

**THE REPUBLIC OF UGANDA,  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)  
HCMA NO 0688 OF 2014  
(ARISING FROM HCCS NO 0508 OF 2003)**

**ESERO KASULE}.....APPLICANT/PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL}.....RESPONDENT/DEFENDANT**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**RULING**

The Applicant commenced this application under the provisions of section 34 of the Civil Procedure Act, section 27 of the Judicature Act and Order 52 rules 1 and 2 of the Civil Procedure Rules for orders that the dispute as to the method of computation of interest accruing from the judgment in the main suit should be referred to a reputable Chartered Accountant or such other expert or organisation as the court shall deem fit and for costs of the application to be provided for.

It is averred in the grounds that the Applicant is a decree holder in the main suit and a substantial amount of money has been paid to him by the judgment debtor. There is however controversy with regard to the mode of computation of interest accruing. Lastly that it is in the interest of justice that the application is granted.

In a ruling on a preliminary point objecting to the application delivered on 20 November 2014 I held that under section 34 of the Civil Procedure Act the question of computation of interest should be tried as clearly agreed upon in the written submissions of both parties. Secondly the issue of computation of interest as framed by the parties and as a matter arising out of the discharge of the decree

of the court shall be fixed for hearing. The ruling arose from written submissions on points of law against reference of the question of computation of interest accruing from the judgment to a reputable Chartered Accountant or such other expert or organisation as the court shall deem fit. Consequently the issue of computation of interest was tried under section 34 of the Civil Procedure Act as if it were an original suit between the judgment creditor as the Plaintiff and the judgment debtor as the Defendant.

At the hearing of the matter as a dispute under section 34 of the Civil Procedure Act, Counsel Jehoash Sendege represented the Plaintiff/Applicant while Patricia Mutesi Principal State Attorney represented the Attorney General. According to the Applicant's Counsel, pursuant to the ruling of the court on 28 November 2014, the issue of computation of interest had to be addressed on the basis of the judgment. In the oral submissions the Applicant's Counsel submitted that most of the matters were considered in the ruling of the court but there were matters to be emphasised. He invited the court to consider the terms of the order for review. Counsel submitted that the order of the court on review superseded the consent judgment and other prior proceedings between the parties.

Secondly in this application although the Respondent raised the issue of estoppels the Attorney General has been shifting his position on the matter as evidenced by annexure "C" which is a loose minute attached to the affidavit of the Applicant Mr. Esero Kasule in rejoinder. The document is a loose minute dated 26<sup>th</sup> of November 2008 in which the Attorney General writes that the outstanding interest is Uganda shillings 190,290,553/=. At the back of the document there is a statement in the second paragraph that:

"The Public Accountant's method allocates interests payments to interest accrued as is the custom in many commercial enterprises. Under this method payments on the principal start after all interest accrued has been paid"

Counsel Sendege submitted that the significance of this document is that the parties were in the Commercial Court Division of the High Court which applies commercial interest. At the end of the loose minute there is a computation of the

amount due to the Applicant. The Applicant deposes in the affidavit in paragraph 7 thereof that the Senior Accountant of the Attorney General's office handed over this loose minute to him indicating the amount of interest due at that time of Uganda shillings 190,290,553/=. The doctrine of estoppels does not apply in the circumstances. With further reference to annexure "A" attached to the notice of motion there is a report of the accountants Messieurs Bernard Mukooli and Company Associate Accountant of Uganda. In the report the accountant writes that the amount of 90,080,000/= is computed basing on the principle of Time Value of Money which principles postulates that money available today is worth more than the same amount if received in the future to its potential earning capacity. Secondly the interest rate of 16% per annum is meant to compensate the Plaintiff. Based on the theory and formula the accountants conclude that what owed to the Applicant is **Uganda shillings 1,944,949,674/=**.

The Applicant's Counsel submitted that the court has two positions to consider. According to the Attorney General where the decretal sum is paid in bits and pieces, money paid is applied to reduce the principal amount. The Applicant's position is that the money paid in "bits and pieces" should be applied to reduce the interest and not the principal. The rationale given by the Consultant Accountant is the preservation of the worth and integrity of the award. The subject matter in the suit was land which was compulsorily acquired without payment of money. If the method proposed by government is applied, the value of the decretal amount would be completely eroded and therefore the Plaintiff/Applicant can never replace the land. The result would be outrageous and scandalous. Lastly a decree is property and therefore any reduction in value should be guarded against. It is like any other property or asset and courts must be careful not to occasion to litigants loss especially at the commercial court. An award is compensatory and the victim should get the worth of the award.

