

**THE REPUBLIC OF UGANDA,**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**CIVIL SUIT NO 32 OF 2013**

**MUGISA AZIZ MATEEBA}.....PLAINTIFF**

**VERSUS**

**NATIONAL FORESTRY AUTHORITY}.....DEFENDANT**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**JUDGMENT**

The Plaintiff filed this action against the Defendant authority for a declaration that the Defendant was in breach of contract. Secondly claiming general damages in the amount of Uganda shillings 1,145,000,000/=, interest on the above at court rate from the date of filing the suit till payment in full and for costs of the suit. On the other hand the Defendant denied the claims and counterclaimed for unpaid licence fees in the sum of Uganda shillings 13,001,149/= as well as for timber harvested beyond the licence quantity totalling to Uganda shillings 5,051,597/= and for costs of the counterclaim together with interest at 20% per annum on the liquidated claim.

The facts of this suit are mainly admitted and questions of interpretation arise as both parties depend mainly on the documentary evidence. The facts of the dispute are reflected in the written submissions of Counsel. At the proceedings the Plaintiff was represented by Counsel Joseph Manoba while the Defendant was represented by Principal State Attorney Philip Mwaka. After the witnesses of both parties testified, the court was addressed in written submissions giving the facts and the law relied upon. In the written submissions of both parties the following issues are addressed namely:

1. Whether there was a breach of contract/license and if so who is liable?
2. What remedies are available to the parties?

**Basic Facts relied on by the Plaintiff**

The Plaintiff's Counsel submitted that there were certain uncontested facts from the pleadings and evidence namely:

The Defendant licensed the Plaintiff to harvest a volume of 285.684 cm<sup>3</sup> specified tree species of abandoned logs in Biiso, Block No. 4 in Budongo Central Forest Reserve Masindi.

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The Defendant on the 11<sup>th</sup> July 2009 caused the arrest and the detention of the Plaintiff's workers at Masindi Police Station and impounded the saw tools on allegations of felling trees illegally vide CRB 1076/2009.

The Plaintiff's workers and she were never prosecuted before any Court of Law for the alleged illegal felling of trees.

The Plaintiff paid Uganda shillings 150,000/= (One Hundred Fifty Thousand Shillings only) to the Defendant prior to receiving back the timber and impounded tools.

The rest of the facts form part of submissions on the issues by the Plaintiff's Counsel.

### **Basic facts presented by the Defendant**

The Defendant's Counsel relied on the evidence adduced by the following witnesses as a background to his submissions on the issues namely:

DW1: Mr. Odoi Boaz Juventine - formerly NFA Sector Manager Budongo, Biiso Block. DW2: Assistant Commissioner of Police John Twinomugisha - Officer, Uganda Police Force, formerly attached to NFA and DW3 Mr. Etwodu Levi - NFA Director, Natural Forests

The Defendant's Counsel prayed that the Court accept the factual background elaborated and established by the Defendants witnesses and documents admitted in evidence. These facts Counsel relied on are as follows.

On the 6<sup>th</sup> January, 2009 the Defendant licensed the Plaintiff to harvest 285.684 m<sup>3</sup> of abandoned logs from Budongo Central Forest Reserve (CFR) as per the license agreement Exhibit P5. The Plaintiff had been a timber dealer previously transacting with the Defendant as evidenced by Exhibits D9, D10, D11, D12, D13, D14, D15, D16 and D17. Also see Exhibit P3 and P4. The Plaintiff was assessed for license fees under Clause 7 at Uganda shillings 25,501,149.33/= of which she was required to pay the 1<sup>st</sup> instalment of Uganda shillings 12,500,000/= within two (2) weeks ending on, or before 21<sup>st</sup> January, 2009.

The Plaintiff paid Uganda shillings 8,000,000/= on the 6<sup>th</sup> January, 2009 (Exhibit D38, D39 & D45) and Uganda shillings 4,500,000/= on the 4<sup>th</sup> February, 2009 (Exhibit D35 & D36) - beyond the time stipulated in the agreement - in fulfilment of the first instalment of Uganda shillings 12,500,000/=. This was accommodated by the Defendant. (Exhibit D33 and Exhibit D37). The balance under the license agreement of Uganda shillings 13,001,001/= which was due within four (4) months of the 1<sup>st</sup> instalment (4<sup>th</sup> August, 2009) was not paid and has not been paid to date, recovery of which is subject to the counterclaim herein.

The Plaintiff began performing under the contract by converting the abandoned log into timber in April, 2009 - three (3) months after commencement and three (3) months to expiry of the license

agreement. This is admitted in letter dated 18<sup>th</sup> July, 2009 (Exhibit D26). The Plaintiff sought extension of time of the harvest period vide letter of 18<sup>th</sup> July, 2009. (Exhibit D26). The duration of the license under Clause 6 was for six (6) months from date of execution (6<sup>th</sup> January, 2009), expiring on, or about 6<sup>th</sup> July, 2009.

The Defendant issued the Plaintiff a casual license to cut or take forest produce in a Central Forest Reserve for the period 4<sup>th</sup> February, 2009 - 3<sup>rd</sup> August, 2009. (Exhibit D34). In evidence of the Plaintiffs performance of the license agreement, the Defendant has attached Forest Produce Declaration Forms which are required to accompany any forest produce being transported, including; - Serial No. 22203 dated 14<sup>th</sup> May, 2009 (Exhibit D43), Serial No. 22204 dated 14<sup>th</sup> May, 2009 (Exhibit D42), Serial No. 22205 dated 22<sup>nd</sup> July, 2009 (Exhibit D44) and Serial No. 22267 dated 28<sup>th</sup> July, 2009 (Exhibit D41).

On the 11<sup>th</sup> July, 2009 the Defendants staff arrested employees of the Plaintiff for illegally felling fresh trees outside the licensed area which timber was impounded and contrary to their license which provided for harvest of abandoned logs. The impounded timber was transported to the Defendants Headquarters. The Plaintiffs employees were detained at Masindi Police Station and investigated under police file CRB 1076/2009. The Plaintiff later admitted illegally harvesting tree under Section 14(1) of the National Forestry and Tree Planting Act, 2003 and paid compensation to the Defendant in the sum of Uganda shillings 150,000/= in lieu of being prosecuted. See Exhibits 05, 06 and 07.

Numerous internal correspondences are exhibited showing the processes and calculations of the Defendant resulting in the Plaintiff being offered an extension of the duration of the license agreement. A report was made by the Sector Manager dated 13<sup>th</sup> July, 2009, following a meeting between the Defendant's staff and the Plaintiff on the 1<sup>st</sup> September, 2009 and a further joint field verification conducted on 10<sup>th</sup> September, 2009. (Exhibit P11).

The report of 13<sup>th</sup> July, 2009 (Exhibit P11) established that the Plaintiff harvested timber worth Uganda shillings 17,551,597.60/= and considering the 1<sup>st</sup> instalment of Uganda shillings 12,500,000/= paid by the Plaintiff, the excess amount the Defendant required by the Plaintiff to pay was Uganda shillings 5,051,597.60/=. It was also recommended that the Plaintiff pay the balance of Uganda shillings 13,001,149/= under the license agreement before any resumption of harvesting. On 13<sup>th</sup> July, 2009 the Defendant prepared a Field Situational Report in respect of the activities of the Plaintiff. (Exhibit P29). The Plaintiff on the same day wrote to the Defendant requesting release of the impounded timber. (Exhibit P30).

On 14<sup>th</sup> July, 2009 the Plaintiff wrote (Exhibit P27) to the Defendant in respect of observations/problems and a way forward/lasting solution. Measurements were submitted to the Range Manager/Bugondo Systems (Exhibit P20). See (Exhibit 028). On the 11<sup>th</sup> July, 2009 the Chairman, Board NFA proposed recommendations on salvaging abandoned logs in Budongo

Central Forest Reserve. On the 18<sup>th</sup> July, 2009 the Plaintiff wrote to the Defendant requesting extension of the period to harvest abandoned logs. (Exhibit P25). The Plaintiff admitted starting in April, 2009 and partly attributing the delay to processing a Bank Loan.

In the Defendants internal correspondence of 24<sup>th</sup> July, 2009 (Exhibit 024) the Range Manager/Budongo Systems was requested to establish the volume of illegally harvested trees converted to be deducted from the volume of abandoned mahogany trees. On 4<sup>th</sup> August, 2009 the Defendant wrote to the Plaintiff indicating that the volume of abandoned logs was not stated and requested the Range manager Budongo Systems to assess unconverted logs. (Exhibit P22). On the 14<sup>th</sup> August, 2009 the Defendant wrote to the Plaintiff stating that whereas the Plaintiff had paid Uganda shillings 12,500,000/= the volume of timber removed was worth Uganda shillings 20,471,969/=, leaving a balance of Uganda shillings 7,974,969/= and the overall balance to be paid for completion was Uganda shillings 13,001,149/=.

Other internal documents include; - Exhibit P23 dated in August, 2009 where the Defendant wrote to the Plaintiff (Exhibit 019) extending the validity of her harvesting license for Forty Five (45) days from 24<sup>th</sup> August, 2009 to October, 2009 to enable the Plaintiff recover timber agreed under the license agreement on condition that she pays the balance of Uganda shillings 13,001,149/= of which the excess to be paid was calculated at Uganda shillings 7,974,969/= and was to be paid prior to harvesting. The balance could be paid in the course of harvesting the remaining logs. The impounded timber was to be released to the Plaintiff upon payment to the Defendant of handling and transport costs - in compensation, since NFA had transported the timber from Masindi to Kampala at its own expense. See (Exhibit 019). On 18<sup>th</sup> August, 2009 the Plaintiff presented her version of volumes of timer in Exhibit 018 which were to be harmonized in the forest.

