THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CORAM: HON. JUSTICE S.G. ENGWAU, JA
HON. JUSTICE A. TWINOMUJUNI, JA
HON. JUSTICE C.N.B. KITUMBA, JA

CIVIL APPEAL NO.84 OF 2005

BETWEEN

MBALE EXPORTERS & IMPORTERS LTD ……...APPELLANT

AND

IBERO (U) LIMITED …….RESPONDENT

[Appeal from the judgment and decree of
the High Court of Uganda at Kampala (Arach Amoko)
dated 5th October 2005 in HCC No.609/2000]

JUDGMENT OF TWINOMUJUNI, JA:

This is an appeal against the judgment of the Commercial Division of the High Court in which the appellant's claim for US$84,206.9016 special damages, general damages for breach of contract, interest and costs of the suit against the respondent was dismissed with costs to the respondent.

The facts which gave rise to this civil suit as found by the learned trial judge and stated in her judgment are as follows:

"The plaintiff is a company based in Mbale and is engaged in the business of buying coffee from farmers and supplying to exporters. The defendant is based in Kampala. It buys, part processes and exports coffee from Uganda.

On the 31st May 2000, the plaintiff filed the above suit against the defendant claiming US$84,206.9016, being the value of 650 bags of various grades of coffee; plus general damages, interest and costs.

The defendant filed a defence denying liability for the alleged or any loss. The claim arose out of two contracts numbered 010 and 001, dated 3rd December 1999 executed by the plaintiff and the defendant for the supply of various grades of coffee.

On the morning of Sunday, 19th December 1999, the plaintiff's trailer turned up at defendant's premises in Kampala to deliver the coffee the subject of the two contracts.

The plaintiff's driver convinced the defendant's security guards who allowed him to park the trailer in the defendant's yard pending the opening of the defendant's business the following day, which was Monday the 20th December 1999.

That night, the trailer was stolen from the defendant's yard. The empty trailer was later found in Jinja, after a protracted search by the two parties together with officials of Group Four Security Ltd.

The plaintiff claims that the trailer was carrying 650 bags of various grades of coffee worth USSS42069011 which was supplied and delivered to the defendant under the two contracts. The defendant should therefore pay for it.

Alternatively, the plaintiff pleads that the defendant was a bailee and that it reneged on its duty of care as a bailee. It is therefore liable for the loss.

The defendant on the other hand states that it never received any coffee and that it is not liable as bailee or otherwise to pay for the coffee in issue."

At the scheduling conference, the following facts were agreed:

> "(1) That there was a contract in writing.
> (2) That the plaintiff's trailer was driven to the defendants premises on Sunday 19/12/1999.

(3) That the said lorry was stolen from the said premises.

(4) Demand for payment of the value of the coffee was made by the plaintiff."

The following points of disagreement were identified:-

"1) That the lorry was carrying 650 bags of coffee.

(2) The said lorry and coffee were parked at the defendant's premises at the instance and with the consent of the managing director of the department.

(3) Delivery of the coffee to the premises constituted delivery of the coffee under the contract.

(4) That the theft of coffee was as a result of the negligence of the defendant's servants for whom the defendants are vicariously liable.

(5) That the defendants are liable to pay the claimed amount and general damages.

(6) That the defendant owed a duty of care to the plaintiff.

As a result of these matters, the following issues to be tried were framed:

"1) Whether the 650 bags of coffee were delivered by the plaintiff to the defendant as per contract.

2) Whether the lorry and the coffee were parked at the defendant's premises with the defendant's consent or sanction.

3) Whether the theft of the lorry and the coffee was a result of the defendant's servant's negligence.

4) Whether the defendant owed the plaintiff a duty of care.

5) Whether the defendant is liable to pay the damages sought by the plaintiff."

In her judgment dismissing the suit, the trial judge held that:

(a) The appellant failed to deliver the coffee as per contract.

(b) The lorry of coffee was kept at the respondents premises without his consent.

(c) The theft of the lorry was not a result of the respondent's negligence.

(d) The respondent owed no duty of care to the appellant.

