

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

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

CIVIL APPEAL NO 01 OF 2012

BETWEEN

BRITISH AMERICAN TOBACCO (U) LTD ::::::::::: APPELLANT

AND

1. SEDRACH MWIJAKUBI }

2. MUKITALE ASIIMWE }

3. JOSEPH BYANGIRE

4. FENEKASI BABYESIZA }

5. SOLOMON KIIZA }

RESPONDENT

[Appeal from the decision of the Court of Appeal at Kampala (Engwau, Twinomujuni and Nshimye, JJ.A) dated 12th August 2010 in Civil Appeal No 50 of 2008]

JUDGMENT OF ODOKI, CJ

This is an appeal against the decision of the Court of Appeal which dismissed with costs the appeal filed by the appellant.

The brief facts of the case as found by the Courts below are as follows. The respondents brought a suit on their own behalf and on behalf of numerous farmers of Tobacco in Masindi and Hoima Districts. They claimed that they were tobacco farmers contracted by the appellant to grow tobacco in Masindi and Hoima Districts for the

2004 season, They also claimed that they had written contracts from the appellant under which the appellant advanced loans to them to grow tobacco.

The respondents also claimed that the appellant supervised the growing and harvest of the tobacco, providing technical advice, along the way. At harvest all the tobacco had to be sold and or bought by the appellant at predetermined prices. For 2004 season the appellant Initially purchased some tobacco early in the season and then announced that it would not purchase any more tobacco from the farmers.

The respondents brought an action in the High Court to recover from the appellant the value of the tobacco they grew and delivered to the appellant's buying sheds but which the appellant refused to purchase, less the outstanding loans given to the farmers by the appellant. The respondents further sought interest on the said sums of money at the rate of 26% from 20th December, 2004 till payment in full and costs of the suit.

The appellant denied that the respondents were its contracted farmers. In the alternative, in case the respondents were appellant's contracted farmers, the appellant pleaded that the suit was premature as it informed the respondents that it was carrying out a verification exercise to establish that the said farmers grew the tobacco in question in accordance with their contracts, and the Tobacco (Control and Marketing) Act and Regulations.

The trial judge held that the appellant was liable to pay the respondents and the other farmers on whose behalf the action was brought, and in respect of whom, registration numbers with the appellant had been provided in exhibit P2 and P3, the value of the tobacco shown in those exhibits to have been delivered to the defendant's marketing sheds. There was a weight for each farmer shown but the value at the end was not proven given the fact that the tobacco was not *graded*. According to the said exhibits the value had been calculated at shs. 1 ,600. 00 per kilogramme.

The trial Court held further that it was more appropriate to take the price provided by the appellant which put the average price at Uganda Shs 1 200 per kilogramme. That price would be the multiplier with the kilograms delivered to the appellant's sheds as shown in exhibit P2 and P3. Offset from this sum would be the loan amounts advanced to each of the farmers by the appellant.

Lastly, the trial judge held that for each respondent and/or individual farmer's value of his tobacco crop for the 2004 season, interest would be paid thereon at the rate of 26% per annum on daily balances compounded monthly, in line with regulation 11(2) and (3) of the Tobacco (Control and Marketing) Regulations, S.1 35-1. The trial judge awarded costs of the suit to the respondents.

The appellant appealed to the Court of Appeal against the whole of the above mentioned decision on various grounds.

After the appeal had been heard, but before judgment was delivered on 27th July 2010 a compromise settlement and consent order was entered into by counsel for the appellant and the then counsel for the respondents M/s Muwema & Mugerwa Advocates. The consent order was filed in Court but was never signed nor sealed by the Court, On 29th July learned counsel for the appellant, Dr Byamugisha, wrote a letter to the Registrar of the Court of Appeal requesting him to sign and seal the consent order and advising the Registrar that the appeal was accordingly being withdrawn because of the compromise. On 12th August 2010, learned counsel for the respondent wrote a letter to the Registrar confirming that the matter had been resolved and the appellant should accordingly be discharged. However, on the same day 12th August 2010, the Court of Appeal delivered judgment in the appeal.

The Court of Appeal dismissed the appeal but set aside the rate of interest of 26% and substituted with it the rate of interest at 15% per annum on daily balances compounded monthly.

