

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(EXECUTION AND BAILIFFS DIVISION)

MISCELLANEOUS APPLICATION NO. 285 OF 2016

5 **(EMA NO. 284 OF 2016)**

ARISING FROM UGANDA HUMAN RIGHTS HOLDEN AT KAMPALA

COMPLAINT NO. UHRC/20/2008

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF MANDAMUS

10 **KATO SULAIMAN ----- APPLICANT/ J/CREDITOR**

VS

1) ATTORNEY GENERAL ----- 1ST RESPONDENT / JUDGMENT DEBTOR

2) TREASURY OFFICER OF ACCOUNTS 2ND RESPONDENT

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

15 **RULING**

This application was made under S.3 of the Judicature (Amendment) Act, 2002, Rules 3 (a) and 6 of the Judicature (Judicial Review) Rules, 2009, SI 11 of 2009.

20 The Applicant seeks an order of mandamus to compel the Treasury Officer of Accounts to pay the Applicant / Judgment Creditor a sum of Shs. 4,000,000/- being general damages for the violation of his right of freedom from torture by state agents, together with interest at the rate of 10% from the date of the decision of the Uganda Human Rights Commission till payment in full, inclusion of costs.

Cost of this application to be paid by the Respondent.

The grounds for the application are set out in the motion which is supported by the affidavit of the Applicant / Judgment Creditor.

The application was filed in court on 20.02.16 and according to the affidavit of service was served on the Respondents on the 04.04.16. However, there are no affidavits in reply.

When the Application was called for hearing on 20.04.16. The Applicant and his Counsel were in court but Respondents were absent.

- 5 Counsel for the Applicant pointed out that the Respondents had been served with the application on 04.04.16 as indicated in the affidavit of service dated 19.04.16.

The Respondents duly acknowledged receipt of the motion, but as already indicated in this ruling, no reply was every filed in court.

- 10 Further, Counsel added that he had neither received any communication from the Respondents or any explanation as to their failure to attend court. He accordingly applied to be allowed to proceed exparte.

The court looking at the affidavit of service and the attached documents that clearly indicate that service was duly effected and acknowledged by the Respondents, and there being no reasons advanced for their absence, allowed the application to proceed exparte.

- 15 Counsel for the Applicant then went through the provisions under which the application was made and the orders sought by the Applicant.

He then stated that the grounds of the application are that ever since 12.05.14 when the decision was made by the Human Rights Commission in favor of the Applicant, the Respondents have not paid the Applicant the amount granted to him by the Commission.

- 20 Further that, no appeal has been prepared by the Respondents against the decision of the Commission.

Although the order of the Commission together with a certificate of order against the Government have both been served upon the Respondents, no payment has been effected to the Applicant.

- 25 It was the assertion of Counsel that the refusal to pay the Applicant is unconstitutional and the court is enjoined to issue a writ of mandamus compelling the Treasury Officer of Accounts (Second Respondent) to pay the said money to the Applicant, in accordance with the decision of the Human Rights Commission.

Attached to the application are the following relevant documents:-

- Annexure "A" – the decision of the Commission.

- Annexure “B” – The Order of the Commission.
- Annexure “C” – the Certificate of order against Government.
- Annexure “D” – a letter from the Commission to the Solicitor General, Ministry of Justice and Constitutional Affairs, forwarding the decision of the Commission.

5 Emphasizing that the Applicant is a victim of police brutality meted out to him while he was at work at Kisseka Market in 2008, and that he was beaten so badly that he was unable to walk, Counsel prayed that the application be allowed with costs.

Explaining how the file came to this court, Counsel stated that the Human Rights Commission Procedure Rules 1998, especially Rule 24, provide for execution of the Commission decisions under
10 the rules applicable to this court. Hence the forwarding of the file to this court for execution.

The Following cases and documents were also availed to court to guide it in its decision.

