

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

CORAM: HON. LADY JUSTICE A.E.N.MPAGI-BAHIGEINE, JA
5 **HON. MR. JUSTICE S.G. ENGWAU, JA**
HON. LADY JUSTICE C.K.BYAMUGISHA, JA

CIVIL APPEAL NO.84 OF 2002

10 **BETWEEN**

KARIM HIRJI:..... APPELLANT

AND

KAKIRA SUGAR WORKS LTD:..... RESPONDENT

15 *(An appeal from the judgment and orders of the High Court of Uganda
sitting at Jinja (Bamwine J) dated 9th May 2002 in HCCS No.93 of 2001)*

JUDGMENT OF BYAMUGISHA, JA

20 This appeal arose out of the decision and orders of the High Court wherein the
appellant's claim against the respondent was allowed in part.

I had the benefit of reading in draft form the lead judgment that was prepared by
25 Bahigeine JA and I agree with her that the appeal lacks merit. The facts that led to the
institution of the proceedings in the lower court are sufficiently set out in the lead
judgment and it is not necessary to repeat them. However, I shall make a few remarks
on one aspect of the damages that was claimed by the appellant - the value of the
vehicle.

30 The main contention before us was whether the appellant had proved the claim for
damages to the standard that the law requires. The damages claimed was the value of
the vehicle that was damaged beyond repair in the accident. The law is that when
goods are destroyed, the measure of damages is the market value of those goods at the

time of destruction. The learned trial Judge was alive to the principle when he stated at page 64 of the record:

"The principle of law in cases of destruction of goods, the measure of damages is the market value of those goods at the time of judgment". See Interfreight

5 **Forwarders (U) Ltd v EADB SCCA No.33/1992(1993 1V KALR 124).**

He applied this principle and awarded the appellant the sum of DM 20,000 being the customs approved value of the vehicle. This value was contained in the Customs Bills
10 of Entry (exhibit D.2) which the importer or his/her authorised agent makes for purposes of assessing taxes payable. The data contained in the bill shows that the vehicle in question entered the country through Malaba entry point during February 1999. The accident occurred on 5th September, the same year.

15 Mr Michael Akampurira who represented the appellant before us criticised the trial Judge for not awarding the sum of DM 625,000- as the value of the vehicle. He claimed that this sum was supported by the testimony of Patrick Mugerwa (P.W.6) who tendered in evidence an invoice dated 23/03/96(exhibit P.1). This invoice indicated that the purchase price of the said vehicle was DM 625,000= and, according
20 to counsel, the appellant had paid its equivalent in US dollars 600,000=

Mr Bart Katurebe SC who represented the respondent supported the award given by the trial Judge. He pointed out that the invoice tendered in evidence by the appellant had inconsistencies that could not be easily explained. The first inconsistency was the dates of 28/03/96 that appeared at the right hand corner and another date of 21/03/96
25 at the bottom left hand corner. The second inconsistency pointed out was that the invoice bears a sum different from the one allegedly sent. He was referring to the testimony of the appellant wherein he stated that he paid a total of one million deutsche marks.

30 In arriving at the figure to award the appellant, the learned trial judge relied on the testimony of Allen Kagina (D.W.3), Commissioner for Customs and Excise, Uganda Revenue Authority. She tendered in evidence the customs bill of entry dated 26/08/99 and the declaration of the value of the vehicle. This indicated as earlier stated in this judgment that the vehicle was valued at DM 20,000 in 1999. She stated that the value

of the vehicle in 1996 was DM 80,000 which means that it had depreciated. The testimony of this witness shows that the appellant failed to prove to the satisfaction of the court that the vehicle he brought into the country in August 1999 was valued at DM 625,000 as claimed in the plaint. Consequently, I would dismiss this appeal in the
5 terms proposed by Bahigeine JA.

Dated at Kampala this...20thday of.....April.....2004.

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C.K.Byamugisha
Justice of Appeal