IN THE SUPREME COURT OF UGANDA

AT MENGO

CIVIL APPEAL NO. 4/91

BETWEEN

J.K PATEL…… APPELLANT

AND

SPEAR MOTORS LIMITED …… RESPONDENT

(Appeal from judgment of the High court of

Uganda at Kampala by Mr. Ag. Justice A.R. Soluade

Dated the 27/3/91 in Civil Suit No. 1031 /88)

High Court Civil Suit No. 1031 of 1988

JUDGEMENT OF SEATON. J.S.C.

This appeal and the cross appeal arose out of a suit involving a contract. The appellant was the original plaintiff. The respondent was the original defendant. Hereinafter I shall refer to them by the designation they bore in the High court.

The Contract was for work down on the defendant's premises. It was alleged in the plaint that the defendant asked the plaintiff to perform the work and promised to pay for it. The plaintiff and the defendant did not reduce their agreement to writing. Evidence was given in the trial court as to its terms.

The dispute was about payment. The plaintiff claimed US Dollar 253, 700 was owing on the agreed amount that was to be paid for the work. The defendant insisted he had fully performed his obligation as to payment.

The learned trial judge gave Judgment dismissing the suit. This is the subject matter of the appeal. The Judge made no order as to costs. This has occasioned the cross appeal.

Six grounds were set out in the memorandum of appeal. Of these three grounds overlapped. The sixth ground was abandoned. I shall deal with the grounds of appeal in the order in which they were set out in the memorandum. Then I shall deal with the sole ground of the cross appeal.

The first ground of appeal concerned the issues as framed at the commencement of the hearing. It was said that the learned trial Judge erred in law when he failed to address himself to these issues and as such the Judgment was erroneous.

There were three issues agreed by the counsel and recorded by the learned trial Judge as follows:-

i) Whether there was a contract between the parties and its terms.
ii) Whether there was a breach of the said contract by non –payment.
iii) What remedy is available to the plaintiff if there was a breach i.e. US Dollar 253,700 or its equivalent and interest.

It appears from the record that immediately after these issues were agreed, counsel for the defendant stated (at p.1 .of the record): “I do not contest issue No. 1. The plaintiff then commenced his case by calling witnesses. In due course the defendant also called witnesses .Then the learned Judge gave his Judgment.

Before considering what was decided in the Judgement.It is desirable to see what were the pleadings as to the contract and its terms. According to paras. 4 to 9 of the plaint.

> "4. Sometime in 1982 the defendant requested and engaged the plaintiff to carry out construction services of promises at plot M 428 Jinja Road at Nakawa at a payment which was agreed to be in United States dollars.
>
> 5. It was duly agreed between the plaintiff and the defendant that the defendant would provide all the building materials and the various structures.
>
> 6. The plaintiff duly embarked on the construction and erection of premises at the said Plot M 428 Jinja Road Nakawa and by January 1984 the plaintiff's work was valued at the equivalent of U.S .Dollars 98, 700. The plaintiff shall rely on his records to that effect.
>
> 7. At the further instance of the defendant, the Plaintiff carried out more construction services on the premises whose worth was concretized by the plaintiff and the defendant on the 10th November 1984 to amount to the equivalent of U.S. dollars 30,000 . The plaintiff shall rely on his records to that effect.
>
> 8 .Still at the further instance of the Defendant the Plaintiff rendered construction services at the said premises particulars whereof are contained in letters from the Defendant's architect to its general Manager.

> 9 . The Plaintiff shall aver that the payment for the construction referred to in paragraph 8 above was agreed between him and the defendant to be the equivalent of U.S. dollar 200, 000 on the 4th February 1986".

The written statement of Defence (WSD) dealt with the plaint's averments of a contract and its terms in paras.

I have underlined the words "would pay "in the above extract because learned Counsel for the Plaintiff contended before us that this was misdirection. Nowhere in the Plaint, he submitted, is it averred that there would be payment on the completion of each job. Rather what was averred was that there was: (1) agreement that payment was to be in U.S. Dollars; and (2) after each job there was a valuation in an equivalent sum of U.S. Dollars sum of U.S. dollars.

