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

5 *[Coram: Odoki, CJ., Tsekooko, Kitumba, Tumwesigye & Kisaakye, JJSC.]*

Civil Appeal No. 12 of 2009

Between

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SEMYALO MICHAEL :: APPELLANT

And

THE REGISTRED TRUSTEES :: RESPONDENT
OF KAMPALA ARCHDIOCESE

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{Appeal from the decision of the Court of Appeal at Kampala (Okello, Mpagi-Bahigeine & Engwau, JJA) dated 27th February, 2008 in Civil Appeal No. 12 of 2006.}

20 JUDGMENT OF J.W.N. TSEKOOKO, JSC.

This is a second appeal. It arises from the judgment of the Court of Appeal which reversed the decision of the High Court and dismissed the Suit filed there by the appellant.

BACKGROUND:

25 Sometime in the 1950s the late Archbishop Kiwanuka (RIP) of the Catholic Church in Uganda conceived the idea of establishing a Micro Finance Institution as a church based project. The purpose was to alleviate poverty especially among the rural poor. The clergy and some lay apostolates embraced and developed the idea over the years. Eventually a private limited liability company known as Centenary Rural Development Trust (the Trust)
30 was incorporated on 06th April, 1983.

Among the major objectives of the trust was to operate as a credit institution through its branches all over Uganda. It was principally to offer credit facilities to the rural poor.

35 The trust used the existing Catholic Dioceses as its share holders. Many Christians contributed money to enable their dioceses to purchase shares allotted to them in the Trust.

The appellant was among the hundreds of parishioners who contributed to some of the shares purchased by the respondent in the Trust. The appellant also made further contributions in the names of his then three infant daughters namely, Namayanja Julian, Nanyondo Immaculate and Namyalo Stella.

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The model arrangement was copied from South America where the practice has existed for over 150 years and the practice there is called "Unit Trust Investment". Under the arrangement, the understanding is that a contributor who wishes to withdraw would be free to do so at any time. There is a formula known as "Gordon's Growth Model Formula" that

10 is applied to calculate the amount of the investment of the withdrawing contributor plus the accruing interest thereon. At the time when this case started in the High Court, there were about 600,000 such contributors. Some years later, the Trust Company received a license to operate as a bank. Consequently, it changed its name to **"Centenary Rural Development Bank Ltd",** (the Bank).

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The appellant and twelve others including his aforementioned three infant daughters later sued the Bank claiming, among other things:—

1) ***That their names had been wrongfully omitted from the Trust Bank's register of members.***

20 2) ***That at the time they made contributions they had falsely been made to believe that they were paying for ordinary shares in the company whereas not.***

The appellant and his co−plaintiffs in the suit in effect based their claims in torts of misrepresentation and fraud. They sought various reliefs arising from these claims. As

25 required by law, a scheduling conference was held by the trial judge. During that conference, the plaintiffs prayed court to join the respondent and Masaka Diocese in the suit as defendants.

The trial of the suit has some interesting features. First, twelve of the plaintiffs including the

30 appellant's three infant daughters who had sued through him as their next friend, settled their claims with the respondent and Masaka Diocese agreeing, firstly that the appellant's

said three infant daughters and the other plaintiffs disinvest the contributions they individually made towards their respective diocese's subscription to the purchase of shares in the Bank. Secondly, that the Diocese was to pay those twelve plaintiffs costs of the suit. A Consent Decree to that effect was filed in Court on 14/10/2003. The appellant, however, decided to proceed with the suit alone as a plaintiff and engaged his present lawyers, Messrs. Semuyaba, Iga & Co., Advocates. These lawyers filed a notice of change of advocates the following day on 15/10/2003 after the consent decree had been filed. This forced Counsel for the defendants to raise a preliminary objection to the appellant's pursuit of the suit. Justice Ogoola, the Principal Judge (as he then was), as the trial judge, overruled the objection. That ruling is missing. That was the position in the Court of Appeal. It appears to have gone missing during the trial in High Court. Be that as it may, judging from the submissions on the points of contentions and noted on record of appeal the objections were—

1. ***Whether the appellant (as plaintiff) was a trustee for the minors he represented.***

2. ***Whether the appellant was in breach of fiduciary duty that he had with the minors as their next friend when he accepted a settlement which he was not willing to accept himself.***

