IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: MANYINDO, D.C.J., ODER, J.S.C., & PLATT, J.S.C.)

CIVIL APPEAL NO. 7 OF 1988

BETWEEN

KIBIMBA RICE COMPANY LTD. ..... APPELLANT

AND

UMAR SALIM(..... RESPONDENT

(Appeal from the judgment and order of the High Court of Uganda at Jinja. (Mpagi J.) dated 8/8/89).

IN

CIVIL SUIT NO. 58 OF 1988

JUDGEMENT OF PLATT J.S.C.

The appellant Company, the Kibimba Rice Company, has premises along the main road from Tororo to Iganga and thence to Jinja. There is a gate way on this road opposite to the Nainala Road, a side road. The Company was using an official vehicle UA 0057, and it was involved in a traffic/ accident on 9th May 1988. The Company is aided by Chinese personnel, and Mr. Lu Rongirein (DW1) was driving the vehicle from the field to the residence and Company garage, of which Mr. Lu Rongirein was in charge. As Mr. Rongirein wished to turn into the Company gate, the Plaintiff's vehicle UWN 056 a Peugeot Estate car, collided with UA 0057. It was supposed that the Company had accepted liability, and there were nogotiations for settlement. At length, no payment having been made, the plaintiff Mr. Umar Salim brought this suit, claiming damages for the loss he had suffered. He claimed repair charges to his vehicle, towing charges, loss of business, and for general inconvenience and mental suffering or anguish.

2/....

The pleadings took this form. The plaint stated that on 9th May 1988, the Plaintiff's driver had been driving the Peugeot Estate vehicle, which was carrying passengers, when the Defendant's vehicle "crossed the road resulting (in) a collision with the Plaintiff's vehicle causing extensive damages". The particulars of negligence were that the Defendant's driver had driven without due care and attention; had failed to avoid the collision; and had crossed the road without ensuring the safety of other road users. As a result special damages were claimed for repair charges at Shs 1,500,000/-, towing charges at Shs 25,000/-, and loss of income at Shs 15,000/- per day from the date of the accident till the vehicle is finally repaired. General damages were claimed for inconvenience and mental suffering or anguish. Attached to the plaint was a "fee note/proforma invoice, which claimed Shs 1,380,000/- at that stage, 1st June 1988 (Annexure A). There was also attached a letter from the Company's Secretary dated 13th September, 1988 stating that the Company had undertaken to repair the Plaintiff's vehicle and an inventory of damage had been taken on the spot immediately after the collision. There was no undertaking to compensate the Plaintiff for loss of earnings during the period when the vehicle would be garaged. It was left to Mr. Umar Salim to expedite the repairs to shorten this period as much as possible. The Company had a cash flow problem, but the Ministry of Agriculture, the parent Ministry, had consented to the matter being settled out of Court.

The defence was that the Company's driver was not at fault, and that the accident was due entirely to the negligence of the Plaintiff's driver. The particulars of negligence include driving without due care and attention, attempting to overtake when it was not safe to do so; failing to keep a proper look out and failing to avoid the

3/....

accident. The defendant denied the claims or that annexures "A" and "B" could be held against the Company. There was no counter claim.

On these pleadings, the issues agreed for trial were unusual. I would have thought that it was a straight-forward contest; was the Plaintiff's driver placed in a position so that he could not avoid the accident, caused by the sole negligence of the Company's driver? If the accident was not caused by the sole negligence of the Company's driver should the plaint be dismissed? If the Company's driver Mr. Lu Rongerein was solely at fault, to what damages was the Plaintiff entitled? The Company denied all liability, but the Plaintiff alleged that the Company had admitted liability. The issues actually agreed were as follows:-

"1) Whether the Defendant accepts liability, if so,

2) Whether it is liable to pay the Plaintiff;

3) Whether there was negligence on the part of the Plaintiff's servants or the Defendant's servants; if so what damages is the plaintiff entitled to."