After judgment had been delivered, a group of farmers who had been beneficiaries of the compromise filed Civil Application No 175 of 2011 in the Court of Appeal challenging the filing of the appeal in the Supreme Court when they had discharged the appellant by deed of settlement signed on 5th October 2011. The seven applicants led by one Guzarwa Vincent filed the application against the current respondents except one Fenekasi Babyesiza. On 22nd October 2010,

the first, third and the fifth respondents wrote to M/s Muwema & Mugerwa Advocates withdrawing instructions from the advocates.

In a meeting held on 29th January 2011, the farmers of the Bunyoro Tobacco Farmers Association resolved to dissolve the then association headed by the first appellant and elected a new executive headed by one Hajji Nasur Rwebiiha. Application No 175 of 2011 is still pending hearing before the Court of Appeal.

The appellant being dissatisfied with the decision of the Court of Appeal appealed to this Court on grounds framed as follows:

"1. The learned Justices of Appeal erred in law in going ahead to deliver judgment in Civil Appeal No 50 of 2008 in total disregard of the mutual compromise and deed of settlement filed that had been withdrawn by the appellant in view of the compromise.

IN THE ALTERNATIVE;

2. The learned Justices of Appeal erred in law and fact when they held that the respondents and others that they represent were all contracted farmers of the appellant.

3. The learned Justices of Appeal erred in law when they failed to re-evaluate the evidence on record and came to their own findings of fact not supported by evidence that the respondents and others that they represent were all contracted farmers of the appellant

4. The learned Justices of Appeal misdirected themselves by relying on the evidence of PW1 and PW2 in determining that the respondents and others

that they represent were all contracted farmers of the appellant.

5. **The learned Justices of Appeal erred in law and in awarding excessive interest at the rate of 15%, having already found that there was no evidence to substantiate the award of interest at the Bank of Uganda minimum commercial lending rate. ”**

The appellant was represented by Mr. James Mukasa Sebugenyi with Mr. Michael Mafabi, while the respondents were represented by Mr. Peter Walubiri and Mr. Brian Masika. Counsel for the appellant argued ground one separately, grounds two, three and four together and ground five separately.

Ground 1: Validity of the Compromise Settlement and Consent Order

Submissions of the Appellant:

Learned counsel for the appellant submitted that on the 27th July 2010, a compromise settlement and a consent order were entered into by M/S Byamugisha & Co Advocates representing the appellant and M/S Muwema & Mugerwa Advocates for the respondents in order to resolve Civil Appeal No.50 of 2008. He pointed out it was confirmed as received by the Registrar Court of Appeal on 28th July 2010 although it was never signed nor sealed. Counsel recalled that Dr. Byamugisha of Byamugisha & Co. Advocates who was counsel for the appellant at the time even wrote to the court on the 29th July

2010 requesting the court to sign and seal the consent and advising the court that the appeal was accordingly being withdrawn because of

the compromise. On 12th August 2010, counsel for the respondents also wrote to the Registrar Court of Appeal confirming Dr. Byamugisha's letter that the matter had been resolved and that the appellant should accordingly be discharged. On the same day, (12th August 2010), the Court of Appeal delivered judgment in the same case. The judgment did not take into account the fact that there was a compromise between the parties, and yet they were aware of it as it had been filed on 28th July 2010. Counsel maintained that the Court had the opportunity to seek clarification, or even recall the parties for the clarification.

Counsel for the appellant cited the case of **Stephen Kasozi & Others vs. People's Transport Services**, Civil Appeal No.27 of 1993, in which the Supreme Court held that the duty of the Court was to recognise and take recognition of the compromise and consent. The Court went on to state that if it had reasons to reject the consent and compromise, it would call the parties and even go ahead to give reasons why it was rejected.