3. ***Whether the appellant was precluded from suing for a remedy that is better than the one he accepted on behalf of his minor daughters.***

4. ***Whether the respondents (as defendants) were entitled to use that breach of trust to ensure that the appellant receives the settlement that he negotiated on behalf of the three minors for whom he acted as next friend in same suit.***

Counsel for the appellant contended during the hearing of the objection that the appellant was not a trustee and that he was not bound by the position he took on behalf of his daughters. On the other hand counsel for the respondents contended for the contrary and therefore that the appellant was precluded from pursuing the suit. The Principal Judge appears to have accepted the submissions of the appellant's counsel and that is why he overruled the objection and allowed the suit to proceed.

The plaint was further amended, this time, leaving out the names of the twelve co−plaintiffs and the defendant Masaka Diocese. The suit proceeded with the appellant as the sole plaintiff against two defendants namely, Centenary Rural Development Bank (the bank) as the first defendant and the present respondent as the second defendant. Apparently on 09/03/2005, the learned Principal Judge gave the main (or rather preliminary) judgment in favour of the appellant. That judgment, too, is missing. Parties were ordered to make more submissions on appellant's choice to disinvest. The learned Principal Judge thereafter held that the appellant's *"formula was extravagant, without any basis or logical justification"*, mainly because the appellant, according to the learned Principal Judge, was "*under the illusion that he had shares in the Bank which was not the case*". The learned Principal Judge in effect rejected the appellant's entitlements based on what was described as the Gordon Growth Formula in preference to figures arrived at by the respondent as well as his dividends. Because the learned Principal Judge found the failure by the respondent to disclose fully share ownership position, ***"to be deplorable and verging on fraud,"*** he on 25/05/2005, delivered what I regard as a supplementary judgment awarding to the appellant Shs.2,000,000/= **"as general and punitive damages."** Of more interest, however, is the absence or loss of the Principal Judge's original judgment. It can't be traced anywhere. In any event, the respondent appealed to the Court of Appeal which reversed the decision of the learned Principal Judge. Hence this appeal which is based on six grounds of appeal.

Mr. Justin Semuyaba of Semuyaba, Iga & Co., Advocates, represented the appellant while Messrs Kawanga & Kasule, Advocates, jointly with Mr. Peter Kabatsi, of Kampala Associated Advocates, represented the respondent. Both counsel filed written submissions.

Mr. Semuyaba first argued grounds 1, 2, and 3 together followed by ground 4. He then argued grounds 5 and 6 together. The respondent's counsel similarly argued grounds 1, 2 and 3 together and then ground 4, followed by grounds 5 and 6 together.

Grounds 1, 2 and 3 are worded as follows:—

1. ***The Learned Justices of the Court of Appeal erred in law and in fact in their judgment when they held that the appellant was bound by the compromise of H.C.C.S No. 579 of 2002 Michael Semyalo Vs Centenary Rural Development Bank Ltd and the Registered Trustees of Kampala Archdiocese whereas he was not party to the consent judgment.***

2. ***The Learned Justices of the Court of Appeal erred in fact and law in their judgment when they held that by the time of (compromise??) the appellant had not yet withdrawn instructions from M/s. Niwagaba & Mwebesa, Advocates and instructed M/s Semuyaba, Iga & Co. Advocates.***

3. ***The Learned Justices of Court of Appeal erred in fact and law in their judgment when they held that the appellant's claim in H.C.C.S No. 579 was not distinct from that of the 10th, 11th and 12th plaintiffs who were minors for whom the appellant sued as next friend.***

Obviously the word "compromise" is missing from ground 2.

COUNSEL'S ARGUMENTS:

Counsel for the appellant admits that Messrs. Niwagaba & Mwebasa, Advocates, represented all the original thirteen plaintiffs including the appellant in HCCS No. 597 of 2002 right up to 14/10/2003 when a compromise between parties to the suit was struck. However learned counsel appears to contend that even then, the appellant, who was the first plaintiff in the suit, acted properly when he opted not to be bound as a plaintiff by the compromise and that is why the appellant engaged a different firm of advocates who lodged a notice of change of advocates in court on 15/10/2003, the following day after the compromise was lodged in the High Court. Learned counsel contended that the compromise which the appellant did not sign personally, bound only his three minor daughters for whom the appellant acted as next friend but the same compromise did not bind him and that is why he opted to pursue his own claim through a different firm of advocates.

