

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO**

(CORAM: ODOKI, CJ, ODER, TSEKOOKO, KAROKORA AND KANYEIHAMBA, JJS.C.)

CIVIL APPEAL NO. 7 OF 2003

BETWEEEN

1. ADMINISTRATOR GENERAL ::::::::::::::::::::::::::::::::::: APPELLANT

AND

- 1. BWANIKA JAMES**
- 2. MAYANJA ALEX**
- 3. KAKEETO PATRICK**
- 4. NAMUGERA AMOS**
- 5. MAYIGA WUKSON**
- 6. NAKUYA JOYCE**
- 7. NAMUKASA CHRISTINE**
- 8. NAMAYANJA ROBINA**
- 9. NABISIGYE ESEZA**
- 10. KWANDAGO BEATRICE ::::::::::::::::::::::::::::::::::: RESPONDENTS**

(Appeal from the decision of the Court of Appeal of Uganda at Kampala (Mpagi-Bahigeine, Twinomujuni, and Kitumba, JJ.A) dated 7th July, 2003, in Civil Appeal NO. 36 of 2002)

JUDGMENT OF ODER, JSC

This is a second appeal. It is brought against the judgment of the Court of Appeal dismissing the appellant's appeal against a judgment of the High Court in a suit instituted by the respondents against the appellant. The background to the appeal is as follows: The High Court granted the appellant Letters of Administration to administer the estate of the deceased, Francis Drake Mayiga, in Administration Cause No. 851 of 1978. The estate consisted mainly of a commercial building in Masaka Municipality. The respondents were the children of Francis Drake Mayiga (deceased) and the

beneficiaries of his estate. With the agreement of the respondents; the appellant authorized the law firm of M/S Ntume Nyanzi & Co. Advocates to sell the building and remit the proceeds of sale therefrom to the appellant for distribution to, or management for, the respondents, most of whom were minors at the material time. On 9/5/1996, the law firm issued a cheque, the proceeds of sale, for Shs: 83,995,560/=. The cheque was collected by one Katamba-Mukiibi, a member of staff and a State Attorney in the appellant's Department. The cheque was later banked by a Senior Accountant of the appellant, one Lawrence Lagara, on the appellant's Bankruptcy Estate Account No. 3506, instead of in the appellant's General Account, No.3432. Both the accounts were in the Kampala main branch of the former Uganda Commercial Bank Ltd. (thereinafter referred to as "the Bank"). Lawrence Lagara and the Appellant's Accountant called J.B Mukasa were the signatories to the Bankruptcy Estate Account. They withdrew all the money over a period of two years and disappeared. The beneficiaries of the estate, the respondents, never received a single cent from the proceeds of sale of the estate. In 1991, they jointly instituted the suit in this

case against the appellant only. In view of the parties' respective cases as canvassed at the trial and on appeals in this Court and the Court below it is necessary, in my view, to refer to what they stated in their pleadings. The respondents' amended plaint stated, inter alia:

"6. In the course of the administration of the said estate the Defendant received on or about 9/5/86, a sum of Shs: 83,995,560/= for and on behalf of and on account of the plaintiffs, the said sum being part of the proceeds out of the sale by the defendant as administrator of the estate of late Francis Drake Mayiga's property comprised in Leasehold Registrar volume 643 Folio 18, plot 31, Kampala Road, Masaka Municipality.

7. The Defendant in breach of his duties and obligations to the plaintiffs as administrator and trustees has failed and/or ignored and/or refused to effect payment of the said sum to the plaintiffs, but has instead converted the same to his (Defendant) use and has thus caused each and every plaintiff to suffer loss and damage and plaintiffs claim damages by reason thereof.

