

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)**

MISCELLANEOUS APPLICATION NO 1023 OF 2015

(ARISING FROM HCCS NO 609 OF 2003 AND MISC APPLICATION NO 759 OF 2003)

- 1. MAHMOUD SAAD SAID}**
- 2. OMARI YASSIN ASSIN}.....APPLICANTS**

VS

- 1. ATTORNEY GENERAL}**
- 2. SECRETARY TO THE TREASURY}.....RESPONDENTS**

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

RULING

The Applicant filed this application under Order 42 (a) of the Civil Procedure Rules as amended by the rules 4 (1), 8 (2) of the Civil Procedure (Amendment) (Judicial Review) Rules, Statutory Instrument 75 of 2003; section 36 of the Judicature Act as amended by the Judicature (Amendment) Act No. 3 of 2002 for an order that the second Respondent is ordered to pay the decretal sum of US\$1,431,300.14 plus accruing interest and taxed costs arising there from directly to the Applicants and for costs of the application to be granted to the Applicants. The grounds of the application as set out in the chamber summons are as follows:

1. The Applicants obtained judgment against all Respondents for the awards herein above stated and the court ordered for payment in their favour.
2. Despite all entreaties for payment, the second Respondent has refused, ignored and/or unilaterally failed to act on court's orders.
3. The Respondents have no reason for their failure to respect a lawful court order that have not been appealed from or in any way challenged successfully.
4. The second Respondent's failure to pay the adjudged amounts of money to the Applicants are visibly and actually an abuse of the constitutionalism and the rule of law and should be abhorred and condemned in totality.
5. It is in the interest of justice that the application is granted.

The application is supported by two affidavits of the Applicants and further grounds are included in the chamber summons to the effect that firstly the Applicant is a judgment/decreet holder in miscellaneous application number 759 of 2003 arising from HCCS 609 of 2003 and were

adjudged to be paid US\$1,431,300.14 by the second Respondent/judgment creditor. Secondly the judgment was never challenged by way of an appeal or otherwise. Thirdly the Applicants have sought for payment but the second Respondent has unilaterally, albeit unlawfully refused to respect the court orders despite the advice of the Minister of Justice and Constitutional Affairs and the Solicitor General. Fourthly it is in the interest of justice that the application is granted.

The Applicant relies on the affirmation of the second Applicant Mr Omari Yassin Assin which gives the facts in support of the application. The deponent together with Mahmoud Saad Said filed HCCS 759 of 2003 against the Attorney General of Uganda and the Iraqi Fund for External Development and obtained judgment against the Defendants. They extracted a certificate of order in favour of the Applicants dated 13th of June 2008. The judgment was never challenged by way of an appeal or otherwise. On 23 February 2005, the Principal Private Secretary to His Excellency the President, Mr Fox Odoi wrote to the Honourable Suruma Ezra (Minister of Finance) imploring him to depose of all issues pertaining to the matter. On 13 June 2008 the first Applicant obtained a certificate of order (decree absolute) against the Government of Uganda ordering it to settle the claim but the second Respondent refused to do so and the Certificate of Order against Government is dated 13th of June 2008. On 21 July 2011 the acting Solicitor General wrote to the deputy Secretary to the Treasury who is the second Respondent urging him to settle the claim but he refused to take action and a copy of the Solicitor General's letter. On 25 February 2015 the Senior Adviser to the President General Salim Saleh wrote to the second Respondent urging him to pay but the latter defied the directive. On 7 September 2015, the Minister of Justice and Constitutional Affairs Major General Kahinda Otafiire wrote to the second Respondent urging him to settle the indebtedness due to the Applicants but the latter obstinately and defiantly ignored the directive. On the basis of advice of his lawyers Messieurs Kusiima & Co. Advocates he deposes that the omission to act on superior directives by the second Respondent amounts to gross insubordination on his part for which he should be held liable. He was also advised that it is in the interest of justice that the second Respondent should be ordered to respect the court order and administrative instructions to pay the decretal amounts due together with costs and interest thereon. Due to the acts of neglect to pay the Applicants, the Applicants assert that they have suffered financially and the loss can only be atoned for by an award of general, exemplary and punitive damages. In the premises the application ought to be granted.

