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The Republic of Uganda  
In the High Court of Uganda Holden at Soroti  
Civil Suit No. 292 of 2010

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- 1. Julius Ochen
- 2. Imodot Paphrus Edimu
- 3. Opio Osoto Joseph
- 4. Epama Michael and
- 5. 205,000 Others



..... Plaintiffs

Versus

15

Attorney General ..... Defendant

Before: Hon. Justice Dr Henry Peter Adonyo

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Judgement

1. Background:

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The Plaintiffs ( Imodot Paphrus Edimu, the 2<sup>nd</sup> Plaintiff filed his claim is in Civil Suit No. 09 of 2012) sued the defendant which it states neglected its statutory duties for compensation for lost lives and properties as a result of the war and the insurgencies which took place in Teso sub region late 1980s and early 1990's allegedly perpetuated by various armed groups including the Uganda People's Army (UPA), the National Resistance Army(NRA), the Lord's Resistance Army(NRA), the Uganda People's Defence Forces (UPDF) and the Karimojong warriors'/ cattle rustlers among others.

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The defendant in a defence filed on 18<sup>th</sup> January 2011 denied the plaintiffs' claims stating that it carried it statutory duties well and even pacified the sub region and



5 as such the plaintiffs had no claim against it and this suit should be dismissed with costs.

2. The plaintiffs' case:

The plaintiffs claim is that the Government of Uganda represented by the defendant was constitutionally duty bound to protect them as citizens of Uganda but that between the years of 1986 up to 2006 when there was insurgency in Teso sub region perpetrated by various armed groups which included amongst others the Uganda Peoples' Army, National Resistance Army, the Lord's Resistance Army, UPDF and Karimojong warriors, the government of Uganda negated its duty leading the plaintiffs suffering incredible human rights abuses coupled with loss of livestock and property.

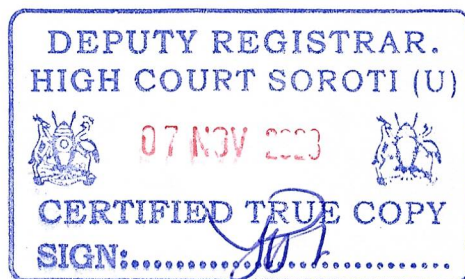
The plaintiffs contend that since they are victims of the defendant's failure in carrying its statutory duty, then they were seeking for compensation from the defendant which negated its statutory duties

3. Defendant's case:

The defendant denied that the Government of Uganda failed to protect its citizens of Teso sub region from the acts of UPA, LRA, plus other armed groups' who killed, looted and stole the plaintiffs' cattle, goats, food crops plus destroying their household properties, which left the plaintiffs in abject poverty and suffering.

The defendant further denied the plaintiffs' allegations that the NRA/UPDF carried out the acts of killing, looting, stealing of the plaintiffs' property, destruction or attacks.

The defendant denied that its servants acting within the scope of their duty breached Articles 1,2,3,20,21,22,23,24,26,30,33,34 and 44 of the Constitution of the Republic of Uganda, 1995.



5 The defendant further contended that it never breached its statutory duty and denies ever exposing the plaintiffs to the brutal acts of the Karimojong warriors and as such prayed this honourable Court to dismiss the plaintiffs suit with costs.

4. Representation:

10 In this suit the plaintiffs were represented by M/s Omongole and Company Advocates, while the Attorney General's Chambers represented the defendant. The plaintiff, in proof of its case, led evidence of fourteen witnesses and these are Ochen Julius, 49 years old (PW1); Isiagi E. Silvanus, 96 years old (PW2); Okubu Peter Aeto, 75 years old (PW3); Isala Eragu Veronica Bichetero, 69 years old (PW4), Opolot Faustine Henry, 76 years old (PW5); Erudu Okiror, aged 75 years  
15 old (PW6); Okia Eric, aged 73 years old (PW7); Ewatu Alfred aged 57 years old (PW8); Ochan Geresemu aged 63 years old (PW9); Angulor Ben (PW10); Nyangan David aged 65 years old (PW11); Iloot Basil aged 65 years old (PW2); Ameri Alfred aged 57 years old (PW3); Erechu Peter aged 48 years old (PW14); Atai Betty (PW15).

20 The plaintiffs also produced a number of documents which are contained in the Plaintiffs Trial Bundle and which is admitted on record.

The defendant on the other led the evidence of three witnesses: Ro/02296 Brigadier General Fred Ssegamwenge, 58 years old (DW1), Ro/02539 Brigadier General Stephen Mugerwa, aged 53 years old (DW2) and Ro/08188 Brigadier  
25 General Professor Godard Busingye (DW3).

The defendant also produced a number of documents which are contained in the Defendant Trial Bundle and which is admitted on record.

At the conclusion of the hearing of this suit which has taken thirteen years, the parties filed final written submissions to which this Honourable Court is grateful.

