THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT DIVISION)

CIVIL SUIT NO. 274 OF 2021

JOHN IMANIRAGUHA .....PLAINTIFF

VS

UGANDA REVENUE AUTHORITY.....DEFENDANT

BEFORE THE HON. MR. JUSTICE RICHARD WEJULI WABWIRE

RULING

INTRODUCTION AND BACKGROUND

Between June and July 2007, as stated in the Joint Scheduling Memorandum, the Defendant seized various motor vehicle trucks belonging

to the Plaintiff. The seizure also included fuel which was being transported in the said trucks.

The Defendant commenced criminal proceedings against the Plaintiff on allegations of infraction of customs laws. In one of the cases, the Plaintiff was acquitted while in the other case, the charges were withdrawn.

Court orders were issued by the Tax Appeals Tribunal, the Chief Magistrates' Courts at Nakawa and at Busia directing the Defendant to release the vehicles to the Plaintiff, but the Defendant did not comply. This culminated into his conviction for Contempt of Court and further orders issued by the Constitutional Court to have the vehicles released. The Defendants then released some but not all of the vehicles.

Premised on the foregoing, the Plaintiff filed this suit in which he seeks for recovery of the replacement value, at the current market rates, of all the vehicles and the value of the fuel, all of which he alleged were unlawfully and contemptuously confiscated by the Defendant. He also seeks to recover compensation for lost earnings, aggravated special and general damages, all with interest and costs of the suit.

When the matter came up for scheduling, Counsel for the Defendant raised a preliminary point of law; that this Court lacked the mandate to entertain and hear the case. The Preliminary Objection was dismissed with costs.

On 30th May 2023, after Court delivered its Ruling in respect of the said Preliminary Objection regarding its lack of jurisdiction to entertain and hear this matter, Counsel for the Plaintiff also raised two Preliminary objections that;

1. The Written Statement of Defence (WSD) filed by the Defendants is evasive and does not respond to the pleadings in the Plaint.

2. The issues that the Defense alludes to are *Res judicata*.

ISSUES

I have framed two issues whose consideration, I believe, will determine the points of law raised by the Plaintiff. These issues are;

1. **Whether the Written Statement of Defense offends Order 6 Rules 8 and 10.**

2. **Whether the Written Statement of Defense raises issues that are *Res judicata***

Issue No. 1: Whether the Written Statement of Defense offends Order 6 rules 8 and 10.

Counsel for the Plaintiff submitted that the Plaintiff's claim is essentially for recovery of the value of his motor vehicles, damages and compensation for loss of earnings accruing from respective dates following Court orders directing the Defendant to release the said vehicles.

That the claim is not premised on the seizure process of these vehicles but rather on the consequences of the Defendant's unlawful detention of the vehicles despite the numerous Court orders directing the Defendant to release them to the Plaintiff.

That the various Court Orders and Judgments have never been appealed, set aside nor reviewed. That the Defendant also accepts that these Judgments and Orders actually do exist and are admitted by the Defendant in the Written Statement of Defense (WSD) and his evidence to annexure

D3, D4 & H. That however, this admission notwithstanding, the Defendant goes further in their WSD to contend that the impounding was lawful which, he contends, is not a matter or decision of this Court.

Counsel further argued that the Written Statement of Defense does not specifically rebut the issue of contempt and assessment of damages. That Paragraphs 6, 7, 8, 9 10 & Paragraphs 13-38 of the Written Statement of Defense (WSD) do not specifically respond to any of the averments in the Plaint.

That whereas the Defendant, in his Written Statement of Defense, talks of Appeals, none of the alleged Appeals has ever been prosecuted and that this fact was admitted by the Defendant in the Constitutional Court where Mr. Baluku, Counsel for the 1st Respondent/Defendant, conceded that the said orders existed and that whereas he initially claimed that they had been appealed, on further inquiry from Court, conceded that the Appeals had not been prosecuted nor had the orders of the Court been set aside. He further conceded that the motor vehicles were then still in the custody of the Respondent/Defendant.

That in the same proceedings, Mr. Okello who was then also Counsel for the Respondent, confirmed that there were Court orders directing the first Respondent to release the said trucks but the trucks were still with them (defendant). He also conceded that as at that date, none of the said orders had been reversed.

