

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]
MISCELLANEOUS CAUSE NO. 323 OF 2020
[ARISING FROM HCCS No.91 of 2011]

1. CHRISTOPHER SALES

2. CAROL SALES APPLICANTS

VERSUS

1. SECRETARY TO THE TREASURY

2. ATTORNEY GENERAL RESPONDENTS

BEFORE: HON. JUSTICE ESTA NAMBAYO

RULING

The Applicants, Christopher and Carol Sales, brought this application against the Secretary to the Treasury and the Attorney General (Respondents), under **Articles 28 (1), 50 (1) and 139 of the 1995 Constitution of Uganda, Sections 33, 36 (1) (a) and 37 of the Judicature Act, Section 98 of the Civil Procedure Act, Section 19 of the Government Proceedings Act, Rule 14 of the Government Proceedings (Civil Procedure) Rules, Rule (3) (1) (a) of the Judicature (Judicial Review) Rules, 2009 and Rule 7 of the Judicature (Judicial Review) (Amendment) Rules 2019**, seeking for orders of this Court that:-

1. A writ of mandamus directing the Respondents to satisfy the Judgment debt in HCCS No.91 of 2011 be issued.
2. The Respondents be directed to provide a timeline for payment of the decretal sums owed to the Applicants
3. Costs occasioned by this motion be provided by the Respondents.

The grounds of this application are well laid out in the affidavit in support of the application sworn by the 1st Applicant but briefly are: -

1. That the Applicants are judgment creditors in High Court Civil Suit No.91 of 2011 in which Court declared a foreign judgment from US; vide Christopher and Carol Sales –v- Permanent Mission of the Republic of Uganda 90 CIV 3972, against the Government of Uganda represented by the Respondents, enforceable in Uganda.
2. That the judgment and decree issued by the High Court of Uganda on February 1st, 2013 and the decree extracted on March 11th, 2014 in the former suit was for enforcement in Uganda.
3. That the amounts contained in the decree of the United States Southern District of New York Court USD 1,894,604.76 and USD 245,637,50 with interest compounded annually at a rate of 9% according to the US Federal Law whose outstanding amount is now USD 19,379,679 in respect of the first Applicant and USD 2,516,576 in respect of the second Applicant and the entire sum remains unsatisfied (see judgment and decree of the High Court, Southern District of New York).
4. That on February, 8th, 2013, the second Respondent filed a notice of appeal and applied for a record of proceedings to prepare the memorandum of appeal to the Court of Appeal.
5. That on September 30th, 2013, the Applicants filed a Notice of Motion to strike out the Second Respondent's Notice of Appeal in Civil Application No.315 of 2013 on grounds that an essential step to wit filing a memorandum of appeal was more than sixty days, omitting an essential step in the process.
6. That the Court of Appeal on February 28th, 2019 allowed Civil Application No.315 of 2013 and struck out the Notice of Appeal with costs.

7. That the bill was taxed and allowed at UGX 17,102,000 on December 16th, 2019 (Certificate of Order of the Court of Appeal dated April 16th, 2019 and December 16th, 2019 and a certified copy of the record of proceedings dated September, 20th, 2020.

8. That the Respondents filed a Notice of Appeal to the Supreme Court to the decision in paragraph 6 on March 12, 2019 but no further steps have been taken as of the date of filing of this Motion.

9. That the Certificate of order of the High Court dated October 7th,2020 confirmed the decretal amount due to the Applicants as United States Dollars 21,896, 252 payable with taxed costs of the Court of Appeal on September 9th ,2020 at UGX 17,216,000.

10. That the Respondents have failed to pay the decretal sums owed to the Applicants who first received judgment in their favour on August 30th, 1993. The same was confirmed as valid and declared enforceable in 2013 in the High Court of Uganda.

11. That the Applicants' demands to settle this liability addressed to the Respondents have gone unanswered.

12. That Receipt copies of certificates of the orders were served on the Respondents on October 16th, 2020 together with the notice of intention to bring legal action.

13. That the Applicants have suffered excess injury and lack of recompense.

In reply, Allan Mukama, a State Attorney from the Attorney General's Chambers filed an affidavit in reply on behalf of the Respondents opposing this application.

