THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 216 OF 2019

(ARISING OUT OF HIGH COURT CIVIL SUIT NO.257 OF 2016)

HON. MR. JUSTICE ANUP SINGH CHOUDRY::::::::::::::::APPELLANT

VERSUS

NATIONAL WATER &
SEWERAGE CORPORATION::::::::::::::::::::::::::::::::::::RESPONDENT

(Appeal from the Judgement and decision of the High Court at Kampala before the Hon. Lady Justice H. Wolayo dated 5th July 2017 in HCCS No.257 of 2016)

CORAM: HON. LADY. JUSTICE ELIZABETH MUSOKE, JA

HON. LADY. JUSTICE CATHERINE BAMUGEMEREIRE, JA

HON. MR. JUSTICE STEPHEN MUSOTA, JA

JUDGMENT OF HON. MR. JUSTICE STEPHEN MUSOTA, JA.

Facts of the Appeal

The appellant (Hon. Mr. Justice Anup Singh Choudry) sued the respondent (National Water & Sewerage Corporation(NWSC)) in the High Court of Uganda by way of ordinary plaint filed in the Civil Division of the High Court of Uganda at Kampala on 1st October, 2014. In paragraph 3 of the plaint, the cause of action is stated to be

of; negligence, procedural error, unlawful disconnection of water supply, anxiety, distress, and breach of statutory duty.

The plaintiff sought declarations and orders as follows;

a) An order for the declaration that the Meter and Bill computations made since 2009 in a non-sustainable manner be declared null and void and the defendant be directed to make good all the illegal bills.

b) A declaration that the disconnection Order dated 19/12/2013 was marred by procedural errors, irregularities and was null and void.

c) A report dated 31/12/2013 from National Water and Sewerage Corporation was marred by negligence, thus detrimental to the Plaintiff

d) A permanent injunction restraining the Defendant from further negligent act particularly disconnecting the plaintiff

e) Special Damages

f) General Damages

g) Exemplary and or punitive damages

h) Costs of the suit

i) Any other relief deemed fit by this honorable court

The defendant (NWSC) on the 24th October, 2014 filed a Written Statement of Defence denying any liability with a counterclaim for recovery of UGX 710,569 as outstanding bill for the water supply services made to the Appellant/plaintiff. The defendant prayed in the WSD for the suit to be dismissed with costs to the defendant. In the counterclaim NWSC prayed for the following orders;

a) Payment of Shs 710,569/= (Seven Hundred ten thousand, five hundred sixty-nine shillings)

b) General Damages

c) Costs of the counterclaim

d) Interest of 25% per annum on (a) above from the time of default till payment in full

e) Interest of 25% on (b) and (c) from date of judgment till payment in full

The Appellant as Defendant to the counterclaim filed a Reply to the Statement of Defence and Counterclaim. The case was heard *interparty* through witness statements and written submissions. Each party had a chance to cross examine and examine witnesses.

After the hearing, a Judgment was delivered in favour of the Respondent (NWSC) with the following orders;

1. The plaintiff's suit is dismissed
2. The plaintiff shall pay the defendant outstanding bill of 710,569/=
3. The plaintiff shall pay the costs of the suit and counterclaim.

The appellant was dissatisfied with the decision and filed this appeal on the following grounds;

1. ***The judgment is unsafe due to the delay of 4 months in delivering it thus losing recollection of evidence, facts and laws more particularly demonstrated by the various grounds below***

2. ***The Learned Trial Judge erred in law and fact in holding that disconnection was lawful because outstanding bills had not been paid for 30 days under section 92(a) (mobile)(b) of the Water Act Cap 152 and in failing to evaluate evidence that the said outstanding amount was challenged due to water leak and was subject of pending investigation by the Water Authority in Entebbe.***

3. ***The earned trial Judge erred in law and in fact in overlooking the basis of assessment of water supplied under section 44(3) (a) (b) and (c) of the Water Act 152 and the validity of the invoices rendered contrary to section 2(3) which states that the water supplied may be assessed on the quantity of water supplied as regulated by a meter installed on a consumer's land by the water authority. The judge failed to evaluate that the said meter was not installed on the plaintiff's land.***

4. ***The learned judge erred in law and in fact by wrongfully evaluating evidence of Mr. Ojok that he never received complaint from the previous owner since 2012 about the leaks when the previous owner's house was demolished in 2008 after he sold it to the plaintiff and present building was constructed in 2009***

