

**REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA SITTING AT KOLOLO**  
**CIVIL DIVISION**  
**MISCELLANEOUS NO. 0160 OF 2010**

**BAREMA FEREDAS & 9 OTHERS:..... PLAINTIFF/APPLICANT**

**VERSUS**

**ATTORNEY GENERAL:..... :.....DEFENDANT/RESPONDENT**

**RULING**

This is an application by way of a Notice of Motion taken out under some articles of the Constitution (254, 50 & 42), S. 3 of the Judicature (Amendment) Act, and Rules 3, 4, 6, 7 and 8 of the Judicature (Judicial Review Rules) of 2009. Also reliance was made to provision of the Pensioners Act, and the Rules made thereunder.

The application is seeking the following reliefs:-

- (i) A declaration that the Respondent's decision to withhold and/or refusal to pay to the Applicants their late husband/father's pension, gratuity and other entitlements was illegal, unjust and discriminatory.
- (ii) An order that the Applicants be paid all the accumulated pension gratuity and allowances due to them as beneficiaries and survivors on account of their late husband/father.
- (iii) An order requesting the Respondents to continue to pay to the Applicants pension, gratuity and allowances on account of their late husband/father in one lump sum catering for all the outstanding arrears of pension, gratuity and other allowances and entitlements on account of their late husband/father monetized at UGX 3,610,302 per month per annum x 15 years and pay the same upfront.
- (iv) An order of mandamus ordering the respondents to promptly pay the said monies to the applicants.
- (v) Costs of this application be provided for.

Thereafter the applicants listed 11 grounds why the application should succeed. The application was also supported by one Agaba Mark's affidavit with several annextures.

The respondents filed affidavit in reply deposed by one Mugume Fred from the Uganda Police Force. At the hearing, Mr. Adrale, represented the Attorney General and intimated to the court that the respondent has never refused to pay the money due to the applicant. He told Court further that, the Ministry of Public Service is supposed to process the money and pay it to the applicants. He further raised a preliminary objection in that it was incompetent on the following grounds;

- a) That there was no decision for the court to review.
- b) That the applicant should have brought the matter by plaint.

On the other hand, Dr. Akampumuza, the Learned Counsel for the applicant submitted to the effect that, Article 42 of the Constitution gives a party to go to Court and complain about administrative decisions taken against him/her. That under the interpretation Act, actions include omissions. He told court further that, this was a proper case for Judicial.

Review under the provision of Rule 3 (1) (a) of Judicature (Judicial Review) Rules of 2009.

Both Learned Counsel cited various authorities to support their respective view points.

The Chief Justice of Uganda, Hon. B.J. Odoki, and the Rules Committee made, Rules governing Judicial Review in Uganda. The latest are contained in The Judicature (Judicial Review) Rules of 2009. (S. I. 11/09). The Chief Justice made these Rules pursuant to S. 41 and 42 of the Judicature Act, Cap 13 of Laws of Uganda.

Under S. 42 (1) (b) of the Judicature Act, he empowered to make rules of court

*“ prescribing the procedures.....where an order of mandamus, prohibition or certiorari is sought.”*

Rule 3 of The Judicature (Judicial Review) Rules 2009, defines appropriate cases for Judicial Review. Rule 3 (1) (a) provides as follows:-

### **“ 3: Cases appropriate for Judicial Review**

- (i) An application for:-
  - (a) an order of mandamus, prohibition or certiorari .

Rule 6 provides for the mode for Judicial review:

### **6: Mode of applying for Judicial Review.**

(i) In any criminal or civil cause or matter, an application for Judicial Review shall be made by Notice of Motion in the form specified in the schedule to these Rules.

Rule 7 provides for the filing of affidavits by both sides and other matters connected thereto. These affidavits, as is the practice, provides for the evidence supporting the grounds for the application.

Rule 8, of the same Rules provides for the award of damages if the applicant has claimed the same in his motion.

Given the above provision of the law, any person seeking mandamus, prohibition and certiorari, he can do so by way of Judicial Review.

In this particular case, the applicants have moved court for various orders including that of mandamus. They have done so under Article 254, 50 and 42 of the Constitution. They have cited the Judicature (Judicial Review) Rules 11/2009 and other laws.

It is therefore my considered view that they are entitled to bring this application as they did, that is by way of Notice of Motion. In the premises the preliminary objection is overruled in that it was not necessary for the applicant to file a plaint.

As to whether the application has merit or not, this requires a full hearing of its own which could include the calling and examining of the deponents of both the affidavit in support of the application and that in reply.

Order accordingly.

**Justice Akiiki – Kiiza**  
**Judge**  
**07/05/2013.**