He further submitted that the review was made in 2008 but the dispute arose in Feb 1991. Given this background if there is any ambiguity in this matter it should be resolved in a way that will assist the Applicant to get worth of his property.

In reply Patricia Mutesi Principal State Attorney submitted that the Respondent opposed the application and the Plaintiff's computation based on reduction of interest first. As in the affidavit in reply the Accountant General advised that the standard practice is for payment to be applied to reduce principal to prevent escalation of interest accrual. The Plaintiff's Counsel gave many reasons in support of their case but stopped short of showing the basis either legal or otherwise for the claim. She contended that where a judgment does not specify such a computation the judge having rendered judgment he cannot reopen the same on issues not pleaded as justifying such an award.

The court should interpret the judgment in such a way that whatever computation is allowed has a basis either from the party's conduct or from the law or practice of the court. The position of the government is that the computation requested for with such a financial obligation cannot be based on a private Accountant's report in the absence of a legal basis. On the question of the conduct of the parties the Attorney General relies on the affidavit in reply and further affidavit in reply. That affidavit attaches correspondences and demonstrates that even before the Plaintiff's Counsel representations, the Plaintiff acknowledged that all payments received were being made towards the principal sum and not towards reduction of interest first. Payments made by government are applied towards reducing the principal and not interest.

Having made representations to court and government on the basis of which the judgment debtor indicated that payment reduces the principal amount first the Plaintiff is barred by estoppels from turning round from what he represented. Counsel relied on the definition of estoppels in Black's Law Dictionary. Secondly she submitted that there is no law which specifies how interest is computed on a judgment debt and specifically on the question of whether part payment reduces interest first or is used to reduce the principal debt first. The law is simply silent on the issue. There may be countries where it is specified by law that any payment is first appropriated towards reduction of interest, costs and then the principal. I.e. in India under Order 21 rules 1 Civil Procedure Code of India.

In the facts and circumstances of this case the judgment is silent on the matter. The court in its wisdom could have spelt out the meaning of the word “net”. Secondly the Attorney General’s Counsel maintains that there is no established practice and the matter is neither obvious nor automatic. Finally the practice of Government is shown in the affidavit in reply to the application and reduction of interest first is not the prescribed method. The government is a judgment debtor in many courts and any decision would have serious ramifications on public coffers. The Plaintiff referred to the custom for commercial enterprises. That custom is usually based on contract law and practice of banks. In the absence of a contract it cannot be applied to the Plaintiff’s case.

The Plaintiff’s Counsel had countered the argument on estoppels on the basis of annexure “C” which is a statement of the Senior Accountant of Ministry of Justice. However the statement relied on has some words missing and does not state what comments are made about the demand. Secondly it was an error and in any case objectionable on the ground that it is a loose minute which is an internal document. Estoppels is concerned with a statement or representation made to the party seeking to rely on it.

As far as the Plaintiff’s Counsel sought to justify the value of the decretal amount on the ground that it was compensation for land, the suit was not in respect of the land. There was valuation and part payment. The suit was for payment of the balance and not for the land and was therefore a money claim. The reason why courts award commercial interest is to preserve the value of the award and by the time the Plaintiff filed the suit he did not own the land. The court ought to find that the proposed computation of the Plaintiff is without legal basis. Secondly based on the conduct of the Plaintiff, the Plaintiff is barred by the doctrine of estoppels from making the computation as prayed for. In the premises the application ought to be dismissed with costs.

In rejoinder the Plaintiff’s Counsel agreed that it is true that under the Ugandan law there is no express law on the matter. The interpretation can go either way depending on the circumstances of the case. The application should be decided on its own merits. Government practice cannot by any stretch of imagination oust

the option presented by the Plaintiff. The option is supported by expert opinion. Even the Senior Accountant of the government supports it but gives reasons why it should not be applied. As for the loose minute, the court can use it notwithstanding how it was obtained. Besides according to paragraph 7 the document was given by the Senior Accountant to the Plaintiff and government cannot disown the document. The document gives figures and continues with a figure of 1.9 billion on outstanding interest and the Attorney General is inconsistent on the matter.

