

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 358 OF 2020
STEPHEN RWEHUTA & 1097 OTHERS :::::::::::::::::::::::::::::: APPLICANTS
VERSUS
1. ATTORNEY GENERAL
2. SECRETARY TO THE TREASURY :::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE BONIFACE WAMALA
RULING

Introduction

[1] This application was brought by the firm of advocates of M/s Mushabe, Munungu & Co. Advocates in the names of the Applicants. The application was brought by Notice of Motion under Order 52 rules 1 & 2 of the Civil Procedure Rules SI 71-1, Sections 38(1), 90 & 98 of the Civil Procedure Act Cap 71, seeking orders that;

- a) The Court doth issue an order of Mandamus directing the Respondents and each of them as the principal concerned officers/agents of the Government of the Republic of Uganda, to comply with the Certificate of Order issued by the High Court (Civil Division) in the matter from which this application arises and forthwith pay to the Applicants the decretal sums due and owing accordingly.
- b) Costs of this application be provided for.

[2] The grounds of the application are contained in the affidavit in support of the application affirmed by **Sharif Mabingo**, an advocate working with M/S Mushabe, Munungu & Co. Advocates. Briefly, the grounds are that the law firm received instructions from the Applicants to file Miscellaneous Cause No. 318 of 2016 seeking an order of Mandamus for recovery of the decretal sum vide

M.A No. 192 of 2000 arising from HCCS No. 207 of 1993. The said order was granted on 20th April 2018 and was extracted by the Applicants' Advocates who also prepared a bill of costs which was taxed and allowed at a sum of UGX 203,688,144/= (Uganda Shillings Two Hundred Three Million Six Hundred Eighty-Eight Thousand One Hundred Forty-Four). On 19th September 2018, a Certificate of Order against Government was extracted and a demand letter was written to the Respondents but no response was received. It is for this reason that the Applicants are seeking the present order of Mandamus against the Respondents to enforce the said Certificate of Order against the Government. The deponent states that the said order shall not prejudice the Respondents in any way whatsoever.

[3] On 27th August 2020, a one **Sabiiti Jackson** and another **Stephen Rwehuta** filed affidavits in opposition of the application. The gist of both affidavits is that both deponents, named as applicants, are decree holders and/or judgment creditors in HCCS No. 207 of 1993 and in Miscellaneous Application No. 192 of 2000. The deponents opposed the application on the grounds the matters concerning the representation of the decree holders are pending an appeal to the Court of Appeal and an interim order for stay of execution has since been issued by the Court of Appeal pending disposal of the main application for stay of execution and the appeal. The deponents aver that the order of stay of execution issued by the Court of Appeal stays recovery of both the decretal sum and the costs. It is further averred that the present application is a disguised attempt to enforce matters that have been stayed by the Court of Appeal which puts the deponents, as listed applicants, at the risk of being cited for contempt of the Court. The deponents also denied ever having instructed the firm of M/s Mushabe, Munungu & Co. Advocates in any matters arising from HCCS No. 207 of 1993 and M.A No. 192 of 2000. The deponents concluded that the instant application is a glaring abuse of court process and that the same ought to be rejected by the Court.

[4] The Respondents opposed the application through an affidavit in reply deposed by **Mugisha Twinomugisha**, a State Attorney at the Ministry of Justice and Constitutional Affairs, filed on 25th January 2021 in which he stated that vide HCCS No. 207 of 1993 and M.A No. 192 of 2000, all the judgment creditors were awarded 12,000,000/= each as compensation for destruction of their properties by government agencies with interest at the rate of 6% p.a. from April, 1993 until payment in full. He stated that on 11th April 2003, a settlement was reached between the Government of Uganda and Benon Turyamureeba who was the attorney for all the judgement creditors. The Applicants applied and obtained an order of Mandamus vide Miscellaneous Cause No. 318 of 2016 to compel the Government of Uganda to pay the decretal sum of Twenty Billion Two Hundred Fifty-One Million Eight Hundred Fourteen Thousand Four Hundred Only (UGX 20,251,814,400/=). Upon filing the bill of costs vide Taxation Cause No. 63 of 2018, the court allowed a sum of Uganda Shillings Two Hundred Three Million Six Hundred Eighty-Eight One Hundred Forty-Four Only (UGX. 203, 688,144/=) as costs.

[5] The deponent stated that later on, some of the interested parties filed Miscellaneous Application No. 555 of 2018 challenging claims of certain law firms that claimed to have instructions to represent the Applicants in this matter. Upon disposal of the application on 21st March 2019, M/s Bashasha & Co. Advocates who was a party to Miscellaneous Application No. 555 of 2018 lodged an appeal against the orders issued in the said ruling. On 19th June 2020, an interim order was granted by the Court of Appeal staying execution and the enforcement of the orders issued in Miscellaneous Application No. 555 of 2018 vide Civil Application No. 70 of 2020 until the disposal of the substantive application for stay of execution. The deponent avers that the hearing and determination of this application will violate the subsisting order of stay of execution issued by the Court of Appeal.

