**THE REPUBLIC OF UGANDA**

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

*[Coram: Egonda-Ntende, Muzamiru Kibeedi, Gashirabake JJA]*

**CIVIL APPEALS NO. 93 OF 2015 & 169 OF 2015**

*(Arising from High Court Civil Suit No. 409 of 2010)*

**BETWEEN**

Commissioner of Customs ==========Appellant/Cross-Respondent

**AND**

Prompt Packers & Forwarders Ltd ==========Respondent/Cross-Appellant

*(An appeal from the judgment of the High Court of Uganda Commercial Division [Wangutusi, J] delivered on 18th December 2014)*

## JUDGMENT OF FREDRICK EGONDA-NTENDE, JA

### Introduction

[1] For purposes of handling both of the appeals, the Commissioner of customs shall be referred to as the appellant / cross respondent while Prompt Packers & Forwarders Limited shall be known as the respondent /cross appellants. The respondent / cross appellant instituted High Court Civil Suit No. 409 of 2010 against the Commissioner of Customs for the recovery of special damages of UGX 590,871,160, general, exemplary and aggravated damages for wrongful suspension of its license. The respondent sought interest on special damages at 30% per annum, interest on exemplary damages, aggravated and general damages at 21% per annum and costs of the suit. The

respondent also sought a declaration that the suspension of its businesses licences was unlawful and an order for reinstatement of its licence.

[2] The respondent, a customs clearing and forwarding agent alleged that the appellant unlawfully suspended its business on various occasions by posting false entries on its bond register which included entries of goods cleared by other companies which occasioned it losses. The respondent alleged that the appellant raised several short payment notices and queries against the respondent leading to disruption and suspension of its business only to discover that the entries had been cleared. The respondent alleged that the appellant illegally distrained it property and made it to pay taxes it was not liable to pay which resulted into loss of business income.

[3] The learned trial judge entered judgment in favour of the respondent. He ordered that the suspension of the respondent company from operating be lifted and its licence restored. The learned trial judge awarded to the respondent aggravated damages of UGX 30,000,000 and general damages of UGX 100,000,000 with interest of 21% per annum from the date of judgment until the date of payment in full.

[4] Dissatisfied with the decision of the learned trial judge, both the appellant and respondent appealed to this court. The respondent set out its grounds of appeal in Civil Appeal No.93 of 2015 as follows:

> '1. That the trial court erred in law and fact when it failed to award the appellant consequential damages for lost earnings.
>
> 2. That the trial court erred in law and fact in failing to award the appellant special damages of Ushs.590, 871,160.
>
> 3. That the trial court erred in law ad fact in failing to award the appellant exemplary/punitive damages.'

[5] The appellant's grounds of appeal are set out in Civil Appeal No. 169 of 2015 as follows:

'1. The learned trial judge erred in law and fact when he held that the Appellant was unjustified in suspending the Respondent's licences, when there was evidence justifying the suspension.

2. The learned trial judge erred in law when he ordered for the reinstatement of the Respondent's license.

3. The learned trial judge erred in law and fact when he awarded the Respondent aggravated damages of **UGX.30, 000,000** in the absence of proof of justification for the award.

4. The learned trial judge erred in law and fact when he awarded the Respondent general damages of **UGX.100, 000,000** when the Respondent had not proved entitlement thereto.

5. The learned trial judge erred in law when he awarded the Respondent general damages of Ugx 100,000,000 which was manifestly excessive in the circumstances.'

**Submissions of Counsel**

[6] During the hearing, the appellant was represented by Ronald Baluku, Allideki Ssali Alex and Kweli Sam while the respondent was represented by Alex Candia and Saviour Okuku.

**Civil Appeal No. 169 of 2015**

[7] Concerning grounds 1 and 2 in Civil Appeal No. 169 of 2015, counsel for the appellant cited section 145(3) of the East African Customs Management Act which gives the commissioner power to suspend the licence of a holder in the circumstances stipulated thereunder. Mr. Baluku referred to the witness statement of Basomba Charles in which he stated that the respondent had failed to account for a number of transactions that it undertook, it had outstanding payment on some of its entries. He submitted that this evidence of Basomba Charles was unchallenged.

[8] Counsel for the appellant submitted that it was erroneous for the learned trial judge to imply an inference of guilt on the appellant due to the failure to produce the verification report in court. He contended that the appellant had availed all the outstanding entries in court. Counsel submitted that section 145(3) of the East African Management Act grants the commissioner power to revoke the licence even if it is only one entry that is outstanding.

[9] In reply, counsel for the respondent submitted that the commissioner of customs lifted the suspension against the appellant after the judgment and has been renewing the appellant's licence from 2015 to date. By complying with the decision of court, the appellant accepted the burden ad cannot therefore allege that the suspension was legal thus the licences should not have been restored. Counsel for the respondent argued that by renewing the respondent's licence every year from 2015, the appellant approbated and reprobated thus waiving its right to appeal. Counsel relied on Ddegeya Trading Stores Uganda Ltd v Uganda Revenue Authority Court of Appeal Civil Appeal No.44 of 1996 (unreported) to support this submission. Counsel for the respondent further contended that the appellant ought to have applied for a stay of execution if it intended to appeal against the said orders. Counsel for the respondent also submitted that no evidence was adduced to show that the respondent was convicted or was guilty of an offence under the custom laws as required by section 145(3) of the East African Customs Management Act.

[10] In rejoinder to counsel for the respondent's submissions, counsel for the appellant submitted that the act of the appellant lifting the suspension following a court order does not take away its right of appeal. The appellant was complying with a court order and also reducing the losses it could incur in case this court decided the appeal against it. Mr. Baluku submitted that the suspensions were for certain periods and were not done over the same period of time as the respondent alleges and that the suspensions would be lifted when the respondent complied. Counsel contended that respondent's submission that the entries cleared by a one Paul Owere not done by the company are baseless because a person cannot access someone's system in ASYCUDA without the permission of the owner.

[11] Regarding grounds 4 and 5, counsel for the appellant submitted that an appellate court can only interfere with an award for general damages if the

damages were awarded on a wrong principle. He submitted that there was a joint verification report that was adduced in evidence showing that some entries had not been accounted for. Counsel contended that section 145(3) of the East African Management Act grants the commissioner power to revoke the licence even if it is only one entry that is outstanding. Mr. Ssali also contended that the award of UGX 100, 000,000 was excessive in the circumstances.

[12] In reply, counsel for the respondent submitted that the respondent adduced sufficient evidence of aggravation. He contended that the respondent proved claims where the appellant unlawfully suspended the respondent for over a period of 7 years. Concerning the award of general damages, counsel for the respondent submitted that the trial court rightly did not find any fault in the evidence of the witnesses regarding the magnitude of loss suffered as a result of unlawful suspension of the respondent for a period of over 8 years. Counsel submitted that the assurance report shows that the respondent was earning on average about UGX 54,600,000 per month. He contended that the appellant has not shown that the award of damages was manifestly high, that on the other hand, the award of damages was manifestly low because the trial court in assessing damages did not take into consideration the concept of lost earnings. Counsel submitted that since the trial court did not err in principle or quantum, counsel for the respondent prayed that this appeal be dismissed.

