THE REPUBLIC OF UGANDA
IN THE HGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 169 OF 2020
(ARISING FROM EXECUTION CASE NO. 2194 OF 2016)
(ARISING FROM CIVIL DIVISION MISC. APPLICATION NO. 831 OF 2015)
(ARISING FROM LAND DIVISION CIVIL SUIT NO. 128 OF 2015)

IGNATIUS KATETEGIRWE :::::::::::::::::::::::::::::::::: APPLICANT/PLAINTIFF /DECREE HOLDER

VERSUS

1. ATTORNEY GENERAL

2.SECRETARY TO THE TREASURY :::::::::: RESPONDENTS/DEFENDANTS /JUDGEMENT DEBTORS

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The Applicant brought this application by Notice of Motion seeking for orders that:

a) This Court doth judicially review the matter before it and be pleased to issue an Order of Mandamus directing the Respondents and each of them, as the principal concerned officers/agents of the Government of the Republic of Uganda, to comply with the Judgement, Decree and Certificate of Order issued by the High Court of Uganda in the matter from which this application arises and forthwith pay the Applicant the judgment and decretal sums, outstanding as at 9th March 2020 now due and owing in the sum of UGX 2,652,200,372/= (Two billion six hundred and fifty-two million two hundred thousand three hundred and seventy two shillings).
b) The costs of this application be provided for.

[2] The grounds for the application are summarized in the Notice of Motion and also set out in the affidavit in support of the application deposed by **Ivan Arinaitwe**, a holder of a Power of Attorney from the Applicant and also son to the Applicant. Briefly, the grounds are as follows:

(a) In 2015, the Applicant sued the Government of Uganda for compensation in respect of his Ranch No. 55 in Mawogola which the government had unlawfully expropriated.

(b) On the 18th day of August 2015, a consent judgment was entered by the parties and sealed by the court in which the court ordered that;

(i) The Government of Uganda pays to the Applicant UGX. 11,666,382,000/= (Eleven billion six hundred and sixty-six million three hundred and eighty-two thousand shillings);

(ii) The Government of Uganda pays to the Applicant the taxed costs of that suit, which were subsequently taxed, allowed and certified by the court in the sum of UGX. 141,354,167/= (One hundred and forty-one million three hundred and fifty-four thousand one hundred and sixty-seven shillings); and

(iii) The Government of Uganda pays interest on the said two sums at the rate of 10% per annum from the 18th day of August 2015, the day the consent judgement was entered and sealed, until payment in full.

(c) Consequently, demand for payment of the sums due was made on behalf of the Applicant and when no action was taken by the Respondents, execution proceedings by way of mandamus were filed by the Applicant. The parties then agreed on a specific and strict schedule of payment for the sums stated above.

(d) The Respondents made certain instalment payments but failed, neglected and/ or refused to abide by the strict schedule of payments and breached the terms of the judgment, the decree and the consent order. The outstanding amount payable as at 9th March 2020 was UGX. 2,652,200,372/= which has been demanded for in vain.

(e) The Applicant is a senior citizen now of 92 years of age and with ill health. It is therefore necessary and urgent that all money due to him in this matter be paid so that he may arrange his medical, health and other affairs as soon as possible.

[3] The Respondents opposed the application through an affidavit in reply deposed by **Keith Muhakanizi**, the Permanent Secretary and Secretary to the Treasury in the Minister of Finance, Planning and Economic Development, in which he stated that:

(a) On the 28th day of October 2016 the Ministry of Finance, Planning and Economic Development with guidance from the Ministry of Justice and Constitutional affairs based on the Court Order and Mandamus Orders against the Government of Uganda, entered into an agreement for a negotiated payment of the decretal sum of the court award arising from Land Division Civil Suit No. 128 of 2015.

(b) In accordance with the agreement, the Ministry of Finance, Planning and Economic Development paid UGX. 9,534,615, 605/= in eight instalments from February 2017 to October 2019.

