

**THE REPUBLIC OF UGANDA**

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

**CIVIL DIVISION**

**HIGH COURT CIVIL SUIT NO. 383 of 2012**

**DR. MAJOR (RTD) ANTHONY JALLON OKULLO ::::::::::: PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL ::::::::::: DEFENDANT**

**BEFORE: HON. JUSTICE STEPHEN MUSOTA**

**JUDGMENT**

The plaintiff Dr. (Rtd) Major Anthony Okullo through his lawyers M/s Davis Ndyomugabe & Co. Advocates who was later joined by M/s Victoria Advocates instituted this suit against the defendant (the Attorney General) in his representative capacity for recovery of US\$19,362,821 or its equivalent in UGX being expenses in breach of contract incurred in the provision of medical services, and treatment of the late Lt Col. Angelo Okello, interest and general damages as well as costs.

As can be deduced from the plaint, the plaintiff's case is that around 11<sup>th</sup> June 1988, the defendant through the Chief of Medical Services Mbuya of the then National Resistance Army (NRA) (then) and the Secretary of Defence instructed him to receive Lieutenant Col. Angelo Okello a former rebel leader of the Uganda Democratic Army/ Movement (UPDM/A) which had been incorporated into the NRA after a peace agreement with the Government of Uganda for medical services in treating, overseeing, caring and making all necessary arrangement for clinical welfare of the patient. It was agreed that the plaintiff's services would be paid for.

The plaintiff took care and supervised and treated Lt Col. Angelo Okello locally and in Kigali, Jeddah, Brussels and in Rome and back to Uganda until December 1988 when he succumbed to the sickness.

The plaintiff contended that upon the demise of the late Lt. Col. Angelo Okello he sent invoices to the Ministry of Defence for payment of professional services, food, accommodation and transport of USD 68,950 and USD 24,200 respectively for payment but the same were never paid whereupon a compound interest of 24% p.a was agreed upon on the principle until payment in full. However no payment was made by the defendant to that effect until payment of UGX 138,455,750/- made in 2011 and another UGX 94,200,000/- made in 2012 as part payment of the total claimed of USD 10,577,372.60.

The defendant filed a Written Statement of Defence wherein he denied the claim by the plaintiff as mentioned in paragraph 3, 4 and 6 of the plaint. In the alternative the defendant contended that the defendant or his servants have never contracted the services of the plaintiff to provide medical care to the Late Lt Col. Angelo Okello for the value of USD 19,362,821 as being claimed by the plaintiff. The defendant further contended that he has never signed or entered into any form of contract or agreement with the plaintiff for that purpose.

In a joint scheduling memorandum filed on 13<sup>th</sup> February 2013 dully signed by both parties, it was an agreed fact that the government has paid on the debt only two paltry installments in the sums of UGX 138,455,750/- and UGX 94,200,000/- to the plaintiff.

The agreed upon issues are as follows;

1. Whether the suit is time barred.
2. Whether there was any binding contract between the plaintiff and the defendant.
3. Whether there was breach of the contract by the defendant.
4. What remedies are available to the parties?

Counsel for the parties filed written submissions in respect of their respective cases as directed by court.

In his submissions, learned counsel for the defendant framed new issues citing inadvertence on both parties not to have framed the issues. With due respect to counsel for the defendant's submission, I find it unprofessional for the same counsel who signed and endorsed on the joint scheduling memorandum which was filed in court with framed issues to falsely say that issues were never framed. The issues were framed jointly. I will go ahead and resolve the issues as framed.

**Issue 1: Whether the suit is time barred**

At the commencement of this trial, this court dealt with this issue as a preliminary matter and came to the conclusion that this case is not time barred. Court followed court precedents and the law applicable and held that the defendant having made part payment of the debt and the plaintiff having pleaded part payment as an exemption as required under Order 7 rule 6 of the Civil Procedure Rules, the plaintiff's claim accrued from the debt of the defendant's last payment. The effect of acknowledgment or part payment of a debt or other liquidated sum is that time which had started to run against the creditor started afresh by an acknowledgment of liability made by the debtor. See: **J. K Patel Vs Uganda Revenue Authority HCCS No. 14 of 2003.**

It is the law that time which has started to run against the creditor may be stopped and made to start afresh by acknowledgment of liability or by a part payment made by the debtor. Consequently court found that the preliminary objection had no basis and it was dismissed with costs to the plaintiff. Therefore I need not to delve into resolving issue 1 for the second time.