The learned Judge held that the Defendant Company did not actually admit liability, although there was an attempt to reach a settlement. Although it seemed that issue No.2 was dependant on issue No.1, the learned Judge understood her task to be to decide liability under issue No.3, including the possibility of contributory negligence. Then having decided issue No. 3, that both parties were negligent, she then returned to issue No. 2 and decided that the Plaintiff's driver was 30% to blame and the Defendant's driver 70% to blame. The learned Judge then decided various claims in damages, which I will leave until later.

4/....

The appeal of course is divisible into the decision on liability and the decisions on damages. I have also to note that there was a cross appeal. On the appeal, the Company having been adjudged 70% liable, claims that in principle the learned Judge's approach was wrong, as she shifted the onus of proof on to the Defendant Company. The Plaintiff had not produced evidence to support his claim in negligence. His claim ought to have been dismissed. It was not right to find each party guilty of negligence, and if that were right, then the division of 70% liability on the part of the Company was wrong. Hence the Company appealed for orders that (a) the plaint should be dismissed completely, or (b) at least the Company should have only 30% liability. These submissions follow grounds 1, 2, and 3 of the Memorandum of Appeal.

The difficulty facing the Appellant Company, is that issue No.3 widened the issues specifically arising on the pleadings, to include a possible division of liability for contributory negligence. Had the parties been content to leave the contest as one in which the Respondent/Plaintiff had contended that the Company's driver was solely to blame for the accident, and the appellant Company had denied that liability completely, then the Appellant would have been right to claim that the Respondent/Plaintiff had been set the task of proving his claim on the balance of probabilities. But issue No. 3 did not envisage the case of proof of the sole liability of the Company driver. It envisaged a case when there might be liability on either side. In that event, the Respondent had of course to offer proof of his claim; but equally the appellant Company had to show that it was not liable at all, or to what lesser extent it was liable.

5/....

Having allowed the issue to be widened for trial by consent, the Appellant cannot now complain that the learned Judge examined the conduct of the Appellant's driver and cast upon him a proportion of the responsibility; unless that was not borne out by the evidence. This analysis is confirmed by the closing speeches of Counsel at the end of the trial.

The learned Judge's conclusion is set out in ground 1 of the Memorandum, as follows:-

> "Neither side has been totally convincing. This would incline me to the view that either driver failed to exercise the natural reasonable care expected of them. They were negligent".

As a result of that factual conclusion, the learned Judge then made her decision apportioning the blame. She observed:-

> "It is always a difficult and unpleasant task to decide on the apportionment of liability. Having decided issue No. 3 as I have and doing the best I can in the circumstances I would hold the plaintiff 30% liable while holding that the defendant should shoulder 70% of the blame".

It is said in ground 3 that no reasons were given for this apportionment. But that is a misunderstanding of the Judgement, and when this was pointed out to the appellant's counsel, he withdrew this ground. Nevertheless Counsel submitted under ground 2 that there was no evidence upon which to base such an apportionment.

The learned Judge had before her, as the appellant's Counsel described the situation, two conflicting accounts of the accident. On the Plaintiff Respondent's side, the driver of the Plaintiff's car, Mr. Godfrey Mulondo (P.W.2), told the Court that he had been driving from Tororo to Jinja at 70 K.P.H. when suddenly he saw a vehicle "crossing". It was too late to avoid the accident, though he had

6/....

applied his brakes. He further explained under cross-examination that the vehicle had crossed 15 metres in front of him; he was then on his left hand side of the road; he knocked the other vehicle on the side near the rear door; after the impact the vehicles remained on the left hand side of the road where the impact had occurred, and this was directly in-front of the Company's gate. The evidence portrays a situation where from somewhere on the left, at a place unspecified, the Company's car emerged to cross the road, 15 metres infront of Mr. Mulondo. He could not by breaking or swerving avoid the accident, and so he hit the rear side but only dented the Company's car. His car was extensively damaged. It seems that the front of the Plaintiff's car was involved.

The Company's case was that Mr. Lu Rongerein, while returning to the residence at the Company's premises aimed to turn right into the Company's gate from the main Tororo-Jinja Road. He put on his indicator to show that he intended to turn right, when he saw a taxi about 15 metres behind. But he continued to turn at about 20 K.P.H., and then the taxi ran into his car, when he had almost entered the gate. His car spun round and the other car stopped facing Jinja.

