

UGANDA / JUDGMENT

Simba Telecom Ltd v Karuhanga & Anor (HCCS 242 of 2011) [2015] UGCommC 81 (15 May 2015)

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COURT

Commercial Court of Uganda

CASE / FILE NUMBER

HCCS 242 of 2011

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THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS NO 242 OF 2011

SIMBA TELECOM LTD}..... PLAINTIFF

VERSUS

1. KARUHANGA JASON}

2. SANIPARS LTD}..... DEFENDANTS

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiff's claim is for a sum of Uganda shillings 151,625,029/=, interest at market rates per month on the monies claimed from the date of breach until payment in full for breach of contract, interests and costs of the suit.

The Defendant denied the claim and counterclaimed for payment of Uganda shillings 278,075,481/=. The Defendant alleges that upon reconciliation of accounts by agreed to auditors they found unpaid to the Defendant certain monies.

The Plaintiff is represented by Counsel Kakooza Rogers of Messieurs Mwebesa Kakooza and Company advocates while the Defendants are represented by Anthony Ahimbisibwe of Messieurs Anthony Ahimbisibwe and Company Advocates and Solicitors. The court was addressed in written submissions after a reconciliation of accounts by an agreed referee and adducing evidence.

The admitted facts by both the Plaintiff and the Defendant are that the second Defendant was appointed to operate as an exclusive sub distributor for MTN products with the Plaintiff for Nakulabye territory in Kampala on 27 June 2008. The agreement was to take effect on 1 July 2008. Under the agreement the second Defendant was asked to achieve a sales monthly target of Uganda shillings 1,000,000,000/= and a quarterly target of Uganda shillings 3,000,000,000/=. The second Defendant was entitled to a compliance commission of 1% monthly and additional 0.5% on attaining quarterly sales targets. The contract was performed up to October 2010.

It is in controversy whether the monthly sales target was Uganda shillings 1,500,000,000/= and the quarterly sales target was Uganda shillings 4,500,000,000/=. The Defendant disputes the Plaintiffs claim of Uganda shillings 151,605,029/=. The Defendant/counterclaimant on the other hand claims to have hit the sales targets and earned commissions and bonuses and after paying for the goods supplied, carried out reconciliation and demands Uganda shillings 22,428,081/= from the Plaintiff. Furthermore the Defendants claims to have overpaid the Plaintiff in the amount of Uganda shillings 255,647,400/=. Lastly the total amount of the counterclaim of the Defendant is Uganda shillings 278,075,481/=. The issues agreed for trial are:

1. Whether the counterclaimant is entitled to the prayers in the counterclaim?
2. Whether the Plaintiff is entitled to the monies claimed in the plaint.

The basic facts of this suit and counterclaim are sufficiently contained in the written submissions of Counsels. The crux of the Plaintiff's written submissions is that in June 2008 the Plaintiff and the Defendant had a contract for dealing in various Telecom products and the Defendants were appointed there under to be sub distributors of MTN products for the Plaintiff within the Kampala area. The Plaintiffs case is that the Defendants failed to remit a total of Uganda shillings 151,625,028/= for products supplied during the period January – October 2010. The issues as framed are as follows:

1. Whether the Defendants owe the Plaintiff Uganda shillings 151,625,029/=?
2. Whether the Defendants are entitled to the prayers in the counterclaim?
3. What remedies are available to the parties?

Whether the Defendants owe the Plaintiff Uganda shillings 151,625,029/=?

The Plaintiff's Counsel submitted that the burden of proof lies on the party who is affirmative of the issue or question in dispute and the standard of proof is that on the balance of probabilities. As far as the issue as to whether the Defendant's owed the Plaintiff Uganda shillings 151,605,029/= is concerned, Counsel relies on section 16 of the Evidence Act for the definition of an admission. He further submitted on the effect of an admission under section 28 of the Evidence Act and that it is not conclusive proof of the matters admitted but may operate as estoppels. Reviewing the evidence the Plaintiff's Counsel contended that the second Defendant while responding on behalf of the first Defendant wrote and indeed acknowledged indebtedness to the Plaintiff in the sum claimed. From the facts on record since the Defendants did indeed admit the disputed sum, they

are barred by the doctrine of estoppels from denying liability. He relied on the documentary proof in exhibit P6 which is a letter dated 24th of November 2010. He further submitted that at the hearing the Defendant denied having authored exhibit P6. However the expert evidence of PW7, the handwriting expert, confirms that the signature on the exhibit was that of Mr Jason Karuhanga. He submitted that although the evidence is not binding on the court, it is persuasive and corroborates the testimonies of the Plaintiff's witnesses regarding the extent of indebtedness and acknowledgement by the Defendant (See *Kimani versus Republic* (2002) EA 417.)

On the basis of the above evidence Counsel submitted that the evidence confirms the audit report of Genesis and Company Certified Public Accountants. He sought to distinguish the findings of Ernst and Young and their findings that the Defendant's indebtedness to the Plaintiff amounted to Uganda shillings 99,395,805/=. He submitted that they followed the cash basis for accounting in the execution of their role. On the other hand Genesis and Company followed the accrual basis of accounting in which sales and payments related to the same period are matched in order to determine the amounts due to Simba Telecom from Jason Karuhanga. Counsel submitted that according to the first Defendant's ledger account in the books of Simba Telecom which were made available, payments received from the first Defendant on 2 December 2010 of Uganda shillings 63,985,000/= and on 4 January 2010 Uganda shillings 63,985,000/= were from sales made to him on 31 December 2009. To arrive at payments received from the first Defendant which are related to the sales made him in the same period, the payments received on 2 January and fourth January 2010 amounting to Uganda shillings 127,970,000/= must be excluded because they relate to a prior period to 1st of January 2010. He therefore submitted that this honourable court exercises its discretion to correct the accounting error displayed by the independent auditors.

Furthermore he submitted that the International Standards on Auditing 510 on initial audit engagements stipulates that opening balances whose effective implementation date is for financial statements for periods beginning on or after 15 December 2005 should be considered when making the report. During the preparatory meetings for the audits, the issue of opening balances came up. The parties agreed generally that there were no major issues or problems between them until 2010. Needless to say the respective positions for the period prior to 2010 were generally agreed to by the parties. Therefore the period to be considered was that between 1 January 2010 and 31st of October 2010.

