

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**MISCELLANEOUS APPLICATION NO.04 OF 2020**  
**ARISING FROM MISCELLANOUES APPLICATION NO. 194 OF 2020**  
**ARISING FROM HCCS NO. 487 OF 2018(CIVIL DIVISION)**

**STEPHEN PETER NAGENDA----- APPLICANT**

**VERSUS**

- 1. THE SECRETARY,UGANDA LAND COMMISSION**
- 2. UGANDA LAND COMMISSION----- RESPONDENTS**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant filed an application for Judicial Review under Section 33,36 &37 of the Judicature Act as amended, Rules 3(1)(a),6 of the Judicature (Judicial Review) Rules, 2009 for the following relief that;

- a) An order of Mandamus doth issue against the Respondent 1<sup>st</sup> respondent compelling him/her to pay UGX 460,000,000/= and Interest thereof of 20% per annum from 29<sup>th</sup> October 2014 when valuation was confirmed till payment in full, general damages of UGX 100,000,000/= and costs of the suit taxed UGX 19,778,000/= all currently totalling to UGX 1,062,778,000/=.
- b) Costs of the application be provided for.

The grounds in support of this application were stated in the supporting affidavit of the applicant but generally and briefly state that;

1. The applicant sued the 2<sup>nd</sup> Respondent in Civil Suit No. 487 of 2018 seeking to recover 460,000,000/= being the balance due and owing for his suit land which fell under the Land Fund Programme for compensation of absentee landlords;
2. On 28<sup>th</sup> October 2019, *Justice Lydia Mugambe* delivered judgment in his favour for a decretal sum of shs 460,000,000/=, Interest thereof of 20% per annum from 29<sup>th</sup> October 2014 when the valuation was confirmed till payment in full, general damages of shs 100,000,000/= and costs which were taxed at shs 19,778,000/=.
3. The 2<sup>nd</sup> respondent did not appeal the said decision and thereafter the applicant started demanding for payment of the decretal amount from the 2<sup>nd</sup> respondent through the accounting officer of the 2<sup>nd</sup> respondent-the 1<sup>st</sup> respondent.
4. That on or about 14<sup>th</sup> February 2020, the applicant's lawyer Counsel Sam Mayanja of M/s Kampala Associated Advocates together with Mrs Marion Nagenda met the officials of the 2<sup>nd</sup> respondent regarding the payment of the decretal sum. Thereafter, the Chairperson of the 2<sup>nd</sup> respondent wrote to the lawyers, M/s Kampala Associated Advocates, stating that they failed to pronounce themselves and did not have a solution for the applicant.
5. The Chairperson did not give any valid or legitimate answer or reason why they did not want to pay the applicant.

6. That on 26<sup>th</sup> February 2020, the applicant's new lawyers M/s Kakuru and Company Advocates wrote to the 1<sup>st</sup> and 2<sup>nd</sup> respondents demanding for the payment of the total decretal amount which at the time amounted to shs 1,062,778,000/= but the communication has never been responded to.
7. That on 9<sup>th</sup> March 2020, the applicant's lawyers wrote another reminder to the respondent, demanding the payment but the same was also ignored.
8. That the applicant is frail and of old age and wishes this matter be completed and the interests of justice be served.

The respondents never opposed this application and he did not file any affidavit in reply although their lawyer appeared in court.

At the hearing of this application the court directed the parties to file submissions but the respondents never filed any submissions. I have considered the submissions filed by the applicant.

One issue was proposed for court's resolution;

***Whether the applicant is entitled to the grant of an Order of Mandamus?***

The applicants were represented by *Mr Gad Wilson* whereas the respondents were represented by *Franklin Owizera*-State Attorney.

Counsel for the applicants submitted that the applicant seeks to compel the 1<sup>st</sup> respondent as a public officer or body to perform a public duty imposed on them. Citing the case of *Muhangi Martin v Uganda land Commission Misc. Cause No. 480 of 2015 arising from Civil Suit No. 12 of 2014(Jinja)* Court held that the applicant seeking an order of Mandamus must;

- a) Show a clear legal right to have the thing sought by it to be done.
- b) Show that a demand for performance was made and was unequivocally refused.

The applicant in this matter has a judgment of this court and a decree therefrom and the 1<sup>st</sup> respondent has a duty to give effect to the orders made thereunder for the payment of the decretal sum.

The 1<sup>st</sup> respondent has refused or failed to make such payment of satisfy the decree as demanded by the applicant in spite of the several demands and reminders. It is the failure to satisfy an obligation of payment that is compelling the applicant to move court to also compel the respondent to satisfy the obligation and decree.

The 1<sup>st</sup> respondent's office has the duties set out under section 50 of the Land Act which includes among others being an Accounting Officer of the 2<sup>nd</sup> respondent. This means that he has an obligation to satisfy the orders of court by effecting payment.

It is the duty of the Secretary –Uganda Land Commission to pay or authorise payment of the decretal amount or to bring it to the attention of the responsible office through a budget that there is debt due and owing.

Public officers can be compelled to perform a statutory duty as obligated by any law. See *John Jet Tumwebaze vs Makerere University & 2 others HC Civil Application No. 78 of 2005*.

The applicant is before court seeking an order of Mandamus. Under Rule 3(1)(a) and 6(1) of the Judicature (Judicial Review) Rules 2009 this court is mandated to issue an order of Mandamus.

An applicant for an Order of Mandamus is required to establish the following:

- a) A clear legal right and corresponding duty on the Respondent
- b) That some specific act or thing, which the law requires that particular officer to do, has been omitted to be done by him;
- c) Lack of an alternative, or
- d) Whether an alternative exists but is inconvenient, less beneficial or totally ineffective.

See *Hon Justice Geoffrey Kiryabwire & Others vs Attorney General High Court Miscellaneous Application No. 783 of 2016*

The applicant has satisfied the above requirements and the respondent has not defended this application which is an indication that they admitted to the truthfulness of the averments in the affidavit in support. See *David Kato Luguzza & Another vs Evelyn Nakafeero & Another HCCA No. 37 of 2011*

*An order of Mandamus doth issue against the Respondent 1<sup>st</sup> respondent compelling him/her to pay UGX 460,000,000/= and Interest thereof of 20% per annum from 29<sup>th</sup> October 2014 when valuation was confirmed till payment in full, general damages of UGX 100,000,000/= and costs of the suit taxed UGX 19,778,000/= all currently totalling to UGX 1,062,778,000/=.*

The respondent is directed to effect the payment within this financial year since by the time of making the budget estimates for the financial year 2020-2021 the judgment of this court had already been delivered and they ought to have included it as a debt due and owing.

I make no order as to costs.

I so order

**SSEKAANA MUSA**

**JUDGE**

**2<sup>nd</sup>/10/2020**