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THE REPUBLIC OF UGANDA  
IN THE SUPREME COURT OF UGANDA  
AT KAMPALA

10 [Coram: Katureebe, Tumwesigye, Dr. Kisaakye, JJSC.& Dr. Odoki, Tsekooko, Okello &  
Kitumba, Ag. JJSC]

*Constitutional Appeal No. 05 of 2010.*

15

*Between*

ATTORNEY-GENERAL. ===== CROSS - APPELLANT.

20

*And*

GOODMAN AGENCIES LTD. ===== RESPONDENT.

25 {Cross Appeal (by the Attorney-General) arising from Supreme Court Civil Appeal No. 05 of 2010 and  
judgment of Constitutional Court at Kampala (Mpagi-Bahigeine, Twinomujuni, Byamugisha, Kavuma  
and Nshimye, JJA/ JJCC) dated 28<sup>th</sup> October, 2008 in Constitutional Petition No. 03 of 2008.}

**Judgment Of The Court:-**

30 This Cross-Appeal by the Attorney-General, arises from a decision of the  
Constitutional Court allowing a petition by Goodman Agencies Ltd., the  
respondent, challenging the alteration by Tabaro J., a High Court Judge, of a  
consent judgment which was originally entered into by and between Goodman  
Agencies Ltd. and others as the plaintiffs and the Attorney-General as the  
35 defendant. The Constitutional Court awarded interest to Goodman Agencies  
Ltd. and fellow judgment creditors on the decretal amount at the rate of 24%  
p.a. After the consent judgment had been entered into between Goodman  
Agencies & Others on the one hand and the Attorney-General, on the other, the  
High Court joined Hassa Agencies (K) Ltd. as one of the decree holders and  
40 yet the latter was not one of the parties who participated in the negotiations

resulting in the consent judgment. The Constitutional Court upheld the petition by Goodman Agencies Ltd.

**Background:-**

5 The background to this cross-appeal as gathered from the court records available is as follows—

Goodman Agencies Ltd., Hassa Agencies (K) Ltd. and others, had been bailees of ten trucks which were seized by Uganda Government Security Agencies in 1996. Goodman Agencies Ltd. and Hassa Agencies (K) Ltd. together with others  
10 as bailees challenged the seizure and consequently they instituted High Court Civil Suit No. 719 of 1997 against the Attorney-General seeking to recover damages because of the seizure of those lost trucks. At some stage, the High Court struck out Hassa Agencies (K) Ltd. from the suit before it was disposed of. Later the rest of the plaintiffs including Goodman Agencies (U) Ltd. on the one  
15 hand and the Attorney-General on the other settled the suit and a consent judgment dated 02<sup>nd</sup> September, 2005, was filed in the High Court on 06<sup>th</sup> September, 2005.

The amount of damages inclusive of costs which the consent judgment contained as settlement was Ug. Shs.14,485,543,842. The consent judgment did not bear  
20 any rate of interest on that amount.

Apparently Hassa Agencies (K) Ltd. was jerked by the settlement. So on 12/09/2005, after the consent judgment had been filed in the High Court and sealed, Hassa Agencies (K) Ltd. hurriedly moved the High Court and applied to  
25 be included in the consent judgment. Within two days a Judge of the High Court on 14<sup>th</sup> September, 2005, granted the application and added Hassa Agencies (K) Ltd. to the consent judgment as one of the judgment-creditors. On the same day, the decree was signed by the same Judge and sealed. Goodman Agencies who appears not to have been involved in the court process that led to the inclusion of

Hassa Agencies (K) Ltd. as one of the decree-holders successfully petitioned the Constitutional Court challenging the whole process which led to the inclusion of Hassa Agencies (K) Ltd. as one of the decree-holders. The Constitutional Court disapproved the procedure used by the judge and ruled that the High Court erred  
5 when it added Hassa Agencies (K) Ltd. to the consent judgment. The same Constitutional Court awarded interest on the decretal amount at the rate of 24% p.a. Consequently Hassa Agencies (K) Ltd. filed a Constitutional Appeal to this Court. Thereafter, the Attorney-General filed a cross-appeal challenging the award of 24% p.a. interest in favour of Goodman Agencies and its co-plaintiffs.

10

Before the appeal could be heard, Goodman Agencies instituted Civil Application No. 01 of 2011 in this Court seeking for orders, *inter alia*, that Hassa Agencies (K) Ltd. be ordered to deposit cash as further security for costs. On 27<sup>th</sup> January, 2011, a Single Judge of this Court declined to grant the application.  
15 Goodman Agencies Ltd. made a reference from that decision which reference was heard and allowed by a panel of three Justices of this Court. On the 02<sup>nd</sup> August, 2011, the three Justices ordered that in the circumstances of the case, Hassa Agencies (K) Ltd. should deposit in Court cash of Ug. Shs.200,000,000/= as security for costs within forty five days from the date of the Court ruling.  
20 Hassa Agencies (K) Ltd. was unable to deposit the money or any part thereof. Consequently, Goodman Agencies Ltd. filed an application seeking for, *inter alia*, an order to strike out the pending Constitutional Appeal and the cross-appeal of the Attorney-General.

25 The application was partially successful in that this Court struck out the Constitutional Appeal by Hassa Agencies (K) Ltd. but declined to strike out the cross-appeal. Subsequently, we heard the cross-appeal on 24<sup>th</sup> September, 2014 and reserved judgment which we now give.

During the hearing, Mrs. Robina Rwakojo, Commissioner for Litigation in the Attorney-General’s Chambers, assisted by Mr. K. Kasibayo, a State Attorney (SA), represented the Attorney-General, while Mr. James Okuku and Mr. Justine Semuyaba jointly appeared for Goodman Agencies Ltd.

The Attorney-General, (the cross-appellant) belatedly filed written submissions. The respondent, (Goodman Agencies), made oral submissions through its counsel (Mr. Okuku and Mr. Semuyaba). This is one of the rare occasions where this Court has had to hear a cross-appeal after the substantive appeal has collapsed.

Rule 87 (1) of the current Supreme Court Rules states—

“A respondent who desires to contend at the hearing of the appeal in the Court that the decision of the Court of Appeal or any part of it should be varied or reversed, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of his or her contention and the nature of the order which he or she proposes to ask the Court to make in that event, as the case may be.”

Under Rule 91 (2) of the Supreme Court Rules a cross-appeal has to be heard like an appeal so that the cross appellant is treated as an appellant while the original appellant is treated as if he or she were a respondent.

By virtue of Rule 23 (2) of the Constitutional Court (*Petitions and References*) Rules 2005 (S.I. No. 91 of 2005, Supreme Court Rules regulate Constitutional Appeals to the Supreme Court.

The contention of the cross appellant in this cross-appeal is set out in the notice of the cross appeal. It constitutes one ground which is framed this way—

*The decision (of the Constitutional Court) ought to be varied or reversed to the extent and in the manner and on the following grounds—*

5                   *“That the Learned Justices of the Constitutional Court erred in law and fact when they awarded the 1<sup>st</sup> respondent interest of 24% per annum thereby varying the consent judgment entered into by the 1<sup>st</sup> respondent and three others together with the 2<sup>nd</sup> respondent on the 2<sup>nd</sup> day of September, 2005, in the High Court Civil Suit No. 719 of 1997.”*

(The first respondent in the main appeal was Goodman Agencies Ltd. while the  
10 Attorney-General was the second respondent.)

Although the Attorney-General had belatedly filed a written statement of arguments, the Court asked Mrs. Rwakojo to supplement those written arguments with oral submissions. She submitted that the Constitutional Court  
15 erred by awarding interest whether at 24% or at any other rate. She pointed out that parties had entered into a consent judgment which did not carry interest and that judgment was filed and sealed in the High Court. She contended that the then plaintiff (now the respondent) never objected to this. The learned Commissioner of Litigation referred to Respondent’s submissions in  
20 Constitutional Court (page 473 of the Record) of Appeal and to paragraphs 19 to 21 of the affidavit in support of the petition. Paragraphs 19 to 21 are part of Goodman Agencies Ltd.’s affidavit in rejoinder and in support of the petition sworn by Mr. Nicholas Were (Managing Director) in the same Court.

