THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAN: MANYINDO.D.C.J. ODER, J.S.C.KAROKORA.J.S.C.)

CIVIL NO. 7 OF 1995

BETWEEN

HAJI ASUMANI MUTEKANGA……APPELLANT

AND

EQUATORGROWERS (U) LTD…….....RESPONDENT

(Appeal from the judgment of the High Court at Kampala (Katutsi, J.) dated 5/12/1994 in H.C.C.S. NO. 1131 of 1990

JUDGEMENT OF ODER, J.S.C.

This is an appeal from the judgment of the High Court in a Suit instituted there by the appellant against the respondents which he lost.

The appellant was a coffee dealer/processor, and the respondents owned a coffee factory. By an agreement dated 30/9/1983 the respondent agreed to let and the appellant agreed to take the coffee factory for a period of three years, beginning 1/10/1983 at an. agreed rent of Shs. 700,0001=, payable in two equal instalments beginning 31/3/1984 Upon execution of the agreement, the appellant took over the factory and began to process coffee therein

Between the 1st and 4th November 1933 the appellant was arrested and detained at Luzira Prison, leaving his workers to Continue With his business at the coffee factory. He was detained in Luzira until July, 1987. A month or so after his arrest the appellant's workers were allegedly chased away from the factory by the respondent. The appellants workers allegedly left some coffee and other property belonging to the appellant in the factory when they were chased away.

The respondents took over the factory and the appellant never recovered his coffee and the other property left there by the appellant's employees.

On 8/11/1988, the appellant instituted the suit in the High Court against the respondents for conversion of the items of property set out in paragraph 6 of the plaint as follows:-

> "(a) 25 tons of clean coffee valued at Shs. 3.565,000/=
> (b) 20 tons of second class coffee, valued at Shs. 323,800/=
> (c) 1.800 new gunny sacks valued at Shs. 900,000/=
> (d) 2500 secondhand gunny sacks valued at Shs. 750,000/=
> (e) 1 lorry tyre with rim and tube, valued at She. 200,000/=
> (f) Motor vehicle spare parts, valued at Shs.550,000/=
> (g) Coffee hacks, valued at She. 70,000/=".

It was also alleged in paragraph 7 of the plaint that by reason of the respondents illegal act, the appellant was unable to process 430 tons of coffee from which he expected a profit of Shs. 200,000/=.

In his plaint, the appellant prayed for:-

> "(a) Shs. 6,368,800/= being the total value of the items of property listed in paragraph 6 of the plaint;
>
> (b) loss of profit of She. 2,000,000/=;

(c) general damages for breach of contract;

(d) interests at 27% p.a. and

(e) costs of the suit.”

After they were served with the summons and plaint the respondents neither entered appearance, nor filed a written statement of defence, whereupon an interlocutory judgment was entered in favour of the appellant On 22/12/1988, under Order 9, rule 6 of the Civil Procedure Rules. Subsequently, the suit was set down for formal proof hearing on 27/2/1989. It was not heard on that date and adjourned to another date. Subsequently the suit was adjourned several times with a view to a settlement, but no settlement was reached.

On 5/9/1994 the suit again came on for hearing before Katutsi, J. On that occasion, the appellant was represented by Mr. Peter Kusiima and the respondent by Mr. Edward Sekandi. The learned trial Judge allowed Mr. Sekandi to participate in the proceedings and cross-examine the appellant and his witnesses.

Subsequent to the trial, the learned trial Judge dismissed the suit on the ground that the appellant had failed to prove his case. Hence this appeal.

Before the appeal came on for hearing the parties made their submissions in writing under rule 97 of the Rules of this Court, and did not address us at the hearing except for purposes of amendment of the memorandum of appeal.

Five grounds of appeal were set out in the original memorandum as follows:-

> "1 The learned trial Judge erred in law in holding that the interlocutory judgment was of no consequence.
>
> 2. The learned trial Judge erred in law and in fact. in holding that no special damages were proved and none were awarded.
>
> 3. In view of the evidence the learned trial Judge erred in law and in fact when he held that there was no breach of contract and therefore no general damages awardable"
>
> The following prayers were then made:-
>
> "It is proposed to ask this Honourable Court to order that (a) the appellant's appeal be allowed
> (b) Special and general damages be awarded to the appellant
> (c) The decree of the High Court be set aside with costs to the appellant."