**Civil Appeal No. 93 of 2015**

[13] Regarding ground 1, counsel for the appellant (Prompt Packers & Forwarders Ltd) submitted that the trial court found evidence of lost income yet it did not apply the correct law in assessing damages. Counsel contended that exhibit P22 covers lost income from May 2007 to December 2010. The report shows that the appellant was earning UGX 54,600,000 per month on transit cargo clearing alone, UGX 27,200,000 for entry clearance and UGX 7,000,000 for import clearing. Counsel contended that the respondent (Commissioner of Customs) did not challenge exhibit P2 by producing a contrary copy from ASYCUDA. Counsel submitted that the respondent did not challenge PW1's evidence on the fees or charges against the appellant's bond in force. He relied on Habre International Co Ltd v Kassim & Others [1999] 1 EA 125,

Eladam Enterprises Ltd v SGS (U) LTD & Ors [2004] UGCA 1, Mpungu & Sons Transporters Ltd v Attorney General & Anor [2006] UGSC 15, Mpagi Godfrey v Uganda [201] UGSC 36 to support its submissions.

[14] Counsel for the appellant stated the law for assessing pecuniary losses or lost income while awarding damages as was set out in Robert Coussens v Attorney General [2000] UGS 2. He submitted that had the learned trial judge taken into consideration the multiplier and multiplicand principle in Robert Coussens v Attorney General (supra) while assessing damages, it would have arrived at UGX 8,080,800,000 as damages due to the appellant. Counsel submitted that the appellant only prayed for UGX 5,000,000,000 as general damages due to the principle in that case to the effect that in assessing lost income, discount should be allowed for the fact that a lump sum is being given now instead of periodic payments over the years.

[15] Counsel for the appellant submitted that during the 7 years of unlawful suspension, the appellant lost all its retainer customers including those stated in paragraph 2 of PW1's witness statement. Counsel submitted that the trial court appreciated the magnitude of the loss suffered by the appellant but did not reflect this magnitude in awarding damages. Counsel then set out the principles upon which an appellate court can interfere with the damages awarded by the trial as was stated in Ahmed Ibrahim Bholm v Car and General Ltd [2004] UGSC 8. Counsel contended that in this case the trial court did not apply the multiplier and multiplicand principle in assessing lost income which resulted in an award of general damages that was manifestly low.

[16] In reply, counsel for the respondent submitted that general damages are awarded at the discretion of court which discretion ought to be exercised judiciously in due consideration of the conditions prevailing in the country and previous court decisions. Counsel contended that court cannot dismiss an award of damages merely because the amount awarded does not correspond with the appellant's assessment. He relied on Southern Engineering Company Ltd v Mutia [1985]] KLR 730. Counsel also cited Jane Chelagat Bor v Andrew Otieno Onduu [1990-1994] EA 47 for the submission on how damages ought to be assessed.

[17] Counsel for the respondent further submitted that the damages awarded were sufficient in this case because entries 1148 and 1163 that were unaccounted for where found to have been carried out by a former employee of the appellant who had access to the appellant's password and user name in the ASYCUDA system. Counsel submitted that it is thus unjust to punish the respondent for the appellant's own negligence. Counsel for the respondent relied on Catholic Diocese of Kisumu v Sophia Achieng Tete [2004] 2 KLR 55 for the principles upon which an appellate court can interfere with an award of damages and contended that the learned trial judge was alive to the law and facts of the case when he found the award of UGX 100,000,000 sufficient as compensation for the loss suffered by the appellant.

[18] Regarding ground 3, counsel for the appellant set out the principles upon which exemplary or punitive damages can be granted as was stated in Fredrick JK Zaabwe v Orient Bank & 5 Others [2007] UGSC 21. Counsel contended that the appellant adduced overwhelming evidence of high handed, oppressive, arbitrary and unconstitutional conduct on the respondent's part as well as conduct calculated to procure benefit to the respondent at the appellant's expense which the trial court failed to evaluate. Counsel relied on the evidence of fake lists of outstanding entries generated by the respondent. Counsel for the appellant submitted that the respondent ignored the appellant's protests against the fake entries until 2009 when court ordered a joint inspection of the register which exonerated the appellant. The respondent refused to restore the appellant's license even after such exoneration and constant demand from the appellant's lawyers.

[19] Counsel for the appellant submitted that the appellant was wrongly suspended for outstanding payment on a consignment where the respondent allowed Maersk shipping company to change the transit route without its consent. Counsel also submitted that the respondent issued a distress warrant against the appellant concerning alleged under collection of UGX 10,892,688 for entry KA10/06/01/C4 13381 which had already been paid and also wrongfully suspended the licence of the appellant for alleged misclassification of goods. Counsel relied on exhibits P.8 and P.9 to support his submissions.

[20] Counsel for the appellant also contended that all the suspensions of the appellant's licence were done without the appellant first being heard which is contrary to Article 28 and 44(c) of the constitution. Counsel relied on Bakaluba Peter Mukasa v Nambooze Betty Bakireke [2010] UGSC 1 where the supreme court held that a fair hearing means a proceeding which hears before it condemns and includes the right to present evidence. Counsel submitted that condemning a person unheard constitutes unconstitutional conduct. He submitted that the respondent's high handed, arbitrary, oppressive and unconstitutional conduct is manifestly evident in the above instances. Counsel prayed for exemplary damages of UGX 200,000,000 since the above acts of the respondent were committed frequently and intermittently.

[21] In reply, counsel for the respondent submitted that the trial court rightly observed that punitive or exemplary damages are only awarded in instances of unconstitutional, arbitrary and or oppressive actions by the public body or any individual or where the acts are done by the respondent for the motive of making profit. Counsel submitted that the respondent was not oppressive, arbitrary and unconstitutional in its conduct, that no evidence was adduced that the respondent acted for gain to the detriment of the appellant. Counsel for the respondent submitted that Exhibit P.13 that the appellant puts forward as an exonerating document on its part shows that there were two entries that were attributed to the appellant that remained uncleared in the system. Counsel for the respondent contended that the respondent therefore acted within the confines of the law to suspend the appellant's operating licence for the various periods of suspension.

**Analysis**

**Court of Appeal Civil Application No.23 of 2016**

[22] Before I consider the appeals, I shall first resolve Court of Appeal Civil Application No.23 of 2016 that was instituted by Prompt Packers & Forwarders (applicant) against Uganda Revenue Authority on the following grounds:

'1. That no appeal lies by the respondent against the judgment in HCCS No. 409 of 2010.

2. That the purported Civil Appeal No. 169 of 2015 was filed out of time.

3.That the interest of justice demands that the said appeal be struck out.'