The letter dated 1<sup>st</sup> April attached to the affidavit in reply was written long before the review and contains the words “without prejudice.” With regard to the practice of court, if others have not been vigilant in cases where it is warranted, it is too bad for them. The practice of government which is unconscionable cannot be allowed to prevail in a case where appropriate computation is warranted such as in the Plaintiff’s case. Furthermore the suit was for unpaid money for a piece of land and the facts are on record. The Plaintiff could have claimed the land but did not want to embarrass the government. With regard to the dictionary definition in Black’s Law dictionary, there is a category on judicial estoppels and there is no fraud on the court as defined. In view of the loose minute the Attorney General cannot claim that government would be adversely affected.

Allowing the application would be a blessing to the nation in suitable cases. It will force government to pay promptly instead of taking time and having amounts awarded eroded. In the premises the Plaintiff’s Counsel prayed that the report of expert is adopted as reflected the correct position in the payment of interest and for costs of the application to be awarded to the Plaintiff.

With leave of court Principal State Attorney Patricia Mutesi submitted on the effect of delayed payments on members of the public. She prayed that the court should take judicial notice of the slow payments based on financial constraints. Furthermore an interpretation allowing part payment to offset the accumulated interest first would create a bigger burden on Government coffers.

## Ruling

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I have carefully considered the judgment of the court, the order on review of the decree, the Applicants application, the reply thereto, the submissions of Counsel and the law.

It is clear that the main controversy in this application or suit between the judgment creditor and the judgment debtor is on the method of computation of interest on the decreed sum. The Attorney General's position is that part payments made to the judgment creditor should be applied to firstly offset the principal debt before it can be used to offset the accumulated interest. In other words any part payment made would firstly be used to offset the principal amount while interest continues to accumulate on a reduced principal amount until the principal amount is offset. Thereafter the accumulated interest would be reduced until all the payment has been made. This is the practice of the Ministry of Justice in the payment of the judgment debts. According to the Attorney General's Counsel in court, in the absence of a contract, the prevailing practice should be applied. Additionally the Attorney General requested for the court to look at the ramifications any other interpretation would have on government coffers on the ground that the government is a judgment debtor in very many cases (not quantified) and the computation based on the Plaintiff's formula would put a heavy burden on public coffers. The commercial practice cannot be applied where the judgment does not specify how interest should be computed.

On the other hand the Plaintiff's position is that part payment should first clear the accumulated interest while the principal interest remains intact if not partially cleared by the part payment and as long as there are any arrears of interest. The Plaintiff further argued the rationale for this approach on the basis of an opinion from an "expert" accountant. Furthermore it is the Plaintiff's case that it is a commercially acceptable practice and also the practice of the banks. The approach is meant to preserve the value of the principal amount or subject matter.

I have duly taken into account the submissions of Counsel which I have reproduced earlier on in this ruling.

The beginning approach must consist of a perusal of the judgment and decree of the court for guidance. The Plaintiff filed HCCS 508 of 2003 on 22 August 2003. In the plaint the Plaintiff averred in paragraph 3 (a) that at all material times he was the registered proprietor of land comprised in Bulemezi block 1009 plot 1 at Bulyamusenyu amounting to 1281 acres. It is averred that sometime in February 1991, the government of Uganda compulsorily acquired the land for purposes of setting up a Presidential Farm. Subsequently a valuation of the property was carried out by the East African Consulting Surveyors and Valuers. It is further alleged that the government agreed to pay the Plaintiff Uganda shillings 166,530,000/= of which the Plaintiff had been paid in two instalments of Uganda shillings 26,450,000 and Uganda shillings 50,000,000/= leaving an outstanding balance of Uganda shillings 90,080,000/=. The Plaintiff prayed for general damages for loss, inconvenience and disturbance, special damages and the principal amount of 90,080,000/= as well as interest at 25% per annum from February 1991 until payment in full.

Judgment was entered for the Plaintiff on 12 October 2004 and in Miscellaneous Application Number 865 of 2004, the Plaintiff applied for review of the judgment so that the Plaintiffs claim for interest which was agreed at 16% per annum could be extended to cover the whole amount of Uganda shillings 90,080,000/= 'on a reducing scale'. It was averred in that application that 90,080,000/= shillings owed at the time of filing the suit as from February, 1991 till payment in full as claimed in the plaint. The order of the court on review dated 21st of February 2008 is as follows:

"...

