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

(CORAM: OWINY-DOLLO, C.J; MWONDHA; TIBATEMWA; TUHAISE;
CHIBITA; JSC.)

10

CIVIL APPEAL NO.10 OF 2020

BETWEEN

OSMAN KASSIM RAMATHAN :::::::::::::::::::::::::::::::::::APPELLANT

AND

CENTURY BOTTLING COMPANY LIMITED ::::::::::::::::::::::::::: RESPONDENT

15 *[Appeal from the Judgment of the Court of Appeal at Kampala (Egonda Ntende, Elizabeth Musoke, Hellen Obura, JJ.A.) dated 19th August 2019 in Civil Appeal No.0040 of 2010]*

JUDGMENT OF MIKE J. CHIBITA, JSC.

This is a second appeal against the decision of the Court of Appeal that dismissed the Appellant's appeal against the decision of Hon. Justice
20 Kiryabwire in the High Court in H.C.C.S No.431/2006 in a claim for special damages of UGX 404,720,567/= for breach of contract.

Background:

The background giving rise to this appeal is that; on 29th June 1999, a partnership of 1970 comprising of three brothers namely Mustapha Ramathan,
25 Ahmed Ramathan and Kassim Ramathan; trading as Bombo Wholesalers

5 executed an exclusive agency agreement with the Respondent, Century Bottling
Company Limited to distribute its products as an agent over a defined territory.
Kassim Ramathan later registered M/s Top Bombo Wholesale on 25th April,
2005, which executed a Manual Distribution Centre agreement(MDC) on the
same day with the Respondent. Both Ahmed and Kassim passed on in 1994 and
10 25th June, 2005 respectively. On 8th July, 2005, a notice of cessation of business
for Bombo Wholesalers was registered and the entity ceased to exist. On 20th
July 2005, Bombo Wholesale Limited was incorporated by the appellants.

In 2006, Mustapha Ramathan (now deceased) trading as Bombo Wholesalers
together with the appellant instituted HCCS No. 431 of 2006 against the
15 respondent. The appellant as alleged in paragraph 2 of the plaint sued as a
beneficiary of the estate of the late Kassim Ramathan, who was trading as
Bombo Wholesalers.

The Appellant together with Mustapha alleged that the Respondent breached
the contract premised on the agency agreement of 1999 wherein they were
20 trading under the business name of Bombo Wholesalers. They claimed for
general damages for breach of contract, special damages of UGX 404,720,567/=
for unpaid sums of money, loss of business and profits, interest and costs.

In particular, the special damages claimed were; a refund of UGX 166,100.00
for soda and empties, UGX 5,520,000.00 as refund in respect of 600 crates of
25 soda ordered and paid for, UGX 1,739,867.00 being VAT payments, UGX
6,319,800.00 being loss of gross profit, UGX 5,520,000.00 being refund for soda
paid for and delivered, UGX 250,000.00 being transport and telephone costs,
UGX 1,800,000.00 being salaries paid to members of staff, UGX 35,356,800.00
being payment in lieu of notice and UGX 353,568,000.00 being loss of future
30 earnings for ten years.

5 The respondent on the other hand denied liability under the said agreement. However, it also averred that the relationship between the parties was based on the 2005 MDC agreement which it did not breach. The suit was partially successful. The Learned trial Judge found that the 1999 agreement was inoperative at the time of the dispute. However, that the relationship between
10 the parties was governed by the 2005 MDC agreement which had rendered the 1999 agreement inoperative. Court relied on Order 1 rule 9 of the Civil Procedure Rules on misjoinder or non-joinder of parties and found that since the appellant sued as a beneficiary of the estate of the late Kassim Ramathan he was also a managing director of M/s Top Bombo Wholesalers, whereas
15 Mustapha was a major player in M/s Top Bombo Wholesalers as well. Court therefore found that the respondent terminated the MDC agreement without notice and awarded the appellants general damages of UGX 5,000,000/= for breach of the agreement. He also awarded special damages of UGX 5,520,000/= for 600 crates which the appellants had ordered and paid for, which amount
20 was admitted for refund by the respondent.

The trial Judge declined to grant the remaining sums claimed as special damages. He found that no evidence was lead by the appellants to support the claims and that even the accounts in the audit report of PW3 were for M/s Bombo Wholesalers and not M/s Top Bombo Wholesalers, and there was no
25 nexus made between the two entities in the accounts.

Court also awarded the appellants 50% of the taxed bill of costs.