(e) The appellant was not entitled to any remedy.

The appellant was not happy with the entire judgment of the trial court, hence this appeal on the following grounds:

> **"1. The Learned trial judge erred in law and in fact when she held that the theft of the plaintiffs coffee was not a result of the defendant's servants negligence.**
> **2. The learned trial judge erred in law and in fact when she found that the trailer and coffee were not kept at the defendant's premises with the defendant's consent.**
> **3. The learned trial judge erred in law and in fact when she found that the defendant owed no duty of care to the plaintiff's evidence on record and thus came to a wrong conclusion.**
> **4. The learned trial judge erred in law and in fact when she failed to judiciously weigh the plaintiff's evidence on record and thus came to a wrong conclusion.**
> **5. The learned trial judge erred in law and in fact when she is framed an issue on her own volition, relating to the warehouse and resolved the same in favour of the respondent.**

I propose to deal with the 2nd 3rd and 4th grounds of appeal first which I consider to be crucial to the appeal. They raise the three vital questions namely:-

> (a) Whether the appellant delivered coffee in accordance with the contract between the parties.
> (b) Whether the respondent owed a duty of care to the appellant.
> (c) 'Whether there was breach of that duty.

Before I go into the merits of this appeal. I take note of the facts that at the trial, both sides called the evidence of three witnesses each. They submitted written submissions upon which the learned trial judge gave her judgment. On appeal, the parties counsel addressed court emphasising most of the matters they had raised in the High Court. In this judgment, I shall attempt to re-evaluate all the evidence on record as I am expected to do under Rule 30 of the rules of this court.

Indeed one of the grounds of appeal which I propose to deal with first calls upon us to do just that. I make no attempt here to repeat or summarise the evidence which was before the lower

court. I do not deal individually with various points raised by counsel in their submissions. I consider the record as a whole.

In revaluating the evidence, I bear in mind that this court did not have opportunity to see the witnesses in court. Where the learned trial judge made a specific finding based on her assessment of the credibility of the witnesses, that finding is to be respected unless, taking all evidence on record into account, the finding is untanable.

GROUNDS 2, 3 4

I think there is no doubt whatsoever that the appellant and the respondent entered into a contract whereby the appellant undertook to deliver specified 650 bags of coffee. The coffee was to be delivered between 3 and 17th December 1999. At the beginning of the trial, the parties agreed that the appellant's lorry was driven into the respondent's premises on Sunday 1 9th December 1999. Whether the lorry contained coffee or not was acknowledged by the respondent who, on 23 December 1999 wrote to the appellant and to Group 4 Security Ltd a company hired by the respondent to guard his premises, as follows:

"Re: Coffee theft at IRERO premises

Dear Sirs,

We have been advised to hold you responsible for all the costs, damages and consequences due to theft of the truck and cargo from IBERO (U) LTD premises 7th Street Industrial Area Kampala, on the night of 18th/19th 1999."

Four days after the appellant's lorry delivered cargo at the respondent's premises on 7th Street Kampala, the respondent acknowledged that it contained coffee, that it was stolen from his premises and that depending on the result of police investigations, he would hold either the appellant or Group 4 Security LTD or both liable.

In his evidence DW1 AISU Ignatius, a Security and Yard Supervisor at is the respondent's premises stated that when the lorry arrived at the gate of the respondent, the driver told him that he was carrying coffee from Mbale Importers and Exporters Ltd (the appellant). To his

knowledge, that company had delivered coffee 3 - 4 times and that was why he did not doubt the driver that the lorry contained coffee. Though he did not inspect the contents of the lorry which were covered by a tauplin, he allowed the vehicle to enter the respondent's premises and directed the driver where to pack.