Further in the Judgment the learned Judge reverted to issue No. 1 (at p.38) as follows:

> "The parties having agreed that there was a contract also as to its terms, there is nothing more for me to add. But my observation is that the terms, according to the evidence adduced by the plaintiff have not been clearly stated what is before the court is vague and sketchy."(Underlining added).

I interpret the above observation, particularly the words underlined, to mean that although the contract terms were agreed, the Judge found them too uncertain to constitute a valid contract (that could be) enforceable at law.

Learned counsel for the plaintiff denied there was anything vague of sketchy about terms. He referred to the evidence of the plaintiff and the handwritten notes (Exhs P.1., P2 and P3) which supported the averments in the Plaint.

> "My duty was to build according to plan the Defendant provided the materials. In the course of the work I dealt with the G.M. (General Manager) and Director of the Company by name "Kornmayer, and the Architect . The G.M. was to give me various pieces of work to do. After completing each piece we agree to the amount to be paid with the G.M. Kornmayer. I made note of what I was paid and the balance left."

The question before the court, it seems to me, is not whether or not the learned Judge addresses himself to this issue No.1. clearly he did. What we are really being asked .I think, is whether or not the Judge erred or misdirected himself; when he came to the finding that the contract terms were "vague and sketchy."

The answer to this latter question must be sought in the rules which the law of contract has laid down, particularly relating to offer and acceptance. If there has been an offer to enter into legal relations on definite terms and that offer is accepted, the law considers that a contract has been made. Whether there has been an acceptance of an offer may be inferred from words or documents that have been passed between the parties or from their conduct. Brodger Vs Metro Politan Rly Co. (1877) & App .Cas. 666 is illustrative of these rules.

In the instant case, the only evidence of the words passed between the parties came from the plaintiff .The G.M.Kornmayer did not testify because apparently he had gone to Europe by the time the case was heard. As to documents, the notes made by the Plaintiff, Exhs. P1 to P3, were not all signed or initialed by Mr.

Kornmayer , athough he did sign or initial some and was said , by the plaintiff , to have seen and approved all , even helped to prepare them.

What may be inferred from the parties conduct? From 1982, the plaintiff did work at the defendant's site at Nakawa . He constructed a Mercedes Benz Assembly plant there. He put up the building, workshops for Lorries, grease pit, houses, office blocks double storeys and some extras. For reasons best known to them, the parties did not set out in any document what terms they agreed as to how much and when the work was to be paid for.

The defendant had made plans drawn by their Architect for the work to be done and these were what the plaintiff followed. From time to time, the plaintiff Kornmayer and The Architect met and evaluated the work done. They did this on 11th January 1984, 26th November 1984 and another occasion when Exh P3 for extra work was written by the Architect Engineer.

The trial Court was not told, nor have we been told, what was the basis of the valuation. But there must have been some basis agreed between the parties. Otherwise the defendant would have challenged the figures submitted by the Plaintiff.

The learned Judge did not, it must be assumed, consider that an offer on definite terms had been made by one party and accepted by the other. He considered the parties words and documents. He did not consider their conduct. It seems to me, with respect, that had he done so , he would have had to infer that there was a valid , enforceable.

I now turn to Issue No .2. Whether there was a breach of the said contract by non – payment.

The plaintiff had averred in para 11 of his amended plaint that the total balance due for the construction work that he carried out on the defendant's premises was U.s dollars . 303,700. Of this, the plaintiff admitted that the defendant remitted to him Dollar 50,000, leaving an outgoing balance of dollar 253, 700 still owing.

The amended written statement of defence denied each and every allegation in the plaint. The defendant averred in para .4 that "it does not know of the plaintiff's claim as set out therein and will put the plaintiff to strict proof thereof."

In his testimony the plaintiff gave details of payments he had received from the defendant. He said he made notes of what he was due to be paid each time he completed a certain stage of the work. On occasion the representative of the defendant wrote on or initialed these notes.