(c) The Ministry of Justice and Constitutional Affairs made payments totalling UGX. 6,000,000,000/= for this claim, in three instalments from September 2017 to November 2017. The deponent attached a copy of a document evidencing proof of the payments.

(d) The record obtained from the Integrated Financial Management System to provide proof of the payments made by Government stands at UGX. 15, 534, 615, 605/= and, as such, the Government fully complied with the terms of the agreement by October 2019 before the lapse of the agreed payment period of January 2017 to January 2020.

(e) At the time of entering into the agreement, it was understood that the accrued interest would be waived, in which case UGX. 1,180,773,616/= was waived by the judgment creditor.

(f) As a matter of principle with the handling of other similar claims, it was also understood that all future interest on the claim would be frozen provided payments were concluded before January 2020 which condition was fulfilled.

(g) There has been no breach of the agreement by the Government as it is evident that the sums set out in the Consent Order were settled strictly within the stipulated timelines.

(h) Interest ought to have applied on a reducing balance method in which case, the accrued interest from October 2016 to the date of last payment within the amount of the decretal sum in October 2018 was approximately UGX. 729,000,000/=.

(i) The government is therefore not indebted to the Applicant.

[4] Hearing of the application proceeded by way of written submissions which were duly filed by Counsel and adopted by the Court.

Issues for Determination by the Court

[5] Four issues were agreed upon by both Counsel for determination by the Court, namely;

(i) Whether 50% of the entire interest as agreed and awarded in the consent judgment and decree of the High Court of Uganda was waived by the Applicant?

(ii) Whether the calculation of the interest agreed and awarded in the consent judgment and decree of the High Court of Uganda was at flat rate basis or not?

(iii) Whether the amount outstanding and due from the Respondents to the Applicant after off-setting all instalment payments as at 9th March 2020 is UGX. 2,652,200,372/=?

(iv) Whether an Order of Mandamus should issue against the Respondents?

Resolution of the Issues

Issue 1: Whether 50% of the entire interest as agreed and awarded in the consent judgment and decree of the High Court of Uganda was waived by the Applicant?

Submissions by Counsel for the Applicant

[6] It was submitted by Counsel for the Applicant that it was not true that the Government of Uganda and the Applicant in the consent order agreed that 50% of the entire interest in the judgement and decree was waived. Counsel submitted that UGX. 1,180,773,616/= was the sum that was waived off by the Applicant and that this sum amounted to one year's interest on the decretal sum of the principal amount and the taxed costs. Counsel submitted that there is nothing anywhere to show that the terms of the Consent Judgment and Decree were ever amended, adjusted or compromised. Counsel argued that subject to the waiver of the named specific amount, interest as awarded in the Consent Judgement and Decree remained in place and continued to accrue "until payment in full". Counsel further argued that "payment in full" was in respect of the principal sum and taxed costs as well as the interest that accrued on those figures annually at 10% until the entire sum was paid off. Counsel prayed that the first issue be answered in the negative.

Submissions by Counsel for the Respondents

[7] In reply, Counsel for the Respondents submitted that the parties consented and agreed that payment of interest on the decretal sum worth UGX. 1,180,773,616/= was waived. Counsel submitted that the parties agreed that the Secretary to the Treasury would pay the Applicant a sum of UGX. 11,666,382,000/= and the taxed costs of UGX. 141, 354, 167/= within three years commencing in January 2017. Counsel submitted that in line with the principle applied to similar claims, it was understood that all future interest on

the claim would be frozen provided that the payments were concluded before January 2020 which condition was fulfilled. Counsel further submitted that the Government fully complied with the terms of the agreement whereby the Respondents made a payment of up to UGX. 15, 534,615, 605/= in total by October 2019 which was before the lapse of the agreed payment period of January 2017 to January 2020.

