IN THE SUPREME COURT OF UGANDA

AT MENGO

(Coram;MANYINDO, DCJ., ODER, JSC., & PLATT, JSC)

CIVIL APPEAL NO. 3/93

BETWEEN

ESSO STANDARD (U) LTD…… APPELLANT

AND

SEMU AMANU OPIO…… RESPONDENT

(Appeal from the decision of the High Court (Hon. R. Rajasingham Q.C.) dated 26/5/92)

IN

HIGH COURT CIVIL SS. CASE NO. 343/87

JUDGEMENT OF PLATT, J.S.C.

In this appeal, three important issues call for consideration, the most important of which concerns the learned Judge's entry into the country where angels fear tread, namely, awarding exemplary or punitive damages for breach of contract. The other issues relate to the operation of the Currency Reform Statute, 1987, and the date when damages are payable in a case of detinue. Apart from this the court called for certain calculations by the parties as will be explained. I shall begin with the first issue.

The facts are not difficult to relate and it may be stated at once that there is no appeal against the findings that the Appellant Company was in breach of the contract with the respondent, and liable in detinue for holding the Respondent's goods. But it will not be possible to entirely evade the issue of liability, because the manner in which the breach arose might be relevant to exemplary damages.

The Appellant Company had entered into an agreement dated 1st September, 1982, by which the Respondent, was to manage a Petrol Station for the Appellant Company There were certain terms and conditions which each side was o observe, and one became the cause of controversy underlying the whole *case:* namely, that the parties had agreed that the Respondent's service could only be terminated on giving him six month notice. In fact, the Appellant terminated the Respondent's services in December 1986 within a fortnight. The Company had by that time repaired the petrol station, and to that end, it had put in renovators. The respondent was told to hand over to the latter persons, with the result that due to the short period within which the Respondent had to quit, he was forced to leave behind a good deal of property. As a result, the Respondent pleaded, firstly, that he had suffered damage by breach of the contract to give six months notice of termination, and secondly by the detention of his goods.

On the other hand the Company asserted that it had had the right to terminate the services of the Respondent at short notice, because his services were deplorable. The Company had sent him a warning notice dated 31st May, 1983, complaining that the Respondent was absent from his Station, and that he had failed to meet Mr. Nkuyahaga (DWI, Service Manager of the Appellant Company) for important discussions. The Station was in a filthy condition, it was said, and the Respondent's employees were irresponsible. There was later said to be some improvement but a second letter dated 20th June 1984 was sent to the Respondent repeating the charges of absenteeism, the bad condition of the station, and in fact that a fire broke out at station while the fire extinguishers were locked up in the salesroom in the absence of the Respondent. Finally by a letter dated 4th December, 1986 the respondent's services were terminated as from 15th December, 1986. The respondent was told to hand over to the Contactors carrying out repairs.

The learned Judge carefully shifted the evidence with a shrewd appreciation of the unsatisfactory nature of Mr. Nkuyahaga's evidence. The complaints of absenteeism and inefficiency were found to be exaggerated out of proportion, since the petrol sales had not suffered. Moreover Mr. Nkuyahaga's letter of 23rd December, 1986 gave the real reason that the repairs which would cost over shs.300 million would be carried out on condition that the Respondent was replaced. Indeed Mr. Nkuyahaga had the new man already in mind. It was clear that some reason to dismiss the Respondent was being looked for. The fire was a matter

of divided responsibility, it seems, due basically to the Company's lack of repairing the service island and partly due to the extinguishers being locked up. But in fact the servants of the Respondent had put out the fire with sand. No harm was done to the buildings at the station. Although there was no good reason not to give the proper notice. Moreover Mr. Nkuyahaga reconsidered his position in his letter of 23rd December, 1986, by saying that the Respondent could be allowed to have another month to wind up his business. There was no reason why that position had not been taken in the first place, but, indeed, there was no reason why the respondent should not have been given his full six months notice. The company was therefore substantially at fault, and the learned Judge was entitled to reach the conclusion that the Respondent had been -

"bundled out in the most cavalier fashion."

