THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: ODOKI, CJ., TSEKOOKO, KATUREEBE, TUMWESIGYE, AND KISAAKYE JJ.SC]

CIVIL APPEAL NO. 16 OF 2010

BETWEEN

MONDAY ELIAB::APPELLANT

AND

ATTORNEY GENERAL::::::::::::::::::::::::::::::::::::RESPONDENT

[Appeal from the judgment of the Court of Appeal at Kampala (Mpagi-Bahigeine, Engwau and Twinomujuni, JJ.A) dated 16th April, 2010 in Civil Appeal No. 21 of 2008]

JUDGMENT OF TUMWESIGYE, JSC

This is a second appeal. Monday Eliab, the appellant, sued the Attorney General the respondent, in the High Court for breach of contract in respect of the hire of his motor vehicle to State House. The High Court gave judgment in favour of the appellant. The Attorney General appealed against the judgment to the Court of Appeal which reversed the judgment of the High Court. The appellant has appealed to this court against the judgment of the Court of Appeal.

Brief Facts:

The facts giving rise to this appeal are that the appellant (trading as Country Wide Contractors) entered into an agreement with State House for the hire of his motor vehicle Toyota Land Cruiser Reg. No. 860 UAJ at an agreed price of Uganda Shillings 200,000 per day. The hire was on a self-drive basis. The contract which was effective from 7th March 1998 only depended on a Local Purchase Order (LPO). On 31st March 1998, the vehicle was involved in an accident on Masaka Road. It was towed to Masaka Police Station where it was kept until 29th January 2000 when it was given by the Police to one Paul Kaggwa who had its registration card.

The appellant filed a suit in the High Court against the respondent claiming payment of shillings 174,220,000/= being payment of hiring charges at shillings 200,000/= per day from 1st April 1998 to 30th August 2000 when he filed his suit. He also claimed shs 200,000/= per day from 30th August 2000 when he filed the suit till the date of judgment, return of the vehicle or payment of its market value, general damages, interest and costs of the suit. The Attorney General defended the suit, denying that he owed the appellant the sums of money claimed, and pleading that the motor vehicle hires agreement was terminated on the 31st March 1998.

The trial judge decided the suit in favour of the appellant but reduced his claim to shillings 66,800,000/=, and also awarded him

damages of shs 2,000,000/= at an interest rate of 35% and costs of the suit.

The Attorney General appealed against the High Court judgment to the Court of Appeal. The appellant also filed a cross-appeal against the High Court judgment. The Court of Appeal decided the appeal in favour of the respondent and dismissed the appellant's cross appeal. The appellant being dissatisfied with the decision of the Court of Appeal filed this appeal.

The appellant's grounds of appeal as contained in the memorandum of appeal were framed as follows:

1. The learned Justices of Appeal erred both in law and in fact by finding that the contract was frustrated by accident.

2. The learned Justices of Appeal erred both in law and in fact by finding that "the burden of proof as to whether the appellant was at fault was on the respondent. Though he could have proved it with the assistance of the police who investigated the accident, he did not attempt to do so", and thereby arrived at a wrong decision occasioning a miscarriage of justice.

3. The learned Justices of Appeal erred by finding that the appellant was notified of the accident.

4. The learned Justices of Appeal erred by finding that while the vehicle was in police custody for investigation, State House was not in constructive custody of the vehicle.

5. The learned Justices of Appeal erred by failing to clearly pronounce themselves on the respondent's cross appeal.

The appellant prayed that the appeal be allowed, the judgment of the Court of Appeal be set aside and the judgment of the High Court be affirmed with the orders that -

(a)The appellant be awarded Uganda Shs 200,000/= per day from 1 st April 1998 till payment in full.

(b) Interest be awarded on the principal as found by the High Court from the time of filing the suit till payment in full.

(c) Order for the return of the motor vehicle or payment by the respondent of its market value.

The appellant also prayed for the costs of the appeal and costs in the two courts below.

