THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: ODOKI, CJ, KATUREEBE, OKELLO,

TUMWESIGYE AND KISAAKYE, JJSC.)

CIVIL APPEAL NO. 11 OF 2009

B E T W E E N

CONCORP INTERNATIONAL LTD: :::::::: APPELLANT

A N D

EAST & SOUTHERN AFRICAN
TRADE & DEVELOPMENT BANK: :::::::: RESPONDENT

[An appeal from the judgment and orders of the Court of Appeal dated 10-02-2009, at Kampala (Mukasa-Kikonyogo, DCJ, Twinomujuuni and Kitumba, JJA) in Civil Appeal No. 70 of 2004].

International organizations – whether the provisions of the treaty governing the Eastern and Southern African Trade and Development Bank prevail over municipal law – whether the inherent jurisdiction of the high court cannot be invoked where there is conflict between international and municipal law.

Sovereignty of states – whether immunity on the principle of sovereignty of states does not apply to international organizations which are governed by the treaty provisions establishing them.

Waiver – whether in the absence of a waiver by the president of the respondent bank under the provisions of the treaty, the COMESA Court of Justice has jurisdiction in the circumstances and not the Ugandan courts.

Sections 3, 24 and 43 of the Charter cap 53.

The appellant is a body corporate established in Sudan and registered in Uganda. The respondent is also a body corporate established with the Eastern AND Southern African Trade and Development Bank charter of the PTA. the parties entered into a loan agreement whereby the respondent provided money to the appellant to set up an oil refinery. The agreement was secured by the appellant's land and developments thereon. By a subsequent loan agreement, the respondent provided another loan to the appellant. A memorandum of understanding was entered into whereby the two loans were restructured. A dispute arose from the memorandum where the respondent instructed the Auctioneers and court bailiffs to attach and sale the appellant's land. The appellant therefore, sued for breach of the contract. At the hearing the respondent's counsel raised a p.o which resulted into both the application and the main suit. The appellant unsuccessfully appealed to the court of appeal hence this appeal.

Appeal allowed case referred back to high court for rehearing.

JUDGMENT OF G. M. OKELLO, JSC:

This is a second appeal from the judgment and orders of the Court of Appeal that confirmed a decision of the High Court.

The background to this appeal is briefly that the appellant, according to the plaint dated 22-02-2001, is a body corporate established in Sudan and duly registered in Uganda with offices in Kampala, Uganda. The respondent is also a body corporate established by the Eastern and Southern African Trade and Development Bank Charter (hereinafter referred to as the Charter) of the Preferential Trade Area (PTA) for Eastern and Southern African States. The objectives of the respondent are set out in article 4 of the Charter and will be reproduced later in the judgment. Article 13(1) of the charter sets out the respondent's method of work by which, subject to the conditions set out in the charter, the respondent may provide finance or facilitate financing to any agency, entity or enterprise operating in the territories of the Member States.

The parties had on 3rd December 1996, entered into a loan agreement to provide money to the appellant for the construction of an Oil Refinery in Sudan. The loan was secured by the appellant's land and developments thereon comprised in leasehold Register volume (LRV) 2468 Folio 20 Plots Nos. 48 - 50 situate at Mukabya Road, Kampala.

By a subsequent agreement dated 03-10-1997, the appellant again obtained from the respondent another loan, described as trade finance loan, for the Oil Refinery in Khartoum, Sudan. Subsequently the parties entered into an understanding dated 04-10-1999, to restructure the above two loans.

A dispute arose between the parties arising from the memorandum of understanding and the respondent instructed an Auctioneer and Court Bailiffs Firm to attach and cause the sale of the appellant's said land.

By a plaint dated 22nd January 2001, the appellant filed in the High Court in Kampala, Civil Suit No. 48 of 2001, against the respondent in breach of contract. In the plaint, the appellant sought several reliefs including general damages for breach of contract, an order for permanent injunction restraining the respondent from proceeding with its threat to evict the appellant and its tenants and causing the sale of the said property and a declaration that LRV 2468 folio 20 Plots Nos. 48 - 50 Mukabya Road is not subject to a mortgage in favour of the respondent and does not form any security thereof among others.

