THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, C.J., TSEKOOKO, MULENGA, KANYEIHAMBA, KATUREEBE, JJ.S.C.)

CIVIL APPEAL NO.2 OF 2006

BETWEEN

ATTORNEY GENERAL:::::::::::::::::::: APPELLANT

AND

SENKALI GEORGE
AND 45006 OTHERS::::::::::::::::
RESPONDENTS

(Appeal arising from the judgment, decisions and orders of the Court of Appeal (,OKello,Engwau, Kitumba, JJ.A.) in Civil Appeal No.055. of 2005, dated 1 st, of March , 2007)

JUDGMENT OF KANYEIHAMBA, J.S.C

This is a second appeal form the judgment of the Court of Appeal dated 1st of March 2007, in which the appellant's appeal from the High Court (Bamwine J.) dated 4th April, 2005, at Kampala was dismissed with costs to the respondents.

The facts and background to this case are of constitutional and jurispresidential interest and significance.

Since 1966, Uganda has gone through and experienced a series of military *coups d'etat*, and deaths, misplacements as well as destruction of life and property of both soldiers and

civilians alike. The latest of these revolutionary changes was characterized by a protracted civil war for a period of years from 1982 to 1986, which calumniated in the promulgation of Legal Notice No.1 of 1986 that largely figures this case. However, many of the respondents have lived in periods and times of several such Legal Notices including those of 1971, 1979, 1981and 1985 that preceded the latest of 1986. The pleadings show that many of the appellants fought against the successive regimes that each *coup d' etat,* revolution or Legal Notices, ushered in the country. Other army officers and soldiers were killed, perished, disappeared or detained in between the various changes. The overwhelming majority of the appellants appear to have survived these violent charges. Some of them were deployed by one or more of the successive regimes that surfaced every other revolution. Apparently, the appellants claim that they were sent home to await further military orders and deployment. In between the date or dates of being sent home and the filing of this suit, no evidence has been adduced to show what steps, if any, all or each of them took or sought to take to enquire whether they were still needed in the army, let alone active military service. However, it would appear that the majority of the 45006 or more or less, claim to be members of the Uganda Army Servicemen Development Association whose aim is mainly to develop and pursue the interests and welfare of the members. It has not been shown that one of the aims of the

association is to plead for the return of its members to active service or to be deployed on military service either as currently administered now or in the past.

There is no doubt however that it is only now, in 2008, some twenty two years after the latest Legal Notice No 1 of 1986, and many more after the first of the series of Legal Notices, that representatives of the respondents, through their Association (*supra*), instructed counsel to sue for their rights and entitlements. Three firms of Advocates, namely, Messrs. Kawanga and Kasule, Advocates, Messrs. Matovu, Kimange, Nsibambi, Advocates and Messrs Seguya and Company Advocates, jointly drew up and filed Civil Suit No.126 of 2003 from which this appeal emerges.

In the suit, the respondents claimed against the appellant, the Attorney General, for a declaration and specified remedies. The declaration was to be to the effect that notwithstanding the successive Legal Notices and the different names those Notices prescribed for the military institution of the country, they, the respondents, remained members and in the regular service of the Army. The respondents claim that they are therefore entitled to payment of salary arrears, terminal benefits, gratuity, food rations, clothing, travelling allowances, professional allowances, interest on the amount owed and costs of the suit. They claim these benefits because they contend that at all material times they were employed in Government service as members of

the Uganda Army which employment entitles them to their salary and allowances and on retirement, they should or ought to be issued with discharge certificates and payment of pension and gratuity.

Bamwine, J. heard the case in the High Court and dismissed the suit with an order that parties pay their own costs. The Respondent's appeal to the Court of Appeal succeeded. Hence this second appeal by the Attorney - General.