The Applicant is represented by Byamugisha Deus Barusya of Messrs Kusiima & Co Advocates. The court was addressed in written submissions. However I need to point out that several efforts were before judgment to give the Attorney General an opportunity to have an input in this application. This application came for hearing on 10 February 2016 when the Attorney General was not represented. There was evidence of service of the chamber summons on the Attorney General and the affidavit of Mr Kiggundu Sam shows that on 14 January 2016 he received from the court a chamber summons to be served on the Respondents and accordingly the Director of

Civil Litigation was served and a copy of the acknowledgement filed together with the affidavit. They were served on 18 January 2016. Similarly the Ministry of Finance and Economic Planning and particularly the office of the second Respondent was served on 18 January 2016. None of the Respondents appeared when the matter came for hearing on 10 February 2016 at 2:30 PM. The court directed that the Applicant would file written submissions on 24 February 2016 and serve it on the Attorney General whereupon the Attorney General would file and serve a reply by 9 March 2016 and any rejoinder to be filed and served by 14 March 2016. Again the application was fixed for mention on 15 March 2016. On 15 March 2016 the Applicant was represented by Byamugisha Deus Barusya and State Attorney Jane Francis Nyangoma represented the Attorney General. She informed court that she could not abide by the timelines for the filing of written submissions. She further informed court that she was ready to abide by the directions of court. The Applicant was directed to serve the Attorney General with written submissions that very day and time was extended for the Attorney General to file and serve the reply on the Applicants Counsel by 5 April 2016 and any rejoinder by necessary extension would be filed and served by 12 April 2016. The matter was fixed for mention on 26 April 2016 at 9:30 AM to give a ruling date. On 26 April 2016 the Applicants Counsel appeared but the Attorney General was absent or not represented. The matter was stood over for an hour to enable Counsel get in touch with the Attorney General. Subsequently the Applicant's Counsel presented a copy of the letter dated 11 February 2016 showing that the Director of Civil Litigation was notified about the timelines for filing written submissions. The matter was fixed for ruling on the 20th of May 2016. By the time of writing this ruling, the Attorney General through the Directorate of Civil Litigation had neglected to file a reply.

The Applicants Counsel directed the court to the ruling dated 19th of July 2002 arising from HCCS 1391 of 2000; the letter authored by the Solicitor General that they were paying costs of the suit despite the order of mandamus dated 29th of October 2005; decree dated 23rd of October 2002; certificate of order against the government dated 22nd of October 2002; memorandum of understanding dated 23rd of August 2012 between the Applicants and the Iraq Fund for External Development; HCCS 09 of 2002 between the Applicants and Iraq Fund for External Development; consent order dated 7th of November 2003; decree dated 7th of November 2003; order nisi dated 15th of December 2003 in Miscellaneous Application Number 759 of 2003 arising from HCCS 609 of 2003 (garnishee proceedings). The decree absolute dated 4th of November 2005 between the Applicant and the garnishee; certificate of order against the government dated 13th of June 2008; administrative directive to the deputy Secretary to the Treasury to pay the sum ordered dated 21 July 2011 and letter from the honourable Minister of Justice and Constitutional Affairs to the Treasury to pay dated 7th of September 2015.

I have carefully considered the submissions as far as the law is concerned. The Applicant's Counsel submitted among other things that the debt due to the Applicants originates from garnishee proceedings to attach money due to the judgment debtor, Iraqi Fund for External

Development which is in the hands of government upon which a garnishee order nisi issued and subsequently an order absolute was entered against the Respondent. This is recognised by law under Order 23 Rule 1 of the Civil Procedure Rules as a debt. Counsel relies on the case of **Petro Sonko & another versus Patel and another (1953) EACA 99** at page 101 that it must be proved that the amount claimed is in fact due and recoverable from the garnishee. It is incorrect to give judgment against the garnishee. The correct procedure is to make the order nisi absolute. He contended that the scenario is applicable to the instant case because the order absolute has already been issued and there is a certificate of order against the government to that effect. Counsel submitted on the issue of whether the Respondent was duly served with the chamber summons and if so what step in the Respondents take? Secondly, the issue is whether the Applicants are entitled to an order of mandamus to compel the second Respondent to pay the decretal sum, accrued interest, and punitive orders.

On whether the Respondents were duly served the chamber summons and if so what steps the two? I have perused the submissions and it is unnecessary to handle the issue because the Respondent was served and this appears in the summary of steps taken so far which are set out above.

On issue number two whether the Applicants are entitled to an order of mandamus to compel the second Respondent to pay the decretal sum, accrued interest and punitive orders? The Applicant's Counsel relies on the decree absolute granted to the Applicants on 7 November 2003, the certificate of order against the government dated 13th of June 2008, and subsequent administrative directive issued to the second Respondent that are attached to the application.