It is not quite clear from the record, the application is not on the record, but it would appear that the appellant had also filed in the same court an application by chamber summons seeking against the respondent a temporary injunction.

When that application came up for hearing, counsel for the respondent raised a preliminary objection on a point of law contending in effect that the application and the main suit were premature and misconceived for failure to comply with the law. He pointed out that section 4 of statute 7 of 1992, (now section 3 of Cap. 53) had given

articles 24 and 43 of the Charter the full force of law in Uganda. Therefore, under article 43(3) of the charter, the respondent is immune from all legal process unless its president waives the immunity. He submitted that such a waiver was neither sought nor obtained by the appellant before these proceedings were instituted. He urged court to strike out and dismiss with costs both the application and suit.

The trial Judge upheld the objection and dismissed the application and the main suit with costs.

The appellant's appeal to the Court of Appeal was also unsuccessful; hence this appeal to this Court on two grounds.

The respondent filed, under rule 88 of the Rules of this Court, a Notice of the following grounds additional to those relied on by the Court of Appeal for confirming the decision of the Court of Appeal:

(1) ***That the provisions of the Treaty creating and governing the Eastern and Southern African Trade And Development Bank prevail over Municipality law and where there is apparent conflict the inherent jurisdiction of the High Court cannot be invoked to circumvent Treaty provisions and objections;***

(2) ***That immunity on the principle of sovereignty of states does not apply to international organizations which organisations are governed by the Treaty provisions establishing them;***

(3) ***That in the absence of a waiver by the President of the respondent Bank under the provisions of the Treaty, the COMESA COURT OF JUSTICE has jurisdiction in the circumstances of this case and not the Ugandan Courts.***

Counsel for both parties filed written submissions which I propose to consider starting with ground 1 of the appeal.

Ground 1 is couched as follows:

> ***"The learned Justices of the Court of Appeal erred in law and in fact when they misconstrued the law applicable to a suit filed against the respondent."***

The appellant's complaint in this ground is that the learned Justices of Appeal misconstrued the intention of the legislature in the Eastern and Southern African Trade and Development Bank Act (hereinafter referred to as Cap. 53). Learned counsel for the appellant contends that Cap. 53 strictly provides for governing relations of member States with the respondent and not for governing relations of the respondent with individuals or third parties. The immunity of the respondent under Cap. 53 is therefore restricted to transactions between the respondent and Government of Uganda and does not extend to transactions of a commercial nature between the respondent and a third party like the appellant. He submitted that reading the preamble of Cap. 53 together with the charter leads to the conclusion that the respondent had no immunity when it engages in commercial transactions with a third party.

Learned counsel pointed out that the fundamental rule of statutory interpretation is that statutes must be expounded according to the intention of the legislature. To discover that intention, it is proper to read not only the enacting words but also the preamble and have regard to the surrounding circumstances. He relied on ***Attorney General - vs - Prince Earnest August of Hanover (1957) AC 436.*** Counsel finally submitted that had the learned Justices of Appeal considered the preamble of Cap. 53, they would have concluded that the respondent had no immunity in respect of its commercial transaction with a third party. He prayed that on this ground, the appeal should be allowed.

On the other hand learned counsel for the respondent contends that the Court of Appeal correctly interpreted the intention of the legislature in Cap. 53. He denied that the

intention of the legislature was to govern the relationship between the Government of Uganda as a member State and the respondent only and therefore, the immunity therein is restricted to the respondent's public transactions.

Learned counsel contended that the intention of the legislature in Cap. 53 was to give the force of law, within Uganda, to those articles of the Charter as Uganda Government deems necessary to enable the respondent carry out its objectives and execute its mandate under the Charter within Uganda unimpeded.

He pointed out that by section 3 of Cap. 53, the Government of Uganda did give the force of law to articles 24 and 43 of the Charter. He argued that the scope of the immunity in Cap. 53 must be ascertained from the enacting provision itself. Recourse to the preamble can be had only where the enacting words are not clear and are ambiguous. He concluded that the enacting words in sub-article 3 of article 43 of the Charter are clear and unambiguous. They show that the immunity applies to every form of legal process that anybody intends to institute against the respondent in a national court. There is only one exception and that is when the President of the respondent Bank waives the immunity that a national court can have jurisdiction. He prayed that this ground should fail.

