THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

CIVIL APPEAL NO. 1 OF 2019

[CORAM: MWONDHA; TIBATEMWA-EKIRIKUBINZA; TUHAISE; CHIBITA; MUSOKE JJSC]

BETWEEN

MAKUBUYA ENOCK WILLIAM
(T/A POLLA PLAST) :::::::::::::::::::::::::::::::::::::: APPELLANT

AND

UMEME (U) LIMITED:::::::::::::::::::::::::::::::::::::: RESPONDENT

[*Appeal from the judgment of the Court of Appeal in Civil Appeal No. 216 of 2015 before (Hon. Justices: Kasule, Kakuru and Kiryabwire, JJA) dated 30th October 2018.*]

Representation: The Appellant represented himself.

The Respondent Company was represented by Mr. Nicholas Mwasame of M/S Shonubi, Musoke & Co. Advocates.

There was no official from the Respondent Company in Court.

Summary:

Special damages- particularity of pleading and proving special damages - what amounts to sufficient particulars of special damages in pleadings.

Proving Special damages- The damages can be proved through adducing documents such as receipts or invoices as evidence but can also be proven through other ways such as: testimony of the person who says they bought the destroyed item, fair market value of the damaged property, expert opinion or other credible evidence.

General damages- in assessing the general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the victim may have gone through and the extent of injury suffered.

JUDGMENT OF PROF.TIBATEMWA-EKIRIKUBINZA, JSC.

Background

The Appellant (Makubuya E William t/a Polla Plast) purchased plastic manufacturing machines from BMK Industries and commenced business on the premises of his landlord Messrs. BMK Industries Limited. This was between March and November 2008.

The Appellant and his landlord agreed that the Appellant pays his electricity bills on the account of BMK. Later on, the Appellant caused change of the account names into the names of his business Polla Plast Ltd but was surprised to be given an outstanding bill of electricity by the Respondent Company amounting to Ug.shs. 155,183,658/=. The Appellant contested the bill and refused to settle it. As a result, the Respondent Company disconnected the Appellant's electricity.

Subsequently, the Appellant signed a deed of acknowledgment of debt in which he undertook to settle the electricity bill and reconnected the electricity, albeit illegally. This came to the notice of the Respondent Company. A charge for causing energy loss and a fine were imposed on the Appellant. The fine was added to the unpaid electricity bill. It is partly on the basis of the illegal re-connection that the Trial Court awarded the Respondent Company Ug.shs. 25,586,300 based on the company's counter-claim.

The Appellant on the other hand stated that after the Respondent disconnected the power supply to his factory, the electricity meters kept running and he continued receiving electricity bills up to the time he lodged the civil suit in the High Court. The Appellant therefore believed that the Respondent Company did not give him a correct bill and that the electricity meters installed by the Respondent at his company were faulty. The Respondent admitted that indeed the meters were faulty.

Due to the disconnection of power supply by the Respondent Company, the Appellant suffered financial constraints and could not keep up with all his financial obligations including paying rent to his landlord. As a result, in a separate suit, the landlord attached the

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Appellant's machines which were subsequently sold off under a court order. This resulted into collapse of the Appellant's company.

It is against the above background events that the Appellant sued the Respondent in the High Court. The Appellant first lodged a plaint in the Trial Court on 6th November 2012. He subsequently amended his plaint on 16th December 2013. According to Order 6 rule 19 of the Civil Procedure Rules[1], a Plaintiff has liberty to amend his pleadings without requiring the leave of court but must follow the timelines prescribed within the said rule. Furthermore, Order 6 rule 24 provides that where a party has amended his pleadings, the opposite party shall plead to the amended pleadings. Based on the amended plaint, the following issues were framed at the trial:

1. Whether the plaintiff (now Appellant) was liable to pay the outstanding electricity bill of Ushs 155,157,226.83 to the defendant.
2. Whether the defendant (now Respondent) illegally and unlawfully transferred the bill of Ug.shs 60,482,777/= to the plaintiff.
3. Whether the defendant irregularly and unlawfully fined the plaintiff in respect to the imposed fraud charge of Ushs 52,575,373/=.
4. Whether the defendant irregularly and unlawfully billed the plaintiff in respect of faulty meter readings.
5. Whether the defendant was liable for the loss of the plaintiff's machines and business.
6. What appropriate remedies were available to the parties?

In finding that the Appellant was not liable to pay the bill of Ug.shs 60,482,777/=, the trial Judge made a declaration that the Appellant was unlawfully charged for causing energy loss and was therefore not liable to pay the fraud charge of Ug.shs 51,575,373.68/=. Furthermore, the trial Judge held that the undertaking executed by the Appellant on the 9th of May 2012 was void because it was made under duress. The Judge ordered that arbitrators be appointed to carry out a valuation of the Appellant's machinery in order for him to be compensated for the unlawful actions carried out by the

[1] Statutory Instrument 71-1.

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Respondent. Further still, in absence of an agreement between the parties, the Judge ordered that a valuation surveyor be appointed by the Electricity Disputes Tribunal to determine the amount of compensation payable under section 77(10) of the Electricity Act 1999 cap 145. In conclusion, the trial Judge awarded the Appellant general damages of 20% of the amount that was to be assessed by the Electricity Disputes Tribunal. He also awarded interest at 20% per annum on the compensation amount from the date of judgment till payment in full.

Dissatisfied with part of the decision, the Respondent Company-UMEME successfully obtained an order for stay of execution of the High Court orders which included the assessment proceedings that were underway at the Electricity Disputes Tribunal. The Respondent also lodged an appeal in the Court of Appeal on the following grounds:

1. *The trial judge erred in law and fact when he held that the Appellant was unlawfully disconnected from power having found that the same Appellant had an unpaid electricity bill of USHS 25,000,000/=.*

2. *The learned trial judge erred in law and fact when he held that the deed of acknowledgment of debt and undertaking to pay, dated the 27th of September 2011 entered into between the Appellant and Respondent was done under economic duress.*

3. *The learned trial judge erred in law and fact when he held that the Respondent was responsible for the loss of the Appellant's machines and was liable to compensate him for the same, yet, the machines had been sold pursuant to a suit in which the Appellant was not a party.*

4. *The learned trial judge erred in law and fact when he held that the bill of USHS 60,482,777 was unlawfully transferred to the Appellant's account.*