8. *The plaintiffs demand from the Defendant is for payment of Shs: 83,995,560/= as money had and received for and on behalf and on account and in trust of the plaintiffs and which the Defendant is not at all entitled to keep for himself.*

9. *The plaintiffs contend that whatever is complained of herein was carried out by the Defendant's servants/agents/employees authorized agents acting in the course and within the scope of their employment with the Defendant and as such the Defendant's vicariously liable by reason thereof.....*

WHEREFOR it is prayed that judgment be entered for the plaintiffs against the Defendant for:

- a) *Principal sum of Shs: 83,995,560/= and in the alternative the proportionate present monetary value of the plaintiffs' interests in the said property.*
- b) *General damages for conversion.*
Interest on the sums in (a) and (b) above at the rate of 50% per annum from 1st May, 1986, till payment in full
- c) *Costs of the suit".*

The gist of the appellant's defence to the suit was set out in the following paragraphs of the written statement of defence:

"5 The Defendant states that this suit is misconceived and is bad in law so for as: -

- i) *The plaint discloses no cause of action*
- ii) *The orders and declarations sought by the plaintiffs are subject of criminal proceedings against the defendant's former employee Mr. Lagara who acted fraudulently, illegally and out of the course of duties in converting and putting to his personal use money intended for the plaintiffs, see a copy of a report of the Police investigating officer attached hereto and marked annexure "A".*

iii) The Defendant has at all times material exercised due diligence and has never at anytime been negligent and/or been in breach of its duties and obligations

7. Paragraph 5 is accepted in so far as it relates to the Administration of the estate but the rest of the paragraph is denied and the plaintiffs will be put to strict proof thereof.

8. Paragraph 6 is denied and the plaintiffs will be put to strict proof thereof.

9. Paragraph 7 is denied and in the Defendant shall aver in reply that he has exercised due diligence and has never at any time been in breach of his duties and obligations and/or converted any money to his own use.

10. Paragraph 8 is denied and the plaintiffs will be put to strict proof thereof

11. Paragraph 9 is denied and the defendant avers in reply that never has he authorized agents/servants/employees acting in the course of their employment performed any act or omission rendering him vicariously liable and the plaintiffs will be put to strict proof thereof."

About three years after the pleadings had closed the appellant applied for a third party notice to issue against the Bank. The purpose of the third party notice was to join the Bank as a party to the suit and to claim indemnity from it for the respondent's money, which had been lost in the Bank. The trial judge granted the application and the third party notice was served on the Bank but it neither entered an appearance nor filed a defence. The suit was therefore tried with only the appellant and the respondents as parties to it. Three issues were agreed and framed at the commencement of the trial. They were:

"1. Whether the Administrator General is responsible for the sale and distribution of the proceeds in respect of the property comprised in Leasehold Register 643 Folio 18, Plot 311, Kampala Road, Masaka.

2. ***Whether the Administrator General is liable to pay the proceeds there from and or the proportionate monetary value of the property to the plaintiffs.***
3. ***Other remedies if any to the plaintiff".***

The learned trial judge heard evidence from both parties. In her judgment, she answered the first and second issues in the positive and ordered that the appellant should pay to the respondents:

- (a) The current value of U.S. dollars equivalent to Shs: 83,995,560/=;
- (b) Interest on the decretal sum at the rate of 6% per annum from 1st may 1986 till payment in full.
- (c) The costs of the suit.

The appellant's subsequent appeal to the Court of Appeal was unsuccessful. That Court, however, varied the award of damages made by the learned trial judge and ordered the appellant to pay to the respondents:

- (a) Shs: 424,891,540/= being the amount of money the respondents would have received if the original sum of Shs: 83,995,560/= had been invested by the appellant in a fixed account at the interest rate of 10% per annum for 17 years
- (b) General damages of Shs: 10,000,000/= for each of the ten respondents making a total of Shs: 100,000,000/=
- (c) Interest of 6% per annum on the decretal amount of Shs: 524,891, 540/=
- (d) Cost of the suit in the High Court and of the appeal in the Court of Appeal.

This appeal is against that judgment.

There are three grounds of appeal, which are similar to those, which were argued for the appellant in the Court below.