It was this aspect of the case which led the learned Judge to the conclusion which is the main contention in this appeal. He concluded: -

"Considering that the plaintiff had served the defendant for eleven years including a period of which the country was in turmoil, I think it is justifiable that the award of general damages should include an element of punitive damages.

I therefore award the plaintiff a sum of 15,000,000/= as general damages for breach of contract, with interest thereon at 6% from 15th December, 1986, up to date of payment in full."

Ground three of the Memorandum of appeal protests that: -

"The learned Judge erred in law by awarding punitive damages in the sum of shs. 15,000,000/="

Both Counsel Mr. Kateera for the Appellant, and Mr. Okalang for the Respondent submitted that they had not been allowed to address the Court in summing up their respective points of view, before Judgment was delivered, A glance at the record reveals that Counsel are correct in this submission as a matter of fact. When Mr. Kateera closed the Defendant Company's case 2nd April, 1992, the Court declared:-

"Matter is adjourned sine die as I am commencing a criminal session shortly". The next thing that happened was that Judgment was delivered on 26th MAY, 1992. It would have been proper, (See Order 16 Rules 2 & 3 of the Civil Procedure Rules), and certainly wise, to have allowed the parties to address the Court before Judgment, when this contentious aspect of damages could have been put to counsel. As Counsel feel that this was an error on

the part of the Judge alone, there should be not costs awarded against them. It is therefore especially necessary to make certain that the Judge was in error, as Counsel claim.

1. The Rationale of Exemplary Damages

As is very well known, the function in the civil law is to compensate, while the function of the criminal law is to inflict deterrent and punitive penalties. Damages for breach of contract and tort are, or ought to be, fixed at a sum which will compensate the plaintiff. In the case of tort, the damages should be fixed at a sum, so far as money can do so, to compensate the victim for all the injury which has been suffered. This compensation sum may be enhanced to cover the loss suffered as well as the injury to the plaintiff's feelings and reputation. On the other hand, there is the loss to the plaintiff, and on the other, there is the conduct of the defendant. The latter may have acted in a high-handed, insulting, malicious or oppressive manner. The defendant's action may cause the damages of a purely compensatory kind to be increased; and such increase, still compensatory, would be called aggravated damages. But then as tort is a wrong done to the plaintiff, how would the Court prevent a wrong done repeatedly in disregard of the plaintiff's rights? The notion arose that a further sum in damages could be meted out by way of punishment, or by making an example of the defendant's conduct. Hence this extra sum may be called punitive or exemplary damages. Other names have been used such as vindictive damages; but as Lord Hailsham of St Marylibone protested in CASSELL CO LTD vs. BROOME (1972) 1 All E.R. 801 at p. 825 vindictiveness can hardly be a trait properly pursued by a court of justice. Nevertheless, the House of Lords in Cassell's case confirmed its decision in ROOKES vs. BARNARD (1964) A.C. 1129, 1 All E.R. 367. The decision in ROOKES was admittedly anomalous, and the House would have liked to have overruled exemplary damages, except that it was not prepared to disregard precedent altogether. Accordingly, it limited the award of exemplary damages to the three cases as stated in Rookes vs Barnard.

a) The case of oppressive, arbitrary or unconstitutional action by the servants of the government. This category was not to be extended to oppressive action by private corporations or individuals.

These two matters were based on precedent, several cases having firmly established that servants of the government were liable to pay exemplary damages, and only one case overruled, which dealt with a private bully.

b) Where the motive of making a profit is a factor.

"When a defendant with a cynical disregard for a plaintiff's rights has calculated that the money to be made out his wrong-doing will probably exceed the damages at risk, it is necessary for the law to show that it cannot be broken with impunity. This category is not confined to money making in the strict sense. It extends to cases in which the defendant is seeking to gain at the expense of the plaintiff some object perhaps some property which he covets, which either he could not obtain at all or not obtain except a price greater than he wants to put down. Exemplary damages can properly be awarded whenever it is necessary to teach a wrong-doer that tort does not pay." (per Lord Devlin).

c) Certain statutory provisions that do not apply to this case. Lord Reid in Cassell's case while freely admitting the illogicality of the reasoning in the above tests, in regard to the second test, observed that : -

"an ill disposed person could not infrequently deliberately commit a tort in contumelious disregard of another's rights in order to obtain an advantage which would outweigh any compensation damages likely to be obtained by his victim."