[8] Counsel for the Respondents also submitted that the said consent order was arrived at after post judgment negotiations between the parties and thus it superseded all prior orders, discussions, correspondences and or agreements. It became an agreed judgment which was clothed with the authority and sanction of the court. Counsel prayed that the court should find that the parties agreed to the terms set out in the order.

Determination by the Court

[9] Upon perusal of the Consent Order dated 28th October 2016, I do not see the origin of the dispute between the parties as to what was waived. The Order is very clear in item 1 thereof to the effect that "Payment of interest on the decretal sum worth UGX. 1,180,773,616/= (in words) is waived". Item 2 of the Order states that "The Secretary to the Treasury shall pay to the Plaintiff Shs. 11,666,382,000/= (in words) and taxed costs of Shs. 141,354,167/= (in words) within three years commencing in January Two Thousand and Seventeen". The above consent order is clear in my view. It sets out what is waived; a specific sum in interest to the tune of UGX. 1,180,773,616/=. The consent order does not attach the waived sum to any period. Neither does it state the said sum as a percentage of any interest accrued or yet to accrue. As such, the oral assignment of a period or a percentage by either party herein is invalid and/or immaterial. On the one hand, it was argued for the Applicant that the said sum of UGX. 1,180,773,616/= represented interest for one year. That is not stated in the consent order and is only a personal conclusion of the Applicant upon making of a mathematical calculation. It is, however, immaterial since the

Order states the particular amount waived. On the other hand, it was averred for the Respondents that the said sum represented 50% of the entire interest as agreed and awarded in the consent judgement and decree. This too is an assertion that is extraneous to the Consent Order.

[10] That being the case, the clear position of the law is that oral evidence cannot be invoked to vary or contradict written and express terms of a contract or any document. The Consent Order herein in issue having specified the amount of interest that was waived, it cannot be imputed that it intended to waive any other sum. As such, the argument for the Respondents that upon entering of that consent, all interest was waived or frozen provided payment was done within the agreed period (of three years) is unacceptable. It should be noted that the Consent Order of 28th October 2016 was not a Consent Variation Order. As clear as it states, it arose during the process of executing the Consent Judgement and Decree in HCCS No. 128 of 2015. The Consent Order was, therefore, for purpose of setting out terms of payment and not intended to vary any of the terms in the Consent Judgment and Decree of 18th August 2015. As clearly seen in the Consent Judgement and Decree, nothing was stated in it regarding terms of payment. The Decree only stated what was payable. It is therefore erroneous for the Respondents to assume that the Consent Order of 28th October 2016 replaced or varied any of the terms of the Consent Judgement and Decree.

[11] The logical conclusion therefore is that the interest awarded in the Consent Judgment and Decree was payable at 10% per annum from the date of the Consent Judgment (18/08/2015) until payment in full, less the sum of UGX. 1,180,773,616/= that was expressly waived pursuant to the Consent Order dated 28th October 2016. Any other assignment of meaning or import to the Consent Order has no legal or factual basis and is therefore invalid. The first issue is therefore answered in the negative.

Issue 2: Whether the calculation of the interest agreed and awarded in the consent judgment and decree of the High Court of Uganda was at flat rate basis or not?

Submissions by Counsel for the Applicant

[12] Counsel submitted that the method of calculation of the due interest in the judgment and decree was at a flat rate in accordance with the law and the standard practice in this honourable court. Counsel argued that issues of compound interest, interest on reducing balances and other forms of calculation of interest are only applicable when specifically agreed upon by parties in writing or imposed upon them by a court. Counsel relied on **Section 26(2) of the Civil Procedure Act** which refers to further interest on "the aggregate amount". Counsel submitted that the phrase "on the decretal sums until payment in full" means the application of interest at flat rate on the principal decretal sums until both principal sums and the interest thereon at the same flat rate are paid in full and not on the reducing balances therefrom. Counsel referred the Court to three decisions from the Court of Appeal of East Africa on the subject, namely; ***Yousuf Abdulla GulamHussein v. The French Somaliland Shipping Co. Ltd [1959] EA 25; Lwanga v. Centenary Rural Development Bank [1999] 1 EA 175; and Shah v. Guilders International Ltd***.

