THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(CORAM: MADRAMA, MULYAGONJA, MUGENYI, JJA)

CIVIL APPEAL NO 196 OF 2016

ATTORNEY GENERAL} ..... APPELLANT

VERSUS

GENERAL DAVID SEJUSA} .....RESPONDENT

(Appeal from the Judgment and Orders of Hon. Lady Justice Margaret C. Oguli – Oumo Judge of the High Court of Uganda at Miscellaneous Cause No. 176 of 2015 delivered on 28th May, 2016)

JUDGMENT OF CHRISTOPHER MADRAMA, JA

This appeal arises from the ruling and orders of the High Court in High Court Miscellaneous Cause No 176 of 2015. The applicant who is now the Respondent had the filed an application for judicial review under Article 42 of the Constitution, section 36 of the Judicature Act, rules 6, 7 and 8 (2) of the Judicature (Judicial Review) Rules 2009 for judicial review and the following reliefs namely:

1. A declaration that the applicant ceased to be an officer of the UPDF on 8th April, 2015, since 90 days within which the Respondent ought to have officially communicated its decision to him had expired.
2. A declaration that the Respondent's commission and/or omission to communicate its decision to the applicant within 90 days but continuing to discharge others within the period contravened articles 2 (2); 21; 24; 25 (1) & (2); 40 (3) c; 42; 44 (a), (b) & (c) & 137 (3) b of the Constitution of the Republic of Uganda.
3. A declaration that the Respondent's commission and or/omission to communicate its decision to the applicant; refusal to pay him his salary and other benefits; withdrawal of his army guns; refusal to

deploy him; failure to provide him with transport, meals and housing all amounted to constructive discharge of the applicant from the Uganda People's Forces.

4. A declaration that since the Respondent constructively discharged the applicant, then the applicant is entitled to a discharge certificate accordingly.
5. A declaration that since the Respondent constructively discharged the applicant, then the applicant is entitled to his salary arrears, emoluments, and his retirement benefits.
6. An order of mandamus ordering the first and second Respondents, officers under them, the chief of personnel to hand over the applicant's discharge certificate to the applicant.
7. An order of prohibition prohibiting the Respondent, the Chief of Defence Forces, Chief of Staff LF and all other offices under them purporting to assign, deploy, transfer or control the applicant as an active officer of the UPDF contrary to the law.
8. An order directing the Respondent to pay the applicant his salary arrears that were not paid to him until the recall and replacement in Parliament.
9. An order directing the Respondent to pay the applicant his other retirement benefits and/or arrears due and owing.
10. An order directing the Respondent to calculate and pay the applicant his retirement benefits having at least served for 34 years and pay him.
11. General damages for wrongful withholding of the applicant in the UPDF from 8th April, 2015 until the date of Judgment.
12. An order that the Respondent pays 20% of the sum in (8) - (10) above.
13. Costs of the suit.

The parties framed 13 issues which were reduced into four issues by the trial Judge namely:

1. Whether or not the application is time barred?
2. Whether the application is amenable to judicial review?

3. Whether the Respondent's actions of refusal to pay the applicant salary and other benefits and withdrawal of his guns, uniforms and refusal to deploy him including failure to provide him with transport, housing allowance amount to constructive discharge?
4. Whether the applicant is entitled to the remedies sought?

The learned trial Judge allowed the application and made the following orders:

(a) Declared that the applicant ceased to be an officer of the UPDF on 8th April, 2015, since the 90 days within which the Respondent ought to have officially communicated his decision to him at expired.

(b) Declared that the Respondent's commission and or omission to communicate its decision to the applicant within 30 days, but continuing to discharge others within the period contravened articles 2 (2), 21, 24, 25 (1) & (2), 40 (3) (c), 42, 44 (a), (b), & (c) and article 137 (3) (b) of the Constitution of the Republic of Uganda.

(c) Declared that the Respondent's commission and/or omission to communicate its decision to the applicant, refusal to pay his salary and other benefits, withdrawal of his army uniform and guns, refusal to deploy him, failure to provide him with means of transport, meals and housing, all amounted to constructive discharge of the applicant from the Uganda People's Defence Forces.

(d) Declared that since the Respondent constructively discharged the applicant, the applicant is entitled to a discharge certificate accordingly.

(e) Declared that since the Respondent discharged the applicant, then the applicant is entitled to his salary arrears, emoluments and his retirement benefits.

(f) An order of mandamus was issued directing the Respondent, officers under them to immediately handover to the applicant his discharge certificate.

(g) Ordered that the Respondent refunds the applicant his pension contributions together with interest accruing therefrom.

(h) Ordered that the Respondent is prohibited together with the Chief of Defence Forces, Chief of Staff LF and all other officers under them from purporting to assign, deploy, transfer or control the applicant as an active officer of the UPDF contrary to the law and from prosecuting him.

(i) Ordered that the Respondent pays the applicant his salary arrears that were not paid to him until the recall and replacement in Parliament.

(j) Directed the Attorney General to pay interest of 20% on items (e), (h) and (i) from the date of the ruling till payment in full.

(k) Directed that the Respondent is also to pay the applicant costs of the suit.

The Attorney General was aggrieved by the ruling and orders of the High Court and appealed to this court on 10 grounds of appeal namely:

1. The learned Lady Justice of the High Court erred in law and in fact when she held that the judicial review application was filed within the time prescribed by law.
2. The learned Lady Justice of the High Court erred in law and in fact when she found that the application was amenable to judicial review process regardless of the fact that there is no decision in existence.
3. The learned Hon Lady Justice of the High Court erred in law and in fact when she found that the Respondent was entitled to being constructively discharged from the Uganda People's Defence Forces and entitled to a discharge certificate regardless of the fact that this remedy is alien to the UPDF Act.
4. The learned Hon Lady Justice of the High Court erred in law and in fact when she found that the Respondent ceased being an officer of the UPDF on 8th April 2015 since he was entitled to an official communication from the UPDF 90 days after he applied to retire under the UPDF Act, 2005 and these actions were in breach of Articles 2 (2),

21, 24, 25 (1), (2), 40 (3) (c), 42, 44 (a), (b), (c) and article 137 (3) (b) of the 1995 Constitution and was therefore entitled to his salary arrears, emoluments and benefits.