The grounds are:

"1). The learned Justices of Appeal erred in law in upholding the trial judge's finding that there was no evidence of negligence on the part of the Uganda Commercial Bank Ltd. When it accepted a cheque drawn and clearly marked "Pay THE ADMINISTRATOR GENERAL" to be banked on a Bankruptcy Account, which did not belong to the Appellant.

2). The learned Justices of Appeal erred in law in not holding Uganda Commercial Bank Ltd. liable to indemnify the appellant for the loss he incurred.

3). The learned Justices of appeal misdirected themselves by applying a wrong formular in awarding damages of Shs: 524,891,540/= which in the circumstances is excessive".

The memorandum of appeal then prayed for orders that:

- a) The judgments of the High Court and of the Court of Appeal be set aside.
- b) The appellant be indemnified by the Uganda Commercial Bank Ltd, for the loss it incurred.
- c) The appellant be granted declarations that this Court deems fit under rule 1 (3) of the Supreme Court Rules.
- d) The appellant be awarded the costs of this appeal and cost in the Courts below.

Both parties filed their respective arguments of the grounds of appeal. At the commencement of the hearing Mr. Francis Atoke, Principal State Attorney, the counsel for the appellant filed a supplementary Record of Appeal with leave of the Court. It was a short one, containing only the trial Court's record granting the appellant's application for issue of a third party notice against the bank.

The appellant's written arguments in support of the appeal were filed by the Administrator General's Department. The appellant's submission regarding ground one reiterated the arguments on the ground one of the appeal in the lower court. The arguments are that the evidence adduced at the trial by the appellant was sufficient to support a finding that the bank was negligent in allowing a cheque drawn in the appellant's name to be banked on a different account; evidence was provided by a report dated 24/2/94, compiled by D/SP J.B. Kaunda of Frauds C.I.D Headquarters, who was not called as a witness. The report was listed as one of the agreed documents at the trial.

The second paragraph of the report by J.B. Kaunda, D/SP is the most relevant to the appellant's submission. It states:

"Inquiries have shown that Mr. Lagara banked the cheque on Account No. 3506 with U.C.B. Kampala Main Branch (Bankruptcy Estate) on which he (Lagara) and Mr. J.B. Mukasa were the only signatories. It should be noted that Account No. 3506 (Bankruptcy Estates) is for the Registrar General of Companies and has nothing to do with the Administrator General's Department. It should also be noted that the cheque in question had the payee clearly marked: "CREDIT ADMINISTRATOR GENERAL" and the bank should not have accepted to credit this money on the account of a wrong payee i.e. Bankruptcy Estates".

It is contended in the appellant's submission that the C.I.D. report having been admitted in evidence by agreement of both the parties' section 57 of the Evidence Act applied to it. There was therefore no requirement for the appellant to prove it by calling its author as a witness. Consequently, the C.I.D report should have been relied on by the Hon. Justices of Appeal in determining whether the bank was negligent or not.

In view of the stated names of the payee of the cheque, the Bank should have rejected payments of cash out of the cheque over the counter since the cheque was marked "Credit AMINISTRATOR GENERAL". But instead the bank paid some cash over the counter out of the cheque to Lagara and Mukasa until the money was exhausted.

It is further contended in the Appellant's submission that as Omara Obel (DW2) testified, "*the cheque was fraudulently banked on a different account... if it had been banked in the Administrator General's Account, cash would not have been withdrawn.*"

The appellant relied on certain authorities in support of his case. These are: **Marrice Megrah & F.K Ryder on Paget's Law of Banking**, Butter-Worths, 9th Edition, Pages 89-90, regarding a banker's role in respect of trust account's; **Commissions of Taxation Vs. English, Scottish and Australian Bank Ltd. (1970)**

AC683 regarding the test of negligence; **A.L. Under Wood Ltd.**

Vs. Bank of Liverpool (1924) AC 776, in which a sole director of a company banked cheques meant for the company on his private account to defraud the company's bankers and the recipient bank did not query the transaction and **House Property Vs. London County and Westminster Bank (1915) 84 L.J (K.B.) 1846**

The respondent's written submission in opposition to the appellant's submission was filed by M/S Lwere, Lwanyaga and Co. Advocates. On ground one of the appeal the respondent reiterated and adopted their arguments in the High Court and the Court of Appeal since, it is contended, the appellant's ground is similar to the equivalent grounds of appeal in the Court below. The respondents now contend that answers to certain issues would effectively and completely dispose of all the arguments made in the appellants submission under ground one of the appeal.