The plaintiff admitted having received a Mercedes Benz Pick up valued at dollar 10,000 from the defendant and this is referred to in Exh. P3. There was testimony from Ramji Patel (DW2) of payments made in cheques. According to this witness the contract amount was dollar 250,000 of which ¾ was paid, about dollar 150,000. However he stated that the plaintiff "used to tell me when he was paid ". His evidence therefore appears to be hearsay.

The owner and Managing Director of the defendant company, Gordon Wavamumunno, DW1, testified of some payments for the work done by the plaintiff. He mentioned payment of part of the amount by giving to the plaintiff in

Uganda shillings and to his account in India money to buy a ticket for his (the plaintiff's wife). Further, the plaintiff stayed in the witness' home for four years "On the understanding that this would be taken into account when payment is made ".

Finally this witness testified that he , the plaintiff and Mr. Kornmayer had sat down with the plaintiff and they made full payment of U.S. dollar 50,000. There was no reduction into figures of the amount paid for the plaintiff's wife ticket and the value of the plaintiff's use and occupation of Mr. Wavamunno's home for four years.

It appears from the record that the plaintiff was not asked in cross examination any questions concerning his wife's ticket or his four year stay in the home. Nor was the defence witness cross-examined on these points.

In the circumstances, what could be said to have been proved regarding payment? There was the oath of the plaintiff that he was not paid for the contract work against the oath of Defendant's Managing Director that he was paid. The burden of proof was on the plaintiff to prove that there was a contract and that he carried out the work down according to its terms. This was not disputed by the defendant.

Learned Counsel for the plaintiff submitted that the onus then shifted on to the Defendant. He alleged he had paid for the work done and hence there was no breach of the contract. It was for him therefore to prove it.

On the question of burden of proof, learned counsel for the plaintiff referred to 0.13 rr.1, 2 and 3 of the civil procedure code. These rules deal with the framing of

issues and the determination of suits upon the issues of law and fact. With due respect to counsel, I fail to see how these rules are of much help on the question before us.

Learned counsel also referred to ss.100 & 102 of the Evidence Act (Cap. 43). These sections are pertinent for they provide as follows:-

> "100. Whoever desires any court to give Judgment as to any legal right of liability dependant on the existence of facts which he asserts must prove that these facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."
>
> "102 The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, lie on any particular person."

The case of Constantine Steamship Line V. Imperial Smelting Corp (1941) 2 AIIER. R 165 (H.L) was cited in support of Counsel's submission. The facts briefly were that a ship was chartered to load a cargo, but on the day before she should have proceeded to her berth, an explosion occurred in the auxiliary boiler, which made it impossible for her to undertake the voyage. The cause of the explosion could not be definitely ascertained, and, of three possible explanations, only one would have imported negligence on the part of the ship owners.

The charterers claimed damages from the ship owners for failure to load a cargo. The question arose whether, on a plea had to prove that the frustration was not due to his negligence, or whether the party denying the frustration must affirmatively prove negligence or default on the part of the party setting up the

plea. It was held that (i) it was upon the party denying the frustration to prove negligence or default on the party.

What was a particularly relied on by learned Counsel for the appellant was the observation of Viscount Maugham who had this to say (at p.179) :-

> "……..Agreeing with the trial Judge, I think the burden of proof in any particular case depends on circumstances in which the claim arises. In general the rule which applies is oi qui affirmat non ei qui negat incumbit orobatio. It is an ancient rule founded on considerations of good sense, and it should not be departed from without strong reasons……."

Counsel also cited Travor Price Vs Raymond Kelsall (1957) E.A. 752 . 761 F-G and Phippson on Evidence, 12th Ed .p. 6 para , 91 et seq . In the latter work, it is pointed out that: "As applied to judicial proceedings the phrase "burden of proof" has two distinct and frequently confused meanings:

1) The burden of proof as a matter of law and pleading – the burden, as it has been called, of establishing a case , whether by preponderance of evidence , or beyond a reasonable doubt ; and (2) the burden of proof in the sense of adducing evidence.

