

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

MISC. APPLICATION NO. 70 OF 2015

(Arising from H. C. C. S NO. 123 OF 2009)

1. KALIBAALA VINCENT

2. SENTONGO KIZIRI & 560 OTHERS ::::::::::::::: APPLICANTS

Versus

ATTORNEY GENERAL ::::::::::::::: RESPONDENT

BEFORE: HON.JUSTICE STEPHEN MUSOTA

RULING

This is an application for consequential orders, interest, a certificate of complexity and a certificate of 2 counsel. It is brought by Notice of Motion under Articles 254 of the Constitution, Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act and Order 52 of the Civil Procedure Rules.

The applicants seek for the following orders:

1. A consequential order that the respondent/defendant immediately pays to the applicants/plaintiffs a total sum of 25,739,251,935/- as calculated and ascertained terminal benefits and/or pension and arrears thereof, general damages, interest thereon as of 29th February 2016 following the judgment of court delivered on 8th may 2015.

2. That the applicants be paid interest due on the ascertained terminal benefits and/or pension and arrears up to the date of the ruling in this application.
3. That all pension arrears and decretal sums be paid through the applicants/plaintiffs lawyers/advocates M/s Bashasha and Co. Advocates for onward transmission to the applicant.
4. That a certificate of complexity and a certificate of two counsel be issued by this court.
5. Costs of the application be provided for.

At the hearing of the application, Mr. Mpumwire Abraham appeared for the applicant and Mr. Elisha Bafilawala (SSA) appeared for the respondent.

The brief background to this application is that sometime in 2009, the applicant filed a suit in this court which was heard and disposed of in their favor. The court made several orders but amongst them, it ordered that the applicant be reinstated on the payroll and be paid the unpaid pensions and arrears. The court also ordered that the respondents compute and ascertain the pension arrears and the respondents compute the same with haste and in consultation with the Auditor General. To date since 8th May 2015 which was the date of judgment, the respondent has not computed or paid the applicants entitlements in the judgment of court and that is why this application has been brought.

The grounds of the application as contained in the application and the affidavit in support are deponed by the 1st applicant in summary, are that:-

1. Judgment was passed in favor of the applicants in High Court Civil Suit 123 of 2009 on 8th May 2015 directing the respondent and the Auditor General to verify and ascertain the amounts due to each of the applicants/plaintiffs as pension and arrears.
2. The Auditor General is biased and unwilling to do as ordered by court.

3. The applicants are elderly and risk demise without enjoying their pension and/or fruits of the judgment.
4. It is unconstitutional that the applicants have not been reinstated to the pension register for the last 10 months.
5. It is just and equitable that the application be granted.

The respondent opposed the application and filed an affidavit to that effect sworn by Mr. Batanda Gerald (SSA) in the respondents' chambers dated 1st April 2016. The grounds in opposition are that immediately after delivery of the judgment:-

1. The Attorney General requested the official receiver/ liquidator of Uganda Electricity Board to forward personal files of the applicants for verification as per annexures 'A' and 'B' to the affidavit in reply.
2. The process of verification is still ongoing and the Attorney General is in constant consultation with the Auditor General with the view of determining the applicants' under paid terminal benefits.
3. The Attorney General and the Auditor General have not refused to verify the pension unpaid.
4. There is no evidence whatsoever that the Auditor General has expressed bias or unwillingness.
5. There are over 560 applicants so the time taken doesn't mean the auditor general is unwilling because the applicants are many.
6. The matters raised in this application are not amenable to consequential orders because this is disguised as a review of the court order.
7. The instant application is not complex as to warrant the grant of a certificate of two counsel.

Court allowed respective counsel to file written submissions in support of their respective cases. I have considered the application and the affidavits for both sides as well as the respective submissions. From the issues in controversy, the following arise:-

1. Whether this is a proper case for consequential orders.
2. Whether the applicants are entitled to the orders prayed for in the application.

I will start with issue 1: Whether this is a proper case for consequential orders.

I agree with the definition of the term consequential order as stated in the submissions by learned counsel for the respondent that, instructively the term consequential orders denotes an order of court giving effect to the judgment or decision to which it is consequential or resultant there from. Such an order is normally directly traceable to or flowing from the judgment of decision duly prayed for or granted by court.

The persuasive authorities of *Obayagbona Vs Obazee [1970]5 SC 247 and Odofin Vs Agu [1992] LPELR 2225 (SC); [1992] NWLR (Pt 229) 35* are instructive on this point.

What this means is that the consequential orders are applied for where the court hands out a judgment but the implementation of the judgment is impossible except with further orders of court.

In the instant application, learned counsel for the applicant submitted that the Auditor General is unwilling to compute the pension arrears and is biased against the applicants. On the other hand learned counsel for the respondent submitted that the Attorney General's chambers has no capacity to compute the pension arrears except with the assistance of the Auditor General. The respondent further submitted that the judgment of the court did not give a specific number of days within which to compute the pension arrears and comply with the court order therefore it can be anytime. That they wrote to the Auditor General and the Official Receiver/Liquidator UEB and that in doing this, they complied with the court order.

