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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**[CIVIL DIVISION]**

**MISCELLANEOUS CAUSE No.0094 OF 2019**

*(Arising from Civil Appeal No.0028 of 2015)*

10 **MUKASA JOHN ::: APPLICANT**

**VERSUS**

**1.ATTORNEY GENERAL**

**2.TREASURY OFFICER OF ACCOUNTS**

**SECRETARY TO THE TREASURY ::::::::::::::::::::::::::::::: RESPONDENTS**

15 **BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW**

**RULING:**

Mukasa John (*hereinafter referred to as the “Applicant”*) brought this application against the Attorney General and the Treasury Officer of Accounts/ Secretary to the Treasury (*hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, respectively*); under Section 37 of the Judicature Act Cap.13; Rules 3 and 6 of the Judicature (Judicial Review) Rules 2009; seeking for orders that;

- 1. An order of mandamus doth issue to compel the Respondents to pay the Applicant UGX.31,305,600/= to**

5        **satisfy a decree and certificate of order in Civil Appeal No.  
28 of 2015.**

**2. Costs of the application be paid by the Respondents.**

The grounds of the application are that the Applicant was the judgment creditor in Civil Appeal No. 28 of 2015 against the 1<sup>st</sup> Respondent. He extracted a certificate of order against Government and the same was served on 4/12/2018 together with a formal demand for the payment of the judgment debt. On 8<sup>th</sup> February 2019 the Applicant issued a further demand to the 1<sup>st</sup> Respondent for the payment of the judgment debt. The Applicant contends that the Respondents have deliberately refused to pay the judgment debt to his detriment, and that it is in the interest of justice that this application be granted and an order of mandamus be issued. The grounds are supported by the affidavit of the Applicant simply amplifying them. It is thus not necessary to reproduce the full content in order to avoid repetition.

The Respondents were served with the hearing notices several times and each time acknowledged receipt of the service, but neither filed a reply nor appeared in court to defend the application. The matter thus proceeded *ex parte* after court was satisfied upon the affidavit

5 of service that the Respondents had been duly and effectively served  
with the court process. Mr. Rubaizi Jacob of *M/s Owoyesigyire,*  
*Muhereza & Co Advocates*, counsel for the Applicant, proceeded and  
filed written submissions to argue the application and supplied an  
authority to back his arguments, which court has taken into  
10 consideration in this ruling. The issues for determination are as  
follows;

***1. Whether the present application is a proper case for the  
issuance of the writ of mandamus.***

***2. What remedies are available to the parties?***

15 ***Resolution of the issues:***

***Issue No.1: Whether the present application is a proper case  
for the issuance of the writ of mandamus.***

The term “mandamus” comes from a Latin word *mandare*, which  
literally means ‘we command’. The writ of mandamus is thus a  
20 command issued by the High Court to command an administrative  
authority or statutory body or tribunal, directing it to perform a  
peremptory duty imposed by law. See: ***Re An Application by  
Bukoba Gymkhana Club (1963) 478 (T)***; and ***R. vs. Poplar***

5 ***Metropolitan Borough Council, ex parte LCC (No.2) [1992] 1 KB***  
**95.**

Section 36 of the Judicature Act (supra) provides the prerogative writ of mandamus as one of the remedies which the High Court is empowered to issues. It provides as follows;

10 ***“36. Prerogative orders.***

***(1) The High Court may make an order, as the case may be, of—***

***(a) mandamus, requiring any act to be done;...”***

In an application for an order of mandamus, the onus lies on the Applicant to effectively demonstrate, by evidence or otherwise, that he has a right derived from an order specified in a decree of court, and contained in a certificate of order extracted and served against the Government, and that the Respondents have refused and/ or neglected and/ or failed to honor the certificate of order to pay the amount stated in the decree. This position is well articulated in the case of ***Intex Construction Ltd vs. Attorney General & Anor HCMC No. 737 of 2013***, where the court, inter alia, held that;

***“... the applicant for an order for mandamus must show that; it enjoyed a right, the right is specified by a decree***