The evidence of the DW3, the Chief Executive of the respondent was very direct. He testified:

> **"We had dealt with the plaintiff for one and half to two years before this incident. I cannot comment on the integrity of the plaintiff's staff. I can say that we had a good commercial relationship. They continued to deliver coffee and we continued to buy from them after the incident."**

Earlier on, DW1 had testified:

> **"I know that there was a truck in the compound on the night of 19th December 1999 because I saw it on the video tapes that record the pictures from the close circuit television cameras. We saw a truck parked in the compound, and we saw the truck being removed from the compound. It was removed at night. We could not see who removed the truck. We could see the movement of people, but it was not enough to identify them. I did not promise to pay Mr. Dega for the coffee, which was on the truck. (Shown exh P4). I recognize this letter. It is dated 25/1/2000. I am the one who signed it. It is addressed to the plaintiff attention Mr. Wilberforce Dega. (Reads it out). It is in response to a letter of 25 January 1999 from the plaintiff. (Shown exh P3). This is the one. The letter claims the sum of USD84, 206.906. It is for 650 bags of various of Bugisu coffee. IBERO did not receive the coffee referred to in this letter. We would need to sample and analyse the coffee to determine the grade, and we need to weigh the coffee to determine number of bags. None of this was done. We have never sampled nor weighed the 650 bags. I did not promise to contact my directors in order to make payment. I never contemplated making payment for the 650 bags of coffee complained of."**

It will be seen that throughout his evidence, DW1 asserted that no coffee was received because:

(a) The Security Supervisor who received it had no authority to do so.
(b) His company did not sample, test its quality or measure it.

I will deal with these two shortly. From his and the evidence of the respondent's, there was no doubt that when the respondent's lorry arrived, they assumed it contained coffee. That is why they never bothered to check the lorry. For example when PW1 was told that the lorry was delivering coffee to the factory, the learned trial judge records that PW1 asked:

> **"We have been waiting for this vehicle since yesterday. Where have you been? After explanation, they opened the gate and told him to park in the yard till the following day."**

After a careful evaluation of the above evidence, I have no doubt that on the morning of Sunday 19th December 1999, the appellant delivered at the premises of the respondent a lorry full of coffee as had been the practice for the last two years and as they continued to do after the incident of theft of the lorry.

The next question is whether the consignment was received within the meaning of the contract between the two parties. Here, I deal with two matters:

(a) Time of delivery.
(b) Authority to receive the consignment.

I think it need not be over emphasised that where a contract stipulates time within which a contract or any part of it must be performed, then the contract must be performed within that period unless the time is waived. If time of delivery is not of essence, the goods are correctly delivered, even outside stipulated time, if delivered within a reasonable time. Moreover the Sale of Goods Act provides that in ascertaining the intention of the parties, regard should be had of the terms of contract, the conduct of the parties and the circumstances of each case.

In the instant case, the coffee was delivered two days out of time. Though there is clear evidence that top officials of both parties were in contact with one another, the respondent never attempted to repudiate the contract on account of late delivery. On the morning of 18th December 1999, PW3 Wilberforce Dega was waiting for the coffee at the respondents premises in company of the

Chief Executive of the respondent. The respondent's security servants at the gate were expecting the consignment the whole day. The next morning when the lorry arrived, the servants of the respondent clearly admitted they were expecting it. When PW1 Dega arrived at the premises at 10 a.m. that morning, he was shown his lorry by the servants of the respondent and no attempt to repudiate the consignment was communicated. The lorry spent the whole of 19th day and up to 2 am on 20th day December in the parking yard of the respondent. It was guarded by the servants of the respondent. It was covered, among other stringent security measures, by circuit cameras for twenty four hours whereby the top officers of the respondent could even see it from their homes as it was actually being robbed. No repudiation of delivery was communicated. On 20 December 1999 it was the respondent and his servants who reported to the police that the coffee had been robbed. The security staff and the police joined in the hunt for the lorry to distant places such as Karuma Falls and Jinja. They at that time accepted that the coffee had been delivered to them. They did not repudiate delivery on account of late delivery. In the correspondence that took place between the parties for some months after the incident, the respondent first admitted receiving the consignment but said he would hold the appellant and Group 4 Security Ltd liable for the theft. Later they changed and denied receiving any coffee at all. They never, however, claimed that the contract was being repudiated due to late delivery of the coffee, or whatever the consignment was. For example on 24th March 2000 M/s Nangwala & Co for the respondents wrote to counsel for the appellant:

> **"It is true our client entered into a contract with your client for delivery and purchase of coffee. That contract did specify in clear terms what delivery is. Your client did not and our client did not take delivery of that coffee or at all.**
>
> **Our client does not take delivery of coffee through the guards as you did suggest. All liability is therefore denied."**

The respondent denied liability on grounds that delivery was not taken by an authorised officer, not on account of late delivery.

