

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 171 OF 2015
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BASIIMA KABONESA & ORS:..... APPLICANTS

Versus

ATTORNEY GENERAL :..... RESPONDENT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application for mandamus against the Treasury Officer of Accounts/Secretary to the Treasury to compel the respondents to perform a Constitutional and Public duty to pay UGX 29,184,201,127= claimed by the applicants against the Government by reason of a Decree and Certificate of Order against Government arising from HCCS 259 of 2014.

An order and decree in respect of the decretal sum was approved by both the applicants' counsel and the Director Civil Litigation on behalf of the Attorney General and the same was extracted. However, the Secretary to the Treasury has not performed his duty to pay the decretal sum in infringement and denial of the applicants' right to property which ought not to be condoned by court.

In reply the respondents opposed the application reasoning that they have since discovered new facts that the verification and computation was based on the award by the Industrial Court in Trade Dispute 1 of 1992 to wit; **National Union of Clerical, Commercial and Technical Employees Vs Coffee Marketing Board** whose enforcement was prohibited by a ruling by the High Court in **Miscellaneous Cause 74 of 2006 Coffee Marketing Board Ltd and National Union of Union of Clerical, Commercial and Professional Employees**. Therefore the respondents are in the process of applying to set aside the consent judgment in HCCS 259 of 2014. That allowing this application may lead to double payment and occasion a miscarriage of justice since the respondent are in the process of setting aside the consent order. Finally the respondents argue that payment of terminal benefits to the former workers of Coffee Marketing Board is subject to regularization and fresh verification.

The applicants filed an affidavit in rejoinder disputing the position held by the respondents. To them the issue which has come to this court severally concerns a group of 264 Unionized claimants laid off in 1991 and not the current 1568 claimants laid off between 1992 and 1998 the Judgment Creditors in HCCS 259 of 2014.

At the hearing of this application Mr. Musinguzi Bruce appeared for the applicants while Mr. Ojambo Bichachi a State Attorney appeared for the respondents.

Both learned counsel never disputed the background to this application. There is no dispute that to-date the decretal sum has never been paid. The respondent argues that this is due to their intention to apply to set aside the consent judgment and re-verification of the claim in view of the decision of this court in MC No. 74 of 2006.

This is an application for mandamus and mandamus is a prerogative order issued in certain cases to compel the performance of a duty. It is issued by court where the injured party has a right to

have anything done and has no other specific means to compel its performance especially when the obligation arises out of the official status of the respondent. This writ is used to compel public officers to perform duties imposed on them by Statute or Act of Parliament as was decided in the case of *Shah Vs Attorney General (No. 3) [1970] EA 543.*

In this application what the applicant is seeking is not relief against the Government but to compel a Government official to do what the Government through Parliament has directed him to do.

After a careful consideration of all the pleadings and submissions by respective counsel it is apparent that the respondents are refusing to pay the applicants basing on a misapprehension of the facts in the decision by the Industrial Court and this court regarding the claim by the applicants.

As rightly deponed by Mr. Basiima Kabonesa and submitted by Mr. Musinguzi learned counsel for the applicants, the award of the Industrial Court in Trade Dispute No. 1 of 1992 concerned a group of 264 unionized claimants who were laid off in 1991 and not the current 1,568 non unionized claimants laid off between 1992 and 1999 and are the judgment creditors in Civil Suit No. 259 of 2014. That is why the ruling in part 2 of claim 1 of 1992 advised the new claimants that were laid off in 1992 to file a separate suit.

Likewise the judgment in HCMC 74 of 2006 concerned the group of claimants who were laid off in 1991 and not the current claimants in this application because it was prohibiting the enforcement of Trade Dispute No. 1 of 1992. Therefore, there is no reason why the applicants should not be paid what is due because the respondent has the intention which has lasted for over a month to apply to set aside the consent and/or “regularization and fresh verification” of the claim.

I am therefore, satisfied that this application has merit and it is hereby granted. The respondents are ordered to do their duty and pay the applicants as per the Certificate of Order against Government. Costs of this application are to be provided by the respondent.

Stephen Musota

J U D G E

11.01.2016.

11/1/2016 AT 9:57:56AM:

Mr. Bruce Musinguzi for the Applicants.

The applicants in court (57).

Mr. Ojambo Bichachi from the directorate of Civil litigation, State Attorney appearing for the respondents.

Ms. Jolly Kauma Court Clerk.

Court:-

Ruling delivered in open court in presence of the above.

Stephen Musota

J U D G E

11.01.2016.

11/1/2016 AT 9:57:56AM:

Court:-

Mr. Bruce Musinguzi for the Applicants.

The applicants majority in court.

Mr. Ojambo Bichachi State Attorney, from the Directorate of Civil Litigation, appearing for the respondents.

Ms. Jolly Kauma Court Clerk.

Mr. Bruce Musinguzi:-

The applicants majority of whom are in court I wouldn't want to mention all of their names, they are about 57 of them around court premises. May be for the ease of this court I could handover this list.

This matter is coming up for ruling and we are ready to receive it.

STEPHEN MUSOTA

JUDGE

11/01/2016.