

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

**CAUSE NO. 372 OF 2013 OUT OF EACJ REF 06/2010 & APP NO. 06
OF 2011**

1.DEMOCRATIC PARTY

2.MUKASA FRED MBIDDE

VERSUS

1. THE ATTORNEY GENERAL OF UGANDA

2. TREASURY OFFICER OF ACCOUNTS

BEFORE JUSTICE NYANZI YASIN

RULING

BACK GROUND

1. The records show that this application was filed in this court on the 30th Dec 2013. It was filed under the Judicature (Judicial Review) Rules 11 of 2009 Act 44 of the East African Treaty and Rule 74(1) of the East African Court of Justice Rules of Procedure.

2. The applicants sought to be granted the prerogative order of mandamus to compel the respondents to pay to the applicants a sum of shs 51,556/= which accrued to them as costs in **EAST AFRICAN COURT OF JUSTICE ARUSHA REF 6 OF 2010 & APL NO. 6 OF 2011** Democratic party & Mukasa Fred Mbidde –vs- AG of Uganda.
3. Secondly the order that the respondents do appear before that court to show cause why they should not pay the amount due in the decree and thirdly that the respondent be ordered to provide security by way of bank guarantee for payment of USD 51.6. Lastly the costs of this application.
4. The application is supported by the affidavit of the applicant Hon. Mukasa Fred Mbidde with relevant Annextures attached thereto.
5. There are two affidavits in reply of this application, the first one is by **NABAASA CHARITY FILED ON 03.03 2014** and the 2nd one by **KEITH MUHAKANIZI FILED ON 02/04/2014** belatedly along with written submissions which I believe cannot be considered as pleadings had long closed.
6. However it is important to state the procedural concern in the affidavit of **NABAASA**.In paragraph 5 the deponent stated

5” that the applicant has not duly made a demand in accordance with the Government Proceedings Act and Government Proceedings Rules”

Para 6 that I know that the applicant’s claim duly is not actionable and cannot be sustained for want of due process”

7. The submission of the learned attorney General considered the above position first. It in other words raised a preliminary point of law for this court to consider.

8. AG detailed the chronological events that preceded the filing of this application. Relevantly the AG stated that this application was filed on the 30/12/2012 after the decision of the court on appeal made on 5th Nov 2013. The AG stated that the applicant obtained the certificate of order for costs against government issued by the high court on the 7th January 2014.

Lastly the AG stated the the applicant served the office of the respondent with the certificate of order on 17Jan. 2014.

9. From the above sequence of events the AG wanted this court to answer the issue whether or not the applicant complied with S.19 of the Government Proceedings Act and made effective demand for payment prior to filing of the instant application.

- 10.** The AG cited and relied on S. 19 (1) and (3) of the Government Proceedings Act providing to the effect that any party seeking to satisfy an order against Government including an order for costs is required to obtain a certificate of order against Government, specifying the sum due. The certificate is in a prescribed form and it is endorsed by the registrar of court.
- 11.** Under S. 19 (2) of the same Act it is required that service of the certificate of order be made on the Attorney General.
- 12.** The AG finally reasoned that payment by Government only becomes effective when a certificate of order is issued against Government and the same is duly served on the A G . As required under S 19 of the Government proceedings Act and added that as a matter of practice the AG is served along with the treasury accounting officer.
- 13.** In the present case the AG’S main concern is that this application was filed on 30th December 2013. Yet Annexure ‘A” to the affidavit of Hon. Mukasa Mbidde the applicant, which is the certificate of order the same was issued on 7th Jan 2014. Still it is not disputed that the same was served on Attorney General on 17.1. 2014.
- 14.** The AG concluded that an order of mandamus cannot be made as the Treasury Officer of Accounts has not violated any duty requiring him to effect payment on the applicant. The reason being that the application was filed before any demand was duly made to the respondent to pay as required under S. 19 of the

Act. The AG called this failure to take a mandatory and essential step prior to the filing of the application premature and incompetent. He prayed that it be dismissed with costs.

