THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO.0216 OF 2015

UMEME LIMITED ..... APPELLANT

VERSUS

MAKUBUYA E. WILLIAM T/A POLLA PLASTIC ..... RESPONDENT

(An appeal from the Judgment and Decree of the High Court of Uganda at Kampala (Commercial Division) before His Lordship Honourable Justice Christopher Madrama Izama dated 9th February 2015 in High Court Commercial Suit No. 534 of 2012)

CORAM: Hon. Mr. Justice Remmy Kasule, JA

Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Geoffrey Kiryabwire, JA

JUDGMENT OF COURT

This is an appeal arising from the decision of *Christopher Madrama Izama J,* (as he then was) delivered on 27th August, 2014 in which he entered Judgment in favour of the respondent in respect of some reliefs claimed and prayed for in the plaint, but at the same time entered Judgment for the appellant in respect of a number of reliefs pleaded and prayed for in the Counter-claim.

Background

The brief facts as accepted by the learned trial Judge are that; the respondent purchased a number of plastic manufacturing machines from BMK Industries. He subsequently commenced business on the premises of his landlord Messrs BMK Industries and they agreed that the respondent pays his electricity bills using the account of BMK. Later on the respondent caused change of the account names into

the names of his business Polla Plast and was surprised to be given an outstanding bill by the appellant amounting to Ug. Shs.155,183,658/=. The respondent disputed this bill and refused to pay it.

His power was disconnected by the appellant a number of times, causing irreparable damage to his plastic manufacturing business. In order to prevent the financial disaster, the respondent signed a Deed of Acknowledgement of Debt of the appellant and Undertaking to Pay. During the time the respondent's electricity was disconnected, the appellant alleged in a counterclaim that the respondent reconnected his electricity fraudulently, causing a loss of power. The estimated cost for the loss of power as well as other fees and taxes were added to the debt owed to the appellant by the respondent. Due to the financial constraints placed on the respondent by the appellant, the respondent was unable to keep up with other financial obligations. Unable to pay rent to his landlord, the respondent's machines were attached and sold under a Court order taken out by the landlord and his company collapsed. The learned trial Judge found in favour of the respondent against the appellant and was subsequently awarded damages.

The appellant being dissatisfied with the decision of the learned trial Judge filed this appeal on the following grounds:-

1. *The learned trial Judge erred in law and fact when he held that the respondent was unlawfully disconnected from power having found that the same respondent had an unpaid electricity bill of Ug. Shs. 25,000,000/= (Uganda Shillings twenty five million only).*
2. *The learned trial Judge erred in law and fact when he held that the Deed of Acknowledgment of debt and undertaking to pay, dated the 27th of September 2011, entered into between the appellant and respondent was done under economic duress.*

3. *The learned trial Judge erred in law and fact when he held that the appellant was responsible for the loss of the respondent's machines and was liable to compensate the respondent for the same, yet, inter alia, the same had been sold pursuant to a suit in which the appellant was not a party.*
4. *The learned trial Judge erred in law and fact when he held that the bill of Ug. Shs. 60,482,777/= (Uganda Shillings sixty million four hundred eighty two thousand seven hundred seventy seven only) was unlawfully transferred to the respondent's account.*
5. *The learned trial Judge erred in law and fact when he held that the fraud charge/energy recovered of Ug. Shs. 51,575,373/= (Uganda Shillings fifty one million five hundred seventy five thousand three hundred seventy three only) was unlawfully imposed.*
6. *The learned trial Judge erred in law and fact when he held that the document marked Exhibit "D8" was not authored by the respondent.*
7. *The learned trial Judge erred in law and fact when he failed to properly evaluate the evidence on record, thereby arriving at a wrong conclusion.*
8. *The learned trial Judge erred in law and fact when he held that only Ug. Shs. 25,000,000/= (Uganda Shillings twenty five million only) was due from the respondent in unpaid electricity bills.*
9. *The learned trial Judge erred in law and fact when he held that the excessive sum in general damages of 20% per annum of the amount assessed by the Electricity Disputes Tribunal be paid to the respondent.*
10. *The learned trial Judge erred in law and fact when he did not award general damages to the appellant as a result of the respondent's unpaid bills.*
11. *The learned trial Judge erred in law and fact when he held that interest of 20% per annum from the date of Judgment was payable to the respondent on the compensation amount and the general damages.*

12. *The learned trial Judge erred in law and fact when he granted costs of the suit to the respondent.*

Representations

At the hearing of this appeal *Mr. Sam Gimanga* learned counsel appeared for the appellant while *Mr. Medard Lubega Ssegona* together with *Mr. Ssemakula Muganwa Charles, Mr. Edward Mukwaya* and *Mr. Joseph Angulia* appeared for the respondent.

Appellant's case

Mr Gimanga asked Court to adopt the conferencing notes on Court record. He submitted that, the learned trial Judge erred when he held that, the respondent was unlawfully disconnected having found that the same respondent had an unpaid electricity bill to the tune of Ug. Shs. 25,586,300/=. He argued that, the appellant had unfettered rights to disconnect the respondent as provided for under *Regulation 7.6.1 (c)* of the Electricity (Primary Grid Code) Regulations, 2003 and *Regulation 17(3)(a)* and *(e)* of the Electricity (Quality of Service Code) Regulations 2003.

In respect of ground 2, Counsel contended that, the Deed of Undertaking signed on the 9th day of May 2012 by the respondent was not effected under economic duress as found by the learned trial Judge. He submitted that, the ingredients of economic duress as laid down in *Pao On vs. Lau [1979] 3 All ER 65* did not exist. The respondent under paragraph 3 of the undertaking accepted the bill of Ug. Shs. 137,000,000/= and promised to pay the amount due. He added that, the respondent had an alternative course of action for a legal remedy. He would have made a complainant to the Electricity Regulatory Authority or to the Disputes Tribunal but he did not. Further, that there was no evidence adduced to show whether the respondent got any independent advice. Therefore Court erred when it found that there was economic duress.

On ground 3, Counsel argued that, the Court erred when it held that, the appellant had to compensate the respondent for the loss resulting from the sale of its machines which were sold through a Court process by the respondent's landlord to which action the appellant was not a party. The sale followed a distress for rent suit between the respondent and their landlord at the time. Further that, at the trial it was an undisputed fact that the respondent's machines were sold in execution of a Court order by his landlord in a suit where the appellant was not a party. He contended that the learned trial Judge erred when he held that the unlawful disconnection had led to the attachment of the respondent's machines.

