THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 173 OF 2018
(ARISING FROM H.C.C.S 1029 OF 1998)

CHARLES ABOLA & OTHERS :: APPLICANTS

VERSUS

1. **TREASURY OFFICER OF ACCOUNTS**
2. **ATTORNEY GENERAL :: RESPONDENTS**

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The Applicants brought this application by Notice of Motion under Rules 3, 4 and 6 of the Judicature (Judicial Review) Rules, 2009 and Section 33 of the Judicature Act seeking orders that:

a) An order of mandamus doth issue requiring the 1st Respondent to perform a constitutional and public duty and pay UGX 35,088,680,000/= claimed by the Applicants against the 2nd Respondent by reason of a Certificate of Order arising from High Court Civil Suit No. 1029 of 1998 together with costs.

b) Costs of this application be provided for.

[2] The grounds of the application as set out in the Notice of Motion are that the Applicants are ex-policemen who were part of the 6,339 plaintiffs in HC Civil Suit No. 1029 of 1998. The Applicants are 161 in number who have never been paid their pension arrears in spite of various demands made by them. The 1st Respondent having refused to make payments to the Applicants, it is fair and just that the application be allowed and orders sought be granted by the Court.

[3] The application is supported by the affidavit of **Hussein Kato** in which he further states that the Applicants have calculations of their outstanding demands totalling to UGX 35,088,680,000/= as shown by the Certificate of Order annexed to the affidavit in support. The Applicants made a demand for payment of the money which the Respondents neglected contrary to their statutory duty to pay the Applicants. The deponent reiterated that it is in the interest of justice and fairness that the application is allowed.

[4] The Respondents opposed the application through an affidavit in reply deponed by **Simon Bwire**, the Principal Human Resource Officer at the Ministry of Public Service, in which he averred that upon receipt of this application and pursuant to a request from their lawyers at the Attorney General's Chambers, the Ministry of Public Service embarked on a verification exercise to clarify the facts and amounts due as alleged by the Applicants. He stated that during the verification exercise, it was established that the only outstanding claims and liabilities exist for 128 claimants amounting to UGX 1,304,094,643/= after off-setting the previous payments to the claimants. The Ministry of Public Service also discovered that 12 (Twelve) of the claimants are currently active on the payroll and receiving monthly pension yet they stand to benefit from the same Court award. The deponent further averred that the application sums of UGX 35,088,680,000/= are substantially higher than the actual sums due to the Applicants and the Court ought to investigate the same. He also averred that payment of the sums claimed by the Applicants will occasion substantial loss to Government if paid in the current state, which will be a grave injustice. He concluded that it is just and equitable that the Court approves payment for only the verified sums.

[5] Four affidavits in rejoinder were filed, namely by **Kato Hussein**, **Odwori James**, **Ssenoga Godfrey** and **Okello Charles**. It was stated by **Kato Hussein** that there is no proof to warrant any reduction in the claimed compensation.

That the affidavit in reply is full of falsehoods as no sums have ever been paid, the computation for the payment of UGX 35,088,680,000/= was accurate, fair, equitable and will not occasion any loss to the government. He averred that it is fair and equitable for the Respondent to honour the consent judgment which was signed wilfully after the Applicants serving the country and the twenty-eight years of suffering since the date of retrenchment is too long a period. **Odwori James** and **Ssenoga Godfrey** deponed that they were wrongfully indicated as deceased which is evidence of falsehoods in the affidavit in reply and annexure A2 thereto. **Okello Charles** deponed that his name appears among those said to be active on the payroll and receiving monthly pension which is not the case.

Representation and Hearing

[6] At the hearing, the Applicants were represented by Mr. Mushabe David Gureme while the Respondents by Mr. Uwizera Franklin, State Attorney. It was agreed that the hearing proceeds by way of written submissions which were duly filed by both Counsel. I have considered the submissions in the course of determination of the matter before the Court.

Issues for Determination

[7] Two issues are up for determination by the Court, namely;

1) **Whether the application meets the criteria for issue of a Writ of Mandamus?**
2) **What remedies are available to the parties?**

Resolution of the Issues

[8] In their submissions, Counsel for the Respondents raised two preliminary points of objection, which I will first deal with before considering the merits of the application. The first point of objection was that the affidavit in support of the application is defective. The second point of objection concerned the

inaccuracy of the Certificate of Order against the Government upon which the application was premised.