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5 The final submissions have been considered together with the pleadings, documentary and oral evidence relating to facts together with the law while resolving the instant dispute between the parties herein.

5. Issues:

10 According to the Joint Scheduling Memorandum (JSM) dated 18<sup>th</sup> April 2013 which was re-filed on 18<sup>th</sup> August 2022, the following issues were formulated and agreed by the parties:

a) *Whether the defendants had a statutory duty to protect the plaintiffs, their properties and their relatives from the various wars? And if so, whether the defendant failed in its statutory duty?*

15 b) *Whether the actions/inactions of the defendant's agents violated the rights of the plaintiffs.*

c) *Whether the plaintiffs are entitled to compensation for actions/inactions of the defendants and breach of statutory duties.*

d) *What other remedies are available to the plaintiffs?*

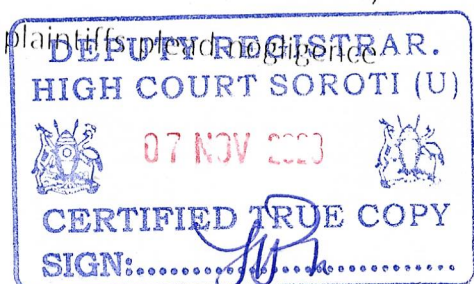
20 However, the reading the plaintiffs' submissions through their counsel show a departure from issues agreed during the Joint Scheduling Memorandum, (JSM). I will confine myself to the issues agreed to in the JSM for determination of this suit.

6. Resolution:

25 a. Preliminary objections:

From the final submissions five (5) preliminary objections containing of points of law are raised which counsel for the defendant state are capable of disposing this suit and these are that the instant was instituted on behalf of others without a representative order pursuant to Order 1 Rule 8 of the Civil Procedure Rules, S.I No. 71-1, that the plaintiffs plead vicarious liability without stating its particulars, that this instant suit is barred by limitation, that the plaintiffs plead negligence

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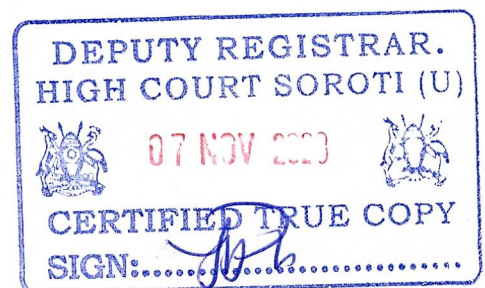
5 but do not provide the particulars of negligence contrary to Order 6 Rule 3 of the  
Civil Procedure Rules and lastly the plaintiffs adopted the wrong procedure for  
the enforcement of their human rights. These preliminary objections have come  
belatedly during the final submissions of the defendant yet the taking of evidence  
is now complete and this matter is set for judgement. Secondly the record shows  
10 that some of these preliminary objections (P.O.) were on 20<sup>th</sup> May 2013  
dismissed by this court per the ruling by Lady Justice Elizabeth Ibanda Nahamya  
(RIP). Accordingly, the preliminary objections are over-ruled as this court is  
*functus officio* in relations to some of them and that the rest of the P. Os were  
belatedly raised without affording the plaintiffs the opportunity to respond. I will  
15 now proceed to resolve the instant case on its merits.

a. Whether the defendant had a statutory duty to protect the plaintiffs, their  
properties and their relatives from the various wars? And if so, whether the  
defendant failed in its statutory duty?

The counsel for the plaintiffs submitted extensively to the fact of the defendant  
20 being constitutionally charged with the duty of protecting the citizens of Uganda,  
including the plaintiffs but that it failed to do so between the years of 1986 to  
2006 during the period of wars and insurgency in the Teso sub region  
perpetuated by the Uganda Peoples' Army, National Resistance Army/ Uganda  
Peoples' Defence Forces, the Lord's Resistance Army and Karimojong warriors  
25 plus other rampaging armed groups' which resulted in the plaintiffs suffering  
untold human rights abuses such as the killings, abductions, torture, rape,  
unlawful detention, trauma and loss of livestock, household property and food.

According to counsel, the defendant thus was vicariously liable for the plaintiffs'  
suffering and thus must compensate them in line with the holding *Hon. Okupa*

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5 *Elijah & 2020 Others vs Attorney General & Ors Misc. Cause No. 14 of 2005* where  
His Lordship Hon. Mr. Justice Batema N.D.A, held that;

10 *"Government had a duty to deploy the Uganda Peoples Defence  
Forces to provide security to its citizens and to protect and defend the  
territorial integrity of Uganda, including Karamoja, at all costs (Article  
209 of the Constitution of the Republic of Uganda 1995)"*

15 Counsel further added that in the aspect of negligent of statutory duty, the  
defendant through its agents created under Article 212 of the Constitution failed  
in its statutory duties in Teso sub region as properties were destroyed and or  
looted, lives were lost, cattle theft making the government liable for its failure in  
implementing its constitutional duty and thus was liable for *"the loss of lives in  
this case was a result of the respondent's breach of statutory duty and as such the  
respondents are liable to pay compensation."* as was held in *Okupa's case (cited  
above)*.