In respect of ground 4, Counsel submitted that, the respondent requested the appellant to have the bill of Ug. Shs. 60,482,777/= transferred to his account, this is contained in Exhibits "D6","D7" and "D8". Further, that the respondent himself admitted having shared the factory's electricity meter with Hotel Africana and that was a subject of the transfer bill of Ug. Shs. 64,482,777/=. This was the basis upon which that bill was transferred to his meter, therefore the learned trial Judge erred when he found that the bill was illegal and unlawfully transferred to the respondent's account without his consent, yet there was overwhelming evidence to the contrary.

Ground 5, Mr. Gimanga submitted that, the learned trial Judge misinterpreted the contents of exhibit "D3" and arrived at a wrong conclusion holding that, the energy recovered was wrongfully charged on the respondent's account, exhibit "D3" which was an assessment of energy recovered. Counsel submitted that the appellant had a right under the Electricity (Primary Grid Code) Regulations (supra) to recover the energy that had been consumed by the respondent illegally. Further that, the law actually allowed the appellant to estimate how much energy has been consumed.

On ground 6, Counsel argued that, the learned trial Judge erred in law when he held that the document "D8" which authorised the transfer of Ug. Shs. 60,482,777/= to the respondent was not authored by him yet the same was overwhelmingly corroborated

by other documents tendered in at the trial including exhibits "D6" and "D7" and the oral testimony of the respondent.

In respect of grounds 7 and 8, Counsel contended that, the learned Judge failed to properly evaluate all the evidence on record, ignored the contents of exhibit "D7", failed to consider the direct evidence of the respondent, ignored the explanation contained in exhibits "D2" and P20 on the typographical errors in exhibits "D3" and he wrongly considered the total balance of respondent's bill as Ug. Shs 137,614,450/= yet the same was Ug. Shs. 155,157,226/=. He thereby arrived at a wrong figure of the balance of Ug. Shs. 25,000,000/=. The evidence tendered showed that the balance of the account at the time the account was disconnected was Ug. Shs. 155,157,226/=.

In respect of ground 9, Counsel contended that, the general damages awarded to the respondent were exorbitant, considering that general damages are meant to be restitutory and compensatory in nature. He argued that, the machines' value was not assessed and to put a value of 20% per annum was a very exorbitant figure which, in his opinion, is not restitutory or compensatory. He submitted that the respondent was not entitled to any award of damages since he suffered no harm from the appellant. The appellant's actions to disconnect the respondent's electricity were lawful therefore it were not in breach of its contract.

On ground 10, Counsel submitted that, the learned trial Judge erred when he failed to award general damages to the appellant having found that a huge sum accrued to it in power consumed by the respondent.

In respect of grounds 11 and 12, Counsel submitted that, the learned trial Judge failed to exercise his discretion judiciously, the award of damages with 20% per annum to the respondent was too exorbitant and the costs were also awarded in error.

Appellant's Counsel prayed Court to allow the appeal and award costs to the appellant.

Respondent's reply

Mr. Ssegona, opposed the appeal, supported the trial Judge's findings and sought for leave to rely on the respondent's reply to the appellant's conferencing notes which were filed on 17th March 2013. Counsel submitted that the appellant had no unfettered rights to disconnect the respondent's electricity as submitted by Counsel for the appellant. He argued that, *Section 77* of the Electricity Act (Cap 145) mandates the appellant to supply electricity. It stipulates that once an applicant requires the licensee to supply electricity, the appellant is duty bound to supply which also includes a reference to continuing to supply.

In reply to grounds 1 and 8, Counsel submitted that the appellant's action of disconnecting the respondent's power supply had nothing to do with its unfettered rights to disconnect power supply under Regulation 17(3)(a) and (e) of the Electricity (Quality of Service Code) Regulation 2003, but it was based on the fact that the appellant unlawfully transferred the bill of BMK/ Hotel Africana to the respondent's account without his consent. Further, that the disconnection was based on an illegal charge of fraud/energy loss of Ug. Shs. 51,573,373/= which was unlawfully and illegally imposed on the respondent.

Counsel argued that, the learned trial Judge rightly evaluated the evidence and found that, the appellant was only entitled to Ug. Shs. 22,586,300/= as the decretal sum resulting out of the counterclaim it. The learned trial Judge subtracted Ug. Shs. 60,482,777/= being the amount unlawfully transferred to the respondent's account and Ug. Shs 51,575,373/= being the fraud charge unlawfully imposed on the respondent from the total amount of Ug. Shs.137,614,450/= claimed when the electricity was disconnected and arrived at Ug. Shs. 22,586,300/=

In reply to ground 2, Counsel submitted that, the Deed of acknowledgment of debt and undertaking to pay dated 27th September 2011 was not authored by the

respondent as alleged by the appellant. He argued that, the Deed of Undertaking dated 9th May 2012 which the respondent authored was voidable since it was made under economic duress as rightly found by the learned trial Judge after considering the evidence on record. The appellant disconnected the respondent's power supply and in a bid to save his business the respondent accepted to make the deed of undertaking to pay all the outstanding bills as he did not have any alternative source of power.

In respect of ground 3, Counsel argued that the appellant was responsible for the loss suffered by the respondent and was liable to compensate him accordingly. He argued that the trial Judge properly evaluated all the evidence on record, relied on Section 77 of the Electricity Act, Cap 145 and reached at a right conclusion. He rightly considered the fact that loss of the respondent's business was a direct consequence of the appellant's action of disconnecting him from power supply. Further that, the trial Judge's findings on compensation is also supported by the Constitutional provisions which enjoin Court under Article 126(2)(e) to make orders of compensation to victims of wrong.

On ground 4, Counsel submitted that, the learned trial Judge rightly held that the transfer of Ug Shs. 60,482,777/= to the respondent's account was unlawful since it was made without his consent and knowledge. He argued that the transfer was based on a forged letter purported to have been written by the respondent. He contended that there was no factual evidence to support the assertion that the respondent requested the appellant to transfer the said bill to his account, further that, there was no evidence proving that the respondent had consumed the electricity amounting to the bill imposed on the respondent.

In reply to ground 5, Counsel contended that, the contents of Exhibit "D3" were duly considered by the learned trial Judge and clearly stated that the fraud charge was only Ug. Shs.1,000,000/= not Ug. Shs. 51,575,373/= as alleged by the appellant. He argued that, the charge could not be explained by the appellant's witness during cross

examination. Counsel argued that the appellant did not lead any evidence to prove that the respondent reconnected himself to power supply. Therefore the alleged charge was unlawfully imposed on the respondent.