Mr. Brian Othieno represented the appellant and Christine Kahwa, Principal State Attorney (PSA), represented the Attorney General. Both filed written submissions. The appellant's counsel argued the grounds of appeal in the order he presented them in the memorandum of Appeal. The respondent's counsel did

likewise. However, I will consider ground 1 and 2 together, and grounds 3 and 4 together, and 5 separately in that order.

GROUND 1 & 2:

The appellant's ground 1 and 2 complain that the Court of Appeal erred in holding that the contract of hire between the appellant and State House was discharged by frustration. Under this general issue of whether the contract was frustrated there are sub-issues which I will consider. They are:

1. Whether frustration was pleaded by the respondent in his Written Statement of Defence or in his memorandum of appeal.

Learned counsel for the appellant argued In his written submissions that frustration was not one of the respondent's grounds of appeal in the Court of Appeal nor even in the respondent's written statement of defence and that, therefore, it was wrong for the learned Justices of Appeal to find that the contract of hire was terminated by frustration when frustration was not pleaded. He supported his argument by citing the case of **Interfreight Forwarders (U) Ltd v. EADB**[1990-1994] EA 117 on the importance of pleadings.

In reply, counsel for the respondent supported the decision of the Court of Appeal arguing that frustration was one of the

respondent's grounds of appeal envisaged under ground 3 where it is stated: "**The learned trial judge erred in law and fact in failing to properly evaluate the evidence as a whole and, therefore, came to a wrong decision."**

Twinomujuni, JA, who wrote the Court of Appeal's lead judgment, stated as follows:

> **In the instance (sic) case, the contract between the appellant and the respondent was terminated by frustration i.e. destruction of the subject matter. Physical destruction of the subject matter as an instance of frustration was discussed in the case of Taylor vs Caldwell (1863) 3 B.S. 826 ... [1]f further fulfillment of the contract is brought to an abrupt stop by some irresistible and extraneous cause for which neither party is responsible, the contract shall terminate forthwith ...**
>
> **Relating this to the instant case, the accident occurred without the fault of either party. Since the vehicle was the subject matter of the contract, when it was destroyed, the contract was terminated forthwith and the parties were discharged. The burden of proof as to whether the appellant was at fault was on the respondent. Though he could have proved it with the assistance of the police who investigated the accident, he did not attempt to do so.**

In the course of cross-examining Monday Eliab, the appellant, in the High Court, counsel for the defendant (respondent in this appeal) applied for leave to amend the written statement of defence because, according to counsel, during further perusal of the documents, she had found that the contract was terminated by the parties and "there was an element of frustration of the contract". At that point the learned trial judge adjourned the hearing to enable the defendant's counsel to supply the plaintiffs counsel with a copy of her proposed amendment of the written statement of defence before the trial judge could make a ruling on her application. However, when the court resumed, counsel for the defendant abandoned her application to amend the written statement of defence.

In his judgment the learned trial judge stated:

> **"Frustration was not specifically pleaded by the defendant and not framed as an issue for this court's determination. Even if it had been, I find that the defendant has on a balance of probabilities failed to prove that there was frustration of the hire agreement by the occurrence of the accident. "**

In the respondent's memorandum of Appeal in the Court of Appeal, the respondent's grounds against the judgment of the trial judge were as follows.

1. **The learned trial judge erred in law and fact in holding that the plaintiff was not notified of the accident and yet he was.**
2. **The learned trial judge erred in law and in fact in holding that while the vehicle was in police custody for investigation, State House was still in constructive custody of the vehicle.**
3. **The learned trial judge erred in law and in fact in failing to properly evaluate the evidence as a whole and therefore came to a wrong decision.**
4. **The Honourable judge erred in law and in fact in awarding an interest of** 35% **per annum to the plaintiff which is excessive.**

Counsel for the respondent argued in his submissions that frustration was pleaded in ground 3 above. I agree with learned counsel for the appellant that frustration of the contract of hire was not one of the grounds pleaded in the respondent's memorandum of appeal in the Court of Appeal. Ground 3 in the respondent's memorandum of appeal in which the respondent complained that the trial judge did not properly evaluate evidence as a whole cannot in any way be said to include frustration. The learned trial judge was right to say that frustration was not specifically pleaded in the respondent's written statement of defence and probably this explains why it was not made a ground of appeal in the Court of Appeal either. I find that the respondent's argument that frustration

was included in ground 3 of the appeal to this court to be extremely farfetched and devoid of merit.

