

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA

AT MENGO

**CORAM: ODOKI, CJ, ODER, TSEKOOKO, KAROKORA
AND KANYEIHAMBA, JJ.SC.)**

CIVIL APPEAL NO. 01 OF 2005

B E T W E E N

CROWN BEVERAGES LTD: ::::: ::::: APPELLANT

A N D

SENDU EDWARD: ::::: ::::: RESPONDENT

*(Appeal from the decision of the Court of Appeal at Kampala
(Mpagi-Bahigeine, Engwau and Kitumba, JJA) dated 8th
October, 2004 in Civil Appeal No. 17 of 2002).*

JUDGMENT OF ODER, JSC.

This is a second appeal against the decision of the Court of Appeal allowing the respondent's appeal against the judgment of the High Court, which had dismissed the respondent's suit.

The background facts were that the respondent bought a bottle of Mirinda fruity soft-drink for him to drink, from a retailer's shop who opened it for him. As he galloped down the contents of the bottle, he sensed some small stones on his tongue, and when he looked at the bottle, he noticed some dirt in it. As he complained to the seller, he saw another bottle of Mirinda Lemon on the rack, also containing some dirt. After reluctantly paying for the drinks, he decided to take the bottles to the L.C.I Chairman, to whom he reported the matter. He was advised to take the bottles to the Government Chemist, Nsubuga Emanuel, PW5, who analysed the contents of the bottles and found some substance suspended therein, which was unsafe for human consumption. He wrote a report-Exhibit P3.

On returning home, the respondent developed nausea, vomiting and diarrhea. He visited his doctor at Busabala Clinic, Dr. James Balongo, PW4, who prescribed treatment for him. The respondent, however, did not complete the treatment due to lack of funds. PW4 referred him to a specialist neurologist after he complained about his diminishing sexual prowess and shrinking manhood. He never consulted the neurologist due to lack of funds. He decided to sue the appellant for shs.30,000,000/= as general damages in negligence for breach of duty and the resultant injuries he had suffered.

In his plaint, the appellant claimed that:

“4 (g) As a result of drinking the sodas, the plaintiff developed weaknesses in his genitals and his penis had started to shrink and is unable to erect, therefore likely to result into impotence. (A photocopy of Busabala Nursing Home’s Comments are attached hereto and marked as Annexure “C”).

(h) the plaintiff’s disability is stated to be above 60% according to annexure “B” and is likely to become permanent thus denying our Chart his natural right.”

Particulars of the appellant’s alleged negligence were stated in paragraphs 5 as:

- (a) ***Providing and bottling Mirinda Fruity and Mirinda Lemon with starchy substance suspended therein;***
- (b) ***Failure to detect the said starchy substances;***
- (c) ***Putting on the market the said Sodas sealed with starchy substances;***
- (d) ***Knowing that the said sodas would reach the plaintiff with no reasonable possibility of intermediate examination;***
- (e) ***Injuring the plaintiff’s life as shown by Annexure “B” causing him a 60% permanent disability thus denying him enjoyment of his natural rights.”***

Paragraph 7 of the plaint repeated the allegations in paragraphs 5.

The appellant denied the respondent’s allegations in the plaint, contending that in their factory, they adhere to strict quality control standards set by the Uganda National Bureau of Standards and denied responsibility for the adulteration of the drink consumed by the respondent.

The learned trial judge dismissed the suit, holding that the respondent had failed to prove that the appellant breached the duty of care owed to the respondent. The respondent appealed to the Court of Appeal, which allowed the appeal and awarded the respondent shs.15,000,000/= general damages with 1/3 of the costs in the Court of Appeal and in the trial Court.

The appellant was dissatisfied with the Court of Appeal's decision. It appealed to this Court on the following grounds:

1. *The learned Justices of Appeal erred in law and in fact in: -*

- (a) ***granting damages in respect of a head that had not been claimed.***
- (b) ***In the alternative, the learned Justices of Appeal awarded damages that were excessive in the circumstances.***

Written submissions were filed in support of the appellant's appeal.

At the hearing of the appeal, the appellant's learned counsel, Mr.