5. ***The Judge erred in law and in fact in holding that Plaintiff's expert found that there was a leakage after the water Tanks. This was a grave error of recollection of evidence after 4 months because the there was no leakage after the water tanks inside the house or outside in the plaintiff's compound; plaintiff's plumber found a leak at the point of the meter joining the G pipe and not after the meter.***

6. ***The learned judge erred in law and in fact in failing to read Plaintiff's letter to the General Manager National Water Entebbe dated 27th March, 2014 marked exhibit C page 2 of the plaint which concluded that the leak was in the meter.***

7. ***The trial judge erred in law and in fact that the leak was after the meter and in the tanks in the house.***

8. ***The learned judge erred in law in interpreting section 73(1) of the Water Act as no authority's works were on plaintiff's land nor was any Notice under this section given to the plaintiff to effect, repair or maintain any works. The said statutory proviso was subject to Notice being served***

9. ***The learned judge erred in law in failing to hold that the plumbers from the Water Board were both negligent and incompetent as they failed to identify the leak which was done by the plaintiff's plumber by using the right detection rod/and or equipment***

10. ***The trial Judge erred in law and in fact when holding that the invoices in the sum of 710,569 shillings are payable when it is basic principle of common law that any incorrect, inaccurate, or wrong invoice cannot be enforced in law because the leak could not be render them correct***

11. ***The learned Judge acted wrongfully and contrary to judicial ethics when she delivered the Judgment in the absence of the defendants.***

The appellant proposes that the following orders be granted;

1. ***That the appeal be allowed and the judgment and orders of the High Court be set aside***
2. ***Costs of the appeal and costs of lower court be awarded to the appellant.***

Duty of a first appellate court

This being a first appeal it is important that I state the duty of this Court as a first appellate court. The role of this court as a first appellate court is laid down under **Rule 30(1)** of **the Judicature (Court of Appeal Rules) Directions** which provides that;

"30. Power to reappraise evidence and to take additional evidence.

(1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—

(a) Reappraise the evidence and draw inferences of fact; and

(b).....

This Court is therefore obliged to reappraise the inferences of fact drawn by the trial court.

In the case of **Kifamunte Henry v. Uganda Criminal Appeal No. 10 of 1997** the Supreme Court had this to say on the duty of a first appellate court;

"We agree that on a first appeal, from a conviction by a Judge the appellant is entitled to have the appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour the appellate Court must be guided by the impressions made on the judge who saw the witnesses. However, there may be other circumstances quite apart from the manner and demeanour, which may show whether a statement is credible or not which may warrant a court in differing from the Judge even on a question of fact turning on credibility of witness which the appellate Court has not seen. See

Pandya v. R [1957] EA 336, Okeno v. Republic [1972] EA 32 and Charles Bitwire v. Uganda Supreme Court Criminal Appeal No. 23 of 1985 at page 5.

Furthermore, even where a trial Court has erred, the appellate Court will interfere where the error has occasioned a miscarriage of justice…"

In Banco Arabe Espanol Vs. Bank of Uganda Supreme Court Civil Appeal No.8 of 1998 the Supreme Court of Uganda applied the Kifamunte standard in a civil matter. Therefore, the duty of a first appellate court is to review the evidence of the case and to reconsider the materials before the trial Judge then make its own conclusion. I shall consider the above principles in determining this appeal.

Representations and submissions

At the hearing of the appeal, Mr. Joram Sebuliba and Mr. Wilberforce Kazibwe appeared for the Respondent and the Appellant who represented himself but was absent on the day of hearing this appeal assigned his legal assistant to attend the hearing on his behalf.

The parties filed written submissions which they agreed and prayed that Court adopts. Court adopted the parties' submissions as prayed and they have been considered in this judgment.

Determination of the appeal

The parties identified five issues which I shall deal with in the order in which they were raised/stated in the submissions of the parties starting with the issue 1 through to issue 5.

The issues identified are;

Issue 1 Whether the learned trial Judge erred in law and fact by failing to visit locus and thus coming to the wrong conclusion?

Issue 2 Whether the Judgment is unsafe due to the delay of 4 months in delivering it thus losing recollection of evidence?

Issue 3 Whether the learned trial Judge erred in law and fact in holding that the Respondent's plumbers were not negligent and incompetent?

