THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

CIVIL SUIT NO 117 OF 2008

TIBENDERANA XAVIER}..... PLAINTIFF

VERSUS

ATTORNEY GENERAL} ..... RESPONDENT

BEFORE HON. JUSTICE CHRISTOPHER MADRAMA

JUDGMENT

The plaintiff's suit against the Attorney General of Uganda is for recovery of *inter alia* **Uganda shillings 51,090,000,** being a claim for special damages for breach of contract, general damages for breach of contract and costs of the suit. Initially the defendant objected to the suit on the ground of time bar before Hon. Lady Justice Stella Arach who ruled that the question whether the suit was time barred could not be determined without hearing evidence. Thereafter the plaintiff's counsel applied for judgment on admissions and the application was disallowed on the ground that the court had ruled that the question of time bar had to be determined after evidence had been led viva voce on the documents attached to the plaint which documents included those on which the plaintiff relied in his prayer for judgment on admission. The facts in the pleadings were sufficiently stated in my ruling on whether the plaintiff was entitled to judgment on admissions which ruling was delivered on the 25th of October 2011.

The plaintiff's case is that in the year 2002, the Government of Uganda through the Ministry of Agriculture Animal Industry and Fisheries had a programme to distribute tea plantlets among small holder growers to boost tea production. It procured tea plantlets from trained nursery farmers, including the plaintiff who had established a tea plantlet nursery under the programme. The Ministry of Agriculture Animal Industries and Fisheries through Messrs James Finlay Uganda

Limited procured tea seedlings from tea nursery farmers for distribution to the tea farmers supported by the programme. The plaintiff and other nursery farmers were trained by the Ministry of Agriculture Animal Industry and Fisheries to establish nurseries. The Ministry of Agriculture Animal Industry and Fisheries in conjunction with James Finlay Uganda limited made orders for tea seedlings under the project and the plaintiff alleges that he supplied seedlings to farmers under the project worth Uganda shillings 50,020,000 but was never paid hence the suit.

The plaintiff claims transport costs of Shillings 1,090,000/=, damages for inconvenience and loss of profits. The plaintiff also seeks any other remedy as the court may deem fit to grant.

In its written statement of defence, the defendant admits paragraphs 4 (i), (ii), (iii) of the plaint but denies the rest of the averments in the plaint. The defendant contends that the suit is time barred under the Civil Procedure and Limitation (Miscellaneous Provisions) Act. Ruling on whether the suit was time barred was stayed by court pending the hearing of evidence. It is sufficient here to repeat the submissions of the Defendant. The preliminary objection had been raised by Miss Nyangoma State Attorney who represented the Attorney General while the plaintiff was represented by Counsel Byaruhanga Dennis. On 9th of April 2009 Nyangoma submitted that the plaintiffs suit was time barred having been brought after three years prescribed by the Civil Procedure and Limitation (Miscellaneous Provisions) Act, cap 72, section 3 (2) thereof which prescribes a period of three years for filing an action founded on contract from the time the cause of action arose. On the 15th of April 2009 Hon. Lady Justice Stella Arach ruled that the documents relied on to make the objection did not specifically indicate on what date they were written especially the date of acknowledgment and ruling on the preliminary objection was stayed until after evidence had been adduced when the issue of time bar would be decided as the first issue in the controversy.

At the hearing the Attorney General was represented by State Attorney Irene Baiga while Counsel Byaruhanga Dennis still represented the plaintiff. The agreed issues for resolution of the suit are:

1. Whether the suit is time barred,

2. Whether the Attorney General is liable to pay the plaintiff for 250,100 seedlings supplied to ministry of Agriculture Animal Industry and Fisheries in the year 2004.

3. Remedies available to the parties:

The plaintiff only called one witness and testified as PW1 while the defendant called one witness Mr. Okasai Sidronius Opolot, the Director of Crop Resources Ministry of Agriculture Animal Industry and Fisheries. At the close of the cases of both parties Counsels opted to address court in written submissions.

1. Whether the suit is time barred.

As noted above the Attorney General had already raised a preliminary objection that this suit was time barred in that AG submitted that the suit was brought after three years because the cause of action arose in August 2004 while the suit was filed on 2 May 2008. Section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act provides that no action founded on contract shall be brought against the government after the expiration of three years from the date the cause of action arose.

