

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC.APPLICATION NO.531 OF 2014
ARISING OUT OF MISC. APPLICATION NO.294 OF 2011
ARISING FROM HIGH COURT CIVIL SUIT NO.301 OF 1996
(CIVIL DIVISION)**

A.K.P.M LUTAYA ::::::::::: APPLICANT/JUDGMENT CREDITOR

VERSUS

1. ATTORNEY GENERAL

2. TREASURY OFFICER ACCOUNTS

**MINISTRY OF FINANCE (The Secretary to the treasury Keith
Muhakanizi ::::::::::: RESPONDENTS/JUDGMENT DEBTORS**

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

RULING

The applicant commenced this application by Notice of Motion under the provisions of Sections 33, 36 (1) (b),(c),(d) and (e) of the Judicature Act, Cap 13, Rules 3,5,6,8 and 10 of the Judicature (Judicial Review) Rules SI 11/2009, Section 67(2) and 98 of the Civil procedure Act, the Government Proceedings Act and Rules, and Order 52 rules 1 and 2 of the Civil Procedure Rules. It is for the following orders;

1. The secretary to the treasury Mr. Keith Muhakanizi be summoned to the High Court to answer charges of Contempt of Court for defying the Orders of this Court in **Misc Appl. No.294 of 2011 arising from HCCS No. 301 of 1996.**
2. The Attorney General of Uganda be summoned to Court to answer charges of contempt of Court for defying the orders of this court in **Misc Appl. No.294 OF 2011 arising From HCCS No.301 of 1996.**
3. A declaration that the applicant is entitled to the payment of UGX 523,524,413/= as at 5th December, 2012, and any further interest that has accrued since then in accordance with the Decree/order in **Misc Appl. No.294 OF 2011 arising from HCCS No. 301 of 1996,**

which has accumulated to UGX 614,035,466/=, and the applicant's Lawyers Taxed Costs amounting to UGX 17,666,500/=.

4. A declaration that the applicant has a right of access to courts of law and is entitled to a fair speedy and public hearing to recover the payment of UGX 523,524,413/= as at 5th December 2012 and any further interest that has accrued since then in accordance with the Decree/order in **Misc Appl. No.294 of 2011 arising from HCCS No. 301 of 1996**, which has now accumulated to UGX 614,035,466/= and the applicant's Lawyer's taxed costs amounting to UGX 17,666,500/=.
5. The respondents be ordered to forthwith pay UGX 523,524,413/= as at 5th December, 2012, and any further interest that has accrued since the decree/order in **Misc Appl. No.294 of 2011 arising from HCCS No. 301 of 1996** was passed, and the applicant's Lawyers taxed costs amounting to UGX 17,666,500, short of which the secretary to the treasury Mr. Keith Muhakanizi be committed to civil prison.
6. An order for the applicant to be paid exemplary/aggravated and general damages for contempt of Court by way of a fine.
7. An order that the applicant be paid costs of this application.

The applicants grounds in support of the application were that the respondents were in contempt of court for defying the orders of court in **Misc Appl. No. 294 OF 2011 arising from HCCS No.301 of 1996**; as a result, the applicant has been subjected to great loss and suffering as his business is stuck, and it is in the interest of justice that this application is granted.

The application was supported by the affidavit of the applicant, who repeats the averments in the Notice of Motion

The respondent's in their affidavit in reply, sworn by Cheborion Barishaki, a Director of Civil Litigation in the Respondent's chambers, opposed the application and averred that whereas the applicant was in possession of a judgment/decreed in his favor, payments totaling to UGX **586,000,000/=** had already been made to him as follows;

1. UGX 50,000,000/= on 11th May, 2012.
2. UGX 125,000,000/= on 3rd December, 2012.
3. UGX 55,271,890/= on 22nd March, 2013.
4. UGX 94,947,000/= on 22nd March, 2013.
5. UGX 30,053,000/= on 27th March, 2013.

6. UGX 69,728,110/= on 27th March, 2013.
7. UGX 125,000,000/= on 19th March, 2013.
8. UGX 36,000,000/= on 12th March, 2013.

Mr. Cheborion further contended that the applicant's costs totaling to **UGX 100,381,110/=** which arose from prosecuting this matter in the Supreme Court, Court of Appeal and the High Court were fully settled. Whereas the respondent was ready and willing to settle this matter, it was realized that there was a computation error on the interest regarding the balance, which error was attributed to the applicant; so the matter was set for verification purposes.

Mr. Cheborion contended that upon computation of the sums owing to the applicant by the respondent's accounts department, it was discovered that the amounts due were UGX 187,252,000/=, and the costs due and payable to the applicant's Lawyers were UGX 17,666,500/=. The applicant's Counsel had compounded the interest owing to the applicant instead of computing it based upon the payment of the decretal sum of UGX 489,000,000/=. Therefore, the total amounts owing to the applicant and his Lawyers is UGX 204,918,509 which the respondent was willing and ready to pay if this position was agreed upon by the applicant and his Counsel.

In his affidavit in rejoinder, the applicant stated that judgment had been entered in his favour as follows;

1. Special damages UGX 389,400,000/=
2. General damages UGX 100,000,000/=
3. Interest on special damages at 8% p.a from 21st December, 2005 till payment in full.
4. Interest on general damages at 8% p.a from December, 2005 till payment in full
5. $\frac{3}{4}$ of the taxed costs of the Appeal and the two Courts below to have been paid to the applicant.
6. The taxed costs were to bear interest at the rate of 6% p.a till payment in full, vide Supreme Court Civil Application No.1/2007, Civil Appeal No.10/2002 and Court of Appeal Civil Application No.2/2005.

