

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISCELLANEOUS CAUSE NO. 28 OF 2020
(ARISING FROM CIVIL NO. 25 OF 2009)
(FORMERLY CIVIL SUIT NO. 49 OF 2005)

LUKWAGO HABIB ::::::::::::::::::::::::::::::: APPLICANT/JUDGEMENT
CREDITOR

VERSUS

1. ATTORNEY GENERAL

**2. PERMANENT SECRETARY/
SECRETARY TO THE TREASURY
MINISTRY OF FINANCE PLANNING & ECONOMIC
DEVELOPMENT ::::::::::::::: RESPONDENT/JUDGEMENT
DEBTORS**

BEFORE: HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA

RULING

Background

This Application is brought under Article 50 of the 1995 Constitution, Section 33, 36(1) and 37 of the Judicature Act, Section 3(a) of the Judicature Amendment Act No. 3 of 2002, O 52 r 1 & 3 of the Civil Procedure Rules seeking for: -

- a) An Order of Mandamus issues against the Respondents for payment of the decretal sum in Civil Suit No. 25 of 2009 of UGX. 33, 034, 600/= being special damages, UGX. 10,000,000 being general damages together with 8% interest at Court rate on special damages from the 3rd day of April 2017 till payment in full.
- b) Taxed costs of the suit in the sum of UGX. 49,317,000 be paid by the Respondents.
- c) That the Respondents pay costs of this application.

Brief facts

Judgement in Civil Suit No. 25 of 2009 was delivered in favor of the Applicant on the 3rd day of April 2017 wherein the Respondent was ordered to pay a total of 92,351,600/= (Ninety-Two Million Three Hundred Fifty-One Thousand Six



Hundred Shillings Only) as special damages, general damages, interest on special damages and costs of the suit. The Applicant extracted a Certificate of Order against Government and duly served it on the 1st Respondent on the 28th day of February 2018 together with a written demand for payment. The 2nd Respondent is the custodian of the accounts and the budget of the 1st Respondent and has the direct duty of satisfying Court awards which duty has been breached. The Applicant contends that the Respondents have no lawful or plausible excuse not to pay the sums decreed in a matter where no appeal against the judgement was preferred and that the Respondents are unlikely to settle the Judgement debt due under the Certificate of Order unless they are compelled to do so by Court by Order of Mandamus.

In reply, the Respondent filed an affidavit sworn by Aggrey Wunyi, the Accounting Officer at the Uganda Police Forces, Headquarters Kampala wherein he acknowledged having knowledge of the decretal sum. He averred that the Government passed a policy in 2016 where payment of Court awards and compensation was decentralized to line Ministries. On 11th June 2019, the Solicitor General of the Ministry of Justice and Constitutional Affairs wrote to the Inspector General of Government informing Police to make arrangements to pay the sums as stated in the Judgement. He continued to aver that the right to apply for enforcement of such decrees by way of a writ of mandamus does not accrue unless the Applicant provides evidence to show that the amount sought to be recovered forms part of expenditure that is authorized for the financial year during which the enforcement is sought. He further averred that no money can be withdrawn from the Consolidated Fund except to meet expenditure charged on the fund by the Constitution or by an Act of Parliament and where the issue of those monies has been authorized by an Appropriation Act or a Supplementary Appropriation Act.

He further averred that since the money claimed by the Applicant had not been considered in the current financial year, these funds were not available for payment to the Applicant.

Representation

The Applicant was represented by Counsel Amujong Kevin of M/S Okalang Law Chambers while the Respondents were represented by Counsel Nabasa Charity of Attorney General's Chambers.

Submissions.

Counsel for the Applicant cited **Section 36 of the Judicature Act Cap 13** which provides for the prerogative order of Mandamus. Counsel referred to the case of **Mukasa John Vs Anor, Misc. Cause No. 0094/2019** for the proposition that 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 Government and that the Respondents have refused, neglected and or failed to honor the Certificate of Order to pay the amount stated in the decree. The Applicant demonstrated that he has a right derived from a decree of Court and adduced evidence to show that this right is contained in a Certificate of Order which was attached as Annexure "D" to the Affidavit in Support of the Notice of Motion which had been served on Government on the 28th day of February, 2018. That the Respondents have refused to pay the decretal sum to date.

Counsel also relied on **Article 250(2) of the 1995 and Section 10 of the Government Proceedings Act** which stipulate that Civil Proceedings by or against the Government shall be instituted by or against the Attorney General and all documents required to be served on the Government for the purpose of or in connection with those proceedings shall be served on the Attorney General which was done by the Applicant in the instant case. Counsel also cited **Section 19(3) of the Government Proceedings Act** which provides for payment of decretal awards by Government.

