THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 92 OF 2010

DAVID MAY .....APPELLANT

VERSUS

BUSITEMA MINING CIE LTD .....RESPONDENT

[Appeal from the judgment/order of Honourable Justice Yorokamu Bamwine, as he then was, dated 26th June 2009 at Kampala arising from High Court Civil Suit No. 86 of 2008]

Coram: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Ezekiel Muhanguzi, JA

Hon. Lady Justice Percy Night Tuhaise, JA

JUDGEMENT OF HON. LADY JUSTICE PERCY NIGHT TUHAISE, JA

The appellant was the plaintiff in Civil Suit No. 86 of 2008 in which he filed a suit for recovery of US $ 120,902.89 (United States Dollars one hundred and twenty thousand nine hundred and two point eighty nine cents) being a claim for outstanding remuneration due to him under an employment contract, interest thereon, general damages and costs of the suit. The High Court rejected the claim and dismissed the suit, and each party was ordered to bear its own costs.

Background to the appeal

The brief facts giving rise to the appeal are that, the appellant was employed by the respondent as its General Manager from the 1st January, 2002 to 1st December, 2007 when his employment contract with the respondent was ended by the appellant's resignation. The appellant claims he was entitled to a pay of US $ 7,000 (United States Dollars seven thousand) per month but throughout the contract period the appellant was paid only US $ 4,000 (United States Dollars four thousand) per month. The appellant claimed that at the time of his resignation, the respondent owed him a sum of US $ 120,902.89 as accumulated salary arrears. The respondent in its written statement of defence (WSD) denied the claim contending the suit was premature and that the contract which was the basis of the suit claim was unenforceable and illegal. The High Court found that the contract was invalid and unenforceable, and dismissed the suit, ordering each party to bear its own costs.

The appellant, being dissatisfied with the decision of the High Court filed this appeal on the following grounds:-

1. The learned trial judge erred in law and fact in holding that there was no valid and enforceable contract of employment between the appellant and the respondent.
2. The learned trial judge erred in law and fact when he assessed general damages which were very low in the circumstances.
3. The learned trial judge erred in law and fact in dismissing the appellant's case and ordering the appellant to bear his own costs.

Representations

The appellant was represented by Mr. Dennis Kusasira, learned Counsel, while the respondent was represented by Mr. Paul Kuteesa and Mr. Jet Tumwebaze, learned Counsel.

When this appeal was called for hearing, the court informed the parties of the following:-

That this appeal was filed on 6th March 2014 and came up for hearing before this court, constituted at the time, of Steven B. Kavuma JA, Rubby Aweri Opio JA, and Richard Buteera JA.

Both parties orally presented their respective submissions, following which judgement was reserved by the Court to be delivered on a date to be given to the parties on notice. No judgement was ever delivered, because by October 2017 all the Justices on the Coram had left this Court. This necessitated a re-hearing.

Upon recount of the above information, both counsel were allowed to reiterate their earlier respective submissions made before the collapsed Coram on 6th March 2017.

Before the matter could be reserved for judgement, learned Counsel Jet Tumwebaze for the respondent informed Court that the respondent company had been dissolved in the Virgin Islands where it was initially registered and the notice of resolution was filed in Uganda.

The Court rejected the submissions of the respondent's counsel, as no such evidence was on court record, and such statement could not be accepted as proof of dissolution of the respondent company.

Accordingly the Court reserved judgement to be delivered on notice on the basis of earlier submissions which both Counsel had adopted.

This judgement therefore is based on the earlier submissions adopted by both parties.

The appellant's case

Learned counsel for the appellant submitted on all grounds together as one issue. He submitted that, all contracts made under the repealed Employment Act cap 219 which were valid and in force at the time of commencement of the Employment Act 2006 are deemed to have been made under the Employment Act 2006. He cited section 24 of the Employment Act to support this proposition.

Counsel submitted that in considering whether the appellant's contract was saved by the above section, the questions to be answered are:-

1. *Was the contract between the appellant and the respondent valid at the time of commencement of the Employment Act 2006?*

2. *Was the contract between the appellant and the respondent in force at the time of commencement of the Employment Act 2006?*

The appellant submitted that the answer to the first question is in the affirmative, because section 15(2) of the repealed Employment Act Cap 219 only declared unattested employment contracts to be unenforceable, but not invalid.