Submissions by Counsel for the Respondents

[13] It was submitted by Counsel for the Respondents that it was the Respondents' averment in the affidavit in reply that interest was supposed to apply on a reducing balance method. Counsel further stated that even if the interest was not frozen, the accrued interest from October 2016 to the date of the last payment within the amount of the decretal sum in October 2018 was approximately 729,000,000/=. Counsel submitted that it was the reducing balance method of interest calculation which was applicable and the flat rate

method was not tenable for the reason that the principal sum had been settled within the agreed time. Counsel argued that the standard practice is for payment to be applied to reduce principal to prevent escalation of interest accrual. Counsel prayed to Court to find that the proper method of calculation of interest is on a reducing balance as applied by the Respondents.

[14] Counsel for the Applicant made further submissions in rejoinder which I have also taken into consideration.

Determination by the Court

[15] The position of the law is that the computation of interest should be guided by the terms set out in the court order or decree. The court derives the power to award interest from Section 26 of the Civil Procedure Act. Section 26 (2) of the Act, in particular, provides that:

> *"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"*

[16] On the case before me, in the Consent Judgment dated 18th August 2015, interest was awarded to the judgment creditor (now Applicant) on the decreed sums at the rate of 10% per annum from the date of entering the Consent Judgment until payment in full". The decree is therefore silent on the mode of calculation of interest. Whether it is at a flat rate (as argued for the Applicant) or at a reducing balance (as argued for the Respondent) is really an assignment of such terms by the parties' Counsel to the decree. Establishing the correct mode of calculation of interest in circumstances such us the present ones has

to depend on the Court's interpretation of the law on interest and how it applies to the present decree.

[17] The **Stroud's Judicial Dictionary of Words and Phrases, Sweet & Maxwell 2000 Edition** defines the phrase "**interest on money**" as "**... compensation paid by the borrower to the lender for deprivation of the use of his money"**. The text refers to ***Riches v. Westminster Bank [1947] A.C. 390; [1947] 1 All ER 469*** wherein at Page 472, Lord Wright states as follows:

"*...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....*"

[18] As such, 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. See: ***Jefford and another v Gee [1970] 1 All ER 1202***. It is also the position of the law that an award of interest as well falls under the doctrine of *restitutio in integrum*. In ***Esero Kasule vs Attorney General, HC M.A No. 0688 of 2014*** (un reported), **Madrama J.** (as he then was) cited with approval the decision in ***Tate & Lyle Food and Distribution Ltd v Greater London Council and another [1981] 3 All ER 716*** wherein **Forbes J** at page 722 stated:

> ***"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."

[19] The Court in ***Esero Kasule vs Attorney General (supra)*** went on to hold that in view of the above legal position, 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 the value of the money. In that case, the contention was whether in the course of payment, the judgment debtor could pay off the principal first and then interest later; or pay off the interest first and the principal last. The Attorney General, who was the judgement debtor, insisted that the first above mentioned option was the one preferable under the law; while the Plaintiff/ judgment creditor insisted on application of the latter. **Madrama J.** (as he then was) in a decision that I have found highly persuasive, held that in a situation where there has been a substantial delay in the payment of the money, it 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".

[20] On the facts of the present case, let me illustrate below how this principle plays out. Interest was awarded at 10% per annum from the date of the consent judgment (18/08/2015) till payment in full. By the 28/10/2016 when the consent order as to terms of payment was made, a period of 15 months had passed. The total sum payable was UGX. 11,807,736,167/= (being the principal sum and the taxed costs). Interest at 10% for the first 12 months on the above total sum was UGX 1,180,773,616/=. This is the sum that was

waived pursuant to the Consent Order dated 28th October 2016. The first 12 months ended on 18th August 2016. So, calculation of further interest started from 19th August 2016 up to when the first payment was done pursuant to the Consent Order. There are two documents on record that speak to the payments and when they were done. One is from the Applicant and is attached to a letter dated 9th March 2020 (marked as Annexture "F" to the Applicant's affidavit in support of the application). The other is from the Respondents (marked as Annexture "B" to the affidavit in reply to the application). I will rely on these two documents while proceeding to illustrate how interest ought to have been calculated in the instant case.