Counsel argued that this was a valid consent, which met the elements and ingredients of a compromise and consent, which include: (1) Who made the compromise and consent? (2) Its form (3) The subject of the compromise (4) The effect of the compromise (5) The capacity to enter into the consent (6) The consent compromise should be in relation to something that is uncertain (7) The compromise consent puts an end to proceedings and the suit in effect creating an element of **res judicata**. The compromise should also not

be in respect of a criminal matter. In this case counsel submitted, the consent was made and signed by the two counsels who had been handling the matter for five years both in the Court of Appeal and in the lower courts. The High Court in its judgment had given a formula for arriving at the figure for payment and the compromise was simply crystallising this. The two counsels had the ostensible authority to enter into the consent as was held in ***Equip Agencies Ltd vs. Credit Bank Ltd*** (2004) E. A. 61 where court held that advocates were recognised agents of their clients and had ostensible authority to compromise a suit. According to counsel, this authority is also supported by Order 4 of the Civil Procedure Rules.

Counsel for the appellant also informed the Court that the consent agreement has been approbated and enforced by some farmers. About 1000 farmers have been paid, amounting to 921,195,924 million shillings from the compromise sum on 4.6 billion shillings. He requested the Court in respect to this ground of appeal to fault the Court of Appeal for failing to recognise the compromise and endorse it. Counsel maintained that the appellant paid the money agreed upon in the compromise to counsel for the respondents who had started paying the farmers but was stopped by the Court of Appeal.

Counsel further submitted that the Court of Appeal caused confusion by not dealing with the compromise by either accepting or rejecting it, thereby allowing the parties to exercise different rights. He also held that the matter has been overtaken by events.

Submissions of the Respondents:

Counsel for the respondents began his arguments by noting that the respondents had been totally unaware of the compromise that was reached on their behalf as they had not been a part of any discussions that dealt with it. They then wrote to the Registrar Court of Appeal, informing him that judgment had been due on that day but that their lawyer had requested for an adjournment on the ground that there was a settlement that had been reached. In the letter, they reiterated their lack of knowledge about the settlement and declare it a nullity and invalid. He pointed that there is a stamp of the court receiving this letter on the 6th August 2010. On the same day, the respondents also instructed Nyanzi, Kiboneka & Mbabazi Advocates to represent them jointly with Muwema and Mugerwa and instructed them to attend court on 10th August to receive judgment.

On 12th August, Messrs Muwema and Mugerwa Advocates wrote to the Registrar and copied the new advocates, talking about the consent to be filed on court record. At that point none had been filed. Counsel for the respondents therefore contends that the Justices of the Court of Appeal cannot be faulted for proceeding to deliver their judgment. They had by then received notice that the purported compromise had not been done on the instructions of the respondents. Counsel referred to the case of **Neel v Gordon Lennox** (1902) A C 465 in which parties appeared before a judge and counsel stated that there was an agreement and referred the matter to a referee. Before the order could be drawn and endorsed

by Court, the plaintiff contested saying he had not consented to it. In their judgment in the House of Lords, the Lord Chancellor stated:

“The Court is asked for its assistance when this order is asked to be made and enforced that the trial of the case should not go on, and to suggest to me that a court of justice is so far bound by an authorized act of learned counsel that it is deprived of its general authority to do justice between the parties, is to my mind, the most extraordinary proposition that I ever heard.”

Counsel for the respondent emphasised the point the House of Lords was making that Courts are not bound to agree to a compromise signed by counsel without the authority of the client. He also referred to the case **Shepherd and Robinson** (1919) I.K.B 474 to support his point. Counsel submitted that after the consent was taken to Court and the registrars referred it to the Justices, and the respondents wrote and the letter went to the Justices, they were justified on the basis of this authority to reject the purported order and compromise and proceed to read their judgment.

Counsel for the respondent concluded by reiterating the submission that consents that are binding are those that have been endorsed by Court.

Consideration of the Submissions and the Law:

The appellants (British American Tobacco) contend that the Learned Justices of the Court of Appeal erred in delivering their judgment when a mutual agreement had been signed between the two parties

and had been filed in the Court. Even before the judgment had been read, the respondents, who are representatives in the suit, wrote to the Court denouncing the mutual agreement and claiming it had been signed without their consent. Meanwhile, there is a pending application before the Court of Appeal, **Miscellaneous Application No. 175 of 2012** in which the applicants are seeking **an order to rescind the appointment of the First, Second and Third Respondents as representatives of the beneficiaries**.

