



2. The grounds upon which this application is based are set out in the affidavit of the Applicant sworn on 4<sup>th</sup> November, 2020, which are that:
- (a) the Applicant was arraigned before court on the 21<sup>st</sup> day of December, 2021 and remanded at Kitale Government Prison where he was in custody until the 8<sup>th</sup> day of June, 2017, when he appeared before court to take plea;
  - (b) the Applicant was indicted for the offence of aggravated defilement contrary to section 129 (3) & (4) (a) of the Penal Code Act in this court vide Criminal Case No. 093 of 2017;
  - (c) the case was cause listed for the criminal session before Lady Justice Margaret Mutonyi vide Criminal Case No. 093 of 2017 on the 8<sup>th</sup> day of June, 2017;
  - (d) when the case came up for hearing, the Applicant was brought to court on stretchers and he took plea while lying on his back and was just lifted by fellow inmates to support him after he suffered a broken backbone;
  - (e) in court, the trial Judge asked the Applicant what was wrong with him and he informed her that he was beaten by a prison warden a one Afande Otim while digging in the Prisons Farm;
  - (f) the Applicant also informed the trial Judge that he had been in the state of disability for two years in Murchison Bay Hospital;





- (g) the Applicant further informed court that when he was arrested, he was examined at Buvuma Health Centre on the 19<sup>th</sup> day of December, 2012 and a medical report was made showing that he did not have any injuries on his body nor did he have any medical condition of significance;
- (h) when the Trial Judge was convinced that the Applicant's rights had been grossly violated while in lawful custody, she ordered that the Applicant be compensated UGX. 200,000,000/= for the pain, physical torture and suffering that was meted unto him;
- (i) because the Applicant could not pursue his rights, his lawyers from M/s Rwakafuuzi & Co. Advocates served the Respondent with copies of the order and certificate of the order against the Government;
- (j) the Respondents have not paid the Applicant despite being duly served with the said certificate of order against the Government and numerous reminders;
- (k) it is unfair, improper and illegal for the Respondents to refuse to pay the Applicant in accordance with the order and certificate of order against the Government;
- (l) the torture from which the cause of action that gave rise to the ruling and order was perpetrated by members of the Uganda Prisons;

A handwritten signature in blue ink is located in the bottom right corner of the page. Below the signature is a faint, circular stamp, likely an official seal or stamp, which is mostly illegible due to fading.

- (m) the 1<sup>st</sup> & 2<sup>nd</sup> Respondents are vicariously liable to pay the judgment debt brought about by actions or omissions of the 3<sup>rd</sup> Respondent;
- (n) it is only fair and just that an order of mandamus be issued compelling the Respondents to pay the Applicant compensation of UGX. 200,000,000/= for the pain, physical torture and suffering that was meted unto him while under lawful custody; and
- (o) if the writ of mandamus is issued against the Respondents, the Applicant will be paid his compensation.
3. The Respondent opposed the application through the 1<sup>st</sup> Respondent who filed an affidavit in reply deponed by Mr. Sam Tusubira, a State Attorney in the Attorney General's Chambers, on the following grounds that:
- (a) the instant application is misconceived, incompetent and it amounts to an abuse of court process;
- (b) based only upon the statement of the Applicant and evidence given at the Bar by the Applicant's counsel and without evidence being called or witnesses examined, the court arrived at a determination that the right of the convict had been violated and condemned the 1<sup>st</sup> Respondent to the payment of damages;
- (c) the 1<sup>st</sup> Respondent was not given an opportunity to defend itself by giving its own evidence, to make, correct or to controvert any



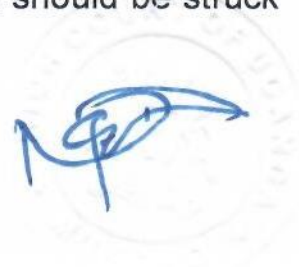
relevant statements brought forward by the 1<sup>st</sup> Respondent to its prejudice, hence denied a right to a fair hearing;

- (d) the Applicant was convicted on his own plea of guilty for the offence of aggravated defilement c/s section 129 (3) & (4) (a) of the Penal Code Act, Cap. 120;
- (e) the 1<sup>st</sup> Respondent filed a miscellaneous cause in this honourable court seeking to set aside the orders of Lady Justice Margaret Mutonyi for reason that it was not accorded a fair hearing in contravention of the provisions of Article 28 of the Constitution of the Republic of Uganda, 1995;
- (f) with regard to awards made against the government, the right to apply for enforcement of such decrees by way of a writ of mandamus does not accrue unless the Applicant provides evidence to show that the amount sought to be recovered forms part of expenditure that is authorized for the financial year during the enforcement is sought;
- (g) payment of debts owed by the Government follows an elaborate process;
- (h) in order to satisfy the order which forms a public debt, such monies must be charged on the Consolidated Fund and other public funds of Uganda;