5. The learned Hon Lady Justice of the High Court erred in law and in fact when she found that the Respondent was entitled to pension contributions with no evidence of the existence of any such contributions in the UPDF.
6. The learned Hon Lady Justice of the High Court erred in law and in fact when she went on to order that the Chief Defence Forces should not assign, deploy, transfer or control the Respondent as an active officer of the UPDF contrary to the law.
7. The learned Hon Lady Justice of the High Court erred in law and in fact when she found that the prosecution of the Respondent in the Court-Martial should be halted with no justification whatsoever.
8. The learned Hon Lady Justice of the High Court erred in law and in fact when she found that the Respondent was entitled to salary arrears that were not paid to him until his recall and replacement in Parliament.
9. The learned Hon Lady Justice of the High Court erred in law and in fact when she found that the Respondent was entitled to interest of 20% on salary arrears, emoluments, retirement benefits, pension contributions and salary arrears.
10. The learned Hon Lady Justice of the High Court erred in law and in fact when she found that the Respondent was entitled to costs.

The Appellant seeks to have the Judgment of the High Court overturned or set aside with costs.

At the hearing of the appeal learned counsel Mr. George Kalemera, Commissioner from Attorney Generals chambers appearing together with Ms. Charity Nabasa, State Attorney represented the Appellant. Present in court were officers from the UPDF General Goddard Busingye Chief of Legal Services and Lt Achilles Bwete Staff Officer Chieftaincy of Legal Services. The Respondent was served through his counsel on record but neither the

Respondent nor his counsel appeared in court. With leave of court the matter proceeded in the absence of the Respondent under Rule 100 (3) of the Rules of this Court. The above notwithstanding the Appellant with leave of court relied on its written submissions. The court was availed evidence showing that the submissions were served on the Respondent's counsel. The court directed the Appellant and Directorate of Legal Services of the UPDF through the officers present in court to notify the Respondents counsel to file written submissions in reply within one week from the 2nd of September 2021. Judgment was reserved on notice thereafter. The notification to the Respondent's counsel was filed on court record in a letter dated 2nd September 2021 and filed in court on the same day. It is written to the Respondent's counsel asking them to file submissions within 7 days from 2nd September 2021. By December 2021, no written submissions were received from the Respondent. Because no reply was filed as directed, the Appellant did not need to file a rejoinder. It is on the basis of the written submissions of the Appellant that this appeal was considered.

Submissions of the Attorney General

The Appellant argued grounds 1, 2, 9 and 10 of the appeal separately and grounds 3, 4, 5, 6 and 8 of the appeal jointly.

Ground 1:

> The learned Hon Lady Justice of the High Court erred in law and in fact when she held that this judicial review application was filed within the time prescribed by law.

The Appellants counsel submitted that the trial Judge found that the failure to communicate its decision was a continuous tort and since the applicant was entitled to a reply by 8th April 2015, no specific date could be stated as the date when the cause of action arose. Secondly the court found that it was a misnomer for both counsel to take 8th April 2015 as the date when the grounds of the application arose on the basis that it was when the 90 days expired. Lastly, the court found that failure to communicate their decision constitutes an illegality and illegality brought to the attention of the court

cannot override the rights of the applicant which had been violated by failure to communicate him the decision of the Respondent.

The Appellant relies on Rule 5 (1) of the Judicature (Judicial Review) Rules, 2009 which provides that an application for judicial review shall be made promptly and in any event within 3 months from the date when the grounds of the application first arose unless the court extends the time for good reason. The Appellant's submission is that the Respondents claim arose when he submitted his application for retirement from the UPDF to the Commission's Board on 30th December 2014. The 90 days provided for by the law expired on 30th of March 2015 and the judicial review application was filed in the High Court on 23rd November 2015, seven months after the time within which the judicial review application must have been filed. Counsel further submitted that even if time was reckoned from the time stated in the Respondent's submissions, the Respondent pleaded that he ceased to be an officer of the UPDF on 8th April 2015 on the basis of the 90 days within which the UPDF commissions/promotions board ought to have officially communicated its decision. The 3 months from that time expired on 8th July 2015.

On that basis the Attorney General submitted that the application for judicial review was filed out of time and the Respondent never made an application to extend the period within which the application could have been validly filed.

Counsel submitted that the wording of rule 5 (1) of the Judicial Review Rules 2009 are clear and failure to bring the application within the prescribed time or failure to obtain a court order extending time to file the application rendered it time barred.

Counsel further submitted that the general effect of the expiration of the limitation period is that the remedy of judicial review became unavailable to the Respondent. He contended that the underlying principle for limitation of actions is that, once a cause of action is time barred, subsequent developments cannot revive it (See **Nicholson vs. England [1926] 2 KB 93(at**

page 108); Arnold vs. Central Electricity Generating Board [1988] AC 228(245) Ralph Gibson L.J.;

> "When a period of limitation has expired, a potential defendant should be able to assume that he is no longer at risk form a stale claim. He should be able to part with his papers if they exist and discard any proofs of witnesses which have been taken; discharge his solicitor if he has been retained; and order his affairs on the basis that his potential liability has gone. That is the whole purpose of the limitation defence."

Counsel submitted that a statute of limitation is not concerned with merits and is usually strict and inflexible, automatically stifling litigation on the cause of action after the prescribed period whatever the merits of the cause. Because limitation of a cause of action is a defence, it is a substantive right which should not have been taken away. Further, the court cannot unilaterally extend time on its own motion and to do so would condemn the parties unheard thereby violating principles of natural justice. The Appellant's counsel submitted that rule 5 (1) of the Judicial Review Rules 2009 does not only provide a limitation period for applications for judicial review but also provides the remedy for failure to file the application within the prescribed time. He contended that the onus is on the party caught by limitation to advance the grounds for extension of time. In the premises counsel submitted that the application was time barred and incompetent and the decision of the trial Judge ought to be set aside on this ground alone.

Ground 2

> The Learned Hon. Lady Justice of the High Court erred in law and in fact when she found that the Application was amenable to the judicial review process regardless of the fact that there is no decision in existence.

The Appellant's counsel submitted that the crux of the Respondent's case is that he ceased being an officer of the UPDF on 8th April 2015. The 8th of April 2015 being the end of 90 days within which the UPDF commissions/promotions board ought to have communicated its decision

to him. This is based on Section 66 of the UPDF Act, 2005 which provides that:

> Resignation of commission;
>
> (1) An officer may in writing tender the resignation of his or her commission to the Board but shall not, unless otherwise ordered by the Chief of Defence Forces, be relived of the duties of his or her appointment until he or she has received notification, in writing of the approval of his or her resignation by the Board.
>
> The Board shall notify an officer of its decision on his application to resign his or her commission within ninety days after receipt of his or her application, and the approval of an application to resign the commission shall not be unreasonably withheld.