[6] An affidavit in rejoinder was filed on behalf of the Applicants, affirmed by **Sharif Mabingo**, whose contents I have also taken into consideration.

Representation and Hearing

[7] At the hearing, the Applicants were represented by **Mr. David Gureme Mushabe** of M/s Mushabe, Munungu & Co. Advocates; **Mr. Moses Mugisha**, State Attorney, appeared for the Respondents; while **Mr. William Were** appeared for the opposing applicants on brief for **Mr. Elisha Bafirwala** from M/s Marlin Advocates. The parties agreed to file written submissions which were duly filed and have been adopted by the Court.

Issues for Determination by the Court

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

- a) Whether this is a proper case for issuance of an order of Mandamus?
- b) What are the available remedies?

Resolution of the Issues

[9] In their written submissions, the parties raised points of law relating to the propriety of the application, which I intend to deal with before considering the merits of the application.

Bringing the suit in the names of the Applicants

[10] Counsel for the Respondents argued that the instant application is unsustainable on account of having been brought in the name of Stephen Rwehuta, among others, who opposed the application. In reply, Counsel for the Applicants argued that while advocate-client bills of costs are normally brought in the names of the advocate versus the client, a party to party bill of costs is normally brought in the name of the judgment creditor against the judgment debtor. Counsel cited the case of *Peter Jogo Tabu v Peter Langi, HC Civil Application No. 023 of 2017* to the effect that party to party bill of costs are one party lawyers' costs to be paid by the losing party, while advocate-client bill of

costs are costs of an advocate against his own client. Counsel argued that it was proper for Mushabe, Munungu & Co. Advocates to file a claim for their costs via the party and against the Attorney General.

[11] The argument by Counsel for the Applicants presents the correct position of the law. Given that the advocates were enforcing payment of a party to party bill of costs, they could only sustain an action for recovery of the same through the name of the judgment creditors who are the named applicants herein. The fact that some of the named applicants are opposed to the application simply go to the merits of the application and not to its propriety. As such, the instant application is properly before the Court and the objection is overruled.

Lack of locus standi of the deponents to the affidavits in opposition

[12] It was contended by Counsel for the Applicants that one of deponents of the affidavits in opposition to the application, one Sabiiti Jackson, was not among the 1,097 claimants and the other, Stephen B. Rwehuta, is not genuine and has no representative order to represent the remaining claimants. In response, Counsel for the Respondents stated that questioning the locus standi of the deponents is diversionary and offends the principle against approbation and reprobation. Counsel argued that the deponents are the same persons cited as clients by Mushabe, Munungu & Co. Advocates and as judgment creditors in HCCS No. 207 of 1993 and Misc. Application No. 192 of 2000. They are the same persons cited in Misc. Cause No. 318 of 2016 that sought for an order of Mandamus and was the basis of the Taxation Cause No. 63 of 2018 from which the instant application arises.

[13] Looking at the record of previous proceedings connected to this matter, the name of Sabiiti Jackson appears on record. For instance, in M.A No. 152 of 2020 which arises from M.A No. 555 of 2018, from M.A No. 153 of 2016, from M.A No. 192 of 2000 and from HCCS No. 2017 of 1993; the said Sabiiti Jackson is listed as one of the Applicants. It is from the above stated

application that Civil Appeal No. 59 of 2020 pending before the Court of Appeal arises and the Court of Appeal Civil Application No. 70 of 2020 under which the interim order of stay of execution was issued. In my view, the fact that the said Sabiiti Jackson is an interested party in a proceeding pending in the Court of Appeal that is connected to the instant application, among other previous proceedings, such is sufficient ground to bestow locus standi upon the said person. As regards Stephen Rwehuta, he is named as the 1st Applicant in this application. The reason the application was brought in the names of the listed applicants has already been indicated. If an applicant such as the said Stephen Rwehuta is opposed to the application, his locus standi cannot be questioned especially where the application was brought in his name without his instructions as can be seen from his claim.

[14] Given the reasons advanced by the said Stephen Rwehuta forming the basis of his opposition to the application, I do not see any bad faith on his part as alleged by Counsel for the Applicants. Lastly, once he was named as party to the application, he did not need the authorization of the other listed persons before raising his personal objections to the application. This preliminary objection raised by Counsel for the Applicants is devoid of merit and is accordingly overruled.

Issue 1: Whether this is a proper case for issue of an order of Mandamus?

Submissions by Counsel for the Applicants

[15] Counsel for the Applicants cited the provisions of Section 36(1) and 37 of the Judicature Act which empowers the court to grant an order of mandamus where it appears to court to be just and convenient. Counsel relied on the case of *Amos Bakeine and Others v Attorney General & Uganda Wild Life Authority HC Civil Application No. 524 of 2010* which cited the case of *Shah v Attorney General (3)*, *HCMC No. 31 of 1969* to the effect that Mandamus could issue to the Treasury Officer of Accounts to compel him to carry out the statutory duty to pay cast upon him by S. 20(3) of the Government Proceedings Act. Counsel

submitted that the order of Mandamus issued vide Misc. Application No. 318 of 2016 was secured by M/s Mushabe, Munungu & Co. Advocates who filed a bill of costs vide Taxation Cause No. 63 of 2018 and was awarded taxed costs of UGX 203,688,144/=. Counsel stated that the law firm extracted a Certificate of Order, served it on the Respondents who, however, ignored it without justification.

