THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 21 OF 2018

NABCO ENTERPRISES UGANDA LIMITED ==========APPELLANT

VS

REGISTERED TRUSTEES OF JESUIT ==========RESPONDENT

CORAM HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE, JA

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

JUDGMENT OF THE HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

This is a first Appeal from the Judgment and orders of the Hon. Lady Justice Anna B. Mugenyi delivered at the High Court (Commercial Division) on 24th August, 2017 in Civil Suit No. 893 of 2014. The Appellant's cause of action in the High Court was for breach of a construction agreement. The trial court dismissed the Appellant's claim and ordered that each party bear their own costs.

BACKGROUND

The Appellant Company is a building Contractor while Respondent is a Catholic Religious based Trustee (nonprofit Organisation). On 20th May, 2013 the Appellant entered into a contract with the Respondent to construct a classroom Block at Ocer Campion Jesuit College, in Gulu. The Appellant had

properly executed the Agreement until disagreements developed regarding the iron sheets that had been used to roof. The Respondent claimed that the iron sheets were peeling and should be replaced. The Appellant then raised the complaint with the suppliers of the iron sheets (Uganda Baati) who found that the iron sheets had scratches that resulted from mishandling and could be rectified by painting. The Respondent did not agree with this remedy and refused to pay the Appellant the cost of the iron sheets. The Respondent also contracted another supplier to install solar panels yet this was part of the contract of the Appellant. The Respondent also asked UNBS to carry out tests on the iron sheets without informing the Appellant.

The Appellant sued the Respondent for breach of contract. The Appellant alleged that the Respondent had breached their contract of construction because the Respondent failed to pay the amount for the cost of iron sheets, the cost of solar panel installation and VAT which was unlawfully withheld by the Respondent. The trial Judge found in favour of the Respondent. The Appellant being dissatisfied with the Judgment of the trial Judge filed this Appeal and set out 8 grounds of Appeal namely;

1. **That the trial Judge erred in law and in fact when she held that the iron sheets were defective.**
2. **That the trial Judge erred in law and fact when she held that the report by Uganda Baati lacked objectivity and therefore court could not rely on it.**
3. **That the trial Judge erred both in law and fact when she disregarded the contents of the 1st Report by UNBS.**

4. **The trial Judge erred both in fact and law when she regarded the technical evidence and expertise of DW3 as an afterthought.**
5. **That the trial Judge erred both in law and fact when she reached a wrong conclusion that because the plaintiff has never corrected the defects on the iron sheets therefore the defendant was right not to pay for the iron sheets.**
6. **That the trial Judge did not properly evaluate the evidence and came to a wrong conclusion that the plaintiff failed to carry out its obligation to provide solar power as per the construction contract and as directed in the meeting of 17th December 2014.**
7. **That the trial Judge erred both in law and fact when she held that the Defendant could not pay VAT on a supply in which it was not exempt.**
8. **That the trial Judge erred in law and fact when she refused to grant the Plaintiff general damages and costs of the suit.**

REPRESENTATIONS

The Appellant was represented by Mr. Gad Wilson and Mr. Idoot Augustine while the Respondent was represented by Mr. Kasozi Joseph.

DUTY OF THE COURT

This is a first Appeal and therefore this court is charged with the legal duty of reappraising the evidence and drawing inferences of fact as provided for under Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions S I 13-10 (hereinafter referred to as the Rules of this Court). This court also has the duty to caution itself that it has not seen the witnesses who gave testimony first hand. On the basis of its evaluation this court must decide

whether to support the decision of the High Court or not as illustrated in **Pandya v R [1957] EA 336 and Kifamunte Henry v Uganda Supreme Court Criminal Appeal No. 10 of 1997.**

Counsel for the Appellant submitted that he would argue the first five grounds together and summarised them as follows;

That the trial Judge did not properly evaluate the evidence and came to a wrong conclusion that the Respondent lawfully retained payment to the Appellant for the cost of iron sheets.

Arguments for the Appellant

First, counsel for the Appellant submitted that the trial Judge did not properly evaluate the evidence surrounding the circumstances in which the three Reports that were investigating whether the iron sheets were defective were made.

He submitted that the trial court should have considered the Report carried out by Uganda Baati. This is because Uganda Baati was the supplier of the Iron sheets; they carried out the inspection of the iron sheets in the presence of both the Appellant's and the Respondent's Representatives. He argued that this report also gave a solution which was that the iron sheets would be repainted for free by supplier Uganda Baati. He further submitted that the refusal of the report made by Uganda Baati was not based on any technical expertise.