The Memorandum of Appeal in this court contains four grounds which are framed as follows:

1) **That the learned Justices of the Court of Appeal erred in law and fact in holding that Legal Notice No.1 of 1986 never terminated the services of the respondents in the Uganda People's Defence Forces.**
2) **That the learned Justices of the Court of Appeal erred in law and in fact in holding that this suit was not time barred.**
3) **That the learned Justices of the Court of Appeal erred in law and in fact in finding that Legal Notice No 1 of 1986 merely ushered in a change of name of the Uganda Army from Uganda National Liberation Army (UNLA) to Uganda People's Defence Forces (UPDF).**

4) **That the learned Justices of the Court of Appeal erred in law and in fact in finding that the respondents were entitled to the reliefs sought.**

In this court and at the hearing, the respondents were represented by a team of four, Counsel Babigumira, Matovu , Mubiru, and Seguya, while the Attorney General was represented by Mr. Oluka and Mr. Aringe both Senior State Attorneys.

Mr. Oluka argued ground 1 and 3 together and the other two grounds separately. On ground 1 and 3, Mr. Oluka contended that the learned Justices of Appeal erred in both law and fact when they held that Legal Notice No 1 of 1986 as amended exempted all Government employees in public service including officers and soldiers in the Uganda Army from termination of service. He contended that under the law, members of the Armed Forces are a distinct and different group of employees not classified as public servants. Mr. Oluka submitted that the wording of all the legal notices under which the status of the respondents was affected is the same and none can be said to have saved the positions or employment of any of the appellants. He contended further that the consequence of each and every legal notice referred to since 1979 had the effect of terminating services of the appellants in the Uganda Army. Counsel argued that under the law, the definition of members of the public service means government workers employed in a civil capacity and the

definition excludes members of the armed forces of the country. Counsel contended therefore that not only were the services of the respondents extinguished by the successive Legal Notices but they, the respondents could not claim any rights or compensation under those Legal Notices. Counsel referred to Legal Notice No.1 of 1986 in which it was provided that certain provisions of the Constitution which would have saved the rights of the respondents were abolished with effect from the 26th day of January that year. Counsel criticized the learned Justices of Appeal for agreeing with Counsel for the respondents that their services had not been terminated by Legal Notice No 1 of 1986.

Mr. Oluka contended further that the Legal Notice prohibited any suit against the Government for any act or omission that occurred during the operations and circumstances that necessitated the proclamation of Legal Notice No 1 of 1986. Counsel contended therefore that the respondents claim does not disclause a cause of action in law. He submitted that the meaning of Legal Notice No 1 of 1986 cannot be stretched to include soldiers of a disbanded army in the category of public servants saved by its provisions. Counsel contended that therefore the Court of Appeal erred in holding that section 105 of the National Resistance Army Statute technically saved and continued the services of the members of previous armed forces who were in the army before coming into force of that statute.

Mr. Oluka submitted that the effect of the events prior to legal Notice No.1 of 1986 was to extinguish any actionable claims that might be contemplated and therefore ground 2 of the appeal is adequately supported by the available authorities. Counsel further contended that these authorities show that in 1979 and 1986 through forceful ejections of the then existing governments, the former constitutional arrangements ceased and disappeared with their leaders and armies and were replaced by the new ones. Counsel submitted further that in any event, an incumbent President can summarily dismiss any army officer or soldier from the Uganda Armed Forces without the Government incurring liability. Counsel concluded on these two grounds by arguing that in any event, with passage of time and with no action taken by the respondents, their claims are caught by the Civil Procedure and Limitations (miscellaneous proceedings) Act and are time barred.

On ground 3 and 4, Counsel for the appellant reiterated the submissions of the Attorney General in the Court of Appeal and asked this court to allow these two grounds of appeal.

Counsel for the Attorney General cited a number of authorities in support of his submissions. These included the various Uganda Constitutions and Constitutional instruments from 1971 to 1968, **Andrew Lutakome Kayiira and Paul Semwogerere v Edward Rugumanayo, Omwony Ojok,**

Dr F.E.Sempebwa & 8 others, Constitutional case No 1 of 1979, **Opoloto v Attorney General** (1969) E.A 613, **Uganda v Commissioner of Prisons ex-parte, Matovu** (1966) E.A. 514, **Stella Madzibamuto v Desmond William Larder – Burke, Fredrick Phillip George** (1969) A.C 645, *National Resistance Army, General Administrative orders,* the *Interpretation Act, Cap 3 Laws* of Uganda, the Civil Procedures Act and **Gulaballi Ushillani v Kampala Pharmaceuticals Ltd**. Civil Appeal. No 6 of 1998, (S.C.) (unreported).