20 Counsel thus concluded that since in the present case the defendant breached  
its statutory duty then the plaintiffs herein are entitled to be compensated.

In response counsel for the defendant denied that the government breached its  
statutory duty at all and insisted that at all times the defendant through its agents  
protected the citizens of Teso sub region including the plaintiffs as was testified  
to by all the defendant's witnesses including Brigadier General Fred  
25 Ssegamwenge and Brigadier General Stephen Mugerwa who testified that  
Government soldiers were heavily deployed in areas of insurgency in Teso sub  
region and because of that the various armed groups and rebels who were  
operating in the region were wiped out and thus peace was restored in the Teso  
sub-region which was even acknowledged by the plaintiffs.

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5 Counsel further submitted that no government soldier committed any atrocities  
as was alleged by the plaintiffs while pointing to the testimony of Brigadier  
General Stephen Mugerwa who testified that government soldiers rescued many  
people held captive by the various rampaging armed rebel groups with even  
many soldiers dying during the process as instances of the defendant upholding  
10 its statutory duties.

In reply counsel for the plaintiffs repeated his earlier submissions and find that  
the government / defendant breached its statutory duties.

b. Court's analysis and Determination:

Lexis Nexis defines the breach of a statutory refers to the situation where a  
15 claimant who suffers loss or injury in circumstances in which the defendant has  
been in breach of a statutory provision could potentially claim damages in tort,  
even if the situation does not fall within the scope of any existing tort such as  
negligence.

Black's Law Dictionary, 9<sup>th</sup> Edition, page 214, defines breach of duty as *the*  
20 *violation of a legal or moral obligation; the failure to act as the law obligates one*  
*to act; esp., a fiduciary's violation of an obligation owed to another.*

Actionable breach of statutory duty is a distinct form of tort action from  
negligence as was pointed in *London Passenger Transport Board v Upson [1949]*  
AC 155.

25 However, generally, the legal principle of *Res ipsa loquitur* which is a Latin phrase  
that translates to "*the thing speaks for itself*" apply. *Res ipsa loquitur* is a legal  
doctrine in common law and Roman-Dutch law jurisdictions that allows a court  
to infer negligence from the very nature of an accident or injury in the absence  
of direct evidence on how any defendant behaved in the context of tort litigation.

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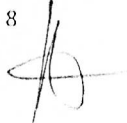
5 For example, if a patient undergoes surgery and wakes up with a surgical instrument inside their body, the occurrence of such an event is so rare that it can be inferred that the surgeon was negligent.

In this suit and according to pleadings, the plaintiffs' claim is anchored on the breach by the defendant of its statutory duty to protect them and their properties  
10 which are encompassed in the constitutional arrangement of Uganda of which Article 20 of the Constitution of the Republic of Uganda, 1995 as amended (hereinafter referred to as "the Constitution") espouses reenacts as part of the fundamental and other human rights and freedoms and which were saved from the provisions of the Uganda 1967 Constitution and provides thus;

- 15 1. Fundamental rights and freedoms of the individual are inherent and not granted by the state.
2. The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.

20 Furthermore, the Government of the Republic of Uganda is responsible as provided by Article 189 of the Constitution and its Sixth Schedule Arms, ammunition and explosives and defence, security, maintenance of Law and Order.

In respect of the defence forces, Article 209 of the Constitution provides the  
25 functions of the defence forces as including to preserve and defend the sovereignty and territorial integrity of Uganda, to cooperate with the civilian authority in emergency situations and in cases of natural disasters, to foster harmony and understanding between the defence forces and civilians and to engage in productive activities for the development of Uganda.

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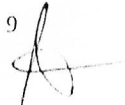
5 As for Uganda Police, Article 212 of the Constitution provides for its functions which include to protect life and property; to preserve law and order, to prevent and detect crime; and to cooperate with the civilian authority and other security organs established under this Constitution and with the population generally.

10 Construing from the legal provisions above, it is clear in my mind that the state's organs and agencies and all persons are enjoined, among others; to respect, uphold and promote the rights and freedoms of the individual and groups of people as are enshrined in the Constitution.

15 Furthermore, the state is also enjoined to protect life and property of the citizens through its establishments and formations such as the Uganda Peoples Defence Forces (UPDF) and the Uganda Police Force (UPF) in addition to preserving and defending the sovereignty and territorial integrity of Uganda as is the case of the Uganda Peoples Defence Forces (UPDF);

20 Invariably, therefore, the argument postured by counsel for the defendant that the plaintiffs' action is not sustainable because Articles 189 and 20(2) were meant to primarily protect the general public and not designed to protect the commercial interests of the individual plaintiffs, is seen as being out of constitutional context, because the law does not categorise or exclude commercial rights but encompasses all rights; meaning that the instant action of the plaintiffs, is tenable in law.