The issue that is discernible from the above arguments of counsel for the parties on this ground is whether the intention of the legislature in Cap. 53 was to govern or regulate the relation between the Government of Uganda, as a state member, and the respondent or it was to give the force of law to certain provisions of the charter.

The object of any interpretation is to determine the intention of those who made the document. The fundamental rule, the literal rule of interpretation, is that such an intention must be deduced from the enacting words. It is only when the enacting words are not clear and ambiguous that recourse may be had to the preamble as an aid. (*Maxwell on Interpretation of Statutes 12th Edition at pp. 28).* It is also worthy to note that one of the canons of interpretation is that all words, if they be general and not

precise, are to be restricted to the fitness of the matter, that is to be construed as particular if the intention be particular.

Maxwell on *Interpretation of Statutes* (supra) at page 87 gave ***Wethered - vs - Calcutt (1842) Man & G 566*** as an example of the application of the above rule. In that case, the church wardens and overseers were making clandestine rates that caused inconveniences to the inhabitants of the parish.

An Act of Parliament was enacted that required those officers to permit "*every inhabitant"* of the parish to inspect the rates under a penalty for refusal. The object of the Act was to protect those inhabitants who had previously no access to the rates. A church warden who was also an inhabitant was refused inspection of the rate.

In an action for refusal, it was held that the term *"inhabitant"* did not extend to church warden even though he was an inhabitant because the object of the Act was to protect those inhabitants who had previously no access to the rates.

In the instant case, Kitumba, JA, as she then was, who wrote the lead judgment with which the other two Justices of Appeal agreed dealt with the matter as follows:

> ***"To my mind that Act of Parliament incorporated the provisions of the Charter into the laws of Uganda and gave it (sic) the force of law."***

The above passage seems to suggest that the intention of the legislature in Cap. 53 was to give the force of law, within Uganda, to certain provisions of the Charter.

Section 3 of Cap. 53 provides that:

"Articles 24 and 43 of the charter which are set out in the schedule to this Act shall have the force of law in Uganda."

The above section indeed gives the force of law, within Uganda, to articles 24 and 43 of the charter.

My scrutiny of article 43 in the schedule to Cap. 53 reveals that sub article 3 thereof differs from sub article 3 of article 43 of the charter which was presented to us by counsel for he appellant as his authority.

Sub article 3 of article 43 in the schedule to Cap. 53 is couched as follows:

"The Bank, its property and assets shall enjoy immunity from every form of legal process except in so far as in any particular case it has, through the President, expressly waived its immunity;

Provided however that no waiver of immunity shall extend to any measure of execution."

On the other hand, sub article 3 of article 43 of the charter presented by counsel for the appellant as his authority was framed as follows:

"The principal as well as regional offices of the Bank shall be inviolable. The property and assets of the Bank shall be immune from search,

requisition, confiscation, expropriation, and any other form of interference whether by legislative, executive, judicial or administrative action."

Though the above two versions of sub article 3 of article 43 of the charter both provide for absolute immunity, there is no evidence of the amendment of the charter to account for the difference in the wording of the two versions of sub article 3 of article 43 of the charter.

Be that as it may, taking the provision in the schedule to Cap 53 which counsel for both parties referred to without any complaint, it is clear that the provision of article 43(3) appears to be giving to the respondent absolute immunity. This however, appears to be in contrast with what is provided in article 43(1) of the charter which states:

"To enable the Bank to achieve its objectives and perform the functions with which it is entrusted, the states, capacity, privileges, immunities and executions set out in paragraphs 3 to 10 of this Article, shall be extended with respect to the Bank in the territory of each member states."

Article 43(1) above, clearly provides for a functional immunity as opposed to the absolute immunity which article 43(3) appears to accord to the respondent.

