# THE REPUBLIC OF UGANDA

## IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

## CIVIL APPEAL NO. 321 OF 2019

*(Arising out of HCCS No. 005 of 2012)*

**UGANDA NATIONAL ROADS AUTHORITY :::::::::::: APPELLANT**

**VERSUS**

**1. PARAMBOT BREWERIES LIMITED**
**2. PARAMBOT DISTILLERS LIMITED :::::::::: RESPONDENT**

**CORAM: HON. JUSTICE MUZAMIRU KIBEEDI, JA**
**HON. JUSTICE CHRISTOPHER GASHIRABAKE, JA**
**HON.JUSTICE OSCAR JOHN KIHIKA ,JA**

**JUDGMENT OF CHRISTOPHER GASHIRABAKE, JA**

This appeal arises out of the decision of Justice Bashaija K. Andrew in High Court Civil Suit No. 321 of 2019.

**Background**

The background of the case as can be discerned from the record is as follows; the respondents sued the Attorney General and Uganda National Roads Authority jointly and severally for negligence and encroachment on the respondent's land. The respondent's case was that the appellants, while constructing the Gayaza-Zirobwe Road, on which the respondent's twin factories are situated, caused injury to the respondent's premises and machinery. By consent of both parties, the Chief Mechanical Engineer of the Ministry of Works was engaged to reconcile the two conflicting valuation reports on the extent of damage occasioned to the respondent's machinery. A

detailed report was made and was admitted as part of the court record.

At the trial court, while resolving the issue of who was liable for the damages caused to the respondent's machinery, it was held that the appellant, together with the Attorney General, were jointly and severally liable for the damages, part of which had been recovered in the report of the Chief Mechanical Engineer of the Ministry of Works. A judgment on admission was entered as against the appellant and the Attorney General and the issue pertaining to damage of the respondent's machinery was accordingly disposed of. Court ordered that the respondent's would proceed to prove their claim in respect of the outstanding issues of compensation for damage to the wall fence, housing structures and land.

The appellant, who was the 2nd defendant at the trial court, was dissatisfied with the decision and filed this appeal on the following grounds;

1. The learned trial Judge erred in law and fact when he failed to properly evaluate the evidence before him and thereby arrived at a wrong decision.
2. The learned trial Judge erred in law and fact when he failed to make a finding that the suit against the appellants was barred by limitation.
3. The learned trial Judge erred in law and fact when he made a finding that the admission of one of the parties to the suit (the 1st defendant) was binding on the appellant.

4. The learned trial Judge erred in law and fact when he found the appellant liable for breaches of an agent in a contract the appellant was not party to.
5. The learned trial Judge erred in law and fact when he found that the Uganda National Roads Authority (Transfer of Assets and Liabilities) Regulations 2012 were not applicable to the dispute between the parties.
6. The learned trial Judge erred in law and fact when he found that a statement made by a State Attorney during trial amounts to an opinion of the Attorney General as envisaged under Article 119 of the Constitution.
7. The learned trial Judge erred in law and fact when he found that the Ministry of Works and Transport supervises the appellant and decisions of officials of the said ministry are binding on the appellant.
8. The learned trial Judge erred in law and fact in awarding the respondents a sum of UGX 31,484,904,247/= to be paid by the defendants jointly and severally.

**Representation**

When this appeal came up for hearing, Counsel Titus Kamya tohether with Counsel H. Muhangi appeared for the appellant while Counsel Joseph Kyazze appeared for the respondents on the 28th day of June 2022.

Both parties filed written submissions which I have duly considered.

**The duty of a first appellate Court**

The duty of a first appellate court is set out in the law as well as in decided cases. It has been stated that the duty of a first appellate court is to re appraise the evidence on record and draw its own inferences. **Rule 30(1)** of the **Judicature (Court of Appeal Rules) Directions SI 13-10** provides that;

*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.*

The Supreme Court also clearly set out this duty in the case of **Kifamunte Henry Vs Uganda, SCCA NO. 10 OF 1997** as follows;

*"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 judgement appealed from but carefully weighing and considering it"*

**NOTICE OF GROUNDS FOR AFFIRMING OF THE DECISION**

The respondents filed in this court a Notice of Grounds for Affirming of the decision on grounds that;