Secondly, counsel for the Appellant faulted the trial court for finding that the first report conducted by UNBS on 17th November 2014 was not done independently and therefore was unreliable. He argued that the Respondent

had invited UNBS to carry out this evaluation Report without informing the Appellant's representatives. The Respondent notwithstanding this lack of notification, went ahead to give a sample of the iron sheets to UNBS for anaylsis. He submitted that results of the test also showed that the iron sheets were not defective. He submitted that the trial Judge disregarded this evidence erroneously because there was no bias or undue influence from UNBS officials. Furthermore counsel for the Appellant submitted that the conduct of the Respondent unilaterally carrying out another evaluation Report as on 23rd February, 2015 was suspicious.

Thirdly, counsel for the Appellant submitted that the trial court erroneously disregarded and dismissed the evidence of John Okumu (Dw3), a technical director and an expert with UNBS. He submitted that John Okumu (Dw3) was more qualified than the first UNBS inspection team as he had over 20 years of experience. He therefore asked the Court to consider John Okumu's (Dw3) conclusion that samples were too small and taken from the edges of the iron sheets and thus could not give conclusive remarks on the status of the whole iron sheets. Additionally John Okumu (DW3) had explained that he didn't find that the evidence that the iron sheets were defective while still new because the samples in the present case they were all old, therefore some results which were not positive were due to old age and usage rather than the weakness of the iron sheets.

Furthermore, counsel for the Appellant prayed that the evidence of John Okumu (Dw3) be regarded as an opinion of expert. This was because his opinion clearly explained the role of an expert by clearly stating in detail the factors surrounding the investigation. He submitted that John Okumu (Dw3)

was neither biased nor prejudiced because he drew logical inferences from what he observed. He submitted that the trial Judge therefore was wrong to disregard John Okumu's (Dw3) evidence by calling it mere conjectures.

He referred to Sarkar's Law of Evidence 14th Edition 1993 at page 820 for the proposition that;

"Expert evidence.... is of value in cases where the courts have to deal with matters beyond the range of common knowledge and they could not get along with it e.g. in matters of scientific knowledge or when the facts have come within the personal observation of experts....."

And

".....expert is fallible like all other witnesses and the real value of his evidence consists in the logical inferences which he draws from what he has himself observed, not from what he merely surmises or has been told by others."

He submitted that Sarkar further clarified their Roles by stating that

".....their duty is merely to assist the court by calling its attention to, and by explaining, matters the true significance of which would not be clear to persons who have received no scientific training, or have no special experience in such matters.

Fourthly, counsel for the Appellant faulted the trial Judge for relying on the second Report yet the samples which were relied upon were never exhibited in court. He submitted that the Respondent did not tender any tangible evidence of the iron sheets peeling.

Fifthly, counsel for the Appellant submitted that the trial Judge erred in law and in fact when she did not consider the circumstances under which the third test was taken.

He submitted that the Respondent had contacted UNBS to conduct a third test because they were disagreements between the parties regarding the two earlier tests done. Letters of invitation were served on all parties these were the Appellant, the Respondent, Uganda Baati and UNBS representatives to inspect the buildings. However on the day when they went to the site the Respondents were denied access to the site and therefore did not participate in the inspection.

He submitted that the Respondent was currently utilizing the facility and there is nowhere where it was indicated that the property was abandoned by the Respondent because of the defective iron sheets.

He concluded his submissions on this ground by praying that the court re-evaluate the evidence and find that trial Judge misdirected herself by basing her Judgment on a wrong analysis of the facts.

Arguments for the Respondent

Counsel for the Respondent opposed the Appeal. He submitted that the trial court evaluated the evidence properly and was correct to find that the Respondent had not breached the contract of construction.

Counsel for the Respondent submitted that the trial Judge gave reasons as to why it was the Appellant who breached the contract. First the iron sheets were defective *ab initio* and both parties were made aware of the defects. Secondly, the trial Judge looked at the contract and looked for the corrective

measures in case of defects. Thirdly, the trial Judge further observed that the corrective steps were never undertaken by the Appellant at any time. Fourthly, the court also observed that John Okumu's (Dw3) assertion that the samples were old and small was an afterthought because this observation was never included in the Report. Lastly, it was found that the fixing of Solar panels had not arisen by October 2013, so the scratches on the iron sheets were not as a result of installation of solar panels.

Counsel for the Respondent submitted that the trial Judge had the opportunity to observe the demeanor of the witnesses before she made her findings.