Learned counsel supported the decision of the Principal Judge who tried the suit and who overruled an objection by the respondent to the course adopted by the appellant to pursue

his own claim after the compromise. The Principal Judge held that the claim of the appellant was separate from and independent of the claims of his minor daughters. The appellant's counsel relied on some quotations from **Chitaley And Rao,** among other authorities, for the view (which is correct) that in a suit minors are the real plaintiffs and not
5 their next friend and, therefore, a compromise in the suit binds the minors alone and not their next friend. Counsel for the appellant criticized the decision of the Court of Appeal which reversed the final decision of the Principal Judge who had upheld the appellant's claim. In effect appellant's counsel contends that counsel for the respondent had accepted the appellant's claims.

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As mentioned earlier, the respondent was represented by two firms of advocates. Messrs Kampala Associated Advocates replied to the arguments of the appellant's counsel on grounds 1, 2 and 3. Learned counsel in effect repeated what was stated in the Court of Appeal. With regard to the appellant's arguments on grounds 1 and 2, the respondent's
15 counsel supported the decision of the Court of Appeal that the appellant was bound by the compromise filed in Court on 14/10/2003 in HCCS No. 579 of 2002, where the appellant was the first plaintiff. Learned counsel contended that at the time when the compromise was recorded in Court, the appellant had not withdrawn instructions from his advocates — Niwagaba & Mwebase & Co., Advocates, and had not instructed his present advocates to
20 take over his own case. Those instructions were given on 15/10/2003, the following day after the compromise had been filed and endorsed by Court on 14/10/2003. Learned Counsel relied on, *inter alia,* **Patience Swinfen Vs Fredrick Hay Swinfen (1856) 139 ER 1459,** for the view that parties are bound by the consent of their counsel. (This is normal). Learned counsel contended further that in this case it is inequitable for the
25 appellant to accept compromise for his three minor daughters whom he represented and yet refuse the same position for himself when the claims are the same and based on the same facts. (Indeed these arguments were first raised in the trial court which the trial judge rejected.)

Further learned counsel relied on the decision of **Hirani Vs Kassam (1952) 19 EACA 131** and **Attorney General and Another Vs J.M. Kamoga & Another (**Supreme Court Civil Appeal No. 08 of 2004) for the well known principle that *"consent judgments are treated as fresh agreements, and may only be interfered with on limited grounds such as illegality, fraud or mistake."* Counsel submitted that the grounds upon which the appellant is seeking to upset the consent judgment are insufficient as those grounds do not fall in any of the above exceptions.

In reply to the appellant's argument on ground three, the respondents' counsel referred to paragraphs 4 and 5 of the amended plaint dated 27th July, 2003 upon which the compromise was based. Counsel submitted, quite correctly in my view, that no distinction was made in those paragraphs between the claim of the appellant and the claims of his three minor daughters.

Appellant's counsel filed submissions in rejoinder to the written submissions from the respondent's counsel. I must observe that the rejoinder did not conform to the Chief Justice's Practice Direction No. 2 of 2005 in that the rejoinder was unnecessarily long and the contents were essentially a regurgitation of the arguments made at the beginning of arguing the appeal.

Be that as it may, counsel for the appellant contended, quite correctly I think, that the trial judge accepted the appellant's request to opt out of the compromise which prompted his former lawyers to withdraw from the case and the trial Court accepted it. Counsel argued, again correctly, that the appellant was therefore not included among those who entered into the compromise (from 2nd to 13th plaintiffs). This is evident from the consent judgment itself.) Counsel argued that the claim of the appellant was distinct from those of his three minor daughters.