When the appeal first came for hearing, Mr. Babigumira, for the appellant applied to amend the memorandum of appeal by adding additional grounds as stated in a document filed in Court the day before. Mr. Sekandi, for the respondent did not oppose the amendment, but said on that occasion that he had just received the additional grounds and that he needed at least one week to study and prepare for them. Consequently the appeal was adjourned.
When the appeal next came on for hearing on 25/4/1996, Mr. Tibaijuka represented the appellant and Mr. Sekandi the respondent. Both the learned Counsel indicated that they did not wish to add anything to their written submissions, and Mr. Sekandi said nothing more about the additional grounds of appeal which had been introduced on the previous occasion. In the circumstances we

took it that the respondent had no objection to the additional grounds, and the appeal proceeded on that basis.

The additional grounds stated that:-

> "lA. The learned trial Judge erred in law, in the circumstances of the case, when he allowed the defendants/respondents to participate in the proceedings.
>
> 1B. The learned trial Judge erred in law when he allowed the defendants'/ respondents' Counsel to cross-examine the plaintiff/appellant and his witnesses on matters in related to quantum of damages."

The prayers in the original memorandum of appeal were also amended as follows:-

"IT is PROPOSED to ask this Honourable Court in the alternative;-
(a) That a retrial be ordered.
(b) That the respondent pay costs of this appeal and in the Court below,
(c) That costs of the retrial abide the results of the retrial."

In the written submission by the firm of Katureebe, Twinomukunzi & Co. Advocates, Counsel for the appellant, arguments were made which were relevant to grounds 1.A and 1.B, together.

It was submitted first that a defendant who neither enters an appearance, nor file a written statement of defence does not deserve service. The case is fixed exparte, as was held to be the case in the Eastern African Court of Appeal, Civil Appeal No. 14/72 Attorney General of Uganda

V. Charles Sengendo (Unreported). The learned Counsel referred to what Duffus, P. said on P.2 of the Judgment, which was this:-

> "Order IX rule 10 is silent on the procedure to be followed when the appellant fails to file a defence. The procedure is different when a defendant has failed to enter an appearance in that case the action is set down for hearing ex parte, no notice is served on the defendant."

In the instant case, it was contended, no notice was necessary. The respondents were even lucky to have been served for the hearing date of 27/2/1989, (which they were), when they failed to turn up. The case was then adjourned to 10/4/1989, because the appellant's witnesses were absent. It was further contended that on subsequent occasions the learned trial Judge gave audience to Mr. Sekandi as Counsel for the respondents to participate in the proceedings, culminating on 5/9/1994, when the learned trial Judge allowed Mr. Sekandi to cross-examine the appellant and his witnesses. Relying on the case of Attorney V. Sengendo (supra), it was contended for the appellant that the respondent not having entered appearance or filed a defence, the learned trial Judge should not have allowed the respondent's Counsel to participate in the proceedings and to cross-examine the appellant and his witnesses at the trial of the suit, as happened.

In his written submission in reply to that of the Counsel for the appellant Mr. Sekandi, for the respondent, did not comment on the complaint made by the appellant in ground 1A and 1B

I agree with the view of the appellant's learned Counsel. With respect, I think that the learned trial judge should not have allowed the respondent's learned Counsel to participate in. the proceedings and, still less, to cross-examine the appellant and his witnesses.

What happened briefly, in this case is that, the respondent not having entered appearance or filed a defence, an interlocutory judgment was entered for the appellant on 22/12/1988. Thereafter the

suit was set down for formal proof hearing on 27/2/1989. But before that date Mr. Sekandi, for the respondents, apparently wrote to the Court, requesting that the formal proof be adjourned to enable him (Mr. Sekandi) take necessary action. That letter was copied to the appellant's Counsel. The record further shows that on 11/10/1991, MIS Sekandi & Co Advocates, filed a notice of motion, but it is unknown what the application was about.

The suit next came on for hearing on 30/6/1994, when it was adjourned at the instance of Mr. Sekandi on the ground apparently, that the appellant's Counsel had been to see him (Mr.Sekandi) with a view to a settlement. When the case next came on for hearing on 5/9/1994, the Counsel for the appellant said that since the respondents had failed to comply with a Court order granted on 8/10/1991 allowing their request to file an application for setting aside the interlocutory judgment within a week from that date, the Appellant was ready to proceed with the formal proof. Mr. Sekandi, for the respondent, addressed the Court, saying, inter alia, that he had failed to contact the persons responsible for the respondent Company. He had communicated to them, but unfortunately, they were dead. He then continued:-

> "However, What is conceded is that there was a termination of arrangement, as for claim f damages suffered, that was not admitted. In view of the problem I have, since all the people who knew the case are dead the best I would do is accept to allow filing a defence to contest the damages. The damages are
> contested. That is all we want."

