**THE REPUBLIC OF UGANDA,**

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

**(COMMERCIAL DIVISION)**

**CIVIL SUIT NO 157 OF 2012**

**JADE PETROLEUM LTD}...........................................................................PLAINTIFF**

**VERSUS**

**SALIM RAMZANLI t/a S.R. PETROLEUM}..........................................DEFENDANT**

**AND**

**KIMSAM INVESTMENT (U) LTD}.......................................................THIRD PARTY**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**JUDGMENT**

The Plaintiff filed this action against the defendant for special damages of US$46,623 arising from alleged fraud and conversion of the defendant or the agent and servants of the defendant acting in the course of their employment at the material times of the plaintiff’s petroleum products.

The plaintiff’s case as disclosed in the plaint is that the plaintiff was at all material times the owner of petroleum products contained in consignment note/delivery note number 14371. On 11th of March 2011, the plaintiff loaded 31,000 L of petroleum products i.e. automotive gas oil in Mombasa shell terminal on motor vehicle registration numbers KBL 743M/ZD 4094 belonging to the medal carriers Ltd which petroleum product was for sale in Uganda.

On 19th March, 2011, the consignment of petroleum products arrived in Kampala, and the product was diverted, offloaded by unknown persons in collusion with the driver of the lorry and the petroleum products were offloaded at the defendant's petrol station at Kyengera on Kampala/Masaka Road. The plaintiff was alerted that the product had not reached its destination and immediately informed one of the employees to trace the whereabouts of the product whereupon he discovered that the truck was offloading the petroleum products at the defendant's petrol station. The defendant was notified that the product belonged to the plaintiff according to the consignment/delivery notes given to the agent of the defendant. The servant/agent acknowledged receipt of the product in the presence of the plaintiff’s agent. The plaintiff’s case is that the persons who sold the petroleum products to the defendant were not authorised to do so and neither were they agents or employees of the plaintiff and in fact did not remit any proceeds of sale to the plaintiff. In the premises the plaintiff claimed for general and special damages of US$46,623 arising out of the defendants conversion of the petroleum products, costs of the suit and interest on all monies at 25% per annum from the date of the cause of action as well as any other remedies that the court may deem fit to grant.

The written statement of defence of the defendant merely denies the averments in the plaint wherein the defendant avers that it was not aware of any loss or damage occasioned to the plaintiff on account of the defendant's actions or omissions. The defendant took out third party notice against Kimsam Investments (U) Ltd.

By amended written statement of defence the defendant admitted having bought petroleum products from Messieurs Kimsam investments (U) Ltd or furnished him with all relevant documents such as consignment note/delivery notes and invoices which put the costs of product at US$30,253.73 and taxes of Uganda shillings 16,360,779/=. The defendant paid a total of Uganda shillings 82,870,240/= to the third-party and denied any liability to the defendant for loss. Alternatively the defendant sought indemnity from Kimsam investments (U) Ltd.

The plaintiff is represented by Counsel Yesse Mugenyi while the defendant is represented by Counsel John Kiwuuwa and Nankya Lillian. After the hearing of the plaintiff and defendant's case, the court was addressed in written submissions. The following are the agreed issues:

1. Whether the defendant got a good title for products sold to him by the third-party?
2. Whether the defendant has the claim against the third-party?
3. Remedies available to the parties?

The plaintiff’s suit in the written submissions of counsel is that the Plaintiff was at all material times the owner of petroleum products contained in consignment note/delivery note No. 14371. On 11th March, 2011 the plaintiff loaded 31,000 litres of petroleum products i.e. automotive gas oil in Mombasa Shell Terminal on Motor vehicles Registration Numbers KBL 743M/ZD 4094 belonging to Tornado Carriers Limited which petroleum product was for sale in Uganda. On 19th March, 2011 when the said consignment of petroleum products arrived in Kampala the lorry ferrying the product was diverted and offloaded by unknown persons in collusion with the driver of the lorry of the said petroleum products at the defendant’s petrol station after Kyengera around Nabingo on Masaka road.

