

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA (COA)**

5

AT KAMPALA

CIVIL APPEAL NUMBER 0239 OF 2013.

***AN APPEAL FROM THE DECISION OF THE HIGH COURT
(CIVIL DIVISION) AT KAMPALA (KABIITO J) IN
MISCELLANEOUS CAUSE NO. 148 OF 2012 DATED 19-09-
2013.***

**THE EXECUTIVE DIRECTOR, NATIONAL
ENVIRONMENT MANAGEMENT
AUTHORITY(NEMA)::~::~:APPELLANT**

VS

**SOLID STATE LIMITED:~::~:
DEFENDANT**

**BEFORE: HON. MR JUSTICE A .S.
NSHIMYE, JA**

**HON. MR. JUSTICE REMMY
KASULE, JA
HON. JUSTICE. PROFESSOR L.
EKIRIKUBINZA TIBATEMWA, JA**

JUDGMENT OF THE COURT.

This is an appeal against the decision of the High Court quashing an administrative decision of the appellant whereby a certificate to operate a quarry business earlier granted to the respondent was cancelled.

BACKGROUND FACTS

The respondent is a limited Liability Company

incorporated in Uganda to carry out the business of stone quarrying among many others. It is a regulatory requirement that before any one carries out the business of stone quarrying, such a one has to first obtain a certificate of Environmental Impact Assessment from the appellant, (herein after referred to as the EIA Certificate).

On the 16th Day of July 2012, after fulfilling all the requirements as required by the appellant, the respondent was granted an EIA Certificate to quarry a rock at Lubani village, Butagaya Sub County, Jinja District. The stones were to be used for road and railway construction.

The respondent undertook various activities in preparation for the commercial quarrying of the stone and these included; borrowing money from Crane Bank to facilitate the purchasing of the rock, purchase and hire of equipment, as well as entering into contracts with construction companies to supply them with crushed rock stones, among others.

On the 24th October 2013, the appellant, without giving any explanation and without according a hearing to the respondent, cancelled the EIA Certificate that it had earlier on issued to the respondent.

Aggrieved, the respondent sought redress in the High Court by lodging **Miscellaneous Cause NO. 148 of 2012** where in the respondent sought an order to quash the appellant's order cancelling the EIA Certificate and also sought both special and general damages from the appellant. On the 29th day of September 2013, Hon. Justice Benjamin Kabiito granted the following orders;

- 1. An order of Certiorari issued against the respondent (now applicant) to quash the cancellation of the EIA certificate NO. NEMA/EIA/4206 of 1st July 2012.*
- 2. An order for the appellant to pay the respondent special damages of Ug. shs.896,000,000/- and US \$ 17,595.*
- 3. An order for the appellant to pay the respondent general damages of Ug. shs. 400,000,000/-*
- 4. An order for the award of interest of 20% pa on the sums in (2) and (3) above.*
- 5. An order that the appellant pays costs of the application to the respondent.*

Dissatisfied with the said orders, the appellant appealed to this Court through this appeal.

Grounds of the Appeal:

The Memorandum of appeal dated 12.12.2013 contained 7 grounds, however through a joint scheduling Memo dated 28.05.2014, the original ground 3 was dropped and substituted with a new ground that is set out so herein below. On 27.07.2014, by consent, the dropped ground 3 was reinstated and it became ground 8. So there are 8 grounds of appeal, all of them substantive and none in the alternative. The grounds are;

(1) That the learned trial Judge erred in law and in fact in holding that the respondent was not accorded a fair hearing before the

cancellation of the Environmental Impact Assessment Certificate.