25 She criticized the Constitutional Court for awarding interest at 24% p.a. on the claim that the Attorney-General had delayed to pay in time the agreed amount in the consent judgment. She submitted that the Constitutional Court did not investigate the cause of the delay. She pointed out that the consent judgment was filed in Court on 06<sup>th</sup> September, 2005. Thereafter, on 12<sup>th</sup> September, 2005,  
30 Hassa Agencies (K) Ltd. applied to the High Court to be joined as a joint-judgment creditor. She in effect argued that the application by Hassa Agencies

(K) Ltd. and the subsequent proceedings which followed caused the delay and so the award of interest was not justified. She relied on the following authorities, among others, in support of her arguments—

5           **Attorney-General vs. Sam Semanda (Supreme Court Civil Appeal No. 08 of 2006); Ahmed Ibrahim Bholm vs. Car & General Ltd. (Supreme Court Civil Appeal No. 12 of 2002; and Section 26 (2) of the Civil Procedure Act (CPACT).**

The learned Commissioner for Civil Litigation relied on, among others, the  
10 authority of **Shah vs. Attorney General (1970) No. 2 EA 523** for the opinion that the award of the interest occasioned injustice, it was not called for and submitted that if any interest should be granted at all, it should be at court rate. (Normally Court rates means 6% p.a. – see S. 26 (3) of the Civil Procedure Act.) She, prayed that costs in the Constitutional Court be set aside.

15

Mr. Okuku, lead counsel for the respondent, supported the decision of the Constitutional Court to award interest at the rate of 24% p.a. He correctly argued that the award of interest by a Court is discretionary. He pointed out that his client acquired the trucks in 1995 but those trucks were unlawfully taken over  
20 by Security Agents of the Government in 1996. A suit was instituted to recover compensation and a consent judgment was entered into by the parties in 2005. He contended that the Attorney-General should have paid the damages agreed upon in the consent judgment early but did not and, therefore, the Constitutional Court was right in granting interest from the date of the consent judgment. He  
25 relied on Article 26 (2) (b) (i) of the Constitution for the view that his clients were entitled to prompt payment of the agreed damages.

Mr. Semuyaba supplemented and expanded on the submissions by Mr. Okuku. He agreed with the law set out in the authorities cited by Mrs. Rwakojo. He contended that in the petition their clients had prayed for interest and when we

(Court) asked him to indicate where the prayer for interest was, learned counsel referred Court to the Record of Appeal from page 313 to page 319 (and Para. 49 of Were's affidavit in rejoinder which is in Volume 2 of the Record of Appeal). As a matter of fact, pages 313 to 319 contain the **petitioner's affidavit in**  
5 **rejoinder** to the reply by the Attorney-General sworn on 04<sup>th</sup> May, 2011 by Nicholas Were, the Managing Director of Goodman Agencies. In Paragraph 49 of the affidavit, Mr. Were prayed the Constitutional Court to expunge from the Court Record Justice Tabaro's record of proceedings in the High Court as from 02<sup>nd</sup> September, 2005. In the same paragraph Mr. Were also prayed for interest  
10 on the damages at the rate of 24% on 02<sup>nd</sup> September, 2005.

The said paragraph was couched in the following words—

15 *“I depone this affidavit in reply to the second respondent's affidavit in reply to the petition and in further support to the Constitutional Petition seeking for a declaration that the proceedings by Justice Tabaro after the 02<sup>nd</sup> September, 2005, after the consent judgment was entered are unconstitutional and void abinitio as he was **functus officio** and without jurisdiction as the matter had become **RESJUDICATA** and pray to this Honourable Court that all proceedings after 02<sup>nd</sup> September, 2005 be  
20 expunged from the record and that a proper decree be extracted from the consent judgment dated 02<sup>nd</sup> September, 2005, **plus interest at the rate of 24% p.a. from 02<sup>nd</sup> September, 2005, the date of the consent judgment till payment in full plus costs of the petition.**”*

25 Mr. Semuyaba referred to Rules 3, 5 and 7 of the Constitutional Court (*Petitions and References*) Rules, 2005. (These Rules regulate the format and contents of a petition and supporting affidavit.) Mr. Semuyaba also referred to page 27 of the Record of Appeal where there is a letter dated 04<sup>th</sup> December, 2007 which Mr. Okuku had written to the Attorney-General requesting the Attorney-General to,  
30 among others things, sign the proper decree, a copy of which decree was attached to that letter. Mr. Semuyaba further referred Court to page 43 of the Record of Appeal which is his firm's letter dated 17<sup>th</sup> September, 2009, with

which counsel forwarded the written submissions on the petition to the Constitutional Court. Mr. Semuyaba contended, in effect, that the joining of Hassa Agencies Ltd. and the objection raised in the Constitutional Court by the Attorney-General on the competence of the petition contributed to the delay in the execution of the decree arising from the consent judgment. In effect, counsel argued that interest on the consent judgment was justified. Mr. Semuyaba relied on a number of authorities in his submissions. These include the following—

1. ***Yahaya G. vs. Attorney-General & Another (Supreme Court Civil Appeal No. 07 of 1994).***
2. ***Sietico vs. Mobile Builders (Supreme Court Civil Appeal No. 31 of 1995) where Court awarded interest on the deretal amount at the rate of 30% p.a.***
3. ***Premchandra Shenoï & Anor. vs. Maximov Oleg (Supreme Court Civil Appeal No. 09 of 200), where the Court held that the award by the Court of Appeal of interest in a Commercial case at the rate of 20% p.a. was appropriate.***
4. ***Kimani vs. Attorney-General (1969)EA 502.***
5. ***J.K. Patel vs. Spear Motors Ltd. (Supreme Court Civil Appeal No. 04 of 1991) where the Court awarded interest at the rate of 30% p.a.***

Mr. Semuyaba contended that the Attorney-General did not say in the cross-appeal that he was appealing against the order of costs. Counsel alluded to Rule 79 of Supreme Court Rules without indicating why. But we are aware that this rule regulates the institution of an appeal in this Court.

Mr. Kasibayo (SA) for the cross-appellant in rejoinder to submissions by counsel for the respondents contended that the respondents were not entitled to any interest at all. In the alternative he submitted that the respondents could perhaps get interest at Court rates. He contended that the Attorney-General could not sign the decree on 04/09/2009 because by then Hassa Agencies Ltd. had been



joined as a joint decree holder / judgment creditor. He criticized the Court of Appeal for not giving reasons why interest was awarded.

5 Mrs. Rwakojo in further rejoinder opposed the award of interest. She referred to Rules 5 (c) and 7 (b) of SI No. 91 of 2009 (*supra*) and submitted, (we think erroneously), that there was no prayer in the petition for interest and that the Constitutional Court did not give reasons for awarding interest. She submitted that the Attorney-General's conduct of the case did not contribute to delay complained of by counsel for the respondent.

10

**Consideration:-**

In our opinion the cross-appeal raises two questions.

15 The first is whether the respondents are entitled to any interest on the decretal amount. The second is consequential which is that if the answer is yes, what rate is applicable.

In their lengthy written submissions in the Constitutional Court, counsel for Goodman Agencies Ltd. explained to the Constitutional Court that the trucks  
20 were used by Goodman Agencies Ltd and others for commercial purposes implying that the impounding affected the respondent's commercial activities and profits. Counsel relied on the case of *Shah* (*supra*) for the view that the consent judgment is a debt which is correct. In conclusion (see page 260 A Volume 1 and page 439 Volume 2 of the Court Record) in prayer (b) (iii),  
25 counsel in the submissions asked the Constitutional Court to give interest on the decretal amount at the rate of 24% p.a. This was reiterated at page 474 of Volume 2 of the Record of Appeal. Contrary to arguments by Mrs. Rwakojo that respondents did not pray for interest in the petition, Mr. Were's affidavit in

rejoinder prayed for interest at 24% p.a. This appears in paragraph 49 which we have already quoted in this judgment.

5 The Attorney-General filed in the Constitutional Court a written reply to the arguments of counsel for the petitioner (See pages 481 to 485), and surprisingly made no comment on the Petitioners' prayer for interest. What we have seen on the record shows the Attorney-General just asked the Constitutional Court to dismiss the petition with costs.