Counsel for the Respondent submitted that the trial Judge formed the opinion that John Okumu (Dw3) deliberately wanted to contradict the earlier report of his colleagues at UNBS who followed he required procedure set out by UNBS. He submitted that the witness was making attempts to water down the evidence of the Respondent. He relied on the case of **Coghlan v Cumberland (1898)1Ch. 704** which propounds that;

"when questions arise as to which witness is to be believed rather than another that question turns on manner and demeanor the Court of Appeal always is, and must be guided by the impression made on the Judge who saw the witnesses."

He implored us to follow the decision of the trial court because the trial court observed the manner and demeanor of the witnesses. He prayed that we invoke our Powers under Rule 32 of our Rules and confirm the decision in the High Court.

Court's findings

The thrust in these grounds is that the Appellant did not breach the Construction agreement by using iron sheets that were defective. The trial Judge had found that the Appellant had supplied defective iron sheets and when the Appellant was asked to rectify the defects in the iron sheets they did not do so they breached the contract. The Appellants argue that if there was any defect in the iron sheets it could be rectified by painting which the supplier of the iron sheets (Uganda Baati) was willing to do at no fee. The Appellants submitted that the circumstances under which the evaluation Reports were made by Uganda National Bureau of Standards to ascertain the status of the iron sheets were made biased. They could not give a fair assessment of the iron sheets. This was because the Appellants were not given an opportunity to be present when the UNBS officials were carrying out the inspection.

The Respondent on the other hand submitted that the trial Judge was correct to find that the iron sheets were defective. This is because the Reports on the iron sheets were done independently; secondly, the trial Judge had the opportunity to observe the demeanor of the witnesses. Since in resolving this case the trial Court heavily relied on assessment reports and expert witnesses, we shall re-evaluate this evidence as in the Record of Appeal.

REPORTS

The Respondent noticed that the iron sheets that had been installed had white spots and were even peeling. The Respondent then commissioned several assessment reports to verify whether the iron sheets were indeed defective. The first assessment Report was made by Uganda Baati on the 23rd August

2014. In their assessment of the iron sheets they had found that the scratches on the iron sheets were caused by mishandling while peeling could have been a result of a factory problem. It was further recommended that the iron sheets be repainted.

The trial Judge found that the first Report lacked objectivity and thus could not be relied on because it was made almost a year after the complaint was lodged and was made by the supplier itself whose representative was present in November when the peeling of paint and white dots where noted.

The second Report was made by an official of UNBS called Kalule C. It found that the sample which was analysed met the required standards. The Report was made on the 17th November 2014. The sample that was given to UNBS underwent the following tests, the band adhesion test, flexibility test, appearance, length and squareness of the iron sheets. In the Remarks the official who carried out the analysis says; *"that the sampling was not independently carried out by this office.* This means that a sample was just given to UNBS; UNBS did not have the discretion to choose its sample. It could also imply the sample that was given to the UNBS may not be a true reflection of the iron sheets at the site. Furthermore the tests that were carried out on it were very basic and this is why it did not have any visible defect on it. The test parameters on this test were band adhesion, flexibility test, appearance, length and its squareness.

A third test was made by UNBS on 16th March 2015. It was conducted by John Sanyu. In this test the samples failed to meet the requirement for bond test, appearance, impact test, chemical resistance test and mass of zinc test plus aluminum test as specified in the standard.

In contract with the assessment Report carried out 17th November 2014 the test parameters were more. Furthermore, the sampling was independently carried out by UNBS officers from the Quality Assurance and Testing department who travelled to Gulu.

The question for me to determine is which of these three assessment Reports is more reliable and has the most objective results. Is it the Uganda Baati Report which supplied the iron sheets or UNBS Report where UNBS is mandated to supervise quality standard of goods. I am mindful of the fact that UNBS carried out two tests that had contradictory results. When both reports were made, the Appellant was not allowed to observe the investigation. The first one conducted in 2014 found that the iron sheets were not defective while the other was carried out in 2015 found that the iron sheets were defective. The Appellant disputes the circumstances under which these two tests were carried out because the Appellants were never allowed to access the premises during the inspection.

As to why the two UNBS tests produced different results, I find that this was because of two main factors; first, the nature of sampling done and secondly, the test parameters that were carried out on it were different. My conclusion is that the iron sheets were defective since the test carried out by Uganda Baati had shown that the sheets were characterised with white dots, scratches and dust and the second UNBS test also showed that the iron sheets were indeed defective. This is because the average values of the samples failed to meet the bend test, appearance, impact test, chemical resistance and mass of zinc-aluminum test. The trial Judge was correct to make this finding that the iron sheets were defective.