The Plaintiff relies on the testimony of PW5 Peter Openduru to the effect that the Defendant was a trade debtor as well as a trade creditor to the Plaintiff for sales of airtime as well as for commission earned by him from the sale of airtime. As a trade debtor, the opening balance for the first Defendant in the Plaintiffs ledger by 1st of January 2010 was Uganda shillings 129,918,880/= while as the trade creditor, the opening balance was Uganda shillings 31,126,000/=. Ernst and Young in reconciling or confirming positions from the previous years audited accounts of both parties by simply stating that, that scope was outside the terms of reference for the disputed period. The independent auditor's report indicates that they worked according to International Standards on Related Services (ISRS) 4400 and within their agreed terms of reference. However ISRS 4400 provides that the standard should be read in the context of the preface to the

International Standards on Quality Control, Auditing, Review, Assurance and Related Services which sets out the application and authority of the ISRS. They neglected many of these procedures some of which include neglecting to get confirmation from MTN Uganda, Barclays bank Ltd, both entities with reliable information which could be essential in settling the dispute. The assertion that these third parties were not directly linked to the dispute simply does not suffice since as an expert from whom the court seeks guidance, it is supposed to do all in its power to give a credible audit opinion.

The Plaintiff requested court to take judicial notice of the use of targets in the telecom business industry which is evidenced by the initial dealership agreements signed between the parties in June 2008. The written acknowledgements and requests by the Defendants decrying the unrealistic sales targets given to them further goes to highlight the reality of the stiff competition in the telecom industry. It is partly for this reason that the Defendants were unable to meet the payments for the high turnover. The auditors in their report indicated that they had not obtained a valid evidence of targets in 2010 and relied on the targets set forth in the initial dealership agreement to apply for that period. In the draft report on page 7, they earlier acknowledged that they did obtain targets communicated for the first quarter of 2010 although they did not obtain those for the second and third quarter.

Arising from the fluid business environment and that time in the telecom industry in Uganda was characterised by price wars and cutthroat competition, targets were continuously being set by industry players to increase and protect their market share. Targets to distributors like the Defendant kept on rising every other month and as any businessman should know. The Plaintiff presented evidence of the changes in targets to the Defendant over time; all were duly acknowledged and signed by the first Defendant.

The existence and operation of the 24 hour revolving credit arrangement in the business relationship between the parties was also not fully appreciated by the independent auditors. Under the credit arrangement, the Plaintiff undertook to sell stock on credit to the Defendants and allowed him a grace period of 24 hours to pay for the stock taken the previous day. It implies that the Defendants at trade debtors to the Plaintiff and therefore at the termination of the relationship, the whole amount owed by and owing to the Defendant from the stock sold and commissions earned should be offset and accounts settled. Counsel further submitted that the auditors were obliged to perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence according to ISA 500 on Audit Evidence. Consequently information later brought by the Defendant totalling to Uganda shillings 255,647,400/= on the basis of various receipts presented by the Defendant was excluded by the auditors but the Defendant is now alleging that he overpaid the Plaintiff and was to be reimbursed. The auditors evaluated the authenticity and validity of the receipts presented to them by the Defendant. Counsel submitted that the auditor's report should not be considered in isolation and with exclusion of the audit report of Genesis and Company. The court should be the final arbiter in the matter.

He further submitted that even though section 133 of the Evidence Act provides that no particular number of witnesses in any case may be required for the proof of any fact, as a matter of prudence the Plaintiff through several witnesses produced corroborative evidence that the second Defendant owed the Plaintiff Uganda shillings 151,655,834/=. Secondly the Defendant acknowledged indebtedness by way of a letter to the Plaintiff as earlier submitted and even proposed a payment plan. In those circumstances issue number one ought to be decided in favour of the Plaintiff according to the Plaintiff's Counsel.

In reply the Defendants Counsel submitted that the Plaintiff's suit is for the sum of Uganda shillings 103,550,000/= originally filed as a summary suit. The amount arose as a supply of six items to the Defendant totalling to 12,000 items chargeable for that amount. The evidence is the invoice dated 30th of October 2010 according to paragraph 4 (B) of the plaint. Leave to file a defence was granted and the written statement of defence was filed whereupon there was a counterclaim filed on 6 December 2011 for Uganda shillings 81,057,550/= against the Plaintiff. The Plaintiff did not file a reply to the counterclaim and the Defendant obtained judgement and execution was carried out. Execution was set aside by court order on 16 March 2012. By consent of the parties the Plaintiff was allowed to file a reply to the counterclaim and a reconciliation of accounts was agreed upon. It was further agreed that the audit report of the expert shall become part of the findings of the court with the right of Counsel to address the court about it. The report was issued in June 2012 and shows that the Plaintiff's indebtedness to the Defendant is Uganda shillings 22,428,081/= this arose as a difference between Uganda shillings 121,823,886/= and Uganda shillings 99,395,805/=.

After the joint audit report the Plaintiff amended its plaint and claimed Uganda shillings 151,625,029/= without any basis. The Plaintiff claimed that the amount was for 12,000 pieces of assorted goods. On 5 July 2013 the Defendants amended their written statement of defence and counterclaim and denied indebtedness and instead counterclaimed for Uganda shillings 22,428,081/= derived from the audit report as well as an additional 255,647,400/= bringing the total figure claimed by the counterclaimant to Uganda shillings 278,075,481/=.

On the issue of whether the Defendants are indebted to the Plaintiff to the tune of Uganda shillings 151,625,029/= the Defendants Counsel submitted that the Plaintiff did not prove or produce any evidence in support of the claim. This is because in the original plaint the Plaintiff's claim is for Uganda shillings 103,000,000/= and an invoice was attached dated 30th of October 2010. Nothing was mentioned about this invoice in the joint scheduling memorandum and no witness from the Plaintiff testified about it.

Secondly the claim of Uganda shillings 151,625,029/= is not backed by any evidence. Annexure "C" in paragraph 4 (F) of the amended plaint avers that from the Plaintiff's invoice records, it was discovered that around 30 October 2010 the Defendants ordered for 12,000 pieces of assorted goods for which they had to pay the chargeable amount of Uganda shillings 151,625,029/= which remained outstanding. Annexure "C" is just a table with no author and there is no evidence of acknowledgement by the Defendants.