10 After considering the submissions of both sides the Constitutional Court concluded that the Judge in the High Court acted unconstitutionally when he allowed the application by and for Hassa Agencies Ltd. to be joined as joint decree holder. The Constitutional Court expunged all the proceedings which led to the inclusion of Hassa Agencies Ltd. to the consent judgment. The Court then  
15 granted the order as to reliefs including the one on interest as follows—

***“(ii) That the petitioner is at liberty to undertake execution processes in respect of the consent judgment of the 02<sup>nd</sup> September, 2005, in High Court Civil Suit No. 719 of 1997 the subject of this petition with interest at the rate of 24% p.a. from the date of that judgment till payment in full.”***

20

The Constitutional Court must have been alive to the submissions of both sides. Counsel for the respondents had cited a number of cases as to why interest had to be given. We have already referred to these cases in this judgment. It is true that in the High Court consent judgment, interest on the damages was not included.  
25 But interest was specifically prayed for in the affidavit supporting the Constitutional Petition and in the subsequent submissions before the Constitutional Court. The prayer for interest was based on the principle that a judgment decree is a debt and also because the lost trucks were used for gainful

commercial purposes. There was obvious challenge to the claim that the lost trucks were for commercial use. In our opinion this was solved when the parties signed the consent judgment. As correctly contended by counsel for the respondents that judgment had now become a debt due to the decree holders. We  
5 should point out that by virtue of S. 18 of the Government Proceedings Act, in normal suits where Government is a defendant and is found liable and is condemned to pay damages, the Government would also be liable to pay interest on the damages awarded. The section provides as follows—

10 *“Sections 26 (2) and (3) and 27 (3) of the Civil Procedure Act (which relate to the payment of interest where a decree is for payment of money and to the payment of interest on costs) shall apply in the case of the Government as they do in the case of a private person.”*

We find it unnecessary to explain these clear provisions of the law. Section 26 (2) and (3) of the CPA read as follows—

15 (2) *Where and insofar as a 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 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*  
20 *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.*

25 (3) *Where the decree is silent with respect to the payment of further interest on aggregate sum specified in subsection (2) from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 percent per year.*

Subsection 3 of S. 27 reads as follows—

*“27 (3) The court or judge may give interest on costs at any rate not exceeding 6 percent per year, and the interest shall be added to the costs and shall be recoverable as such.”*

5

We therefore think that the grant of interest was proper. Perhaps the main question for us to consider is that since the judgment is against the Government and satisfying it will involve spending public money, whether it is appropriate to give interest at the rate of 24% p.a. This is an issue on which we are prepared to show rational concern about public funds. We would, therefore, hold that in the circumstances of this case, in principle the respondents are entitled to interest but 24% is rather on the higher side. In our considered opinion interest at the rate of 6% p.a. is reasonable. Mrs. Rwakojo, the learned Commissioner for Litigation, suggested that interest could be at the rate of 6%. We think that is reasonable and we would therefore award the respondents interest at the rate of 6% p.a. from the date of the consent judgment in the High Court till payment in full. The rate is effective from the date when the decree was sealed in the High Court.

Consequently the cross-appeal succeeds in part. The rate of interest is reduced to 6% p.a.

We would award to the respondent half the costs of this cross-appeal and the costs in the Constitutional Court.

25 **Delivered at Kampala this 24th day of March 2015.**

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**B.M. Katureebe,  
Justice of the Supreme Court.**

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**J. Tumwesigye,  
Justice of the Supreme Court.**

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**Dr. E. Kisaakye,  
Justice of the Supreme Court.**

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**Dr. B.J. Odoki,  
Ag. Justice of the Supreme Court.**

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**J.W.N. Tsekooko,  
Ag. Justice of the Supreme Court.**

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**G.M. Okello,  
Ag. Justice of the Supreme Court.**

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**C.N.B. Kitumba,  
Ag. Justice of the Supreme Court.**

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

5 **(CORAM: KATUREEBE; TUMWESIGYE; KISAAKYE; JJ.S.C;  
ODOKI; TSEKOOKO; OKELLO & KITUMBA, Ag. JJSC)**

**CONSTITUTIONAL APPEAL NO. 05 OF 2010**

**BETWEEN**

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

**AND**

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**GOODMAN AGENCIES LTD. :::::::::::::::::::::::::::::::::: RESPONDENT**

*[A Cross-Appeal arising from the Judgment of the Constitutional Court  
(Mpagi-Bahigeine, Byamugisha, Kavuma, Nshimye, Arach Amoko, JJ.CC)  
dated 28<sup>th</sup> October, 2010 in Constitutional Petition No.03 of 2008.]*

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**JUDGMENT OF DR. KISAAKYE, JSC. (DISSENTING).**

This Cross-Appeal arose from the decision of the Constitutional Court rendered in Constitutional Petition No. 3 of 2008, between the respondent (Goodman Agencies), the cross -appellant (the Attorney General) and Hasa Agencies Ltd (the original appellant).

25

The Attorney General cross appealed the decision of the Constitutional Court, which ordered it to pay Goodman Agencies interest of 24% on Uganda Shillings 14,485,543,842/= from 2<sup>nd</sup> September, 2005 till payment in full. The payment arose under a Consent Judgment that the Attorney  
30 General had entered into in September, 2005 with Goodman Agencies & 3 others.

I have had the benefit of reading the majority Judgment in this appeal. With due respect to my learned brothers and sister, I disagree with the

majority decision which has upheld the decision of the Constitutional Court that the Attorney General should pay interest to Goodman Agencies on Uganda Shillings 14,485,543,842/= but at a lower interest rate of 6% from the date of the consent judgment (September 2005) until payment in full.

5 I would instead allow this appeal on grounds that the Constitutional Court erred in law and fact when: (a) the Court awarded interest to Goodman Agencies which it had not prayed for in its Constitutional Petition; (b) when the Court awarded interest whereas no interest had been provided for in the Consent Judgment signed between the Attorney General, Goodman  
10 Agencies and 3 others; (c) when the Court failed to properly exercise its discretion to award interest to Goodman Agencies and lastly, (d) when the Court awarded interest against the Attorney General for the delay caused by the actions of Hasa Agencies ,which is a Kenyan Company as well as others, including Goodman Agencies itself.

15

I would therefore order that the Attorney General pay Goodman Agencies the decretal sum that was agreed upon in the Consent Judgment of 14,485,543,842/=. I would also order that no interest at all should be paid by the Attorney General to Goodman Agencies but rather that Goodman  
20 Agencies should pursue its claim for interest from Hasa Agencies.

The reasons for my Judgment appear later in my Judgment.

### **Background**

25 Goodman Agencies Ltd. (the respondent in this appeal) and several other plaintiffs, who included Hasa Agencies Ltd., sued the Attorney General before the High Court in Civil Suit No. 719 of 1997. In the said suit, the Plaintiffs were seeking payment for the value/replacement of 10 trucks

which had been seized by soldiers and for loss of earnings expected from the said trucks.

Subsequently, Hasa Agencies Ltd. was dismissed as a co-plaintiff in High Court Civil Suit No. 719 of 1997 for non- appearance. By September 5 2005, Hasa Agencies had not yet been reinstated as a party.

On 2<sup>nd</sup> September, 2005, the Attorney General and Goodman Agencies Ltd & several others co-plaintiffs not including Hasa Agencies Ltd, entered into a Consent Judgment. Under this Consent Judgment, the Attorney General (then Defendant) agreed to pay Goodman Agencies Ltd and its co- 10 plaintiffs Uganda Shillings 14,485,543,842/=, broken down as follows:

***“a) The Defendant do pay to the Plaintiffs a sum of Ug. Shs. 1,320, 172, 842/= being replacement cost/value of the ten trucks.***

15 ***b) The Defendant do pay the Plaintiffs a sum of Ug. shs. 12,865,375,000/= being loss of earnings.***

***c) The Defendant pays the Plaintiffs Ug. shs. 300,000,000/= being costs of the suit.”***

20

The Consent Judgment was endorsed by the High Court on 6<sup>th</sup> September, 2005.

On 12<sup>th</sup> September 2005, Hasa Agencies Ltd. applied to the High Court to be added as a party to the Consent Judgment. On 14<sup>th</sup> November 2005, the 25 court allowed the application and added Hasa Agencies Ltd. as one of the beneficiaries to benefit from the Consent Judgment between the Attorney General and Goodman Agencies Ltd.

Being dissatisfied with the decision of Tabaro, J. (*as he then was*), to add Hasa Agencies Ltd. as one of the beneficiaries of the Consent Judgment,



Goodman Agencies Ltd. filed Constitutional Petition No. 03 of 2008 against the Attorney General in the Constitution Court. In this Petition, Goodman Agencies challenged the decision and orders made by the trial judge, which it claimed had violated its rights to property and to a fair hearing, contrary to Articles 26 and 28 of the Constitution of Uganda, respectively.

Subsequently, Hasa Agencies successfully applied to the Constitutional Court and was joined as a party to Constitutional Petition No. 03 of 2008. On 28<sup>th</sup> October 2010, the Constitutional Court ruled in favour of Goodman Agencies and made the following orders:

- “i) That all the proceedings conducted by the learned trial judge from the 2<sup>nd</sup> September 2005 to the date hereof be and are hereby expunged from the court record.**
- ii) That the petitioner is at liberty to undertake execution processes in respect of the consent judgment of the 2<sup>nd</sup> September 2005 in High Court Civil suit No. 719 of 1997 the subject of this petition with interest at the rate of 24% p.a. from the date of that judgment till payment in full.**
- iii) The petitioner be paid the costs of this petition and a certificate for two counsel is hereby granted.”**

It should be noted that, the Constitutional Court awarded interest on the decretal sum of 24% from the date of the Consent Judgment till payment in full, whereas the Consent Judgment did not provide for any interest to be paid to the respondent.

