

4) An order directing the Respondents to pay 5% of the money due as costs of this application.

The grounds for the application briefly are that:-

- The Respondents have to date neglected to pay the money due to the Applicant.

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- The money has been owing to the Applicant since 1998, when it sued.

- The Respondents have a statutory duty to pay the Applicant as per S.19 (3) Government Proceedings Act.

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The application was supported by the affidavit of Evaristo Mugabi. The application was first called for hearing on 08.06.16 in the absence of the Respondents.

There being an affidavit of service on record with an attached copy of the motion indicating that the Respondents were served, and since no reason had been advanced for their absence, the court allowed the application to proceed exparte. The application was against the First respondent.

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Counsel for the Applicant went through the application stating the orders sought and emphasizing that the certificate of order against Government remains unsatisfied to date.

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It was then prayed that the application be allowed under S. 19 (3) Government Proceedings Act.

Further that the First respondent be summoned to appear to show cause why the money in the certificate should not be paid. Since the Applicant had been deprived of the same for eighteen years.

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S. 3 of the Judicature Act was cited as empowering court to grant the order requiring any act to be done. The case of **Shah vs. Attorney General [1970] EA LR 43** was relied upon. It was held in that case that *“the Treasury Officer of Accounts has a duty to pay as required by the Government Proceedings Act.”*

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Court was also urged to look at the case of **Kyoniya and Another vs. Attorney General & Another CMA 57/12 [2012] ULR 239.**

The ruling was set to be delivered on 22.06.16. When Counsel for the Applicant appeared on that date, he applied to be allowed to amend the Notice of Motion so as to include the Attorney General as a party to the proceedings.

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The amendment was allowed under S.33 of the Judicature Act and court directed that the Attorney General be served by close of business on that date.

The matter was then adjourned to 04.07.16.

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On 04.07.16, the Respondents were absent. Counsel for the Applicant submitted that the Attorney General had been made a party to the application and served on 22.06.16 the same date the amended application was filed. There was no appearance from the Attorney General's chambers.

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It was then prayed that since the submissions were already on record, the court should proceed to write the ruling.

The affidavit of service dated 01.07.16 had a copy of the motion attached to it duly received and stamped by the Ministry of Finance and the Attorney General's chambers.

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Since no reasons were given for the absence of the Respondents, court decided to go ahead and wrote the ruling based on the submissions earlier made on behalf of the Applicant.

25 Issue: **whether this is a proper case for issue of the writ of mandamus.**

The High Court has discretion under S. 37 (1) of the Judicature Act, "***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.***"

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An order may be made under this section unconditionally or on such terms and conditions as the High Court thinks fit. – S. 37 (2) Judicature Act.

The Applicant must establish the following circumstances in order to obtain a writ of mandamus.

- 1) A clear legal right and corresponding duty in the Respondent.
- 5 2) That some specific act 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
- 10 4) Whether the alternative remedy exists but it is inconvenient, loss Beneficial or less effective or totally ineffective.

It has been laid down by decided case that “mandamus will not issue to enforce doubtful rights.

- 15 The duty to perform an act must be undisputable and plainly defined. – Refer to **Nampogo Robert and Another vs. Attorney General HCCV MC No. 0048/09** – Hon Justice Bamwine.

The Applicant, a limited Liability Company instituted a suit against H.P. Gant Ingeniennre Gmber & Co; Hima Cement (1994) Ltd and the Uganda Land Commission, Civil Suit 0246/1998. The
20 reliefs sought by the Applicant in the suit are set out in the judgment and I do not find it necessary to repeat them here. Judgment was given for the Applicant in the set out in the last paragraph of the judgment, and court directed among other things that, First and Third Defendant jointly and severally pay the Plaintiff / Applicant the current __ value of the land (less developments thereon) to be assessed by a quality surveyor or approved by the Registrar of the
25 court.

The suit against the Second Defendant and the Second Defendants counter claim were dismissed.

The First and Third Defendants were directed to pay the Plaintiffs costs of the suit. The
30 judgment was delivered on 29.01.15.

A decree was extracted on the 4th day of February 2015. By letter dated 23.04.15, Counsel for the Applicants sent a copy of the decree and valuation report to the First and Second Respondents.

- 5 There are unsigned stamps on the letter indicating that the documents were received by the Respondents in the same date that is 23.04.15.

Another letter dated 09.11.15 to the Attorney General (First Respondent) was received on 10.11.15. It indicates that copies of the judgment, decree and valuation report were also
10 attached. The First Respondent was implored by Counsel for the Applicant to intervene in the matter and have it settled once and for all as it had been in court since 1998.

Counsel complained that the land had been undervalued and requested that the Government Valuer confirm ___ or not the valuation given was ___ or alternative the Government Valuer to
15 give his own value of the land for purposes of compensation.

There is nothing to indicate whether the Attorney General ever responded to the Applicant's request.

- 20 There is a certificate of order against Government dated 23.05.16, certifying that the amount payable to the Applicant is Shs. 8,325,000,000/- together with interest at the rate of 6% per annum from 29.01.15 until payment in full.

The certificate is also to the effect that the costs were taxed and allowed by the Registrar at Shs.
25 104,954,250/-, certificate of Taxation is dated 23.05.16.

There is nothing on record to show that the certificate of order against Government or the certificate of Taxation were ever served upon the Respondent.

- 30 While copies of the two documents are purportedly attached to the Notice of Motion that was filed on 16.05.16, a week before they were issued!

They are also not mentioned in the motion or the supporting affidavit as being attachments to the motion.

5 The supporting affidavits to the motion is dated 28.01.16. The same date as the motion that was signed by the Deputy Registrar on 23.05.16.

10 The affidavit of service dated 01.06.16 is to the effect that the motion was issued on 23.05.16 to be served on the Secretary to the Treasury (First Respondent). And that the motion was served on 26.05.16 on the Second Respondent who by then was not a party to the application and on the First Respondent on 30.06.16.

The stamp on the motion indicates that the motion was received by Ministry of Justice on 26.05.16 and by the Ministry of Finance on 30.05.16.

15 As earlier indicated, the application was heard on 08.06.16 and was fixed for ruling on 22.06.16.

20 When the matter was called on that date, Counsel for the Applicant applied to be allowed to amend the motion to include the Attorney General as a party to the proceedings. The application was allowed under S. 33 Judicature Act and court directed that the Attorney General be served with the motion at the close of business. The application was adjourned to 04.07.16.

25 The court record indicates that the motion was filed on 04.07.16 and yet is alleged to have been received by the Ministry of Finance and the Attorney General on 22.06.16! Court is left to wonder how the amended motion was served before it was filed.

Court has also noted that both the earlier motion and the amended motion seek for orders that were not part of the judgment on 29.01.15.

30 The order seeks for damages of 10% of the money due, interest at the rate of 25% of the amount due since 29.01.15 and 5% of the money due at costs of the present application.

As earlier pointed out in this ruling, courts have emphasized that ***“mandamus will not issue to enforce doubtful rights”***. **Nampogo’s case (Supra)**.

All the inconsistencies I have pointed out in this ruling make the claim of the Applicant doubtful. More so as there is doubt that the certificate of order against Government and the certificate of Taxation were ever served upon the Respondents. And that the Applicant is seeking for other
5 remedies that were not granted by the trial court.

In the circumstances, this court finds that it would be unjust to compel the Respondents to pay the Applicant when the claim is doubtful.

10 The application is accordingly dismissed for all those reasons. Since the Respondents did not appear, no order is made as to costs.

15 **Flavia Senoga Anglin**

Judge

06.12.16