25 Besides, the plaintiffs adduced evidence to show that the looted or lost properties belonged to them and were not solely for commercial interests or that lost lives and or that the injuries which were inflicted onto their relatives, or to the people who were known to them or to themselves as testified to by PW15, who exposed in court her leg which was shot at and which had to be amputated,  
30 were matters related purely personal and not commercial rights.

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5 Since the parties herein agree that the period of insurgencies in the Teso sub  
region, came with it the atrocities and the destruction of properties of the  
plaintiffs by armed groups of persons, then the only contention which needs  
examination is whether the defendant undertook its statutory duty as is even  
agreed by the defendant that it is its constitutional mandate to protect the  
10 citizens.

The question then which arise is as to what extent did the defendant carry out its  
statutory duties?

That question is answered as follows. Section 4(2) of Government Proceedings  
Act Cap 69 (as it was applicable) created government liability. It is provided that;

15 Where the government is bound by statutory duty which is binding also upon  
persons other than the government and its officers, then subject to the provisions  
of this Act and to the provisions of section 6 of the Law reform [Miscellaneous  
Provisions] Act, the government shall, in respect of a failure to comply with that  
duty, be subject to all liabilities in tort, if any, to which it would be so subject if it  
20 were a private person of full age and capacity.

As to government neglecting its statutory duty Isiagi E. Silvanus, (PW2) told court  
in an uncontested testimony that between 1986 and 1987 wars and conflicts  
encompassed Teso sub region as government armed forces battled rebel groups  
and armed Karimojong raiders/rustlers. This witness himself encountered two (2)  
25 attacks by the Karimojong warriors in Malera around 1987/88 at night and that  
by armed groups. PW15 Atai Betty survived narrowly from LRA attack on a camp  
in Olelai Internally Displaced Persons' (IDP) camp in Amuria. She lost her husband  
and other dear ones due to random shooting. Personally she was shot on her leg  
which had to subsequently be amputated.

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5 Both these witnesses testified to the fact that the government which was supposed to provide security to its people failed to do so as the NRA soldiers who were supposed to protect them either did so lukewarmly or were so few that they were of no effect.

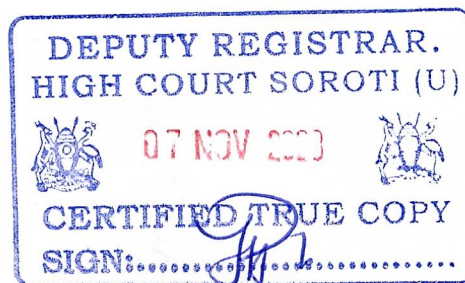
Another witness, Ameri Alfred (PW13) confirmed the fact of the Government neglected its duty to protect them and added that government soldiers turned against them the ordinary people.

10 Iloot Basil (PW12) was even more sarcastical. He opines that it is so unfortunate that the Government is not thinking of compensating people who suffered during the insurgency yet the Government failed in its statutory duty to protect them because their soldiers joined in violation of our rights with PW10 Angulor Ben, 15 having say that during the insurgency people really suffered at the hands of both the rebels and government soldiers yet the government which had the duty to protect people really failed at that time.

From these witness testimonies, the insurgency occurred leading to wanton suffering with the government which encamped people in IDP camps under its 20 control failing to stop armed groups like the LRA as testified to by PW15 from infiltrate the camps and then killed, wounded and looted people's properties.

Worst still, according PW2 Isiagi Stanislaus and PW10 Angulor Ben, some rogue government soldiers joined in the indiscriminate killing, maiming and the looting 25 of people's properties instead of protecting them.

The defendant denies that it abandoned of its duties and maintain that none of the government soldiers committed the alleged atrocities as since the plaintiffs did not name a single one who did so but only mentioned Karimojong rustlers as the perpetrators of the alleged atrocities.



- 5 But even if those Karimojong rustlers were the ones who attacked the plaintiffs and stole their properties and or killed their relatives or maimed them, then question that arise would be that by the time the Karimojong rustlers accessed the plaintiffs and their properties, where were the state agents whose constitutional obligation was to protect the citizens and their properties?
- 10 The answer to this can be answered from the graphic testimony of PW15 who testified to the fact of the LRA which attacked an IDP camp in Amuria and overwhelmed the few NRA (government) soldiers who were supposed to protect the people there resulting in the killing and maiming of people under the defendant's protection.
- 15 Invariably, the only clear conclusion which the court can make is that since the defendant was constitutionally responsible for ensuring that the population, including the plaintiffs were protected against cattle raiders and lawless armed then the defendant failed in its constitutional and legal duties to stop the atrocities and the loss of properties meted onto the plaintiffs even though the
- 20 defendant's witnesses told court that they tried they best but their best was not enough because the state has the monopoly to constitutionally to control the flow of arms and ammunitions.
- Furthermore, that the state had the statutory duty to protect the plaintiffs even from own rogue soldiers is underscored from the honest testimony of Ro/02296
- 25 Brigadier General Fred Ssegamwenge, (DW1) who testified indeed some soldiers including even some of their commanders could have gone off track and committed the mentioned atrocities and mistakes since soldiers were humans and not angels and that he could not defend atrocities atrocities which could have been committed by them.