The Appellant's counsel further submitted that the learned trial Judge failed in her duty to determine whether or not the subject matter of the application was amenable to judicial review. Further, that the purpose of judicial review is to ensure that public bodies do not exceed their jurisdiction or carry out their duties in a manner detrimental to the public at large. That judicial review is only available against a public body in a public law matter in two instances. Firstly, the body challenged must be a public body amenable to judicial review. Secondly, the subject matter of the challenge must involve claims based on public law principles and not the enforcement of private law rights (see Ssekaana Musa, **Public Law in East Africa, p 37 (2009) Law Africa Publishing, Nairobi)**. See also **R Vs. East Berkshire Health Authority Ex Parte Walsh [1984] 3 WLR 818**, where it was held that:

> the remedy of judicial review is only available where the issue is of breach of "public law", and not of breach of a "private law" obligation. To bring an action for judicial review, it is a requirement that the right sought to be protected is not of a personal and individual nature but a public one enjoyed by the public at large."

Counsel submitted that the learned trial Judge ought to have established whether the rights of the Respondent sought to be enforced were public law rights rather than private law rights and whose remedy lay under public

law. He contended that the matters raised by the Respondent concerning his cessation in the employment of the UPDF, refusal to pay him salary and other benefits, withdrawal of his army uniforms and guns, failure to deploy him, transport, meals and housing allowances involved adjudication of private rights and not public law rights. Because the remedies sought by the Respondent lay under private law and not public law, the Court should have declined to entertain it in a judicial review application. The Appellant's counsel conceded that judicial review was possible and enabled by article 42 of the Constitution which provides that:

> "Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her."

The Appellants counsel submitted that Judicial Review is primarily concerned with the improper exercise of public powers and duties and it deals with decisions or actions in a public law context that are amenable to judicial review (See **Judicial review proceedings –A practitioner's guide Jonathan Manning, Sarah Salmon and Robert Brown** Page 68 and **Attorney General vs Yustus Tinkasimiire Civil Appeal No. 208 of 2013** for the proposition that judicial review is concerned not with the decision but with the decision making process and involves an assessment of the manner in which a decision is made. It is not an appeal and jurisdiction is exercised in a supervisory manner but

> "not to vindicate rights as such but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality..."

The Appellants counsel submitted that the administrative body (the UPDF Commissions Board) never made a decision that can be subjected to judicial review. The facts are that the Respondent applied to the Chairperson of the Commissions Board of UPDF on the 29th December, 2014 seeking permission to retire from the Army. On 8th January 2015, the Chief of

Defence Forces, Katumba Wamala informed the Respondent in writing that he is awaiting written or any other form of communication from His Excellency the President and Commander in Chief of the Defence Forces to give guidance on the issue.

The Appellant's counsel submitted that for the matter to fall within the scope of judicial review jurisdiction, the UPDF Commissions Board ought to first have made a decision on whether to retire the Respondent or not whereupon their decision making process could be subjected to judicial review. Further counsel submitted that because there was no decision regarding the Respondent's application for retirement, the matter was still under consideration and could not be subjected to judicial review.

He prayed that the Court finds that this was not a proper case to be subjected to judicial review and the learned trial Judge erroneously entertained it. He prayed that we allow the appeal and set aside the decision of the High Court.

Grounds 3, 4, 5, 6 and 8 of the appeal

Ground 3

> The Learned Hon. Lady Justice of the High Court erred in law and in fact when she found that the Respondent was entitled to being constructively discharged from the Uganda People's Defence Forces and entitled to a discharge certificate regardless of the fact that this remedy is alien to the UPDF Act.

Ground 4:

> The Learned Hon. Lady Justice of the High Court erred in law and in fact when she found that the Respondent ceased being an officer of the UPDF on 8th April 2015 since he was entitled to an official communication from the UPDF 90 days after he applied to retire under the UPDF Act, 2005 and these actions were in breach of Articles 2(2),21,24,25(1), (2),40(3)(c),42,44(a), (b), (c) and 137(3)(b) of the 1995

Constitution and was therefore entitled to his salary arrears, emoluments and benefits.

Ground 5

The Learned Hon. Lady Justice of the High Court erred in law and in fact when she found that the Respondent was entitled to pension contributions with no evidence of the existence of any such contributions in the UPDF.

Ground 6

The Learned Hon. Lady Justice of the High Court erred in law and in fact when she went on to order that the Chief of Defence Forces should not assign, deploy, transfer or control the Respondent as an active officer of the UPDF contrary to the Law.

Ground 8:

The Learned Hon. Lady Justice of the High Court erred in law and in fact when she found that the Respondent was entitled to salary arrears that were not paid to him until his recall and replacement in Parliament.

The Appellants counsel jointly argued grounds 3,4,5,6 and 8 together. He reiterated the argument that the remedies under judicial review are only available to an applicant who is challenging a public body whose acts are amenable to judicial review. Counsel submitted that the learned trial Judge erroneously applied remedies under judicial review to private contractual rights applicable to employment and gave the Respondent private legal remedies that are alien to the UPDF Act. Counsel prayed that the court is persuaded by the High Court decision per Mubiru, J in **High Court Miscellaneous Application No 003 of 2016; Arua Kubala Park Operators and Market Vendors Coop Society Ltd v Arua Municipal Council** for *inter alia* the proposition that to bring an action for judicial review the applicant must demonstrate that the "right sought to be protected is not of a personal and individual nature but a public one enjoyed by the public at large. The "public"

nature of the decision challenged is a condition precedent to the exercise of the courts' supervisory function. If the relationship is governed by private law (no matter how ineffective), then judicial review is unavailable".

The Appellant submitted that public bodies just like private entities may execute binding contracts or commit torts. Individuals may only be seeking the enforcement of private law rights. Judicial review is not available to enforce purely private law rights. Contractual and commercial obligations are enforceable by ordinary action and not by judicial review.

In the premises, the Appellant submitted that the learned trial Judge erred in law in granting the Respondent "constructive discharge" which remedy is not available in judicial review proceedings because it is a private law remedy available after trial and the evaluation of evidence to determine private rights. He argued that this set a very dangerous precedent where a very senior and serving military officer of the UPDF was granted permission to leave the army by way of a resignation letter.