(p 838 in Cassell's case) Lord Reid's version is perhaps more felicitous but it expresses the same general idea. Lord Reid grasped the nettle of the tort feaser who does not wish to gain, but acts simply out of malice. He explained that the analysis was based on precedent and the best that could be done was to limit exemplary damages as far as could be, and that excluded the bully, illogical as that might be. On the one hand, there the concept that exemplary damages can serve a useful purpose in vindicating the strength of the law, and thus affording a practical justification for admitting into civil law, a principle which ought logically to belong to the criminal (indeed in the view of some of their Lordships there was a sense in which minor criminal breaches had been exhibited, but which were more easily punished by exemplary damages), and on the other hand, in contrast as it were, there is the dislike of giving to the plaintiff an undeserved wind fall of extra money beyond what he had justly deserved as compensation, it being said that the extra was really a fine which ought to go to the State.

2. The RESULT of the Rookes' & Cassell's cases

When the two cases are compared, it seems that the House of Lords would have overruled the idea of exemplary damages if it had felt able to do so. Their Lordships were not followed in Australia. The Privy Council confirmed the Australian decisions extending exemplary damages having been derived from principles embedded in Australian common law. It appears that exemplary damages are awarded in the U.S.A. and Canada, for reasons apparently pertinent to those countries; but not in Scotland. The position in England is probably that the cases in which exemplary damages can be awarded is strictly limited to those allowed by the House. Lord Reid refused - "to extend the right to inflict exemplary damages to any class of case which was not already clearly covered by authority," (p 839 Cassell's case); whilst Lord Hailsham and Lord Diplock held, according to the head notes, that Rookes vs Barnard: —

"did not have the effect of extending the power to award exemplary damages for torts, such as deceit or negligence, where exemplary damages could not previously have been awarded (pp 828 & 874); dictum of Lord Widgery L.J. in MAFO vs Adams (1969) 3 All E.R. at 1410 disapproved" (p 804. Cassell's case)

While three of their Lordships were expressly against extending the exemplary principles, and the other Judges of the House not expressing disapproval on this point, it is surprising to read the following passage in MCGREGOR on DAMAGES 14th Ed p 323 –

"Yet, somewhat ironically at the same time as criticism has been voiced at the arbitrariness of limiting exemplary damages along the lines proposed by Lord Devlin, problems have also arisen as to whether his new ruling may not in other ways have enlarged the range of situations in which exemplary awards may be made. For it may well be that a defendant can be shown to have the necessary profit motive when committing a tort of a type for example, of deceit, conversion and injurious falsehood. Perhaps more startling, it can be true even of breach of contract, where hitherto the right of exemplary damages has never been allowed to run. The reason for the absence of exemplary damages in the past in such torts-and also in contracts —would stem from the fact that they do not generally give rise to injured feelings and dignity on the part of plaintiffs and therefore fall outside the former dominant rationale of so-called exemplary awards as additional compensation for aggravation of loss. But if there is now new rationale this may well bring within the exemplary damages net wrongs which were

not caught in it before. Widgery L.J in MAFO vs Adams was quite confident of this conclusion…."

Within the confines of English law Lord Widgery L.J.'s views in MAFO vs ADAMS were overruled specifically by two of their Lordships in Cassell's case, and Lord Reid did so by implication! It is doubtful therefore whether the statement in McGregor can be relied upon after the express disapproval of Widgery L.J. 's views. Indeed it is probably clear that MAFO vs ADAMS being a case of deceit can no longer be accepted after the strenuous disapproval by Lords Hailsham and Diplock, of extending ROOKES vs BARNARD to the tort of deceit. However, that may be, there cannot be any justification for extending the exemplary principles to breach of contract. There has been no previous precedent for that extension. There is no warrant for it in principle.

In coming to this conclusion, I have of Course checked the decisions which have followed after 1972. There are several Police cases, which support the first principle in Rookes vs Barnard. There are also several landlord cases which support the second principle, notably DRANE v EVANGELOU (1978) I.W.L.R. 455. The decisions in the 1980s assume that a tort has been committed and that the aim was to gain vacant possession. I would think that in Uganda, the tort ought to be pleaded and exemplary also pleaded.

