

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS APPLICATION NO.17 OF 2012

KAKYOMYA FARM AND ANOR:.....APPLICANTS
VERSUS

1. ATTORNEY GENERAL :.....RESPONDENTS
2. TREASURY OFFICER OF ACCOUNTS

BEFORE HON. MR. JUSTICE MIKE J. CHIBITA

RULING

This was an application by Notice of Motion seeking for orders of mandamus to issue against the Attorney General and Treasury Officer of Accounts, for general damages and costs of the application.

The grounds are stated in the motion and application is accompanied by the affidavit of Counsel Bwiruka. There is an affidavit in reply by Patricia Mutesi a Principal State Attorney.

Counsel for the Applicant submitted as follows:

“The principals for grant were spelt out in the case of **Mera Kobwemi versus Attorney General MA 18 of 1988** and also repeated in **Matovu Kimanje, Nsibambi and Co Advocates versus Attorney General MA 1756 of 2000**.

There must be a legal right; in this case it is based on the judgment, order and decree of Civil Suit 14 of 2005. The legal duty to honour that court award is provided for under section 19(3) Government Proceedings Act.

Also, there must be a proper cause for court to grant the orders sought. The judgment and decree were made on 23rd April, 2010. A demand on the 1st respondent to pay was made and received on 17th May, 2010 by Counsel for the respondent and a 2nd demand was made on 12th January, 2012.

They have refused to satisfy the decree.

On existence of other appropriate remedies, that is not possible because execution against government by way of attachment is not convenient, is costly, less effectual and beneficial thereby leaving the applicant with only this remedy.

Finally the order sought is very effectual because the respondent will only pay within a timeframe given by court since decree did not specify time within which to pay so that respondents are not at liberty to take their time.

It is one year and ten months since the decree was passed but no payment has been forthcoming. Court has the power to order payment within a specified time frame.

The delay/refusal to pay is not in the interest of government because the court awards carry interest which continues to accumulate. This has a serious implication on the taxpayers.

There is also inflation that court should take judicial notice of. The applicant continues to suffer more losses since he was affected in his ranch.

The affidavit in reply is very unfortunate. It is true there was a MA 108 of 2010 an application to file an appeal out of time. The application was argued and determined on 15th July, 2010 where a ruling was delivered to the effect that there was no sufficient cause and application was dismissed.

Therefore there is no appeal pending. Therefore for her to aver as she did in paragraph 3 is very unfortunate.

We heard an application on taxation meaning that there was no appeal except the taxation reference. The decretal award can therefore be paid leaving court with the duty to vary the certificate of costs.

It is not true that the awards are uncertain and unclear. That leaves annexures A, B and C to the affidavit in reply with no probative value.

I pray that the application be granted in the terms prayed for and varies the certificate accordingly. We pray for costs of the application and for damages.”

In response, Counsel for the Respondent had the following to state in reply:-

“We oppose the application. The writ of mandamus is based on the discretion of court. I agree with the factors for the grant.

The legal right must not be in doubt. The application and annexure A2 to affidavit is a certificate of order which applicant seeks to enforce. Paragraph 4 of the affidavit in reply challenges the award on the basis of the uncertainty arising from the challenge to the taxed costs and therefore cannot be enforced.

This was set out clearly in **Afro Motors versus Okumu Ringa MC No. 693 of 2006** where **Kasule J.** stated that mandamus could not issue to enforce doubtful awards. The application was therefore dismissed.

At the time of filing the application Counsel was aware of our dissatisfaction with the taxed amounts. We therefore pray that the application is dismissed with costs.

The budgetary constraints will not immediately allow payment when there is a dispute ongoing. He has a fallback position of interest on the decretal sum and therefore inflation should not be raised as an issue.

We therefore pray that application be dismissed with costs.”

In rejoinder COUNSEL FOR APPLICANT stated as follows:

“The avenues under which this court is being asked to exercise discretion are shown. On the issue of disputed costs the matter is resolved by section 19(3) GPA and the events of today where the reference has been argued.

Court therefore under section 19(3) can order payment of award not in dispute or vary the certificate. Thankfully the dispute has been argued today and court can make the relevant orders.

The certificate was granted by court in April, 2011 and the reference to contest costs filed in November, 2011 therefore at time of filing the certificate there was no dispute.

We therefore pray as before.”

COURT: I have listened to the arguments by both Counsel. Both parties know that there was an appeal against the Bill of costs, which was successful in reducing the amount allowed as taxed costs.

Since the Applicant has not yet made a demand from the Respondents ever since the figures were revised, it is rather premature to issue the writ of mandamus.

The Applicant is advised to issue a demand note to the Respondents giving the updated figure as soon as possible. If the current financial year ends without the bill being honoured then an application for mandamus should be filed and considered at that stage.

This also serves as notice to the Respondents that failure to satisfy the applicant's certificate in the current financial year will most definitely attract issuance of the writ of mandamus.

It is in the interest of justice that each party bears its own costs.

Dated at Fort Portal this 16th day of March, 2012

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JUSTICE MIKE J. CHIBITA