Being dissatisfied with the orders of the Constitutional Court, Hasa Agencies Ltd. filed Supreme Court Constitutional Appeal No. 05 of 2010 in this Court against Goodman Agencies.

Being partially dissatisfied with the decision of the Constitutional Court, the Attorney General also filed this cross appeal on the following ground:

5 ***“The learned Justices of the Constitutional Court erred in law and fact when they awarded the respondent interest of 24% p.a. thereby varying the consent entered into by the first respondent and three others together with the cross appellant on the 2<sup>nd</sup> day of September 2005, in High Court Civil Suit No. 719 of 1997.”***

The appeal lodged by Hasa Agencies Ltd was however struck out by this Court in ***Goodman Agencies Ltd. v. Attorney General & Another, Supreme Court Constitutional Application No. 01 of 2012.*** This followed an application lodged by Goodman Agencies on grounds that Hasa had failed to deposit Uganda Shillings 200,000,000/=, as security of costs as they had been ordered to do so by this Court in ***Goodman Agencies Ltd. v. Hasa Agencies (K) Ltd., Supreme Court Civil Reference No. 1 of 2011.***

In our Ruling rendered under the said application, the Attorney General’s cross appeal survived by virtue of Rule 91(2) of the Judicature (Supreme Court) Rules. As a result, the Attorney General became the appellant.

### **Consideration and Reasons for Allowing the Appeal**

The main issue raised by this appeal is whether the Constitutional Court erred in law and in fact when it awarded 24% interest to Goodman Agencies, to run from the date of the Consent Judgment till payment in full.

As I already indicated in my judgment, I would answer this issue in the affirmative.

Three sub-issues which arise out of the main issue are:

(i) Whether Goodman Agencies prayed for interest in its Petition before the Constitutional Court?

5 (ii) Whether awarding interest to Goodman Agencies by the Constitutional Court when no interest had been specifically provided for in the consent Judgment amounted to alteration of the Consent Judgment?

(iii) Whether the Constitutional Court nevertheless properly exercised its discretion to award interest to Goodman Agencies for the delay in receiving their money?

10 In the following section, I discuss these issues *vis a vis* the parties' submissions, the law, the Constitutional Court's findings and also provide the legal basis underpinning my reasoning and dissent from the majority decision.

15 (i) Whether Goodman Agencies prayed for interest in its Petition before the Constitutional Court?

Counsel for the Attorney General argued that there was no justification for the Constitutional Court to award interest, when Goodman Agencies had not prayed for it.

20 Counsel for Goodman Agencies contended before this Court that their client prayed for interest in the Constitutional Petition. After taking court through the record, counsel referred this court to the affidavit in rejoinder to the reply, which the deponent, one Nicholas Were swore, as is shown below.

25 ***“That I depone this affidavit in reply to the second respondent’s affidavit in reply to the petition and in further support of the Constitutional Petition seeking for a declaration that the proceedings by Justice Tabaro after 2<sup>nd</sup> September 2005 after the Consent judgment was entered are unconstitutional and null and void ab initio as he was FUNCTUS OFFICIO and without***

*jurisdiction as the matter had become RES JUDICATA and pray to this Honourable Court that all proceedings after 2/09/2005 be expunged from the record and that a proper Decree be extracted from the Consent Judgment and the Petitioner recovers the*

5 *decretal sum as agreed in the Consent Judgment dated 2<sup>nd</sup> September 2005 plus interest at the rate of 24% p.a. from 2<sup>nd</sup> September 2005, the date of the Consent Judgment till payment in full plus costs of this petition.”*

10 I am not persuaded by the arguments of counsel for Goodman Agencies. As I noted before, Goodman Agencies filed Constitutional Petition No.3 of 2008 to challenge the actions of the trial judge in High Court Civil Suit No. 719 of 1997 which, according to Goodman Agencies, violated its constitutional rights to its property and the right to a fair hearing contrary

15 to Articles 26 & 28 of the Constitution respectively. The actions of the trial Judge that the respondents deemed unconstitutional, and for which they sought a declaration under Article 137 were listed in the Petition as follows:

- 20 *“i) Holding onto the Court file after a Consent Judgment had been entered into by the parties to the suit and filed on the Court record.*
- ii) Proceeding with a fresh trial when the substantive suit had been concluded thus violating the functus officio rule.*
- iii) Denying the petitioner hearing in the above proceedings.*
- 25 *iv) Grafting on board Hasa Agencies (K) Ltd as co-plaintiff and thus becoming a Judgment Creditor in a suit concluded before they had been joined as parties to the suit or the consent judgment.*

- v) ***Signing a decree drawn by a stranger to the suit that was wholly at variance with the consent judgment.***

As is clearly evident from the above quote, the acts that Goodman Agencies alleged were inconsistent with their rights as provided for under the Constitution were not about the failure of the Attorney General to carry out his obligation under the consent judgment to pay them. The Petition was about the claims of unconstitutionality and inconsistency with the Constitution that Goodman had claimed in its Petition. These being the only issues that the Petition raised, they are the issues that the Constitutional Court should have adjudicated upon.

Similarly, Goodman Agencies only sought the following redress from the Court:

- a) (i) ***Expunging all the proceedings before Hon Justice JPM Tabaro held or being held from 2/9/2005 to date from the court record.***
- (ii) ***Ordering the Execution process of the consent Judgment aforesaid to issue forthwith.***

Clearly, the prayer for interest was not in the main Petition. Goodman Agencies only referred to interest in the affidavit in rejoinder. An affidavit in rejoinder, in my view, is merely evidence supporting those claims that a party has alleged or those prayers a party would have made in the Constitutional Petition.

My reasoning is reinforced by Rule 3(5)(c) of the ***Constitutional Court (Petition & Reference) Rules*** which provides that “***the Petition shall conclude with a prayer that Court grants an order for redress***”. Rule 7(b) of the same Rules also provides that, “***where appropriate, the Petition shall contain the redress prayed for.***”

Goodman Agencies did not offer any explanation as to why it never pleaded a specific prayer for interest in its Petition as required by these Rules. The failure by Goodman Agencies to pray for interest in the main  
5 petition could not, in my view, be remedied by its inclusion in an affidavit in rejoinder. This should have been rectified by filing an amended Petition, which Goodman Agencies failed to do.

I am therefore convinced that Goodman Agencies did not pray for interest  
10 in its Petition to the Constitutional Court.

(ii) Whether awarding interest to Goodman Agencies by the Constitutional Court when no interest had been specifically provided for in the consent Judgment amounted to alteration of the  
15 Consent Judgment?

I am aware that the majority have held, based on its prayers in the Affidavit in Rejoinder that Goodman Agencies prayed for interest to be awarded by the Constitutional Court. Even if I had agreed with them, the question would remain whether the Constitutional Court altered the Consent  
20 Judgment when it awarded interest in a consent judgment which did not provide for it. I will deal with this issue in the following section.

It is trite law that a Consent Judgment duly signed by the parties and endorsed by the Court cannot be changed without their consent. This principle was restated in *Wasike v Wamboko, [1976-1985] E.A. 625*,  
25 where the Court held as follows:

***“...a consent judgment or order, whether final or interlocutory, deliberately made with full knowledge, with the full consent, of the parties or advocates on both sides, is regarded as having a full***

***binding contractual effect on which the other party is perfectly entitled to insist and normally it cannot be set aside or varied...***

However, Courts may, in limited circumstances review or set aside a Consent Judgment. In ***Brooke Bond Liebig (T) Ltd. v. Mallya [1975] E.A. 266 at 270***, the East African Court of Appeal held that:

5 ***“It is well settled that a Consent Judgment can be set aside only in certain circumstances, e.g. on the ground of fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a court to set aside or rescind a contract.”***

10 In ***Attorney General & another v. James Mark Kamoga & another, Supreme Court Civil Appeal No. 08 of 2004***, this Court also addressed itself to this issue when Mulenga, JSC (as he then was) noted as follows:

15 ***“The principle upon which the court may interfere with a consent judgment was outlined by the Court of Appeal for East Africa in Hirani vs. Kassam (1952) 19 EACA 131 in which it approved and adopted the following passage from Seton on Judgments and Orders, 7<sup>th</sup> Ed., Vol. 1 p. 124:***

20 ***“Prima facie, any order made in the presence and with consent of counsel is binding on all parties to the proceedings or action, and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court ... or if the consent was given without sufficient material facts, or in***

25 ***misapprehension or in ignorance of material facts, or in general for a reason which would enable a court to set aside an agreement.”***

Mulenga, JSC (as he then was) continued to reason as follows:

***“However, it is well settled ... that unlike judgments in uncontested cases, consent judgments are treated as fresh agreements, and may only be interfered with on limited grounds such as illegality, fraud or mistake.”***

5 The Court accordingly declined to alter a consent decree which had been entered into between the Attorney General and the respondents because it was not shown to be vitiated in any way to warrant interference through review.

