

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 224 OF 2017

NATIONAL FORESTRY AUTHORITY APPELLANT

VERSUS

MUGIZA AZIZ MATEBE RESPONDENT

CORAM : Hon. Mr. Justice Alfonse Owiny- Dollo, DCJ

Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Stephen Musota, JA

JUDGMENT OF THE COURT

This appeal arises from the decision of Hon. Justice Christopher Madrama, J (as he then was) in High Court Commercial Division Civil Suit No. 32 of 2013 dated 16th June 2017.

Brief facts

The appellant was the defendant and counter claimant at the High Court. The respondent who was the plaintiff filed a suit against the defendant now the appellant in which she set out her claim as follows:-

- a) A declaration that the defendant was in breach of contract.*
- b) General damages of shs. 1,145,000,000/=.*
- c) Interest on (b) and (c) above at the Court rate from the date of filing the suit until payment on full (sic).*

d) Costs of the suit.

The appellant had issued to the respondent a permit under the National Forest Tree planting Act, 2003 (No. 8 of 2003) permitting her to harvest logs that had been felled and abandoned in Budongo Central forest reserve overtime. The permit specified the location, the species of trees, the volume of timber and number of pieces in square metres. The permit also indicated the amount of money the respondent was to pay and the period that the respondent was permitted to carry out the activity.

There were a number of misunderstandings between the parties over the contract period. The dispute ended up at the High Court, where the matter was resolved in favour of the respondent. However, the appellant's counter claim was also upheld. The respondent was awarded damages of shs. 300,000,000/= from which the counter-claim of shs. 13,002,000/= would be offset.

Being dissatisfied with the decision of the High Court, the appellant filed this appeal on the following grounds:-

- 1. That the learned trial Judge erred in law and in fact when he held that the appellant was in breach of its obligations towards the respondent and consequently in breach of the contract.*
- 2. That the learned trial Judge erred in law and in fact when he held that the question of whether the Plaintiff was in breach of the contract as far as the license is concerned cannot arise.*
- 3. That the learned trial Judge erred in law and in fact when he held that resolution of the issue of whether the Plaintiff breached the license on the ground of illegal felling of trees and the arrest of her servants will lead to no possible good.*

4. *That the learned trial Judge erred in law and in fact and failed to properly evaluate the evidence regarding the respondent's illegal felling of trees.*
5. *That the learned trial Judge erred in law and in fact when he failed to make any finding in respect of the respondent's illegal felling of trees.*
6. *That the learned trial Judge erred in law and in fact and failed to properly evaluate the evidence when he failed to make any finding as to the Respondent's admission of illegal felling of trees.*
7. *That the learned trial Judge erred in law and in fact when he held that the Chairman of the appellants Board of Directors absolved the respondent of allegations against her in respect of illegal felling of trees.*
8. *That the learned trial Judge erred in law and in fact and failed to evaluate the entirety of the evidence on the issue of liability arising from illegal tree felling.*
9. *That the learned trial Judge erred in law and in fact and failed to properly evaluate the evidence when he disregarded and failed to take into account or rely on the testimony and evidence of the defendant's witnesses in respect of the issues of illegal tree felling and breach of contract by the Respondent.*
10. *That the learned trial Judge erred in law and in fact and failed to properly evaluate the evidence when he considered Exhibit P. 13 in isolation and disregarded the context of the other evidence.*
11. *That the learned trial Judge erred in law and in fact and failed to properly evaluate the evidence when he held that the amount of Ushs. 150,000/= paid by the respondent was a refund for transportation costs and not a fine for illegal tree felling.*