Appellant's counsel wrongly opined that the respondent's submissions on ground 1, 2 and 3 are based on proceedings which were not available to the Court of Appeal during the

hearing of the appeal in that Court. {May I point out here that in the lead judgment in the Court of Appeal, Okello, JA., (as he then was) pointed out the materials which were missing and I have similarly pointed this out earlier in this judgment.} Essentially these are the original (or the preliminary judgment) and a ruling on objections raised by the respondent in the trial Court. . Counsel further contended that after his firm took over the appellant's case, his firm was not challenged and, therefore, the firm conducted the appellant's case up to its conclusions before the same trial judge, Ogoola, PJ. Counsel cited a number of authorities including **Hirari Vs Kassam** *(supra)* and **Attorney General Vs. J. M. Kamoga** *(supra)* to support the view that a party is bound by a compromise made by his counsel.

Rearguing ground 3, appellant's counsel contended that despite the contents of paragraph 4 and 5 in the amended plaint, the appellant's claim was distinct from that of his three minor daughters. He relied on the figures set out in the High Court judgments, i.e., consent judgment of 14/10/2003 where these three daughters appear and the judgment deciding the appellant's claim.

CONSIDERATION BY COURT:

Part of the problem of this appeal arises from loss of the main judgment and a ruling on objection whether the appellant should have pursued the suit after the compromise. The Principal Judge delivered both. The missing original judgment apparently delivered on 09/03/2005 and the order overruling the respondents' objections to the appellant's pursuit of his claims disappeared from the court record in the High Court.

Whatever the case, I know of no law or practice in this country, which makes it mandatory for parties with similar causes of action to institute one and only one suit. In theory and practice litigants who have the same or similar causes of action are free to institute and each can institute separate suits. However, because of the necessity of convenience and the need to save on time and particularly costs, on the part of parties, parties who have the same cause of action are encouraged to institute one suit. This is a common practice of procedure

which is set out in **Order 1 of the Civil Procedure Rules.** Thus Rule 1 of the Order reads:—

> ***All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate suits any common question of law or fact would arise.***

Rule 2 of the same Order empowers trial courts to order separate trials under certain circumstances. On the facts of this appeal, there can be no doubt that the cause of action of each of the 13 plaintiffs in the original suit were similar if not identical. This also explains why in their written statements of defence the respondent and its co-defendants admitted that the plaintiffs made some contributions to their respective dioceses. The only difference between the appellant and the other plaintiffs including his three minor daughters are figures relating to contributions made by each of the plaintiffs. That explains why they all engaged the same firm of advocates who filed a joint suit on their behalf. It was averred in paragraphs **3** of the original plaint (and the same was repeated in para 4 of the amended plaint) that the appellant and co-plaintiffs including his minor daughters claimed against the defendants jointly and severally. Although the Appellant acted as his daughters' next friend, which is a requirement of the law (See Order 32 Rule 1 of CPR), each of the three daughters had her own independent though similar cause of action. Accordingly, I think that each plaintiff was free to pull out of the suit before the compromise was sealed by the trial Court. What happened here is not contrary to practice or cases cited for the view that a party is bound by the acts of his or her counsel. As a matter of fact, there is no evidence on the record to show that by the time the appellant chose to pursue his claims, the trial Court had sealed the compromise. That obviously explains why the trial court overruled the defendant's objections. Indeed the decree on the record shows that the appellant (as 1st plaintiff) was not one of the plaintiffs who were to benefit from the compromise. Again there is no evidence supporting the contention by counsel for the respondent that the appellant had not yet withdrawn his instructions from his former advocates by the time he

opted to pursue his own claim. The copy of the compromise and of the ensuing decree on my court record of appeal shows that only the 2nd to 13 plaintiffs were listed as parties to the compromise. The compromise decree from which the appellant is not a beneficiary was signed by appellant's previous advocates and not by the appellant personally which to me means everybody respected the appellant's option to pursue his own claim. Therefore, and with great respect to the Court of Appeal, that court erred when it held that the appellant was bound by the compromise to which he was not personally a party. As that compromise and the ensuing consequential decree show the appellant was clearly not included and so he could not be bound.

I find nothing on the record of appeal or indeed under our law to support the contention by counsel for the respondent that it is inequitable for the appellant to accept a compromise for his three daughters but decline the same for himself. To me it appears inequitable to have the appellant's suit in the High Court dismissed in as much as the 2nd and 3rd original defendants admitted in their joint defence that the appellant made financial contributions to dioceses to enable dioceses acquire shares.