Turning to the present appeal, it is evident from the Judgment of the  
10 Constitutional Court that there was no evidence of any illegality, fraud or mistake that would merit the consent judgment the Attorney General entered into with Goodman Agencies to be altered or amended to include payment of interest. Indeed, at page 20 of its judgment, the Constitutional Court noted as follows:

15 ***“...the consent judgment stated not only that the Attorney General accepted liability, but it was also comprehensive. This shows that it took a lot of time, care and effort to frame the clauses of that consent judgment. Our careful and thorough perusal of the record leads us to the same conclusion.”***

20 Furthermore, the Court further noted at page 23 of its Judgment as follows:

***“Further and most significantly, a consent judgment with the blessing of the Attorney General could not be impeached except on the aforementioned grounds. Under Article 119 (3) of the Constitution, the Attorney General is the Principle Legal Advisor  
25 to the Government. His legal opinion is generally binding on Government and all public institutions. He has capacity to sue and be sued on behalf of the Government. He had been sued in this case for and on behalf of the Government. He admitted liability and opted to enter and sign a consent judgment after thorough and***



***comprehensive consultations with all the concerned government departments... the rule is very clear; a consent judgment can only be assailed in cases of illegality, fraud or mistake. There is no such evidence in the instant case.”***

5 Having held that it was wrong for the trial judge to alter the Consent Judgment to accommodate the claims of a third party (Hasa Agencies), the learned Justices of the Constitutional Court should have also realized that it was equally wrong for them to alter the same Consent Judgment in favour of Goodman Agencies by ordering the Attorney General to pay interest on  
10 the Decretal sum at the rate of 24% per annum. This is especially so, since Goodman Agencies had been at the negotiating table with the Attorney General and had an opportunity when the Consent Judgment was being discussed, to insist on a specific clause catering for interest.

15 In the alternative, it is also possible that the Shs. 12,865,375,000/= which was included in the Consent Judgment as payment for loss of earnings to Goodman Agencies may have factored in interest due to delays in the payment. Since no evidence was available on the record to guide the Constitutional Court in reaching a decision that interest and possible delays  
20 were taken into account before the Consent Judgment was concluded, the Constitutional Court should not have entered into this arena by altering the terms which had already been agreed upon in the Consent Judgment by ordering one party to pay interest.

25 Indeed, I entirely agree with the Constitutional Court, when at page 19 of its judgment, it underscored the need for finality of judgments when it held as follows:

***“...this court finds that the consent judgment should have acted as a constructive final judgment the moment it was officially approved***

***and filed into the High Court... The judge should have respected this agreement between the parties. While judges are supposed to be independent arbiters to help the litigant parties reach a fair settlement, ultimately, the parties themselves should be the main players and have the main onus to decide amongst themselves what is fair.”***

The Constitutional Court was also alive to the case law which supported finality of Consent Judgments. At page 21 of its judgment, the Court noted as follows:

***“...case law supports the finality of consent judgments ...The very narrow circumstances where a consent judgment may be challenged confirm that such a judgment acts as a final decision.”***

In my view, since the parties to the consent judgment were content with its terms on the basis of which they signed it, and the Constitutional Court was also satisfied that there was no reason for interfering with the consent judgment so reached on grounds such as illegality, fraud or mistake, there was no need by the Constitutional Court to alter the Consent Judgment.

Therefore, by awarding interest to Goodman Agencies, the Constitutional Court was going contrary to its findings above, as well as the law governing Consent Judgments. Upon the finding by the Constitutional Court that the Consent Judgment was a final adjudication of all the disputes in HCCS No. 719 of 1997, the Constitutional Court should have simply sanctioned the execution of the Consent Judgment without altering it through an award of interest to Goodman Agencies.

By going ahead to grant interest, the Constitutional Court was altering the Consent Judgment. This alteration of the Consent Judgment was not only detrimental to the Attorney General, but also the people of Uganda, who eventually have to pay the decretal sum from the consolidated fund, at the expense of other legitimate national priorities.

I therefore agree with the Attorney General that the Constitutional Court erred in law and in fact when it awarded Goodman Agencies interest on the decretal sum of Uganda Shillings 14, 485,547,842/= . The error in law was  
5 made when the Constitutional Court, having found that no factors existed for the trial judge to alter the Consent Judgment and that the trial judge, though in error, had acted in good faith, nevertheless went ahead to alter the Consent Judgment by awarding interest, in a substantial manner, to the detriment of the people of Uganda.

10 The cumulative effect of the alteration that was sanctioned by the Constitutional Court was first to prolong the litigation between the parties because it necessitated this cross appeal to the Supreme Court by the Attorney General.

In monetary terms, the Constitutional Court's order of awarding interest of  
15 24% per annum on the decretal sum of Uganda Shillings 14, 485,547,842/= translated into a gross annual alteration of the decretal sum of Uganda Shillings **3,476,531,482/=** per year, with effect from September 2005.

Hence by the time the Constitutional Court gave its judgment in October  
20 2010, interest alone which was payable for the 5 years that had lapsed since the Consent Judgment was passed, had accumulated to Uganda Shillings **17,382,657,410/=**. This meant that the Attorney General was supposed to pay a total of Uganda Shillings **31,868,205,252/=** being the agreed upon decretal sum plus the interest thereon, instead of Uganda Shillings 14, 485,547,842/= that had originally been agreed upon.

25 By the time of hearing this appeal in 2014, after a lapse of 9 years from the date of the consent judgment, the interest on the decretal sum had accumulated to a colossal sum of Uganda Shillings **31,288,783,338/=** , accumulated from the date of the Consent Judgment, bring the total amount payable to Uganda Shillings **45, 774,331,180/= as at the date of**

**judgment.** This is the amount that the Attorney General would have had to pay if this Court had upheld the rate of 24% interest that was awarded by the Constitutional Court. This figure would continue to multiply even after our judgment until payment in full.

5 Such a windfall, emanating from a hire agreement of 10 old hired Commercial Trucks which Goodman Agencies hired in 1995 is difficult to justify, particularly so when there is no independent evidence on the record of appeal, such as bank statements, payment vouchers from the clients of Goodman Agencies who were paying for its services or copies of cheques  
10 to confirm the claim of lost earnings the trucks were generating for Goodman Agencies prior to the confiscation by the government soldiers. It is also difficult to justify this windfall bearing in mind the advanced age of the trucks at the time of their hire and also the fact that ordinarily, after a period of 5 years, vehicles have no book value and are supposed to be  
15 written off!

(iii) Whether the Constitutional Court nevertheless properly exercised its discretion to award interest to Goodman Agencies for the delay in receiving their money?

In the following section, I will consider whether in the absence of a prayer  
20 for interest and of factors that would warrant the Court to alter a Consent Judgment, there was nevertheless sufficient basis for the Constitutional Court to exercise its discretion in favour of awarding Goodman Agencies 24% interest on the decretal sum.

Counsel for the Attorney General argued that there was no justification  
25 given by the learned Justices of Appeal for awarding interest to Goodman Agencies. Relying on the authorities of **Attorney General v. Sam Semanda, Supreme Court Civil Appeal No. 8 of 2006** and **Ahmed Ibrahim v. Car & General, Supreme Court Civil Appeal No. 12 of 2002**,

the Attorney General contended that justification must be given for the award of interest.

Counsel for the Attorney General contended that the Attorney General did not keep Goodman Agencies' money for its use to warrant the Court's  
5 order against them to pay interest at 24% to compensate Goodman Agencies.

Counsel for the Attorney General further submitted that the Attorney General was not responsible for the delay in making payment to Goodman Agencies. Counsel also faulted the Constitutional Court for failing to  
10 investigate the alleged delay and whether the same was caused by the Attorney General. Counsel further contended that before Goodman Agencies could demand for payment in accordance with the rules governing execution against the government, Hasa Agencies, which was an alien to the consent judgment applied to court [on its own volition] to be  
15 joined as a party to the consent judgment. The Attorney General further submitted that Hasa Agencies' application brought with it the ensuing litigation and the inevitable delay. Counsel argued that this delay could not be visited on the appellant.

Counsel for Goodman Agencies relied on Article 137(4) of the Constitution  
20 to support their submission that the Constitutional Court was justified to award interest to their client.