**Issue 2: Whether there was any binding contract between the plaintiff and the defendant.**

At the trial, the plaintiff testified as PW3. He testified that he provided medical services in handling, treatment, care and management of the life of the Late Lt Col. Angelo Okello between June 1988 and December 1988 when he died. That the circumstances surrounding his involvement arose out of instructions, reference and requests by the Government of the Republic of Uganda through the Ministry Of Defence and with the knowledge of the Permanent Secretary and further through the then Chief of Medical Services of the National Resistance Army Dr. Ben Mbonye who directed and referred the said Lt Col. Angelo Okello for medical treatment. PW3 further testified that he was directed by the government to spare no efforts, resources and time in the treatment care and management of the personal life of the said Lt Col. Angelo Okello whether in Uganda or outside Uganda.

In cross examination, PW3 testified that the patient was referred to him by a fellow Medical Physician along the line of emergency management. That in emergency cases, one does not waste time but focus is put on the case before him first. That when he decided to fly the patient to Italy, PW3 gave information that the patient needed specialized treatment which the country did not have at the time. That he took the patient to San Camilo Hospital and he cleared the bill. That the receipts were submitted to the ministry of Defence. That nobody could have copies of documents related to the patient because they were classified so nobody could have kept copies of documents related to the treatment of the patient because they were classified. So nobody could have copies. That all documents were submitted in February 1989. That although the original claim in 1989 was USD 93,150 a compound interest of 24% p.a was imposed when the payment was delayed.

PW1, Dr. Ben Mbonye testified that he was the Chief of Medical Services of the NRA Mbuya Military Hospital. That when Lt Col. Angelo Okello fell sick, he was asked by the NRA leadership which doctor he would feel confident with to treat and supervise the treatment of his life and the patient suggested Dr. Anthony Okullo. That the NRA leadership had no objection to Dr. Okullo treating Lt Angelo Okello and that during the treatment the said Doctor was sanctioned to take the patient abroad for treatment.

In cross examination, PW1 stated that he was consulted when the plaintiff took charge of Lt Col. Angelo Okello by the army leadership and he was asked to facilitate treatment of Lt Col. Angelo Okello. That the patient was handed over to the plaintiff who took charge and treated him. The doctor was to keep submitting expenses incurred in the treatment. That the initial contact with PW1 was made by Major General Salim Saleh. PW1 explained that the Permanent Secretary is the technical head of the Ministry of Defence but usually receives communication from the army which has its own system. That the correspondences of the army may not go through the Permanent Secretary. That claims in the army go through the army relevant departments and not necessarily the Permanent Secretary and payment can be made by either by the army or the ministry head quarters when verified. PW1 acknowledged writing exhibit P1 confirming that the events happened.

PW2 was Major General (Rtd) Emilio Omondo who filed a witness statement in which he testified that the Ministry of Defence, himself, the Chief of Medical Services NRA and other top military offices in the NRA agreed that Lt Col. Angelo should have specialized and priority treatment due to the nature of his standing in the forces. That government instructed Dr. Anthony Okullo to take personal diligent and dedicated care, treatment, management and supervision of the health and well being and personal attention of Lt Col. Angelo Okello. That he treated and attended to Lt Col. Angelo Okello and abandoned his private clinic to travel with the patient to several countries including Rwanda, Saudi Arabia, Belgium and Italy and back to Uganda. That due to the sensitive nature of the patient, Dr. Okullo was requested later on to explain to the Acholi people the circumstances of Okello's death since rumor was rife that Okello was killed by the government. PW2 further testified that the plaintiff accomplished his assignment and submitted his claims for payment but was instead intimidated. That after repeated harassment the plaintiff begged and requested that his delayed payment attract compound interest of 24% p.a till payment in full and since PW2 and the others did not anticipate payment to delay, government accepted and agreed to pay 24% per annum interest in 1989. PW2 attributes to the failure to pay the money to indiscipline. That the agreed interest should be paid since PW3 borrowed money to meet the instructions of government.