In respect of grounds 6 and 7, Counsel submitted that, the learned trial Judge rightly held that exhibit "D8" was not authored by the respondent. The appellant never adduced any direct evidence to prove it as it had been contested by the respondent. He argued that the respondent contested the bills in Exhibit "D7" which was rejected by the appellant. Since he was left with no option, he subsequently entered into an undertaking under economic duress.

He submitted that, the learned trial Judge properly evaluated all the evidence on record, he analysed the contents of all the documents, carefully considered the pleadings and the testimonies from both parties and reached at a right conclusion.

In reply to ground 9, Counsel argued that the 20% per annum of the damages awarded by the trial Judge are not exorbitant as alleged by the appellant. He contended that, it is fair and reasonable to meet the ends of justice given the fact that the conduct of the appellant led to the loss suffered by the respondent. For the above proposition he relied on *Omunyokol Akol Johnson Vs Attorney General, Court of Appeal Civil Appeal No. 071 of 2010* (unreported).

In respect of ground 10, Counsel submitted that, the learned trial Judge rightly exercised his discretion by not awarding general damages to the appellant as a result of the respondent's unpaid electricity bills. There was no evidence adduced by the appellant to show the loss suffered due to the respondent's failure to pay the bills. Further, that the unpaid bill was as a result of the appellant's unlawful transfer of electricity bill not consumed by the respondent and the fraud charges which were protested and challenged by him.

In conclusion Counsel asked Court to dismiss this appeal, uphold the Judgment of the lower Court and award costs to the respondent both in this Court and in the lower Court.

In rejoinder, Mr. Gimanga, argued that the appellant was not responsible for the respondent's lost machines. The respondent lost his machines due to rent arrears owed to his landlord. There was no evidence adduced showing that the problem of rent started when there was billing issued by the appellant. He therefore asked Court to overturn the decision of the lower Court.

Resolution

This Court is required under *Rule 30* of the Rules of this Court to re-appraise the evidence of the trial Court and come to its own decision. *Rule 30 (1) (a)* provides as follows:-

> *"Power to reappraise evidence and to take additional evidence.*
>
> *(1) on any appeal from a decision of the High Court acting in its original jurisdiction, the court may-*
>
> *(a) reappraise the evidence and draw inferences of fact"*

In the case of *Fr. Narcensio Begumisa & others Vs Eric Tibebaaga, Supreme Court Civil Appeal No. 17 of 2002,* Mulenga JSC in his lead Judgment put this obligation of the first appellate Court in the following words:-

> *"It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions. This principle has been consistently enforced, both before and after the slight change*

I have just alluded to. In Coghlan vs. Cumberland (1898) 1 Ch. 704, the Court of Appeal (of England) put the matter as follows -

"Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the court must reconsider the materials before the judge with such other materials as it may have decided to admit. The court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the court comes to the conclusion that the judgment is wrong ... When the question arises which witness is to be believed rather than another and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the Judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may show whether a statement is credible or not; and these circumstances may warrant the court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom the court has not seen."

In *Pandya vs. R (1957) EA 336,* the Court of Appeal for Eastern Africa quoted this passage with approval, observing that the principles declared therein are basic and applicable to all first appeals within its jurisdiction. See: *Bogere Moses Vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997* and *Kifamunte Henry Vs Uganda, Supreme Court Criminal No. 10 of 1997.*

We shall keep the above principles in mind while resolving the grounds of appeal. We have listened to the submissions of Counsel and carefully perused the Court record. We now proceed with our duty of evaluating the evidence.

In respect of ground 1, the appellant faults the trial Judge for finding that the disconnection was unlawful having found that the respondent owed the appellant Ug. Shs. 22,586,300/=.

We have carefully perused the High Court Judgment and found that the learned trial Judge dealt exhaustively with the issues before him at the trial. In order not to repeat ourselves, we are constrained to reproduce in *extenso* the pertinent parts of his Judgment.

While resolving the issue raised in ground 1 of the appeal the learned trial Judge stated as follows at pages 59 and 60 of his Judgment correspondingly pages 549 and 550 of the record of appeal as follows:-

> *"In as much as the Defendant has powers to disconnect power, the basis for the disconnection was unlawful. I have duly considered the provisions of the Electricity (Primary Grid Code) Regulations, 2003 and particularly regulation 7.6 on illegal use. The option of the Defendant on the basis of its allegation that the Plaintiff was illegally using the power was to estimate the usage for which the consumer had not paid and secondly to take a 'debt recovery' action for the unpaid amount or to take action in accordance with part 15.0 to disconnect supply to the consumer's premises.*
>
> *With reference to disconnection of power which is the option the Defendant could have exercised, regulation 12.4.3 provides that where a licensee undercharges the consumer as a result of the consumer's fraud or use of electricity otherwise than in accordance with the code, the licensee may take action in accordance with clause 7.6 of the code. The evidence however shows that it was not the consumer who was responsible for the bill. The consumer was charged a bill of another customer. The charge was based on a document purportedly written by the Plaintiff but which was not even on the Plaintiff's letterhead and had a*

different address. It was purportedly signed by the Plaintiff's managing director (exhibited D8) but the managing director disputed the signature and was able to show while on the witness stand as PW1 that the signature was not his. In any case under regulation 13.6.3, a consumer remains responsible for paying for electricity supplied on the premises after vacating the premises (i.e. Hotel Africana Ltd or BMK Industries).

Whereas a licensee may disconnect electricity for failure to pay by a consumer under regulation 15.1.1, disconnection is not permitted under regulation 15.6 where a consumer has made a complaint related to failure to pay amount of the bill which does not relate to the standing service fee, electricity usage charge, capacity charge or charges for other services rendered by the licensee. The transferred bill did not relate to any of the above categories. Secondly the fraud charge was unjustified and unlawful according to the finding of the court on the issue.

Last but not least the Electricity Act 1999 chapter 145 on supply of electricity and Section 79 thereof gives a consumer of electricity a right to be supplied by the licensee of the Authority. Secondly the licensee may seek to recover outstanding dues by civil action."

The action of disconnecting respondent's power supply was based on a claim of unpaid bills. It appears clearly from the evidence on record that the said unpaid bills were frequently protested by the respondent. The respondent upon getting exorbitant bills complained to the appellant and notified it that, they shared the same account with BMK/ Hotel Africana, hence the overpriced outstanding bills were not due to him alone. He further notified the appellant about the faulty meters which caused wrong calculations but the same went unheeded. There was also a disputed consent to transfer the outstanding bill from Hotel Africana. On 21st August 2012, in his letter, the respondent comprehensively explained to the appellant.