1st Preliminary Objection: Defectiveness of the Affidavit in Support

[9] It was argued by Counsel for the Respondents that the affidavit in support deponed by Hussein Kato is incurably defective as it is sworn on behalf of 171 Applicants without the requisite authority and ought to be struck out with costs on that basis. Counsel relied on Order 1 Rules 10(2) and 13, and Order 3 Rule 2 (a) of the Civil Procedure Rules (CPR) to submit that an affidavit sworn on behalf of others must possess the requisite authority from the other Applicants. Counsel relied, for this argument, on the decisions in ***Binaisa Nakalema & 3 Ors vs. Mucunguzi Myers MA 460/2013; Taremwa Kamishana Thomas vs AG MA 48/2012; Mukuye & 106 Others vs Madhvani Group Ltd MA 821/2013***. Counsel submitted that the thrust of the decisions in the above cited cases is that an affidavit is defective by reason of being sworn on behalf of another without showing that the deponent had the authority of the other.

[10] In reply, it was submitted by Counsel for the Applicants that the Applicants sued in their individual capacities and that this was not a representative suit. Counsel further submitted that nonetheless, a power of attorney was given to Okello Charles, Iyamuremye Damiane, Kato Hussein and Isooba Henry; which is within the ambit of Order 3 Rule 2 (a) of the Civil Procedure Rules that authorises an attorney to make such appearance. Counsel argued that it follows, therefore, that the affidavit of Kato Hussein is valid and was properly relied on.

[11] I need to first point out that the provisions of the law relied upon by Counsel for the Respondents in support of this point of objection have been wrongly invoked by learned Counsel. Order 1 Rule 10(2) of the CPR is in

respect of removal and addition of parties to a suit before court. Order 1 Rule 13 CPR is in respect of the mode of application to add, strike or substitute a party to a suit. Order 3 Rule 2(a) of the CPR sets out the recognised agents of parties by whom appearances, applications and acts are to be made which include persons holding powers of attorney authorizing them to make such appearances, applications and acts on behalf of the parties. None of the cited rules has anything to do with giving evidence before the court, and specifically to deponing to an affidavit. Clearly the rules under Order 1 CPR cited above have nothing to do with the objection.

[12] Regarding Order 3 Rule 2(a) of the CPR, I should point out that when a party before court, sued with others, is giving evidence over facts that are within his/her personal knowledge or information and belief as may be permitted under the law, such a party is not acting as the other parties' agent even where the evidence he/she gives serves the benefit of the other parties. As such the provision under Rule 3(a) of Order 3 CPR cannot be applied to such a scenario. Such a deponent cannot be said to be appearing or acting on behalf of the others within the meaning of the said rule.

[13] I also find that the authorities cited by the Respondent's Counsel as per the decisions in ***Binaisa Nakalema & 3 Ors vs. Mucunguzi Myers MA 460/2013; Taremwa Kamishana Thomas vs AG MA 48/2012; Mukuye & 106 Others vs Madhvani Group Ltd MA 821/2013*** were cited out of context. As was held by **Mubiru J**. in ***BankOne Limited vs Simbamanyo Estates Ltd, HC M.A No. 645 of 2020 (Commercial Court)***, the above cited cases wrongly based on the analogy between bringing representative suits on the one hand and giving evidence on the other hand; which analogy the Learned Judge found misplaced. Like the Judge found in that case, I have also not found any basis in the rules of evidence or of procedure for the principle that where there is no written authority to swear on behalf of the others, the affidavit is defective.

Such a principle can neither be imported from the provision under Rule 2 of Order 3 CPR nor from Rule 12 of Order 1 CPR. Order 1 Rule 12 CPR is in respect of appearance, pleading or acting of one on behalf of several parties where there are more parties than one in a suit. As I have pointed out above, the role of giving evidence is not necessarily appearing, pleading or acting on behalf of the other.