- 1) **H/C CV MC 0048/09 Nampoga Robert and Another vs. Attorney General.**
- 2) **Janet Kobusingye vs. Uganda Land Commission, Miscellenous Applicant 28/13.**
- 3) **The Judicature Judicial Review Rules, 2009, SI 11/2009.**
- 15 4) **The Judicature (Amendment) Act, 2002, and**
- 5) **The Human Rights Commission Procedure Rules, 1998.**

The issue for court to determine is **whether this is a suitable case to grant an order of mandamus.**

Under S.37 (1), 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 or convenient to do so”.***

20 (2) ***An order may be made under this section unconditionally or on such terms and conditions as the High Court thinks just”.***

Decided cases have established the following circumstances the Applicant must prove in order to obtain a writ of mandamus.

- I) A clear legal right and a corresponding duty in the Respondent.
- 25 II) That some specific act or thing, which the law requires that particular officer to do, has been omitted to be done by him.

III) Lack of any alternative, or

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

5 Court have emphasized that ***“mandamus will not issue to enforce doubtful rights. The duty to perform an act must be undisputable and plainly defined”***. – Refer to **Nampogo Robert & Another vs. Attorney General (Supra)** by Justice Y. Bamwine.

10 In the present case, the Applicant after sustaining injuries as a result of police brutality filed a complaint with the Human Rights Commission against the First Respondent. He complained of the violation of his right to property and right to freedom from torture, cruel inhuman and degrading treatment or punishment. He sought compensation from the Respondent for the violations. – See Annexure A to the application.

Upon hearing the complaint, it was partly allowed and on the ground of violation of the Applicant’s right of freedom from torture by state agents and the Respondent (Attorney General) was ordered to pay the Applicant a sum of Shs. 4,000,000/- as general damages.

15 He was also awarded interest at 10% per annum on the decretal amount to be calculated from the date of the decision until payment in full.

The decision of the Commission is dated 12.05.14.

20 Although the order of the Commission together with the Certificate of order against Government were served upon the Solicitor General, the Applicant / Judgment Creditor has not received any payment to date. – See Annexures “C” and “D” to the application.

No appeal was ever made by the First Respondent / Judgment Debtor against the decision of the Commission and the time for filing such appeal has long since elapsed.

No reasons have been advanced by the First Respondent / Judgment Debtor for failure to pay the Applicant the decretal sum.

25 It is apparent from all the foregoing facts that have not been disputed by the Respondents that a clear legal right exists in favor of the Applicant to get the fruits of his judgment and there is a corresponding duty in the Respondents to pay the decretal sums.

The Applicant obtained a decision in his favor and the money he seeks to be recovered from the Respondents was decreed to him.

The Solicitor General was served with the Certificate of order against Government together with the order of the Commission but no payments have been made.

5 This court therefore finds that the payment which the law requires the Respondent to make to the Applicant has not been made.

Payments decreed against Government have to be made by the Attorney General through the Treasury Officer of Accounts.

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

Under S. 36 (1) (a) of the Judicature Act, the High Court is empowered to issue orders of mandamus directed to an Officer of Government to do a duty that is statutorily provided for.

15 As pointed out by Counsel for the Applicant and rightly so, the continued refusal by Government to pay the decreed amounts to the Applicant / Judgment Creditor is unconstitutional and amounts to the continuous breach of the Applicant's rights.

In the circumstances, the application is allowed and court directs the writ of mandamus to issue compelling the Treasury Officer of Accounts to perform his statutory duty and pay the Applicant / judgment Creditor:-

- 1) The sum of Shs. 4,000,000/- decreed to the Applicant as general damages,
- 20 2) Interest at the rate of 10% per annum on the said sum inclusive of costs calculated from the date of the decision of the Commission, that is 12.05.14, until payment in full.
- 3) Costs of this application are also granted to the Applicant.

FLAVIA SENOGA ANGLIN

25 **JUDGE**

02.05.16