Being aggrieved with the decision of the learned trial Judge for the award of Special damages; the appellants appealed to the Court of Appeal vide Civil Appeal No. 40 of 2010. Court found no evidence to support the claims. Court

5 also found that this action was based on the 1999 agreement and not the MDC agreement. The appeal was therefore dismissed with costs hence this appeal.

Grounds of appeal

The appellant's appeal is based on two grounds:

- 10 1. That the honourable learned Justices of the Court of Appeal erred in law in holding that no evidence was adduced and/or led by the appellant to support a claim for special damages for the lost revenue and income.
- 15 2. That the honourable learned Justices of the Court of Appeal erred in law when they failed to subject the evidence to fresh scrutiny and wrongly arrived at erroneous decisions.

The Appellant prays that the appeal is allowed, the judgment and orders of the Court of Appeal be set aside. He also prayed for costs.

Representation

20 At the hearing the Appellant was represented by Mr. Richard Omongole while the Respondent was represented by Mr. Earnest Kalibbala. Both parties filed written submissions which they adopted at the hearing.

Submissions:

Appellant's Submissions

25 The appellant submitted on both issues independently. However, before submitting on these grounds, he re-echoed the duty of the second appellate

5 Court and relied on the case of **Henry Kifamunte Vs Uganda Criminal Appeal No.10/1997**.

Ground 1.

Counsel for the Appellant faulted the Learned Justices of the Court of Appeal for upholding the decision of the High Court that there was no evidence adduced
10 by the Appellant to support the claim for special damages.

Counsel submitted that the Appellate Court in reviewing and scrutinizing the evidence, should have noted the inter-change in the use of the names of the business agency and should have done the same in assessing the damages. Counsel stressed the fact that the special damages were proved by the Auditor
15 PW3. Counsel submitted that attention should have been drawn to the transactions that had taken place through the receipts, payments and the audit report given that special damages must be pleaded and strictly proved. Counsel relied on the case of **Kampala City Council Vs Nakaye (1972) EA 446** to support his submission.

20 Counsel submitted that the Appellant's business was a going concern and profitable which was proved by the evidence of PW1 and PW3. He argued that the loss of income and profit was a direct result of the reduction of the distribution routes by the Respondent. Counsel relied on the case of **Victoria (Windsor) LTD V Newman Industries Ltd & Coulson & Co Ltd (1949) 2**
25 **ALLER 528** and **Joseph Musoke V Departed Asian Property Custodian Board SCCA No.1 of 1992** to buttress this argument.

Counsel submitted that the business operated using documentation relating to all the business that is, Bombo Wholesalers, Top Bombo Wholesale used

5 interchangeably or involved in a partnership business and that all accounts and payments remained in the names of Bombo Wholesalers.

Counsel therefore invited this Court to allow the appeal.

Ground 2

Counsel submitted that learned Justices erred when they failed to properly
10 subject the evidence to fresh scrutiny thereby arriving at an erroneous decision. Counsel submitted that it is the duty of the first appellate Court to subject the evidence to a fresh scrutiny and make its own findings and to arrive at its own conclusion. Counsel relied on the case of **Henry Kifamunte Vs Uganda, (Supra), Muluta Joseph V Katama Sylvano SCCA No. 11 of 1999 and**
15 **Narsensio Begumisa & 3 others V Eric Tibegega SCCA No.17 of 2002.**

In that regard, the learned Justices failed to evaluate and scrutinize the evidence regarding loss of income and profits as a result of the respondent's breach as adduced by the Auditor PW3. Counsel submitted that they also failed to scrutinize the evidence in regard to the use of one bank account for all the
20 business enterprises. Counsel argued that the business operated using documentation relating to all business that is Bombo Wholesalers Limited and that all accounts and payments remained in the name of Bombo Wholesalers which the respondent accepted.

Counsel therefore invited the Court to look into the findings of both the trial
25 and appellate Courts hence allowing the appeal that the appellant is entitled to special damages having pleaded and proved the same.

Respondent submissions

5 **Ground 1**

Counsel for the Respondent opposed the appeal. He noted and submitted that the appellant did not appeal against or complain about a finding of the learned trial judge that the 1999 agreement was not operational and therefore was not breached or that what was found to be operational was the 2005 MDC
10 agreement.

