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

[CORAM: ODOKI, CJ; Tsekooko, KANYEIHAMBA, KATUREEBE AND OKELLO, JJ.S.C]

CIVIL APPEAL No. 16 OF 2007

BETWEEN

ATTORNEY GENERAL :::::::::::::: APPELLANT

AND

A. K. P. M. LUTAYA ::::::::: RESPONDENT

[Appeal from the judgment of the Court of Appeal at Kampala (M. Kikonyogo, DCJ, Twinomujuni and Kavuma JJ.A) dated 21st December, 2005 in Civil Appeal No. 2 of 2005]

JUDGMENT OF TSEKOOKO, JSC:

This is an appeal, from the decision of the Court of Appeal which varied an order of the High Court (Katutsi, J) awarding Shs. 157,200,000/= as special and general damages to the respondent. To be more accurate the Court of Appeal ignored the award made by Katutsi J., and made its own assessment.

I consider it helpful to set out the facts. A.K.P.M. Lutaya, the respondent, is the registered proprietor of a piece of land comprised in Leasehold Register Volume

1425, Folio 13, Block 97, Plot 1, Kyaggwe, in Mukono District. He purchased it in 1987. He established a farm in one part of the land, (hereinafter referred to, for convenience, as the "suit land"). Some time in 1995 the Uganda Government deployed government soldiers at Mpoma Satellite Station to carry out security work. The station is on land adjacent to the suit land. The evidence adduced by Lutaaya established that soldiers trespassed to the suit land. On 20th February, 1996, he brought an action in trespass against the Attorney General, the appellant, in the High Court. In the action he claimed for general damages, special damages for trespass to the land and for a permanent injunction.

In the plaint, he alleged that during February, 1995, 600 government soldiers, who were deployed at Mpoma Satellite Station, trespassed upon the suit land and caused substantial damage to his farm, farm produce and his exclusive and demarcated forest. He also alleged that the soldiers together with members of their families cut down trees and removed valuable timber for construction of houses to live in and for firewood and producing charcoal. In the process the soldiers ruined his forest cover. In his written defence, the Attorney General admitted the presence of some soldiers at the station, but denied they numbered 600 and yet did not

say how many they were. He also denied knowledge of the existence of a farm and the alleged trespass and damage to it by the soldiers. The Attorney General averred further that if any soldiers trespassed, they did so on a floric of their own.

The suit was heard and dismissed by Ntagboba, PJ., as he then was. Lutaaya succeeded on second appeal to this Court. This Court decided in Civil Appeal No. 10 of 2002 (between the same parties) that the evidence on the record established Lutaaya's claim of trespass. This Court set aside the original order dismissing the suit and ordered for assessment of damages. In the High Court, Katutsi, J., awarded Shs. 156,200,000/= as special damages and Shs. 1,000,000/= as general damages. Upon appeal by the respondent, the Court of Appeal on 21st December, 2005 assessed special damages and general damages at Shs. 600m/= and Shs. 100m/= respectively, each carrying interest at 17% p.a. The Attorney General has now appealed from that decision on three grounds.

I must first decide what appears to be an objection to the grounds of appeal.

Before responding to the appellant's arguments in favour of each of the three grounds of appeal, Messrs

Semuyaba, Iga & Co., Advocates, counsel for the respondent, vaguely objected to the formulation of the three grounds of appeal contending that they do not conform to **Rule 82(1)** of the Rules of this Court in that none of the grounds specifically asks this Court to reduce the quantum of damages or the interest thereon concisely as required by the sub-rule. Apparently the appellant did not responded to this objection.

Be that as it may, the three grounds of appeal are couched in the following words -

1. *The learned Justices of the Court of Appeal erred in law and fact in their assessment and award of special damages.*

2. *The learned Justices of the Court of Appeal erred in law in their assessment of general damages.*

3. *The learned Justices of the Court of Appeal erred in law and fact in their evaluation of the interest awarded on both the general and special damages.*

The memorandum ended with two prayers one of which states that-

(b) **The quantum of damages be considerably reduced.**

It is obvious from this prayer that although the Attorney General has not asked for reduction of damages and interest by use of the words ***"because they were inordinately high"*** as contended by respondent's counsel, he has certainly asked for reduction of the quantum. I think that the objection has no merit and must be rejected.