All these facts are relevant and have a bearing on this particular case. Before determining whether judgment should have been passed in this case, it is essential to determine whether there was a valid consent agreement. Counsel for the appellants stated that all the elements required before making a consent agreement were present, namely: (1) Who made the compromise and consent? (2) Its form (3) The subject of the compromise (4) The effect of the compromise (5) The capacity to enter into the consent (6) The consent compromise should be in relation to something that is uncertain (7) The compromise consent puts an end to proceedings and the suit in effect creating an element of **res judicata**.

The consent order itself, and the Deed of Settlement Compromise provide detailed terms including the amount of money to be paid to the respondents, and when it was to be paid. Both these documents are dated 27th July 2010 and are signed by Dr. Byamugisha, counsel for the appellant and the counsel for respondents.

As admitted by counsel for the appellant, the consent agreement was never signed nor sealed by the Court. In fact, counsel for the respondents in a letter to the Registrar, Court of Appeal, dated and stamped, 12th August 2010 he states: ‘ **For completeness, details of the settlement are included in a Consent to be filed on Court Record**’ (emphasis mine). This makes it clear that though the consent order may have reached the Court earlier, the details of the settlement had not been filed before 12th August 2010, which is the date on which judgment in Civil Appeal No.50 of 2008 was passed. In a letter to the Commandant at the Special Investigations Unit at the CID Headquarters, dated November 17 2011, the Registrar, Court of Appeal stated that **“the consent order though was presented and received by our registry on July 28 2010 has never been signed and sealed to be taken as valid.”**

It is not for us to speculate as to the reasons why the consent order was never signed or sealed. The Court of Appeal should have addressed itself on this matter in its judgment. Order 50 Rule 2 of the Civil Procedure Rules states that **In uncontested cases and cases in which the parties consent to judgment being entered in agreed terms, judgment may be entered by the Registrar.** Order 25 Rule 6 of the Civil Procedure Rules on compromise of a suit also states that:

“Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part

of the subject matter of the suit, the court may, on the application of a party; order the agreement, compromise or satisfaction to be recorded, and pass a decree in accordance with the agreement, compromise or satisfaction so far as it relates to the suit “

In **Wasike v Warn boko**, (1976-1985) E.A 625 reference was made to the case of **Chandless-Chandless v Nicholson** [1941] 2 All ER 315 at 317 in which Lord Green in his judgment states that **the universal practice is to record that a judgment or order is by consent ’**

The purpose of this is to validate the consent order since as was held in Ismail Hirani v Kassam [1952] EA 131, “where a compromise is recorded under Order 24 rule 6 (Now 025 r 6), the decree is passed upon a new contract between the parties superseding the original cause of action.”

Accordingly I am of the view that there was no valid compromise settlement and consent order.

In regard to the withdrawal of the appeal, the only information we have is a letter from Dr. Byamugisha, counsel for the appellant to the Registrar, Court of Appeal dated 29th July 2010 stating that **‘In view of your sealing the consent order and in consideration of the consent order, the appeal is hereby withdrawn by the Appellant, British American Tobacco Uganda Ltd.**

Withdrawal of appeals in the Court of Appeal is governed by rule 94 of the Judicature (Court of Appeal Rules) Directions SI 13-10 which states:

- “(1) An appellant may at any time after instituting his or her own appeal in the court and before the appeal is called on for hearing, lodge in the registry notice in writing that he or she does not intend further to prosecute the appeal.**
- (2) The appellant shall, before or within seven days after lodging the notice of withdrawal, serve copies of it on each respondent who has complied with rule 80 of these Rules.**
- (3) If all the parties to the appeal consent to the withdrawal of the appeal, the appellant may lodge in the appropriate registry the document or documents signifying the consent of the parties; and the appeal shall then be struck out of the list of pending appeals.**
- (4) If all the parties to the appeal do not consent to the withdrawal of the appeal, the appeal shall stand dismissed with costs, except as against any party who has consented, unless the court, on the application of the appellant, otherwise orders.**
- (5) An application under sub-rule (4) of this rule shall be made within fourteen days after the lodging of the notice of withdrawal.”**

Dr. Byamugisha’s letter does not state under which rule he was withdrawing the appeal but all the rules require further action from the party withdrawing the appeal. Rule 1 is supported by rule 2 which requires that a notice in writing is lodged in the registry and copies

served on the respondent. I do not think that this letter meets the requirement of a notice and in any case, there is no proof of copies being served on the respondent. Rule 3 similarly requires documents to be lodged in the registry. Moreover, the notice of withdrawal was lodged after the appeal had been called for hearing and was pending judgment. The rules are silent on withdrawal of appeals after the appeal has been called for hearing, but it should be possible with leave of the Court.