In reply the defendant’s Counsel submitted that the Defendant bought the petroleum products in issue from Messrs Kimsam Investments (U) Ltd and was furnished with all relevant documents like consignment/delivery note, invoices specifying cost of the product at US$ 30,253.73 and taxes of Uganda shillings 16,360,779/=. The Defendant paid a total of Uganda shillings 82,870,240/= (Shillings Eighty Two Million Eight Hundred and Seventy Thousand Two Hundred Forty) to Kimsam Investments (U) Ltd through a direct remittance to the latter's account with DFCU Bank as evidenced by a Diamond Trust Bank (U) Ltd Transfer/Remittance dated 19th March, 2011. The Defendant accordingly denies liability for the plaintiff's loss and alternatively seeks indemnity from Kimsam Investments (U) LTD the Third Party.

**Issue 1 and 2 on whether the Defendant got good title for the products sold to him by the Third Party** **and whether the defendant has a claim against the third party?**

**On issues 1 and 2 the plaintiff’s Counsel** stated that the plaintiff called two witnesses Kamaljit Singh and Joseph Wachira. The evidence of the two witnesses was uncontroverted as it was not disputed that a consignment of 31,000 litres departed from Mombasa destined for the plaintiff company. It was the evidence of the plaintiff that this fuel never reached the plaintiff but was instead diverted to a petrol station on Masaka Road after Nabingo and the said fuel was offloaded into a petrol station belonging to the defendant. The second witness informed court that he was dispatched to that station to halt any offloading of fuel but his effort was in vain because the defendant seized their fuel. The plaintiff’s Counsel submitted that in determining the resolution of this issue, it is important to establish whether there was a sale or contract of sale between the defendant and the plaintiff. The Plaintiffs Counsel relied on **Sections 19 and 20 of the Sale of Goods Act,** which provides for transfer of property. Under section 19 (1) where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Secondly, under subsection 2 regard shall be had to the terms of the contract, the conduct of the parties and the circumstance of the case in ascertaining the terms of the contract.

The Plaintiff’s Counsel submitted that from the evidence on record there was actually no contract of sale between the parties. No evidence was adduced to show that the plaintiff had ever entered into any negotiations or transactions indicating that they intended to sell their product to the defendant. The plaintiff’s Counsel submitted that in his defence, the defendant insisted that he had communicated with someone from Kenya who had authorized the offloading of the said product into his station provided he produced certain documents. Counsel submitted that that evidence was very unreliable as Mr. Kamalajit Singh, PWI told court that he had talked to a person who was at the station but he never communicated with the defendant. Indeed, the defendant confirmed this aspect of the evidence when he testified that he was not at the station when the fuel was being offloaded. Therefore, from the evidence of the parties there could not have been a contract of sale that could be inferred from the conduct of the parties or their intention. He submitted that it was not the intention of the plaintiff that the defendant should take possession of their product and more so that title in the goods should pass to the defendant. The Plaintiffs counsel relied on the case of **Jane Bwriza vs. John Nathan Osapil Civil Appeal No. 2 of 2002**, whereOdoki CJ, Oder JSC, Tsekooko JSC, Karokora JSC and Mulenga JSC observed that the general rules under sections 19 and 20 of the SGA as to the passing of property in the goods can be modified by the
intention or conduct of the parties to the sale.

For the contention that a contract existed, the defendant relied on a consignment/ delivery note to explain its acquiring of possession of the petroleum product. A scrutiny of the said consignment/ delivery note indicates that it is not in the names of the defendant. The consignment shows that the fuel was to be delivered to the plaintiff company. Counsel further submitted that by relying on a document in the names of the plaintiff company, it can be inferred that the defendant failed to explain the circumstances under which he had acquired the goods. Moreover, from this evidence, he was transacting with a certain person in Kimsam Investments (U) Ltd who by the third party defence averred that they had never purchased any fuel from the plaintiff. The plaintiff’s Counsel submitted that it is very evident that the defendant dealt with a person who had no title to the petroleum and the Consignment note/delivery note itself was proof of this fact. The plaintiff’s Counsel submitted that this created a notice to the defendant that goods belonged to another and as such the defendant had notice that the property belonged to the plaintiff according to the consignment/delivery note. Counsel relied on the Supreme Court case of **Imelda Nassanga vs. Stanbic Bank & Bamuguzanga Farm (U) Ltd Civil Appeal No. 10 of 2005** where Odoki, CJ, Tsekooko J.S. C, Mulenga J.S C, Kanyeihamba J.S C, Katureebe, J.S. C held that the courts below were correct to hold that the appellant had notice that the property did not belong to the judgment debtor, and therefore she was not a bona fide purchaser for value without notice. Justice Tsekooko particularly said:

“‘There can be no doubt that at law neither Mr. Christopher Iga nor the second respondent had property in the Tractor and its Trailer. So neither could lawfully dispose of it...The subsequent sale passed no property in the equipment to the appellant.”