On 26<sup>th</sup> August, 2009 the Defendant wrote to the Plaintiff stating that her calculations were improperly done and instructing that the Plaintiff and Range Manager/Budongo Systems have a joint physical verification on the ground to harmonize. On the 3<sup>rd</sup> September, 2009 the Plaintiff admitted contravening Section 14 (1) of the National Forestry and Tree Planting Act, 2003 - providing for felling trees outside of a valid license - and agreed to pay the Defendant compensation in the sum of Uganda shillings 150,000/= rather than be prosecuted. The Plaintiff accordingly signed the NFA Form Serial Number 450 provided under the 19<sup>th</sup> Schedule of the Act (Exhibit 07). The Plaintiff paid the Defendant the compensation assessed, fine in the sum of Uganda shillings 150,000/= and was issued NFA General Receipt No. 90142. (Exhibit 05) and the timber released to her through NFA Form Serial Number 309. (Exhibit P6).

In spite of the Defendant extending the validity of the license agreement, the Plaintiff failed, neglected and or refused to resume performance of the license agreement and subsequently embarked on a protracted campaign to purportedly seek compensation from the Defendant. On 21<sup>st</sup> March, 2010 the Chairman of the Defendants Board wrote to the Minister of Water and

Environment observing that the Plaintiff's employees had been arrested converting illegally harvested log and that the Plaintiff had failed to pay the 2<sup>nd</sup> instalment. Notwithstanding, it was recommended that the Plaintiff is allowed to resume operations under impartial supervision by the Defendants staff.

On 14<sup>th</sup> November, 2011 the Plaintiff wrote demanding compensation from the Defendant for purported expenses and loss of business. (Exhibit P3). On 23<sup>rd</sup> February, 2012 the Defendants Board, Chairperson wrote to the Executive Director following a Board decision indicating compensation of Uganda shillings 55,405,448/= subject to: -

- i. The Plaintiff producing documents in proof of her purported expenditure.
- ii. Guidance from the Permanent Secretary, Ministry of Water and Environment.
- iii. Guidance from the Office of the Solicitor General.
- iv. Guidance from the Minister of Water and the Environment (Exhibit 02).

The preconditions of the purported compensation were never met and approval was not granted by any of the parties cited. The Plaintiff declined the conditional amicable negotiated settlement offered and on the 9<sup>th</sup> March, 2012 the Plaintiff wrote to the Defendant through her Attorneys demanding Uganda shillings 573,810,000/= which claims in this suit has since escalated to Uganda shillings 1,100,000,000/= (Exhibit P1).

### **Submissions of Counsel**

Two issues were agreed to for resolution of the suit namely:

1. Whether there was breach of Contract/License and if so who is liable?
2. What remedies are available to the parties?

### **Submissions of Plaintiff's Counsel on issue 1:**

- 1. Whether there was breach of Contract/License and if so who is liable?**

For the Plaintiff it is submitted that the Defendant breached the contract/ license awarded to the Plaintiff to harvest abandoned logs in Budongo Forest. The Plaintiff in her witness statement admitted in evidence as her evidence in chief testified that log 32 and 33 of Khaya in Paragraphs 5 & 6 of her statement was sold to other people by the Defendant's staff. The Plaintiff further indicates that this issue was raised with the Defendant as at Paragraph 21-26 of the said statement. This testimony was unchallenged by the Defendant. This evidence is the first indicator of breach on the part of the Defendant for disposing of logs already given to the Plaintiff in complete disregard of the terms of her license. The Defendant on the other hand

strongly contends that the Plaintiff was in breach owing to her being involved in the alleged felling of illegal trees. This was contended by DW1, DW2 and DW3 in their evidence in chief adduced through their respective witness statements. In order to properly evaluate this allegation, the Plaintiff submits that it is crucial to examine the context within which she came to be licensed; the work environment; the alleged illegal felling; and the alleged failure to pay the full license fees as discussed herein below. The Plaintiff and her husband as stated in Paragraph 3 of her witness statement applied some time in 2007 to the Defendant to harvest abandoned logs and her application was granted.

As stated in Paragraph 4 of her witness statement sometime in September 2007, she re-applied to the Defendant and on the 12th September 2007; she received a response offering her Mahogany and Muvule trees of a volume of 53.286m<sup>3</sup> and 8.11 m<sup>3</sup>. The said offer is marked Exhibit "P3" in her trial bundle at Pg 12. As stated in Paragraph 5 of her witness statement, making reference to her earlier offer, the Defendant on its own initiative on the 24<sup>th</sup> October 2008 in Exhibit P4 at Pg 13 wrote to the Plaintiff offering her to buy and convert 285.684cm<sup>3</sup> of various tree species. In Paragraphs 19, 21-26 of her witness statement, the Plaintiff shows that she observed certain occurrences in the forest and brought these to the attention of the Range Manager and asked him to visit their work site. In Paragraph 20, the Plaintiff went an extra mile of inviting the Defendant's staff at the Head office to consider conducting regular visits of her work.

It is submitted that if the Plaintiff was a person who engaged herself in illegal felling of trees outside her license between 2007 and 2008, she would have not gone to great lengths to look for the Range Manager and Head Office Staff to come and inspect her work. Secondly the Defendant would never on its own initiative have offered a larger volume in 2008 to her to convert. Indeed none of the Defendant's witnesses accused the Plaintiff of previous conduct before the impugned incident of allegedly being involved in illegal felling of trees. In Paragraph 27 - 30 of her statement the Plaintiff reported cases of illegal felling of trees to the Sector Manager and Forest Supervisor respectively. The said report of the Plaintiff was not received in good faith by the Defendant's staff who instead confronted her and her Husband for reporting illegal activities in the forest. Following the threat by the Plaintiff to report the illegal incidents in the forest, the Plaintiff's workers and timber were arrested and impounded respectively.

It is submitted for the Plaintiff that it would be self defeating for her to fell fresh tress and report the same to the Defendant knowing the same would not be licensed to her. Rather it is strongly contended that because of the Plaintiff's resolve to curb illegal activities, the Defendant's workers plotted to implicate her in illegal felling with the aim of damaging her reputation. The three Defence witnesses respectively in their evidence in chief claimed and alleged that two of the Plaintiff's workers were arrested because they were found converting logs not within her license.

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DW1 ODOI JUVENTINE in cross examination claimed there were four people in two sites where the impounded timber was found. When put to task the witness could not explain how a heavy log could have been mounted to a platform to be converted into timber by two men. The witness also asserted there was no illegal Declaration issued to the Plaintiff which testimony contradicted his former supervisor DW3 MR. LEVI ETWODU who testified that he – DW1 issued a declaration of illegal produce to the Plaintiff. This witness similarly contradicted DW2 MR. TWINOMUGISHA JOHN the Police Liaison who similarly maintained that an illegal declaration was issued but not signed by the Plaintiff. Additionally, neither of the Defence witnesses produced evidence of the alleged trees illegally felled by the Plaintiff. Rather the Defendant sought to rely on Exhibit D5, D6 and D7 at Pgs 16, 17 and 18 of DW3 witness statement as evidence of compensation paid by the Plaintiff for the illegally felled trees.

It is submitted that the payment of 150,000/= (One Hundred Fifty Thousand Shillings only) by the Plaintiff as *"fine transporting illegal products"* cannot be evidence of compensation for alleged 5 trees as testified to by DW3. It was the evidence of the Defendant that the 110 pieces of timber impounded by the Defendant was transported from Masindi to Kampala by the Defendant. Clearly from this evidence the Plaintiff was not involved in any transportation of any timber anywhere. No such evidence was led.

Exhibit P5 also at Pgs 82 - 88 is the "License Agreement" issued to the Plaintiff. Paragraph 23 thereof at Pg 86 of the Trial bundle requires a licensee to pay the compounded value of the volume of the illegally felled trees. With due respect, the Defendant is misleading this Court to think that Uganda Shillings 150,000/= (One Hundred Fifty Thousand Shillings only) amounts to what is contemplated in the provisions of the Plaintiff's license. Exhibit P15 at Pg 61 of the Plaintiff's trial bundle is a report of the *National Forestry Authority Technical Committee*. The Committee in its report finds as a matter of fact that the Defendant did not present any evidence to show that the Plaintiff was felling trees in the forest. The Committee further observes that little transports that she was charged would look like a compensation for mistreatment". The Committee additionally notes that at the meeting held on the 29<sup>th</sup> July, 2010 in DISO's office between National Forestry Authority and the Plaintiff, and the letter from the Chairperson of the National Forestry Authority Board, the Plaintiff was absolved of any wrong doing. At Pg 20 of the same Exhibit P15, the committee also noted that it was on record that the Plaintiff helped the Defendant to curb illegal activities in the forest reserve. Indeed Exhibit P13 at Pg 38 of the Plaintiff's trial bundle another independent report commissioned by the Minister of Water and Environment absolved the Plaintiff of any wrong doing. It is submitted, that the only logical conclusion and supported by the testimony of the Plaintiff during cross examination, is that the sum assessed by the Defendant pursuant to the directive of the Defendant's Executive Director marked Exhibit D19 at Pg 44 of the DW3 witness statement is the fact that Uganda Shillings 150,000/= (One Hundred Fifty

Thousand Shillings only) was not a fine or compensation paid by the Plaintiff but rather a sum that was imposed on the Plaintiff for transporting timber from Masindi to Kampala. The Plaintiff was not involved in any illegal felling of trees and the Defendant did not produce any such evidence to controvert her testimony. Exhibit P9 at Pg 32 of the Plaintiff's trial bundle is a letter from the Defendant's Board Chair. The Board Chair, HON. BAGUMA ISOKE as he then was wrote to the then Director MR. DAMIAN AKANKWASA recommending that among other things, the Plaintiff pay the outstanding revenue in the course of her work. This action is in line with section 60 (1) (c) of the National Forestry and Tree planting Act, 2003, read together with section 16b. At Exhibit D19, Pg 44 of the Defendant's list of documents a one HUDSON J. ANDRUA, acting on behalf of the Executive Director amended the recommendations of the Board Chair and required at Pg 45 the Plaintiff to pay an alleged excess of Uganda Shillings 7,974,969/= (Seven Million Nine Hundred Seventy Four Thousand Nine Hundred Sixty Nine) prior to resumption of work. It is submitted that these two directives potentially made it impossible as testified by the Plaintiff to execute her work because of the conflicting nature of the two communications.

