

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
MISCELLANEOUS CAUSE NO. 693 OF 2006  
(Arising out of Civil Application No. 203 of 2006)

THE LAW REFORM (MISCELLANEOUS PROVISION) (RULES OF COURT) RULES SI 74-  
1 AS AMENDED BY THE CIVIL PROCEDURE (AMENDMENT) (JUDICIAL REVIEW)  
RULES SI 75 OF 2003

IN THE MATTER OF SECTION 36 OF THE JUDICATURE ACT, CAP 13 AS  
AMENDED BY JUDICATURE (AMENDMENT) ACT NO.3 OF 2002

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY AFRO-MOTORS  
LTD and OKUMU-RINGA PATRICK ALOYSIUS FOR ORDERS OF MANDAMUS  
AGAINST:

- 1. MINISTER OF FINANCE, PLANNING AND  
ECONOMIC DEVELOPMENT**
- 2. PERMANENT SECRETARY/SECRETARY TO  
TREASURY, MINISTRY OF FINANCE, PLANNING  
AND ECONOMIC DEVELOPMENT**

**BEFORE: AG. JUDGE REMMY K. KASULE**

**RULING:**

The applicants seek an order of mandamus requiring the Respondents to perform a Constitutional and public duty to pay monies as well as interest and damages the applicants claim against the Government.

The application was heard on 13.06.07 and Ruling was fixed for delivery on 06.07.07. However before the Ruling was delivered on the fixed due date, the respondents applied and were allowed to have the hearing re-opened so as for Court to consider additional evidence contained in an affidavit deposed to by the Hon. Attorney General, Dr. Khidu – Makubuya. Counsel for applicants requested and Court allowed the request, for the Hon. Attorney General and the Secretary to Treasury, to be cross-examined on their respective affidavits filed in the application. On 28.04.08 after both the Hon. Attorney General and Secretary to the Treasury, had failed to appear to be cross-examined, Court held that the respondents had failed to prosecute the re-opened hearing and ordered the Hon. Attorney General's affidavit, which had necessitated the re-opening to be struck off the Court record. The affidavit of the secretary to Treasury was not struck off since it had been relied upon, without any objection of applicants' counsel at the original hearing held on 13.06.07. Court further ordered that it was to proceed to give its Ruling based on the affidavit evidence and submissions of respective Counsel as at 13.06.07 when the original hearing was concluded.

This is the Ruling:

It is the contention of the applicant that the Attorney General of Uganda, having, on the 3<sup>rd</sup> August 2005, in the exercise of his Constitutional duty under Article 119 of the Constitution, advised the respondents to settle the applicant's claim by paying the applicants Ug.shs.1,074,831,029/=, the respondents must; as a matter of a constitutional and public duty, effect the payment to the applicants.

This contention is contained in the supporting affidavit of Mr. Okumu-Ringa Patrick Aloysius, the second applicant, who also is shareholder and director of the first applicant.

For the Respondents, Mr. C.M. Kassami, Secretary to the Treasury, Ministry of Finance, Planning and Economic Development, swore an affidavit in reply opposing the application

The reasons for opposing the application are, that in March/April, 2002, the applicants accepted a settlement in full and final settlement of the claim, by accepting Ug.shs.431,893,260/= paid to them by Government. Further, that there have been conflicting positions on whether the

applicants are entitled to this payment or not in the office of Attorney General; and that the final position of Government on the matter is that the Applicants are not entitled to any further payment of money. Finally that in the absence of a certificate of order against Government, which is absent in this case, the applicants cannot apply for an order of mandamus against an accounting officer of Government.

The background to the claim of the applicant is that during the period October 1986-1990, the first applicant claims to have procured and imported vehicles, allegedly at the request of the Uganda Government, for its purchase and use. According to the first applicant, Government never purchased all the imported vehicles as undertaken; and so applicants incurred loss giving rise to the claim.

In 1994, Government, through Ministry of Finance, Economic Planning offered to pay shs.431,893,260/= as settlement, but applicant refused the offer as insufficient.

In September, 1995, again Government, through Attorney General offered payment of Ug.shs.700 million ex-gratia payment as settlement. The same was too rejected by applicants.

Applicants then filed in this Court civil suit No. 1098/97 seeking almost Ug.shs.2 billion against the Government. The suit was dismissed by Court as being time barred and disclosing no cause of action against the Government.

After the dismissal of the above suit, on 12<sup>th</sup> March, 2002, the Government, through once again the Attorney General, offered to pay to applicants shs.431,893,260/= ex-gratia payment in full and final settlement of the claim. Through Messrs Odere and Nalyanya, Advocates, applicants accepted this offer in full and final settlement. The same was subsequently paid to applicants in September 2002. Later, after receipt of the money, the applicants denied that the said sum of money was in full and final settlement of their claim.

Thereafter the applicant's claim appears to have been re-opened resulting in the Attorney General's communication to the Minister of Finance, Planning and Economic Development on 03.08.05 thus:-

**“Please find Ug.shs.1,074,831,029/= and please pay it to M/s Afro Motors Ltd and Hon. Patrick A. Okumu Ringa, M.P.”**

The two respondents resisted effecting payment on the ground that the applicants were not entitled to any further payment.

Strangely the Respondents resisting payment are represented in this application by the very Attorney General’s chambers.

Before Court Learned Counsel Henry Oluka, senior State Attorney of the Attorney General’s Chambers, maintained that he had instructions from the office of Attorney General to deny that the applicants are entitled to any further sums of money.