[23] Counsel for the applicant submitted that the respondent was not a party to High Court Civil Suit No. 409 of 2010 thus cannot appeal against the decision of the trial court. He referred to Mansukhlal Ramji Karia & Anor v Attorney General & Ors [2004] UGSC 32 where Tsekooko JSC (as he then was) held that a third party who did not participate in the matter has no right of appeal and their only course was to apply to set aside the judgment by a suit or apply at the trial stage to be joined as a party in the suit. Counsel for the applicant contended that the commissioner of customs who was the defendant in High Court Civil Suit No. 409 of 2010 never appealed against the decision thus the appeal from Uganda Revenue Authority lacks legal foundation.

[24] Counsel for the applicant further submitted that the appellant filed the appeal out of time contrary to rule 83(1) of the rules of this court. He contended that the registrar's letter to the applicant dated 22nd May 2015 confirmed that the record of proceedings had been typed and made ready for collection on 19th April 2015. Consequently, the applicant filed Court of Appeal Civil Appeal No. 93 of 2015 against the Commissioner of Customs on 29th May 2015 and served Uganda Revenue Authority on 1st June 2015. Counsel for the appellant submitted that on receipt of the applicant's appeal, the course open was to file a cross appeal under rule 91 of this court's rule.

[25] Counsel for the applicant further submitted that the respondent filed the memorandum of appeal more than sixty days after receiving from the applicant's lawyer the record of appeal on 1st June 2015. Having known that the record of appeal was ready, the respondent refused to collect the record until September 2015. Counsel contended that the failure by the respondent to appeal within 60 days was due to its dilatory conduct and not the absence of the record of proceedings. He relied on Semakula Musoke & Anor v

Nabamba & 2 Ors [2020] UGSC 28 where an appeal was struck out because the notice of appeal was filed out of time to support his submissions. Counsel for the applicant submitted that filling within the 60 days prescribed by rule 83(1) is mandatory and failure to comply with it renders the appeal null unless validated by court upon application for extension of time under rule 5 of the rules of this court.

[26] Further counsel for the applicant submitted that the Commissioner of Customs complied with part of the judgment by lifting the applicant's suspension and restoring its licence as ordered by court. The Commissioner of Customs has been issuing yearly licenses to the applicant since January 2015. Counsel for the applicant contended that by restoring applicant's license, the Commissioner of Customs accepted the court's decision that the applicant's suspension was unlawful. He submitted that the Commissioner of Customs cannot therefore appeal as it would amount to approbating and reprobating. Counsel relied on George Lubega & Ors v Uganda Transport Ltd & Anor [1978] UGSC 2 and Car & General Ltd v AFS Construction (U) Ltd [2018] UGCA 34 to support this submission. Counsel also relied on Ddegeya Trading Stores (U) Ltd v Uganda Revenue Authority Court of Appeal Civil Appeal No.44 of 1996 (unreported) where it was held that the legal effect of approbation and reprobation is that a party waives their right of appeal. Counsel for the applicant also submitted that since the trial court awarded damages as consequential remedies for unlawful suspension, the respondent can only challenge the damages on the quantum. He prayed for costs relying on Goodman Agencies Ltd v Attorney General & Anor [2010] UGSC 7.

[27] In reply, counsel for the respondent submitted that Civil Appeal No.169 was filed within time. Upon lodging the notice of appeal, the respondent applied for the record of proceedings which was filed on 22nd December 2014 and served on the applicant on 16th January 2015. The respondent was informed about the readiness of the record of proceedings by the assistant registrar on 4th September 2015, it collected the same on 5th September 2015 and duly instituted the appeal on 8th September 2015, three days after receiving the record of proceedings which was within the stipulated timeline.

[28] Counsel contended that the respondent could only institute its appeal upon being availed the record of proceedings by the registrar of High court.

Counsel submitted that the mistake in titling the respondent's appeal is not a ground to warrant the sticking out of the respondent's appeal within the parameters set by rule 82 of the rules of this court. Counsel contended that the judgment of the trial court delivered on 18th December 2014 bears the defendant as Uganda Revenue Authority and the applicant's notice of appeal refers to Uganda Revenue Authority as the defendant. Counsel for the respondent further submitted that even though the proceedings of the trial court bear the commissioner of customs as the defendant, the omission or error is a curable defect as no real harm, prejudice or miscarriage of justice has been occasioned to the applicant.

[29] Counsel for the respondent submitted that should this court agree with the applicant's submission that no appeal lies by the respondent against High Court Civil Suit No. 409 of 2010 on the account of a wrong titling of the appeal, as a consequence, Civil Appeal No. 93 of 2015 should suffer the same fate as their notice of appeal bears Uganda Revenue Authority as a defendant.

[30] In rejoinder, the applicant reiterated its submissions and stated that the respondent did not collect any record of proceedings from court on 5th September 2015 as claimed. The respondent only made a copy of the record of proceedings availed to them by the applicant which is fraudulent and an abuse of court process. Counsel for the applicant submitted that naming Uganda Revenue Authority as a defendant in the judgment was an accidental slip that can be rectified under section 99 of the Civil Procedure Code Act. However, this error does not confer on the respondent the right of appeal since the right to appeal is a creature of statute. Counsel also contended that citing the respondent as the respondent in Civil Appeal No. 93 of 2015 does not confer on the respondent the right to appeal.

[31] Rule 83 (1) of the Judicature (Court of Appeal Rules) Directions (SI 13-10) requires that appeals be instituted by lodging a memorandum of appeal and the record of appeal within sixty days after filing a notice of appeal. However, rule 83(2) states:

> '(2) Where an application for a copy of the proceedings in the High Court has been made within thirty days after the date of the decision against which it is desired to appeal, there shall, in

computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the High Court as having been required for the preparation and delivery to the appellant of that copy.'

[32] Rule 83 (3) provides:

'An Appellant shall not rely on sub-rule (2) unless his or her application for a copy of proceedings was in writing and a copy was served on the Respondent, and the Applicant has retained proof of that service. '

[33] Rules 83 (2) and 83 (3) permit an appellant to exclude, from the computation of the 60 days' limit, time taken by the Registrar to prepare and deliver copies of the typed proceedings to the appellant, provided that the application for proceedings was in writing and that a copy of the said letter/application was served upon the respondent

[34] The evidence on record shows that the respondent filed the notice of appeal on 22nd December 2014, and served the same on the applicant on 22nd December 2014. On 19th December 2014, the respondent wrote a letter to the registrar requesting for a certified copy of the record of proceedings which was served on the applicant on 16th January 2015. The assistant registrar notified the respondent that the certified copy of the record of proceedings was ready on 4th September. The respondent picked the copy of the certified record of proceedings on 5th September 2015 and filed the memorandum of appeal and record of appeal for Civil Appeal No. 169 of 2015 on 8th September 2015.