Issue 4 Whether the learned trial Judge erred in law and fact in holding that the invoice of UGX 710,564/= (Uganda Shillings Seven Hundred Ten Thousand five hundred sixty-nine only) was enforceable despite the fact that it was disputed?

Issue 5 Whether the learned trial Judge erred in law in misinterpreting statutory provisions?

Issue 1 Whether the learned trial Judge erred in law and fact by failing to visit locus and thus coming to the wrong conclusion?

The appellant submits that this issue is based on judicial ethics and judicial integrity for a Judge to form his or her or their mind they have to visit the *locus in quo* in order to ascertain the true picture in contention by the two parties by him or her or them. That this is prudential and in his view is based also on the knowledge of a reasonable man that before agreeing let me have the picture physically other than virtually.

For this submission the appellant relied on John Marshall who said that "the power of the judiciary lies not in deciding cases, not in imposing sentences, not in pushing

for the contempt, but in trust, faith and confidence of the common man" **(Judicial Ethics and Intellectual Integrity by Justice Sudhanshu Dhulia)**

In reply the respondent submitted that visit to a *locus in quo* is essentially for the purposes of enabling judicial officers to understand the evidence better. The visit is intended to harness the physical aspects of the evidence in conveying and enhancing the meaning of the oral testimony and therefore must be limited to the inspection of the specific aspects of the case as canvassed during the oral testimony in court and to test the evidence on those points only. That in essence a *locus in quo* visit is necessary where the judicial officer believes it would aid them to understand the evidence better. Counsel cited the case of ***Adam Bale and 2 Others versus Willy Okumu High Court Civil Appeal No.21 of 2005*** for the submission that *locus in quo* visit is discretionary and not mandatory. That the appellant herein had the right to apply to court seeking a *locus in quo* visit however, he did not do so. Therefore the appellant cannot purport to fault the learned trial Judge for not carrying out a locus in quo visit since it is even not mandatory.

Determination of Issue 1

I am inclined to agree with the case of the respondent on this issue. Visit to *locus in quo* is not mandatory in civil cases which are not land disputes.

The question of *locus in quo* visits has been considered by this Court in the case of ***Bongole Geofrey & 4 Others v Agness Nakiwala (CIVIL APPEAL No. 0076 OF 2015).*** In ***William Mukasa vs Uganda 1964 EA 698 at 700 Sir Udo Udoma CJ (as he then was)*** held that a view of a *locus in quo* ought to be, to check on the evidence already given and where necessary and possible, to have such evidence ocularly demonstrated in the same way a court examines a plan or map or some fixed object already exhibited or spoken of in the proceedings. It is essential that after a view a

Judge or magistrate should exercise great care not to constitute himself into a witness in the case. Neither a view nor personal observation should be substitute for evidence.

Visits to the *locus in quo* are provided for in the Chief Justice's Practice Direction No.1 of 2007 which in Paragraph 3 states that

> ***"During the hearing of land disputes, the court should take interest in visiting the locus in quo…."***

This is clearly not requiring the visit to be mandatory. All it requires is that the court should take interest in visiting the *locus in quo* and decide whether to do it or not. Reasons must be given why it is not necessary to visit the *locus in quo* and this is only in land disputes.

The question then is; was **High Court Civil Suit No.257 Of 2016** a land dispute? The obvious answer here is that no it was not. Because the dispute was on whether or not the bill imposed by the respondent was properly assessed given the appellant's claim that there was a water leak.

Therefore, it follows that in this particular case visiting the *locus in quo* was not necessary and as such the omission to do it was inconsequential and not in error of either law or fact. On the other leg of the issue of whether the failure to visit the *locus in quo* is the reason why the decision was made in error is not based on any findings of the Judge.

I accordingly would answer issue 1 in the negative.

Issue 2 Whether the Judgment is unsafe due to the delay of 4 months in delivering it thus losing recollection of evidence?

Appellant Submissions.

On this issue the appellant submits that the delay in delivering the Judgment by the trial Judge caused her not to recollect evidence properly and thereby coming to the wrong conclusion. The appellant cites many examples of evidence not considered by the trial Judge. Examples are;

Example 1 That the trial Judge failed to consider Exhibit C attached to the plaint which is a letter showing that the respondent had identified the leak at the G point with the lead pipe which was not maintained. That the next day the appellant sent the respondent a letter with the report of the investigation and a photo of the leak which was identified. That the respondent thereafter came and fixed the leak. That had the Judge delivered the Judgment in time she would have recollected this very important evidence. That Judgments delivered over 3 months are unreasonable as per **S. Muthu Nurayanan vs Paulary Nuicker 12 Sept. 2018.**

Example 2 that due to the Judge delivering Judgment after 4 months she erroneously found that the leak was found after the water Tanks and this grossly impaired her Judgment because actually the leak was found at the G connection in the meter.