[21] As already indicated, the total sum as of 18th August 2016 stood at UGX. 11,807,736,167/=. The first payment was done on 23rd February 2017, of UGX 1,494,967,273/=. From 18th August 2016 to 23rd February 2017 was a period of 06 months. This period accrued interest amounting to UGX. 590,386,800/=. This is arrived at by getting the total interest that accrued in 12 months (UGX. 1,180,773,616/=); divide it by 12 months (giving UGX. 98,397,800/= per month); then multiply the monthly interest by six months (giving UGX. 590,386,800/=). When the accrued interest (UGX. 590,386,800/=) is added to the total principal sum (UGX. 11,807,736,167/=), the total sum accruing as of 23rd February 2017 was UGX. 12,398,122,967/=. Subtracting the amount paid (UGX. 1,494,967,273/=), it leaves an outstanding balance of UGX. 10,903,155,694/=.

[22] The next payment was of UGX. 410,298,131/= made on 28th August 2017. Since the previous payment, a period of 06 months had elapsed, attracting interest of UGX. 545,157,786/=. This interest is calculated upon the basis of the previous outstanding (UGX. 10,903,155,694/=). When the accrued interest (UGX. 545,157,786/=) is added to the said previous outstanding, it amounts to UGX. 11,448,313,480/= which was the total outstanding as of 28th August

2017 when that payment was done. Subtracting the sum paid (UGX. 410,298,131/=), it leaves an outstanding amount of UGX. 11,038,015,349/=.

[23] The next payment was of UGX. 1,500,000,000/= said to have been made by the Respondents on 18th September 2017 but allegedly received by the Applicant on 10th October 2017. For purpose of this payment, interest will be calculated as running up to 28th September 2017; thus accruing interest for one month. On the basis of the outstanding sum of UGX. 11,038,015,349/=, one month's interest amounted to UGX. 91,983,461/=. When added to the outstanding sum, it amounts to UGX. 11,129,998,810/=. Subtracting the sum paid (UGX. 1,500,000,000/=) leaves an outstanding balance of UGX. 9,629,998,810/= as at 28th September 2017.

[24] The next payment of UGX. 4,000,000,000/= is said to have been paid by the Respondents on 29th November 2017 but is said to have been received by the Applicant on 21st December 2017. For purpose of this payment, interest will be calculated as running from 28th September to 28th December 2017; a period of 03 months. On basis of the previous outstanding sum (UGX. 9,629,998,810/=), accrued interest for three months amounted to UGX. 240,749,970/=; which when added to the previous outstanding balance, amounts to UGX. 9,870,748,780/=. Subtracting the sum paid (UGX 4,000,000,000/=) leaves an outstanding balance of UGX. 5,870,748,780/= as at 28th December 2017.

[25] The next payment was of UGX. 1,000,000,000/= said to have been received by the Applicant on 14th January 2018. Interest of one month accrued for this period. Basing on the previous outstanding amount (UGX. 5,870,748,780/=), accrued interest for one month amounted to UGX. 48,922,906/=; which when added to the previous outstanding amounts to UGX. 5,919,671,686/=. Subtracting the sum paid (UGX. 1,000,000,000/=)

leaves an outstanding balance of UGX. 4,919,671,686/= as at 14th January 2018.