The applicant filed Misc Application No.294 of 2011, against the respondents and obtained orders for a writ of a prerogative of Mandamus compelling them to carry out the statutory duty to

pay the above mentioned sums, accrued interest and costs of the suit; and respondents had so far paid the following amounts;

1. Costs of the Supreme Court UGX 47,155,850/=
2. Costs of the Court of Appeal UGX 22,572,260/=
3. Costs of the High Court UGX 30,653,000/=
4. Applicants interest UGX 450,000,000/=

The applicant further averred that the costs of the Supreme Court, Court of Appeal and High Court above mentioned were fully paid and they are no longer in dispute; however, interest on the decretal sum of UGX 489,400,000/= would continue to accrue, until payment in full. The balance of the decretal amount due had accumulated to UGX 528,312,865/= plus UGX 17,666,500/= being the taxed costs of the proceedings of mandamus. The applicant's Lawyers extracted Certificates of Order compelling the respondents to carry out the statutory duty to pay the above mentioned outstanding sums plus accrued interest, and the certificates were served upon the respondents.

At the hearing of the application Counsel for the applicant filed written submissions in support of the application.

Counsel for the applicant contended that it was not in dispute that the High Court issued a prerogative order of mandamus on the 15th April, 2014, directing the 2nd respondent to perform the public duty to pay the balance of monies owing to the applicant, which was calculated to be UGX 523,524,413/=. Subsequently, the applicant extracted certificates directing the 2nd respondent to pay the above mentioned sum with any further interest that accrued since that date, and the payment of UGX 17,666,500/= being the costs of **Misc Application No.294 of 2011** under which the order of mandamus was granted. Regardless of the several reminders to obey the mentioned orders of court, the respondents have not complied. Counsel submitted that the issue to be determined was whether the respondent's conduct amounts to contempt of court.

Counsel relied on *Stanbic Bank (U) Ltd & Anor Versus The Commissioner General, URA MA 42 of 2010, arising from Civil Suit No.479 Of 2010*, where court based the definition of contempt of court on *Halsbury's Laws of England, Vol. 9(1) 4th Edition*, and held as follows;

“contempt of court can be classified as either criminal contempt, consisting of words or acts which impede or interfere with the administration of justice or which create

substantial risk that the course of justice will be seriously impeded or prejudiced, or contempt in procedure, otherwise known as civil contempt consisting of disobedience to judgment, orders or other process of court and involving in private injury.”

Counsel contended that the applicant had comprehensively set out conduct of the respondents which amounts to non compliance and disobedience of orders that were issued by court, and this conduct resulted in private injury on the part of the applicant. Counsel submitted that the 2nd defendant's refusal to comply with the order of mandamus with the resultant effect of injustice that had been occasioned on the applicant amounts to contempt of court; and the respondent's actions were high handed and an abuse of the court process.

It is not in dispute that this court issued a prerogative order of mandamus directing the 2nd respondent to perform the public duty to pay the balance of monies owing to the applicant, calculated to be UGX 523,524,413/= as at 15th December, 2012, and any further interest that had accrued since then in accordance with the decree, and an order was extracted in those terms. The applicant subsequently extracted two Certificates of Order, directing the 2nd respondent to pay UGX 523,524,413/= and any further interest accrued since that date, and the payment of UGX 17,666,500/= being the costs of Misc Application No.294 of 2011. However, the above mentioned orders have never been complied with by the 2nd respondent, regardless of the numerous reminders made by the applicant.

In *Mehga Industries (U) Ltd Versus Comform Uganda Limited, HC Miscellaneous Cause No.21 of 2014*, it was held that a party who knows of an order cannot be permitted to disobey it and as long as the order exists it must not be disobeyed. Therefore, a court order cannot be ignored or disregarded simply because a party does not agree with the content of the same. If the respondents were not in agreement with the computations of the amounts that were ordered to be paid by court, they had an option of challenging the orders rather than merely refusing or ignoring the same. In *Stanbic Bank (U) Ltd & Anor Versus The Commissioner General, URA MA 2010*, it was held as follows;

“...it is settled law that a party who knows of an order regardless of whether in the view of that party the order is null or valid, regular or irregular cannot be permitted to disobey it by reason of what the party regards the order to be. It is not up to that party to choose whether to comply or not to comply with such an order. The order must be

complied with in totality, in all circumstances by the party concerned, subject to the party's right to challenge the order in issue, in such a lawful way as the law permits."

In the present application, an order was made by this court directing the Secretary to the Treasury (2nd respondent) to make payments as mentioned above. Certificates of Order were issued, directing the payments to be made accordingly, and the 2nd respondent ought to have complied with the orders. The fact that he was aware of the said orders has not been denied.

I also note that during the hearing of this application, the respondents admitted the sum of UGX 204,918,501/= as owing to the applicant, and on 18th December, 2014, an order was issued by this court for the immediate payment of the amount which was not disputed. However, it has never been paid to date.

The next question to determine is whether the applicant should be granted the prayers sought.

I have already stated above that this court is not the proper forum for the determination as to whether the amount contained in the order is the proper amount owing to the applicant to be paid by the respondents. The order stands as it is and it has not been challenged in any court of law. Accordingly, the amount owing to the applicant is UGX 523,524,413/= as at 5th December, 2012, and any further interest that has accrued since then, minus what has been received so far by the applicant towards settlement of the said amount.

With the issue of the orders of mandamus, this court, in my view concluded its role in this matter. There is an Execution Division of the High Court which was established to handle matters regarding the execution of court orders. Since the applicant has already obtained Certificates of Order obliging the 2nd respondent to pay the required amounts, the next forum in case of failure/refusal by the respondents to pay would be the Executions Division.

The applicant is therefore urged to take the application to the appropriate forum.

I shall make no order as to costs.

Elizabeth Musoke

JUDGE

29/09/2015