THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO.13 OF 2011

LOCHAB TRANSPORTERS CO. LIMITED::::::::::::::::::::::::::::::::APPELLANT

VERSUS

S.W.T TANNERS LTD::RESPONDENT

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA

HON. MR. JUSTICE BARISHAKI CHEBORION, JA

HON. MR. JUSTICE REMMY KASULE, Ag. JA

JUDGMENT OF THE COURT

This is an appeal arising from the High Court decision of M.S Arach-Amoko, J (as she then was) delivered on 22nd September, 2009 in which she entered judgment in favour of the respondent in the following terms;

1) US Dollars 16,537.50 as special damages.

2) US Dollars 10,000 as general damages.

3) Interest on (1) at 20% p.a from the date of filing till payment in full.

4) Interest on (2) at Court rate from the date of judgment till payment in full.

The brief facts as accepted by the learned trial Judge are that on 22nd January, 2002, the plaintiff (the respondent herein) contracted the defendant (the appellant herein) to transport 10 (ten) pallets of wet salted cattle hides (hereinafter referred to as "the goods") from Kampala, Uganda to Mombasa Port, Kenya. When the truck arrived at Mombasa Port and upon opening the container, it was discovered that 7 (seven) pallets had been removed and the container had been filled with sand instead.

The respondent blamed the appellant for the loss of the said goods and filed a suit for recovery of US Dollars 23,625 being the value of the goods together with general damages, interest and costs. The appellant contended that the container was carried on a special contract whose terms exempted it from liability and the said documents were given to the respondent at the time of executing the agreement to transport the container. Judgment was entered in favor of the respondent.

The appellant being dissatisfied with the decision of the learned trial Judge filed this appeal on the following grounds:-

1. *The learned trial Judge erred in law and in fact in finding that there was no legally binding contract between the appellant and the respondent.*

2. *The learned trial Judge erred in law and in fact in finding that the appellant was a common carrier and as such subject to common law rules applicable to common carriers.*

3. *The learned trial Judge erred in fact in finding that the respondent's goods were lost in the custody of the appellant's servants.*

4. *The learned trial Judge erred in law and in fact in awarding special and general damages.*

At the hearing of this appeal, Ms. Diana Nabuso holding brief for Mr. Paul Rutisya appeared for the appellant while Mr. Ronald Tusingwire represented the respondent. Both counsel asked Court to adopt their written submissions on Court record.

On ground 1 of the appeal, counsel for the appellant invited Court to look at page 131 of the Record of Appeal where the learned trial Judge found that Exhibit P2 (i) was not a contract between the parties but a consignment note between them and according to counsel exhibit P2 (i) constituted an agreement between the parties which was enforceable by Court. Counsel added that the terms and conditions of the carriage were part of the consignment note which governed the relationship between the consignee and consignor and therefore one could not interprete the terms of the consignment note without reference to the terms and conditions. She relied on ***M.A Bayusuf & Sons V Reliable Freight, Civil Case 483 of 1998*** for the proposition that the transport consignment notes related to carriage of the goods to the consignee and the terms thereof included the transportation being at owner's risk.

Counsel further submitted that the terms and conditions of carriage contained a clause exempting the appellant from liability in particular instances. She added

that according to the evidence of PW5, Ikbal Karim, he stated that he signed off the receipt acknowledging the goods but never read the statement that goods are for carriage at owners risk. According to counsel, PW5 having admitted to have signed off the consignment note without inducement cannot be heard to say that he was not bound by the terms of the document because he did not read them. She relied on ***L'Estrange V Gracoub Ltd, KB (1934) ALLER. REP 16*** for the proposition that when a document containing contractual terms is signed, then in the absence of fraud or misrepresentation, the party signing it is bound and it is immaterial whether he read the document or not.