On a different point there is HAYES vs DODD (1990) 2 ALL E.R. 815. Inasmuch as the Respondent in this present appeal claimed damages for inconveniences, no damages could be awarded unless convenience or peace and freedom of mind was especially provided in the contract. There is no room for damages of this sort where there has been a breach of a commercial contract.

I suppose that the learned Judge, encountered this extension in one or more of the many jurisdiction in which he has served previously. Assuming that to be so, (unfortunately he has not explained this in his judgment) I must now consider how these principles have been received in East Africa.

3. The Situation in East Africa

The leading case in this matter is OBONG vs KISUMU Council (1971) E.A. 91. The facts were not similar to those in the present appeal. The Appellant (or Appellants) occupied an

eating house at the Kisumu Municipal Market as of the Municipal Council. There was a clause against assigning or sub-letting the premises. The First Appellant took the Second Appellant into partnership and informed the Council. There was no clause stipulating the period of notice by which the agreement could be terminated. The Council held that the First Appellant was in breach of his agreement, and therefore on that account terminated the agreement giving the Appellant one week in which to vacate the premises. The District Court held that the Council had acted in a high-handed manner without giving reasons for its action. In the High Court, Counsel conceded that the Judge had power to award exemplary damages if the breach of the implied agreement for quite enjoyment amounted to the tort of trespass. In the Court of Appeal this was queried by the same Counsel. But it was held that this was a case where exemplary damages could be awarded presumably on the basis of trespass. The first principle of Rookes v Barnard applied, Government servants being extended to those in local Government.

The importance of the Obongo decision is that the attack on Rookes vs Barnard from Australia was rejected. It was held that there were only three cases in East Africa where exemplary damages were ordered and they did not conflict with Rookes vs Barnard. There was therefore no local common law which should not be displaced by Rookes vs Barnard. I have not been able to follow all the reasons why Canada, New Zealand and U.S.A. prefer a wider approach to the operation of exemplary damages. It appears that in U.S.A. there are some procedural matters which made the adoption of exemplary damages useful. Spry V.P. in Obong's case was not convinced that exemplary damages should be extended, and I am more or less content to follow that lead for the following reasons.

a) The decision in Rookes' case was an attempt to bring some order into confusion of ideas and phrases used by different courts. The phrases now have distinct meanings. Aggravated damages is distinct from exemplary damages. The way that these sums are calculated has been clarified. t1ord Reid, looking back at Rookes vs Barnard in which he took part, explained the method of awarding damages in this way at p. 839 Cassell's case:—

"The difference between compensatory and punitive damages is that in assessing the former the jury or other tribunal must consider how much the defendant ought to pay. It can only cause confusion if they consider both questions at the same time. The only

practical way to proceed is first to look at the case from the point of view of compensation to the plaintiff. He must not only be compensated for proved actual loss but also for any injury to his feelings and for having had to suffer insults, indignities and the like and where the defendant has behaved outrageously very full compensation may be proper for that so the tribunal will fix in their minds what sum would be proper as compensatory damages. Then if it has been determined that the case is a proper one for punitive damages, the tribunal must turn its attention to the defendant and ask itself whether the sum which it has already fixed as compensatory damages is or is not adequate to serve the second purpose of punishment or deterrence. If they think that that sum is inadequate for the second purpose as well as for the first they must not add anything to it. It is sufficient both as compensatory and as punitive damages. But if they think that sum is insufficient as a punishment then they must add to it enough to bring it up to a sum sufficient as punishment."

