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(CORAM: ODOKI, CJ., TSEKOOKO, KATUREEBE, TUMWSIGYE, AN D KISAAKYE, JJSC).

CIVIL APPEAL NO. 09 OF 2010

KITUUMA MAGALA & CO. ADVOCATES :::::::::::::::::::::APPELLANT

GANDA

AND

CELTEL (U) LTD :::RESPONDENT

REME

[Appeal from the judgment and orders of the Court of Appeal (Mukasa-Kikonyogo, DCJ, Twinomujuni, and Kitumba,)JJA) in Civil Appeal No. 39 of 2003 dated 18th August 200S].

JUDGMENT OF KATUREEBE,]SC.

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"The appellant; a law firm, signed a Debt Collection Agreement with the respondent to collect monies owed to the respondent. Terms for the remuneration of the appellant were duly stipulated in that agreement. In respect of some clients, the appellant filed civil suits to recover the money. The agreement was then terminated before any recoveries had been made in respect of those suits. The appellant filed a Client! Advocate Bill of costs for taxation. The taxing officer rejected it on grounds that the matter was governed by the debt collection agreement and not by the ordinary rules regulating the remuneration of Advocates. Dissatisfied with that decision, the appellant appealed to a Judge of the High Court. The Judge, Tinyinondi, *J,* dismissed the appeal on grounds that the matter was supposed to be governed by the debt collection agreement but which agreement had not complied with the provisions of sections 48, 50 and 51 of the Advocates Act and was therefore unenforceable.

The appellant then appealed to the Court of Appeal which confirmed the decision of the High Court and dismissed the appeal, holding further that the appellant could not seek to have his remuneration under the Remuneration of Advocates Rules when he had signed an agreement which set out the terms of his remuneration. Hence this appeal.

In this Court, the appellant filed only one ground of appeal namely:

> *"The learned Justices of Appeal erred in law and in fact in holding that the appellant entered into an illegal contract and that accordingly there was no basis for the appellant to demand that the taxing master taxes the appellant's fees for handling High Court Civil Suits No 5.140 of1997,* 41 *of1999 and* 44 *of1999.*

Both parties filed written submissions, *M/s KWESIGABO, BAMWINE & WALUBIRI*, Advocates filing on behalf of the appellant, and *M/s LEX UGANDA ADVOCATES* filing reply on behalf of the respondent.

In their written reply, counsel for the respondent raised a preliminary point of law, namely, that the appeal now in the Supreme Court was a third appeal which required a special certificate of general importance under section 6(2) of the Judicature Act and Rule 39 of the Supreme Court Rules.

Counsel contended therefore that in the absence of such certificate the appeal was incompetent and ought to be struck out. In support of his argument, counsel cited the decisions of this court in *NAMUDDU - Vs UGANDA (2004)2 EA 207 and J. B CHEMICALS* & *PHARMACEUTICALS -Vs GLAXD GROUP LTD (2007)* 2 *EA 191*.

At the hearing, Mr. Walubiri for the appellant applied to respond to the above point orally since he had had no notice of it before filing the written submissions. We allowed him.

Mr. Walubiri argued that section 6(2) of the Judicature Act relates to appeals that originated in a Magistrate's Court and went to the High Court on appeal and the decision of the High Court was made in exercise of its appellate jurisdiction. If an appeal were to go to the Court of Appeal it would be a second appeal. To proceed to the Supreme Court, it would be a third appeal requiring a special certificate of the Court of Appeal that the matter was of a matter of law of great public importance. However, he argued, the matter before the court was different. The taxing officer was not a Magistrate's court and therefore the use of the word “appeal" in 'section 62 of the Advocates Act cannot be used in the same way as an appeal envisaged under section 6(2) of the Judicature Act.