12. *That the learned trial Judge erred in law and in fact and failed to properly evaluate the evidence when he held that the appellant is liable to compensate the respondent for alleged suffering.*
13. *That the learned trial Judge erred in law and in fact and failed to properly evaluate the evidence when he held that the Respondent is entitled to compensation because she was not able to work even after being allowed to do so.*
14. *That the learned trial Judge erred in law and in fact and misapplied the principles of assessment of General Damages for Lost Opportunities in making the excessive award of Ushs. 300,000,000/= with interest at 21 % per annum.*
15. *That the learned trial Judge erred in law and in fact when he failed to consider issues failure of the Respondent to mitigate her losses, if any.*

When the appeal came up for hearing learned Counsel *Mr. Joseph Kwesiga* and *Mr. Moses Muhumuza* appeared for the appellant while learned Counsel *Mr. Joseph Manoba* appeared for the respondent. Both parties made lengthy oral submissions which I have found no reason to reproduce here in *extenso*. The submissions were a repeat of what they had each submitted at the trial. I will thereafter only high light the pertinent parts.

The Appellant's Case

Mr. Kwesiga, Counsel for the appellant argued grounds 1, 2, 3, 4 and 7 together. He stated that, the appeal is based on the fact that, the trial Judge failed to find that the respondent had breached the contract between the parties in which the respondent was to harvest specific logs of wood in a National Central Forest Reserve that had already been felled. The respondent had been required under the license issued to her by the appellant to pay shs. 25, 501, 149.33/=. She only paid shs.12, 500, 000/= even then out of time.

When the respondent entered the Budongo Central Forest Reserve under license she instead felled trees in contravention of the conditions of the license. Her workers were arrested by law enforcement officers of the appellant. The respondent's workers admitted to having committed the offence and the respondent paid a fine to the appellant in order to avoid prosecution. Counsel submitted that, the contract had therefore been breached by the respondent and faulted the trial Judge for having failed to find so.

Counsel submitted that the learned trial Judge failed to properly evaluate the evidence before him and therefore arrived at a wrong conclusion. Counsel submitted that, during the time the respondent was in breach, the license expired and was not renewed. Further that, the appellant only allowed the respondent to complete the harvesting of the trees that had been specified under the contract on condition that she paid the money stated by the appellant but again she failed to do so. He asked the Court to allow the appeal.

The Respondent's case

Mr. Munoba for the respondent opposed the appeal and supported the decision of the High Court. Counsel submitted that the respondent had been engaged in the business of harvesting and selling timber. That she had been granted a license by the appellant to harvest timber in Budongo Central Forest Reserve. Counsel submitted that, it was the appellant who invited the respondent to harvest timber and granted her a license to do so. He submitted further that the respondent did not carry out any illegal activity in the forest reserve. However, she paid shs. 150,000/= to the appellant not as an admission of guilt but the money 'was paid as "transport refund" to the appellant , as the impounded timber had already been transferred to Kampala from Budongo. Counsel submitted that, the respondent was simply directed to pay

the shs. 150,000/= by the appellant's executive Director before the harvested logs of timber could be released to her and she did so.

Counsel submitted that the respondent's workers did not harvest any timber illegally but were only suspected to have done so because they were found at a site where timber had been freshly harvested.

Counsel submitted further that the parties entered into negotiation over the matter at the instance of the Board Chairperson of the appellant. The recommendations made were ignored by the appellant's management. Counsel further supported the decision of the trial Judge to award shs. 300,000,000/= as general damages for breach of contract. He submitted that, the amount was justified considering the frustration the respondent went through and the money she lost in the process of trying to carry out the business for which a licence had been granted.

Counsel asked Court to dismiss the appeal and uphold the decision of the trial Judge.

Resolution of the grounds of appeal

This is a first appeal. This Court is required as a first appellate Court to re-appraise the evidence and make its own inferences on issues of law and fact. See Rule 30 (1) of the Rules of this Court. 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, Fr. Narsensio Begumisa and 3 Others Vs Eric Tibebaga, Supreme Court Civil Appeal No. 17 of 2002.*

We shall therefore proceed to do so.

The background to this appeal is long and checkered. It was ably set out by the learned trial Judge in his judgment in considerable detail.