Counsel argued that the issue before Court was proof of special damages not re-evaluation of evidence. Counsel submitted that special damages must not only be pleaded but must be strictly proved and not presumed to flow from alleged acts of a defendant. Counsel relied on the case of **Kampala City Council Vs Nakaye (Supra)** and **Joseph Musoke V Departed Asian Property Custodian Board (Supra)**.
15 **Board (Supra).**

Counsel submitted that whereas in Paragraphs 5(f), 6, 8, 9, 11, 13 and 14 of the Plaintiff, the Appellant claimed special damages of UGX 166,100, UGX1,739,866, UGX 6,319,800, UGX 5,770,000 only 5,520,000 admitted by the Respondent,
20 UGX 1,800,000, UGX 35,356,800 and UGX 353,568,000 respectively totalling to UGX 404,720,567 no supporting evidence was availed.

Counsel submitted that on UGX 166,100, relating to handover of "CBC's property", no iota of evidence was given to support the claim and that the evidence given clearly shows that it related to handover of the respondent's
25 property. How can a claim arise when the respondent was taking back his property? On UGX1,739,866 as alleged VAT payments on behalf of the respondent, non were made by Bombo Wholesalers and the documents did not refer to the respondent. Relating to UGX 250,000 no evidence was offered at trial nor on appeal. On UGX 6,319,800 as alleged loss of gross profit, it was

5 marred with inconsistencies with its computation. On UGX 1,800,000 claimed
as salaries of former employees, counsel submitted that this was not supported
with any evidence relating to Bombo Wholesalers. On UGX 35,356,800, alleged
12 month's payment in lieu of notice, he submitted that such a claim would stem
from the agreement and the 1999 agreement never provided the same and, in
10 any event, the 1999 agreement ceased to operate. The claim was therefore
baseless. On UGX 353,568,000 for future earnings, he argued that evidence in
support of the same was lacking in amplitude and was speculative.

Regarding the evidence of the audit report as stressed by counsel for the
appellant, counsel submitted that the same was prepared during the pendency
15 of the suit. The suit was filed on 21st July, 2006 and the report was done in
December, 2006. Counsel argued that it was not based on reliable principles
and did not consider the before and after picture i.e the trading in 2004 and
2005 to compare it with 2006. There was no reasonable basis showing prior
trading upon which the claim for lost profits could be mounted with any degree
20 of uncertainty. The accounts did not consider the previous performance of the
entity. He also contended that it was not possible for an entity that had ceased
trading in 2005 to trading in 2006. The courts were therefore faced with an
audit report and accounts which were of little or no evidential value.

Counsel submitted that expert witness is to provide an independent assistant
25 to the court. That expertise ought to be unbiased, impartial and objective
evidence. If it's based on illogical or even irrational reasoning, it is unreliable
and the court may reject it. Counsel relied on the case of **Kagina V Kagina and
another No.300 of 2013.**

He submitted that it was not enough to throw figures to court without proof;
30 there was no connection in accounts between Top Bombo Wholesale, Bombo

5 Wholesale and Bombo Wholesale Limited as the evidence presented was hazy, disjointed and unrelated; found unreliable or non-existent or insufficient by both the trial Judge and Court of Appeal.

Counsel submitted that there was no evidence to prove specific damages and it was not borne out of failure to properly evaluate evidence but lack of
10 supportive evidence.

Counsel prayed that this Honourable Court finds no merit in the ground and dismisses the same.

Ground 2

Counsel submitted and re-echoed the duty of the first appellate Court to review
15 the evidence and consider the materials before the trial Court.

Counsel submitted that the basis of counsel for the appellant's argument that the appellant in one way or another operated using the different business names which was acceptable by the respondent is false and not founded on the record. Counsel also submitted that since there is no appeal against the 1999
20 agreement, it was not breached and hence no claim premised on it has a basis. Counsel submitted that there was also no breach of the 2005 agreement in respect of reduction in the territory.

Counsel submitted that the Court of Appeal pointed out its duty and duly executed the same. Counsel argued that the Court of Appeal scrutinized all the
25 heads of special damages claimed and arrived at a finding that they were based on lack of supportive evidence.

Counsel submitted that it is trite law that the second appellate Court's duty is to evaluate whether the first appellate Court carried out its duty. He submitted

5 that the judgment of the Court of Appeal reflects that the Court of Appeal carried out its duty.

Counsel invited the Court to find that the Court of Appeal did not error in law because it subjected the evidence to fresh scrutiny thereto, arriving at a correct decision.

10 **Appellant's submissions in Rejoinder**

Counsel for the Appellant reiterated his earlier submissions and emphasised that the claim was enjoined to substantive justice. He argued that the names were just a formality but the substance was that it was the same business entity run by the same people. Counsel buttressed his argument on **Article 126 (2)**
15 **(e) of the Constitution of Republic of Uganda, 1995.**

Consideration of Court

I have considered the record of appeal, the submissions and authorities cited by the parties.