In their Written Statement of Defence dated 19th June 2000, apart from general denials and some specific pleadings on the issue of authority to receive the goods and the alleged negligence of the

respondent, the respondents never pleaded at any time that delivery was not accepted because it was done out of the time stipulated in the contract. It is my considered view that this particular defence is a mere after thought and cannot form a basis for repudiation of the contract.

The issue of authority to receive the goods was settled in the East African Court of Appeal case of **Muwonge vs. Attorney General 1967 EA 17** where it was held per NEWBOLD P.

> **"An act may be done in the course of a servants employment so as to make his master liable even though it is done contrary to orders of the master, and even if the servant is acting deliberately, wantonly, negligently or criminally, or for his own benefit. Nevertheless if what he did is merely a manner of carrying out what he is employed to carry out, then his mater is liable."**

The lorry of the appellant, carrying coffee as it had done several times in the past, arrived at its contractual destination on 19th December 1999. The servants of the respondent employed to open the gates and to secure the lorry were present. They recorded the arrival of the lorry and took it into custody. They took over the security of the lorry for about 18 hours. Then, despite all the alleged security precautions in the premises of the respondent, the lorry vanished in thin air. Only the respondent and his servants and hired security guards of Group 4 Security Ltd could explain what happened to the consignment. Management knew all along or at any rate had ample opportunity to know of the presence of the lorry but none protested. I would hold that under the authority of Muwonge vs The Attorney General (supra) the respondent would be held liable for the acts of his servants unless they proved that they were not negligent.

It is not helpful to the respondent to say that he did not sample, test the quality or measure the goods. Once the goods were received in custody of the respondent, nothing could have been done by the appellant to stop their being weighed, sampled or measured in any other way. The burden shifts on the respondent to show that the appellant's conduct hindered the process. In conclusion on this matter, I would hold that, the goods, the subject matter of this appeal were delivered to the respondent in accordance with the contract entered into by the two parties.

I now consider whether in the circumstances as I have found above, the respondent owed a duty of care to the appellant. I have found that the appellant, in accordance with a contract of sales of

goods, delivered the goods to the respondent. The only part which was not performed, namely sampling and weighing the coffee was frustrated by the robbery of the coffee, an act to which the appellant cannot be said to have contributed. Once the respondent accepted the coffee in circumstances explained above, then he definitely assumed the duty to ensure that nothing happens to the goods till they were sampled, weighed or dealt with in any other way stipulated by contract or until they were returned to the owner if they did not satisfy the terms of the contract.

In that case, the respondent became a bailee of the goods and owed a duty of care to the goods as are well known under the law of bailment. It was contended by learned counsel for the respondent that bailment is a contract and in order for it to be valid, all ingredients of contract must be present. It was contended that in this case there was no consideration for the bailment. I do not agree. Bailment can take place without consideration. There are two types of bailment at Common Law:

(a) Gratuitous bailments,

(b) Bailments for reward.

The provisions of "THE LAWS OF ENGLAND by EARL OF HULSBURY Vol. 2 Third edition" were relied upon by counsel for appellant on the Common Law of England on bailment. As far as I have been able to find out, it is still the law in Uganda. At paragraph 191 page 96 the learned author states:

> **"Bailment may be classified as being gratuitous, or for reward; thus the first three classes above mentioned, being without recompense, are designated gratuitous bailment; the others are bailments for reward or for valuable consideration. Of the three kinds of gratuitous bailments, it will be noticed that the first two are wholly for the benefit of the bailor, and the third wholly for the benefit of the bailee……..**
>
> **192. *Degree of care and diligence.* Of the various rights and duties of bailors and bailees, that most discussed is the degree of care and diligence required of the bailee in each kind of bailment, and that degree has, from the time of the Roman Empire**

till now, been held to vary according to the benefits derived from the bailment by the bailor and the bailee respectively. An ordinary degree of care and skill usually is required where both benefit from the transaction; slighter diligence, perhaps, where the benefit is wholly that of the bailor, and greater diligence where the benefit accrues only to the bailee. It may perhaps be stated with equal truth and brevity that the bailee is required in every case to take that degree of care which may reasonably be looked for, having regard to all the circumstances; for example, if you confide a casket of jewels to the custody of a yokel, you cannot expect him to take the same care of it that a banker would. It must be remembered, however, that bailment is a contract and the parties may always vary the incidents by the terms of the contract."

Further on, the learned author states:

"As soon, **however,** as **the bailee actually accepts the chattel, he becomes in some degree responsible for it whilst it remains in his possession or under his control, and is also bound, upon demand, to redeliver it to the true owner or his nominee, unless he had good excuse legally for not doing so."**

From the above exposition, I would conclude that once the respondent took possession of the goods in the circumstances I have endeavoured to explain, he assumed a duty of care to the degree explained above. I would decide this issue in favour of the appellant.

GROUND NO.1

This ground raises the issue whether the loss of the appellant's goods was 25 a result of negligence by the respondent. I have found that from the time the respondent took charge of the lorry and the consignment of coffee on the morning of 19th December 1999, they became gratuitous bailees of the goods and owed such duty of care as the extract from Hulsburys Law of England above shows. The same duty of a bailee was stated in **United Garments Industry LTD Civil Suit No.1520 of 1975.** It was stated that a bailee owed a duty to the bailor to take reasonable care of them, while they were in his custody, so that they were not lost or damaged. The issue here is whether the respondents fulfilled this obligation.

The security arrangements prevailing at the premises of the respondent were described at length by the key witnesses of the respondent mainly to show that everything possible was in place to ensure the safety of the goods. DW3, the Chief Executive of the respondent proudly praised the effectiveness of their security arrangements. I have already alluded to that evidence above. In a similar manner, DW2 Francis Opolot, a security guard of the respondent, who was on night duty on the night of the robbery, gave the following testimony:

> **"On that evening when I reported I asked my colleague who worked during the day about the situation at the place of work. He told me and showed me the lorry and said the lorry had come that morning. I went around and I checked the premises. Everything was okay. The security lights were okay. Even the barbed wires put around the walls were okay. Even the walls were okay. The wall at IBERO is just a big and strong wall, which is built all round the premises. It is about 10 meters high. There are two big gates and there is one small gate which people use. They are 3 gates. Two big ones and one small one. The two big gates are separated by a wall, then there is a small gate within one of the big gates for people to use. The gates are about 8 meters high. The barbed wires are all round on top of the wall as well as the gates.**

In addition to the wires and the walls there are other things the company gives us to use including

- keys for locking the gates.
- a machine which has an alarm. It is connected to Group 4 Security. When you press it, it rings to force people and they come as reinforcement.
- There are cameras placed in each and every office to see what is going on and also outside the offices within the yard.
- We also have hand phones.
- There are also two security guards from Group Four - each with a gun.
- The security lights are adequate.

I was not given the keys of the truck.

My colleagues gave me the phone, the remote machine and the keys to the gate.

The two guards from Group Four also came. They came at 20 6.45 pm in the evening. They found me there. I remember their names.

- Bogere Steven and
- Oyuki Erisa.

When they came, they knocked the gate and after recognizing their voices, I opened for them. I also took them around to see the place. We remained working. I was the only one from IBERO. So we were 3 including the two guards from Group Four. We stayed together briefly at the beginning but later at night around 10.30 pm each of us took a different position. For me, I went to our security room upstairs. I left the two guards downstairs. I don't know which positions they took from down there.