Both drivers denied the other driver's version of what happened. However they were agreed on some points. On either story the Plaintiff/Respondent's vehicle was only 15 metres away from the Company's car. That is rather a short distance. The accident occurred in daylight near the Company's gate. There was apparently no obstruction. Mr. Lu Rongerein said that his car had been followed by a Mini-bus which had also indicated a right turn. But Mr. Lu Rongerein did not say that the Mini bus was directly behind him, or what Mr. Mulondo was doing in his taxi, except that he could see Mr. Mulondo's taxi.

7/....

Indeed Mr. Mulondo was carrying passengers. The inference appears to be that Mr. Lu Rongerein could see Mr. Mulondo's car, and vice versa, without the Mini bus intervening. Both witnesses agreed that the Police visited the scene, and that the accident was discussed between the parties.

The only witness called to resolve this dispute, was the Police Constable who visited the scene and drew the sketch plan exhibited. His name is not recorded, so I will refer to the Constable as D.W.3. It was his evidence which led the learned Judge to doubt the evidence of both drivers. On the one hand, the Constable put the point of impact well over the centre line into Mr. Mulondo's right hand lane, and from there he indicated that the cars had travelled on to a place infront of the gate on the extreme edge of the right hand side. As Mr. Lu Rongerein stated, his car had turned round, while Mr. Mulondo's car was left facing Jinja. The vehicles were near each other at the gate. On the other hand, the Constable said that Mr. Lu Rongerein's vehicle had no indicators, and the Constable assumed that Mr. Lu Rongerein had turned without giving any signal.

Both drivers disagreed with the Constable's evidence, in the sense that when each driver was cross-examined he denied the opposing thesis put to him. Mr. Mulondo denied driving in the right hand lane or overtaking. He denied that the vehicles came to rest on the right hand side. He denied the existence of the Mini bus. Mr. Lu Rongerein protested that though his vehicle was old, it had been in good mechanical repair; and he was in charge of the garage. But he was not questioned specifically on the existence of the indicators, or perhaps their inability to function. On the other hand, besides a general cross-examination by the Plaintiff's Counsel, the place of the vehicles

on the sketch plan, was not put to the Constable. The impact and the place where the vehicles stopped on the right hand side of the road was not specifically challenged.

The learned Judge did not make specific findings on the credence and acceptability, of the Constable. But she noted all that the Constable had to say, and as far as I can judge from her comments and conclusions, she accepted his evidence. It seems that both sides accepted that the Constable had come to the scene; that it had been considered and talked about at that time, in connection with the alleged offer to repair the Plaintiff/Respondent's car. I must conclude therefore that the Constable's evidence was accepted as reliable.

In those circumstances, the basis of the Plaintiff's driver's evidence is false, and his general thesis wrong. But there is a part of his case which remains because the Company's driver was turning across the path of the Plaintiff's driver. It was not a "crossing" from the left side of the road, suddenly confronting the Plaintiff's driver with an impossible situation; it was that the Company's driver had turned across the right hand lane of the road about 15 metres infront of the Plaintiff's driver. Suppose for instance that the Plaintiff's driver was lawfully there, it was still a case of crossing in front of a car behind, and that could, I think, still raise a question for decision within issue 3. At any rate, it was never submitted that the Plaintiff's driver had completely failed to prove his case, and that the plaint must fail. It was a case of one vehicle "crossing" the stream of traffic, but not as the Plaintiff's driver alleged in the latter's left hand lane, but rather with the Defendant's driver crossing by turning across the Plaintiff's driver's path in the latter's right hand lane.

9/....