It is my considered view that the facts of this case are distinguishable from the cases of **Waugh and Others** *(supra),* **Hirani Vs. Kassam** *(supra) and* **Attorney General Vs, J.M. Kamoga** (*supra).* The appellant may have had a moral duty to ensure that the interests of his infant daughters were fully and properly protected in the suit and this he appears to have done. But being a next friend in the same suit did not necessarily mean that if he consents to a judgment in favour of his daughters, he must necessarily also consent to a compromise judgment with regard to his own interest so long as his act in not compromising his own claim did not prejudice the interests of any of his daughters. There is no contention nor is there evidence to show that the appellant's refusal to compromise his own interest originally in the suit prejudiced the interests of any of his three daughters. His pursuing the suit may adversely affect him more in terms of costs but that prejudices him and nobody else. Indeed since he compromised the claims of his minor daughters, there is no clear and overwhelming grounds why he could not accept the compromise along with

the other plaintiffs. This is a case where he may be denied some costs. I think that the appellant was not bound by the compromise reached in High Court Civil Suit No. 579 of 2002. Secondly, whether the appellant had withdrawn instructions or not, it is clear that his former advocates did not include him on the list of the plaintiffs who had consented to the compromise. Further I am unable to trace evidence anywhere on the record showing that the appellant's former advocates had agreed to compromise, or indeed that they compromised, on his behalf. Accordingly the three grounds of appeal must succeed.

GROUND FOUR:

The complaint in this ground is that the learned Justices of Appeal erred in law and in fact in their judgment when they held that the appellant's claim was not premised on misrepresentation and fraud by the respondent that they were selling shares.

COUNSEL'S ARGUMENTS:

With due respect to counsel for the appellant, the original written submissions on the 4th ground are confusing in that in some places counsel refers to the appellant as the respondent.

In summary, counsel contends that the appellant pleaded fraud and misrepresentation in the amended plaint and further that in his sworn statement (which is on the record of appeal) and during his cross-examination on that sworn statement, the appellant proved fraud and or misrepresentation because the appellant was made to believe that he was investing his contributions in the Bank. Counsel also relied on the fact that the respondent admitted liability by consenting to the judgment at the trial and therefore that judgment should not have been upset by the Court of Appeal. Counsel relied on ***Attorney General & Uganda Land Commission Vs J.M. Kamoga & J –*** *Supreme Court Civil Appeal No. 8 of 2004 (supra) in support of his arguments.*

Messrs. Kawanga & Kasule, Advocates, filed written submissions in reply on grounds 4, 5 and 6 on behalf of the respondent. Counsel supported the decision of the Court of Appeal, and contended that the appellant did not plead particulars of fraud nor misrepresentation as required by Order 6 Rules 1,3 and 13 of the **Civil Procedure Rules** and that the contents of paragraph 4 of the amended plaint are insufficient. Learned counsel contended further that the evidence adduced by the appellant was insufficient to prove either fraud or misrepresentation. Learned counsel submitted that the finding of the Court of Appeal on the absence of both particulars of and evidence to prove fraud or misrepresentation should not be disturbed because the court properly evaluated the evidence before it reversed the decision of the trial Principal Judge whose main judgment was not available to indicate how he himself evaluated the evidence on the question of fraud and misrepresentation.

CONSIDERATION:

As already observed, it is very unfortunate that the main judgment of the trial court is missing. The absence obviously makes it difficult for this court to appreciate how the learned Principal Judge, as a trial judge, evaluated the evidence on fraud and or misrepresentation before he decided the case in favour of the appellant and against the respondent. Indeed in his subsequent "supplementary" judgment, the learned Principal Judge describes the conduct of the respondent's ***failure to disclose fully share ownership position to be deplorable and verging on fraud."*** This description shows the doubts in the mind of the Principal Judge. Longman's Dictionary of Contemporary English defines ***"Verge on"*** as ***to be near to (the state, quality or condition)."*** My understanding of the use of the expression is that the learned Principal Judge was not satisfied with evidence proving fraud or misrepresentation.

Like the Court of Appeal did, I will do my best. There is no doubt that Rules 1(1), 3 and 13 of Order 6 require that particulars of fraud and misrepresentation should be pleaded in a plaint.