In these circumstances the enacting article 43(3) of the Charter is not clear as to the extent of the immunity to be granted to the respondent. It therefore, necessitates recourse to the preamble of Cap. 53 to determine what the intention of the legislature was, regarding the extent of the immunity to be granted to the respondent.

It is necessary to reproduce the preamble of Cap. 53 to determine the object of the Act. It reads thus:

"An Act to provide for the carrying out of the obligations of the Government of Uganda arising under the Charter of the Eastern and Southern African Trade and Development and other matters relating thereto."

In my opinion, the legislature that set out in Cap. 53 to provide for the carrying out of the obligations of the Government of Uganda arising under the Charter and for other matters relating thereto, had set out to provide the legal framework for the carrying out of those obligations of the Government of Uganda. In doing so, the legislature had set the basis to govern or regulate the relationship between the Government of Uganda and the respondent.

Giving the force of law, within Uganda, to certain articles of the Charter was one of the obligations of the Government of Uganda arising under the Charter that the legislature set the legal framework in Cap. 53 for their carrying out. Another such an obligation is payment of money due from the Government of Uganda as a member State. Section 2 of Cap. 53 provides the basis for effecting such a payment.

Section 3 of Cap 53 gives the force of law, within Uganda, to articles 24 and 43 of the Charter. Article 43 relates to status, capacity, privileges and immunities.

The objectives of the respondent referred to in article 43(1) above are set out in article 4 of the Charter as follows:

" (a) Provide financial and technical assistance to promote the economic and social development of Member States taking into account the prevailing varying economic and other relevant conditions within the Common Market;

(b) ***Promote the development of trade among the member states conducted in accordance with provisions of the Treaty by financing, where appropriate, activities related to such trade;***

(c) ***Further the aims of the Common Market of financing wherever possible, projects designed to make the economies of member States increasingly complementary to each other;***

(d) ***Supplement the activities of national development agencies of Member States by joint financing operations and by the use of such agencies as channels for financing specific projects;***

(e) ***Co-operate within the terms of this Charter, with other institutions and organizations public or private, national or international, which are interested in the economic and social development of member States; and***

(f) ***Undertake such activities and provide such other services as may advance the objectives of the Bank."***

As can be seen, paragraphs (a to e) above relate to the economic and social development of member States and paragraph (f) is *"ejusdem generis"* with those paragraphs (a to e). Reading the preamble of Cap. 53, the objectives of the respondent, article 43 (1) & (3) of the Charter together and applying the interpretation rule that general words must be restricted to the fitness of the matter, leads me to the conclusion that the immunity in Cap. 53 was not intended to extend to transactions between the respondent and a third party like the appellant. The terms *"every form of legal process"* in article 43(3) must be restricted to the transactions between the respondent and the Government of Uganda

because the object of Cap. 53 was to regulate the relation between them. To confer on the respondent absolute immunity would be contrary to public policy.

In my opinion, the learned Justices of Appeal, with respect, erred in their interpretation of the intention of the legislature in Cap. 53 when they failed to consider the preamble thereof. Had they done so, and had regard to the circumstances of the case, including the objectives of the respondent, they would have inevitably concluded that the intention of the legislature was to govern the relationship between the Government of Uganda and the respondent. Consequently, the immunity therein was restricted to the transactions between the respondent and the Government of Uganda or its agencies.

Ground 1 has merit and would therefore, succeed.

This now leads me to ground 2 which is that:

> ***"The learned Justices of the Court of Appeal erred in holding that it is a rule of procedure for the appellant to seek the respondent's President's waiver before it can commence any proceedings against it."***

The gist of the appellant's complaint in this ground is that the learned Justices of Appeal erred when they held that it is a rule of procedure to seek a waiver from the President of the respondent before commencing any legal process against the respondent. Learned counsel contended for the appellant that the requirement of a waiver was uncalled for in the instant case as the loan transaction which gave rise to this appeal were commercial transactions between the respondent and the appellant. The immunity in Cap. 53 does not apply to such a transaction. He cited several authorities including the Kenyan case of ***Tononoka Steels Ltd. - vs - The Eastern and Southern African Trade and Development Bank, Court of Appeal (2000) 2 EA 536 of 1998;*** and ***The Belgian Case of S. A. Dhellemea et Masurel - vs - Banque Centrale de Turquie (1963) 45 ILR 85,*** to support that view.