The mandate of this Court as reiterated in the law and a plethora of cases is well
20 settled, not to interfere with the findings of fact by the first appellate Court; only where the first appellate Court has erred in law or failed to re-evaluate or apply the evidence as a whole to a fresh scrutiny. In **Galleria in Africa Limited V Uganda Electricity Distribution Company Limited Civil Appeal No. 08 of 2017** this Court held that;

25 *".....except in the rarest of the rare cases, a second appellate Court is not required to re-evaluate the evidence like a first appellate Court.*

5 ***On the second appeal, it is sufficient to decide whether the first appellate Court, approaching its task, applied or failed to apply such principles.....”***

I shall now proceed to resolve the grounds bearing in mind the above principle.

The gist of this matter relates to a claim for special damages by the appellant.

10 The appellant raised two grounds of appeal; In ground one the appellant faults the learned Justices for finding that was no evidence adduced to support a claim for special damages. In ground two, that the learned Justices failed to re-evaluate the evidence to a fresh scrutiny. I shall handle them simultaneously since they are related.

15 This Court has stated in the case of **Makubuya Enock William (T/A Polla Plast) v UMEME (U) Limited**. SCCA No. 1 of 2019, that:

20 ***“special damages relate to past pecuniary loss calculable at the date of trial. They are awarded to cover financial loss that can be actually ascertained in terms of monetary cost. It is compensation to cover financial losses covered.”***

The general rule on special damages is that it must be specifically pleaded and strictly proved. See **Musoke V Departed Asians Property Custodian Board & Another (Supra)** citing **Kampala City Council V Nakaye (Supra)** at page 4242, Seaton JSC observed that:

25 ***“... such loss depends in part, at least, on special circumstances of the case.***

5 ***It must therefore always be explicitly claimed on pleadings, and at the trial it must be proved with evidence both that the loss was incurred and that it was the direct result of the defendant's conduct..."***

10 The basis of the award of special damages is the evidence given to prove the actual damage and to note that the Defendant's/respondent's conduct was primarily responsible. The appellant therefore ought to have spent the claimed monetary costs.

15 The Appellant faults the learned Justices for having found that there was no evidence adduced to support the claim of special damages for lost income and revenue; which are UGX 166,00.00 for soda and empties, UGX 1,739,867.00 being VAT payments, UGX 6,319,800.00 being loss of gross profit, UGX 250,000.00 being transport and telephone costs, UGX 1,800,000.00 being salaries paid to members of staff, UGX 35,356,800.00 being payment in lieu of notice and UGX 353,568,000.00 being loss of future earnings for ten years. He therefore argued that the Court of Appeal's judgment was in isolation of the evidence on record.

20 Counsel further argued that the business names as evidence were used interchangeably and were just a formality but the substance was that it was the same business entity with the same account. He relied on **Article 126 (2) (e) of the Constitution**.

25 I note that the learned Justices in resolving the matter, were alive to their duty as the first appellate Court in reaching their independent decision.

 Court re-evaluated each amount of money claimed together with the evidence on record and found that there was no evidence to support the above claims. Furthermore, the learned Justices also found that the suit was originally

5 brought in the name of Bombo Wholesalers and was premised on the 1999 agreement which was inoperative and that the contention by the appellant that three entities that is **Bombo Wholesale, Top Bombo Wholesale, and Bombo Wholesale Limited** are the same was indefensible.

10 It is important to state from the outset that **Article 126 (2) (e) of the Constitution** which is in regard to administering substantive justice without undue regard to technicalities is applied **subject to the law**. See **Mulindwa George William v Kisubika Joseph. SCCA No. 12 of 2014**. Clause 2 is no license to ignore the existing law and circumvent the same on grounds of technicalities. A non-existent entity cannot maintain a cause of action because
15 it has no legal existence. Bombo Wholesalers which ceased operation on 8th July, 2005 and from which the suit was originally founded is simply now a mere name with no legal existence. The appellant in the circumstances cannot simply use it and sue on it as evidence. This is not a mere technicality to be cured by Article 126 (2) (e) of the Constitution.

20 The argument of the appellant that the names were just a formality and were used interchangeably and that the learned Justices should have done the same in assessing the damages is therefore untenable. The learned Justices can therefore not be faulted.