As I understand counsel it is in the second sense that he applied the term when he submitted that the onus had shifted onto the defendant. Phippson (at para .95) comments on the onus probandi in this sense that:-

> "……it rests, before evidence is gone into upon the party asserting the affirmative of the issue; and it rests , after evidence is gone into , upon the

> party against whom the tribunal , at the time the question rises , would give judgment if no further evidence were adduced ……"

Accepting as I do , the above-cited opinions on the burden of proof by the House of Lords in the Constantine Line case and by the learned authors of Phippson's Evidence. I have tried to ascertain whether the learned Judge in the instant case approached his task in accord with such opinions.

It will be recalled that were the respective pleadings, the burden of proof in the sense of establishing a case , rested on the plaintiff. After the plaintiff's testimony, the trial court was entitled, I would think, if no further evidence was adduced, to give Judgment against the defendant.

But then the defendant gave evidence. He testified as to payment. One would have expected, if such were to be his testimony, that in drafting his WSD, he would have followed the advice of Odgers on Pleading and practice 21st ED. , at p p. 186 -187 . This states as follows:

> "Payment before action is a matter of defence which must be pleaded and proved by the defendant. A plea of payment should state that the payment relied on was made before the issue of the writ , giving dates and amounts and also any facts showing an appropriation of such payments to the debt sued for in the action. But there is no need for the defendant to plead he has paid any sums for which he is expressly given credit in the statement of claim. The plaintiff is taken to be suing for the balance due after crediting payments he admits. "

The learned Judge, in considering the issue of breach of the contract by non – payment, in his Judgement made a detailed analysis of the evidence adduced by the plaintiff. He had to say (at p.36)

> "The evidence of the plaintiff as to what he is entitled on each executed job is vague, it lacks the necessary details of particulars i.e. dates, the only guide for the Court are the Exhs produced."

The learned Judge proceeded to review each of the Exhs P.1. , P2 and P3. He found them all to be defective or in adequate as proof. Exh. P.1. had an entry of "Total Balance dollar 98,700 11.1.84 "among other entries which tallied with the figure in para. 6 of the Amended Plaint. It was rejected (at P. 37 of Judgement because:-

> "In the absence of any concrete evidence to substantiate what the plaintiff is claiming i.e as to which particular job etc this item must fail. The entries in Exh .P1 could be anybody it bears no signature or any useful details to link the GM with the Plaintiff."

Exh P2 had an entry on a ship of dollar 113,700 at the bottom of a series of figures. There was another entry in writing unlike dollar 113,700 which was type written at the bottom.

EXH P2 was rejected because:

> "……There is no signature to show the maker of the entries or what it is all about. In my view, the handwriting in Ex P2 (the part in writing) are not the same , which leaves balance of dollar 113, 700 was arrived at, there is no evidence in support……."

Exh P3 was a list of extra work completed written by the Architect. It was addresses to th Director / General Manager of the defendant company. On it were also some writings pertinent ones being "…. Up to today (1) out of dollar 200,000 we received 15,000 on 17th June 1988 conform A TECH (2) Macidas Benz plus dollar 10,000."

Exh P3 was rejected (at p.38 of the Judgement) because :

> "……. I cannot relate the claim of "200,000 minus Dollar 10,000 to the Exh P3. Although mention is made in the Ext. of earlier receipt of DOLLAR 10,000 and the Mercedes Benz; there is in my view nothing to connect them. As stated earlier there is no evidence as to who wrote (i) and (ii) quoted above and also who is E.Daniel, the signature in the said Ext. P3."

It is not indicated in the Judgement where the learned Judge placed the burden of proof. Assuming , as I have indicated above , that the burden of proof in the second sense , IE of adducing evidence , was upon the defendant to prove payment , then ant vagueness , ambiguity or lack of precision in the evidence as to payment should be held against the defendant , not against the plaintiff.

