

The grounds of the application are set out in the affidavit of Mr. Richard Mubiru, the Director of Corporate Affairs of the Applicant Company.

5 The affidavit was relied upon at the hearing and the brief grounds of the application are set out in the motion.

The Application was called for hearing on 14.11.16 in the presence of Counsel for the Applicants and a representative of the Applicant Company.

10 None of the Respondents was in court.

The affidavit of service dated 11.11.16 has a copy of the notice of motion attached indicating that the motion was duly served on the Respondents. Without any reason advanced for their absence, court directed hearing to proceed exparte.

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Going through the provisions of the law under which the application was made, the grounds set out in the motion and the supporting affidavit; Counsel for the Applicant submitted that the First Respondent wrote to the Second Respondent indicating that payment was due. The Second Respondent was accordingly advised to pay in orde

20 r to curb the interest. The letter was copied to the Applicant. – Annexure L.

Basing on the letter, the Applicant made a further demand to the Second Respondent on 01.09.16, but no response has yet been received. – Annexure F.

25 Asserting that court has the discretion to grant an order of mandamus in all cases in which it appears to be just and convenient, Counsel relied upon the case of **Hon. Justice Kiryabwire and 3 Others vs. Attorney General and 2 Others Miscellenous Application 783/16**, for support.

30 He also outlined the four (4) circumstances for which court could issue the writ of mandamus, citing the case of **Kato Sulaiman vs. Attorney General and 2 Others Miscellenous Application 284/16**.

It was further pointed out that payments against Government have to be made by the Attorney General through the Treasury Officer of Accounts. And that parties in the present case consented specifying the Officer to effect payment; on the basis that payment would be expeditiously made.

Counsel emphasized that despite several demands to the Respondents to comply with the decree in Civil Suit 724/14, the Respondents have refused or ignored to honor the same.

He then prayed that the application be allowed and the order of mandamus issued directing the Respondents to pay the Applicant Shs. 8,925,747,166/- together with costs of the application.

Whether the order of mandamus should issue:

Under S. 37 (1) of the Judicature Act, the High Court has discretion ***“to grant an order of mandamus..... in all cases in which it appearsto be just and convenient to do so.”***

An order may be made under S.37 (2) ***“unconditionally or on such terms and conditions as the High Court thinks fit.”***

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An Applicant must establish the following circumstances in order to obtain a writ of mandamus:-

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

In determining this application, court bears in mind the established principle that *“mandamus will not issue to enforce doubtful rights. The duty to perform an act must be indisputable and plainly defined.”* - Justice Bamwine in the case of **Nampogo Robert and Another vs. Attorney**

5 **General HCC Miscellenous Application 0048/2009**

In the present case, the Applicant Company, the Commissioner General of Uganda Revenue Authority and the First Respondent entered into a consent judgment on the 19th day of January, 2016. The judgment was endorsed by court on the 29th day of January, 2016. – Refer to
10 Annexure A to the supporting affidavit.

A decree was extracted from the consent judgment on the 3rd day of February, 2016. – Annexure B.

15 It is clear from the consent judgment and the decree that the First Respondent then Second Defendant was responsible for effecting the payment of the VAT refund and the interest agreed to in the consent judgment.

As required by S.19 of the Government Proceedings Act, a certificate of order against
20 Government was issued on the 4th day of February, 2016, and served upon the First Respondent. - Annexure “C”.

It is trite law that payments decreed against Government have to be made by the Attorney General through the Treasury Officer of Accounts. And that the decree or order of payment
25 made against Government becomes a statutory duty for the Government Officer concerned to perform the duty.

It is the undisputed evidence of the Applicant that despite several reminders and demands, the Respondents have failed, neglected and or refused to comply with the decree and certificate of
30 order against Government.

Further that, the Applicant has no other legal means of enforcing its rights under the certificate of order. And therefore, the continued refusal by the Respondents to pay the decretal sum is an infringement and denial of the Applicant's rights, which should not be condoned by court.

- 5 It was also emphasized that, unless this application is allowed, and the Respondents are directed to settle the Applicant's debt, the Applicant's business risks being crippled by the existing loans.

This court finds that the Applicant has proved the circumstances necessary to obtain a writ of mandamus.

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A clear legal right exists in favor of the Applicant to get the VAT tax refund together with the compound interest as indicated in the consent between the Applicant and the Attorney General. And there is a corresponding duty by the Respondents to pay the decretal sum.

- 15 It is also a term of the consent that the First Respondent is responsible for effecting the said payments to the Applicant, which the First Respondent has failed to do to date.

There is no viable alternative available to the Applicant as attachment of the Respondent's properties is out of question.

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It is therefore only fair and just in the circumstances that court exercises its discretion under S. 37(1) of the Judicature Act to allow the application and grant the order of mandamus.

- 25 The Respondent's failure to and or continued refusal to pay the amounts agreed on by the parties has greatly inconvenienced the Applicants and placed its business at risk.

The application is accordingly allowed for all those reasons.

- 30 The writ of mandamus is to issue compelling the Respondents to perform their statutory duty to pay the Applicant Company the sum due and owing to it as indicated in the decree and certificate of order against Government.

Taxed costs of this application are also granted to the Applicant.

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Flavia Senoga Anglin

Judge

10 **18.11.16**