Rule 3, in so far as relevant, states—

> ***In all cases in which the party pleading relies on any misrepresentation, fraud ………………………. and in all cases in which particulars may be necessary, the particulars with dates shall be stated in the pleadings.***

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Rule 13, also reads thus—

> ***Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact, without setting out the circumstances from which the malice, fraudulent intentions, knowledge or other condition of mind of any person is to be inferred.***

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Counsel for the appellant contends that particulars of fraud and misrepresentation were pleaded by the appellant in paragraphs 4 and 5 of the amended plaint upon which the trial of the suit proceeded in the High Court before the Principal Judge. Counsel also contends that fraud and misrepresentation were proved. At the risk of being lengthy I will, as did the Court of Appeal, reproduce paragraphs 4 and 5 of the amended plaint dated 22nd July, 2003. The hearing of the appellant's case was based on the same amended plaint. P*aragraph 4 reads—*

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> ***"The plaintiff's claim against the defendants jointly and severally is for a declaration that the plaintiffs are shareholders in the first defendant, an order that their names be entered in the first defendant's Register and order that the plaintiffs' returns be rectified to reflect/portray the plaintiffs as shareholders, an order for payment of dividends to the plaintiffs, general, exemplary/punitive damages and costs of the suit".***

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(i) *The plaintiffs severally between 1984 and 1997* **subscribed** *shares in the first defendant (then known as Centenary Rural Development Trust Ltd.) and dully paid up for shares subscribed as follows:—*

1st Plaintiff …………………………. 34071 shares.
30 *2nd Plaintiff …………………………. 129 shares.*
3rd Plaintiff …………………………. 101 shares.
4th Plaintiff …………………………. 120 shares.
5th Plaintiff …………………………. 51 shares.
6th Plaintiff …………………………. 40 shares.
35 *7th Plaintiff …………………………. 5 shares.*
8th Plaintiff …………………………. 313 shares.
9th Plaintiff …………………………. 100 shares.

10th Plaintiff .... 55 shares.
11th Plaintiff .... 55 shares.
12th Plaintiff .... 50 shares.
13th Plaintiff .... 51 shares.

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(ii) *At the time of the* ***subscription*** *and the payment of those monies the plaintiffs were led into paying the same by the defendants jointly who convinced them that* ***the money was to capitalize the first defendant and later make profits*** *whereupon receipt as evidence of payment of the shares were issued. Samples of the receipts* 10 *that were issued by the defendant then known as* ***Centenary Rural Development Trust (Ltd)*** *jointly with the 2nd defendant and in the some instances with the 3rd defendant are attached hereto as annexture Group D1.*

(iii) *In breach of the law and the first defendant's Memorandum and Articles of* 15 *Association, the first defendant has excluded the plaintiffs from participation in the management of its affairs by refusing to invite the plaintiff to its meetings. Copies of the Memorandum and Article of Association shall be produced and relied upon at the hearing.*

20 ***(iv)*** *Further, the first defendant has unlawfully refused to enter the plaintiff's names in the Register of the Members and the various returns filed with the Registrar of Companies (Copies of the returns to that effect are hereto annexed and marked "Annexture Group E".*

25 ***(v)*** *The first defendant has denied the plaintiff's access to the Company's Statutory Records kept with it thereby denying the plaintiffs information and full participation in the first defendant.*

(vi) *In light of the foregoing, the plaintiffs aver that their rights in the first defendant as* 30 *shareholders have been and continue to be infringed upon and they have suffered loss and damages."*

Paragraph 5 pleaded alternative claim as follows—

"In the alternative but without prejudice to the foregoing, the plaintiff's claim from the defendants jointly and severally the market value of the shares being the money payable by the defendants to the plaintiffs as money had and received together with interest thereon at the commercial rate and shall aver that the defendant's act constitute unjust enrichment and the plaintiffs are entitled to the value of their shares.