There was no ground of appeal in Court challenging the right of the current respondents to prosecute this appeal, nor was there any objection against them. On the contrary both counsels were ready and willing to proceed with the hearing of the appeal.

The fate of Miscellaneous Application No 175 of 2012 seems to have been over taken by events. It is therefore not necessary to consider whether the advocates for the respondents had authority to enter into the compromise or to represent the respondents in this Court. Accordingly I would dismiss the first ground of appeal.

Grounds 2, 3 and 4: Proof of Contracted Farmers:

Submissions of Counsel:

Learned counsel for the appellant combined grounds 2, 3 and 4 in his submissions. Counsel contended that learned Justices of Appeal erred when they relied on the evidence of a list which was constructed by the respondents which included farmers without

passbooks. He maintained that this therefore was secondary evidence that did not meet the standard of proof of a fact as spelt out in the Evidence Act. He also argued that the learned Justices failed to re-evaluate the evidence which had many discrepancies and these had been raised in the conferencing notes. He contended that both the High Court and the Court of Appeal had shifted the burden of proving the contracts on to the defendants contrary to the law. He relied on the decisions in **AKPM Lutava v Attorney General** Civil Appeal No 10 of 2002 (SC) **Mpuga Rukidi v Prince Solomon Iguru**; Civil Appeal No 18 of 1994 (1996) IKLR, **N Nsubuga v Electoral Commission**. (HCT-00-CV-EP 0034 of 2011 (HC).

On the other hand counsel for respondent argued that the Justice of Appeal who wrote the lead judgment carefully considered and evaluated all the evidence and submissions. He maintained that in regards to exhibits P2 and P3, the appellant did not object to their inclusion. He stated that under the Tobacco Regulations, the appellant was obliged to keep a record of their contracted farmers and therefore should have been able to raise contrary evidence which they did not do. It was his contention that this evidence was available and the justice was not shifting the burden of proof. Counsel further argued that contrary to the appellant's assertions, the lists were primary evidence, not secondary, and the discrepancies mentioned were dealt with by both the High Court and at the Court of Appeal.

Consideration of the submissions and the Law:

Counsel for the appellant submitted that the Court of Appeal simply accepted what the High Court said and did not re-evaluate the evidence as it is required by law.

In his lead judgment, Engwau JA stated:

“Having perused the evidence on record on this issue, submissions of counsel for both parties, the law involved, decided cases and the findings of the learned trial Judge, I have no justification to fault the trial judge who held that the respondents and other beneficiaries they represented were all contracted farmers of the appellant. In the premises, I would concur with the learned trial judge when he found ground 2 in favour of the respondents.”

Counsel for the appellant faulted the learned Judge of Appeal for not providing more reasoning and analysis of his decision. While it is prudent for judges to provide explanations for how and why they reached a certain decision, I am of the opinion that this is not an indication that the evidence was not properly re-evaluated, and is simply, as counsel for the respondent asserted, ‘a matter of style.’ However, I have carefully perused the leading judgment and found that he actually reevaluated the evidence of the two principal witnesses in detail and came to his own conclusion before he agreed with the findings of the trial Judge. The learned Justice ensured that he recounted the various points in contention and had them in mind when writing the judgment.

On the standard of the evidence presented, counsel for the appellant maintains that it had been agreed by both parties that production of a passbook was evidence of who was a farmer and who was not. He states that Court then departed from this and opted to rely on a list constructed by the respondents without the passbook. In court, only 214 passbooks were presented. He relied on Sections 100, 101, 103 of the Evidence Act as well as Sections 58, 60, 63. He maintained that both Courts did not appraise themselves of the law and ended up making an error on the law.