The failure of the Defendant to harmonize its position led to the trigger of Independent committees to further investigate the matter, developments that only went to fail the Plaintiff in executing her license. The failure of the Defendant to harmonise its position led to the trigger of Independent committees to further investigate the matter, developments that only went to fail the Plaintiff in executing her license. It will further be recalled that the Plaintiff at Paragraph 9 of her witness statement, testified that the said HUDSON ANDRUA solicited a bribe of Uganda Shillings 1,000,000/= (One Million Shillings only) from the Plaintiff. Therefore when another opportunity presented itself the said HUDSON ANDRUA made it difficult by revising the recommendations of the Chair.

It is submitted for the Plaintiff that from the above evidence, the Defendant was in breach of the license as it chose to frustrate the Plaintiff when there was clearly no evidence of fault on her part nor was there evidence of felling of trees on her part. We invite this Honourable Court to find as such. It is additionally submitted that by ignoring the advice of the Board, the staff of the Defendant acted ultra vires and caused the Plaintiff damage which could have easily been managed.

### **Submissions in reply of the Defendants Counsel on issue No. 1:**

#### **Whether there was a breach of contract/license and if so who is liable?**

Defendants Counsel submitted as follows:

The evidence adduced by DW1, DW2 and DW3 outlined in expansive detail above was coherent, cogent and the three (3) witnesses corroborated each other in every material particular in respect of the Defence and counterclaim and establishes the following:

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Breach of contract by non-payment of the 2<sup>nd</sup> instalment:

The Plaintiff was continually in breach of her contractual obligations right from the outset including failing to complete payment of 1<sup>st</sup> instalment within two (2) week on, or before the 21<sup>st</sup> January, 2009. The Defendant accommodated the Plaintiff in this instance and accepted payment of Uganda shillings 4,500,000/= on the 4<sup>th</sup> February, 2009. The Plaintiff failed to pay the 2<sup>nd</sup> instalment of Uganda shillings 13,001,001/= under the contract which under Clause 7 (b) was due on or before four (4) months from the date of the 1<sup>st</sup> instalment. Considering that payment of the 1<sup>st</sup> instalment was completed on the 4<sup>th</sup> February, 2009 the 2<sup>nd</sup> instalment should have been paid on or about 4<sup>th</sup> June, 2009. This was the first breach by the Plaintiff of the license agreement.

The Plaintiff admitted in cross-examination that she has not paid the 2<sup>nd</sup> instalment of Uganda shillings 13,001,001/= to date and which sum is subject of the Defendants counterclaim. Breach of contract by unauthorized and illegal harvest of trees under section 14 (1) National Forestry and Tree Planting Act, 2003. The most fundamental breach by the Plaintiff was on the 11<sup>th</sup> July, 2009 when her employees were found by the Defendants staff converting fresh illegally harvested logs outside of her license which only authorized her to harvest abandoned logs.

DW1 testified that the trees that the Plaintiff was authorized to harvest were specifically identified and marked as well as stamped in blue paint marked in an exercise in which the Plaintiff and her employees and the Defendant and its staff participated after commencing operations in April, 2009. There was no confusion about which trees were duly licensed as abandoned logs, the Plaintiff and her employees acted deliberately and illegally. DW3 further testified that the Plaintiff was the only person licensed by the Defendant in the suit area at the time. DW1 testified that besides the persons arrested, the Plaintiff had a labour camp a few meters from the site of the incident. This not only constituted the most fundamental breach of the contract but was also a criminal offense of illegally harvesting timber outside of license terms contrary to section 14(1) of the National Forestry and Tree Planting Act, 2003.

This breach of contract and commission of a criminal offense is fully established by Exhibits D5, D6 and D7 in which the Plaintiff made admission and compensated the Defendant in lieu of being prosecuted. The Plaintiffs attempts to deny her admission simply establish her dishonesty - initiated by illegal tree harvested and now perjury. A lot seems to have been made of the sum of Uganda shillings 150,000/= paid by the Plaintiff to the Defendant in compensation as evidenced by Exhibits D5, D6 and D7. This is clarified in Exhibit D19 where on page 2 No. 3 in the last sentence the Defendants Official explains the circumstances under which the sum of Uganda shillings 150,000/= was determined - essentially being the expenses of the Defendants transporting the Plaintiffs timber from Masindi to Kampala.

Clearly, the Plaintiff got off lightly and escaped the penalty for the offense under Section 14 (2) of the National Forestry and Tree Planting Act, 2003 and the sanction under paragraph No. 23 under the Schedule of the agreement. All and any attempts to cast the Plaintiff as not having been involved in illegal tree felling under Section 14 (1) of the Act, including in paragraphs 21 - 25 of pages 5 - 6 of the Plaintiffs submissions cannot override Exhibits D5, D6 and D7. PW3 Assistant Commissioner of Police John Twinomugisha corroborated this evidence and established that the Plaintiff admitted guilt and paid compensation in order to avoid prosecution.

The Plaintiff's Counsel has tried to make a lot of the report of the Committee of the Board. (Exhibit P15). This report should be read in context, being an internal review and attempt to reach amicable settlement with the Plaintiff. Emphasis is placed on the conclusion and recommendations. In the Committees view, if the Defendant had a case on violation of harvesting agreement, it was forfeited upon return of timber and release of workers from police. This observation is what prompted considerations of compensation in order to avoid any legal battle.

ii. Exhibit 02 is instructive and in the letter dated 23<sup>rd</sup> February, 2012 from the Chairman of the Board to the Executive Director certain conditions are imposed on the proposed compensation of Uganda shillings 55,405,448/=, including: -

- The Plaintiff producing documents in proof of her purported expenditure.
- Guidance from the Permanent Secretary, Ministry of Water and Environment.
- Guidance from the Office of the Solicitor General.
- Guidance from the Minister of Water and the Environment. (Exhibit 02).

Suffice it to say that the preconditions of the purported compensation were never met and approval was not granted by any of the parties cited. Moreover, the Plaintiff declined the conditional amicable negotiated settlement offered and on the 9<sup>th</sup> March, 2012 the Plaintiff wrote to the Defendant through her Attorneys demanding Uganda shillings 573,810,000/= which claims in this suit has since escalated to Uganda shillings 1,100,000,000/=. (Exhibit P1). Notwithstanding, considering that this suit has reached this stage of litigation this Honourable Court is obliged to review the entirety of the evidence on record both exhibits and oral testimony and make judgment.

The Defendant prays that this Honourable Court finds that the Plaintiff breach the contract by converting logs outside the mandate of the license which breach is tantamount to commission of an offense contrary to Section 14 (1) of the National Forestry and Tree Planting Act, 2003.

Breach by converting timber beyond the amount paid for under the license agreement.

DW1 and DW3 testified that the Plaintiff exceeded the licensed amount paid for. The Plaintiff paid a 1<sup>st</sup> instalment of Uganda shillings 12,500,000/=. The excess amount converted amounted

to Uganda shillings 7,974,969/=. The Defendant required the Plaintiff to pay the excess amount of Uganda shillings 7,974,969/= prior to resuming operations. DW1 and DW3 were emphatic that licensed conversion of logs into timber is done by considering the volume against the amount paid for. The Defendant discovered the excess amount harvested following the arrest of the Plaintiffs employees for conversion of illegally harvested trees. No doubt this was part of the illegal haul. The contention by the Plaintiff that log 32 and 33 of Khaya were purportedly sold by the Defendants staff in paragraph 5 and 6 of the Plaintiffs witness statement are misconceived and refer to a period in, or about September or October, 2008 prior to the contract subject to this suit which was filed and also are inconsistent with the evidence that the Defendants staff marked the abandoned logs for harvest and measurements were duly taken prior to commencement of work converting logs to timber. In any case, in relation to any affected logs, the Defendant calculated the volumes and offered the Plaintiff the opportunity to make good.

Other contentions that the Defendants staff purportedly sought to implicate the Plaintiff in illegal felling of fresh trees outside her license are outrageous, especially in view of her admissions evidenced by Exhibits D5, D6 and D7 where she admits acting contrary to Section 14(1) of the National Forestry and Tree Planting Act. In regard to the Forest Produce Declaration Form, I pray that Court accepts the evidence of the Defence witnesses that the Form was prepared but the Plaintiff refused to sign it. In respect of the claim that the Plaintiffs two (2) employees could not have possibly lifted a heavy log, the defence witnesses explained that the Plaintiff had a camp with other workers nearby and this misses the point because the initial crime was in the felling of the fresh tree contrary to the license followed by the conversion.

Further and contrary to the Plaintiffs claims that the Defence did not produce the trees felled, the evidence is within Exhibit 06 which lists an inventory of the produce returned to the Plaintiff upon her admissions of the offense and payment of compensation. The Defendant submits that the Plaintiff completely fails to discharge the burden of proof of establishing breach of contract, liability and loss arising there from. The Plaintiff has not provided an iota of evidence in support of the claims. The Plaintiff's testimony was tenuous at best and this is further reflected in the Plaintiffs submissions.

