

The Respondents have a statutory duty to pay the Applicants.

The application was supported by the affidavit of the First Applicant which was read and relied upon at the hearing.

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On 02.02.17 when the application was called in absence of the Respondents, Counsel for the Applicant sought leave of court to amend the motion to include the Attorney General. Before then, the First Respondent was the Ministry of Finance.

10 The application was allowed and the matter was adjourned to 22.02.17, to enable the Applicants serve the amended motion on to the Respondents.

On 22.02.17, Counsel for the Applicants was in court but none of the other parties were. He submitted that the amended motion had been served on the Respondents as confirmed by the affidavit of service filed on 10.02.17. And that, since the Respondents were not in court, the application should proceed exparte.

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Looking at the affidavit of service, the Respondents had been served on 07.02.17 and the stamps acknowledging receipt of the motion appeared on the amended motion. Both the stamp from the Ministry of Finance and the Ministry of Justice and Constitutional Affairs indicated that's service had been effected on 07.02.17.

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There being no affidavit in reply and without any reason having been advanced for the absence of the Respondents, court allowed hearing to proceed exparte.

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Counsel for the Applicant went through the amended motion, citing the laws under which the application was made, the grounds for the same plus the paragraphs of the supporting affidavit. That is paragraphs 2,3,4,5,6 – 11 thereof.

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Counsel then submitted that mandamus issues where an Officer of Government fails to do what they are supposed to do. He pointed out that, in the present case, the Secretary to the Treasury was supposed to pay the money due and owing to the Applicants under the Certificate of Order against Government, but had not done so.

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It was then prayed that court allows the application and issue the order sought.

The case of **Benon Turyamureeba and 132 Others vs. Attorney General and Treasury Officer of Accounts/ Secretary to Treasury Miscellenous Application 440/2005** of Justice Remmy Kasule and the case of **Southern Range Nyanza Ltd vs. Attorney General and the Treasury Officer of Accounts and Secretary to Treasury Miscellenous Application 2157/2016** were cited in support..

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The issue for court to determine is **whether this is a proper case for issue of the order of mandamus.**

5 ***“The High Court has discretion to grant an order of mandamus in all cases in which it appears to be just and convenient.”***

“The order may be granted unconditionally or on such terms and conditions as the court thinks fit.” – See S.37 (1) and (2) of the Judicature Act.

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In order to obtain a writ of mandamus, the Applicant has to establish the following circumstances:-

- A clear legal right and a corresponding duty in the Respondent.

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- That some specific act or thing that the law requires that particular officer to do, has been omitted to be done.

- Lack of any alternative.

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

25 Courts have clearly stated that ***“the duty to perform an act must be indisputable and plainly defined as mandamus will not issue to enforce doubtful rights.”*** – See the case of **Nampogo Robert and Another vs. Attorney General HCCMA 0048/2009.**

30 In the present case, the Applicants obtained judgment against the Second Respondent in Civil Suit 136/2012 on 23.03.16. A decree was extracted on the date where inter alia it was decreed that the Applicants be paid by the Attorney General the sum of Shs. 2,720,818,100/- with interest at the rate of 12% per annum from the date of judgment until payment in full.

Costs of the suit were also granted to the Applicants.

35 A Certificate of Order was issued against the Second Respondent on 08.06.16 where the principal sum due and owing was indicated, together with interest which was then in the total sum of Shs. 320,498,172.- and fixed costs of Shs. 285,776,360/-.

40 The Minister of Justice by letter dated 14.06.16 directed the Respondents to pay the amounts due in the said certificate.

But despite the said directive of the Minister, the Respondents have failed to settle the amount due, to the detriment of the Applicants.

5 The affidavit in support of the application was not disputed by the Respondents and there is no affidavit in reply an indication that the application is not contested.

10 It has been established by courts ***“a decree or order of payment made against Government becomes a statutory duty for the Government Officer concerned to perform the duty. And that payments decreed against Government have to be made by the Attorney General through the Treasury Officer of Accounts.”***

15 It is clear from the undisputed facts of this case that there is a clear duty upon the Respondents to pay the sums of money decreed against them by court.

However, that the Respondents have neglected or omitted to pay the said sums of money despite clear directions by the Minister to effect the order of court.

20 The Applicants have no other legal means of enforcing their right under the Certificate of Order against Government. And this court finds that, the continued refusal by the Respondents to pay the decretal sum and accrued interest amounts to infringement and denial of the Applicants’ rights to enjoy the fruits of their judgment.

25 I accordingly find that the Applicants have proved the circumstances necessary to obtain the order sought in this application.

30 They have a clear legal right to be paid the decretal sum together with the interest at the rate allowed by court from the date of judgment until payment in full. Together with the taxed costs that were allowed by court.

The Respondents have a corresponding duty to pay the decretal sum, the interest that has accrued and the costs, which they have failed to do to date.

35 As already pointed out, there is no viable alternative available to the Applicants as attachment of the Respondent’s property is out of question.

40 However, I wish to observe that the damages sought by the Applicants at the rate of 10% of the money due are not payable by the Respondents as they were not decreed by court and are likely to raise questions. Mandamus cannot issue to enforce doubtful or disputed rights.

Court finds it fair and just to allow the application under S.37 (1) of the Judicature Act and grant the order of mandamus in respect of the sums that were allowed by court.

5 The Respondents' continued refusal and or failure to pay the amounts decreed by court continues to grossly inconvenience the Applicants.

The application is therefore allowed for all those reasons. The writ of mandamus to issue to compel the Respondents to perform their statutory duty to pay the Applicants the sums due and owing as per the decree and Certificate of Order against Government.

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Taxed costs of this application are also granted to the Applicants.

15 **FLAVIA SENOGA ANGLIN**
JUDGE
23.03.17