Furthermore in the joint scheduling memorandum the Plaintiff intended to rely on invoice printouts. One would have expected the invoice of Uganda shillings 151,605,029/= to be produced by at least one witness but no witness produced any such invoice. Counsel goes on to examine the testimony of the Plaintiff's witnesses. PW1 mentions the figure of Uganda shillings 151,625,026/= which is a different figure than the one claim in the original and amended plaint. PW2 does not testify about the figure claimed. PW3 testified is about 151,000,000/=. PW6 testified is about 151,655,834/=. He contended that the figures are inconsistent with each other and with the claim in the plaint. Consequently the submission of the Plaintiff's Counsel that the Defendant owed the Plaintiff Uganda shillings 151,625,029/= is an invention of Counsel. PW 6 mentioned two conflicting figures one of Uganda shillings 151,625,029/= and Uganda shillings 151,655,834/=. He submitted that the problem was aggravated by failure to attach any invoices and therefore there was failure to show where the figures were derived from in cross-examination.

In another attempt the Plaintiff wanted the court to rely on exhibit P6 which alludes to an admission of the debt of Uganda shillings 151,605,029/= but the Plaintiff ignores the fact that those communications were before the suit was instituted. It was even before the joint audit report of the auditors commissioned by both parties under section 27 of the Judicature Act which is binding. Counsel contended that the matter before the court concerns accounts and joint auditors were appointed and gave a report. On the basis of the report it can be concluded who is indebted to the other party. The Plaintiff's Counsel deliberately chose to ignore the provisions of the law and the court should find that section 27 of the Judicature Act prevails. Secondly there is the false impression that there are two audit reports one of which is that of Genesis and Company Certified Public Accountants as well as that of Ernst & Young Certified Public Accountants. All the materials including other audit reports were availed to the agreed to auditors. Even the Plaintiff's witnesses Peter Openduru PW5 and Asaph Asimwe (PW3) as well as PW4 Babu had an input in the production of the joint auditor's report.

As far as the targets set for the Defendants are concerned, the Plaintiff prayed that the court takes judicial notice of certain facts under sections 55, 56 and 57 of the Evidence Act. However the facts of change of targets are not one of the facts of which a court can take judicial notice and the court should deny the Plaintiffs prayer.

PW1 and PW5 on the other hand gave contradictory or different targets for the same period namely the first, second and third quarters of 2010.

The Plaintiff has not shown any evidence that the Defendants owe Uganda shillings 151,625,029/= even on the balance of probabilities. The Plaintiff instead chose to criticise the audit report exhibit P2. Consequently issue number one ought to be resolved in favour of the Defendant.

In rejoinder the Plaintiff's Counsel submitted that the Plaintiff had seven witnesses inclusive of the handwriting expert PW7. Secondly the law on amended pleadings is to the effect that the court considers the amended pleadings as having precedence on record and replaces the original documents on the same matter. This position was held by honourable justice Geoffrey Kiryabwire in PCCW (Hong Kong) Ltd versus Gemtel limited HCCS 304 of 2010. Reference to the original

plaint to prove contradictions are grossly misleading and devoid of any merit and ought to be disregarded by court.

Secondly where the court takes into account the testimonies of PW1, PW2, PW7 and DW1 on the question of whether the Plaintiff gets Uganda shillings 151,625,029/=, the matter would be resolved.

The Plaintiff's Counsel submitted that the disparity in the figures testified about can be explained in terms of a margin of error in the computation.

As far as section 27 of the Judicature Act is concerned, the court is not bound by the audit report. The audit report is meant for guiding and helping the court to arrive at a just decision after taking into account the evidence adduced in court and any other relevant facts. To hold otherwise would curtail the independence and original jurisdiction of the court.

The two other audit reports of Genesis and company was not formally submitted before the court but its contents were firstly contained in the testimony of PW6 Mr John Opeduru. Attempts to point out disparities between the two reports are to show that Ernst and Young did not do a thorough audit job according to accounting standards.

Issue number two:

Whether the Defendants are entitled to the prayers in the counterclaim?

On this issue the Plaintiff's Counsel submitted on the principle behind business dealings between the Plaintiff and the Defendants. The Plaintiff used to pay the Defendant's a commission for all sales made on its behalf. He reiterated submissions that the commission rate was 0.5% of the total sales plus additional sums if the periodic/quarterly targets are met. Total sale this for the period of January to October 2010 was Uganda shillings 14,954,680,000/= and 0.5% of the amount is Uganda shillings 74,773,403/= for the entire period in issue. The net balance due to the Defendants is a sum of Uganda shillings 121,823,886/= according to the audit report. Even if it is assumed that the Defendants are entitled to a percentage for achieving quarterly targets, the total sums cannot accumulate to the amount of Uganda shillings 278,075,481/= claimed in the counterclaim. The assertion that the alleged receipts were over payments is not corroborated. The contrary is that in September 2010 the Defendants were under immense pressure to make payments to the extent that the suggested payments plan for repayment. At no time during the initial reconciliation did the Defendant ever mention any overpayment. Their request was for the Plaintiff to offset the expected earnings and bonuses to clear outstanding payment arrears of the Defendants account with the Plaintiff.

Counsel further reiterated submissions that the receipts used by the Defendants were not even in the use at the time in question from the period January 2010 to October 2010. Secondly the first Defendant during cross-examination admitted that he received all his view bonuses by endorsing on the respective vouchers. Furthermore it defeats logic for somebody who has made an overpayment to seek for more credit facilities from the Plaintiff. The Defendant according to a letter in evidence was requested for an increase in their credit limit.

In reply the Defendants Counsel reiterated that the summaries at page 8 of the audit report, and in the tabulation shows amounts due to the Plaintiff from the Defendant of Uganda shillings 99,395,805/=. It also shows that commissions due to Jason Karuhanga from Simba Telecom was Uganda shillings 121,823,886/=. It is by simple arithmetic that the Defendants are entitled to Uganda shillings 22,428,081/=. The entitlement of the counterclaimant/Defendant to Uganda shillings 121,823,886/= is confirmed by the Plaintiffs witness Asaph Asiimwe. No evidence was ever presented to court that Jason Karuhanga has ever been paid this amount.