The first is whether or not the Bank was a party to the suit at the trial, to the appeal in the Court below, and to this appeal. The respondents contend that although the appellant applied for a third party notice to issue against the Bank, he omitted to take important steps to join the Bank as a party to the suit. Nor was the Bank ever made a party to the first appeal. It would therefore be inconsequential for this Court to find negligence on the part of the Bank when it was not a party to the suit, to the first appeal and to the present one. I shall comment more

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on this point later when considering ground two of the appeal, to which it is more relevant.

Secondly, it was not framed as an issue for determination of the trial Court whether or not the Bank was negligent in processing the cheque through account No. 3506. Nor did the appellant apply to the trial Court under order 13, rule (1) of the Civil Procedure Rules to amend the agreed issues; or the trial Court on its own motion amend the issues. The respondent's contention therefore is that liability for negligence cannot be found against the Bank, as it was not an issue at the trial.

Thirdly, whether or not the appellant adduced sufficient evidence or any evidence at all at the trial of the suit to prove that the Bank was negligent in the way it dealt with the suit cheque. According to the respondents no such evidence was adduced by the appellant. On the contrary, evidence available proved the plaintiff's negligence. The suit cheque was paid on Account No. 3506, which also belonged to the appellant; exhibit D2, the Bank's paying in slip, clearly stated "Credit Administrator General". Whether or not there was a mis-posting of the cheque, it is contended that this was not evidence of negligence on the part of the Bank. It was the appellant's Principal Accountant, Lagara who banked the suit cheque on account No. 3506. Lagara had the authority as an officer of the appellant's Department to bank the cheque and did so in the course of his employment. If it was the wrong account and Lagara acted for his own benefit or for the benefit of this employer in the course of his duty, his employer, the appellant was vicariously liable for his action. **See Lloyd Vs. Grace, Smith (1912) H.L. 716: and Cassidy Vs. Ministry of Health (1951)2. (K.B.) 343.**

Fourthly, since both accounts 3506 and 3432 belonged to the appellant, it was not proved by evidence whether cheques written "Credit Administrator General" could not be banked on the Bankruptcy Estate account.

Fifthly, the appellant did not make a written complaint to the Bank about the cheque having been banked on account No. 3506, if indeed it was the wrong account. The cheque was banked on 13th May, 1986, and money was withdrawn by Lagara and Mukasa for a period of two years, up to march/April, 1988. The respondents kept on checking on the appellant during this period but were not informed of what had happened to the suit cheque. This means that the appellant could not have been ignorant of what had happened to the cheque. The beneficiaries of a trust fund, like the respondents in the instant case, are entitled to information relating to documents concerning the trust account. **See Re. Londonderry Settlement (1964) 3 All E.R 855** . Regarding the CID report written by Kaunda D/SP, No. 5 on the list of Agreed Documents, it is contended for the respondents that the report did not prove negligence on the part of the Bank. Documents merely agreed upon during the scheduling conference of a trial are not themselves admissions within the meaning of section 57 of the Evidence Act. They are documents, which the parties have agreed to rely on during the trial. It is still left to the parties to adduce evidence on such documents because they have not been admitted in evidence as exhibits.

It is contended that the learned Justices of Appeal were correct in rejecting the CID report dated 24/2/1994.