1. Judgment is hereby entered for the Plaintiff on the sum of Uganda shillings 90,080,000/= net MINUS whatever amounts he has so far received from government to date.
2. The said sum of shillings 90,080,000/= shall carry interest, on the decreasing net amount at the rate of 16% per annum with effect from 1<sup>st</sup> of February, 1991 until payment in full.



3. The Defendant shall pay the Plaintiffs costs of the main suit and this application."

A perusal of the decree of the court as reviewed on the 21<sup>st</sup> day of February 2008 is that any monies paid to the Plaintiff by the 21st day of February 2008 are to be deducted. Secondly the principal amount carries interest on the decreasing net amount at the rate of 16% per annum with effect from 1 February 1991. The judgment of the court does not specify whether any accumulated arrears of interests have to be paid before the payments can be used to offset the principal amount. The court used what appears to be the unfortunate phrase "decreasing net amount". The question therefore remains as to when the net amount begins to decrease. If the interpretation of the Attorney General is to be accepted, the effect would be that any amounts paid would first be used to offset the principal amount while interest would continue to accrue on the remaining net amount out of the principal after the offset. If the principal is all paid-up, then interest stops running from that time and the Attorney General would only be obliged to pay arrears of interest which had accrued immediately before the principal amount was offset.

The Plaintiff attacked this approach on the ground that it does not make commercial sense. The Plaintiff's approach is that interest continued to accrue until all the arrears of interest are paid-up then any further payments would be used to offset the principal amount. If no sufficient funds are paid using this approach, the Plaintiff can continue to earn interest ad infinitum (that is so long as interest remains due and unpaid the principal also will remain outstanding).

The two approaches do not consider the commercial bank practice of apportioning instalment payments in such a way that the total amount outstanding is reduced over time. However this depends on the prompt payment of instalments. The instalments are calculated in such a way that they are more than the interest per annum or per month so that eventually there is instalment payment on a decreasing amount. Secondly there is the issue of whether interest payments are compounded or simple interest.

It may be in controversy whether interest payments in the case of payments by the government where there is no contract to the contrary is simple interest per annum or compounded. I will consider the issue in due course.

With reference to the evidence adduced by the Plaintiff/Applicant, the Applicant attaches annexure "B" which is a letter addressed to the Solicitor General, Ministry of Justice and Constitutional Affairs dated 25th of May 2011 from the Accountant General. In the letter addressed to the Solicitor General the Accountant General writes that guidance on procedure would be appreciated. In other words even the Accountant General was not definitive about the proper approach and required guidance from the Solicitor General. He wrote that the internal audit and inspectorate had reviewed the computation of interest accrued in respect of the Plaintiffs claim. Part of the letter reads as follows:

"Please find here attached the detailed computation showing the accrued interest due to Mr Yesero Kasule of UGX = 32,256,901 = (also in words) as at 12 February 2009, a position that has not changed to date, because payment of the principal amount, on which interest was charged, was made in full."

However the reference to unattached detailed computation was not included in annexure "B". What I have sight of is the so called practice of the Accountant General. No rules or regulations were referred to by Counsel and the submission of the Attorney General is that there is no specific legislation dealing with how interest is to be calculated.

What is attached to the affidavit in rejoinder of the Plaintiff/Applicant is a loose minute of the Senior Accountant Ministry of Justice and Constitutional Affairs written on 26 November 2008 and addressed to the Under Secretary/Accounting Officer on the subject of computation of all amounts payable to the Plaintiff.

The loose minute writes that from 1 February 1991 up to June 2003 interest at 16% per annum amounted to Uganda shillings 177,757,867/=. Thereafter the Senior Accountant applied a cheque payment of Uganda shillings 51,650,000/= on the principal amount leaving a balance on the principle of Uganda shillings

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38,430,000/=. Subsequently he calculated interest between July 2003 up to June 2005 on the balance of the principal amount at 16% per annum and came to a figure of Uganda shillings 21,297,600/=. Subsequently the Senior Accountant writes that in 2005 the Plaintiff was paid Uganda shillings 38,000,000/= which offset the balance of the principal which at that time was Uganda shillings 38,430,000/= leaving a balance of Uganda shillings 430,000/=. Interest on that amount outstanding on the principal between July 2005 to November 2008 was Uganda shillings 235,086/=. Thereafter he computed the outstanding interest for the entire period commencing February 1991 to November 2008 at Uganda shillings 190,290,553/=.