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5. *The learned trial judge erred in law and fact when he held that that the fraud charge recovered of USHS 51,575,373/= was unlawfully imposed.*

6. *The learned trial judge erred in law and fact when he held that the document marked exhibit d8 was not authored by the Appellant.*

7. *The learned trial judge erred in law and fact when he failed to properly evaluate the evidence on record thereby arriving at a wrong conclusion.*

8. *The learned trial judge erred in law and fact when he held that that only USHS 25,000,000/= was due from the Appellant in unpaid electricity bills.*

9. *The learned trial judge erred in law and fact when he held that the excessive sum in general damages of 20% per annum of the amount assessed by the electricity disputes tribunal be paid to the Appellant.*

10. *The learned trial judge erred in law and fact when he did not award general damages to the Respondent as a result of the Appellant's unpaid bills.*

11. *The learned trial judge erred in law and fact when he held that interest of 20% per annum from the date of judgment was payable to the Appellant on the compensation amount and the general damages.*

The Court of Appeal found in favour of the Appellant-Makubuya E William and dismissed UMEME's appeal. Consequently, the decision of the trial Judge was upheld with the following modifications:

1. UMEME pays Ug. shs. 300,000,000/= as general damages to the Respondent.

2. The amount of money owed by Makubuya to UMEME in the sum of Ug shs. 25,586,300 for used electricity be set off from the general damages awarded under item 2 above.
3. Interest granted at 20% per annum on item 2 after deduction of the sum in item 3 above. That interest was to run from the date of the High Court judgment-9th February 2015 until payment in full.
4. Costs of the appeal and those in the High Court were awarded to Makubuya at 6% per annum from date of taxation till payment in full.

The Appellant-Makubuya Enock William being dissatisfied with part of the Court of Appeal decision appealed to this Court. However, before the appeal was heard, he filed an application for leave to adduce additional evidence.

The evidence was in form of proceedings that had transpired at the Electricity Disputes Tribunal and a valuation report together with invoices from MOK Associates Certified Public Accountants detailing the value of the Appellant's machinery.

This Court found no merit in the application for leave to adduce additional evidence. It was therefore dismissed on the premise that the Appellant had not presented the application at the earliest opportunity in the lower courts.

Regarding the appeal lodged in this Court, the Appellant presented the following grounds for determination:

1. **The learned Justices of the Court of Appeal erred in law in holding that special damages amounting to USD 2, 534,107/= were neither pleaded nor proved in the plaint by the Appellant and that, as such he was not entitled to the same in HCCS No. 534 of 2012.**

2. **The learned justices of the Court of Appeal erred in law when they failed to refer the matter to the electricity disputes tribunal and/or to allow the electricity disputes tribunal to determine the value of the Appellant's property for purposes of compensation as directed by the high court.**

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3. **The learned justices of the court of appeal erred in law in awarding the Appellant a sum of USHS 300,000,000/= as general damages in regard to the injury he suffered for the loss of his business and goodwill.**

4. **The learned justices of appeal erred in law, when they failed to properly evaluate the evidence on record as a whole thereby arriving at a wrong decision.**

The Appellant sought the following orders from Court:

1. That the appeal be allowed.
2. That the judgment and orders entered for the Appellant be set aside as far as the abovementioned grounds are concerned and be substituted with the following:

   a) The Respondent compensates the Appellant for the loss of factory machines and his business by paying him special damages.
   b) That the dispute be referred to the electricity disputes tribunal for determination of compensation payable by the Respondent as directed by the High Court.
3. That the Respondent pays costs of this appeal and in the courts below.
4. Any other relief deemed fit by this honorable Court.

Ground 1

Appellant's submissions

The Appellant submitted that the Honourable Justices of Court of Appeal erred in law when they failed to evaluate the evidence on record by stating that he neither pleaded nor proved special damages. He argued that the main objective for amending his plaint was to insert the pleading of special damages. That it cannot therefore be said that he failed to plead special damages.

In regard to the issue of proof, the Appellant argued that special damages are not only proved through documentary evidence. They

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can also be proved by direct evidence of a person who claims to have received or paid out a sum of money in respect of the subject matter. The Appellant submitted that in the instant case, he personally purchased and paid for the machinery. He referred to Agreements marked PA I and PA 2 to support the foregoing submission. Document PA1 is an agreement between B.M.K Industries and the Appellant for purchase of the plastic Manufacturing Factory by the Appellant. The second document PA2 is an agreement between B.M.K Industries and the Appellant for sale of various machinery for a consideration of Ug. Shs. 170,000,000/= which was to be paid in monthly installments of Ushs.21, 250,000/= between 15th December 2008 and 15th July 2009.

The Appellant also referred Court to a letter appearing on Pages 1-4 of his supplementary record as well as paragraph 4 (i) of the amended plaint. He argued that the reason for amending the plaint was for purposes of including the claim for special damages.

Premised on the above documents, the Appellant argued that he pleaded and proved the claim for special damages.

Respondent's reply

The Respondent's counsel argued that the Appellant neither pleaded nor proved special damages. That indeed this Court in Makubuya Enoch William T/A Polla Plast vs. UMEME Limited (Civil Application No.9 of 2019) arising out of this Appeal found that the special damages had not been pleaded. The Court in that application stated that:

"*It is trite law that special damages have to be specifically pleaded and strictly proved ... We have had the occasion to peruse the amended Plaint (annexture A to the Affidavit in support of the application filed by the applicant in the High Court). The Plaint does not show that the applicant pleaded special damages as required by the rules of procedure. This is evidence from the decision of the High Court where the Trial Court made declaratory orders, awarded general damages, interest and costs of the suit, but no order as to special damages. A similar award of general damages, interest and costs were made by the Court of Appeal. Neither the pleadings nor the decision of the courts below talk of special damages. What the Applicant (now Appellant) is*

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attempting to do indirectly is to amend his plaint on second appeal to include special damages."