Counsel argued that an appeal against a decision of the taxing officer to a Judge of the High Court was analogous to appeals made to the High Court from decisions of Administrative or quasi judicial bodies as may be provided for by specific statutes. These have been held not to be "appeals" in the strict judicial sense but more as reference. In support of his submissions, counsel cited the cases of *MAKULA INTERNATIONAL*

LIMITED - Vs- HIS EMINENCE CARDINAL NSUBUGA & ANOTHER, C. *A.* C. *A. NO.4 OF* 1981 and *MANSUKHALAL KARIA AND ANOTHER - Vs- ATTORNEY GENERAL* & 2 *OTHERS*, *S.C.C.A. NO 20 OF 2002.*

The question that we have to answer is whether an appeal to a judge of the High Court against a taxing officer's decision is an appeal within the terms of section 6(2) of the Judicature Act and Rule 39 of the Supreme Court Rules. Perhaps the two provisions should be set out right from the start for ease of reference. Section 6(2) of the Judicature Act states:

> *"(2) Where an appeal emanates from a judgment* or *order of a chief magistrate* or *a magistrate grade* 1 *in the exercise of his* or *her original jurisdictions but not including an interlocutory matter a party aggrieved may lodge a third appeal to the Supreme Court on the certificate of the Court of Appeal that the appeal concerns a matter of law of great public* or *general importance* or *if the Supreme Court considers in its overall duty to see that justice* is *done that the appeal should be heard."*

Rule 39 of the Supreme Court rules lays down the procedure for applying for the special certificate. It appears clear to me, and I agree with Mr. Walubiri, that section 6(2) is concerned with appeals emanating from judgments or orders of chief magistrates or magistrates grade one which then go to the High Court as first appeals, to the Court of Appeal as second appeals, and would go to the Supreme Court as third appeal only where a certificate of importance has been applied for and obtained as per Rule 39. Would one regard a taxing officer in the High Court as a chief magistrate or magistrate grade one. My answer is no. The attempted taxation arose out of matters filed in the High Court as civil suits to recover debts. Normally, costs are awarded by the Court hearing the case and then taxed by the taxing officer who is normally a Registrar and an officer of that court. I do not see how costs in the High Court could be taxed in a magistrate's court. Indeed the application before the taxing officer was referenced as *High Court Miscellaneous Application* No. 135 of 2001. It was High Court matter before a taxing officer of that court.

43 (1) *"There shall be such officers of the courts of judicature as may be necessary for the performance of any special duties in connection with the business of the courts of judicature, and such officers shall include the chief registrar, registrars, deputy registrars and assistant registrars"*

(2) *Subject to article* 133 *of the Constitution, the officers of the Courts of judicature shall perform such duties as may be assigned to them under the rules of court and shall be subject to the general direction and supervisions of the Chief Justice."*

In my view, taxation of costs is one of the special duties in connection with the business of the High Court, as in this case, that a Registrar is required to perform as a taxing officer. The taxing officer is not a chief magistrate or magistrate grade one so as to be brought under the ambit of section 6(2) of the Judicature Act. In my view, a similar situation would arise under Order XLVIII Rule 7 and Order L Rule 8 of the Civil Procedure Rules. Those situations cannot be brought under section 6(2) of the Judicature Act.

Under Article 139 of the Constitution, the jurisdiction of the High Court is spelt out. **It** has ***"unlimited original jurisdiction*** **in** ***all matters and such appellate*** ***and other jurisdiction*** ***as may be conferred*** **on** ***it by this Constitution or other law."***

139 (2) states:-

> ***"Subject to the provisions of this Constitution and any other law, the decisions of any court lower than the High Court shall be appealable to the High Court."***

It appears to me that even the Constitution is making a distinction between appellate jurisdiction over matters arising from lower courts, and other jurisdiction conferred by law. **In** my view, the use of the word "appeal" in Section 62(1) of the Advocates Act is analogous to the use of the same word in other statutes where provision is made for appeals to the High Court against decisions of administrative or quasi judicial authorities. This Court has held in a number of cases that such appeals are not "appeals" in the judicial sense as would be envisaged by section 6(2) of the Judicature Act.

In the ***MANSUKHLAL KARIA*** case (supra) this Court considered at length whether an appeal against a decision of the Minister to the High Court was a first appeal so as to regard a subsequent appeal to the Court of Appeal as a second appeal and an appeal to the Supreme Court as a third appeal. The Court held that the appeal against the Minister's decision under section 15 of the Expropriated Properties Act did not amount to a judicial appeal and did not take away the original jurisdiction of the High Court. After extensively analysing the various legal definitions of the word "appeal", Tsekooko, JSC stated (at page 16 and 17 of his judgment):

> ***"These meanings tend to support the view that a judicial appeal is not the one intended in section 15 because of the expression "appeal to the High Court" ....I think it would be a misnomer to describe a suit instituted under section 15 to challenge the Minister's rejection of an application for repossession as an ordinary judicial appeal."***

Likewise, I think it would be a misnom.er to regard an appeal against the decision of a taxing officer of the High Court to a judge of the High Court as an appeal envisaged under section 6(2) of the Judicature Act. **In** my view, the High Court would be exercising "other jurisdiction" conferred by the Advocates Act, but not appellate jurisdiction over a decision of a lower court as envisaged by Article 1390f the Constitution and section 6(2) of the Judicature Act. The decision of the Judge of the High Court in this matter was therefore the first judicially appealable decision, and the matter is properly before this court as a second appeal.