In cross-examination PW2 stated that in 1988 he was a Permanent Secretary Ministry of Defence and met the plaintiff in the same year. That he authorized the treatment of Lt Col. Angelo Okello after consulting with the Chief of Medical Services of the NRA (PW1). That his role was to commit the ministry and ensuring the officer was treated. That PW1 brought to his attention the ill officer and sought clearance for treatment as a matter of emergency and the treatment was approved. That Pw2 did not receive a report of the treatment because it was confidential and therefore did not know the actual medical condition and it could be difficult to know the financial implications then. That the government was to pay USD 93,000 in January 1989 after the death of the patient which PW2 authorized to be processed for payment but had not been paid by the time the witness left the ministry.

Further in cross-examination PW2 admitted committing the government of Uganda to pay a compound interest of 24% per annum after consulting the Under Secretary Finance and other officers. That in this case, time was of essence so he did not consult the Attorney General. That had the bill been paid in a short time, the compound interest of 24% p.a would not be a big deal. That it would have been small money. That the doctor was to treat the patient without government paying anything but using his own resources. That he was disappointed when he realized that the plaintiff had not been paid for 21 years. That because at the time, the two year old government of Uganda had no money, the plaintiff paid on behalf of the Government and Uganda did not even foot flight expenses.

Further in cross-examination PW2 testified that the patient was a strategic officer and politically sensitive therefore they had to do whatever it took to preserve him after signing the peace agreement with the patient's rebel outfit with which the government had been at war in the Acholi land. That Lt Col. Angelo Okello had committed his organization to peace with government and government did not want opponents to get capital out of the situation. That at the time of this commitment, the president was the Minister of Defence and as well as the Commander in Chief.

In their submissions learned counsel for the plaintiff made reference to Section 10 of the Contract's Act No. 7 of 2010 while defining an agreement. But as rightly submitted by learned counsel for the defendant, this act is not applicable to this case because it was enacted after this transaction had been done. However, this does not stop this court from considering the well known principles of what comprises a contract.

Learned counsel for the plaintiff submitted that both parties to this transaction were in agreement that there was the offer, acceptance, consideration and there was execution of the terms of the contract. Learned counsel further submitted that the Ministry of Defence's action and the plaintiff's response all created an effective contract. That the ministry offered the plaintiff an assignment to treat a patient and Dr. Okullo accepted the offer by treating the patient with the consideration being the promise by the ministry to pay for the treatment.

Learned counsel for the defendant submitted that there has never been any legally binding contract between the government of Uganda and the plaintiff as the government does not operate or enter into contractual legal obligations verbally. He cited the Public Finance Act of 1962 and the Public Tender Board Regulations of 1977 and submitted that the plaintiff's alleged transactions if any with the Ministry of Defence was in total contravention of the above laws of the country.

Learned Defence counsel further submitted that it was glaringly strange that the plaintiff would sit together with two officers in the Ministry of Defence and decide to commit government with huge financial obligations in contravention of the laws regulating procurement of contract of services on behalf of the government. That the whole arrangement was tainted with illegalities and contrary to public policy, he invited court to find this issue in the negative.

From the evidence on record, it is apparently clear that there was an arrangement made between the government of Uganda through its responsible officers and the plaintiff. At the time the government had just carried out a successful revolution and was consolidating itself in power and had suspended the constitution of Uganda. It were the officers of that government who contacted the plaintiff to do what he did. The plaintiff did perform his part of the bargain but the defendant did not until 2012 when it made a part payment of money owed to the plaintiff. The

money owed was USD 93,150 as at 1989. This debt is not disputed by the Defence and the part payment made to the plaintiff were from recognition of that indebtedness. It has not been shown by the Defence that when the initial arrangement was reached the parties did not have the capacity to do so. It has been shown by the evidence on record that the matter at hand was so urgent calling for immediate action the way the responsible officers did i.e. PW1 and PW2. These witnesses impressed it on court that saving the life of Lt Col. Angelo Okello was very crucial to the stability and tranquility of the country and therefore required emergency attention. That is why they acted the way they did and at the time. It appears that was the *modus operandi*.

As I stated above, from the evidence, I got the impression that the existing social order was overthrown and effective institutions like those envisaged in the submissions by learned counsel for the defendant were not effectively in place. The President was the Minister of Defence and substantially the military was in control, and was the government. Therefore if the officers of the government failed to follow the laws of the land as suggested by learned counsel for the defendant, this was not the problem of the plaintiff who was himself a retired soldier. The plaintiff did what he was requested to do as testified by PW1 and PW2. I am not convinced that at the time, the conventional tendering process or negotiation of this contract would have been done yet the patient who required treatment was in a critical condition.