It was sometimes said at the trial and in the Judgement that the Plaintiff's driver was over taking. The latter denied that. Mr. Lu Rongerein did not specifically say that the driver behind him was overtaking. But that was pleaded, and that was the inference drawn. I think that that was a correct conclusion. How else would the point of impact be midway in the right hand lane? Why was the Plaintiff's driver driving his vehicle at that place and not in his left hand lane as he stated? The sketch plan is only understandable if the Plaintiff's vehicle was in a position of overtaking. It is said that the Company's Mini bus was behind Mr. Lu Rongerein. The Plaintiff's driver denied that. The Police Constable said that he had been told about three vehicles. Possibly the Plaintiff's driver had overtaken the Mini bus. Whatever the reason was (and unfortunately the driver of the Mini bus was not called to give evidence), the Plaintiff's vehicle was in the right hand lane, or the overtaking lane, when it collided with the Company's vehicle.

Thus, when one considers the position of the Plaintiff's vehicle and the Company's vehicle turning across the path of the Plaintiff's vehicle, one understands very well what the learned Judge was saying in her summary. First, she found that neither side was candid. The Plaintiff was not on his left. Mr. Lu Rongerein did not say he gave a hand signal. One must conclude that he gave no signal. Even if the Mini bus did signal a right turn, its position is obscure and there is no reason given in the evidence why the Plaintiff's driver should associate the Mini bus with the vehicles driven by Mr. Lu Rongerein; nor that the latter would similarly turn right. Secondly, the learned Judge summed up the approach to each driver. She pointed out:-

10/....

> "I need hardly stress that it is the duty of a driver not only to give a signal before commencing a turn but to observe whether his signal has been appreciated, though failure to give a signal would not free the following vehicle from all blame".

Then, later on she remarked:-

> "DW3 suggested that PW2 was overtaking three other vehicles. This would be mere speculation I think. It was never substantiated. However assuming it was the case, and in the absence of any other explanation, one had to bear in mind that a vehicle overtaking another must pass on the right or off-side. The overtaking vehicle undertakes the management of the situation and should therefore give adequate warning of intention to pass and allow proper clearance to avoid a collision through some involuntary act of some other drivers".

Then she expressed the opinion that she did not think that at 70 K.P.H. the Plaintiff's driver could have failed to brake or swerve in order to avoid a vehicle sighted crossing about 15 metres away. She found that the Plaintiff's driver had not explained why he was on the wrong side of the road. The Plaintiff had not called the Police Constable to give evidence which was unusual. So she reached the conclusion that both were negligent.

I agree with the learned Judge in nearly all she said. There is no doubt that both drivers were at fault. It is a clear inference that the Plaintiff's driver had given no signal that he wished to overtake, or drawn the Company's driver's attention to his manoeuvre, by his horn. (If he had, no doubt he would have placed himself on the road as an overtaking vehicle). The Company's vehicle was crossing quite closely infront of the Plaintiff's vehicle without signalling. Both drivers were carrying out a permitted manoeuvre in the wrong way, and they saw each other at very close range. Perhaps

11/....

they did not fully appreciate what the other driver was doing. Nevertheless the Company's driver could have waited for the Plaintiff's driver to pass, and if one calculates the closing speed at about 50 K.P.H. the Plaintiff's driver ought to have been able to take some avoiding action; certainly swerving at once to the right and braking. Success depended on whether he was keeping an alert look out as he was approaching the Company's vehicle. But he said that he merely braked; he could not swerve. The learned Judge criticised him for not taking avoiding action, and in general terms, rightly so.

If that was the situation then apportionment of liability was of course the correct solution. I part company with the learned Judge, with great regret, in the proportions she chose. In my view there was little to choose between these parties and I would have divided the blame equally between them, i.e. 50% liability on each side.

I have now to consider the cross-appeal. I am not sure that much can be made out of it. It was first argued that the Plaintiff's driver was only 10% liable. But then it was conceded that 30% was fair. The leanred Judge was supported, and the first ground of the cross-appeal fell. In these circumstances it was not necessary to weigh up the cross appeal with the appeal. Equally the appellant was only partially successful. He failed to have the plaint struck out. His claim to have the proportions reversed also failed. But he was partially successful whilst the cross appeal on liability failed completely.

There are then the unfortunate questions to be answered on damages. The plaint was in artistic to say the least. There were four claims:-

12/....