Counsel submitted further that, a statute may declare a contract

unenforceable, void or illegal; that in this case, the language used in section15 (2) of the repealed Employment Act cap 219 is very plain and unambiguous. He argued that the section did not declare the contract invalid; that it simply declared the contract unenforceable, the principle basis of enforceability being the non-attestation; that in other words, the unattested contract is valid but it is unenforceable for want of attestation. He contended that unenforceable contracts usually satisfy all the elements of a valid contract but for some reason, in this case lack of attestation, neither party to such contracts may have recourse to a court for a remedy. On the other hand, he argued that an invalid contract is one which lacks any or all the essential elements of a valid contract.

Learned counsel further submitted that in this case, the contract of employment between the appellant and the respondent satisfied all the elements of a valid contract but would be unenforceable for lack of attestation if the repealed Employment Act cap 219 were to be the law applicable; that therefore, at the time of commencement of the Employment Act 2006, the contract of service between the appellant and the respondent was valid.

Regarding the question of whether the contract between the appellant and the respondent was in force at the commencement of the Employment Act 2006, learned counsel for the appellant submitted that the answer lies in the interpretation of the phrase "All *contracts* of *service... in force at the commencement* of *this Act ...* " as it appears in Section 24 of the Employment Act 2006.

Counsel cited **Hargreaves V Dawson. 24 L.T. 428** where court was dealing with section 19 of the Wines and Beerhouse Act, 1869 and took the view that the phrase "a licence *in force"* on 1st May, 1869 meant a licence in existence on that date and which had continued and remained in existence at that time. He stated that the same interpretation was given in **The Queen V Curson L.R. 8 Q.B. 400** when the court was dealing with the same section of the law.

Counsel argued that section 24 of the Employment Act 2006 provides that all contracts of service valid and in force at the commencement of the said Act shall continue to be in force on the commencement of the Act and shall be deemed to have been made under the same Act.

Counsel stated that according to the Employment Act 2006 (Commencement Instrument, SI 33 of 2006), the Employment Act 2006 commenced on the 7th day of August 2006. He contended that there is uncontroverted evidence on record that by the said date, the appellant's contract was still running.

Counsel further submitted that if the interpretation of the phrase "in force" as given in **Hargreaves V Dawson** and in **The Queen V Curson** (supra) is applied to section 24 of the Employment Act 2006, the phrase *"all contracts* of *service ... in force at the commencement of this Act ..."* means all contracts of service which were in existence on the date of commencement of the Employment Act 2006, and all contracts which continued and remained in existence at that commencement date.

He argued further, that under section 24 of the Employment Act 2006,

all contracts of service which were in existence on the date of commencement of the employment Act 2006, and all contracts which had continued and remained in existence after the commencement of the said Act (including those contracts which had been made under the repealed Employment Act Cap 219) are deemed to have been made under the Employment Act 2006.

He submitted that, since there is uncontroverted evidence that the appellant was still in the employment of the respondent at the time of commencement of the Employment Act 2006, the contract between the appellant and the respondent was still in existence at the time of commencement of the Employment Act 2006; and that therefore it was in force at that time.

Counsel submitted that, having established that the contract between the appellant and the respondent was valid and in force at the time of the commencement of the Employment Act 2006, the learned trial judge erred when he applied the repealed Employment Act to the facts before him.

Counsel contended further that, had the learned trial judge applied the Employment Act 2006, he would have considered its attestation provision under section 26 which provides that the only contracts which are required to be attested are those made between the employer and an employee who is unable to read or understand the language in which the contract is written. He argued that the appellant's contract did not fall under this category.

In the alternative but without prejudice, Counsel submitted that, it was the duty of the respondent to have the employment contract attested. He relied on section 15 (2) & (3) of the repealed Employment Act cap 219 and section 100 of the Employment Act 2006, to show that it was the duty of the respondent and not the appellant to ensure that the employment contract is attested.

He argued that since it was the respondent's duty to ensure that the contract is attested, it was unjust for the High Court to have allowed the respondent not to pay for services rendered by the appellant under this contract, and which services the respondent has in fact accepted. He relied on **Craven-Ellis V Canons Ltd [1936) 2 KB 403** and **Storm V Hutchinson [1905] AC 515** to support this legal proposition.

In further alternative, Counsel submitted that even if this court were not to accept his earlier submissions, the appellant ought to be awarded his claims on basis of *quantum meruit*. He relied on **Ahmed Ibrahim Bholm V Carr & General Ltd, Supreme Court Civil Appeal No. 12/2002** to support this proposition.