Here was a situation where two people chose to conduct their business in a manner that was quite informal. Not only were the details of work to be done and the payments therefore not reduced to a written document. Payments made were not acknowledged by the usual manner of giving receipts. In cross examination, the defendant's Managing Director conceded:

> "……As being we did not write anything from the beginning so there was no record about the payment of Shs .50.000"

It may be said that neither party adduced anything like the proof that would be expected in ordinary business dealings. I would hold, however, that the defendant had failed to discharge his onus and that there was a breach of the contract by non-payment.

The third issue was framed as follows:-

What remedy is available to the plaintiff if there was a breach i.e. . U.S Dollar 253,700 or its equivalent and interest?

The ordinary remedy for breach of contract is damages. In the instant case the plaintiff , if there was breach , was entitled to have such a sum as would put him in the same financial position as he would have been in had the defendant carried out his side of the bargain.

According to the amended plaint , by the 4th February , 1986 there was a total balance due to the plaintiff of US dollar 303,700 of which the defendant subsequently paid dollar 253,700 . The prayer in the plaint was for this amount plus interest thereon at the rate of 30% p.a .since 4th February 1886 till payment in full.

As has been indicated earlier in this Judgement , the learned trial Judge did not make any finding on this issue No.3. He never reached this stage because of his finding on Issue No. 1 which was, in effect, that there was no valid, enforceable contract. To ascertain extent this ground of appeal has merit. It cannot be said, however, that the learned trial Judge ignored the issues as framed. It would be more correct to say that he came to the wrong conclusions on them. I would with respect agree with learned Counsel for the appellant that in that respect the

judgment was erroneous. Ground 1 of appeal accordingly succeeds. The ground 2, 3, 4, of the appeal may be taken together. They were as follows:

> 2. The learned Judge erred in law when he failed to appreciate and evaluate the evidence adduced at the trial.
>
> 3 .In relying on extraneous matters not raised during the trial as the basis for his decision, the learned trial Judge grossly misdirected himself and as such his decision was erroneous.
>
> 4. The learned trial Judge's decision constituted an error as it was against the weight of evidence.

I believe with respect, that the learned Judge failed to some extent to appreciate and evaluate the evidence, as alleged in ground 2 above. He went into the evidence in some detail and explained why he could accept some parts of the plaintiff's testimony. It is true however that his Judgement does not mention anything about the demeanor of the witnesses. Nor does he indicate why he preferred the oral testimony of the defendant, unsupported by any records, accounts books, cheque books or bank statements, to the oral testimony of the plaintiff.

It is also to be observed that the learned Judge's rejection of Exh. P. 1 and P2 were apparently based on his own comparison of the documents . The assertion was made by the plaintiff that the two documents were the authorship of the same person . He had testified that at the discussions , himself (the plaintiff) , the defendant's Managing Director (DW1), the General Manager (Kornmayer) and

the Arthitect all participated and on occasions made notes on the pieces of paper exhibited.

It might have expected that kornmayer the GM would have been called to testify . No adverse comment was made on his absence by the learned Judge in his Judgement although no explanation was given by the defendant. It may be that the GM was I;; or that the expense of bringing him back from Germany to testify would have been disproportionately large in relation to the amount involved in the claim .These are only some of the possible explanations . However in the absence of any explanation , an adverse inference might well have been drawn from the GM'S failure to be called.

It appears to me that had the learned trial Judge correctly directed himself on the burden of proof, it would have enabled him to better appreciate and evaluate the evidence. I would hold with respect that there is merit in the plaintiff's complaint that failing to correctly direct himself, the learned Judge was led into an erroneous decision and this decision was against the weight of evidence Grounds 2 and 3 of the appeal accordingly succeed.

Ground 5 relates to the standard of proof. It is alleged that:

> "The learned Judge erred in setting to high a standard of proof for the appellant. "

I see nothing in the Judgment to indicate what was the standard of proof applied by the learned Judge. Without some express mention of the standard, I would assume that he applied the usual one in civil cases, that is, on the balance of probabilities. It seems to me, with respect, that this ground must fail.

