

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

CIVIL DIVISION

HCT-00-CV-MA-0365 OF 2017
(*Arising out Civil Suit No. 383 of 2014*)

KABERA STEVEN ::: APPLICANT

Versus

1. ATTORNEY GENERAL
2. SECRETARY TO TREASURY } ::: RESPONDENTS

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING:

This is an application for an order of mandamus brought by way of Notice of Motion under Section 37 & 38 of the Judicature (Amendment) Act 2002 and Section 19 of the Government Proceedings Act. The orders sought are *that*:

- (a) An order of mandamus be issued to compel the respondents to pay the applicant the sum of UGX.300,000,000/= with interest from the date of judgment till full payment.

- (b) An order of mandamus be issued to compel the respondents to pay the applicant the sum of UGX.29,767,007/= being taxed costs of the suit.

- (c) That an order issues for damages to be paid by the respondents under section 38 (2) of the Judicature (Amendment) Act 2002.

- (d) The 2nd respondent to appear before court to show cause why he should not pay the decree holder the monies due.
- (e) Costs of this application be provided for.

The application is supported by the affidavit of one Mutabazi Moses which is relied upon by the applicant but briefly states that:

- (i) The applicant is a decree holder in HCCS No. 383 of 2014.
- (ii) The applicant obtained certificates of order against government which were served on the respondents.
- (iii) The applicant has severally demanded payment but has received no response.
- (iv) There is no excuse why the respondent should not pay.
- (v) The applicant is sickly and needs urgent medical treatment.

In their affidavit in reply sworn by Mr. Oburu Odoi, a Principal State Attorney in the Attorney General's Chambers, it is acknowledged that judgment was entered on the 9th day of February 2017. That a certificate of order against Government and a certificate of order for costs against Government were entered on the 12th day of April 2017 and 13th day of April 2017 respectively. He however, depones that this application for an order of Mandamus is premature because the 1st respondent has just recently communicated to the Ministry of Defence to settle the claim. He referred to annexure as attached but said that the annexure is not the letter written to the Ministry of Defence but is a Hearing Notice dated 10th February 2017.

Finally that the 1st respondent has already demonstrated readiness to satisfy the applicant's claim and is only following its usual procedures of fulfilling the same.

I have considered the application and submissions by respective counsel. The issue to be determined by this court is whether this is a proper case for issue of the order of Mandamus. It is trite law that the High Court has the discretion to grant an order of Mandamus in all cases in which it appears to be just and convenient. The order may be granted unconditionally or on such terms and conditions as the court thinks fit.

For an application of this nature to succeed, the applicant must establish that a clear legal right exists and a corresponding duty in the respondent.

That a particular officer enjoined with a legal duty to act has omitted to do so. This duty to perform an act must be indisputable.

That there is no alternative remedy open to the applicant but even if the alternative remedy exists, but it is inconvenient, less beneficial or less effective or totally ineffective.

In the instant case the applicant obtained judgment against the 1st respondent in HCCS No. 383 of 2014. A decree was extracted and a certificate of order against Government was issued against the respondent for payment of UGX.300,000,000/= (Three hundred million) and a certificate of order for costs of UGX.29,767,000/= (Twenty nine million seven hundred sixty seven thousand).

A demand for payment of these monies were made by the applicant and the respondent acknowledged this. He however, says that this application is premature because he has

written to the Ministry of Defence to pay and the orders being enforced are as recent as April this year.

Whereas under normal circumstances where the debt is an ordinary debt time for payment of money owing can be extended, the circumstances of this case require that the claim by the applicant needs special attention and urgent payment. The applicant's life is in danger. He has a bullet lodged in his chest having been shot by a stray bullet by servants of the respondent. His health is continuously deteriorating, he cannot walk anymore or sustain himself and family. The applicant's life is in danger and he needs this money to get treatment to save his life.

Although this court appreciates the effort of the Attorney General to require the Ministry of Defence to pay, the urgency of this case requires that this application be granted to accelerate the process.

Consequently I will allow this application. A writ of mandamus will issue to compel the respondents to perform their statutory duty to pay the applicant the sums due and owing as per the decree and certificates of order against Government.

I wish to observe however, that the damages sought by the applicant in this application are not payable by the respondents since they were not decreed by court. Mandamus cannot issue to enforce doubtful or disputed rights.

The applicant shall get the taxed costs of this application.

I so order.

Stephen Musota

J U D G E

15.08.2017

15.08.2017:-

Mr. Babu Rashid for applicant.

Respondents representative absent.

Both parties absent.

Ms. Ejang D. Clerk.

Mr. Babu:-

The matter is for ruling. I pray that it is delivered since counsel for the respondents was present the last time.

Court:-

Ruling read and delivered in open court.

.....

Sarah Langa Siu

DEPUTY REGISTRAR

15.08.2017

RULING