Arising from this explanation, is the question which is one of the fundamental problems, why are exemplary damages really necessary? If the injuries to a plaintiff's feelings, the insults he has suffered, the indignities and the like, are all considered, can they really be separated from the cause of those injuries, insults and indignities, namely, the contumelious and high-handed actions of the Defendant? Is it not a case of the greater the high-handedness, of the defendant, the greater the injury, insult and indignity? The Plaintiff and defendant are locked in battle, with the defendant gaining the ascendancy. If this be a proper approach then in reality aggravated damages, if properly measured, should not only bring compensation to the plaintiff, but also make an example of the defendant. In my view, apart from the precedents which the House felt constrained to honour, no doubt with an eye to Commonwealth practice, there is no reason or principle which should have persuaded the House to preserve exemplary damages. They are anomalous, and while logic is not the final arbiter in legal analysis, it is satisfactory if an analysis produces a reasonable and logical result. Without exemplary damages, the law of damages bears a logical compensatory face.
For these reasons, I would hold that Rookes vs Barnard need not have been followed and exemplary damages could have been expunged. But they have been accepted in East Africa through Obongo's case, and I would be content to allow such damages to be awarded without any further extension. Indeed, I would state plainly that MAFO vs ADAMS (1970) 1 Q B 548, 558 should not be followed, neither in the vision of Widgery L.J. as extending the possibility of an award to a variety of other torts, or to contract, nor in the width of the statement in McGregor dealing with this topic at para 323 (supra). Indeed an aspect of

Obongo's case gives me trouble, in that Spry V.P. reconciled the decision in KISHEN SINGH vs MAKIMA MASIMBA (1951) 18 E.A.C.A. 12 on the basis of MAFO vs ADAMS. The analysis of KISHEN SINGH's case is, shorn of orbiter dicta -

"the claim for damages might apparently have been founded in deceit (See MAFO vs ADAMS) and the appellant's motive was financial gain at the expense of the respondent." (P.94).

Now that Lord Hailsham and Lord Diplock have expressly doubted whether deceit is a tort on the basis of which exemplary damages can be awarded, this part of the Obongo's decision, should not in my view be followed. Moreover I doubt whether it would have been followed, if Obongo's case had been decided after the decision in Cassell's case.

There are two small matters which I should notice shortly, which illustrate the inadvisability of awarding exemplary damages.

The first is that where there are two or more defendants and they are not equally at fault, the exemplary damages given as one award against all the defendants, can only measure up to the fault of the least guilty. The most guilty goes unpunished that is odiously seen in libel cases.

(b) Secondly, there is the necessary search behind a pure breach of contract for a tort committed. In Kishen Singh's case, Sir Barclay Nihill considered whether the case fell "within the range of cases where a court or jury are entitled to award heavy exemplary damages because of the particularly high-handed, insolent, vindictive or malicious conduct of those who committed the tort." In that case, possession of a house had been obtained by a trick. The learned President remarked that: —
"Had the learned Judge been able to find a trespass ab nitio I would feel no difficulty on the question of damages."

As already been pointed out, Spry V.P. justified the case on the basis of deceit. In Obongo's case, Counsel conceded that the breach of the implied agreement for quite enjoyment amounted to the tort of trespass. Where there is a tort aggravated and sometimes exemplary damages may be awarded.

It may well be that in some jurisdictions, the concurrence of a breach of contract and the commission of a tort, may seem inadequate to deal with other cases of a high—handed defendant. It may perhaps seem a matter of fiction that some defendants, who in committing breach of contract have acted either with a view to gaining an advantage or out of malice, but have not committed a tort, are not visited with additional damages. In MAFO vs ADAMS (supra) however, Sachs L.J. very carefully warned of the dangers of extending Rookes vs Barnard in principle, for example to trover, detinue and deceit, which had not previously been subject to awards of exemplary damages,and secondly, that if exemplary damages were to be awarded, the case for punishment must be as well established as in other penal proceedings. The problem seems to point to the necessity for other proceedings to deal with the outstanding case of unjust enrichment and malice. Sachs L.J. did not look at other proceedings to find some remedies, such as the Theft Act. One would think that the action of disgraceful landlords should be the subject of direct penal proceedings. Some cases might in the future be dealt with by claims in quasi—contract for unjust enrichment. The latter notion attracted Lord Diplock in Cassell's case, McGregor on Damages supra at para 324, Goff and Jones The Law of Restitution 2nd Edition pp 474 -478. But it must be admitted that no easy alternative is present at hand, although there will not be many cases involved.