Counsel referred to the judgment of a Court of Appeal Judgment by Justice Berko J.A. In **Civil Appeal No. 25/96 in the matter of an application by Mustapha Ramathan for orders of certiorari, prohibition and injunction**. His lordship justice Berko held that litigation will automatically be stifled after expiry of a prescribed length of time irrespective of the merits of a particular case. He agreed with the statement of Lord Greene MR in **Hilton vs. Steam Laundry (1946) 1 KB 61** at page 81 that:

> "...the statute of limitation is not concerned with merits. Once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the

benefit of the statute of limitations is entitled, of course, to insist on his strict rights".

Counsel submitted that non adherence to time limits is not a mere technicality but non-compliance with a substantive law. In the circumstances she prayed that the suit is dismissed with costs.

For his part the plaintiff's counsel submitted that there was enough evidence on court record before the plaintiff filed this suit that he took various steps and made efforts in an attempt to be paid shillings 50,020,000 being the money for 250,100 seedlings supplied to the government through the Ministry of Agriculture, Animal Industry and Fisheries (MAAIF).

This evidence was in a letter dated 1st November 2006 from the Estate Manager Bugambe Estate addressed to the Permanent Secretary Ministry of Agriculture Animal Industry and Fisheries exhibit P3, the internal memo of the Head Tea Unit dated 22nd of November 2006 to the Permanent Secretary MAAIF exhibited as exhibit D1. He contended that the document forwards the plaintiffs claim for action of the Permanent Secretary and also attaches a letter from the PS to Messrs Finlay (U) Ltd dated 9th November 2006 acknowledging the supply of tea seedlings by the plaintiff. It is the plaintiff's case that the defendant's servants having failed to pay the plaintiff after the claim was submitted in the year 2006 prompted that plaintiff to file a suit on 2 May 2008 within time. Counsel also submitted that DW1 did not show that the claim of the plaintiff was time barred or delayed. The case presented by DW1 for the defendant was that the Ministry of Agriculture, Animal Industry and Fisheries had no agreement to supply seedlings with the plaintiff and secondly that the project in issue was terminated in a letter to the District Agricultural Officer Hoima to stop receiving tea plantlets from nursery operators which letter is dated 23rd February 2004 and exhibit D3.

Counsel concluded that the suit was not time barred and that total justice dictated that the court be pleased to hold that the suit is not time barred. Counsel referred extensively to the exhibits some of which were admitted by the defendant's counsel proving that the plaintiff supplied seedling which formed the basis of the plaintiffs claim in the plaint.

Lastly the plaintiff's counsel contended that the supply of the said seedling was confirmed in the year 2006. The plaintiff had agreed with the concerned people that upon supply thereof by the plaintiff and confirmation of supply, payment would follow. The plaintiff could not claim for payment before the Permanent Secretary of the line Ministry confirmed and approved the payment. Accordingly the Permanent Secretary had acknowledged and confirmed the plaintiffs claim on the 9th of November 2006. Had the plaintiff filed the suit before the Permanent Secretary confirmed supply, it would have been premature. The suit was filed in court on the 2nd of May 2008, less than two years from 9 November 2006.

I have carefully considered the submissions on the first issue of whether the plaintiff's suit is time barred. The plaintiff's suit was filed on the 2nd of May, 2008. The ruling of Honourable lady Justice Stella Arach on the issue of time bar was as quoted hereunder:

> "The documents annexed to the plaint appear to indicate that there was some kind of arrangement as described, and that the plaintiff made several fruitless efforts to get paid. The last document is a memo from the head tea unit dated 22 November 2006 forwarding the plaintiffs claim to the Permanent Secretary. However, as Mr Byaruhanga pointed out, and rightly in my view, the said documents do not appear to indicate the exact date when the plaintiff was supposed to be paid. It is therefore difficult for this court to determine with certainty at this stage in the proceedings when the cause of action arose for purposes of computation of time before evidence is adduced by the parties.
>
> In the circumstances, the preliminary objection cannot be ruled on by court at this stage. The decision on the preliminary objection is according postponed, and it is directed that the point be made issue number 1 among the issues for determination by the court after receiving evidence from both parties."

