

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-01-CV-MA-0006 OF 2016

(Arising from FPT-00-CV-LD-CA-0001/2006)

- 1. KISEMBO B. JOHN**
- 2. KASIRABWA YONA**
- 3. KULE ALISTACLE**
- 4. KAHAIKA WILLIAM & 87 OTHERSAPPLICANTS**

VS

BUNDIBUGYO DISTRICT LOCAL

GOVERNMENT COUNCIL.....RESPONDENT

BEFORE: HON. MR. JUSTICE OYUKO. ANTHONY OJOK

RULING

This is an application brought to Court by way of Notice of Motion under Section 36 (1) (a) (2) of the Judicature Act Cap 3 Order 46 A [1] [1] 2[a] Rules 6[2] of the Civil Procedure Rules as amended, Rules 3[1][a] and 5 of the Judicature (JUDICIAL REVIEW) Rules, 2009 seeking for orders that;

1. That an Order of mandamus issues to compel, command and order the Administrative Officer and the Personnel Officer of the Respondent to process and pay the applicants their monthly arrears for the period in issue
2. An order for compensation for the illegality, denial of necessities of life, delay, suffering, anguish and inconveniences suffered by the applicants in form of general damages of Shs 5million each and punitive damages in the sum of 5 million each
3. An order for Costs of these proceedings be provided for.

This application is supported by the affidavit of Mr. Kisembo B. John, the 1st applicant and the grounds are;

1. That the applicants are all dully recruited, appointed and posted teachers in various schools in the service of the Respondent.
2. That the Respondent is in breach of its statutory duty to pay the applicants and has deliberately and unreasonably refused to pay monthly salary arrears.
3. That the Respondent's duty to pay is continuous with the applicants' stay in service uninterrupted and demands and claims have been made in vain.
4. That the Respondent's refusal and delay to pay the Applicants and 75 other teachers in service contravenes the provision of **Article 40[1] [5] and 173[a] of the 1995 Constitution of Uganda, Sections 59 and 64[2][c][g] and 3 of the Local**

Government Cap 243, Section B-a Rules; 2,4,7,9,11,25,26 and 27 of the Uganda Public Service Standing Orders, January 2010.

5. That it therefore safe, fair, prudent, reasonable, just and equitable in the circumstances and in the interest of substantive justice that the Judicial Review order of mandamus issues against the Respondent.

The application was opposed by an affidavit in reply sworn by Nsubuga Hood.

Ms Rwakafuuzi, & Co. Advocates appeared for the Applicants and MS Kaahwa, Kafuuzi, Bwiruka & Co. Advocates appeared for the Respondent. By consent both counsel agreed to file written submissions

Brief background

The Applicants were recruited, posted and have at all material times been performing their duties as primary school teachers under the employment of the Respondent herein.

S. 36 (1) (a) of the Judicature Act vests in the High Court jurisdiction to grant a relief of Mandamus compelling any act to be done.

Hon. Justice V.F. Musoke Kibuuka in stream Avian Ltd Vs The Civil Aviation Authority HCMA No. 377/2008 (attached No. 1) Stated that;

“Mandamus is certainly a drastic remedy. **It is often issues against statutory authorities or public officers who have statutory functions compelling them to carry out the statutory duty required of them. The case of Shah Vs Attorney General (No.3) (1970) EA 543** is quite classic on this prerogative remedy. It considered the nature of Mandamus and its applicability in Uganda. The Court held among others that the Commissioner/Treasury Officer of Accounts [as the Government Account General was then called , had a statutory duty under section 20(3) of the Government proceedings Act to pay moneys awarded by a Court as damages.”

Mandamus issued to compel him to pay money that had been awarded in order to fulfil his statutory duty.

... Secondly, Mandamus would ordinarily issues in situations where the applicant has no alternative remedy. It would compel the person against whom it is issued to fulfil his or her statutory obligation.

With that background and the orders sought and the cited authority, the following issues arise;

1. Whether the Respondent has a statutory duty/Obligation towards the applicants.
2. Whether the Respondent has breached the statutory duty if any owed to the applicants.
3. What remedies (if any) are available?

Resolution

1. Whether the Respondent has a statutory duty/Obligation towards the applicants.

The Constitution of the Republic of Uganda under Article 40(2) guarantees an individual's right to practice his or her profession while Article 40 (1)(b) stressed the right of the employee to receive payment for the work done. Section 41(1) and (2) of the Employment Act 2006 further still emphasizes how an employee is entitled to payment. The obligation to pay wages of the employees of the district vest in the office of the Chief Administrative Officer pursuant to Section 64(1) of the Local Government Act Cap 243.