- (i) no monies can be withdrawn from the Consolidated Fund except to meet expenditure charged on the Fund by the Constitution or by an Act of Parliament and where the issue of those monies has been authorized by an Appropriation Act, a Supplementary Appropriation Act;
  - (j) withdrawal of money from the Consolidated Fund must also be approved by the Auditor General and in a manner prescribed by Parliament;
  - (k) the 2<sup>nd</sup> Respondent pays out money only where the funds are approved and appropriated by Parliament through an appropriation bill;
  - (l) the court award shall be paid only when Parliament appropriates money for the Respondents to satisfy the Applicant's decree; and
  - (m) the Respondents will be prejudiced if the order is granted because public funds will be lost.
4. In rejoinder, the Applicant deponed that the Respondents were served twice with the Notice of Motion on the 30<sup>th</sup> May, 2022 and hearing notices on 28<sup>th</sup> June, 2022, requiring them to file and serve their replies within 15 days but the Applicant's lawyers were belatedly served with the Respondents' affidavit in reply filed on 19<sup>th</sup> September, 2022, for which it shall be prayed to be struck out for offending procedural rules governing this honourable court. That the affidavit in reply has deliberate falsehoods and contradictions for which it should be struck



off. The evidence of the Applicant's torture was given by him in answer to the question from court and not by counsel as Sam Tusubira would wish to mislead court.

5. Further rejoinder by the Applicant was that the state was ably represented by the competent line Department of Directorate of Public Prosecutions and the orders in Criminal Case No. 093/2017 were made with full and active participation of the office of the DPP. Also that the Respondents have been aware of their obligation to satisfy the orders of this honourable court from July, 2017 but contemptuously chose to ignore the same necessitating the instant application. That the Respondents have not attached any documentation to their reply in support of the allegations.
6. The Applicant's preliminary objection about the late filing of the affidavit in reply by the 1<sup>st</sup> Respondent is untenable because in all the occasions that service of court process was directed by this court, it was found to be ineffective. Therefore, this application was considered inter-parties though there was no representation from the Respondents' side in court during the hearing of the application. The preliminary objection is therefore over ruled and I shall proceed to determine this application on its merit.
7. At the hearing of this application, the Applicant was represented by Counsel Isotah Sulaiman from M/s Katuntu & Co. Advocates who filed written submissions. The Respondents did not file written submissions as directed by this honourable court and were not represented at the





hearing of the application. The Applicant's counsel filed the Applicant's written submissions on 3<sup>rd</sup> November, 2022, reiterating the Applicant's averments in his supporting affidavit and affidavit in rejoinder which I find unnecessary to reproduce.

**Issue: Whether the court should issue a writ of mandamus.**

8. In an application for judicial review the court may grant one or more of the following remedies:
- (a) Certiorari: this remedy quashes an unlawful decision of a public authority;
  - (b) Prohibition: this remedy prohibits an unlawful act which a public authority is proposing to perform;
  - (c) Mandamus: this remedy compels a public authority to perform a public duty.

According to Michael Allen & Brian Thomson in *Cases & Materials on Constitutional & Administrative Law*, 4<sup>th</sup> Edition at page 533, these prerogative orders may not be granted against the Crown, although they may be granted against individual ministers of the Crown.

9. Section 36 of the Judicature Act, Cap. 13 provides for the prerogative writ of mandamus as one of the remedies which the High Court is empowered to issue. Section 36 (1) (a) of the Judicature Act provides thus:

*(1) The High Court may, upon application for judicial review, grant any one of the following reliefs in a civil or criminal matter -*  
*(a) an order of mandamus, requiring any act to be done;*





- (b) .....
- (c) .....
- (d) .....; or
- (e) ....."

10. In the instant case, the applicant applied for a writ of mandamus against the Respondents seeking for an order compelling the Respondents to pay 200,000,000 shillings to the Applicant as per an order of Justice Margaret Mutonyi made on 8<sup>th</sup> June, 2017.

11. In the case of **Intex Construction Ltd v. Attorney General & Anor, HCMC No. 737 of 2013**, Justice B. Kainamura held that:

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

12. It is an established legal principle that in an application for an order of mandamus, the onus lies on the Applicant to effectively prove to court 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, neglected or failed to honor the certificate of order to pay the amount stated in the decree.



13. The 1<sup>st</sup> Respondent opposed the application mainly on the grounds that the State was not given an opportunity to be heard before the order was made. On 19<sup>th</sup> September 2022, the 1<sup>st</sup> Respondent filed Miscellaneous Cause No. 55 of 2022 seeking orders setting aside the trial judge's orders including the order of compensation to Mulooki Henry on the grounds that there was no fair hearing before the orders were made by the court.

14. Annexure "A" to the current Applicant's affidavit in support of the application is a certified record of the proceedings before the trial judge in Criminal Session Case No. 093 of 2017 where the accused (current Applicant) pleaded guilty to the offence of aggravated defilement contrary to section 129 (3) and (4) (a) of the Penal Code Act, Cap 120. He was convicted and sentenced to imprisonment for 4 years and 6 months which was the period he spent on remand. Basing on section 33 of the Judicature Act, Cap 13, the trial judge said on pages 10 -11:

**"The rights of the convict in this case have been grossly violated while in custody. He deserves to be treated and compensated for the physical, mental and psychological damage and injury he has suffered while under Prison custody. It is this court's view that all reasonable persons must join hands to end the horror of torture in Government Prisons or any facility of incarceration. .... In the result court is making the following orders:**

- 1. The State is directed to take on the responsibility of the treatment of Mulooki Henry at Mulago Referral Hospital**





with a view of according him the best treatment for his current ailment.