Claims of general damages, special damages and loss of income are wholly unsupported. Special damages were neither specifically pleaded nor proved. The Defendant did not breach the contract in any way as alleged by the Plaintiff, or at all.

The Plaintiff committed the following breaches of the contract below:

- i. Non-payment of the 2<sup>nd</sup> instalment under the license agreement in the sum of Uganda shillings 13,001,001/= which remains unpaid to date.

- ii. Illegally harvesting fresh trees contrary to the terms of the licence agreement which provided for harvest of only abandoned logs and contrary to Section 14 (1) of the National Forestry and Tree Planting Act, 2003.
- iii. Converting timber in volumes over and above the amount paid for.

Even after the Defendant had accommodated the Plaintiff by re-calculating the volumes allowable and extending the period of the contract, the Plaintiff failed to resume operations. In so doing, the Plaintiff made no effort whatsoever to mitigate any losses. The Plaintiff unilaterally decided to abandon the contract - even after it had been extended in duration.

## 2. Remedies

The Plaintiff's Counsel submitted as follows:

### **General Damages:**

The Plaintiff in the entire body of her witness statement describes a vivid account of mistreatment, frustration, mental and Psychological torture at the hands of the Defendant, its servants or agents.

In the case of the **Kabonge Jane & Another vs. Semanda Paul, H.C.C.S. No. 76 of 2014** (unreported) Justice Bashaija, citing **Takiya Kashwahiri & Another vs. Kajungu Denis C.A.C.A. NO. 85 of 2011** where the Court of Appeal held that general damages should be compensatory in nature in that they should restore some satisfaction as far as money can do it, to the injured Plaintiff.

In the instant case the Plaintiff has shown that her work was all done in Masindi. By pursuing this matter with the various authorities including the Defendant, its Board, the Ministry in the period of Seven (7) years she had but to incur expenses in travel, accommodation, feeding to and from Kampala, suffer ill health all of which she spent money that was unforeseeable. The Plaintiff shows how her actions to curb illegal activities in the forest were instead used against her by the Defendant in spite of the overwhelming evidence that absolved her of any wrong doing but owing to her insistence she has been subjected to seven (7) years of pain and suffering embarrassment and loss of income through staff in the field as well as officials at the Head Office of the Defendant who ignored the Board recommendations and select Technical committees set up by the Defendant to investigate her situation.

He invited the Court to award the Plaintiff the sum of Uganda Shillings 300,000,000/= (Three Hundred Million shillings), in general damages as flowing from the time and income lost.

### **Special Damages:**

At Paragraph 87 - 88 the Plaintiff shows the financial loss she sustained from the actions of the Defendant. The expected income if she had worked through her license normally is computed as shown in Exhibit P20 at Pg 73 of the Plaintiff's trial bundle to the sum of Uganda Shillings 157,102,408/= (One Hundred Fifty Seven Million One Hundred Two Thousand Four Hundred Eight Shillings). The Defendant did not challenge the Plaintiff on how this was arrived at and therefore it stood unchallenged. The above notwithstanding, a cursory perusal of Exhibit P20 at Pg 76 will show that the report is self explanatory as to how the values are arrived at. He invited the Court to be guided by Exhibit P20 and award the Plaintiff the sum of Uganda Shillings 157,102,408/= (One Hundred Fifty Seven Million One Hundred Two Thousand Four Hundred Eight Shillings) in special damages.

### **Counterclaim**

The Plaintiff's Counsel submitted that the Court should find that the failure to pay the outstanding sum on the license was occasioned by the Defendant as already indicated herein. He prayed that the Court directs that the sum of Uganda Shillings 157,102,408/= (One Hundred Fifty Seven Million One Hundred Two Thousand Four Hundred Eight Shillings) be paid to the Plaintiff less the outstanding sum on the license.

### **In reply on the issue of remedies the Defendant's Counsel submitted that:**

The Defendant established that the Plaintiff has not proved or offered even an iota of evidence establishing any liability or loss caused whatsoever.

### **General Damages:**

The Defendant cannot be made to pay for the Plaintiff's purported expenses in unilaterally pursuing her claim against Defendant where no liability has been established as against the Defendant.

The Plaintiff's claim for Uganda shillings 300,000,000/= as general damages is even more outrageous in view of the fact that she abandoned the license, even after the Defendant had accorded her every opportunity to conclude harvesting of the abandoned logs and therefore the claims of purported mistreatment, frustration, mental and psychological torture are frivolous. The evidence in fact demonstrates that the Defendant was cordial, professional and timely in its dealings with the Plaintiff. The Plaintiff as demonstrated by the evidence did not take any steps to salvage her interest in the license agreement or mitigate and potential purported losses by concluding performance of the license in spite of the extension of the duration for Forty Five (45) days to accomplish this from 24<sup>th</sup> August, 2009 to 7<sup>th</sup> October, 2009.

In any event, a scrutiny of the claims for travel, accommodation, feeding, etc these items would be raised as special damages. No proof of expenditure is presented in forms of receipts or otherwise. The Plaintiff did not even lead evidence to specify the date she purports to have incurred this expenditure. The Plaintiff simply presents an omnibus claim.

### **Special Damages/Lost Income**

The Plaintiff failed to present an iota of evidence on the issue of lost income. The contract was for a period of six (6) months and the license fees as well as the volumes harvested were determinate. This was also determinate for the proposed extension. The Plaintiff is not entitled to the Uganda shillings 157,102,408/= claimed. The Defendant returned the timber illegally harvested by the Plaintiff and factored in the excess amount which she was required to pay prior to resumption of harvesting of Uganda shillings 7,974,969/=. Rather than conclude performance of the license, the Plaintiff walked away from its performance and therefore cannot be seen to benefit there from. No witness was called to support Exhibit 20 and therefore the weight of the purported evidence therein is nil.

When asked in cross examination about her purported loss of income, the Plaintiff failed to explain any loss whatsoever. As submitted above, a scrutiny of the claims for travel, accommodation, feeding, etc are completely unsupported by proof of expenditure is presented in forms of receipts or otherwise. The Plaintiff did not even lead evidence to specify the date she purports to have incurred this expenditure. The Plaintiff simply presents an omnibus claim. He prayed that court find that the Plaintiff is not entitled to any remedy whatsoever and the suit as against the Defendant be dismissed with costs.

### **Counterclaim**

In view of the Plaintiff that she has not paid the 2<sup>nd</sup> instalment under the contract in the sum of Uganda shillings 13,001,001/= the Defendant prays that court enter judgment against her in the sums of Uganda shillings 13,001,001/= as per its pleadings. The Defendant prayed for costs.

### **Judgment**

I have carefully considered the written submissions in light of the pleadings and the evidence as well as the law. Two issues were agreed upon for resolution of the dispute. The first issue is **whether there was breach of the contract/licence?** The second one concerns the remedies available upon resolution of the first issue. The first issue is considered in relation to the activities of the Plaintiff as well as the activities of the Defendant and covers both the claim in the plaint and the counterclaim.

There are certain basic facts which are admitted and which I will deal with in the course of this judgment. There are also basic facts that need to be set out at the beginning.

It is an admitted fact that the Plaintiff was licensed to harvest abandoned logs and the licence and the terms of the license were admitted in evidence.

The second admitted fact is that the Plaintiff was accused of illegally felling trees and two of her workers were arrested.

Secondly, it is further established by evidence that the Plaintiff was not prosecuted.

Thirdly, it is established from the evidence that the licence of the Plaintiff was not revoked upon the alleged illegal felling of the trees contrary to section 14 (1) of the National Forestry and Tree Planting Act, 2003.

I have also established from the evidence and the submissions of both parties that there were protracted proceedings between the Plaintiff and the Defendant on the issue of the licence as well as allegations that the Plaintiff suffered loss as a result of the activities of the Defendant's servants.

Having evaluated the evidence and the law, I am of the considered opinion that the Defendant as a regulatory authority took some decisions from which it cannot go back to the question of illegally felling of trees for reasons contained in the judgment. I will attempt rather to demonstrate what the Defendant did to resolve the issue. At this stage of the proceedings, it is not upon the Plaintiff to challenge the acts of the Defendant or its servants in relation to the licence because the Defendant is the regulatory authority mandated to deal with certain administrative matters and to take proceedings including prosecution if there was commission of an offence. To argue the dispute on the simple basis of the breach of contract would avoid the role of the Defendant in resolving the issue as the statutory authority with the mandate to do so.

I will nevertheless try my best to resolve the issue particularly the first issue in the context of the regulatory framework set up under The National Forestry and Tree Planting Act, 2003.

### **Whether there was breach of contract/licence?**

As far as breach of licence is concerned, it is clear from the evidence that the Defendant authority compromised its position and waived its rights to proceed against the Plaintiff on the basis of its statutory mandate to prosecute or seek compensation for any illegal activities in terms of section 14 of the National Forestry and Tree Planting Act, 2003. This is because the Defendant did not apply the provisions of the law in the case of commission of an offence under section 14 (supra) but allowed the Plaintiff to continue with the licence. The resolution of the issue of whether the Plaintiff breached the license on the ground of illegal felling of trees and the arrest of her servants will lead to no possible good because the Defendant dealt with the issue and released the Plaintiff from any liability as far as the commission of the offence is concerned. This can be considered from the evidence and the law.

Secondly, the question of whether the Plaintiff was in breach of contract as far as the licence is concerned cannot arise because the Defendant dealt with it administratively and allowed the Plaintiff to continue with the licence. The question of expiry of licence is a separate consideration and has nothing to do with the issue agreed upon. As far as payment for the licence is concerned, that may be worthy of consideration on the merits.