[26] The next payment of UGX 500,000,000/= is said to have been received by the Applicant on 14th June 2018; a period of 05 months from 14th January 2018. Based on the previous outstanding balance of UGX. 4,919,671,686/=, accrued interest for 05 months amounted to UGX. 204,986,320/=; which when added to the previous outstanding amount, makes it UGX. 5,124,658,006/=. Subtracting the amount paid (UGX. 500,000,000/=) leaves an outstanding sum of UGX. 4,624,658,006/= as at 14th June 2018.

[27] The next payment of UGX 1,000,000,000/= is said to have been made by the Respondents on 17th July 2018. This payment does not appear on the Applicant's payment list. But the same was not controverted by the Applicant yet it is included on the list that was attached to the Respondents' affidavit in reply. Under the law, such an averment is deemed to be admitted by the opposite party. I accordingly believe that the same was paid and received by the Applicant. A period of one month had elapsed since the last calculation of interest. Based on the previous outstanding balance of UGX. 4,624,658,006/=, accrued interest for one month amounts to UGX. 38,538,817/=; which when added to the previous outstanding amount, makes it UGX. 4,663,196,823/=. Subtracting the amount paid (UGX. 1,000,000,000/=) leaves an outstanding balance of UGX. 3,663,196,823/= as at 17th July 2018.

[28] The next payment of UGX. 2,500,000,000/= is said to have been made by the Respondents on 11th October 2018 but acknowledged by the Applicant on 22nd October 2018. This is a period of 03 months. Based on the previous outstanding amount of UGX. 3,663,196,823/=, accrued interest for 03 months, amounts to UGX. 91,579,920/=; which when added to the previous outstanding amount, makes it UGX. 3,754,776,743/=. Subtracting the amount

paid of UGX. 2,500,000,000/= leaves an outstanding balance of UGX. 1,254,776,743/= as at 22nd October 2018.

[29] The next payment of UGX. 1,129,350,199/= is said to have been paid by the Respondents on 24th December 2018 but was acknowledged by the Applicant on 7th January 2019. For purpose of calculation of interest over this amount, the due date will be taken as 22nd December 2018; a period of 02 months from the time of the previous calculation. Based on the previous outstanding amount of UGX. 1,254,776,743/=, accrued interest for two months, amounts to UGX. 20,912,946/=; which when added to the previous outstanding amount, makes it UGX. 1,275,689,689/=. Subtracting the amount paid of UGX 1,129,350,199/= leaves an outstanding balance of UGX 146,339,490/= as at 22nd December 2018.

[30] The next payment of UGX. 1,000,000,000/= is said to have been made by the Respondents on 29th July 2019 but is acknowledged by the Applicant on 3rd August 2019. This is a period of 07 months running up to 22nd July 2019. Based on the previous outstanding balance of UGX 146,339,490/=, accrued interest for 07 months, amounts to UGX. 8,536,472/=; which when added to the previous outstanding balance, makes it UGX 154,875,962/=. Subtracting the amount paid of UGX. 1,000,000,000/= leaves an over payment of UGX 845,124,038/= as at 22nd July 2019.

[31] There is further evidence that on 15th October 2019, the Respondents made a further payment of UGX 1,000,000,000/= which is acknowledged by the Applicant on 22nd October 2019. From the above calculation, the Respondents' liability as against the Applicant had been extinguished as way back as 22nd July 2019 with an over payment of UGX 845,124,038/=. The two sums amount to an over payment of UGX 1,845,124,038/=. Counsel for the Respondents had indicated that the Applicant had been overpaid to the tune of UGX. 3,726,879,438/= but this has not been borne out. The Respondents'

Counsel in their submissions also purported to claim for a refund of the overpaid amount. This was superfluous since it was not based on any claim on the pleadings. If the Respondents had intended to claim for a refund, they ought to have brought a counter application for the same, to enable the Court give it a consideration after hearing the Applicant over the matter. As such, while this Court is in position to make a finding that there was an over payment as indicated above, I cannot issue an order of refund as the same was not claimed for by the Respondents.