Counsel therefore argued that a party who has not pleaded special damages cannot be entitled to an award of the same. Counsel relied on the authorities of:

(i) **Haji Asuman Mutekanga and Equator growers (U) Ltd SCCA No 7 of 1995** where this Court stated that: *it is trite law that special damages and loss of profit must be specifically pleaded.*

(ii) **Fang Min vs. Belex Tours and Travels SCCA No 06 of 2013** where this Court stated at page 29 that: "*it is now settled law that a party cannot be given a relief which it has not claimed in the plaint or claim".*

In response to the Appellant's submission that he particularized loss and damages under paragraph 19 of the amended plaint, counsel argued that the said paragraph provided for particulars of loss and damage and not special damages.

Furthermore, counsel submitted that no inference of special damages could be drawn from paragraph 19 of the amended plaint.

Counsel further argued that having omitted to particularize special damages in his amended plaint, it was not an issue for determination in the High Court as well as the Court of Appeal.

Based on the above arguments, counsel invited this Court to uphold the decision of the Court of Appeal and the Ruling of this Court in Civil Application No.9 of 2019.

Ground 2

Appellant's submissions

Under this ground, the Appellant faulted the Learned Justices of the Court of Appeal for failure to refer the matter to the Electricity Disputes Tribunal or to allow the Electricity Disputes Tribunal to determine the value of the Appellant's property for purposes of

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computing the 20% award of general damages as directed by the High Court.

That this caused an injustice to both parties. The Appellant prayed that this Court appoints Arbitrators under Section 27 of Judicature Act as well an Independent Engineer Valuation Surveyor to assess the value of the machines.

Respondent's reply

Under this ground, counsel supported the finding of the Court of Appeal that since special damages were not pleaded, the assessment of damages was in respect of general damages only. That there was no need to refer the matter to the Electricity Tribunal for assessment or send the file back to the Trial Court since **Section 11 of the Judicature Act** vests the Court of Appeal with powers of a Trial Court. The said section provides as follows:

> **For the purpose of hearing and determining an appeal, the Court of Appeal shall have all powers, authority and jurisdiction vested under any written law in the Court for the exercise of the original jurisdiction of which the appeal originally emanated.**

Ground 3

Appellant's submissions

The Appellant argued that the Learned Justices of the Court of Appeal erred in law by assessing and awarding him USHS 300,000,000/= as general damages for the injury and loss of his business and goodwill. That this was contrary to the directives of the Trial Court that the Appellant be given general damages amounting to 20% of the valued machinery.

In conclusion, the Appellant made the following prayers:

1. The appeal be allowed.
2. This Court appoints a technical Engineer to move overseas and inquire about the costs of the machines. Or Court orders the Respondent to pay the Appellant the amount as per Exhibit P.

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31 inclusive of all the transportation costs from overseas to Kampala.

3. The judgment and orders of the Court of Appeal be set aside and those of the High Court upheld.
4. The Respondent pays 50% of the costs of this appeal.
5. The Respondent pays all the costs in the courts below with interest of 6% from the date of judgment until payment in full.
6. The Respondent pays 20% on General damages annually from the date of judgment of the High Court until the present date.
7. The Respondent is penalized with exemplary damages.
8. The Respondent pays 20% interest on the figure which has been assessed either on Exhibit P. 31 or directly by the appointed valuers annually from the date of High Court Judgment until payment in full.
9. Any other relief deemed fit by this Honourable Court.

Respondent's reply

Counsel submitted that the award of general damages is an exercise of judicial discretion which can only be interfered with if it is injudiciously exercised.

That the Justices of the Court of Appeal were correctly guided by the principle in **Uganda Commercial Bank vs. Deo Kigozi [2002[EA 395** where Court held that:

... in assessing the general damages payable to the Appellant the court should be guided by the value of the subject matter, the economic inconvenience that the Respondent may have gone through and the extent of injury suffered.

Counsel submitted that based on the above principles, the Court of Appeal took note of the fact that the Appellant had purchased machinery from various entities and that the Plastic factory machines were valued at USD 2,534,107 which information was on the court record. That therefore, the Appellant cannot fault the Court of Appeal for assessing general damages due to him which was premised on correct principles.

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Furthermore, counsel submitted that this Court being a second appellate Court is precluded from questioning the findings of fact of the Trial Court which are supported by evidence.

In conclusion, counsel prayed that the appeal be dismissed. He further prayed that costs in this Court and in the courts below be granted to the Respondent.

Court's consideration

The pivotal arguments of the appeal before Court are in respect of pleadings in a claim of special damages and the award of general damages.

Ground 1

Under this ground, the Appellant argued that he pleaded and proved the claim for special damages. On the other hand, the Respondent's counsel argued that the Appellant's amended plaint does not contain any specific pleading of special damages.

What constitutes special damages?

Special damages relate to past pecuniary loss calculable at the date of trial.[2] Special damages are awarded to cover financial loss that can be actually ascertained in terms of monetary cost. It is compensation to cover financial losses incurred.

The losses must be specifically pleaded and proven. The damages can be proved through adducing documents such as receipts or invoices as evidence but can also be proven through other ways such as: testimony of the person who says they bought the destroyed item, fair market value of the damaged property, expert opinion or other credible evidence.

In determining the issue of special damages, the Court of Appeal held as follows:

[2] Principles governing the award of damages in civil cases, a paper presented by Rtd. Justice Katureebe, JSC on Wednesday, 18th June 2008.

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"... special damages were not specifically pleaded in the plaint. Paragraph 19 of the plaint referred simply to economic loss of income. The particulars of the machines said to have been lost were neither set out in the plaint nor proved ...

In respect of special damages, the principle of law is that special damages must be specifically pleaded and proved, but strictly proving does not mean that proof must be documentary evidence. Special damages can also be proved by any direct evidence, for example by evidence of a person who received or paid or testimonies or experts conversant with matters. See Gapco (U) Ltd versus A S Transporters (U) Ltd.,CACA No 18 of 2004 and Haji Asuman Mutekanda versus Equator Growers (U) Ltd SCCA No 7 of 1995". (My emphasis)

I note that the Appellant's amended plaint which is on record states as follows:

Paragraph 19.

That as a result of the illegal and unlawful actions of the defendant, the plaintiff has lost his entire business occasioning him economic loss and loss of income for which the defendant shall be held liable.

Paragraph 20.

PARTICULARS OF LOSS AND DAMAGE

a) Loss of the Plaintiff's plastic manufacturing machines valued at United States Dollars 2,534,107 owing to the fact that the Landlord attached the Plaintiff's entire factory for nonpayment of rent.

b) Loss of the plaintiff's business occasioned by the defendant's unjustified claims that entirely stifled the plaintiff's operations occasioning him financial or economic loss.