Counsel prayed that the Written Statement of Defense be struck out for not conforming to the provisions of Order 6 Rules 8 CPR which requires that when filing a written statement of defense or a written statement in reply, a

Defendant or Plaintiff must address each specific allegation of fact that they do not admit as true. That simply denying the grounds alleged in a general manner is not considered sufficient. Both parties are expected to provide specific responses to each factual allegation unless it pertains to damages.

He also invoked Order 6 Rule 10 CPR which provides that the disputant making pleadings must note do so evasively but must answer the points with substance.

In reply, Counsel for the Defendant contended that to determine whether a Written Statement of Defense should be struck out, the Court ought to look at the issues in controversy. He submitted that the first issue agreed upon in the Joint Scheduling Memorandum is whether the Defendant lawfully impounded the Plaintiff's vehicles.

That in the Written Statement of Defense, from Paragraph 1 to the last Paragraph, the Defendant explains the reasons why he held onto the Plaintiff's motor vehicles. That the discrepancies between the chassis numbers and the number plate are contained in the Written Statement of Defense and that those explanations are consistent with the issue agreed upon by both parties as reflected in the Joint Scheduling Memorandum. And that to that extent the Written Statement of Defense cannot be held to be general and evasive.

He further contended that most of the documents, including D3, D4 and DH, referred to by Counsel for the Plaintiff were agreed upon in the Joint Scheduling Memorandum because these were Court Rulings and Court orders. That to use them as a ground for admission by the Defendant is therefore misleading. That "*the facts as stated in the JSM needed a*

background to arrive at the details contained in the Written Statement of Defense."(Sic)

Counsel contended that the Defendant's defense is that he lawfully impounded the Plaintiff's vehicles. And further that the Plaintiff is not entitled to the remedies' sought.

He sought to distinguish the case of **MHK ENGNIEERING SERVICES (U) LTD vs MACDOWEL LTD, MA 825 of 2018** from the instant case. He contended that that decision is distinguishable from the facts in issue before this Court in that for all the vehicles and for all the actions taken by the Defendant, the WSD has clearly explained why that action was taken and why the Plaintiff is not entitled to the remedies sought. While in **MHK Engineering Services** case, the Defendant only stated that he had paid but he did not go into the details. That in the instant case, Counsel stated that, they have explained every detail in the WSD right from Paragraph 1 to the last Paragraph. That this is why they contend that their actions were lawful and that the Plaintiff is not entitled to the remedies sought.

That as regards the proceedings in the Constitutional Court, no where did the Defendant admit that the Appeals were not being prosecuted but that what is clear from those proceedings and which is agreeable to both parties is that the Defendant was aggrieved by some of the decisions of the Magistrate Courts and that Notices of Appeal by the Defendant are on Court record but that the Defendant does not have the mandate to fix his/her own appeals.

That when the Court of Appeal directed that the Plaintiff's vehicles be released, the Defendant released the vehicles but the Plaintiff refused to take

some of them. That therefore, the Plaintiff cannot now mislead Court by saying that the Defendant refused to release the vehicles to him.

That where the Defendant did not prefer an appeal, the motor vehicles and the fuel were released to the Plaintiff and that where the Magistrate Court ordered and there was no appeal preferred, those vehicles were dully handed over to the Plaintiff.

DETERMINATION BY COURT.

Order 6 R 8 of the Civil Procedure Rules (CPR) provides that;

> *"It shall not be sufficient for a Defendant in his/her Written Statement of Defense to deny generally the grounds alleged by the statement of claim, or for the Plaintiff in his or her written statement in reply to deny generally the grounds alleged in a Defense by way of counter claim, but each party must deal specifically with each allegation of fact of which he or she does not admit the truth, except damages."*

Order 6 Rule 10 CPR provides that he must not do so evasively but must answer the points with substance. It states as follows;

> *"When a party in any pleading denies any allegation of fact in the previous pleading of the opposite party, he or she must not do so evasively, but answer the point of substance. Thus if it is alleged that he or she received a certain sum of money, it shall not be sufficient to deny that he or she received that a particular amount, but he or she must deny that he or she received that sum or any part of it, or else set out how much he or she received. If the allegation is with diverse circumstances, it shall not be sufficient to deny it along with those circumstances."*

Whether or not the pleadings are evasive, cannot be determined from the issues framed. This questioned can only be addressed by scrutiny of the written statement of defense against the Plaint. This is the essence and import of Order 6 Rules 8 and 10 CPR.