1. The learned trial Judge should have found and should have held that;
   a) The appellant was added as a defendant to the suit by Court order pursuant to a formal application, which the appellant through its then lawyer conceded to, without raising any issue of limitation or otherwise.

b) The appellant through its lawyers raised the same objections in earlier proceedings, which the learned trial Judge at the time, disregarded as being mere afterthoughts.

c) The nature of cause of action and damage complained of by the respondents as well as the activities of the respondents and their agents were continuous from 2012 and thereafter as evidenced by the Chief Mechanical Engineer's report.

d) In the alternative but without prejudice, if at all the respondents claim was caught by limitation, the appellant had by its conduct, throughout the proceedings, also exemplified by the contents of the letter to the Chief Mechanical Engineer acknowledged the liability, opted to settle the same, which conduct revived the action.

2. The learned trial Judge should have found and should have held that;

i) The appellant through execution of the addendum to the construction agreement assumed all the obligations of the Ministry of Works, Transport and Telecommunication under the Gayaza-Zirobwe Road Project including all the liability.

ii) It was incumbent upon the appellant to bring a third party action against the contractor under Order 1 Rule 14 of the CPR.

The respondents filed the Notice of Grounds for Affirming of the decision under **Rule 92 (1)** of the **Judicature (Court of Appeal Rules) Directions** which provides that;

*92. Notice of grounds for affirming decision.*

*(1) A respondent who desires to contend on an appeal in the court that the decision of the High Court should be affirmed on grounds other than or additional to those relied upon by that court shall give notice to that effect, specifying the grounds of his or her contention.*

From my analysis of the Notice of Grounds for Affirming of the decision, the grounds stated therein are also entailed in the grounds of appeal contained in the Memorandum of Appeal filed by the appellant in this court of 21st November 2019. A final court order is affirmed when the evidence submitted supports the decision and the lower court's judgment provides an explanation for that decision. It appears to my mind that granting the affirmation as prayed is akin to determining the entire appeal. It is therefore my considered view that the appellant's grounds in the Notice of Grounds for Affirming of the decision can be and shall be determined within the grounds of appeal as stated in the appellant's Memorandum of Appeal.

**CONSIDERATION OF THE APPEAL**

I now proceed to resolve the grounds of appeal as set out in the Memorandum of Appeal filed in this court on 21st November 2019. I shall resolve the grounds in the format set out in the parties' submissions. The appellant submitted on only grounds 2 to 8.

**Ground 2: The learned trial Judge erred in law and fact when he failed to make a finding that the suit against the appellants was barred by limitation.**

In the submissions of counsel for the appellants, counsel submitted that the matter of limitation was raised by the appellant within its submissions in answer to the preliminary objection as to who of the defendants is liable but the learned trial Judge omitted to rule on the same. That the issue of limitation was well canvassed at the trial court and the same should be determined by this court. Counsel argued that the respondent's cause of action against the appellant in respect to the alleged damage occasioned to the factory equipment by dust ingress was based on the tort of negligence and as such, the suit should have been filed within the statutory time of two years.

Counsel relied on **section 3** of the **Civil Procedure and Limitation (Miscellaneous Provisions) Act** which provides that no action in tort shall be brought against Government, a local authority or a scheduled corporation after the expiration of two years from the date on which the cause of action arose. That the tortious acts complained of arose in 2009 and yet the suit was filed in January 2012 and the amended plaint which was served on the appellant was filed in 2014, about 5 years from the date the cause of action accrued. That the cause of action arose in 2010 when the respondents wrote a complaint to the Executive Director of the appellant or when they received the repot of the Government Analyst.

In the alternative, counsel submitted that the appellant is a scheduled corporation by virtue of the **Civil Procedure and Limitation (Miscellaneous Provisions) Act (Amendment of the Third Schedule) Order SI No. 42 of 2012** and Section 8 of the Act provides that when a scheduled corporation is added to the schedule and cause of action has commenced before, a case must be instituted within 12 months from the commencement order. UNRA became a scheduled corporation on 22nd June 2012 by virtue of the gazette notice. The suit ought to have been filed on 13th June 2014. Counsel relied further on the decision in **Mohammed B Kasasa Vs Jasper Buyonga Sirasi, Civil Appeal No. 42 of 2008** on the notion that statutes of limitation are in their nature strict and inflexible enactments.