The letter dated 22 November 2006 is an internal memo from the Head Tea Unit to the Permanent Secretary Ministry of Agriculture Animal Industry and Fisheries. The last paragraph of the internal memo states as follows:

> "Mr Tibenderana Xavier is one of such nursery operators who were caught up by the decision to hold procurement and distribution of plantlets, when his were still immature. Several times I have tried to explain the situation to him but could not accept to loose. He has therefore personally delivered his well-documented claim to my office and I am now forwarding it to you to decide what to do for him."

This document was admitted as exhibits D1 during cross-examination of PW1, the plaintiff. It is therefore clear from the ending of the internal memo that the Permanent Secretary was supposed to consider the plaintiff for payment. It is indicated in the internal memo that the claim is for 250,000 tea plantlets worth 50 million Uganda shillings. It is not indicated when the government refused to pay the plaintiff pursuant to the internal memorandum forwarding his claim to the Permanent Secretary Ministry of Agriculture Animal Industry and Fisheries. The internal memo additionally attaches a letter addressed by the PS written by one D.K Kasangaki acknowledging as head Tea Unit receipt of claim documents from the plaintiff. The letter is dated 9th of November 2006 and addressed to Finlay's, James Findlay (Uganda) Ltd, and Bugambe Tea Estate of P.O. Box 371 Fort Portal. In addition the memo of the Head Tea Unit to the PS MAAIF attaches thereon the letter of James Findlay (U) Ltd, Bugambe Tea Estate dated 1st November 2006 forwarding the plaintiffs claim to the permanent Secretary Ministry of Agriculture Animal Industry and Fisheries at Entebbe. The letter forwards the documents proving that the plaintiff supplied 250,100 tea plantlets under the programme. Whatever the answer to the claim, the plaintiffs suit was filed on 2 May 2008 within the limitation period of three years from the date the Head Tea Unit forwarded the plaintiffs claim to the Permanent Secretary Ministry of Agriculture Animal Industry and Fisheries. Three years is the limitation period prescribed by section 3 of The Civil Procedure and Limitation (Miscellaneous Provisions) Act for causes of action founded on contract. If anything the plaintiff's suit was filed within a period of two years from 22 November 2006. In the premises, the internal memo also shows that the plaintiff's nursery comprised of young tea plantlets which were not ready by the time the line ministry ran out of funds. The plaintiff had however committed funds to develop the tea nursery by

the time other farmers were allowed to supply tea plantlets on credit but too late to benefit from this. The cause of action therefore arose between November 2006 and May 2008. Without deciding the question of the liability of the Attorney General, the Attorney General's objection to the suit on the ground of time bar is overruled.

2. Whether the Defendant is liable to the plaintiff for seedlings supplied to MAAIF.

The plaintiff's case on issue No. 2 is that the Ministry of Agriculture, Animal Industry and Fisheries in conjunction with James Finlay Uganda limited made orders for tea plantlets to supply tea seedlings worth shillings 50,020,000 being the total cost of 250,100 seedlings valued at shillings 200 each. The order to supply the seedlings was confirmed by the District Agricultural Officer Hoima and the plaintiff has never been paid despite several demands he made for payment. The plaintiff's counsel contended the Attorney General of Uganda is answerable as the government's chief legal adviser for all claims for and against the government. All legal documents such as contracts and agreements drafted are executed on the basis of the legal advice of the Attorney General. Through defendant witness DW1 the court was told that the plaintiff was not a party to an agreement between the Ministry of Agriculture Animal Industry and Fisheries and Rwenzori Highland company the witness failed to explain why supply and confirmation documents from the Ministry of Agriculture Animal Industry and Fisheries where issued in the names of the plaintiff. In the agreement between the Government and Messrs Rwenzori Highland Tea Company the price for each seedlings was Uganda shillings 110 but not shillings 200 as stated in the supply and confirmation documents of the plaintiff. Counsel contended that this could therefore not arise from the said agreement between the Government of Uganda and Rwenzori Company.