Example 3 that Mr. Ojok evidence that he never received any complaints from the previous owners of the property was not well evaluated because it is not possible that he would know that since he was in office starting 2012 yet the old building was demolished in 2008 and the plaintiff built in 2009.

Example 4 that the trial Judge erred in law in finding that the plaintiff's expert found the leakage after the water tank because there is no leakage inside the house or

outside the house in the compound. It was found at the point of the meter joining the G pipe and not after the meter.

Example 5 that the trial Judge failed to read plaintiff's letter to the General Manager National Water Entebbe dated 27th March 2014 marked Exhibit C page 2 to the plaint which concluded that the leak was in the meter.

Example 6 the judge erred in law in failing to find that the plaintiff had paid 300,000 as reasonable amount for consumption of water and he did not refuse to pay.

Respondent submissions

The Respondent on the other hand submits that; ***the Uganda Judicial Code of Conduct Principle 6.2*** on competence and diligence provides that where a judgment is reserved, it should be delivered in 60 days unless for good reason it is not possible. That in this case judgment was delivered within 4 months which is a reasonable time. That relying on **Anil Rai vs State Bihar** litigants should have complete trust and confidence in the results of litigation. That litigants who are uncomfortable with delay to deliver judgments by a court have an option of applying to the court to have the judgment delivered earlier. That the appellant in this case ought to have asked for the judgment to be delivered earlier which he did not do. Further that it is judicially noticed that judicial officers rely, in making Judgments, on the record of proceedings wherein all events as and when they occur before them during the hearing are recorded for evaluation. That as such this ground of appeal is academic, and ought to fail because the period of 4 months is not a delay and in that period the Judge could recall the facts of the matter.

In rejoinder the Appellant submits that there are several authorities which hold that Judgment delivered after three months are unsafe as the Judge cannot recall evidence of the demeanor of the parties which her Lordship in this case overlooked.

Determination of Issue 2

The reason why the appellant says the Judgment is unsafe due to the delivery of Judgment after 4 Months is that the Judge as a result did not recollect certain evidence.

Whereas ***Principle 6 of the Judicial Code of Conduct*** provides for Competence and Diligence and in ***Paragraph 6.2*** it states as follows;

> ***6.2 A judicial Officer shall promptly dispose of the business of the court, but in so doing, must ensure that justice prevails. Protracted trial of a case must be avoided wherever possible. Where a judgment is reserved, it should be delivered within 60 days, unless for good reason, it is not possible to do so.***

I do not see the link between the 4 months taken to deliver the judgment and the failure to recollect evidence. It is unclear how the appellant came to the conclusion that the delay is the reason why the Judge did not consider some of the evidence given as examples of omitted evidence. It appears to be a result of imagination or conjecture.

The appellate court only deals with the record of proceedings and the trial Court creates that record. In this case the appellant relied on that very same certified record to file this appeal. I therefore find that delay to deliver Judgment does not directly translate into error of law and fact or a failure to recollect evidence.

I am accordingly not convinced by the Appellant's case and find that the 4 months taken to deliver the Judgment did not lead to a failure of the trial Judge to recollect evidence. Accordingly issue 3 is determined in the negative.

However, the real complaint in this issue appears to be that the Judge made a mistake in the evaluation of the evidence. The reason for this submission is

1. the claim that the leakage was at the meter in the G pipe connecting to the meter, and;
2. the claim that the appellant had paid the bill totaling 300,000= which he considered as the reasonable sum of the bill outstanding/unpaid.

Therefore, what is clearly demonstrated and admitted by the appellant is that he had not paid the whole sum billed and his claims that there was a leakage were rejected by the respondent. The question is; did the Judge evaluate the evidence properly to come to the conclusions she did?