He prayed this court to allow his appeal.

The respondent's case

Learned counsel for the respondent on the other hand submitted that the proper statute governing the contract of employment in issue is not the Employment Act 2006 as submitted by the appellant but rather the Employment Act cap 219, since the employment contract was entered into on the 1st January, 2002. He argued that

the validity of the contract is therefore subject to section 14(1) of the repealed Employment Act cap 219 which stipulates that;

> *"foreign contracts fall among those contracts which shall, subject to section 13, not be enforceable unless they have been approved or attested in accordance with the same Act."*

He cited, in support of his arguments, section 13 of the Interpretation Act cap 3, and relied on **Syed Huq V Islamic University in Uganda, SCCA No. 47/1995**. He submitted that the requirement for attestation was, at the time of execution of the contract, a mandatory statutory requirement, and that failure to comply with the requirement rendered it invalid, a nullity, and hence unenforceable. The enactment of a new labour law could not have retrospectively validated contracts otherwise invalid under the repealed law. He supported the decision of the trial Judge and asked this court to uphold it.

The respondent's counsel also submitted that sections 100 (1) of the Employment Act or 15(2) and (3) of the repealed Employment Act do not place the burden to have the contract attested on the respondent; that as the learned trial Judge found, to apply section 15 (2) and (3), there has to be a valid contract in force and that contract has to have an express provision placing the burden of attestation on the employer which are both lacking. He also submitted that as held in **Strom V Hutchinson [1905] A.C 515,** where the burden of doing an act is not expressly placed on either the plaintiff or the defendant and it is not done, the failure

will benefit the defendant or as the legal maxim applied in this case, *"in pari delicto, potior est condition defendetis."*

The respondent's counsel also distinguished the facts in **Ahmed Ibrahim Bholm V Carr & General Ltd** from those in the instant case. He submitted that in the said case there was clear evidence from the terms of the contract that the employer had the responsibility to obtain the work permit for the employee, which was not the case in the instant case.

Counsel also submitted that the appellant did not plead *quantum meruit,* and that, therefore, he cannot raise it at the appellate stage. He cited **Interfreight Forwarders (U) Ltd V EADB Civil Appeal No. 33/1992** to support this position.

Resolution of the appeal

This is a first appeal. The role of a first appellate court is to review or re hear the evidence and consider all the materials which were before the trial court and come to its own conclusion on the facts, but taking into account that it did not see or hear the witnesses. In that regard, it should be guided by the observations of the trial court on the demeanour of witnesses. See **Kifamunte Henry V Uganda Supreme Court Criminal Appeal No 10/1997.**

Rule 30 of the Judicature (Court of Appeal Rules) Directions SI 13-10 also empowers this court to re appraise evidence and to take additional evidence.

The appellant did not argue ground 2 of the appeal. The main issue embedded in ground 1 and 3 of the appeal is whether there was a valid and enforceable contract between the appellant and the respondent. This is the same as the issue that was framed before the trial court as issue 1 which the learned trial Judge answered in the negative.

The facts agreed on at the trial court were set out as follows:-

1) The plaintiff was employed by the defendant company as General Manager of its mine at Busia upon contract commencing on 01/01/2002.
2) Under the contract, he (plaintiff) was entitled to monthly salary of US $ 7000 (United States Dollars seven thousand) net of all taxes and social security deductions.
3) Under the terms of the said agreement, US $ 4000 (United States Dollars four thousand) was payable immediately at the end of every month and the balance of US $ 3000 (United States Dollars three thousand) was to be deposited on a company savings account to be paid to him after commencement of production.
4) The plaintiff resigned from the defendant company.

The record shows that the contract in question (**exhibit P1**) was a management agreement between the appellant and the respondent. It was signed by the appellant and one Paul Sherwen, Managing Director of the respondent company who was also the respondent's sole witness during the trial. It was not attested. This was not disputed by any of the parties at the trial court. Exhibit **P1** was signed on 1st January 2002. At that time, the law governing

employment contracts in Uganda was the Employment Act (Cap 219) which was later repealed and replaced by the Employment Act of 2006.

Section 14 of the repealed Act stated as follows:-

> *"The following contracts shall, subject to section 13, not be enforceable unless they have been approved or attested in accordance with this Act;*
>
> *a) A foreign contract…."*

The agreement was therefore clearly not enforceable under the Employment Act cap 219.