According to the evidence on record, the applicants were dully recruited, employed, posted and are in active service of the Respondent as teachers deployed in various schools in the jurisdiction of the Respondent. I refer court to para 3 of Kisembo B. John sworn in support thereof. The fact that the applicants are employees of the Respondent is equally admitted by the Respondent.

We refer Court to paragraph 3 of the affidavit of Nsubuga Hood sworn in reply to the application.

Having established the employer relationship between the applicants and the respondent, they prayed that Respondent herein has a statutory duty to pay the applicants' wages or salaries.

2. Whether the Respondent has breached the statutory duty if any owed to the applicants.

The applicants were recruited, posted and have been in execution of their duties as teachers in various schools in Bundibugyo District. As of right, each of the applicants is entitled to receive monthly salary from the Respondent ever 28th day of the month served. The Chief Administrative Officer and the Personnel Officer of Bundibugyo District who are the accounting officers have information of the applicants' bank details and their respective account numbers. This fact is not disputed. As soon as this application was brought, the Respondent panicked and paid some instalment of the same sought to be recovered (See Attachment to the Respondent's affidavit in reply).

Despite having these details, the Applicants' schedule A annexure S1 to the affidavit in support have never received their monthly salary arrears from the date of appointment, deployment and assumption of their duties for the period shown in the schedule.

The list of the names of some of the applicants in the schedule annexure S2 have never received their monthly salary for the periods indicated which ranges between months and years of salary arrears.

It's unfortunate that the primary school which is the beginning or foundation of the education system upon which the soundness of an economy can fail to remunerate its teacher/servant for years (we invite court to see annexure S3) while some have been unpaid (Annexure S4) where underpayment has accumulated to Ushs 28,481,478/=.

The moneys in issue have not only been in arrears for years, the payment of the same has been demanded in vain. We refer Court to paragraphs 11 of the affidavit in support and annexures L1 and L2.

The applicants having rendered their services to the Respondent who now owes them salary arrears ranging between months and years, we invite Court to find that the Respondent is in breach of its obligation under the Uganda Public Service standing orders, General Rules on payment of salaries [Ba} rule 1,2,4,9,11,25,26 and 27 and section 64(20(c), [9] and 3 of the Local Government Act Cap 243.

3. What remedies (if any) are available?

1. **Writ of mandamus:** This Honourable Court has jurisdiction to grant a writ of mandamus pursuant to Section 36(1)(a) of the Judicature Act Cap 13. This is further supported by the decision of **Lugayizi J** [as he then was] in **Matovu & Kimanje Nsibambi Advocates Vs Attorney General [2000] KALR 704 at 706 [attached No.2]** where he held stating that;

..... **the writ of Mandamus is ordinary granted where a Government officer refuses to do what he is legally bound to do.**

The applicants herein are employees who the respondent owes salary arrears. The salary arrears range between months and years. We refer court to paragraphs 2-13 of the affidavit of Kisembo B John sworn in support hereof.

The applicants having executed their duties are owed salary un arrears and have demanded payment of the same in vain. We implore Court to invoke S36 (1)(a) and 33 of the Judicature Act and accordingly issue a writ of mandamus in the following words;

The Chief Administrative Officer and the Personnel Officer of Bundibugyo District Local Government Council be directed to pay applicants' salary arrears of Ushs 223,122,420/= (Two Hundred Twenty Three Million, One hundred Twenty two Thousand Four Hundred Twenty Uganda Shillings Only) unless what was paid after the commencement of these proceedings or else they shall be made to appear before Court and show cause why they should not be arrested and taken to civil prison to suffer imprisonment for disobedience of the law.

(2) . General Damages

The Court of Appeal in **Kampala District Land Board and George Mitala Vs Venansio Babweyana CA No 2/2007 (attached No. 3)**

Stated that:

..... it is trite law that damages are the direct probable consequences of the act complained of such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering.

The applicants' source of livelihood is their salaries. It is from these salaries that the applicants can afford to sustain their families with necessities. It is no doubt that the central Government timely sent the salaries and the same was abused by the Respondent. This abuse and intentional withholding of applicants' salaries for a period that stretches between months to years, has inflicted damage.

[I refer Court to the evidence contained in paragraphs 11 to 16 of the affidavit of Mr. Kisembo sworn in support hereto] the proposal of Ushs. 5 million for each applicant is even insufficient or not commensurate to the injury/inconvenience caused.

2. Punitive damages

According to Biyan A. Garner Black's Law Dictionary 19th Edition at 448:

“Punitive damages are awarded in addition to actual damages when the defendant acted with recklessness, malice or deceit..... awarded by way of penalizing the wrong doer or making an example to others. Punitive damages are intended to punish and thereby deter blameworthy conduct...”