As a result of my holdings on ground 1,2 , 3 , and 4 , I would allow the appeal and set aside the judgment of the lower Court.

Does this mean that the plaintiff is entitled to all he claimed in the amended plaint, i.e. the equivalent of U.S dollar 253,700 in Uganda currency at the prevailing exchange rate at the time of Judgment? Not necessarily. There is the unchallenged testimony of the defendant regarding the ticket for the plaintiff's wife and his stay of four years in the defendant's home.

Learned Counsel was of the view that the court cannot give any consideration to these allegations as the matter was not properly raised by the pleadings. Learned Counsel for the plaintiff submitted that the learned Judge erred in admitting evidence of the defendant's Managing Director as to the ticket for the plaintiff's wife hen no set –off had been pleaded.

As I perused the record of proceedings, I failed to see that the question of set- off was raised by either party in the pleadings or at the trial. It could have raised by the defendant as a defence in the WSD under 0.8 r .2 of the Civil Procedure Rules. As he had not done so, one would have expected the plaintiff to object to the defence adducing any evidence on this matter. Not only was there no objection but the defendant's evidence on this matter was subjected to any cross – examination.

It would seem to me that it is too later at this stage to raise an objection, as to admissibility. I would hold that there has been an implicit admission, by failure to cross-examine, of the validity of this evidenced as to payment or settlement of a portion of the plaintiff's claim.

I would therefore hold that there has been part payment of the amount of US dollar 253,700 claimed by the plaintiff in his plaint.

From this amount, therefore I would declare that there must be deducted the cost of the ticket purchased for the plaintiff's wife. There must also be deduced the market value (i.e. the reasonable rent) of the plaintiff's use and occupation of the defendant's home for four years.

As there has been no evidence on these two matters. I would remit the case to the lower court for such evidence to be taken and findings made on the evidence. I would then award to the plaintiff the equivalent of US Dollar 253,700 less the amounts so found by the lower court.

I must at this stage make some observation a point which was not argued. The learned Judge failed to assess the damages.

As to the question of interest, a rate of 30% was claimed in the amended plant as from 4th February 1986. Learned Counsel for the plaintiff urged that this is a reasonable rate and that this court should take judicial notice of the fact that the Bank rate was 38% at the time of thenhearing . There was no avertment in the Written Statement of Defence that the rate of 30% was excessive . A a matter of law , unless the rate awarded must be reasonable : S.26 of the Civil Procedure Act.

The time when the amount claimed was due is the date from which interest should be awarded. In the instant case that date was the last time when the parties agreed on the total balance due. This was 4th February 1986. I would therefore award interest at the rate of 30% on the amount awarded from 4th

February 1886 until payment in full plus costs of the appeal and in the lower court.

As to the equivalent amount in Uganda shillings, learned Counsel for the appellant submitted that this should be according to the “open market “. This is because the Bank of Uganda has specific transactions, of which the contract such as in the instant case is not one.

I have some difficulty in accepting this submission. The “open market “rate varies from forex bureau to bureau. It also varies from week to week, if not from day to day. Even if one were to succeed in assessing the open market rate as a particular sum of shillings to the U.S. dollar, which date should be selected? The date of breach, 4th February, 1886, the date of payment in full?

I believe there is too much uncertainty in choosing the open market value. Further, there is no indication that this was in the contemplation of the parties at the time of making the contract. The contract term, according to the evidence, was for payment in U.S. Dollars. The Judgment of the court cannot insert a term that it should be at a rate other than the official Bank of Uganda rate. If the parties had wished otherwise, they should have said so.

I now turn to the cross- appeal. It was set out in the Memorandum as follows:

> “The learned trial Judge erred in law when he departed from the normal practice of awarding costs to the successful litigant and instead dismissed the suit without any order as to costs, without assigning any reasons therefore.”