In the alternative

(2) *The learned trial judge erred in law by arbitrarily exercising his discretion to grant a prerogative order of Certiorari when the circumstances of the case did not warrant such an order.*

(3) *The learned trial judge erred in law and fact when he wrongfully entertained a claim for damages and awarded the same in the unwarranted circumstances of the matter before him.*

(4) *That the learned trial judge erred in law and in fact in finding that the respondent was entitled to Ug. shs. 896,000,000 and US \$ 17,595 as special damages when the same had not been properly pleaded and/or strictly proved.*

(5) *That having found that there was no evidence of special arrangement between the respondent and Mr. Isaac Isanga Musumba; the learned trial judge erred in law and in fact in awarding a sum of Ug. shs. 500,000,000 as the cost for the purchase of the rock.*

(6) *That the learned trial judge erred in law and in fact when he awarded a sum of Ug. shs. 400,000,000 as general damages which sum was so high in the circumstances to constitute an entirely erroneous estimate of damages to the respondent.*

(7) *That the learned trial judge erred in law and in fact when he awarded an excessively high and unjustifiable interest rate.*

(8) *That the learned judge erred in law and in fact when he entertained and determined an application for judicial review against the Executive Director NEMA who is a non-existent legal entity.*

Legal Representation;

The appellant was represented by learned Counsel Bruce Kyerere, a private practitioner who appeared with Mr. Philip Mwaka and Mr. Ojambo Bichachi respectively Principal and Senior State Attorneys of the Attorney General's Chambers, together with Ms. Christine Akello a senior legal counsel and Miss Eunice Asinguza a legal officer both of the legal department of the appellant.

Also in attendance from the appellant were Dr. Tom Okurut, the Executive Director, his deputy Dr. Sawula Musoke, Mr. Waisswa Ayazika, the Director Environmental Monitoring and Compliance, Mr. Kasekende Aristaco, Director of Finance and Administration, and Mrs. Joy Kagoda an official of the appellant.

Learned counsel Urban Tibamanya was for the respondent company whose Managing Director Hon. Isaac Isanga Musumba was also in attendance.

Submissions for the Appellant.

Grounds 1 and 2 were submitted upon separately while grounds 3, 4, 5 6 and 7 were submitted upon all combined together.

Counsel for the appellant submitted in respect of ground 1 that the trial Judge misdirected himself in deciding the question of a fair hearing on the basis of **Article 28 of the Constitution** when that Article is inapplicable to this case. The decision that was challenged was taken by a public officer exercising administrative functions and therefore the right Article applicable is **Article 42 of the Constitution**.

Under this Article, Fair hearing in administrative actions may be carried out in a very informal way such as correspondences which is what happened in this case.

The affidavit of Dr. Okurut, the Executive Director, clearly showed what steps NEMA took to notify, communicate, respond and interact with the respondent before the decision to cancel the license was taken. Counsel faulted the trial Judge for having ignored much of that evidence and instead dealt with and believed only that of the respondent. He urged this court to re evaluate the whole evidence and come to the conclusion that a fair hearing was afforded to the respondent before the certificate was cancelled.

The appellant's counsel relied on the case of **Regina Vs Race Relations Board 1WLR (1975) P.1686** where court held that the investigating body is the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not involve lawyers in the proceedings. It suffices if the broad grounds are given to the opposite party. For one to be accorded a fair hearing and to conform to the rules of natural justice, does not necessarily require formality. It can be done in an informal way having taken into account the circumstances of a particular case. The investigating body can carry this out by deploying a number of its servants. This is what the

appellant had done and followed according to the affidavit of Dr. Okurut. Counsel argued that this ground of the appeal be allowed.

As to ground 2 of the Appeal, counsel submitted that the granting of an order of certiorari was unwarranted. The trial Judge did not address himself to the circumstances of the case and to other considerations that organs of the State and other agencies of Government, which the appellant is, have at the back of their mind before making certain decisions.

Counsel referred to the National Objectives that are part of the Constitution and particularly part xiii thereof, which deals with protection of natural resources. Under this objective, the State is obliged to protect important natural resources which include land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda. Thus NEMA is enjoined to superintend over natural resources on behalf of the people of Uganda. Therefore the learned trial Judge did not take into consideration the national interest in reaching the decision that he reached and thus acted contrary to Article 8A (1) of the Constitution.

Counsel contended that the learned Judge was not at liberty to disregard the National Objectives and Directive Principles of State Policy and that he should have exercised his discretion in favor of public interest by declining to grant the order of certiorari. Thus Ground NO. 2 of the appeal also ought to be allowed, counsel submitted.

With regard to grounds 3, 4, 5, 6, and 7 of the appeal, counsel submitted that before making an award of damages, the court must first be satisfied that the claim for damages had been properly pleaded and proved like a party would be required to do in an ordinary suit.