At this point, what the Court is required to do is to examine the Plaintiff's claim in the Plaint as against the Defendant's responses.

The contention by learned Counsel for the Defendant that to determine whether the Defense should be struck out, Court ought to look at the issues as captured in the Joint Scheduling Memorandum is fallacious and misconstrued. It is a misrepresentation of the purpose of the law, whose intent is to avert the mischief by litigants of filing vexatious, incoherent, insufficient and ineffective pleadings.

The law only requires that at this stage, Court restricts itself to the claim as stated in the Plaint and the reply in the WSD or in the reply by the Plaintiff in the case of a counterclaim, to determine if the pleadings offend Order 6 rules 8 and 10. The law does not envisage an evaluation of the issues, as contended by Counsel for the Defendant.

This position was upheld in **MHK ENGINEERING SERVICES LTD VS McDowell LTD (supra)** that the Court will simply look at the Plaint and the claim as against the WSD.

In my opinion, the import of Oder 6 r 10 is that the party denying an allegation, in this case the Defendant, should in his written statement defence clearly and concisely either admit or deny or state which of the allegations are not admitted and to what extent, stating the basis of his denial or otherwise, whichever the case may be.

Per **Davinder Sing v State of J&K, AIR 1995,** if no counter-claim is made to the averments in the Plaint, the contents in the claim are deemed to be correct.

The Defendant in his or her plea should give a clear answer to every point of substance raised in the Plaint by admitting or explicitly denying every material matter alleged against him otherwise, every allegation of fact in the Plaint will be taken to be admitted if it is not denied specifically or stated to be not admitted.

Court considers only the facts that constitute the Plaintiff's claims as stated in the Plaint. In equal measure, Court looks at only those averments in the defence as would be relevant to exonerate the Defendant or to discount the Plaintiffs claim as alleged in the Plaint. Court cannot adjudicate this, based on the possible issues framed or likely to be framed, which is the case that Counsel for the Defendant makes in his submissions. This cannot be the case as it would transcend the precincts of preliminary points of law into the realm of facts, which would therefore amount to irregular determination of the dispute without delving into the evidence.

In determining whether Order 6 rules 8 as 10 are infracted, consideration is made of only the pleadings as they barely are, be they the Plaint or the Written Statement of Defense, they are the foundation of the claim and of the Defense.- see **Abubakar Abdul Inamdar vs Harun Abdul Inamdar AIR 1996 SC 112.**

Order 6 rules 8 and 10 of the Civil Procedure Rules generally require parties to provide clear and specific and relevant responses to the claims made against them. The disputant must take each fact alleged against him or her

paragraph by paragraph and say he or she admits or denies it. Otherwise, the pleadings are deemed to be general or evasive and not in accordance with the law. A party who files an evasive Defense that does not address the specific allegations made against them in the Plaint is taken to admit them.

I now turn to the pleadings themselves.

All the facts which constitute the Plaintiff's claim have been stated in the claim. I have briefly stated them elsewhere and will therefore not repeat them here.

In his Written Statement of Defense, Paragraphs 1 to 25, the Defendant dwells on his mandate to collect taxes, use of the suit vehicles in infraction of tax laws, events that culminated into the seizure of the suit motor vehicles and justification for the seizure.

While the Defendant denies Paragraph 3 of the Plaint, in Paragraph 6 of his Written Statement of Defense, the Defendants admits to have impounded the Plaintiff's vehicles, ostensibly, for purposes of establishing whether the number plates on the trailers were used in disregard of the fact that they belonged to other vehicles.

Indeed whereas in his submissions, Counsel for the Defendant stated that right from Paragraph 1 to the end, the Written Statement of Defense explains the reasons why the Defendant held onto the Plaintiff's vehicles, this does not address the claim in the Plaint.

The reasons for and the seizure of the vehicles is only a part of the circumstances that give rise to the issue in contention. The issue in contention, and which ought to have been addressed in the Written

Statement of Defense is the contemptuous retention of the motor vehicle trucks and the consequential loss suffered by the Plaintiff.