I would therefore reject the preliminary point raised by the respondent.

This brings me to the substantive sole ground of appeal which I have already set out above.

Arguing on this ground, counsel for the appellant contended that the Debt Collection Agreement consisted of two parts Le one part consisted of the instructions to the appellant to recover money from debtors, and the other part was concerned with the remuneration for those services. Counsel argued that even if the part of the agreement concerning remuneration was found to be null and void, that part ought to have been severed from the rest so that the appellant could still recover his fees under the normal regulations governing the remuneration of Advocates. Failure to do so, he argued, would lead to an injustice on the Advocate who would have performed his duties as per instructions. Counsel cited the case of *MARIES -Vs- PHILIP TRANT & SONS LTD MACKNNON, THIRD PARTY IQB 29* where the cause of action was severed from that part of the contract where the other party had not performed a statutory requirement of providing the prescribed particulars, and it *was* held that the other party could still recover their particular loss arising out of the contract.

To counsel, the illegality in the instant case was in the provisions regarding remuneration, and this did not destroy the cause of action which was based on a contract for the provision of legal services. Therefore, that cause of action would survive and the appellant would be entitled to recover fees for services rendered not under the illegal agreement but under the ordinary remuneration of advocates rules ..

Counsel also sought to rely on *PANDIT -Vs- SEKATAWA [1964J EA 491* where the rationale for sections 48, 50 and 51 of the Advocates Act was expounded upon. Counsel also sought to rely, strangely in my view, on the case of *SAROJ GANDESHA -Vs- TRANSLOAD LTD* (Supreme Court Civil Appeal No.13 of 2009), where this Court upheld payments made to an Advocate under a consent judgment.

In answer to the above arguments counsel for the appellant fully supported the judgment and decision of the Court of Appeal. They argued that the Court of Appeal did not rule that Advocates cannot enter into debt collection agreements nor that such agreement was for an illegal purpose. What the Court of Appeal had decided, upholding the decision of the High Court, was that any agreement made under sections 48 and 50 of the Advocates Act had to comply with the provisions of section 51 of that Act. Where the agreement failed to comply with any of those provisions, it was not enforceable and it was in fact an offence for any advocate to seek to gain any benefit under that agreement. Counsel further contended that in fact the appellant's counsel had in the High Court conceded that the Debt Collection Agreement was illegal, but had instead sought to rely on twp

letters written after the signing of the Debt Collection Agreement which counsel claimed constituted instructions to file legal proceedings, separate from the Debt Collection Agreement. Counsel supported the finding of the Court of Appeal that the two letters were in fact part and parcel of the Debt Collection Agreement which itself was illegal for non-compliance with the provisions of the law. Counsel further pointed out that in fact the appellant had received payments of his commission as stipulated in the Debt Collection Agreement. Counsel submitted that the appeal had no merit and should be dismissed with costs in this Court and the Courts below.

The gist of the ground of appeal, as I understand it, is in two parts, the first is that the Court of Appeal was in error to hold that the appellant entered into an illegal contract. The second part is that the court was in error to hold that there was consequently no legal basis for the appellant's demand for taxation of his fees.

The question that comes to mind is whether this ground really arises from matters that were before, and decided on, by the Court of Appeal. To answer that I think it is useful for ease of reference to set out the grounds of appeal in the Court of Appeal. These were as follows:-

> *"1. The learned trial judge erred in law and in fact in finding that the letters of* 3/11/1997 *and 17/3/1998 did not constitute a separate agreement from the agreement of 3/11/1997.*
>
> *2. The learned trial judge erred in law and in fact in failing to find and hold that there was evidence that the appellants were outside the agreement of '3/11/1997 duly instructed by the respondents to file*
>
> *High Court Civil Suits No. 140 of* 1997,41 *of* 1999 *and 440f1999.*
>
> *3. The learned trial Judge erred in law to hold that there was no basis for the appellant to demand that the Taxing Master taxes the appellant's now appellant's fees for handling High Court Civil Suit Nos. 140/97,41/99, and 44/99."*