Counsel for the respondent submitted that the appellant had the opportunity to object to the evidence and did not, and therefore the evidence was tendered before court. The witnesses were also cross-examined and their evidence was unchallenged. They explained how they came about making the lists. The lists were handed to the appellant which was supposed to verify them but did not. He referred to the Tobacco Regulations 8(3) which states that “a **sponsor shall maintain records of all the growers with whom he or she has subsisting sponsorship agreements**”. And regulation 4 provides that “**the record referred in sub regulation 3 of this regulation shall include the names of the growers’ societies or other groups copies of identification cards of each grower and such other information as the Minister may determine**”. Learned counsel therefore maintained that the appellant was obliged to keep a record of the contracted farmers and once it was availed the lists, then it could easily

cross-check the names with their own list. Counsel also argued that these lists were in fact primary evidence if Section 61 of the Evidence Act is considered.

The provision of Section 103 of the Evidence Act are clear. They provide that, "*The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.*" The respondents sought to prove that the names were those of contracted farmers and therefore produced evidence to that effect. The appellant wanted court to believe some of these farmers were not contracted farmers but did not provide any evidence to this effect despite the fact that the law under the Tobacco Regulations 8(3) requires it of them. The Court could infer that the appellants must have reasons why they did not produce this evidence to rebut the evidence of the respondents. This does not amount to shifting the burden of proof on the appellant. On the whole therefore I am of the opinion that there was sufficient evidence to establish that the respondents were contracted farmers and the two courts below were justified in reaching concurring findings on this issue. Grounds 2, 3 and 4 have no merit and should therefore fail.

Ground 5: The Rate of Interest:

Counsel for the appellant submitted that the Learned Justices of Appeal erred in awarding the interest rate at 15% when the matter

had been resolved in the compromise where a rate of 10% was agreed upon. He contended that the Court therefore should not have interfered with the rate of interest.

Arguing ground 5 and the cross appeal counsel for the respondent submitted that the contract between the appellant and the respondents was a commercial contract and under the regulations if they did not pay promptly, they had to pay interest at commercial rate and compound interest at that Learned Counsel maintained that the 26% interest found by the High Court was justified and that the Learned Justices of Appeal had no justification for interfering with the findings of the High Court.

In *Attorney General vs. Virchand Mithalal & Sons* SCCA No.20 of 2007, Kanyeihamba JSC, stated,

In my opinion, a clear distinction needs to be made between the reasons for awarding a simple interest and those that justify an award of a compound interest in legal proceeding. A simple interest arises invariably when a party which is liable or owes money fails to pay what is due or on the date agreed stipulated is implied.

The learned Justice clarified that the award of compound interest depends on other facts;

“It is based on one or more of a multiplicity of reasons such as the law applicable to the transaction, the nature of the business transacted

or agreed between the parties, the construction of the agreement of contract made between the parties, the trade custom of the business out of which the lateness arose intentions of the parties or the consequences of the commercial transaction that was concluded between them”.

The learned Justice of the Supreme Court also referred the decision in **Wallersteimer v Moir** (No 2) [1975] All ER 849 at page 855, where it is stated as follows:

’Interest is never awarded by way of punishment. Equity awards it whenever money is misused by an executor or a trustee or whenever money is misused by anyone else in a fiduciary position who has misapplied the money or made use of it himself for his own benefit. The court presumes that the party against whom relief is sought has made that amount of profit which persons ordinarily do make in trade and in those cases the court directs interest to be paid [compound interest].

In **Attorney General vs Virchand Mithalal & Sons** (supra), Kanyeihamba JSC, observed that:

“unless there is an error of fact or in law, appellate courts hardly ever interfere with the trial court’s discretion to award interest on terms and conditions the court deems justifiable on the facts and circumstances of a particular case. ”

I am persuaded by the above authorities. I agree with the view that appellate Courts should not interfere unnecessarily with the trial Court’s award of interest because it is based on judicial discretion.

The trial Court had based its findings on The Tobacco (Control and Marketing) Regulations, where Rule 11: states:

"11. Mode of payment of growers.

(1)

(2) Where a sponsor defaults in payments as provided under sub regulation (1) of this regulation, he or she shall pay interest on the purchase price in respect of the period of payment, which interest rate shall be calculated at a rate equivalent to the Bank of Uganda minimum commercial lending rate.