Finally on ground one the respondents submitted that as this is a second appeal from the judgment of the first appellate court upholding the trial Courts finding of fact, it is contended that this Court, as the second appellate court should not interfere with the finding of fact unless it is established that the first appellate court failed, in effect, to consider and weigh the evidence and further that the failure of the first appellate Court to evaluate the evidence is clearly apparent from the wording of its judgment. The respondents contend that in the instant case, the Justices of the Court of Appeal clearly and carefully weighed the evidence on record before they came to their conclusions. The honourable Justices

neither erred nor misdirected themselves when re-evaluating the evidence on record. See Shantila Manaklal Ruwala V. R (1957) E.A.570.

The respondents then prayed that this Court should disallow ground one of appeal.

In the Court of Appeal, Twinomujuni, J.A, wrote the lead judgment, with which the other two members of the Court agreed. He dealt with the appellant's contention that the Bank should have been found to have been negligent this way:

"The central issue in this ground of appeal is whether Bankruptcy A/C 3506 belonged to the appellant or not. The appellant relies on a documentary report, which appears on the Record of Appeal as an investigation report of D/SP J.B Kaunda. The document is dated 24th February, 1994. It is not marked as a court exhibit and D/SP Kaunda did not give evidence in court. The report suggests that the A/C No. 3605 did not belong to the Administrator General but to the Registrar General: It does not explain, however, how Lawrence Lagara and J.B. Mukasa both of whom were accountants of the appellant could have been signatories of the account. In my view, the report has no evidential value and its contents which were not tested in court cannot be relied upon.

The learned trial judge did not make a specific finding on the matter. However, there is the evidence of DW3, D/ASSP. A.P Omara which though contradictory on the issue states, under cross-examination that "This account was called Bankruptcy Estate. It was not an account of the Administrator General as earlier stated". This version is corroborated by an earlier report he had made after investigation in 1988 (Exhibit D.1) where he stated: "The same cheque was fraudulently banked by Lawrence Lagara on 12/5/86, on A/C 3506 BANKRUPTCY ESTATE instead of A/C 3432 ADMINISTRATOR GENERAL. Although both accounts belong to the Administrator General, it would be in order if the cheque was deposited on A/C 3432".

The version of D/ASSP Omara (DW3) is further corroborated by the undisputed fact that Lawrence Lagara and J.B Mukasa were both Accountants of the Administrator General. An examination of the account 3506 (Exhibit D4) shows that it was a busy account where huge sums of money were being transacted. It was being operated by Lagara and Mukasa. The appellant never called any evidence to prove that the account was not being operated on its behalf or that it belonged to the Registrar General as it was being suggested. I agree with counsel for the respondents that the trial judge did not hold that UCB was not negligent. It was not a framed issue. She

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held however, that she did not find evidence of negligence on its part. There is overwhelming evidence showing that A/C 3506 belonged to the appellant. Although it is remotely possible that Lagara and Mukasa could have opened it without authority of the appellant, an examination of the account disproves the hypotheses. Moreover, the appellant have easily disowned the account by producing evidence to the contrary."

This passage of the judgment in my opinion clearly indicates that the learned Justices of Appeal, as the first appellate court, re-evaluated the evidence on record, as they were bound to do, and reached their own conclusions to the effect that account 3506 belonged to the appellant and that the respondents did not receive their money banked on the account 3506, due to the action of the appellant's employees, Lagara and Mukasa. The appellant is vicariously liable for the conduct of his employees in this matter. Whether the appellant's employees in question acted negligently or fraudulently within the scope of their employment, the appellant was liable to the respondents for their action: **Lloyd Vs. Grace. Smith & Co (1912) AC 716. (HL)**.

The Court Appeal's conclusions, in my opinion, are justified. The conclusions also agreed with the points made by the appellants in his submissions on ground one of the appeal and are consistent with the arguments made in the respondent's submission in opposition to the same ground of appeal.

Like the learned trial judge, the learned Justices of the Appeal did not find, rightly in my view, that the Bank was negligent, because the Appellant did not prove such negligence on the part of the Bank.