What appears to be a ruling then followed:-

> "Court: Having considered the issues raised, I rule that being proceeds or Sekandi will be entitled to cross-examine the plaintiff. This is an assessment of damages."

The formal proof hearing then proceeded, with Mr. Ssekandi participating and cross-examining the appellant and his witnesses.

With respect, I think that the learned trial judge erred to have allowed the respondents' Counsel to do so. The learned trial Judge did not only put the appellant in a very disadvantageous position of making his case without knowing what case was to be put in rebuttal, but also gave a definite and gratuitous to the respondents, who were the guilty party for ,having failed to enter appearance and file a defence, and who ha failed to take advantage of the Court order allowing them time to apply to set aside the interlocutory judgment.

There was a valid interlocutory judgment granted because the respondents had failed to enter appearance and file a defence.

In these and other circumstances of the case, the learned trial Judge, with respect, ought not to have permitted the respondent's Counsel to participate in the proceedings and, still less, allow him to cross-examine he appellant and his witnesses. The record shows that Mr. Sekandi cross-examined the appellant and his witnesses on matters relating to the existence of the agreement. In his address to the learned trial Judge, Mr. Sekandi also went as far as submitting that there was no breach, and yet the existence and breach of the agreement were matters on which the interlocutory judgement had already been entered, and more importantly which Mr. Sekandi had himself conceded.
In my view the conclusion that the learned trial Judge ought to have permitted the respondent's counsel to participate in the proceedings and cross-examine witnesses is supported by the case of Attorney General V Sengendo (supra) and Kanji V. Jinabhai (1934) 1; EACA 87. Grounds 1 A and 1 B must therefore succeed.

Ground 1 and 3 of the appeal were taken together by the learned Counsel for the appellant. These grounds attacked what in effect, amounted to the learned trial Judges disregard of the

interlocutory judgement, and his finding that there was no breach of contract.

I think that these grounds too must succeed. First because what I have said about grounds 1 A and 1 B equally applies to them.

Secondly, the only issue before the learned trial Judge was the quantum, or assessment of, damage (if any). An interlocutory judgement having been entered in favour of the appellant when the suit came on for formal proof hearing on 5/9/1994 breach of the agreement was no longer an issue; moreover, it was admitted by the respondents as shown by the passage of their learned Counsel, Mr. Sekandi's address to the trial Court, to which I have referred above. There can be no better evidence against a party in a suit than an admission by him, which was the case in the instant case. Inspite of this however, the learned trial Judge reopened the issue of breach of contract, as the passage in his judgement referred to below clearly shows:-

> "I will now deal with the question of breach of the contract. There is the claim made by the plaintiff that he paid the first instalment before he was arrested. I find this difficult to accept. The agreement was made on the 30th September,1983. It was expressly provided that the first instalment was due on 31st March,1984. It would appear to me that the plaintiff's claims he paid is sheer lies. I am fortified in my belief by the fact that he did present any receipt acknowledging payment of this rent. This, however, is a by the way. The evidence of what happened after the arrest of the plaintiff is not clear. If his workers were ever chased out, it is not clear whether who chased out the workers were representatives of the company for whose action the company would be held liable. The plaintiff had a duty to show that the group which chased his workers out of the factory was the recognised agents of the company. The company cannot be responsible for acts of rebels who were not commanding the mind of the company."

With respect I think that such reopening of an issue which was already shut, as I have indicated above, was a serious error on the part of the learned trial Judge.

Thirdly even if it was necessary to prove that the respondents had breached the contract, there was ample evidence to that effect. Evidence adduced, in my view, proved that the appellant's workers were chased away from the coffee factory, in breach of the contract, not by "rebels" as the learned trial judge said but by officials of the respondent company, for which the company was liable. The appellant's workers were chased away after the appellant had been arrested and detained at Luzira Prison, apparently, for attempting to poison Kayemba ,the Managing Director of the respondent company. Some of the witnesses who testified regarding how the appellant's workers were chased away from the coffee factory had, in fact been Directors or officials of the respondent company.

