

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(EXECUTION AND BAILIFFS DIVISION)**

5 **MISCELLEANOUS APPLICATION NO. 1288 OF 2016**

**(ARISING OUT OF HCT - EMA NO. 2720 OF 2014)
(ALL ARISING FROM CIVIL SUIT NO. 152 OF 2005)**

10 **ABDALLAH MAKARU KAMIRA APPLICANT /DECREE HOLDER**

VERSUS

15 **1) ATTORNEY GENERAL**

**2) THE ACCOUNTANT GENERAL / SECRETARY TO
TREASURY.....RESPONDENTS/ JUDGMENT DEBTORS**

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

20 **RULING**

By this application made under S. 33 and 36 of the Judicature Act, the Judicature (Judicial Review) Rules, and S.19 Government Proceedings Act, the Applicant sought an order of
25 mandamus to be issued by this court, directing the Government of Uganda, through the Accountant General's office to Secretary to Treasury, or such other responsible officer to comply with the judgment and decree of the court in HCCS 152/2005 and pay the Applicant all the monies due to him.

30 Costs of the application were also applied for.

The grounds of the application are briefly set out in the motion which is supported by the affidavit of the Applicant.

35 The application was filed on 17.06.16. And though a copy of the motion indicates that the same was served and received by the Ministry of Justice and Constitutional Affairs, Directorate of Civil Litigation on 11.07.16, there is no affidavit of service. – See also affidavit of service dated 25.07.16.

On 24.08.16, a hearing notice for the application was issued, for 04.10.16. Since the parties were absent and the trial judge was indisposed, the matter was adjourned sine die. Another hearing notice was issued for 02.11.16.

- 5 The affidavit of service dated 18.10.16 indicates that the Directorate of Civil Litigation and the Ministry of Finance were served and received the hearing notice.

On 02.11.16 when the application was called for hearing, Counsel for the Applicant and the Judgment Creditor were present. The Attorney General and the other Respondent were absent.
10 No excuse was advanced for their absence. Court accordingly allowed the application to proceed exparte.

Going through the motion and the grounds thereof, plus the supporting affidavit, Counsel for the Applicant submitted that, the law is well settled in applications of this nature.

15 That the Applicant had satisfied the requirements for issuance of the order of mandamus by showing that he has a right _ against Government to recover the decretal sum awarded to him on 12.11.13 in civil suit 152/05.

20 Further that, the Applicant is also entitled to costs and the details of the entitlement are set out in the certificate of order against Government issued by court on 12.06.14 – Annexure AMK5 to the Applicant’s affidavit.

25 And that, the Respondents have a public duty to pay up on presentation of the certificate of order under S.19 (3) of the Government Proceedings Act.

That the Applicant had shown that he presented the certificate of order against Government to the Attorney General on 26.06.14. Receipt of the same was acknowledged as per Annexure AMK4 to the supporting affidavit.

30 And while the Applicant has made several attempts to recover the sums due to him; the Attorney General has not paid to date.

35 Pointing out that the application before court was used as a last resort, Counsel prayed court to grant the orders sought.

The issue for court to determine is **whether this is a proper case for the issue of the order of mandamus.**

The Applicant has shown in this case that he was the Plaintiff in HCCS 152/2005 where the Applicant obtained judgment against the Government of Uganda, which was represented by the First Respondent.

- 5 The decree together with the certificate of taxation of the Applicant's costs were issued by court and were duly served upon the Attorney General. Despite that, the Applicant has not been paid to date.

10 On 12.06.14, a certificate of order against Government was extracted for payment of Shs. 64,955,200/- being the decretal sum and costs of Shs. 12,268,564/-.

The certificate of order was served upon the First Respondent on 26.06.10.

15 Attachment of the property of the First Respondent was attempted but was opposed as being illegal and promises to pay were made.

Upon waiting and receiving no payment, Counsel for the Applicant wrote to the First Respondent seeking settlement.