15. Mr. Semuyaba for the applicant made an over detailed reply to the AG'S concern.

I believe what was required of the applicant in answering the AG was to prove that the application was in conformity with the provision of S. 19 of the Act not more than that. It required Mr. Semuyaba to explain why while on the 30/12/2013 when he filed his application, the certificate of order had not come out. It comes out on 7/1/2014.

Secondly how could the certificate be annexure "A" to the affidavit of Hon. Mbidde which was deponed on 27/12/2013. That is what was required of that applicant to explain as a reply in rejoinder to the concerns of the Attorney General.

16. Mr. Semuyaba himself and rightly in my view cited **OIL SEEDS –VS- CHRIS KASSAMI MISC APP NO. 136/2008**

And quoted the passage below

“In the instant case, I find that a clear legal right exists in the plaintiff. It holds a certificate of order against the Government which the Government is under a duty to satisfy under section 19 of the Government proceedings Act (CAP 77) there is a corresponding duty as Secretary to the Treasury to pay the sum claimed in the certificate of order.”

17.The AG'S objection to the present application is that no certificate of order against Government existed to clearly state how much due was to be paid and before the same could be re-established or availed this application was filed.

18.IN PATRICK KASUMBA -VS- AG & TREASURY OFFICER OF ACCOUNTS MISC APP NO. 121/2010 BAMWINE J HELD

Before the remedy of mandamus is given the applicant must show a clear legal right to have the thing sought by it done. Mandamus is a discretionary order like all other prerogative orders, which the court will grant only in suitable circumstances and withhold in others. It cannot be granted as a matter of course. A demand for performance must precede an application for mandamus and the demand rules have been unequivocally refused"emphasis.

19.The present case is on the extreme side because before the application was filed no demand at all was made under S. 19 of the Act.

In **GOODMAN AGENCIES LTD VS- AG AND TREASURY OFFICER OF ACCOUNTS MISC NO. 34/ 2011** application for an order of mandamus was based on a consent judgment and no Certificate of order was obtained against the Attorney General. My brother Judge **CHRISTOPHER MADRAMA** explained the purpose of procedure under S. 19 of the government proceedings Act. He stated.

“The requirement for the certificate of order against the Government and the decree is procedural. It ensures that only the exact amount stated in the certificate of orders are paid by the Treasury Officer of Accounts. In the present case I find the applicant’s application is premature for failure to have extracted an order from the High Court.....”

The Judge concluded.

20. An order of mandamus is issued against a Government official or in history a crown’s servant to enforce the execution of a statutory duty. In the case of this nature, the Attorney General and the Treasury Officer of Accounts cannot be said to have failed to execute any statutory duty before they are served with the certificate of order as S. 19(2) of the Government Proceedings as the Act requires. Until the 17/1/2014 when the Attorney General was served he had no statutory duty to execute and failed to do so.

21. On the part of the 2nd respondent, the Treasury Officer of Accounts who is at the same time the Permanent Secretary of the Ministry of Finance and Economic Planning, he deponed that he was only served with court process on 10. Feb 2014. He did not confirm that the documents he was served with were a certificate of order against the Government or that such service was in conformity with the provisions of S. 19 (4) of the Government Proceedings Act. As Court, I will take

it that he was served only on 17 /02 /2014 as deponed. However even if he had been served at any earlier date. The Attorney General has already proved that while this case was filed on 30/12/2014, the certificate of order against the government was endorsed and issued by court after the filing of the application. The omission in my view is incurable as the certificate cannot act retrospectively to cure the offensive filing of the motion before a demand is made.

22. For those reasons I agree with the AG's objection. This application just like **GOOD MAN AGENCIES LIMITED –VS- AG (Supra)**

Is premature and it is accordingly struck out with costs to the respondents.

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NYANZI YASIN

JUDGE

2/04/2014