The appellant himself testified that at the time of his arrest the contract was still running. He had fulfilled the condition of the contract. He left management of the company in the hands of his brother, Yasin Mutekanga (PW2).

P.W.2's evidence was that about early December,1993, when his boss was in prison, two men, namely Francis Kayemba and Ben Magalo, went to him (P.W.2) and told him not to go back to the factory. He was then working as the appellant's foreman. Armed policemen were present when the witnesses was asked to leave the factory. After the appellant's workers were chased from the factory, P.W.2 said, he did not know what happened to the appellant's coffee and other property at the factory.

Emmanuel Lutaya (PW3) had been a Director of the and a signatory to the contract under consideration. He said that when new Directors of the company were elected, the appellant's workers left the factory. Kayemba was the Managing Director of the Company and PW3 was no longer a Director of the company at the time. In cross-examination, this witness said that when

the appellant was imprisoned his workers ran away from the factory. It was not clear from the witness evidence whether the workers ran away from the factory on their own volition or because they were chased away. This was not, apparently put to him in cross-examination.

Alosio Yahwe (PW4) had also been a Director of the respondent company and a signatory to the contract. He subsequently became the appellant's employee. He testified that the were forced out of the factory by Kayemba, who was the leader. Other Directors were also present.

Sowedi Ganyana (PW5) another former Director of the company and signatory to the contract, said that he was working at the coffee factory as a sacks distributor to the appellant.

Part of his testimony reads as follows:

> "Mutekanga was in the factory from September, 1983 up to—? He was later arrested around February. He was arrested after about three months after September. We workers went on working even when he was arrested. We worked up to December,1983.In December the Directors called for a meeting. The meeting was to examine the issue of Mutekanga and Equator Growers. The meeting was held at the factory. I attended the meeting. At the meeting it was decided by a group of the Directors that Mutekanga should be stopped while another group supported him Continuing to be at the factory .Those who
> were for Mutekanga to leave the factory won. We the workers continued going to the factory to work. After about three days after the meeting the group which wanted Mutekanga out came to tell us to stop work at the factory. We then went to find out what to do from the Police. Police advised us to remove the property of Mutekanga from the factory."

Most of these witnesses had been Directors of the respondent and employees or had dealings with the appellant. It was not shown that they did not tell the truth to the trial court. Their apparently credible evidence was not controverted. In my view their evidence ought to have been believed as truthful with regards to the manner in which the appellants workers left the factory and the items of the appellants property that were left at the factory.

In the circumstances, I think that, in addition to the admission of breach, to which I have already referred, available evidence sufficiently proved that the respondents breached the contract.

Finally ground two. This appears to be the crux of the appeal. It criticised the learned trial judge for holding that no special damages were proved and awardable.

Under this ground, it was submitted for the appellant, first, that since the appellant's claim was for a liquidated sum of money and the respondent had not entered appearance or filed a defence, the appellant's claim of shs. 6,368,000/= ought to have been allowed.

Secondly, it was contended, that in the absence of a defence and evidence in support thereof, as it was the case, the appellant had a lighter burden to prove his case against the respondents than would otherwise have been the case. In the circumstances, it was said, the evidence adduced not having been controverted, was sufficient to prove the appellant's case. It went beyond mere conjection, contrary to the learned trial Judge's findings.

Mr.Ssekandi, learned Counsel for the respondents argued otherwise. He echoed the learned trial judge's view that "formal proof" meant that the plaintiff must prove that which he claims from the defendant. An interlocutory judgement does not entitle the plaintiff, in whose favour it has been entered to sit cross legged and wait to be fed on a silver plate. He has a duty to show on the balance of probability that he is entitled to the relief claimed in the plaint.

I agree with Mr. Sekandi in this regard, because the argument put forward for the appellant runs counter to the well known general principle of law that in Civil cases the burden of proving claims in suits rests on the plaintiff, and that the standard of proof is on the balance of probabilities.

The heads of damages claimed by the appellant in his plaint included special damages and loss of profit, each for a specific sum. The former was shs.6,368,800/=, allegedly being the value of items of the appellant's property removed from the coffee factory and converted by the respondents. Loss of profits was specified as shs.2,000,000/=.

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 probability. This rule applies where a suit proceeds inter parties or exparte. It follows that even where as in the instant case, the defendant neither enters appearance nor files a defence, the plaintiff bears the burden to prove his case to the required standard. The burden and standard of proof does not become any less.