The evidence on the sums due and owing and the leakage is in the record of appeal. The record shows that the appellant presented only himself as a witness and he made a witness statement of 10 paragraphs where he does not mention any of the things which he claims to constitute evidence in the above stated examples of error of recollection of evidence by the trial Judge. Whereas he states that he hired an expert plumber who found the leak at the G pipe at the meter which was outside his premises he did not bring that expert as a witness and the particulars of the expert are not on court record. Whereas the appellant later swore an affidavit emphasizing these facts and attaching a letter addressed to the General Manager NWSC Entebbe this letter is not proof of the alleged facts that the appellant paid the sum of 300,000= and that the leakage was at the G pipe or that it is the responsibility of the Respondent.

On the other hand, Anthony Ojok a Principal Engineer National Water & Sewerage Corporation, Entebbe was presented as a witness by the Respondent. He confirmed that the bill of 710,000= arose from consumption and the leakage could have been inside the plaintiffs appliances.

Therefore, even on the evidence alone on record it is not justifiable to fault the trial Judge for making error in judgment yet the appellant did not present any conclusive evidence of the technical matters of engineering which he sought the court to find in his favour. It is a settled principle of law that he who alleges must prove. A plaintiff has both the legal and evidential burden to prove his case on a balance of probabilities. It is also the law under ***Section 101 (1) of the Evidence Act Cap 6*** that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts must prove those facts and the burden of proof in a suit or proceeding lies on the person who would fail if no evidence at all were given on either side. Further the evidential value of the testimony of an Engineer as compared to that of the Appellant on matter of G pipes is greater and the trial Judge was right to agree with it.

I accordingly find that the trial Judge comprehensively evaluated the evidence and rightly found in favour of the respondent.

Issue 3 Whether the learned trial Judge erred in law and fact in holding that the Respondent's plumbers were not negligent and incompetent?

Appellant's submissions.

On this issue, the appellant submitted that the learned trial judge erred in law and fact when she failed to hold that the corporation plumbers were negligent and incompetent as they failed to identify the leak. That they owed the appellant a duty

of care and the risk was foreseeable because of the escalation in the water usage which was abnormal and their failure resulted into breach of the duty of care and the plaintiff/appellant suffered damages when the consumption had escalated on a monthly routine. That the law on negligence is settled in the land mark case of ***Donoghue v Stevenson [1932] UKHL 100.***

The appellant further submitted that common sense had flown out of the court when the defendant's plumbers alleged that the leak was after the tank on top of the 3 storied house to which the trial Judge concurred because the 55 cubic meters of water a month would have flooded the whole house. That holding so without visiting the *locus in quo* was in error.

That the respondent's plumbers' failure to locate the leak amounted to professional negligence. That another plumber was engaged by the appellant and located the leak.

In ***Bolam v Friem Hospital Management Committee (1957) 1 WLR 582*** it was held that what was common practice in a particular profession was highly relevant to the standard of care required. A person falls below the appropriate standard and is negligent, if he fails to do what a reasonable person would do in the circumstances.

Further that in ***Bannet v Chelsea and Kensington Hospital (1968)1 ALL ER 1068*** a man died after not being treated yet he was received in the hospital. The hospital was not held liable because even if he had been treated, he would still have died. That this case is distinguishable from the instant case because in this case if the respondent's engineer and team had practiced prudential measures expected of a qualified plumber, the leak would have been located and the problem eradicated.

Respondent Submissions.

For the respondent, it was submitted that they did owe the appellant (as a customer) a duty of care. They also agree with the authority of ***Donoghue v Stevenson [1932] AC 562*** where three ingredients must be fulfilled, *to wit*;

a. Existence of a duty of care owed by the defendant to the plaintiff
b. Breach of the said duty of care
c. Plaintiff has suffered damage resulting from the defendant's breach of its duty

That it is not in doubt that both parties agreed and it was their testimony that there was a leakage at the Appellant's premises. However, it was DW1's testimony that the leak was not due to the meter being faulty or within their scope of fulfilling their duty towards the Appellant. That DW 1 Anthony Ojok testified that the meter and the pipes were dug up and it was found that there was no leakage before the meter. Further that the leakage could have been within the Appellant's appliances specifically within the guard's toilet which was not within the Appellant's appliances specifically within the guard's toilet which was not within the Respondent's Area of management.

DW1 further testified that the Respondent's duty or obligations were from the Respondent's main supply pipe to the meter. Thereafter the meter, the client takes on the responsibility and according to the investigations the respondent's system was never faulty and whatever leakage existed, was after the meter. That the appellant himself during cross examination admitted that the leakage was after the meter and the same was reading correctly which corroborated the Respondent's findings that the system was functioning properly. That the Appellant's expert on whose basis he faults the Respondent's plumbers for incompetence was never presented as a witness

and the appellant during cross examination could not mention the expert's particulars.