On ground 2 of the appeal, counsel faulted the learned trial Judge for holding that the appellant was a common carrier because according to Black's Law Dictionary, 7th Edition, a common carrier is a carrier that is required by law to transport passengers or freight, without refusal if the approved fare or charge is paid. Counsel further submitted that whether the appellant was or was not a common carrier was a very material fact that could only be determined upon consideration of the law and evidence as presented by both parties. She invited Court to look at clause 7 of the Contract of Carriage at page 115 of the Record of Appeal where the company had unfettered discretion to refuse to carry any consignment it considered offensive, dangerous and inflammable. According to counsel clause 7 placed the appellant within the ambit of the definition of a private carrier.

Counsel further submitted that the duty of the appellant was to transport the container from Kampala to the interfreight yard in Mombasa and nothing more. She invited Court to look at the evidence of DW2 who stated that their role as a transporter began from the loading of the container into the truck upto the time of offloading and they were not part of the transportation from the interfreight yard to the port because everything was handed to Hassa Agencies. Counsel further submitted that according to Exhibit P2(i), the goods were to be transported from Kampala to Mombasa and not to Mombasa Port. Further that by the time the goods reached Mombasa Port, they were not being transported by the appellant's truck and the only explanation to this is because the goods had already been handed over to the clearing agency. That the appellant's duty was to take reasonable care to ensure that the truck reached Mombasa Yard without damage and the said duty did not extend to the time after it was offloaded.

On ground 3 of the appeal, the learned trial Judge was faulted for holding that the respondent's goods were lost in the custody of the appellant's servants. Counsel submitted that it was true that both the delivery note and the consignment note showed that the goods were loaded onto the appellant's truck but it is not correct that the said goods got lost while in the appellant's custody. Counsel further submitted that their role as the appellant was to transport the container to the Yard in Mombasa and then hand it over to the respondent's clearing agents. Counsel added that the respondent alleged that it was the appellant's truck that took the goods to the port then why was it that the truck

that left Kampala and the one that finally delivered the goods had different number plates? That the goods left the custody of the appellant when they were offloaded from the appellant's truck Reg. Number KAE 692Y/ZB 5986 and loaded onto truck KXA 511/2B5987.

On ground 4 of the appeal, the learned trial Judge was faulted for awarding special and aggravated damages. Counsel submitted that the learned trial Judge acted on a wrong principle because the appellant was not a common carrier. She prayed that this Court quashes the decision of the learned trial Judge as the respondent was not entitled to damages.

Counsel for the respondent opposed the appeal. He submitted that exhibit P2 (i) did not constitute the agreement as argued by counsel for the appellant and the learned trial Judge was right in finding that the Consignmnet Note did not constitute an agreement. Counsel further submitted that the authority of ***L'Estrange V Gracoub Ltd (1934) ALLER. REP 16*** relied on by the appellant was distingushable from the present case in that in ***L'Estrange V Gracoub (supra)***, the terms excluding liability were brought to the attention of the appellant before the contract was executed unlike in the present appeal where the Consignmnet Note with the exemption clause was brought to the attention of the respondent after the truck had already been loaded and left the Respondent's premises.

Counsel further submitted that the goods that were handed to the appellant through its driver were specific both in description and weight. It was therefore

a breach on the part of the appellant to deliver a consignment with a gross weight of 16,740kgs being less of 22,500kgs by 7160 kgs; and worse still to deliver a container with volcanic sand at Mombasa. He relied on ***Andrews Bros Ltd V Singer & Co. Ltd (1934) 1 KB 17***, where Court held that where goods are expressly described in the contract and do not comply with the description, it is inaccurate to say there is an implied term; the term is expressed in the contract.

On grounds 2 and 3 of the appeal, counsel submitted that the appellant by evidence confirmed that they were transporters of the respondent and hence common carriers within the facts of the case. Counsel further submitted that the appellant stated that it did not breach the duty of care, however no explanation was given as to why only 3 pallets of wet salted hides and skins were delivered instead of the 10 pallets.