The learned senior State Attorney further submitted that under Article 119 of the Constitution the Attorney General is entitled to vary, distinguish, reverse or change position on a specific issue, if conditions and circumstances arise that necessitate such variances in the internal functioning of Government. This was such circumstance in this particular case. The Attorney General had reversed himself by agreeing with the respondents that applicants were not entitled to any further payment.

Under Article 119 of the Constitution the Attorney General is the principal legal adviser of the Government, giving legal advice and legal services to the Government on any subject; draws and peruses agreements to which government is a party or has interest. None of such can be concluded without advice of Attorney General. Government is represented by Attorney General in Courts of law or other legal proceedings to which Government is a party.

The Constitution or any other law is silent as to what happens if the advice of the Attorney General is not followed by a colleague Minister or a particular Government officer at the level of internal functioning of Government.

The Supreme Court of Uganda observed, as far as it is relevant to this application, that;-

“While it is true that, the Attorney General plays a dual role as Government principal legal adviser on both political and legal matters, nevertheless, in the latter role, the Attorney General is a law officer for the sole purpose of advancing the ends of Justice, and in this role, the Attorney General has access to all types of advice from fellow ministers. He has a host of qualified and experienced advisers on legal matters ----- of the Attorney General of England whose functions are legacies adopted in the Ugandan Constitution and laws, it was said -----

The Attorney General, Politics and the Public interest, 1984, that:-

**“It is the duty of the Attorney General, in the discharge of his responsibilities entrusted in him, to inform himself of all relevant circumstances which might properly affect his decision.”**

See **Bank of Uganda Vs. Banco Arabe Espanol**: [1997-2001] Uganda Commercial Law Reports: (UCL) p.30 at p.40.

It is significant that the language of the Supreme Court in the above case does not amount to asserting that, at all times, the legal advice of the Attorney General to a colleague Cabinet Minister in Government or other Government officer, inspite of the esteem and respect that it must be given, cannot be questioned, if circumstances to do so exist, by his recipient cabinet minister within Government.

To obtain a writ of mandamus requiring the performance of an act, the applicant must show (i) a duty of the opposing party to perform the act, (ii) the ministerial nature of the act (iii) the applicant’s specific legal right for which discharge of the duty is necessary, and (iv) a lack of any other legal remedy. Where, for any reasons, the duty to perform the act is doubtful, the obligation is not regarded as imperative, and the applicant will be left to his/her other remedies. So when the statute prescribing the duty does not clearly and directly create it, the writ will not lie. Mandamus, will not issue to enforce doubtful rights. The duty to perform an act must be indisputable and plainly defined: See: **High Court Miscellaneous Cause no. 31 of 1969: Jayantilal .S. Shah Vs. The Attorney General: 1970 HCB 99**. See also **Redmond Vs. Lexington County School District No. Four: 314 S.C. 431) 4371445 S.E. 2d 441) 445, (1994)**

and

**Gardner Vs. Blackwell, 167 S.C. 313, 321, 166 S.E. 338, 341 (1932)**  
**<http://www.Judicial.state.sc.us/opinions HTML files/sc/24980 htm>**.

Whether or not to issue a writ of mandamus lies within the exercise of the discretion of this Court.

Court has noted that the Respondents did not agree with the advice of the Hon. Attorney General for further payment to applicants of shs.1,074,831,029/= because the latter had been paid in full and final settlement of shs.431,893,260/= by Government in September, 2002. This was following advice of 12.03.02 by the then Attorney General, Hon. F.J. Ayume.

It is also a fact that the applicants' suit to pursue the claim: **H.C.C.S No. 1098 of 1997** was dismissed by court for being time barred and disclosing no cause of action. The applicants had the option of appealing the decision of dismissal of the suit or take steps to set aside the dismissal so that they pursue the case against Government and/or put right the grounds of dismissal. No explanation is given to Court as to why these options were or are not being taken by the applicants. The fact remains however that the applicants had and did resort to a legal remedy, other than mandamus.

Court also notes that the Attorney General's chambers, headed by the Attorney General are themselves defending the Respondents in opposing further payment to the applicants. These chambers drew up and filed in court the second respondent's affidavit which is c/o Attorney General's Chambers. Thus by implication the Attorney General, as head of these Chambers is now pursuing instructions of Government opposed to further payment of any money to the applicants.

The applicants have not submitted to Court any legal authority that bars the Attorney General from, reversing himself on a previous advice he might have given to a fellow Minister or other Government official, if circumstances so warrant. In the considered view of Court resolution of

such disagreement, if one exists, between a Minister and the Attorney General is a matter for the executive of Government to resolve and not a Court of law.

Court, on the basis of the above facts and state of affairs finds that there are grounds to make it doubtful that the respondents are mandatorily under a duty to do the act of effecting another payment of shs.1,074,831,029/=, or any sum at all, to the applicants.

It cannot be stated, on the basis of the facts availed, that the duty to perform required of the respondents is indisputable and plainly defined.

Neither can it be taken as established that the applicants have an undoubtful right to a further payment. Certainly not when the Attorney General's chambers, and by implication, the Attorney General, are pursuing the respondents' instructions to resist further payment to the applicants.

The writ of mandamus will not issue to enforce doubtful rights or those rights that are the subject of disputes.

This court in the exercise of its discretion declines to grant to the applicants the order of Mandamus against the Respondents.

The application stands dismissed.

Given the facts of this application particularly the conflicting positions, overtime, of both the applicants and the Government comprised of, in this application, the Attorney General and the Respondents, as regards the claim, Court orders that the interests of justice will best be served by each party bearing its own costs of this application.

**Remmy Kasule**

**Ag. Judge**

**2<sup>nd</sup> April, 2008**