[14] In ***BankOne Limited vs Simbamanyo Estates Ltd (supra)***, the Learned Judge held that, like in giving evidence before the court, what is required in affidavits is the knowledge or belief of the deponent, rather than authorisation by a party to the litigation. The content of affidavits is dictated by substantive rules of evidence and their form by the rules of procedure. Competency to swear an affidavit is pegged to ability "to depose to the facts of the case," which in turn is circumscribed by the deponent's ability to "swear positively to the facts," on account of personal knowledge or disclosure of the source, where that is permitted. The Learned Judge went on to hold as follows:

> ***"While filing a suit and related pleadings has aspects of locus standi, adducing evidence is all about competence. While representative suits arise from rules of convenience prescribing conditions upon which persons who have the same actual and existing interest in the subject matter of the intended suit, although not named as parties to a suit, may still be bound by the proceedings therein, the rules of evidence on the other hand confer discretion on the court to control repetitive evidence; a judicial safety valve by which a party's attempt to adduce excessive evidence in support of the same proposition can be cut short. An affidavit should not be filed when it adds very little to the probative force of the other evidence in the case. <u>Therefore, when the relevant facts are within the common knowledge of parties having the same interest in the litigation, an affidavit by one of</u>***

<u>them will suffice</u>. Whereas initiating a suit in another's name clearly requires authorization since it raises issues of autonomy of the individual, adducing evidence of facts that have a bearing on another's case already before court does not". [Emphasis mine]

[15] I am in total agreement with the above reasoning by my learned brother. In the instant case, the application was brought by 161 individuals, each in their respective capacity. One of the Applicants, Kato Hussein, deponed to the affidavit in support. He, actually, does not claim that he was deposing on behalf of the others. He states that he was deposing to the facts in his capacity as one of the Applicants. Where such averments constitute evidence that is helpful to the case for the other applicants, it cannot be expected or required by the court that each of the 161 applicants should depone to their own affidavits. Indeed, it is the duty of the court to control against excessive and/or superfluous evidence. There is also no legal basis for the proposition that before the particular deponent deposed to the facts in such circumstances, he had to first seek the authority of the others. I find this the true position of the law. For those reasons, this objection by Counsel for the Respondents is misconceived and is accordingly dismissed.

2nd Preliminary Objection: Inaccurate Certificate of Order against the Government

[16] I have looked at the arguments of both Counsel regarding this objection and I am of the view that the matters raised under this objection touch on the merits of the application. I have therefore declined to take this point as a preliminary objection and I have taken the position that the questions raised will be dealt with when considering issue 1 on the merits.

Issue 1: Whether the application meets the criteria for issue of a Writ of Mandamus?

Submissions by Counsel for the Applicants

[17] It was submitted by Counsel for the Applicants that following a consent judgment entered for the 6401 plaintiffs in HCCS No. 1029 of 1998 for UGX 7,356,283,107/= as pension arrears, interest of 6% per annum from the date of judgment to payment in full and taxed costs, a Certificate of Order against Government was issued in the sum of UGX 35,088,680,000/=. Despite service of the said Certificate of Order, the Respondents have since refused to pay the Applicants. The judgment in HCCS No. 1029 of 1998 has not been appealed against, varied or set aside which makes it a valid legal instrument to be executed.

[18] Counsel relied on the case of ***Professor Mondo Kagonyera vs the Attorney General & National Social Security Fund, HC MC No. 10/2010*** in which **Hon Justice Geoffrey Kiryabwire** cited the case of ***Kasibo Joshua vs. The Commissioner of Customs URA, HC MA No. 44 of 2007*** and held that ***"... the orders be they for declaration, mandamus, certiorari or prohibition are discretionary in nature. In exercise of its discretion with respect to prerogative orders, the Court must act judicially and according to settled principles ... such principles may include; common sense and justice; whether the application is meritorious; whether there is reasonableness; vigilance and not any waiver of rights by the Applicant ..."***

[19] On the principle of **common sense and justice**, Counsel submitted that the consent judgment was voluntarily entered into based on the Respondent's own admissions as to the number of plaintiffs and the quantum owed after verification. With the certificate of order against government, which is still valid

and unreversed, the Respondent's actions to re-verify the 171 claimants has an effect of variation and setting aside of the consent judgment. Additionally, if the Respondent has not concluded verification after 28 years, no more time should be availed for the process which has no basis in law and is premised on gross negligence, frivolity and recklessness. Counsel relied on the case of ***Baligobye & 2 Others vs Attorney General & 3 Others, HC MC No. 376 of 2019*** in which **Justice Dr. Bashaija K. Andrew** held that ***"judgments of court cannot be reviewed and/or scrutinised by any arm of government. This would be a blatant constitutional error"***.