Punitive damages are clearly purely punitive or exemplary in nature. According to **Rookes Vs Bernard [1964] All ER 367** punitive or exemplary damages are awarded among others where there has been oppressive, arbitrary or unconstitutional action by the servants of the government.

The Respondent herein received the applicants' salaries, withheld and abused the same. This was not only a violation of Article 40(1)(b) of the Constitution which guarantees the employee's right to receive wages but an abuse of office as the applicants' salaries were unlawfully withheld and abused.

It's on that premises that we pray that Court finds that the Respondent's action of unlawful withholding applicants' salaries deserves punishment by way of award of punitive damages of Ushs. 5,000,000/= for each applicant.

The Respondent vehemently opposed the application and submitted that Respondent filed an affidavit in reply contesting the application wherein it is indicated that the Applicants' salaries are paid by the Central Government and the salary arrears of the applicants are in the process of being paid. Some of the applicants had received part payment and further payments were ongoing. The Respondent contends that the applicants' application for judicial review, seeking writs of mandamus is premature. The applicants have not proved that the Respondent was not responsive to their claims for salary arrears.

In fact there is all evidence to support the respondent that it did all that was within its powers to assist the applicants in the process of making their claims for salary arrears.

The applicants have failed to prove any breach of any statutory duty.

The Respondent as a Local Government Under Section 61(2) of the Local Governments Act has to ensure that the terms and conditions of its staff conform to those of the Public Service

Standing Orders in particular paragraph 27 (B-a) provides that all claims for salary arrears must be authorised by the Accounting Officer in person. There is no evidence that all the applicants made their respective claims and consequently there is no statutory duty on the Respondent to pay arrears not duly claimed as required by law.

They further submitted that there is no justification for issue of the writ of Mandamus. Consequently the claim for punitive and general damages does not arise.

Having internalized both submissions I do agree with both Counsel that the applicants are and are still employees of the Respondent who have never been paid despite several reminders to the Respondent. Some of the applicants have been paid although the Respondent does not mention the specific names, secondly I agree that because of limited resource envelop not all monies can be paid all at once but attempts should be made. Whereas it is true that no evidence was adduced that all the applicants made their respective claims, it is not in doubt that the Respondent owes some of the Applicants money.

I do therefore order the CAO to present before this Court payment schedule within 2 months how he/she intends to pay the applicants plus other debtors. Provide the list of those already paid and their balances and those not yet paid.

General damages;

As regard general damages, it is an established principle of law that general damages are such damage as the law presumes to be the direct natural or probable consequence of an act complained of.

In **Civil Suit No. 342 of 2014, Sentongo Jimmy Vs Kabugo Ltd & 2 Others Justice Flavia Senoga Anglin** at page 5 of the Judgment stated that where the plaintiff claims general damages, while he does not have to prove the specific amount lost, never the less if he does not lead some evidence which would assist the court, he has no one but himself to blame if the amount actually awarded by the Court is not sufficient to compensate him for any loss which he actually suffered.

In this case the Applicants pleaded UShs 5M/= and stated that the Respondent withheld their salaries intentionally but no prove was tendered apart from mentioning it and yet the assistant CAO in Para 4,5, and 6 clearly mentions the attempts made to ensure that the Applicant's salaries are paid. I do agree that not paying the applicants affected their livelihood and for that reason I do award each applicant Ushs 300,000/= for the inconvenience caused. The 5M mentioned is baseless because the applicant never showed or proved it.

Regarding Punitive damages, Counsel of the applicants never brought any prove that the Respondent acted recklessly with malice. In the affidavit of the ACAO, he made it very clear why the applicants had not been paid. This was so in the case of **Biyan A. Garner Black's Law Dictionary 19th Edition at PP 448:**

“Punitive damages are awarded in addition to actual damages when the defendant acted with recklessness, malice or deceit awarded by way of penalizing the wrong doer or making an

example to others. Punitive damages are intended to punish and thereby deter blameworthy conduct.....”

I therefore not award Punitive damages to the Applicants.

In conclusion costs follow events S. 27 (1) and (2) of the Civil Procedure Act is very clear. Costs are awarded at the discretion of Court. Where costs are not warded there are reason(s) not to be given. I therefore award costs to the Applicants.

.....
Oyuko Anthony Ojok
Judge
31/5/2017

Judgment delivered in open court in the presence of;

1. Counsel Robert Luleti holding brief for Counsel Nyamara Edward for the Applicants.
2. Counsel Bwiruka Richard for the Respondent.
3. James - Court Clerk.
4. The 1st Appellant
5. In the absence of the Respondent.

.....
Oyuko Anthony Ojok
Judge
31/5/2017