Tumusingusi, abandoned ground 1 (a) and only argued ground 1(b). He

submitted that the damages awarded by the Court of Appeal was too

excessive given the extent of injuries. He cited the following cases in support of his submission:

Flint vs. Lovell, (1925) IKB. 354; Robert Coussens vs. Attorney General, Civil Appeal No. 8 of 1999 (scu) (unreported); and Milly Masembe vs. Sugar Corporation of Uganda and Another, Civil Appeal No. 1 of 2000(scu) (unreported).

In the instant case, learned counsel contended that the Court of Appeal does not appear to have stated any principle in support of the award it made. On the injuries sustained by the respondent, the learned counsel submitted that the evidence of the doctor (PW4) and his medical report, (Exbt.P2) indicated that the respondent's major problem was "weakness in the genitals- the penis had started to shrink and unable to erect," which may result into impotence. The doctor also said that on the third day the respondent had improved. Learned counsel contended that the trial Court and Court of Appeal found that it was not proved that the injuries warranted an award of damages. He also contended that there was nothing to prove that the injury was permanent. The appellant's learned counsel

concluded that as the award made by the Court of Appeal for damages, was excessive, this court should reduce it to shs.3 million to 5 million. Learned counsel referred to **Milly Masembe vs. Uganda Sugar Corporation (Supra)** in which this court upheld an award of 7,000,000/= general damages for personal injury. The appellant there had sustained very serious injuries in a road motor accident.

In the instant appeal, the respondent was represented by M/s Lumweno &Co. Advocates, who argued grounds I (a) and I (b) of appeal in their written submission, arguing them separately. Under ground 1(b), which was, alternative ground to 1(a). Learned counsel submitted that the award of shs 15,000,000/= general damages by the Court of Appeal was not excessive, and that we should leave it undisturbed. Learned counsel relied on what this Court said on award of damages in **Robert Coussens vs. Attorney General (supra)**. In that case what I said in the lead judgment was concurred to by the other members of the Court. The case concerned Coussen's claim for damages for the very severe gunshot wounds which was negligently caused by the Uganda Police. The relevant passage of my judgment was reproduced by the respondent's learned counsel in their written submissions.

In the passage, pages 20 to 21, I said:

"I turn now to the trial court's discretion on matters of damages. The law is now well settled that an appellate Court will not interfere with an award of damages by a trial Court unless the trial court has acted upon a wrong principle of law or that the amount is so high or so low as to make it an entirely wrong principles of law or that the amount is so high or so low as to make it an entirely an erroneous estimate of the damages to which the plaintiff is entitled. The earliest authority on this point I have been able to find is Phillips vs. London South Western Point (supra), in which James L.J. said on pages 85: -

"The first point, which is a very important one, relates to dissenting

from verdict of the jury upon a matter which generally speaking is considered to be within their exclusive province, that is to say the amount of damages.

We agree that Judges have no right to overrule the verdict of a jury as to the amount of damages, merely because they take a different view, and think that if they had been the jury, they would have given more or would have given less, still the verdict of juries as to the amount of damages are subject, and for the sake of justice, be subject, to supervision of a court of first instance and if necessary of a Court of Appeal in this way that is to say, if in the judgment of the Court the damages are unreasonably large or are unreasonably small then the Court is bound to send the matter for consideration by another jury.”

In Owen vs. Sykes (1936)l, KB 192, the Court of Appeal of England felt that although if they had tried the case, in the first instance they would have probably awarded a smaller sum as damages yet they would not review the finding on damages as they were not satisfied that the trial judge acted upon a wrong principle of law, or that amount awarded as damages was so high as to make it an entirely erroneous estimate of the damages to which the plaintiff was entitled. The Court of Appeal followed the case of Flint vs., Lovell (1935) IKB 354. This principle has been applied in East Africa and Uganda: see: Muljibhai vs. the ParticularAnor (1944) EACA, Mitdford Bowker (1947) 14 EACA 20; Watson vs. Powles (1968) IQ596, and Obonyo vs. Municipal Council of Kisumu (1971) EA 91 of 96.”

