

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISC. APPLICATION NO. 0121 OF 2013

(Arising from HCCS No. 583 of 2005)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

PANAKAT MUHAMMAD ASHIRAF

(Suing through Nsubuga Musoke D.

David holder of Power of Attorney) ::::::::::::::::::::::::::: APPLICANT

VERSUS

- 1. ATTORNEY GENERAL**
- 2. THE TREASURY OFFICER OF ACCOUNTS
OF MINISTRY OF FINANCE, PLANNING
AND ECONOMIC DEVELOPMENT**
- 3. THE OFFICIAL RECEIVER/LIQUIDATOR
UGANDA AIRLINES HOLDINGS LIMITED
IN LIQUIDATION**

RESPONDENTS

BEFORE: HON.JUSTICE STEPHEN MUSOTA

RULING

This is an application brought by Notice of Motion under Rules 3(1)(a) and 6(1) of the Judicature Judicial Review Rules to compel the respondents and the Treasurer Officer of accounts to carry out its statutory duty to pay the applicant the decretal sum of USD 25623.4 or its equivalent in Uganda Shillings and UGX 9,733,600/- being taxed costs. The grounds for the application are set out in the application and supporting affidavits. In summary, the grounds are that the applicant is decree holder in High Court Civil Suit No. 583 of 2005. He has a certificate of order against government. He has made many demands to be paid but the respondents have failed to satisfy the decree. The applicant states that he has made the application without undue delay and the respondent has no valid reason to deny the applicant the fruits of judgment. That in the interest of justice this application be granted.

The application is supported by the affidavit of Nsubuga Musoke D. David and the respondents filed two affidavits in reply, one sworn by Imelda Adong State Attorney in the Ministry of Justice and Constitutional affairs and another by Mustapher Ntale, Manager Liquidation/Officer Receiver in Uganda Registration Services Bureau.

The background to this application is that the applicant sued the 1st and 3rd respondents in High Court Civil Suit 583 of 2005. Judgment was entered in his favor on 25th January 2012. A decree to that effect was extracted on 14th February 2012 and he obtained a certificate of order against government on 22nd November 2012 (see annexure “B” and “D” respectively). He also got a taxation certificate (annexture “C”). Despite making repeated demands for payment to the 3rd respondent, no payment to date has been made.

At the hearing of this application Ms. Dorothy Kabugo represented the applicant and Ms. Ijang State Attorney represented the respondents.

In her submissions, learned counsel for the applicant said that the application is premised on the decree of February 2012 against the 3rd respondent requiring them to pay repatriation, general damages and costs. That the process as outlined above was followed but to date no payment has been made yet the respondents do not deny the indebtedness. That this has put the applicant to enormous stress and costs. That the respondent admits that they are indebted to the applicant and promised to pay. Further that it has been four years since the decree was made and if the excuses by the respondents are taken it may take another ten years yet the claimant is elderly and needs to enjoy the fruits of his judgment. Learned counsel further submitted that the purpose of this application is to compel the respondent to settle this claim. She relied on the case of **John Mary Kitembo Vs KCC Misc. Cause No. 80 of 2009** where it was held that an order of mandamus is a prerogative to enjoy a right.

The right in this case is in the decree which the applicant demanded to be fulfilled but for four years nothing has been done. That if the order is not granted, no payment shall be made.

In reply, the respondents submitted that funds have not yet been allocated to pay the applicant. That even if demands for payments are made, payment can only be made after funds have been allocated. Further to this the Official Receiver says that the 3rd respondent is overdrawn and he is in talks with the privatization unit to come up with the payment schedule. That since the order sought is discretionary in nature, it should not be granted. That demands for payments have never been unequivocally refused. Finally citing the case of **Kakyomya Farm & Another Vs Attorney General & Another HCMA 17 of 2012**, learned counsel submitted that the respondents shall pay whenever funds are available therefore the application should be put in abeyance.

In rejoinder learned counsel for the applicant submitted that claims that there is a plan to pay have not been supported by evidence and therefore cannot be relied upon by court. The fact that the respondent is overdrawn have not been proved with evidence and the respondent is not party to negotiations with the Privatization Unit therefore this argument should be ignored. Further that although the ministry receives funds every financial year the applicant's claim is never included. Only an order of mandamus can compel the respondents to pay.

I have considered the application and submissions by respective counsel.

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

1. He/she has a clear legal right to have something done by the respondent and the respondent is under duty to do it.
2. Performance of the duty by the respondent is necessary.
3. He/she has to demand a thing to be done or that the respondent performs that duty.
4. The demand has been unequivocally refused.
5. There is no other remedy available.

See: ***Goodman Agencies Limited Vs Attorney General & Anor, High Court Misc. Application 34 of 2011.***

In the instant case it is clear that there is a decree of court ordering the 3rd respondent to pay the applicant 76,965,370/-. That means that the respondent has a legal duty to pay and the applicant has a legal right to be paid.

The applicant has made repeated demands to the respondents to pay as per annexure “E. The demands were never satisfied nor did the respondents reply in any way which has made it difficult to ascertain whether it is an equivocal refusal to pay or acceptance to pay. In my view however, this adamant refusal to respond amounts to an unequivocal refusal to pay despite the Attorney General’s argument, that this is not the case. The none response by the respondents left a lot of uncertainty as to whether the applicant will ever be paid. The debt has been pending for 4 years and no way forward is in sight. The respondent were served long ago in 2012 but were not moved. I think in the circumstances the applicant has no remedy other than to apply for mandamus in light of Section 19(4) of the Government Proceedings Act.

There is no evidence to back the claim that there is a plan to pay. The fact that the respondent is overdrawn is equally not proved by evidence.

The applicant has proved the application and I will grant the same. The application is accordingly allowed with costs to the applicants.

I so order.

Stephen Musota

J U D G E

24.03.2016