The Applicant filed this application on the ground that the Attorney General had defaulted in executing court decisions and orders granted the Applicants despite several administrative communications. Counsel relies on the case of **Oil Seeds versus Chris Kassami, Secretary to the Treasury** where honourable Lady Justice Stella Arach Amoko held that section 19 of the Government Proceedings Act cap 19 imposes a duty on the government to satisfy the judgment, decree and certificate of order against the government. The Secretary to the Treasury has a corresponding duty to pay the sums in the judgment, decree and in the certificate of order. Counsel submitted that the Applicants have taken all necessary and possible steps to try to realise the decreed sums but to no avail and they have no alternative remedy. The Government has been served with a certificate of order under section 19 of the Government Proceedings Act. The certificate of order against the Government has never been challenged. Counsel also relies on the various letters requesting the Secretary to the Treasury to pay the Applicants. He submitted that the second Respondent has without any justifiable cause refused to pay the Applicant.

Whenever government officials are supposed to carry out particular duties in relation to subjects, and there under a legal obligation to do so, an order of mandamus would lie for the enforcement of their duties (see **Shah versus Attorney General (No. 3) [1970] EA 543, Sheema**

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Cooperative Society & 31 Others versus the Secretary to the Treasury HCMA No. 1145 of 2014 arising from HCCS No. 0103 of 2010).

Furthermore the Applicant's Counsel submitted that the unlawful behaviour of the second Respondent is not only disrespectful of court orders but also a harsh invasion of the supremacy and independence of the judiciary. He contended that justice is not only to be preached but should also be seen to be done especially by officers of Government or controlling authorities. He relied on the case of **Attorney General versus Osotraco Ltd Court of Appeal Civil Appeal No. 32 of 2002** for the submission that the powers and immunities of the state or its officers are not immutable. He contended that there was no justifiable excuse whatsoever for the failure to satisfy the judgment. He reiterated that the second Respondent has the singular duty and cannot escape his obligation and the court should compel him to act as required of him.

He contended that failure to grant the order as prayed for would injure the Applicant's interest which has been outstanding since 2003 and lower the authority of court and the confidence of the public that it can effectively administer justice.

Finally the Applicant's Counsel submitted that justice hurried is justice crushed but justice delayed is justice denied. In the premises an order of mandamus ought to be issued by the court. It should be for unconditional order to the second Respondent to immediately cause the satisfaction of the decree in favour of the Applicants/decreed holders. Secondly the second Respondent should pay interest at the rate of 27% per annum from the date of the order until payment in full. Lastly that costs should be paid by the second Respondent.

Ruling

I have carefully considered the Applicants matter chronologically. The genesis of this action is that the Iraqi Fund for External Development filed HCCS No. 1391 of 2000 against the Attorney General of Uganda and the matter was before Honourable Justice Richard Okumu Wengi and High Court/Commercial Division. Judgment was entered in favour of the Plaintiff and it was ordered that the Attorney General would pay the Plaintiff US\$6,432,809.63. Secondly the Attorney General was ordered to pay interest on the above sum at the rate of 2.5% per annum from the date of judgment that is on 19 July 2002 until payment in full.

I have carefully considered the Applicants application for an order of mandamus to compel the Respondents to pay a sum of US\$1,431,300.14, accrued interest as well as taxed costs arising directly there from and interest. No general damages were awarded and the Defendant was ordered to pay the costs of the suit as well as Miscellaneous Application Number 412 of 2002 arising there under.

Subsequently the Applicants as Plaintiffs filed Miscellaneous Application number 759 of 2003 arising from HCCS 609 of 2003 against Iraqi Fund for External Development as the Defendant

and the Attorney General and the Secretary to the Treasury as garnishees. The garnishee proceedings resulted in a garnishee order nisi on 15 December 2003. It was ordered that all debts due and owing from the Ministry of Finance Planning and Economic Development to the judgment creditor be attached to answer a decree against the judgment debtor by the decree holder in the High Court of Uganda Commercial Division of 7th of November 2003 for the sum of US\$1,286,561.92, together with costs of the garnishee proceedings which decree remain unsatisfied. The judgment creditor is Iraqi Fund for External Development.

The Attorney General and the Secretary to the Treasury were required to attend to the High Court Commercial Division on 12 January 2004 in an application by the decree holder that the Attorney General/Secretary to the Treasury should pay the debt due from the Ministry of Finance Planning and Economic Development to the judgment debtor to satisfy the decree together with costs of the garnishee proceedings. A decree absolute was issued on 4 November 2005. The Attorney General/Secretary to the Treasury was ordered to pay the Plaintiffs a sum of US\$1,286,561.92 out of the judgment credit due to Iraqi Fund for External Development.

Thereafter the Applicants herein filed Miscellaneous Application Number 759 of 2003 (arising out of HCCS 609 of 2003) against the Iraqi Fund for External Development who is the Defendant/judgment debtor and the Attorney General/Secretary to the Treasury as the garnishees and obtained a certificate of order against the Government. The Certificate of Order against Government is dated 13th of June 2008 in which the registrar certified as owing to the Applicants from the government US\$1,431,300.14.