It is not disputed that indeed the plaintiff took charge of the health of the late Lt Col. Angelo Okello. What learned counsel for the Defence seems to dispute is the fact that in rendering the service by the plaintiff, the laws were flouted and were not followed. I must state that the two officers concerned here were not junior officers but rather the Permanent Secretary and the Chief of Medical Services who in their mind had full knowledge of the circumstances at the time and were of the view that the matter was of urgency. They did whatever they had to do to avert the political dangers that would be associated with failure to attend to Lt Col. Angelo Okello. It would therefore be unfair and contrary to the constitution which enjoins this court to administer substantive justice without undue regard to technicalities under Article 126 (2)(e) for the defendant who may not have been effective at the time to turn around and claim that the right procedure was not followed before the services of the plaintiff were rendered. Moreover it



is not revealed anywhere that the plaintiff went on soliciting to offer the services but was rather approached by officials of the defendant upon consultations with the late on which doctor he would feel comfortable with to entrust his life as testified by PW1.

Learned counsel for the defendant submitted that at the time the laws in force were:

- (1) Public Finance Act 1962, and
- (2) The Public Finance Tender Board Regulations of 1977.

That the plaintiff's transaction with the Ministry of Defence if any was in total disregard of the above laws. That the whole arrangement was tainted with irregularities and contrary to public policy.

However as rightly pointed out by learned counsel for the plaintiff, the law only provided for what would befall a public officer who went ahead and executed a contract without seeking approval of the central tender board. Such officer was required to show cause why he or she should not be surcharged with all or part of any expenditure plus facing disciplinary proceedings. See: Regulation 25.

On construction of the Regulations cited by the defence, their object was not to render the contract invalid but to punish the public officer for entering into the contract without approval of the board. The contract would go ahead and supplier of services or goods would be paid. A public officer of the rank of Permanent Secretary has ostensible authority to enter into a contract for provision of goods and services to the government.

In the instant case such an officer entered into the contract with the plaintiff. It would be unjust to expect the plaintiff to inquire into the internal workings of the defendant. Therefore the plaintiff is entitled to payment though there may have been breach of the procurement procedures.

The allegations of fraud were never pleaded by the defendant and cannot be addressed from the bar. The defendant failed not only to plead fraud in his pleadings but also to show that any failure to follow the regulations referred to voided the contract.

Another aspect pleaded by the defendant was that the transaction in this case was against public policy. For court to find any breach of public policy, it must be satisfied that some form of reprehensive or unconscionable conduct has contributed substantially to the award being obtained. See: **NSSF & Another Vs Alcon International SCCA No.15 of 2009.** It has to be emphasized that inconsistency with the constitution (which in this case had been suspended) and the Laws of Uganda whether written or unwritten, does not stand alone. The inconsistency must go further and breach the national interest of Uganda and be contrary to Justice and Morality. It is therefore not sufficient to simply say the law was breached and therefore is contrary to national policy.

In the instant case therefore breach of public policy would come in if the parties entered the agreement well aware that Lt Col. Angelo Okello was a fictitious person but then went ahead and prepared documents to show fake medical attendance upon the fictitious Lt Col. Angelo Okello. Therefore the defendant has not made out a case of the doctrine of contravention of public policy to apply.

If a government department in its dealings with the subject takes upon itself to assume authority upon a matter which he or she is concerned, he or she is entitled to rely on it having authority which it assumes. This was the case in **Robertson Vs Minister of Pensions [1949]1 KB 227.**

In that case, the appellant a serving army officer wrote to the war officer regarding a disability of his and received a reply dated 8<sup>th</sup> April 1941 stating; “*Your disability has been accepted as attributable to Military service.*” Relying on that assurance he forebore to obtain an independent medical opinion on his own behalf. The Minister of Pensions later decided that the appellant’s disability was not attributable to war service. Denning J held *inter alia* that:

- (i) ***“as between subjects such an assurance would be enforceable because it was intended to be binding, intended to be acted upon and was in fact acted upon;***
- (ii) ***The assurance was binding on the crown because no term would be implied that the crown was at liberty to revoke it.***
- (iii) ***The assurance was therefore binding on the minister of pensions, the appellant having become entitled to assume that the war office had consulted any other department concerned before it gave the assurance.”***

This would be the position unless the author could show that it was made by mistake or induced by misrepresentation. This case is on all fours with the case under consideration. In the instant case such defence was not pleaded. The defendants cannot escape in this case.

