

**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA  
AT KAMPALA**

**CORAM: HON. JUSTICE L.E.M MUKASA-KIKONYOGO, DCJ.  
HON. JUSTICE J.P BERKO, JA.  
HON. JUSTICE. S.G. ENGWAU, JA.**

**CIVIL APPEAL NO. 34 OF 2002**

**AFRO MOTORS LIMITED===== APPELLANT  
VERSUS  
UGANDA REVENUE AUTHORITY===== RESPONDENT**

(An Appeal from the Judgment and Decree of the High Court  
[Commercial Court] of Uganda at Kampala  
(Lady J. Constance Byamugisha) dated  
The 17<sup>th</sup> day of August 2001 in  
Civil Suit No. 355of 2000)

**JUDGMENT OF THE COURT**

The appellant company by their plaint, claimed against the respondent the total CIF value amounting to 147,457,500/= for motor spare parts which the respondent collected from the appellant's warehouse, interest at bank rate on the amount, damages and costs of the suit. The respondent denied the claim and raised a counter claim in the sum of Shs. 52,948,439/=.

When the matter came before the trial court, the appellant made an application under Order 11 rule 6 C.P.R for a judgment on admission contained in a letter dated 24<sup>th</sup> May, 2001. Counsel for the respondent opposed the application and contended that the letter did not amount to an admission. He further contended that the suit was not maintainable as it was time barred.

The learned trial judge in her ruling upheld the objection on the ground that the letter did not amount to an admission by the respondent of the appellant's claim. The judge also found that the suit was not time barred. Instead of proceeding to hear the appellant's main claim/suit on its merits, she proceeded to dismiss the whole claim. She also allowed the counter-claim with costs.

We think, with respect, that the learned trial judge should not have dismissed the whole claim when the application for judgment on admission failed. The proper

course should have been to set down the appellant's suit for hearing so as to give opportunity to the appellant to prove its case, if it can and to allow the trial judge to determine the matter on its own merits after hearing the evidence from the respondent.

In our view, this ground is enough to dispose of the appeal without considering the remaining grounds of the appeal which all revolve around the ground we have just considered.

In the result, we allow the appeal with costs. We think that this is a proper case to order a retrial by another judge of the High Court. It is so ordered.

Dated at Kampala this 8<sup>th</sup> day of September, 2003

---

Hon. Justice L.E.M Mukasa-Kikonyogo  
**DEPUTY CHIEF JUSTICE.**

---

Hon. Justice J.P. Berko  
**JUSTICE OF APPEAL.**

---

Hon. Justice S.G. Engwau  
**JUSTICE OF APPEAL.**