THE EVIDENCE OF THE WITNESSES

Counsel for the Appellant submitted that the trial Judge disregarded and dismissed the evidence of Okumu John (Dw3) a technical director of UNBS yet he had more experience than the team of UNBS officials who had earlier on inspected the iron sheets. On the other hand counsel for the Respondent submitted that the trial Judge was correct to disregard the evidence of Okumu John (Dw3) because it was an afterthought since his testimony was not reflected in the assessment Report.

The evidence of Sanyu John (Dw2) was to the effect that the samples of the iron sheets brought to them did not meet the required standards of the appearance test, impact test, resistance chemicals and the zinc alum test. He was the technician who carried out analysis on the samples brought to UNBS on the 16th March 2015 (The second test carried out by UNBS). John Okumu's (Dw3) evidence was that the reason why the samples of the iron sheets did not meet these standards was because they were old and yet these quality standards were meant for new iron sheets. He was employed as the head material testing laboratory at National Bureau of Standards.

With respect, I am not persuaded by the analysis of Okumu John (Dw3) since Uganda Baati officials also carried out assessment tests on the iron sheets in 2014 when they were fairly new but had found that the iron sheets were characterised by white dots and were peeling.

A breach of contract occurs when a party neglects, refuses or fails to perform any part of its bargain or any term of the contract, written or oral, without a legitimate legal excuse. This includes failure to perform in a manner that meets the standards of the industry or the requirements of any express or

implied warranty. Surprisingly, the parties in this matter did not argue in detail the implied and warranted terms under the Sale of Goods Act which would have been relevant to these arguments.

The above notwithstanding, I find that the trial Judge was correct to find that the Appellant had breached the contract by supplying iron sheets that were defective to the Respondent as the evidence showed that the iron sheets were damaged.

Ground 6: That the trial Judge did not properly evaluate the evidence and came to a wrong conclusion that the plaintiff failed to carry out its obligation to provide solar power as per the construction contract and as directed in the meeting of 17th December 2014.

Appellant's submissions

Counsel for the Appellant submitted that the trial Judge erred in law and fact when she found that the Respondent had not breached the contract to install solar panels with the Appellant.

He submitted that according to the Agreement and the Bills of quantities it was the Appellant who supposed to provide alternative power supply. This arrangement was also confirmed in a meeting with both parties on 17th December 2013. He argued that it was a breach of contract to employ another contractor to install the solar panels.

Counsel for the Appellant referred us to **Halsbury's laws of England**, 4th Edition (paras 552, 553) for the proposition that where a contract is repudiated before the time of performance, the innocent party may treat the repudiation as a wrongful attempt to put an end to the contract and may at

once treat himself as discharged from the contract and bring an action for the breach.

Respondent's submissions

Counsel for the Respondent submitted that the trial court was correct to find that there was no breach of contract by the Respondent. This is because the Respondent notified the Appellant to fix the solar system but the Appellant did not comply.

He argued that in such a circumstance the Appellant could not come to court to claim lost opportunity when it was its own doing to omit to install the solar panels. He prayed that Court follow the finding of the lower court.

Court's Findings

Under this ground the Appellant submitted that the installation of solar panel by them was suspended and a third party was contracted to install the solar panels. On the other hand the Respondent submits that it was the Appellant who omitted to supply the solar panels. The trial Judge found in favour of the Respondent because they had shown through a letter that dated 7th December 2013 that whereas they had asked the Appellant not install solar panel but in a subsequent meeting held on 17th December 2013 they allowed the Appellants to carry out the installation of the solar panels.

Upon perusal of these minutes I find that the Appellant was supposed to install some of the solar panels and another party was to install other panels. The minute reads as follows;

"*9.0 Solar Panels*

The contractor was instructed to do solar power as was given in the bills of quantities and other required panels shall be added by another person chosen by the client."

My understanding of this of this minute is that there was a specific number of solar panels that were to be supplied by the Appellant in the bills of quantities and they agreed that the Appellant would supply them. The rest were to be supplied by another supplier.

The Appellant did not install the solar panels which were in breach of the understanding agreed to by the parties and this led the Respondents to have another party to install all the solar panels. I find that the trial Judge was correct to find that the Appellant was the one who breached this part of the contract.