The suit from which this appeal arises was filed in 2008 two years after the repeal of the said Act.

However, section 13 of the Interpretation Act cap 3 provides that:-

> *"(1) Where this Act or any other Act repeals and re-enacts, with or without modification, any provision of a former Act, references in any other enactment to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.*
>
> *(2) Where any Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not –*
>
> *(3)(a) revive anything not in force or existing at the time at which the repeal takes effect;*
>
> *(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed;*

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;

(d).....

(e)....."

Thus, as deduced from the foregoing provisions, and as stated by the learned trial Judge, a repeal does not in itself validate an act previously invalid. In the instant situation, the learned trial Judge applied this legal position on basis that the contract was unenforceable and invalid. The trial Judge, in his decision, apparently perceived unenforceable contracts as invalid or illegal contracts. I respectfully differ from this position.

The **Black's Law Dictionary, ninth edition, at page 374** defines an unenforceable contract as:-

> *"A **valid** contract that, because of some technical effect, cannot be fully enforced; a contract that has some legal consequences but that may not be enforced in an action for damages or specific performance in the face of certain defences...."* (emphasis added).

This therefore means that an unenforceable contract is not necessarily invalid. A valid contract is defined by the same dictionary to mean a contract that is fully operative in accordance with the parties' intent.

It is therefore misleading to condemn an unenforceable contract as illegal or invalid. The unenforceability of a contract is attributed to a technical defect, like lack of a stamp, want of written form, or, as was the case in the instant situation, lack of attestation, to mention but a

few of such instances depending on the legal regimes under which they are operational. The unenforceability in the law is, in my opinion, attributed to matters of public policy or the purpose of the law, like protection of certain categories of employees from exploitation by a foreign employer. In any case, if the Legislature had wanted to make such contracts invalid or illegal, it would have stated so in the Act.

In that regard, I agree with the appellant's submissions that, although the repealed Employment Act rendered a non-attested contract unenforceable, the said Act did not render the contracts invalid, and it was not illegal. Despite its not being attested, the appellant's contract remained valid but was only unenforceable under the repealed Employment Act for lack of attestation. Such defect is curable.

There is undisputed evidence on record that the Employment Act cap 219 was repealed and replaced by the Employment Act 2006 while exhibit **P1** was still in existence. This is deduced from exhibit **P2** which shows that the appellant issued a three months' notice of resignation to the Directors and shareholders of the respondent company on 1st April 2007. The evidence from both sides further shows that the appellant continued working for the respondent until December 2007. The Employment Act 2006 was by then already in force, since the employment Act (commencement) Instrument, 2006 set the commencement date to be 7th August 2006.

Section 24 of the Employment Act 2006 provides that all contracts of service valid and in force at the commencement of the said Act shall continue to be in force on its commencement, and shall be deemed to have been made under the same Act. The question is, did this cover the

contract between the appellant and the respondent which is the subject of this appeal?

It is my finding above that exhibit **P1** was a valid contract. The fact that the agreement was in existence and running at the time the Employment Act 2006 became law means it was in force. In **Hargreaves V Dawson 24 L.T. 428,** the words to be *"in force"* were attributed to something being in existence and running (not necessarily being enforceable) at a particular time in question.

In that regard exhibit **P1** would, as at 7th August 2006 when the Employment Act 2006 commenced, be deemed to have been made under the said Act. It was thus brought into the realm of the Employment Act 2006 since it was valid and in force when the said Act came into force as analysed above.

In that regard, section 13 of the Interpretation Act does not apply to this appeal since, for reasons given above, the contract between the appellant and the respondent was existing, or valid and in force, at the time the Employment Act cap 219 was repealed.

I therefore agree with the appellant that, with the coming into force of the Employment Act 2006, the appellant's contract became enforceable under the said Act though it was unenforceable under the repealed Employment Act cap 219. This is so because foreign contracts need no attestation under the Employment Act 2006. The only contracts that require attestation under the Employment Act 2006 are those where the employee is unable to read or understand the

language in which the contract is written.