The respondent further submitted that it is trite law under ***section 43 of the Evidence Act Cap 6*** that when court has to form an opinion upon a point of foreign law, science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons especially skilled in that foreign law, science or art or in questions as to identity of handwriting or finger impressions are relevant facts. That it is also the law under ***Section 101 (1) of the Evidence Act Cap 6*** that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts must prove those facts and the burden of proof in a suit or proceeding lies on the person who would fail if no evidence at all were given on either side.

That the appellant failed to prove his case against the Respondent as required in the Evidence Act and therefore the learned trial Judge rightly evaluated the evidence, applied the law and facts and reached a proper decision in the matter. That the respondent's plumbers were neither negligent nor incompetent.

Submissions in rejoinder by the appellant.

In rejoinder, the appellant submitted that the respondent's plumbers failed to identify where the leak was because they did not have the right equipment that is; Water Detection Equipment. That they were negligent in their findings as well because they found that the leakage was inside the house which was not true and all the conditions in the **Donoghue vs Stevenson** case are satisfied. The plumbers were negligent for not using the right equipment.

Determination of Issue 3

The learned trial Judge dealt with the issue of statutory duty at pages 3-5 of the Judgment. Most importantly she stated that;

> ***"Under section 73(1) of the Water Act, the owner of land has a responsibility to repair and maintain works connecting the land to the works of the authority***
>
> ***Under section 73(2) if land is connected to the works of the authority by a combined connection, a notice to repair may be served on any or all the land owners***
>
> ***The plaintiff asserts that the meter was off his property and therefore the defendant had a responsibility to fix plumbing problems after the meter***
>
> ***This argument is flawed because section 73 of the Water Act places responsibility to repair works on the land owner, more so plumbing problems after the meter. This is because water after the meter is charged on the property owner regardless that it is wasted or that it leaked.***
>
> ***I find that the defendant acted reasonably when its engineers investigated the complaint of excessive water consumption and recommended the plaintiff gets a plumber to fix the problem.***
>
> ***Therefore, the defendant was not in breach of its statutory duty"***

I agree with the analysis of the trial Judge. There was neither a common law duty or a statutory duty owed to the appellant by the Respondent based on the evidence

presented before the Judge. The evidence was below the required standard of proof by balance of probabilities

Issue 4 Whether the learned trial Judge erred in law and fact in holding that the invoice of UGX 710,564/= (Uganda Shillings Seven Hundred Ten Thousand five hundred sixty-nine only) was enforceable despite the fact that it was disputed?

Appellant's Submissions.

On this issue the appellant submitted that the learned Judge erred in law and fact in applying Section 95(2)(a)(b) of Water Act Cap 152 which is subject to section 44(3)(b) and (c), where assessment of bills has to be on a meter on a consumer's land. The meter was not on consumer's land and the invoices rendered were therefore invalid and could not *inter alia* be paid in 30 days. That the learned Judge erred in law to rule that the invoices had to be paid in 30 days.

At common law it is perfectly within a customer's right to dispute invoices because they are not legally binding as they are subject to challenge and without paperwork and other evidence the recipient does not have to pay them.

The invoices may be disputed for any number of reasons and in this case, it is the leak and incorrect consumption of water. The invoices cannot be rendered correct retrospectively to generate a correct invoice as the actual consumption cannot be assessed. Hence all the invoices are null and void and not payable. The defendant's counterclaim fails. The learned Judge erred in law in awarding the sum of 710,569 shillings to the defendants.

Plaintiff kept paying what was reasonable while disputing the amount anyway and when the dispute was being investigated the water was cut off on 19th December

2013 despite the December bill not being delivered. That the learned Judge did not examine the Bills or look at a statement of account in reaching her conclusion that the disconnection was lawful in absence of evidence. Moreover, invoices cannot be recovered after 6 years as they are statute barred.

Respondent's Submissions.

The respondent submitted that section 95(2)(a) and (c) of the Water Act Cap 152 empowers the respondent to restrict or disconnect to restrict or disconnect the supply of water to any land where any rate, charge, fee or any interest or penalty payable in respect of any water supplied by the water authority is outstanding for 30 days from the day on which it became due.