For the respondents, Mr. John Matovu, opposed the appeal. He first observed that ground 1 and 2 are so interrelated, that the way ground 1 is decided will also determine the fate of ground 2. Counsel for the respondents conceded that if there be any conflict between the Army Act and Legal Notice 1 of 1986, the latter would prevail.

Counsel further contended that however, the provisions of the Army Act which applied to the respondents were not abolished by Legal Notice of 1986, but saved and it is on this basis that the respondents claim their continued membership of the UPDF that has not been interrupted since they were stopped from deployment. Mr. Matovu reiterated the submissions he made in the Court of Appeal that the change of the Army's name from Uganda National Liberation Army to National Resistance Army and later to the Uganda People's Defence Forces were mere changes of names and did not

affect the status of the respondents as members of the army throughout these changes. Counsel invited this Court to invoke rule 31 of its Rules to review the judgment and decisions of the Court of Appeal and make appropriate decisions. Counsel reiterated the submissions and arguments advanced in the High Court and Court of Appeal in favour of the respondents' case. Counsel cited provisions of the Constitution of Uganda of 1966, Legal Notice No 1 of 1986 and **Attorney General v Major General David Tinyefuza** Constitutional Appeal No 1 of 1997 (S.C),(unreported), in support of their submissions and arguments.

The issues raised in this appeal are well articulated in the judgment of learned trial judge, Bamwine, J. and it is worth revisiting that judgment. In the High Court, the respondents were represented by seven of their number and in his judgment; the learned trial judge observes that:

> **"The seven plaintiffs herein brought this suit jointly by representative action on behalf of numerous others said to be in the region of 45,000 and on their own behalf, all members of Uganda Army Service Men Development Association. Their claim is for a declaration that they were entitled to payment of salary arrears, terminal benefits, gratuity, pension, food rations, clothes, travelling allowances, interest as well as substantial damages and**

costs of the sort… The plaintiffs contend that they are at all times employed in Government service of Uganda Army. They aver that due to political changes in the Government of the Republic of Uganda in 1979, they were disarmed and taken to various prisons in Uganda they were subsequently told to wait for further deployment. They contend that they have not been deployed despite their readiness to serve. They contend further that they have never been dismissed, discharged, suspended or interdicted from service. The defence denied these claims".

Then four issues were framed for determination. These were:

(1)Whether the plaintiffs are in the employment of the Government as military servicemen,

(2) Whether the plaintiffs are retired or discharged from the Army

(3) Whether the action is incompetent, misconceived and time barred.

(4) Whether the plaintiffs are entitled to the reliefs they claim in the plaint.

In the High Court, three key witnesses gave evidence in support of the respondents' claims. The first witness was PWI, Vincent Yekoko, aged 59 years who said he was a Major in the present Army that is the Uganda People's Defence Forces. He

asserted that he is still an officer in the army even though not presently deployed. He testified that while still in active service he was deployed as an officer in charge of Training and Operations at the Army Headquarters. He last performed those duties in 1979. On the removal of the then Army Commander-in-Chief and President of Uganda, Idi Amin, he and his fellow soldiers dispersed. Later, they were apparently summoned by a new and the then Government of the day to report to their respective District Headquarters or army and police headquarters. On reporting, Major Vincent Yekoko was sent to prison in Luzira with thousands other officers and men of the Uganda National Liberation Army (UNLA) for screening. He and others were actually subsequently detained in that prison.

It was not until 1985 that he was released and told to go home. He has never been deployed again since he and many of the other respondents were dispersed. It is worth observing that since his departure from active service in the Uganda Army, there have been five successive and different governments, each of them under different commands and commanders-in-chief, namely, the UNLF government under Yusuf Lule, The Military Commission under Godfrey Binaisa, The Military Junta under General Okello, the NRM under Museveni and now the multiparty government of NRM still under Museveni.