In the loose minute it is noted that the Plaintiff's accountant allocates payments to interest accrued as is the custom in many commercial enterprises (The loose minute is not clear on this point but does not affect the conclusion of the court). Under this method payments are allocated to interest accrued until all interest accrued has been paid. On the other hand the Senior Accountant's method was that payments are applied to the principal to reduce escalation of interest accrual. He further noted that his knowledge was a custom not prescribed by accounting standards or regulations. There was an objection to the admissibility of this document on the ground that it is an internal memo. However the objection is technical because the submissions of the Attorney General's Counsel are in effect a replication of the Senior Accountant's opinion and loose minute on the matter in two material respects. Furthermore the affidavit in further reply to the Applicant's application by Principal State Attorney Oburu Odoi Jimmy relies on that document and opinion in paragraph 3 thereof.

I do not see any prejudice to the Attorney General if the document is relied upon as evidence of how interest was calculated in the Plaintiff's matter by a Government Department. Secondly any earlier calculations giving the Plaintiff more interest has now been denied on the basis of the method used and the decision of the Accountant General. Estoppels cannot be applied to the earlier position.

On the other hand the calculations of the Plaintiff are based on a computed compensation award from 1991 to 2014 prepared by Bernard Mukooli and Company Accountants, filed on court record on 17 April 2014. He argues that the interest rate of 16% per annum is meant to compensate the Plaintiff for the risk associated and the change in the purchasing power of that money. He made a computation of the amount and the payments made. From 1 February 1991 up to 1 February 2002 the interest kept on changing and increasing yearly suggesting that every year he added the interest of the previous year to the principal and applied 16% per annum on the new quantum. Consequently by 1 February 2003 when Uganda shillings 51,650,000/= was paid, he shows that the balance left unpaid was Uganda shillings 483,067,316/=. Finally after deducting the payments made by 1 February 2014 his calculations leave an outstanding balance owed to the Plaintiff of **Uganda shillings 1,944,949,674/=**. My understanding of the calculation is that his computation compounded interest yearly.

Furthermore I have considered the argument relating to the doctrine of estoppels as to whether the Plaintiff can claim further accrual of interest on the basis of the submissions of Counsel and the affidavits in further reply. In the affidavit in reply Principal State Attorney Jimmy Oburu deposes that on 10 October 2014 the parties executed a consent judgment in the main suit for the sum of Uganda shillings 38,230,000/= in full and final settlement of the suit. The court ordered interest to be paid on that sum from the date of valuation which is 14 December 1999 till payment in full. Thereafter in November 2004 the Applicant filed an application for review seeking interest of 16% to be extended to cover the amount of 90,080,000/= because it was due and owing at the time of filing the suit. He deposes that out of the amount of 90,080,000/= claimed in the plaint, Uganda shillings 51,650,000/= had been paid after institution of this suit. In June 2005 before the application could be heard the Applicant was paid an additional 38,000,000/= of the principal amount leaving a balance of Uganda shillings 230,000/= only. Subsequently the application for review was made on adding interest on a reducing scale. He further deposited that the Applicant's lawyers wrote to the Respondent that they were aware that the most if not all the principal amount representing the compensation had been paid in bits and pieces

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for a period of over 15 years. What remained to be paid is the interest. In February 2009 the Respondent paid the Applicant/Plaintiff Uganda shillings 161,746,970/= as interest. Thereafter the Accountant General reviewed the computation of interest due to the Applicant in May 2011 and he was advised that interest payable to him was Uganda shillings 32,256,901/= and that the principal amount had been paid in full. In December 2011 the Applicant was paid a final outstanding interest of Uganda shillings 27,418,366/= equivalent to the outstanding amount less withholding tax of 4,838,535/=. On the basis of the above deposition, the Respondent is of the opinion that the Applicant/Plaintiff is barred by the doctrine of estoppels from alleging that there is a controversy as to the computation of interest or that payments should first be deemed to have first been applied towards the payment of interest when he expressly acknowledged otherwise.

As far as the doctrine of estoppels is concerned, it cannot be said that the Applicant/Plaintiff waived his rights under the judgment. In an application made under section 34 of the Civil Procedure Act, the court considers any issue arising out of execution and the question of whether the decree of the court was satisfied according to the terms of the decree is a matter arising out of execution and the doctrine of estoppels cannot be applied to determine the rights of the parties under the decree. I further agree with the Plaintiff's Counsel that the original suit even though it was a claim for money, was actually a claim for compensation money pursuant to compulsory acquisition of the Plaintiff's land. Nonetheless the nature and use of money as a store for value does not change. I further agree that the matter in question is also under the purview of article 26 of the Constitution of the Republic of Uganda that prescribes prompt, adequate and prior compensation of a person deprived of property before compulsory acquisition of the property.