Further that the wider implication of this Court order is that the UPDF is now at risk of having soldiers, whose duty and role under Article 209 (a) of the Constitution is to preserve and protect the sovereignty and territorial integrity of Uganda, abandoning their duties when in active service by expressing their desire to retire from the army in a letter. He contended that this was not the intention of legislature in the enactment of the UPDF Act when it enacted the procedures that must be undertaken prior to the acceptance of the resignation of UPDF soldiers. He prayed that Court takes judicial notice of the fact that the Respondent is a member of the High command in the Uganda Peoples Defence Forces and listed as the fourth member in the third schedule to the UPDF Act, 2005.

Further that the designation and standing of the Respondent in the Army is one of a very serious nature and his resignation cannot be treated in a flippant manner through the submission of a letter without consideration by the Commissions Board especially regarding the replacement of such a high ranking military general. He prayed that we find that this is a proper

ground to set aside the orders of the High Court to the effect that the Respondent had been constructively dismissed from the UPDF.

The Appellant's counsel further argued that the learned trial Judge delved into private law remedies by determining that the Respondent ceased being an officer of UPDF on 8th April 2015 and could not be assigned, deployed or transferred after that date. Further that the Respondent was entitled to salary arrears, emoluments, benefits and pension contributions. In summary these were erroneously private law remedies under employment law and not judicial review.

He submitted that judicial review is only supposed to deal with the decision making process by an administrative body and determine whether it has been carried out in a legal, rational and or procedurally proper manner. However, the trial Judge went beyond the scope of judicial review jurisdiction and determined the Respondent's rights in his employment with UPDF. Further, in granting the orders barring the Chief of defence Forces from deploying or supervising the Respondent and payment of benefits under the employment, she exceeded her jurisdiction in judicial review proceedings which this court ought to set aside as inoperative under the Law.

Ground 9

> The Learned Hon. Lady Justice of the High Court erred in law and in fact when she found that the Respondent was entitled to interest of 20% on salary arrears, emoluments, retirement benefits, pension contributions and salary arrears.

The Appellant relied on **Mbogo v Shah [1968] EA** 93 for the proposition that the appellate court will not interfere with the exercise of discretion of the trial court unless the decision was clearly wrong, or the court misdirected itself or "acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion" (Per De Lestang VP page 94).

In the premises, the Appellants counsel contends that the learned trial Judge, erroneously held that the Respondent is entitled to salary arrears not paid to him until his recall and replacement in Parliament together with general damages of 750,000,000/= (Uganda shillings seven hundred and fifty million) when there was no evidence to support it. Counsel submitted that the affidavit in support of the application does not have any supporting evidence proving that the Respondent is entitled to salary arrears while he was serving in Parliament nor is the award of 20% interest on the sums awarded supported by any evidence.

The Appellant's counsel submitted that the grant of judicial review remedies is discretionary and the court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any particular case (See **R vs Aston University Senate ex p Roffey [1969] 2 QB 558, R vs Secretary of State for Health ex p Furneaux [1994] 2 All ER 652).** Secondly, the burden to prove entitlement was on the Respondent under section 101 of the Evidence Act.

Counsel submitted that the award of general damages for stress, harassment and humiliation allegedly suffered by the Respondent was not supported by evidence and ought to be set aside. On the issue of award of interest, the Appellant submitted that the Respondent was not owed any monies by UPDF and he in any case did not adduce any evidence to that effect that he was owed money. He contended that there was no basis for the award of salary arrears, pension payments or general damages as awarded and interest that was adjudged at 20% per annum.

The Appellant's counsel submitted that though the award of interest is at the discretion of the Court, the burden was on the Respondent to prove that he was owed money. The affidavit in opposition of Brigadier Ramathan Kyamulesire is to the effect that the Respondent is still a serving military officer of the UPDF entitled to his emoluments and which he was receiving from the UPDF regularly and there is no basis for the award of 20% interest on unproven salary arrears and pension contributions.

Ground 10

> The learned Hon. Lady Justice of the High Court erred in law and in fact when she found that the Respondent was entitled to costs.

On the issue of the holding awarding costs to the Respondent, the Appellant relied on section 27 of the Civil Procedure Act and the decision of the Supreme Court in **Impressa ING. Fortunato Fedrice versus Irene S.C.C.A. 3/ 2000**; where Oder JSC held that a Judge should exercise the discretion granted under section 27 of the Civil Procedure Act to award costs judiciously. The Appellant submitted that the learned trial Judge improperly assessed the case and therefore the Respondent is not entitled to any costs. The Appellant prays that we review the propriety of the High Court decision and allow the appeal with costs to the Appellant.

Resolution of appeal

I have carefully considered the written submissions of the Appellant, the record of appeal and the law. Our duty as a first appellate court from an appeal from the High Court decision in the exercise of its original jurisdiction is to reappraise the evidence on record and to draw our own inferences of fact and reach own independent conclusions on matters of fact and law. This duty is encapsulated in rule 30 (1)(a) of the Rules of this Court which provides that the Appellate Court may reappraise the evidence and draw inferences of fact. In **Peters v Sunday Post Limited [1958] 1 EA 424 at page 429** the East African Court of Appeal held that a first appellate court should review the evidence in order to determine whether the decision of the trial court on the matter or matters in controversy should stand.

I have carefully considered the Appellant's appeal and the record of appeal has the same materials that were available to the trial Judge. The applicant had filed an application for judicial review by notice of motion supported by the affidavit of the applicant and attaching the necessary documentation. Secondly, the Respondent filed an affidavit in a reply by RO/101454 Brig Ramadhan Kyamulesire, the Chief of Legal Services of the Uganda People's Defence Forces. Lastly there was an affidavit in rejoinder of the applicant.

The grounds of appeal are mainly on matters of law. The first ground of appeal is to the effect that the application for judicial review of the Respondent before the High Court was statute barred because it was filed out of time. Secondly in ground 2 of the appeal, the Appellant states that the learned trial Judge erred to find that the application was amenable to judicial review thereby bringing the point that either the UPDF commission was not amenable to judicial review or the matter brought to the court was not amenable to judicial review. The rest of the grounds namely grounds 3, 4, 5, 6 and 8 deal with the details of whether the matters considered by the Judge where matters amenable to judicial review in which the learned trial Judge rightly exercised her jurisdiction. On the other hand, grounds 9 and 10 deal with the issue of remedies which flow from the previous grounds of appeal. If the court considers ground one of the appeal and finds in favour of the Appellant, it does not have to consider any of the other grounds of appeal. Secondly, if the court considers ground 2 of the appeal and finds in favour of the Appellant, it does not have to consider the rest of the grounds. I would therefore consider grounds 1 and 2 of the appeal starting with ground 1 of the appeal which if not resolved in favour of the appeal, would I consider the rest of the grounds.