Counsel for the Applicant relied on the case of **Nampogo Robert & Anor Vs Attorney General Constitutional Petition No. 43 of 2012** for the proposition that the Attorney General has the Constitutional duty to ensure that the decisions of Courts of law calling for compliance by Government are promptly and strictly complied with. The 1st Respondent has never appealed against the decision of Court in Civil Suit No. 29 of 2009, therefore the decision stands.

The Applicant's Counsel premised her arguments on Section 11(1) of the Public Finance Management Act of 2015 which mandates the 2nd Respondent to ensure that all monies lawfully demanded against the Government of Uganda are budgeted for and promptly paid for. Counsel supported this argument by relying on the case of **Haruna Nsereko Isabirye Vs. Attorney General and Anor , M.A No.12 of 2018.**

In reply, the Respondents submitted that enforcement of such decrees by way of a writ of Mandamus does not accrue unless the Applicant provides evidence to show that that the amount sought to be recovered forms part of the expenditure authorized for a financial year. The Respondents argued that the funds the Applicant seeks to recover have not been catered for under the government plan

20.02.2023

of revenue and expenditure during this financial year and that these funds have been considered in the next financial year.

Counsel further submitted that the public debt of Uganda shall be charged on the consolidated funds of Uganda. He contended that under **Article 160 of the Constitution**, the public debt of Uganda shall be charged on the Consolidated Fund must be charged by the Constitution or by an Act of Parliament in accordance with Articles 154 and 155 of the Constitution. Counsel submitted that in accordance with Article 155 (1) of the Constitution, the President must cause to be prepared and laid before Parliament estimates of revenues and expenditure of Government and that for Court to order or cause withdrawal from the consolidated fund without an appropriation of funds by Parliament offends the doctrine of separation of powers and is unconstitutional. Counsel relied on the case of **Nampongo Robert and Tumwesigye Moses Vs Attorney General Constitutional Petition No. 43 of 2012** to support his argument.

Issues

1. Whether the present application is a proper case for the issuance of a writ of Mandamus.
2. What remedies are available to the parties.

Analysis

Issue No. 1: Whether the present application is a proper case for the issuance of a writ of Mandamus.

The remedy of Mandamus is a creature of statute provided for under **Section 36 and 37 of the Judicature Act** which is to the effect that the High Court may upon an application for judicial review grant an order of Mandamus requiring any act to be done.

Mandamus is defined under **Rule 3 of the Judicature (Judicial Review) Amendment Rules 2019** to mean “a court order issued to compel performance by public officers of statutory duties imposed on them.”

Section 19(3) of the Government Proceedings Act 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 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 the 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, payment of



22.02.2023


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.

In this case, it is not contested that the Applicant is entitled to 92,351,600/= (Ninety-Two Million Three Hundred Fifty-One Thousand Six Hundred Shillings Only) and that the Applicant extracted a Certificate of Order against the Government which was duly served on the 1st Respondent on the 28th day of February 2018 together with a written demand for payment. However, to date, the decretal sum remains unpaid and the Respondents are unlikely to settle the Judgement debt due under the Certificate of Order unless they are compelled to do so by a Court Order of Mandamus. This position is covered in paragraphs 6, 7, 8, 10 and 11 of the Applicant's Affidavit in support of the Application.

The Respondents in their Affidavit in Reply sworn by Aggrey Wunyi oppose the grant of an Order of Mandamus on grounds that it does not accrue unless the Applicant provides evidence to show that the amount sought to be recovered forms part of expenditure authorized for the financial year during which the enforcement is sought. No monies can be withdrawn from the consolidated fund except to meet expenditure charged on the fund by the Constitution or by an Act of Parliament and where the issue of those monies has been authorized by an Appropriation Act or a Supplementary Appropriation Act.

I find this argument untenable. **Section 19(3) of the Government proceedings Act** (supra) imposes an obligation on the Treasury Officer of accounts or such other Government Accounting Officer to pay with an exception for non-satisfaction only where an appeal exists. In this case, there is no appeal. The provision does not condition payment on the Applicant providing evidence about the amount forming part of the authorized expenditures, budgetary allocations and parliamentary approvals. In any case the Applicant is not concerned with the payment processes. The Applicant is only concerned with obtaining the money due to him.

When a Judgement has been entered against the Government and a monetary decree issued against it, it does not enjoy any special privileges with regard to its liability to pay except when it comes to the mode of execution of the decree. Where decrees for the payment of money or costs have been issued against the Government in favour of a litigant, the said decree in can only be enforced by way of an Order of Mandamus compelling the accounting officer in the relevant ministry to pay the decretal sum as the Government is protected and given immunity from execution and attachment of its property or goods under Section 14 of the Government Proceedings Act.