I am constrained to take an unusual step of reproducing the findings of fact, as set out by the learned trial Judge in his own Judgment from which this appeal arises. At pages 3-8 the trial Judge found as follows:-

“On the 6th January, 2009 the Defendant licensed the Plaintiff to harvest 285.684 m³ of abandoned logs from Budongo Central Forest Reserve (CFR) as per the license agreement Exhibit P5. The Plaintiff had been a timber dealer previously transacting with the Defendant as evidenced by Exhibits D9, D10, D11, D12, D13, D14, D15, D16 and D17. Also see Exhibit P3 and P4. The Plaintiff was assessed for license fees under Clause 7 at Uganda shillings 25,501,149.33/= of which she was required to pay the 1st installment of Uganda shillings 12,500,000/= within two (2) weeks ending on, or before 21st January, 2009.

The Plaintiff paid Uganda shillings 8,000,000/= on the 6th January, 2009 (Exhibit D38, D39 & D45) and Uganda shillings 4,500,000/= on the 4th February, 2009 (Exhibit D35 & D36) - beyond the time stipulated in the agreement in fulfillment of the first installment of Uganda shillings 12,500,000/=. This was accommodated by the Defendant. (Exhibit D33 and Exhibit D37). The balance under the license agreement of Uganda shillings 13, 001,001/= which was due within four (4) months of the 1st installment (4th August, 2009) was not paid and has not been paid to date, recovery of which is subject to the counterclaim herein.

The Plaintiff began performing under the contract by converting the abandoned log into timber in April, 2009 three (3) months after commencement and three (3) months to expiry of the license agreement. This is admitted in letter dated 18th July, 2009 (Exhibit D26). The Plaintiff

sought extension of time of the harvest period vide letter of 18th July, 2009. (Exhibit D26). The duration of the license under Clause 6 was for six (6) months from date of execution (6th January, 2009), expiring on, or about 6th July, 2009.

The Defendant issued the Plaintiff a casual license to cut or take forest produce in a Central Forest Reserve for the period 4th February, 2009 - 3rd August, 2009. (Exhibit D34). In evidence of the Plaintiffs performance of the license agreement, the Defendant has attached Forest Produce Declaration Forms which are required to accompany any forest produce being transported, including; - Serial No. 22203 dated 14th may, 2009 (Exhibit D43), Serial No. 22204 dated 14th May, 009 (Exhibit D42), Serial No. 22205 dated 22nd July, 2009 (Exhibit D44) and Serial No. 22267 dated 28th July, 2009 (Exhibit D41).

On the 11th July, 2009 the Defendants staff arrested employees of the Plaintiff for illegally felling fresh trees outside the licensed area which timber was impounded and contrary to their license which provided for harvest of abandoned logs. The impounded timber was transported to the Defendants Headquarters. The Plaintiffs employees were detained at Masindi Police Station and investigated under police file CRB 1076/2009. The Plaintiff later admitted illegally harvesting tree under Section 14(1) of the National Forestry and Tree Planting Act, 2003 and paid compensation to the Defendant in the sum of Uganda shillings 150,000/= in lieu of being prosecuted. See Exhibits 05, 06 and 07.

Numerous internal correspondences are exhibited showing the processes and - calculations of the Defendant resulting in the Plaintiff being offered an extension of the duration of the license agreement. A report was made by the Sector Manager dated 13th July, 2009, following a meeting between the Defendant's verification conducted on 10th September, 2009. (Exhibit P11). Staff and the Plaintiff on the 1st September, 2009 and a further joint field verification conducted on 10th September, 2009. (Exhibit P11)

The report of 13th July, 2009 (Exhibit P11) established that the Plaintiff harvested timber worth Uganda shillings 17,551,597.60/= and considering the 1st installment of Uganda shillings 12,500,000/= paid by the Plaintiff, the excess amount the Defendant required by the Plaintiff to pay was Uganda shillings 5,051,597.60/=. It was also recommended that the Plaintiff pay the balance of - Uganda shillings 13,001,149/= under the license agreement before any resumption of harvesting. On 13th July, 2009 the Defendant prepared a Field situational report in respect of the activities of the Plaintiff. (Exhibit P29). The Plaintiff on the same day wrote to the Defendant requesting release of the impounded timber. (Exhibit P30).