He concluded that waiver from the respondent's president was an internal rule of the respondent and does not apply to the High Court which is governed by the Civil Procedure Rules (S1 71 - 1). A blanket immunity could undermine the citizens' rights of access to courts. He prayed that this ground should succeed and the appeal be allowed.

Learned counsel for the respondent opposed the above submissions. He contended firstly that by the time the appellant entered into the loan transactions with the respondent, the appellant was operating in Sudan and Uganda. Therefore, even if the immunity enjoyed by the respondent under Cap. 53 was restricted to only official acts of the respondent, the loan transaction falls in that category to which this immunity applies.

Secondly, that by the nature and operations of international organisations like the respondent, the immunity enjoyed by such a body extends to all its acts or transactions whether commercial or not, public or private. Their immunity is absolute. In the instant case, there is only one exception and that is where there is a waiver from the respondent's president.

He reasoned that the concept of restricted immunity was applicable only to Sovereign States. There, the immunity is restricted to *jure imperii* (sovereign acts) and does not extend to *jure gestionis* (non sovereign acts). He explained that this distinction is not applicable to the immunity enjoyed by international organisations like the respondent. The reason for this distinction is based on the difference in the sources of the immunity they enjoy.

Sovereign States enjoy immunity derived from the principle of reciprocity while the international organisations derive their immunity from their respective treaties or charters establishing them. The provisions of these Treaties or Charters prevail over the municipal laws.

Learned counsel argued that absolute immunity is necessary to an international organisation to preserve its independence and neutrality against the host member State for

the effective pursuit of its objectives and execution of its functions unimpeded. He cited several authorities including ***Mendaro - vs - World Bank 717 F 2nd 610 pp 615 - 7; Broadent - vs - Organisation of American States 628 F. 2nd 27 (1980) pp 27 - 34*** to support his view.

He submitted that the case cited by counsel for the appellant were distinguishable from the instant case on their facts. He prayed that this ground should fail and that the appeal be dismissed with costs.

The issue that emerges from the above arguments of counsel for the parties is whether the loan transactions which gave rise to this appeal are covered by the immunity under Cap. 53 and consequently a waiver from the respondent's President was necessary.

Justice Kitumba, JA, as she then was, dealt with this matter as follows:

> ***"To my understanding the Article does not bar actions being instituted in the High Court. However, before one institutes such an action, he/she must seek a waiver from the president of the respondent. This is just a rule of procedure."***

I have already found on ground 1 that any commercial transactions of the respondent with a third party is not covered by the immunity in Cap 53. The reason for this, as stated earlier in this judgment, is briefly that Article 43 (1) of the charter has based the scope of the immunity to be accorded to the respondent on the principle of functionality when it provides: *"to enable the Bank to achieve its objectives and perform the functions with which it is entrusted."* Sub-article 3 of Article 43 must be read together with sub-article (1) of the same article.

The learned Justices of Appeal have held, subject to a waiver from the President of the respondent, that Article 43 (3) does not confer absolute immunity on the respondent.

Learned counsel for the appellant criticized the learned Justices of Appeal for not following the decision in ***Tononoka*** (supra). He claimed that that case was on all fours with the instant case.

In my opinion, that criticism was not justified. Tononoka is distinguishable from the instant case on two grounds

(1) ***The immunity claimed in that case was contained in a statutory instrument while in the instant case, section 3 of Cap. 53 an Act of Parliament gave the force of law, in Uganda, to Article 43 of the Charter which provides for the immunity.***

(2) ***In Tononoka, English law was applied to determine the scope of the immunity whereas in the instant case the Ugandan law and the charter are applicable.***

As shown earlier in this judgment, the objectives of the respondent in paragraphs (a to e) are about the economic and social development of the member states. All these are of a public nature. Paragraph (f) in a way broadens the objectives of the respondent within the limits listed in paragraphs (a to e). It is under this paragraph (f) that the respondent entered into the loan agreements with the appellant, a third party.