The question which follows is: *whether the above paragraphs amounted to a sufficient/ specific pleading for special damages in the plaint.*

In response to the Appellant's submission that he particularized loss and damages under paragraph 19 of the amended plaint, counsel for

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the Respondent argued that the said paragraph provided for particulars of loss and damage and not special damages.

The Respondent's Counsel submitted that paragraph 19 did not amount to pleading special damages. That in fact the slightest inference for the claim of special damages cannot be made from the said paragraph.

I note that the Court of Appeal made a finding at page 23 of their judgment that *special damages were not specifically pleaded in the plaint.* The court pointed out that *the particulars of the machines said to have been lost were neither set out in the plaint nor proved.*

I am alive to the need for clarity, certainty and particularity in pleadings. And there is no doubt that laxity in drafting pleadings for a claim of special damages would defeat the purpose of pleadings and take by surprise an opponent who must prepare their defence for every allegation in the plaint. Nevertheless, I am persuaded by the philosophy of Bowen L.J expressed in **Ratcliffe vs. Evans**[3] that:

> (whereas) to insist upon less particulars in the pleadings would be to relax old and intelligible principles [that special damages must be strictly pleaded and proved] ... to insist upon more would be the vainest pedantry.

Therefore, once it can be ascertained from the pleadings that a claim for special damages was made out, it would be a travesty of justice to insist that a party must use the words "special damages" in the pleadings.

Based on the excerpts of the plaint reproduced above, could a claim for special damages be made out/ascertained?

I answer the question in the affirmative. Special damages were specifically **pleaded** in the plaint at paragraph 20. The pleadings referred to loss of plastic manufacturing machines valued at United States Dollars 2,534,107. Such is a claim for special damages. The argument by Counsel for the Respondent that the relevant paragraphs provided for particulars of loss and damage and not special damages, does not stand.

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[3] [1892] 2 Q.B 524 (C.A)

It is trite that pleadings are a crucial part of the legal process as they define the scope of the dispute, delineate the issues between the parties and inform the opposing party about the nature of the case and specific claims to be met. But whereas I accept that pleadings are the chief basis of preparation for trial, it cannot be said that pleadings are the only basis for trial preparation. It should be recognized that pleadings are not a fact-sifting mechanism and that attempts to force them to serve that purpose may only result in making the pleadings increasingly complicated.

I must also point out that where a party opines that they are prejudiced by what they perceive to be inadequate information and or unclear pleadings, the law provides additional means by which the parties might obtain the related facts through the use of various discovery procedures. One such procedure is an application for further and better particulars. The Respondent could have sought for further and better particulars about the claim under **Order 6 Rule 4** of the **Civil Procedure Rules** and the court would order the plaintiff to serve further and better particulars of a matter stated in the pleading. In the matter before us, such an order would result in giving further and better particulars of *"plastic manufacturing machines"* already stated in the plaint.

The rule provides that:

> **A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered upon such terms as to costs and otherwise as may be just.** (My emphasis)

The above rule avails an opportunity to a party to receive better particulars to enable them prepare a sufficient defence to every claim and allegation made. Had the Respondent felt prejudiced as defendant, that they could not on the basis of the pleadings adequately prepare their defence, they would have moved for a more definite statement. **They did not**.

And as a matter of fact, it was not a ground of appeal at the Court of Appeal that the Appellant had not pleaded special damages. The ground of appeal regarding the claim of lost machines was:

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The learned trial judge erred in law and fact when he held that the Respondent was responsible for the loss of the Appellant's machines and was liable to compensate him for the same, yet, the machines had been sold pursuant to a suit in which the Appellant was not a party.

Another relevant example of discovery procedures is the pretrial conference from which ensues scheduling memoranda.

I note that in the present case, a pre-trial conference was held on 18 February 2014. This was followed with filing of a joint scheduling memorandum signed by both parties. In the joint scheduling memorandum, one of the issues which was presented by the parties for determination was: *whether the defendant is liable for the loss of the Plaintiff's machines and business.* Furthermore, the parties in the joint scheduling memorandum listed documents to be relied upon, witnesses to be called as well as the agreed facts. Among the documents listed by the Appellant which are relevant to the issue of special damages was a list of Polla Plast machines and their values and a Bank of Africa Appraisal Report by Meys Consult for Polla Plast machines as of June 2014.

All in all, I come to the conclusion that the Appellant pleaded special damages. What the Respondent denied was liability.

Did the Appellant specifically prove the claim of special damages?

As already noted in this judgment, there are various types of evidence which can be adduced for proving special damages. In the case before Court, what was adduced in evidence is:

(i)the Appellant's testimony indicating how much he bought the machines; and

(ii)a report prepared by Meys Consulting Engineers and Valuers showing the fair market value of the machinery.

In respect of category (i), in his witness statement dated and signed 19 March 2014, which appears in the supplementary Record of Appeal at pages 235-243, the Appellant testified that he lost all his

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plastic manufacturing machines valued at United States Dollars 2,534,107.

According to **Order 18 rule 5A (10)** of the **Civil Procedure (Amendment) Rules**[4], a witness statement is a written testimony signed by a witness and filed in court and served on the opposite party for purposes of having it tendered in court as the evidence in chief of the witness. (My emphasis)

Order 18 rule 5A (8) also provides that a witness shall include documents on which the witness relies. In line with this Rule, the Appellant at paragraph 47 (a) of his witness statement deponed as follows:

"I have lost all my plastic manufacturing machines valued at United States Dollars 2,534,107 owing to the fact that the Landlord attached my entire factory for non-payment of rent since I was no longer operating because power supply had been arbitrarily disconnected by the defendant.

All the machines are listed on my list of machines and their values. (See: Plaintiff exhibit P 31 on pages 52-56 on the trial bundle)."

Exhibit P31 appears on the Record of Appeal at page 148 with the title -List of Machines for Polla Plast. It was signed by the Appellant and is dated 31 December 2012. It also bears a stamp of Polla Plast and postal address. Exhibit P31 also lists a total of 23 various types of machines that the Appellant owned in his factory as well as the countries from which they originated with a corresponding amount in US dollars for each type of machine listed. I note that this list was relied upon by the Appellant both in the Trial Court and in the Tribunal.