As the learned author stated in MC Gregor on Damages 4th Edition page 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 the 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. Evan (1892) 2 Q.B. 524, Bowden L.J, said this at pages 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 vaniest pandatory."

In the instant case, the issue is whether the appellant sufficiently proved his claim for special damages, loss of profit and general damages for beach of contract, which were prayed for. As a first Court of appeal it is our duty to scrutise and evaluate the evidence afresh and make our own conclusions on the evidence.

I will start with the evidence concerning the claim for Shs. 6,368,000/=, as the total value of items of property allegedly converted by the respondents.

The items of property and their values were listed in paragraph 6 of the plaint as follows:

(a) 25 tons of clean coffee valued at – Shs. 3,565,000/=
(b) 20 tons of second class coffee valued at Shs. 323,800/=
(c) 1,800 new gunny bags, valued at Shs. 900,000/=
(d) 2,500 second hand gunny bags, valued at Shs. 750,000/=
(e) 1 lorry tyre with rim and tube Shs. 200,000/=
(f) Motor vehicle spare parts Shs. 550,000/=
(g) Coffee husks Shs. 70,000/=

TOTAL Shs 6,363,800/=

Regarding proof of damages relating to these items of property, Yasin Mutekanga (PW2) appears to have been one of most important witnesses for appellant's case. He was the appellant's foreman at the coffee factory. He was also in-charge of weighing coffee. He testified that when Francis Kayemba and Ben Magalo told him not to go to the factory, there were at the factory 25 tons of clean coffee, and also 2nd grade coffee. In all there were 45 tons of coffee at the factory. The clean coffee was contained in 460 bags, and BHP in 320. The BHP appears to have been the 2nd grade coffee. Yasin (PW2) further said that they were buying the coffee from coffee traders and taking it to the factory for processing. It *was* the appellant who kept the records. PW2 himself did not make entries in the delivery books.

The delivery book was, in fact, tendered in evidence as an exhibit b the appellant.

In the course of being chased away, PW2 said that they removed 80 bags of coffee to the appellant's house but they were forced to carry the 80 bags of coffee back to the factory. He also said that he took some coffee to the police.

PW2 further testified that at time they were chased away the there were also at the factory a lorry tyre, a tyre of speed vehicle, 1800 new bags and about 2300 old gunny bags.

Also Yahwe (PW4) testified that when the factory was close the appellant's coffee was in there; some of the appellant's coffee was at the factory and some were at his home. There was about 25 tons of grade I coffee and 20 tons of grade II coffee; This witness did not indicate the quantity of coffee which was at factory and at the appellant's home respectively His evidence was more specific about the quality of grade II coffee than that of PW2

The evidence of Sowedi Ganyana (PW5) in this regard was that the police advised then to remove the appellant's property from the factory. These were coffee and coffee husks: While the

witness did not say how much husks was there, he said that there were 45 tons of clean processed coffee185 bags of which they loaded on a motor vehicle and took to appellant's house. There after, the witness and others were told not to remove any more coffee from the factory. Those who chased away the appellant's workmen threatened to go for the coffee which the workman had removed to the appellant's house. It is not difficult to see that according to the evidence of other witnesses, the figure of 45 tons mentioned by PW5 consisted of a total grade I and grade II coffee. Not all 45 tons were clean processed coffee..

This witness, (PW5's) evidence is silent on whether the threat was carried out, and on the existence of the other items such as grade II coffee, coffee husks, gunny bags, and motor vehicle tyre. In my view, such silence is not inconsistent with PW2's evidence in that regard.

Ngobya (PW6) said that as the vice chairman of the respondent company, he called a meeting to decide about the contract with the appellant. The meeting decided that the agreement should be terminated. The appellant had in the factory 45 tons of coffee, of which 25 tons was processed coffee and 20 tons second grade coffee. There were also a tyre for a lorry, some other spare parts and empty sacks. The witness did not say how many sacks there were at the factory.

At the time he gave evidence, which was on 28.9.1994, PW6 was a coffee dealer, selling coffee for Ngereko Society. He said that the price of processed coffee at the time was Shs.2800/=, and that he was not sure about the price of second grade coffee.

The appellant also gave evidence. His evidence about the numbers of the various items of property must, however, be regarded as hearsay, because his workers were chased away from the factory when he (the appellant) was away in Luzira Prison. He also said that the original agreement and all other books were left at the coffee factory when his workers were chased away.