If the respondent's argument was to be upheld, the common complaint usually found in several memoranda of appeal of appellants filed in appellate courts that the judge or the lower court "erred in law and in fact by failing to properly evaluate the evidence" would be turned into a ground enough to cover all types of grounds of appeal. To prevent this, Rule 86(1) of the Judicature (Court of Appeal) Rules was made. It provides:

> A memorandum **of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided...**

This is reinforced by Rule 102(a) of the same Rules which provides that no party shall without leave of the court, argue that the decision of the High Court should be reversed ... except on a ground specified in the memorandum of appeal. In this case no such ground was specified and no leave was applied for by the respondent.

Therefore, with respect, it was wrong for the learned Justices of Appeal to base their decision to allow the respondent's appeal on the ground that the contract of hire was frustrated and thereby terminated when the respondent did not plead frustration as a

defence in his Written Statement of Defence or even make frustration of the contract of hire a ground of appeal.

2. Whether there was evidence of frustration.

In his submissions the appellant argued that even if it were to be accepted that the Court of Appeal was right to decide that the contract was terminated by frustration even when frustration was not a ground of appeal, still there was no evidence of frustration to lead to the court's finding that the contract was frustrated.

Counsel for the respondent on the other hand argued that whereas the defendant's pleadings did not show that frustration was pleaded as a defence, evidence was led on it and submissions were made on the issue. However, counsel for the respondent did not show which evidence was led by the defence to prove that there was frustration of the contract.

The learned Justices of Appeal held that the contract of hire was discharged by frustration when the motor vehicle had an accident and that if it was the appellant's contention that it was the driver of State House who caused the accident it was the appellant's duty to prove it. In their judgment they stated: **"The burden of proof as to whether the appellant was at fault was on the respondent. Though he could have proved it with the assistance of the police ... he did not attempt to do so."**

With respect, the learned Justices of Appeal misdirected themselves on the law of evidence regarding the party with the evidential burden to prove that the contract was discharged by frustration. Section 101 (1) of the Evidence Act on the burden of proof provides:
"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist". Whether or not there was frustration of contract is a question of fact and the respondent had a duty to prove it.

It is the respondent who sought to rely on frustration to justify the termination of the contract. This being so, it was incumbent on the respondent to lead evidence to prove that the contract was discharged by frustration as a result of the accident. If the respondent produced such evidence, the burden of proof would then shift to the appellant to show that the motor accident was not due to frustration as claimed by the respondent but was a result of the fault of the driver of the hired vehicle. See the cases of **Musisi Divia vs. Sietco, SCCA No. 24 of 1993** and **Howard & Co. (Africa). Ltd v. Burton** [1964] EA 540.

In the instant case, the only evidence produced by the respondent was of Sgt. Lubega (DW2) who stated: **"I was driving about 200 metres behind the convoy when 1 was knocked by a trailer and the vehicle overturned. The vehicle got damaged."** This evidence shows that the accident happened, but it does not show why it

happened or who caused it. The possibility that it was caused by DW2's negligence cannot, therefore, be ruled out. As the learned trial judge observed, "vehicles do not normally get knocked or overturn when driven with due care and attention". Since the respondent wanted to rely on frustration as a defence he had a duty to prove it. In the case of **Howard & Co. (Africa) Ltd v. Burton** (supra) Sir Daniel Crawshaw, J.A., stated:

> **The onus of proving frustration is on the party alleging it, and if that is proved, the onus is upon the other party to prove that it was self-induced.**

This is the correct statement of the law. The respondent failed to discharge his burden of proof and, therefore, I respectfully agree with the finding of the learned trial judge that even if frustration had been pleaded in the written statement of defence, there was no evidence to prove it.