According to counsel, an action for damages was to be brought by a party when an injury is done to that party's personal property by a public authority and/or individual, acting ultravires or in abuse of power. An action for damages would also lie against a public authority or a private individual, who commits trespass, causes false imprisonment, negligence or creates a nuisance, or commits a breach of contract. In all these cases, there must be a distinct and independent cause of action in tort or contract that must first be pleaded and established. Relying on **Regina Vs. Secretary of State for Foreign and**

Common Wealth Affairs ex-party, Quack fishing Ltd, House of Lords, [2005] UK HL 5 counsel submitted that it is not enough to merely allege that a public officer acted wrongly or was found to have done something improperly to give rise to an action for damages. This is because not every loss or damage per se is amenable to creating a cause of action.

Further, counsel submitted that the respondent had acted wrongly to claim substantial damages through a Judicial review application. In Attorney **General Vs. Kim. DotCom and others, 2013 NZCA**, the New Zealand Court of Appeal emphasized the importance of keeping judicial review proceedings simple and prompt and expressed itself as to how it is not appropriate for Judicial review proceedings to expand and include such claims for damages.

Similarly the decision of **Canada (Attorney General) Vs. Telezone Inc. 2010 SCC**, the Supreme court of Canada expresses the reluctance of courts in the exercise of their inherent discretion, to consider issues of claim for damages in the course of determining Judicial review applications. It was further submitted for the appellant that in the Notice of Motion, the respondent should have pleaded special damages and particularized them as is normally done in an ordinary suit and that this is the essence of ***Rule 8 Sub Rule 2 of the Judicature (Judicial Review) Rules 2009***. The applicant had not complied with this Rule and as such no damages ought to have been awarded to him. Counsel relied on the authorities of **Longdon Griffiths Vs Smiths & others, [1950]2 ALL ER 661** and **Walji Vs. Semakula (1999) 1EA 361** for the principle that if a party has not specifically pleaded special damages that party cannot be awarded such damages.

Counsel referred to the judgment of Hon. Justice Tsekoko JSC in the case of **Charles Harry Twagira VS Attorney General and 2 others SCCA NO. 4 of 2007** where his Lordship stated that;

“In my experience at the bar and on the bench, I cannot understand how by this Notice of Motion the appellant would be able to call evidence to establish such damages without filing an ordinary suit”

Counsel prayed that we find that the learned trial Judge erred when he considered and awarded damages to the respondent in a judicial review application on the basis of mere documents whose authenticity could not be established.

On the issue of interest, counsel submitted that the same had been awarded without basis and as

such it was exorbitant.

On ground 8, we were urged to hold that the Executive Director, NEMA, is not a corporate entity and therefore he or she cannot be sued. So the application was wrong in law by reason thereof. He referred to the case of **Supreme Court Civil Appeal NO. 2 of 2007, Commissioner General URA Vs 240 Meera Investments Ltd** where the Supreme Court held that under the URA Act, the Commissioner General, URA could sue and be sued. Counsel contrasted this decision with that made in **Supreme Court Civil Appeal N0.6 of 2008, Gordon Sentiba and 2 others Vs. IGG** wherein reference was made to the case of **Kikonda Butema Vs. IGG Constitutional Petition NO. 14 of 2007** in which the Supreme Court doubted whether it was correct in law to assert that the IGG had corporate status.

Counsel submitted further that this court in **Civil Appeal NO. 35 of 2009 American Procurement Co. Ltd Vs. Attorney General** had made reference to the case of **Gordon Sentiba** and that of **IGG Vs. Kikonda Butema Farm and Attorney General** and this court had observed that the Supreme Court could not have set aside the decision of the **Constitutional Court of IGG Vs Kikonda Butema Farm and Attorney General**, since only the Appeal Constitutional Court was vested with such powers under the Constitution. The Supreme Court could only have decided not to follow the decision, but not to set the same aside.

Thus counsel urged this court, sitting as an ordinary appellate Court to resolve that the Executive Director NEMA cannot be considered as an entity against which a suit can be filed since he is not vested by law with such corporate personality like is the case with the Commissioners, Land Registration under **Section 91 of the Land Act**, and the Secretary to the Treasury under **Section 19 of the Government Proceedings Act**.