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5 This actuality was also agreed to by Brigadier General Stephen Mugerwa, (DW2) who testified that according to policy government soldiers were required to protect the lives and properties of people but if they did not do so then they went astray.

Given the above acknowledgment then it is safe to conclude, similarly as was held  
10 in *Hon. Okupa Elijah & 2020 Others vs Attorney General & Ors Misc. Cause No. 14 of 2005* by Hon. Mr. Justice Batema N.D.A that the government had a duty to deploy the Uganda Peoples Defence Forces to provide security to its citizens including the plaintiffs as is enshrined under Article 209 of the Constitution of the Republic of Uganda 1995 and since it did not do so then it is liable. This issue  
15 succeeds.

c. Whether the plaintiffs are entitled to compensation for actions/inactions of the defendants and breach of statutory duties:

The plaintiffs contended that the government of the Republic of Uganda failed to protect them as citizens from the inhuman acts and atrocities with even  
20 Government soldiers participating in committing those atrocities which left them killed, maimed and in abject poverty and suffering thus entitling them to compensation from the defendant as per their compiled lists of claims which they had presented to the Ministry of Defence supported with statements of eye witnesses after the same were verified and validated by the Ministry of Defence  
25 itself.

That the plaintiffs are entitled to compensation just like any other citizens of this country is position also confirmed by Brigadier General Prof. Goddard Busingye (DW3) who admitted that; *"...the UPDF and other groups caused loss of property (ies) and livestock...If the people of Teso are verified and ordered to be  
30 compensated, then they should be so as directed by the President/commander-in-*

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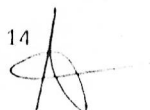
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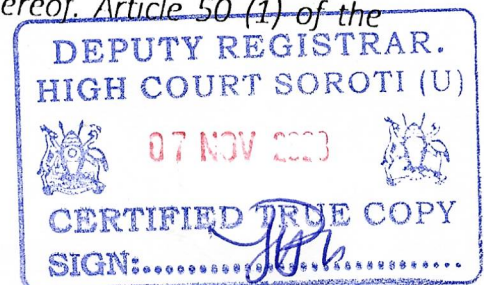
The above admission contrasts profoundly with the general denial by the  
defendant in its written statement of defence. However, the unquestioned  
10 testimony of Ochen Julius (PW1), Isiagi Stanislaus (PW2) and that of Atai Betty  
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Karimojong cattle rustlers, armed groups such as the LRA as well rogue NRA  
soldiers caused the evidenced atrocities to the plaintiffs. Given these  
corroborated testimonies on record, it is evidently clear that indeed the  
15 allegations by the plaintiffs that the defendant never protected them as required  
by the law is proved which renders the defendant liable to the plaintiffs as per  
their claims and entitles them to compensation as is the position of the law.

This conclusion distinguishes the holding in *Gunya Company Ltd V Attorney  
General Civil Suit 31 of 2011*, which was cited by the defendant, that liability  
20 cannot be imposed on the defendant when it is not provided for by the law.

On the contrary, Article 26 (2) of the Constitution and Article 50 (1) of the  
Constitution provides that compensation is available to a complainant where  
there has been proved that there was an infringement of one’s rights. In this case,  
indeed by the defendant and its agents failing to protect and secure the plaintiffs  
25 as was statutorily required, then the plaintiffs’ rights were infringed and so they  
have the right to claim for compensation from the defendant which failed in its  
statutory duties.

And as was pointed out in *Osotraco Limited Vs Attorney General, Civil Suit No. 1380  
of 1986* by Justice Egonda-Ntende (As he then was) the “...the right to property is  
30 a right protected by the Constitution in Article 26 thereof. Article 50 (1) of the

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5 *Deylon's case* (cited above) applies to the instant matter for it was held that even if no evidence had been adduced showing any specific instance of any government soldier causing the losses claimed or the losses incurred, the government still had the constitutional duty to preserve and protect the lives and property of its people at all costs.

10 This holding applies to the instant case which fortunately has graphic recounting by witnesses such as Atai Betty (PW15) who connected government failure to the killing and the causing of significant harm to the plaintiffs when she testified that people, including herself were attacked by the LRA rebels who overpowered the few government soldiers who were guarding them in an established government  
15 containment place called IDP camp in Amuria. PW15 was shot at by the rebels and she subsequently lost her leg while others like her husband were not lucky enough as they died as a result of the failure of the few government soldiers who were overpowered by the rebels.