The appellant's arguments, in the alternative but without prejudice, are that the duty to ensure attestation of the contract was on the respondent. The repealed Employment Act cap 219 did not expressly state whose duty it was to have a contract of service attested. Section 15 (2) & (3) of the repealed Employment Act provided as follows:-

> *(1) .....*
> *(2) A contract which has not been presented for attestation shall not be enforceable except during the period of one month from the making of the contract, but the employer may present it for attestation at any time prior to the expiry of the period of one month.*
> *(3) If the omission to present the contract for attestation was due to the wilful act or the negligence of the employer, that employer commits an offence."*

Section 100 (1) of the Employment Act 2006 states as follows:-

> *"(1) subject to section 3 (2), every person who is employed by an employer under a contract of service, must be offered employment by the same employer as from the day this Act comes into force on terms and conditions of employment no less favourable than those that applied to that employee's employment under the Employment Act repealed by section 98."*

The spirit of the law as implicit in section 15(2) & (3) of the repealed Employment Act cap 219 suggests that it is the employer (respondent in this case) who would present the contract for

attestation. This is more so, since section 15(3) criminalises an employer's omission to present the contract for attestation due his/her wilful act or negligence. There would be no rationale for a law to cast a criminal yoke on a person who in the first instance has no legal duty to do anything. The respondent's submissions that it is the appellant who as Managing Director had the duty to present the contract for attestation are therefore rejected. This is a matter, not of evidence, but of law, as interpreted from the repealed Employment Act.

Suffice it to say, in this case, that section 15(2) & (3) of the repealed Employment Act and section 100 (1) of the Employment Act 2006 suggest, or at least imply, that the respondent had the responsibility to have the contract attested.

The respondent agreed before the trial Court that the appellant was their employer entitled to monthly salary of US $ 7000 (United States Dollars seven thousand) net of all taxes and social security deductions. The respondent benefitted from and accepted the services rendered by the appellant as their General Manager. The respondent has an obligation to pay the appellant the remuneration the respondent agreed to pay him for the services he actually rendered and which were accepted by and benefitted the respondent. See **Craven-Ellis V Canons Ltd [1936] 2 KB 403.**

The record at page 102 shows that the trial court accepted the appellant's claim. It observed that the defendant (respondent) had ample time, space and opportunity to verify the claim but it did not do so. It concluded that had it not been for its finding that the

contract was not enforceable, it would have decreed the sum claimed by the appellant. This therefore reinforces the fact that the sum claimed by the appellant against the respondent was not questioned during trial.

It is also the respondent's argument that the appellant did not plead *quantum meruit* and that therefore he cannot raise it at the appellate stage.

The question of *quantum meruit* however is purely an issue of law in this matter. It is not disputed that the appellant rendered the services in the contract, which were accepted by, or benefitted, the respondent. It can therefore be raised on appeal since it will not require adducing of evidence. It is a fact established at the trial court, and it is evident in the facts agreed on by both parties, that the appellant availed services as General Manager to the respondent under an employment contract. See **Christine Bitarabeho V Edward Kakonge Supreme Court Civil Appeal No. 4/2000.**

The principle of *quantum meruit* applies where the plaintiff has rendered services in pursuance of a transaction supposed by him/her to be a contract, but which, in truth, is without legal validity.

In **Craven – Ellis V Canons Ltd [1936] 2 KB 403** the plaintiff was appointed Managing Director of a company by an agreement under the company's seal which provided for his remuneration. By the

articles of association each director was requested to obtain certain qualification shares within two months of his appointment. Neither the plaintiff nor other directors ever obtained these shares. The plaintiff nevertheless purporting to act under the agreement, rendered services for the company and sued for the sums specified in the agreement, or alternatively for a reasonable remuneration on a *quantum meruit.* The Court of Appeal held that the agreement was void, since the persons purporting to act as directors had no authority and could not bind the company. The claim in contract therefore failed, but as services had in fact been rendered whereby the company had benefitted, the alternative claim on the *quantum meruit* succeeded.

In this case, it is evident the respondent accepted and benefitted from the services of the appellant and did not pay. It would be unjust to allow the respondent to escape its obligation to pay for services it benefitted from, more so, where it had a duty to ensure the contract was attested as required by the law. The respondent should not benefit from its omission to have the contract attested (which rendered it unenforceable), by insisting it is not obliged to pay the appellant under the said contract. It is like wanting to eat its cake and have it at the same time.

On the question relating to the status of the contract under the provisions of the Mining Act 2003, Regulation 50 of the Mining Regulations SI 71/2004 states as follows:-

> *"Every holder of a mineral right, who is not personally continuously in charge of the operations under mineral right, shall at all times*

have an agent at the site of the operations to be in charge of the operations and shall notify the Commissioner of every appointment or charge of such agent."

