THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CV-MC-0009-2014

KACHRA INVESTMENT COMPANY LTD…..…..…..……..APPLICANT
VERSUS
MBALE DISTRICT LAND BOARD.……..……...…….RESPONDENT

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING

This is an application brought under Section 36 (1) and 33 of the Judicature Act and rules 3, 6, and 7 of the (Judicial Review) rules SI 11/2009; for an order of mandamus to be issued against Respondents.

The brief facts are that the Chief Magistrate's Court of Mbale presided over CS 21 of 2008 between applicants and Respondents. The facts giving rise to that civil suit were that applicants had been granted leases by the Respondents over lands comprised in LRV 2722 Folio 22 Plot 20 and LRV 2665 Folio 13 plots 25-27 both situated at Malukhu road Mbale Municipality effective 1st January 1998 for five years. The leases expired in around 2002, whereupon applicant applied for extension of the leases which was not granted. Applicant filed a complaint against the respondent culminating into the proceedings under CS 21/2008 at Mbale.

The suit was found in the favour of the applicant, with orders that the Respondent extends the applicant's leases. A decree of court was issued, extracted and served upon the Respondents, who have since failed to respond to the court orders. As a result, applicants have filed this application.
The issue for determination is whether the applicant is entitled to the order of mandamus directing the respondent to effect the said lease extension.

I have carefully analyzed the facts, evidence on record, the submissions by both counsel and the law applicable. The following are my findings.

It is not disputed by the parties that there was C/S 21/2008 in the Chief Magistrate's Court of Mbale between the parties above. It is also true that parties agree that a Decree of court was issued and served upon the respondents.

A reading of the Notice of Motion and supporting affidavit sworn by **Sadrudin Alani**, shows under paragraphs 8, 9, and 10 that todate the Decree of the court has not been satisfied by the Respondents.
The same position is contained in the affidavit in reply deponed by **Anna Nakayenze** in paragraphs 13, 14, and 15; particularly paragraph 14 which shows that non compliance was due to the desire to have the decree set aside.

Given the above non contraverted facts, it is important to examine whether the remedy of mandamus can be invoked by applicants to remedy the situation.

In their submissions Respondents argued that the application is incompetent for being time barred. A reference to Rule 5(1) of the Judicature (Review) Rules 2009, provides that:

> "*An application for Judicial Review shall be made promptly and in any event within 3 months from the date when the grounds of the application first arose, unless the court consider that there is good reason for extending the period within which the Application shall be made*."

In rejoinder, the applicants have argued that the operational phrase in those provisions is "*within 3 months from the date when the ground of the application arose……*" Respondents show that the application arose on 4th February 2014, the date when annexture "F" was served upon applicants.
This position is the true position.

There was communication (Anex "F") sent out on 4.2.2014, which was received by applicants. Therefore as argued by respondents, time began running for purposes of this matters on the 4th of

February of 2014. Since the application was filed on 7th April 2014, it was well within the time provided for in the rules.

This argument is therefore not sustained.

Respondents also argued that, the remedy is not available to applicants because they had an alternative in section 107 of the Penal Code Act, Cap.120.
They also argued that applicants had the option of appeal, and also challenged the decision in CS.21/2008.
They therefore stated that the grant of the order of mandamus should not be issued in vanity.

In rejoinder the applicants argued that the arguments above are not tenable since the remedies of appeal, review or revision refer to a party dissatisfied with a decision, not a party in whose favour it was given as in case of the applicant.

The beginning point of investigation to answer the above postulations is to examine what amounts to a writ of mandamus.
This is an order under the discretion of court. The wealth of decided cases has unanimously agreed that this remedy can only be granted on proof of;

(i) Illegality.
(ii) Irrationality
(iii) Procedural impropriety.

In determining these grounds courts have regard to common sense of justice, whether the application is meritorious, whether there is reasonableness, vigilance and no waiver of rights by the applicant. (See: ***Aggrey Bwire v. Judicial Service Commission & A.g – CACA No. 9/2009***, ***Jet Tumwebaze v. Makerere University Council & Others – HCC AP No. 353 of 2005,*** for the above inferences)**.**

The ground rule in these applications is that the court only investigates or deals with only the decision making process. Court is not interested in the fairness or unfairness of the decision. It

only checks the propriety of the decision making process, to test it and see whether any of the grounds above were committed in the due course of decision making.

From the decided cases cited, and others on this subject, illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. See: ***Council of Civil Service Union v. Minister for Civil Service (1985) AC 375***, as cited in ***Mugabi Edward v. Kampala District Land Board & Wilson Kashaya Misc. Cause No. 18 of 2012***.