The Plaintiff therefore acknowledges and agrees with the findings of the auditors in exhibit P2. Secondly it proves that the Defendants are entitled to Uganda shillings 22,428,081/=. Thirdly during cross-examination of Asaph Asiimwe, he categorically admitted that the Plaintiff is indebted to the Defendants. Fourthly the court should disregard the attempts by Opeduru Peter to run away from the joint audit report.

The second part of the counterclaim is a claim of Uganda shillings 255,647,400/= according to Plaintiffs exhibits P3 (a), (b), (c), (d) and (e). The receipts totalled to Uganda shillings 255,647,400/=. All these were paid in cash by Jason Karuhanga. The monies were unjustifiably excluded by the auditors. The conclusion is that the said amount had not been acknowledged by Simba Telecom as a receipt of payment. Furthermore they indicated that they could not independently verify the payments and excluded them from determination of the amounts due.

The Defendants Counsel cross examined PW2 one Emily Agasa who acknowledged knowing the documents because she issued them in her capacity as a cashier. Consequently the independent verification that the auditors lacked was provided for in the court by the said witness for the Plaintiff. These payments were over payments. The Defendant would pay and reconciliation would be done later. He would pay after receiving phone calls from the finance manager and managing director of the Plaintiff. This was because the Defendants were interested in the continued business relationship.

In rejoinder and on the question of the counterclaim, the assertions credited to DW5 Emily Agasa by the Defendants Counsel are grossly misleading. She categorically stated that the business setup of the Plaintiff Company is such that the office of the cashier and that of the accounts/credit Department are distinct both in function and structural location. She further testified that there is no way she would know whether a payment from Jason Karuhanga as claimed in his receipt is meant to clear an earlier credit or whether he was paying cash for goods. Finally at no time did Jason Karuhanga make advance payments as alleged.

Remedies available.

On this issue the Plaintiff's Counsel submitted that the court should take judicial notice of the fact that the Plaintiff has suffered a great inconvenience and disruption of business for which general damages would be appropriate. Secondly the first Defendant had deposited a certificate of title for property valued at Uganda shillings 70,000,000/= at the time as collateral security to cover the credit facility. The Plaintiff should be granted authority to liquidate the asset as a means of recovery of its entitlement. In the premises the Plaintiff seeks payment of Uganda shillings 151,625,029/=. Secondly general damages, costs of the suit and any other relief that the court may deem fit to grant.

In reply the Defendant prays that the Plaintiff suit is dismissed with costs because the claim has not been proved. Payment of Uganda shillings 278,075,481/= should be made by the Plaintiff and to the Defendants because it has been proved. Secondly general damages should be awarded for inconveniencing the Defendants. This has led to loss since 2010 and the sums should attract interest at commercial rate. Lastly the duplicate certificates of title deposited with the Plaintiff should be returned.

Judgment

I have carefully considered the pleadings, the proceedings of the court as well as the audit findings of Ernst & Young, the testimonies of witnesses written submissions and authorities.

The parties engaged the services of Ernst Young Certified Public Accountants to reconcile accounts on the matter in dispute. The genesis of the matter is that in HCMA No. 11 of 2012 being an application that the judgement and the garnishee order nisi against the Plaintiff to be set aside and for leave to file a response to the counterclaim out of time and for costs and application to be provided for there were negotiations between the parties. On 26 March 2012 and by agreement of the parties the court ordered that the parties instruct auditors within two weeks and an audit report was expected within a further two weeks from that time. The parties were supposed to agree to the terms of the audit. Subsequently on 28 March 2012 the court record shows the consent of the parties and order of the court as follows:

“By consent of the parties and their representatives in court it is hereby agreed that the parties will appoint auditors to carry out a reconciliation of the accounts between the parties as follows:

1. The Applicants have appointed Genesis and company auditors while the Respondents have appointed Evlo and company auditors.
2. The parties have agreed that the third auditors shall be Ernst and Young who would be the chairperson of the auditors.
3. The parties will formally instruct the said auditors within two weeks from the date of this agreement. Thereafter the audit will be carried out within another period of two weeks and a report submitted to court and the parties.

4. The auditor's report shall become part of the findings of court provided Counsels for both parties have the right to address the court on the merits of the audit report.
5. Proceedings in this application are stayed, and execution proceedings pursuant to the default judgement obtained by the Respondents are also stayed. Both matters as aforesaid are stayed pending the outcome of the audit report and the hearing by the court pursuant to the audit report.

The application will be mentioned again on the 16th of May 2012 while both Counsels would make a report and address court on the audit report.”

The report of the auditors was filed on court record on 28 June 2012. The auditors indicated in their report that the objective of the assignment was to review the audit report prepared by the Genesis and Company and that of Evlo and Company for the transactions between Simba Telecom Ltd and Karuhanga Jason and another for the period January 2010 to October 2010 to establish the amount (if any) that is due from or payable to each of the parties. The auditors also indicated that there was an agreement to review any additional and relevant information supporting the transactions and computation of the amounts owed between the two parties. Thirdly to establish the amounts owed on account between the two parties on the basis of the review. The factual findings of the auditors are at pages 6- 8 of the audit report exhibit P2. In terms of agreement/order number 4 the audit report becomes part of the findings of court and the Counsels for the parties would have a right to address court on them. It is in that light that the findings of the auditors are quoted below:

"3.2 Factual findings

Based on the documents availed to us, we found that:

1. Simba Telecom Limited made net sales of Mr Jason Karuhanga for the period January 2010 to October 2010 amounting to Uganda shillings 14,954,680,600/= as detailed in appendix II.
2. The audit report by Evlo and Company Certified Public Accountants indicated that Mr Jason Karuhanga paid shillings 15,005,914,131/= to Simba Telecom Limited either by cash or bank transfers for the period January 2010 to October 2010. However only Uganda shillings 14,475,304,895/= was reported by Genesis and Company Certified Public Accountants as payments received by Simba Telecom Ltd in the same period. A reconciliation of the two amounts is detailed in appendix III. An analysis of the items making of the reconciliation is discussed further below.
3. Payments made by Mr Jason Karuhanga of Uganda shillings 444,905,000/= were incorrectly recorded in Mr Jason Karuhanga's records resulting into an understatement of Uganda shillings 854,700/=. In addition, payments made by Mr Jason Karuhanga of Uganda shillings 302,427,800/= were incorrectly recorded in Simba Telecom's records resulting into an understatement of Uganda shillings 89,900/=. This is detailed in appendix IV.