The Court of Appeal, decided, correctly in my view, to deal with grounds 1 and 2 together as they overlap. Clearly, counsel for the appellant sought to sever the Debt Collection Agreement from the letters which were written further to it. Counsel sought to treat these letters as constituting instructions to sue separate from the Debt Collection Agreement. In the lead judgment of Kitumba, JA (as she then was) the court minutely set out and examined the language of both the Debt Collection Agreement and the letters in question and, quite correctly in my view, reached the conclusion that the letters were part and parcel of the agreement. The learned Justice of Appeal put it thus:-

> *"A perusal of the* two *letters clearly shows that they were part and parcel of the debt collection agreement. The appellant was free to use whichever means of debt collection*

it deemed fit, whether to file civil suits or employ other means to recover the respondent's debts. Thus clause 2 of the agreement of3/11/1997 provides

"2. The AGENT shall use his best efforts to collect whatever debts he may be instructed to receive and shall endeavour to collect them within a period of 8 *weeks." (underlining mine).*

The appellant's argument that the affidavits by the respondent's credit controller Kuluo constituted instructions to sue is not tenable. I agree with the ruling of the learned judge that the letters of 3/11/1997 *and*

17/3/1998 *were not separate agreements to sue. The debt collection agreement and the letters did not comply with the*

provisions of section 51 *of the Advocates Act and are, therefore, illegal and unenforceable. "*

I fully concur with this finding. The debt collection agreement is signed between parties and provides in clause 1 thereof that:

"CELTEL shall from time to time furnish the AGENT with the particulars of debtors and the amount due." (emphasis added).

If CELTEL then subsequently writes a letter furnishing .the agent with the particulars of debtors and the amounts due, I fail to see how counsel can argue that that letter is not part of the agreement. Likewise, a letter subsequently written which states: *"Further to the Debt Collection Agreement. ....attached, please find the revised schedules of the procedures to be followed in the course of your debt recovery exercise on our behalf ...."* must clearly be part and parcel of the earlier agreement between the parties.

I agree with counsel for the respondent that the Court of Appeal did not decide that the parties had entered into an illegal agreement or that the agreement was for an illegal purpose. The appellant was free in terms of section 48 and 50 of the Advocates Act to enter into the agreement with the respondent. But the law, section 51, required that such agreement comply with certain conditions or else by law it is unenforceable. Indeed, both in the High Court and in the Court of Appeal counsel for the appellant conceded that the agreement was not enforceable for its failure to comply with section 51. That is what made it an illegal agreement. Strangely, it was counsel for the respondent who argued that the agreement had been notarized and was enforceable. The only point of departure was whether

the two letters were part of the agreement.

In my considered view, the Court of Appeal did not err in law or fact to hold that the Debt Collection Agreement did not comply with section 51 and was therefore illegal and unenforceable. I find no merit in the first part of the ground of appeal.

The second part is a logical consequence on the above finding. The appellant has sought to base his claim to taxation on the assumption that the two letters constituted separate instructions. I have already stated that I agree with the Court of Appeal that they did not. They were simply part and parcel of the agreement. Counsel then brought up the argument about severance, i.e., that the illegal part of the agreement regarding remuneration be severed from the part dealing with instructions to sue.

Counsel for the appellant argued that the agreement is severable so that the part dealing with remuneration is deemed unenforceable while the part giving instructions is saved. As pointed out earlier. Counsel sought to rely on ***MARLES -V- PHILIP TRANT & SONS LTD. MACKINNON, THIRD PARTY*** (supra). With respect, I think that case is distinguishable from the case before us. To begin with, that case was concerned with merchants supplying seed to dealers and farmers. The instant case is dealing with regulation of specific agreements by a specialized group of professionals, Le. Advocates. Secondly, that case was concerned with the rights of a third party to recover damages. The instant case deals with payment of professional fees to an Advocate who is a party to the agreement. Thirdly, the Court found that the contract in that case was illegal in its performance. In the instant case, it is the statute which itself renders the whole contract

unenforceable if it did not comply with the conditions set forth in section 51 of the Act.

