

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL APPLICATION NO. 524 OF 2010

AMOS BAKEINE,
MOSES TURYAGUMANAWA,
EZRA TWINOMUJUNI,
BARYAYAKAA FRED,
NDINAWA BYAKWASO & 3544 OTHERS } **:::: APPLICANTS**

VERSUS

ATTORNEY GENERAL
UGANDA WILDLIFE AUTHORITY ::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE ELDAD MWANGUSYA

RULING

The applicants had obtained judgment against the Government for UGX. 21,294,000,000/= in High Court Civil Suit No. 1022 of 2001. The government has failed to pay and the applicants bring this motion for an order of mandamus requiring the Commissioner/ Treasury officer of Accounts to exercise and perform a constitutional and public duty to pay a decretal sum of Uganda shillings 6.000.000/= to each of the 3549 applicants, totalling to UGX 21.294.000.000, owed by Government to each of the applicants.

The grounds of the application were premised in the affidavit deponed to by of Alziik Namutebi, an advocate with M/s Nyanzi, Kiboneka & Mbabazi Advocates and these were;

1. That the applicants in the present application were the plaintiffs in HCCS No.1022 of 2001 to which the Attorney General and Uganda Wildlife Authority were the defendants
2. That this Honourable court passed judgment in favour of the plaintiffs after the final disposal of HCCS No.1022 of 2001
3. That on the 5th day of August 2010, a decree was issued by this Honourable court in which the number of plaintiffs was verified and ascertained as 3549 and each of them was awarded UGX 6,000,000 (six million shillings) totalling to UGX 21,294,000,000
4. That on the 5th day of August, 2010, this court issued a certificate of order against the government and on the 20th day of August 2010 the said certificate was forwarded to the Treasury Officer of Accounts vide Ref :NKM/GEN/2010 dated 20th August
5. That the continued non performance by the treasury officer of accounts of his duty to pay the decretal sum is an infringement and denial of the applicants' right to property which ought not to be condoned by this court.

The respondents did not file any affidavit in reply.

Although the parties agreed to file written submissions and were thus directed by court to file submissions on given dates, the respondents did not file their submissions. This court, dispenses with the submissions of the respondent and disposes of this matter on the available evidence and submissions of the applicant.

This application revolves around the issue of the writ of mandamus provided for under Section 36 (1) of the Judicature Act Cap 13

empowers the High Court to make an order of mandamus requiring any act to be done and section 37 which empowers this court to grant an order of mandamus where it appears to court to be just and convenient.

The gist of the applicants' submission is that there are grounds on record in support of the application and these include the consent judgment which was signed by the parties and a decree and certificate order against the government. The secretary to the treasury has a corresponding duty to pay the sum in the judgment, the decree and certificate of order and there is no other alternative remedy to the applicants who have complied with the procedure provided under section 19 of the Government proceedings Act; there is no dispute as to the amount in the consent judgment. The remedy sought by the applicants is compulsion of the Commissioner/ Treasury officer of accounts to perform a duty in lieu of execution proceedings being brought against the respondents.

Section 19 of the Government proceedings Act provides that execution against the government is commenced by the judgment creditor obtaining a certificate of order against the government which certificate may then be served on the Attorney General and the relevant secretary to the treasury. A person may then within 21 days after an order has been made for payment of money by the government to an individual obtain a certificate in a prescribed form containing particulars of the order specifying the amount and costs that is to be paid to the applicant.

Subsection 19 (3) provides;

If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the treasury officer of accounts or such other Government accounting officer as may be appropriate shall, subject as hereafter provided, pay to the person entitled or to his or her advocate the amount appearing by the certificate to be due to him or her together with the interest, if any, lawfully due on that amount; but the court by which any such order as is mentioned in this section is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part of it, shall be suspended, and if the certificate has not been issued may order any such directions to be inserted in the certificate.

Subsection (4);

Except as is provided in this section, no execution or attachment or process in the nature of an execution or attachment shall be issued out of any court for enforcing payment by the Government of any such money or costs as are referred to in this section, and no person shall be individually liable under any order for payment by the Government, or any Government department or any officer of the Government as such, of any such money or costs.

It follows from subsection 4 above, that the only method of enforcement of payment is that under the preceding sections of

section 19 (4) cited above. Where a certificate is served and no payment is made, the judgment creditor is left with the option to apply for execution by way of mandamus to compel the relevant treasury officer of accounts to pay.

A similar situation arose in the case Of **SHAH V ATTORNEY GENERAL (3) HCMC NO.31 OF 1969** where the applicant had like in this case obtained judgment against government which filed to pay. The applicant filed a motion for an order of mandamus directed to the officials responsible for making payment, to pay the amount of the judgment. After hearing of the motion, court held that mandamus could issue to the Treasury Officer of Accounts to compel him to carry out the statutory duty to pay cast upon him by S.20(3) of the Government Proceedings Act. Likewise this court finds that this is an appropriate case for making an order of mandamus which is hereby granted.

On costs I wish to observe as I did in Misc application No. 140 of 2012 that the judgment the subject matter of this application arose out of an eviction of thousands of people from their bibanja in 1993. The action of eviction was almost twenty years ago. The Attorney General agreed to pay the victims of the evictions on 24.06.2012 and in the application cited above I observed that by then the Attorney General should have complied with the decree. I reiterate the same observation and it is for that reason that court orders that the respondents who neither filed a reply to this motion or filed written submissions when directed to do so should meet the costs of this application. It is a demonstration that they do not seem to be

caring about the plight of thousands of people that were affected by the eviction and craving for payment of money that government pledged to pay when a consent judgment was filed.

In the circumstances an order of mandamus requiring the Commissioner/Treasury Officer of Accounts to perform a constitutional and public duty to pay a decretal sum of Uganda Shillings 6.000.000= to each of the 3549 applicants is granted and the respondent will meet the costs of this application.

Eldad Mwangusya

J U D G E

28.09.2012