I will start with the written testimony of the Defendant's witnesses. This is because this testimony stated the basic facts which had been the bone of contention between the parties and which had been dealt with using the statutory mandate of the Defendant. DW1 Mr Odoi Juventine Boaz, the Sector Manager National Forestry Authority gives some basic facts as follows which corroborated the Plaintiff's own testimony in some material respects.

National Forestry Authority authorised the Plaintiff to harvest 285.684 mm<sup>3</sup> of abandoned logs from Budongo Central Forest Reserve according to a licensing agreement admitted in evidence. The duration of the licence was from the date of execution of the agreement on 6<sup>th</sup> January 2009 for a period of six months ending on or about 6<sup>th</sup> July, 2009 according to clause 6 of the licensing agreement. The Plaintiff was assessed for licence fees in the sum of Uganda shillings 25,501,149.33/= of which Uganda shillings 12,500,000/= was due within two weeks of execution of the agreement. The balance of Uganda shillings 13,001,149/= was due within four months of the first instalment. On 20<sup>th</sup> of January 2009, National Forestry Authority wrote to the Plaintiff extending the period of validity of the offer under the licensing agreement and granting another extension of time within which the licence was to be finalised. The Plaintiff paid Uganda shillings 12,500,000/= towards the first instalment. On 16<sup>th</sup> January, 2009 the Plaintiff paid Uganda shillings 8,000,000/=. Secondly, on 4<sup>th</sup> February, 2009 the Plaintiff paid Uganda shillings 4,500,000/=. The balance of Uganda shillings 13,001,149/= was due to be paid within four months from the date of the first instalment and was not paid.

The Plaintiff was only authorised to harvest abandoned logs. On 30<sup>th</sup> of May 2009 the Plaintiff wrote to the Director, Natural Forests requesting for extension of the period to harvest abandoned logs because she started working late on 7<sup>th</sup> April, 2008 and the licence was executed and were supposed to have commenced on 4<sup>th</sup> February, 2009. On 4<sup>th</sup> of February 2009 the Defendant issued the Plaintiff a 'casual licence' number 773 to cut and take Forest products up to August 2009. On 14<sup>th</sup> of July 2009 the Plaintiff wrote to the Executive Director National Forestry Authority making observations and explaining problems she faced in harvesting timber under the licence. On 18<sup>th</sup> of July, 2009 the Plaintiff wrote two letters to the Executive Director, for the Sector Manager and the Range Manager requesting for extension of the period to harvest abandoned logs for reasons contained in the letter. On 18<sup>th</sup> of July 2009 the Plaintiff again wrote reporting the timber harvested and denying illegally felling trees.

What is very material to the issue of breach of contract is that on 17<sup>th</sup> July, 2009, the Chairman, Board of Directors of the Defendant wrote to the Executive Director National Forestry Authority



making recommendations in the letter regarding the Plaintiff. The background was that the staff of the Defendant from Budongo Systems Range, Masindi district sometime on 11<sup>th</sup> of July 2009 arrested the Plaintiff's workers for allegedly illegally felling trees outside the mandate of the licence and impounded timber that the Defendant alleged was illegally felled timber which timber was first transported to Masindi office and later transported to the Defendant's headquarters in Kampala. The Plaintiff's workers were transported and detained in Masindi police station and investigated by the police. On 13<sup>th</sup> of July 2009 the Sector Manager made a report on timber harvesting in the Budongo Central Forest Reserve which detailed the quantity of timber impounded. On 17<sup>th</sup> August, 2009 DW1 wrote to the Plaintiff accusing her of illegally harvesting trees which were impounded and were in the custody of the Defendant. The letter gave the volume of converted and uncontroverted timber which had been established. The volume of unconverted logs was offset from the illegally converted or harvested trees.

Thereafter the Plaintiff was allowed to continue harvesting fallen logs identified. The validity of the harvesting licence was extended by a period of 45 days from 24<sup>th</sup> of August 2009 up to 7<sup>th</sup> October, 2009. The Plaintiff was required to pay Uganda shillings 7,974,969/= before the resumption of harvesting being an excess of timber harvested out of the balance of Uganda shillings 13,001,149/=. The Defendant agreed to release to the Plaintiff the timber impounded.

The evidence clearly demonstrates that the bone of contention arose from an alleged illegal felling of trees and the commission of an offence. This testimony as far as the alleged illegal felling of trees is concerned is repeated in the testimony of the entire Defendants' witnesses. Inasmuch as the Plaintiff denies having illegally felled any trees, I will consider the issue from the perspective of action taken by the regulatory authority using its mandate.

DW2 Twinomugisha John, Assistant Commissioner of Police confirmed that the Plaintiff's staff had been arrested on the allegation of illegal felling of trees.

Similarly DW3 Mr Levi Etwodu, the Director Natural Forests of the Defendant confirmed the testimony.

As far as the Plaintiff is concerned she confirms that she had been granted a licence and that her staff had been arrested on the allegation of having felled trees illegally. She alleges that in the process of paying for the licence one of the staff of the Defendant requested for a bribe of Uganda shillings 1,000,000/= before he could process the licence. I will eventually deal with the testimony of the Plaintiff and suffice it here to refer to the legal framework under which the Defendant was supposed to operate.

According to the facts, the alleged offence was supposed to have been committed around July 2009. The Plaintiff's workers were detained around this time. On 13<sup>th</sup> July, the Sector Manager made a report and subsequently wrote to the Plaintiff on 17<sup>th</sup> of August 2009. The Plaintiff was allowed to continue harvesting identified logs. Secondly the Plaintiff was required to pay Uganda

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shillings 7,974,969/=. It is alleged that on 3<sup>rd</sup> of September the Plaintiff admitted contravention of section 14 (1) of the National Forestry and Tree Planting Act, 2003 and that she paid compensation of Uganda shillings 150,000/= to the Defendant. An issue arose as to whether the Uganda shillings 150,000/= was for transportation refund or compensation of the Defendant for the alleged illegal felling of trees.

Section 14 of the National Forestry and Tree Planting Act, 2003 provides as follows:

“14. Prohibited activities in forest reserves

(1) No person shall, in a forest reserve, cut, disturb, damage, burn or destroy any forest produce, or remove or receive any forest produce except—

(a) in accordance with regulations or guidelines made for the proper management of the forest reserve;

(b) in the course of the management of the forest reserve by the responsible body;

(c) in terms of the exercise of a right or interest in the forest reserve; or

(d) in accordance with a licence issued under this Act.

(2) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding fifty currency points or to imprisonment for a term not exceeding five years, or both.”

It is clear from the allegations that the Plaintiff was accused of harvesting timber not in accordance with the licence issued under the Act. What is pertinent is that a person who contravenes section 14 commits an offence and is liable on conviction to a fine not exceeding 50 currency points or to imprisonment for a term not exceeding five years, or both (to a fine and imprisonment). The Plaintiff was not prosecuted for any offence and was not convicted of the commission of any offence. The Plaintiff cannot be fined without prosecution as this would be contrary to article 28 of the Constitution of the Republic of Uganda. She cannot pay the penalty before trial before an independent and impartial tribunal established by law. To say that the Plaintiff admitted the commission of an offence pursuant to a receipt issued to her, begs the question as to what proceedings were taken against the Plaintiff and that must form part of the finding of this court.

The Defendants relied on the general receipt dated 3<sup>rd</sup> September, 2009 receipt number 9014 showing receipt of Uganda shillings 150,000/= issued to the Plaintiff by the Defendant’s servant. It shows that it is “payment for fine transporting illegal produce”. DW3 was cross examined about this receipt and testified that it was issued by the sector manager. He testified that compensation was paid by the Plaintiff in the form of a fine. The question was whether this

amount was not for transporting timber. He testified that when timber is impounded, on the ground that the licensee fells a tree illegally, the compounded volume of the timber shall be paid by the licensee. The Defendant accessed the Plaintiff to pay a sum of Uganda shillings 7.9 million. The figure was arrived at by using the total volume of Uganda shillings 20,474,969/= and the amount paid by the licence fee of Uganda shillings 12,500,000/=. He testified that the Plaintiff exceeded the licensed amount by Uganda shillings 5,000,000/=.

Going back to section 14 of the National Forestry and Tree Planting Act, 2003, the section was never harnessed. The section clearly envisages a prosecution and conviction for an offence before the penalty written under the law is imposed. A person is only liable to a fine upon conviction under that section. A conviction can only arise from the prosecution before an independent and impartial tribunal established by law. Additional provisions of the law clearly demonstrate the statutory mandate of the Defendant as well as the legal framework for handling contravention of section 14 of the National Forestry and Tree Planting Act, 2003.

Section 81 of the said Act creates general offences and provides inter alia that any person who contravenes any of the terms or conditions of licences granted under the Act, commits an offence and is liable, on conviction to a fine not exceeding 40 currency points, or to imprisonment for a term not exceeding five years, or both.

The Defendant is alleging contravention of any of the terms and conditions of the licence. Going back to the licence itself admitted in evidence as exhibit P5 and exhibit P6, the Plaintiff was licensed by an agreement dated 6<sup>th</sup> January, 2009. Under the agreement she agreed to pay a certain consideration in money. The conditions of the licence are under schedule "A" of the agreement on "Permitted Use" is very instructive. Under the 'permitted use' schedule regulation 22 provides that:

"In the event of breach of the National Forestry and Tree Planting Act (2003) or any term or condition of this licence, this licence may be cancelled and the forest produce forfeited, without prejudice to any proceedings which may be taken in respect of the same breach."

Secondly clause 32 provides that where a licensee fells a tree illegally, the compounded value of the volume shall be paid by the licensee. Under clause 33 if an undersized tree is felled, charges will be compounded and levied as if the tree had reached a minimum felling diameter of that species.