Thus section 51 (2) is very clear:

> *"An agreement under section* 48 or *50 shall not be enforceable if any of the requirements of sub-section (l) have not been satisfied in relation to the agreement, and any advocate who obtains* or *seeks to obtain any benefit under any agreement which is unenforceable by virtue of the provisions of this section shall be guilty of professional misconduct. "*

It is to be noted that, the appellant did acknowledge receipt of some payments under the agreement but turned around to argue that, that money should be taken as deposits and be deducted during taxation. I wonder whether that in itself does not amount to obtaining a benefit under an unenforceable agreement, contrary to section 51 (2) of the Advocate Act.

In *ANDERSON - Vs- DANIEL* [1924] *I KB [cited in CHITTY ON CONTRACTS P.* 858 - 859] the Court considered those agreements where the statute prohibits certain agreements and provides for the punishing of one party. The Court stated:

> *"When the policy of the Act in question is to protect the general public* or *class of persons by requiring that* a *contract shall be accompanied by certain formalities* or *conditions, and* a *penalty* is *imposed on the person omitting those formalities* or *conditions, the contract and its performance without those formalities* or *conditions* is *illegal, and cannot be sued upon by the person liable to the penalties. "*

Indeed, the *MARLES* case (supra) would be authority for-the proposition that the innocent party would not be deprived of his civil remedies for the criminal default of the guilty party. That is why the court held that the third party could recover damages. As Singleton L.}, put it; *"The third party had nothing to* do *with the contract between the plaintiff and the defendants." (P.* 35 *of the judgment).*

In my view, the *PANDIT* case (supra) is more relevant to this case in so far as it seeks to explain the rationale for the strict provisions of the Advocates Act. Having explained why it was necessary for the agreement for

remuneration to be in writing, Sir Udo Udoma, *CJ,* went on to state as

follows (at P. 497):

> *"The situation, I think, might be different if it was* a *client who had brought this action seeking to enforce the agreement* as *against the advocate. In that case, it would be the duty of this court to hold the advocate to his agreement for then the client would not be seeking to derive any benefit from such an agreement. It seems to me that what section 55 has done is to prescribe the formality which must be complied with by an advocate, who has concluded an agreement with his client* as *to his professional remuneration, if such an agreement is to be enforced by the*

court as against his client. And section 56 (2) *prohibits the bringing of any action for the enforcement of such an agreement, which means in fact that any action brought for the purpose of enforcing such an agreement would be misconceived in law, having regard to the special procedure prescribed for that purpose under Section* 56 (2) *of the ordinance. The protection is for the client and not for the advocate. "*

As in this case where the appellant is seeking, in the alternative, to argue that the contract be severed so that the part for remuneration is now governed by the Advocates Remuneration Rules, in the *PANDIT* case the advocate/plaintiff sought in the alternative to rely on the Indian Contract Act, 1972. The learned Chief Justice dealt with that argument thus (P. 499):

"In my view, the claim of the plaintiff in the alternative is not maintainable, because to hold otherwise for the reasons given above would be contrary to public policy. The agreement, the subject matter of this suit not having been made in writing, violently contravenes the Advocates Ordinance No. 19 *of* 1956, *which regulates the relationship between advocates and their clients in this court. The purpose of the Advocates Ordinance is to regulate such relationship and to bring an advocate within the control, jurisdiction and embrace* of *this court. It would be*

dangerous in the extreme to side-track the special provisions of the Advocate Ordinance, which regulate agreements between advocates as officers of this court and their clients. In my view, to accept the contention of the plaintiff that the Indian Contracts Act, 1972, *applies to the agreement between him and the first defendant would be to open a flood-gate to advocates to appear in court and act* *without any retainer and without instructions from litigants in the hope that whether the client accepted their services or not, the court would always enforce their claims for professional fees under the Indian Contract Act. The result may be disastrous."* (emphasis added).

In the instant case, the agreement was in writing but failed to satisfy the condition in section 51 (1) (b) and (c). The advocate had the option of stipulating that his fees would be governed by the Advocates Remuneration and Taxation of Costs Rules. He did not exercise that option. He opted to accept remuneration as stipulated in the Debt Collection Agreement. The client accepted his services on the basis of that agreement. It would be contrary to the letter and spirit of the Act, and indeed against public policy, were the court to allow the Advocate to walk away from the clear provisions of the Act and seek refuge in the Advocates Remuneration Rules, which he had not opted for in the first place. The agreement was for provision of legal services for which remuneration was stipulated. The argument that somehow this can be severed is, in my view, not tenable, especially coming from the advocate who should have known better, and for whom the provisions of the Act were meant.