The above list indicated that the grand sum of the machines was USD 2,534,107. I however note that a correct addition of the corresponding figures in the breakdown amounts to USD 2,519,557 and not USD 2,534,107. **Therefore, the correct amount to be referred to is USD 2,519,557.**

[4] 2019.

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Secondly, the Appellant attached a valuation report indicating the fair market value of the machinery. The valuation report was prepared by Meys Consulting Engineers and Valuers dated 26 June 2012 and marked Exhibit P.33. The said report was prepared on instructions of Bank of Africa to find out the value of all the Appellant's machinery. The report indicated a breakdown of 31 machines with corresponding fair market values. It was stated in the report that the machines inspected were in a fairly good condition and could serve for a reasonable period of time if well maintained. The report also indicated that the total sum of the fair market value of the machinery was Ug. Shs. 2,110,950,000 (two billion, one hundred and ten million, nine hundred and fifty thousand Uganda shillings only) and a forced sale value of Ug.shs. 1,266,570,000/= (one billion two hundred sixty-six million five hundred seventy thousand Uganda shillings). Regarding these values, it is important to emphasize that they should not be perceived as a contradiction with those appearing in Exhibit P31 and hence a failure by the Appellant to prove his claim for special damages. A fair market value (FMV)of property is determined by the marketplace (or objective purchasers) rather than as determined by a subjective individual. It is what an informed and unpressured buyer would pay to an informed, unpressured seller in an arm's length transaction, where the price is based solely on the value of the property, as opposed to selling the property to a family member and giving them a special deal).[5] Thus, the fair market value does not represent the actual amount the property was bought.

And it is important to note that the Respondent neither challenged the values in Exhibit P31 nor that in the Meys Consulting Engineers and Valuers report. Indeed, the Appellant's lawyer in the Trial Court submitted that:

"The evidence that the Plaintiff's factory machinery was worth $2,534, 107 was not at all rebutted by the defendant and the court should order the defendant to compensate the plaintiff for the loss of factory machines by paying the plaintiff USD 2,534, 107 as special damages

[5] Legal Information Institute, https://www.law.cornell.edu/wex/fair_market_value, accessed on 11 January 2024.

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(excluding the cost of transportation from India, China, Japan, S. Korea, Taiwan and Germany)." [My emphasis]

On this aspect, the trial Judge held that:

"In the premises, the loss of the Plaintiff's business which included the attachment of its property for failure to pay rent is a direct consequence of the defendant's actions in disconnecting the Plaintiff on grounds which had been successfully challenged in this suit. The Defendant is liable to compensate the Plaintiff for the loss of all his machines in the factory." (My emphasis)

From the foregoing analysis, I hold that the Court of Appeal erred in its finding that the Appellant neither **pleaded nor proved** special damages.

I have also found it pertinent to address the Respondent's submission that this Court, in its Ruling following the application for leave to adduce additional evidence (vide Civil Application No.18 of 2019), held that the amended plaint as well as the decisions of the Trial Court and the Court of Appeal did not contain an aspect on special damages.

A reading of the Ruling shows that in the said application, what the applicant sought to adduce as additional evidence were documents which were as a matter of fact already on the record i.e. the amended plaint, receipts showing the purchase price of the machinery and valuation reports showing the value of the machines.

It is pertinent to note that the Appellant who was the applicant then was an unrepresented litigant. This perhaps was the reason why he was misguided on presenting documents which were already on the court record.

Further scrutiny of the Ruling shows that the Court veered into an area which should not have been dealt with in the application i.e. whether or not the Appellant had pleaded special damages. This issue should have been left for consideration in the appeal and indeed, this is what we have done in the matter before us – the appeal.

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However, more important to note is that the *ratio decidendi* of the Ruling is that leave to adduce additional evidence should be raised at the earliest opportunity. It is for this reason that the Court did not grant the applicant the leave he had sought to adduce "additional" evidence on a second appeal.

I therefore opine that the error apparent in the Court's ruling should not constrain the Court in arriving at the correct finding that in fact the Appellant pleaded and proved special damages.

Ground 1 succeeds.

Ground 2

The Appellant argued that the Court of Appeal erred in assessing the general damages instead of referring the matter to the Electricity Disputes Tribunal. The Respondent's counsel on the other hand argued that the Court of Appeal had the power to assess general damages and this Court should not interfere with the award.

The Electricity Disputes Tribunal is established under **Section 93 of the Electricity Act.**[6] According to the Act, the objective of the Tribunal is to hear complaints related to the power sector, which includes disputes between consumers and the public bodies charged with generation, transmission and distribution of electricity.

Furthermore, the jurisdiction of the Tribunal is provided for under **Section 77 (10)** of the Act as follows:

> **A dispute as to the liability of the licensee to pay compensation under subsection (8) or the amount of that compensation shall be determined by the tribunal.**

Subsection (8) provides that:

> **Where damage or loss is caused to the consumer by the negligence of the licensee in the exercise of powers conferred on the licensee by this Part, the consumer is entitled to prompt payment of fair and adequate**

[6] Cap 145.

compensation by the licensee for the damage or loss sustained as a result of the exercise of those powers.

On the other hand, **Article 139 (1)** of the **Constitution** confers on the High Court original and unlimited jurisdiction over all matters.

A juxtaposition of the provisions of law reproduced above *prima facie* suggests that both the High Court and the Tribunal have concurring jurisdiction in assessing general damages.

In dealing with a similar issue in **Uganda Revenue Authority (URA) vs. Rabbo Enterprises (U) Ltd**[7], I held that an Act of Parliament cannot oust the original and unlimited jurisdiction of the High Court. Therefore, although the High Court, opted to refer the determination of quantum of damages to the Electricity Disputes Tribunal, the court had the jurisdiction to not only resolve the issues raised but also assess the general damages due to the plaintiff.

Having arrived at the finding that the High Court had the power to assess damages, it follows that the Court of Appeal too had the power to assess and determine damages due to the Appellant.[8]

The Court of Appeal therefore correctly evoked its powers under Section 11 of the Judicature Act to assess the general damages. In the view of the Court of Appeal, the High Court had enough evidence to evaluate the damages due to the Appellant.