For the respondent, counsel submitted that ground one of the appellants Memorandum of Appeal is a general ground that offends the provisions of Rule 86(1) of the Judicature Court of Appeal Rules Directions SI 13-10. The ground is general, not concise and does not specify the evidence on which the trial Judge is being faulted. The requirement under Rule 86(1) is mandatory and not regulatory and is meant to ensure that the court adjudicates on specific issues complained of in the appeal and prevent abuse of court process.

In regard to ground 2, counsel submitted that the issues for determination by the learned trial Judge were framed by consent of the parties and the issue of limitation did not arise at the trial court. Limitation was only raised by the appellant in the submissions as an

afterthought. The appellant, while at the trial court consented to the application to be added as a co-defendant and did not raise the issue that the suit was time barred.

In addition, counsel submitted that the respondent's cause of action was a continuous one and therefore could not be rendered time barred. Counsel argued that if this court is inclined to consider the objection of time limitation, it will necessarily, as a first appellate court have to consider the evidence on record especially the determination by the Chief Mechanical engineer which showed that the injury complained of by the respondents was a continuous one and thus not time barred. Counsel submitted that Section 3 of the **Civil Procedure and Limitation (Miscellaneous Provisions) Act** and the decision in **Nyeko and others Vs Attorney General, SCCA No. 01 of 2016** as relied on by the appellants are not applicable to the instant case. That the case of Nyeko (supra) did not address the issue of limitation where the damage complained of is a continuous one.

Counsel argued that in this case, there was a claim at the trial court of encroachment and appropriation of part of the respondent's land for construction of the road and this encroachment had not ceased even at the time the suit was filed. The respondents pleaded in their plaint that the acts or omissions complained of were committed during the construction of the Gayaza-Zirobwe Road which commenced in 2009 and was only concluded after 2012, thus making the damages continuous.

**Consideration of ground 2**

Ground 2 faults the learned trial Judge for having failed to make a finding that the suit against the appellant was barred by limitation. It is clear from the record that the appellant only raised the issue of limitation of time in its submissions in reply. An application was made to add the appellant as a defendant vide HCMA No. 128 of 2014 and the appellant consented to the application without any objection that the suit was time barred. In addition, when the appellant filed an application for leave to file a written statement of defence out of time, one of the grounds upon which the application was premised was that the appellant and the respondent were engaging in negotiations for possible settlement of the matter and did not raise the issue of limitation.

In the written statement of defence filed by the appellant in reply to the amended plaint, the appellant did not raise any objection to the suit being barred by limitation but instead conceded to having been involved in the road construction of the Gayaza-Zirobwe Road.

I am finding it difficult to fault the learned trial Judge for failing to make a finding that the suit was barred by limitation and yet the appellant never pleaded the same in their pleadings. It is trite law that parties are bound by their pleadings under O.6 r 7 of the Civil Procedure Rules. This position was re – affirmed in the cases of **Jani Properties Ltd versus Dar-es-Salaam City Council, (1966) EA 281; and Struggle Ltd versus Pan African Insurance Co. Ltd, (1990) ALR 46 -47,** wherein Court rightly observed that;

*"the parties in Civil matters are bound by what they say in their pleadings which have the potential of forming the record moreover, the Court itself is also bound by what the parties have stated in their pleadings as to the facts relied on by them. No party can be allowed to depart from its pleadings"*

The Supreme Court has on several occasions emphasized the need for pleadings in civil proceedings to describe the respective cases for the parties and to define the issues in dispute for resolution by the court. In **Interfreight Forwarders (U) LTD Vs East African Development Bank, Civil Appeal No. 33 of 1992**, Oder, JSC held;

> *The system of pleadings is necessary in litigation. It operates to define and deliver it with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them. It thus serves the double purposes of informing each party what is the case of the opposite party which will govern the interlocutory proceedings before the trial and which the court will have to determine at the trial. See Bullen & Leake and Jacob's Precedents of pleading 12th Edition, page 3. Thus, issues are formed on the case of the parties so disclosed in the pleadings and evidence is directed at the trial to the proof of the case so set and covered by the issues framed therein. A party is expected and is bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed to succeed on a case not so set up by him and*

*be allowed at the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by way of amendment of the pleadings.* (Emphasis added)

It is my considered view that the learned trial Judge addressed the issues raised by both parties extensively and cannot be faulted for not having resolved an issue not pleaded. The appellant seems to suggest to this court that having raised the issue of limitation in the submissions of counsel, it formed part of the pleadings, I would think not. Submissions are arguments of counsel summarizing their client's case to court.

