

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(EXECUTION AND BAILIFFS DIVISION)

5 **MISCELLEANOUS APPLICATION NO. 1224 OF 2016**

(ARISING OUT OF MISC. APPLICATION NO. 265 OF 2014)
(ARISING FROM HCRT CIVILI SUIT NO. 492 OF 2012 COMMERCIAL DIVISION)

10 **VAMBECO ENTERPRISES APPLICANT/ JUDGMENT CREDITOR**

VERSUS

1. ATTORNEY GENERAL

15 **2. SECRETARY TO TREASURY RESPONDENTS/ JUDGMENT DEBTORS**

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

20 By this application, the Applicant Company moved court to issue an order of mandamus against the Secretary to the Treasury compelling him to pay Shs. 2,811,445,494/- being the decretal sum in civil suit No. 492/2012.

25 Costs of the application were also applied for.

The application was supported by an affidavit of Mr. Varatharajan Viswalinghan, the Managing Director of the Applicant Company.

30 The grounds for the application briefly are:-

- 1) The Applicants filed a suit against the Attorney General where judgment was entered in favor of the Applicant and a decree and certificate of order against Government was consequently issued.
- 5 2) The Respondents were served with the decree and certificate of order against Government for payment of Uganda Shs. 2,811,445,494/- but to date payment has not been effected.
- 3) It is in the interest of justice and equitable that the application be allowed.
- 10 There is an affidavit in reply sworn by Juliet Luwedde Kayondo the Acting Accountant Officer in the Ministry of Justice and Constitutional Affairs.
 - She admits knowing the judgment passed in favor of the Applicant where the Respondents were ordered to pay general damages of Shs. 1,445,473,262/- together with interest on the sum at the rate of 12% per annum from the date of judgment (that is September 2010) until payment in full. And costs of the suit.
 - That payment is based on the funds released by the Ministry of Finance on a quarterly basis.
 - 20 - That payment is effected to Judgment Creditors, based on the funds allocated by the Ministry.
 - That the Ministry of Justice was requested to verify the judgment in favor of the Applicant.
 - 25 - That the First Respondent is in advanced stages of forwarding to the Ministry of Finance the verified and payable court award in favor of the Applicant.
 - That therefore the application for mandamus when negotiations are ongoing was made in bad faith.
 - 30 - That the Respondents have not refused or neglected to pay the Applicant.

- That the application should be stayed while the Respondents expeditiously explore all ___ to settle the claim.
- The application to issue the orders sought by the Applicant is opposed.

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The application was called for hearing on 04.07.16 in the presence of both Counsel.

Counsel for the Applicant applied to amend the motion under S.37 (1) of the Judicature Act, to correct the amount claimed to include the accrued interest for thirteen months and the taxed
10 costs. He relied upon the supplementary affidavit of Brian Othieno to confirm that the figure claimed was now Shs. 3,161,697,499/- .

Counsel for the Respondents did not object to the amendments and they were accordingly allowed.

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Counsel for the Applicant then went through the grounds of the Application and the figures ___ as of 30.04.16. He relied upon the supporting affidavit of the Managing Director and the supplementary affidavit of Brian Othieno.

20 He emphasized that there is a decree in favor of the Applicant against the Respondents issued by the High Court and the certificate of order against Government.

Further that a demand was made for the payment of the decretal sum by way of letter to the Solicitor General and the Second Respondent – Annextures C and D- received 31.03.15 and
25 30.04.15 respectively.

However that, the decree remains wholly unsatisfied to date.

He pointed out that the affidavit in reply acknowledges the judgment debt, the accrued interest
30 and that it has not been satisfied and that there are no negotiations going on.

Counsel for the Applicant denied any purported negotiations going on or that such efforts have been communicated to the Applicant.

And that since the demand for payment was made in March, 2015, interest of more than Shs. 300,000,000/- has accumulated. He asserted that this was a proper case for issue of the order of mandamus. The case of **Justice Kiryabwire and Others vs. Attorney General and 2 Others**
5 **Miscellaneous Application 783/16** was relied upon to support the submissions __ that it sets out the circumstances under which the order of mandamus may issue.

Contending that the Applicant had satisfied the conditions, Counsel prayed that the application be allowed.

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The application was opposed by Counsel for the Respondents relying on the affidavit in reply.

She argued that, while the award and interest are not denied, the contention is whom the Respondent is supposed to pay.

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The reason she emphasized is that insufficient funds are released by the Ministry of Finance and that has resulted in the delay to pay the Applicants. It was prayed that the Respondents be allowed at least two months in which to pay the Applicant.