Counsel further submitted that the appellant stated that its duty was to deliver the goods to Mombasa and then hand over the container to Hassa Agencies. However the appellant did not demonstrate that it discharged the undertaking on the delivery note to take full responsibility of transporting the goods from Kampala until they reached Hassa Agencies.

On ground 4 of the appeal, counsel submitted that the learned trial Judge was alive to the principles governing the award of special and general damages. He added that the learned trial Judge considered the Survey Report (Exhibit P1) made by Cunningham Lindsey Marine Ltd which indicated that the loss suffered by the respondent was USD 16,537.50 being the value of the 7 pallets that got

lost. Counsel prayed that the appeal be dismissed and the judgment of the lower Court be upheld.

In rejoinder, counsel reiterated her earlier submissions.

We have studied the Record of Appeal and the judgment of the lower court. We have also considered the submissions of counsel for both parties' written submissions and the authorities that were availed to Court for which we are grateful.

This being a first Appeal, our duty as rightly submitted by counsel for all the parties to the Appeal, is to reappraise the evidence and come up with our own conclusions. Rule 30 of the Judicature (Court of Appeal Rules) Directions gives this Court power to reappraise evidence and to take additional evidence.

In ***Kifamunte Henry V Uganda, SCCA NO. 10 of 1997***, it was held that:

> *"The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it."*

On ground 1 of the appeal, the learned trial Judge was faulted for finding that there was no legally binding contract of carriage between the appellant and the respondent. She held that Exhibit P2 (i) which the appellant considered to be a contract as merely a consignment note.

The learned trial Judge stated as follows:-

"Exhibit P2 (i) is however not the contract between the parties, it was merely a Consignment Note. Even if it were, I believe the plaintiff's witness that the exemption was not explained or brought to their attention. No contract was tendered in this Court. On that basis let me answer straightaway that there was no special contract limiting liability on the part of the defendant in the form of the Consignment Note tendered as Exhibit P2 (i)."

It was counsel for the appellant's contention that exhibit P2 (i) constituted an agreement between the parties which was enforceable by Court since the terms and conditions of the carriage were part of the consignmet note which governed the relationship between the consignee and consignor and therefore one could not interprete the terms of the consignment note without reference to the terms and conditions. Counsel added that PW5 having admitted to have signed off the Consignment Note without inducement cannot be heard to say that he was not bound by the terms of the document because he did not read them. She relied on ***L'Estrange V Gracoub Ltd 1934) ALLER. REP 16*** for the proposition that when a document containing contractual terms is signed, then in the absence of fraud or misrepresentation, the party signing it is bound and it is immaterial whether he read the document or not.

In response to the above submission, counsel for the respondent submitted that the authority of ***L'Estrange V Gracoub Ltd (1934) ALLER. REP 16*** relied on by the appellant was distingushable from the present case in that in ***L'Estrange V Gracoub (supra)***, the terms excluding liability were brought to the attention of

the appellant before the contract was executed unlike in the present appeal where the Consignment note with the exemption clause was brought to the attention of the respondent after the truck had already been loaded and left the Respondent's premises.

Black's law dictionary, 4th Edition defines a contract of carriage as a contract for the conveyance of property, persons, or messages, from one place to another. A Consignment Note is a document a consignor and consignee agree to prove receipt of property. It is an alternate of bill of lading but is not a contract or negotiable instrument. ***See Black's Law Dictionary Free Online Legal Dictionary, 2nd Edition.***

The appellant relied on Exhibit P2 (i), the consignment note as the agreement that was meant to bind both parties.

We have looked at annexture P2 (i), the Consignment Note. At the bottom of the said annexture, it stated that;

> *"Please receive the above mentioned goods for carriage at owner's risk in good order and conditions and subject to the conditions stated on the back hereof."*

Clause 1 of the terms and conditions of carriage on the reverse side of the consignment note reads as follows;

> *"I .....(hereinafter called the company shall not be liable for loss, damage, deviation, mis-delivery, delay or detention of or to a consignment or any part thereof or to any goods or any goods any part thereof no matter how such loss, damage, deviation, mis-delivery, delay or detention was*

caused and whether or not such loss, damage, deviation, mis-delivery, delay or detention was caused by or through or due to the negligence of the Company or its servants or agents or otherwise."