Be that as it may, the Major further testified that there was once an occasion when he and other officers and solders were summoned to the army headquarters for attestation and documentation for purposes of verifying their pay arrears and pensions and that was in 2001 under the National Resistance Movement Government. Today the National Resistance Movement Political Party.

The other two key witnesses gave more or less similar stories. These were PW2, George Ssenkali, aged 66 years warrant officer who joined the Army in 1971 when the force was then known simply as the Uganda Army. The other officer to give evidence at the trial was, PW3, Kizito Nabugo aged 57 another warrant officer who also joined the Army in 1971, the year Idi Amin and his fellow soldiers seized the government in a successful military *coups d'etat* and governed the country with Amin as Commander-in-Chief until April 1979 when a combination of Uganda exilees and Tanzania Peoples Forces overthrew Idi Amin and his government and ushered in a short lived government under President Yusuf Lule as Commander-in Chief.

The defence called two witnesses in support of their contention that soldiers in different and previous Uganda regimes were either re-engaged or deployed or dismissed. The first witness was DW1, Lt.Col. Ramadhan Kyomulesire aged 50 years, who is now a Director of Legal Services in the present UPDF but who had joined the UNLA in 1979. After the

capture of Kampala in 1986 by the National Resistance Army, he reported himself to the nearest NRA unit was taken to a Re-organization centre in Masaka, screened and redeployed in the Directorate of Legal Services.

In his testimony, Lt Col. Ramadhan revealed that he was not alone in this exercise. There were other officers and soldiers who were similarly dealt with, and the selection of officers and men from previous armies was on individual basis. He also testified that officers and men who were successful in redeployment in the UPDF were classified as RA, RO and UO, depending on which previous army one was recruited from. The second defence witness was David Wakalo who was recruited from the UNLA in 1985 and having risen through the ranks of the army is now No. 2000 and Chief of Personnel and Administration in the UPDF. The same witness stated that:-

> **"When NRA captured state power in 1986, it embarked on an army building process whereby it integrated other fighting groups and UNLA. Those in UNLA were recruited in their individual capacities. You were recruited as long as you were proved worthy to belong to the force (UPDF), it was not automatic recruitment".**

It is apparent from their judgment that the learned Justices of Appeal ignored much of the evidence of the

witnesses. The only alludement to some of it is when in their judgment the Justices of Appeal observed;

> **“The evidence available on record shows that the appellants were told after release from detention, to report to their respective District Commissioners and await deployment”.**

If this passage was intended to capture all the evidence presented in the High Court, it is grossly inadequate and misleading. The judgment of the Court of Appeal is mainly on the application and interpretation of the various laws and authorities that may or may not be relevant to this case.

In my view however, whether or not any individual or groups of them are members of the existing armed forces, is both a much a matter of law and much as it is a matter of fact. In democratic states, the armed forces of the nation are established by the Constitution and structured and organized in accordance with laws made by Parliament or similar legislative bodies. Beyond that, the armed forces of a country are regarded as instruments of the central government, commanded, equipped, disciplined and trained for the exercise of physical force in the interests of the state. The exercise is only limited and supervised in accordance with the provisions of the Constitution and the laws of the land.

It follows that in a modern state, it is inconceivable and impractical for a group of soldiers, let alone thousands of them to exist, live and remain members of the army without

the knowledge or deployment by the central government or its relevant departments. Emeritus Professor Bradley in the University of Edinburgh and Ewing, Professor of Public Law in the University of London, learned authors of the 12th edition of **Constitutional and Administrative Law**, published by Longman of London, pp.278 – 279, observe that:-

> **"Military law is the basis of the discipline in the armed forces and cannot run with reliance on the ordinary law applicable to civilians. But it does not follow that those who join the armed forces should be required to surrender the right to be treated fairly or that they should be expected to waive their human rights".**

While I agree with the authors' opinion on the status and rights of officers and soldiers in service and their entitlement to protection of both the law and the courts, much more proof is required to accept that the respondents are actually serving members of the Uganda People's Defence Forces.