Ground 1

> **The learned Hon Lady Justice of the High Court erred in law and in fact when she held that this judicial review application was filed within the time prescribed by law.**

Ground one of the appeal can be resolved on the basis of reckoning of the time from which to count the period of 3 months from which the grounds of the application for judicial review first arose or is stated to have arisen.

> 5. Time for applying for judicial review.
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> (1) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made.

(2) Where the relief sought is an order of certiorari in respect of any Judgement, order, conviction or other proceedings, the date when the grounds for the application first arose shall be taken to be the date of that Judgment, order, conviction or proceedings if that decision is delivered in open court, but where the Judgment, order, conviction or proceedings is ordered to be sent to the parties, or their advocates, (if any), the date when the decision was delivered to the parties, their advocates or prison officers, or sent by registered post.

(3) This rule shall apply, without prejudice, to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

The head note of rule 5 makes it clear that it deals with the time for applying for judicial review. The two elements in rule 5 (1) (supra) worth taking note of is that an application for judicial review shall be made promptly. This is followed by stating that in any event, the application shall be made within 3 months from the date when the grounds of the application first arose. The third element which follows is that the court may consider that there is a good reason for extending the period within which the application shall be made. This third element gives the court power for good reason to extend the period within which the application shall be made. Rule 5 (2) gives guidance on how to reckon time where the application for judicial review is for an order of certiorari in respect of the Judgment, order or conviction or other proceedings. It provides that the period of 3 months from which time should be reckoned is the date when the decision was delivered to the parties, their advocates or prison officers or sent by registered post. Last but not least, rule 5 and the timelines for the filing of applications for judicial review do not exclude any other statutory provision providing timelines within which an application for judicial review may be made.

The learned trial Judge considered the issue of whether the application was time barred and framed it as the first issue as to whether or not the application is time barred. The facts presented in an objection by the Attorney General to the application as stated in detail in the ruling of the trial court is that the Respondent ceased being an officer of the UPDF on 8th of April 2015 since the 90 days within which he was supposed to receive an

official communication on his retirement application had expired. From those premises, the grounds for judicial review arose on 8 April 2015. The learned trial Judge found that in the instant application, the applicant filed an application for retirement on 30th December 2014 and by 8th of April 2015, the 90 days within which the Respondent/the authority was required to respond had expired. This proceeded from the provisions of section 66 (2) of the UPDF Act. She further found that on 3rd January 2015, the applicant and his lawyers were invited to State House to discuss his retirement. The meeting was attended by the Director of Legal Services of the UPDF among other officers. On 7th of January 2015, the applicant wrote a reminder to the Director Legal Services of the UPDF to follow-up on the matter with his Excellency the President of Uganda. On 18th January 2015, the Chief of Defence Forces who was also the Chairman Commissions/Promotions Board wrote to the applicant that he was awaiting instructions from his Excellency for guidance on the matter. On 6th March, 2015 the applicant's lawyers wrote to his Excellency the President of the Republic of Uganda to remind him of his promise to retire the applicant. She found that these letters were not responded to and the Respondent had not received the certificate of discharge or rejection of his retirement or salary or other benefits. She found that the date on which the Appellant alleged the grounds of a petition arose was 8th April 2015 when the 90 days expired within which the relevant UPDF authority should have communicated the decision in the matter. This is what the learned trial Judge held:

> In that respect, it is my considered opinion that the failure to communicate its decision entails a continuous (recurring) tort because the applicant was entitled to a reply by 8th April, 2015. Failure to do so constitutes a continuous tort so you can't state the date when the cause of action arose.
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> It was a misnomer for both counsel to take (8th) April, 2015, as the date when the grounds of the application arose just because it is when the 90 days expired.
>
> Moreover, failure to communicate their decision constitutes an illegality and once such an illegality is brought to the attention of the court, it cannot override the rights of the applicant which have been violated by failure to communicate to him the decision of the Respondent.

> This application is granted on a violation of the applicant's right to a just and fair treatment in administrative decisions (see Article 42 (1) of the Constitution of Uganda.)
>
> Procedural errors cannot override the applicant's guaranteed the rights.
>
> In addition, article 126 (2) (e) of the Constitution of Uganda enjoins this court to administer justice without undue regard to technicalities.

The learned trial Judge considered rule 5 (1) and found that in the instant case, there was good reason why time should be extended because the applicant had followed up the matter according to the correspondence referred to above and would therefore made an order extending the time. This is what she stated:

> All the above shows that the applicant attempted to make a follow-up on his application with the hope and promises that his application will be handled.
>
> In view of the above, court is satisfied that the applicant has shown good reasons for court to exercise its discretion to extend the time in which the application had to be filed.

She found that the application was properly before the court and overruled the objections.

Clearly the court extended the time within which the application should be filed. Secondly the appeal by restricting itself to ground one which is whether the learned trial Judge erred in law and in fact when she held that the judicial review application was filed within the time prescribed by law, does not consider the fact that the learned trial Judge validated the late filing of the application. Because the appeal does not fault the trial Judge for finding that the time taken by the Respondents to follow up the matter after the expiration of 90 days was reasonable, there is no basis for ground 1 of the appeal.

The above notwithstanding, I have considered section 66 (1) and (2) of the UPDF Act 2005 which provides that:

> 66. Resignation of commission

(1) An officer may in writing tender the resignation of his or her commission to the Board but shall not, unless otherwise directed by the Chief of Defence Forces be relieved of the duties of his or her appointment until he or she has received notification, in writing, of the approval of his or her resignation by the Board.

(2) The Board shall notify an officer of its decision on his or her application to resign his or her commission within ninety days after receipt of his or her application, and the approval of an application to resign the commission shall not be unreasonably withheld.

(3) An officer who resigns his or her commission under subsection (1) and resigns from his or her employment in the Defence Forces under any regulations, shall not be exempt from any service to which he or she may be liable under this Act.