It reads as follows:-

"We wish to respond to your letter ref DM/BND/2/08/16 dated 16.8.2012.

In this letter you were opposing our request to waive the transferred bill of UGX 64 million from Hotel Africana to this account, the fraud bill of UGX 51,575,374/= reading KVA on faulty meters thus giving rise to a fake bill of over UGX 24 million of the November bill 2011.

The facts are that we never consented to the transfer of the UGX 64 million. It was due to the landlord's influence in your office and as a resulted of locking POLLA PLAST out of the premises for over three weeks, M/S. Hotel Africana wanted us to pay their bill, claiming that we used the electricity alone to run the machines at their expense. We were desperate about workers' salaries, rent for the premises etc that we coarsely wrote the consent. Otherwise we were not liable to pay UGX 64 million.

Regarding the fraud bill, we just saw UMEME disconnecting us claiming that we had fraudulently used UGX 51,575,374/= for a number of times we have to write to UMEME about this bill that it lacked a substantive evidence to justify the fraud but it has kept a deaf ear. The feeder pillar at our place was ever locked by UMEME, where did we get the key to access electricity?

We pray that the bill be deleted from our account.

Umeme misread their KVA as 524, yet our machinery capacity was between 170 and 200 KVA. In the month of November 2011 the reading was also obtained from a fault meter and as such the bill of November 2011 of UGX 24,503,990/= was fake.

Please refer to your attached letter dated 20th Jan 2012 where you agreed that the two meters were faulty and on that basis, you as UMEME promised to test

your meters and tell us the extent of the fault and for you to waive the fake bill of Nov 2011 but not any step has been taken. Can you do it for us because we feel it."

Having been presented with such an explanation, the appellant ought not to have disconnected the respondent's power supply. We agree with the learned trial Judge that, the bill was transferred unlawfully and the energy loss cost was purely arbitrary and not based on any sort of logical calculation. Had it not transferred such a superfluous bill, the respondent would most probably have been able to continue paying monthly electricity bills. But he was instead burdened by the appellant. The learned trial Judge rightly found that the transfer was unlawful and as such the disconnection was also unlawful. We find that he was justified when he went on to assess the right amount that was due to the respondent and subtracted Ug. Shs. 60,482,777/= which was the amount unlawfully transferred to the respondent's account and Ug. Shs 51,575,373/= which constituted the fraud charge unlawfully imposed on the respondent from the total amount of Ug. Shs.137,614,450/= claimed when the electricity was disconnected and arrived at Ug. Shs. 22,586,300/=.

The resolution of ground 1, resolves ground 8 as well. Grounds 1 and 8 fail and we accordingly uphold the learned trial Judge's findings in respect of the above.

The resolution of ground 2 begs the question of why the respondent signed the Deed of Acknowledgement of Debt and Undertaking to pay if he did not consent to the bill transfer. The appellant faults the learned trial Judge for holding that the undertaking was done under economic duress.

As defined in *Pao On Vs Lau Yiu [1979] 3 All ER 65 at 78*, to constitute duress of any kind there had to be coercion of will so as to vitiate consent. The law recognises a kind of duress termed *"economic duress,"* both in situations where there exists a relationship between the complainant and the defendant and in situations where it is

not. Black's Law Dictionary (9th Edition) defines economic duress as an unlawful coercion by threatening financial injury at a time when one cannot exercise free will. It is also termed *"business compulsion."*

Lord Scarman in *Pao On Vs Lau Yiu* (supra) while relying on the judgments of Lord Wilberforce and Lord Simon of Glaisdale in *Barton vs Armstrong [1976] AC 104*held that, there is criteria that is relevant in considering whether a Plaintiff acted voluntarily or not in signing an instrument or entering into a contract. Furthermore, that in determining whether there was coercion of the will such that there was no consent, it is material whether the person alleged to have been coerced did or did not protest at the time, that at the time he did or did not have an alternative course open to him such as an adequate legal remedy, whether he was independently advised and finally whether after entering the contract, he took steps to avoid it.

These tests have been applied when Courts consider whether the impugned conduct, although legitimate, amounted to economic duress. In *Occidental Worldwide Investment Corporation Vs Skibs (The Sibeon & The Sibotre) [1976] 1 Lloyds Rep 293* it was held that commercial pressure was not enough. It must be shown that there existed a state of affairs constituting coercion of the will so as to vitiate consent. "The classic case of duress is, however, not the lack of will to submit but the victim's intentional submission arising from the realisation that there is no other practical choice open to him" See: *The Universe Sentinel [1983] 1 AC 366*. Accordingly two elements of duress are required; compulsion of the will and absence of choice and illegitimacy of the pressure.

Where a person enters into a contract as a result of threats of physical violence, the contract may be set aside provided the threat was a cause of entering the contract. There is no need to establish that they would not have entered the contract but for the threat.

In *Barton Vs Armstrong [1976] AC 104*, the appellant was the managing director of a company, whose main business was in property development. The appellant made a deed by which the company agreed to pay $140,000 to Alexander Armstrong, a state politician and former Chairman of the company's Board of Directors, and buy his shares for $180,000. Evidence was led to show that Armstrong had threatened to have the appellant killed. The Privy Council decided that the appellant could avoid the contract for being under duress, and it did not matter that he may have agreed to the deal any way. Lord Cross, Lord Kilbrandon and Sir Garfield Barwick held that physical duress does not need to be the main reason, it must merely be one reason for entering an agreement.

Originally, common law only recognised threats of unlawful physical violence. However, in more recent times the courts have recognised economic duress as giving rise to a valid claim. The basis of the duress as a vitiating factor in the law of contract is that there is an absence of free consent. Pressure not amounting to duress may give rise to an action for undue influence in equity. The effect of a finding of duress and undue influence is that the contract is voidable. Otherwise, a document signed without compulsion implies that, the person who subscribes his or her signature thereto intends his or her signature to authenticate his or her full agreement to its contents.

In *North Ocean Shipping Co Ltd Vs Hyundai Construction Co Ltd* [1979] QB 705, it was held that, the threat by the builders of a ship to terminate a contract with the owners unless an extra 10 per cent on the price was agreed was "economic duress", and the agreement by the owners to pay the extra was a contract made under "duress", and therefore voidable." From the definition, it can be deduced that the "duress" has to be unlawful. What is unlawful needs further clarification and may depend on the facts of the case. Some general remarks can however be made. The first conclusion is that lawful force cannot be actionable as "duress". It is therefore necessary for the

applicant relying on the ground of duress to prove that unlawful pressure was applied on him or her so as to lose his or her free will. Threat of the process of Court cannot be unlawful pressure and is always exacted by litigants or potential litigants to threaten anybody they claim is in breach of the law to comply with their demands or else face the due process of law. Consequently it is necessary to establish by evidence that the force or threat of force or pressure which was applied was unlawful pressure and that as a consequence thereof, the applicant lost her free will.