The latent failure of the government in protecting the plaintiffs is a theme which  
20 run all through the uncontested evidence of all the plaintiffs' witnesses with some like Isala Eragu Bichetero (PW4), who worked with the NRA in diaspora but told court that NRA and Karimojong warriors committed atrocities to people including her own father whose eyes were gorged by NRA soldiers and Karimojong warriors and he subsequently died after their property was even  
25 ransacked and looted.

From these examples, it is clear that the plaintiffs have proved that the government fell short of its duty to the ordinary people as including the plaintiffs who were subjected to atrocities, harm and the destruction of their properties under the very watch of the defendant which half-heartedly deployed its soldiers  
30 to protect the plaintiffs from armed Karimojong cattle rustlers and rebels such as





5 LRA and UPA but those soldiers were not effective as they were not only few but some of them even turned against which they were supposed to protect and similarly committed atrocities against them.

That negation of statutory duty makes the defendant responsible for the resultant anarchy which ensued.

10 Accordingly, this Hon. Court finds that defendant failed in its statutory duty and is thus responsible for the losses incurred by the plaintiffs and as such must compensate the plaintiffs in accordance with the provision of Article 26 and 50 of the Constitution and as was held in the *Deylon's case* (op. cit) for the people looked to the Government to provide them security which it did so by deploying  
15 its soldiers in the affected areas as it was clearly alive of the dangers to the lives and property of the ordinary people and was mindful of its duty but failed in that duty.

The Lists of Claims as admitted on record as PEx 26 (Ten Volumes) and tendered in court by PW1 Julius Ochen testified on 25<sup>th</sup> April 2023 catalogues the atrocities  
20 and lost properties and lives. It forms concretely supports the plaintiffs' claims. It is adopted by this Hon. Court as the undeniable litany of the result of the defendant failure in its duty. What is contained therein I thus must be used for compensating the plaintiffs though it should be properly verified and validated since the defendant denied ever verifying the plaintiffs claim and the plaintiffs  
25 did not present any concrete proof of any verification by the defendant though they presented documents which show some processes towards that.

Overall, this issue succeeds and I do approve PEx26 which is constituted of Ten (10) volumes for assessment and eventual compensation accordingly.



5 6. What other remedies are available to the Plaintiffs?

The plaintiffs prayed for;

- 10 a) A declaration that the plaintiffs' fundamental rights guaranteed under the Constitution in Articles 1,2,3,20,21,22,23,24,26,30,33,34, and 44 were violated and infringed upon by the government [defendants'] agents.
- 15 b) A declaration that the government of the Republic of Uganda breached its statutory duties to protect the people of Teso from attacks from the Lord's Resistance Army (LRA), National Resistance Army (NRA), Uganda Peoples' Army (UPA) and the Karimojong rustlers thus violating their fundamental rights to life, education, property, and freedoms.
- 20 c) A declaration that as a result of the government's failure to adequately protect the people of Teso from war, they suffered a lot of human rights abuses which included torture, killings, abduction, rape, unlawful detention and trauma, among others.
- d) A declaration that the plaintiffs are entitled to compensation for the property and livestock looted/stolen in the process, general and exemplary damages for the suffering subjected to the plaintiffs and costs of the suit.
- 25 e) Costs of the suit.

Article 50 (1) of the Constitution of the Republic of Uganda, 1995 allows a person whose rights have been violated to seek redress and such redress includes compensation. It provides;

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5 (1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent Court for redress which may include compensation

The plaintiffs have proved that their fundamental rights and freedoms guaranteed under the Constitution were infringed by the defendant and as such  
10 they are entitled to redress under Article 50(1) of the Constitution including award of compensation.

In *Osotraco Limited Versus The Attorney General HCCS No.1380 of 1986*, Egonda Ntende J. (as he then was) held that;

15 *“Article 50 ensures such a person redress before the Courts, redress in my view refers to effective redress and nothing short of that. A less than appropriate remedy is not effective redress.”*

On the strength of the above authorities, I would conclude and find that the plaintiffs are indeed entitled to the following remedies:

a) Compensation for lives lost:

20 During the attack for example of the Internally Displaced People’s Camp in Amuria, many people lost lives as testified to by PW15. In the case of *Abu Igasit and Eliko David Vs. Attorney General HCMC No.63 of 2005*, Justice Elizabeth Musoke awarded general damages for the loss, pain and to the injury caused coupled with the manifest breach of due process.

25 The loss of lives in this case was a result of the defendant’s breach of statutory duty. Also different types of lives were lost including those of adults and children. I am unable to estimate the value to life lost as life is priceless but I can only award such sums as would, in my view, modestly ameliorate the plaintiffs’ situation arising from loss of dependency and pain.