I now consider the merits of the appeal beginning with the first ground in which the complaint is that the Justices of the Court of Appeal erred in law and fact in their assessment and award of special damages.

The gist of the arguments by the Attorney-General is that the allegation in the plaint did not justify the award of shs. 600m/= and that the Court of Appeal did not have sufficient evidence before it to justify that award as special damages for two years. It is further argued that the Court failed to re-evaluate available evidence. He relied on the following authorities **Jivanji Vs. Sanjo Electrical Co. Ltd. (2003) 1 EA 98(K); Ratcliffe Vs. Evans** (1989) ..B. 524 and **Siree Vs. Lake Turkana El Molo Lodges Ltd.** (2000) 2EA 521 (K). (These cases really reiterate well know statements of the law that claim for special damages must be particularised and be strictly proved).

In response, counsel for the respondent, supported the reasoning and decision of the Court of Appeal. Though Counsel's arguments on this ground are hazy, in effect the contention is that the respondent as plaintiff made adequate allegations in his amended plaint and adduced sufficient evidence to prove those allegations which the appellant did not rebut by contrary evidence. Counsel further contends that the respondent should in fact have been awarded a higher figure of special damages. Learned counsel relied on a number of authorities including **JIVANJI (supra), McGregor ON Damages** page 1066 and ***Robert Coussens Vs. Attorney General*** Sup. Ct. Civil Appeal No. 8 of 1999 (unreported), as well as **Matiya Biryabarema & 2 Others Vs. Uganda Transport Co.** (1975) Ltd. S. Ct. Civil App. 10/93.

There are many decided cases which set out principles upon which appellate courts act in reversing (or not reversing) award of damages made by a lower court especially a trial court. Thus in ***Traill Vs. Bowker*** (1947) 14 EACA, 20, the Court of Appeal for Eastern Africa Stated that in an appeal against the quantum of damages, the appellate court although if it had tried the case would have awarded a different amount will not interfere with the award of the trial judge unless it is satisfied that he acted upon a wrong principle or

that the amount of the damages awarded was so high or so low as to make it an erroneous estimate of the damages to which the plaintiff was entitled. The same principles were repeated subsequently in cases from various common law jurisdictions: see , for instance, ***Singh Vs. Kumbhar*** (1948) 15 EACA 21 and **Marumba Vs Clark** (1952) 19 EACA 60 and **Nartey-Tokoli Vs. Volta Aluminium Co.** (1990) LRC (Comm), at page 604 a decision of the Supreme Court of Ghana. Further, there are guidelines regarding assessment of quantum. It is trite law that in measuring damages, an attempt must not be made to give damages to the full amount of perfect compensation for the pecuniary injury but a reasonable view of the case must be taken and an award made of what is considered under the circumstances' to be a fair compensation for there are many incalculable factors which interpose to makes the assessment of a perfect compensation impossible: see ***Singh Vs. Singh*** (1932) 14 LRK 32, See also ***Henry H. Il***anga Vs. Mannoka (1968) EA 705 a case of trespass; ***Bhogal Vs. Burbinge Islir*** (1975) EA 285 and **Aden Port Trustees Vs. Ahamed Saleh El Watia** ***Islir*** 1964) EA 49. (another case of continuing trespass as in the present case) and **Matiya Biryabarema** (supra).

In the court below the lead judgment was delivered by Twinomujuni J. A. Because the trial judge had based

his assessment of damages on the basis of the contents of the original plaint dated 20/6/1996 (most likely though mistake) instead of the amended plaint dated 10th February 1997, the learned Justice of Appeal justifiably ignored the assessment of damages by the trial judge and made fresh assessment with which the other members of the court agreed.

In his judgment, (see page 7 of his typed judgment) the learned Justice of Appeal stated:-

"Both parties have made very detailed submissions addressing the ten grounds of appeal. It is not possible or even desirable to address each and every detail in order to arrive at a reasonable and just assessment of the damages. There is on record the evidence of expert valuers whose evidence was challenged by the respondent but was not rebutted. There is the evidence of the appellant and his witnesses which was challenged but not rebutted".