In deciding whether or not the transaction was procured by duress, the fundamental question always is whether the pressure crossed the line from that which must be accepted in normal robust commercial bargaining. Illegitimate pressure must be distinguished from the rough and tumble of the pressures of normal commercial bargaining. See: *DSND Subsea Ltd Vs Petroleum Geo-Services ASA [2000] EWHC 185*).

The minimum basic test of subjective causation in economic duress ought to be a "but for" test. The illegitimate pressure must have been such as actually caused the making of the agreement, in the sense that it would not otherwise have been made either at all or, at least, in the terms in which it was made. In that sense, the pressure must have been decisive or clinching. See: *Huyton SA Vs Peter Cremer GmbH [1999] 1 Lloyds Rep 620*).

The classic case of duress is not the lack of will to submit but the victim's intentional submission arising from the realisation that there is no practical choice open to him or her. The absence of choice can be proved in various ways, e.g. by protest, by the absence of independent advice, or by a declaration of intention to go to law to recover the money paid or the property transferred.

That it is necessary in a claim of duress to show that there was no reasonable alternative should not be underestimated. This is clear from the decision in *DSND Subsea VS Petroleum Geo Services ASA* (Supra) where the Claimant was carrying out

construction work for the defendant on an oil rig but suspended its work pending the signing of a contractual variation on more favourable terms. The defendant contended on the basis of economic duress that it should not be bound by the variation. This argument was rejected for three reasons: (a) the pressure from the Claimant was not illegitimate because the Claimant was acting in good faith in insisting on new terms. (b) The defendant had realistic practical alternatives to accepting the variation of the contract. (c) The contract had been affirmed when the defendant was free from any duress.

In establishing whether or not economic pressure is illegitimate, consideration is paid to the nature of the demands being made, their justification and the presence and absence of good faith."Outside the field of protected relationships, and in a purely commercial context, it might be a relatively rare case in which lawful acts of duress can be established. It might be particularly difficult to establish duress if the defendant *bona fide* considered that his demand was valid". See dictum of Lord Steyn in *CTN Cash & Carry Ltd Vs Gallaher Ltd [1993] EWCA Civ 19.*

There is a fine line between tough negotiations and actual economic duress. It must be shown that the claimant was put in a position where no other practical solution was available.It is important for the party claiming signing under duress to prove that there was indeed no other alternative, but to accept the conditions given under illegitimate (excessive) pressure, in which case, the claimant must also prove that he or she protested against such proposal and took all possible and necessary steps to avoid the deal. See: *Pao On v. Lau Yiu Long* (Supra)

Having set out the above principles of law relating to economic pressure in contracts we now apply them to the facts of this appeal.

The evidence on record indicates that the respondent at all times vehemently protested the illegality of the transfer of BMK/Hotel Africana electricity bill to his

account. However, he could do nothing as he had no alternative course of action. He was forced to choose between accepting the bill or having power disconnected which would automatically result in losing his business. Without the transferred bill as well as the fraud charge, the respondent would most probably have been able to pay his bill and keep his business afloat. It appears clearly from the facts before us that the undertaking was his only chance for the company to survive.

We find that the respondent would most probably have kept his business running had the appellant not imposed the disputed bills on him because, the appellant acknowledged that between November, 2008 to July, 2013 the respondent paid Ug. Shs. 350,720,585/= in respect of the power bills.

The appellant also acknowledged that, the respondent was a good client and that the only dispute was the BMK / Hotel Africana bill and the penalty fees imposed by the respondent. Clearly the appellant used its monopoly power as the only supplier of electricity in Uganda to coarse the respondent not only to pay a bill that was for someone else but also to try to squeeze more money from their otherwise good customer who had no option but to pay, and in the result they lost a good customer and destroyed his business.

We have no hesitation in finding that the said deed was executed whilst the respondent was under extreme economic duress. While resolving this issue, the learned trial Judge stated at pages 51-53 of his judgment respectively pages 541 -543 on the record of appeal as follows:-

> *"I have duly considered the evidence and particularly the testimony of PW1 and PW3. PW3 had been arrested at the offices of the Defendant. The Plaintiff was going to be disconnected when he was disputing the bill. In a bid to save his business and be able to fulfil his business obligations, he signed the undertaking. The undertaking exhibit D6 was executed under circumstances in which the*

Plaintiff's managing director Mr. E Makubuya could only exercise limited choice. He could not conduct his business of manufacturing plastic products without electricity. He could not make money to fulfil his monetary obligations without manufacturing plastic products. He was afraid of being sued for failure to fulfil his orders...

The evidence clearly showed that the Plaintiff did not have an alternative course open to him in the face of disconnection. He had to make money or sink. If he did not sign the undertaking, power would be disconnected and he would be unable to fulfil the Plaintiff's obligations to the Defendant and other persons. To make matters worse, the bill he was undertaking to pay included a transferred bill of over 60,000,000/= as well as a penalty of over Uganda shillings 51 million. Subsequent correspondence shows that the Plaintiff protested the bill which he was undertaking to pay. In exhibit P 19 the Plaintiff wrote on 25 January 2012 protesting in paragraph 7 of the letter a default bill of Uganda shillings 51,575,373/=. The Plaintiffs suit was filed on 8 November 2012 protesting the transferred bill of Uganda shillings 60,452,777/= as well as unlawful charging 51,575,373.68 Uganda shillings. The bill transfer of 60,452,777/= was based on a document relied on by the Defendant as the Plaintiff's document when the Plaintiff had not executed it. Inasmuch as the pressure applied on the Plaintiff included the colossal sums of money he was being pressured to pay, a substantial portion of the bill consisted of 60,452,777/= as well as 51,575,373/= Uganda shillings which was unlawful according to resolution of the next issue. The total Bill based on the two items amounted to Uganda shillings 112,028,150/=. In paragraph 3 of the undertaking exhibit D6 it is written that the account of the Plaintiff was indebted to the Defendant in the tune of Uganda shillings 137,614,450/=. If one subtracts 112,028,150/= from the said amount, one gets only Uganda shillings 25,586,300/= which is what the Plaintiff could have paid notwithstanding the complaint about the issue of faulty meters.