PW2 in cross examination testified that:

***“the statement I made was mine. Everything stated is true unless you ask me what you doubt..... I met the plaintiff as a PS in June 1988. I authorized a treatment of Lt Col. Angelo Okello. Before I consulted technical people i.e. Chief of Medical Services in the NRA Dr. Mbonye..... He sought me to clear for treatment as a matter of emergency. He told me he consulted Major General Salim Saleh and treatment was approved..... My only role was yes commit the Ministry and officer be treated, as accounting officer..... The treatment could be here in Uganda or outside.....”***

From the evidence on record, it is my finding that if a government department in its dealings with the subject takes it upon itself to assume authority upon a matter with which he is concerned, he is entitled to rely upon it having the authority which it assumes. A subject dealing with such department does not know and cannot be expected to know the limits of its authority. The department itself is clearly bound and since it is an agent of the government and as the government is bound so are the other departments which are also agents of the government.

In the instant case and as rightly submitted for the plaintiff, whether internal procedures of procuring the services were followed by the government officials or not should not be used as an excuse for none payment of the plaintiff. There was legitimate expectation to be rewarded for the services rendered in the treatment of Lt Col. Angelo Okello. In the circumstances, I will find that there existed a legally binding agreement between the government of Uganda and the plaintiff.

**Issue 3: Whether there was a breach of contract by the defendant.**

It was the plaintiff's testimony that after the death of Lt Col. Angelo Okello, he tendered to the ministry a demand for his professional fees and bills for the treatment of the officer. These were exhibited as P6 and P7.

It is also the evidence for the plaintiff that because of the delay in payment, he wrote to the Secretary for Defence suggesting a 24% compound interest on the sum of USD 93,150 on 21<sup>st</sup> February 1989. See exhibit P5. The plaintiff testified that the suggestion was accepted by the Secretary for Defence who signed it on behalf of the defendant as per exhibit P2 and the interest on the principle sum has been running since and the defendant was fully aware of the position.

In his submission, learned counsel for the plaintiff argued that by failing to pay the plaintiff the sums of money as agreed by settling the invoices submitted on 6<sup>th</sup> February 1989 and failure to honor the compound interest as agreed in Exh. P2, the defendant was in breach of the contract entered into between the plaintiff and the defendant.

In reply learned counsel for the defendant argued that the whole arrangement was illegal and contrary to public policy. That the basis of the claim of USD 19,362,821 was founded on an illegal transaction and therefore unenforceable in courts of law.

I have already held that there existed a legally binding contract between the plaintiff and the defendant. The plaintiff performed his part of the bargain by treating and taking care of the patient. He went ahead and submitted invoices to the Ministry of Defence as had earlier been agreed but his dues were not paid not until 2011 and 2012 when some money was paid to him.

The defendant claims that the USD 93,150 paid in 2011 and 2012 was full and final settlement of the plaintiff's claim and that it was paid on compassionate grounds for medical expenses of the plaintiff's wife and travel abroad expenses.

The plaintiff explains that the claim of USD 19,362,821 arose as a result of the defendant's failure to honor the plaintiff's claim as submitted in 1989 and also as a result of the compound interest of 24% per annum agreed later. I will not handle the issue of compound interest now. It will be handled when dealing with the remedies.

According to **Black's Law Dictionary 9<sup>th</sup> edition page 213**, breach of contract is defined as:

***“Violating a contractual obligation by failing to perform one's own promise by repudiating it or by interfering with the other party's performance.”***

It was held in **Hydro Engineering services Co. (U) Ltd (HESCO) vs Thorne International Boiler Services HCCS 818 of 2003** that:

***“In law, breach of contract refers to breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party. It also entitles him to treat the contract as discharged if the other party renounces it or makes its performance impossible or totally or substantially fails to perform its promises.”***

In the instant case the defendant was supposed to pay the plaintiff as agreed. It failed to do so for a period of over 20 years and only paid him partly when it did. The law is that payment of a small sum is not satisfaction of a liquidated debt of a greater amount, when there is no consideration for giving up the remainder. Therefore by failing to pay the plaintiffs the sums of

money as agreed by settling the invoices submitted on 16<sup>th</sup> February 1989 in time was in breach of the contract entered into between the plaintiff and the defendant.