In the alternative and without prejudice to their argument that their client had prayed for interest, counsel for Goodman Agencies further submitted that a Court can make an award of interest even where no prayer of interest  
25 was made in the pleadings. Counsel relied on ***Kimani v. Attorney General [1969] EA (T) 502***, as persuasive authority in support of their submissions. Counsel for Goodman Agencies contended that the award of interest was discretionary and that the Constitutional Court duly exercised its discretion

to award interest to Goodman Agencies, because of the delay by the Attorney General to pay the agreed upon sum in the consent judgment. Relying on ***Shah v Attorney General (1970) No.2, E.A. 523***, to argue that a judgment debt is property, counsel for Goodman Agencies submitted

5 further that they are entitled to the award of interest due to the delay to access their money due under the consent judgment. They further argued that there had been no willingness on the part of the Attorney General to pay since they had never received any offer from them to collect their payment. Counsel further submitted that the Attorney General was only

10 covering up for the wrongs they had done to their client from 1995 to date. Counsel for Goodman Agencies supported the award of interest at 24%, arguing that the delay by the Attorney General to pay, coupled with the fact that the trucks were being used for commercial purposes, provided sufficient justification for the learned Justices of the Constitutional Court to

15 award interest at a commercial rate. Counsel for Goodman Agencies relied on, among others, ***Sietco v. Nobel Builders (U) Ltd, [Supreme Court Civil Appeal No. 31 of 1995]***; ***J. K. Patel v. Spear Motors Ltd, Supreme Court Civil Appeal No. 04 of 1991***; and ***Premchandra Shenoji & Shivam M. K. P. Ltd v. Maximov Oleg Petrovich, Supreme Court Civil Appeal No. 9 of***

20 ***2003*** to support the award of interest at the commercial rate of 24%. Lastly, Goodman Agencies contended that the Attorney General should have paid the agreed amount in the consent judgment pending the disposal of this appeal.

It is also indeed true that this matter has spent a total of 9 years in the

25 Courts from the date when the consent judgment was filed, out of which close to 4 years have been at this Court. Although the Constitutional Court did not explicitly state so in its judgment, this delay must have influenced its decision to award interest to Goodman Agencies. In examining the issue whether the Constitutional Court properly exercised its discretion to

award interest to Goodman Agencies, it is therefore important to address the following two questions. The first one is who caused the delay in the payment to Goodman Agencies of the decretal sum under the Consent Judgment? Secondly, who should pay for the loss that arose from the delay to pay Goodman Agencies?

I will now consider the first question of who caused the delay.

This Court engaged counsel for Goodman Agencies at length to show Court how the Attorney General was responsible for the delay. For purposes of clarity, I will reproduce the relevant sections, part of the record of proceedings where counsel for the respondent canvassed this point as follows:

**Semuyaba:** *... In the Constitutional Court the Attorney General's conduct all through showed a very big opposition about the prayers that were being raised in the petition ... One thing to note first is that the original petition in the Constitutional Court was filed against Attorney General alone. So we inform them that let us expedite this petition as the rules require and have it sorted out or settled.*

**Court:** *But where is the wrong conduct you are accusing them for.*

**Semuyaba:** *I am going now to relate it to the next event to show that.*

**Court:** *If someone proposes to you to file written submissions and you opt for oral submissions, is that wrong conduct?*

**Semuyaba:** *No they didn't opt for oral submissions instead they said they have a very serious preliminary objection.*

**Court:** *Is raising a preliminary objection wrong conduct?\_*

**Semuyaba:** *It shows that you are not conceding to the petition which is trying to correct a record.*

**Court:** *But this is a preliminary point of law in court which may be overruled or upheld. How can that be described as wrong conduct?*

**Semuyaba:** ... if the Attorney General was only willing to pay ... we would not have a fully blown up litigation ... if Attorney General had in the first place conceded and not raised an objection that matter would have ended there at that time. Now along the way, Hasa Agencies comes and wants to be joined in the Constitutional Court as the respondent. ... So the court allows Hasa Agencies to be joined as a 2<sup>nd</sup> respondent. Then we dully argue the petition to its final conclusion...

5

**Court:** So is your point that even the raising of objections or the way people argued their case contributed to the delay.

**Semuyaba:** Yes because at that time Hasa Agencies had not come anywhere and we were two in the Constitutional Court. Goodman Agencies v Attorney General.

15

**Court:** Who brought Hasa Agencies?

**Semuyaba:** Hasa Agencies came and filed an application. So then they were joined as respondents.

**Court:** What is the culpability of the Attorney General in that?

20

**Semuyaba:** That in the first place when the petition was filed even during the scheduling conference they ought to have realised that the petitioner was raising a very serious point and they would have had no objection to settle that petition at that stage. So eventually the petition was handled with Hasa Agencies as another respondent...”

25

Clearly, counsel for Goodman Agencies even with the probing of Court, failed to show how the Attorney General had been responsible for the delay in disposing of this matter. Contrary to the arguments of counsel for Goodman Agencies, it is evident from the record of appeal that the actions of several players who included Hasa Agencies, the trial Judge as well as the litigation strategy that Goodman Agencies adopted in this Court that, all contributed to this prolonged litigation and the delay to pay off the decretal sum. These actions included the following:

30

35

- Hasa Agencies Ltd applying to be joined as a party to the consent judgment;



- the trial Judge agreeing to add Hasa Agencies as a party without according Goodman Agencies a chance to be heard in the said application;
- Goodman Agencies filing a Constitutional Petition challenging the inclusion of Hasa Agencies;
- Hasa Agencies appealing the decision of the Constitutional Court; and
- finally Goodman Agencies prolonging the hearing of this appeal by lodging a multiplicity of applications in this Court that delayed the hearing of this Appeal on its merits.

It is evident from the record of appeal that the Attorney General was a party to the several applications and proceedings, which caused the delay at the Constitutional Court and at this Court. However, it should be noted that the Attorney General did not, with the exception of this cross-appeal, initiate any of these other several miscellaneous applications. Therefore, while there had been a notable delay in paying the judgment sum to Goodman Agencies, it was wrong to attribute the delay to the Attorney General.

The only possibility for holding the Attorney General liable for the delay to pay would have been to hold the Attorney General liable for the acts or omissions of the trial Judge, who allowed Hasa Agencies to be joined as a beneficiary to the consent judgment. However, section 3(5) of the Government Proceedings Act specifically prohibits holding government liable for the actions of Judicial officers, by providing as follows:

***“No proceedings shall lie against the Government by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or her, or any***

***responsibilities which he or she has in connection with the execution of judicial process.”***

Indeed, counsel for the Attorney General cited this section to the Constitutional Court but the learned Justices of Appeal did not specifically  
5 address themselves to this issue in their Judgment.

I am also unable to find merit in the argument of counsel for Goodman Agencies that the Attorney General should have paid their clients in the meantime, while this appeal was pending. The arguments of counsel for Goodman Agencies ignore the fact that once it lodged the Constitutional  
10 Petition before the Constitutional Court, the Attorney General was constitutionally bound to respect the constitutional order which permits a party to file a Constitutional Petition where such a party alleges that any act done under the authority of any law is inconsistent with any provision of the Constitution. The Attorney General could not have pre-judged the  
15 outcome of the Constitutional Petition by paying the entire sum as per the consent judgment to Goodman Agencies. This is especially so since the decree had been altered by the Trial judge and there was a pending Constitutional Petition on the matter.

20 Similarly, on completion of the Constitutional Petition, Hasa Agencies appealed to this court, in exercise of its duly entrenched right of appeal under Article 132(3) of the Constitution for litigants aggrieved by a decision of the Constitutional Court.

25 Secondly, even where Hasa Agencies’ appeal had been struck out, the Attorney General could not have been expected to pay Goodman Agencies pending this Court’s disposal of the cross-appeal. Recently, in ***British American Tobacco (U) Ltd. v. Sedrach Mwijakubi & 4 others, Misc. Application No. 7 of 2012 (SC)*** this Court refused to offset payment that  
30 the applicant had made to the respondents’ then lawyers from the final

decretal amount on grounds that there was no valid compromise settlement and consent order. In the appeal under consideration the decretal sum due under consent judgment had been put into question even though there was a valid Consent Judgment that the Attorney General had originally entered  
5 into with Goodman Agencies in 2005.

Lastly, it should be noted that the framers of our Constitution provided for a judicial system that provides for trial and appellate Courts. Therefore, courts ought to take judicial notice of the fact that when parties elect to  
10 make use of appellate Constitutional channels to seek further adjudication on disputes, inevitably the successful party at the Court of first instance or the first appeal level will have to experience delay in accessing the fruits of his or her Judgment. Courts should also take judicial notice of the fact that there is case backlog in our Courts. This is in addition to the fact that at the  
15 time any appeal is filed, there will always be other pending matters. Furthermore, there is no reason why the time allowed by the Court Rules for parties to access the record of appeal and to file their pleadings should be included in calculating interest. The totality of all this is that there is inevitable delay which should not be transferred to the losing party because  
20 the losing party has no control over these events.