5           ***of court, a certificate of order against the government  
has been extracted and duly served on the respondents  
and that the respondents refused to honor the certificate  
of order by refusing to pay the amount decreed in the  
certificate of order.”***

10 As applicable to facts of the instant application, the Applicant’s  
evidence shows that he has fully complied with all the above  
requirements in his application for mandamus. In his uncontested  
affidavit in support, at paragraphs 2, 3, 4 and 5, the Applicant  
shows that he is entitled to a payment in a sum of  
15 UGX.31,305,600/=, being judgment debt in *Civil Appeal No.0028 of  
2015*, where the 1<sup>st</sup> Respondent was a party. The Applicant  
extracted a certificate of order against Government and served the  
same on the 1<sup>st</sup> Respondent as is shown in *Annexure “A”* to the  
affidavit in support. The 1<sup>st</sup> Respondent on 04/12/2018 was served  
20 with, and acknowledged receipt of, a formal demand with a  
certificate of order attached.

Further, at paragraph 6 of the affidavit in support, the Applicant  
shows, in *Annexure “C”* to the affidavit in support, that he  
requested the 1<sup>st</sup> Respondent to pay the judgment debt by yet

5 another formal demand served on the 1<sup>st</sup> Respondent on 08/02/  
2019. Also at paragraph 7 of the affidavit in support, the Applicant  
demonstrates that the Respondents have deliberately refused to  
honour the certificate of order against Government to pay him the  
decretal sum of UGX.31,305,600/=, without unjustifiable reason.

10 Article 250 of the Constitution 1995, provides as follows;

***“Civil proceedings by or against the Government shall be  
instituted by or against the Attorney General; and all  
documents required to be served on the Government for  
the purpose of or in connection with those proceedings  
shall be served on the Attorney General.”***

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In effect, the Attorney General is the Chief Government lawyer and  
legal advisor upon whom the mandate falls to represent  
Government in any civil proceedings by or against the Government.

Regarding service of certificate of order against Government, Section

20 19 of the Government Proceedings Act, provides as follows;

***“A copy of any certificate issued under this section may  
be served by the person in whose favour the order is made  
upon the Attorney General.”***

5 The 1<sup>st</sup> Respondent was served with a certificate of order requiring  
him to pay the decretal sum of UGX.31,305,600/= which he has  
refused and /or failed to honour. In all, the Applicant has  
discharged the onus upon him and fulfilled all the legal  
requirements, and he has no any other remedy under the law. That  
10 renders the present application a proper case for the grant of the  
order of mandamus. Issue No.1 is answered in the affirmative.

***Issue No.2: What remedies are available to the parties?***

The Applicant seeks an order of mandamus to compel the  
Respondents to pay him the amount of UGX.31,305,600/= to  
15 satisfy a decree and certificate of order in *Civil Appeal No. 28 of  
2015*, and costs of this application. Section 37 of the Judicature Act  
(supra) empowers this Court to grant an order of mandamus. For  
ease of reference it is quoted below.

***“37. Mandamus, etc. by interlocutory order.***

20 ***(1) The High Court may grant an order of mandamus or  
an injunction or appoint a receiver by an interlocutory  
order in all cases in which it appears to the High Court  
to be just or convenient to do so.”***

5 As already found, under issue No.1 above, the instant application is  
a proper case for the issuance of the writ of mandamus against the  
Respondents. It is noted that the Respondents did not even oppose  
the application. The principle in **Massa vs. Achen [1978] HCB 297**,  
and also in **Domaro Behangana & Anor vs. Attorney General**,  
10 **Const. Petition No. 53 of 2010** applies, that where facts are sworn  
to in an affidavit and these are not denied or rebutted by the  
opposite party the presumption is that they are accepted as the  
truth. Based on the foregone reasons, the application is allowed  
with the following orders;

15 **1. An order of mandamus doth issue compelling the  
Respondents to pay the Applicant the amount of  
UGX.31,305,600/= to satisfy a decree and certificate of  
order in Civil Appeal No. 28 of 2015.**

**2. The Applicant is awarded costs of this application.**

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**BASHAIJA K. ANDREW  
JUDGE  
15/05/2020**