It is the submission of counsel for the plaintiff that the supply made by the plaintiff was not disputed and is based on exhibit P1 which contains a batch of documents that prove the case of supply of the seedlings upon the express order and confirmation of the order of servants of the defendant. Secondly evidence

adduced prove that the plaintiff had not been paid his claim of shillings 50,020,000 despite the fact that the government make a supply order for the seedlings in issue and the plaintiff had supplied the same according to the confirmation of supply adduced in evidence. Consequently the plaintiff's counsel submitted that the defendant is liable to pay for the seedlings the plaintiff supplied to farmers on behalf of the Minister of Agriculture Animal Industry and Fisheries.

In reply State Attorney Irene Baiga submitted that Defendant's case is that the Government of Uganda through the Ministry of Agriculture Animal Industry and Fisheries in conjunction with James Finlay Uganda limited between the years 2001 and 2002 under a Government strategic interventions programme selected key enterprises including tea for support to promote production, processing and export in order to improve household incomes. The Government invested money in this project which would be sustained subject to the availability of funds. The funding of the Ministry got finished and the project could not be sustained.

Counsel submitted that the DW1 testified that starting from the financial year 2001/2002 the Government interventions strategic programme was started and through the MAAIF executed an agreement with James Findlay's on 30 April 2002 where Government provided some money to farmers to boost their projects. PW1 on cross examination testified that he received Uganda shillings 6,600,000 from the Uganda Government which was non-refundable under the project.

This project however was subject to the availability of funds as provided for in the agreement and the nursery farmers were made aware of this condition but chose to ignore it. It was the testimony of DW1 that after the Government run out of funds the plaintiffs were notified about the non-availability of funds in a letter dated 23rd February 2004 from the Head Tea United addressed to the District Agricultural Officer to stop nursery farmers from supplying to tea farmers tea plantlets but the plaintiff (a nursery farmer) did not want to come to terms with the fact that the projects funds went no longer available. Counsel referred to a letter to the plaintiff from the Ministry of Agriculture dated 29th of November 2004 informing the plaintiff that funding for the project had been halted. Counsel

further relied on exhibit D1 (referred to in my judgment below) which she contends indicates that the plaintiff was aware that the project had been halted but he was not satisfied and sued government. The case of the defendant is that the plaintiff and other nursery farmers were told to look for alternative market for their seedlings after project funds had got finished but the plaintiff insisted on supplying Government on credit.

Counsel submitted that the government cannot pay damages for projects meant to boost incomes. This was a way of depleting scarce resources in the treasury of Government. Moreover the plaintiff admitted receiving from government shillings 6,600,000 to start his nursery garden and later government would buy from them subject to availability of funds in accordance with the agreement between Government and James Findlay (U) Ltd exhibit D2.

In rejoinder counsel for the plaintiff mainly reiterated his earlier submissions and added that much as DW1 told court that the government directed the District Agricultural officer to stop receiving supply of seedlings from the nursery operators basing on exhibit P3, the letter was not specifically addressed to Hoima District Agricultural Officer or any other person. There was no evidence that the plaintiff was informed of this directive Moreover PW1 testified that he was never notified of the directive in issue.

As far as the second issue is concerned, I have carefully considered the evidence on record and the submissions of counsel on this point. It is not in dispute that the plaintiff supplied 250,100 tea seedlings each at the cost of Uganda shillings 200 during the period April/August 2004. In support of the plaintiffs claim admitted in evidence as a batch of documents is exhibit P1 being a supply order dated 31st of January 2004 serial number 6987 signed by the extension officer in charge/sub country and also signed by the District Agricultural Officer. The document was meant for the Permanent Secretary Ministry of Agriculture Animal Industry and Fisheries. The order was made to the plaintiff. It is also backed by a confirmation of supply document issued by the Ministry of Agriculture Animal Industry and Fisheries entitled "Support to Uganda Tea Growers AG 02 (B) forms 11". The document reads and I quote:

"We confirm that the above named nursery operator has supplied 250,100 hardened clonal tea seedlings in good condition each at shillings 200 and the total value of the consignment is shillings 50,020,000/=."