[35] The applicant contended that the respondent ought to have filed its appeal when it received a certified copy of the record of proceedings from the applicant on 1st June 2015. It should be noted that both parties filed appeals arising out the decision in High Court Civil Suit No. 409 of 2010 which was delivered on 18th December 2010. The applicant filed a notice of appeal on 2nd January 2015 and served a copy of the same to the respondent on 13th January 2015. It requested for certified copies of the proceedings from the registrar on 13th January 2015 and served a copy of the letter on the respondent on 11th February 2015. The registrar informed the applicant that the certified copy of the record of proceedings was ready on 19th April 2015. The applicant then

filed the memorandum and record of appeal in Civil Appeal No.93 of 2015 on 29th May 2015 which was served on the respondent on 1st June 2015.

[36] It would have been more prudent had the respondent filed a cross appeal upon being served by the applicant the memorandum of appeal and record of appeal in Civil Appeal No. 93 of 2015. However, failure to do so did not negate the respondent's right of appeal. Besides the respondent had already instituted its appeal. The respondent's time for filing the memorandum of appeal only began to run when it received from the Assistant Registrar the record of appeal. The record shows that the respondent filed the memorandum 3 days after receiving the certified copy of the record of proceedings which is within the prescribed time.

[37] Counsel for the applicant contented that Civil Appeal No. 169 of 2015 ought to be struck out on the ground that the appellant, Uganda Revenue Authority has no *locus standi* because it was not a party to High Court Civil Suit No. 409 of 2010 from which the appeal originates. The record indicates that High Court Civil Suit No. 409 of 2010 was instituted by the respondent against the Commissioner of Customs and in the judgment of the trial court, Uganda Revenue Authority is indicated as the defendant. Civil Appeal No. 169 of 2015 was instituted in the names of Uganda Revenue Authority while the notice of appeal in Civil Appeal No.93 of 2015 instituted by the applicant cites Uganda Revenue Authority as the respondent. The memorandum of appeal though cites the Commissioner of Customs as the respondent.

[38] Considering the above, I am of the view that citing Uganda Revenue Authority as a party in both the appeals was an error that emanated from the judgment of the trial court. It was not the intention of the respondent to introduce a new party to the suit on appeal and it is not surprising that the parties were mixed up because the Commissioner of Customs is an officer of Uganda Revenue Authority. I would deduce that the intended party was the Commissioner of Customs and this error can be rectified on the face of the record.

[39] The applicant's submissions relating to whether the Commissioner of Customs can appeal after having obeyed the court order by lifting the

suspension and restoring the applicant's licence relate to the merits of the appeal and shall be handled thereunder.

[40] Considering the above, I find that Court of Appeal Civil Application No. 23 of 2016 lacks merit. I would therefore dismiss the application.

**Duty of a First Appellate Court**

[41] Turning to the appeals, as a first appellate court, it is our duty to re-evaluate the evidence on record as a whole and arrive at our own conclusion bearing in mind that the trial court had an opportunity to observe the demeanor of the witnesses which we do not have. See Rule 30 of the Judicature (Court of Appeal Rules) Directions S I 13-10, Banco Arabe Espanol v Bank of Uganda [1999] UGSC 1, Rwakashaija Azarious and others v Uganda Revenue Authority [2010] UGSC 8 and Omunyokol v Attorney General [2012] UGSC 4.

**Grounds 1 and 2 of Civil Appeal No. 169 of 2015**

[42] Grounds 1 and 2 of Civil Appeal No. 169 of 2015 shall be handled together since they are interrelated. Counsel for the appellant basically contended that the appellant lawfully suspended the respondent's licence because it had outstanding entries that were unaccounted for. The appellant contended that it was justified to do so under section 145(3) of the East African Community Customs Management Act which stipulates as follows:

> '(3) The Commissioner may refuse to issue a licence or may by order, suspend, revoke or refuse to renew, any such licence on the ground that the applicant or holder has been found guilty of an offence under the Customs laws or has been convicted of an offence involving dishonesty or fraud, or for any other reason that the Commissioner may deem fit.

[43] The evidence on record shows that the respondent was suspended on various occasions in 2005, 2006 and 2007. In March 2005, the respondent's licence

was suspended regarding outstanding payments for entries no. 016194, 06195 and 016196 for Maersk shipping company. Upon perusal of the evidence on record, we find the learned trial judge rightly found that cancellation of the respondent's bond based on the said entries was unjustified.

[44] PW1, Ayebare Lawrence, the managing director for the respondent stated in his witness statement that the appellant changed the transit route for the consignment upon request of Maersk shipping company without the knowledge and permission of the respondent and the consignment was consequently cleared by care agencies. Despite the respondent's complaint, it was suspended from business and its bond was rendered unutilised for more than a year. He referred to the documents contained in exhibit P.6. In letter dated 11th February 2006, PW1 raised this complaint to the manager TMU Uganda Revenue Authority. The letter stated:

> **'RE: ALTERATION OF TRANSIT GOODS**
> The management Prompt Packers & Forwarders Limited wish to bring it to your attention, that in May 2005 we cleared a truck said to contain lubricants, in transit to Kigali contracted by Maersk Shipping as a transporting company.
>
> We have since then been following the returns for our bond cancellation but still in vain.
>
> When contacted Maersk, we were only told that, they changed regime of the truck and cleared it in Kampala but of which they failed to prove it to us, neither to customs at the border.
>
> Remember we were not consulted in regard to this kind of change as owners of the bond and besides, they have withheld our bond to-date. Several times we have called on them but they seem not to be clear to us.
>
> Please we seek for your immediate intervention, so as to clarify on the matter and let our bond be cancelled at Malaba border.
>
> These include entry No. 01694, 01695 and 01696 respectively.
>
> Here attached are the photocopies of the entries.'

[45] Fiona Nyamurungi Tubeine, the Ag. Manager Transit Monitoring replied to the letter on 1st April 2006 stating:

> **'RE: ALTERATION OF TRANSIT GOODS**
> Reference is made to your memo of 11th March 2006 referenced PFF/MGT/TM/06 on the above subject.
>
> The consignment cleared by your company at Malaba in May 2005 on entry nos MA10/05/05/S801/01694, 01695 and 01696 in the names of Hass Petroleum was allowed to terminate transit and clear for home consumption in June 2005.
>
> The cargo was cleared at Kampala CBC by Care Agencies vide entry no C25008 of 21/06/05 and paid taxes of Ugshs 39,279,260/=.
>
> Find attached the release order for the same for your information.
>
> The details will be sent to Supervisor Assessment Malaba for cancellation of your bond.'

[46] There is another letter on record dated 9th June 2006 to the manager TMU Uganda Revenue Authority in which the respondent tries to follow up on a list of outstanding entries where the respondent believed that the outstanding could have been as a result of changes in exit points that they were not consulted on. The letter stated:

> **'RE: OUTSTANDING ALTERATION OF TRANSIT GOODS.**
>
> The Management of Prompt Packers and Forwarders Uganda Ltd, wish to appreciate, that out of our findings, the mistakes made by certain officers in regard to some long time outstandings have been corrected by the Supervisor Malaba.
>
> However, its part of our findings, that most outstandings if not all, have remained so, as a result of a phenomenon of changing the exit routes without the consent of the bond owners.