Background of the application

The brief background to this case is that the Applicants won a case against the Respondents in the US; vide *Christopher Sales & Carol Sales -v- The Republic of Uganda & Apollo K. Kironde (the then Ambassador and Permanent*

85 ***Representative of Uganda to the United Nations 90 CIV 3972 (CSH)***, where the 1st
Applicant was awarded a compensation of USD 1,891,607.76 (One Million Eight
Hundred and Ninety one thousand, six hundred and Seven dollars and seventy six
cents) and interest while the second Applicant was awarded USD 245,637,50 (two
hundred and forty five thousand, six hundred thirty seven dollars and fifty cents).
90 In 2011, the Applicants filed Civil Suit No.91 of 2011 in the High Court of Uganda
for enforcement of a foreign judgment and Eldad Mwangusya, J, (as he then was)
granted the application on the 1st February, 2013. The Respondents have since not
complied with the orders of Court, hence this application.

Representation

95 Learned Counsel Ssemogerere Kaloli represents the Applicants while Mr. Wanyama
Kodoli Principal State Attorney from the Attorney General's Chambers is for the
Respondents. When the matter came up for hearing on the 16th March, 2021
Counsel for the Respondents raised two preliminary objections which court over
ruled and directed Counsel to file written submissions in the application and they
100 have complied with the directives.

Issues for determination are: -

**1. Whether this is a matter where the High Court's discretion to grant the
Applicant's prerogative writ of mandamus should be exercised.**

**2. Whether the Respondents have any valid legal defence to the grant of
105 this writ.**

Submissions on issue 1:

Counsel for the Applicants relied on Section 36 and 37 of the Judicature Act and the
cases of *Shah- v- Attorney General (No.3) [1970] 1 EA 543 (HCU)*, *Mukasa John -v-
Attorney General & Treasury Officer of Accounts Misc. Cause 94 of 2019, Nampogo
110 Robert and Anor -v- Attorney General HCC Misc. Application No.48 of 2009 and
Southern Range Nyanza Textiles -v- Attorney General & Two Others (Misc.*

Application No.727 of 2014. He explained that in applications for mandamus, the onus lies on the Applicant to effectively demonstrate by evidence or otherwise that he has a right derived from an order specified in a decree of court and contained in
115 a certificate of order extracted and served against the Government and that the Respondents have refused, neglected or failed to honor the certificate of order to pay the amount stated in the decree. The Applicant must show that the certificate was served on the Treasury Officer of Accounts or other responsible officer in accordance with sections 19(1) of the Government Proceedings Act and a copy
120 served on the Attorney General under S. 19(2). Counsel further relied on the cases of *Intex Construction Ltd -v- Attorney General & Anor HCMC No.737 of 2013*, *Shah -v- Attorney General (supra)*, *Re: An application by Bukoba Gymkhana Club (1963) 478 (TLR)*, *R -v- Poplar Metropolitan Borough Council ex parte LCC (N0.2) (1992) 1 KB 95* and *Mukisa John -v- Attorney General & Treasury Officer of Accounts Misc. Cause No.94 of 2019* and explained that in the instant case, the Applicants have exhausted their remedies in their legal domicile and in Uganda. That evidence of the decrees, certificates of order and reminders made to the Respondents are attached to this application.

Counsel relied on rule 3 (2) of the Judicature (Judicial Review) Rules, 2009, which
130 provides for considerations for the grant of mandamus and explained that the Applicants served the Certificate of Order against Government more than one year after the 2nd Respondent's appeal was struck out by the Court of Appeal and after the Respondents abandoned the appeal they filed at the Supreme Court, but no action has been taken by the 1st Respondent.