The Court of Appeal of Kenya held in the case of **Mr. Fidelis Kitili Kivaya, Returning Officer Njoro Constituency and 2 others Vs Karanja Kabage and another, Civil Application No. 21 Of 2014 (UR 16/2014)** that:

> *"There can be no denying the fact that the effect of the motion, were the same to be granted, would be to introduce the issue of limitation. I say introduce because, admittedly the issue of the Petition having been caught by time was not an issue before the High Court, the same having not been pleaded or countered by the opposite side and definitely evidence not having been led on the same. It appears to my judicial mind that granting the motion as prayed is akin to re-opening the Petition to introduce the issue of Limitation after the High Court has made a determination thereby clearly prejudicing the 1st Respondent who would be denied the opportunity to respond to the issue."*

I would agree with the persuasive decision of the learned Justices of the Court of Appeal of Kenya. The learned trial Judge in this case cannot be faulted for not having addressed a matter not pleaded by the parties. This ground therefore accordingly fails.

**Grounds 3, 6 and 7: The learned trial Judge erred in law and fact when he made a finding that the admission of one of the parties to the suit (the 1st defendant) was binding on the appellant.**

Counsel for the appellant submitted that the under Order 13 rule 6 of the Civil Procedure Rules, judgment on admission can only be entered upon an application made by one of the parties to the suit where an admission of facts has been made and that court cannot enter judgment on admission on its own volition. That the learned trial Judge entered a judgment on admission without any application by the respondent and that the state attorney who submitted the report of the Chief Mechanical Engineer during pre-trial only conceded that he considered the same as binding upon his client. That the said state attorney acknowledged that the appellant had objected to the same and that such admission cannot be binding on the appellant. In addition, such admission should be clear, unambiguous, unequivocal and positive.

Counsel relied on the decision in **Cassam v Sachania, [1982] KLR 191** on the notion that the Judge's discretion to grant judgment on admission of fact under the law is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the plaintiff to judgment.

Counsel argued that in the present case, the learned trial Judge entered judgment against the appellant based on admission made by the Attorney General's State Attorney conceding to the binding nature of the report on his client. Counsel contended that for a judgment to be entered on admission, such admission must be explicit and not open to doubt.

While arguing ground 6, counsel submitted that whereas the opinion of the Attorney General is authoritative and binding on government and its departments, it is not applicable to the present case for reasons that the report in question was not prepared by the Attorney General. That the concession of the state attorney from the Attorney General's chambers is not a legal opinion within the meaning of Article 119 of the Constitution. Counsel submitted that the appellant is a separate and distinct legal entity from its line Ministry and is not bound by the actions of the Attorney General except under Article 119 of the Constitution.

For the respondent, counsel argued grounds 3, 6 and 7 concurrently as in his view, they appear to be intertwined. Counsel submitted that the learned trial Judge made a finding that Section 5 (3) of the UNRA Act places the appellant under the supervision of the government through the Ministry of Works and Transport and that it cannot run away from falling under government. That the appellant, save for being a body corporate, is not conferred with independence from Government so as not to be bound by a position of the Attorney General.

Counsel relied on the decision in **Bank of Uganda Vs Banco Arabe Espanol ,S.C.C.A No. 8 of 1998** in which the Supreme Court held that the opinion of the Attorney General is binding on the government and its departments or agencies. The provisions of Section 5 (3) of the UNRA Act are clear that the appellant is under the supervision of the government through the Ministry of Works. Counsel argued that there is no clause in the Act to the effect that it shall be independent from government or the Ministry of Works and Transport.

Counsel submitted that the Chief Mechanical Engineer stands in the same position like the Chief Government Valuer and is the technical advisor to government and public institutions on technical or mechanical issues falling in his expertise. Counsel argued that the report rendered by the Chief Mechanical Engineer of the Ministry of Works and Transport is binding on the appellant for reasons that the instructions to the Chief Mechanical Engineer were to review the reports prepared by both parties and determine the authenticity of the respondent's claims, the extent of damage, the accuracy of the reports and the value of compensation due.