On 14th July, 2009 the Plaintiff wrote (Exhibit P27) to the Defendant in respect of observations/problems and a way forward/lasting solution. Measurements were submitted to the Range Manager/Budongo Systems (Exhibit P20). See (Exhibit 028). On the 11th July, 2009 the Chairman, Board NFA proposed recommendations on salvaging abandoned logs in Budongo Centre Forest Reserve. On the 18th July, 2009 the Plaintiff wrote to the Defendant requesting extension of the period to harvest

abandoned logs. (Exhibit P25). The Plaintiff admitted starting in April, 2009 and partly attributing the delay to processing a Bank Loan.

In the Defendants internal correspondence of 24th July, 2009 (Exhibit 024) the Range Manager/Budongo Systems was requested to establish the volume of illegally harvested trees converted to be deducted from the volume of abandoned mahogany trees. On 4th August, 2009 the Defendant wrote to the Plaintiff indicating that the volume of abandoned logs was not stated and requested the Range manager Budongo Systems to assess unconverted logs. (Exhibit P22). On the 14th August, 2009 the Defendant wrote to the Plaintiff stating that whereas the Plaintiff had paid Uganda shillings 12,500,000/= the volume of timber removed was worth Uganda shillings 20,471,969/=, leaving a balance of Uganda shillings 7,974,969/= and the overall balance to be paid for completion was Uganda shillings 13,001,149/=.

Other internal documents include; - Exhibit P23 dated in August, 2009 where the Defendant wrote to the Plaintiff (Exhibit 019) extending the validity of her harvesting license for Forty Five (45) days from 24th August, 2009 to October, 2009 to enable the Plaintiff recover timber agreed under the license agreement on condition that she pays the balance of Uganda shillings 13,001,149/= of - which the excess to be paid was calculated at Uganda shillings 7,974,969/= and was to be paid prior to harvesting. The balance could be paid in the course of harvesting the remaining logs. The impounded timber was to be released to the

Plaintiff upon payment to the Defendant of handling and transport costs - in compensation, since NFA had transported the timber from Masindi to Kampala at its own expense. See (Exhibit 019). On 18th August, 2009 the Plaintiff presented her version of volumes of timber in Exhibit 018 which were to be harmonized in.

On 26th August, 2009 the Defendant wrote to the Plaintiff stating that her calculations were improperly done and instructing that the Plaintiff and Range Manager/Budongo Systems have a joint physical verification on the ground to harmonize. On the 3rd September, 2009 the Plaintiff admitted contravening .Section 14 (1) of the National Forestry and Tree Planting Act, 2003 - providing for felling trees outside of a valid license - and agreed to pay the Defendant compensation In the sum of Uganda shillings 150,000/= rather than be prosecuted. The Plaintiff accordingly signed the NFA Form Serial Number 450 provided under the 19th Schedule of the Act (Exhibit 07). The Plaintiff paid the Defendant the compensation assessed, fine in the sum of Uganda shillings 150,000/= and was issued NFA General Receipt No. 90142. (Exhibit 05) and the timber released to her through NFA Form Serial Number 309. (Exhibit P6).

In spite of the Defendant extending the validity of the license agreement, the Plaintiff failed, neglected and or refused to resume performance of the license agreement and subsequently embarked on a protracted campaign to purportedly seek compensation from the Defendant. On 21st March, 2010 the Chairman of the Defendants Board wrote to the Minister of Water and Environment observing that the Plaintiff's employees had

been arrested converting illegally harvested log and that the Plaintiff had failed to pay the 2nd installment. Notwithstanding, it was recommended that the Plaintiff is allowed to resume operations under impartial supervision by the Defendants staff.