**Issue 4:** What remedies are available to the parties?

In the pleadings, the plaintiff prayed for special damages of USD 19,362,821 which incorporates the principle sum and compound interest as agreed upon from the date of filing and a further compound interest till payment, general damages for breach of contract, 8% interest on the general damages and costs of the suit.

Learned counsel for the plaintiff submitted that the contract between the plaintiff and the defendant was reduced into writing on 21<sup>st</sup> February 1989 and parties agreed on the compound interest of 24% on the principle sum till the amount is paid in full.

It was held in *Sarah Kayaga Farm Limited Vs Attorney General HCCS 351 of 1991* per Kasule J (as he then was) that:

***“Thus compound interest compensates better the one entitled to payment under a contract and yet is not paid. This is because it takes care of the consequences of delayed payment namely opportunity cost, risk and inflation.”***

On the issue of compound interest, it is the defendant’s case that the claim for that interest of 24% p.a by the plaintiff is allegedly based on a letter or agreement reached between PW2 Major General Emilia Omondo and the plaintiff. The letter was tendered in court as Exh P2. The defendant disputes the agreement.

Learned counsel Bafirawala argued that it is rather strange and unorthodox that the alleged agreement was based on the plaintiff’s letter head rather than the Ministry of Defence or government official letter head. According to learned counsel, the explanation for that

unconventional act is not hard to get. That the only logical conclusion is that PW2 had already left the Ministry of Defence and had no access to the letter head or authority to sign as Secretary for the Ministry of Defence. That it was therefore convenient for the plaintiff and PW2 to decide unitarily to use an official document to commit the government. That the conduct of the plaintiff and PW2 as far as the authorship of a document "A3" is concerned was encircled with suspicion and that the said document was not authored in 1989 as it purports to state.

The defendant also relied on the evidence of DW3, a forensic document examiner and concluded that the letter was a forgery probably authored sometime in 2010 when PW1 had already left the Ministry.

From the submissions of learned counsel for the defendant, my understanding of his contention is that the plaintiff and PW2 connived and authored Exh. P2 way after PW2 had left the Ministry of Defence. The evidence by DW3 on which the defendant heavily relies to dispute Exh. P2 suggests that the person who signed and wrote Exh. P2 on behalf of the government was not PW2.

I must note that courts are enjoined to exercise caution before accepting handwriting expert evidence. In this case the signature in question was owned up by the person who signed it. During cross examination, PW2 confirmed the position when he said as follows:

***"I committed the government of Uganda to pay compound interest of 24% ..... If it was paid in a short time 24% was not a big deal. It would be small money."***

And in re-examination, PW2 said:

***"When I signed Exh. P2 I never thought payment would take 20 years. I could not imagine the Ministry of Defence would fail to pay. We could pay in two or three months."***

This is stronger evidence compared to what DW3, the expert said. In cross examination, DW3 testified that he did not get the original documents and did not ask whether the author of the documents was dead or alive, so he did not get the original samples of the witness's signature. In fact he said that someone copied Emilia Omondo's signature. In examination by court on his findings, DW3 stated that signatures vary each time they are written and that the extent of variation varies between people. That with time variations can be wider or consistent.

Given this revelation, I am convinced that indeed signatures vary from time to time. PW2 owned up the signature and never alleged that anyone forged his signature as DW3 suggests. The document is clearly dated 21<sup>st</sup> February 1989 and in absence of the evidence to the contrary, I am left with no doubt that the same was authored in 1989 by the same parties whose signatures appear on it.

The only question I wish to address is whether a compound interest of 24% per annum was reasonable undertaking in the circumstances for the officer to bind the government. Whether interest was agreed upon or not, its payment is sanctioned under the Civil Procedure Act. See: Sections 26(2) and (3) and Section 27 (3) thereof.

While considering the appropriate rate of interest it is important to take into account the fact that since judgment is against government and satisfying it will involve government money it was not appropriate for PW2 to agree to a compound interest rate of 24% per annum since there was a possibility that the debt may not be paid promptly. Basing myself on the guidance of the Supreme Court case of **Attorney General Vs Goodman Agencies Limited Constitutional Appeal No.5 of 2010**, rational concern has to be shown about public funds. I will therefore hold that in the circumstances of this case, in principle the plaintiff is entitled to compound interest but not at the rate of 24% per annum which is on the higher side. I will accordingly substitute it for an interest rate of 15% per annum as compound interest as reasonable on the claim by the plaintiff from February 1989 to the date of judgment and a rate of 6% interest from the date of judgment until payment in full.



