

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO 502 OF 2020
(ARISING OUT OF CIVIL SUIT NO. 544 OF 2003)

DR. KAGORO KAIJAMURUBI :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

- 1. ATTORNEY GENERAL**
- 2. TREASURY OFFICER OF ACCOUNTS/
SECRETARY TO TREASURY :::::::::::::::::::::::::::::::::::RESPONDENTS**

BEFORE: HON JUSTICE SSEKAANA MUSA

RULING

The Applicant brought this Application under S.36 & S.37 of the Judicature Act, Rules 3(1) (a), 5, 6 and 7 of the Judicature (Judicial Review Rules) 2009 S.98 of the Civil Procedure Act and Order 52 of the Civil Procedure Rules SI 71 – 1) for orders that;

1. An order of *Mandamus* doth issue compelling the 2nd Respondent to pay a decretal sum of U.shs. 12,682,632/= in Civil Suit No. 544 of 2003 together with interest of 12% per annum from 2003 until 13th February, 2015 and thereafter at the rate of 6% from 13th February, 2015 till payment in full and taxed costs in civil suit No. 544 of 2003 amounting to Ug.shs. 8,946,367/=.
2. A warrant of arrest be issued for arrest and detention of the 2nd Respondent in Civil Prison until such time when the decretal sum is fully paid to the Applicant.

3. A declaration that the Respondents are in contempt of court orders issued in High Court, Civil Suit No. 544 of 2003.
4. Costs of the Application be provided for.

The grounds of this application are specifically set out in the affidavit of Dr. Kagoro Kaijamurubi which briefly state;

1. That the Applicant is the successful party in civil suit No. 544 of 2003 wherein a judgment was delivered on 13th February, 2015 with orders that;
 - (a) The 1st Respondent pays to the Applicant terminal and retirement benefits of Ug.shs. 12,682,632/= (Uganda Shillings Twelve Million Six Hundred Eighty Two Thousand Six Hundred Thirty Two).
 - (b) Interest of twelve percent (12%) per annum on (a) above from 2003 till the date of judgment.
 - (c) Interest of six percent (6%) per annum from the date of judgment till payment in full.
 - (d) Costs of the suit were also awarded to the Applicant.
2. The Applicant's costs of the suit were taxed and a certificate of order against the 1st Respondent was issued by this Honourable Court on 01st February, 2018 and effectively served upon the 1st Respondent on 01st March, 2018.
3. To date, the certificate of order remains unsettled by the Respondents despite several written demands and verbal reminders.

The Applicant was represented by *John Magezi* while the Respondents were represented by *Kodoli Wanyama*.

Court directed both parties to file submissions which have been considered by this court.

ISSUE FOR DETERMINATION

Whether or not an order of mandamus should issue?

Determination

Counsel for the Applicant submitted that section 37 (2) states that an order may be made under this section unconditionally or on such terms and conditions as the High Court thinks fit. From the above provision, 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 unconditionally or on such terms and conditions as the court thinks fit. In the case of *Hon. Justice Kiryabwire & 3 Ors versus The Attorney General & 2 Ors HCT Miscellaneous Application No. 783 of 2016* and *Glory Ranchers Limited Vs Attorney General & Anor HCT Miscellaneous Application No. 1409 of 2017*,

Hon. Justice Flavia Senoga Anglin stated that in order to obtain a writ of mandamus, an application must establish the following circumstances:-

- 1. A clear legal right and a corresponding duty in the Respondent.*
- 2. That some specific act or thing, which the law requires that particular officer to do, has been omitted to be done by him.*
- 3. Lack of any alternative, or-*
- 4. Whether the alternative remedy exists but it is inconvenient, less beneficial or less effective or totally ineffective.*

Applicant's counsel further submitted that it must be borne in mind that the duty to perform an act must be undisputable and plainly defined, as mandamus will not issue to enforce doubtful rights or those rights that are the subject of dispute as stipulated in the case of *Afro Motors Ltd & Another vs. Ministry of Finance, Planning and Economic Development & Another and Nampogo Robert & Another vs Attorney General HCCMA 0048/2009*. Looking at the affidavit in support of the Application as sworn by the Applicant, he states that on 03rd September, 2003, him and others

brought civil suit No. 544 of 2003 against the 1st Respondent for unlawful termination and / or dismissal of our employment, however, in the course of proceedings, the rest of the Plaintiffs were settled by the 1st Respondent upon a consent judgment and as result, they withdrew their claim against the 1st Respondent.