Often times, this has happened with permission from either Transit Monitoring Unit Offices or Commissioner's office; a trend that has left all this pending at stations that perhaps were not meant as proper exit point for such consignment.

Besides all that, this business of alteration has been effected with no proper records in place, that would help to follow up the bond at a later stage.

This is justifiable enough with entry No. 01694, 01695, 01696 respectively, that was altered by Maersk (U) Ltd upon permission from the Commissioner, to change the regime, of paying taxes from here with completely no consent of the bond owner (prompt packers).

Note that, this held our bond worth 39 millions for almost a year till 11th March 2006 when we raised a query to your office and only to find, that goods paid taxes from here on entry No. C25008.

Likewise Maersk (U) Ltd clearly states with a proof that entry No.00471, 00468 were consignments that they delivered themselves across but continue to wonder why upto now, landing certificates have never reached Malaba for bond conciliation!

We are therefore, convinced, that the attached list of outstandings, could be as a result of changes of exit points that we were not consulted upon.

We kindly therefore, appeal to your office to intervene and perhaps send a copy to each and every exit point, for them to sort out what could have passed via their station and be able to send back the landing certificates or any proof of exit to originating station Malaba, for bond conciliation.

And in this regard, we request, never to grant permission to anybody different from Prompt Packers for any change of papers.

Thanks in anticipation of your usual co-operation.'

[47] From the above letter, it seems that the respondent had been in the habit of allowing alteration of transit routes for consignment under care of the respondent without the permission of the respondent leading to some entries being recorded as outstanding as seen for entries 01694, 01695 and 01696.

[48] There is no doubt that the respondent's suspension from operation on 22nd November 2006 as a result of a wrongful declaration was lawful. The respondent has not contested the findings of the trial court and there is sufficient evidence on record to uphold the finding. On 23rd October 2006, the customs and excise department Busia issued a short collection notice to the respondent of UGX 5,881,866 for misclassification of goods as washing powder under code 39011000, yet the goods were polythene bags whose code should have been 39232900. The notice contained exhibit D.4 stated as follows:

> 'RE: **SHORT COLLECTION**
> This is to request you to pay arrears on misallocation of washing powder which you declared as 39011000 instead of 39232900. The entry and the short collection are stated below:
> C25933 of 6/10/2006 - Shs 5,881,866/=
> **(five million eight hundred eighty one thousand eight hundred sixty six shillings only)**
> N.B. You are to pay within 14 days from the date of this letter.'

[49] The respondent effected payment for the arrears on 3rd December as shown by exhibit D8. Earlier on through an internal memo dated 22nd November 2006, the appellant had suspended the respondent from transacting business until it effected payment of outstanding amount in the above short collection notice. The suspension was then shifted by an internal memo dated 4th December 2006.

[50] PW1 stated in his witness statement that the suspension was unlawful. Upon cross examination, he stated that the short payment notice was erroneously issued against the respondent because it never cleared washing powder. DW2 confirmed that the respondent did not import washing powder but rather polythene bags and the code referred to as 39232900 in the short collection notice was in respect of polythene bags. She admitted that they made an error regarding the description of the goods in the letter.

[51] DW2 testified that the commodity code 392232900 is for polythene bags. The goods in the container were classified under that code following an examination of the consignment at Busia. She stated that the appellant first declared the goods as polythene raw materials under code 39011000 but when they carried out a post audit, they discovered that the goods were polythene bags which calls for import duty of 25% and exercise duty of 50%. When the misclassification was discovered, DW2 stated that hey amended the entry and issued the short payment notice.DW2 testified that the verification was carried out in the presence of Mr. Okuku Geoffrey on 6th October 2006, an agent of the respondent. It was revealed that the goods in the container were '150cm × 20 kgs polythene bags – Malaysia (sample)' according to exhibit D3.

[52] While resolving the same issue, the learned trial judge stated:

> 'There is no proof that this error on the face of the document was notified to the Plaintiff. This in itself however does not invalidate its authenticity.
>
> PW1 during cross-examination acknowledged that he did know the HS Codes; recognized the Codes 39011000 and 39232900 and conceded that the two did not relate to washing powder.
>
> The Plaintiff could have raised a query to the Defendant as to the washing powder import attributed to them but they did not. This is indicative that the Plaintiff was aware that the notice was in relation to the declaration of polythene bag raw material instead of polythene bags.
>
> It is my opinion that indeed polythene bags were imported and not their raw material. The Defendant on inspection of the goods, having found that it was actually polythene bags that had been imported and which ought to be subjected to import and excise duty, lawfully raised a short collection notice on 23rd October 2006 which the Plaintiff settled and had its suspension accordingly lifted.
>
> In view of the foregoing, the short collection notice raised by the Defendant was lawfully done. The collection notice required the Plaintiff to effect payment within 14

days. This was not done by the Plaintiff and on 22nd November 2006, in answer to that defiance, and cushioned by Sections 145(3) EACCMA 2004, the Defendant lawfully suspended the Plaintiff. This suspension having been done within the law, it was justifiably done by the Defendant.'

[53] As already noted above, I agree with the findings of the learned trial judge that the suspension was lawful in as far as the respondent misclassified polythene bags as raw material of polythene bags leading to a short payment. However, this suspension alone does not justify the actions of the appellant. Counsel for the appellant argued that the section 145(3) of the East African Community Customs Management Act grants power to the Commissioner to suspend the licence of a holder even if it is only for one outstanding entry. This position is correct but the suspension must be justified. The fact that the suspension in the above matter was justified does not justify the subsequent suspensions.

[54] Regarding the suspensions that were effected against the respondent from 2007 onwards, the learned trial judge relied on exhibits P.20, P.13 and P.17 to arrive at the conclusion that the suspensions were not founded on proper grounds. He stated:

'In conclusion, examination of Exhibit P. 20 read together with Exhibit P. 13 and P. 17, it is found that the Defendant sought to rely on entries that had already been validated in many places, entries that indicated that the goods in question had been cleared by different clearing agents some of whom were Royal Freighters, Mark Forwarders, Jaffer Freighters, Paluku Agencies, Speedag; while some of the entries were unexistent in the system and were never seen during reconciliation. This painted the Defendant in a light of keeping records in a manner which was so un reliable that suspension of the Plaintiff's operations based on such records would not be justified. It is this Court's finding therefore that apart from the suspension on 22nd November 2006 based on misclassification of polythene bags which was lifted on 4th December 2006, the rest of the suspensions were not founded on proper grounds and are hereby found unlawful

and in breach of Sections 145(3) of the East African Community Customs Management Act (EACCMA) 2004.'