4. Uganda shillings 118,583,364 were offset by Simba Telecom limited against amounts due from Mr Jason Karuhanga in lieu of commission due to the latter. However, this amount was not recognised in Mr Jason Karuhanga records and thus has been incorporated in the workings by Evlo and Company Certified Public Accountants. The amounts offset are detailed in appendix V.
5. Payments by Karuhanga Jason acknowledged by Simba Telecom amounting to Uganda shillings 537,480,000/= will not be traced to workings by Evlo and Company Certified Public Accountants. The particulars of these payments are detailed in appendix VI and have been included as part of the payments made by Jason Karuhanga.
6. A sum of Uganda shillings 551,100,000/= included in the report by Evlo and Company Certified Public Accountants relating to payments made by Karuhanga Jason Simba Telecom Ltd could not be traced to the workings by Genesis and Company Certified Public Accountants. We reviewed the bank statements of Simba Telecom and Mr Jason Karuhanga and could not trace these payments to the bank accounts of either party. The details of these transactions are set out in appendix VII and have been excluded in the determination of the payments made by Jason Karuhanga.
7. On a quarterly basis and as stipulated in the contract between Simba Telecom and Mr Jason Karuhanga, the latter was entitled to a bonus equivalent to 0.5% of a total turnover on achievement of quarterly targets communicated by Simba Telecom. However, we did not obtain valid evidence of targets communicated for the first, second and third quarters ended 31st of March 2010, 30th of June 2010 and 30 of September 2010 and have thus taken the targets set forth in the initial dealership agreement to apply for the period.
8. During the period January 2010 to October 2010, Simba Telecom made payments for commission of Uganda shillings 46,946,000/=. From our review, the commission related to 2009 and as has been excluded from the transactions in the period September 2010 to October 2010. In addition, Simba Telecom limited offset commission received from MTN of Uganda shillings 44,962,631/= for Mr Jason Karuhanga against commissions that were due from Jason. This commission has also been excluded from the period of review as it does not directly relate to the commission payable to Mr Jason Karuhanga for the transaction arising between January 2010 and October 2010.
9. There are deposits on Simba Telecom Ltd's bank account amounting to Uganda shillings 379,890,000/= that are taken by Jason Karuhanga as settlement of amounts due to Simba. These amounts are additionally supported by copies of receipts issued by Simba Telecom limited to Karuhanga Jason. However, these have not been acknowledged by Simba Telecom. The amounts have been included in the computation for determining the amounts due subject to Simba Telecom providing evidence to indicate that these payments were either not made by Jason Karuhanga or are already included in the payments captured by Simba Telecom. These deposits are detailed in appendix VIII.

10. A sum of Uganda shillings 255,647,400/= included in the report by Evlo and Company Certified Public Accountants relating to cash payments made by Karuhanga Jason to Simba Telecom limited has not been acknowledged by Simba Telecom limited as receipt of payment. We could not independently verify these payments and have excluded them in the determination of the amounts due. The details of these transactions are set out in appendix IX.
11. On the basis of the facts in sections (a) to (i) above, Simba Telecom made net sales of Uganda shillings 14,954,680,600/=. Jason Karuhanga paid Uganda shillings 14,854,284,795/= to Simba Telecom in the period January 2010 to October 2010. Thus the total amount due to Simba Telecom for the period January 2010 to October 2010 and as at 31 October 2010 excluded any unsettled balances from the period prior to 1st January 2010 and the facts in section (j) above was Uganda shillings 99,395,805/=.
12. The total commission due to Mr. Jason Karuhanga from Simba Telecom Ltd for the period January 2010 and October 2010 and as at 31st of October 2010 was Uganda shillings 121,823,886/= excluding any unsettled balances from the period (s) prior to 1st January 2010. Refer to appendix X for details.
13. The amounts due per sections (k) and (l) are summarised as follows:

Amounts due to Simba Telecom from Jason Karuhanga Uganda shillings 99,305,805/=.

Commission due to Jason Karuhanga from Simba Telecom Uganda shillings 121,823,886/="

The audit report in the above reconciliation effort shows that the Plaintiff owes Jason Karuhanga and his company Uganda shillings 22,428,081/=.

The Plaintiff did not accept the audit report and the Defendant filed an amended written statement of defence and counterclaim, claiming the sum of Uganda shillings 22,420,081/= against the Plaintiff as well as an additional Uganda shillings 255,645,400/=. Subsequently both parties adduced evidence by calling their witnesses to testify on the controversy. Secondly both Counsels for the Plaintiff and the Defendant addressed the court in written submissions as set out above.

The two issues agreed upon in the joint scheduling memorandum are intertwined and fundamentally deal with the issue of who owes money to the other. The first issue is **whether the counterclaimant is entitled to the prayers in the counterclaim?** Secondly **whether the Plaintiff is entitled to the monies claimed?**

There was a reconciliation of accounts by Messieurs Ernst and Young Certified Public Accountants. The second attempt of the parties at appointing auditors shows that they were appointed under section 27 of the Judicature Act. It was an appointment by consent of the parties. For the record the question of appointment of auditors arose in Miscellaneous Application No. 111 of 2012 wherein the Plaintiff applied to set aside the judgement and a garnishee order nisi obtained by the Defendant in the counterclaim and for leave to file a

response to the counterclaim out of time. On 28 March 2012 the parties agreed that it was advisable to appoint independent auditors. The consent order was recorded by the court and specifically in paragraph 4 thereof it was indicated that the auditor's report shall become part of the findings of the court provided Counsels for both parties have a right to address the court on the merits of the audit report. Both parties appointed their own auditors to work with Messieurs Ernst and Young Certified Public Accountants. The Plaintiff appointed Genesis and Company Certified Public Accountants while the Defendant/Respondents appointed Evlo and Company Certified Public Accountants.

Appointment by consent of the parties falls under section 27 (c) of the Judicature Act Cap 13 Laws of Uganda. It provides as follows:

“27. Trial by referee or arbitrator.