By the application of the *"ejusdem generis"* rule, any commercial transactions of the respondent made under paragraph (f) can only be covered by the immunity in Cap. 53 if it is made with a member state or its agency in accordance with paragraphs (a to e).

In my opinion, the loan transactions in issue do not fall within the category listed in paragraphs (a to e). They are therefore, not covered by the immunity in Cap. 53 and the High Court has jurisdiction over them.

Learned counsel of both parties agree that the loan agreements which gave rise to this appeal contain an arbitration clause. In that case, any of the parties could apply under section 6 of the Arbitration and Conciliation Act, Cap. 4 for stay of the proceedings before the court to enable the parties pursue the arbitration course which they have voluntarily agreed to. This should have been done instead of the course taken.

I do accept the argument of learned counsel for the respondent that the sources of the immunity enjoyed by Sovereign States and that enjoyed by International Organisations, like the respondent, are different. Sovereign states derive their immunity from the principle of reciprocity. Under this principle, the immunity is restricted to *"jure imperii"* (sovereign acts) but does not extend to *"jure gestionis"* (non-sovereign acts).

On the other hand, the immunity of International organisations, like the respondent, is based on the principle of functionality. In other words the immunity encompasses all acts needed for execution of the functions and activities with which the relevant International Organisation is entrusted Concrete determination of the scope of the immunity is based on the respective treaties or charters establishing each International organisation.

Learned counsel for the respondent submitted that by their nature and operations, International Organisations, like the respondent, enjoy absolute immunity to preserve their independence from and neutrality against the host countries to enable them effectively perform their mandated functions. He cited ***Mendaro - vs - World Bank 717 F 2nd 610 (1963) p. 615 - 7; Broadbent - vs - Organisation of American States (OAS) 628 F and 27 (1980) p. 27 at 34.***

I have read both these cases. In both cases, the extent of the immunities accorded to the International Organisations was held to be *"as are necessary for the fulfillment of the purposes of the Organisation."*

It is important to note that there are cases particularly on the Continental Europe and in the United States of America showing a growing trend of basing immunity enjoyed by International Organisations on the principle of functionality. That is restricting the immunity to an extent as to enable the organisation *"to fulfill its institutional purposes only."*

A good example of these cases is ***Giovanni Porru - vs - FAO (UNJY) (1960).***

In that case, an Italian Court held that acts by which an International Organisation arranges its internal structure falls in the category of acts performed in the exercise of its established functions and therefore, are covered by the immunity.

Another example is the Belgian case of ***SA Dhellemea et masurel - vs - Banque Centrale de Turguie*** (supra).

In that case, a Belgian Court refused a plea of immunity by the Turkish Central Bank when it was sued as a guarantor in a private contract outside its purpose.

Learned counsel for the appellant complained that cap. 53 and the charter do not provide for any recourse for settlement of disputes arising from any private transactions between the respondent and a non - member.

Learned counsel for the respondent refuted this claim and contended that there are several avenues of recourse for settlement of disputes which are provided for:

Firstly, Arbitration: He pointed out that the loan agreements which gave rise to this appeal contain an arbitration clause. Under this clause the appellant could have submitted its dispute to an arbitration by an arbitration tribunal but that the appellant did not.

Secondly, Comesa Court of Justice: Learned counsel submitted that under section 27(2) of the Comesa Treaty, any person can bring a claim against the Common Market or its institution for acts of their servants or employees in the performance of their duties. The Comesa Treaty recognizes the respondent Bank as an institution of Comesa under article 174(1)(2)(a) of the Treaty. The appellant could have taken its claim against the respondent to Comesa Court of Justice where the respondent has no immunity but that the appellant chose not to do so.

Thirdly, the waiver: Learned counsel for the respondent further contended that Article 43(3) does not confer absolute immunity on the respondent but it also provides for a waiver from the president of the respondent to enable any person wishing to institute any legal process against the respondent to do so but that the appellant chose not to pursue this.