1. in paragraph 6 of the Plaint, "specific" damages was claimed for Shs 1,500,000/- which was said to have been explained in the letter dated 13th September 1988;
2. in paragraph 7, a claim for made for Shs 25,000/- for towing charges, as "specific" damages;
3. in paragraph 7 Shs 15,000/- was claimed for loss of income from the date of the accident till the vehicle is repared; also as "specific" damages; and
4. a claim for general damages was made in paragraph 8 of the plaint for inconvenience and mental suffering on anguish. By "specific" damages the learned Judge no doubt correctly understood "special" damages.

The first claim was pleaded as follows:-

> "6. By the defendant's letter dated the 13th September, 1988 (copy whereof is attached and marked 'B') the defendant accepted the occurence of the accident and proposed to settle the plaintiff's bill, labour charges inclusive which is estimated at Shs 1,500,000/- .....".

In paragraph 5 the Plaintiff alleged that by the Defendant's letter/ note/proforma invoice dated the 1st June 1988 the defendant accepted liability for actual garage bills. That is not correct. This document was not the Defendant's letter. It was admittedly made by the Plaintiff Mr. Umar Salim. He himself wrote the last sentence that the above bill could be subject to garage bills. This document reveals claims for Shs 460,000/- for loss of business, and Shs 250,000/- for contigencies. How can it be said in paragraph 5, that the defendant made this letter and accepted liability for actual garage bills? The Defendant signed the bottom of the letter. The Plaintiff thought,

13/....

he says, that the Defendant had therefor agreed to pay Shs 1,380,000/-. Where does Shs 1,500,000/- in that case fit in paragraph 6? The matter becomes clearer when one considers paragraph 6. The letter Ex B dated 13th September 1988 does not mention Shs 1,500,000/-. The letter states in clear terms that the Company had come to a mutual understanding with the Plaintiff in good faith, to pay the Plaintiff the actual cost of repairs for his vehicle, on the plaintiff's presentation of actual garage bills, pertaining to the repair and or replacement of the actual parts and accessories damaged during the accident. The Company noted that an inventory of the damaged parts and accessories had been taken on the spot after the collision. The Company denied ever agreeing to pay the Plantiff for loss of earnings during the period of repair. It was up to the Plaintiff to get repairs done as quickly as possible to enable him to resume his earnings. The Company explained its cash flow problems, but as soon as the repairs had been made, the Plaintiff should approach the Company. The Ministry of Agriculture had agreed to the Company reaching a settlement out of Court.

From this letter, it can be seen that the learned Judge was quite right in deciding that the Company had not admitted liability, but had attempted to make a settlement, on the ground of reimbursement for actual garage bills. The Plaintiff admitted as much in paragraph 5 of his plaint when he says that the basis was actual garage bills.

Exhibit "A" was not a document concerned with actual garage bills; it was an estimate, and two items claimed were not garage bills at all. Admittedly the Plaintiff did not tender any garage bills.

Ex B did not agree to the figure of Shs 1,500,000/- for which there is no evidential support.

14/....

The Plaintiff did not abide by the terms of the agreement he appears to have relied upon by citing the September 1988 letter in paragraph 6. Consequently Exhibits "A" abd "B" are no use to him and his claim as set out failed. Infact he had not had the vehicle repaied by the time of the trial. He was therefor unable to prove his claim even then on actual garage bills.

The Plaintiff is of course, entitled to some damages. But he did not put forward a sound case and prove it. It may not however be too late to take proper proof of repair to the Company for payment in accordance with the terms of the September letter. At least he might use the original inventory; but I have not seen it.

The learned Judge decided the point in another way. She held that the mechanic who stated that he had invoiced the Plaintiff for repair charges of "about Shs 1,000,000/-" was not a person who could give such evidence. Perhaps so. But the main point is that the repairs had not been carried out and no serious estimate was put forward. Thus, even if the learned Judge was prepared to entertain a general claim, there was no evidence before her on which she could do so, as I am sure she realised.