It is a well-settled legal principle, embodied in Rule 29 (1) of the Court of Appeal Rules, that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inferences and conclusions: See Coghland Vs. Cumberland (1898) 1 ch. 704 (Court of Appeal of England): and Pandya V R. (1957) E.A 336. The authorities also state that a second appellate court will not interfere with the findings of fact by the first appellate court. It will do so only where the first appellate court has erred in law in that it has not treated the evidence as a whole to that fresh and exhaustive scrutiny which the appellant was entitled to expect. See also Shartilal M. Ruwala Vs R (Supra) Kifamunte Henry Vs. Uganda. Criminal Appeal No. 10/97 (SCU) (unreported) Bogere Moses Vs. Uganda, Criminal Appeal 1/97 (SCU) (unreported).

In the instant case, I am unable to fault the Court of Appeal in what it did as a first appellate court in its re-appraisal of the evidence.

The appellant relied on certain authorities in support of his arguments on ground one. Regarding Maurice Megrah & F.K. Ryder on Paquet's Law of Banking (Supra) the appellant contended that the Bank ought to have known that the Administrator General's account was a trust account. As these were trust funds the Bank would be held liable for parting with the money to a third person, even on a cheque if circumstances were such that it could have known it constituted a misapplication of the funds, albeit without personal benefit to the Bank. In my view that statement of the law is not relevant to the instant case, because the cheque was paid in the appellant's account and withdrawn by the appellant's employees. The bank did not pay the moneys to a third party.

I am unable to find all the decided cases in the Law Reports cited in the appellant's submission. Consequently, I am unable to comment on them.

In the circumstances ground one of the appeal should fail.

Ground two of the appeal, in my view, is really the same as ground one, except that it is worded slightly differently. For that reason the appellant's arguments in his submission in support thereof appear to be repetitions of the arguments it made in respect of ground one. The arguments were also well considered by the Court of Appeal. In the circumstances, I think that the reasons and conclusions I have made in this judgment regarding ground one, equally apply to the second ground. I shall, however comment only briefly for the sake of clarification on the issue of the third party notice which the trial court granted on the appellant's application.

The appellant contends that by virtue of the third party notice, the Bank should have been held liable for loss of the respondent's money, which they did not receive.

The third party notice was issued under rule 14 of Order 1 of the Civil Procedure Rules. It was issued against Mr. Lagara and the Bank. The grounds of the third party notice were that:

"(a) The defendant claims to be indemnified by the third parties against liability because the Administrator General has never either himself and/or through his authorized agents /servants received any money from anybody and converted the same to his use.

(b) It was Mr. Lagara and the Uganda Commercial Bank who received and converted to their use the money mentioned in the plaint".

According to the affidavit of service, only the Bank was served with the third party notice. Lagara was not. The Bank did not enter appearance, nor file a defence. In the result, under the provisions of rule 15 of order 1 of the C.P.R. the Bank was deemed to admit the validity of the decree obtained against Administrator General as the defendant and the Bank's own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice.

The Bank having defaulted in entering appearance, it appears that the appellant could have proceeded under rules 16 and 17 of order 1 of the C.P.R. to obtain the remedy of indemnity against the Bank, but

it has not. May be it is not yet too late for the appellant to consider doing so. This is only a suggestion for it to consider in its absolute discretion.

In the circumstances, the second ground of appeal should also fail.

On the third ground of appeal the appellant's submission is that the learned Justices of Appeal misdirected themselves by applying a wrong formula called FUTURE VALUE INTEREST FACTOR (FVIF), and awarded damages which were excessive. The interest rate of 10% on which the formula was based was too high. Further the Currency Reform Statute should have applied to the principal sum payable to the respondents by a reduction of two zeros therefrom. It is also submitted for the appellant that the award of Shs: 100,000,000/= to the respondents as general damages was too excessive. It is contended that award of damages should have been to put the aggrieved parties to the position in which they should have been, had it not been for the wrong they had suffered, but not to make profit out of their misfortune.