Ground 7:

That the trial Judge erred both in law and fact when she held that the Defendant could not pay VAT on a supply in which it was not exempt

Appellant's submissions

Counsel for the Appellant made one line of argument under this ground.

Counsel for the Appellant submitted that the Respondent did not issue tax invoices to the Appellant when the Respondent supplied hydro form blocks and culverts to the Appellant. As a result of this the Appellant incurred penalties of Shs. 70,000,000/= from URA because of its failure to pay to account for VAT because of the Respondent.

His argument was that the Respondent as a provider of educational services and was VAT exempt. The Respondent was obliged to issue a tax invoice when it made a vatable supply in this case when it supplied hydra form blocks and culverts to the Appellant; but it did not. He submitted that the Appellant as a result had to account before URA the VAT due on Shs 58,987,000/= material supplied. This amounted to Shs. 11, 890, 000/=.

Respondent's submissions

Counsel for the Respondent submitted that payment for VAT had been provided for and paid. He submitted that this was during the computation of the contract in the Bills of Quantities and the Appellants were aware of this. He argued that the Respondent in their supply did not add VAT because they were a non VAT registered entity. He submitted that Lucy Anita Kawuma (DW4) demonstrated how the tax was collected by the Appellant on pages 1070 of the Appeal.

Secondly, counsel for the Respondent submitted that the Appellant collected tax irregularly. He submitted that first it collected when its registration had been expired. Secondly, it collected it from an entity which was supposed to be enjoying a tax holiday. He submitted that this exemption was brought out that Lucy Anita Kawuma (DW4) in her testimony.

It was submitted by counsel for the Respondent that the trial Judge made an erroneous finding that the Respondent had not shown through evidence that the Respondent had paid VAT.

He concluded by praying that the finding in relation to VAT be varied and substituted with a holding that the VAT was paid and that the Respondent during the period of that contract enjoyed a tax holiday.

Court's findings

The complaint under this ground is that the Respondent did not give a tax invoice to the Appellant when the Respondent supplied the Appellant with hydro form blocks and hire of mixer machine amounting to Shs 58,987,000/=. Counsel for the Respondent submitted that the VAT was paid for. The issues for me to resolve are whether the Respondent paid the requisite VAT on the Hydro form blocks and machine hire. Secondly, whether the Respondent could enjoy exemption to VAT payment for its activity?

Section 19, of the VAT Act, provides that a supply of goods and services is an exempt supply if it was specified in the Second schedule. The second schedule in section 1 (g) provided that the supply of education services is an exempt supply for the purposes of section 19.Furthermore section 2 of the second schedule defines education services as education provided by i)a pre-primary primary or secondary school; ii) a technical college or university; iii) an institution established for the promotion of adult education, vocational training, technical education or the education or training of physically or mentally handicapped persons.

Furthermore in the correspondence to all accounting officers dated 20th August 2014, the Permanent Secretary of Ministry of Finance clarified that the policy change to terminate the VAT exemption on education services and other services would not apply to contracts signed before 1st July 2014.

Clearly, the supply of hydro form blocks and hire of mixer machine did not fall under the educational services therefore the Appellant had to pay taxes on this supply. However since the Respondent's primary source of business was VAT exempt it may not have been VAT registered.

Lucy Anita Kawuma (DW4) who was employed as the accountant at the construction project explained how the arrangement of payments concerning the hydro blocks and concrete mix machine were met. On page 1063 of the record she testified that;

"...what happened is that the Registered Trustees of the Jesuit of the Society of Jesus who are non-profit and non-VAT registered made available after agreeing with the contractor a number of hydro form blocks and also offered them to use their concrete mixer machine at a fee without VAT through their penultimate certificates and later when they were paid, the registered trustees recovered exactly the cost of these blocks leaving the VAT amount with NABCO the contractor."

The trial Judge found that the Appellant failed to prove that the VAT on the Shs. 58,987,000 had been held back by the Respondent in respect of hydra form blocks. In this regard the trial Judge relied on the testimony of Lucy Anita Kawuma (DW4). She found that the law only exempted the Respondent from paying taxes on education services only and did not exempt the Respondent from VAT for the supply of other goods or services outside the second schedule of the Act.

The evidence on this issue is fairly straight forward. I agree with the trial Judge's finding that only the Respondent's educational services were exempt from VAT taxation and this exemption did not extend to the supply of hydro

form blocks. I further concur with the trial Judge that the Appellant on the other hand did not prove the VAT refund that it was claiming.