Learned counsel for the defendant submitted that his client had been successful in the court below and was entitled to costs unless there were good reasons to order otherwise .He cited S.27 of the Civil Procedure Act.

Learned Counsel also referred to Donald Campbell Vs.Pellock (1927) A.C. 732 in which the House of Lords discussed the principles which should guide a trial Judge in exercising his discretion as to the award of costs under the Judicature Acts , 1873 and 1890 , and Order LXV , P.1 of the Rules of the Supreme court . In the course of his Judgment, Lord Atkinson observed (at p.814):

> " .....But there is such a settled practice of the courts that in the absence of special circumstances a successful litigant should receive his cots , that it is necessary to show some ground for exercising a discretion by refusing an order which would give them to him . The discretion must be judicially exercised for a discretion exercised on the grounds cannot be judicial...."

In the instant case, the learned trial Judge apparently made his order without inviting counsel to address him as to costs. Nor did he indicate the grounds on which he exercised his discretion. He merely stated, at the close of his judgment, that:

> "..... The plaintiff has not been able to substantiate each item of work done ..... the plaintiff's claim is accordingly dismissed without costs. "

Learned Counsel for the plaintiff submitted that the Defendant was not successful at the trial; the Learned Judge did not find in favour of the defendant that it had

paid , neither that the plaintiff had not been paid . Counsel's view was that neither party won on the issues and perhaps this was the reason no costs were awarded because neither party won on the issues.

Learned counsel for the plaintiff may be correct as to the judge's reasons. With respect, however, the learned Judge should have expressed those reasons in his Judgment. In failing to state the grounds on which he exercised his discretion, he erred. Accordingly, I would allow the cross- appeal. That, however, may be a matter of academic interest only, because of my views earlier expressed, regarding the main appeal.

I would therefore order that:

(a) the appeal be allowed

(b) the case be remitted to the lower court for the Judge to take evidence and make findings regarding the amount to be paid to the plaintiff after deducting from dollar 253 ,700 the reasonable rent for the defendant's home for four years;

(c) that an award be made to the plaintiff of the sum so found ;

(d) the plaintiff has his costs here and the Court below.

DATED AT MENGO THIS 11th DAY OF OCTOBER 1991.

SIGNED: E.E SEATON
JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A TRUE
COPY OF THE ORIGINAL.

……

B.F.B. BABIGUMIRA**REGISTRAR SUPREME COURT**

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, J.S.C., ODER, J.S.C., SEATON, J.S.C.)

CIVIL APPEAL NO. 4/91

BETWEEN

J.K PATEL…… APPELLANT

AND

SPEAR MOTORS LIMITED …… RESPONDENT

(Appeal from Judgment of the High court of

Uganda. (Soluade AG.J) dated the 23rd April 1991)

In

Civil suit No. 1031 of 1988

JUDGEMENT OF ODOKI J.S.C

I have had the advantage of reading in draft the Judgment prepared by Seaton, J.S.C. I agree that this appeal must be allowed and that the cross appeal must succeed. I concur that the appellant should be given the costs in this court and the court below.

As Oder J.S.C. agrees, there will an order in the terms proposed by Seaton, J.S.C.

DATED at Mengo this 11th day of October, 1991

Sgd: B.J. ODOKI
JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A TRUE COPY
OF THE ORIGINAL.

…….
B.F.B. BABIGUMIRA
REGISTRAR SUPREME COURT

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, J.S.C., ODER, J.S.C., SEATON, J.S.C.)

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(Appeal from Judgment of the High court of

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dated the 27rd .3. 1991)

In

High Court Civil suit No. 1031 of 1988

JUDGEMENT OF ODER , J.S.C.

I have had the benefit of reading the Judgment of Seaton J.S.C. in draft. I agree with his conclusions that the appeal should succeed and I have nothing useful to add.

DATED at mengo this …… Day of October. 1991.

Sgd : A.H.O ODER
JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A TRUE
COPY OF THE ORIGINAL

……
B.F.B. BABIGUMIRA
REGISTRAR SUPREME COURT