Counsel further submitted that there being no contract of sale and by virtue of the fact that the third party had never purchased the fuel from the plaintiff. The defendant in the circumstances could not have acquired any good title to the said petroleum product. The pertinent issue pending resolution is whether the defendant paid for fuel consumed. The defendant's evidence is that he paid a third party and not the plaintiff. Counsel relied on **J.K Patel vs. Spear Motors limited Civil Appeal No 4 of 1994** where the Supreme Court held that where one party denies receiving payment and the other alleges otherwise, the onus is on the party alleging payment to prove payment because it is difficult to prove the negative. The plaintiff’s Counsel submitted that this evidence and more so the payment document issued by the third party to the defendant should be disregarded as the third party was not the rightful owner of the goods.

**In reply to Issue 1 on whether the Defendant got good title for the products sold to him by the Third Party i. e Kimsam Investments (U) LTD? The defendant’s Counsel** submitted that the Defendant called one witness namely the Defendant. The Third Party did not show up although its Advocate participated in the initial stages of the hearing but never produced any witness. He further submitted that the Plaintiff called two witnesses Kamaljit Singh and Joseph Wachira through whom the Plaintiff's counsel laboured to show that they proved the plaintiff’s case whereas not. Despite the third party's earlier admissions of receipt of the money, the Plaintiff decided to ignore any role of the third party and directed its attack on the Defendant presumably because of the Deep Pocket Theory. Counsel submitted that this case should not have proceeded for trial as it was proved that the third party had been paid the 82,870,240/= the cost of the petroleum products and was willing to refund the same. If the third party had no dealings with the plaintiff, there is no explainable reason why the plaintiff after reporting a case of theft of its petrol at police and after the Defendant being cleared, the Plaintiff opted not to proceed against the third party. If the third party had no title to the petrol, its officers ought to have been charged, but were not. The defendant’s Counsel submitted that the evidence of the Defendant ought to be believed and is that Kimsam Investments (U) LTD must have had a relationship with the Plaintiff who sold to them the Petrol which Petrol was sold to the Defendant after the Plaintiff's agents in Nairobi had confirmed with the Defendant's employee. Counsel submitted that PW1 Joseph Wachira's evidence should not be believed as he contradicted himself. He contended that the evidence was manufactured for the purpose. Joseph Wachira denied ever having any dealings with Kimsam Investments (U) Ltd which was a lie as he was the sole representative of Jade Petroleum Ltd in Uganda. He even denied ever reporting the matter to Police and claimed that he was not aware that the third party's agents were ever arrested by Police and he did not know whether the Defendant had ever been summoned by Police.

Counsel submitted that it is inconceivable that the sole country representative of the Plaintiff in Uganda would not be aware of the salient features/history of this case. The only inference is that he was telling lies and was in court to get money from the Defendant. He further submitted that PW2 Kamaljit Singh did not help the plaintiff's case as he was very inconsistent and gave the impression of having been coached. In cross examination he earlier stated that the Transporters sued the Plaintiff and later changed that the Plaintiff had sued the Transporters for the same petrol products. He never told court the outcome of the case. Assuming they had been successful, then this case would be a case of double enrichment which is untenable under the law. He further stated that at the moment, the Plaintiffs are not operating in Uganda. He also denied ever allowing the petrol to be off loaded at the Defendant's Petrol Station. He submitted that this witness should not be believed because his company had a working relationship with the third party. The third party acquired the petrol products from them with their knowledge and or consent and had authority to sell the same to the Defendant as per all documents furnished to the Defendant by the third party. The Defendant accordingly acquired good title. If he had not acquired good title the Plaintiff would have been at the fore front to prosecute the third party’s agents which it did not. Counsel pointed out that the non-appearance of the third party for cross examination left a vacuum in this case which should all be settled in the Defendant's favour.