3. Whether the vehicle was destroyed.

The learned Justices of Appeal stated in their judgment: **"Since the vehicle was the subject matter of the contract, when it was destroyed, the contract was terminated forthwith and the parties were discharged."**

Counsel for the appellant complained that there was no evidence that the motor vehicle was destroyed. He argued that the only evidence on record showed that the vehicle was only damaged but

not damaged beyond repair. Counsel for the respondent supported the finding of the Court of Appeal that the destruction of the vehicle rendered the contract impossible to perform but she did not indicate any evidence which was adduced to lead to this finding.

The learned Justices of Appeal cited the case **Taylor and Another v. Caldwell and Another** [1861-73] All E.R. 26 for the settled principle that destruction of the subject matter of the contract without the fault of either party renders the contract frustrated and

the parties discharged from performance. In that case, the music hall which was the subject matter of the contract was completely destroyed by fire. However, in the instant case, the destruction of the motor vehicle is not borne out by any evidence. The evidence of DW2 was that the vehicle was damaged and towed to Masaka Police Station. However, damage to a chattel cannot be equated with its destruction. In a letter written to the Solicitor General on 10th

November 2003 (Exh. D8) Paul Kaggwa (DW3) stated that he removed the vehicle from Masaka Police Station on 29th January 2000. And when he testified in court on 11th October 2005 (almost 5 - years later), he stated that he was still keeping the car at his home. This evidence, in my view, is inconsistent with the vehicle having been destroyed.

Difficulty to perform a contract by one party is not frustration of the contract. In **Taylor v. Caldwell** (supra) Blackburn, J., stated:

"There seems no doubt that, where there is a positive contract

to do a thing not in itself unlawful, the contractor must perform it or pay damages for not doing it, though, in consequence of unforeseen accident, the performance of his contract has become unexpectedly burdensome ... " We have seen above, though, that where the contract becomes impossible to perform for no fault of either party due to some extraneous event that was not anticipated by both parties, the contract will be frustrated and the parties will be discharged from further performance.

Since damage to the car caused by the accident was not tantamount to its destruction, it had only rendered the performance of the contract burdensome to State House. There was no evidence of the destruction of the vehicle and the Court of Appeal therefore erred to hold that the contract of hire was frustrated as a result of the alleged destruction of the vehicle. Therefore, ground 1 and 2 of appeal should succeed.

GROUND 3 & 4:

The respondent's 1st ground of appeal to the Court of Appeal (where he was the appellant) was that the learned trial judge erred in law and fact in holding that the plaintiff was not notified of the accident. The Court of Appeal agreed with the respondent and found that the appellant was notified of the accident through DW2 who testified in court that on the night when the vehicle had the

accident he telephoned the appellant and informed him of the accident.

The appellant disputes this and stated in his 3rd ground of appeal that "the learned Justices of Appeal erred by finding that the appellant was notified of the accident". He submitted that the Court of Appeal should not have relied on DW2's evidence because according to the appellant, the trial judge had found that DW2 had some untruths in his evidence. Further, that the Court of Appeal should have relied on the testimony of the appellant who stated that DW2 never notified him but came to learn of the accident through his cousin who telephoned him from Masaka.

The respondent supported the finding of the Court of Appeal and seemed to argue that since the services of the vehicle were not being rendered due to the accident, the contract was accordingly terminated. It is not clear to me why notification of the accident by State House to the appellant is regarded as important in this case. Whether or not DW2 informed the appellant of the accident, the appellant agreed that his cousin informed him of the accident on 3rd April 1998, two days after the accident, so he knew of the accident in reasonable time any way.

While the Court of Appeal might have held that the appellant was notified by State House of the accident, it did not say that notification of the accident by State House to the appellant was the

basis for the termination of the contract. Instead, the Court of appeal based itself on frustration to hold that the contract was terminated. It seems to me that arguments of both parties concerning notification of the accident come from the mistaken view that notification of the accident by State House to the appellant would by itself terminate the contract.

A contract of hire created for an indefinite duration such as the one under consideration would only be terminated by either party giving notice of intended termination to the other unless the subject matter was destroyed without the fault of the hirer.