Counsel argued that the Attorney General studied the determination by the Chief Mechanical Engineer, who is the chief advisor of government on mechanical and related subject matter, and the Attorney General's opinion is generally binding on government and public institutions. Counsel contended that the finding of the learned trial Judge the appellant was bound by the opinion of the Attorney

General since the appellant was under the supervision of the Ministry of Works.

**Consideration of grounds 3, 6 and 7**

The issue for this court to resolve in these grounds is whether the admission of the Attorney General was binding on the appellant and whether the Ministry of Works and Transport supervises the appellant.

**Section 5** of the **Uganda National Roads Authority** Act provides;

*5. Establishment of Authority*

*(1) There is established the Uganda National Roads Authority.*

*(2) The Authority is a body corporate with perpetual succession and a common seal and may, for the discharge of its functions under this Act—*

*(a) acquire, hold and dispose of moveable and immovable property;*

*(b) sue and be sued in its corporate name; and*

*(c) do all acts and things as a body corporate may lawfully do.*

*(3) The Authority shall be under the general supervision of the Minister.*

The appellant, created under Section 5(2) of the UNRA Act above, is a body corporate with capacity to sue and be sued in its own name. Section 5(3) of the same Act places the appellant under the supervision of government through the Ministry of Works and

Transport. Whereas the appellant is a body corporate, the supervision rights are reserved by the minister under the Ministry of Works and transport.

In this case, I find it pertinent to give a background of the report made by the Chief Mechanical Engineer that was adopted by the learned trial Judge. At the initial stages of the suit, the parties had each engaged their respective expert to give a valuation of the extent of damage caused to the respondent's premises and they both generated conflicting reports. On 25th October 2018 the appellant and the Attorney General convened a meeting and agreed to harmonize the varying reports of experts and have a mutually agreed position hence the reference to the Chief Mechanical Engineer of the Ministry of Works and Transport to review the conflicting reports.

The instruction letter from the appellant to the Permanent Secretary, Ministry of Works and Transport appears at page 100 of the Record of Appeal and it sought to forward the reports made earlier on and request the Chief Mechanical Engineer to determine the following;

1. *"The authenticity of the plaintiffs' claim*
2. *The extent of damage caused to the equipment, if any.*
3. *The accuracy of the reports prepared by either party and,*
4. *The value of compensation due to the plaintiffs, if any."*

Pursuant to the instructions in a letter dated 16th May 2018, the Chief Mechanical Engineer rendered a detailed report which was conceded to by the Attorney General.

One of the issues for the trial court to determine was whether the appellant, UNRA, was bound by the report of the Chief Mechanical Engineer of the Ministry of Works and Transport. The case of **Bank of Uganda Vs Banco Arabe Espanol ,S.C.C.A No. 08 of 1998** addressed the issue of the binding nature of the opinion of the Attorney General exhaustively. In that case, the Supreme Court held that;

> *"In my view, the opinion of the Attorney General as authenticated by his own hand and signature regarding the laws of Uganda and their effect or binding nature on any agreement, contract or other legal transaction should be accorded the highest respect by government and public institutions and their agents. Unless there are other agreed conditions, third parties are entitled to believe and act on that opinion without further enquiries or verifications. It is also my view that it is improper and untenable for the Government, the Bank of Uganda or any other public institution or body in which the Government of Uganda has an interest, to question the correctness or validity of that opinion in so far as it affects the rights and interests of third parties."*

The report of the Chief Mechanical Engineer was conceded to by the Attorney General, who was the 1st defendant at the trial court and this, in my view, would be binding on the appellant as a government body under the Ministry of Works and Transport. The appellant's contention is that the Attorney General's consent to the report of the Chief Mechanical Engineer did not amount to an opinion of the

Attorney General within the meaning of Article 119 of the Constitution. Article 119 creates the office of the Attorney-General as the Principal Legal Advisor of the Government of Uganda with functions, *inter alia,* to give legal advice and legal services to the Government on any subject and to draw and peruse agreements, contract, treaties, conventions and documents by whatever name called, to which the Government is a party or in respect of which the Government has an interest.

In this case, the expertise of the Chief Mechanical Officer was sought and given, and the Attorney General studied the report and confirmed that the report is binding on government and its institutions. I have already found that the appellant is under the supervision of the Ministry of Works and Transport and is thus bound by the opinion of the Attorney General. In this case, the opinion of the Attorney General was that the report of the Chief Mechanical Engineer was binding on government and the appellant, as an agency of government, cannot claim not to be bound by the report. Grounds 3, 6 and 7 accordingly fail.