Considering that the appellant and his witnesses testified in 1994, apparently from memory, about events which had occurred nearly 11 years ago, I think that the apparent few discrepancies or inconsistencies which are in their testimonies about the numbers or quantities of some of the items of property cannot, in my view, be surprising. Moreover, I think that the discrepancies or inconsistencies were minor and did not, I think, point to deliberate lies to the trial Court on the part of the witnesses.

Other points which must be regarded as important in re-evaluation of these witnesses' evidence, I think, are that some of them had been Directors and Officials of the respondent company during the events under consideration. Normally, therefore, they would not be expected to testify against their own company, given that same of them still held office in the company when the events took place.

The other point is that the appellant's relevant records remained at the coffee factory when his workers were chased away. Consequently, no could not produce them in evidence.

These are factors which, in my view, favour acceptance of the evidence of the witnesses as being truthful.

In the circumstances of this case, I think that the appellant sufficiently proved special damages regarding:-

(a) 25 tons of clean coffee;
(b) 20 tons of second hand coffee;
(c) 1800 new gunny bags;
(a) 2300 second hand gunny not 2500, in view of PW2's evidence.
(a) One lorry tyre with a rim and tube.

On the other hand, I find that special damages regarding motor vehicle spare parts, and coffee husks were not proved.

As regards the claim for loss of profit, no attempt was made to adduce evidence to prove it. I accordingly find that it was not proved, and that the learned trial Judge was justified in rejecting it. Next, I shall consider the claim for general damages.

General damages consist, in all, items of normal loss which the plaintiff is not required to specify in his pleading in order to permit proof in respect of them at the trial. Its distinction from special damages was defined by Lord Wright in Monarch s.s. Co. V Karlshanus Oliefabriker (1949) AC, 196 at 221 as being:

> "damages arising naturally (which means in the normal course of things) and cases where there were special and extra ordinary circumstances beyond the
> reasonable provision of the parties. In the latter event it is laid down that the special fact must be communicated by and between the parties."

With regard to proof, general damages in a breach of contract are what a Court (or jury) may award when the Court cannot point out any measure by which they are to be assessed, except the opinion and judgement of a reasonable man. See Prehn V. Royal Bank of Liverpool (1870) L.R. 5 Ex. 92 at 99-100.

In the instant case, the respondents having acted in breach of the contract, they were liable to the appellant in general damages. At the trial of the suit, the appellant's Counsel Mr. Kusiima suggested a figure of Shs.10m/= as general damages. I think that this was far too high. In the circumstances of this case, I would award general damages of Shs. 1m/=.

With regard to interest, a rate of 27% per annum was claimed. No reasons were given for claiming such a rate. In my view the rate claimed was on the high side. Since this was a business enterprise, I would award interest at the rate of 12% of the decretal sum.

There is not basis for a retrial, prayed in the alternative in the memorandum of appeal. There was no mistrial of the suit. I would, accordingly, refuse that prayer.
In the result I would allow the appeal to the extent indicated above, set aside the judgment and orders of the learned trial Judge and substitute therefor the following.

(i). For items (a), (b), (c), (d), & (e)in paragraph 6 of the plaint - Shs.5,678,800/=

(ii) General damages Shs.1,000.000/=

(iii) Interest at the rate of 12% on the decretal amount.

(iv) The costs of the suit and of the appeal since the appeal is substantially successful.

Dated at Mengo this 29th day of July 1996

A.H.O. ODER,
JUSTICE OF THE SUPREME COURT.

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

W. MASALU-MUSENE

REGISTRAR, SUPREME COURT.

JUDGEMENT OF MANYINDO D. C .J.

I had the advantage of reading the judgment of Oder, J.S.C, in draft and I agree with it. As Karokora J.S.C., also agrees the appeal is allowed in part. There will be order for costs in terms purposed by Oder J.S.C.

Dated at Mengo this 29th day of July 1996

S.T. MANYINDO

DEPUTY CHIEF JUSTICE

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

W. MASALU-MUSENE

REGISTRAR, SUPREME COURT.

JUDGEMENT OF KAROKORA, J.S.C.

I have had the advantage of reading the judgment of Odor, J.S.C., in draft and I concur with it.

Dated at Mengo this 29th day of July 1996.

A.N. KAROKORA,
JUSTICE OF THE SUPREME COURT.

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

W. MASALU-MUSENE
REGISTRAR, SUPREME COURT.