The circumstances which the Defendant seeks to rely on as stated in the Written Statement of Defense predicated the Court orders which he disobeyed thus giving rise to the instant claim. The legitimacy or otherwise of those circumstances cannot therefore be in issue in the instant case, having been determined prior to the contravention of the Court orders from which the claim derives.

A narrative of the circumstances leading to seizure of the motor vehicles is therefore irrelevant because the point of substance in dispute is the fact that the Defendant refused to release the vehicles, in disobedience of the Court orders requiring him to do so, and that the vehicles continued to be illegally detained and that the Plaintiff suffered loss.

The question therefore is whether the allegations of the claim in the Plaint are specifically and expressly responded to in the Written Statement of Defence.

In my opinion, as already stated, the suit is not about the legality or otherwise of the Defendants' seizure of the Plaintiffs motor vehicles, it is about the Defendant's alleged contemptuous confiscation of the Plaintiff's vehicles and fuel despite Court orders to have them released and the consequential loss suffered as a result of the confiscation.

Having diligently studied the pleadings on file as well as considered the submissions by Counsel and taken into account the provisions of the law, my inevitable conclusion is that the Written Statement of Defense avoids

directly addressing the allegations and does not provide a substantive response.

Paragraph 3 of the Written Statement of Defense entails general denials while the averments in Paragraphs 6 to 39 are simply evasive. The averments make no specific rebuttal of the claim for recovery of the replacement value of the vehicles and fuel which were retained by the Defendants in contempt of various Court orders.

I am reinforced in my opinion by various persuasive decisions in which similar conclusions as I have made were arrived at when faced with circumstances akin to those in the instant case. In **Thorp v. Holdsworth (1876) 3 Ch.D. 637**, the denial was found to be evasive when the Defendant pleaded that;

> *"The Defendant denies that the terms of the arrangement between himself and the Plaintiff were definitely agreed upon as alleged."*

In **Narmadashanker Manishanker Joshi v Uganda Sugar Factory Limited (Civil Appeal No. 16 of 1968) [1968] EACA 6**, when allowing the appeal, LAW, J.A, as he then was, stated that;

> *"To say in a defence that it is not admitted or that it is denied, that an event took place at the time alleged in the Plaint is in my opinion an evasive plea within the meaning of Order 6 rule 9, especially when time as in this case may well be a material factor. If the Defendant is contending that the accident took place at a time other than "at about 7.45 p.m." as pleaded in the Plaint, then to comply with Order 6 rule 9 he should specify the time for which he contends. If he is not so contending, he should not have traversed the allegation as to time. I*

consider that the Plaintiff is entitled to know what the Defendant's version is in relation to time of the accident, which has been put in issue by the Defendant."

In the instant case, as has been demonstrated and determined, the Defendant's Written Statement of Defense, in a most unmitigated fashion, offends Order 6 Rules 8 and 10 of the Civil Procedure Rules.

Issue No.1 is answered in the affirmative and the preliminary objection is therefore upheld. The Written Statement of Defense is evasive and does not respond to the claims pleaded in Plaint.

Issue 2: Whether the Written Statement of Defense raises issues that are *Res judicata*

Counsel for the Plaintiff submitted that some of the issues raised in the Written Statement of Defense are *Res judicata*. He cited the case of **GODFREY MAGEZI VS NATIONAL MEDICAL STORES AND 2 ORS, CIVIL SUIT NO. 636 OF 2016** where Court stated that the test whether or not a suit is barred by *Res judicata* seems to be that, is the Plaintiff or Defendant in the 2nd Suit trying to bring before Court in another way a new cause of action of a transaction already before Court and which has already been adjudicated upon before a Court of competent jurisdiction in earlier proceedings, if that is so, then *Res judicata* will apply.

Counsel drew Court's attention to Paragraphs 6A-6I of the Written Statement of Defense which he says relate to matters which were finally determined by the Chief Magistrate's Court of Nakawa in Criminal case No.499/2008 and to Annexure 'F' of the Written Statement of Defense, being the judgment thereof. The Plaintiff was acquitted on all the charges in that case and Court

ordered that the motor vehicles in that criminal case and in case M.A No.12/2007 before the Tax Appeals Tribunal be released to the Plaintiff unconditionally.