Where in any cause or matter, other than a criminal proceeding—

- (a) all the parties interested who are not under disability consent;
- (c) the question in dispute consists wholly or partly of accounts, the High Court may, at any time, order the whole cause or matter or any question of fact arising in it to be tried before a special referee or arbitrator agreed to by the parties or before an official referee or an officer of the High Court. ”

Section 27 of the Judicature Act gives one of the essentials as the consent of the parties interested and not under disability. Particularly under subsection (c) where the question in dispute consists wholly or partly of accounts, the High Court may order the whole cause or matter or any question of fact arising in it to be tried before a special referee or arbitrator agreed to by the parties or before an official of the High Court. The head note of the section provides that it deals with the option of trial by a referee or arbitrator. Whereas the parties and the order of the court allowed Counsels to address the court on the merits of the audit report, the question remains as to the extent to which they would address the court. A trial results in a determination of the issues. The wording of the section is very explicit and allows the matter which is referred to be tried by the arbitrator or referee as the case may be.

What was the question arising in the suit and which was referred to the auditors? It was explicitly provided for in the consent order that the parties will appoint auditors to carry out the reconciliation of the accounts between the parties. It is the auditor's report which also indicated that the parties further agreed on the period of the audit. It is indicated in the letter addressed to Counsels for both parties that the objective of the assignment was to review the audit reports prepared by Genesis and Company and Evlo and Company for the transactions between Simba Telecom Ltd and Karuhanga Jason and another for the period January 2010 to October 2010 to establish the amount (if any) that is due from or payable to each of the parties as supported by the documentation and explanations provided to them.

On the other hand in the amended plaint it is averred that from 21 April 2010 to 12 June 2010 the Defendants have been making several payments of Uganda shillings 63,315,000/= to the Plaintiff through money transfers in Barclays bank (see paragraph 4 (c) of the plaint. Secondly it is averred in paragraph 4 (d) that from the Plaintiffs invoice records, it was discovered that around 30 October 2010, the Defendants ordered for 12,000 pieces of assorted goods for which they had to pay a chargeable amount of Uganda shillings 151,625,029/= which was still outstanding. Thirdly it is averred in paragraph 4 (e) that the Defendants are now indebted to the Plaintiff for the unpaid phone products received from the Plaintiff. Paragraph 4 (f) of the plaint avers that the particulars of the sums outstanding and owing to the Plaintiff are 'itemised' in annexure "C" to the plaint. Lastly despite several payment plans proposed by the Defendants, the Defendant intentionally, negligently or adamantly refused to pay the Plaintiff thereby causing great loss. The annexure referred to were not attached to the amended plaint but are part and parcel of the original plaint and in the affidavit of Asaph Asiimwe whose attachments were pleaded in the amended plaint. For emphasis these are:

1. Copy of the agreement (Annexure "A").
2. Invoice print outs (Annexure "B")
3. Money transfer copies (Annexure "C")
4. Debt repayment plan (Annexure "D")
5. Others with leave of court.

In the summary of evidence to the amended plaint the above list is reproduced as follows: “

1. Copy of the agreement (Annexure "A").
2. Invoice print outs (Annexure "B")
3. Money transfer copies (Annexure "C")
4. Debt repayment plan (Annexure "D")
5. Others with leave of court.”

Consequently I have come to the conclusion that the attachments to the original plaint are the same as the attachments to the amended plaint. For that reason Annexure "C" to the amended plaint is a tax invoice addressed to Karuhanga Jason by the Plaintiff for several items amounting to a total of Uganda shillings 103,550,000/= and is dated 30th of October 2010. Particularly the summary plaint and affidavit in support thereof in paragraph 4 (the affidavit of Asaph Asiimwe) deposes that:

"The Defendants on 30 October 2010 ordered for six different items totalling to 12,000 pieces with the chargeable amount of Uganda shillings 103,550,000/= (one hundred three million five hundred fifty thousand only) (hereto attached is annexure "C")."

The Plaintiff was under obligation to produce the particulars of outstanding sums as averred in the Plaintiff and without amendment could not depart from the specific pleadings. Paragraph 4 (d) specifies that the Defendants ordered for 12,000 pieces of assorted goods. Even though there is no heading or itemisation of the claim as special damages, the Plaintiffs claim for the total amount of Uganda shillings 151,625,029/= comes under the heading special damage because it is a specific claim for specified items namely the chargeable amount for 12,000 pieces of assorted goods. It is therefore a claim for special damages. Annexure "C" gives the particulars of those items. The question is whether a general reconciliation should go outside the amount claimed in the plaint to consider other payments that may or may not be claimed by the Plaintiff.

It is the Defendant's defence that this item of special damages as defined above was not proved by any of the Plaintiff's witnesses. The parties are at cross purposes in their submissions on the Plaintiff's claim. On the one hand to disregard the audit report permits the court to look at the merits of the suit firstly on the basis of the disclosure of the claim in the pleadings. If the parties are to be bound by the outcome of the audit report, the court may adopt the findings of the auditors as part of the judgement of the court on matters of fact relating to who owes money to the other as far as the entire dispute which relates to a claim by the Plaintiff for the above amount as well as the counterclaim of the Defendant is concerned. In that reconciliation is it is relevant matter to be taken into account the fact that the claim be confined according to the pleadings? Should the auditors go outside the actual claim in the plaint to establish other amounts that may be owing to the Plaintiff? I have established that the principal claims of both parties in the Plaintiff and counterclaim are in the nature of a liquidated sum which is in substance special damages.

In the court order by consent of the parties it was simply ordered that the auditors would reconcile the accounts of the parties. In the audit report however the terms of reference starts from January 2010 to October 2010 to establish the amount (if any) that is due from or payable to each of the parties as supported by the documentation and explanations provided by them to the auditors. To a certain degree the scope of the reconciliation is wider than that in the plaint as far as the claim of the Plaintiff is concerned. The issue of acknowledgement of a sum of Uganda shillings 151,625,026/- in exhibit P6 was not relied upon as founding a cause of action. Instead the foundation of the amount was pleaded. In the reconciliation effort, the auditors would be required to take this into account through the submission of the parties. Can the court reopen the issue? That is the crux of the matter before the court.