4. For these reasons, though understanding the aim of the learned Judge with respect, I find myself unable to agree with him that exemplary or aggravated damages may be awarded for breach of contract. Counsel did not ask the Court to ascertain whether any alternative ground existed, upon which such damages could be awarded. The learned Judge did not consider whether the breach of contract which he found, gave rise to the commission of some tort. There is no apparent case of trespass, because the Company was entitled to enter to carry out repairs, improvements or additions, to the premises and equipment, as the Company may find necessary, without any obligation to indemnify the operator of any disturbance whatsoever to his business as a result of such repairs, improvements and additions. (Clause 1 Ex. P1). The Company was also entitled to enter to re-establish the premises and equipment to the standard of cleanliness as required by the contract, if the operator failed in this regard (Clause 3 (7) Exh. P1). Consequently, as the Respondent did not have time to remove his property, the latter was left in the hands of the Company's renovators. The claim of detinue was made in the plaint. That did not support an award of exemplary damages as an alternative for breach of contract.

On the claim in detinue for goods retained the learned Judge made the following findings as to the quality and nature of the goods : —

11,100 litres of diesel,
2500 litres of paraffin,
160 litres of engine oil,
30 litres of grease,

one safe valued in 1986 at shs 6 million, one table valued at 10,000/=
one chair valued at 1,500/=
one vehicle jack valued at shs 8,000/=
one gear box, Datsun, shs 20,000/=
one swift safe valued at shs 20,000/=
one wheel spanner at shs 20,0001=
one stapler, one punch at shs 20,000/=
The award was as follows for special damages:—
a) damages in a sum equivalent to today's value of 11,100 litres of diesel; 2500 litres of paraffin, 160 litres of engine oil, 30 litres of grease;
b) damages in a total sum of shs 183,500/=.

It was further ordered that the safe and contents were to be returned unopened and the contents intact or alternatively to pay shs 6,140,000/= .

This was an unusual award in that the value of the items in
(a) above was not quantified. At the beginning of the hearing of this appeal, the Court called for the quantification of these items and Counsel agreed that the value of the products at the time of the breach was shs 17,932,850/= old currency. At the date of judgment the value was shs 10,780,000/=.

The award should therefore be, in the terms of the learned Judge's findings, as far as may be, as follows: as far as maybe as follows:-

a)damages in a sum equivalent to today's value of the products set out, shs 10,780,000/=;
b) for the small items the Judge's figures are accepted as correct at shs. 183,500/=;
c) the safe and contents are set at shs 6,140,000/=;
d) The Company owed the Appellant shs 1,779/= new currency;
e) What are the damages for breach of contract without exemplary damages?

On these figures, the arguments are that in the case of detinue, while the rule was that there should be an award for the value at the date of judgment, the new rule is that the value should be at the date of breach. Consequently the Currency Reform Statute No. 2 of 1987 applies and the value must be divided by 100.

-.The traditional view is that plaintiff can recover his goods detained unlawfully, or their value, and damages for detention as well as any consequential damages as at the date of judgment. ROSENTHAL vs ALDERTON (1946) KB 374; GENERAL AND FINANCE FACILITIES LTD vs COOKS (ROMFORD) ltd (1963) 1 W.L.R. 644; MOHAMED ALl KANJI DHARAMSHI VS RATNAKARSAN Civil Appeal No. 37 of 1973 in Kenya (unreported).

Mr. Kateera argued that since MILLIANGOS vs FRANK TEXTILES) LTD (1976) A.C. 443 the rule now is that damages are assessed at the date of the breach as would be the case if there had been a conversion of the goods. The Milliangos case was not dealing with the tort of detinue, but repayment of debt in a foreign currency. Their Lordships did have occasion to consider the general rules in the civil law of tort and contract, but were not dealing with special cases. They were not concerned to overrule GENERAL AND FINANCE FACILITIES Ltd. vs COOK CARS (ROMFORD) Ltd where DIPLOCK L.J. observed at p. 650, 651,:-

"In substance this (form of judgment) is the same as the remedy in conversion, although the sum recoverable, as I had indicated, may not be the same as damages for conversion, for the case of action in detinue is a continuing one up to the date of judgment, and the value of the chattel is assessed as at that date. (See Rosenthal vs Alberton) a final judgment in such form is for a single sum of money." (Parenthesis mine)