In the premises the matter shall proceed for interpretation as to the manner of computation of interest. It must be noted that the computation of interest should be guided by the court order. Power to award interest by the court is enabled by section 26 of the Civil Procedure Act. Particularly section 26 (2) provides that:

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“Where the decree is for the payment of money, the court may in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.”

The wording of the court order is that the sum of Uganda shillings 90,080,000/= shall carry interest on the decreasing net amount at the rate of 16% per annum with effect from 1 February 1991 until payment in full. The meaning of "net amount" means the balance after deducting any payment. It does not mean a balance after deducting the amount paid on the principal or the interest. It meant that the government department responsible would calculate interest up to the date at which payment is made and add that interest to the principal amount whereupon they would subtract the amount paid from the total due. Because the award of interest is on the principal sum adjudged, until and unless in that process the principal amount is also offset, it would continue carrying interest. The award of interest cannot be based on the custom or practice of the Accountant General but on the decree and should be guided by the wording of the court in the decree. Furthermore in terms of section 26 (2) of the Civil Procedure Act the court clearly awarded interest with effect from 1 February 1991 until payment in full on the decreasing net amount. So long as there is no decrease on the amount of Uganda shillings 90,080,000/=, the interest shall continue to accumulate at a simple rate of 16% per annum with effect from 1 February 1991 on the principal amount until sufficient payments have been made to start offsetting the principal amount. There is no requirement in making an offset to separate the principal amount from the accrued interest. The principal carries interest and any deduction is made on the total due and outstanding at the date of payment of any instalment.

Before taking leave of the matter I need to comment on the rationale for the award of interest and the appropriate payment method. According to **Stroud's Judicial Dictionary of Words and Phrases Sweet & Maxwell 2000 Edition** "interest on money" is:

*"Interest is compensation paid by the borrower to the lender for deprivation of the use of his money (Riches v. Westminster Bank [1947] A.C. 390) ... (Emphasis added).*

Interest in the circumstances of the Plaintiff is meant to compensate the Plaintiff for deprivation of the use of his money that remained unpaid at the time of institution of the suit.

In the case of **Riches v Westminster Bank Ltd [1947] 1 All ER 469 HL at page 472** Lord Wright explains the essence of an interest award in the following words:

*"... the contention is that money awarded as damages for the detention of money is not interest and has not the quality of interest. Evershed J, in his admirable judgment, rejected that distinction. The appellant's contention is, in any case, artificial and is, in my opinion, erroneous because the essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation...."*  
(Emphasis added).

Furthermore Halsbury's laws of England (supra) paragraph 850 provides:

*"it is assumed that the Plaintiff would have borrowed to replace the assets of which he has been deprived..."*

In the case of **Jefford and another v Gee [1970] 1 All ER 1202**, Court of Appeal, Civil Division Lord Denning MR held at page 1206 that:

“We applied this principle very recently in Harbutt’s Plasticine Ltd v Wayne Tank and Pump Co Ltd... where we all agreed in saying:

*‘... the basis of an award of interest is that the Defendant has kept the Plaintiff out of his money; and the Defendant has had the use of it himself. So he ought to compensate the Plaintiff accordingly.’ ...”*  
(Emphasis added)

Finally the precedents on the matter are that an award of interest also falls under the doctrine of *restitutio in integrum*. In the case of **Tate & Lyle Food and Distribution Ltd v Greater London Council and another [1981] 3 All ER 716** Forbes J at page 722 said that:

“I do not think the modern law is that interest is awarded against the Defendant as a punitive measure for having kept the Plaintiff out of his money. *I think the principle now recognised is that it is all part of the attempt to achieve restitutio in integrum. One looks, therefore, not at the profit which the Defendant wrongfully made out of the money he withheld (this would indeed involve a scrutiny of the Defendant’s financial position) but at the cost to the Plaintiff of being deprived of the money which he should have had.* I feel satisfied that in commercial cases the interest is intended to reflect the rate at which the Plaintiff would have had to borrow money to supply the place of that which was withheld.” (Emphasis added)

