

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISCELLANEOUS APPLICATION NO. 12 OF 2018**

ARISING FROM CIVIL SUIT NO. 121 OF 2014 AT BUSEMBATIA COURT

- 1. HARUNA NSEKO ISABIRYE.....APPLICANT/DECREE HOLDER
VERSUS**
- 1. ATTORNEY GENERAL
2. THE PERMANENT SECRETARY MINISTRY OF FINANCE AND ECONOMIC
DEVELOPMENT/SECRETARY TO THE
TREASURY..... RESPONDENTS**

RULING

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

A brief background

This application was presented by notice of motion under the Judicature Act and (Judicial Review Rules) (hereinafter referred to the Rules) seeking judicial relief for the writ of mandamus against the respondents. Upon directions of Court, Applicant's counsel filed an amended motion in which the order sought is specifically directed to the 2nd respondent calling upon that office to pay to the applicant all monies due to him as a result of the decision in the judgment and decree in Iganga Chief Magistrate's Court, Civil Suit No. 121 of 2014 (hereinafter referred to as the former suit), and for costs to be provided for.

I was satisfied that both respondents were effectively served with the motion and hearing notices. They neither filed responses nor turned up for the hearing of 30/10/2018. It is deemed that they had no interest to contest the motion. For that reason, I permitted exparte proceedings

The brief grounds of the application are that:-

- i. The applicant is the judgment creditor in the former suit
- ii. The respondents have declined and/or neglected to pay the decretal sums owed to the applicant
- iii. The applicant has suffered untold and financial loss, is an ailing diabetic, and has a heart disease, both for which he requires money for treatment.
- iv. It is just and equitable that the application is granted.

The applicant filed an affidavit in support of the application and his counsel Munyamasoko Chris, made brief aural submissions in Court. Both will form the basis of my decision.

The law

The remedy of mandamus is a creation of the Rule 3(1) (a), (2) and 5.

It appears to be the strong view of the High Court that judicial review is available only when alternative procedures or more convenient remedies are missing. See for example **Uganda Crop Industries Ltd Vs URA (supra)**. Justice Bamwite holding the same view held in **Micro Case Insurance Ltd Vs Uganda Insurance Commission (Misc. Application No.31/09)** that review orders will be available only if there is no alternative remedy or where it exists it is shown to be inconvenient, less beneficial, less effective or totally ineffective.

My decision

According to his affidavit, the applicant successfully sued the Attorney General for general and special damages for trespass. Judgment was passed in his favour on 27/4/17 and awarded Shs. 17,000,000 in special damages with interest at 12% per annum (from the date of judgment until payment in full). He was in addition awarded costs of Shs. 2,091,600/-. Copies of the judgment and decree dated 27/04/2017 and 2/5/2017, respectively, were attached to Mr. Isabirye's affidavit. No part of that award has been paid to date.

The record of the lower Court confirms the applicant as the successful party in the former suit. Being the successful party, the only and most effective course open to him was to make a formal demand for payment against the Attorney General which he did through demand notices dated 2/8/17 and 25/9/17 respectively. He followed up those notices with one to the 2nd respondent dated 25/9/17. It appears he also forwarded his claim to other offices, for example that of the Speaker of Parliament and the His Excellency the President. I am satisfied that both respondents received the notices and supporting documents because their official stamps appear prominently on each one of them.

The 2nd respondent is by law the office in charge of payments of any monies payable by the Government of Uganda, when represented by the 1st respondent. Indeed the respondents appreciate that statutory duty, for when prompted by the office of the President, on 15/3/2018, the Solicitor General communicated to the Permanent Secretary, Ministry of Local Government as the line Ministry, with a request for payment to the applicant of the full

sums awarded in the decision in the former suit. As correctly observed by Mr. Isabirye in his affidavit, the Local Government Ministry who was not a party to the suit, cannot be compelled or be concerned with making any payment to him.

I repeat that the 2nd respondent has the statutory duty to pay any monies lawfully demanded against the Government of Uganda, as is the case here. No reasons were given by the respondents not to pay the decretal sum when the demand was made. It is sad to note that a successful party who is faced with such serious health challenges, has had to wait to enjoy the fruits of his judgment for now 22 months. It is unjustified and inexcusable that no payment has been made to Mr. Isabirye to date.

I accordingly allow the application and issue a writ of mandamus in favour of the applicant and specifically against the Permanent Secretary, Ministry of Finance & Economic Development/Secretary to the Judiciary, directing him to pay to Mr. Nseko Haruna Isabirye the applicant, all monies, interest and costs due to him to date vide the judgment and decree in Iganga Chief Magistrate's Court at Busembatia, Civil Suit No. 121 of 2014 within **14 days** of their receipt of my order.

In addition award the applicant the costs of this application.

I so order.

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EVA K. LUSWATA
JUDGE
25/3/2019