Again from 11 is signed by the Extension Officer/for the Sub-County; by the plaintiff as the nursery operator; by the Chairman Local Council III and the District Agricultural Officer. The serial number of the confirmation of supply form 11 is 1141. The document is dated 31st August 2004. Additionally the plaintiff proved in evidence a distribution list of the clonal seedlings supplied to farmers. The primary contention of the Attorney General stems from the date of the letter of the Permanent Secretary Ministry of Agriculture Animal Industry and Fisheries dated 29th of November 2004. The letter is addressed to the plaintiff and refers to the letter of the plaintiff dated 27th of September 2004 concerning the above captioned subject of advance payment for 250,100 clonal tea seedlings supplied to Bugambe out growers which reads as follows:

"Please refer to your letter dated 27th September, 2004 concerning the above captioned subject.

First I take this opportunity to thank you for the efforts you have taken as a tea nursery operator. I would like however to inform you that due to financial constraints the ministry has for the time being halted purchase and distribution of the seedlings and also giving financial assistance (advance) to nursery operators. Nursery operators having tea seedlings including yourselves are advised to look for a market for the seedlings and sell them at a negotiated price."

Exhibit P2 is signed for the Permanent Secretary. The plaintiff testified that he received this letter at Entebbe on the 23rd of February 2005 at 3:30 PM where he had gone to pursue his payment. Exhibits D1 is a loose minute dated 22nd of November 2006 and gives a coherent account about what actually happened concerning the plaintiffs problem. The internal memo was written by the Head Tea Unit and concerns Hoima Districts Nursery Operators Claim and specifically refers to the claim by the plaintiff. It shows that the claim was forwarded by James Finlay (Uganda) Ltd through the Hoima District Agricultural Officer. It

confirms that the claim is in respect of 250,000 tea plantlets which the nursery operator produced under the strategic interventions on tea and supplied to other farmers in the same district. The memorandum confirms that the plaintiff's seedlings had been supplied to farmers in the same district.

From the evidence on record, it is very crucial when these tea seedlings were actually supplied. As we have noted above documents endorsed by the District Agricultural Officer show that the seedlings had been supplied or distributed between May 2004 and 10th of September 2004. The letter relied on by the Attorney General exhibit P2 dated 29th of November 2004 has two aspects. The first aspect is the fact that it was written after the plaintiff had already supplied the farmers under the government supported program. The reasons that can be discerned from the documents are as follows: The supply order was endorsed by the relevant officials including the District Agricultural Officer. The second aspect is that the evidence shows that the plaintiff received this communication on 23rd of February 2005 which evidence has not been contradicted and stands unchallenged.

It is with this background that we need to review the letter or internal memorandum of the Head of the Tea Unit dated 22 November 2006 and received by the Ministry of Agriculture Animal Industry and Fisheries on 23 November 2006 exhibits D1. The Head Tea Unit states that the activity was taken up so vigorously and that the plantlets produced and supplied overtook the availability of funds to pay for them. This situation was aggravated by declining releases of funds from Finance for the intervention. He further writes in his memo to the Permanent Secretary:

> "Due to the fact that the plantlets take at least nine months in the nursery to be ready for planting, by the time the release of funds started declining, there were already millions of tea plantlets in nurseries in all the nine tea producing districts.
>
> In 2003 the ministry realising the growing debt of unpaid nursery operators, decided to halt the authorisation of nurseries to supply tea plantlets to farmers. This was followed by outcry from, the nursery

operators who had invested a lot in the nurseries and still had a lot of plantlets, farmers who needed the plantlets and political leaders from the affected districts.

The outcry resulted in a Presidential directive that all tea plantlets that were ready by the end of 2003 be distributed on credit. This was done and all the claims for the period submitted to the ministry. Unfortunately many nursery operators had already put plantlets in the nurseries for the 2004 first and second season plantings and were not ready for distribution by the end of 2003.

Mr Tibenderana Xavier is one of such nursery operators who was caught up by the decision to halt procurement and distribution of plantlets, when his were still immature. Several times I have tried to explain the situation to him but could not accept to loose. He has therefore personally delivered his well-documented claim to my office and I am now forwarding it to you to decide what to do for him."