On 14th November, 2011 the Plaintiff wrote demanding compensation from the Defendant for purported expenses and loss of business. (Exhibit P3). On 23rd February, 2012 the Defendants Board, Chairperson wrote to the Executive Director following a Board decision indicating compensation of Uganda shillings 55,405,448/= subject to: -

- i. The Plaintiff producing documents in proof of her purported expenditure.*
- ii. Guidance from the Permanent Secretary, Ministry of Water and Environment.*
- iii. Guidance from the Office of the Solicitor General.*
- iv. Guidance from the Minister of Water and the Environment (Exhibit - 02).*

The preconditions of the purported compensation were never met and approval was not granted by any of the parties cited. The Plaintiff declined the conditional amicable negotiated settlement offered and on the 9th March, 2012 the Plaintiff wrote to the Defendant through her Attorneys demanding Uganda shillings - 573,810,000/= which claims in this suit has since escalated to Uganda shillings 1,100,000,000/= (Exhibit P1).

Two issues were agreed to for resolution of the suit namely:

1. *Whether there was breach of Contract/License and if so who is liable?*
2. *What remedies are available to parties."*

From the facts as accepted by the trial Judge it is evident that the respondent's workers were found to have been engaged in illegal felling of timber in Budongo Central Forest Reserve.

They were arrested by the appellants' enforcement officers. They were taken to the Police where they admitted to the offence. On 3rd September 2009 the respondent entered into an agreement without the appellant which stipulated as follows:-

Serial No. 450

NINETEENTH

SCHEDULE

THE NATIONAL FORESTRY AND TREE PLANTING ACT, 2003

[Sections 88(4), 90, 93(1)(a)]

***AGREEMENT TO PAY COMPENSATION FOR CONTRAVENTION
OF THE ACT OR RULES MADE THEREUNDER***

1, Mugisha Aziizi of Masindi hereby admit that I have contravened section 14(1) of the National Forestry and tree Planting Act (2003). Rather than be prosecuted for this contravention, I elect of my own free will to pay under and in accordance with the provisions of the Forestry & Tree Planting Regulations, 2003 [Forest Act, cap. 2461 the sum of Shs 150,000 compensation as assessed by NFA Section /Unit: L-EU.

Date 03/09/2009

Mateeba

Signature of the contravener

Musenero A.

Name and Signature of the responsible officer

Payment made on Receipt No. 90142

Date 03/09/2009

<i>Distribution:</i>	<i>Original</i>	<i>Controvenor</i>
	<i>Duplicate</i>	<i>To NFA HQ</i>
	<i>Triplicate</i>	<i>Remain in book</i>

The timber that had been illegally harvested was released to the respondent by the appellant. The release form is dated 3rd September 2009 and stipulates as follows:-

SEC/Unit Range Law Enforcement

Serial No. 309

Date 03/09/2009

1. The following exhibit(s), tools I vessels / forest-produce I Number plates other(s) (specifyy)" tick the applicable.

2. Particulars of exhibit (detailed

The following sizes of timber (mahogany) have been returned back to the owner after a discussion with the ED and agreed to pay all expenses.

12x1x14= 048pcs

4x3x14=011pcs

12x2x14=024pcs

011pcs

8x2x14=018pcs

6x2x14=09pcs

on truck UAB 074S

3. Have been officially released from NFA custody under the following conditions*state condition(s).

a) Payment of fine of amount 150,000
in words One hundred fifty thousand only
on receipt no 90142 Agreement No 450

b) other
condition

Name of authorised

Officer Musenero A

Signature

Title F/S L-E

Date 03 /09/2009

Owner /Agent Mugisha Aziiz. M

Signature

Date 3/9/2009

Distribution:	Original	Controvenor
	Duplicate	To NFA HQ
	Triplicate	Remain in book