There are other correspondences the Applicant relies on and the same shall be referred to chronologically. The Principal Private Secretary to His Excellency the President on 23 February 2005 wrote to the Honourable Minister of Finance, Planning and Economic Development advising him to dispose of all issues disclosed in a letter addressed to His Excellency the President and copied to him. On 21 July 2011 a letter was written by the acting Solicitor General to the Deputy Secretary to the Treasury, Ministry of Finance, Planning and Economic Development on the subject of payment of outstanding sums in decree absolute in HCCS No. 609 of 2003. He drew the attention of the Secretary to the Treasury to the Certificate of Order against the Government dated 4th of November 2005 and requested him to settle this claim to avoid further accumulation of interest. On 25 February 2015 the Senior Adviser to the President General Salim Saleh AC wrote on the subject of outstanding sums in decree absolute in High Court Civil Suit Number 609 of 2003. He requested that the beneficiaries be assisted as soon as possible. Finally in a letter dated 7th of September 2015 the Minister of Justice and Constitutional Affairs wrote to the Permanent Secretary/Secretary to the Treasury Ministry of Finance, Planning and Economic Development on the subject of payment of outstanding sums in respect of High Court decree absolute 759 of 2003 arising from HCCS 609 of 2003. He requested that the Secretary to the Treasury settles the matter in the earliest to avoid unnecessarily incurring interests.

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I have carefully considered the Applicants application and I am of the considered opinion that what the Applicant is struggling with is a fact that there was no ready money that was available for attachment pursuant to garnishee proceedings. The practical result of the garnishee proceedings was the attachment of a debt. It moves from the premises that the Government of Uganda owes the Iraqi Fund for External Development pursuant to another civil suit in which it was successful. The Iraqi Fund for External Development is the judgment creditor while the Government of Uganda is the judgment debtor. The Applicants sought to attach part of what was owed so that it is paid to the Applicants instead of the Iraqi Fund for External Development.

Garnishee proceedings move under Order 23 of the Civil Procedure Rules and rule 2 thereof which provide that the order made binds the debt in the hands of the garnishee provides as follows:

“Service of an order that debts due to a judgment debtor liable under a decree be attached, or notice of the order to the garnishee in such manner as the court may direct, shall bind such debts in his or her hands”

The money in the hands of the Government owing to the Iraqi Fund for External Development was attached. This money was a judgment credit in favour of the Iraqi Fund for External Development subject to the payment procedure for the payment of judgment debts by the Government of Uganda. Attachment of debts of is a procedure for execution under section 38 (c) of the Civil Procedure Act which provides that:

“Subject to such conditions and limitations as may be prescribed, the court may, on the application of the Decree holder, order execution of the Decree –...

(c) by attachment of debts;”

The effect of the order is that money owing to the Iraqi Fund for External Development was successfully attached by a decree nisi and a decree absolute which followed. Where an order nisi is issued, the garnishee has an opportunity to appear before the court to show cause why the debt should not be attached. Where no cause is shown, the order would be made absolute and the debt would be liable to the judgment and enforceable against the garnishee. Order 23 rule 7 of the Civil Procedure Rules provides that:

“Payment made by or execution levied upon the garnishee under any such proceedings as aforesaid shall be a valid discharge to him or her as against the judgment debtor to the amount paid or levied, although such proceedings or order may be set aside or the decree reversed.”

A garnishee order absolute may only be set aside on specific grounds. Denning MR considered the procedure of garnishee in **Choice Investments Ltd v Jeronimon (Midland Bank Ltd, garnishee) [1981] 1 All ER 225** at page 227 where he said:

There are two steps in the process. The first is a garnishee order nisi. Nisi is Norman-French. It means 'unless'. It is an order on the bank to pay the £100 to the judgment creditor or into court within a stated time unless there is some sufficient reason why the bank should not do so. Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. Or if payment to this creditor might be unfair by preferring him to other creditors ... If no sufficient reason appears, the garnishee order is made absolute, to pay to the judgment creditor, or into court, whichever is the more appropriate. On making the payment, the bank gets a good discharge from its indebtedness to its own customer, just as if he himself directed the bank to pay it. If it is a deposit on seven days' notice, the order nisi operates as the notice.

But the 'attachment' is not an order to pay. It only freezes the sum in the hands of the bank until the order is made absolute or is discharged. It is only when the order is made absolute that the bank is liable to pay."

