

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA**

(**Coram:** Mwangusya, Mwendha, Buteera, JJ.S.C. Nshimye, Tumwesigye Ag. JJ.S.C.)

CIVIL APPEAL NO. 02 OF 2018

Between

HWANG SUNG LIMITED APPELLANTS

Versus

M. AND D. TIMBER MERCHANTS A
ND TRANSPORTERS LIMITED RESPONDENTS


(Appeal against the decision of the Court of Appeal at Kampala before Owiny-Dollo DCJ, Kavuma, Barishaki, JJ.A. in Civil Appeal No. 30 of 2016)

JUDGMENT OF MWANGUSYA, JSC

I have had the benefit of reading in draft the judgment of my learned brother Hon. Justice Buteera, JSC and I agree with his findings and decision that this appeal be allowed with costs to the appellant in this Court and the Courts below.

I also agreed that the case be remitted to the High Court for hearing on its merits.

Dated at Kampala this^{11th}.....day of ^{July}.....2018


Hon. Justice Eldad Mwangusya
JUSTICE OF THE SUPREME COURT

INTERNAL MEMO

To: Hon. Justice Mwangusya, JSC
Hon. Justice Buteera, JSC
Hon. Justice Nshimye, Ag. JSC
Hon. Justice Tumwesigye, Ag. JSC

From: Hon. Justice Mwendha, JSC

Date: 27/06/2018

RE: **CIVIL APPEAL NO. 02 OF 2018**

Between


Hwan Sung Limited.....Appellant

And

M and D Timber Merchants and Transporters
Limited.....Respondent

Your Lordships,

Please find herewith attached my draft concurring Judgment of the above mentioned Appeal.


Hon. Justice Mwendha
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

Coram: - Mwangusya, Mwendha, Buteera JJSC, Nshimye,
Tumwesigye AG. JJSC

CIVIL APPEAL NO.02 OF 2018

BETWEEN

HWAN SUNG LIMITED.....APPELLANT

AND

M AND D TIMBER MERCHANTS AND TRANSPORTERS
LTD.....RESPONDENT

(Appeal against the decision of the Court of Appeal at Kampala before Owiny Dollo DCJ, Kavuma, Barishaki JJA in Civil Appeal No.30 of 2016)

JUDGMENT OF MWONDHA JSC

I have had the benefit of reading in draft the Judgment of my learned brother, Hon. Justice Buteera JSC and I agree with his findings, reasoning, decision and orders proposed.

I would like to add that it is apparent from the pleadings and the brief facts that there are issues which can only be resolved after a full trial has been held.

Section 5 of the Limitation Act and Order 7 Rule 6 of the Civil Procedure Rules are technicalities which cannot override the clear provisions of the Constitution. Article 126(2) (e) is instructive. It states:-

Substantive justice shall be administered without undue regard to technicalities.

The adjudication of cases both civil and criminal is subjected to the law which is the Supreme law of the land as above stated and any other law not inconsistent and or in contravention with the Constitution.

The subject matter being land, it is only fair and just that the file be remitted to High Court for hearing on its merits.

Dated at Kampala this.....^{11th} day of ^{July}.....2018

Mwondha

MWONDHA

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

**(CORAM: MWANGUSYA; MWONDHA ; BUTEERA; JJ.S.C.;
NSHIMYE; TUMWESIGYE; AG. JJ.S.C.)**

CIVIL APPEAL NO: 02 OF 2018

BETWEEN

HWAN SUNG LIMITED :::::::::::::::::::: APPELLANT

AND

M. AND D. TIMBER AND

TRANSPORT LIMITED :::::::::::::::::::: RESPONDENT

[Appeal from the decision of the Court of Appeal at Kampala (Owiny Dollo, DCJ, Kavuma, Barishaki, JJA) in Civil Appeal No. 30 of 2016]

JUDGMENT OF TUMWESIGYE, JSC.

I have had the benefit of reading in draft the judgment of my learned brother, Hon. Justice Richard Buteera, JSC and I agree with him that this appeal should be allowed with costs in this court and in the courts below.

I also agree with the orders he has proposed.

Dated at Kampala this^{11th}.....day of.....^{July}.....2018


Justice Jotham Tumwesigye
JUSTICE OF THE SUPREME COURT

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA**

**(CORAM: MWANGUSYA, MWONDHA, BUTEERA JJ.S.C, TUMWESIGYE,,
NSHIMYE,AG.J.J.S.C.)**

CIVIL APPEAL NO.02 OF 2018

BETWEEN

HWAN SUNG LIMITED:.....APPELLANT

AND

**M.AND D. TIMBER MERCHANTS AND
TRANSPORT LIMITED :.....RESPONDENT**

*[Appeal against the decision of the Court of Appeal at Kampala
before Owiny Dollo, DCJ, Kavuma, Barishaki, JJ.A. in civil appeal
No. 30 of 2016]*

JUDGMENT OF A.S. NSHIMYE, AG. JSC.

I have had the benefit of reading in draft the lead judgment of my learned Brother Hon Justice Richard Buteera JSC. I agree with the way he has addressed the issues, reasoning and conclusion that the appeal be allowed with costs here and in the courts below.

I also agree that, the file be sent back to the High Court for trial on its merits.

I would only add that the pivot point at which this appeal hinged, was whether the decision of High Court to strikeout the appellant's suit finally disposed of and determined the whole suit. If it did, then the appellant had an automatic right of appeal without recourse to seeking leave of

Court to Appeal. On a glance, the Civil Procedure Rules, Order 44, gives the impression that it exhaustisefully deals with all types applications that end up in court orders. It is not the case.

Appellate courts ought to be careful and ascertain whether or not in a particular given case before court, what appears to be an ordinary order arising from an application to strike out a suit, is not actually a disguised final decree.

The lead judgment rightly quoted the opinion of Justice Mustafa in the case of ***South British Insce Co. Ltd v Muhamedali Taibji Ltd (1973) E.A 210***, which is binding. It is now settled that if an order has the characteristic and consequence of bringing a whole suit to finality, it is a decree within the meaning of section 2 (c) of the Civil Procedures Act and is therefore appealable as of right.

Dated at Kampala, this 11th day of July 2018.


A.S. NSHIMYE

AG. JUSTICE OF SUPREME COURT