The learned Justice of Appeal then alluded to the contentions of the State Attorney who represented the appellant Attorney General in that court. These were that -

(a) *Because of contradictions between oral evidence and figures in the plaint, the Court should evaluate evidence and award a realistic figure.*

(b) *In awarding damages against the Attorney General, Court should take into account other players who also caused damages and apportion the loss accordingly.*

(c) The evidence of experts should not be treated as gospel truth.

Thereafter the learned Justice of Appeal considered and allowed only the first ground of Appeal which was a complaint that the trial judge had erroneously based the award of damages on the original plaint dated 20/6/1996 instead of basing the award on the amended plaint dated 10/2/1997, which amended plaint was on the court record. The learned Justice did not consider the remaining nine grounds of appeal because in his opinion they were objections to a judgment which was found faulty and therefore ignored its contents.

SPECIAL DAMAGES

In considering the award of special damages the learned Justice stated -

"I take into account the pleadings, the evidence on record, guidelines of the Supreme Court and arguments of counsel for both parties. The appellant claims shs.389,400,000/= each year for two years, i.e., 1995 and 1996.

However, this is not clear in the amended plaint. What is clear in the plaint is that at the time of filing the amended plaint in February 1997 the trespass was still going on. The claim for two years is, therefore, implied. Also it is not clear when the trespass actually stopped. It could have continued for another few months or years. Given those uncertainties, I would accept the estimate of the appellant's loss for two years at (shs.389,400,000/= x 2) shs.788,800,000/=. I will then take into

account that damages ***for timber, charcoal and fruits may have been exaggerated"*** *as the Supreme Court found. It is not clear to what extent this exaggeration could have been done. However, of the appellant went out of his way to employ expert valuers. The respondent was given opportunity to cross-examine them. The respondent also had opportunity to call upon such experts from the government valuation departments to rebut the appellant's evidence. Though the respondent challenged the appellant's evidence, it did not rebut the evidence.*

Taking all the circumstances of this case into account, I would award a figure of Ug.shs.600,000,000/= as special damages for:

(a) loss of timber,

(b) loss of trees for charcoal burning,

(c) loss of fruits and other garden fruits.

This loss must be borne by the respondent alone because it was caused by the soldiers of the UPDF. If other players came in afterwards, it was a result of the chaos that was introduced when the UPDF invaded the area.

Mr. Wamambe, the State Attorney who appeared for the Attorney General in the Court of Appeal, was not specific in his submissions on the amount which the Court could award. He urged the court ***"to re-evaluate the evidence and come to your own conclusion and award an appropriate award."***

Since the appellant did not adduce any evidence during the trial in rebuttal to that of the plaintiff (now respondent) and his witnesses as regards to damage caused to his land, his forest

and fruits, the Court of Appeal acted on such evidence as was placed before it by the respondent.

In his arguments in this Court on this ground the Attorney General asserted that the Court of Appeal had no relevant materials before it to conclude that trespass was for two years. Like in the Court of Appeal, he urged us to re-evaluate the evidence on record and come to a reasonable assessment. Again, as in the Court of Appeal, he did not indicate as to what is reasonable.

In my opinion the cases relied on by the appellant do not help and are distinguishable. The **Jivanji case** (supra) arises from infringement of the respondent's trademark in that case. The principles of pleading special damages and strict proof thereof were emphasised. There was an award of special damages in the nature of net profits on the goods sold.

The **Siree case** (supra) arose from wrongful administrative actions which led, inter alia, to closure of a respondent's lodge by administrative officials leading to loss of revenue by the respondent. The Kenya Court of Appeal held, inter alia, that in closing the lodge, the District Officer not only exceeded his authority but he also misused his powers and behaved like a village tyrant. That court only disallowed claims which had not been specifically pleaded. Indeed the court expressed the opinion that if the respondent had pleaded punitive and exemplary damages, the same could have been awarded. Like Jivanji case this case is relevant to pleading special damages and strict proof thereof.

In this case special damages were specifically pleaded and proved and the Court of Appeal so found.