It is quite clear and contractual that the Defendant was entitled to cancel the licence for breach of any section of the National Forestry and Tree Planting Act 2003 or for breach of any term of the licence. Thirdly, the Defendant was entitled to have forfeited all the produce that the Plaintiff had in the event of breach of the National Forestry and Tree Planting Act, 2003 or any term or condition of the licence.

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With such a contractual right, it is material whether the Defendant did pursue the allegations levelled against the Plaintiff to its logical conclusion. In the first place, the Defendant never prosecuted or had prosecuted the Plaintiff and therefore could not impose any fine. Secondly, the rights of the Defendant were without prejudice to any proceedings which may be taken in respect of the alleged breach of the Act or the licence.

The mandate of the Defendant is backed by statutory provisions. Section 52 of the Act makes the Defendant a body corporate with perpetual succession. Section 54 of the Act provides for the functions of the board of the Defendant. None of the functions of the Defendant include the right to prosecute anybody. The conclusion is that the Defendant could not impose any fine on the Plaintiff. Furthermore when one examines section 83 of the National Forestry and Tree Planting Act, 2003, it clearly provides for penalties upon conviction and it is quoted herein under for ease of reference:

“83. Penalties

A person convicted of an offence under this Act for which no penalty is provided is liable

—

(a) in the case of a first offence, to a fine not exceeding thirty currency points or imprisonment for a term not exceeding three years or both; and

(b) in the case of a second or subsequent offence, to a fine not exceeding forty currency points or imprisonment for a term not exceeding five years or both.”

Because contravention of the term of the licence is an offence, the Plaintiff could be prosecuted and her guilt established independently. There was no prosecution. Under those circumstances, the Defendant was only entitled to impose the terms of the contract. A court conducting the trial of the prosecution has powers in addition to the penalty imposed to order compensation for the loss or damage up to 5 times the value of the produce. Or up to 10 times the amount of any fees, royalties or other payments which, had the act constituting the offence been authorised, would have been payable in respect of the authorised act. Furthermore the court may on conviction of the person charged with the offence, order the licence to be cancelled or disqualify the person from obtaining a licence for a period the court deems fit. Under section 88 (6) of the Act, an officer seizing or detaining any item under that section shall commence administrative proceedings leading to prosecution in respect of that item without delay. This section provides as follows:

"88. Powers of authorised person

(1) An authorised person may arrest, without warrant, any person whom he or she reasonably suspects has committed, or is in the process of committing an offence under this Act.

(2) Where an authorised person suspects that any person is in possession of any forest produce unlawfully obtained, he or she may search that person or any baggage, package, parcel, conveyance, vehicle, tent or building under the control of that person.

(3) An authorised person may seize and detain any forest produce, livestock, tools, boats, conveyance, machinery, or other implements, which he or she reasonably suspects, are liable to be forfeited under this Act.

(4) Where the officer acting under subsection (3) is of the opinion that the item seized is subject to speedy and natural decay or will entail avoidable expenses on the part of Government, he or she may sell it, and the proceeds of that sale shall be treated in the same manner as the seized item would have been treated if there had been no sale.

(5) No action shall be brought against an authorised person or a person acting under his or her direction in respect of any deterioration in quality or value of any forest produce, instrument or item seized under subsection (3).

(6) An officer seizing or detaining any item under subsection (3) shall commence administrative proceedings leading to prosecution in respect of that item without delay.”

The term "authorised person" defined by section 3 of the Act includes “a forestry officer, an Honorary Forestry Officer, a Wildlife Protection Officer, a police officer or any other person designated by the Minister under section 51 to be an authorised person for the purposes of the Act”.

The powers of the Defendant's officials, including the power to arrest without warrant, power to seize the goods or produce illegally harvested, power to sell the goods or forest produce which had been seized and to have it applied in the manner provided for under the Act.

Evidence of the Defendant's action:

The Plaintiff adduced evidence of the action taken by the Defendant pursuant to the allegations of the commission of an offence in documentary exhibits in addition to her testimony. I have duly reviewed the documentary exhibits. In exhibit P9 in a letter dated 17th of July 2009, the Chairman, Board of directors of the Defendant, wrote to the Executive Director of NFA regarding a report from the Range Manager, Budongo Systems to the Director Natural Forest dated 14th of July 2009 and having had a meeting with the Plaintiff recommending that the matter should be addressed in the following manner:

"I wish to refer to a short report from the Range Manager, Budongo Systems to the director natural forests dated 14th of July 2009...

1. The remaining volume earlier allocated to the licensee according to her contract should be given to her in the same area, whether the logs have been recently cut or not.
2. Paying the remaining revenue should be done as she works.
3. Her workers should be released from police custody to finalise the work they were carrying out.
4. From now onwards, management should implement an earlier board instruction to have NFA utilise the abandoned logs and not to allow any private millers to harvest the so-called abandoned logs as this has been used by the Millers to perpetually fell more trees.
5. Recruit, train and appropriately equip forest assistants and deploy them to Budongo Systems Range as a priority.

I hope this move will stem the illegal felling of trees in the reserve, a challenge that the field of managers have been grappling with for some time."

In exhibit P11, the Defendant wrote to the Director Natural High Forests, National Forestry Authority with reference to a directive in a letter dated 26th of August 2009 whereupon a joint verification was held in two phases by the verification of documents and field joint verification. It was stated in the report that the licensee had paid Uganda shillings 12,500,000/= with a balance to be paid of Uganda shillings 13,001,149/=. Secondly, the value of timber already harvested was assessed at Uganda shillings 17,551,597.60/=. The excess amount which must be paid was Uganda shillings 5,051,597.60/=. It was recommended that all the balance of Uganda shillings 13,001,149/= is to be paid before any harvesting resumes to avoid any further confusion in the field.

Apparently, the Plaintiff was saddled from utilising the offer because she was asked to pay before commencing the works. For various reasons which appear in her testimony, the Plaintiff complained to the Minister of Water and Environment and this is evidenced in the letter exhibit P10 addressed to the Plaintiff by the Permanent Secretary Ministry of Water and Environment. The letter is dated 20th of October, 2009. The letter also reveals that apart from communicating to the Honourable Minister, there was a subsequent meeting held on 22<sup>nd</sup> of October, 2009 between the Plaintiff and the Honourable Minister. In the meeting it was agreed that the Plaintiff and the Defendant are required to submit their claims to the Permanent Secretary not later than Tuesday 27<sup>th</sup> of October 2009. A neutral party would be appointed by the Minister to carry out the verification of the submitted claims. Of course the date of the letter seems to have an error because it refers to an earlier meeting of 22<sup>nd</sup> of October, 2009. However the letter clearly provides that the report of the verification will be submitted to the Honourable Minister of Environment for a final decision in respect of the Plaintiff's complaint culminating in issuance of the new licence detailing the terms.

The contract for verification was given to Forest Concern Uganda Limited and in a letter addressed to Mr Buwembo Monday by the Chairperson, Board of Directors of NFA. The letter is dated 2<sup>nd</sup> February, 2010 on the subject of investigating Mrs Mugisa Aziz Mateeba's Case. In the letter the chairman of the board ruled that following guidelines will help in investigating and verifying the claims and counterclaims that were brought to the attention of the Right Honourable Second Deputy Prime Minister and with the Honourable Minister of Water and Environment. The independent person was supposed to among other things obtain photocopies of the licence offered to the Plaintiff to salvage abandoned logs in Budongo Central Forest Reserve. Secondly, establish what volume of round wood and which tree species were offered to the Plaintiff. Thirdly, establish what volume of timber has so far been sawn by the Plaintiff. Establish the payments which the Plaintiff made in respect of the converted volume. Determine why all claims and disagreement between the Defendant staff and the Plaintiff failed since June 2009. Recommend to the Minister what should be done to quicken an end to the disagreement. The investigation and verification was to be done and the report presented to the Honourable Minister of Water and Environment within a period of two weeks. The independent person was also to do all things within the law to resolve the case. The Executive Director of the Defendant by copy of the letter was requested to facilitate Forest Concern Uganda limited by facilitating Mr Buwembo's travel and to call on the NFA staff in Budongo Systems Range to cooperate with the investigator.

In a letter dated 15<sup>th</sup> of March, 2010 exhibit P13 Mr Buwembo Monday Executive Director of Forest Concern Uganda limited wrote to the Honourable Minister, Ministry of Water and Environment forwarding a report as requested. Part of the letter is to the effect that they executed the assignment as best as circumstances permitted and had the honour to present a report which was attached. The report contains 22 pages.

The report indicates inter alia that the Minister of water and environment requested Forestry Concern Uganda to investigate the Plaintiff and her claims against National Forestry Authority. It was also to investigate counterclaims against the Plaintiff.

The findings of the independent investigator inter alia is that the Plaintiff's problems started when the inspection team found two men in B4, where she was operating, working on freshly felled mahogany. The team arrested the men, confiscated their tools and timber as exhibit and had the men detained at Masindi police station. Instead of prosecuting the alleged culprits, the chairperson Board of Directors NFA, recommended that the men be released from police custody and the confiscated timber returned to the Plaintiff. They noted that this action amounted to exonerating the Plaintiff and her workers. While the chairperson attached no conditions to the release of the Plaintiff's workers, her impounded timber and resumption of work, later correspondences show that the NFA officials at the headquarters introduced new conditions in the equation such as first paying the remaining balance of Uganda shillings 13,001,149/= shillings before being allowed to resume activities in the B4 compartment and reimbursing NFA

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for expenses incurred on the confiscated timber. The new demands not only impinged on the time of the Plaintiff but also on her finances and served only to sour the relationship between her and the NFA officials and caused deep suspicions and resentment. The investigator also considered an allegation that one of the officials requested for a bribe of Uganda shillings 1,000,000/= to allow her to resume her operations. He also noted that both the sector manager Bulisa and the sector Manager Budongo Systems range recommended the Plaintiff to be allowed to resume her operations.