20 In rejoinder, it was submitted that the prayer for two months be disallowed as _ was __ to suggest that anything would be due even if the Respondents were given two months.

It is more than one year Counsel stated, since the certificate of order was served.

25 The Applicant has been put in difficult circumstances since judgment was given over six years ago and their business transactions have been affected.

The Respondent has not demonstrated any willingness to perform its duties and unless the order issues, the situation is likely to continue endlessly.

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Earlier prayers were reiterated.

Whether this is a proper case for issue of the order of mandamus is the issue to be determined by this court.

Under S.37 (1) of the Judicature Act, ***“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 and Government to do so.”***

Under S.37 (2) of the same Act, ***“an order may unconditionally pr on such terms and conditions as the High Court thinks fit.”***

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

- A clear legal right and a corresponding duty in the Respondent.
- 15 • That some specific order __ which the law requires that particular Officer to do, has been omitted to be done by him.
- Lack of any alternative.
- 20 • Whether the alternative remedy exists but is inconvenient, less beneficial or less effective or totally ineffective.

It should be borne in mind that ***“mandamus will not issue to enforce doubtful rights. The duty to perform an act must be indisputable and plainly defined.”*** - Refer to **Nampogo Robert and Another vs. Attorney General HCC CV MC 0048/09.**

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The Applicant in the present case obtained a judgment against the First Respondent in HCCS 492/12. A decree was issued by court on 11.03.15. - Annexure A.

30 Following the said decree a certificate of order was issued on 30.03.15. – Annexure B. The certificate of order against Government was served to the Solicitor General on 31.03.15 and receipt thereof was acknowledged by the Ministry of Justice and the Ministry of Finance. – Annexure C.

A copy of the decree and the certificate of order against Government were forwarded to the Second Respondent by letter dated 15.04.15. The stamps therewith indicated they were received by the Ministry of Finance and the Ministry of Justice on 30.04.15. There are no signatures in the stamps. – Annexure “D”.

The same letter of 15.04.15 also requested that arrangements be made to settle the sums due immediately to avoid accumulating interest therein.

10 The Bill of Costs was taxed and allowed at Shs. 21,406,898/- as evidenced by the certificate of Taxation dated 02.06.16. – Annexure “A” to the supplementary affidavit.

While it is admitted for the Respondent that judgment was given to the Applicant in the terms already mentioned herein, no payment has been effected to date.

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The Respondents contend that payment to all Judgment Creditors depends upon the funds allocated to the First Respondent by the Ministry of Finance.

And that the First respondent was requested to verify the judgment in favor of the Applicant and forward it to the Second Respondent.

It is also the contention of the Respondents that negotiations as to the payments continue between the parties and that the Respondents have not refused or neglected to pay the Applicant.

25 This court finds that the Applicant has proved that a clear legal right exists in its favor to be paid the decretal sums arising out of the decree and taxed costs of the suit and that the Respondents have a corresponding duty to pay the sums due.

The Respondents are ___ consented to the amendment of the decree to include the Taxed Costs and the accrued interest on the decretal sum from 2010.

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It is an established principle of law that payments decree against Government have to be made by the Attorney General (First Respondent) through the Treasury Officer of Accounts (Second Respondent).

- 5 The decree or order of payment made against Government becomes a statutory duty for the Government Officers concerned to perform the duty.

The duty of the Respondents to pay the sums decreed to the Applicant is accordingly undisputable as it is plainly defined.

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The alleged negotiations for payment are denied by the Applicant. And it is not disputed that the continued failure and or refusal to pay the Applicant has occasioned continued business loss and damages and has greatly inconvenienced the Applicant.

- 15 It is on record that way back in July, the Respondents requested for more time of at least two months to enable them settle the claim due to the Applicant.

The two months long expired and there is no indication of any effort made by the Respondents to clear the claim of the Applicant.

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It therefore only fair and just in the circumstances that the application be allowed and the writ of mandamus issued to compel the Respondents to perform their duty and pay the Applicants the decretal sum together with the accrued interest from 2010, and costs of the suits.

- 25 Continued failure to pay the sums without any justifiable reason amounts to contempt of court orders by the Respondents.

The application is allowed. The writ of mandamus to issue to compel the Respondents to pay the Applicant the decretal sum in civil suit 492/2012 together with accrued interest at the rate of 21%
30 per annum from September 2010, until payment in full plus costs of the suit.

The taxed costs of the present application are also granted to the Applicant.

5 **Flavia Senoga Anglin**

Judge

06.12.16