On this basis the learned Judge's actual order was compassionate but incompetent. The Defendant/Appellant objects to being ordered to go before a "mutually agreed, recognised and competent mechanic" for an assessment. The Appellant is within its rights to do so, and the Respondent was unable to support the order in law. The order could only have been given with the consent of the parties. Thus ground 4 of the Appeal must succeed and this order must be vacated. The first of the Plaintiff Respondent's claims for special damages must fail.

15/....

The second claim was for Shs 25,000/- special damages for towing charges. The Defendant Appellant conceded that there should be no challenge to the Judge's order for Shs 10,000/-. After that concession I should say no more, and indeed there is no specific appeal on this award. There might have been the need for a consequential order after the proportion of liability had been changed. But as I say Shs 10,000/- has been conceded, and that order stands.

On the third claim several points of principle arise. The defendant appellant claims that the learned Judge was wrong to observe that it was impossible to prove a claim for Shs 15,000/- per day for loss of business. It was based on common sense, she observed, and so she assessed Shs 10,000/- per day. She made no order how long this payment would last. In the Plaint, payment was to last until the repairs had been carried out. The decree however stated that Shs 10,000/- per day, save Sundays, was to be paid from date of Judgement until payment in full. That might be a proper order for a claim for general damages. Here special damages were claimed, and so in principle the period would run from the date of the accident until the vehicle was repaired, as claimed in the plaint. The appellant drew attention to the wrongly worded decree. The latter must be set aside.

Taking the award in terms of the plaint, i.e. that Shs 10,000/- per day be paid from the date of the accident until the repairs had been carried out, there are still two objections to it. The Appellant is quite right to say, that in the case of special damages, the plaintiff must plead and prove them. This was clearly explained in SHAMJI vs BHATT (1965) EA 789 at p. 789 upon which the appellant relied.

16/....

It is a useful rule, because having done so, a Defendant may well concede such damages on inspection of the supporting documents. That reduces the issues for trial and on occasion they may be paid over before the trial is completed.

It is not true to say that daily income can never be proved. Accounts of receipts against outgoings can be proved to arrive at a net figure. If no accounts were kept, then a claim in general damages should be considered.

The second problem is that this claim must have ended before the vehicle was repaired. Mr. Mulondo, the Plaintiff's driver testified to the fact that he was driving the Plaintiff's Toyota purchased after the accident. I conclude therefore that the Plaintiff mitigated his loss by buying a new vehicle. How long his loss of income lasted, if any, I cannot say, as there is no exact evidence on the point. But on the strength of Mr. Mulondo's evidence, there does not seem to have been any great length of time between the accident and the purchase. I do not consider therefore that loss of income as special damages ought to have been allowed on any basis, of common sense or actual proof. Indeed the purchase of the new vehicle, which does not figure in the claims at all, may well be the reason why the repairs to the Peugeot taxi have taken so long. The purchase of the new vehicle ought to have been the limit of the claim for loss of business. Consequently ground 5 must succeed.

Finally, there is the claim for general damages for inconvenience mental suffering or anguish. The learned Judge made no comment on this head. The Plaintiff Respondent in his cross-appeal drew the Court's attention to this lapse, in ground 4 of the cross appeal. But then Counsel was unable to show any particular evidence led to this claim,

17/....

especially mental suffering and anguish. It was agreed that it was correct to make no award.

In the way Counsel put forward his case that may be logical. He was still hoping to prove special damages. But that having failed I must consider the situation in general.

First of all, Counsel is quite right that no evidence was led to mental suffering or anguish. It is not easy to see from the evidence that such injury was inflicted. But when one comes to inconvenience that can be inferred from the facts that there was an accident; there were negotiations for settlement; and finally the Plaintiff Respondent bought a new vehicle, and later brought this suit. It is true to say that the Plaintiff Respondent did not repair the vehicle damaged as would appear to have been the basis of the agreement that the Plaintiff Respondent relied upon. It is also true that his loss of business was curtailed by the purchase of the new vehicle. But apart from those 2 limiting factors there was obviously some general inconvenience.