Ground 2 therefore fails.

Ground 3

Under this ground, the Appellant argued that the general damages assessed by the Court of Appeal were dismal. The Appellant submitted that the learned justices of the Court of Appeal erred in law in awarding him a sum of Ushs.300, 000,000/= as general

[7] SCCA No.12 of 2004 delivered on 10th July 2017.

[8] Section 11 of the Judicature Act provides that for the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the origina' jurisdiction of which the appeal originally emanated.

h.7-E

damages in regard to the injury he suffered for the loss of his business and goodwill.

General damages are the direct natural or probable consequence of the wrongful act complained of and include damages for pain, suffering, inconvenience and anticipated future loss. (See: **Storms vs. Hutchinson [1905] AC 515**).

It is trite law that the amount of general damages which a plaintiff may be awarded is a matter of exercise of judicial discretion.

It is also trite law 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 an erroneous estimate of the damages to which the plaintiff is entitled.[9] (My emphasis)

I note that in arriving at the award of general damages, the Court of Appeal was guided by Exhibit P31, which indicated the total sum of the Appellant's machines as USD 2,519,557. The court was also guided by a valuation report prepared by Meys Consulting Engineers and Valuers (Exhibit P33) which indicated the fair market value of the Appellant's machinery at Ug.sShs. 2,110,950,000 (two billion, one hundred and ten million, nine hundred and fifty thousand Uganda shillings).

The above mentioned evidence was not challenged by the Respondent Company save for a mere denial in the Written Statement of Defence.

Guided by the above evidence, I find that the Court of Appeal judiciously exercised its discretion and made an appropriate award of general damages in the sum of Ug. Shs. 300,000,000/=. The sum is neither too low nor manifestly excessive.

I therefore uphold the award of general damages in the sum of Ug. Shs. 300,000,000/= (three hundred million).

Ground 3 fails

[9] Robert Coussens vs. Attorney General SCCA No. 8 of 1999; Crown Beverages Ltd vs. Sendu Edward SCCA No.1 of 2005.

h. T-E

Ground 4

The Appellant made no submissions to support Ground 4 which faulted the learned Justices of Appeal for failing to evaluate the evidence on record.

Conclusion and Orders

I hold that the appeal succeeds on ground 1 and fails on grounds 2 and 3 with the following **proposed** orders:

1. The Appellant is awarded special damages equivalent to the sum of USD 2,519,557 as the proved cost of the machinery. This award is subject to a deprecation rate over the number of years the machinery was put to use before being attached and sold off.

2. The Appellant's award of general damages in the sum of Ug. Shs. 300,000,000/= as granted by the Court of Appeal is upheld.

3. The Appellant's outstanding electricity bill of Ug. Shs. 25,586,300/= which was arrived at by the trial Judge taking the difference between the paid up bill of Ug.Shs. 112,028,150/= from the total amount claimed by the Respondent in the sum of Ug. Shs. 137,614,450 is upheld. The Court of Appeal erred in its orders by stating the outstanding bill as Ug. Shs. 22,586,300/= instead of the correct figure 25,586,300/=.

4. The outstanding electricity bill of Ug. Shs. 25,586,300 is to be deducted from the general damages awarded in item 2 above.

5. Interest is awarded at 20% per annum on the award of general damages after deduction of the sum in item (3) above. The interest is to run from the date of the Court of Appeal judgment (30th October 2018) until payment in full.

6. The sum of Ug.shs.100, 000,000/= as exemplary damages awarded by the Court of Appeal is upheld.

7. I make no order as to the costs in this Court since the Appellant was a self-represented litigant.

8. Costs in the courts below are awarded to the Appellant.

Dated at Kampala this...25th... day of...January.....2024.

L. Tibatemwa.

.....

PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT.

Delivered by the Registrar

25/1/24

Reg

L.T-E

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: MWONHDA, TIBATEMWA-EKIRIKUBINZA, TUHAISE, CHIBITA, MUSOKE JJ.SC.)

CIVIL APPEAL NO.01 OF 2019

BETWEEN

1, MAKUBUYA ENOCK WILLIAM (T/A POLLA PLAST)::APPELLANT

AND

1. UMEME (U) LIMITED)::RESPONDENT

[Appeal from the judgment of the Court of Appeal in Civil Appeal No. 216 of 2015 before (Hon Justices, Kasule, Kakuru and Kiryabwire, JJA) dated 30th October 2018

JUDGMENT OF TUHAISE , JSC.

I have had the benefit of reading the lead judgment of Hon Justice Prof. Tibatemwa-Ekirikubinza, JSC.

I agree with the decision, and the orders therein.

Dated at Kampala, this ------28th------ day of ---January------ 2023

Percy Night Tuhaise

JUSTICE OF THE SUPREME COURT

Delivered by the Registrar 28/1/24

Reg

THE REPURLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: MWONDHA; TIBATEMWA-EKIRIKUBINZA; TUHAISE; CHIBITA; MUSOKE; JJSC)

CIVIL APPEAL NO. 1 OF 2019

BETWEEN

MAKUBUYA ENOCK WILLIAM
(T/A POLLA PLAST) ::::::::::::::::::::::::::::::::APPELLANT

AND

UMEME (U) LIMITED::::::::::::::::::::::::::::::::RESPONDENT

{Appeal from the decision of the Court of Appeal at Kampala (Kasule, Kakuru and Kiryabwire, JJA). Dated 30th October, 2018 in Civil Appeal No. 216 of 2015.}

JUDGMENT OF MIKE CHIBITA, JSC.

I have had the benefit of reading in draft the Judgment of my learned sister, Hon. Justice Prof. Lillian Tibatemwa-Ekirikubinza, JSC.

I agree with her decision that this appeal should succeed. I also agree with the orders she has proposed.

Dated at Kampala this ..25th..day of....January.....2023

.....

MIKE CHIBITA
JUSTICE OF THE SUPREME COURT.