[55] In a letter dated 30th March 2007 (exhibit D.14), the appellant generated a list of 66 outstanding entries which the respondent was ordered to pay within 14 days. The respondent was advised to liaise with the Supervisor Transit Monitoring Unit for further management of the outstanding payments. In a letter dated 2nd May 2013 (exhibit P.20), the respondent wrote to the manager Transit Monitoring Unit URA requiring it to confirm exit of 53 entries out of the 66 in exhibit D.14. The appellant returned the letter on 10th May 2013 having validated 38 entries and declared them to have exited.

[56] DW1 stated in cross examination that he was the one who forwarded exhibit P.20 to Vicent Kiberu for verification. Vicent Kiberu was called by court to testify and he testified as CW1. He confirmed that the entries marked 'R' on exhibit P.20 were not outstanding since he validated them. These were the 38 entries. He stated that wherever he marked 'R' meant that the consignment had exited, therefore validated. Where he did not write 'R', he wrote 'unexistent' except in four arears were he did not put any remarks.

[57] While determining the meaning of the word 'unexistent' in the circumstances of the case, the learned trial judge stated:

> 'The word unexistent was written against the 14 that had no 'R'. CW1 explained that by 'unexistent' he meant that the letter 'R' was missing. But 'unexistent' could also mean that the entry did not exist. I say this because during the hearing it became clear that some of the entries that were attributed to the Plaintiff did not exist at all.
>
> In this, I am cushioned by Exhibit P.13 which was a joint report by all parties. Exhibit P.13 indicated that 13 of the entries were "not seen". In other words, the system did not have them. In my view therefore, "unexistent" could mean an unfound entry more than non-exit.

> It is my view that if the consignment had not exited, the word used would have been "non-exit" instead of "unexistent".
>
> As Court has stated above, Exhibit P.13 clearly showed that they were "entries" that did not exist. Referring to Exhibit P. 13, PW1 told Court that during the joint reconciliation exercise, where all parties were represented, they found that some of the entries did not actually exist. His testimony in this regard was not challenged at all, other by way of cross-examination or production of defence evidence to counter it. Taking his evidence together with Exhibit P.13, Court can safely hold that the word 'unexistent' in Exhibit P. 20 meant that the entries did not exist or at most were not found.
>
> CW1 was instructed by his superior DW1 to verify Exhibit P.20 and report. This report was not produced in evidence. The only inference that one may draw from the failure to produce the report in Court is that it was not favourable to the Defendant.
> In conclusion therefore, the Court is not convinced that the list of outstandings in Exhibit P.20 reflects a true and correct position.'

[58] I agree with the above findings of the learned trial judge. Counsel for the appellant contended that it was erroneous for the learned trial judge to draw an inference that the appellant did not adduce into evidence the report alluded to in the above excerpt of the judgment because it was not favourable to the appellant. Counsel contended that there was ample evidence to show that the respondent had outstanding payments on entries to warrant its suspension and that the respondent did not also produced the report since it was in possession of the report.

[59] The said report was a verification of the entries contained in exhibit P.20 that CW1 made after making the remarks on P.20. The report was intended to give a status update of the entries contained in exhibit P.20. A copy of the report was not availed to the respondent as alleged and it is unexplainable as to why CW1, who authored and was in possession of the report did not avail a copy to court. It can only lead to an inference that the report was not adduced into

evidence because it was not favourable to the appellant. I therefore find no reason to fault the finding of the trial court.

[60] Exhibit P.17 is a demand letter dated 22nd April 2010 from the appellant to the respondent. It stated:

> **'RE: DEMAND FOR PAYMENT FOR OUTSTANDING TRANSIT GOODS FOR 1ST JANUARY 2005 TO 15TH APRIL 2010.**
>
> Our records show that the goods indicated in the schedule attached did not reach their destination and their bonds are still outstanding after expiry of the allowed transit period.
>
> This is to request you to pay the outstanding amount within fourteen (14) days from the day of receipt of this letter, in accordance with section 109(1) of the EACCMA. Failure to pay the due taxes will lead to your suspension from conducting further business with Customs.'

The list attached contained 37 entries transacted between 2005 and 2010. The first four entries are purported to have been carried out in April 2010 while the respondent was not carrying out business. Entries D 63277, D 48318 and D 18125 were validated and marked as exited in P20. Entries D 50551, 4403 were marked as 'unexistent' therefore they did not exist. In a letter dated 5th April 2007 (exhibit P.11) by the respondent to the appellant while replying to the appellant's letter of 30th March 2007 (exhibit D14), the appellant informed the respondent that transactions D, 51883, 66195, 4961, 4335, 83, 27747, 5648, 40834, 50211, 5063, 10778, 5059 and 263 were not carried out by the appellant. Exhibit P.7 shows that respondent paid the amount due in respect of a short payment notice dated 27th November 2006 in respect of entry C12919 but the appellant still queried the payment on 2nd July 2007.

[61] Further, in the joint inspection report executed on 9th February 2009 by the parties (exhibit P.13), it was found that 19 out of the 29 alleged entries by the respondent with outstanding payments were not seen in the system which means that they did not exist. 7 of the entries belonged to other clearing agents that is; Royal Freighters/ Stamet, Mark Forwarders, Jaffer Freighters, Spedag and Paluk agencies. Only two entries that is; 1163 and 1148 were

unaccounted for and attributed to the respondent. The respondent contended that these entries were carried out by a one Paul Owere who was a former employee of the respondent at the time. While dealing with this issue the learned trial judge stated:

> 'Some of the queries put to the Defendant should never have arisen. A good example is also derived from the queries 1148 of 24th July 2005 and 1163 of 23rd July 2005 in which the Defendant sought payment from the Plaintiff on goods that had been purportedly cleared by the Plaintiff. The officer who had purportedly cleared the goods was a one Owere Paul who had been an employee of the Plaintiff in the past. One wonders why the Defendant dealt with him when in a letter, Exhibit P. 14 dated 24th May 2005, the Plaintiff had written to the Defendant informing them that their transactions would now be handled by Hajara Nankoma. It said in its letter:
>
> *"This therefore serves to inform you further that Mr. Owere Paul is no longer our staff and should never be allowed to act on our behalf."*
>
> For the Defendant therefore to transact business with a person they knew was not an employee of the Plaintiff and could not bind the Plaintiff to turn around and claim payment from the Plaintiff was unjust and cannot be supported.
>
> Any suspension of the Plaintiff based on this transaction cannot be sustained.'

[62] Counsel for the appellant contended that it was erroneous for the learned trial judge to hold the appellant accountable for the said entries since the respondent having a username and password to ASYCUDA is responsible for everyone who has access to their system at any given time. I find the appellant's contention baseless because the respondent took effort to inform the appellant that the said Owere Paul was no longer an employee of the appellant and should therefore not be allowed to act on its behalf.