The investigator observed that the exchanges between the Plaintiff and certain officials however made it difficult for the Plaintiff to operate frictionless if she was to resume her operations.

The investigator recommended that the best solution under the circumstances was not to point fingers at anyone or engage in blame game but to recommend a way forward that will not only resolve the impasse between the parties but also remove impediments which had affected the ability of NFA to fulfil its legal mandate and to ensure that such a problem such as that of the Plaintiff does not occur again. They recommended that the Plaintiff be allowed to resume her operations without fettering conditions. Secondly, because of the bad blood between the Plaintiff and NFA supervisors on the ground, another independent team should be appointed to supervise her work in conjunction with NFA personnel on the ground. The investigator noted that although the report exonerated the Plaintiff and entitled her to restitution, it was not enough. The Plaintiff would need NFA to supervise her work and to assess how much timber she had completed and its value. They also noted that it would not be in the best interest of the Plaintiff to operate in the intimidating impenetrable Budongo Central Forest reserve in a hostile environment. He noted that immediate intervention should be put in place to ensure that some NFA senior personnel not abuse their positions as evidenced in the Plaintiff's saga. The report was signed on 16<sup>th</sup> March, 2010.

That was not the end of the matter in Exhibit P14 dated 12<sup>th</sup> December, 2011, the Executive Director NFA wrote to the Plaintiff to invite her for an interactive meeting with the board committee on the issues relating to her complaints. In exhibit P 15 there are minutes of the meeting dated 15<sup>th</sup> and 16<sup>th</sup> of December 2011 in the NFA board room. The meeting was held with the Technical Committee together with the complainant. The Technical Committee also met with the field and headquarters staff which included the Director Natural Forests, the Director Seed Centre, Sector Manager, Budongo, Former Ranger Manager, and the Forest Supervisor.

The committee recommended compensation amounting to Uganda shillings 55,505,448/= broken into five components. Recovery of unpaid loan to Pride Bank of Uganda shillings 15,905,448/=; Auction Fees of Uganda shillings 4,500,000/=; transport seeking redress from NFA Uganda shillings 20,000,000/=; accommodation and feeding for three years Uganda shillings 10,000,000/= and for her communication and the stationary Uganda shillings 5,000,000/=.



In exhibit P 16 the Plaintiff's lawyers were informed by the Executive Director that due to the colossal sums of money and the complexity and involvement of the Plaintiff's case, the matter was referred to the Solicitor General for advice. The letter is dated 10<sup>th</sup> of May 2012.

The parties had reached an impasse because they did not accept the amounts claimed by the Plaintiff and the Plaintiff filed the current suit.

The legal framework giving the administrative structure of the authority of the Defendant under the National Forestry and Tree Planting Act, 2003 put the Minister at the apex of the structure. The Minister appoints members of the Board of the Defendant. Members of the Board recommend the appointment of the Executive Director of the Defendant. The board is answerable to the Minister while the executive director of the Defendant is answerable to the board. The Defendant is a body corporate established under section 52 of the National Forestry and Tree Planting Act, 2003. The authority is capable of doing all acts and things that a body corporate may lawfully do and maybe sued and can sue. It may acquire, own and dispose of movable and immovable property. Section 52 (3) of the Act provides that the authority shall be under the general supervision of the Minister.

Section 55 of the Act provides that the authority shall have a board of directors consisting of seven members. Under section 55 (3) the Minister shall appoint the members of the board. The functions of the board are provided for under section 60 of the Act which provides as follows:

“60. Functions of the Board

- (1) The Board is responsible for the general direction and supervision of the Authority.
- (2) Without prejudice to the generality of subsection (1) the Board shall—
  - (a) review and approve operating plans, budgets, reports and audited financial statements of the Authority;
  - (b) oversee the operations of the Authority;
  - (c) provide guidance to the Executive Director and staff of the Authority; and
  - (d) establish and approve rules and procedures for appointment, termination, discipline and terms and conditions of service of staff of the Authority.
- (3) The Board is, in the performance of its functions, responsible to the Minister.”

The board is responsible for the general direction and supervision of the Defendant. Secondly, it has the function of overseeing the operations of the Defendant and providing guidance to the Executive Director and staff of the Defendant. In the performance of its functions, the board is responsible to the Minister.

From the evidence on record, the chairman of the board absolved the Plaintiff of the allegations levelled against her by the Defendant staff of illegally felling trees (two trees). She had been licensed to fell abandoned logs. Paragraph 2 of exhibit P5 which is the licence agreement provides that the Plaintiff had the right to harvest mature forest crop in the specified area, to build shades of a temporary nature for housing the sawmilling facility, storing timber for purposes and for workers accommodation. To construct and maintain a log yard. Clause 9 provided that the licence may be terminated forthwith by notice given by the licensor inter alia for breach of the condition and stipulations agreed to. Under schedule "A" which gives the permitted use and admitted in evidence as exhibit P6 it is provided that the licensee shall fell and take only the forest produce allotted under the licence. Upon allegations being levelled against her for breach of the licence, the Chairman, Board of Directors wrote to the Executive Director recommending that the remaining volume earlier allocated to the Plaintiff according to the contract should be given to her in the same area whether the logs had been recently cut or not. Secondly, he recommended that the Plaintiff should pay the remaining revenue as she continues to work. The impounded timber was to be given back to her. Her workers were to be released from police custody to finalise the work they were carrying out. This letter is dated 17th of July 2009.

However, the authority did not implement the recommendations of the Chairperson Board of Directors. The office of the Executive Director is provided for by section 65 of the Act. He or she is appointed by the Minister on the recommendations of the board and on terms and conditions to be specified in the instrument of appointment. The Executive Director is the Chief Executive Officer of the Defendant responsible for the day-to-day operation and administration of the Defendant. Under section 66 of the Act, he or she is subject to the law unto the general supervision and control of the board. In the performance of his or her duties the Executive Director is answerable to the Board. Because of the failure to come to any terms of agreement as to the way forward, the matter was reported to the Minister and correspondences clearly demonstrate that the Permanent Secretary appointed a neutral party. In exhibit P10 he clearly indicates that a neutral party will be appointed by the Minister to carry out verification of the submitted claims of the Plaintiff. The Plaintiff and the Defendant were required to submit the issues to the Permanent Secretary for that purpose.

The matter was taken out of the hands of the Defendant and submitted to the arbitration and direction of the office of the Minister. The chairman board of directors wrote to the Forest Concern Uganda Ltd in exhibit P12 on 2<sup>nd</sup> February, 2010 to follow guidelines in investigating the issue. Their report was admitted in evidence as exhibit P13.

Following the legal framework, why should the court reopen the question? The Ministry concerned with the control of the Defendant appointed investigator who came up with a report. The Defendant did not apply to call the investigator for cross examination in the course of proceedings in the suit. In the premises, I find it not only prudent but necessary to adopt the *Decision of Hon. Mr. Justice Christopher Madrama Izama* \*^\*~ \*&\*\$\$\$# xtra+ maximum735securityx 2017 style

progress made in the resolution of the dispute even though the outcome of the investigation was not subject to a final decision of the Minister. The matter was left to the court after the parties failed to agree on the figure for compensation of the Plaintiff. For that reason it would be improper to rely on the testimony of the Defendant's witnesses who were the players in the investigation. Similarly, the issue of the Plaintiffs complaint was forwarded to the Minister for decision. Investigation was carried out and recommendations were made. The report, blames the Defendant's officials in the manner in which they conducted the issue at hand. In paragraph 3.2.4 at page 11 of the investigators report, it is provided that the Plaintiffs timber was impounded and the Defendant was directed to release her workers and impounded timber and allow her to resume work without first paying the remaining balance of Uganda shillings 13,001,149/=. They also noted that the longer it took her to resume work, the bigger her debt to the bank grew recognising that the Plaintiff had taken a loan in order to be able to carry out work under the licence. The investigator noted that in paragraph 3.2.6 that it would not be possible to verify the veracity of the Plaintiff's claims of alleged soliciting for bribes by the Defendant's official. However, both the sector manager Bulisa and the sector manager Budongo systems range recommended that the Plaintiff should be allowed to resume her operations.

In paragraph 3.2.8, the investigator noted that there was friction between the range manager, Budongo systems range and the Plaintiff and her partner. Secondly, the Plaintiff was facing a hostile environment and he recommended a neutral party to supervise her work when she resumes work. He noted that it would be impractical for her to operate in the thick impenetrable forest under hostile supervision. He recommended that she should be allowed to resume her operations.

I have further considered the fact that subsequent to the investigation which has the report of 16<sup>th</sup> of March 2010, the technical committee of the Defendant composed of honourable Sheila Kawamara Mishamba, Mr. Ponsiano Busesa and Ms Patience Lorna Tukundane recommended that the Plaintiff should be paid compensation of Uganda shillings 55,405,448/=. This recommendation was made in minutes dated 16<sup>th</sup> and 15<sup>th</sup> December, 2011 more than a year after the parties reached an impasse. Moreover they noted that, if the Defendant had a case, it was forfeited when the impounded timber was returned and workers of the Plaintiff released. The technical committee noted among others that there was unprofessional conduct of the Defendant's staff. He recommended that serious investigation should be urgently undertaken against the staff and among other things they said as follows:

"There is ample evidence that some staff have been involved in gross misconduct against the terms of service and in order to restore the credibility of the organisation, appropriate disciplinary measures should be taken."