From the memorandum of the Head of the Tea Unit the plaintiff was one of those farmers who had already put plantlets in the nurseries for the 2004 first and second season plantings which seedlings were not ready for distribution by the time of the Presidential directive to procure them on credit. This was at the end of the year 2003. From the documentation on record or exhibited and as I have noted above the plaintiff distributed his seedlings during the period of May 2004 and September 2004. The supply order was given at the beginning of the year 2004 that is 31st of January 2004 according to exhibit P1 dated 31st of January 2004. The letter of the Permanent Secretary dated 29th of November 2004 to the plaintiff exhibit P2 was issued to the plaintiff after he had already supplied the beneficiaries of the program with the tea seedlings. It should also be noted that the order to supply was endorsed by the District Agricultural Officer at the beginning of the year 2004. It appears from the internal memorandum of the Head of the Tea Unit that if such a Presidential directive for the supply of plantlets of credit was ever issued this was done at the end of the year 2003. The mode of communication of the Presidential directive whether verbally or in writing has not

been established. Exhibits D1 is however exhibited on behalf of the defence and is deemed admitted evidence as to the facts stated in the document. What can be deduced from this document is that the District Agricultural Officer would be taken to have acted pursuant to the directive to supply the farmers on credit which directive was given at the end of the year 2003. The plaintiff then supplied the products ordered for between May 2004 and September 2004. This was made on credit. But as noted by exhibit D4 the financing from the ministry had started dwindling and was halted. The handwritten notes on exhibits D1 signed by PAS/FSA dated 27 November 2006 requested for the Head Tea Unit to provide a copy of the Presidential directive mentioned in the last paragraph of the memorandum.

DW-1 testified that the project was terminated through a letter written by the Project Coordinator instructing the District Agricultural Officer to stop the supply of tea plantlets in the districts. The letter encouraged nursery operators to look for alternative buyers. However, PW1 could not dispute exhibit P1 which is dated 31st of January 2004 and is signed by the District Agricultural Officer. He testified that the letter stopping the district agricultural officer is on the letterhead of Ministry of Agriculture Animal Industry and Fisheries written on 23 February 2004. The letter was exhibited as exhibit D3. It is addressed to the District Agricultural Officer and reads as follows:

> "RE-: PAYMENT AND DISTRIBUTION OF TEA PLANTLETS
>
> This office has been receiving lots of enquiries regarding payment and distribution of plantlets and this letter comes to once again make clarification on the same as follows:
>
> 1. Distribution of plantlets on credit can only be authorised by the Ministry of Finance, Planning and Economic Development by informing this ministry which in turn informs the concerned districts.
>
> 2. In the case unauthorised distribution has taken place please do not send the claim forms to this office because there are no funds to pay.

3. All nursery operators should be advised once again not to put up nurseries targeting Government. They are advised to look for market for their plantlets. Tea farmers should be sensitised into buying the plantlets.

I hope the above will once again assist you to plan for the way forward accordingly."

Counsel for the plaintiff attacked this exhibit on the ground that it is not addressed to any particular district. However DW1 stated that it was written to several districts. Be that as it may, it is written by the head Tea Unit and copied to the Chief Administrative Officer and Tea G.F. Company. On being cross examined about exhibit D3 he testified that this was a generic letter to districts implementing the project. As far as GF Company is concerned he testified that it was Rwenzori Highland Tea Company which kept on changing its names and later became Bugambe Growers Tea Factory Company. However exhibited D1 which is the internal memo of the Head Tea Unit is also written to the Permanent Secretary forwarding the plaintiffs claim for consideration. The witness was not however sure whether the nursery operators were advised about exhibit D3. Finally the evidence shows that the supply order was made on 31 January 2004 which order was endorsed by the District Agricultural Officer of Hoima district. Specifically, the order was made before exhibit D3 was ever received by the districts implementing the project. In any case authorisation to make orders for supply of tea plantlets on credit from Ministry of Finance cannot be the responsibility of the nursery farmers but those charged with the task of making the order to supply. The letter stopping the project was written around 23rd of February 2004. It is crucial to note that if the plaintiff had been stopped after the district received exhibited D3 soon after it was written on 23 February 2004, they would have to revoke the supply order endorsed by the District Agricultural Officer on 31 January 2004 which had been made about a month earlier than the directive stopping or halting the process. In any case the directive halting supply on credit was not an absolute bar but directed that authority be sought from the Ministry of Finance to make orders to supply farmers on credit.