Further on the issue of damages, counsel faulted the trial judge for awarding damages to Mr. Isaac Musumba who is not a party to the application. There was also no pleading, let alone evidence relating to the shs. 205, million for hire of compressors, US\$ 15,000, for purchase of explosives, US\$ 2000, cost of travel to Jeddah, 17 million Ug. Shillings cost of construction, 11 million Ug. shs. cost of environmental impact assessment, and Ug. shs. 500 million cost of acquisition of the rock.

Relying on **American Express International Banking Corporation Vs ATW [1990-1994] EA 10(SC)**, counsel submitted that the trial judge was wrong, because he took into account matters which he should not have, considered in making the awards. Counsel prayed that the appeal be allowed.

In reply, counsel for the respondent submitted on ground one that the respondent went through and obtained all the requirements necessary for it to have an environmental impact assessment and after getting it and while the executive director of the respondent was away, a letter suspending further operations of the respondent was received. The letter suspending the operations did not specify the nature of complaints NEMA had received. It did not invite him to answer any complaints. It just directed him to stop activities and he complied. After waiting for 20days, he received communication from NEMA that the certificate was cancelled.

Thus the respondent was neither informed of any charges brought against him nor was he given any opportunity to answer. He was arbitrarily punished without being heard. Though the letter suspending operations stated in its last paragraph that;

"NEMA will immediately undertake verification with you of the said complaints following which you shall be advised on the next course of action"

This undertaking was never fulfilled. The respondent was never approached even once by the appellant to be told of the reason for cancellation up to date.

Counsel contended that had the respondent been approached, there would have been answers to all the queries which would have led to the certificate not being cancelled.

Counsel emphasized the well known principles of natural justice namely, the right to be heard by an unbiased tribunal, and the right to have notice of charges of misconduct, if any. He cited the English case of **Ridge Vs Baldwin [1964] AC 40** in which the House of Lords held that a decision made in disregard of observance of the principles of natural justice was void. So was this one, Counsel submitted. Therefore, since there was no hearing under any circumstances grounds 1 and 2 of the appeal ought to fail.

On Grounds 3,4,5,6, and 7, counsel contended that the Judge was right in awarding, damages in an application for judicial review.

Rule 8(1) of the Judicature (Judicial Review) Rules 2009 allows court to award damages to an applicant if he or she has included in the motion for Judicial review application a claim for damages arising from any matter to which the application relates. In the instant case the respondent exhaustively pleaded in the Notice of Motion its claim for damages. The two affidavits in support of the Motion outlined the details of those damages. At the request of the appellant, the respondent's Managing Director Isaac Isanga Musumba

was cross examined on the issue of damages. The claims of special damages were never rebutted.

As to the award of shs. 500million, counsel submitted that the judge had judiciously exercised his discretion in making the award. An environmental impact assessment clearance was issued to the respondent after satisfying NEMA that the respondent through the owner of the company Mr. Isaac Isanga Musumba owned the rock. Therefore the judge was right in awarding shs. 500,000,000/= million for the purchase of the rock.

The sum of Shs. 400,000,000/= million awarded as general damages was awarded through the exercise of court's discretion. General damages were justified because the respondent had made tremendous investment in its quarrying business. With the cancellation of the EIA certificate, the whole of the investment prospects and expectations had come to an end. Counsel therefore prayed that the award of damages both general and special be not disturbed and the grounds of appeal relating to damages be disallowed.

On Ground 7 counsel submitted that **20%** interest was justified considering the time the parties spent in court. The respondent had made heavy investment in the purchase of rock and other investments in the business whose money was borrowed from a bank at a high interest rate. Referencing to the case of **Charles Lwanga Vs Centenary Bank Civil Appeal Number 30 of 1999 (COA)**, Counsel invited this Court to hold that it is the law that where, a decree is for payment of money, the Court may in the decree order interest on the terms awarded at such a rate as the court deems reasonable. The trial judge found 20% interest on the damages awarded to be reasonable.