PW4, Anjum Murir stated that;

"Since we started with them I used to ask them for the agreement and they said they would send it. They never sent them; but verbally they said they were responsible for the security of the cargo and in the event of any mishap, they would compensate us.....Before they left our warehouse, they signed our delivery note and the packing list plus they gave us their document called goods consignment note which is evidence that they had received a container from us full of hides. It was signed by Mr. Mukasa. It is their document. They just gave it to us."

During cross examination, PW4 stated that;

"I don't remember how long we had dealings with the defendant but I think it was for 2 years. They used to give us copies of consignment notes every time (shown Exh P2). It says "Transport consignment note owner's risk." The middle para says "above mentioned goods are carried at owners risk and in good order and conditions stated at the back hereof". I never read the back because they always gave us a photocopy and there was nothing at the back."

The above evidence was corroborated by PW5, Ikbal Karim who testified as follows;

"We stopped using the defendants after this incident. In our arrangement the defendant was to take responsibility of the goods got lost along the way. (Shown Exhibit P2) this is a transport consignment note. The defendant issued it. They issue after the container has left our premises and the weight bridge. This is an acknowledgment of receipt of goods from Lira Millers. I signed then gave to them. I never read the statement of the above mentioned goods are for carriage at owners risk back hereof..... I never read the back. We signed the original. We were just only given the photocopy of the front." SIC.

The learned trial Judge found the respondent's witnesses truthful and had no reason to doubt them. She stated that she believed the respondent's witnesses that the exemption was not explained or brought to their attention. We agree with the learned trial Judge because both PW4, Anjum Murir and PW5, Ikbal Karim testified that they never read the back of the document because they were always given photocopies showing the face of the document without the back.

The learned trial Judge found that exhibit P2 (i) was not a contract between the parties but merely a Consignment Note. As already stated above a Consignment Note is a document a consignor and consigned agree to prove receipt of property. It is an alternate of bill of lading but is not a contract or negotiable instrument. We therefore find and agree with the learned trial Judge that there was no special contract limiting liability on the part of the appellant in form of the Consignment Note tendered as exhibit P2 (i).

Ground 1 of the appeal fails.

On ground 2 of the appeal, the learned trial Judge was faulted for finding that the appellant was a common carrier and as such subject to common law rules applicable to common carriers.

The learned trial Judge found that a common carrier could not exclude liability based on its negligence.

Counsel for the appellant submitted that, the issue whether the appellant was or was not a common carrier, was a very material fact that could only be determined upon consideration of the law and evidence as presented by both parties. She invited Court to look at clause 7 of the Contract of Carriage at page 115 of the Record of Appeal where the company had unfettered discretion to refuse to carry any consignment it considered offensive, dangerous and inflammable. According to counsel clause 7 placed the appellant within the ambit of the definition of a private carrier.

In response, counsel for the respondent submitted that the appellant by evidence confirmed that they were transporters of the respondent and hence common carriers within the facts of the case. He argued that although the appellant stated that it did not breach the duty of care, there was no explanation given as to why only 3 pallets of wet salted hides and skins were delivered instead of the 10.

A common carrier is defined as one who professes willingness to carry for reward the goods of all persons that desire to employ him. His profession of willingness may be confined to certain places or to certain types of goods, but subject to that he must be willing to carry for everyone. If, therefore, he reserves the right to

reject any particular consignment on the ground that the customer's offer is not sufficiently attractive, he will be a private carrier and not a common carrier. ***See Commercial Law by Robert Lowe, Fifth Edition, London, Sweet and Maxwell, 1976.***

Counsel for the appellant invited Court to look at clause 7 of the contract of carriage and according to her, the clause placed the appellant within the ambit of the definition of a private carrier.