<u>Particulars:—</u>

(i) *The defendants received the money from the plaintiffs as being the amount of shares in the first defendant but to date the interest of the plaintiff (sic) has never been entered in the register and plaintiffs have never received dividends at all taking into account the market value of the shares to date.*

(ii) *The money was received by the defendants who held it to their use to date. The first defendant has since made enormous profits which it has invested in various ventures and projects.*

On the face of it, it would appear from these averments that some particulars alleging misrepresentation were pleaded by the plaintiffs in the two paragraphs. Secondly, it was these pleadings upon which the compromise for the 12 plaintiffs was reached and reduced into a consent judgment in favour of those 12 plaintiffs. However in their written statements of defence the three original defendants denied allegations by the appellant that he paid for shares and averred that the appellant and his co-plaintiffs contributed money to their diocese through their local parishes to enable the diocese to purchase shares for the dioceses. That is why each of the receipts issued in respect of each contribution made by the appellant between 1985 and 1997 bears the heading **"SHARES CONTRIBUTION."** In their plaint the appellant and his original co-plaintiffs' claim that they "Subscribed Shares" which is itself misleading. Receipts which were issued each year from 1984 to 1997 and which are on the record as exhibits bear **share contribution** not "**subscription for shares."** In his final judgment the learned Principal Judge considered the appellant's claim and what he was entitled to. The Principal Judge correctly found that the "(appellant)

was under the illusion that he had shares in the Bank which was not the case." Here the learned Principal Judge found as a fact that the appellant had no shares. That is to say, the appellant never purchased shares.

5 In the trial court the appellant {as PW1} gave evidence by way of sworn statements upon which he was orally cross-examined. According to the appellant he subscribed for shares following announcements in his church and on the basis of the information of Monsignor E. Kibirige (RIP) and the late Francis Pule (RIP) calling upon Christians to pay for shares. During cross-examination he explained how he made the contributions. He indicated, *inter*
10 *alia,* how there were radio announcements inviting him and others to subscribe for shares in the bank. He also got information of one John Sendaula in addition to that of Mgr. Kibirige (RIP) and the late Pule.

Witnesses for the respondent similarly made sworn statements to oppose the appellant's
15 claims. In their view, the appellant never bought shares. These are Mrs. Peninah T. Kasule who by 29/04/2004, was the Company Secretary of the Bank, Mr. Adriano Sibo, Chairman of the Bank from 1991 to 2002 having first been its Director from 1988 to 1991 and the late Msgr Emmanuel Kibirige. The latter explained the process of the formation of "the Trust" and later the Bank and how funds were raised. In the last Paragraph of his statement he
20 states that *"The Archdiocese has never at any one time sought to deprive the (appellant) of his* ***contribution,*** *which like that of any other Parishioner were securely protected under the preference share owners in the bank".* Mrs. Kasule explained the formation and the operation of the bank as a limited liability private company. In paragraph 5(iv) of her sworn statement, she indicates that the dioceses were often called upon to pay up their
25 shares and *"the dioceses reported of mobilization effort to this end through their* ***parishioners share contributions*** *paid either at the Centenary Bank branches or at the Dioceses ………."*

Under paragraph 6, she explained how from the minutes of the meetings it was clear that Dioceses used to do mobilization for **contribution** through fundraising.

It seems to me as I stated earlier, that the appellant pleaded some particulars of what he claimed were misrepresentation and he attempted to prove fraud and or misrepresentation.

In his testimony he stated that he was made to believe he was buying shares. In my considered opinion the fact that for more than ten years the respondent through its agents issued receipts acknowledging payment of appellant's money and describing each payment as **shares contribution** says a lot. I agree with the Court of Appeal that the appellant did not buy shares but he made contributions to the diocese which would be owners of shares. In the Court of Appeal, Okello, JA., reevaluated the evidence and found that (page1084) the appellant knew very well that he was one of the contributors and that he had put this in his letter dated 09/08/2000. It is a well known principle that the standard of proof required to prove fraud or misrepresentation in such cases is higher than proof on a balance of probabilities. ***See R.G. Patel Vs. Lalji Makanji (1957) EA 314*** at page 317 and the judgment of Wambuzi, C.J., ***in Kampala Bottlers Ltd Vs. Damanico (U) Ltd. — Supreme Court Civil Appeal No. 22 of 1992.*** In my view, the evidence adduced falls short of proof of fraud or misrepresentation. I believe that is why the learned Principal Judge found that **"it verges on fraud."** Obviously he was not satisfied with the appellant's evidence on fraud. I therefore agree with the Court of Appeal that the evidence adduced by the appellant did not prove either fraud or misrepresentation on the part of the respondent. The evidence adduced proved that he contributed money to his Archdiocese/diocese to enable the diocese purchase shares. All the receipts refer to all his payments as contributions for shares for the diocese (Archdiocese). It is dioceses which held shares in the Bank and not the appellant.