That it was DW1s testimony that the disconnection of the Appellant's water supply was lawful owing to the Appellant's nonpayment of his water bills had accumulated to the sum of UGX 710,000/= to which he relied on the Appellant's bill that was presented to court and exhibited as DEx1.

DW1 further testified that billings are conducted basing on the readings or recordings of the water meter on the consumer's land indicating the amount of water supplied and duly consumed by the customer per Section 94(3a) of the Water Act Cap 152. That throughout the trial no evidence was ever presented before the court by the Appellant to show that he had fully paid his water bills as required by the Respondent and neither did he show that the outstanding sum as demanded or owing to the Respondent was owed for a period less than 30 days.

That it is important to note that though the appellant contends that he disputed the bill or invoice for reasons of the leakage and incorrect consumption of water, the Appellant testified and acknowledged that the leakage was after the meter which

clearly indicated that the said water was consumed through the meter. That accordingly the learned trial Judge evaluated the evidence and found for the defendant/respondent that there was no basis to dispute the bill.

Determination of Issue 4

Having found that the trial Judge correctly evaluated the evidence, it follows that in the absence of any proof of payment of any monies which the appellant claims to have paid (the 300,000 UGX) there was no basis for the Judge to hold and find that the invoice was defective or unpayable. On the contrary the Respondent presented in Court DExh. 1, a water bill of 30 September, 2014, showing the outstanding sum of 710,000 UGX. Therefore, there was enough evidence of the outstanding bill. The failure by the appellant to present evidence of a leakage as claimed and his failure to produce the expert witness to make testimony as to the duty of the Respondent, his other claim of the bill being excessive was left less probable.

By the time of delivering Judgment the bill as charged by the Respondent has been successfully justified and the Appellant has succeeded in failing to present decisive evidence to prove his dispute of the unpaid Bill of 710,000 UGX.

Issue 5 Whether the learned trial Judge erred in law in misinterpreting statutory provisions?

Submission of the Appellant.

The appellant submitted that the learned trial Judge erred in law and fact in overlooking the basis of assessment of water supplied under section 44(3)(a)(b) and (c) of the Water Act Cap 152 and the validity of the invoices rendered contrary to Section 2(3) which states that the water supplied may be assessed on the quantity of water supplied as regulated by a meter installed on a consumers' land by the water

authority. That the trial Judge failed to evaluate that the said meter was not installed on the plaintiff's land. That the meter is not installed on the consumer property. It was outside the plaintiff's boundary. It is the property of the Municipality which has to maintain it. There is possibility of meter tampering, theft and vandalism making its installation unsafe besides the leakage by installing the meter outside the perimeter wall. That the defendants are in breach of section 70(2) of the Water Act when they installed the water meter outside the perimeter walls.

Further that the learned judge erred in law in interpreting Section 73(1) of the Water Act as no Authority's works were on Plaintiff's land nor was any Notice under this section given to the plaintiff to effect, repair or maintain any works. The said statutory proviso was subject to Notice being served. That section 73(1) of the Water Act Cap 152 provides that an authority may by notice in writing to the owner of the land require the owner to repair within the time specified in the notice, any works connecting that land to the works of the authority, or to do anything necessary for the service provided to the land by the authority.

On the contrary there was no such notice given out to the plaintiff because their was no determined point of the leakage at time since the engineer and his team failed to locate the actual point of the leakage in the premises other than there allegation inside that the leak is inside the house after the water tanks. On the same note the notice referred to in Section 73 Cap 152 is a statutory notice which needed to be reduced in writing with the Authority Engineer's directions that plaintiff get a private plumber. There was no notice under section 73.

Submission of the Respondent

The respondent submitted that the claim by the appellant that the trial Judge erred in law in interpreting the statutory provisions of section 2(3) and 44(3) (a)(b) and (c) of the Water Act Cap 152 which were never the subject of interpretation in this matter at the High Court is a misdirection.

None the less, the proper provisions of the Water Act Cap 152 that were a subject of Interpretation in this matter and basing on the issues that were raised by the parties for determination by the learned trial judge were section 95(2) which empowers the Respondent to restrict or disconnect the supply of water to any land where any rate, charge, fee or any interest or penalty payable in respect of any water supplied by the Respondent is outstanding for 30 days from the day on which it became due; That section 73(1) which imposes a responsibility on the Respondent's customers or consumers of its services to repair and maintain any works of the Respondent upon notice from the Respondent which according to the wording of the provision of the law is not mandatory.