Clause 7 of the terms and conditions of the carriage of freight states as follows;

> *"The Company may in its own unfettered discretion refuse to carry any consignment or any part thereof or any goods delivered for carriage, if such are in the opinion of the Company of an offensive, dangerous, inflammable or explosive nature or in the case of goods desired by the consignor to be taken from one territory into another which are subject to customs restriction or for any other reason whatsoever."*

In the instant case, the appellant accepted to load the respondent's goods which included 10 pallets of wet salted cattle hides on its truck No. KAE 692Y/ZB5986 and container No. MOLU 2288653. We have not found any evidence to suggest that the appellant exercised the right to reject the respondent's consignment on grounds that the respondent's offer was not sufficiently attractive.

For the said reason, the appellant cannot rely on clause 7 above to place itself within the ambit of the definition of a private carrier.

We therefore agree with the learned trial Judge that the appellant was a common carrier and therefore subject to common law rules applicable to common carriers.

Ground 2 of the appeal therefore fails.

On ground 3 of the appeal, the learned trial Judge was faulted for finding that the respondent's goods were lost in the custody of the appellant's servants.

The learned trial Judge stated that;

> *"Again, the delivery note and the consignment note showed that the goods were loaded on the defendant's truck above mentioned, for transportation from Kampala to Mombasa. The goods were loaded on the defendant's truck at their premises in Nakawa. Apart from the three pallets, most of it never arrived. The plaintiff never engaged any other transporter to transport its said goods. They got lost while in the defendants custody."*

PW4, Anjum Murir testified that on 22nd January, 2002, they loaded a container of salted hides. She was around when the truck was being loaded in the presence of the loading people and Ikbal Karim who was in charge of the loading. The transporter Mr. Geoffrey Mukasa, the country manager of the defendant, and the driver Mr. Daniel Korir were also present. She added that the container was loaded and the seal put and it was taken from the respondent's warehouse to

Lira Millers Weigh Bridge. Further that before they left the respondent's warehouse, Mr. Mukasa signed the respondent's delivery note, the packing list and the respondent was given a Goods Consignment Note which was evidence that the appellant had received a container from the respondent.

The above evidence was corroborated by the evidence of PW5, Ikbal Karim who testified that he was present at the time of loading of the container and 16 other employees who did the loading of the container. Daniel Korir the driver of the truck was also present and after loading the container, it was sealed in the presence of Mr. Geoffrey Mukasa, Mr. Daniel Korir, Mr. Siraji Abdulla and the loaders. Mr. Daniel Korir drove the truck from the respondent's premises after signing the delivery note and the packing list. He added that they loaded 10 pellets of Uganda wet salted cattle hides.

Indeed Exh P2 (i), the transport consignment note and the delivery note, Exhibit P4 show that 10 pallets of wet salted cattle hides were loaded into the container measuring 23900kgs. The Consignment Note was signed by the appellant's representative, Mr. Geoffrey Mukasa and the Delivery Note was signed by the appellant's driver, Mr. Daniel Korir.

Counsel for the appellant conceded to the fact that both the delivery note and the consignment note showed that the goods were loaded onto the appellant's truck. However, in her view the said goods did not get lost while in the appellant's custody. She submitted that the role of the appellant was to transport the container to the Yard in Mombasa and hand it over to the respondent's clearing

agents. That the goods left the custody of the appellant when they were off-loaded from the appellant's truck reg. Number KAE 692Y/ZB 5986 and loaded onto truck KXA 511/2B5987. Further that the appellant played its role of delivering the container in Mombasa and it was inspected by Hassa Agencies, the clearing and forwarding agents of the respondent and the seals were found to be intact. In counsel's view, the only plausible conclusion is that the goods were not lost in the appellant's custody but sometime before the truck left Kampala or after they were offloaded so as to be taken to the Port.