A garnishee order absolute is an order to pay money. What is material for consideration is the fact that neither the Attorney General nor the Secretary to the Treasury brought proceedings challenging the garnishee order nisi. The order was made absolute making the Government liable to pay the sums indicated in the garnishee order absolute. Subsequent to the garnishee order absolute, the Applicants were not paid. They therefore brought out additional execution proceedings against the government of Uganda. Initially execution proceedings had been brought against the Iraqi External Fund for Development. The Attorney General and the Secretary to the Treasury were mere garnishees and were holding funds under another judgment of the High Court to the judgment creditor Iraqi External Fund for Development, which was diverted to be paid partly to the Applicants. The sum equivalent to the Applicants claim was therefore attached. If there was any objection or if there was no sum owing to Iraqi External Fund for Development they should have made objections to the order being made absolute. That ought to have been the end of the matter. However as I have noted above, there was no money in the hands of the government to pay like the case of an account having credits held by a bank. The Applicant has therefore opted to bring subsequent execution proceedings by obtaining a certificate of order against the government pursuant to the provisions of the Government Proceedings Act Cap 77 laws of Uganda.

The relevant provision of the law is section 21 of the Government Proceedings Act which provides as follows:

"21. Attachment of monies payable by the Government.

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(1) Where any money is payable by the Government to some person who, under any order of any court, is liable to pay any money to any other person, and that other person would, if the money so payable by the Government were money payable by a private person, be entitled under rules of court to obtain an order for the attachment of the money as a debt due or accruing due, the High Court may, subject to this Act and in accordance with rules of court, make an order restraining the first-mentioned person from receiving that money and directing payment of that money to that other person; except that no such order shall be made in respect of—

(a) any money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution; or

(b) any money payable by the Government to any person on account of a deposit in the Post Bank Uganda Limited.

(2) The provisions of subsection (1) shall, so far as they relate to forms of relief falling within the jurisdiction of a magistrate's court, have effect in relation to magistrates courts as they have in relation to the High Court.”

The clear meaning of section 21 (1) of the Government Proceedings Act is that the court has power to restrain Iraqi Fund for External Development Fund from receiving the sum of US\$1,431,300.14 from the garnishee who in this case is the Government of Uganda represented either by the Attorney General or Secretary to the Treasury. It presupposes that the government of Uganda owes Iraqi Fund for External Development some money. It is that money owed which is the subject matter of an order restraining Iraqi Fund for External Development from receiving a specified sum of money. Section 21 (1) of the Government Proceedings Act secondly allows the court to direct that the money mentioned in the order is paid to the Applicant instead. Again the provision presupposes that the Applicant is owed money pursuant to an order of the court by Iraqi External Development Fund or the creditor.

From the facts of this case it has been established from the record and from the application that the High Court in HCCS 609 of 2003 on 7 November 2003 awarded to the Applicants and against Iraqi Fund for External Development US\$1,286,561.92. The Applicants were also awarded interest at 2.5% per annum from the date of judgment till payment in full. Each party was to bear its own costs of the suit.

On the issue of whether Iraqi Fund for External Development (IFED) is owed money by the Government of Uganda this is answered by perusal of HCCS 1391 of 2000 between Iraq Fund for External Development and the Attorney General. In that suit by decree dated 22nd of October 2002 the said IFED was awarded US\$6,432,809.63 and interest on that amount at 2.5% per annum from the date of judgment (19th of July 2002) until payment in full. It was also awarded costs of the suit and of Miscellaneous Application No. 412 of 2002 arising there under. On the

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face of it Iraqi Fund for External Development is owed money by the Government of Uganda in the amount written above. The question would have been whether that amount of money was an outstanding liability? Or was it an outstanding liability by the time the Applicants obtained the garnishee order absolute? There is no need to answer that question because the issue was never raised and does not arise. Secondly the Attorney General never sought to challenge the garnishee order nisi before it was made absolute. Due process of law leads to the conclusion that the debt was attached and the Government of Uganda is under obligation to pay to the Applicants the sum attached. In theory the Government of Uganda would be fulfilling its obligations to the Iraqi Fund for External Development pursuant to HCCS 1391 of 2000. In any case only a portion of the money was attached. The bilateral relationship between Iraq and Uganda is not material to consider on the question of liability because the liability of the Government was the subject of the suit between Iraqi fund for external Development and the Attorney General of Uganda who represents the Government.