In ***Attorney General v. Sam Semanda, Supreme Court Civil Appeal No. 8 of 2006*** this Court recognized that delays in Court are at times beyond the control of litigants. This Court also criticized the basis of the Court of  
25 Appeal's award of interest at 45% on grounds that the case had been dragging on in Court for the last 5 years, which aggravated the appellant's continued loss and damage.

Besides the delay attributable to the court processes, Goodman Agencies too, was not free of blame when one considers the litigation strategy they adopted at this Court, and at the Courts below, which also caused delay. The actions of the trial Judge they complained of took place in 2005, yet  
5 Goodman Agencies filed its Constitutional Petition in 2008, after a 3 year period. Similarly, this appeal has taken 4 years to be heard by this Court largely due to the multiplicity of applications that were filed by Goodman Agencies. This totals to at least 7 years of delay which are attributable to Goodman Agencies.

10 It therefore follows that delay will be inevitable whenever parties elect to exercise their right of appeal. It is also true that delay can be attributable to the successful party. It is therefore high time that Courts, in the interests of justice to all parties, started deducting the period of delay attributable to court processes as well as that attributable to the successful party, from the  
15 period covered by an award of interest given by the Court.

Courts of law, as the third arm of Government, also need to take judicial notice of the national/official budgetary cycle of Government which runs from July – June of each year. It therefore follows that with or without Hasa Agencies' application which was made after the consent judgment  
20 had been signed between the Attorney General and Goodman Agencies or the trial judge's decision to include Hasa Agencies as one of the beneficiaries of the consent judgment, Goodman Agencies should have envisaged a delay in payment by the Attorney General. This is because when they signed the Consent Judgment in September 2005 when they well  
25 knew or when they should have known that the Government's financial year was already in progress. Therefore, the earliest possible date, all factors being equal, that the Attorney General would have been able to make budgetary provision for their payment would have been in the following financial year, 2006/2007, after approval by the Parliament of the

Ministry's budget. These facts were within the public domain. Therefore the Constitutional Court did not require any evidence to be adduced before it could take such factor into account before it awarded interest to Goodman Agencies.

5

I will now consider the second question: who should pay for the loss that arose from the delay to pay Goodman Agencies?

According to the Judgment of the Constitutional Court, which has been upheld by the majority in this Court with the exception of reduction of the interest rate to 6% per annum on the decretal sum, the Attorney General, representing the people of Uganda, should pay for the loss suffered by Goodman Agencies. However, why should the people of Uganda be penalized in interest for the time this Court and indeed the Constitutional Court took to adjudicate this appeal, as the two Courts are constitutionally mandated to?

This Court has on previous occasions held that a litigant should not be penalized for delay which is beyond his or her control. For example, in *Attorney General v. Sam Semanda, Supreme Court Civil Appeal No. 8 of 2006*, Tsekooko, JSC (as he then was), rightly faulted the Court of Appeal on this ground, as follows:

***“In the Court of Appeal his counsel asked for judgment as prayed in the suit. She did not explain how interest at 45% is justifiable. Kavuma, JA. awarded interest at 45% because the case had been dragging on in courts for the last five years, which aggravated the appellant's continued loss and damage. So he found the interest at 45% was appropriate. The appellant has justifiably criticized the learned Justice of Appeal for such reasoning since delay in court is beyond the control of the appellant...”***

As I noted earlier in this judgment, part of the delay to pay Goodman Agencies was caused by Hasa Agencies' application to the High Court, the Constitutional Court and this Court. Hasa Agencies, on its own motion, moved the High Court to be joined as a party to the Constitutional Petition and to file the main appeal to this Court. Goodman Agencies did not argue that Hasa Agencies was acting on behalf of the Attorney General. There is also no evidence on the record of appeal to show that Hasa Agencies was acting on behalf of or on the directives of the Attorney General, in any of the proceedings it initiated. Why should the Court transfer the consequences of the actions of Hasa Agencies to the Attorney General? There was no legal basis for the Attorney General to be held liable for the delay which was caused by the actions of Hasa Agencies. It is against this background that I find that in the appeal under consideration, it was not proper for the Constitutional Court to penalize the Attorney General for the delayed payment to Goodman Agencies, by awarding interest to Goodman Agencies. By awarding interest in these circumstances, the Court was penalizing the wrong party. The learned Justices of Appeal therefore erred in law when they held the Attorney General liable to pay interest for the delay which was primarily caused by other actors. The proper channel, in my view, that ought to have been taken by the Court would have been to order Hasa Agencies to pay Goodman Agencies for the loss the latter had incurred as a result of the delay in payment caused by the application of Hasa Agencies. This is because it is Hasa Agencies which applied to High Court to be joined as a beneficiary to the consent judgment, thus setting in motion the chain of litigation that ensued right from the High Court, through the Constitutional Court to the Supreme Court.

There was an opportunity to correct the error of the Constitutional Court at this Court. Unfortunately, Goodman Agencies opted to let Hasa Agencies off the hook, well knowing that it was the main culprit that could have been held legally responsible either wholly or partially for the delay by the  
5 Attorney General to pay them. Hasa Agencies was struck off as party to this appeal as a result of an application made by Goodman Agencies to this Court in ***Goodman Agencies Ltd v. Attorney General & another, Constitutional Application No. 1 of 2012.***

10 I also find that the learned Justices of Appeal did not properly exercise their discretion when they awarded interest to Goodman Agencies, which resulted in overcompensating Goodman Agencies for the loss arising out of the impounding of the 10 trucks. I am of the firm view that if the Constitutional Court felt constitutionally bound or inclined to exercise its  
15 discretion to award interest to Goodman Agencies, it should have done so in a manner that leaned more towards the preservation of the funds in Uganda's national coffers. The Court should have done so instead of enhancing the payment to Goodman Agencies, which, on the face of it, would appear to have been overcompensated in the Consent Judgment for  
20 its losses, through the award of 12,865,375,000/= as loss of earnings from 1996-2005.

The apparent over compensation becomes evident when one considers the particulars of the 10 trucks in question which were listed in a Loose Minute titled *High Court Civil Suit No. 917 of 1997: Goodman Agencies and*  
25 *Another v: Proposal for an Out of Court Settlement.* This loose minute was written by the then Solicitor General, L. Tibaruha on 27<sup>th</sup> June 2005 to the Attorney General. The particulars of the 10 Trucks were listed as is indicated here below, in the following table:

Owner	Vehicle Registration No.	Trailer & Reg. No	Year of Manufacture
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1. Kasine Eliana	M/Benz AB0228	LA 0341	1982/1984
2. Jean Mugerwa	M/Benz KN6511M	KV 370E	1985/1985
3. Musheruri Faustein	M/Benz AC3239	LA 1279	1985/1985
4. Rwezaho Tharcise	M/Benz AC3917	LA 0024	1985/1985
5. Simbizi Joseph	M/Benz KV2846D	KV 6131C	1988/1984
6. Busogi Janvier	M/Benz KV7298C	KV 9781C	1988/1988
7. Airfreight Services	M/Benz KV 6287C	KV 6274	1988/1989
8. Felesi Leonidas	M/Benz IB 0933	LA 0751	1991/1991
9. Airfreight Services	MAN AC2406	LA 1208	1988/1987
10. Kagabo Francis	Renault CBH280 AB9900	LA 0134	1988/1988

As is evident from the above table, 9 out of the 10 trucks which were the subject of the original Civil Suit from which this Appeal arose, ranged from 7 to 13 years of age by the time Goodman Agencies hired them from their original owners in 1995. The newest Truck in the whole lot was the one owned by one Felesi Leonidas which was listed as having been manufactured in 1991. Even then, this Truck was 4 years old. There was no evidence available on the record to confirm to the Constitutional Court or this Court that the said vehicles had been purchased by their owners as new Vehicles. Yet these are the Trucks that were plying long routes of Mombasa, Kampala, Kigali, etc for 20 days each month earning Goodman Agencies Uganda Shillings 400,000/= per day in 1996!

In making the award of 24% interest, the Constitutional Court was also fully aware that the claim of Goodman Agencies was not based on ownership of the 10 trucks in question but on a Bailee/Hire Agreement. In its judgment, the Constitutional Court observed as follows:

***“ Goodman’s claim was premised on Clause 3 of the hire agreement dated 21<sup>st</sup> November 1995, which provides:***



***‘(Goodman) shall have the legal possession of the said motor vehicle(s) at all times as long as this (these) agreement(s) a (are) in force, with powers to hire the same to third parties appertaining to the said motor vehicle(s) on behalf of the owner(s).’***

5

Given all these factors listed above, it is inconceivable that these old vehicles were running efficiently without breaking down for 20 days every month; that Goodman Agencies was assured of hiring out each of the 10 Trucks 20 days of each month from 1996 to 2005 when the consent judgment was signed without experiencing any low periods in business; that none of the Trucks would have been involved in a road accident, that Goodman Agencies would not have had overheads to meet from the net earnings generated by the Trucks; that these long haul Trucks were not insured comprehensively and that no insurance policies became operational to compensate Goodman Agencies or the owners when the vehicles were seized by the soldiers.