PW1, Mwanyawa Mweru Mwayubu, a Marine Cargo Surveyor currently working with Cunningham Lindsey Marine Ltd as a Marine Manager, Mombasa Office, testified that their officer was called by one Mr. Hanif Smji of Sofitra and Mr. Amor of Hassa Agencies Mombasa. They wanted them to attend at the port of Mombasa and inspect the contents of the said container. The container was a shipment from S.W.T Tanners (U) Ltd consisting of raw salted hides for delivery in Hong Kong. He added that their business was to determine the extent of the loss of the said container. The inspection was done in the presence of officials from Kenya Ports Authority, Police under Kenya Ports Authority, Security under Kenya Ports Authority and the shippers clearing agent Mr. Amir from Hassa clearing agencies.

PW1 added that on arrival to the scene, the said container was availed to them. It had been cleared and secured with a security seal which had earlier on been fitted by M/s SGS Kenya. The seal was broken in their presence and the

container opened. Their findings were stated in the survey report dated 10th April, 2002 and signed by PW1, Mwanyawa Mwayubu. It indicated 7 pallets out of the 10 were missing from the container and the contents pilfered from the container whilst in transit from Kampala to Mombasa between 22nd January and 2nd February 2002. When the clearing agents noted the reduction in the container,the seal and the padlock were broken for verification of its contents and it was discovered that the container was partly empty and partly filled with black volcano ash.

Further findings of the survey report indicated that the container was weighed at the place of stuffing in Uganda and ascertained to weigh 22.5MT. When the same container was re-weighed in Mombasa, it was found to weigh 16.74MT depicting a shortfall of 5.76MT. Secondly, its original seal No.23858 and padlock fitted in Kampala were intact on receipt in Mombasa even though the container had its cargo pilfered and instead filled with soil to make up for the lost weight. Thirdly, that the type of soil therein contained was black volcanic ash soils, characteristric of highland soils found in areas between Busia and Mombasa.

The surveyors concluded that the container was emptied of its contents and then filled with volcanic ash after leaving the shippers premises and prior to arriving at Mombasa. During this time the container was under the custody of the driver who was acting for the transporter. Further, that in order to ascertain how entry was gained, the surveyors inspected the container particularly the doors and

locking system and established that the bolts and rivets holding the locking bars had possibly been severed then welded back and repainted.

The learned trial Judge relied on the passage in ***Chitty on Contract Vol.2*** paragraphs 36-018 wherein the author stated that;

> *"Liability for loss or damage merits fuller discussion..... But the common carrier is, prima facie, strictly responsible for all loss or damage which occurs in the course of transit, subject, at common law, to the plea of any of four "expected perils" coupled with the disproof of negligence on the part of the carrier or its employees..... thus the common carrier is prima facie liable where goods in his charge are lost or damaged through the wrongful acts of third parties including robbery, or riot, or through accidental fire or other inevitable accident. This liability is often described vividly though strictly speaking, inaccurately, as an "insurer's liability". To escape his insurer's liability the common carrier must prove both (i) that the loss or damage was caused by an act of God, or act of Queen's enemies, inherent vice in the goods or the consignor's own fault, and (ii) that no negligence or want of reasonable care on the part of the carrier or his employer contributed to the loss or damage."*

We do not agree with counsel for the appellant's submission that the goods were not lost in the appellant's custody because the survey report revealed that the bolts and rivets holding the locking bars had possibly been severed, welded back and repainted.

In our view, this can only mean that the container was tampered with while still in the custody of the appellant. We therefore agree with the learned trial Judge that the respondent's goods got lost in the custody of the appellant because all the evidence on record revealed that the same were loaded onto the appellant's truck in the presence of both the appellant's representatives and the respondent's representatives.

Ground 3 of the appeal fails.