**Ground 4: The learned trial Judge erred in law and fact when he found the appellant liable for breaches of an agent in a contract the appellant was not party to.**

Counsel for the appellant submitted that the construction of the road project whose activities gave rise to the suit was not carried out by the appellant or the appellant's agent. The contractor was procured vide a contract between Ministry of Works and Transport on one hand

and Energo Projekt-Kiskograndja, the contactor. The appellant argues that the contract in question is dated 18th February 2008, a date before the appellant came into existence and it was signed by the Permanent Secretary, Ministry of Works and Transport. Counsel argues that the appellant was not a party to the said contract and it cannot be held liable in law for any acts or omissions arising out of its performance.

Counsel submitted that the appellant cannot, owing to the doctrine of privity of contract, sue the contractor. Sub clause 19 1 (d) & (e) of the General Conditions of Contract dated 18th February 2008 provides that any damage to the works or adjacent properties resulting from the contractor's failure to take necessary precautions shall be made good at the contractor's expense. Counsel submitted that the respondent should have sued the contractor in negligence. That the appellant cannot be deemed to fall under the docket of Ministry of Works and Transport.

For the respondent, counsel submitted that in the appellant's written statement of defence, there was no denial of the fact that the appellant was responsible for the construction of the Gayaza-Zirobwe Road. The appellant did not deny taking over the construction project and also claimed to have carried out an environmental impact assessment of the road. Counsel submitted that under Section 6 of the UNRA Act, the appellant's mandate extended to responsibility for the National Roads Network including the upgrade, construction and completion of Gayaza Zirobwe Road project. Counsel submitted

further that there is documentary proof on record to show that the appellant had taken over the overall responsibility of the project including liability over claims arising out of the acts and omissions during the construction of the road.

Counsel submitted that the appellant, through execution of an addendum to the initial construction agreement assumed all the obligations of the Ministry of Works and Transport under the Gayaza-Zirobwe Road Project, including all the liability. The appellant is described as the employer in the addendum dated 18th July 2011. Secondly, the claim by the respondents was not for breach of contract, but for encroachment and negligence on account of damage caused to the respondent's premises and equipment.

Counsel relied further on the Ministerial Policy Statement appearing at page 125 of the supplementary Record of Appeal, vote 113 of the appellant, specifically the Ministerial Budget Policy Statement for the year 2010-2011 where the upgrading and construction/reconstruction of the Gayaza Zirobwe Road including environmental impact assessment and payment of compensation is all placed under the appellant's control and authority. That the appellant has not denied the authenticity of the documents submitted before the trial court by the Attorney General and the Ministry of Works and Transport.

**Consideration of ground 4**

The respondent's claim against the appellant and the Attorney General was not one of breach of contract but one in tort of

negligence. The Oxford Dictionary of Law, sixth edition (Edited by Elizabeth A. Martin and Jonathan Law) defines 'negligence' (at p. 353) as: *"A tort consisting of the breach of a duty of care resulting in damage to the claimant. Negligence in the sense of carelessness does not give rise to civil liability unless the defendant's failure to conform to the standards of the reasonable man was a breach of a duty of care owed to the claimant, which has caused damage to him. Negligence can be used to bring a civil action when there is no contract under which proceedings can be brought. Normally it is easier to sue for breach of a contract, but this is only possible when a contract exists."*

The damage caused to the respondent's property was done in constructing the Gayaza-Zirobwe Road, on which the respondent's twin factories are situated thus causing injury to the respondent's premises and machinery. The appellant is the implementing agency of government as far as the national road network is concerned. The fact that the appellant contracted a third party to carry put the construction and re-construction of the Gayaza-Zirobwe road does not exempt the appellant from liability under **Section 6** of the **Uganda National Roads Authority Act** and the appellant is thus liable for claims that arise from the performance of its functions thereunder.

In addition, the Ministerial Budget Policy Statement for the year 2010-2011 where the upgrading and construction/reconstruction of the Gayaza Zirobwe Road including environmental impact assessment and payment of compensation was all placed under the

appellant's control and authority and the appellant cannot now claim that the breaches were those of a third party. It is my considered view that the construction of the road project whose activities gave rise to the suit was carried out directly under the appellant.