**In reply to Issue 2 on whether the Defendant has a claim against the Third Party?**

**The defendant’s Counsel** submitted that having argued as above in issue 1, it follows that the Third Party is squarely in the middle of this transaction and even if he had no good title to the fuel products, which has not been proved, the Defendant would stand to be indemnified by him. It's already on record that the third party had already admitted receipt of Uganda shillings 82,870,240/= on its account with DFCU Bank which was remitted by the Defendant's Company S. R. Petroleum LTD on 21st March, 2011 as evidenced by the statement produced by the third party. It therefore follows that the third party’s Statement of Defence and Witness Statement filed on its behalf is a hoax, a blanket denial of everything. Counsel submitted that even the third party’s absence speaks volumes. The Defendant duly bought the Petrol Products from the third party and paid value for the same. In the alternative, even if the third party had no title to the Petrol Products, as is being alleged by the Plaintiff, but which is denied, even then the Defendant stands to be indemnified by the third party.

**With regard to remedies, the plaintiff’s Counsel** prayed that judgment in the sum of US$ 37,784.92 (United States dollars thirty-seven thousand seven hundred and eight four ninety-two cents) being the amount outstanding and owing by the plaintiff on the petroleum product supplied be entered in favour of the plaintiff. He also prayed for both interest on the award of US$ 37,784-92 and interest of 12% per month from date of filing the suit till payment in full as it is justified by the fact that there were no contractual obligations between the parties. Counsel relied on Lord Denning in **Harbutt’s Plasticine Ltd v Wayne Tank and Pump Co Ltd [1970] 1 All ER 225** at 236 who held that:

"An award of interest is discretionary. It seems to me that the basis of an award of interest is that the defendant has kept the plaintiff out of his money; and the defendant has had the use of it himself. So he ought to compensate the plaintiff accordingly. "

Counsel also relied on **Uganda Revenue Authority vs. Stephen Mabosi S.C.C.A No 26 of 1995** where it was held that like all other discretionary powers, the discretion must be exercised judiciously taking into account all circumstances of the case. The plaintiff company being a trading company was denied full use of its money during the period of litigation and till payment in full and therefore it would only be fair that an interest be awarded on payment withheld as a result of the defendant’s action. The plaintiff also prayed for general damages of US$ 15,000 for the inconvenience it had been put through for not using the monies since the institution of the suit. He submitted that the awards of general damages is at the discretion of the court and always will be presumed to be the natural consequence of the defendant's act or omission (See **James Fredrick Nsubuga vs. Attorney General HCCS No. 13 of 1993)**

In the assessment of the quantum of damages, the courts are mainly guided inter alia by the value of the subject matter and the economic inconvenience that a party may have been put through (See **Uganda Commercial Bank vs. Kigozi [2002] 1 E.A. 305).** The Plaintiffs Counsel prayed that judgment is entered for the plaintiff with costs in accordance with **Section 27 (2) of the Civil Procedure** **Act.** Costs follow the event unless for good reasons the court otherwise orders and no good reasons to disentitle the plaintiff of the costs of the suit were advanced by the defendant.

**In reply the Defendant’s Counsel** with reference to earlier submissions prayed that the suit against the Defendant is dismissed with costs and if the Plaintiff is entitled to any remedy, then it should be against the third party.

**Judgment**

I have carefully considered the plaintiff’s suit from the pleadings namely the plaint and the defendants as well as the evidence and written submissions of counsel and the authorities cited. The suit is controlled by the admission of the defendant and that it had bought the petroleum product, the subject matter of the suit from Messieurs Kimsam Investments (U) Ltd or furnished the defendant with all relevant documents such as the consignment/delivery note, invoices specifying cost of the product and that tax. The defendant admitted that he paid the sum of Uganda shillings 82,870,240/= to the said Kimsam Investments (U) Ltd through a direct remittance to its account with DFCU bank.

The defendant relied on the consignment note exhibit D1 whose contents are very unclear and eligible. He further testified as DW1 and his witness statement was admitted as his evidence in chief whereupon he was cross examined. The delivery note relied upon is dated 14th of March 2011. He further relied on their invoice in favour of Kimsam investments Ltd for Uganda shillings 16,360,779/= exhibit D2 and the second invoice for US$30,253.73 exhibit D3. Lastly in exhibit D4 it demonstrated that he paid Uganda shillings 82,870,240/= on 19th of March 2011. In other words the defendant admitted paying for a certain consignment which the plaintiff claims is its goods which had been wrongfully offloaded at the petrol station of the defendant.