[16] Counsel disputed the contention that Civil Appeal No. 59 of 2020 pending disposal by the Court of Appeal raises issues that affect the instant application. Counsel argued that the pending appeal is not against the advocates' taxed bill of costs but involves a question as to which law firm has valid instructions to receive the beneficiaries' outstanding balance and to distribute the same to the beneficiaries; which question does not vitiate the entitlement of the law firm that successfully represented and obtained the order of Mandamus in favour of the clients.

Submissions by Counsel for the Respondents

[17] In reply, it was submitted by Counsel for the Respondents that there is a pending appeal as to matters pertaining the instructions of M/s Mushabe, Munungu & Co. Advocates, among other advocates claiming to represent the judgment creditors. Counsel submitted that Court of Appeal Civil Application No. 70 of 2020 arises from Civil Appeal No. 59 of 2020, which in turn arises from Misc. Application No. 555 of 2018. In Civil Application No. 70 of 2020, the Court of Appeal issued an interim order staying the execution and enforcement of the orders in HCMA No. 555 of 2018 until disposal of the substantive application for stay of execution. Counsel argued that the instant application for mandamus is a disguised enforcement and execution of the matters that have been stayed by the Court of Appeal as above stated.

[18] Counsel further submitted that the instant application is unsuitable for grant of an order of mandamus on account that Civil Appeal No. 59 of 2020

which raises issues that affect this application is pending disposal by the Court of Appeal, that there is a subsisting order for stay of execution by the Court of Appeal in Civil Application No. 70 of 202 and that the application is opposed by Stephen B. Rwehuta in whose name it is purported to have been brought.

Determination by the Court

[19] 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 *Combined Services Ltd v Attorney General & Anor*, HCMA No. 648 of 2015, it was held that the circumstances that must be established by an 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; and
- c) Lack of any alternative; or where the alternative exists, it is inconvenient, less beneficial or less effective or totally ineffective.

[20] In *Goodman Agencies Ltd & 3 Others v Attorney General & Treasury Officer of Accounts*, HCMA 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 and duly served on the respondent and that the respondent has refused to honor the certificate of order by refusing to pay the amount decreed or specified in the certificate of order.

[21] On the case before me, it is not disputed that a Certificate of Order against Government was obtained in the name of the Applicants for a sum of UGX

203,688,144/= arising out of the taxed bill of costs due and owing to the advocates for representing the Applicants in Misc. Cause No. 318 of 2016. There is evidence that the advocates made a demand to the Secretary to the Treasury/Permanent Secretary of the Ministry of Finance and the Solicitor General; which was not honoured. It is stated by Counsel for the Applicants that they have no other means of enforcing their rights to recovery of the said sum. The application is opposed on the ground, among others, that there is a pending appeal before the Court of Appeal vide Civil Appeal No. 59 of 2020 which raises issues that affect the instant application and in respect of which an interim order for stay of execution was issued by the Court of Appeal vide Civil Application No. 70 of 2020.

[22] Upon perusal of the court ruling in Civil Application No. 70 of 2020, it is clear to me that there is an unresolved controversy surrounding the issue of representation of the applicants in the various actions that have taken place before different courts all arising from the main suit vide HCCS No. 207 of 1993. Different law firms have been involved at different levels and apparently instructed by different groups of beneficiaries under the decree or their representatives. I do not agree with the argument by learned Counsel for the Applicants herein that the costs subject of this application are not related to the pending appeal; or that they are not subject of the contention raised by the different law firms. This is because it is clear to me that overtime, instructions have been given to advocates by different groups of applicants or their representatives at different levels. I am unable to deduce with certainty at this level that certain issues are out of question, namely; whether the firm of M/s Mushabe, Munungu & Co. Advocates was duly instructed by the judgment creditors; whether the firm is entitled to all the taxed bill of costs subject of the present claim; or whether the costs may not be affected by the orders that may be issued on appeal.

[23] It is also clear to me that issuing the order of Mandamus as prayed for herein would constitute an act of execution of orders directly related to the cases from which the present application arises. It would be wrong and indeed illegal for this Court to dissect as to which part of the orders should be enforced and which should not in the face of an order of stay of execution by the Court of Appeal. In the circumstances, I would agree that this application is unsustainable and an order of Mandamus is not available in these circumstances.

[24] Accordingly, the application is dismissed. Since the application was brought in the names of nominal applicants and the advocates who were the primary beneficiaries of the application apparently have a claim on the taxed costs, I will order that each party shall bear their own costs of the application.

It is so ordered.

Dated, signed and delivered by email this 15th day of March 2024.



Boniface Wamala
JUDGE