22.02.2023

Article 128(3) of the Constitution provides that;

“All organs and agencies of the State shall accord to the Courts such assistance as may be required to ensure the effectiveness of the Courts. Failure to assist the courts in the matter of satisfaction of a judgement debt is a clear violation of the above Constitutional provision.

In **Nampogo Robert & Anor Vs Attorney General Constitutional Petition No.43 of 2012**, Justice Remmy Kasule, as he then was, observed that in enforcing any judgment against Government under Section 19 of the Government Proceedings Act, “The Attorney General and the responsible accounting officer of Government on being served with a Certificate issued by the Court containing the particulars of the order/Judgement to be enforced ought to comply with that Order, unless the Attorney General, as the legal counsel and representative of the Government obtains an order from the Court determining the cause, or stopping compliance. It is up to those managing the affairs of Government to ensure that at any time there are, within the budgetary provisions of Government, funds to satisfy Courts decisions so that at no time, the Government is made to appear as disobeying such orders when Courts of law make them.”

I agree with Counsel for the Respondent in as far as the procedures in the budgeting processes are concerned and as stipulated under the laws of Uganda. However, the issue of failure to pay has nothing to do with the law and the procedure but the problem is the failure to prioritize/lack of commitment to pay the Judgement debts.

I appreciate the fact that the Respondents rely on funds from the Consolidated Fund which funds are budgeted for in advance. It is also a fact that the process consumes time. However, that does not waive the Government’s obligation to pay its debts and does not in any way hinder its entities from streamlining their operations to rectify inefficiencies in their systems in order to ensure timely payments. Government should be in position to pay Judgement debtors who should not be kept away from enjoying the fruits of judgement.

I am persuaded by Justice Madrama’s observation in **Nambogo Robert(supra)** wherein he stated that;

“.... the question of the budget and appropriation by Parliament does not arise except as a matter of practice for any factors which are not before Court. There should be in place sufficient funds to meet judgement debts. If there are no sufficient funds, it is a problem of management, there are extraordinary circumstances in which money that is budgeted for is not paid out in cases of contracts or tenders resulting in suits for breach of contract. Hypothetically, the money for supply of services to Government ought to have been returned to the



treasury if not paid and if the matter ends up as a civil suit, resulting in judgement debt payable by the government, the money should be available because the activity was budgeted for and money appropriated for it by Parliament except for the award of damages and interest. This should apply to all contracts executed for which money is supposed to be budgeted for to fulfill the contract. It is only the unexpected matters like torts or other breaches of contract or duties which may be of surprise to the Executive. ***Even then there must be a budget to satisfy judgement debts*** estimated from various demands that have been served upon the Attorney General as the legal representative of Government. ***If there is to be a delay in payment, such delays have to be explained to the satisfaction of Court.***”

It is on record that the Applicant herein filed Civil Suit No. 25 of 2009 against the 1st Respondent and the Judgement was delivered in 2017. Costs were taxed on 1st February 2018. The 1st Respondent was served with the Certificate of Order on the 28th day of February 2018 together with a demand notice. It is almost 5 years now and the Judgement debt has never been paid by Government. There has been no evidence adduced by the Respondents that since 2018, there has been any deliberate effort by the Government to pay the Applicant the outstanding Judgement debt. I observed an incomplete and unsigned copy of a letter purportedly from the Attorney General to the Inspector General of Police which I disregarded.

For an Order of Mandamus to issue, the Applicant must demonstrate 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 honour the Certificate of Order by refusing to pay the amount decreed therein.

To support this position, the Court has relied on the cases of *Goodman Agencies Ltd & 3 Others Vs Attorney General & Treasury Officer of Accounts Misc. Application No. 126 of 2008* cited in *Intex Construction Ltd Vs Attorney General and Anor*. I also rely on *Misc. Application No. 737 of 2013, Mukasa John Vs Attorney General & Anor Misc. Cause No. 0094/2019*).

In the instant Application, the Applicant has complied with the above conditions. It is unjustified and inexcusable that no payment has been made to Mr. Lukwago Habib since 2018 when Government was served with the Certificate of Order and a written demand by the Applicant.

I accordingly allow the application and issue a writ of Mandamus in favour of Applicant and specifically against the Permanent Secretary, Ministry of Finance and Economic Development/ Secretary to the Treasury directing them to pay to Mr. Habib Lukwago all monies, interest and costs due to him vide the judgment

112-2023

and decree at the Chief Magistrate's Court of Jinja at Jinja within 14 days of their receipt of my order.

In addition, I award the Applicant the costs of this Application.

I so order.



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HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA

Delivered on 22nd February, 2023.