

Court Civil Suit 64 of 2003 and were awarded that sum. The applicants have made several demands to the Attorney General but they have neglected or refused to pay. Further that the applicants have incurred heavy costs as a result of these proceedings. It is further contended that the Attorney General and the co-respondents have no plausible excuse not to pay because there is no pending appeal. That the applicants have already filed a decree/order, a certificate of order against government and written a demand letter for payment dated 15th October 2015 but no payment has been made. Finally that this matter has dragged on for too long unnecessarily to the detriment of the applicants and therefore it is in the interest of justice that this application be allowed.

The Notice of Motion is supported by the affidavit of Atugonza Flavia Anna.

The respondent filed an affidavit in reply sworn by Richard Adrole Senior State Attorney.

Briefly the background to this application is that the applicant sued the 1st respondent in High Court Civil Suit 64 of 2003. This court entered judgment in their favor on 10th December 2014. They extracted a decree on 12th July 2015 (annexture "B1"). They obtained a certificate of order against government on 13th October 2015 (annexture "B3") and a taxation certificate of UGX 856,967,922/- on 30th September 2015 (annexture "B2"). Subsequently the applicants made a demand note dated 15th October 2015. However, no payment has been made yet hence this application filed on 22nd December 2015.

At the hearing of the application, the applicants were represented by Mr. Chris Bakiza and the respondents by Mr. Martin Mwambustya Senior State Attorney.

In his submissions, learned counsel for the applicants submitted in summary that the respondents are in breach of their statutory duty to pay the applicants who are former employees of Apollo Hotel. Further that the respondents admit in their reply that a demand to pay was made and therefore there is no lawful excuse for the respondents not to pay. Learned counsel further submitted that this court has supervisory jurisdiction of administrative bodies and with statutory functions to carry out their duty and ensure individuals receive fair treatment. Learned counsel relied on the case of **China Civil Engineering Construction Company Vs Attorney General Misc. Cause 71 of 2014** and added that the respondents were served with certificate of order against government and all other court documents but they have not responded and therefore the applicants are dissatisfied. That on that basis the applicant has proved the grant of an order of mandamus that court should be pleased to grant the orders sought.

In reply learned counsel for the respondents opposed the application. He relied on the affidavit of Mr. Richard Adrole (SSA) and submitted that the decree against the government is due and payable upon service of certificate of order against government. He acknowledged that the respondents were served on 15th October 2015 and by that time the respondents had not yet budgeted for the claim of the applicants. Learned counsel pledged that the applicants' claim will be satisfied and budgeted for in the financial year 2016/2017 and therefore a writ of mandamus should not be issued. That the application should be dismissed or alternatively the application should be put in abeyance until time comes.

In rejoinder, learned counsel submitted that according to him the statements of Adrole are mere speculation.

In order for an application of this nature to succeed, the applicant must show that:

1. He/she has a legal right to have something done by the respondent and that the respondent is under duty to do it.
2. That the performance of the duty by the respondent is necessary.

3. That he/she has demanded that the thing be done or that the respondent performs the duty.
4. That the demand has been unequivocally refused.
5. That there is no other remedy available.

In the instant case, it is undisputed that there is a decree of court. There is a certificate for costs and a certificate of order against government which was served. Nevertheless, I have found the explanation by the Attorney General why he has not been able to fulfill the demand by the applicant convincing. By the time of demand for payment i.e 15th October 2015, the budgeting process for the current financial year 2015/16 had ended and the demand could not be slotted in at such a late time. There is an undertaking that the funds for this claim will be allotted in the next financial year of 2016/2017 since this claim had not been budgeted for, therefore failure to pay the applicants this financial year 2015/16 is due to reasons beyond the respondent's control.

By the time of the demand for payment, it was barely two months from the date of service of the certificate of order against government. It was at that time that this application was filed.

Therefore I am satisfied that the respondents have put up a valid defence and there has not been an unequivocal refusal to pay.

Consequently I will find that this application has been hurriedly filed. It will be filed when the respondents fail to budget for the applicants' claim as promised.

The application will be dismissed but with no order as to costs.

Stephen Musota

J U D G E

30.03.2016