[32] Flowing from the above, it is clear that interest was supposed to be calculated taking into account the total outstanding sum as at the time a particular payment was done. Such total outstanding sum included the principal and interest that had accrued as at that particular point in time. The rationale for this approach was well underscored by **Justice Madrama** in the already cited case of ***Esero Kasule vs AG (supra)***. The Learned Judge (as he then was) held that 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. The Learned Judge went on to state that:

> ***"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".

[33] It is clear from the foregoing that where payment of decretal sums is effected by way of installment payment, it is not possible to separate the principal from accrued interest. This is because the accrued interest becomes property of the judgment creditor and, owing to its continued deprivation, it remains money in the hands of the judgment debtor whose use the judgment debtor is deprived. On account of the principle of *restitutio in intergrum*, the judgment creditor has to be compensated for that continued loss. Needless to say, interest would not accrue if total payment of the principle was paid at once; and, as such, this argument would not arise.

[34] Both Counsel raised serious contention as to whether in calculating interest the Court should apply a flat rate method or a reducing balance method. Whatever the real import of those terms in English or Finance, I have not found any legal basis to support the application of either. On account of the legal position herein above explored, what matters, in my view and on basis of decided cases, is that the court makes a proper capture of the meaning and purpose of interest under the law; and then apply the same to the terms of a particular decree. This, in my considered view, is the approach that would pass the legal test. That is what I have applied in the present case. In answer to the second issue, therefore, interest had to be calculated in accordance with the law and terms of the Consent Judgement and Decree.

Issue 3: Whether the amount outstanding and due from the Respondents to the Applicant after off-setting all instalment payments as at 9th March 2020 is UGX. 2,652,200,372/=?

[35] Having applied the correct principle for interest calculation and taken into consideration the payments made by the Respondents and received by the Applicant, I have made a finding that the Respondents fully paid the entire decretal sum and all the accrued interest by 22nd July 2019 which was within time, given that the Consent Order had given the Respondents up to January 2020. I have also found that the Respondents indeed made an over payment to the tune of UGX. 1,845,124,038/=. No Order of refund can, however, be issued since no claim for the same was made for the Court's consideration. In answer to the third issue, therefore, the Court has found that it is not true that the sum of UGX. 2,652,200,372/= is still outstanding and due for payment by the Respondents. The Respondents fully performed their obligations under the Consent Judgement and Decree in issue.

Issue 4: Whether an order of Mandamus should issue against the Respondents?

[36] Under the law, the criterion and the circumstances that must be established by an Applicant in order to obtain a writ of mandamus are;

a) Existence of a clear right on the part of the Applicant and a corresponding duty on the part of the Respondent;
b) That some specific act or thing which the law requires a particular officer to do has been omitted to be done by him; and
c) Lack of any alternative; or where the alternative remedy exists, it is inconvenient, less beneficial or less effective or totally ineffective.

See: ***Combined Services Ltd vs. Attorney General & Anor, HC MA No. 648 of 2015***.

[37] In the case of ***Goodman Agencies Ltd & 3 Others Vs Attorney General & Treasury Officer of Accounts, HC M.A No. 126 of* 2008**, it was held that for an order of mandamus to issue, the Applicant must show that it enjoyed a right, the right is specified by a decree of Court, a certificate of order against the government has been extracted and duly served on the Respondent and that the Respondent has refused to honour the certificate of order by refusing to pay the amount decreed or specified in the certificate of order.

[38] In the instant case, it has been established by the Court that no sum is due and payable to the Applicant. None of the conditions set out above has been or could be satisfied by the Applicant. There is, therefore, no basis for the Applicant's claim for a writ of Mandamus. This issue is answered in the negative.

[39] In the result, the application by the Applicant fails. It is accordingly dismissed with costs to the Respondents.

It is so ordered.

Dated, signed and delivered by email this 21st day of April, 2022.

Boniface Wamala
JUDGE