On the issue in ground 8 of the appeal whether or not it was proper to bring the application against the Executive Director of NEMA, counsel submitted that the learned trial Judge relied on the Supreme Court decision of **Commissioner General of Uganda Revenue Authority Vs Meera Investments Limited; Supreme Court Civil Appeal NO. 22 of 2007** where court held that the Commissioner General of Uganda Revenue Authority was a competent party to the suit. In the same way, in this Appeal, the Executive Director as the Chief Executive Officer of NEMA responsible for the day to day operations and management of the Authority can similarly be sued. This is because the relevant Sections of NEMA and URA Acts are couched in the) same language. Since the Supreme Court decision of **Commissioner General Uganda Revenue Authority Vs Meera Investments Limited (supra)**, had been pronounced, the Supreme Court had not departed from it and was therefore still good law. Therefore this Court should find the trial judge's holding that suing the Executive Director was proper and correct. Ground 8 of the appeal ought to be disallowed.

In rejoinder, it was submitted for the appellant, that the respondent was substantially given a fair hearing through the actions of representatives and servants of the appellant before a decision to

cancel the license was taken.

On damages, counsel responded in reply that the best the trial judge could have done was to award nominal damages like shs. 50million, but not the substantial amount he awarded. The respondent ought to have filed a distinct suit and strictly proved those substantial damages in that suit.

Counsel invited Court to consider the case of **Uganda Breweries Limited Vs Uganda Railways Corporation; Civil Appeal NO. 6 of 2001 (SC)** and come to the conclusion that since Hon. Isaac Isanga

Musumba had not been made

party to the application, then damages relating to him ought not to have been awarded.

On the award of interest of 20% per annum, counsel reiterated that the requirements of Section 26 of the Civil Procedure Act had not been followed in that the trial judge did not say when the interest would begin to run, whether from the date of all the transactions, or whether from the date of judgment. Counsel relied on *Kahiya Vs. Nganga* [2004] UGCC 7 a Kenya 380 Court of Appeal case to support his submission.

Counsel further contended that the interest awarded was erroneous because it is in respect of two currencies which is technically wrong because these two currencies are not of the same value and therefore they cannot attract the same rate of interest. Counsel prayed that this Court allows the Appeal and overturns the judgment and orders of the trial Court.

FINDINGS OF COURT.

Duty of this Court.

The duty of this Court, as the first appellate Court, is to subject the evidence to fresh scrutiny and come to its own conclusion either to support, or not to support the findings of the lower Court and come out with its own. See R.30 of the Judicature (Court of Appeal Rules) Directions S.I 13-10. See also *Kifamunte Henry Vs Uganda SCCA NO. 10 of 1992* and *Active Automobile spares ltd Vs Crane bank and Rajesh Pakesh SCCA 21 of 2001*.

Grounds One and two

In respect for the grounds, that the learned trial judge erred in law by arbitrarily exercising his discretion to grant a prerogative order of certiorari when the circumstances of the case did not warrant such an order (as amended) and that the learned trial judge erred in law and in fact in holding that the applicant was not accorded a fair hearing before the cancellation of the Environment Impact Assessment Certificate.

We appreciate that Certiorari is a remedy that is designed to prevent the excess of or the

outright abuse of power by public authorities.

The respondent was granted by NEMA a certificate to operate a quarry after fulfilling all requirements, including obtaining an Environment Impact Assessment approval certificate. Thereafter, the appellant wrote a letter to the respondent informing him of complaints relating to the location of the quarrying activities by relying on general condition viii of the Environmental Impact Assessment certificate which was to the effect that:-

“(viii) in accordance with section 22 (4) of the National Environment Act cap 153, be duty bound to ensure that, any other undesirable environmental impacts that may arise due to the implementation of this project, but were not contemplated by the time of undertaking this environmental impact assessment, are mitigated” (emphasis is ours)

Our understanding of the above condition is that the applicant (now respondent) would be required to do everything possible to mitigate and bear the costs of arresting any unforeseeable or undesirable environmental impacts, should the same arise in future.

The complaints mentioned by the appellant were followed up by an Inspection Team of the appellant which found out that the District Environment Officer (DEO) had not disclosed certain facts while making his findings and comments to NEMA at the initial stages. The appellant thereafter proceeded to suspend and later to cancel the respondent’s operating license.