Finally I have considered the provisions for satisfaction of orders against the Government quoted in this application and I find that they are irrelevant. I make reference particularly to section 19 (1) of the Government Proceedings Act Cap 77 laws of Uganda. The above quoted section deals with cases where there are any civil proceedings by or against the Government or proceedings corresponding or analogous proceedings on the Crown side of the Queen's Bench Division of the High Court in England or in connection with any arbitration to which the Government is a party and any order including an order of costs is made by any court in favour of any person against the Government or a Government Department or official of Government. The Applicants never brought proceedings against the Government within the meaning of section 19 (1) of the Government Proceedings Act Cap 77 Laws of Uganda. The quoted section envisages an action to which the Government is a party. The Applicants have only sought to attach money belonging to Iraqi Fund for External Development. For that reason the applicable law is section 21 of the Government Proceedings Act which deals with attachment of monies payable by Government. For that matter because the statutory provisions are clear I do not have to rely on judicial precedents which may be defined as common law under section 14 of the Judicature Act Cap 13 laws of Uganda unless they are interpreting the relevant statutory provision. All the judicial precedents quoted by the Applicant's Counsel did not deal with section 21 of the Government Proceedings Act Cap 77 laws of Uganda.

Under section 21 of the Government Proceedings Act Cap 77 laws of Uganda, it is sufficient to comply with the rules of procedure and therefore the garnishee proceedings are proceedings envisaged under the said section. It follows that the garnishee order absolute dated 4th of November 2005 is the order that directs the Government to pay the Applicants US\$1,286,571.92 together with interest on the amount at the rate of 2.5% per annum from 7 November 2003 until payment in full. The garnishee is also required to pay the costs of the garnishee proceedings. The costs of the garnishee proceedings would be met from the debt owed to Iraqi External

Development Fund. The certificate of order against the government is not a requirement under section 21 and is therefore superfluous since it enforces the provisions of section 19 of the Government Proceedings Act Cap 77 laws of Uganda which deals with an order against the Government of Uganda as a party. For emphasis a certificate of order against the Government presupposes an order against the Government when the Government is a party. On the other hand section 21 of the Government Proceedings Act deals with any situation in which the garnishee holds money on behalf of the debtor. The garnishee is not a party to the suit between the Applicant and the creditor. For illustration purposes the salary of a debtor may be under the control of the Government of Uganda when it is garnisheed. The creditor applies to court to garnishee the salary. The Government may owe money on a contract and the Applicant can apply to court to have the debt attached. The debt does not have to arise from a court proceeding and therefore the Government need not be a party to the proceedings. As a garnishee the court compels the Government to pay money which is owing to a third party from the Government to the Applicant. Lastly a certificate of order against the Government presupposes proceedings brought against the government.

A delay by the Government to pay Iraqi Fund for External Development puts the execution proceeding by way of garnishee proceedings for attachment of the money a difficult exercise. The attachment has been accomplished. What remains is the payment. By operation of the budget law, the government must have money appropriated for the settlement of claims such as that of the decree in favour of Iraqi Fund for External Development. Finally the claim is subject to the same frustration faced by litigants and court takes judicial notice of this fact. A similar issue arose in **Miscellaneous Cause No 20 of 2015 (Arising From Civil Suit No. 144 of 2010 Finishing Touches vs. The Secretary to the Treasury, Ministry of Finance, Planning & Economic Development** where the Solicitor General raised the defence that Government had meagre funds to settle claims of litigants. I held that section 19 of the Government Proceedings Act envisages effective compliance by an accounting officer of a Government Department. However in the current constitutional dispensation and administrative arrangements it is the Attorney General and not the responsible Ministry that is mandated to settle judgment debts. The letter of the Minister of Justice and Constitutional Affairs earlier referred to asking the Secretary to the Treasury to pay speaks volumes about the failure of the Attorney General to pay from its coffers. Taking the correspondences in their entirety the various letters referred to in this application namely: Letter of the Principal Private Secretary to His Excellency the President, Mr Fox Odoi dated 23 February 2005, to the Minister of Finance; Certificate of Order against Government dated 13 June 2008; Letter of the Solicitor General dated 21 July 2011; letter of the Senior Adviser to the President General Salim Saleh dated 25th February 2015 and finally the letter of the Minister of Justice and Constitutional Affairs Major General Kahinda Otafiire dated 7th September 2015. All these letters are on the subject of the attached money owing to the Applicants and variously addressed to the Secretary to the Treasury requesting his office to pay. No action has been taken so far. Unlike a bank account where it can be proved that the garnishee

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is holding money for the creditor, in this case there is only an order of court awarding money to the creditor which is Iraqi Fund for External Development. There is no evidence that the Iraqi Fund for External Development carried out any execution proceedings against the Government. The Applicant's application therefore indirectly seeks execution proceedings to issue against the Government to pay the Iraqi Fund for External Development its judgment credit to the extent embodied in the decree absolute in favour of the Applicants.