In my opinion, the principle that an appellate court will not interfere with the award of damages by a trial court unless the trial court acted upon wrong principle of law or the amount awarded is so high or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff was entitled equally applies to the instant case. This court is entitled to interfere with the amount of damages awarded by the Court of Appeal for the following reasons:

Firstly, the respondent prayed for a specific sum of 30,000,000 million as if it

was a claim for special damages, which must be pleaded and proved. It is trite law that the amount of general damages which a plaintiff may be awarded is a matter of discretion by the trial Court. Secondly, the Court of Appeal upheld the trial Court finding that: -

***“(a) There was no expert medical evidence to prove that the disability was likely to result into permanent impotence.
(b) Counsel’s submission that the respondent’s wife had abandoned him because he no longer performed marital duties was a creation of his (respondent’s) own imagination. No such evidence was adduced.”***

Thirdly, in view of the medical and other evidence the amount of 15,million shillings, in my view, was so high as to make it an entirely erroneous estimate of the damages to which the respondent was entitled. It was excessive.

In the circumstances, I would reduce the amount of damages awarded by the Court of Appeal to the respondent from shs.15,000,000 to 3,000,000/=, with one –third of the cost here and in the courts below.

In the result this appeal would partially succeed, and I would set aside the judgment and orders of the Court of Appeal and substitute them with the following orders:-

- (a) ***an award of shs.3,000,000/= general damages to the respondent,***
- (b) ***an award of one third of the costs in this Court and in the Courts below.***

Dated at Mengo this 14th day of March 2006

A. H. O. ODER
JUSTICE SUPREME COURT

THE REPUBLIC OF UGANDA

**IN THE SUPREME COURT OF UGANDA
AT MENGO**

**(CORAM: ODOKI, C.J., ODER, TSEKOOKO, KAROKORA,
KANYEIHAMBA, JJ.S.C.)**

CIVIL APPEAL NO. 1 OF 2005

BETWEEN

CROWN BEVERAGES LTD :::::::::::::::::::::::::::::: APPELLANT

VERSUS

SENDU EDWARDS :::::::::::::::::::::::::::::: RESPONDENT

[An Appeal from the decision of the Court of Appeal at Kampala {Mpagi-Bahigeine, S.G. Engwau and Kitumba, JJA} dated 8th October, 2004 in Civil Appeal No. 17 of 2002]

JUDGMENT OF ODOKI, C.J.

I have had the benefit of reading in the judgment of my learned brother, Oder, JSC and I agree with him that this appeal should partially succeed. I concur in the orders he has proposed.

As the members of the Court also agree, this appeal is partially allowed with orders as proposed by Oder JSC.

Dated at Mengo, this 14th day of March 2006.

BJ Odoki

CHIEF JUSTICE

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI,CJ., ODER, TSEKOOKO, KAROKORA, AND KATUREEBE.
JJ.S.C).

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CROWN BEVERAGES LTD] APPELLANT

AND

SENDI EDWARD] RESPONDENT

[Appeal from the decision of the Court of Appeal at Kampala (Mpagi-Bahigeine, Egwau, Kitumba, JJ.A), dated 8th October, 2004 in Civil Appeal No.17 of 2002]

JUDGMENT OF TSEKOOKO, JSC

I have had the benefit of reading in draft the judgment prepared by my learned brother, Oder, JSC, which he has just delivered and I agree that this appeal ought to succeed in part. I agree with the orders he has proposed.

Delivered at Mengo this 14th day of March 2006.

J.W.N.Tsekooko
Justice of the Supreme Court

THE REPUBLIC OF UGANDA

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**(CORAM: ODOKI, C.J., ODER, TSEKOOKO, KAROKORA,
KANYEIHAMBA, JJ.S.C.)**

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JUDGMENT OF KAROKORA, JSC.

I have had the advantage of reading in draft judgment prepared by my learned brother, Oder, JSC and I agree with him that this appeal should partially succeed. I also agree with the orders he has proposed.

Dated at Mengo, this 14th day of March 2006.

A.N. KAROKORA

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

**IN THE SUPREME COURT OF UGANDA
AT MENGO**

**(CORAM: ODOKI, C.J., ODER, TSEKOOKO, KAROKORA,
KANYEIHAMBA, JJ.S.C.)**

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CROWN BEVERAGES LTD :::::::::::::::::::::::::::::: APPELLANT

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JUDGMENT OF KANYEIHAMBA, JSC.

I have had the benefit of reading in draft the judgment of my learned brother, Oder, JSC and I agree with him that this appeal should partially succeed. I also agree with the orders he has proposed.

Dated at Mengo, this 14th day of March 2006.

G.W. Kanyeihamba

JUSTICE OF SUPREME COURT