[63] Considering the above, the appellant's record keeping is unreliable and marred with inconsistencies. This kind of behaviour is reckless for a tax

collection and enforcement authority. Most of the suspensions against the respondent should not have taken place had the appellant done its work efficiently. The respondent was suspended on entries that had already been validated, some of the entries as seen above never existed while other entries belonged to other clearing agencies and the appellant queried entries that were not outstanding. It is evident that the appellant was not carrying out its duty as it ought to. which was to the detriment of the respondent. I agree with the learned trial judge's finding that the respondent's suspensions based on such records that are unreliable were unjustified.

[64] Apart from the suspension of 22nd November 2006 based on misclassification of polythene bags that was lifted on 4th December 2006, I agree with the learned trial judge that the rest of the suspensions were illegal and in breach of section 145(3) of the East African Community Management Act, 2004 because they were not founded on proper grounds. The learned trial judge was right in lifting the respondent's suspension.

[65] I would dismiss grounds 1 and 2 of Civil Appeal No. 169 for lack of merit.

**Grounds 3, 4 and 5 of Civil Appeal No.169 of 2015 and grounds 1, 2 and 3 of Civil Appeal No.93 of 2015**

[66] The principles upon which an appellate court can interfere with an award of damages by the trial court were set out in Crown Beverages Limited v Sendu [2006] 2 EA 43. Oder JSC (as he then was) stated:

> 'In my opinion, the principle that an appellate court will not interfere with the award of damages by a trial court unless the trial court acted upon wrong principle of law or the amount awarded is so high or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff was entitled equally applies to the instant case. This court is entitled to interfere with the amount of damages awarded by the Court of Appeal for the following reasons:
> Firstly, the respondent prayed for a specific sum of 30 million as if it was a claim for special damages, which must be pleaded and proved. It is trite law that the amount of general damages which a plaintiff may be awarded is a

matter of discretion by the trial Court.' See also Robert Coussens v Attorney General [2000] UGSC 2.

[67] While assessing the general damages that were awarded to the respondent, the learned trial judge stated:

> 'The Plaintiff prayed for general damages. The settled position is that the award of general damages is in the discretion of court, and is always as the law will presume to be the natural and probable consequence of the defendant's act or omission. **James Fredrick Nsubuga v. Attorney General, H.C.C.S No. 13 of 1993; Erukan Kuwe V Isaac Patrick Matovu & Anor H.C.C.S. No. 177 of 2003 per Tuhaise J.**
>
> In the assessment of the quantum of damages, courts are mainly guided by a number of factors among which is the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered. **Uganda Commercial Bank V Kigozi [2002] 1 EA. 305.** A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong. **Charles Acire V Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd. V Umar Salim, S.C.C.A. No.17 of 1992.**
>
> Regarding general damages, PW1 adduced evidence showing lost income; Exhibit 22 and terminated contracts with clients; Exhibit P23.
>
> I find no fault in the evidence of witness regarding these losses and have given consideration to the magnitude of the loss suffered and the applicable principles of law, I am satisfied that Ugx. 100,000,000/= general damages would be sufficient to atone for the loss and injury occasioned to the Plaintiff by the Defendant over the time and restore to the Plaintiff some satisfaction, and I accordingly award the same to the Plaintiff.'

[68] It is evident that the learned trial judge was alive to the principles governing the grant of general damages. In Robert Coussens v Attorney General [2000] UGSC 2, Oder JS (as he then was) stated:

> 'The object of an award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered. The heads or elements of damages recognised as such by law are divisible into two main groups: pecuniary and non-pecuniary loss. The former comprises all financial and material loss incurred, such as loss of business profit, loss of income, or expenses such as medical expenses. The latter comprises all losses which do not represent inroad upon a person's financial or material assets such as physical pain or injury to feelings. The former, being a money loss is capable of being arithmetically calculated in money, even though the calculation must sometimes be a rough one where there are difficulties of proof. The latter, however, is not so calculable. Money is not awarded as a replacement for other money, but as a substitute for that which is generally more important than money: it is the best that a Court can do, damages have to be measured in order to arrive at what compensation should be awarded. The general rule regarding measure of damages applicable both to contract and tort has its origin in what Lord Bluckbum said in: ***Livingstone vs Ronoyard's Coal Co. (1880) 5.App. cas 259.*** He there defined measure of damages as:
> ***"that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in f he had not sustained the wrong for which he is now getting his compensation or reparation."***
> This statement has been consistently referred to or recited with approval in many subsequent cases. In ***British Transport Commission vs Gourley [1956] A. C. 185*** Earl Jowitt put it this way at page 197.
> ***"The broad general principle which should govern the assessment of damages in cases such as this is that the tribunal should award the injured party such a sum of money as will put him in the same position as he would have been f he had not sustained the injuries. See per Lord Blackburn in: Livingstone vs Rowyards Coal***

***[1880] 5 App Cas. 2539."***

[69] Counsel for the respondent contended that the learned trial judge did not take into consideration the multiplier and *multiplicand* principle enunciated in Robert Cousens v Attorney General(supra) to assess the appellant's lost income thus awarding an inordinately low amount of damages to the appellant. On the multiplier and multiplicand method of assessing of loss of income, Oder JSC (as he then was) stated:

> ' An estimate of prospective loss must be based in the first instance, on a foundation of solid facts; otherwise it is not an estimate, but a guess. It is therefore, important that evidence should be given to the Court of as many solid facts as possible. One of the solid facts that must be proved to enable the Court to assess prospective loss of earnings is the actual income which the plaintiff was earning at the time of his injury. The method of assessment of loss of earning capacity after the facts have been been proved is, in my view, persuasively stated by: ***Mcgregor on Damages'14th Edn. in paragraph*** *1164(page797).* as follows:
> *"The Courts have evolved a particular method of assessing loss of earning capacity, for arriving at the amount which the plaintiff has been prevented by the injury from earning in the future. This amount is calculated by taking the figure of the plaintiff's present annual earnings less the amount if any, which he can now earn annually and multiply this by a figure which, while based upon the number of years during which the loss of earning power will last, is discounted so as to allow for the fact that a lump sum is being given now instead of periodic payments over the years. This figure has long been called the multiplier; the former figure has now come to be referred to as the multiplicand. Further adjustment however, may have to be made to the multiplicand or multiplier on account of a variety of factors; viz, the probability of future increase or decrease in the annual earnings the so called contingencies of life and the incidence of inflation and taxation."*
> Discussing the *"multiplicand"* in conditions of diminution of annual earnings the learned author says in paragraph 1168:
> ***The starting point in the calculation has long been the amount earned by the plaintiff before the injury; however, Cookson vs Knewles (1978) 2WL.R.978 (HL) in the***

> ***related field of Fatal accidents would seem to confirm that now, through the stimulus of inflationary conditions, the starting point has become the amount that the plaintiff would having been earning at the date of the trial had he not been injured..... What the plaintiff is earning per annum at the time of injury will generally be easy to calculate where he is employed at a wage or salary; similarly, the amount which he is capable of earning in the future is often made clear by the terms of such post injury employment (if any) as he has entered into before his case is brought to trial"***
> The method of assessment of loss of income or earnings above referred to applies equally to claims based on personal injury as well as to those for loss of dependency arising from fatal accidents. '

[70] Considering the above decision, I find that the respondent did not provide solid facts of the actual income it was earning before the suspension by the appellant. The report on the respondent's lost income from the period of May 2007 to December 2010 contained in exhibit P.22 and the evidence of letter of termination of contracts of its clients contained in exhibit P.23 were not sufficient to lay a solid foundation for its claim of lost income as special damages. The respondent should have presented at least financial statements to prove its claim.