In his testimony in cross examination DW1 admitted that this was the first time he was dealing with the Kimsam Investments Ltd (the third party). The delivery note relied upon indicates that the sender's name is the name of the plaintiff in the suit. He admitted that the consignment of the plaintiff was signed by the defendant’s servants at the petrol station. The document indicates that the petroleum product was from Jade petroleum Kenya consigned to Jade petroleum Uganda. He could not remember the person he dealt with in Kimsam Investments Ltd; he further admitted that the plaintiff had sent a representative to stop the offloading but when the representative saw his receipt, he allowed him to offload. In other words the defendant admits that it had the petroleum product which is the subject matter of the suit with the defence that he bought it from a third party.

On the other hand PW1 and Mr Joseph Wachira, a country representative of the plaintiff also filed a witness statement which was admitted as his evidence in chief. His testimony was that around 19th March, 2011 he received a telephone call from one Emmanuel who works for the plaintiff company late in the evening that they were having trouble with one of the consignments being transported from Kenya to Uganda. He was requested to rush to Masaka road where the vehicle was offloading the petroleum product without instructions. In paragraph 6 he testified that the defendants insisted that they had purchased the consignment being offloaded and when it failed to have it stopped, the official agreed to sign on the consignment note. In cross examination of the defendant, he did not deny having signed the consignment note in question.

In the premises it is established as a matter of fact that the plaintiff's consignment which had been loaded in motor vehicle number KBL 743/ZD 4094 discharged its goods in the defendant's petrol station. It is the same consignment which the defendant admitted it purchased from the third-party. While the third party put in a written statement of defence as to the third party notice, the third party did not adduce any evidence. In paragraph 7 of the third-party written statement of defence, the third-party aver that it dealt with another person called Hannington Mpiima was paid Uganda shillings 84,521,000/= and the transaction was witnessed by a bank official. The payment was allegedly made on 22nd of March 2011. While this averment and the attachments to the written statement of defence of the third-party is not evidence, the defendant confirmed having paid the third-party for the same consignment. From the WSD of the third-party, the role of the third-party becomes mysterious. He denied having sold in the petroleum products to the defendant but admitted receipt of the money but said that it was paid off to yet another person. The defendant on the other hand approved payment to the third-party. As a matter of fact, the plaintiff proved that it petroleum product was offloaded at the defendants petrol station and that it was not paid. The goods belonged to the plaintiff and there was no contract between the plaintiff and the defendant. Apart from two issues agreed upon, issues number one and two were considered together namely:

1. Whether the defendant got a good title for products sold to him by the third party?
2. Whether the defendant has a claim against the third party?
3. **Whether the defendant got a good title to the products sold him by the third party?**

I have carefully considered the issue number 1 as to whether the defendant got a good title for the products sold to him by the third-party. As a matter of fact, the third-party in its written statement of defence denied having sold any goods to the defendant and claimed that the goods were sold by yet another party namely Mr. Hannington Mpiima. Prima facie, the third-party denied being the owner of the petroleum products. The defendant on the other hand proved that it transferred consideration in the form of money to the third-party or to the third party’s account for the same product. The dealings between the defendant and the third-party do not concern the plaintiff. The defendant did not deal with the plaintiff who is the owner of the goods and was not even alarmed by the consignment note which bears the names of the plaintiff. As a matter of fact, it is proven that the defendant was sold the petroleum products by someone who did not have title to the goods. Secondly, the defendant paid Kimsam Investments (U) Ltd for the goods and the said third party denied having dealt with the plaintiff or the defendant in their written statement of defence. Generally whoever sold the goods to the defendant did not have title to the goods and the issue as framed is whether good title was transferred to the defendant.

Section 22 of the Sale of Goods Act cap 82 laws of Uganda deals with sale under a void title and provides as follows:

"22. Sale by person not the owner.

(1) Subject to this Act, where goods are sold by a person who is not the owner of the goods and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his or her conduct precluded from denying the seller’s authority to sell.

(2) Nothing in this Act shall affect—

(a) the provisions of any enactment enabling the apparent owner of goods to dispose of them as if he or she were the true owner of the goods;

(b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.”

On the other hand section 23 of the Sale of Goods Act deals with sale under a voidable title and provides as follows:

“23. Sale under voidable title.