Delivered by the Registrar 25/1/24,

Rg

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

Coram (Mwondha, Tibatemwa-Ekirikubinza, Tuhaise, Chibita, Musoke, JJ.SC)

CIVIL APPEAL NO. 1 OF 2019

MAKUBUYA ENOCK WILLIAM (T/A POKA PLAST).....APPELLANT

VERSUS

UMEME (U) LTD.....RESPONDENT

(An appeal arising from the judgment of the Court of Appeal in Civil Appeal No. 216 of 2015 before (Kasule, Kakuru and Kiryabwire, JJA) dated 30th October 2018)

JUDGMENT OF MWONDHA, JSC

I have had the benefit of reading in draft the judgment of my learned sister Professor Tibatemwa-Ekirikubinza, JSC, I concur with the analysis, reasoning and the decision therein that the appeal succeeds. I also concur with the proposed orders made.

Decision of Court

Since the three members of the Coram, Hon. Justice Mwondha, Hon. Justice Tuhaise, Hon. Justice Chibita concur with the lead judgment and one member Hon. Justice Musoke dissents, the appeal succeeds in the terms as stated therein.

Dated at Kampala this .....25th.....day of .....January.....2024.

.....

Mwondha

Justice of the Supreme Court.

Delivered by the Registrar 25/1/24

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 01 OF 2019

MAKUBUYA ENOCK WILLIAM
T/A POLLA PLAST::APPELLANT

VERSUS

UMEME (U) LTD::RESPONDENT

(Appeal from the decision of the Court of Appeal (Kasule, Kakuru and Kiryabwire, JJA) in Civil Appeal No. 216 of 2015 dated 30th October, 2018)

CORAM: HON. LADY JUSTICE FAITH MWONDHA, JSC
HON. LADY JUSTICE PROF. LILLIAN TIBATEMWA – EKIRIKUBINZA, JSC
HON. LADY JUSTICE PERCY TUHAISE, JSC
HON. MR. JUSTICE MIKE CHIBITA, JSC
HON. LADY JUSTICE ELIZABETH MUSOKE, JSC

JUDGMENT OF ELIZABETH MUSOKE, JSC

I have had the benefit of reading in draft the judgment of my learned sister Prof. Tibatemwa-Ekirikubinza, JSC. I concur with her Lordship's statement of the facts and submissions, and gratefully adopt the same. In this judgment, I will only refer to the facts necessary to explain the conclusions I would reach in this appeal.

The appellant raised four grounds in his memorandum of appeal. Ground 1 of the appeal challenges the Court of Appeal's decision refusing the appellant's claim for special damages of USD 2,534,107 being the value of the machines lost due to the respondent's act of unlawfully disconnecting electricity supply to his factory. The background to ground 1 is that between 2008 and 2012, the appellant operated a plastics manufacturing factory which was powered by electricity supplied by the respondent. The factory was situated on rented premises. In 2011 and 2012, issues arose due to the appellant's alleged failure to settle outstanding electricity bills owed to the respondent, which the appellant disputed. As a result, the respondent

disconnected the electricity supply on two occasions. The first occasion was on 17th April, 2012. Thereafter, the respondent restored the electricity supply after the appellant had undertaken to pay certain outstanding fees within three-months. However, the appellant failed to do so, and on 29th October, 2012, the respondent permanently disconnected the electricity supply at the said factory.

Meanwhile, the disconnection of the electricity supply at the factory greatly affected the appellant's business. The appellant was unable to meet several financial obligations, including payment of rent to the factory premises' landlord. The landlord, following court process, successfully attached and sold the plastics manufacturing machinery contained in the appellant's factory. The appellant's business subsequently collapsed.

The appellant, on 8th November, 2012, instituted a suit against the respondent. He subsequently amended his plaint. The appellant, by his suit, sought several declarations, all to the effect that he owed no outstanding electricity bills debt to the respondent, and that the respondent had unlawfully disconnected the electricity supply to his factory premises. The respondent denied the appellant's claims and further counterclaimed for a declaration that the appellant had an outstanding electricity bills debt of Ug. Shs. 155,157,226.83.

In his judgment, Madrama, J (as he then was) the learned trial Judge, found that the debt alleged by the respondent was unlawful and included bills incurred by third parties and not the appellant. The learned trial Judge found that the appellant's true outstanding electricity bills debt was Ug. Shs. 25,586,300/=. The learned trial Judge further found that the act of the respondent in disconnecting electricity supply from the appellant's factory premises was unlawful and that rather than disconnection, the respondent ought to have resorted to other options including "debt recovery".

The learned trial Judge considered that the respondent's act of disconnecting the electricity supply at the factory premises had occasioned loss to the appellant for which the respondent was liable to pay compensation. The learned trial Judge found that the loss suffered by the appellant included loss

of machines in the factory that were attached and sold off by the appellant's landlord in satisfaction of non-payment of rent by the appellant. However, the learned trial Judge was unable, on the evidence adduced before the Court, to assess the value of the machines, and therefore he referred the matter to valuers appointed by the Electricity Regulatory Authority to determine the value of the machines. He also awarded general damages being 20% of the value determined by the valuers.

The respondent appealed to the Court of Appeal against the trial Court's finding that it was liable to pay damages for the machines. The Court of Appeal considered that the claim for the value of the machines was a claim for special damages, and needed to be specifically pleaded and proved. The Court of Appeal found that the claim for the machines was neither specifically pleaded nor proved and declined to award special damages. The Court of Appeal also awarded the appellant general damages of Ug. Shs. 300,000,000/= for loss of business arising caused by the respondent's acts of unlawfully disconnecting the electricity supply; and also awarded punitive damages of Ug. Shs. 100,000,000/=.

The appellant, as mentioned earlier, appealed against the Court of Appeal's refusal to award him special damages for the lost machines after finding he had neither pleaded nor proved this head of damages. It is worth reiterating that special damages refer to pecuniary loss calculable at the date of the trial. Special damages are such as the law will not infer from the nature of the act. They do not follow in ordinary course. They are exceptional in their character and therefore they must be claimed specially and proved strictly. **See: Stroms Bruks Aktie Bolag and Others vs. J & P Hutchinson [1905] UKHL 844**. In **Mutekanga vs. Equator Growers Ltd [1995-1998] 2 EA 219**, this Court emphasized further stressed this point as follows:

> **"Again, it is trite law that special damages and loss of profit must be specifically pleaded, as it was done in the instant case. They must also be proved exactly, that is to say, on the balance of probabilities.**
>
> **...**

As the learned author stated in MC Gregor on Damages (4 ed) at 1028, the evidence in special damages must show the same particularity as is necessary from its pleading. It should therefore, normally consist of evidence of particular losses such as the loss of specific customers or specific contracts.