Learned counsel for the respondent further submitted that the delay of the Auditor General is not their fault and does not demonstrate unwillingness to comply with the court order and that on the contrary the consultations are ongoing. The respondent has not shown any concrete steps taken to implement the court order or how much has been done so far to comply.

I get the impression that the respondent thinks that because the judgment did not specify the number of days or months within which to comply with its orders, therefore even if it takes 10 years to comply and compute the pension arrears, it should not be a problem. I don't subscribe to such belief.

In the court's ruling, it was held thus:

***“In the circumstances, the defendant should in consultation with the Auditor General compute the plaintiff's pension/retirement benefits based on the consolidated salary and wages. The exercise should be done with haste since the claimants are in danger of dying without receiving a penny of their hard earned benefits.*”**

The phrase 'with haste' according to Oxford's English Dictionary means with excessive speed or urgency of action. It would also mean hurry, immediately, without wasting any time or quickly. What this means is that depending on the circumstances of the case, the act to be done must be done immediately or within reasonable time in order to show that the matter is being treated urgently.

In the case under consideration, Judgment was passed on 8th May 2015. This application was filed on 26th February 2016. That was a period of approximately 10 months from the date of judgment. This period does not in any way depict urgency. If the Auditor General had handled this with haste, and for example handling at least two people per day, by now the 562 people would have known how much they are owed. But since the respondent has been under the mistaken belief that he can comply with the court order anytime, compliance has not been done.

In the circumstances of this case, a period of 6 months would fit the meaning of haste. It is also clear from the evidence on record that the Auditor General is unwilling to get involved in this matter. There is no affidavit from the Auditor General expressing willingness to compute and ascertain the arrears claimed and awarded by court. Whereas the respondent has argued that the delay by the Auditor General is not proof of unwillingness, what was important was for the respondent to show this court that steps have been taken with evidence of the plans which they have put in place to determine the figures payable. This has not been done.

Annexure 'E' of the Auditor General's letter to the Solicitor General dated 15th October 2012 Ref: DCG 48/49/070 clearly shows the Auditor General's unwillingness to comply with the Court Order. He wrote as follows:

***“.....I would accordingly advise you to seek a response from the privatization unit and/or the Ministry of Finance, Planning and Economic Development. My office completed its statutory role in this matter in as far as computation of pension, gratuity, NSSF and General Damages due to former employees of UEB.*”**

In the circumstances, ten months is a long time. By now there should have been evidence of some computations but there is none. Therefore without a Court Order in this application, the orders of court in High Court Civil Suit 123 of 2009 will never be complied with. This would mean the purpose of the judgment in that case will be defeated. On that basis, I find that this is a proper case for consequential orders. The same is accordingly issued.

Issue 2: Whether the applicants are entitled to the orders prayed for in the application.

The applicants made several prayers in the application and I will deal with each:

1. They sought for consequential order that the respondents/defendants immediately pays to the applicants/plaintiffs the total sum of the money claimed as calculated and ascertained

terminal benefits and/or pension and arrears thereof, general damages, interest thereon as of 29th February 2016 following the judgment of this court delivered on 8th May 2015. The computation for this claim was done as indicated in annexure 'D' to the affidavit in support of this application.

I agree with learned counsel for the applicants that the computations submitted by the applicants are resultant and directly effect the orders of court in the main suit. They were as per annexure 'C' a letter dated 5th August 2015 which the applicants through their lawyers submitted their computations of pension/retirement benefits to both the Attorney General and the Auditor General. It appears these were ignored.

It is trite law that where certain facts are sworn to in an affidavit, the burden to deny them is on the other party. If the other party does not deny those facts, they are presumed to have been accepted as was held in *Samwiri Massa Vs Rose Achen [1978] HCB 297.*

I will accordingly state it that the respondent accepts the applicants' computation attached in annexure 'C' to the affidavit in support of the application and annexure 'D' which reflects the accumulated interest as ordered by court as at 29th February 2016 when this application was filed. I will consequently adopt them and a consequential order issued as prayed. Without this court order, the orders of this court will never be complied with as I have already stated. The purpose of the judgment would otherwise be defeated.

2. The 2nd order prayed for is to be paid interest due on the ascertained terminal benefits and/or pension and arrears up to the date of the ruling in their application. I decline to award this prayer because interest was factored in the computations in annexure 'D'. This court cannot award further interest as doing so would go contrary to the principles of the grant of consequential orders.

3. The applicants also prayed that all pension arrears and decretal sums be paid through the applicants/plaintiffs' advocates M/s Bashasha & Co. Advocates for onward transmission to the applicants. Since the applicants so wish as deponed in the affidavit in support of the application, I have no reason to deny them that request. In any case, the said advocates still have instructions to represent the applicants.
4. Learned counsel prayed that a certificate of complexity and a certificate of two counsel be issued by this court. After considering the nature of this application and what it has involved, I don't find that this application requires the award of a certificate of two counsel or a certificate of complexity. If these certificates were to be awarded, they should have been awarded in the main suit but not in this application. There is nothing complex in this application.
5. The final prayer was for costs of this application. It is trite that costs follow the event. In the instant application, there is nothing to stop award of costs. I will therefore award the applicants costs of this application.

For the reasons outlined herein, this application is allowed.

I so order

Stephen Musota

J U D G E

27.06.2016