There is no adduced evidence on record suggesting that the respondent was appointed as an agent at the site of the operations, or even that such appointment was notified to the Commissioner by the respondent who was obligated by the law to make such appointment or notification. I therefore do not find any relevance of the said provisions to the contract which is the subject of this appeal, which only spelt out employer/employee relationship between the appellant and the respondent.

Besides, without prejudice, the regulations were passed in 2004 long after the contract in issue, which was signed in 2001, came into existence. There is nothing in the regulations to show they were retrospective.

At the trial court, the appellant prayed for interest on the salary arrears of US$ 120,902.89 at commercial rate from the date of accrual until payment in full; general damages for the inconvenience caused to him and interest on the said damages from the date of the said judgement until payment in full. At the appeal stage he abandoned the prayer relating to damages, hence acquiescing to the damages assessed by the learned trial Judge.

Section 26 of the Civil Procedure Act cap 71 empowers court to award reasonable interest giving regard to the circumstances of the case.

Interest therefore, where it has not been agreed on by the parties, is a matter of discretion, as to the rate of interest or the period for which it should run. In **Sietco V Noble Builders (U) Ltd SCCA No 31/1995,** the Supreme Court reiterated the principle that interest is a matter of the court's discretion. The basis of award of interest in that case was that the defendant had taken and used the plaintiff's money and benefitted, and, consequently, held that the defendant ought to compensate the plaintiff for the money. In **Premchandra Shenoi & Another v Maximov Oleg Petrovich SCCA No. 9/2003**, the same Court noted that the court rate of 6% was inappropriate where the appellants had received the money for a commercial transaction, and it agreed with the rate of 20% awarded by the Court of Appeal as the more appropriate rate.

On the facts of this case there is no doubt the appellant suffered inconvenience and was deprived of his accrued rights under the contract where he actually availed the services to the respondent who accepted them and benefitted.

I would place the instant case in a commercial category since the respondent was a mining company, which is a commercial enterprise, and the appellant was its employee at managerial level who actually rendered the services. The appellant's salary arrears accumulated over time. I would have awarded interest at commercial rate of 20% on his accrued salary arrears from the date of accrual until payment in full if the salary arrears had been in local currency (Uganda shillings). However, since the accrued salary arrears is in hard currency (United

States Dollars), interest at 8% from the date of filing the suit until payment in full would be fair and appropriate in the circumstances of this case. I would retain the general damages of Uganda shillings 5,000,000/= (five million) assessed by the trial Judge since the appellant did not argue his appeal against the said damages. However, they should attract interest of 6% at court rate from the date of this judgement until payment in full.

In the result, 1 would allow this appeal with costs here and in the trial court. I set aside the Judgement and orders dismissing the appellant's case. I substitute it with judgement against the respondent for US $ 120,902.89 being payment for his salary arrears due, with interest at 8% from the date of filing the suit until payment in full; general damages of Uganda shillings 5,000,000/= (five million) for breach of contract and inconveniences caused with interest of 6% at court rate from the date of this judgement until payment in full.

Dated at Kampala this..2nd.....day of...April.....2019

Percy Night Tuhaise

Justice of Appeal

THE REPUBLIC OF UGANDA

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VERSUS

BUSITEMA MINING CIE LTD.....RESPONDENT

(Appeal from the judgment/ order of Hon. Justice Yorokamu Bamwine, J (as he then was) dated 26th June 2009 at Kampala in High Court Civil Suit No. 86 of 2008)

Coram: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Ezekiel Muhanguzi, JA

Hon. Lady Justice Percy Night Tuhaise, JA

JUDGMENT OF EZEKIEL MUHANGUZI, JA

I have had the benefit of reading in draft the judgment of my learned sister Hon. Lady Justice Percy Night Tuhaise, JA and do agree with the reasons, conclusions and orders proposed.

I have nothing more useful to add.

Dated at Kampala this 2nd day of April 2019.

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Ezekiel Muhanguzi
Justice of Appeal

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Hon. Mr. Justice Ezekiel Muhanguzi, JA
Hon. Lady Justice Percy Night Tuhaise, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the judgment of my learned sister Her Lordship Hon Lady Justice Percy Night Tuhaise.

I agree with her that this appeal succeeds with costs for the reasons she has set out in her judgment. As Hon Ezekiel Muhanguzi JA also agrees it is so ordered.

Dated at **Kampala** this .....2nd.....day of .....April..... 2019.

.....

Kenneth Kakuru

JUSTICE OF APPEAL