The case of the defendant is premised on the fact that the supply of plantlets had been stopped by the directive of the Ministry namely exhibit D3. It is my finding that exhibit D3 came after there was a supply order issued by the representative of the defendant namely the District Agricultural Officer of Hoima district exhibit P1 which has not been contradicted. This is further bolstered by the confirmation of supply by the District Agricultural Officer which is part of exhibit P1 and is form 11 headed MAAIF dated 31st of August 2004 specifying that the plaintiff had supplied 250,100 clonal tea seedlings in good condition each at shillings 200 and the value of the consignment is shillings 50,020,000/=. It is my finding that the letters exhibit P2 addressed to the plaintiff dated 29th of November 2004 and the letter addressed to District Agricultural Officer dated 23rd of February 2004 came too late. The supply order had already been made by the District Agricultural Officer and other authorised persons on the 31st of January 2004 as aforesaid. It cannot be said that the supply order was unauthorised distribution. It was duly endorsed on the ministry documents by the relevant Agricultural Extension Officers, the Local Council Officials and the District Agricultural Officer as duly exhibited in support of the plaintiff's case in the batch of documents in the original exhibit P1. There is also no evidence that the instructions that plantlets on credit can only be authorised by Ministry of Finance Planning and Economic Development ever reached the District Agricultural Officer or the plaintiff or that the officials merely ignored the directive. In any case, exhibited D3 states:

> "In the case unauthorised distribution has taken place please do not send the claim forms to this office because there are no funds to pay."

This paragraph cannot impeach the validity of the supply order which had already been issued to the plaintiff. If anything, it can only lead to the disciplining of the officers who made the order for the plaintiff to supply the requisite amount of plantlets to the farmers if at all the officers were aware of a directive not to supply or being aware did not seek authorisation to supply on credit. In other words, the plaintiff as a third party cannot be faulted in the matter. The supply order and confirmation exhibit P1 are enforceable. This also explains the dilemma of the Head Tea Unit in his memorandum exhibited D1 forwarding the plaintiffs claim for consideration of the Permanent Secretary Ministry of Agriculture Animal

Industry and Fisheries on 22 November 2006. Before I conclude this matter, exhibited D1 is written by the Head Tea Unit who is also responsible for issuing the directive relied on by the defendant exhibit D3 halting the process. The head tea unit who is responsible for the directive halting supply or plantlets on credit found it worthy to forward the plaintiffs claims for consideration of the PS. The memo refers to an alleged Presidential directive at the end of the year 2003. It cannot be said as I have held earlier that the District Agricultural Officer, the Extension Officer in charge/sub county did not comply with any Presidential directive as indicated in the memorandum admitted during the cross examination of the plaintiff as exhibit D1.

All in all, I am satisfied that the plaintiff has proved his case on the balance of probabilities that there was an order made by agents of the defendant for him to supply 250,100 tea plantlets which he duly did. This order was made on 31 January 2004 and the supplies were made between May 2004 and September 2004. The order was made to supply on credit and the claim of the plaintiff to be paid was made later. The plaintiff had been advanced Uganda shillings 6,600,000 to set up the nursery as a contribution by the state. By the time of the alleged Presidential directive came at the end of the year 2003, the plaintiff's plantlets were still young. The supply order was made and duly confirmed by the agents of the defendant and the plaintiff is entitled to be paid for all the efforts he made to comply with the supply orders of the defendant servants acting in the course of their employment. I therefore find issue number two in favour of the plaintiff.

3. Remedies available

Submission of plaintiff's counsel on issue 3 on remedies is that the plaintiff having proved his case against the defendant is entitled to judgment for:

(a) An order for payment of shillings 50,020,000 arising out of the defendant's breach of contract.

(b) General damages for the inconvenience the defendant caused to the plaintiff, mental torture and anguish, loss of business income. Counsel

claimed a sum of shillings 80 million as being reasonable in the circumstances to compensate the plaintiff.