Has Milliangos affected that statement of the law, which has been applied in Uganda? I think not. With regard to loss of or damage to property, the following explanation appears in WINFIELD and JOLOWICZ on tort (12th Ed) p 649:-

"The rapid inflation of the 1970s brought into prominence, particularly in the context of damage to buildings, the question of the date on which damages were to be assessed, for a judgement representing the cost of repair at the time of the wrong, even with interest, would

be unlikely to be sufficient to cover the work when the action came on for trial, while there may still be a general rule that damages for tort are to be assessed at the time when the tort is committed, MILLIANGOS vs GEORGE FRANK (TEXTILES) Ltd., (1976) A.C. 443 — 468) that rule is subject to exceptions and in a repair case the applicable principle is that the date for assessment of damages is the time when, having regard to all the relevant circumstances, repairs can first reasonably be undertaken……"

It appears to me that in the case t is also a special case, because of the continuing nature of that tort as Diplock L.J. explained so clearly. There has been no decision or legislation in this country imposing a different rule.

That being so, I come to the application of the Currency Reform Statute (No. 2 of 1987) which came into effect on 15th May, 1987. Under Section 2(a) every transaction done or had in or in relation to old currency, shall be deemed to be made in relation to new currency at the conversion rate specified in subsection 1 of the Currency Reform Statute.

Applying that provision to the transactions in this case, all matters concerned with detinue will be valued at the date of judgement, namely 26th May 1992 after the operative date of the Currency Reform Statute. The breach of contract was in December 1986, and so any damages on that account will be affected. Hence one can say that claims:

(a) for 10,780,000/=;
(b) for shs 183,500/=;
(c) for shs 6,140,000/=;
are all unaffected.

Claim (d) The money lying with the Company on the Respondent's account and so owed to the Respondent at December 1986, will be affected. That sum was shs 1,779,874 according to exhibit P3. the conversion rate is to divide by 100. The balance owing seems to me to be shs 17,798/74. In my view the award should be shs 17,798/74 or 17,709 to the nearest shilling.

There is the embarrassing mistake in Section 2(a) pointed out by Mr. Okalang whereby that section refers to Section 1(2). That should be 1(b). In order to defeat the application of the

Currency Reform Statute, Mr Okalang insisted that this Court could not improve upon the works of Parliament, and on some occasions he must be right. But on this occasion, I am satisfied that he is wrong.

First, there is the fact that the only conversion *rate* applicable to Section(a) is that in Section 1(b).

Secondly, there has been a corrigendum notice referred to in the Uganda Gazette supplement of 18th December, 1987, relating to:- "Corrigenda Statute No. 2 of 1987 published on 11th December, 1987." The corrigenda notice cannot be found. But it is more than likely that it corrected section 2(a) of the Statute to read Section 1(b), which was the only error in the Statute.

Thirdly, the courts have generally taken that view. It seems likely that the correction has been noted and followed, and that the reasoning has been taken for granted. The result must be that section 1(2) must be read as Section 1(b), and the Statute applied in that fashion.

Mr. Kateera wished the Court to apply Section 3 of the Act, and reduce the claims by 30%. Mr Okalang demonstrated that that Section did not apply. I agree with Mr. Okalang. Claim (e) Finally I come to the question of damages for breach of contract, shorn of exemplary damages.

The breach concerned the length of notice, and accordingly the measure of damages would be what the Respondent would have benefited by having had six months notice. As far as preserving his property is concerned, the Respondent has been compensated. He would have gained his profit over that period. What was his profit? The evidence does not disclose what he would have made. To begin with his normal profits are not in evidence. Further, he had handed over to repairers. Apparently the Respondent and his people were not selling more than 100 litres a day of petrol and some paraffin. This was because the repairers had taken over the station and blocked the entrance. At the beginning of the contract is this stipulation, that the Company was entitled to enter and carry out repairs and improvements. The Company had no obligation to indemnify the Respondent for any disturbance at all to his business. Hence while the renovations were in progress, the Respondent could not make his normal profit and had no recourse to the Company for compensation. It is not clear how long the work would be in progress. In the absence of any other evidence, as there was substantial

work to be done, I must consider that the Respondent would have had his whole six months of notice covered by the renovators. Such small sales as are in evidence would apparently end in a loss to Respondent when set against hi overheads. If that is not so, the Respondent should have proved his loss. I would only award nominal damages.