When the seller of goods has a voidable title to the goods, but his or her title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he or she buys them in good faith and without notice of the seller’s defect of title.”

Under section 23, the issue of notice arises where there is a voidable title and the Defendant bought from the seller bona fide without notice of any defect in title. On the other hand section 22 (1) provides that a buyer does not acquire a better title than the seller had. It deals with void title. Someone with a void title cannot pass any valid title except under certain exceptions under section 22 of the Sale of Goods Act. Section 22 (1) makes it clear that any person who sells goods without the authority or consent of the owner does not pass a better title to the goods than the seller had unless “the owner of the goods is by his or her conduct precluded from denying the seller’s authority to sell”. In this situation the seller of the goods has avoided appearing in court to adduce evidence. The seller to the defendant buyer is the third party. The defendant only proved that it bought from the third-party but could not prove that the third-party had title to pass. Secondly there is no question of estoppels by conduct of the plaintiff so as to avoid the plaintiff’s claim which has arisen as envisaged by the law.

The question therefore is whether the defendant’s case falls within the exceptions to the general rule reflected in the Latin maxim "*nemo dat quod non habet*". The general rule reflected in section 22 (1) of the Sale of Goods Act is that the defendant did not acquire a better title than the mysterious seller had because the mysterious seller did not have any title to the goods. I do not agree with the submissions of the defendant’s counsel that the plaintiff ignored the role of the third-party. The case of the plaintiff is based on conversion of the fuel and not on the fact that the defendant would have purchased the goods from the third-party. The submission of the defendant’s counsel that the defendant proved that the third-party received the sum of Uganda shillings 82,870,240/= being the cost of the petroleum products and that it was willing to refund the same does not take away the plaintiffs cause of action to proceed against the person who converted the fuel. The very submission that the third party is willing to refund the money admits the plaintiff’s suit. The reasoning that if the third-party had no dealings with the plaintiff, there is no explanation why the plaintiff after reporting a case of theft opted not to proceed against the third-party carries no water. Whether it was theft, conversion or any wrongful possession of the plaintiff’s goods, the goods were found in possession of the defendant and the plaintiff rightfully sued the defendant for conversion of its fuel.

From the state of facts, there is no need to proceed to consider whether the defendant fell within the exceptions under section 22 or 23 of the Sale of Goods Act. I agree with the plaintiff’s submission that there was no contractual relationship between the plaintiff and the defendant. Secondly, I agree with the submission that the defendant ought to have inquired about the consignment note which had the name of the plaintiff. The defendant therefore did not acquire any better title than the third-party who is alleged to have sold the fuel to the defendant. The third party had no title and has since denied having dealt with the defendant in its written statement of defence against the defendants claim for indemnity. The Latin maxim "nemo dat quod non-habet" applies. The third-party had no title to pass to the defendant and the defendant never acquired good title to the property and therefore converted the plaintiff’s goods and is liable to make good any loss suffered by the plaintiff as a result of the conversion. Issue number 1 is resolved in favour of the plaintiff.

1. **Whether the defendant has a claim against the third party?**

I have carefully considered issue number two and the third-party never adduced any evidence against the defendant’s claim for indemnity. From issue number one it is proven that the third-party had no title to pass to the defendant and the third party is liable to indemnify the defendant who paid a sum of Uganda shillings 82,870,240/= for the goods. The Defendant proved the transaction. The defendant proved that it bought the goods from the third-party and paid the said sum as consideration. Issue number two is therefore resolved against the third-party. The defendant has a genuine claim against the third-party for indemnity which will be considered on the issue of remedies available to the parties.

1. What are the remedies available to the parties?

As far as the plaintiff is concerned, having succeeded in issue number 1 the plaintiff is entitled to the value of the goods converted by the defendant.

The plaintiff's counsel prayed for an award of special damages of US$37,784.92 and the sum of US$15,000 as general damages together with interest at 12% per month.

The plaintiff has proved as special damages for the fuel converted of the US$37,754.92 which is hereby awarded to the plaintiff as special damages.