Section 66 (supra) has a clear head note which shows that it is about resignation of a commission. Secondly, it allows an officer to tender in the resignation of his or her commission to the Board. Thirdly, it stipulates that unless otherwise directed by the Chief of Defence Forces, the officer who tenders in such a resignation of commission shall not be relieved of his or her duties until after notification in writing by the Board signifying their approval. The Commission Board is mandatorily required to reply to the letter within 90 days after receipt of the application for resignation. It is therefore clear that where an officer tenders in his or her letter for resignation of commission, the Chief of Defence Forces may allow the officer to be relieved of his or her Commission immediately failure for which he or she has to wait for the reply of the board within 90 days. The mere fact that section 66 (1) provides for approval of the resignation by the Board suggests that the Board has authority to withhold the approval. In fact, section 66 (2) provides that the approval of the application to resign the commission shall not be unreasonable withheld. The province for investigation by the Judiciary may be whether any withholding of the approval was reasonable or was unreasonably withheld.

For purposes of clarity, the Commissions Board is created under section 20 (1) of the UPDF Act 2005. Secondly, section 2 of the UPDF Act which is the interpretation section defines the word "Board" to mean "in case of officers, the Commissions Board established by section 20, and in case of militants,

the Unit Promotions Board established by section 21." Further the functions of the board as stipulated by section 20 (3) include *inter alia* the duty to advise the President in respect of appointment of persons to commissions in the defence Forces and in the 20 (3) (f) of the UPDF Act, to monitor the retirement of officers due for retirement and to determine any termination of service.

The facts of this appeal are not in dispute. In the Notice of Motion filed in the High Court on 2third November 2015, the applicant in ground 1 of the Notice of Motion sought the relief of a declaration that he ceased to be in officer of the UPDF on 8th April 2015 which is the date of expiration of the period of 90 days within which the Board ought to have officially communicated its decision to him. Clearly, the failure to communicate the decision by the Commissions Board by 8th of April 2015 could have constituted a ground for judicial review because section 66 (2) of the UPDF Act makes it mandatory for the Board to communicate its decision in respect to the application within 90 days after receipt of the application. It follows that the subsequent communications between the parties in a matter between the commander-in-chief of the armed Forces as well as the board of the Respondent is not material in considering the wording of section 66 (2) of the UPDF Act. The duty was on the board to communicate their decision as to whether they approved the resignation or not. The board had not communicated its decision within 90 days in breach of section 66 (2) of the UPDF Act this was therefore a basis for grievance of the Respondent. Failure to communicate the decision was breach of statute which is a tort. The most important element is that it is the failure to communicate the decision within the statutory prescribed time. The tort of breach of statute is complete upon the expiry of 90 days. It follows that it was erroneous for the learned trial Judge to find that there was a continuous tort. The matter became actionable as breach of statute upon the expiry of 90 days from the time of receipt of the applicant's application by the board. This was when the grounds for judicial review can be stated to have first arisen in terms of rule 5 of the Judicature (Judicial Review) Rules, 2009. The time expired on 8th April 2015, a date

which is not in dispute between the parties. In **Dawson vs. Bingley Urban Council [1911] 2 KB 149,** it was held by Farwell L.J. at page 156 that:

> "breach of a statutory duty created for the benefit of an individual or a class is a tortuous act, entitling anyone who suffers special advantages there from to recover such damages against the tortfeasor"

Further it was held by Kennedy L.J. that the proper remedy for breach of statute is an action for damages especially where the statute provides no consequence for non-compliance or breach and in appropriate cases an action for injunction. While it is debatable at this stage whether the proper remedy of the Respondent lay in judicial review, it is clear from the pleadings that the time of three months had to be reckoned from 8th April 2015. Because the learned trial Judge rightly or erroneously validated the application by extension of time on the basis of the subsequent correspondence between the parties after 8th April, 2015, and this is not the subject of any appeal, I would find that ground 1 of the appeal has no merit and is hereby disallowed.

As far as ground 2 of the appeal is concerned, the Appellant averred that:

> **2. The learned Hon Lady Justice of the High Court erred in law and in fact when she found that the application was amenable to judicial review process regardless of the fact that there is no decision in existence.**

Having resolved ground one of the appeal and found among other things that the Commissions Board were prima facie in breach of section 66 (2) of the UPDF Act, the question was whether the remedy of the Appellants lay in judicial review. According to Kennedy LJ in **Dawson vs. Bingley Urban Council [1911] 2 KB 149,** the proper action for a person who has suffered special damages for breach of statute is an action for damages. Such an action is not an action for judicial review at all but an ordinary suit for damages which have to be proved. This is made clearer by the fact that the applicants application in the High Court was not for declaration that the failure to communicate was a breach of his rights but for declaration that

he ceased to be an officer of the UPDF upon the expiry of 90 days on 8th of April 2015 when the Board failed to communicate a decision on his application within the stipulated time. Section 66 (2) of the UPDF Act does not prescribe an automatic resignation following an application by an officer to the statutory Commissions Board. It is debatable whether the failure by the Board to communicate a decision within 90 days should be taken as a refusal of the resignation or as consent. What is important is that the Board is required to communicate in writing. The requirement to communicate is mandatory. This is taken from the wording of section 66 (2) of the UPDF Act which stipulates that "*The Board shall notify an officer of its decision on his or her application to resign his or her commission within ninety days after receipt of his or her application, and the approval of an application to resign the commission shall not be unreasonably withheld.*" Secondly, and as noted above, the approval of an application to resign the commission can be withheld. The statute only provides that it shall not be unreasonably withheld. It suggests that it can be withheld on reasonable grounds that have to be communicated in writing to the applicant. In other words, the failure to communicate, left the applicant in doubt as to whether his application for resignation had been approved or not. Obviously, the effect of not communicating the approval or disapproval of the application meant that the applicant continued to be a serving officer of the UPDF. In practical terms, he remained the serving officer of the UPDF after the statutory 90 days and this amounted in practical effect, for the intervening period before he receives his or her approval or refusal of the approval, a refusal. The applicant therefore was aggrieved only by the delay since the Board could approve or refuse his application for resignation. Subsequent correspondence between the parties demonstrated that the matter was still under consideration, albeit contrary to section 66 (2) of the UPDF Act which put a ceiling or an upper limit on the time within which a decision ought to have been communicated.