In my opinion therefore, before any officer or soldier can successfully claim against a government for an infringement of his or her right in the army, there must be clear proof that the claimant was not only a member of the armed forces controlled by that government but was so acknowledged by

the authorities of the same government as its soldiers and who are ready at any time to be deployed in those forces.

Counsel for the respondents cited **Attorney General v. Major General Tinyefuza,** Const. Appeal No 1 of 1997, (S.C.), (unreported), as authority for their submission that unless formally dismissed, an officer or a soldier enlisted in a former army of a country automatically becomes a member of that army's successor.

In my opinion, the facts and circumstances of Major General Tinyefuza's case are clearly distinguished from those of this case. In the former case, an acknowledged and commissioned army officer was trying against the wishes and regulations of the UPDF, to have himself declared to be no longer a member of the army. In the present case, thousands of officers, commanders and soldiers of previous defunct who have not been physically in the army or deployed by it for decades of years are now asking to be declared continuing and serving members of the UPDF.

In my opinion, the evidence presented in this case is glossly inadequate to indicate even remotely the said membership or deployment. The evidence presented actually appears to show the opposite. The evidence and counsel's submissions reveal that many of the respondents belonged to and served loyally in a number of successive and previous armies before the establishment of the Uganda People's Defence Force. Most of the respondents have never belonged

to and they do not now belong to the UPDF at all. With the greatest respect, the learned Justices of Appeal overlooked or ignored the national importance of ensuring that army commanders must be in constant touch and in unquestionable and visible command of their troops. There is no iota of evidence that the respondents or any of them took any steps after they were demobilized to seek absorption or deployment in the new army. It has not been shown that the association which is commended for having looked after the interests of its members for decades has as one of past aims, recognition of the respondents as continuing to be in active service and therefore needing deployment. Indeed, the name of the association is self-explanatory. It is the **Uganda Army Servicemen Development Association** (*emphasis supplied*).

In the Court of Appeal, counsel for the respondents had contended that the learned judge erred in law in holding that Legal Notice No 1 of 1986 terminated the services of the appellants who are the respondents in this Appeal Mr. Oluka, for the appellant who was the respondent in the Court of Appeal supported the decision of the learned trial judge and contended that:-

> **"Paragraph 1 of the Legal Notice No 1 of 1986 as amended terminated the services of the appellants as a result of a successful revolution**".

According to learned counsel for the Attorney General, section 14 A of Legal Notice No 1 of 1986 as amended created a new national army known as the National Resistance Army (NRA) which upon the promulgation of the country's Constitution of 1995, was named UPDF. The trial judge was mindful of the traditional difference between public servants and soldiers and went on to say:-

> **"To my knowledge, the army in this country has traditionally been outside the Public Service. Indeed, Articles 175 of the Constitution, defines a "public officer" as any person holding or acting in an office in the public service and public service (is defined) as any service in any civil capacity of the Government, the emoluments for which are payable directly from the Consolidated Fund or directly out of monies provided by Parliament.**
>
> **From the above definition and the provision of Legal Notice No. 1 1986, it appears clear to me that all appointments of servicemen including the plaintiffs who were in service immediately before January, 1986 were terminated. The proclamation left no room for doubt**".

With great respect, in my view, the learned Justices of Appeal misdirected themselves. Instead of responding to the submissions of counsel for the Attorney General and to the interpretation of the law by the learned trial judge, they ventured outside counsel's submissions and the decision of the learned trial judge and confined themselves to pointing out what they apparently saw as an omission in appellant's Counsel's arguments and trial judge's reasoning to the effect.