(3) The interest payable under sub regulation (2) of this regulation shall be calculated on daily balances compounded monthly with an additional margin of 2 percent.

In the lead judgment, the learned Justice of the Court of Appeal when dealing with this issue had this to say:

"According to the evidence on record it was incumbent upon the respondents to adduce evidence regarding the Bank of Uganda minimum commercial lending rate at the time. In my view, this evidence is lacking. An award of 26% as an interest though pleaded in this case, is on the high side without evidence of the Bank of Uganda minimum commercial rate. I would set aside the award of interest at the rate of 26%. I would substitute the rate of interest at 15% per annum on daily balances compounded monthly, in line with regulation 11 (2) and (3) of the Tobacco (Control and Marketing) Regulations S1. 35- 1."


I am unable to fault the reasoning and conclusion reached by the Court of Appeal on the issue of the appropriate rate of interest in this case. Accordingly I would dismiss ground 5.

In the result I find no merit in this appeal. I would dismiss it with costs in this Court and in the Courts below.

Decision of the Court:

As the other members of the Court agree with my judgment, this appeal is dismissed with costs in this Court and in the Courts below.

This 20th day of June. 2013.

Dated at Kampala

B J Odoki
CHIEF JUSTICE

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

AT KAMPALA

**CORAM: ODOKI, C.J, KATUREEBE,
KITUMBA, TUMWESIGYE**

AND KISAAKYE, JJ.S.C)

CIVIL APPEAL NO 01 OF 2012

BETWEEN

BRITISH AMERICAN TOBACCO (U)

LTD :::::::::::APPELLANT

AND

1. SEDRACH MWIJAKUBI

[Appeal from the decision of the Court of Appeal at Kampala (Engwau, Twinomujuni and Nshimye, JJ.A) dated 12th August 2010 in Civil Appeal No. 50 of 2008]

JUDGMENT OF KATUREEBE, JSC

I have had the benefit of reading, in draft, the judgment of my Lord the Chief Justice and I agree with him that the appeal has no merit and should be dismissed.

Dated at Kampala this ...20th day of June.....2013

BART M. KATUREEBE

JUSTICE OF THE SUPREME COURT

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

**(CORAM: ODOKI Cj, B.M KATUREEBE, C.N.B KITUMBA, J.TUMWESIGYE AND
E. KISAAKYE, JJ.S.C.)**

CIVIL APPEAL NO. 01 OF 2012

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RESPONDENTS

***[Appeal from the decision of the Court of Appeal at Kampala (Engwau,
Twinomujuni and Nshimye JJA) dated 12th August 2010 in Civil Appeal No. 50 of
2008]***

TUDGMENT OF KITUMBA, TSC.

I have read in draft the judgment of my Lord the Chief Justice, I concur with
it and the orders proposed therein.

Dated at Kampala, this----20th-----day of-----June-----2013

C.N.B. KITUMBA

JUDGE OF THE SUPREME COURT

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

**(CORAM: ODOKI, C.J.; KATUREEBE; KITUMBA;
TUMWESIGYE AND KISAAYE; JJSC.)**

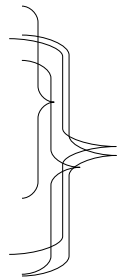
CIVIL APPEAL NO. 01 OF 2012

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**BRITISH AMERICAN TOBACCO (U)
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AND

**MUKITALE
ASIIMWE
JOSEPH
BYANGIRE
FENEKASI
RABYESIWA**



JUDGMENT OF TUMWESIGYE, JSC

I have had the benefit of reading in draft the judgment prepared by the learned Chief Justice, B.J. Odoki and I agree with it and the orders he has proposed.

Dated at Kampala this.....20th....day of.....June.....2013

JOTHAM TUMWESIGYE

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

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

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

BETWEEN

BRITISH AMERICAN TOBACCO (U) LTD:.....:
APPELLANT

AND

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RESPONDENTS

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of 2008]***

JUDGMENT OF DR. E. KISAAKYE, JSC

I have had the benefit of reading in draft the

w 1 concur with him that this appeal should be dismissed. I also agree with Orders he has proposed.

Dated at Kampala this.....20th day of June2013.

DR. ESTHER KISAAKYE JUSTICE OF THE SUPREME COURT