The delay was therefore actionable as tort and the matter did not require judicial review as it was still on the table for consideration by the appropriate authorities. Further it was not a continuous tort as such but a

tort of failure to communicate a decision within 90 days. There was no decision that could be subjected to judicial review. According to **Administrative Court: Practice and Procedure by Blackstone Chambers General Editor: Beverley Lang QC,** paragraph 2 – 23, a claim for judicial review means the claim to review the lawfulness of the decision, action or failure to act in relation to the exercise of a public function.

In case of failure to act, the action ought to be to compel the authority to act but not to replace the decision of the authority with the decision of court as the considerations for whether to approve the resignation or not can only be tested on the grounds stipulated in the section 66 (2) and the UPDF Act, 2005. For starters, what are reasonable grounds for refusal of an application to resign the commission by an officer? It would be an action for an order of mandamus for the authority to exercise its statutory mandate to consider the applicant's application or an action to compel the authority to render a decision within a specified time. According to **Blackstone's Chambers** (supra) paragraph 2 – 24:

> The judicial review jurisdiction is limited to issues of public law, not private law. A public body, which exercises public functions, may also exercise private law powers that will not be amenable to judicial review if there is no statutory or public law element to them....
>
> 2 – 25 **Employment disputes** Judicial review will usually not be available to an employee of the public body, court should enforce his individual employment rights in a private law claim, in the same way as other employees (*McClaren v Home Office* [1990] I. C. R. H 24; *R v East Berkshire HA Ex p Walsh* [1984] I.C.R. 743). But judicial review may be available against the decisions of a disciplinary or other tribunal established to determine such disputes, e.g. the Civil Service Appeal Board (*R. v Civil Service Appeal Board Ex p. Bruce* [1988] I.C.R. 649).
>
> If the employee is adversely affected by a decision by the employer, which is of general application, he may be entitled to challenge it on public law grounds, by way of judicial review claim. For example, the valuation of terms and conditions of service banning trade union membership..."

Ordinarily, judicial review is concerned with the legality, rationality and the reasonableness of a decision. In contrast of judicial review with appellate

jurisdiction, **H. W. R. Wade in Administrative Law, 5th Edition, Oxford University Press** at page 34 – 35 states that:

> The system of judicial review is radically different from the system of appeals. When hearing an appeal, the court is concerned with the merits of the decision under appeal. When subjecting some administrative act or order to judicial review, the court is concerned with its legality. On appeal the question is 'right or wrong?" '. On review the question is 'lawful or unlawful?'.
>
> Rights of appeal are always statutory. Judicial review, on the other hand, is the exercise of the court's inherent power to determine whether action is lawful or not and to award suitable relief. For these no statutory authority is necessary: the court is simply performing its ordinary functions in order to uphold the rule of law.

Further at page 35 - 36 **H.W.R. Wade** (supra) conclusively clarifies on the distinction between appeals and judicial review and touches on the issue of separation of powers where appeals fall within the judicial power of the courts while judicial review deals with the process of decision-making and the legality of the decisions of the executive or statutory/public bodies. He states that:

> Judicial review is a fundamentally different operation. Instead of substituting its own decision for that of some other body, as happens when an appeal is allowed, the court on review is concerned only with the question of whether the act or order under attack should be allowed to stand or not.
>
> If the Home Secretary revokes a television licence unlawfully, the court may simply declare that the revocation is null and void. Should the case be one involving breach of duty rather than excess of power, the question will be whether the public authority should be ordered to make good a default. Refusal to issue a television licence to someone entitled to have one would be remedied by an order of the court requiring the issue of the licence. Action unauthorised by law and inaction contrary to law are equally subject to the courts' control. In the case of unauthorised action, the court's principal weapon is the doctrine of ultra vires, which as will be seen is the foundation of a large part of administrative law. If administrative action is in excess of power (ultra vires), the court has only to quash it or declare it unlawful (these are in effect the same thing) and then no one need pay any attention to it.

It is an inevitable consequence of our concept of the separation of powers, and of our lack of administrative courts, that there is a sharp distinction between appeal and review. It means that fine points of law, alleged to 'go to jurisdiction', are sometimes put forward in support of what is thinly disguised appeal on the merits. But the court's duty is to confine itself strictly to the question of legality. If the administrative authority has acted within its powers and according to law, it is no business of the court to interfere. The law draws the boundaries within which the administration is a free agent.

Judicial control, therefore, primarily means review, and is based on a fundamental principle, inherent throughout the legal system, that powers can be validly exercised only within their true limits. The doctrines by which those limits are ascertained and enforced form the very marrow of administrative law.

I have further considered whether these principles are reflected in Ugandan law. Rule 3 of the Judicature (Judicial Review) Rules, 2009 provides for cases appropriate to judicial review. It provides as follows:

3. Cases appropriate for judicial review.

(1) An application for—

(a) an order of mandamus, prohibition or certiorari; or

(b) an injunction under section 38(2) of the Judicature Act restraining a person from acting in any office in which the person is not entitled to act, shall be made by way of an application for judicial review in accordance with these Rules.

(2) An application for a declaration or an injunction (not being an injunction mentioned in sub rule (1)(b) may be made by way of application for judicial review, and on such an application, the High Court may grant the declaration or injunction claimed if it considers that, having regard to—

(a) the nature of the matter in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari;

(b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and

(c) all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

The applicant sought various the declarations which included that he was constructively discharged among others and for orders of mandamus directing the Board to hand over the applicants discharge certificate. I have carefully considered the rules and clearly it envisages an application for an order of mandamus, prohibition or certiorari or for an injunction under section 38 (2) of the Judicature Act. Where there is no decision, and where it is stated that the matter was still under consideration, the only justiciable issue is the issue of delay to communicate a decision. The delay to communicate a decision is a tortuous matter which is actionable against the Attorney General as the legal representative of Government. It is not amenable to judicial review which deals with the process and not just breach of a statutory provision giving the time within which to communicate a decision. The very basis for the trial Judge overruling the objection on the ground that the application was filed outside the three months' limitation period under rule 5 (1) of the Judicature (Judicial Review) Rules was that the parties were still discussing the issue and no decision had been taken. This acknowledges the fact that no decision had been taken and therefore there was no decision for judicial review. The limited mandate of the court could have been to deal with the delay but the applicant sought a host of other remedies asking the court to substitute its decision for those of the Commissions Board and seeking further remedies for salary and pecuniary benefits of a retired General from the UPDF.