20 However, the moneys due have not been paid to date despite that the First Respondent was served with the certificate of order against Government, hence this application to enforce payment due to the Applicant.

25 As already indicated, there is no affidavit in reply, an indicator that the Respondents do not oppose the application.

30 S.19 of the Government Proceedings Act provides for "**satisfaction of orders against Government**" and it requires the issuance of a certificate of order against Government to be served upon the Attorney General.

It is not disputed in the present case that the certificate of order against Government was issued and served upon the First respondent as required by law.

35 Under **S.37 of the Judicature Act**, the High Court has power to issue an order of Mandamus such an order requires "**any act to be done.**"

The High Court has the 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.**" - **S. 37 (I) Judicature Act.**

40 "**An order may be made under S.37 (2) Judicature Act, unconditionally or on such terms and conditions as the High Court thinks fit.**"

In order to obtain a writ of mandamus, an Applicant must establish the following requirements:-

1) A clear legal right and a corresponding duty in the Respondent.

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2) That some specific acts or thing, which the law requires that particular officer to do, has been omitted to be done by him/her.

3) Lack of any alternative, or

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4) Whether the alternative remedy exists but it is inconvenient, less beneficial or less effective or totally ineffective.

Court is also aware of the established principle that ***“mandamus will not issue to enforce doubtful rights. The duty to perform an act must be indisputable and plainly defined.”*** – Per Hon. Justice Bamwine in the case of **Nampogo Robert and Another vs. Attorney General HCCS CV MC 0048/09.**

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That the Applicant has a clear legal right in the present case and the Respondents have a corresponding duty to pay is not in dispute.

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The Applicant obtained a judgment and decree in Civil Suit 152/2005 against the Government of Uganda.

25 The Applicant’s bill of costs was also taxed and allowed at Shs. 12,268,564/-.

The certificate of order was extracted on 12.06.14 and served upon the First Respondent, requiring that the Applicant be paid the moneys due to him on 26.06.10.

30 Upon failure of the First Respondent to honor the certificate of order, attempt was made by the Applicant to attach properties of the First Respondent. However, the attempted attachment was declared illegal. The First Respondent promised to pay.

In total disregard of the judgment and decree of court and the certificate of order against Government, which was duly served upon the First respondent and receipt acknowledged, the Respondents have neglected and or refused to satisfy the judgment and decree.

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All efforts by the Applicant to have the decree satisfied have been to no avail and promises to honor the decree have not been fulfilled by the First Respondent.

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The Respondents have therefore failed to do what the law requires them to do.

The Applicant has no other alternative as his attempts to attach First Respondent's property to recover his money, was declared illegal.

- 5 It is also not disputed that payments decreed against Government have to be made by the Attorney General (First Respondent) through the Treasury Officer of Accounts (Second Respondent).

10 And that the decree or order of payment made against Government becomes a statutory duty for the Government Officer concerned to perform the duty.

The duty of the Respondents to pay the decretal sum and attendant costs to the Applicant is plainly defined and therefore undisputed.

- 15 Failing to pay the Applicant and making mere promises to pay without any positive action being taken has greatly inconvenienced the Applicant who continues to suffer loss and damage as a result of the Respondent's failure to satisfy the decree and judgment.

20 In the circumstances, I find that the Applicant has fully established the conditions necessary to obtain a writ of mandamus. It is therefore only fair and just that the application be allowed, and it is hereby allowed. The following orders are made:-

25 The writ of mandamus to issue to compel the Treasury Officer of Accounts / Secretary to Treasury to perform his statutory duty and pay the Applicant the decretal sum due and owing to him together with the duly taxed costs of the application\1q1.

Continued failure and or refusal to pay the Applicants the moneys due and owing to him amounts to contempt of court orders.

- 30 The application is allowed for all those reasons with costs to the Applicant.

35 **Flavia Senoga Anglin**
Judge
04.11.16