135 Counsel relied on Article 250 (2) of the 1995 Constitution and S. 10 of the Government Proceedings Act and explained that the Applicants obtained a decree and three Certificates of Order against Government which are uncontested, dated 19th April, 2019 and 16th April, 2019 from the Court of Appeal and October 7th

October, 2020 from the High Court in accordance with Rules 14 (1) and (2) of the
140 Government Proceedings Rules. He also relied on S. 19(3) of the Government
Proceedings Act which provides that;

*"If the order provides for the payment of any money by way of damages or
otherwise, or of any costs, the certificate shall state the amount so payable, and the
treasury officer of accounts or such other Government accounting officer as may be
145 appropriate shall, subject as hereafter provided, pay to the person entitled or to his
or her advocate the amount appearing by the certificate to be due to him or her
together with the interest, if any, lawfully due on that amount; but the court by
which any such order as is mentioned in this section is made or any court to which
an appeal against the order lies may direct that, pending an appeal or otherwise,
150 payment of the whole of any amount so payable, or any part of it, shall be
suspended, and if the certificate has not been issued may order any such directions
to be inserted in the certificate."*

He emphasized that the only circumstances for non-satisfaction of a certificate of
order is where an appeal exists. That in the instant case, no appeal exists. The appeal
155 was struck out on the 28th February, 2019. That the orders of the Court of Appeal
dated 19th April, 2019 and 16th December, 2019 are still in force as laid out in
paragraphs 7, 8, 11 and 12 of the affidavit in reply. Further, that paragraphs 5-10 of
the record of the Court of Appeal guides on disposal of this matter and further
applications for review in paragraph 11 of the affidavit in reply are nugatory and
160 only intended to buy time to the detriment of the Applicants who are at the end of
their natural life.

Counsel further relied on Section 37(1) of the Judicature Act and submitted that
exceptional circumstances in this case are reflected in the affidavit of the 1st
Applicant that the judgment award against the 2nd Respondent has gone unsatisfied
165 for 10 years after verification of the US judgment and confirmation by the High

Court in March, 2013 and about thirty years since the original judgment in the US. He relied on the case of *Haruna Nseko Isabirye –v- Attorney General & Permanent Secretary Misc. Application No.12 of 2018*.

170 In reply, Counsel for the Respondents relied on Section 37 (1) of the Judicature Act and the case of *Oil Seeds (U) Ltd -v- Chris Kassami (Secretary to The Treasury) HCCA No. 115 of 1995 & MA No. 121 of 2008* and argued that the circumstances of this case are such that it would not be just to grant this application. That following the striking out of Civil Appeal No. 205 of 2013, the 2nd Respondent promptly filed Civil Application No.155 of 2019 seeking for review of the Court of Appeal decision on
175 grounds of error apparent on the record. That Civil Appeal No.205 was erroneously struck out for effluxion of time without being heard on its merits yet it was on important matters of the law. That the application for review of the Court of Appeal decision has not yet been fixed and disposed of by Court and granting the orders of mandamus would render Civil Application No.155 nugatory and yet the issue in the
180 Appeal was that the judgment granted to the Applicants by the Southern District Court of New York is unenforceable in Uganda. Counsel emphasized that an order of mandamus should not be issued to enforce rights that are subject to dispute as noted in the case of *Nampongo Robert -v- AG (supra)*. That in this case, the dispute between the Applicants and the Respondents has not been finally settled by Court
185 as the 2nd Respondent has clearly shown that it exercised its right to review and set aside the decision of the Court of Appeal.

Counsel further submitted that perusal of the Certificate of Order against Government extracted by the Applicants does not reveal the exact amount of money required to be paid to the Applicants and the duty to pay has not been well
190 established. He explained that although the Applicants contend to have exhausted all legal avenues, the 2nd Respondent has not exhausted his legal remedies and is currently pursuing the post-trial remedy at the Court of Appeal.

That though the Applicants argue that the review application is intended to buy time to their detriment, this is not true as the said application raises important questions of law and public importance that require consideration by the Court of Appeal as they have a grave bearing on our jurisprudence. That it would defeat the ends of justice to grant this application. Counsel invited this Court to dismiss this application on grounds that it is not a fit and proper case for the grant of the orders sought.

Analysis:

Sections 36(1) (a) and 37 of the Judicature Act empower the High Court to issue a writ of mandamus.

Under S.19 of the Government Proceedings Act, Government has a duty to satisfy the judgment/decree by court and to pay the amounts stipulated in the Certificate of Order against Government.