In paragraph 4 of the amended plaint, this is how the respondent pleaded his claim -

4. *At all times hereinafter mentioned, the plaintiff was and is the registered proprietor of land known as Plot 1 Kyaggwe Block 97 and situated in Mukono District. The plaintiff established a farm thereon.*
   - (a) *On or about February 1995 approximately 600 National Resistance Army personnel were deployed at Mpoma Satellite station.*
   - (b) *As a result of the said deployment, soldiers, who occupied Mpoma Satellite Station, which is adjacent to the plaintiff's land, moved onto the plaintiff's farmland cut down and removed all available timber in his exclusive and demarcated forest for construction of residential accommodation quarters, at the satellite station.* ***Further on the soldiers invaded the plaintiff's well planted fields of perennial crops like bananas, avocados, passion fruits, jack fruits and oranges and proceeded to haphazardly pick fruits therefrom, and in the process damaged their branches hence rendering them totally unproductive or partially productive, consequently forcing the plaintiff to abandon husbanding the said crops for commercial gain.***

The soldiers together with their dependants also continuously engaged in firewood collection including commercial burning.

About six months later the said 600 National Resistance Army personnel were withdrawn from the station and another batch of 600 National Resistance Army personnel were re-deployed at the said satellite station. The new batch of soldiers like their previous counterparts moved on to the plaintiff's land and in like manner proceeded to cut down timber in the forest for construction of new accommodation quarters. The said soldiers together with their families have despite repeated protests from the plaintiff to date continuously engaged in firewood collection and commercial charcoal burning which has ruined and continue to ruin the plaintiff's hitherto well preserved and treasured forest cover. ***They also continued to damage/misuse the plaintiff's aforesaid field of various perennial crops.***

In this, the respondent pleaded in his claim his properties which had been damaged or taken by soldiers. According to the plaint the damage started in February 1995. He describes the sudden arrival of soldiers as an invasion of his well managed forest and farm. According to averments in paragraph 4(c) and 4(g) trespass and damage continued up the time of filing the amended plaint which was on 10th February, 1997 which is two years. This is backed up by respondent's oral and documentary evidence. His witnesses such as Kibuuka Joseph, (PW4), the farm driver, supported the respondent about the presence of soldiers.

In paragraph 5 of the amended plaint the respondent particularised his loss as special damages and quantified the loss in monetary terms. He testified and called witnesses to support him. The record shows that at the trial the Attorney General failed to get any witness to testify for the defence. So apart from the cross-examination of the respondent and his witnesses, there was no evidence from the Attorney General to

rebut that of the respondent. This is what the Court of Appeal held.
Now I notice that the respondent in his amended plaint prayed for shs. 389,400,000/=.

In the circumstances I think that the Court of Appeal did its best to assess the special damages. I however think that the court erred in awarding more than what was prayed for in the plaint which is shs. 389,400,000/=. Therefore ground one partially succeeds. I would therefore reduce special damages to that amount.

Ground 2 has been set out and the complaint is that the Court of Appeal erred in law in its assessment of general damages. I have already set out parts of the allegations in the plaint as to trespass and respondent's complaints.

In his judgment Twinomujuni, JA., stated, inter alia, that -

"I must take judicial notice of the fact that it takes a lot of years and immense expenses to put upon agro-forestry farm of 300 acres of the type under consideration in this case. Since 1995 the appellant had been put to great inconvenience of running around seeking help from whoever could help to no avail ………….. Doing the best I can in the circumstances of this case I would award Ug. shs. 100,000,000/= for this vicious and notorious trespass."

The Attorney General criticized this passage contending that the learned Justices failed in their duty to reevaluate the evidence on record and arrived at a wrong conclusion in assessment of general damages. The learned Attorney General further contended

that the Court of Appeal should have taken into consideration the presence of other players including Itongwa rebels, civilian wives and children and villagers. And so he urged that the award is inordinately high and should be reduced considerably but again he did not suggest a figure. He relied on **Henry Hidaya Ilanga Vs. Manyema Manyoka** (1961) EA 705 and **Robert Coussens Vs. Attorney General Sup. Ct.** Civil Appeal No. 8 of 1999.

Counsel for the respondent supports the decision of the Court of Appeal. Learned counsel urged that ever since the respondent purchased his farm in 1987 at shs. 200m/=, its value had by 1995 increased tenfold. Counsel referred to developments on the suit land, to the fact that respondent borrowed heavily and invested heavily. He referred to evidence in the reports produced by experts on behalf of the respondent.