[20] Counsel for the Applicants further submitted that it follows that the Respondents' attempt to re-verify the beneficiaries after judgment and issuance of the certificate of order against government is illegal and ultra vires because it would amount to review and scrutiny of court orders in contravention of Article 128(1) of the Constitution of Uganda. Counsel concluded that this honourable Court is justified to issue the writ of mandamus for UGX 35,088,680,000/= based on the Respondent's admission, consent judgment and the certificate of order against government which stand unreversed.

[21] On the principle that **the application is meritorious**, Counsel submitted that the certificate of order against government is sufficient to behove the Secretary to the Treasury to pay since the same together with a decree were issued by a competent court and served on the Treasury Officer of Accounts. As such, a mandamus order should be granted to compel government to honour the certificate of order against government. Counsel argued that going by Section 19 of the Government Proceedings Act Cap 77, the Treasury Officer of Accounts is duty bound to effect payment without need for approval from any other government entity. Counsel relied on the case of ***Amos Bakeine & Others vs Attorney General & Another, HC M.A No. 524 of 2010*** and concluded that the Court should allow this application as meritorious.

[22] On the principle that **the Applicants have been reasonable, vigilant and have not waived any of their rights**, Counsel submitted that the Applicants have reasonably and vigilantly written multiple correspondences to the Attorney General which have been ignored. Conversely, the certificate of order against government was extracted on 9th July 2018 and has never been challenged by the Respondent.

[23] The Applicants' Counsel further submitted that there is nothing doubtful about the Applicants' rights. The Respondents have not explained why they continue to declare some claimants deceased or on payroll when it is not the case and there is no such proof. The Respondents' suggestion on availability of alternative remedy is also untenable since the Respondents do not specify any such available remedy. Counsel submitted that if the Respondents wished to contest the certificate of order against Government, there is no logical explanation as to why they did not follow the proper procedure to do so. Counsel concluded that the Respondents' modus operandi is of delaying justice and causing further trauma to the retrenched individuals.

Submissions by Counsel for the Respondents

[24] It was submitted by Counsel for the Respondents that the ex parte certificate of order against government extracted on 9th July 2018 is erroneous, overstated and the court should exercise its discretion to set it aside. Counsel submitted that the ministry of public service has conducted a verification exercise and certified amounts due to the current Applicants under HCCS No. 1029 of 1998. Counsel contended that the Court should direct that the Respondents only pay the amounts certified as due to the Applicants. Counsel further submitted that the Applicants are 171 who were amongst the 6337 plaintiffs in HCCS No. 1029 of 1998. Yet the extracted certificate of order against government applies to the entire judgment including all the 6337

plaintiffs. The certificate of order was not extracted as a result of verification and/or computation involving the Attorney General or ay government ministry or department. It would thus be erroneous for Court to rely on such extraction to compel monies to be released from the consolidated fund, especially since the figures are grossly overstated with no reasonable justification or explanation on how the amount rose.

[25] Counsel for the Respondents argued that the application does not meet the criteria for issuance of mandamus in the current terms because;

a) The Respondents conducted a verification exercise and established that the outstanding liabilities as stipulated by the Applicants are grossly overstated and are meant to defraud the government.
b) The Respondent has partially satisfied the Court award and, therefore, the certificate of order against government cannot be enforced in its current state.
c) The Respondent has not neglected or refused its duty to pay the sums to the Applicants.
d) The Applicants have other alternative actions.
e) The issuance of mandamus is a discretionary remedy and the court should exercise this discretion cautiously and judiciously.