It was the appellant’s contention that in the working arrangements between the appellant and the respondent, there was neither a statutory requirement for giving a hearing nor any requirement of observing the principles of natural justice, before the appellant could cancel the certificate issued to the respondent. That there was no legal requirement on the part of the appellant, to summon and explain to the respondent the allegations against the appellant as regards the operations before cancelling its certificate.

In the affidavit in rejoinder, of the respondent’s Managing Director (Isaac Isanga Musumba), paragraph 22 dated 17th December 2012, in reply to that of the appellant, he sated;

_____ ***“That regarding averments in paragraph 33, had / been given the opportunity to be heard, I would have proven to the respondent that it was not in the applicant’s business***

plan to crush the stone at the site, therefore no dust would be generated and the communities around would not in any way be affected as averred by the respondent”

Courts usually do not interfere with the decisions of statutory bodies like the appellant unless the process is alleged to have been irregular or contrary to the established procedures and rules of natural justice. The application of the rules of natural justice is implied in any quasi judicial process and compliance with the same is fundamental to a decision from that process. A decision taken in non observance of the Rules of natural justice is void abinitio; **Seviri Vs Uganda Land Commission HCB [1979]**.

In this case, there was no hearing at all afforded to the respondent before the license was cancelled. This was contrary to **Article 28(1) and 42 of the Constitution**. **Article 28(1)** entitled the respondent to a fair, speedy and public hearing before an independent and impartial tribunal established by law before the decision to cancel the license was taken by the appellant. **Article 42** put an obligation upon the appellant to treat the respondent justly and fairly before the decision to cancel the license was taken. Courts in cases of Judicial Review applications are bound to look into *“How the decision was reached”* and not into the merits of the case or complaint from which the application for Judicial review is arising from.

In this case, and with respect to counsel for the appellant, it appears the appellant’s case is premised on the assertion that the grant of certiorari was against public interest and interfered with the greater interest of third parties, namely the community around the quarry site. This in our considered view is no excuse for the appellant not observing **Articles 28(1) and 42 of the Constitution** and not applying the Rules of Natural Justice when dealing with the respondent. Thus the learned trial judge was justified in awarding the remedy of certiorari quashing the cancellation of the license. Grounds one and two of the appeal fail.

Grounds three, four, five six and seven.

That the learned trial judge erred in law and in fact when he erroneously/capriciously entertained a claim for special damages in an application for judicial review, that the learned trial judge erred in law and in fact in finding that the respondent was entitled to Uganda shillings 400,000,000/= and US\$ 17,595 as special damages when the same had not been properly pleaded and / or strictly proved and

judge erred in law and in fact when he awarded a sum of Uganda shillings 400, 000,000/= as general damages which was so high in the circumstances to constitute an entirely erroneous estimate of damages to the respondent.

The respondent chose to pursue a claim for damages through a judicial review application. We wish the respondent had done so through an ordinary suit where damages are specifically pleaded and, if of a special nature, strictly proved. However the respondent so chose and the trial judge considered them. We too have to deal with them.

Section 33 of the Judicature Act cap 13, provides thus:-

33. General provisions as to remedies.

_____ *"The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided"*.

The respondent in its pleadings established that its project was for commercial benefit (business) and that by the unjustified cancellation of the certificate, the appellant caused loss to the respondent.

The Judicature (Judicial Review) Rules, 2009, SI 11 under Rule 8 provides thus:-
Claims for damages.

(1) "On an application for judicial review the court may, subject to subrule (2), award damages to the applicant, if — (a) he or she has included in the motion in support of his or her application a claim for damages arising from any matter to which the application relates; and (b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his or her application, he or she could have been awarded damages. (2) Rules 1 to 5 of Order VI of the Civil Procedure Rules shall be applied to a statement relating to a claim for damages as they apply to a pleading".

Damages are within the discretion of Court and just like the respondent pleaded in its Notice of Motion and supporting affidavit, it showed that it lost as a result of the cancellation of the certificate. In the case of **Bullingha Vs Hughs [1949] 1 KB 1 KB 643**, it was held that the

objective of damages is to put the injured person back to the position where he or she was before the injury.