It is therefore my finding on issue number one that it was impossible for the Plaintiff to fulfill the terms of her licence and the Defendant was in breach of obligations towards her and therefore in

breach of the contract. It is also my finding that the Plaintiff was not prosecuted and could not be fined. Thirdly, the Plaintiff never compensated the Defendant when an amount of Uganda shillings 150,000/= as exhibited in the receipt showing that the Plaintiff paid this amount to the Defendant. Instead this amount was for refund of transportation costs incurred in transporting timber to Kampala. The overall result is that the Defendant is liable to compensate the Plaintiff for the suffering involving extensive travelling, issues having been referred from one authority to the other and the Plaintiff being out of work and pursuing a claim which she was made to believe she was entitled to by way of compensation. It was a simple matter under the licence; to revoke the Plaintiff's licence immediately because this was the statutory and contractual power that the Defendant had. However, the Defendant opted to negotiate and the matter was taken out of the hands of the Defendant and forwarded to the Minister. The protracted negotiations, meetings took very many years until the Plaintiff filed this suit seeking the same remedy. In the premises, the Plaintiff for emphasis is entitled to compensation because she was not able to work even after being allowed to do so. Her failure to work was a direct result of the activities and the response of the Defendant's officials.

As far as the counterclaim is concerned, it has not been denied that the Plaintiff owed the Defendant some money. That money can be offset from whatever is due to the Plaintiff.

Remedies available:

I have duly considered the submissions of Counsel on the question of what is owing to the Plaintiff, if any. The primary submission of the Defendant's Counsel is that the Plaintiff should not be paid anything and that the suit should be dismissed. The court has already held that the Defendant was in breach of obligations to the Plaintiff under the licence and the court will not interfere with those findings.

General damages:

As far as general damages are concerned, the Defendant's submission is that the claim of Uganda shillings 300,000,000/= as general damages is outrageous in view of the fact that the Plaintiff abandoned the licence even when the Defendant accorded her every opportunity to conclude harvesting the abandoned logs. This submission goes to the issue of whether the Plaintiff should be liable at all and not to the question of quantum. Secondly, Counsel submitted that the Plaintiff did not mitigate her losses. I do not agree because it was the Defendant's officials who made it impossible for the Plaintiff who was saddled with a loan from commencing activities even after the board's chairman recommended that she should be allowed to resume activities without first paying her obligations recognising that she was handicapped.

The principle for the award of damages has been restated time and time again by the courts and is restitutio in integrum. According to **Halsbury's Laws of England 4<sup>th</sup> Edition Reissue volume 12** (1) and paragraph 812 thereof general damages are defined as those losses, usually

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but not exclusively non-pecuniary, which are not capable of precise quantification in monetary terms and are presumed to be the natural or probable consequence of the wrong complained of with the result that the Plaintiff is required only to assert that such damage has been suffered. In other words, the question is what the natural and probable consequence of the activities of the Defendants servants towards the Plaintiffs investment was?

From the evidence adduced, the Plaintiff could not resume work and therefore could not earn from her licence. She therefore lost that income from way back in July 2009. Secondly her license expired. Thirdly, the Plaintiff moved up and down seeking a remedy as against the Defendants officials. She was denied the right to earn after she was given the opportunity to do so and had a lawful expectation to earn from her activities. It was presumptuous and unlawful to purport to fine the Plaintiff. The Plaintiff was not subjected to an independent and impartial tribunal before the Defendant purported to punish her. The only remedy the Defendant had was to revoke the licence and commence proceedings against the Plaintiff which they did not. The produce could have been forfeited but they were returned to the Plaintiff. The Plaintiff cannot be charged for produce which had to be returned to her. She can only be charged for the licence fees.

The principles for award of general damages are clear. In **Dharamshi vs. Karsan [1974] 1 EA 41**, the East African Court of Appeal held that general damages are awarded to fulfil the common law remedy of *restitutio in integrum* which means that the Plaintiff has to be restored as nearly as possible to a position he or she would have been had the injury complained of not occurred. In **Johnson and another vs. Agnew [1979] 1 All ER 883 at page 896**, it was held by Lord Wilberforce that an award of general damages is compensatory and meant to place the innocent party so far as money can do so, in the same position as if the contract had been performed.

The Plaintiff had continuously been kept out of her business from July 2009. Yet she was an experienced person in that field according to the findings of the independent investigator.

On all the above grounds, I award the Plaintiff the claimed sum of Uganda shillings 300,000,000/= in general damages flowing from the lost opportunities and inconveniences suffered as adequate compensation.

Special damages:

It is trite law that special damages have to be specifically pleaded and proved.

While in the plaint the Plaintiff claimed only general damages of Uganda shillings 1,145,000,000/= together with interest, she gives particulars of damages in paragraph 11 of the plaint. The particulars relate to loss of income of Uganda shillings 73,899,400/=. However, the Plaintiff's timber was returned to her. The other claims are under the head of loss of business,

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transport for movement to the Defendant to mitigate damages for four years, feeding and accommodation, accrued interest from Pride Microfinance Ltd loan acquired to finance the licence agreement, mental and psychological torture, and embarrassment giving the total claimed as general damages.

No special damages were pleaded as such and no particular amount of money was specified for the feeding and accommodation. Part of the money claimed is accrued interest from a loan. The Plaintiff claims expected income of Uganda shillings 157,102,408/= computed according to exhibit P 20.

The Plaintiff's Counsel submitted that this evidence was not disputed and prayed that it should be awarded as special damages. In other words the Plaintiff had abandoned other claims by way of special damages. On the other hand the Defendant's Counsel submitted that the Plaintiff is not entitled to the claim on the ground that the Plaintiff walked away from the performance of the contract. No witness was called to support Exhibit P 20. There was no proof of accommodation claims or transportation claims.

I have carefully considered exhibit P 20 which is a financial business report on loss adduced by the Plaintiff and I agree with the Defendants submissions. The report is authored by Matrix and Co Certified Public Accountants. Special damages have to be pleaded and proved specifically. That notwithstanding, I have considered the Plaintiffs claims in exhibit P 20. The executive summary to exhibit P 20 gives the basis of the claim of the total income which was assumed to be at Uganda shillings 157,102,408/= on the premises that the licence was implemented. In the report it is written that the Plaintiff recovered a sum equivalent to Uganda shillings 29,667,500/= as part of the expected income. The accountants then calculated mark-up and applied interest of 22% per annum for a period of 59 months. It was assumed that from 15<sup>th</sup> January, 2009 up to 30<sup>th</sup> November 2013, the expected income is charged at 22% per annum and compounded for the amounts in question. The total sum less the recovered amount amounted to the outstanding amount charged which included interest. It was further assumed that the Plaintiff would have invested additional capital amount of Uganda shillings 12,387,000/= and therefore having a total claim of Uganda shillings 157,102,408/=.

I agree with the Defendant's submissions to the extent that it is only the Plaintiff who testified as PW1. On 21<sup>st</sup> December 2016, the Plaintiff's Counsel informed the court that the Plaintiff could not call additional two witnesses because she could not meet their demands and therefore she closed her case. The author of the document was not called to testify about the report. Secondly, the Plaintiff was awarded general damages under the doctrine of *restitutio in integrum* which should compensate her for whatever she has gone through including loss of business.

I therefore consider the issue of whether interest should be awarded as claimed in paragraph 3 of the plaint. The Plaintiff claims interest from the date of filing the suit till payment in full on the

claim of Uganda shillings 1,145,000,000/= claimed in the plaint. First of all, this amount was not awarded to the Plaintiff. The Plaintiff was only awarded Uganda shillings 300,000,000/= as compensation under the general title of "general damages". Counsel did not specifically address the court on the issue of interest. However I cannot take it that the claim for interest was abandoned. Section 26 (2) of the Civil Procedure Act provides as follows:

“26. Interest.

(2) Where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.”

The expression reasonable interest under the above provision leaves it to the discretion of the court as to what would be sufficient compensation in addition to the award of the principal sum. The provision also allows the court to award interest from the date of the decree in addition to any interest for a period prior to the institution of the suit. The Plaintiffs suit was filed on 29<sup>th</sup> January, 2013 after negotiations had failed. The Plaintiff has been awarded compensation for loss of income and consequential damages and interest ought not to be awarded for the compensated part. The period considered for damages is the period up to the filing of this suit. In the premises, the Plaintiff would be awarded interest on the decreed sum from the date of the filing of the suit up to the date of full payment on the principal sum of Uganda shillings 300,000,000/=.

Interest is awarded to the Plaintiff at the rate of 21% per annum.

The Plaintiff's suit succeeds with costs to the Plaintiff.

The counterclaim of the Defendant

As far as the counterclaim is concerned, there is no dispute about the counterclaim. On the counterclaim, the Plaintiff's Counsel submitted that the court should find that failure to pay the outstanding sum on the licence was occasioned by the Defendant.

However, the counterclaim amounts to about Uganda shillings 13,001,000/=. This figure can be rounded off to Uganda shillings 13,002,000/=. The counterclaim has been admitted by the Plaintiff.

In the premises, the Defendant's counterclaim succeeds and the counterclaim amounting to Uganda shillings 13,002,000/= shall be offset from the Plaintiff's award. It is accordingly awarded to the counterclaimant.

The counterclaim also succeeds with costs to the Defendant. The costs should be taxed and offset from the Plaintiffs claims.

Judgment delivered in open court on 16<sup>th</sup> June, 2017.

**Christopher Madrama Izama**

**Judge**

Judgment delivered in the presence of:

Joseph Manoba Counsel for the Plaintiff

Plaintiff is present

Charles Okuni: Court Clerk

Julian T. Nabaasa: Research Officer Legal

**Christopher Madrama Izama**

**Judge**

**16<sup>th</sup> June, 2017**