I now turn to the special damages. A perusal of the evidence on record shows
25 that there was no cogent evidence to support the claim for special damages. The appellant claimed UGX 166,100 for soda and empties. This is in relation to property handed over to the respondent. The evidence as annexure C only indicates the respondent's property/items that were handed back to the respondent upon termination of the MDC contract. The appellant failed to
30 specifically prove the said amount.

5 The appellant claimed 250,000/= for transport and telephone costs but no evidence was adduced to support and prove the same. He claimed 6,319,800/= as loss of gross profit and relied on the evidence of an audit report by PW3. This report gave a financial performance of Bombo Wholesale for the period of 6 months from January-June 2006. As at 30th June 2006, Bombo Wholesalers was
10 non-existent and bears no legal effect. This evidence can therefore not be relied on.

The appellant claimed 1,800,000/= for salaries of former employees. The evidence relied on by PW2 to support this claim were payment vouchers marked as exhibit P 6(i). However, the said exhibit was not availed to Court.
15 There was no supportive proof of the alleged expenditure or that the alleged persons received the money.

Relating to the claim of 35,356,800/= for payment in lieu of notice, this was not equally proved. However, the 1999 agreement upon which this claim was premised was inoperative and had automatically terminated upon the
20 dissolution of the partnership.

Regarding 1,739,867/= for VAT payments, there is no evidence to support that claim. The appellant relied on exhibits E1-E4. The exhibits however do not mention or directly attribute to the respondent. The computation of the payments amount to 1,393,395/=. The payments are in the names of different
25 entities, non was made by Bombo Wholesalers. Annexure E3 and E4 do not bare stamps to prove payments made. That notwithstanding, I note that most times VAT is a statutory tax obligation and not a compensatory payment for a loss or injury. In this case, there is no clear demonstration of the financial impact caused by the respondent to award special damages for VAT.

5 In relation to 353,568,000/= being loss of future earnings, no cogent evidence was adduced to support this claim. I note that this amount was not spent it was just anticipated and purely speculative.

The totality of the evidence is that the appellant did not prove the special damages and therefore the learned Justices cannot be faulted.

10 I also note that it is common ground that the suit was brought in the name of Bombo Wholesalers and was premised on the 1999 agreement between the parties. I therefore share the same view with the learned Justices that the claim or breach thereto could only arise from the 1999 agreement then and only during the operation of Bombo Wholesalers. To successfully claim the special
15 damages for breach, the appellant had to show that the contract and business were still in existence which was not the case here.

I therefore find that the learned Justices properly re-evaluated the evidence and rightly found that there was no evidence adduced to support the claim for special damages for lost revenue and income. As a result, both ground one and
20 two fail.

In the circumstances, since all the grounds fail, the appeal is dismissed with costs to the Respondent.

Dated at Kampala this18th..... day ofJune....., 2024

25 

Hon. Mike J. Chibita

JUSTICE OF THE SUPREME COURT

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THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

**Coram (Owiny-Dollo, CJ, Mwendha, Tibatemwa-Ekirikubinza,
Tuhaise, Chibita, JJ.SC)**

CIVIL APPEAL NO. 10 OF 2020

OSMAN KASSIM RAMATHANAPPELLANT

VERSUS

CENTURY BOTTLING COMPANY LIMITED.....RESPONDENT

(An appeal arising from the judgment of the Court of Appeal in Civil Appeal No. 0040 of 2010 before Egonda-Ntende, Musoke and Obura, JJA, dated 19th August 2019)

JUDGMENT OF FAITH MWONDHA, JSC

I have had the benefit of reading in draft the judgment of my learned brother Chibita, JSC. I concur with the analysis and decision that the appeal would be dismissed. I also concur with the orders proposed.

Dated at Kampala this18th.....day ofJune.....2024.

.....*Faith Mwendha*.....

Faith Mwendha

Justice of the Supreme Court.

Delivered by the Registrar

[Signature]
Reg

18/8/24

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CORAM: OWINY-DOLLO CJ; MWHONDA, TIBATEMWA-EKIRIKUBINZA, TUHAISE AND CHIBITA JJSC

CIVIL APPEAL NO. 10 OF 2020

OSMAN KASSIM RAMATHAN.....APPELLANT
VERSUS

CENTURY BOTTLING COMPANY LIMITED..... RESPONDENT

(Arising from the decision of the Court of Appeal in Civil Appeal No. 40 of 2010 before Egonda-Ntende, Musoke and Obura JJA dated 19th August 2019)

JUDGMENT OF OWINY-DOLLO; CJ

I have had the benefit of reading in draft the judgment of my learned brother Chibita, JSC, and I concur with the reasoning, conclusions, and orders proposed therein.