Damages are compensatory for the loss or injury suffered. General damages are awardable at large and after assessment by Court. They are intended to offer some satisfaction to the injured party. They in some respects, focus on the conduct of the party causing the injury and loss. See **Uganda Revenue Authority Vs Wanume David Kitamirike Court of Appeal Civil Appeal NO. 43 of 2010**. We have subjected the evidence adduced on damages to fresh scrutiny and we have reached our own conclusion. The respondent was expected to make profits from the business of rock blasting and crushing. It had already started executing agreements with potential customers. Money was borrowed and spent substantially in the project. Since 13.08.2012, to date, the respondent has not been able to do anything concerning the project due to the unilateral and abrupt conduct of the appellant. The respondent has thus suffered greatly from the liability and other obligations undertaken on the basis that the project was viable and was to be operational there and then. The learned trial judge considered the magnitude of the project and the projected income the respondent would have earned if he was not interrupted. The conduct of the appellant was arbitrary, callous, and inconsiderate. We therefore, have not been persuaded that the award of shs. 400,000,000/= was on the higher side given the stated considerations. We thus uphold the said award of general damages to the respondent.

With regard to special damages, these damages are intended to compensate a plaintiff for a quantifiable monetary loss out of pocket. The supporting affidavit of Isaac Isanga Musumba, the Executive Director of the respondent, stated as follows;

6. That the said company; Solid State Ltd in pursuance of its objectives of acquiring a NEMA Certificate, hired an Environmental consulting firm (ECO) to handle the Environmental Impact Assessment at a total cost of Ug. shs. 10, 000, 0000/= (Ten million Uganda shillings) copies of the receipts (NO. 22 and 23) are hereto attached and Marked "R".

7. That upon receipt of the certificate of approval issued to Solid Stated Ltd by the National Environment Management Authority (NEMA), /_ continued to purchase a rock at Lubanyi village Butagaya sub county Jinja District

from various owners at a total cost of Ug. Shs 1,170,000,000/- (One Billion, one hundred and seventy million shillings (copies of the sale agreements are attached hereto and marked annexure "S")

8. *That I _have since received a notice of cancellation of the contract that the company (Solid State Ltd) made with Namaubi Ltd to avail the former part of the rock for them to harvest, upon failure by Solid State Ltd to meet its part of the agreement, upon having received the respondent's letter asking me to stop further activity on the rock and later the respondents' letter cancelling the certificate of approval of Environmental Impact Assessment. A copy of the said notice of cancellation of contracts is attached hereto and marked annexure "T".*

9. *That on the 13th August 2012, I travelled to Saudi Arabia to purchase equipment and inputs for the purpose of quarrying. I expended in addition to what is stated in my affidavit in support of the application Ug. shs. 180,000,000/- (Ug. shs. one hundred eighty million shillings), equivalent in foreign currencies in travel expenses, purchasing equipment among others. Copies of travel documents and invoice in respect of the equipment are hereto attached and marked annexure "U", in addition to what is attached to the affidavit in support.*

10. *That upon receipt of the certificate of environmental impact assessment, I immediately signed contracts for the supply of services with various clients; the details of which are, in addition to what i stated in the affidavit in support of the application the following;*

(i) I hired staff whom I paid salaries and rented for them accommodation.

(ii) _opened up access roads, bought explosives, bought a container magazine among others all at a total cost of ug. shs

_____195,000,000,000/- (Uganda Shillings One hundred Ninety five million) detail of which expenses are attached hereto and marked annexure "V"

In paragraph 2B of Dr. Tom Okia Okurut (the Executive Director's affidavit in reply dated 13.12.12, the above claims are denied.

In dealing with the above claims, the learned trial judge put them under the following categories;

1. Purchase of rock.
2. Hire of equipment and material's supply
3. Travel
4. Costs of environment Impact Assessment

5. Cost for construction of the access road at Lubanyi.

In his judgment, the judge observed that;

‘The rock purchase agreements were between Isaac Isanga Musumba, the Managing Director of the applicant and the respective vendors. The contracts were therefore not between the Applicant and Vendors.