I have noticed that learned Counsel for the respondent mixed up submissions on general damages with more submissions on special damages, whereas this latter were the subject of the first ground. Furthermore the learned counsel cited and relied on several authorities such as **Esso Standard (U) Ltd. Vs. Semu Amanu Opio** and argued that the respondent is entitled to **exemplary or aggravated damages** in the sum of 600m/= instead of shs. 100m/-. These submissions are not based on pleadings. Although there is some evidence suggesting that the conduct of the soldiers could have attracted such damages, the respondent did not claim for such damages in his amended plaint.

Furthermore if the respondent had wanted general damages to be increased, he should have cross-appealed. He did not. The figure of shs. 600m/= appears only in his submissions and were

borrowed from the earlier written submissions before Ntagboba, PJ. In his assessment of damages, Twinomujuni, JA; took into account relevant factors. He held that the loss *"must be borne by the (appellant) alone because it was caused by the soldiers of UPDF. If other players came in afterwards, it was a result of the chaos that was introduced when UPDF invaded the area."* In the circumstances I have no basis upon which I can interfere with the assessment of the learned Justice of Appeal. Therefore ground two ought to fail.

Ground three is a complaint that the award of interest on both special and general damages at the rate of 17% p.a. is erroneous.

I notice that the respondent in his plaint did not ask for interest on either special or general damages. In his written submissions before Ntagboba, PJ., he had asked for interest at the rate of 25%p.a. but did not explain why nor did he seek to amend the plaint for that purpose.

However the appellant relied on the decision of this Court in **Milton Obote Foundation Vs. Kennon Trading Ltd.** (S. Ct. Civil Appeal No. 25 of 1995) for the proposition that on the facts of this case, the respondent can only get interest at the rate of 6% p.a.

The respondent relied on S. 26 of Civil Procedure Act and argued, correctly, that award of interest is discretionary. Counsel cited a number of authorities concerning award of ~~costs~~ interest and claimed, wrongly in my view, that the respondent prayed for interest at the rate of 25%p.a. I say wrongly because the said prayer for interest at 25%p.a. appears only in the written

submissions in the trial before Ntagboba, PJ., Which the learned Principal Judge dismissed. There was no such prayer in the amended plaint which is the normal pleading. Moreover no sound explanation has been advanced for a higher interest. In the circumstances, this ground succeeds.

It was conceded by appellant's counsel, that both the special and general damages should carry interest at the rate of 6% p.a. from the date when the Court of Appeal award the damages, i.e., from 21st December, 2005.

I am prepared in the circumstances of this case to award interest at the rate of 8% p.a. on both the special and the general damages.

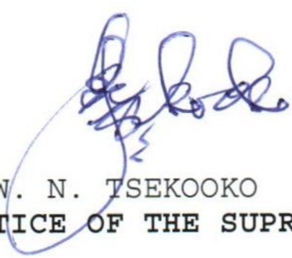
In conclusion this appeal fails substantially. I would order that -

(a) The special damages are reduced to shs. 389,400,000/= with interest at the rate of 8%p.a. from 21st December, 2005 till payment in full.

(b) General damages of shs. 100m/= is upheld but will carry interest at the rate of 8% p.a. from 21st/12/2005 till payment in full.

(c) The appellant will pay three quarters (¾) of the taxed costs of this appeal and in the two courts before. Such costs will carry interest at the rate of 6% p.a.

Delivered at Mengo this ....16th.... day of ....December.... 2008.



J. W. N. TSEKOOKO
JUSTICE OF THE SUPREME COURT.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: Odoki, CJ; Tsekooko, Kanyeihamba, Katureebe and Okello JJ.SC).

CIVIL APPEAL NO. 16 OF 2007

B E T W E E N

ATTORNEY GENERAL : : : : : : : : : : APPELLANT

AND

A. K P. M. LUTAYA : : : : : : : : : RESPONDENT

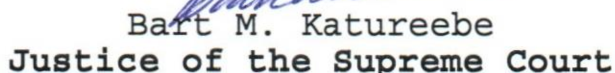
[Appeal from the judgment of the Court of appeal at Kampala (Mukasa-Kikonyogo, DCJ., Twinomujuni, and Kavuma JJ.A) dated 21st December, 2005 in Civil Appeal No. 2 of 2005].