Under the third ground of appeal, the respondents' advocates submitted that the award to the respondents of Shs; 424,891,540/= by the Court of Appeal was not excessive. The formula on which the Court of Appeal relied to reach that figure, namely "Future Value Interest Factor (FVIF)" is scientifically calculated and can be accessed on computer Processed Finance Tables. Since this is a matter which can be scientifically proved the respondent's advocates urged us to take judicial notice of it under sections 54 and 55 (2) of the Evidence Act, and apply the formula and the rate of interest of 10% per annum as the Court of Appeal did. The respondent's advocates submitted that the provisions of the Currency Reform Statute 1987, do not apply to the instant case. Firstly because it was a temporary legislation and not meant to have permanent status. That is why it was subsequently repealed in 2000. Secondly, because section 2 of the Statute related to transactions after the Statute came into force, not before that. In the instant case when the statute came into force, on 15/5/1987, the respondent's money had already been miss-appropriated. Thirdly an application of the Currency Reform Statute would have reduced the amount of Shs: 83,995,560/= which had been due to the

respondents to Shs: 839,956/=. This would have resulted into a travesty of justice and caused great injustice to the respondents, many of whom were minors at the time their interest was abused by the appellant.

The Court of Appeal held the view that the provisions of the Currency Reform Statuted (Repeated) did not apply to the instant case. I agree with that view.

It is trite law that an appellate court should not interfere with an award of damages by a trial court unless the award is based on an incorrect principle or is manifestly too low or too high. In the instant case, the learned Justices of Appeal interfered with the award of damages by the trial Court and awarded a lower figure. Be that as it may, my opinion is that the sum of Shs: 424,891,540/=:, representing the purchase price of Shs: 93,995,560/= of the commercial building, which the appellant should have paid to the respondents is still too excessive. This state of affairs arose because the Hon. Justices of Appeal used the F.V.IF. formular in assessing what should be awarded to the respondents. In my view, the respondents would be fairly compensated if the award to them was assessed by subjecting the sum of Shs: 93.995,560/= to a factor of 10% per annum at simple interest for the period of 17 years. This is the period from 1986, when the suit cheque was paid to the appellant's account to May 2003, when the Court of Appeal varied the trial Court's award of damages to the respondents. This plus the principal would yield the amount payable under this item to Shs: 226.788,012/= (of which Shs; 142,792,452/= is accrued interest).

The award of general damages of Shs; 10.000,000/= to each of the respondents, making a total of Shs; 100.000,000/=:, awarded by the Court of Appeal to all the respondents was, in my opinion fair in the circumstances of the case. It is not excessive. I would not interfere with that item of the award. In the result I would make a total award of Shs: 326, 788,012/=:, payable to the respondents. This sum should carry interest at 6% (the Court rate) from 7/7/2003, the date of the Court Appeal judgment till payment in full. The third ground of appeal should, therefore succeed.

In the result, this appeal should partially succeed. I would set aside the orders of the Court of Appeal and substitute them with the following:

- a) The appellant should pay to the respondents Shs: 326,788,012/=, plus interest at 6% from 7/7/2003, until payment in full.
- b) The respondents should have three quarters of the cost of this appeal and of the costs in the trial Court and the Court of Appeal.

JUDGMENT OF TSEKOOKO, JSC.

I have had the advantage of reading in draft the judgment prepared by my learned brother, the Hon. Mr. Justice Oder, JSC, and I agree with the orders he has proposed in his judgment.

Because of the opinion of Justice Twinomujuni, JA, regarding the evidential value of a report compiled by O/SP.J.B Kaunda, I would like to say something on the essence of the holding of a scheduling conference before trial in civil suits and the consequence of agreements or disagreements reached on certain matters by parties at such scheduling conference.