My closer study of Article 46(1) of the charter reveals that the arbitration provided for in that article is for the settlement of disputes between the respondent and its current or former member only. It does not cover any dispute between the respondent and non-member, like the appellant .

The relevant part of Article 46(1) reads thus:

> ***"If a dispute shall arise between the Bank and a Member or between the Bank and a former Member of the Bank, such a dispute shall be submitted to arbitration by a tribunal of three arbitrators."***

On the arbitration clause in the loan agreement which gave rise to this appeal, my opinion is that the agreements did not form part of the record of this appeal. Therefore, I am not in a position to ascertain the presence of that clause in the loan agreement. However, if they do contain such a clause, then that is the result of a private mutual agreement of the parties to those loan agreements. It is not provided for under Cap. 53 and the charter. Any of the parties to the agreement could, under section 6 of the Arbitration and Conciliation Act, Cap. 4, Laws of Uganda, apply for stay of proceedings before court to enable them pursue the arbitration course on which they have voluntarily agreed.

As for the waiver, it has already been stated that it applies to a transaction which falls within the official objectives of the respondent. It has been stated earlier in this judgment, that the transaction which gave rise to this appeal were between the respondent and a third party. The waiver was thus not necessary and the learned Justices of Appeal, with respect, erred to hold that it is a rule of procedure. The High Court is governed by the Civil Procedure Rules (SI 71 - 1).

This ground too, therefore, ought to succeed.

In the result I would allow the appeal, set aside the orders of the Court of Appeal and make the following orders:

(1) ***remit the case to the High Court for hearing on the merit.***

(2) ***the respondent to pay the appellant's costs here and in the Court of Appeal.***

(3) ***costs in the High Court to abide the outcome of the hearing of the case.***

Dated at Kololo this: 18th day of October 2010.

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G. M. OKELLO

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: ODOKI CJ, KATUREEBE, OKELLO,

TUMWESIGYE AND KISAAKYE, JJ.SC)

CIVIL APPEAL NO 11 OF 2009

B E T W E E N

CONCORP INTERNATIONAL LTD: ::::::: APPELLANT

A N D

EAST AND SOUTHERN AFRICAN TRADE AND DEVELOPMENT BANK ::: RESPONDENT

[An appeal from the decision of the Court of Appeal at Kampala, (Mukasa-Kikonyogo, DCJ, Twinomujuuni and Kitumba, JJA) dated 10th February 2009 in Civil Appeal No. 70 of 2004]

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgment prepared by my learned brother Okello, JSC and I agree with him that this appeal ought to succeed. I concur in the orders proposed by him.

As the other members of the Court also agree, this appeal is allowed with orders as proposed by the learned Justice of the Supreme Court.

Dated at Kampala this **18th** day of **October**, 2010

B J Odoki

CHIEF JUSTICE

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI C.J, KATUREEBE, OKELLO,

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JUDGMENT OF KATUREEBE, JSC.

I have had the benefit of reading in draft, the judgment of my learned brother, Justice Okello, JSC and I agree with him that this appeal be allowed on the grounds he has given. I also concur in the orders he has proposed.

Dated at Kampala this **18th** day of **October**, 2010.

Bart M. Katureebe

Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI CJ, KATUREEBE, OKELLO, TUMWESIGYE AND KISAAKYE, JJ.SC)

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JUDGMENT OF TUMWESIGYE, JSC.

I have had the opportunity of reading in draft, the judgment of my learned brother, Okello, JSC, and I agree that this appeal should be allowed. I also agree to the orders he has proposed.

Dated at Kampala this **18th** day of **October**, 2010.

JOTHAM TUMWESIGYE

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI CJ, KATUREEBE, OKELLO, TUMWESIGYE AND KISAAKYE, JJ.SC)

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JUDGMENT OF DR. E.M KISAAKYE, JSC

I have had the benefit of reading in draft, the judgment of my learned, Justice Okello, JSC.

I concur with the orders he has proposed and I have nothing useful to add.

Dated at Kampala this **18th** day of **October,** 2010.

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DR. ESTHER M. KISAAKYE

JUSTICE OF THE SUPREME COURT