On the other hand the claim of the Defendant which in effect is the counter suit against the Plaintiff is also particularised in the counterclaim. What is specifically interesting is that the amended written statement of defence and counterclaim was filed after the audit report and therefore relies on the report of the audit. The Defendant claims by way of counterclaim against the Plaintiff the balance established by the auditors of Uganda shillings 22,428,081/=. Additionally the Defendant contends that they overpaid the Plaintiff about Uganda shillings 255,647,400/=. In the amended counterclaim the Defendant claims 278,075,481/=. In paragraph 12 of the WSD and amended counterclaim the Defendant's avers that after the reconciliation of the accounts it was

established that the counterclaimant now claims a total of Uganda shillings 278,075,481/= in unpaid commissions as well as over payments to the Plaintiff according to the annexure attached. The annexure are RR2, RR3 (a), (b), (c), (d) and (e). In addition the Defendant claims general damages, interest at commercial rate and costs of the suit.

In effect the state of the pleadings is that the Plaintiff's claim is for special damages of particular itemised matters. The Defendant's counterclaim is also for special damages but relies primarily on the audit report exhibit P2. Additionally it relies on the annexure RR2, RR3 (a), (b), (c), (d) and (e) referred to above. In effect the Defendants partially endorse the audit report while the Plaintiff would like the court to depart from the audit report.

I have carefully considered the audit report and as far as the plaint is concerned it considers the period under item 3.2 (h) from January 2010 to October 2010. In other words it includes the claimed transaction of the Plaintiff made in October 2010. On the other hand the Defendant claims are based on the same period rely on the reconciliation effort which covers a wider period than the actual claim of the Plaintiff that arises from a specific transaction in October 2010. The document relied upon by the Defendant is RR2 which is the audited report dated June 2012 exhibit P2. Secondly RR3 (a) is a receipt dated 20th of January 2010 for Uganda shillings 41,065,000/= received from Karuhanga Jason by Simba Telecom Distributors Ltd. RR3 (b) is another receipt showing that on 19 April 2010 Simba distributors Ltd received a sum of Uganda shillings 67,400. On 17 June 2010 in RR (3) they also received 63,315,000/= from Jason Karuhanga. On 12 August 2010 the received Uganda shillings 85,050,000/= according to RR3 (d). Lastly what 10 September 2010 Simba Telecom Ltd received from Jason Karuhanga Uganda shillings 66,150,000/= according to RR3 (e). In order to establish the counterclaim, it is inevitable that the accounts of the parties are reconciled for purposes of establishing who owes who some money. The fact that the claim of the Plaintiff in the amended plaint concerns a specific and itemised claim does not by itself make the reconciliation effort for other periods irrelevant in view of the fact that the Defendant's counterclaim is met by the Plaintiff's defence of not being indebted to the Defendant. It is therefore inevitable that a reconciliation of accounts would establish the person owing money to the other after the reconciliation effort and for the period January 2010 to October 2010. Secondly the complaint of the Plaintiff in the submission is not that the auditors ignored the orders of the Defendants for 12,000 assorted products from the Plaintiff which had allegedly remained unpaid. The complaint is that the auditors did not consider the balance carried forward for the period prior to January 2010. The admissions of the Defendant in exhibit P6 would in effect reopen the matter referred to auditors for fresh scrutiny.

Section 27 of the Judicature Act and particularly subsection (c) under which the order of reference to auditors was made result into a binding decision under the law because it is a trial of referred matters. The auditors are officers of court. The finding or award ought to be challenged on the grounds accepted by the rules in the Civil Procedure Rules or law under the Arbitration and Conciliation Act 2003 for the challenge of an award of an arbitrator. The parties appearing before the referee who also happen to be auditors presented their own accounts and any documents requested of them and were entitled to address their clients concerns to the referee/

auditor in this case. Under the Arbitration and Conciliation Act section 34 thereof, recourse to the court against an arbitral award may be made only by application for setting aside the award. The grounds for doing so are also stipulated. I am mindful of the fact that in the order of the court, it was the parties to appoint the arbitrator/referee or auditor but under the order of the court to do so. Secondly it is stipulated that the Counsels would have a right to address the court on the merits of the audit report. There was no stipulation that additional evidence would be called on the issue of reconciliation of accounts in the court order making the reference to the agreed auditors.

What has happened is that the Plaintiff literally has challenged the audit report for being erroneous. The Plaintiff relies on the testimony of another chartered accountant Mr John Peter Openduru. His written testimony makes the point that he is the external auditor of the Plaintiff Company and has been working for the Plaintiff for many years. He is also a practitioner of Genesis and Company Certified Public Accountants. What is objectionable to his testimony criticising the final audit report of Ernst and Young is the fact that under the terms of reference Ernst and Young Certified Public Accountants were required to examine and review audited reports prepared by Genesis and company who represented the Plaintiff as well as Evlo and Company Certified Public Accountants for transactions between the period January 2010 to October 2010 which covers the matter in controversy in the suit and counterclaim. In other words he had an opportunity through his firm to make representations to Messieurs Ernst and Young Certified Public Accountants.

His criticism is that there were no issues between the parties prior to 2010 and it was agreed that the audit starts from 1 January 2010 and ends on 31 October 2010. Secondly it was also agreed that the closing balances of the accounts between the parties for the year 2009 are adopted as opening balances for the audit period starting 1 January 2010. He contended that on the debtors ledger account of the Defendants with the Plaintiff by 1 January 2010 there was an opening balance of Uganda shillings 129,918,880 in favour of Simba Telecom. Secondly on the creditor ledger account of Mr Karuhanga Jason with Simba Telecom by 1 January 2010 there was an opening balance of Uganda shillings 31,126,000/= in his favour. Lastly he contended that the Messieurs Ernst and Young in the final report ignored the opening balances and excluded them in the computations thereby rendering the final figures and conclusions incorrect. He further criticised the conclusions on the percentage of the dealer's margin for all transactions. These margins according to him varied between 4.5% and 5.5% for each quarter of 2010. Secondly MTN quarterly targets were communicated to the Defendant and were not taken into account.

I have noted that the procedure adopted by the auditors was to first give a draft report to the parties inviting comments before writing the final report. Secondly the record of the court reveals that the Plaintiff was allowed to refer what they considered emerging issues or even new evidence to the auditors and the Defendant was privy to these further queries for consideration of the auditors. Both parties were given a chance by the court to address emerging or outstanding issue with the auditors who may file any supplementary report. The Referee's/Auditor's report remained the same and was not changed at the time of final address to court by Counsels of the

parties to this suit.