The licensing of activities , that can be carried out in forest is set under Section 40, 41 and 42 of the National Forestry and Tree Planting Act (Act 8 of 2003) as follows;-

40) Licenses

(1) A responsible body may, subject to the management plan, grant a licence to an interested person for-

- (a) *the cutting, taking, working or removing of forest produce from a forest reserve or community forest; or*
- (b) *the sustainable utilization and management of the forest reserve or community forest.*

(2) A responsible body shall in accordance with regulations, prescribe the terms, conditions, rights and fees for a licence granted under this section.

(3) Nothing in this section shall be deemed to transfer to or vest in the person granted a licence, any privilege, right, title, interest or easement over the forest reserve or community forest, other than that stated in the terms of the licence.

41. Application for licence

A responsible body shall, through a fair, open and competitive process in accordance with procedures prescribed by regulations, invite applications for a licence under this Act.

42. Unlicensed activities

(1) A person shall not, except in accordance with section 32 or where he or she has been granted a licence for the purposes, grow, cut, take work or remove any forest produce from a forest reserve or community forest.

(2) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding thirty currency points or to imprisonment for a term not exceeding three years, or both.

Further to the above, the record of appeal before us reveals that on 11th July 2009 the appellant's staff from Budongo Masindi District arrested the respondent's workers while they were felling trees outside the mandate of the licence. The respondent's workers were arrested illegally felling timber out of the scope of the

licence. The felled timber was impounded by officers of the appellant. The above excerpt clearly sets out what transpired between the parties to this appeal, from which we can now make our own inferences both law and a fact. This timber was transported to Masindi National Forestry Authority Office and later transported to Kampala at National Forestry Authority Offices.

The respondent's workers were detained at Masindi Police Station and a criminal case file was opened against them. It is Police file Number CRB 1076/2009. The respondent admitted to the offence and paid a fine as already set out above.

It is trite law that an illegality vitiates a contract. The word 'vitate' is defined in Black law Dictionary as:-

"To impair, to make void, voidable to cause to fall of force or effect to destroy or annul, either entirely or in part, the legal efficacy and binding force of an act or instrument as when it is said that fraud vitiates a contract".

If indeed there was still a subsisting contract between the parties as at 11th July 2009 that contract was vitiated by the respondent's illegal acts. Although the contract itself was not illegal, the respondent was found to have been engaged in an illegal activity in the performance of the contract. That illegal activity vitiated the whole otherwise legal contract. That contract having been vitiated by the respondent could not therefore be enforceable against the appellant in a Court of law.

The respondent through the acts of her employees committed an offence to which she admitted in writing and paid a fine in order to avoid prosecution. She is estopped by record under *Section 14* of the Evidence Act from raising a defence against this admission, contending as she has that; the money paid was not a fine

but transport refund. The document she signed has been reproduced above and it speaks for itself. It was an unequivocal admission of guilt. The offence to which she admitted has been set out above. She would have been liable on conviction to a fine not exceeding thirty currency points or imprisonment for a term not exceeding three years, under *Section 42 of Act 8 of 2003*.

The Supreme Court in *Active Automobile Spares Ltd vs Crane Bank & Rajesh Pakesh, Supreme Court Civil Appeal No. 21 of 2001* summarizes the position of the law in respect of enforcement of illegal contracts as follows:-

“It is trite law that courts will not condone or enforce an illegality. This well established principle of the law was put this way by Lindley L.J, in Scott vs. Brown Doering –MCNo.1 & Co (3) (1892) 2QD, 724 at P.728: “ Exturpi causa non oritur action. This old and well known legal maxim is founded in good sense, and expresses a clear and well recognized legal principle, which is not confined to indictable offences. No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal if the illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence by the plaintiff proves the illegality the court ought not to assist him.”