However, the Managing Director of the Applicant testified under cross examination that there is a special arrangement between him and the applicant to transact on its behalf. No evidence of this special arrangement was provided to Court’.

We find that the rock was purchased by Mr. Isaac Musumba personally but the agreements did not state that he was doing so on behalf of the company. Be that as it may, the cancellation of the certificate by the appellant did not take away the rock which was intended to be exploited by the respondent. It remained the property of Isaac Isanga Musumba. The effect the cancellation of the certificate would have on the rock, would be to cause some temporary loss of value and inconvenience which are catered for by the award of general damages. There is therefore no basis to claim the purchase price of the rock as it still remains property of the purchaser.

Further, the legal and practical consequence of obtaining an order of certiorari would be to restore the status quo as it was before the cancellation of the certificate. The respondent is to carry on the business of rock quarrying subject to complying with the environmental requirements as originally agreed. The trial judge in our view erred to have awarded special damages to the respondent in respect of the items claimed namely, the cost of preparing an Environmental Impact assessment, Cost of the rock, purchase of equipment and travel expenses involved, salaries and rent for employees who did some work and may resume the same once work begins.

The learned trial judge equally in our view erred to have awarded damages for the construction of the road and purchase of explosives and containers. The road is still there and was not taken away by the cancellation.

The explosives were purchased and are still there to be used. The respondent did not lead evidence to show that they have an expiry period which would require the respondent to purchase new ones.

We uphold the submission of the appellant that the total award of special damages was based on wrong principles and was erroneous in that the trial Judge proceeded to make the award on the basis that the project had completely come to a stop for ever, which was not the case. The respondent by praying for an order of certiorari to quash the order canceling the Environmental Impact Assessment license is proof that the respondent wants to go on with the project. This limb of the appeal succeeds and we set aside the award of special damages.

On the ground relating to interest, the evidence on record clearly proves that the respondent was involved in a commercial venture. Accordingly, we do not consider that awarding interest of 20% on general damages arising from loss on a heavy commercial project, like the one of the respondent, is excessive. We would not interfere with the interest awarded by the trial judge.

! Finally on whether it was competent for the respondent to sue the Executive Director of NEMA when he is not a corporate entity, in our view, it would be superfluous to imagine that the decision to cancel the certificate of the respondent would be taken without consultation and approval of the Chief Executive. We note that **Sections 12 and 13 of the National Environmental Act** are not very different from **Sections 9 and 11 of the Uganda Revenue Authority Act**. The duties and functions of the Commissioner General of URA and the Chief Executive of NEMA have much resemblance. Accordingly, we find no reason to fault the judge in following the Supreme Court decision in **Commissioner General of Uganda Revenue Authority Vs Meera Investments Ltd** (supra) where a similar issue was ruled upon by the Supreme Court. We accept the submission of counsel for the respondent that the application was properly instituted against the Executive Director of NEMA. The ground of the appeal relating to this aspect of the appeal thus fails.

In conclusion, we substantially dismiss the appeal save, the part dealing with special damages. We uphold the judge's award of an order of certiorari quashing the appellant's orders of 13.08.2012 and 14.09.2012
suspending

and cancelling certificate NO. NEMA/EIA/14206 issued by the appellant to the respondent on 16.07.2012 and general damages of shs, 400,000,000/- (Four hundred million Shillings) with interest of 20% from the date of judgment of the High Court i.e 29th, September, 2013, till payment in full. We set aside the award of all special damages. The respondent will have 70% of the taxed costs here and in the court below and a certificate of two counsel. For avoidance of doubt, since the Executive Director was sued in his official capacity, it follows therefore that the general damages of Shs. 400,000,000/- (four hundred million shillings), the interest thereof awarded, and costs, shall be paid by the National Environment Management Authority on whose behalf he was acting.

Dated this 27th day of May 2015

HON. MR. JUSTICE A.S. NSHIMYE

JUSTICE OF APPEAL

HON. JUSTICE REMMY KASULE

JUSTICE OF APPEAL

**HON. LADY JUSTICE. PROFESSOR L.EKIRIKUBINZA TIBATEMWA,
JUSTICE OF APPEAL**