A contract of hire of a vehicle is one of the contracts of bailment. The Ugandan common law on hire of chattels is similar to that of the English common law from which Uganda's was derived. In Halsbury's Laws of England, Fourth Edition Reissue, under "Hire of Chattels" it is stated under paragraph 1850:

> **Hire is a class of bailment. It is a contract by which the hirer obtains the right to use the chattel hired in return for the payment to the owner of the price of hiring.**

And paragraph 1860 thereof says:

> **The hirer must return the hired chattel at the expiration of the agreed term. This obligation applies notwithstanding that the task or returning the chattel has become more difficult or costly as a result of some**

> **unexpected event occurring independently of the hirer's negligence. But if the performance of his contract to return the chattel becomes impossible because it has perished, this impossibility excuses the hirer provided it did not arise from the fault of the hirer...**

Therefore, the respondent, as we saw when frustration of the contract was being considered, had a duty as a bailee not only to prove that the vehicle was destroyed but also that it was destroyed

without his fault. The respondent failed to discharge this duty in both respects.

The principle that the hirer must return the vehicle hired (unless the hirer proves that the vehicle was destroyed through no fault of his own) after the contract of hire is terminated is well established. However, it is also correct to say that if the hirer lost possession and control of the vehicle through the owner's fault, the hirer would be freed from his obligation to return it. See **Charles Douglas Cullen v. Persram & Hansraj**[1962] EA 159.

The Court of Appeal in the instant case held that State House was not in actual or constructive custody of the vehicle after the accident. It stated:

> **It is very clear that the appellant did not retain possession of the respondent's car be it constructive or actual. This is because from 31st March 1998, State House lost control of**

the vehicle because it was involved in an accident and police impounded it to assist investigations. Also, after police was through with the investigations, two years later, the owner, Paul Kagwa went to police and took the vehicle and up to now, still possesses the vehicle. Since police had it in their custody, then State House did not have control over it.

Counsel for the respondent agrees with the Court of Appeal in this respect. However, contrary to what the Court of Appeal stated, evidence on record does not show that the vehicle was in police custody for investigation. The evidence of DW2, the driver of the vehicle at the time of the accident, was that after the accident, they telephoned Masaka Police Station and the vehicle was towed to Masaka Police Station. And after removing the spare tyres of His Excellency the President's vehicle he boarded another vehicle and left for Kampala. DW2 does not mention who towed the vehicle to the Police Station and whether any statement was recorded by the police from him in respect of the accident. There was no evidence that the police carried out any investigation in respect of this accident by the time of the trial of this case. No accident report has ever been issued by police.

On the other hand, the letter of the District Police Commander, Masaka, of 25th August 2001, Exh. D3, states as follows:

> **The above mentioned motor vehicle was involved in an accident on 31/3/98 at Kyalusowe along Masaka-Kampala road while moving in a presidential convoy. It was towed to CPS Masaka and handed in ... for safe custody.**
> **The same motor-vehicle was handed back to Mr. Kaggwa Edward who claimed it as the owner on 29/ 1/2000...**

From the above-quoted police letter it is clear that the vehicle was taken to Masaka Police Station for safe custody and not for investigation. The appellant's counsel appropriately cited the case of **Charles Douglas Cullen v. Persram & Hausraj** (supra) where Newbold, J.A stated:

> **Where the original possession of the defendant was lawful, whether by reason of bailment, quasi contract or statutory right, and there is a continuing duty on the part of the defendant to retain the article and then to deliver it up to the person entitled to demand it, it is no defence for the defendant to say that he no longer has possession of the article, unless he proves that the possession was lost without any fault on his part.**

There is evidence that Paul Kaggwa, DW3, through his agent Edward Kaggwa who was his driver, claimed and was given the vehicle by the police on 29th January 2000 because Kaggwa still kept its log book. According to the evidence of DW3, he had sold the vehicle to the appellant for Shs. 5,000,000/= but the cheque of the

same amount which the appellant issued to him for the purchase price was dishonoured. The appellant was later prosecuted, convicted and imprisoned for issuing a false cheque.