In the same case, A.I.Smith, L.J said: “If a plaintiff cannot maintain his cause of action without showing, as part of such cause of action, that he has been guilty of illegality, then the court will not assist him.”

In the earlier case of Taylor vs. Chester (4) (1869) L.R.4 Q.B. 309, it was said at P.314:

“The true test for determining whether or not the plaintiff and the defendant were in pari delicto, is by considering whether the plaintiff could make out his case otherwise than through the medium and by aid of the illegal transaction.”

In the present case, the appellant and the Bank were in pari delicto in the illegal transaction under consideration. The appellant cannot make out its case for refund of the US dollars 97,000/= without depending on the illegal transaction. In the circumstances the Court cannot order for the return of its money.”

We are bound by the decision, which confirms the position of the law in this regard. In the case cited above the Supreme Court declined to grant any remedies to the plaintiff. We find that, the respondent was not entitled to the remedies sought at the High Court.

We would find that, the claim as set out in the plaint was unsustainable having been found on a contract that had been vitiated by illegalities. It ought to have been dismissed on that account. We would accordingly dismiss it.

Had we not found as we have above we would have found that the respondent failed to prove her claim for the following reasons:-

The Forest licence which was the foundation of the contract upon which the suit was premised was issued to the respondent on 6th January 2009 permitting her to harvest 285,684 m³ of timber that had already been felled. She was required under that licence to pay to the appellant shs. 25,501,149.33/= of which the 1st installment was to be paid on or before 21st January 2009. She failed to meet this condition, only managing to pay the said amount on 6th February 2009 out of the time stipulated under the contract. The second installment of shs. 13,001,149/= which was due on 4th August 2009 was never paid and was still outstanding and owing at the time she filed her claim at the High Court from which this appeal arises.

The above notwithstanding, the respondent went on to harvest and take possession of the timber, including timber she felled illegally. She was able to harvest timber worth shs. 17,551,596.60/=. This was shs. 5,051,597.60/= over and above shs. 12,500,000/= she had paid as part payment. She never paid the said amount and the same remained unpaid at the time she obtained judgment at the High Court. For that reason we find that, she was the party in breach of the contract as set out in the licence. The learned trial Judge found that, she owed money under the contract and he allowed the appellant's counter claim of Shs. 13,002,000/= against her. With all respect to the learned trial Judge he ought to have found while allowing the counter claim that the respondent herein was the party in breach of the contract and not the appellant. We have no hesitation in finding so.

Even if we had found for the respondent in this matter and had upheld the decision of the High Court, which we have not, we would have reduced the award of damages to shs. 5,000,000/= considering the facts of this case. The respondent invested shs. 12,500,000/= in a timber business. She harvested and took possession of timber worth over 17.5 million. She could not have lost over shs. 300,000,000/= in the process. We would still have found the award unjustified to say the least and we would have set it aside and substituted it with a lower amount. However having found that the respondent's claim was unsustainable the above is all moot.

We find merit in this appeal which is hereby upheld on all grounds.


We now make following orders:-

- 1) This appeal is hereby allowed. The Judgment and orders of the High Court except as they relate to the counter claim are hereby set aside.
- 2) The Judgment of the High Court is hereby substituted with this Judgment dismissing the respondent's claim entirely as set out in the plaint.


- 3) The respondent shall pay Shs. 13, 002, 000/= the amount set out in the counterclaim as decreed by the High Court.
- 4) Any monies paid to the respondent by the appellant in execution of the orders of the High Court if any shall be recovered from the respondent with interest at 14 percent per annum from the date that money was paid until payment in full.
- 5) The respondent shall pay the costs of the suit at the High Court, the costs of the counterclaim and the costs of this appeal.

We so order.

Dated at Kampala this 20th day of March 2020.



.....
Alfonse Owiny-Dollo
DEPUTY CHIEF JUSTICE



.....
Kenneth Kakuru
JUSTICE OF APPEAL



.....
Stephen Musota
JUSTICE OF APPEAL