Counsel for the appellant then sought to rely on the GANDESHA case. I have failed to appreciate how that case helps the appellant. That case was based on a judgment of the court, albeit a consent judgment referred to as the Consent Variation Order, which provided for certain payments, to several persons including the advocates. Although argument was made that the agreement between the parties leading to the consent judgment may have amounted to champerty, no attempt had been made whatsoever to set aside that judgment. In that case I stated at P.21 of my judgment:

The application by the respondent in the High Court was based on money paid under that order. If the respondent formed the view that the terms of the order were based on an illegal or fraudulent agreement or practice, then it should have applied to the High Court to have the Consent Variation Order set aside."

The present case is not concerned about any judgment. In my view, the two cases are distinct.

In the result, I am of the view that there is no merit in this appeal and it ought to be dismissed with costs in this court and in the Courts below.

Dated at Kampala this ....17th ....day of .….*August* _ 2011,

Bart M. Katureebe

JUSTICE OF THE SUPREME COURT

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

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

CIVIL APPEAL NO. 09 OF 2010

BETWEEN
KITUUMA MAGALA & CO. ADVOCATES::::::::::::::::::::::APPELLANT
AND
CELTEL (U) LTD ::RESPONDENT

[Appeal from the judgment and orders of the Court of Appeal at *Kampala (Mukasa-Kikonyogo, DCJ., Twinomujuni, and Kitumba, JJ.A) in Civil Appeal No.* 39 *of 2003 dated 18th August 2005]*

JUDGMENT OF ODOKI, CJ

I have had the benefit of reading in draft the judgment prepared by my learned brother, Katureebe, JSC, and I agree with him this appeal should be dismissed with costs in this Court and Courts below.

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

Kampala this ... 17th.... day of .August.... .. 2011.

B J Odoki
CHIEF JUSTICE

THEREPUBUCOFUGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[Coram: Odoki, CJ., Tsekooko, Katureebe, Tumwesigye & Kisaakye, JJSC]

Civil AppealNo.09 of 2010

BETWEEN

KITUUMA MAGALA & CO. ADVOCATES .....APPELLANT

CELTEL UGANDA LTD………………………………RESPONDENT

{Appeal from the Judgment of the Court of Appeal at Kampala (Mukasa - Kikonyogo, DCJ., Twinomujuni and Kitumba, JJA) dated 01st August, 2005 in Civil Appeal No. 390f2003}

JUDGMENT OF TSEKOOKO, JSC

I have read in draft the judgment of my learned brother the Hon. Mr. Justice BM Katureebe, 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 17th day of August 2011

JWN Tsekooko

Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

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

KITUUMA MAGALA & CO. ADVOCATES::APPELLANT
AND
CELTEL (U) LTD::RESPONDENT

[Appeal from the judgment and orders of the Court 0 Appeal at Kampala (MukasaKikonyogo DCI, Twinomujuni and Kitumba, *JJ.A)* in Civil Appeal No. 39 of 2003 dated 18th August, 2005]

JUDGMENT OF TUMWESIGYE, JSC

I have had the opportunity to read the draft judgment prepared by my learned brother, Hon. Justice Katureebe, JSC.

I agree with the judgment and the orders he has proposed.

Dated at Kampala this ....17th day of August...............2011.

JOTHAM TUMWESIGYE

JUSTICE OF THE SUPREME COURT *THE REPUBLIC OF UGANDA*

IN THE SUPREME COURT OF UGANDA AT KAMPALA

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

CIVIL APPEAL NO. 09 OF 2010

BETWEEN

KITUUMA MAGALA & CO. ADVOCATES::::::::::::::::::::::::::::::::::::::APPELLANT

AND

CELTEL (U) LTD::RESPONDENT

[Appeal from the judgment and orders of the Court of Appeal (MukasaKikonyogo, DCJ., Twinomujuni and Kitumba, JJ.A) in Civil Appeal No. 39 *of 2003 dated 18th August 2005]*

<u>JUDGMENT OF DR. E. KISAAKYE, JSC</u>

I concur with him that this appeal has no merit and that it should be dismissed with costs in this court and the courts below.

Dated at Kampala this 17th day of August.......201l.

DR. ESTHER M. KISAAKYE

JUSTICE OF THE SUPREME COURT