Regarding the award of general damages, the rationale used by the plaintiff for the prayer is that the plaintiff has been kept out of its money and is entitled to compensation. General damages are compensatory. In **Johnson and another v Agnew [1979] 1 All ER 883**, it was held by Lord Wilberforce at page 896 that the award of general damages is compensatory and meant to place the innocent party so far as money can do so, in the same position as if the contract had been performed. This principle is also discussed in **Dharamshi vs. Karsan [1974] 1 EA 41** by the East African Court of Appeal which held that general damages are awarded to fulfil the common law remedy of *restitutio in integrum.* Restitutio in integrum means that the Plaintiff has to be restored as nearly as possible to a position he or she would have been had the injury complained of not occurred. In **Halsbury's Laws of England 4th Edition Reissue volume 12** (1) and paragraph 812 thereof general damages are defined as those losses which are presumed to be the natural or probable consequence of the wrong complained of. The probable consequence of withholding money due is expected profit. However the plaintiff did not adduce evidence of expected profits and therefore the calculation of general damages can proceed as interest on the money withheld. This is because the purpose for award of interest is also compensation and therefore to achieve *restitutio in integrum*. In **Tate & Lyle Food and Distribution Ltd vs. Greater London Council and another [1981] 3 All ER 716** at page 722 Forbes J held that interest is not awarded against a Defendant as a punitive measure for having kept the Plaintiff out of his money but as part of an attempt to achieve *restitutio in integrum*. Interest in commercial disputes should reflect the rate at which the Plaintiff would have had to borrow money to supply the place of that which was withheld. In **Riches vs. Westminster Bank Ltd [1947] 1 All ER 469 HL at page 472** Lord Wright held that an award of interest is compensation and may be “regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation”

In the premises I will award interest at a reasonable rate from the date the cause of action arose in March 2011 till payment in full under section 26 of the Civil Procedure Act. Section 26 (2) of the Civil Procedure Act provides that:

“26. Interest.

(2) Where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.”

Reasonable interest would be the rate at which the plaintiff would have had to borrow the equivalent money lost through the conversion of the plaintiff’s fuel. In the premises the plaintiff is awarded interest on the principal sum adjudged at the rate of 10% per annum from April 2011 till date of judgment. The plaintiff is additionally awarded US$ 5,000.

Further interest is awarded at 10% per annum on the aggregate sum awarded to the plaintiff at the date of judgment till payment in full.

The Plaintiffs suit succeeds with costs to the plaintiff.

**Suit for indemnity against the Third Party by Defendant**

The plaintiff’s Counsel also submitted in respect to the Defendants case against the third party but is not entitled to do so. The third party’s counsel participated at the hearing and Counsel Wycliffe Tumwesigye cross examined the Defendant but never adduced any evidence of the Third party and eventually dropped out of the case. Consequently the third party never adduced any evidence and the suit of the defendant against the third party proceeded ex parte.

As far as the Defendant is concerned, the Defendant submitted that Kimsam Investments (U) LTD (the third party) was at an earlier stage upon application by the Defendant, joined as a Third Party and the court directed that the suit proceeds as a whole and any liability of the Third Party would be determined in the course of the hearing. The defendant’s Counsel submitted that in its written statement of defence the third party denies having sold any petroleum products to the Defendant and denies ever having any dealings whatsoever with the Defendant. In the WSD the third Party averred that it dealt with another person called Hannington Mpiima who was paid off Uganda Shillings 84,521,000/= and that the said transaction was witnessed by a Bank official. By reason thereof the third party denies any liability whatsoever. At mediation the third party was ordered to produce its DFCU Bank Statement, which it did and the Statement reflected the deposit of Uganda shillings. 82,870,240/= which had been remitted by S.R. Petroleum LTD to the account of Kimsam Investments (U) LTD Account No 01153500257329 DFCU Kawempe Branch on 21/3/2011. On this basis, the Third Party had agreed to refund this amount but due to additional costs claimed by the Plaintiff a settlement failed and the matter was referred for trial.

I am barred from taking into account what transpired at the mediation sessions. However pursuant to resolution of issue number 2 the defendant’s suit against the third party for indemnity succeeds with the following orders:

The third party shall fully indemnify the Defendant for all liabilities ordered against the defendant in this suit less US$ 5000 awarded against the defendant.

Judgement delivered in open court on the 18th August, 2017.

**Christopher Madrama Izama**

**Judge**

Judgment delivered in the presence of:

Yesse Mugenyi for the Plaintiff

No one for the Defendant

Charles Okuni: Court Clerk

Julian T. Nabaasa: Research Officer Legal

**Christopher Madrama Izama**

**Judge**

**18th August, 2017**