The learned Judge seems to have thought that by sending the dispute to a mechanic that was all that was required as far as repairs were concerned, and by using her common sense, she could infer loss of business. Those were claims for special damages. It would have been better had she held that the special damages had not been proved and used her common sense on the claim for general damages. As it was a non-direction not to have done so, this Court can fill up the omission. It would appear to me that the inconvenience was fairly considered. The Plaintiff was placed in an awkward position, at a place he did not wish to be at; he had to get on with his affairs without his car; he had to take part in negotiations; and decide how best to continue

18/....

his business. It took some time to deal with this problem. I would award Shs 300,000/-. The Plaintiff Respondent is entitled to his share of shs 150,000/-.

In the result, therefore, I would set aside the Judgment and decree of the High Court and substitute therefore, Judgment for the Plaintiff Respondent in the sum of shs. 160,000/-. I would grant the appellant the costs of the appeal as he was largely successful. I would grant the Plaintiff Respondent half the costs of the cross-appeal as he was successful on only one point. I would grant the Plaintiff Respondent the costs of the action in the High Court.

Delivered in Court at Mengo this 9th day of February, 1990.

Sgd:

H.G. Platt
Justice of the Supreme Court

I CERTIFY THAT THIS IS A TRUE
COPY OF THE ORIGINAL.

B.F.B. BABIGUMIRA
REGISTRAR SUPREME COURT

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: MANYINDO, D.C.J., ODER, J.S.C., & PLATT, J.S.C.)

CIVIL APPEAL NO. 7 OF 1988

BETWEEN

KIBIMBA RICE COMPANY LTD. ..... APPELLANT

AND

UMAR SALIM ..... RESPONDENT

(Appeal from the judgment and order of the High Court of Uganda at Jinja. (Mpagi J.) dated 8/8/89).

IN

CIVIL SUIT NO. 58 OF 1988

JUDGMENT OF MANYINDO, D.C.J.

I have had the opportunity of reading the judgment of Platt, J.S.C. in draft and I agree with it. As Oder, J.S.C. also agrees, there will be an order in the terms proposed in that judgment.

DATED at Mengo this 9th day of February, 1990.

Signed:

S.T. MANYINDO
DEPUTY CHIEF JUSTICE

I CERTIFY THAT THIS IS A TRUE

COPY OF THE ORIGINAL.

B.F.B. BABIGUMIRA
REGISTRAR SUPREME COURT

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: MANYINDO, D.C.J., ODER, J.S.C., & PLATT, J.S.C.)

CIVIL APPEAL NO. 7 OF 1988

BETWEEN

KIBIMBA RICE COMPANY LTD. ..... APPELLANT

AND

UMAR SALIM ..... RESPONDENT

(Appeal from the judgment and order of the High Court of Uganda at Jinja. (Mpagi J.) dated 8/8/89).

IN

CIVIL SUIT NO. 58 OF 1988

JUDGEMENT OF ODER, J.S.C.

I have had the advantage of reading in draft the judgement of Platt, J.S.C. I agree with him that the appellant and the respondent should share liability for the accident in equal proportion.

The respondent's case in the lower Court in my view had the misfortune of being bungled up almost from the start. His pleadings were not the best. Nor was the quality of evidence adduced in proof of his claims for special and general damages and for loss of income. The framing of issues did not help matters either. Apart from the claim of Shs 10,000/- for towing charges, which the appellant has conceded before us, all that the respondent should receive in my view is some compensation for inconvenience caused to him by the damage of his vehicle in the accident. I concur with the proposed award of Shs. 300,000/- under this head. The respondent would therefore have judgement for Shs 160,000/-.

With regard to costs, I also agree that the appellant should have the costs of this appeal and the respondent should have halve the

2/....

costs of the cross-appeal and costs of the action in the High Court.

DELIVERED at Mengo this 9th day of February, 1990.

Signed:

A.H.O. Oder

Justice of the Supreme Court

I CERTIFY THAT THIS IS A TRUE

COPY OF THE ORIGINAL.

B.F.B. BABIGUMIRA
REGISTRAR SUPREME COURT