2. The State should compensate Mulooki Henry for the pains, psychological torture and suffering that was meted unto him while under lawful custody. Given that the injury is grave and yet he is in his youthful age of 20 years he is awarded damages of Ug. Shs. 200,000,000/=..... No amount of compensation will restore his self-esteem which has been lost forever.
3. The Human Rights Commission is directed to carry out a special inquiry into the conditions prevailing at Kitalya Government Prison Farm and other prison farms in the country.
4. The Solicitor General and Attorney General are directed to arrange and make the above payment in 2 above.
5. The State is to meet the expenses of the advocates who will pursue the award on behalf of the victim of torture for he cannot by himself pursue his rights.

I so order.

The State is free to appeal against this order if it is not satisfied.

.....  
**Margaret Mutonyi**

**JUDGE**

**08<sup>th</sup> June 2017.”**



15. Before making the above pronouncements, the state was not given an opportunity to be heard. A criminal case turned into a civil one without hearing the opposite party. In **Haining & Others v. Republic [1972] E.A. 133** the court was concerned with section 176 of the Criminal Procedure Code which is similar to section 197 of the Magistrates Courts Act, Cap 16. At pages 134 -135 Sir William Duffus, P. said:

*“The necessary requisites for an order for compensation are therefore:*

- (1) That it appears to the court from the evidence that the prosecutor or a witness in the case has suffered material loss or personal injury as a consequence of the offence;*
- (2) That substantial compensation would be recoverable by that person in a civil suit; and*
- (3) The court then, in its discretion, may order the convicted person to pay such compensation as the court deems fair and reasonable. ....*

*Compensation is not a punishment as such but an order made in addition to any other punishment and is an endeavor to settle, in a summary manner, any civil loss that that the prosecutor or a witness in the case may have suffered as a result of the offence. A convicted person would not ordinarily expect that an order for compensation would necessarily follow his conviction ..... An order under this section would usually be made on the application of the prosecutor but if not a court may clearly act on its own accord but in doing so it is performing a judicial act which*





*would materially affect both the party receiving the compensation and the convicted person who has to pay the compensation. It is essential here that these persons, and more so the convicted person, be given an opportunity of being heard. The convicted person should be called upon to show cause why an order should not be made. To do otherwise would be a breach of natural justice and would amount to a person being condemned without having a hearing.”*

16. In the instant case, it was the state condemned unheard where the accused informed court that he was beaten and injured by one Afande Otim while in a prison farm. The State was not given an opportunity to respond or inquire into these allegations made by an accused person. No medical evidence was adduced to determine the extent of injury purportedly inflicted upon the Applicant by a prisons staff. The trial judge relied on section 33 of the Judicature Act, Cap 13 which states thus:

*“The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.”*



17. In my judgment, section 33 of the Judicature Act should only be invoked by the High Court where any of the parties to a cause or matter is entitled to the remedies *"in respect of any legal or equitable claim properly brought before it"*. The matters must have been properly brought before the court before a remedy is granted by the High Court. It is a requirement of law that the court or tribunal's decision must be made in accordance with principles of natural justice and good faith. The court must exhibit fairness to all the parties in a case. These cardinal principles of natural justice were lacking in this case.

18. In **Anisminic v. Foreign Compensation Commission (1969) 2 AC 147** at page 195, Lord Pearce held thus:

*"Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity."*





19. Basing on the authorities cited in this ruling, this application lacks merit and is hereby dismissed because this court cannot issue a writ of mandamus based on a decision made out of jurisdiction as the principles of natural justice were not followed by the learned trial judge. Since this court has held that the order for compensation was a nullity, the issue of extraction and service of the certificate of order against the government and refusal to pay is of no consequence. All the other orders made by the trial judge on 8<sup>th</sup> June 2017 are hereby set aside. I have been allocated Miscellaneous Cause No. 55 of 2022 which I have perused. It is a reproduction of the response made in the instant application. Therefore, I order that Miscellaneous Cause No. 55 of 2022 be discontinued as it is similar to this application. Each party shall bear their own costs of the applications.

20. Suffice to mention that this court does not condone torture of suspects in lawful custody. Where any torture is alleged, the right procedure would have been for the complainant to file a civil suit to be heard on merit by a court with competent jurisdiction.  
I so rule and order accordingly.

This ruling is delivered this .....16<sup>th</sup>..... day of .....May..... 2023 by



**FLORENCE NAKACHWA**  
**JUDGE.**

*In the presence of:*

*(1) Counsel Isotah Sulaiman from M/s Katuntu & Co. Advocates, for  
the Applicant;*

*(2) Ms. Pauline Nakavuma, the Court Clerk.*