JUDGMENT OF KATUREEBE, JSC.

I have had the benefit of reading in draft, the judgment of my brother Tsekooko, JSC, and I agree with his judgment and the orders he has proposed.

I have nothing useful to add.

Dated at Mengo this 16th day of December 2008.



Bart M. Katureebe
Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, C.J, TSEKOOKO, KANYEIHAMBA, KATUREEBE, OKELLO, *JJ.S.C.)*

CIVIL APPEAL NO.16 OF 2007

BETWEEN

ATTORNEY GENERAL :::::::::::::::::::::: APPELLANT

AND

A.K.P.M.LUTAYA:::::::::::::::::: RESPONDENT

(Appeal from the judgment of the Court of Appeal at Kampala (Mukasa-Kikonyogo, D.C.J, Twinomujuni and Kavuma, JJ.A.) in Civil Appeal No.02. of 2005, dated 21st December,2005)

JUDGMENT OF KANYEIHAMBA, J.S.C

I have had the benefit of reading in draft, the Judgment of my learned brother, Tsekooko, J.S.C, and I agree with his findings and decisions. I also agree with the orders he has proposed.

Dated at Mengo this..16th.........day of...December.............2008

G.W.Kanyeihamba

G.W.KANYEIHAMBA

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, C J, TSEKOOKO, KANYEIHAMBA, KATUREEBE AND OKELLO, JJ.SC)

CIVIL APPEAL NO.16 OF 2007

BETWEEN

ATTORNEY GENERAL ………………………………………………APPELLANT

AND

A.K.LUTAYA……………………………………………………………RESPONDENT

[An appeal from the judgment of the Court of Appeal at Kampala (Mukasa-Kikonyongo, DCJ, Twinomunjuni and Kavuma, J.J.A) dated 21st December 2005 in Civil Appeal No2.of 2005]

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgment prepared by my learned brother, Tsekooko JSC, and I agree with it .I concur in the orders he has proposed.

As the other members of the court also agree, this appeal is dismissed with orders as proposed by the learned justice of the Supreme Court

Dated at mengo this ……16th……………day of ……December………2008

B J Odoki

CHIEFJUSTICE

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, CJ, TSEKOOKO, KANYEIHAMBA, KATUREEBE AND OKELLO, JJSC.)

CIVIL APPEAL NO. 16 OF 2007

B E T W E E N

ATTORNEY GENERAL: :::::: :::::: :::::: APPELLANT

A N D

A. K. P. M. LUTAYA: :::::: :::::: :::::: RESPONDENT

[An appeal from the Judgment of the Court of Appeal at Kampala (Mukasa-Kikonyogo, DCJ, Twinomujuuni and Kavuma, JJA) dated 21st December 2005, in Civil Appeal No. 02 of 2005].

JUDGMENT OF G. M. OKELLO, JSC:

I have had the opportunity to read in draft, the judgment of my learned brother, Tsekooko, JSC, and I agree that the appeal must substantially fail.

I wish to comment on the complaint regarding the assessment by the Court of Appeal of the special damages.

In the amended plaint, the respondent prayed for special damages of Shs. 389,400,000=. Justice Twinomujuni, JA, in his lead judgment stated at page 10 thereof that *"I would accept the estimate of the appellant's loss for two years at (Shs. 389,400,000=)."* That statement contained an error and that was where the learned Justice of Appeal went wrong. The amended

plaint did not treat Shs. 389,400,000 as the rate of the respondent's losses per year for the two years (1995 - 1996). On the contrary, it reflected that amount as the grand total loss and prayed for it as such.

The learned Justices of Appeal clearly erred in awarding for special damages more than it was prayed for in the amended plaint. If the evidence indicated a greater amount, then the plaint had to be amended to reflect it. This was not the case.

I concur on the conclusion and the orders proposed by Tsekooko, JSC.

Dated at Mengo this: 16th ***day of:*** December, ***2008.***

G. M. OKELLO
JUSTICE OF THE SUPREME COURT