Counsel further submitted that in Paragraph 8 of the Written Statement of Defense, the Tax Appeals Tribunal in M.A No. 27/2007 directed the Defendant to release a number of vehicles to the Plaintiff and that this is alluded to in Paragraphs 4G & 4H of the Plaint.

That the Court orders were never reviewed or set aside and that the Defendant had not traversed these assertions by the Plaintiff, which would inevitably lead to a conclusion that they were admitted in line with Order 8 r 3 of the CPR.

That Criminal case no.519/2007 against the Plaintiff in respect of a number of motor vehicles was withdrawn by the Defendants and this was admitted by the Defendant at Paragraph 26 of their Written Statement of Defense and also in reference to Annexure H of the Written Statement of Defense.

That Criminal case No.318/2010 was also brought against the Plaintiff in respect of 2 motor vehicles and the Plaintiff was acquitted and Court directed the Defendant again to release the vehicles to the Plaintiff and that this is proved by Annexure D3 of the Written Statement of Defense.

He invited Court to look at Annexure H of the Plaint which is a tabulation of the various vehicles and the various Court cases which clearly show that the issues that are being raised in the Written Statement of Defense are *Res judicata*.

He prayed that the defense be struck out and Court proceeds to assess damages and compensation due to the Plaintiff.

In reply, Counsel for the Defendant submitted that the defense does not contain facts that fall within the principles of *Res judicata* but that to the contrary, it is actually the Plaint that raises issues of *Res judicata*.

He contended that the Plaintiff ought to have filed Contempt of Court proceedings against the Defendant following the Defendant's refusal to comply with the Tax Appeals Tribunal Orders.

He further contended that the principle of *Res judicata* only works against the Plaint and not a Written Statement of Defense because it is the Plaintiff that commenced a suit before this Court and that the decision in the case of **GODFREY MAGEZI VS NATIONAL MEDICAL STORES AND 2 ORS** (supra) sought to be relied upon by Defendant is inapplicable in this instant matter.

He submitted that the Defendant's Written Statement of Defense does not contravene Order 6 Rule 8 & 10 CPR as it specifically answers the Plaintiff's claim and that the principle of *Res judicata* does not apply to the Written Statement of Defense but rather it applies to the Plaintiff's Plaint before this Court and prayed that this Preliminary objection be overruled and the matter be allowed to proceed on its merits.

DETERMINATION BY COURT

The doctrine of *Res judicata* estops a party from bringing a claim or cause of action that has already been adjudicated in a final judgment.

Section 7 of the Civil Procedure Act provides that;

> *"No Court shall try any suit in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit*

between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that Court"

To succeed in alleging *Res judicata*, per **DSV Silo-Und Verwaltungsgesellschaft MBH vs Owners of Ship "Sennar" [1985] 2 All ER 104**, a party must show that;

(a) the matter in issue is identical in both suits,

(b) that the parties in the suit are substantially the same,

(c) there is a concurrence of jurisdiction of the Court,

(d) that the subject matter is the same and finally,

(e) that there is a final determination as far as the previous decision is concerned.

In **Boutique Shazim Limited v. Norattam Bhatia and another, C.A. Civil Appeal No.36 of 2007,** it was held that essentially the test to be applied by Court to determine the question of *Res judicata* is:

"Is the Plaintiff in the second suit or subsequent action trying to bring before the Court, in another way and in the form of a new cause of action, a matter which he / she has already put before a Court of competent jurisdiction in earlier proceedings and which has been adjudicated upon? **If the answer is in the affirmative, the plea of *Res judicata* applies not only to points upon which the first Court was actually required to adjudicate but to every point which**

belonged to the subject matter of litigation and which the parties or their privies exercising reasonable diligence might have brought forward at the time."(Emphasis by Court)

Counsel for the Defendant submitted that the principle of *Res judicata* only works against the Plaint and not a Written Statement of Defense because it is the Plaintiff that commences a suit before this Court. I respectfully disagree with this submission and position.