30 Accordingly, I do award to each plaintiff herein who has lost an adult person an amount of Twenty million shillings only (Shs.20.000.000/=) and Ten Million



5 shillings (Shs. 10,000,000/=) for a child as loss of dependence, pain and suffering  
caused. The lives lost shall as for those which are contained in PEx 26 (Ten (10)  
Volumes of Lists of Claims) which is admitted on record on 25<sup>th</sup> April 2023 when  
PW1 Julius Ochen testified and from the testimonies of the plaintiffs herein.

As for claims of torture, rape, abduction, injury and unlawful detention, an  
10 amount per person of Shillings One Million (Shs. 1,000,000/=) is awarded for each  
claimant similarly to be ascertained from PEx 26 and from the evidence of the  
plaintiffs herein. The awards awards for claims for loss of lives and for torture,  
rape, abduction, injury and unlawful detention above shall be determined and  
agreed upon jointly by the parties herein after establishing, verifying and  
15 validating and this must be carried out within Six (6) months from the date of  
this judgment and a report made to this court for any final and consequential  
orders.

Where the parties fail to do so as above, then this Honourable Court shall use the  
PEx 26 to establish the persons to be compensated.

20 b. Compensation for the properties and livestock lost during the  
insurgency:

The applicants claim the lost cattle to cattle rustlers. In *Gideon Emaru Vs. Attorney  
General HCCM No.071 of 2005*, it was held that;

25 *“The right to property as provided under the Constitution is clear and the  
circumstances under which this right can be interfered with subject to  
compensation; as such failure to fulfill the requirements therein makes the  
action illegal in the instance.”*

In *Deylon Johnson Wilson and others Versus The Attorney General, HCCS No.0027  
of 2010* wherein the plaintiffs sought recovery of their heads of cattle lost during  
30 the insurgency in Lango sub-region, Justice Byabakama Mugenyi granted them

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5 compensation for their livestock and attached to the compensation specific rates for each claimed animal.

However, this Honourable Court is unable to adopt the monetary value of livestock fixed in the *Deylon Johnson (cited above)* for the reason that no method and system was shown as to how that court arrived at those figures. That being  
10 the case, I would declare that while the plaintiffs are awarded compensation for lost properties and animals during the infamous period, such should be properly assessed using the then prevailing values between 1986 to 1994 and an agreed position reached which would be proportionate and commensurate to the losses suffered then using what is contained in PEX.26 and the testimonies of the  
15 plaintiffs.

Both parties thus must ascertain, verify and validate PEX.26 and the testimonies of the plaintiffs in a joint exercise with a final report made to this Honourable Court within a period of no more than six (6) months from the date of this judgment so that final and consequential orders are made in that respect.  
20 However, should the parties fail to carry out the ordered joint exercise as stated above then the court shall assign appropriate figures in respect of compensation for the properties and livestock lost. This issue succeeds upon the above terms.

b) General Damages for violation of rights:

The plaintiffs suffered inconvenience as a result of the defendant's infringement  
25 of their fundamental rights and freedoms. The applicants also lost opportunities in economic and social activities.

Due to the wars, the cattle rustling activities and insecurity the plaintiffs were either confined to IDP camps, had to run away from their homes, got traumatised had their properties and livestock looted or lost or they themselves got injured  
30 while some had to run away from their usual places of residences for long period time and such were thus inconvenienced.

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5 Such situations entitle the plaintiffs to general damages for as was held in *Dr. David Lwamafa Versus Attorney General (1992) KALR 21* "a plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been in had she or he not suffered the wrong."

The holding in *David Lwamafa* (above) applies here and accordingly, I would hold  
10 that the plaintiffs here are entitled to an award of general damages for the wrong they suffered as a result of the unjust act of the defendant. Each of the plaintiffs is thus awarded Shillings Two Million (Ug. Shs. 2,000,000/=) as general damages.

c) Exemplary Damages:

In *Deylon Johnson (op. cit)*, the court pointed out the circumstances under which  
15 exemplary damages can be awarded when it stated that exemplary damages "...are awarded where there has been oppressive, arbitrary or unconstitutional action by the servants of government. This has to manifest in or cause suffering to the plaintiffs."

I agree, and proceed to state that the plaintiffs herein experienced indescribable  
20 and innumerable suffering during the period in question as a result of the defendant failing to execute its statutory duties. There was no excuse for the defendant not doing what it was required to do by law and so for its failing to do to the plaintiffs what it should have done then I am inclined to award to each of the plaintiffs' exemplary damages of one million shillings (Ug. Shs. 1,000,000/=.

25 d) Interest:

The plaintiffs also seek to be awarded interest which is reasonable in the circumstances of this case. Interest is an economic concept of compensating one party for incurring risk and sacrificing the opportunity to use funds while penalizing another party.

30 Section 26 (2) CPA Cap 71 provides that;

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5 (1) 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 satisfaction the decree, in addition to any interest adjudged on such  
principal sum for any period prior to the institution of the suit, with further  
10 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.