(c) Interest on shillings 50,020,000 and general damages from the date of filing until payment in full. This as counsel submitted is due to the fact that the plaintiff has been denied use of shillings 50,020,000 which if they had paid on time would have enabled him to can earn more income there from.

Counsel also prayed that interest rate be at the prevailing commercial rate given the hard economic situation prevailing in the country and costs of the suit.

The defendants counsel on the other hand submitted that if the plaintiff is entitled to remedies he should be awarded nominal damages.

I have already found that the plaintiff has proved his case and he is clearly entitled to the price of the goods he supplied being Uganda shillings 50,020,000/= the price of 250,100 seedlings supplied to farmers by the plaintiff on the orders of government and the said amount is hereby awarded. The contribution by the government of 6,600,000/= towards development of the plaintiffs nursery was non refundable and cannot be deducted from the special damages. Moreover a specific order was made for goods at a specified price.

The claim of special damages of shillings 1,090,000 being transport costs incurred was not proved in evidence and is accordingly disallowed.

As far as interest on special damages is concerned the interest is meant to take care of inflation which averaged over 7% from 2008 and will factor in actual interest of 11 percent after taking into account the fall in value of special damages by the annual inflation rates. Taking the above into consideration the plaintiff is awarded interest at 18% per annum on the special damages awarded of 50,020,000/= from the date of filing the suit in 2008 till payment in full.

As far as the claim of general damages is concerned the plaint pleads a claim for general damages for inconvenience and loss of profits in paragraph 5 and 7 (b) of the plaint. Counsel for the plaintiff first prayed for shillings 80,000,000/= under

this head but in rejoinder amended it to shillings 150,000,000/= without explanation. On the other hand Irene Baiga SA submitted that if the plaintiff is awarded anything it should be nominal damages. The first principle for the guidance of court in the award of damages is stated by the East African Court of Appeal in the case of **Dharamshi vs. Karsan [1974] 1 EA 41** and is a common law doctrine that "The fundamental principle by which the Courts are guided in awarding damages is restitutio in integrum. . .". As far as I understand it, the principle of *restitutio in integrum* means that the plaintiff has to be restored as nearly as possible to a position he would have been had the injury complained of not occurred. I.e. if he had received his money in time.

However counsel has not given the basis of the claim of 80 million. As far as the claim is concerned, the plaintiffs testified that: "Government has failed to pay me and it has affected me in a bad way. I have stayed in poverty. I want this court to complete this case to help me with my problems…. I am sick with liver pain…"

No materials have been put before court to assess any loss of profits claimed and therefore none can be awarded. I have also noted that it is the government which trained the plaintiff to set up his business and it gave him some capital to establish the nursery from which seedlings were supplied to farmers. In fact the plaintiff received cash of shillings 6,600,000/= towards his project from the Government. It is true that the plaintiff did suffer inconveniences and particularly he supplied farmers on the express orders of the defendant's servants but was later denied payment. He had to move to Entebbe a couple of times and pursue his claim in various offices. Yet it is the defendant's servants who caused him to make the supplies. I must note that the order to supply was on credit and not on cash basis and it has not been specifically proved when payment actually fell due. This must have been after the plaintiff was denied payment upon the submission of his claims in November 2006 and not before. In the premises the plaintiff is awarded general damages of shillings 7,700,000/= for the inconveniences suffered pursuing his claim.

The final result is that judgment is given for the plaintiff as follows:

1. The plaintiff is awarded special damages of Uganda shillings 50,020,000/=.

2. The plaintiff is awarded interest on item 1 at 18% per annum from the date of filing the suit till payment in full.
3. The plaintiff is awarded general damages for inconveniences suffered of shillings 7,700,000/=.
4. The plaintiff is awarded interest at 21% on general damages from the date of judgment till payment in full.
5. Costs of the suit are awarded to the plaintiff.

Judgment delivered at Kampala this 27th day of January 2012.

Hon. Justice Christopher Madrama

Judgment delivered in the presence of:

Maureen Ijang State Attorney for the Attorney General

Byaruhanga Dennis for the plaintiff

Plaintiff in court

Ojambo Mokoha Court Clerk

Hon. Justice Christopher Madrama

27th January 2012.