Whereas the Supreme Court held in **National Social Security Fund & another Vs Alcon International Ltd ,S.C.C.A No. 15 of 2009** that a contract cannot confer rights or impose obligations on strangers to it, the facts in the present case before us are distinguishable. The appellant is mandated by virtue of its functions, to be an implementing agency of government to implement government objectives as far as road construction and re-construction is concerned. I am unable to fault the learned trial Judge's finding that the appellant was directly responsible for the road construction project and thus the damage and loss occasioned to the respondents. Ground 4 also fails.

**Ground 5: The learned trial Judge erred in law and fact when he found that the Uganda National Roads Authority (Transfer of Assets and Liabilities) Regulations 2012 were not applicable to the dispute between the parties.**

Counsel for the appellant submitted that under **Regulation 2(1)** of the **National Roads Authority (Transfer of Assets and Liabilities) Regulations 2012** assets and liabilities not listed in the schedule remained vested in the government of Uganda and were not transferred to the appellant. Counsel submitted that words of a statute must be interpreted according to their literal meaning and

sentences according to their grammatical meaning. If the words of the statute are clear and unambiguous and complete on the face of it, they are conclusive evidence of the legislative intention.

Counsel submitted that the wording of **Section 39** of the **UNRA Act** and **Regulation 2(1)** of the Regulations has an obvious and clear meaning and the nature of liability alleged under the suit is not one that was transferred upon the creation of the appellant. That for the respondent to sustain a claim arising out of a prior existing liability, such a liability must have legally been taken over by the appellant upon commencement of the Regulations whose commencement date was 16/03/2012.

For the respondent, it was submitted that the regulations are not applicable in this case since they specifically and exclusively relate to transfer of physical and moveable assets and attendant liabilities. The list pursuant to Regulation 3 comprises of physical assets and not claims such as these arising from road construction.

**Consideration of ground 5**

**Section 39** of the **Uganda National Roads Authority Act** provides;

> *39. Transfer of assets and liabilities*
>
> *(1) The Minister may, by statutory instrument, make regulations for the transfer to the Authority of the ownership or possession of assets belonging to the Government which, by virtue of this Act and in his or her opinion, are necessary for the performance of the functions of the Authority.*

*(2) Upon the commencement of a statutory instrument made under subsection (1) and without further assurance, the Authority shall, in respect of the assets transferred to it by the statutory instrument, have all the rights and be subject to all the liabilities attaching to those assets.*

Regulations 2 and 3 of the **National Roads Authority (Transfer of Assets and Liabilities) Regulations 2012** provide:

*2. Transfer of assets and liabilities*

*(1) The assets and liabilities specified in the Schedule to these Regulations which, before the commencement of these Regulations belonged to the Government of Uganda, and which by virtue of the Uganda National Roads Authority Act, 2006 and in the opinion of the Minister, are necessary for the performance of the functions of the Authority, are transferred to the Uganda National Roads Authority.*

*(2) Upon the commencement of these Regulations and without further assurance, the Uganda National Roads Authority shall, in respect of the assets transferred to it by these Regulations, have all the rights and be subject to all the liabilities attaching to those assets.*

*(3) All assets and liabilities not listed in the Schedule to these Regulations shall remain vested in the Government of Uganda.*

The list in the Schedule to the Regulations comprises of physical assets and not claims such as these in the present case. I am therefore inclined to agree with the learned trial Judge's finding that

the cited Regulations are not applicable in the case before us in so far as they specifically related to physical moveable assets and liabilities and not claims in negligence or compensation such as the present one. This ground also accordingly fails.

**Ground 8: The learned trial Judge erred in law and fact in awarding the respondents a sum of UGX 31,484,904,247/= to be paid by the defendants jointly and severally.**

The appellant's counsel submitted that it was an error on the part of the learned trial Judge to have entered a judgment on admission pursuant to Order 13 rule 6 of the Civil Procedure Rules and order that the appellant is jointly and severally liable to the respondents for the claim as stated in the report of the Chief Mechanical Engineer. The report of the Chief Mechanical Engineer recommended a payment of UGX 31,484,904,247/= for damage of the respondent's machinery and entering a judgment on admission against the appellant, who had rejected the report was erroneous.