Going back to the issue of special damages, the plaintiff's Exh. P6 is an invoice addressed to the Secretary for Defence for payment of fees for professional services rendered to the late Lt Col. Angelo Okello and the amount claimed is US\$ 68,950 and Exh. P7 is another invoice in respect of food, accommodation and transport in Rome of US\$ 24,200 making a total of US\$ 93,150. It was not clearly explained how this figure rose up to US\$ 19,362,821 even at a compound interest of 24% per annum. The principle of law regarding award of special damages is well settled. A claim for special damages must be specifically pleaded and strictly proved. If the plaintiff brings an action for damages, it is for him or her to prove their damage. It is not enough to write down particulars, throw them to court and say; “ *this is what I have lost, I ask you to give me these damages*”, they have to be proved as was decided in **KCC Vs Nakaye [1972] EA 446; Kyambaadde Vs Mpigi District Administration [1993] HCB 44.** Therefore the basis for calculation of the interest owed should be the original figure of US\$ 93150.

It was the evidence of PW2 that he signed exhibit P2, in the said Exh a compound interest of 24% per annum, which I have reduced to 15%, had been levied on the principle till payment in full. I have already found that there existed a contract between the parties. I have also found that upon failure to pay the principle sum, the compound interest was agreed upon. It was also an agreed fact that the plaintiff was paid UGX 138,455,750/- and UGX 94,200,000/- of the monies due. The payments were made in 2011 and 2012 respectively as per Exh. P12.

The defendant submitted that the payment of US\$ 93,150 was on compassionate (exgratia) grounds based on the health of the plaintiff and his wife, and was in full and final settlement of any claim the plaintiff may have had with the Ministry of Defence. I was not persuaded by this argument because US\$93,150 arose out of a contractual obligation between the plaintiff and the defendant to treat the late Lt Col. Angelo Okello. Therefore the defendant's argument is not true. The said payment was made to the plaintiff for the services rendered as instructed and directed by the servants of the defendant. This holding is supported by the payment voucher which clearly stated that payment was in respect of professional services rendered to the Ministry of Defence, it was therefore not exgratia. The said payment did not in any way offset the defendant's obligation. It is trite law that where liquidated amount is due, payment of a

small amount cannot be relied on as satisfaction of the obligation unless there is consideration of relinquishment of the balance. No such evidence was adduced in the instant case.

In the instant case, the defendant has waited for 25 years now to pay the plaintiff's claim and throughout the period, interest was accruing on the principle sum. By the defendant paying the principle sum and ignoring accrued interest meant that the defendant did not completely perform its part of the bargain. The plaintiff pleaded and has proved on a balance of probabilities that the defendant owed him money which fetched interest to be calculated as adjudged i.e. a compound interest of 15% per annum for 25 years as follows:

Formula:  $A=P(1+R/n)^{nt}$  where

P - is the principle amount originally owed US\$ 93,150

R - is the annual interest rate as a decimal

n - is the number of times the interest is compounded per year

T - is the time, and

A - is the total amount owed.

Therefore the amount owed on account of compound interest of 15% per annum is US\$ 3,066,400.44. Judgment will therefore be entered for the plaintiff for that amount and not USD 19,362,821 as earlier prayed. From the date of judgment till payment in full, that amount will carry an interest of 6% per annum.

Regarding general damages the principle of law is that:

***“General damages are such damages as the law presumes to be the direct, natural or probable consequence of the act complained of”.*** See: ***Stroms Vs Hutchinson [1905] AC 515.***

I am of the view that since I have allowed a compound interest of 15% per annum on the principle sum and since the same encompasses a lot of factors arising out of none payment of monies owed and it takes care of any inconveniences and expectations accruing from the breach of contract as well as compensating the one entitled to payment under a contract and yet it is not paid and further consideration that it takes care of the consequences of the delayed payment namely opportunity cost, risk and inflation, I will not award general damages claimed of UGX 3,800,000,000/- as prayed for by the plaintiff. Instead a nominal figure of UGX 500,000,000/- will be awarded as general damages.

In conclusion, I will enter judgment for the plaintiff as outlined in this judgment and the plaintiff shall get the taxed costs of this suit.

**Stephen Musota**

**J U D G E**

**09.09.2015**