The above factors were strong enough to affect the free will of the Plaintiff in signing the undertaking. The factors outlined above vitiated the will of the Plaintiff's managing director. Moreover his staff had also been arrested and there was a threat to take further action against him as well as the threat of suffering economic damages by failure to produce. The undertaking exhibit D6 was signed under extreme economic duress as defined above. It was not lawful for the Plaintiff to be fined without due process of law. The general conclusion is that the undertaking signed by the Defendant is voidable. And the Plaintiff having challenged it on the ground of economic duress and other threats which appear in the evidence, the undertaking is hereby avoided."

We find no reason to fault the learned trial Judge's finding, his decision is upheld that the Deed was executed under economic duress. Ground 2 fails.

In respect of ground 3, it is contended that the appellant was not liable for the loss of the respondent's machines as found by the learned trial Judge.

Due to the outstanding debts, the plastic manufacturing machines of the respondent were attached and eventually sold. The machines were not attached and sold in relation to the case between the appellant and the respondent, but between the respondent and his landlord. The previous ruling had found for the respondent, saying that the financial situation that caused the respondent to lose his machines in a suit with his landlord was directly caused by the appellant. *Dharamshi Vs Karsan [1974] 1 EA 41* states 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. We agree with the learned trial Judge that had it not been for extreme financial strain put on the respondent by the appellant, he would most probably have been able to prevent his machines from being attached and sold. We also agree that, the respondent was unlawfully asked to pay an exorbitant amount of money, and when he was unable, the appellant disconnected his electricity. Being engaged in the

business of plastic manufacturing, the disconnection of power ruined the respondent's business. This action caused the respondent to be unable to operate his business, and thus forced his machines to be attached due to another debt, and ultimately sold. Because of the close relationship between the wrongful actions of the appellant and the loss of the respondent's business, the appellant was found to be liable for the loss of the machines.

The trial Judge did not assess the damages caused to the respondent by the appellant. We find that this was an error. The assessment was in respect of general and not special damages. There is no requirement to specifically prove general damages. In any event special damages were not specifically pleaded in the plaint. Paragraph 19 of the plaint referred simply to economic loss and loss of income. The particulars of the machines said to have been lost were neither set out in the plaint nor proved.

The facts before the learned trial Judge were sufficient for him to determine the general damages and he should have done so. Ordinarily we would have sent back the file to the trial Court for assessment of damages having found that the learned trial Judge erred when he failed to do so. However, this would cause unnecessary delay to the appeal and it would amount to an injustice to the parties of this appeal.

As a first appellate Court we have the duty to re-try the matter, as we possess the same power as the trial Court under *Section 11* of the Judicature Act which stipulates as follows:-

> *"Court of Appeal to have powers of the court of original jurisdiction.*
>
> *For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the original jurisdiction of which the appeal originally emanated."*

We now invoke the power of the trial Court under the above law to assess the general damages.

In the assessment of general damages, the Court should be mainly guided by the value of the subject matter, the economic inconvenience that the respondent may have been put through and the nature and extent of the injury suffered. See: *Uganda Commercial Bank Vs Deo Kigozi [2002] 1 EA 305.*

Furthermore, a party who suffers damage due to the wrongful act of another must be put in the position he or she would have been in if she or he had not suffered the wrong. See: *Hadley Vs Baxendale (1894) 9 Exch 341* and *Kibimba Rice Company Ltd Vs Umar Salim, Supreme Court Civil Appeal No. 7 of 1988.* General damages are the direct natural or probable consequence of the wrongful act complained of and include damages for pain, suffering, inconvenience and anticipated future loss. See: *Storms Vs Hutchinson [1905] AC 515 and Kabona Brothers Agencies v. Uganda Metal Products & Enamelling Co Ltd [1981-1982] HCB 74*

All this is subject to the duty to mitigate. At common law, the claimant had a duty to take all reasonable steps to mitigate the loss sustained. See: *African Highland Produce Ltd v. Kisorio [2001] 1 EA 1*).

Damages are compensatory in nature in that they should offer some satisfaction to the injured party. See: *Uganda Revenue Authority Vs Wanume David Kitamirike CA 43 of 2010.*

As per the prayer for compensation and general damages are concerned, they are awarded so as to compensate the injured party according to Earl Jowitt in *British Transport Commission vs. Gourley (1956) AC at 185 at page 197.* It was held that the broad general principle which should govern the assessment of damages in cases such as this is that the tribunal should award the injured party such a sum of money as will put him in the position as he would have been in if he had not sustained the

injuries. In *Horton vs. Colwyn Bay And Colwyn Urban District Council (1908) 1 Kb 327* at Page 341, Buckley LJ stated that "... *if an actionable wrong has been done* to *the claimant he is entitled* to *recover all damage resulting from the wrong, he would have had no right* of *action for some part* of *the damage if the wrong had not also created* a *damage which was actionable"*

In respect of special damages, the principle of law is that "special damages must be specifically pleaded and proved, but that strictly proving does not mean that proof must always be documentary evidence. Special damages can also be proved by direct evidence; for example by evidence of a person who received or paid or testimonies of experts conversant with the matters". See: *Gapco (U) Ltd Vs A.S. Transporters (U) Ltd, Court of Appeal Civil Appeal No. 18 of 2004 and Haji Asuman Mutekanga Vs Equator Growers (U) Ltd, Supreme Court Civil Appeal No.7 of 1995.*

The other category of damages which ought have been awarded are punitive or exemplary damages. Punitive or exemplary damages are an exception to the rule that damages generally are to compensate the injured person. These are awardable to punish the callousness, deter, highhanded, malicious, vindictive, oppressive and/or malicious conduct of the wrongdoer from acting in the same manner when faced with similar situations. They are also awardable for the improper interference by public officials with the rights of ordinary subjects. In *Obongo Vs Municipal council of Kisumu [1971] EA 91, Court held as follows:-*

> *"It is well established that when damages are at large and Court is making a general award, it may take into account factors such as malice or arrogance on the part of the defendant and this is regarded as increasing the injury suffered by the plaintiff, as, for example, by causing him humiliation or distress. Damages enhanced on account of such aggravation are regarded as still being essentially compensatory in nature. On the other hand, exemplary damages are completely*

outside the field of compensation and although the benefit goes to the person who was wronged, their object is entirely punitive".