Counsel submitted that the report was not justified by the Chief Mechanical Engineer nor was it broken down as to the details of the constituent parts that give rise to the claim. That the appellant's consultant had investigated the matter and found that the damage occasioned to the respondent's equipment was not attributable to dust on account of construction works.

For the respondents, counsel submitted that the appellant was sued jointly and severally with the Attorney General and the appellant was the one that instructed the Chief Mechanical Engineer to render his

determination on the respondent's claims. The sum of UGX 31,484,904,247/= as awarded by court was the exact sum determined by the Chief Mechanical Engineer and the report relied on by court contained a detailed explanation of how the sum was arrived at.

**Consideration of ground 8**

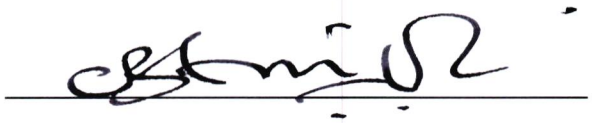
Having found as I have in all the above grounds, it's a matter of course that the learned trial Judge rightly entered a judgment on admission on the sum contained in the Chief Mechanical Engineer's report. I reiterate that the appellant, having instructed the Chief Mechanical Engineer in a letter that appears at page 100 of the Record of Appeal, cannot now claim not to be bound by the opinion that the appellant sought.

Under Order 13 rule 6, the court is empowered to enter judgment on admission at any stage of a suit, where an admission of facts has been made either on the pleadings or otherwise. The purpose of this provision is to enable a party obtain a speedy judgment to the extent of the relief which according to the admission of other party, he is entitled to. I find that the learned trial judge rightly entered a judgment on admission in the sum of UGX 31,484,904,247/= as contained in the Chief Mechanical Engineer's report. I therefore uphold the decision of the learned trial Judge and dismiss this appeal with the following orders;

1. The appellant, jointly and severally with the Attorney General shall pay the respondents the sub of UGX 31,484,904,247/= as contained in the Chief Mechanical Engineer's Report.
2. The respondents are awarded costs of this appeal and the suit in the trial court.
3. The respondents are awarded interest on (1) above at court rate.

Dated this 1st day of November 2023

Signed



**Christopher Gashirabake**

**JUSTICE OF APPEAL**

**THE REPUBLIC OF UGANDA**

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

*[Coram: Muzamiru M. Kibeedi, Christopher Gashirabake & Oscar John Kihika, JJA]*

**CIVIL APPEAL NO. 321 OF 2019**

**UGANDA NATIONAL ROADS AUTHORITY :::::::::::::::::::::::::::::::::::::::: APPELLANT**

**VERSUS**

1. **PARAMBOT BREWERIES LIMITED]**
2. **PARAMBOT DISTILLERS LIMITED ] :::::::::::::::::::::::::::::::::::::::: RESPONDENT**

**JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JA**

I have had the advantage of reading in draft the judgment prepared by my Learned brother, Hon. Justice Christopher Gashirabake, JA. I agree with the reasoning, conclusion and orders proposed.

As Hon. Justice Oscar John Kihika, JA likewise agrees, the above appeal is disallowed in the terms set out in the judgment of Hon. Justice Christopher Gashirabake, JA.

**It is so ordered.**

Dated at Kampala this 1st day of November 2023

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

**THE REPUBLIC OF UGANDA**

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

**CIVIL APPEAL NO 321 OF 2019**

**(Coram: Kibeedi, Gashirabake and Kihika, JJA)**

**UGANDA NATIONAL ROADS AUTHORITY::::::::::::::::::::::::::::APPELLANT**

**VERUS**

1. **PARAMBOT BREWERIES LIMITED**
2. **PARAMBOT DISTILLERS LIMITED::::::::::::::::::::::::::::RESPONDENTS**

*(Appeal from the decision of the High Court of Uganda at Kampala before Justice Bashaija K. in Civil Suit No. 005 of 2012)*

**JUDGMENT OF OSCAR JOHN KIHIKA**

I have had the benefit of reading in draft the judgement of my brother Justice Christohper Gashirabake J.A. I agree with the reasoning and conclusions therein and having nothing useful to add.

The appeal is dismissed with the orders proposed by my learned brother.

Dated at Kampala this ……1st……day of ……November……2023

**OSCAR JOHN KIHIKA**
Justice of Appeal