It was around midnight or some minutes past midnight that some people came upstairs where I had taken position. They banged the door and I heard them cocking the gun. They told me not to make an alarm, not to look at them or to do anything. They put me at gun point. They removed the keys, the remote and the phone from room where I had taken position. They were two. They beat me and tied my hands, put a string around my neck and even my mouth was covered. They left me tied under the table. They tied my mouth with a rope, and pushed a piece of cloth inside my mouth.

When they left me there I don't know whatever happened after that. That was the very night the truck went missing. I didn't see the truck. I was tied and I was weak. I heard lightly the vehicle going. When I gained my senses, I chewed the cloth, push it out and chewed the rope tying my mouth until it got cut. I couldn't however untie my hands. I made an alarm many times. Some people came and policemen also came. The policemen are the ones who untied my hand. The small gate was locked from outside, so the policemen had to break in. The big gates were both locked.

The policemen arrived at 4 am I have never seen this truck again.

Sd……

Ct: What of the Group 4 Guards?

DW2: They were not here; but their guns and uniforms were upstairs in the room where I was beaten. I don't know how the *s* guns and uniforms were there. I saw them after I gained my senses."

DW1, Aisu Ignatius, the Security and Yard Supervisor of the respondent, who was on duty when the lorry was delivered, described the security arrangements as follows:

> **"All the security personnel I have are trained and even myself I am trained, there seven security personnel.**
>
> **I am the 8th person, and the in charge. In IBERO, my security personnel have a uniform. I also have security personnel from Group 4 who hold guns only at night. But during daytime, they don't. The gate of IBERO are strong, made of iron 6 meters long. The walls are 8 meters tall, with barbed wires on top, so that no person can go over. In front of the building are three security lights. Even behind the building there are 3 securities light. Inside the yard, there are 4 security lights. In front of the walls outside, there are two cameras for detection. Inside the yard, there are also two cameras for the same purpose. Even inside the warehouse there are three cameras for the same purpose.**
>
> **There are also two cameras inside the head office. IBERO is situated at 7th Street Plot 44/50 in Kampala.**
>
> **I have only 2 men from Group Four who guard at night. The one who keeps the keys. He has no gun.**

The one of Group Four come at 4.30 pm with their guns. They go back at 6 am.

The gates I described are the ones throughout, which the trucks that deliver coffee pass through. There are 2 gates.

The lights are automatic. They switch at 6 pm in the evening and switch off at 6 am in the morning."

Later in his evidence, DW1 gave more details of what happened from the moment he received the coffee till he found out that it had been stolen the next day:

"On that day, one of the officers of Mbale Importers and Exporters Ltd that one (points at PW2 - Mr. W. Dega) came at around 10 a.m. Mr. Dega asked me if their vehicle had entered. I said yes and I showed him the vehicle. Then he asked me for the driver and turn boy and I told him that those people had gone out.

I showed him the vehicle and he saw it. Then he went away. I came back the following day at 8 am. When I reached the gate, I found there very many policemen. They told me that the tr2iler which had parked inside was stolen. The trailer was not there. I personally went to the security office. I found my security personnel who was a night guard that night was badly beaten and he was tied with a rope and could not talk. He was immediately taken to the hospital. I was not able to talk to him that morning because the man could not talk. He was called Opolot Francis.

When I asked for the keys, they were not there, and one of the policemen told me to go to Jinja Road Police Station, if I want the keys. I went to Jinja Road Police Station. I introduced myself to the policeman at the counter and I asked for our keys. I found Mr. Dega also there. They gave me the keys and I returned to my place of work.

Opolot works at night. He comes in the evening. Odeke worked with me during daytime.

When I came that morning I didn't find any of those Group Four Guards. Even their guns were missing. Up to today, I don't know where they are."