The matter proceeded only in respect of the Applicant's claim against the 1st Respondent. That on 13th February, 2015, judgment was delivered in favor of the Applicant and a decree therefrom was issued by court on 16th September, 2015 with orders that the 1st Respondent pays to the Applicant terminal and retirement benefits of Ug.shs. 12,682,632/=, Interest of 12% per annum on above from 2003 till the date of judgment, Interest of 6% per annum from the date of judgment till payment in full and costs of the suit.

That through his lawyers Messrs Magezi, Ibale & Co. Advocates, he filed a bill of costs which was on 24th April, 2017 taxed and allowed at Ug.shs. 8,946,367/= and a certificate of taxation was issued to that effect. Subsequently, a certificate of order against the 1st Respondent / Government was issued to him by this honourable court on 01st February, 2018.

Counsel for the Applicant further submitted that it is evident from the foregoing that a clear legal right exists in favor of the Applicant to be paid the decretal sum arising out of certificate of order and the taxed costs in the suit. A decree or order of payment made against Government becomes a statutory duty for the Government officer concerned to perform the duty. All payments decreed against Government have to be made by the 1st Respondent through the 2nd Respondent and therefore, it is corresponding (statutory) duty of the Respondents to pay the said sums. However, to date, in total breach of the certificate of order against Government, the Respondents have failed and / or adamantly refused to satisfy the said certificate of order and certificate of taxation. The duty of the Respondents to settle a certificate of order and certificate of taxation is undisputable and is plainly defined.

Applicant's counsel cited *Edith Nakandi vs Umar Katongole HCT Misc. Application No. 252 of 2018*, Hon Justice Henry I Kawesa cited the case of *Stanbic Bank (U) Ltd & Anor Vs The Commissioner General URA MA No. 42 of 2010* in which Lady Justice Mulyagonja based her definition on Halsbury's Law of England, Vol.9 (1) 4th Ed, which is as follows;

"Contempt of court can be classified ascivil contempt consisting of disobedience of judgment, orders or other processes of court and involving in private injury".

Basing on the above case, conditions necessary to prove contempt of court are as follows;

1. *Existence of a lawful order.*
2. *The contemnor's knowledge of that order.*
3. *The potential contemnor's failure to comply, i.e. disobedience*

As to whether the Respondents are guilty of contempt of court orders, it is evident in the affidavit in support of the application that there is a certificate of order which is a lawful order, the said is well within the knowledge of the Respondents who have refused and / or failed to settle it. Therefore, the Respondents are in contempt of court order by failing to settle the certificate of order. The general rule is that costs follow the event and a successful party should not be deprived of costs except for good cause.

Respondent's counsel submitted that it is trite law that to obtain a writ of mandamus requiring the performance of an act, the applicant must show, *a duty of the opposing party to perform the act, the ministerial nature of the act, the applicant's specific legal right for which discharge of the duty is necessary and a lack of any other legal remedy. See MC 693/2006 Afro Motors Ltd & Okumu Ringa Patrick Aloysius Vs Minister of Finance, Planning & Economic Devt & PSST.* The same principles are also stated in *MA 136/2008 (Arising from HCCA NO. 115 & MA 121/08) Oil Seeds (U) Ltd Vs Chris Kassami (Secretary to Treasury)* in which court pronounced that to obtain a writ of mandamus, the applicant must show the existence of, *a clear legal right and a corresponding duty in the respondent, that some specific act or a thing, which the law requires that a particular officer to do, has been omitted to be done by him, lack*

of any alternative or where the alternative remedy exists but it is inconvenient, less beneficial or less effective or totally ineffective. It was the respondent submission that much as the applicant has a legal right as demonstrated in the certificate of order against Government pursuant to section 19 Government Proceedings Act and there is a corresponding duty on the respondent to pay, this is subject to the money appropriated by Parliament vide Article 156 of the Constitution.

Counsel for the Respondent submitted that there is an alternative remedy sought, available to the applicant which is premised on less appropriation of funds to cater such payments at ago. This has necessitated the ministry to come up with a compensation and court award committee to pay the money appropriated for the same. The committee has criteria to follow when effecting payments to wit high interest rate cases, Human rights cases, first in first out etc. the applicant is on the list of liability of the ministry awaiting adequate appropriation of money and payment thereto.