It should be pointed out at this stage, however, that the respondent's defence against the appellant's claim has not been based on the issue of ownership of the vehicle. This is clear from the respondent's Written Statement of Defence in the High Court. The appellant claimed in his evidence to the High Court that he paid for the vehicle and that there was correspondence to prove it. On 25th March 2004 during the cross-examination of the appellant the trial judge adjourned the matter for the parties to sort out the question of ownership, but when the hearing resumed on 29th June 2005, this issue had not been resolved and it was abandoned. In his submissions to the High Court, counsel for the respondent contended that the question of ownership was not relevant as it was resolved in Civil Appeal No. 2 of 2002 by the parties and as no appeal had been filed against the decision.

The respondent disputed the appellant's claim and stated that the appellant failed to pay for the vehicle. It is intriguing, however, that DW3 sold the vehicle to the appellant in early March 1998 and only came to repossess it almost after 2 years in spite of his claim that the appellant had not paid for it. The trial judge attempted to have the issue of ownership resolved but the parties did not seem to be interested, and after some days of protracted adjournments the

court proceedings continued as if the issue has not been raised at all.

Be that as it may, if the appellant was the undisputed owner of the vehicle as he contends, then he must bear the blame for letting Paul Kaggwa retain the vehicle's log book and continue to have the world regard him as its registered owner. In my view, Masaka Police Station cannot be faulted for giving the vehicle to Paul Kaggwa and neither should State House for losing its constructive possession. Therefore, the Court of Appeal was right in finding that State House ceased to exercise control over the vehicle when Paul Kagwa took it from the police station. However, the Court of Appeal erred, for reasons stated earlier, in finding that State House lost control of the vehicle earlier when it was involved in the accident and taken to Masaka Police Station. Ground 4, therefore, should partly succeed.

GROUND 5

The appellant's ground 5 of appeal is that the learned Justices of Appeal erred by failing to clearly pronounce themselves on the respondent's cross-appeal.

The appellant's cross-appeal complained of was that the trial judge erred -

1. when he failed to find that the hire contract subsisted beyond 31st March 1998

2. when he held that the appellant failed to mitigate his loss.

3. when he failed to order the return of the vehicle or payment of compensation for is value and,
4. when he failed to award interest from the date of filing the suit.

The decision of the Court of Appeal was that the contract of hire was frustrated because the vehicle was destroyed in the accident without the fault of either party and that, therefore, this terminated the con tract of hire and discharged the parties from further performance of the con tract.

The Court of Appeal having found that the contract of hire was frustrated and therefore, discharged, understandably saw no need of considering issues relating to breach of contract, return of the vehicle e.t.c. Since the appellant appealed against the finding of the Court of Appeal about frustration and thereby revived consideration of issues by this court which the Court of Appeal would have considered if it had held otherwise, I do not see any useful purpose served by the appellant's raising of this ground of appeal here as I consider it to be redundant.

In conclusion, this appeal succeeds except on the question relating to the constructive custody of the vehicle by State House after Paul Kaggwa, DW3, claimed and took it from Masaka Police Station on 29th January 2000. Before this date State House had constructive custody of the vehicle even after the accident happened in

accordance with its obligation as a bailee. If State House wanted to end this obligation it should have issued a notice of termination of the contract to the appellant. Therefore, the respondent is liable for the loss of income incurred by the appellant as a result of State House's failure to terminate the contract and to return the vehicle to the appellant from 1 st April 1998 to 29th January 2000 when the vehicle was taken by DW3 from Masaka Police Station.

I agree with counsel for the appellant that the learned trial judge erred when he found that the appellant failed to mitigate his loss. There is evidence on record that the appellant wrote to State House about the damage to the vehicle and that he sought financial assistance to have the vehicle removed from Masaka Police Station and repaired. The appellant's effort to mitigate the loss met with no co-operation from State House. It is difficult in the circumstances to see what more the appellant could have done to mitigate the loss.