[26] Counsel also submitted that according to the affidavit of Simon Bwire, the concluded verification exercise established that outstanding claims and liabilities exist for 128 claimants amounting to UGX 1,304,094,643/=. It was also discovered that 12 of the claimants are active on the payroll and were receiving monthly pension. They, therefore, cannot benefit from the mandamus order. Counsel indicated that the Respondents do not deny that the Applicants are entitled to payment of pension, gratuity and general damages in accordance with the court decree in HCCS No. 1029 of 1998. It is the sums claimed that are disputed. This does not in any way alter the Court judgment or vary the

sums awarded by Court. Counsel argued that a verification exercise is thus necessary because;

a) The verification or reconciliation was done with leave of Court based on information provided by the claimants' Counsel at the time.
b) Since the judgment in HCCS No. 1029 of 1998, several of the 6337 plaintiffs were enrolled in various government ministries and departments and have received payments directly from their parent ministries or government departments. A mandamus order to benefit persons who already received their entitlements prior to conducting verification of sums due would occasion a grave injustice on the government of Uganda.
c) The Applicants do not have authority to receive monies on behalf of the 6337 plaintiffs. There is need to confirm amounts due to them as severed from the other plaintiffs. Annexure A2 is a document authored by the ministry of public service and the Applicants have not adduced any evidence to show that they did not receive the payments besides general denials.

[27] Counsel submitted that a court of law is at liberty to grant prerogative orders and may refuse to grant them. Relying on ***Nampogo Robert & Anor vs Attorney General, HC MA No. 48 of 2009***, Counsel submitted that the Applicants' rights are doubtful because the sums presented in the ex parte certificate of order against the government are not accurate and do not portray the actual amounts due to the Applicants. Counsel further submitted that it will be a gross error to award UGX 35,088,680,000/= to 171 out of 6337 persons when there are several payments in satisfaction of the court award by the Respondents. Counsel argued that there is no guarantee that the present Applicants were appointed by the other judgment creditors to receive their monies as either their agents or trustees. Making these payments may therefore occasion double payment, fraud and substantial financial loss to

government. The Applicants should not be allowed to unjustly enrich themselves and defraud the government. Counsel prayed that the Court exercises its discretion and deny the orders sought by the Applicants.

[28] In the alternative but without prejudice, the Respondent prayed that if the Court is inclined to grant the mandamus order, it should require that the Respondents pay the sums certified by the government as due and owing to the Applicants which is UGX 1,304,094,643/=.

[29] Counsel for the Applicants made and filed submissions in rejoinder which I have also taken into consideration.

Court Determination

[30] Under Section 37(1) of the Judicature Act, the High Court has discretion to grant an order of mandamus in all cases in which it appears to the High Court to be just and convenient to do so. Under Section 37(2) of the same Act, the order may be made unconditionally or on such terms and conditions as the High Court thinks fit. The criterion for issuance of the writ of mandamus has been laid down by a number of decided cases. In the case of ***Combined Services Ltd vs. Attorney General & Anor, HC MA No. 648 of 2015***, it was held that the circumstances that must be established by the Applicant in order to obtain a writ of mandamus are;

a) A clear right on the part of the Applicant and a corresponding duty on the part of the Respondent.
b) That some specific act or thing which the law requires a particular officer to do has been omitted to be done by him.
c) Lack of any alternative; or where the alternative remedy exists, it is inconvenient, less beneficial or less effective or totally ineffective.

[31] In the case of ***Goodman Agencies Ltd & 3 Others Vs Attorney General & Treasury Officer of Accounts, HC M.A No. 126 of* 2008**, it was held that for an order of mandamus to issue, the Applicant must show that it enjoyed a right, the right is specified by a decree of Court, a certificate of order against the government has been extracted and duly served on the Respondent and that the Respondent has refused to honour the certificate of order by refusing to pay the amount decreed or specified in the certificate of order.

[32] On the case before me, there is no dispute that the Applicants, among other plaintiffs, obtained a decree by consent pursuant to the proceedings in HCCS No. 1029 of 1988. According to the consent judgment and decree executed on 10th January 2000, the Applicants being part of the 6,339 plaintiffs vide HCCS No. 1029 of 1998, were entitled to payment of pension as from 1992 to the date of execution of the consent totalling to UGX 7,356,283,107/= with interest at the rate of 6% p.a. from the date of the consent judgment till payment in full plus the taxed costs of the suit. As such, the Applicants enjoy a clear right as set out in the consent judgment and decree.