Ground 8:

That the trial Judge erred in law and fact when she refused to grant the Plaintiff general damages and costs of the suit

Appellant's submissions

Counsel for the Appellant submitted that the Appellant was entitled to general damages, interest and costs of the suit but the trial Judge completely failed to consider that when she erroneously dismissed the suit.

He submitted that the Appellant had executed its obligations under the contract and was ready to handover by 4th November 2014. He argued that payment for the iron sheets was unreasonably denied from them.

He also argued that the defect liability period according to the contract was an EDI GCC35.1 was a period of 6 months from completion date. He submitted that it meant that by 1st May 2015, the Appellant was entitled to all its payment including the contract retention fee. Counsel further submitted that the Respondent had not followed those provisions of the contract and had therefore breached the contract.

The Appellant relied on the case of **Uganda Commercial Bank v Kigozi (2002) 1 EA** 305 for the principle that;

"in assessment of the quantum of damages, courts are mainly guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach suffered."

Counsel for the Appellant also claimed that the Appellant was entitled to interest. He relied on the case of **Ahimbisibwe v Akright Projects Ltd CS No.832 of 2007 where the court quoted Halsbury's laws of England 4th Edn Vol 12 (i) para 1063 at 484**"

"Upon breach of a contract to pay money due...the award of interest is discretionary. The basis is that the defendant has kept the plaintiff out of his money and the defendant has had the use of it himself so he ought to compensate the plaintiff accordingly."

He further relied on the case of **Stanbic Bank v Sekalega HCCS No. 185 of 2009** for the proposition that where interest was not agreed upon by the parties, court should award interest that is just and reasonable and that in determining a just and reasonable rate the courts should take into account inflation and drastic depreciation of the currency.

He submitted that in the instant case what should be considered should be the defect liability period which expired on 1st May 2015.

Counsel for the Appellant also prayed for the costs of the Appeal both in the High Court and in the Court of Appeal.

Respondent's Submissions

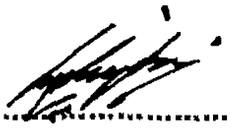
Counsel for the Respondent submitted that the trial Court correctly dismissed the Appellant's suit when it found that the there was no breach of contract however was silent on issues of costs. Counsel for the Respondent submitted that after dismissing the counterclaim the trial Judge held that each party bear its own costs. He submitted that it was not clear if this order was for both the counter claim and the main suit.

He relied on the case of **Uganda Development Bank v Muganga Construction Company LTD (1981) HCB 35** where court found that a successful party can only be denied costs if it is proved that but for his conduct the action would not have been brought. He argued that it was unfair for the trial Judge not to award costs to the successful party without giving any reason for it.

Court Findings

Since the Appellant has not been successful in any of the grounds I dismiss this Appeal with costs here and in the lower court.

Dated at Kampala this 12th **day of** March **2021**



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HON MR. JUSTICE GEOFFREY KIRYABWIRE, JA

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT KAMPALA

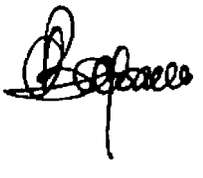
CIVIL APPEAL NO. 21 OF 2018

CORAM:

Hon. Mr. Justice Geoffrey Kiryabwire JA
Hon. Lady Justice Catherine Bamugemereire JA
Hon. Mr. Justice Christopher Izama Madrama JA

Judgment of Hon. Lady Justice Catherine Bamugemereire

I have had the privilege of reading in draft the Judgment of my Learned Brother Kiryabwire JA. I agree with his reasoning, decision and orders proposed.



Catherine Bamugemereire
JUSTICE of APPEAL

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 21 OF 2018

(CORAM: KIRYABWIRE, BAMUGEMEREIRE, MADRAMA JJA)

NABCO ENTERPRISES (U) LTD} .....APPELLANT

VERSUS

REGISTERED TRUSTEES OF

JESUIT SOCIETY OF JESUS} .....RESPONDENT

(Arising from the Judgment and Orders of Hon. Lady Justice Anna B Mugenyi Judge of the High Court of Uganda at Kampala (Commercial Division) in H.C.C.S. NO 893 of 2014 dated 24th August 2017)

JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Geoffrey Kiryabwire, JA.

I agree with the facts and analysis of the issues set out in the judgment. I concur with the conclusion of my learned brother Hon. Mr. Justice Geoffrey Kiryabwire, JA that the appeal be dismissed with the order as to costs he has proposed and I have nothing useful to add.

Dated at Kampala the 12th day of March 2021

Christopher Madrama

Justice of Appeal