Punitive or exemplary damages focus on the wrongdoer's misconduct or fraudulent acts and not the injury or loss suffered by the victim. They are in the nature of a fine to appease the victim and discourage revenge and to warn society that similar conduct will always be an affront to society and also the Court's sense of decency. They may also be awarded to prevent unjust enrichment. They are awardable with restraint and in exceptional cases, because punishment, ought, as much as possible, to be confined to criminal law and not the civil law of tort and contract. We notice that the respondent did not plead exemplary damages however we think that this Court has power to award such damages when it is justifiable as it is in this case. It is within the Courts discretion to determine the amount of exemplary damages to be awarded. See: *Ahmed Ibrahim Bholm Vs Car and General Ltd, Supreme Court Civil Appeal No. 12 of 2002* and *Esso Standard(U) Ltd Vs Semu Amanu Opio, Supreme Court Civil Appeal No. 3 of 1993.*

We find that the appellant acted in a high handed manner when it colluded with BMK/ Hotel Africana to transfer an exorbitant bill to the respondent and when he failed to pay, it disconnected his power supply. The appellant being a monopoly entity, it misused its power which caused loss/injury to the respondent. Therefore in such a situation, we are inclined to award exemplary damages to the respondent.

We consider a sum of Ug. Shs. 100,000,000/= as exemplary damages against the appellant just and equitable in the circumstances of this case.

Courts have also held that they will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages, it will generally be

necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the party is entitled. This is the principle enunciated in *Rook v Fairrie [1941] 1 ALL E.R. 297.* See also *Ecta (U) Ltd Vs Geraldine S. Namirimu and Another, Supreme Court Civil Appeal No. 29 of 1994.*

We are inclined to assess the damages in this matter. The value of the respondent's entire machines that were purchased from various entities on Court record is exhibit P.31 at pages 143—147. The plastic factory machines were valued at $2,534,107. This exhibit shows the value of the machines lost by the respondent due to the appellant's actions.

Exhibit P. 33 at pages 160-177, its purpose for the valuation was to get a loan facility from Bank of Africa and a portion (only 30%) of the respondent's valued assets by Meys Consult was valued then to be worth Uganda shillings 2,110,950,000/=.

The respondent in paragraph 47 of his witness statement at pages 220 and 221 stated and prayed for compensation of what he had lost, in paragraph 48 at page 221 he prayed for Compensation of USD. 2,000,000 for loss of business and loss of good will for over 4 years and in paragraph 19, he prayed for compensation for loss of his machines valued at USD 2,534,107. Taking into account the fact that the respondent lost his business as indicated above due to the appellant's action, we consider that an award of general damages of Ug. Shs. 300,000,000/= would meet the ends of justice.

In respect of ground 4, it is the appellant's submission that the learned trial Judge erred when he held that the bill of Ug. Shs. 60,482,777/= was unlawfully transferred to the respondent's account. As many of the other grounds stem from whether the transfer of money from Hotel Africana was fraudulently done,it is necessary to begin with analyzing the transfer. The respondent has argued that the transfer was done

without his consent. The only piece of evidence advanced by the appellant is a letter that they claim comes from Polla Plast (respondent's company) consenting to the transfer. This letter was suspected to be a forgery for a number of reasons. At the time of the transfer, the respondent had already taken over the account of BMK and there were no continued negotiations. There were no witnesses to the letter's delivery, no evidence was presented as to whether the signature on the letter was authentic, it was not on the typical letterhead used by Polla Plast, as well as other inconsistencies with the formatting of the letter and what is typical of Polla Plast.

Without this letter, there is no evidence to support that the transfer of the Hotel Africana bill was consented to by the respondent. It then follows that there was no consent for the transfer, as the respondent claims, and the transfer was inherently fraudulent by the lack of consent.

We find that the appellant acted in a high handed manner when it compelled that respondent to accept the transfer of BMK and Hotel Africana power bills to the respondent well knowing the respondent was not responsible to pay them. Every power consumer has a contract with the power supplier. There was no contract between the appellant and the respondent. The appellant ought to have closed the BMK/ Hotel Africana Account and opened a new one from the respondent.

By separating the two accounts the appellant would have been able to recover the money from BMK/ Hotel Africana. In those circumstances the respondent would not have been under duress to accept to pay the bill he did not consume. BMK/ Hotel Africana on their part ought to have closed the Umeme Account upon selling the factory. They appear to have connived with Umeme to coarse the respondent to pay the bills.

We agree entirely with the decision of the learned trial Judge on this issue. This ground of appeal as a result fails.

Ground 5 is whether the fraud charge/energy recovered of Ug. Shs. 51,575,373/= was unlawfully imposed upon the respondent. The additional contested money arises from a fine for unlawfully causing power loss. The respondent's electricity was repeatedly disconnected during the time of the conflict for failure to pay the above-mentioned bills. The appellant claims that the respondent unlawfully reconnected his power, causing a loss in power. He was then fined Ug. Shs. 51,575,373/=. The power transfer allegedly bypassed the meter that would register the amount and cost. Thus, an amount of Ug. Shs. 42,687,983 was estimated for the energy loss, coupled with a fine of Ug. shs. 1,000,000/=, VAT of Ug. shs. 7,807,429/=, and a service charge of 20,000/=. The period of time during which this happened is suggested to be three days. Evidence was introduced by a witness for the appellant that it is impossible to consume such a large amount of energy in that short amount of time. *Regulation 7.6* of the Electricity (Primary Grid Code) Regulations, 2003, allows the appellant company to estimate a loss amount in order to recover, but there is nothing in the regulations that allows for the imposition of a fee. As the estimation of Ug. Shs. 42,687,983/= is impossible, and no evidence was introduced as to an actual estimation of power loss, the resultant fines and fees that add up to Ug. Shs. 51,575,373/= cannot be lawfully imposed on the respondent. We agree with the learned trial Judge's finding. Ground 5 fails.