A court should not issue orders in vain. In **Finishing Touches vs. Secretary to the Treasury** (supra) I considered the constitutional arrangement for payment of monies from government coffers. Monies cannot be paid for any head of expenditure without appropriation of funds for that purpose by Parliament. In the absence of monies appropriated and paid to the Attorney General to settle judgment debts, the Secretary to the Treasury has to find the money from special funds or lay the budget for it for approval before the Parliament. I observed that expenditure in the ordinary course of Government business should be kept within the budget and that is the essence of the budgetary laws and principles laid out under articles 154, 155 and 156 of the Constitution of the Republic of Uganda 1995 and certain Acts of Parliament namely: the Public Finance Act Cap 193; the Public Finance and Accountability Act 2003 and the Budget Act 2001. The Minister of Finance and Economic Planning as well as the Secretary to the Treasury were addressed in the letters and have the overall responsibility and mandate to make appropriate arrangements to pay the Applicant pursuant to section 21 of the Government Proceedings Act. That arrangement for payment of the Applicants ought to have been made already but there is no evidence that steps have been taken by the responsible Ministry to make the payment directed by court. By the 4th of November 2005 according to annexure D to the Application the Government had been served with a decree absolute attaching US\$ 1,286,561.92 together with interest at 2.5% per annum from 7th of November 2003 until payment in full and payment of costs by the garnishee attaching the debt owed Iraqi Fund for External Development. The Minister of Finance, Planning and Economic Development was notified in annexure H to the application on the 23rd of February 2005. This was sufficient for purposes of section 21 of the Government Proceedings Act Cap 77 to direct payment to the Applicant. There was non-compliance with the court order. Again a certificate of Order against Government was obtained on the 13th of June 2008 according to Annexure A to the Application and the Solicitor General notified the second Respondent of the order by letter dated 21st of July 2011 requesting the second Respondent to settle the claim but in vain. The issue remained outstanding by February 2015 when the Applicants sought assistance of General Salim Saleh AC Senior Advisor to the President who accordingly wrote to the second Respondent's office to assist the beneficiaries. He wrote that non compliance was very unkind. This was in light of the entitlement having arisen in 2002. Finally this letter was further followed by another letter by the Minister of Justice dated 7th of September 2015 urging the second Respondent to pay to avoid incurring unnecessary interest. No payment has yet been made hence the Applicants filed this application on the 11th of December 2015.

Are further pronouncements really necessary? I wish to add my voice to that of the Executive officials who have urged the second Respondent to pay. The inaction to pay the Applicants does not only show utter disregard and contempt for court orders, a matter that should concern advocates for the rule of law, but it shows a disregard for fundamental rights. Property rights can be violated crudely through physically taking some ones property without compensation. In the conception of fundamental rights it can be taken in a seemingly less crude fashion. Article 26 of the Constitution of the Republic of Uganda forbids deprivation of property. Inaction to pay a Plaintiff without just compensation violates article 26 of the Constitution which guarantees the right to property. In this case, not only was there a breach of section 21 of the Government Proceedings Act, but there has been breach of article 26 of the Constitution through deprivation of the Applicants property rights. Breach of Statutory duties is a tort or misfeasance in a public office and is actionable at common law in a claim for damages or an injunction or to both. In **Dawson vs. Bingley Urban Council [1911] 2 KB 149**, it was held by Farwell L.J. at page 156 that:

“breach of a statutory duty created for the benefit of an individual or a class is a tortious act”

Vaughan Williams held that although it is well established that public bodies representing the public are not liable to be sued by an individual member who has sustained injuries in consequence of the omission of such a body to perform a statutory duty but the Public body may be liable if by its acts, it alters the normal condition of something which it has a statutory duty to maintain and in consequence some person of a class for whose benefit the statutory duty is imposed is injured. It is a misfeasance of the public body, which has caused the injury. According to Kennedy L.J the proper remedy for a breach of statute is an action for damages especially where the statute lays no rule for non-compliance or breach and in appropriate cases an injunction.

The wrong is committed among other things, through acting without express authorisation of statute or without jurisdiction to the prejudice of another person and can be actionable as malice. In the case of **Vermeulen v. Attorney General and Others, [1986] L.R.C (Const) 786**, it was held by Mahon J of the Supreme Court of Samoa at page 823 in a claim for damages as follows:

“The basis for these claims is the tort of misfeasance in public office. There can be no doubt that this tort does exist as a separate basis for legal liability and there are many academic writings supporting this view. However, within the context of judicial precedent, the extent of the nature of the tort has been defined in authoritative terms by the Privy Council in *Dunlop v Woollahra Municipal Council* [1982] AC 158 where this species of wrong of described as “the well established wrong of misfeasance by public officer in the discharge of his public duties. The act complained of must be either an abuse of power actually possessed or an act, which is a usurpation of authority, which is

not possessed, but the essential ingredient of the tort is the presence of malice in the exercise or the purported exercise of statutory power. Malice obviously includes a state of mind representing malice in the popular sense, namely an attitude of ill-will or spite against the Plaintiff, and then there is the different situation where an official acts beyond his jurisdiction with knowledge of that fact. But there can be no difference between those two motivations insofar as this particular tort is concerned. It is to be emphasised that malice in this context will include a situation where there is no element of personal spite or ill will. It includes the case where a person is actuated by reasons, which are collateral to and not authorised by the rules of conduct by which he is bound. In a case of this sort, a public officer may exercise his official powers against another person for reasons devoid of ill-will but motivated by the desire to reach a result not comprehended by the power of decision or the power of discretion with which he has been invested.”

The question I pose is what motivates the inaction despite court orders and administrative entreaties to pay as contained in the above correspondences? Such a motivation if lawful can only be the basis of a challenge to attachment of the debt after the garnishee order nisi had been served for the Respondent to appear. There was no challenge to the garnishee proceedings. The Attorney General who is the principal legal advisor of government and whose decisions are binding under article 119 of the Constitution of the Republic of Uganda advised that the Applicant is paid pursuant to the certificate of order to pay referred to above and in the letter written in that behalf by the Solicitor General. The second Respondent has no power or jurisdiction to refuse to pay and has not demonstrated that it has made the efforts to pay.

As far as deprivation through neglect to pay is concerned I refer to the decision of the Constitutional Court in **James Rwanyarare and Others versus Attorney General constitutional Petition NO. 6 of 2002, at page 9** where the Court approved the decision in **N. Nagendra Rao and Co. vs. State of A.P. AIR (1994) SC 2663**, R.M. Sahai, J (paragraph 24 of his judgment) is that the state is at par in law with the individual and enjoys no special protection (See article 21 of the Constitution of the republic of Uganda) when they said:

“No legal or political system today can place the state above law as it is unjust and unfair for a citizen to be deprived of their property illegally by negligent act of officers of the state without any remedy. The Modern social thinking of progressive societies and the judicial approach is to do away with archaic state protection and place the State or the Government at par with any other juristic legal entity.”

Finally deprivation of property can be through inaction. In effect it has the same effect as naked and tyrannical taking or deprivation of property without lawful justification. In the case of **Societe United Docks and Others vs. Government of Mauritius Marine Workers Union and Others vs. Mauritius Marine Authority [1985] 1 ALL ER 864**, the question was whether the respective appellants had suffered deprivation of property without compensation contrary to

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section 3 (c) of the Constitution of Mauritius. The definition of Lord Templeman at page 870 of the decision brings out the nature of taking property through deprivation when he said:

“The right which is by section 3 of the Constitution recognised and declared to exist is the right of protection against deprivation of property without compensation. A constitution concerned to protect the fundamental rights and freedoms of the individual should not be narrowly construed in a manner, which produces an anomaly, and inexplicable inconsistencies- loss caused by deprivation and destruction is the same in quality and effect as loss caused by compulsory acquisition.”

The Respondent has through inaction or neglect rendered the court orders a mere piece of paper which is of no benefit to the judgment creditor. Judgment decree is property and in the case of **Shah v Attorney-General (No 2) [1970] 1 EA 523** it was held that the term property includes a contract. In **Constitutional Petition No. 1 of 1986 Prof. Ssempebwa vs. Attorney General** a judgment award was held to be property. Are court orders to be treated in this way? Why should a litigant waste his or her time coming to court for redress if court orders, which are not even challenged on any just grounds or even contested at all, can be ignored with impunity?

In the premises I find the office of the Secretary to the Treasury in breach of section 21 of the Government Proceedings Act as well as violation of the spirit of article 26 of the Constitution and accordingly an order of mandamus issues compelling the Secretary to the Treasury to take all lawful and necessary steps to effect payment to the Applicant of the undisputed amount contained in the decree absolute of US\$1,286,571.92 together with interest on the amount at the rate of 2.5% per annum from 7 November 2003 until payment in full and costs of the garnishee proceedings. Payment shall be effected within a reasonable period not exceeding a period of six months.

The Applicant’s application succeeds with costs of the application to the Applicant.

Ruling delivered in open court on the 20th of May 2016

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Byamugisha Deus Barusya assisted by Karuhanga Richard Counsels for the Applicant.

The Respondents are not present or represented in court

Charles Okuni: Court Clerk

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Christopher Madrama Izama

Judge

20th May 2016