The mischief intended to be resolved by the doctrine is to prevent the re-litigation of specific issues or factual determinations that have already been conclusively decided in a prior case involving the same parties or their privies. If a particular issue has been necessarily decided in a previous case, it should not and cannot be re-litigated in a subsequent case between the same parties. This is espoused in the persuasive decision of **Boutique Shazim Limited v. Norattam Bhatia and another, C.A. Civil Appeal No.36 of 2007** cited above, when court stated that

> *"...If the answer is in the affirmative, the plea of Res judicata applies* ***not only to points upon which the first Court was actually required to adjudicate but to every point which belonged to the subject matter of litigation and which the parties or their privies exercising reasonable diligence might have brought forward at the time****."*

My interpretation and understanding of Section 7 of the CPA regarding its scope of application is that the matter envisaged to have been directly and substantially in issue in a former suit is such as must have been alleged by one party and either denied or admitted expressly or impliedly by the other.

Which therefore means that Section 7 and hence the bar by *Res judicata* applies similarly to both the Plaint and the Written Statement of Defence.

To give effect to a plea of *Res judicata*, the matter directly and substantially in issue must have been heard and finally disposed of on the merits in the former suit.

From the pleadings, including the Plaint and the Written Statement of Defense filed respectively by the parties and the record of proceedings of the lower Courts, it is easily discerned that in Criminal case No.499/2008 the Accused who is now the Plaintiff herein, was charged with 3 counts of acquiring, concealing or procuring goods which he knew to be uncustomed, contrary to section 206 of the East African Community Customs Management Act, 2004 (EACCMA). The particulars in the three counts are that he acquired three semi-trailer vehicles each of which bore registration number plates that belonged to a different motor vehicle and accordingly, the semi-trailers were unaccustomed goods.

In a 4th count, he was charged with refusal to produce documents required in accordance with the EACCMA, 2004 contrary to Sections 204 and 209 EACCMA, in respect of the said motor vehicles.

Paragraphs 6 to 25 of the Defendant's Written Statement of Defense in the instant case are an exhaustive exposition of all the same issues over the same subject matters in all the counts and particulars of offences at the previous trials in which charges motivated by the Defendant were brought against the Plaintiff as the Accused in those previous cases.

They specifically allude to the same suit vehicles and alleged offences which were directly and substantially in issue and were resolved in Criminal case No.499/2008 when the Plaintiff was acquitted and in NAK-CO-519 OF 2007.

The doctrine of *Res judicata* is intended to be in service of and promotion of judicial economy, to prevent inconsistent outcomes, and to ensure that once a matter has been fully litigated and decided, it cannot be endlessly pursued in subsequent legal actions. The averments in Paragraphs 6 to 25 of the Written Statement of Defence having been in issue and determined in the previous Court proceedings cannot therefore be raised in defence of the claim against the Defendant.

Premised on the foregoing, I can only conclude, in agreement with the Plaintiff, that the averments in Paragraphs 6 to 25 of the Written Statement of Defense offend the doctrine of *Res judicata* and cannot therefore be sustained.

Issue no 2 is determined in the affirmative, the preliminary objection raised by the Plaintiff is sustained.

O. 6 r.30 provides that;

> *"The Court upon application may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the suit or defence being shown by pleadings to be frivolous or vexatious may order the suit to be stayed or dismissed or Judgment to be entered accordingly as may be just."*

In a persuasive decision of **Mid-East Sales Ltd v. United Engineering and Trading Co. [1970] 1 QB 199**, where the Defendant provided evasive and non-specific denials in response to the claimant's allegations, the Court held

that the Defense was inadequate and struck it out, allowing the claimant to obtain a judgment in their favor.

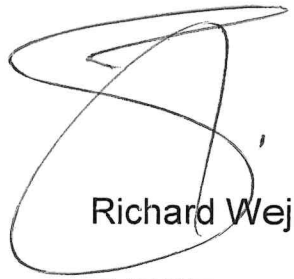
Resultantly, the Written Statement of Defense filed by the Defendant in the instant case is struck out for making general and evasive denials in offense of Order 6 Rules 8 and 10 CPR and Judgment is, in accordance with Order 6 Rule 30 CPR, entered for the Plaintiff.

This however does not entitle the Plaintiff to nor determine the underlying claim in the Plaint which remain subject to proof.

In consequence, the matter is set for formal proof on a date to be determined.

I so order.

Delivered at Kampala this 12th day of June 2023.



Richard Wejuli Wabwire

JUDGE