[33] It should be noted, however, that the figure of 6,339 plaintiffs is not consistently referred to and the same keeps changing. What is certain though is that all the claimants were listed and are all covered by the consent judgment and decree. It is also not disputed that all the 161 Applicants are part of the plaintiffs in whose favour the consent judgment and decree was executed. However, it should further be noted that the figure of 161 Applicants is also not consistently referred to. In some references, the Applicants are said to be 171; which number is not consistent with the pleadings in this application. According to the pleadings herein, the application was brought by Charles Abola and 160 others who are indicated in the list that is on record. The application itself refers to 161 applicants. Nevertheless, this uncertainty

does not negate the existence of a clear right on the part of the 161 Applicants arising out of the said consent judgement and decree.

[34] It was against the background of the said judgment and decree that a certificate of order against government was issued by the court on 9th July 2018 in the sum of UGX 35,088,680,000/= being pension arrears and interest calculated and assessed as per the above said judgment and decree, up to 30th April 2018. There is no dispute that the said certificate of order against Government was duly served upon the Respondents. The contest raised for the Respondents is in regard to the accuracy and regularity of the certificate of order against Government. The Respondents also contest the manner in which the sums indicated in the said certificate of order are being claimed by 161 or 171 Applicants yet the said monies were decreed by the court in respect of 6,339 plaintiffs.

[35] Regarding the accuracy and regularity of the certificate of order, it was argued by Counsel for the Applicants that it was not open to the Respondents to raise this challenge within these proceedings; the Respondents ought to have appealed against the issuance of the certificate of order or challenged it in any other appropriate manner. I am in agreement with this submission by Counsel for the Applicants. As guided by Section 19(3) of the Government Proceedings Act Cap 77, a respondent aggrieved by the issuance of a certificate of order has the option of appealing against the issuance of the same. Where no such appeal is preferred, and the matter comes up before the court for enforcement of the certificate of order, it is not open to the Respondent to raise the challenge that they ought to have raised by way of such appeal.

[36] Nevertheless, even looking at the substance of the issues raised by the Respondents on the matter, they are not capable of impeaching the certificate of order. The evidence before the Court is that the certificate of order was

issued upon the basis of the sum indicated in the consent judgment and decree of UGX 7,356,283,107/= with interest at 6% p.a. from the date of the consent judgment (10th January 2000) until 30th April 2019 when the computation was done. The Respondents did not point out any inaccuracy with this figure or in the way it was arrived at. Neither did the Respondents rebut the evidence adduced by the Applicants showing that the claim that some of the Applicants were paid or are currently on pay roll was false. I have not seen any evidence by the Respondents to prove any such assertions made by the Respondents. The only claim that appears genuine is the fact that while the figure indicated in the certificate of order (UGX 35,088,680,000/=), is in respect of all the plaintiffs in HCCS No. 1029 of 1998, the same sum is being claimed by the 161 Applicants vide this application. This is the only point I find substantive in the claims raised by the Respondents questioning reliance on the certificate of order.

[37] That being the case, I agree that although the present Applicants are entitled to part of the sum indicated in the certificate of order, they are not entitled to the entire sum. As such, they cannot claim a right as against the entire sum subject of the certificate of order. The Applicants have, therefore, not satisfied the Court that Respondents have refused to honour the certificate of order by refusing to pay the amount decreed or specified in the certificate of order. To that extent, the Respondents are right to claim that they needed to verify and ascertain as to which amount is payable to the Applicants as against the other plaintiffs who are not part of this application.

[38] Let me also point out that it is not correct for the Applicants' Counsel to argue that the verification sought to be done by the Respondents is contrary to the provisions of Article 128(1) of the Constitution. Such verification or scrutiny is not in respect of the court order. Rather it is in respect of the figures that ought to be ascertained before any payment can be effected. It is

clear that the consent decree required some computation of the total amount due and ascertainment of amounts payable to each beneficiary. It is for that reason that the amount in the decree is different from the amount contained in the certificate of order. As such, there is no way the decree could be enforced without a process of verification and ascertainment. Clearly therefore, the decision in ***Baligobye & 2 Others vs Attorney General & 3 Others, HC MC No. 376 of 2019*** was cited by Counsel for the Applicants out of context.