Accordingly ground four must fail. This really is the end of this appeal. The award of general and punitive damages has no proper basis. With respect I do not appreciate how

the learned Principal Judge was able to award those damages. The Court of Appeal was justified in reversing that decision.

Grounds 5 and 6 are worded as follows—

5 ***5. The Learned Justices of Appeal erred in fact and law in their judgment when they proceeded to entertain the respondent's appeal when the ruling on the preliminary objections raised during the trial and the final judgment date 9th March, 2005 were missing from the Court Record.***

10 ***6. The Leaned Justices of Appeal erred in law and fact in their judgment when they dismissed the appellant's suit in the High Court with costs.***

Counsel for the appellant essentially argues that because of the absence of the main judgment and the ruling on the objections raised in the High Court against the appellant's 15 claims, the Court of Appeal should have ordered for a retrial. Counsel also contended that because there was a compromise in the suit earlier in the High Court, the Court of Appeal should not have dismissed the appellant's suit. Messrs. Kawanga, Kasule & Co., Advocates, on behalf of the respondent, supported the decision of the Court of Appeal contending that the Court of Appeal was alive to the missing judgment and the ruling and 20 that the Court properly reevaluated the evidence before it allowed the appeal and dismissed the appellant's suit in the High Court. Learned counsel further argued, correctly in my opinion, that the Court had powers under S.11 of the Judicature Act to do what it did.

25 Ground 5 is about the trial judge's judgment dated 09/03/2005 which, as I have already stated, was preliminary to the final one which is dated 26/05/2005. This final judgment is on the record. Whatever the case, I have in effect considered this ground already. There is no substance in it because in the prayers in the plaint the appellant in effect wants to be considered as a shareholder in the bank, which on the evidence available, he is not. So 30 what would a retrial solve? Nothing. Counsel for the appellant refers to the consent judgment (compromise) in the High Court suggesting that the appellant's suit was settled

by that consent judgment in the High Court. As I understand it, the appellant as plaintiff did not enter into any compromise. The compromise on the record was in respect of his three infant daughters and the other plaintiffs. There would not have been a trial of the appellant's suit in the High Court if he was bound by the consent judgment.

On ground 6 my view is that since the respondent admitted in its defence and in the evidence that the appellant made contributions to shares for his diocese, I think that he is entitled to benefits arising from those contributions to the diocese. This is what the Court of Appeal held. In his counsel's written submissions to the trial Court on disinvestment the appellant agreed to disinvest. It was the figures which were in dispute. The appellant should be given what is due to him.

In his final judgment the learned Principal Judge worked out some details of disinvestment as follows and I quote—

"Accordingly, the plaintiffs' total claim is calculated as follows:

(1) Disinvestment:
Contributions of Shs.510,000x2,75=Shs.1,402,500/= as the new nominal contributions. That nominal contribution of Shs.1,402,500/= is multiplied by 6,667/= to yield ***Shs.9,350,467/=***

(2) Dividends:
(a) *Shs.510,000/= x 15% for 8 $^{1}/_{2}$ years (i.e. 1997 – June 2005) = 650,250/= subtract the arrears of Shs.65,265/= that was paid to Semyalo in 2001 (i.e. 650,250/= - 65,265/= =* ***Shs.585,000/=)***

(4) *Interest on the amounts in (1) and (2) above at the rate of 18% p.a. from the date of the filling of this suit until full payment."*

The total from these three, i.e.; 1, 2 and 4 is what the appellant is entitled to. I quote these figures to ease work and principally because these amounts were reduced into the trial Court's decree dated 26th May, 2005. That decree was signed by counsel for both sides and the Deputy Registrar of the Court.

Ground six should succeed.

I agree with the Court of Appeal that the appellant is not entitled to general and or punitive
5 damages.

From what I have held in this judgment, I would allow this appeal in part. I would order that in the peculiar circumstances of this case, parties should meet their respective costs here and in the two Courts below.

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Dated at **Kampala** this **……21st……** day of **December 2012.**

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J.W.N. Tsekooko.
15 **Justice of the Supreme Court.**