The period of six months would run from the beginning of December, 1986 to the beginning of June, 1987. Hence the obligation ended after the currency reform had commenced. The Respondent was entitled to calculate his whole claim at the end of the period. Hence he could claim in new currency. I would award shs 50,000/= in new currency.

In conclusion I would allow the appeal in part, and vary the items dealt with the High Court as follows: —

On claim (a) I would award shs 10,780,000/=.

On claim (b) I would award shs 183,500/=

On claim (c) I would award shs 6,140,000/=

On claim (d(I would award shs 17,798/74 or 17,799/= to nearest shilling.

On claim (e) I would award shs 50,000/=.

The total award is shs 17,171,299/=.

I would not award any costs in this appeal on the question of exemplary damages because setting that award aside was not the fault of either party, and indeed on the other items in dispute each party should bear his own costs.

Both Counsel asked this Court to have the decree of the High Court re-taxed and I would support that plea.

Delivered at Mengo this 15th day of July, 1993.

Sgd: H.G. PLATT

Justice of the Supreme Court

JUDGMENT OF MANYINDO. D.C.J:

I have read the judgment of Platt, J.S.C. in draft. I agree that the appeal should succeed in part, with the proposed variations in the awards made by the trial Judge. I also agree with the proposed order to the costs of the appeal.

In this case the respondent based his claim on two heads, namely, (a) breach of contract, and (b) detinue. For detinue the sum of shs 183,500/= was awarded. No appeal has been brought against that award. The award of shs 15,000,000/= as general damages for breach of contract was said to include "an element of punitive damages." As we pointed out by Lord Hailsham in: Cassell's & Co. Ltd. V Broome (1972) A.C. 1027 at 1073, the expression "exemplary" is to be preferred to the alternatives "punitive" or "vindictive" damages.

Exemplary damages should not have been awarded in this case for two reasons. First the respondent not asked for them. Second, exemplary damages should not be for breach of contract except in cases of breach of promise to marry (injured feelings) or dishonour by a bank of cheques of a customer when there are funds on his account (damaged reputation) but even these are in built or implied exceptions - because the damages should only compensate the plaintiff; See: (1990) A.C. 488. But of course the parties to a contract may, in their contract, make special provision for exemplary damages payable on breach and the plaintiff may seek to recover or the defendant to restrict the award to the agreed sum, rather than the actual loss. Platt, JSC, has ably discussed the law on exemplary damages in his considered judgment.

With regard to the error in Section 2(a) of Currency Reform Statute, it is true, as pointed out by Platt, JSC, that since this Court has always read Section 2(a) as referring to Section (1)(b) instead of 1(2). The corrigendum notice in the Uganda Gazette Supplement of 18/12/87, should now put the matter beyond doubt. It is a matter of regret that the corrigenda notice itself cannot be found.

As Oder, JSC, agrees, this appeal is allowed in part, in the terms proposed by Platt, JSC. Each party shall bear its own costs of the appeal.

DATED at Mengo this day of July, 1993.

Sgd: S.T.MANYINDO

DEPUTY CHIEF JUSTICE

JUDGEMENT OF ODER, J.S.C.

I have had the benefit of reading in draft the judgment of Platt J.S.C. with which I agree.

I think, with respect, that exemplary damages should not have been awarded against the respondent for breach of contract.

Regarding the respondent's claim for value of the various articles of property that remained at the filling station, I think that he was entitled to their value as assessed at the time of judgment. This was a claim in detinue, until delivery up of the property concerned or payment of its value.

The law as stated by Diplock, L.J. in the case of General and Finance Facilities Ltd. Vs Cook Cars (Romford 1963 I.W.L.R 644 at 651, is still good law.

Consequently, in the instant case, the provisions of the Currency Reform Statute, 1987 applies since the breach was in December, 1986 and judgment was passed subsequently to the currency reform.

In the result I would allow the appeal in part. I would also think that each party should bear its own cost of the appeal.

Dated at Mengo this 15th day of July, 1993.

Sdg: A.H.O ODER

JUSTICE OF THE SUPREME COURT