

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

MISC. CAUSE NO. 288 OF 2018

ONGIERA SAMUEL & 39 OTHERS ::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

1. ATTORNEY GENERAL
2. SECRETARY TO THE TREASURY ::::::::::::::::::::::::::::::: RESPONDENTS

RULING

BEFORE: LADY JUSTICE LYDIA MUGAMBE

1. The Applicants filed for mandamus against the Respondents to compel them to comply with the ruling and orders of the Equal Opportunities Commission (herein after the Commission) and forthwith pay to the Applicants Ug. Shs. 4,931,269,000 (Uganda Shillings Four Billion Nine Hundred Thirty One Million Two Hundred Sixty Nine Thousand) being general and special damages awarded by the Commission vide complaint No. EOC/NR/034/2016.
2. The Applicants were represented by Mr. Swabur Marzuq of M/s. Lwere, Lwanyaga & Co. Advocates and the Respondents were represented by Mr. Ojambo Bichachi from the Attorney General's Chambers.
3. The application was supported by the affidavit of Mr. Ongiera Samuel a beneficiary and attorney of the rest of the beneficiaries. He averred that the Applicants are among persons who lost their properties in the west Nile region at the hands of the National Resistance Army between 1986 and 1989 which at the time was an agent of the first Respondent. The Applicants at all times sought compensation from the government with no avail yet the government was compensating other similar victims in other regions of the country. As a

result of the said discrimination, the Applicants filed a complaint with the Commission which was heard on merit and it awarded them the decretal sums. However the Respondents have refused to pay the Applicants the said monies despite having knowledge of the Commission's decision.

4. The Respondents opposed the application through the affidavit in reply of Mr. Oburu Odoi Jimmy a principal State Attorney. He averred that this application does not demonstrate any grounds that warrant the grant of judicial review. The decree, orders and judgment the Applicants purport to enforce were not passed and made by this court thus the application is misplaced and conceived. There is no certificate of order against the government for payment of any sums in this matter. There is a similar matter against the Attorney general filed in Arua High Court seeking payment/compensation for loss of life and livestock between 1986 and 1989 that was filed by the Hon. Piro Santos on behalf of the people in the west Nile.
5. In rejoinder Mr. Ongiera deponed that the Commission issued a certificate of order against the first Respondent which was duly served onto the first Respondent. The case alluded to by Mr. Oburu is different and the matters therein don't concern the Applicants. Further it has been overtaken by events following the ruling by the Commission. There is an order from the Commission that requires enforcement but cannot be enforced by the Applicant without the sanction of this court hence this application.
6. Section 36(1) of the Judicature Act empowers the High court to make an order of mandamus requiring any act to be done and section 37 empowers this court to grant an order of mandamus where it appears to court to be just and convenient.
7. In **Stream Aviation Ltd v. the Civil Aviation Authority Misc. Application No. 377 of 2008** arising from Misc. Cause No. 175 of 20018, Justice FP Musoke Kibuuka held that mandamus would ordinarily issue in situations where the Applicant has no alternative remedy. In **Semwo Construction Company v. Rukungiri District Local Government HC MC 30 of 2010** Justice Bamwine (as he then was) explained that: "... mandamus is a

prerogative writ to some person or body to compel the performance of a public duty. From the authorities, before the remedy can be given, the applicant must show a clear legal right to have the thing sought by it done, and done in the manner and by a person sought to be coerced. The duty whose performance is sought to be coerced by mandamus must be actually due and incumbent upon that person or body at the time of seeking the relief. That duty must be purely statutory in nature, plainly incumbent upon the person or body by operation of law or by virtue of that person or body's office, and concerning which he/she possesses no discretionary powers. Moreover, there must be a demand and refusal to perform the act which it is sought to coerce by judicial review." See also **Shah v. Attorney General (No.3) [1970] EA 543¹**.

8. Accordingly, the Applicant has to show that he/she enjoyed a right and that he has extracted a certificate of order and duly served it on the Respondent. The Applicant must also show that the Respondent declined to honor the certificate of order against government by refusing to pay the amount decreed.
9. Section 19 of the Government Proceedings Act provides for satisfaction of orders against government. It provides that execution against government is commenced by the judgment creditor obtaining a certificate of order which certificate may be then served on the Attorney General and the relevant secretary to the treasury. Section 19(3) provides that "If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the treasury officer of accounts or such other Government accounting officer as may be appropriate shall, subject as hereafter provided, pay to the person entitled or to his or her advocate the amount appearing by the certificate to be due to him or her together with the interest, if any, lawfully due on that amount; but the court by which any such order as is mentioned in this section is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part of it, shall be

¹This writ is used to compel public officers to perform duties imposed on them by Statute or Act of Parliament

suspended, and if the certificate has not been issued may order any such directions to be inserted in the certificate.”

10. In this case the Applicants are judgment creditors for Ug. Shs. 4,931,269,000/= in complaint No. EOC/NR/034/2016 before the Commission. They obtained a certificate of order and served it on the Attorney General. He received the same on 20th December 2018 but has not paid. From 23rd March 2018 when they got judgment from the Commission to date, the Applicants have demanded the judgment value to no avail and there is no appeal of the Commission’s decision.

11. With this background, this is a proper case and it is just and convenient within the meaning of section 36(1) of the Judicature Act to grant an order of mandamus. Accordingly this application is allowed, an order of mandamus is issued directing the Respondents to pay the Applicants the suit monies accruing from complaint No. EOC/NR/034/2016 before the Commission. Costs of this application are awarded to the Applicants.

I so order.

Lydia Mugambe
Judge
10th May 2019