That in the circumstances, having found and acknowledged that the leakage was after the meter, the Appellant ought to have known as a prudent and reasonable member of society that a duty was bestowed on him to further investigate and repair the same with or without the Respondent's call to fulfil that obligation. That the learned trial Judge applied the literal rule of interpretation of the statute. The literal rule means that the words need to be interpreted in the strict ordinary meaning and the scope of words should not be considered more than its ordinary meaning. That the words need to be interpreted in their ordinary and natural meaning unless the object of the statute suggests otherwise. The learned trial judge applied the sections

of the law through the interpretation of the sections strictly. That there is no merit in this issue.

Appellant's submission in rejoinder.

The appellant submits that statutory provisions must be strictly interpreted and they are not subject to any other terms and conditions. That section 95(2) would only apply if the invoice rendered was legally enforceable. That it is submitted that the invoice was incorrect, inaccurate, wrong and subject to challenges and therefore unenforceable in law.

Determination of Issue 5

The statutory provisions of section 2(3) and 44(3) (a)(b) and (c) of the Water Act Cap 152 were never the subject of interpretation in this matter at the High Court. The trial Judge did not deal with these sections at all. I cannot therefore fault her for misinterpreting what she never actually interpreted.

The section 95(2) of the Water Act empowers the Respondent to restrict or disconnect the supply of water to any land where any rate, charge, fee or any interest or penalty payable in respect of any water supplied by the Respondent is outstanding for 30 days from the day on which it became due.

Section 73(1) of the Water Act imposes a responsibility on the Respondent's customers or consumers of its services to repair and maintain any works of the Respondent upon notice from the Respondent which according to the wording of the provision of the law is not mandatory.

I accordingly find no merit in this issue/ground of appeal and accordingly resolve it in the negative.

Conclusion

In the final result, this appeal wholly fails on all grounds and the Judgment and orders of the High Court in Civil Suit No.257 of 2016 are upheld. The appeal is accordingly dismissed but the respondent being the sole provider of water services in Uganda which the appellant needs as a necessary of life, each party shall bear its own costs of the appeal and in the court below.

Dated at Kampala this 10th day of Feb 2022

Stephen Musota

Justice of Appeal

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 216 OF 2019

HON. MR. JUSTICE ANUP SINGH CHOUDRY:::::::::::::::APPELLANT

VERSUS

NATIONAL WATER AND SEWERAGE CORPORATION:::RESPONDENT

(Appeal from the decision of the High Court of Uganda at Kampala (Civil Division) before Wolayo, J. dated 5th July, 2017 in Civil Suit No. 257 of 2016)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE, JA
HON. MR. JUSTICE STEPHEN MUSOTA, JA

JUDGMENT OF ELIZABETH MUSOKE, JA

I have had the advantage of reading in draft the judgment of my learned brother Musota, JA. For the reasons he gives with which I agree, I too, would dismiss this appeal and make the order on costs that he proposes.

As Bamugemereire, JA also agrees, this Court unanimously dismisses this appeal, with each party to bear its own costs of the appeal and in the lower Court.

It is so ordered.

Dated at Kampala this .....10th..... day of.....Feb.....2022.

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Elizabeth Musoke

Justice of Appeal

THE REPUBLIC OF UGANDA
THE COURTOF APPEAL OF UGANDA
CIVIL APPEAL NO.216 OF 2019

CORAM:

HON. LADY JUSTICE ELIZABETH MUSOKE JA
HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE JA
HON. MR. STEPHEN MUSOTA JA

1. HON. MR. JUSTICE ANUP
SINGH CHOUDRY::APPELLANT

VERSUS

NATIONAL WATER AND SEWERAGE
CORPORATION::RESPONDENT

(An Appeal Arising out of the Judgment and Decision of the High Court at Kampala IN Civil Suit No. 257 of 2017 before Hon. Lady Justice H. Wolayo dated 5th July 2017)

Judgment of Hon. Lady Justice Catherine Bamugemereire JA

I have had the privilege of reading in draft the lead opinion of my learned brother Stephen Musota JA. On the crucial points which have to be decided in order to dispose of the appeal there is, as I see it, a striking unanimity, in which I respectfully concur. I therefore agree that the appeal should be dismissed.

10th Feb 2022

Catherine Bamugemereire
Justice of Appeal