In respect of ground 6, the appellant faults the learned trial Judge for finding the Exhibit "D8" was not authored by the respondent. Exhibit "D8" is a letter purported to have been written by the respondent, acknowledging responsibility for A/C No. 110933009. However, the respondent refuted it. We have carefully perused the High Court Judgment and found that the learned trial Judge dealt profoundly with this issue. We are constrained to reproduce in *extenso* his findings. The learned trial Judge stated as follows at pages 44, 48, 49 and 69 of his Judgment respectively pages 534, 538,539 and 551 of the record of appeal as follows:-

"It is my finding that the document does not support the Defendant's case because there was no direct witness who could prove that it had been delivered to the Defendant. Secondly no evidence was led to prove that the signature on the document was that of the Plaintiff or any other person authorised by the Plaintiff. The Plaintiff demonstrated that the document was not on the characteristic letterhead of the Plaintiff Messieurs PollaPlast but only purports to be so and it even had a different box number on the purported letterhead. Though the Defendant's Counsel submitted that the Box number beginning with 341 is in the agreement as 34157, (see exhibit P2 and P3), this is not sufficient to prove that it is the Plaintiff's document. In fact DID1 also has similar heading to the Plaintiffs headed letter which PW1 admitted. Finally it was not signed by the Plaintiff's managing director and he testified that it was his characteristic style to include the date in type script. Exhibit D8 had a handwritten date number of 20th of October 2008. The signature on the document is of an unknown person. The document being hotly contested the burden shifted to the defence to prove it in evidence as the Plaintiff's document. No handwriting expert opinion was sought and the only credible testimony is that of the Plaintiffs Managing Director Mr. Makubuya that he did not sign the document. Finally the acknowledgement of indebtedness of the Plaintiff on the basis of transfer of the bill of Hotel Africana can be considered on its own merits below.

As far as issue number two is concerned as to whether the Defendant illegally and unlawfully transferred the bill of Uganda shillings 60,482,777/= to the Plaintiff, the transfer was made on the request of Hotel Africana according to their letter exhibit P5. Secondly the request was based on a forged letter exhibit D8 (Formerly DID1) attributed to PW1 the managing director of the Plaintiff. Because the basis of the transfer was not with the consent of the Plaintiff, it was unlawful...

...the Defendant on the basis of exhibit D8 (formerly DID1) which was not executed by the Plaintiff or any person proved in evidence and a letter of Hotel Africana exhibit P5 dated 9th of February 2010 without the knowledge of the Plaintiff agreed to transfer the bill of Hotel Africana Ltd above-mentioned to the Plaintiff. The transfer is not binding on the Plaintiff and to that extent the transfer of the bill was unlawful and without consent of the Plaintiff...

The Defendant relied on exhibit D8 (formerly DID1) which purports to take responsibility for account number 110933009 when the document in issue was not written by the Plaintiff at all..."

We entirely agree with the learned trial Judge. This ground of appeal accordingly fails.

Ground 7, the appellant argue that, the learned trial Judge erred in law and fact when he failed to properly evaluate the evidence on record, thereby arriving at a wrong conclusion. We have thoroughly perused the pleadings, the exhibits and the judgment of the learned trial Judge, we have not found anything contrary to the trial Judge's finding. We therefore find that this ground is misconceived and devoid of any merit whatsoever. The learned trial Judge properly and exhaustively evaluated the evidence on record. We find that this ground of appeal has no merit.

Ground 9, the appellant contends that, the general damages awarded to the respondent were exorbitant. The principle which has to be borne in mind is that the person who claims to have been injured must be awarded such sum of money which will put him in the same position as he would have been in if he had not sustained the wrong complained of. See: *Omunyokol Akol Johnson Vs Attorney General, Court of Appeal Civil Appeal No. 071 of 2010* (unreported).

We have already dealt with the issue of damages while resolving ground 3 on this appeal and as such ground 9 is resolved by the resolution of the said ground 3.

On ground 10, the appellant contends that the learned trial Judge erred when he did not award general damages to the appellant as a result of the respondent's unpaid bills. The general principle underlying the award of damages in contract is that the claimant is entitled to full compensation for his losses, that is the principle of *"restitutio in integrum."* See: *Livingstone Vs Rawyards Coal Co- (1880) 5 App Cas 25* where it was held that *restitutio* in *integrum* is that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

General damages compensate the claimant for the non-monetary aspects of the specific harm suffered. This is usually termed 'pain, suffering and loss of amenity'. Examples of this include physical or emotional pain and suffering, loss of companionship, disfigurement, loss of reputation, loss or impairment of mental or physical capacity, hedonic damages or loss of enjoyment of life.

Damages are awarded for loss suffered. We have not found any evidence showing that the appellant suffered any loss. If the learned trial Judge had awarded general damages to the appellant that would have been an error in law. This ground of appeal consequently fails.

Ground 11, the appellant challenges the interest of 20% per annum. The principle in awarding interest on general damages is that *"interest on general damages is compensatory in nature against the person in breach of the contract".* See: *Star Supermarket (U) Ltd Vs Attorney General, Court of Appeal Civil Appeal 34 of 2000.* The appellant was found in breach when it unlawfully disconnected the respondent's electricity, the disconnection led to loss of business by the respondent. The respondent prayed for compensation for loss of Machines, economic loss, loss of business, emotional distress and mental anguish, general damages, interest there on at a rate of 24% per annum from the date of filing of this suit till the date of Judgment and interest on the decretal sum at a rate of 20% per annum from the date of Judgment until payment in full. We find that the learned trial Judge was justified for awarding interest of 20% Per annum. This ground also fails.

Ground 12 is in respect of costs. Costs are awarded to the successful party. The respondent was indeed successful at the trial and we find that the learned trial Judge was justified when he awarded costs to the respondent at the trial.

This appeal fails. We make the following orders.

1. Appeal is dismissed and the Judgment of the High Court is hereby upheld with variations set out in this Judgment.
2. The appellant to pay Ug. Shs. 300,000,000/= to the respondent as general damages.
3. That the amount of money owed to the respondent of Ug. Shs. 22,586,300/= be set off from the general damages awarded under item two above.
4. Interest granted to be at 20% per annum on items 2 after deduction of the sum in item 3 above. That interest is to run from the date of the High Court Judgment 9th February 2015 until payment in full.
5. Costs of the appeal and those of the High Court are awarded to the respondent against the appellant at 6% per annum from date of taxation till payment in full.

Dated at **Kampala** this ..30th.. day of ..Oct.. 2018.

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Remmy Kasule
JUSTICE OF APPEAL

.....

Kenneth Kakuru
JUSTICE OF APPEAL

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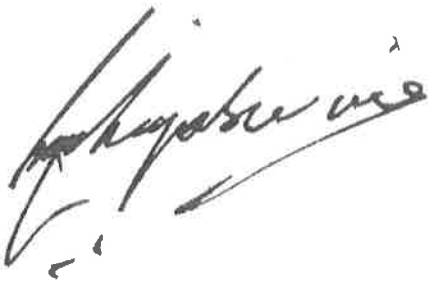

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Geoffrey Kiryabwire
JUSTICE OF APPEAL

30/10/18

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— brief for Appellant

Cst Sam Gmanga
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Cst. Semakula &
Rachis Mugoya Edwin
for Resp
Resp — CL.

Clerk - Melissa

Ct - Judgt read and
delivered in
Chambers.

30/10/18