In the Court below, the Hon. Mr. Justice Twinomujuni, JA, wrote the lead judgment with which the other members of the court concurred. While discussing submissions made on the first ground of appeal, the learned Justice of Appeal referred to a document dated 24/2/1994 compiled by D/SP. J.B. Kaunda, of CID, Frauds Section, which was among the documents agreed upon on 4/11/99 between the parties at the scheduling conference that was presided over by the learned trial judge, Bbossa, J.. In his judgment, the learned Justice of Appeal referred to the document in the following words: -

"It is not marked as a court exhibit and D/ASP Kaunda did not give evidence in court. The report suggest that the A/C. No.3506 did not belong to the Administrator General but to the Registrar General. It does not explain, however, Lawrence Lagara and J.B. Mukasa both of whom were accountants of the appellant could have been signatories of the account. In my view, the report has no evidential value and its contents which were not tested in court cannot be relied upon."

With the greatest respect to the learned Justice of Appeal, I think that this was a misdirection on the evidence. As a matter of fact the document was admitted in evidence during the scheduling conference as part of "agreed documents" No.5 entitled-

"A report from the Criminal Investigation Department Police Headquarters reference CID/8/FRAUDS dated 7th March, 1994. "

The report was sent by the CID Hqtrs. to the Administrator-General, (the appellant) under cover of letter reference CID/8/FRAUD dated 7/3/1994 to which that report was attached as stated in the first paragraph of the said letter. The trial Court record shows that at the scheduling conference, five documents were admitted and the trial judge numbered them as exhibits "1 to 5". A scrutiny of the numbering of the "agreed documents" shows that the said covering letter together with the report constitute exhibit.5.

I would like to point out that the scheduling conference must have been held in accordance with the requirements of **Order XB** Rule I of the **Civil Procedure Rules**. As far as relevant, that rule states: -

"1(1)(a) Within seven days after the order on delivery of interrogatories and discoveries has been made under rule 1 of Order X; or

(b) Where no application for interrogatories and discoveries has been made under rule 1 of Order X, then within twenty-eight days from the date of the last reply or rejoinder referred to in subrule(5) of rule 18 of Order VIII, the court shall hold a scheduling conference to sort out points of agreement and disagreement, the possibility of mediation, arbitration and any other form of settlement "

(2) Where the parties reach an agreement, orders shall immediately be made in accordance with rules 6 and 7 of Order 13"

Rules 6 and 7 of Order 13 empower court to, inter alia, frame issues on agreed matters and enter judgment after due trial.

As I understand these provisions, their purpose is to enable parties to agree on non-contentious evidence such as facts and documents. The agreed facts and documents thereafter become part of the evidence on record so that they are evaluated along with the rest of the evidence before judgment is given. Indeed in as much as they are admitted without contest, the contents of such admitted documents can be treated as truth, unless those contents intrinsically point to the contrary, and if they are relevant to any issue, their admission disposes of that issue because the need for its proof or disproof would have been disposed of by the fact of admission. Having perused the report of D/SP/Kaunda, I cannot say that that report had no evidential value. The trial judge may have omitted to pronounce herself on the report but that can not be a basis for an appellate court to ignore such evidence. Fortunately, in this appeal, even if the report was taken into account as evidence, it would not affect the result of our decision. The pity of it, of course, is that the Administrator-General's Officers, for unclear reasons, chose to be lukewarm about the role of the Uganda Commercial Bank in the scam of the diversion of such colossal sums of money. I will not go beyond the opinion expressed in his judgment by Oder, JSC, on the point of how the appellant can go about the matter. I concur in the orders proposed by Oder, JSC.

JUDGMENT OF KANYEIHAMBA, J.S.C.

I have had the benefit of reading in draft the judgment of my brother Oder, J.S.C, and I agree with him that this appeal ought to succeed partially. I also agree with the orders he has proposed.

JUDGMENT OF KAROKORA. JSC

I have had the benefit of reading in draft the Judgment prepared by my learned brother, the Hon. Justice Oder, JSC and agree with him that the appeal should partially succeed. I also agree with the orders he has proposed. I have nothing useful to add.

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgment prepared by my learned brother, Oder JSC, and I agree with him that this appeal should partially succeed.

I also agree with the orders he has proposed.

As the other members of the Court agree with the judgment and orders of the learned Justice of Supreme Court, there will be orders in the terms proposed by him

Dated at Mengo this 12th day of October 2004.