Because the interest awarded was meant to compensate the Plaintiff for deprivation of his money agreed to by the Defendants servants as compensation for loss of land, the Plaintiff was entitled to prompt and adequate compensation. That being the case the law should be interpreted in such a way as to preserve the value of the money as capital and as an adequate compensation of the Plaintiff and not to erode and the value of the money. They were substantial delays in the payment of the money. It therefore followed that the total amount due to the Plaintiff had to be computed at the time of payment to include the interest carried on the amount. This would mean that the principal amount would be added to the interest at the date of payment. The amount paid would reduce



the total amount that was due and owing at the time of payment. In practical terms and for purposes of illustration only payment ought to have been made as follows:

From 1 February 1991 the first payment that was made was allegedly was made on 1 February 2003 in the amount of Uganda shillings 51,650,000/=.

At the time of making this payment, interests had accumulated for a period of 12 years. Simple interest of 16% per annum on the principal amount is Uganda shillings 14,412,800/=. It followed that by 1 February 2003 the interest that had accumulated was Uganda shillings 172,953,600/=. This would be added to the principal amount of Uganda shillings 90,080,000/= giving an outstanding balance of Uganda shillings 263,033,600/=. If the amount of Uganda shillings 51,650,000/= is subtracted, it would leave an amount of Uganda shillings 211,383,600/=.

The next payment was allegedly made on 1 February 2005 of Uganda shillings 38,000,000/=. This was a period of two years after the last payment. And the additional accumulated interest amounting to Uganda shillings 28,825,600/= giving an outstanding balance of Uganda shillings 240,209,200/=. After the payment of Uganda shillings 38,000,000/= the outstanding balance would be Uganda shillings 202,209,200/= as on 1 February 2005.

Thereafter the next payment was allegedly made on 1 February 2009 being after a period of four years. Again additional interest of Uganda shillings 57,651,200/= had accumulated bringing the total outstanding amount up again to Uganda shillings 259,860,400/=. The total amount paid was Uganda shillings 161,746,970/= leaving an outstanding balance of Uganda shillings 98,113,430.

It should be noted that even at this stage and in theory the principal amount had not yet been reduced. What was being paid was compensation to the Plaintiff for the deprivation of use of the amount. In other words because of the purpose of the award of interest, it could not be separated from the principal in terms of liability to pay. The principal value of money increased due to delay without affecting the computation of simple interest.

Then next payment was made on 1 February 2011 two years later. Again interest had accumulated on the principal amount for a period of two years. The additional accumulated interest amounting to Uganda shillings 28,825,600/=, leaving an outstanding amount of Uganda shillings 126,939,030/=. When the payment of Uganda shillings 27,418,366/= was made, it reduced the outstanding amount to Uganda shillings 99,520,664/=.

If the formula of the Accountant General is to be followed, according to annexure "I" attached to the further affidavit in reply of the Attorney General's representative referred to above accrued interest from 1 February 1999 to 8 October 2003 was Uganda shillings 182,566,938/=. Uganda shillings 51,650,000/= was paid on 8 October 2003 leaving an outstanding balance of Uganda shillings 38,430,000/= on the principal.

Thereafter accrued interest was calculated on the basis of the outstanding principal amount of 38,430,000/= for one year and nine months giving an interest amount of 10,760,400/= Uganda shillings. Thereafter on 24 June 2005 Uganda shillings 38,000,000/= was paid to the Plaintiff leaving a balance of the principle of Uganda shillings 430,000/=. Thereafter accrued interest on 24 June 2005 to 12 February 2009 on the sum of Uganda shillings 430,000/= for three years and seven months was Uganda shillings 246,533/= giving a total interest of 193,573,871. Thereafter interest together with the principal was reduced by Uganda shillings 161,316,974/= leaving a net interest of Uganda shillings 32,250,901/=. At that time using and using that formulae the principal had been reduced to nil.