The learned trial judge calculated the total number of days from 1 st April 1998 to 29th January 2000 when the police released the vehicle to Paul Kaggwa to be 688 days. These are the number of days he multiplied by shs. 200,000/= per day the appellant was entitled to get from State House for the use of his vehicle. However, apart from his finding that the appellant failed to mitigate the loss (which was wrong), the learned trial judge rightly found that there would be days when the vehicle would not be in use. In his evidence Mwongyere (DW1) stated that payment of hire rentals would depend

on presentation by the appellant of invoices accompanied by log sheets signed by the officer who used the vehicle to indicate the number of days the appellant was entitled to claim. Therefore, if the Issue of mitigation, which was an element included by the trial judge to discount the amount he awarded by 500/0, is removed, I would discount the amount payable to the appellant by 40% instead.

I would, therefore, on the whole allow the appeal and set aside the judgment of the Court of Appeal and modify the orders of the learned trial judge as follows:

(a)The appellant to be awarded shillings 200,000/= per day from 1st April 1998 to 29th January 2000 as his lost income. The total amount to be discounted by 40%.

(b)Interest on the above amount to be paid at the rate of 80/0 from the date of filing the suit till payment in full.

(c) The appellant's prayer for the return of the vehicle is declined. (d) The appellant to be awarded costs of this appeal and costs in the two courts below.

Delivered at Kampala this .....14th ..day of November 2011

JOTHAM TUMWESIGYE

JUSTICE OF THE SUPREME COURT

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THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI, C.J, TSEKOOKO, KATUREEBE, TUMWESIGYE AND KISAAKYE, JJ. S.C)

CIVIL APPEAL NO.16 OF 2010

BETWEEN -

MONDAY ELIAB.....APPELLANT

AND

ATTORNEY GENERAL .....RESPONDENT

[Appeal from the judgment of the Court of Appeal of Uganda (Mpagi-Bahigeine, Engwau and Twinomujuni J.J.A) dated 16 April 201 in Civil Appeal No 21 of 2008j

JUDGMENT OF ODOKI CJ

I have had the benefit of reading the judgment prepared by my learned brother, Tumwesigye JSC, and I agree with it and the orders he has proposed.

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 14th day of November 2011.

B J ODOKI
CHIEFJUSTICE

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

*CIVIL **Appeal No. 16 of** 2010*

BETWEEN

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[Appeal from the judgment of *the Court* of *Appeal* of *Uganda (Mpagi-Bahigeine, Engwau and Twinomujuni J.J.A) dated* 16 *April 201 in Civil Appeal No* 21 of *2008j*

JUDGMENT OF ISEKOOKO, JSC

I have read in draft the judgment of my learned brother the Hon. Mr. Justice 1. Tumwesigye, JSc., which he has just delivered. I agree with his reasoning and conclusions. I also agree that the appeal be dismissed with costs to the respondent here and in the Courts below.

Delivered at Kampala this .. 14th day of November **2011.**

JWN Tsekooko.
Justice of the Supreme Court.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 16 OF 2010

BETWEEN

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ONDAY ELIAB.....**APPELLANT**

AND

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TTORNEY GENERAL.....**RESPONDENT**

[Appeal from the Judgment of the Court of Appeal at Kampala (Mpagi-Bahigeine, Engwau and Twinomujuni JJ.A) dated llh April, 2008 in Civil Appeal No. 21 *of 2008].*

JUDGMENT OF KATUREEBE, JSC.

I have had the benefit of reading in draft the judgment of my learned brother, Tumwesigye, JSC., and I fully agree with him that this appeal be dismissed with costs to the respondent in this Court and the Courts below.

Delivered at Kampala this ... 14th... day of November 2011.

Bart M. Katureebe

JUSTICE OF THE SUPREME COUTHE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 16 OF 2010

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JUDGMENT OF DR. ESTHER M. KISAAKYE, JSC.

I have read I draft the judgment of my learned brother, Justice Tumwesigye, JSC.

I concur with him that this appeal should be allowed. I also agree with the Orders that he has proposed.

Dated at Kampala this.l4th day of . November.....2011.

DR. ESTHER M. KISAAKYE

JUSTICE OF THE SUPREME COURT