15

It is therefore inconceivable that Goodman Agencies, through the Hire Agreement of 10 old Trucks, would have earned over 45 billion shillings from 1996-2015 which they would have been entitled to if this Court had upheld the Order of the Constitutional Court of 24% interest on the decretal sum per year from 2005 (the date of the Consent Judgment).

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Even with the reduction of the rate of interest to 6% per annum, it is disputable that Goodman Agencies would have earned the 7.8 billion Shillings they will be receiving as interest as per the majority Ruling. Furthermore, it is also inconceivable that Goodman Agencies could not mitigate its loss by hiring any other Trucks from the open market to continue with its lucrative transportation business but that it opted to suspend its operations in pursuit of a civil suit against the government,

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whose outcome was unpredictable until the case had finally been disposed off.

Courts in general and the Constitutional Court in particular should not turn a blind eye when adjudicating matters before them that have a direct  
5 bearing on the rights of all Ugandans to enjoy their constitutionally guaranteed rights as a people.

The dictates of Article 126 of the Constitution of Uganda are that Courts should exercise judicial power in accordance with the law, values, norms and aspirations of the people of Uganda. Article 126(2) in particular  
10 requires Courts while adjudicating cases, to among others, also ensure that justice is done to all. The reference to “*all*” in this sub-article, should not, in my view, be interpreted narrowly to cover only those parties that would be currently before the Court in a given dispute. In my view, the reference to “*all*” should be interpreted in its ordinary meaning and broadest sense to  
15 embrace even the other stakeholders in the matters before court, who may not necessarily be parties to a particular matter but are likely to be directly or indirectly affected by the decision of the court in that particular case.

Furthermore, Article 21 of the Constitution also entrenches the right of all Ugandans to enjoy the equal protection of the law. Towards this end, it is  
20 important for the Courts of Law to balance the protection accorded to individuals who include natural persons, as well as legal persons like Goodman Agencies to hold property individually or in community with others which is protected under Article 26 of the Constitution of Uganda, with the right of other Ugandans to own property with others which is also  
25 protected by the same Article. Courts of law should also not lose sight of the fact that the resources in the Consolidated Fund do not belong to the Attorney General. Rather these resources are collected from numerous tax payers who may either be holding formal employment or be engaged in

business. It would therefore not be too far-fetched to say that the funds in the national coffers are the property of all Ugandans.

It therefore follows that even public funds and resources which are kept in the consolidated fund too, constitute the property of all Ugandans. These resources are kept in the Fund for the common good of all citizens. Any Court orders made against the Attorney General to pay either the decretal amount or the interest will be drawing on this Fund, from which Government draws to ensure that all the essential services such as education, health, infrastructure, etc which are required to have a properly functioning state are provided to the citizens of Uganda. The Consolidated fund should therefore only be debited to compensate an aggrieved party, only in deserving cases and only to a level they would have been in, if the unlawful acts had not taken place. I am very certain that if the 10 old trucks Goodman Agencies had hired out in 1996 had not been unlawfully seized by soldiers, they would not have earned the colossal compensation they will be receiving out of these Court proceedings, when you add the decretal sum which was agreed upon in the consent judgment, with the interest that has been awarded by the court.

### Conclusion

I find that the learned Justices of the Constitutional Court erred in law and fact when they awarded interest to Goodman Agencies at the rate of 24% per annum from the date of the date of the consent judgment (September 2005) until payment in full. The Constitutional Court erred in law and fact when:

- (a) it awarded Goodman Agencies interest which it had not prayed for in the Constitutional Petition;
- (b) it awarded interest to Goodman Agencies when no interest had been provided for in the consent judgment signed between Goodman Agencies and the Attorney General;

- (c) it failed to show the basis on which it exercised its discretion to award interest to Goodman Agencies;
- (d) it failed to properly exercise its discretion in awarding a very high rate of interest of 24% from the date of the consent judgment until  
5 payment in full;
- (e) it awarded interest against the Attorney General for the delay caused by Hasa Agencies, a Kenyan Company; and
- 10 (f) it failed to hold Hasa Agencies, responsible for its role in delaying the payment of the decretal sum under the Consent Judgment to Goodman Agencies.

Having found that the Constitutional Court made these above errors of law,  
15 the question that remains is whether the reduction of interest from 24% to 6% per annum made by this Court is enough to reverse the errors made by the Constitutional Court?

I am aware that counsel for the Attorney General submitted before this Court that if the Constitutional Court had felt inclined to award interest to  
20 Goodman Agencies on the decretal sum provided for in the Consent Judgment, the Court should have awarded interest at the Court rate (6%) per annum and not at the rate of 24% per annum, as it did.

I am further aware that the majority judgment of this Court has adjusted the  
25 rate of interest awarded by the Constitutional Court from 24% to 6% payable from September 2005 till payment in full.

While I appreciate the substantial reduction made by the majority at this Court in the rate of interest to be awarded to Goodman Agencies, I still

respectfully disagree, for the reasons I have given in this judgment, that even this reduced interest of 6% on the decretal sum indicated in the consent judgment, should be paid.

My position for declining to award the 6% interest or any lower rate is  
5 based on the fact that any award of interest, irrespective of the reduced rate, would still be an alteration of the consent judgment. In monetary terms, the alteration of the consent judgment sanctioned by the court would drop from Uganda Shillings 45, 774,331,180/= which Goodman Agencies would have earned if this Court were to uphold the award of 24% interest, to  
10 Uganda Shillings 7,822,195,834.68/= at the rate of 6% per annum for 9 years, that is if the Attorney General effects payment soon after the Judgment of this Court.

While this would be a substantial reduction, the 6% interest per annum since September 2005 would have enhanced the decretal sum by about  
15 50% of the original decretal sum that was agreed upon by the parties in the consent judgment. For such an alteration to stand in law, the factors that were discussed earlier on this judgment to warrant a court to alter a Consent Judgment must be proved. In my view, Goodman Agencies failed to prove these factors.

20 I am also aware that the majority has relied on, among others, section 26(2) and (3) of the Civil Procedure Act as the legal basis for the award of interest. This section provides in the relevant part as follows:

“1) ....

25 2) ***Where and insofar as a 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.”*

5

I agree that this section gives court discretion to award interest adjudged on the principal sum. I am also aware that section 18 of the Government Proceedings Act applies the provisions of section 26(2) and (3) of the Civil Procedure Act, to the Government, as they do to a private person. It is  
10 however my view that section 26(2) does not apply to the present appeal, because this is not a case where it was the court issuing a decree for payment of money. Section 26 (2) is applicable, **“where and insofar as a decree is for the payment of money...”** Clearly, this is not a Court ordered decree. Rather, this is a case where the parties entered into a  
15 consent judgment which was endorsed by the trial court and later changed by the court to accommodate a third party, which the trial judge believed ought to benefit from the proceeds of the consent judgment.

Secondly, as I have noted before, the parties’ agreement (i.e. the Attorney  
20 General, Goodman Agencies and 3 others), did not have provision for interest.

Thirdly, while I acknowledge that there has been a delay by Goodman Agencies to receive the decretal sum that was agreed upon in the consent judgment; I also firmly believe that one wrong should not be corrected by  
25 another wrong. By this Court upholding the order of the Constitutional Court to award interest to Goodman Agencies, though at a reduced rate of 6% interest, the people of Uganda, through their representative, the Attorney General are being held responsible for the actions of Hasa Agencies (K) Ltd., a foreign company based in Kenya. There is no legal

principle which Goodman Agencies or this Court has stated that permits us to hold the Attorney General, who is representing the Government and indeed the people of Uganda, liable for the actions of Hasa Agencies, which is a foreign company.

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I would therefore allow this appeal and make the following orders:

- (i) That the Attorney General pay Goodman Agencies Uganda Shillings 14,485,543,842/= only, being the amount that was agreed upon by the two parties in the consent judgment.
- 10 (ii) That no interest at all should be paid by the Attorney General to Goodman Agencies.
- (iii) That in the interests of justice, each party should bear its own costs.

15 Lastly, I advise Goodman Agencies, (if it so wishes), to pursue its claim from Hasa Agencies in respect of interest or any other loss that Goodman Agencies may have incurred as a result of the delay to receive the decretal sum indicated in the Consent Judgment, which was directly caused by Hasa's actions.

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Dated at Kampala this ...24th..... day of .....March..... 2015.

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**HON. JUSTICE DR. ESTHER KISAAKYE**  
**JUSTICE OF THE SUPREME COURT**

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