Secondly irrationality was defined as gross unreasonableness, while procedural impropriety is the failure to act fairly on the part of the decision making authority in the process of taking a decision (***Twinomuhangi v. Kabale District & Ors (2006) HCB 1***).

If those grounds are proven then the remedy can be granted. According to ***Wade, H.W.R Administrative Law 5th Edn p.630*** and cited with approval in ***Gooman Agencies Ltd & 3 Others v. Attorney General & Another Misc. Cause 108 of 2012*** it is stated that:

> "*the commonest employment of mandamus is as a weapon in the hands of the ordinary citizen, when a public authority fails to do its duty by him…. It's a discretionary remedy, and the court has full discretion to withhold it in unsuitable cases*."

From the above exposition of the law it is clear that upon determining CS 21/2008 court issued a Decree. The next step that was necessary to enforce or realize the fruit of that litigation was for the successful party to extract the Decree and have it served upon the respondent for execution. According to counsel for respondents, they argue that this was not done.

In their submissions, however, the applicants argue that they extracted and served the Decree attached as "D2 to the application. The respondents however failed, refused and neglected to comply with the same. It was this failure, which prompted this application.

The question therefore for consideration is what remedy is open to the applicants?

The question above can be answered and resolved by resorting to the definition of the writ of mandamus as defined by ***Halisbury's Laws of England, 2001, 4th Edn Vol.1 (1) Para 119 at P.268*** thus:

> " *A command issued by the high Court directed to any person, corporation or inferior tribunal requiring him or them to do some particular thing specified in the command and which appertains to his or their office, and in the form of a public duty…. the breach of duty may be a failure to exercise a statutory discretion or a failure to exercise it according to proper legal principles*."

A Decree of a court is a Judicial Order/pronouncement carrying the force of law. It carries its force to the full until when it is fully satisfied by compliance, or by virtue of another superior order setting it aside, varying it or annulling it. When a Decree is extracted and served upon a party named therein, the orders contained in that order must be obeyed by the recipient, unless, he/she sets forth another order of a superior court whose effect is to stay that order. All these procedures are laid down on the law/statute books of Uganda. None of the above scenarios happened in order to explain the non compliance with the court/Decree as issued.

The Applicant in the grounds 1-5 of his Notice of Motion shows that the Respondent though duly served with the Court Order, has for long refused to comply with the order. Respondent has also not given any tangible reasons for his failure to obey the order. (grounds 1-4). Also in the affidavit in support under paragraphs 5, 6, 7, 8, 9, 10, it is shown that steps were taken by applicants to have Respondent act, but to no avail.

In paragraphs 3, 4, 13, 14, 15 of **Nakayenze**'s affidavit in reply, these matters are conceded. The law and facts as above therefore lead me to the conclusion that as argued by applicants, the refusal by the respondent to act, or explain to applicant why they did not obey a valid court order amounts to acting in bad faith, and acting in illegality to fail to fulfill its statutory duty of constituting itself to meet and consider the court order, and make a decision, as directed. The same behavior amounted to irrationality because as a government authority the respondent has lawyers who know the process of law and how to deal with Decrees of Court. I also find

elements of procedural impropriety in the behaviours of the Respondent as revealed by the affidavit sworn by **Anna Nakayenze** in reply under paragraph 14 in her revelation that; "*In respect to annexture "D" the suit proceeded exparte… the Court did not have an input from respondent, we are in the process to apply to set aside the said decree….*"

As earlier on noted a decree of court is a directive. It cannot be disobeyed by "wishful thinking". The actions of the respondent based on that "wish" are to that extent found improper, illegal and irrational.

The above finding defeats all the arguments in defence of the Respondent's action. There is no appeal. The findings in the case of Mash Investments Ltd v. Kachira Investment Co. Ltd CS.21/2008 and findings regarding LRV 2722 Folio 22 Plot 20 Maluku Road, are extraneous to this application. This was not pleaded by the Respondents in their specific pleadings neither is it relevant at this stage for an application based on another valid Decree of Court.
I do not find any relevance in the cited case of ***Makula International v. Cardinal Nsubuga & Anor. (1982) HCB 11***, as no court irregularity was shown by Respondents in the proceedings before court. The arguments raised were valid on appeal or revision by another due process of court but not tenable in this application.

For all reasons stated above, I find that the applicants are entitled to the prerogative writ of mandamus, to compel the Respondents to have consideration of the Decree of court in Cs 21/2008, and comply as ordered.

This application is granted with costs.

Henry I. Kawesa
JUDGE
01.11.2016