> **That both counsel for the Attorney - General and the learned High Court judge had not included the words** *"pursuant to the powers contained in those suspended articles and chapters of the Constitution".*

The learned Justices of Appeal do not state whether or not those powers would enlighten anyone about the distinction between public servants and military men. A number of authorities were cited before the Court of Appeal and this court on this very point. They include **Uganda v. Commissioner of Prisons**, **ex parte Matovu**, (1966) E.A.514, **Stella Madzimbemuto v. Desmond William, Lardner-Burke and Another** (1969) A.C. 645, amongst others, all showing that a revolution or a **coup d'etat** alters everything in the old order except those provisions specifically saved. Thus, in **Opoloto v. Attorney-General** (1969) E.A. 613, another case cited by counsel **for** the appellant, the court held that:-

“the series of events which took place in Uganda, from February 22nd to April, 1966, were law creating facts appropriately described in law as a revolution; that is to say there was an abrupt political change not contemplated by the existing Constitution that destroyed the entire legal order and was superseded by a new Constitution, namely, the 1966 Constitution, and by effective government”.

In my opinion therefore, the respondents have failed to show that they remained members of the UPDF both in law and fact. I would therefore hold that ground 1 of the appeal ought to succeed.

On ground 2, I entirely agree with counsel for the respondents that the fate of ground 2 is closely intertwined with ground 1of this appeal and as I have held that ground 1 ought to succeed, ground 2 aught to succeed especially considering that many of the respondents were directly or indirectly discharged as long ago as 1979.

For the reasons I have given in relation to ground 1, I agree with the findings and decisions of the learned trial judge that the UPDF is an entirely new army from those that existed before it. Ground 3 therefore ought to be allowed. Mr. Oluka Senior State Attorney prayed Respondents were not entitled

to anything while Babigumira and later Mr. Matovu prayed that Respondents be paid what is due to them.

Further on 20/10/2008, four days after hearing, Babigumira sent in the case of Gulaballi Ushillani for us to consider. Counsel addressed this court adequately on ground 4 even though it is the only ground where it would have been reasonably argued that some respondents may have some rights which, if proved to have been violated, they would enable the respondents to seek appropriate remedies.

After concluding their submissions, counsel were requested to provide any further written evidence, particularly that relating to the pensions and benefits of the respondents. In promising to produce relevant available, documents. Mr. Matovu, learned counsel for the respondents, spoke in speculation rather than hope and prayed that this court should consider the case generally and in the interests of justice invoke Rule 31 of its Rules and confirm, dismiss or vary the decision of the Court of Appeal, or it should review the case as a whole and decided and order what it considers to be fair. Counsel for the appellant promised that if any respondents prove to be entitled remedies and their and their evidence is made available to the Government, the government would see what could be done in the interests of justice and the parties.

A day or two after we heard the appeal, counsel for the respondents supplied this court for consideration and decision

thereon, some four files containing names allegedly being those of the respondents. However, two factors militate against the accuracy of those files.

In the first place, only one of the volumes shows an attempt to certify it with unsigned stamp which suspiciously looks to be home made. None of the thousands of names listed in the volumes is identified or certified. In my opinion, it is essential that for purposes of pension and terminal benefits, each claimant whether officer or soldier must be identified and certified by the UPDF appropriate authority and whatever is due to him or her must be specific and shown in certified figures. This can only be done with the participation of the UPDF relevant department or unit.

All in all, and except for my observations in the immediately preceding paragraph, this appeal succeeds. Considering the public importance of this appeal, I would order that each party bears its own costs

Dated at Mengo this 21st day of January 2009

G.W.KANYEIHAMBA

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, CJ, TSEKOOKO, MULENGA, KANYEIHAMBA, AND KATUREEBE, JJ.SC)

CIVIL APPEAL NO.2 OF 2006

BETWEEN

ATTORNEY GENERAL::APPELLANT

AND

SENKALI GEORGE AND 45006 OTHERS::::::::::::::::::::::::::RESPONDENT

[Appeal from the judgment of the Court of Appeal at Kampala (Okello, Engwau and Kitumba, J.J.A dated 1st March 2005 in Civil Appeal No.55 of 2005]

JUDGMENT OF ODOKI, CJ

I have had the benefit of reading in draft the judgment prepared by my learned brother Kanyeihamba JSC and I agree with him that this appeal ought to succeed. I agree that each party should bear its own costs.