The Respondent could not rely on and benefit from the correspondence between the parties after 8th April 2015 to abridge the time within which an application for judicial review may be filed outside the period of 3 months from which the grounds for judicial review are on the face of the pleadings stated to arise and at the same time maintain the position that he was entitled to a decision before 8th April 2015, within the 90 days' period.

Further applications for judicial review are based on section 36 of the Judicature Act which provides that:

> 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;

(b) prohibition, prohibiting any proceedings or matter; or

(c) certiorari, removing any proceedings or matter to the High Court.

(2) No order of mandamus, prohibition or certiorari shall be made in any case in which the High Court is empowered, by the exercise of the powers of review or revision contained in this or any other enactment, to make an order having the like effect as the order applied for or where the order applied for would be rendered unnecessary.

Section 36 (2) of the Judicature Act ensures that the court makes a distinction between its inherent and statutory jurisdiction to adjudicate in disputes between parties before it and its jurisdiction to review administrative action which is a limited jurisdiction as stated above. In the premises, I accept the submissions of the Appellant's counsel that there was no decision which was ever made with regard to the Respondent's application to the Commissions Board of the UPDF under section 66 (1) of the UPDF Act in a letter dated 29th December 2014 addressed to the Chairperson Commissions Board of the UPDF on the subject of **"Application for Permission to Retire from the Army"**. In any case, the grievance of the applicant could only be the failure to give him a reply within 90 days which is a tort of breach of statute and actionable as such for appropriate remedies.

I have further considered the duties of the Commissions Board under section 20 of the UPDF Act. Those duties do not show that the His Excellency the President is involved on the issue of retirement. The President *inter alia* is advised by the Board on the question of appointments of officers and promotions. The failure of the Board to act within 90 days of receiving the applicant's application was an actionable wrong which could be dealt with in an ordinary suit for remedies after the plaintiff proves his entitlement to damages or certain rights accruing by virtue of employment.

For the High Court to exercise the powers of the Board which had not been exercised is beyond the scope of the judicial review jurisdiction. Further article 42 of the Constitution deals with the issue of whether a person appearing before any administrative official or body was treated justly or fairly in respect of any administrative decision. What was the *administrative decision* in this matter? Article 42 of the Constitution is reproduced for ease of reference and it provides that:

> 42. Right to just and fair treatment in administrative decisions.
>
> Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

The right to apply to court does not necessarily mean a court exercising judicial review jurisdiction. All depends on the nature of the remedy sought. Secondly, article 42 of the Constitution clearly deals with a right to apply to court in respect of an administrative decision. Where the parties claim there were still discussing the issue what decision can the court consider and how would the court determine that the person was treated unjustly and unfairly without the outcome of their deliberations? The matter presented to the High Court was a complex matter which required evidence as well as consideration of the terms and conditions of service of UPDF officers which could not be resolved on the basis of affidavit evidence. For instance, there is a pensions authority which is responsible for the assessment, grant and payment of pensions gratuities and this is made clear by section 24 of the UPDF Act which provides that:

> 24.Pensions Authority and the Minister responsible for defence
>
> (1) the Pensions Authority shall be responsible for the assessment, grant and payment of pensions gratuities under sections 70 and 81 and other similar matters prescribed by or under this Act.
>
> (2) the Ministry responsible for defence shall facilitate the assessment, grant and payment of pensions and gratuities under this Act by the pensions authority.

The applicant's application sought diverse declarations but does not show among other things what role the other authorities concerned with these emoluments were supposed to play or played and whether they played their roles justly and fairly with regard to him. The basis of his action rested on the question of whether his resignation was effective upon the expiry of the 90 days' period within which the Board was supposed to communicate a decision on his application for resignation. This did not give jurisdiction to the High Court under its administrative review jurisdiction to delve into other matters to be dealt with by statutory authorities prescribed in the UPDF Act with the mandate to deal with matters of retirement and retirement benefits of a General in the UPDF. The court would only be concerned with a decision and to assess its legality. There was no decision but only a delay to communicate one in violation of section 66 (2) of the UPDF Act.

In the premises, I would allow ground 2 of the appeal.

The determination of ground 2 of the appeal is sufficient to resolve the Appellant's appeal. Having found that there was no decision that was amenable to judicial review, I find that the rest of the grounds do not need to be considered since they deal with the Respondent's employment benefits. I note that the Board's delay to act in violation of the UPDF Act is actionable in a court of law.

Since my sisters Hon. Lady Justice Irene Mulyagonja, JA and Hon. Lady Justice Monica Mugenyi, JA agree, the following orders shall issue:

1. The appeal is allowed and we set aside the decision of the High Court.

2. We dismiss the application for judicial review in the High Court without prejudice to conversion of the application to an ordinary suit.

3. There shall be no order as to costs.

Dated at Kampala the 8th day of Feb 2022

Christopher Madrama Izama

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram; Madrama, Mugenyi, Mulyagonja, JJA)

CIVIL APPEAL NO. 196 OF 2016

ATTORNEY GENERAL.....APPELLANT

VERSUS

GENERAL DAVID SEJUSA.....RESPONDENT

JUDGMENT OF IRENE MULYAGONJA, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Christopher Madrama, JA.

I agree that the appeal should be allowed with no order as to costs for the reasons set out in his judgment.

Dated at Kampala this 8th **day of** Feb **2022**

.....

Irene Mulyagonja
Justice of Appeal/Constitutional Court

THE REPUBLIC OF UGANDA

THE COURT OF APPEAL OF UGANDA
AT KAMPALA

CORAM: MADRAMA, MULYAGONJA AND MUGENYI, JJA

CIVIL APPEAL NO. 196 OF 2016

BETWEEN

ATTORNEY GENERAL ..... APPELLANT

AND

GENERAL DAVID SEJUSA ..... RESPONDENT

(Appeal from the Judgment and Orders of the High Court of Uganda (Oguli-Oumo, J) in Miscellaneous Cause No. 176 of 2015)

JUDGMENT OF MONICA K. MUGENYI, JA

I have had the benefit of reading in draft the lead Judgment of my brother, Hon. Justice Christopher Madrama, JA. I agree with the decision arrived at, the reasons therefor and the orders made, and have nothing more useful to add.

Dated and delivered at Kampala this ..8th.. day of ..Feb....., 2022.

Hon. Lady Justice Monica K. Mugenyi

JUSTICE OF APPEAL