I have taken liberty to quote at length the evidence of the respondent's key witnesses in order to give an accurate picture of what they did to secure the appellants coffee consignment. On this evidence, it is beyond my imagination to figure out how, in absence of an armed attack from outside, a whole lorry full of 650 bags of coffee could have disappeared from the premises of the respondent without involvement and or connivance of the respondents security officials, including the guards from Guard 4 Security Ltd who were hired by the respondent to keep the premises safe. It is amazing that two of them who were on duty that night were missing in the morning of the robbery and that they have never been found. Did the respondent hold Guard 4 Security Ltd liable for the theft as they had threatened in their letter dated 23rd December 1999. Why then, did the respondent turn round to totally deny any knowledge of delivery of the coffee and the theft of the appellant's lorry at their premises? After a careful evaluation of all this evidence, I am satisfied that not only were the respondent responsible for the theft of the lorry and its contents but they were guilty of criminal negligence of such a nature that no legal system should let them get away with. I would hold that the respondent grossly breached his duty of care to keep the appellant's goods secure and prevent them from being destroyed or stolen as the duty required. I would allow this ground of appeal.

GROUND NO.5

In this ground, counsel for the appellant complains that the learned trial judge framed and decided in favour of the respondent an issue which was not originally agreed upon thus occasioning a miscarriage of justice to the appellant. I will not dwell on this ground of appeal. It is true the trial judge framed an issue that was not directly among the issues agreed upon. However, trial courts have wide powers under our rules of procedure to frame issues and I see nothing to prevent a court from considering an issue which arises from evidence or law being considered at the trial. In the instant case, the main issue was whether the appellant delivered coffee in accordance with the terms of the contract. In my judgment, **consideration** of whether the coffee was delivered at the agreed place was not far-fetched. The appellant was not ambushed because the issue was implicit in the main issue which was framed at the trial. Even if

I was to hold that the trial court acted unfairly, I do not find that this caused any prejudice to the appellant. This ground of appeal should fail.

The final matter to be decided is what damages the appellant is entitled to. This matter was not a subject of contention both in the lower court and in this court. PW2, the chief witness of the appellant explained how the claim of US$84,206.90 16 was arrived at. The appellant also claims for interest at a commercial rate of 20% p.a, general damages and costs of the suit. Since the learned trial judge found that the appellant was entitled to no damages at all, she did not consider the quantum of damages they would be entitled to if they had succeeded in their claim. It falls on this court now to determine the quantum of damages. I would therefore award damages to the appellant as follows:

(a) The market value of 650 bags of coffee was not disputed. I would award US$84,206.90 16 to the appellant.

(b)The appellant claimed for general damages. It does not specify what other damages it suffered that cannot be compensated by special damages and interest. The appellant has, of course, for the last seven years suffered a lot of inconveniences in pursuit of this claim but most of them can be compensated by costs and interest. The appellant's lorry was stolen and recovered and though it was vandalised, no details were given in evidence. I would award a token of general damages of Ug.5,000,000/' (Shillings five million only) with interest of 20% from the date of judgement till payment in frill.

(c) The contract in dispute was a commercial contract. It attracts a commercial rate of interest. The appellant claims 20% p.a but PW2 stated that the operating rate of interest on the dollar account was 13%. This too was not contested. I would award interest of 13% p.a. on the value of the coffee from the date of filing this suit till payment in full.

(d) I would award the costs of this suit to the appellant.

In the result, I would allow this appeal, set aside the judgment and orders of the lower court and order as follows:-.

The respondent to pay to the appellant:

(a)US$84,206.9016 from date of filing this suit till payment in full.

(b) General damages of shs.5,000,000/= with interest of 20% from date of judgment till payment in full.

(c) Interest of 13% on (a) above.

(d) Costs of the suit in this Court and the High Court.

JUDGEMENT OF KITUMBA JA.

I have read, in draft the judgement of Twinomujuni, JA. I concur.

JUDGMENT OF ENGWAU, JA.

I read in draft form the judgment of Twinomujuni, JA, and I entirely agree with his findings and orders. As Kitumba, JA also agrees this appeal would be allowed with costs to the appellant.

Dated at Kampala this 28th day of March 2007.

Hon. Justice Amos Twinomujuni
JUSTICE OF APPEAL

C.N.B. Kitumba
JUSTICE OF APPEAL

S.G. Engwau

JUSTICE OF APPEAL