[39] However, I must point out further that the claim by the Respondents that they need to carry out a verification regarding the amounts in issue has been on for a very long time. If the same claim is left to remain an excuse on the part of the Respondents, the Applicants and the other plaintiffs may never reap the fruits of their judgement and decree. As indicated by the Applicants, their entitlements have remained unpaid since 1992 when they were retrenched, and further since 2000 when the consent judgment and decree were entered into. I am convinced that the Respondents are in position to sever the amounts payable to the Applicants, especially since the Applicants are one category of staff (ex-police officers). As such, my finding is that in as far as the present Applicants are concerned, the Respondents are in breach of their obligation to pay pursuant to the decree and the certificate of order. I am also satisfied that the Applicants have no alternative remedy especially taking into consideration the provision under Section 19 (4) of the Government Proceedings Act which prohibits any other means of enforcement.

[40] I have taken into consideration the fact that the Respondents admit to the sum of UGX 1,304,094,643/= as payable to 128 of the 161 Applicants. I have looked at the averments in the affidavit in reply sworn by one Simon Bwire and the submissions by the Respondents' Counsel. In both, the admission by the Respondents in respect of the said sum is unambiguous and unequivocal. It amounts to a proper admission under Order 13 Rule 6 of the CPR and upon

decided cases. See: ***Industrial and Commercial Development Corporation v. Daber Enterprises Ltd, [2000] 1 EA 75, Future Stars Investment (U) Ltd Vs Nasuru Yusuf, HCCS No. 0012 of 2017,*** and ***Andrew Mirembe Tumwebaze Vs Deox Tibeingana, HC MA No.149 Of 2020 (From HCCS No. 798 Of 2019)***.

[41] That being the case, I accordingly enter an order on admission for the payment of UGX 1,304,094,643/= to the Applicants in line with the decree and the certificate of order against the Government. An order of mandamus shall issue in respect of the said amount.

[42] Regarding the remaining sum of UGX 33,784,585,357/= (the difference between UGX 35,088,680,000/= and UGX 1,304,094,643/=), the Respondents are obliged to verify how much of the above said sum the present Applicants are entitled to. An order shall therefore issue directing the Respondents to do such verification within ninety (90) days from the date of this order, pay the same and report to Court; failure of which, I will issue an order of mandamus in respect of the entire outstanding sum, in which case I will deem the present applicants to be collectors of the entire sum for and on behalf of all the other plaintiffs in HCCS No. 1029 of 1998. In such an instance, I will place an obligation upon the Applicants to disburse the said monies to each and every one of the said plaintiffs/beneficiaries.

[43] In answer to the first issue therefore, my finding is that to the extent set out herein above, the application meets the criteria for the issue of a writ of mandamus.

<u>Issue 2</u>: What remedies are available to the parties?

[44] In light of my finding under issue one, the application is allowed with the following orders:

(1) A Writ of Mandamus doth issue requiring the Respondents to pay to the Applicants the sum UGX 1,304,094,643/= which is uncontested and in respect of which an order on admission has been entered by the Court.

(2) The payment by the Respondents shall be effected within ninety (90) days from the date of this Order; failure of which the Applicants shall be at liberty to take out a Notice to Show Cause as to why the 1st Respondent should not be arrested in execution of the said part of the decree and certificate of order.

(3) An order doth issue directing the Respondents to verify and ascertain how much of the sum of UGX 33,784,585,357/= the present Applicants are entitled to, pay the same within ninety (90) days from the date of this order and report to Court accordingly. In case of failure to comply with the above order, an order of mandamus shall issue in respect of the entire outstanding sum, in which case I will deem the present Applicants to be collectors of the entire sum for and on behalf of all the other plaintiffs in HCCS No. 1029 of 1998.

(4) The costs of this application shall be paid by the Respondents to the Applicants.

It is so ordered.

Signed, dated and delivered by email this 8th day of November, 2021.

Boniface Wamala

JUDGE