My humble conclusion is based on the wording of the decree according to the review thereof. As noted above in order to preserve the integrity and value of the Plaintiffs compensation, the accrued interest was for the period of the delay and had to be paid the first because it compensate the Plaintiff for the time of deprivation of his money. In other words the principal value was preserved by carrying interest. If another approach is used and the principal knocked out first, the interest which had accumulated does not carry any further interest and the Plaintiff could still be deprived of the use of that money and the court would not

*Decision of Hon. Mr. Justice Christopher Madrama Izama \*^\*~?+:*

be able to intervene to award further interest. Yet the interest is part and parcel of the principal of *restitutio in integrum* to keep the principal from depreciating in value. The amount of compensation on the principal amount from the above calculations I have demonstrated by 1 February 2003 was much more than the principal amount. Why should this compensation that covers the period of deprivation be delayed? It is also money and the approach of the Accountant General is a mere technicality used to avoid accumulation of interest as ordered by court without considering the purpose of the interest. In my humble opinion the correct approach is to add the interest that has so far accrued at the time of payment to the principal amount and subtract the part payment out of the total. This does not discriminate between the principal and interest or technically separate them to achieve the purpose of reduction of liability. The interest was due at the time the next instalment payment was made and it cannot be argued that the payment should be applied towards reducing the principal only. As noted the principal sum carries interest and cannot be separated from its value. In theory it preserves its value. Part payment should be applied towards reducing the outstanding amount at the time of payment. The outstanding amount comprises of the principal amount as well as the outstanding interest on it which would reflect the value of the compensation at the time of payment. The principle of *restitutio in integrum* compensates the Plaintiff for the period of deprivation. Secondly the payment is made for the deprivation of the Plaintiff for failure to access the principal amount. In other words at the time of payment, the principal amount to have its intended value should be paid together with the interest. However if only a small portion of the amount due is paid, the principal will continue attracting interest until the judgment debtor starts reducing it towards the end of the payment. This can only be achieved by reducing what appears to be the accumulated interest first. In theory the two amounts cannot be separated except in the conception. Thereafter compensation for deprivation of the principal amount would be paid on the decreasing amount of the principal. Last but not least this application demonstrates in a powerful way the need for the government departments responsible to pay creditors in time to avoid escalation in monetary terms of the amount. Escalation of the amount should not be

curtailed through a sophisticated avoidance approach which approach in this case offends article 126 (2) (e) which prescribes that substantial justice should be done without undue regard to technicalities. In any case the Public Finance and Accountability Regulations 2003 Statutory Instruments No. 73 of 2003 prescribes under regulation 59 (2) thereof that:

"Expenditure properly chargeable to the account of a given year must, as far as possible, be made within that year and must not be deferred for the purpose of avoiding an excess on the amount provided in the estimates".

In other words government accounting regulations recognise that delay in payments could lead to escalation of the amount due for payment. In theory there is no escalation in the value of compensation due to payment of interest because the amounts inclusive of interest reflect the actual value due to the Plaintiff at the time of payment and is consistent with the doctrine of *restitutio in integrum*. Interest takes care of any inflation or deprivation of use of the money.

In conclusion the words of the decree should be strictly construed to preserve the intention of the court and the parties to award the Plaintiff interest on the money award. Accumulated interest merely compensates the delay in payment. The words of the decree that the principal sum shall carry interest on the decreasing amount at the rate of 16% per annum with effect from 1 February 1991 until payment in full, means that the interest together with the principle are to be totalled at the time of payment and reduced by any payments. If it is not reduced substantially, then the interest shall continue to be applied on the outstanding and static principal amount until after the interest it carries are cleared first and the principal reduced whereupon interest is applicable to a decreasing amount.

The calculations that I have made above in this ruling are not meant to be conclusive but only demonstrate how calculations ought to be made. In the premises I do not agree with the formula advised by the Plaintiff's expert which amounts to the charging of compounded interest leading to a colossal amount. Neither do I agree with the formula advanced by the Accountant General which leads to a nil liability and advances a technicality to avoid accrual of interest. The

formula I have advanced reflects the payment of simple interest per annum and treats the principal as capital. Secondly so long as deprivation of the principal is compensated by an award of interest for the period of delay, the payment for the delayed period is added to the principal as an outstanding amount which is the amount reduced through instalment or part payment. Thereafter any further payments would still carry interest at 16% on the decreasing net value of the original principal after there is no interest over and above the amount of Uganda shillings 90,080,000/=.

In the premises the Plaintiff's application succeeds and the interest shall be calculated as indicated above. The Applicant/Plaintiff is awarded costs of this application

Ruling delivered on the 8th of May 2015 in open court

**Christopher Madrama Izama**

**Judge**

Ruling delivered in the presence of:

Esero Kasule Applicant/plaintiff in court

Attorney General not in court

Charles Okuni: Court Clerk

**Christopher Madrama Izama**

**Judge**

**8<sup>th</sup> May 2015**