Before granting the writ of Mandamus against Government, courts must ensure that the Applicant has demonstrated that he/she enjoyed a right as specified in a judgement/decree of court, a Certificate of Order against Government detailing the amounts payable has been extracted and served against the Government and that Government has refused and or failed to pay. There must be no dispute as to the amount in the judgment/decree and that there must be no alternative remedy available to the Applicant. See the cases of *Intex Constructions Ltd –v- Attorney General & Anor MC No. 737 of 2013* and *Oil Seeds (u) Ltd –v- Chris Kassami (Secretary to the Treasury), MA No. 136 of 2008*.

In Patrick Kasumba –v- AG & Treasury Officer of Accounts MA No. 121/2010 Bamwine J, (as he then was) held that: -

"Before the remedy of mandamus is given the applicant must show a clear legal right to have the thing sought by it done. Mandamus is a discretionary order like all other prerogative orders, which the court will grant only in suitable

220 *circumstances and withhold in others. It cannot be granted as a matter of
course. A demand for performance must precede an application for mandamus
and the demand rules must have been unequivocally refused”.*

In the instant case, there is a judgement of a US Court vide *Christopher Sales and
Carol Sales -v- The Republic of Uganda & Appollo K. Kironde (as the Ambassador
225 and Permanent Representative of Uganda to the United Nations 90 CIV 3972 (CSH)*,
there is also a judgement and decree of the High Court of Uganda vide; *Civil Suit
No.91 of 2011* granted on the 1st February, 2013. The Respondents appealed to the
Court of Appeal vide; Civil Appeal No.205 of 2013 and the same was dismissed for
filing the appeal out of time (see Civil Application No.315 of 2013, filed by the
230 Applicants). The Respondents filed another appeal at the Supreme Court claiming to
be aggrieved by the dismissal of their appeal to the Court of Appeal, but they also
abandoned the appeal to the Supreme Court and filed Misc. Application No.155 of
2019 to the Court of Appeal seeking for review of its decision. This application for
review has not been heard.

235 Counsel for the Respondents relied on the case of *Nampogo Robert & Another -v-
Attorney General H.C CVMC 0048 of 2009*, and submitted that mandamus should
not issue to enforce doubtful rights. That the duty to perform the act must be
indisputable and plainly defined. Counsel explained that this matter is still in dispute
as the application for review is still pending before the Court of Appeal. On the
240 other hand, Counsel for the Applicants submitted that the Respondents are only
buying time to delay payment to the Applicants and that in any case, the
Respondents have not filed a stay of execution.

In the case of *Hon. Sitenda Sebalu -v- The Secretary General of the East African
Community; Reference No.8 of 2012, at page 20*, the East African Court of Justice
245 at Arusha while resolving an issue of contempt of Court noted that;

"It is plain and unqualified obligation of every person against or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until it is discharged (see Hodkinson vs Hodkinson [1952] All ER 567). The only way in which a litigant can obtain reprieve from obeying a Court Order before its discharge is by applying for and obtaining a stay."

In this case, though the Respondents filed an application for review, they have not applied for a stay of execution. The application for review filed by the 2nd Respondent after dismissal of the appeal for being filed out of time and after filing another appeal to the Supreme Court and abandoning it, in my view is an afterthought intended to frustrate the Applicants' efforts to have their decree satisfied. Judgement in this case was passed in August, 1993, over 29 years ago!

Annexure 6 to the affidavit in support of the application show that the Respondents have been served with demands for performance. There is no evidence of any response from them. I'm satisfied that the Applicants have demonstrated their compliance with the requirements of S.19 of the Government Proceedings Act and I therefore find it proper to allow this application which I do hereby allow with orders that: -

- 1. A writ of Mandamus be and is hereby issued against the 1st Respondent directing him to perform his statutory duty and effect payment in respect of the judgement debt and the Certificate of Order against Government held by the Applicant.**
- 2. The 1st Respondent is directed to provide a timeline for satisfaction of the judgement debt within 30 days**
- 3. The Applicants are awarded costs of this application.**

I so order

Dated, signed and delivered by mail at Kampala this 10th day of November, 2021.

275 **Esta Nambayo**
JUDGE
10/11/2021.