In *Deylon Johnson (op. cit)* it was stated that;

15 *"It is settled the Court is seized with discretion to determine the rate of  
interest to be awarded to a party depending on the particular circumstances  
of the case.....it is also understood that the Court's discretion must be  
exercised judicially and not arbitrarily.... the guiding principle is that the rate  
of interest must be reasonable."*

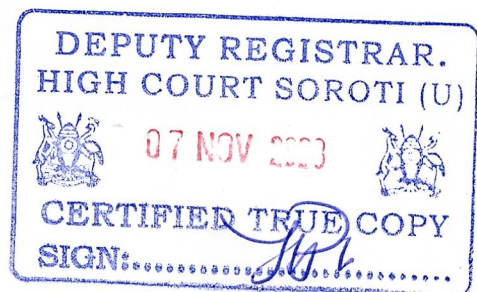
I agree with the holding in Deylon's case above and after considering the fact that  
20 it is the plaintiffs who are the successful parties here and after noting the fact  
that this case has been in court since 2010; with its genesis going back to the  
1980's, I find that it is only fair that interest be paid by the defendant.

Accordingly, I award interest at the court rate of 6 % per annum on the  
established amounts for compensation for lost or destroyed properties, lost lives  
25 and for those injured, raped, abducted, tortured from the date of filing this suit  
till payment in full. And as for interest for general and exemplary damages these  
shall equally be at the court rate of 6 % per annum on the amounts awarded from  
the date of this judgment till payment in full.

e) Costs:

30 It is settled law under section 27 (2) of the Civil Procedure Act that costs shall  
follow the event unless Court shall for good reason otherwise order.

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5 In the instant case there appears to be no good reason as to why Court should deny the plaintiffs the costs of this suit since they are the successful party. The Plaintiffs are awarded costs of this suit.

7. Conclusion:

Arising from the above judgment is entered in the favour of the plaintiffs with the following declarations and orders made;

a. Declarations:

15 i. It is hereby declared that the plaintiffs' fundamental rights guaranteed under the Constitution in Articles 1,2,3,20,21,22,23,24,26,30,33,34, and 44 were violated and infringed upon by the government [defendants'] agents.

20 ii. It is hereby declared that the government of the Republic of Uganda breached its statutory duties to protect the people of Teso from attacks from the Lord's Resistance Army (LRA), National Resistance Army (NRA), Uganda Peoples' Army (UPA) and the Karimojong rustlers thus violating their fundamental rights to life, education, property, and freedoms.

25 iii. It is hereby declared that as a result of the government's failure to adequately protect the people of Teso from war, they suffered a lot of human rights abuses which included torture, killings, abduction, rape, unlawful detention and trauma, among others.

iv. It is hereby declared that the plaintiffs are entitled to compensation for the property and livestock looted/stolen in the process, general and exemplary damages for the suffering subjected to the plaintiffs and costs of the suit.

b. Orders:

30 i. Each plaintiff herein, who has lost an adult person an amount of Twenty million shillings only (Shs.20,000,000/=) and Ten Million shillings (Shs. 10,000,000/=) for a child as compensation for the loss





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of dependence, pain and suffering caused. The deceased persons (Adult or child) for which these awards are granted shall be those as are identifiable from PEx 26 (10 Volumes) and the evidence of the plaintiffs.

- ii. For claims of torture, rape, abduction, injury and unlawful detention, an amount per person of Shillings One Million (Shs. 1,000,000/=) is awarded for each claim as compensation for pain and suffering caused. This award per person shall be based on PEx.26 (10 Volumes) and from the evidence of the plaintiffs herein.
- iii. For loss of Livestock and or properties, both parties herein through a Joint Verification and Validation are ORDERED do establish the then prevailing values (1986 to1994) of the properties and livestock and agree to such proportionate values which shall then form the basis of the compensation by the defendant in regard to the said properties listed in PEx.26 (10 Volumes).
- iv. The values and numbers in (iii) shall be Ascertained, Verified and Validated by both parties herein in a JOINT EXERCISE with a report made to this Honourable Court within a period of no more than six (6) months from the date of this judgment for final and consequential orders to be issued.
- v. Any failure by the parties herein in complying with the directive in (iii) above shall leave this Honourable Court with no option but to use PEx.26 (10 Volumes) in establishing the amount compensation for the properties and livestock lost.
- vi. This court awards Two Million (Ug. Shs. 2,000,000/=) to each of the plaintiffs as general damages.

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vii. This Honourable Court awards each of the plaintiffs herein Exemplary Damages of One Million Shillings (Ug. Shs. 1,000,000/=).

viii. Interest on (i), (ii) and (iii) shall be at the court rate of 6 % per annum from the date of filing this suit till payment in full.

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ix. Interest for General and Exemplary damages is awarded at the court rate of 6 % per annum from the date of this judgment till payment in full.

x. The Plaintiffs are awarded costs of this suit.

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I so order.

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Hon. Justice Dr Henry Peter Adonyo

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Judge

19<sup>th</sup> October 2023