As the other members of the Court also agree, this appeal is allowed with an order that each party bear its own costs.

Dated at Mengo this 21st day of January 2009.

B J Odoki
CHIEF JUSTICE

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, CJ, TSEKOOKO, MULENGA, KANYEIHAMBA, AND KATUREEBE, JJ.SC)

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[Appeal from the judgment of the Court of Appeal at Kampala (Okello, Engwau and Kitumba, J.J.A) dated 1st March 2005 in Civil Appeal No.55 of 2005]

JUDGMENT OF TSEKOOKO, JSC.

I read in advance the draft of the judgment prepared by my learned brother, G. W. Kanyeihamba, JSC., which he has just delivered and I agree with his conclusions that this appeal ought to succeed. I also agree that the parties should bear their own costs. I must emphasise that I accept this position as a matter of duty.

Revolutionary changes of governments particularly by military force in Uganda have invariably always left unpleasant scars, consequences and experiences. Military personnel in the armies that served under Governments which were over-thrown must have been affected in their own peculiar way and the evidence of some of the respondents who testified at the trial speaks to this. Some of the innocent soldiers unfortunately had their services terminated involuntarily and as a consequence their service rights and benefits, including retirement benefits such as pensions, were adversely affected by revolutionary events about which they could hardly have a say. It is, therefore, a pity that

such rights and or benefits cannot in this case be claimed because of the efflux of time. Certainly rights which were adversely affected because of different revolutions which occurred between 1966 and 1986 cannot, without sound and reasonable explanation be sustained through a court action such as HCCS 126 of 2003 which was instituted on 5th/3/2003 very long after the revolutions. The **Civil Procedure and Limitation (Miscellaneous Proceedings) Act**, 1969, and the various laws which legitimized successive revolutions affected the rights of individual soldiers for instance by terminating the services of those soldiers. Mr. Babigumira, learned lead counsel for the respondents submitted to us belatedly, after the hearing of the appeal, the case of **Gulamalli Ushillini vs. Kampala Pharmaceuticals Ltd**. Sup. Court Civil Appeal No.6 of 1998 (unreported) but I do not find this case helpful or an authority that entitles the respondents to recover their individual benefits through court action where such recovery is time-barred.

I hope that the State, or rather the Military, will investigate merits of individual cases so that where accrued pensions and or any other benefits are established, beneficiaries can get those pensions and or any other benefits are established, beneficiaries can get pension or other benefits. It would be wholly immoral to deny pension to a living former soldier about which termination of service he had no say. Good sense and fairness demands that this should be done.

Delivered at Mengo this 21st day of January 2009.

J. W. N. TSEKOOKO
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, CJ, TSEKOOKO, MULENGA, KANYEIHAMBA, AND KATUREEBE, JJ.SC)

CIVIL APPEAL NO.2 OF 2006

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[An appeal from the decision of the Court of Appeal at Kampala (Okello, Engwau and Kitumba, J.J.A) dated 1st March 2005 in Civil Appeal No.55 of 2005]

JUDGMENT OF MULENGA, JSC.

I had the benefit of reading in draft the Judgment that my learned brother Kanyeihamba, JSC has just delivered. I agree with him that this appeal must succeed and I concur in the orders he has proposed.

Dated at Mengo this 21st day of January 2009.

J. N. Mulenga
Justice of Supreme Court.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, CJ, TSEKOOKO, MULENGA, KANYEIHAMBA, AND KATUREEBE, JJ.SC)

CIVIL APPEAL NO. 2 OF 2006

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JUDGMENT OF KATUREEBE, JSC

I have had the benefit of reading in draft the Judgment of my learned brother Kanyeihamba JSC and I agree with him that this appeal ought to succeed for the reasons he has given.

I also agree that each party should bear its own costs.

Dated at Mengo this 21st day of January 2009.

Bart M. Katureebe
Justice of The Supreme Court