On ground 4 of the appeal, the learned trial Judge was faulted for awarding both special and general damages. It is now a well settled principle that an Appellate Court may only interfere with an award of damages when it is so ordinately high or low as to represent an entirely erroneous estimate. Or it must be shown that while assessing the damages the Judge proceeded on a wrong principle or that he/ she misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low. See ***Byabalema and Others V Uganda Transport Company (1990-1994) EA 59 (SC).***

The respondent prayed for special damages of US $ 23,625 (Twenty Three Thousand Six Hundred and Twenty Five United States Dollars or the equivalent in Uganda Shillings, interest on the sum of US $ 23,625 at rate of 20% per annum from the date of filing the suit until payment in full, general damages for negligence and breach of contract, interest on the decretal amount from the date of judgment until payment in full, costs of the suit and any other alternative relief.

The learned trial Judge relied on the case of ***B.A.T V Express Transport (1968) EA 171*** where it was held that;

> *"The correct measure of damages against a common carrier where the goods were entirely lost or destroyed is prima facie the value of the property lost."*

It is settled law that special damages must be specifically pleaded and proved, but strictly proving does not mean that proof must always be documentary evidence. Special damages can also be proved by direct evidence; for example by evidence of a person who received or paid or testimonies of experts conversant with the matters. See ***Gapco (U) Ltd Vs A.S. Transporters (U) Ltd CACA No. 18/2004 and Haji Asuman Mutekanga Vs Equator Growers (U) Ltd, SCCA No.7/1995.***

According to the survey report from Cunningham Lindsey Marine Limited, it indicated that the loss amounted to 7 pallets, 1022 hides, 15,750kg at US $ 1.05 per kilogram totaling to US $ 16,537.50.

The trial Judge found that the respondent had discharged the burden of both pleading and proving special damages before awarding it special damages of US $ 16,537.50.

General damages are the direct natural or probable consequence of the wrongful act complained of and include damages for pain, suffering, inconvenience and anticipated future loss. **See *Storms v. Hutchinson [1905] AC 515.***

It is trite law that measurement of the quantum of damages is a matter for the discretion of the individual Judge which of course has to be exercised judiciously taking into account the general conditions prevailing in the country and prior decisions that are relevant to the case in question, among other considerations.

See Southern Engineering Company Vs Musingi Mutia [1985] KLR 730

In awarding general damages, the learned trial Judge stated that the respondent was entitled to an award of general damages for negligence and taking into consideration the circumstances of the case, she awarded US $ 10,000.

It is our considered view that in awarding general damages, the learned trial Judge exercised her discretion judiciously. We therefore find no reason to interfere with the trial Judge's award of general and special damages to the respondent.

Ground 4 of the appeal fails.

In the result, all the grounds of the appeal having been disallowed, the appeal fails. We uphold the judgment and the orders of the lower Court. The appellant shall further pay the costs of the appeal here and in the lower Court.

We so order

Dated this ....27th....day of ....Feb....2020.

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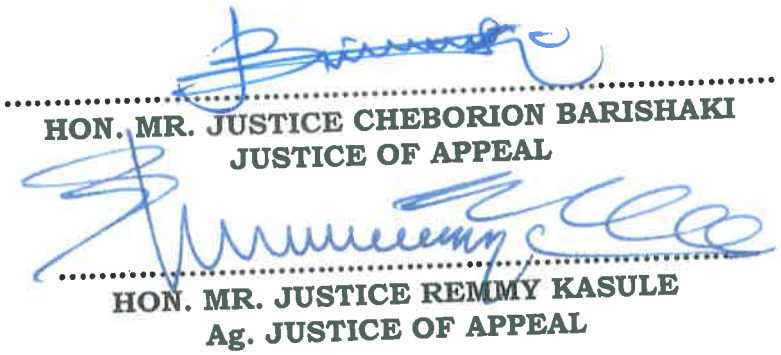
HON. LADY JUSTICE ELIZABETH MUSOKE
JUSTICE OF APPEAL



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HON. MR. JUSTICE CHEBORION BARISHAKI
JUSTICE OF APPEAL

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HON. MR. JUSTICE REMMY KASULE
Ag. JUSTICE OF APPEAL