Since Mwondha, Tibatemwa-Ekirikubinza, Tuhaise, JJSC, also agree, orders are hereby issued in the terms proposed by Chibita JSC in his judgment.

Dated, and signed at Kampala this ^{18th} day of ^{June}..... 2024


Alfonse C. Owiny - Dollo

Chief Justice

Delivered by the registrar

Ref
18/6/24

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
(CORAM: OWINY-DOLLO, CJ, MWONDHA; TIBATEMWA-EKIRIKUBINZA;
TUHAISE; CHIBITA; JJSC)

CIVIL APPEAL NO. 10 OF 2020

OSMAN KASSIM RAMATHAN.....APPELLANT

VERSUS

CENTURY BOTTLING COMPANY LIMITED.....RESPONDENT

(An appeal arising from the judgment of the Court of Appeal in Civil Appeal No. 40 of 2010 before Egonda-Ntende, Musoke and Obura, JJA, delivered on 19th August 2019)

JUDGMENT OF PERCY NIGHT TUHAISE, JSC.

I have had the benefit of reading in draft the Judgment prepared by my learned brother Justice Mike Chibita, JSC.

I agree with his decision and conclusions that this appeal be dismissed with the orders given therein.

Dated at Kampala, this^{18th}..... day of.....^{June}.....2024.


.....
Percy Night Tuhaise
Justice of the Supreme Court

Delivered by the Registrar

Rg
18/6/24

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THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

**[CORAM: OWINY-DOLLO, C.J; MWONDHA; TIBATEMWA-
EKIRIKUBINZA; TUHAISE; CHIBITA; JSC.]**

CIVIL APPEAL NO.10 OF 2020

10 **BETWEEN**

OSMAN KASSIM RAMATHAN :::::::::::APPELLANT

AND

CENTURY BOTTLING COMPANY LIMITED :::::::::::RESPONDENT

15 *[Appeal from the Judgment of the Court of Appeal at Kampala in Civil
Appeal No.0040 of 2010 before Hon. Justices: Egonda Ntende, Elizabeth
Musoke and Hellen Obura, JJ.A dated 19th August 2019.]*

JUDGMENT OF PROF. TIBATEMWA-EKIRIKUBINZA, JSC.

20 I have read in draft the judgment of my learned brother, Hon. Justice
Mike Chibita, JSC and I agree with his conclusion that the appeal be
dismissed with costs to the Respondent.

25 It is evident from the Record that the Appellant comes to this Court on
two grounds which are identical to what he presented at the Court of
Appeal. The grounds focused on the claim for special damages. The case
of the Appellant is that the Court of Appeal failed to re-evaluate the
evidence supporting the said claim. The question which follows for



5 determination is: *Did the Court of Appeal – as the first appellate court – fail to carry out its duty of re-evaluation?*

The first appellate court has a duty to re-evaluate the evidence as a whole, subject it to a fresh scrutiny and reach its own conclusion.¹

10 A reading of the Record as well as the judgment of the Court of Appeal indicates that the Court thoroughly scrutinized and re-evaluated the evidence presented by the Appellant to support his claim for special damages. It is thereafter that the Court arrived at the finding that the Appellant's evidence did not support the claim.

15 I note that the above finding of the Court of Appeal was similar to that of the Trial Court; and it is trite law that an appellate court will not interfere with the concurrent findings of two lower courts unless it is satisfied that the two courts applied wrong principles of law in coming to that finding or that the finding is not supported by evidence.² I have found no reason to depart from the concurrent finding of the lower
20 courts.

I therefore come to the conclusion that the appeal before Court ought to be dismissed.

Dated at Kampala this^{18th} day of^{June} 2024.

25

.....^{L. Tibatemwa}
HON. JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT.



¹ Selle vs. Associated Motor Boat Co. [1968] E.A 123; Sanyu Lwanga Musoke vs. Galiwango SCCA No.48 of 1995; Banco Arabe Espanol vs. Bank of Uganda SCCA No.8 of 1998.

² See: Patrick Mukasa vs. Andrew Douglas Kanyike SCCA No.13 of 2022; The Estate of the Late Charles James Mark Kamoga & ano vs. AG & 7 Ors SCCA No.01 of 2022; Maddumba vs. Wilberforce Kuluse SCCA No.9 of 2002.

Delivered by the Registrar
[Signature]
Reg