[71] In light of the above, I would find no reason to interfere with the amount of general damages awarded by the learned trial judge.

[72] The appellant in its appeal argued that the learned trial judge ought not to have granted the respondents the damages given the fact that the suspensions of the respondent's appeal where lawful while in Civil Appeal No. 93 of 2015 the respondent argued that the amount of damages awarded by the trial court was sufficient. It appears that the respondent failed to take a firm stand on which side of the argument to fall. No person can be allowed to take up two positions inconsistent with one another as this amounts to blowing hot and cold at the same time. See South African Revenue Service v Commission for Conciliation Mediation and Arbitration 2016 ZACC 38

[73] The learned trial judge refused to grant the respondent punitive/exemplary damages on the ground that the case did not fall in the categories in which

punitive or exemplary damages can be granted. In Omunyokol v Attorney General (2012) UGSC 4, the Supreme Court stated:

> 'The principles governing the award of exemplary or punitive damages were set out by Lord Delvin in the case of Rooks vs. Barnard (supra) and generally approved in the case of Cassel & Co Ltd vs. Broome (1972) A.C. 1027. In Rooks vs. Barnard (supra), it was decided that the three cases where exemplary damages might be justified were:
>
> 1.Where the government servants had been guilty of "oppressive, arbitrary or unconstitutional action".
> 2.Where the "defendant's conduct had been calculated by him to make a profit for himself which may exceed the compensation payable to the plaintiff" and
>
> 3.Where such an award was sanctioned by Statute.
> Furthermore, Lord Delvin stated that where exemplary damages are awarded, three considerations were to be borne in mind, namely,
>
> 1.The plaintiff cannot recover exemplary damages unless he was a victim of punitive behaviour.
>
> 2.Restraint is to be exercised, for an award of exemplary damages can be used as a weapon both for or against liberty.
>
> 3.The means of the parties while irrelevant in the assessment of compensation are relevant to the award of exemplary damages.'

[74] I take it that the foregoing authorities clearly set out the law in relation to exemplary and or punitive damages in Uganda. I am inclined to view the conduct of the Commissioner for Customs and his staff as having been extremely reckless and oppressive to the respondent. Out of all entries for which the appellant sanctioned the respondent only 1 was found to have been lawfully done by the trial court. All the sanctions based on entries made from May 2007 to December 2010 were found to be unlawful. 19 entries or so called entries turned out to be non-existent! 7 entries belonged to other clearing agents and were wrongly imputed to the respondent. This behaviour formed a pattern of oppressive behaviour consistently for a period that lasted slightly over 3 years. The appellant had the correct information in its

possession and sanctioned the respondent on what turned out to be false grounds. No explanation was provided for this oppressive conduct.

[75] I am satisfied that the learned trial Judge erred in law not to award exemplary damages to the respondent. This was not simply a case of negligent conduct. It revealed an established pattern of oppressive behaviour by public servants. I would award the respondent shs.100,000,000.00 as exemplary damages. I would allow ground 3 of Civil Appeal No. 93 of 2015.

[76] Regarding ground 2 in Civil Appeal No.93 of 2015, the respondent did not submit on that ground. I would therefore presume that it abandoned the ground.

[77] In light of the foregoing, I would dismiss grounds 3, 4 and 5 of Civil Appeal No.169 of 2015 and grounds 1 and 2 of Civil Appeal No.93 of 2015 for lack of merit.

[78] I would dismiss Civil Appeal No. 169 of 2015 for lack of merit with costs.

[79] I would allow Civil Appeal No. 93 of 2015 in part with 50% of the costs on appeal.

[80] I would allow costs in the court below to successful party, Prompt Forwarders and Packers Uganda Ltd.

[81] I would dismiss Court of Appeal Civil Application No.23 of 2016 with costs.

**Decision**

[82] As Kibeedi and Gashirabake, JJA agree Civil Appeal No. 169 of 2015 is dismissed with costs. Civil Appeal No. 93 of 2015 is allowed in part with 50% costs. Exemplary damages of Shs.100,000,000.00 are awarded to the Prompt Forwarders and Packers Uganda Ltd. Civil Application no. 23 of 2016 is dismissed with costs.

Signed, dated and delivered at Kampala this 14th day of July 2022.

Fredrick Egonda-Ntende
**Justice of Appeal**

**THE REPUBLIC OF UGANDA**

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

*[Coram: Egonda-Ntende, Muzamiru Kibeedi, Gashirabake JJA]*

**CIVIL APPEALS NO. 93 OF 2015 & 169 OF 2015**

*(Arising from High Court Civil Suit No. 409 of 2010)*

**BETWEEN**

Commissioner of Customs ==========Appellant/Cross-Respondent

**AND**

Prompt Packers & Forwarders Ltd ==========Respondent/Cross-Appellant

*(An appeal from the judgment of the High Court of Uganda Commercial Division [Wangutusi, J] delivered on 18th December 2014)*

**JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JA**

I have had the benefit of reading in draft the Judgment prepared by My Lord, Hon. Justice Egonda-Ntende JA. I concur and have nothing useful to add.

Dated at Kampala this 1st day of July 2022

**Muzamiru Mutangula Kibeedi**
**JUSTICE OF APPEAL**

# THE REPUBLIC OF UGANDA

## IN THE COURT OF APPEAL OF UGANDA

## AT KAMPALA

*[Coram: Egonda-Ntende, Muzamiru-Kibeedi, Gashirabake, JJA]*

**CIVIL APPEALs N0. 93 OF 2015 & 169 of 2015**

*(Arising from High Court Civil Suit No. 409 of 2010)*

**BETWEEN**

**COMMISSIONER OF CUSTOMS::::::APPELLANT/CROSS-RESPONDENT**

**AND**

**PROMPT PACKERS &**

**FORWARDERS LTD::::::::::::::::::RESPONDENT/CROSS- APPELLANT**

*(An Appeal from the Judgment of the High Court of Uganda (Commercial Division) (Wangutusi, J) delivered on 18th December 2014)*

## JUDGMENT OF CHRISTOPHER GASHIRABAKE, JA

I have had the benefit of reading in draft the Judgment prepared by Hon. Justice Egonda-Ntende, JA. I concur with the reasoning and conclusions therein. I have nothing useful to add.

**Dated at Kampala this.....18th.....day of .....July.....2022**

Christopher Gashirabake,
**JUSTICE OF APPEAL**