The above notwithstanding it is our submission that the plaintiffs in the main suit 544/03 Fred Wairugala & others vs Attorney, from where this application arises have filed an appeal vide CA 103/19 against Justice Ssekaana's ruling in CS 544/03 dated 30/08/2018. Therefore the applicant's rights are still the subject of disputes. It is trite law that the writ of mandamus will not issue to enforce doubtful rights or those rights that are subject of disputes.

In rejoinder, the Applicant's counsel rejoined that the Applicant is not a party to Civil Appeal No. 103 of 2019 arising out of civil suit No. 544 of 2003. As stated in the Applicant's affidavit in support of the Application, on 03rd September, 2003, him and others brought civil suit No. 544 of 2003 against the 1st Respondent for unlawful termination and / or dismissal of our employment, however, in the course of proceedings, the rest of the Plaintiffs were settled by the 1st Respondent upon a consent judgment and as result, they withdrew their claim against the 1st Respondent. The matter proceeded only in respect of the Applicant's claim against the 1st

Respondent. That on 13th February, 2015, judgment was delivered in favor of the Applicant against the 1st Respondent. Subsequently, on 01st February 2018, the Applicant was issued with a certificate of order for the Respondents to settle and/or satisfy and upon failure by the Respondents to settle the said certificate of order, the Applicant is Appealing against the judgment and orders which are in his favour and at the same time he is bringing this application to enforce the same judgment and the orders. Besides, looking at the memorandum of appeal attached to the Respondents' submissions as Annexure "A", the appeal rotates around the consent judgment which was executed by the rest of the Plaintiffs and the 1st Respondent.

Analysis

The purpose of an order of mandamus is to compel the performance of a public duty. In the case of *Rep & Ors -vs- AG & Anor [2006]2 EA 265* it was held that whenever a public Authority fails to act in accordance with the law or within the four corners of the law it can then be compelled to act accordance with the law. Reference is made to *SHAH -vs- AG* where Court noted that;-

" In mandamus cases it is recognized that when a statutory duty is upon crown servant in his official capacity and the duty is not owed to the crown by the public any person having sufficient legal interest in the performance of the duty may apply to the court for an order of mandamus to enforce it....."

Section 36 of the Judicature Act Cap 13 provides the prerogative writ of mandamus as one of the remedies which the High Court is empowered to issues. It provides as follows;

"36. Prerogative orders.

(1) The High Court may make an order, as the case may be, of—

(a) mandamus, requiring any act to be done;...

In an application for an order of 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 a certificate of order extracted and served against the Government, and that

the Respondents have refused and/ or neglected and/ or failed to honor the certificate of order to pay the amount stated in the decree. This position is well articulated in the case of *Intex Construction Ltd vs. Attorney General & Anor HCMC No. 737 of 2013*, where the court, inter alia, held that;

“... the applicant for an order for mandamus 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 respondents and that the respondents refused to honor the certificate of order by refusing to pay the amount decreed in the certificate of order.

Considering the evidence adduced by the Respondent in their Affidavit in Reply, they admit that for the payment to be effected, there is a compensation and court award committee that follows some criteria, which the Applicant has to wait for. This is an alternative process through which the applicant like other persons in a similar category must follow. The courts should not be used to assist litigants to jump the payment queue simply because they have been able to obtain orders of Mandamus against the Secretary to Treasury. The set criteria should be followed for the benefit of all without favouritism or extraneous considerations and in a transparent manner.

The courts should loathe dictating how public functions should be performed and especially how resources or payments should be applied or deployed in particular circumstances. The funds to be used for payment of all judgment creditors against government must be appropriated by Parliament and if the particular decretal debt has not been appropriated in particular budget year, it is impossible to expect a payment.

The duty of the court or any party affected should be to ensure that the debt is included in the budget of the particular year to reduce on the several applications for mandamus to compel the Treasury Officer of Accounts/Secretary to treasury to pay money not appropriated by Parliament in accordance with the law.

Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject to the well-settled principles which have been established by the court. An action in the mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied by the other as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the court may and should look to the larger, public interest which may be concerned, an interest which the private litigants are apt to overlook, when striving for private ends. The court always retains the discretion to withhold the remedy where it would not be in the interest of justice to grant it.

This application fails for the above reasons and is dismissed with no order as to costs.

I so order.

SSEKAANA MUSA

JUDGE

11th March 2022