However, with proof as with pleadings, the Courts are realistic and accept that the particularity must be tailored to the facts.

In one of the leading cases on pleading and proof of damages, namely, Ratcliffe v Evans [1892] 2 QB 524, Bowden LJ, said this at 532-533:

"The character of the acts themselves which produce the damage, and the circumstances under which these acts are done must regulate the degree of certainty and particularity with which the damage ought to be proved. As such, certainty must be insisted on in proof of damage as is reasonable, having regard to the circumstances and the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pandatory."

In the present case, the appellant, at paragraph 3 (v) of his plaint claimed for compensation for:

"economic loss, loss of business and loss of the company assets occasioned by the acts/omissions of the defendant (respondent).

In relation to the lost machines, the appellant pleaded at paragraph 19 of his plaint as follows:

"That as a result of the illegal and unlawful actions of the defendant, the plaintiff has lost his entire business occasioning him economic loss and loss of income for which he defendant shall be held liable.

PARTICULARS OF LOSS AND DAMAGE

a) **Loss of the plaintiff's plastic manufacturing machines valued at United States Dollars 2,534,107 owing to the fact that the Landlord attached the plaintiff's entire factory for non-payment of rent."**

It is clear from the above excerpt that the appellant mentioned in his plaint that he had lost manufacturing machines worth USD 2,534,104 which he had in factory premises and which were sold by his landlord to satisfy a decree for non-payment of rent. There may be some criticism that the appellant failed to specify the exact machines he had lost and their value or to attach an annexture setting out the value of the machines, however, I am prepared to accept that the appellant appropriately pleaded that he lost plastic manufacturing machines worth the amount he stated in the plaint.

Having pleaded the claim of loss of certain machines, the appellant was expected to adduce evidence to prove on the balance of probabilities that the lost machines were worth the exact amount of money claimed in the plaint. The evidence in this regard was given in the appellant's witness statement as follows:

> **"47**
>
> **(a) I have lost all my plastic manufacturing machines valued at USD 2,534,107 owing to the fact that the landlord attached my entire factory for non-payment of rent since I was no longer operating because power supply had been arbitrarily disconnected by the defendant.**
>
> - **All the machines are listed on my list of machines and their values. (See: Plaintiff exhibit P31)**
> - **When I applied for a loan with Bank of Africa, some of the machines were valued by a valuer of Bank of Africa called M/S Meys Consult. All those machines were taken by Spear Link Auctioneers duly instructed to be attached and auctioned by court since my landlord wanted his rent arrears.**
> - **The valuation report for SPEAR LINK shows the machines taken in the execution exercise. (See: Plaintiff Exhibit P.34)"**

The appellant's own evidence contained three separate values for the same factory machines, namely; 1) USD 2,534,107 per Exhibit P.31, a list compiled by the appellant on 31st December, 2012; Ug. Shs. 2,110,950,000/= per a valuation report by Meys Consult dated 26th June, 2012 (Exhibit P.33); and

Ug. Shs. 191,250,000 (fair value) and Ug. Shs. 95,625,000/= (force sale value) per a valuation report by Spearlink Auctioneers dated 4th May, 2013 (Exhibit P.34). In my view, a person who presents evidence of three different values for the same subject matter cannot be said to have strictly proved the value.

In my view, strictly proving the amount of special damages requires proof of the exact quantum specified in the plaint by adducing credible evidence. In the present case, the value pleaded by the appellant was contained in Exhibit P.31, a list compiled by the appellant. While it is true that a plaintiff need not always adduce documentary evidence to prove special damages, the present case was one where such evidence was not only desireable but also the best evidence. The list presented by the appellant was both hard to verify and of doubtful credibility. My view on the lack of credibility of the list is due to the fact that it was prepared by the appellant on 31st December, 2012 after he had already filed the suit in the trial Court vide his initial plaint of 8th November, 2012. In all likelihood, the appellant contrived to create Exhibit P.31 so as to support the claim contained therein. Secondly, Exhibit P.31 does not provide any purchase documentation as should be expected for expensive machines. Accordingly, it is my view that the list of the lost factory machines and their prices as presented by the appellant in Exhibit P.31 is of doubtful credibility and could not have formed the basis for awarding the colossal amount of special damages claimed by the appellant.

It is no wonder that the appellant has, in this appeal, prayed this Court to refer the issue of determination of the value of the lost machines to valuers determined by the Electricity Regulatory Authority as ordered by the Court. But the reality is the High Court ordered for the valuation because there was insufficient evidence to prove the value of the lost machines as pleaded by the appellant. The traditional course that the High Court ought to have followed was to find that the appellant had not proved the claim for the value of the lost machines and dismissed it, as the Court of Appeal did when it refused the claim due to lack of proof. The High Court clearly erred in taking that course as Prof. Tibatemwa-Ekirikubinza, JSC has rightly found in her judgment.

All the above analysis leads to only one conclusion, which is that the appellant failed to strictly prove his claim for special damages constituting the value of lost factory machines as pleaded in his plaint. The decision of the Court of Appeal refusing to award the appellant special damages was therefore correct and thus, in departure, from the conclusion in the judgment of Prof. Tibatemwa-Ekirikubinza, JSC, I would disallow ground 1 of the appeal.

I would also disallow ground 2 of the appeal in which the appellant is asking this Court to refer his matter to the Electricity Disputes Tribunal to determine the value of his property. In my view, allowing that request will assist the appellant to circumvent the requirement that was imposed on him to strictly prove the claim in his plaint. Such a request would also have practical difficulties as to where machines identical to the lost machines would be obtained for purposes of valuation. Moreover, as stated in the judgment of Prof. Tibatemwa-Ekirikubinza, JSC, the appellant did not, in his plaint, ask the court to order for the valuation, and thus it was improper to order for it.

I would also disallow ground 3 of the appeal for the reasons given in the judgment of Prof. Tibatemwa-Ekirikubinza, JSC.

In conclusion, and for the reasons given in this judgment, I would disallow all the grounds and accordingly dismiss the appeal for lacking in merit. I would make no order as to costs.

Dated at Kampala this ..... day of..... 2023.

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Elizabeth Musoke

Justice of the Supreme Court

Delivered by the Registrar

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