Having considered the detailed findings of the auditors and the fact that they took into account the representations of the parties including Messieurs Genesis and Company Certified Public Accountants who represented the Plaintiff as well as Messieurs Evlo and Company Certified Public Accountants who represented the Defendant, the criticism of John Peter Openduru echoed by the Plaintiff's Counsel in the final address ought to have been addressed to Messieurs Ernst and Young Certified Public Accountants.

I have also considered the claim of the Plaintiff. It is based on the specific transaction in October 2010 which is highlighted. The transaction was alleged in the original summary plaint. Subsequently it was repeated in the amended plaint. To make matters worse paragraph 4 (d) of the amended plaint specifically pleads that the chargeable amount of 12,000 pieces of assorted goods amounted to Uganda shillings 151,625,029/=. The entire claim of the Plaintiff apart from the claim for interest and damages is a special damage arising from a specified transaction which ought to be proved and amounts thereof only offset from any amount established as owing to the Defendants for the same period. By the time the claim in the amended plaint was filed in court it is rightly assumed that the Plaintiff claimed only for those items which are pleaded. No further amendment of the plaint was sought. In the case of **Sullivan v Alimohamed Osman** [1959] 1 EA 239 at 244 East Africa Court of Appeal at Dar es Salam in the judgment of Windham JA held that:

"The plaint must allege all facts necessary to establish the cause of action. This fundamental rule of pleading would be nullified if it were to be held that a necessary fact not pleaded must be implied because otherwise another necessary fact that was pleaded could not be true."

The Plaintiff cannot prove what has not been pleaded or claimed.

On the other hand the Defendant counterclaimed for the amount established by the audit report exhibit P2 of Uganda shillings 22,428,081/=. However the Plaintiff additionally claim to have overpaid Uganda shillings 255,647,400/= to the Plaintiff. In the facts in support of the counterclaim and in the annexure attached, the transactions in issue are reflected in the receipts issued by the Plaintiff to the Defendant for the period beginning January 2010 up to October 2010. This is the same period of the audit. Having taking into account all other factors the auditors arrived at a reconciliation of accounts between the parties. The Defendant relied on this account to claim Uganda shillings 22,420,081/= from the Plaintiff.

The amount claimed additionally by the Defendant is contained in paragraph (j) of the audit report relied on by the Plaintiff and the Defendant. It indicates that Uganda shillings 255,647,400/= included in the report by Evlo and Company Certified Public Accountants relating to cash payments made by Jason Karuhanga to Simba Telecom Limited has not been acknowledged by Simba Telecom Limited as receipt of payment. The auditors concluded that they could not independently verify these payments and excluded them in the determination of the amounts due.

The same issue of reconciliation of accounts cannot be tried again in this court. Section 27 of the Judicature Act is enforced by Order 47 of the Civil Procedure Rules which deals with references by consent of the parties to arbitrators. Order 47 rule 3 (2) of the Civil Procedure Rules provides that the court: “shall not, except in the manner and to the extent provided in this Order, deal with the matter in the suit.” Order 47 rules 15 give the grounds for setting aside an award. The court is moved by notice of motion. However the grounds are misconduct or corruption, fraudulent concealment of any matter by one of the parties and the award is made after proceeding with the suit by the court. None of the grounds under Order 47 rule 15 are disclosed in this matter.

I have again considered the grounds for setting aside an arbitral award under section 34 (2) of the Arbitration and Conciliation Act. I have come to the conclusion that the matter cannot be reopened because the auditors were not satisfied by the evidence produced by the Defendant. The evidence is clearly marked appendix IX together with the receipt numbers. Why is it that the auditors did not accept the receipts as they are? Both the Plaintiff and the Defendant cannot on the one hand rely on the audit report and in another breath disregard it as suit their interests. Both parties cannot have their cake and eat it at the same time.

The end result is that the auditor's report is unimpeachable on the grounds advanced by either the Plaintiff or the Defendant. As far as issues number one and two are concerned, amounts due to Simba Telecom limited from Jason Karuhanga is Uganda shillings 99,305,805/=. On the other hand the commission due to Jason Karuhanga from Simba Telecom is Uganda shillings 121,823,886/=. Both parties had ample opportunity to present all the materials necessary for the reconciliation of accounts and to give their expert presentation to the auditors agreed to. If they did not give all that evidence to the auditors, it cannot be allowed to be placed before this court which had referred the matter to a referee.

Section 27 of the Judicature Act provides for trial of matters by arbitrators, referee's or official referee's upon reference by the court. The end result is that the Defendant is entitled as against the Plaintiff to a sum of Uganda shillings 22,428,081/= established by Messieurs Ernst and Young and the said sum is hereby awarded to the Defendants.

The next question is whether the Defendants are entitled to interest on this amount. According to **Halsbury's laws of England fourth edition reissue volume 12** (1) Para 1063 at 484, upon breach of the contract to pay money due, the amount recoverable is normally limited to the amount of the debt together with such interests from the time when it became payable under the contract or as the court may allow.

In the case of **Jefford and another v Gee** [1970] 1 All ER 1202, Court of Appeal, Civil Division Lord Denning MR held at page 1206 and following an earlier judgment in **Harbutt's Plasticine Ltd v Wayne Tank and Pump Co Ltd** that:

“... the basis of an award of interest is that the Defendant has kept the Plaintiff out of his money; and the Defendant has had the use of it himself. So he ought to compensate the Plaintiff...”

The mandate of the court to award interest is found under section 26 (2) of the Civil Procedure Act which permits the award of interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit and with such further interest as may be reasonable on the aggregate sum adjudged from the date of the decree to the date of payment or any earlier date as the court deems fit.

In this suit the parties were involved in the business of selling products. The Defendants sold the Plaintiffs products on a commission basis. The payments became due by the end of October 2010. The suit was filed on 6 July 2011.

In the premises interest is awarded at the rate of 20% per annum from 1 January 2011 up to 6 July 2011.

Additionally interest is awarded at 20% per annum on the sum adjudged from the filing of the suit on 6 January 2011 up to the date of judgement.

Interest is further awarded on the aggregate sum adjudged from the date of judgement at the rate of 20% per annum until payment in full.

The Defendants are not entitled to general damages in view of the award of interest on a claim for a liquidated sum in special damages.

The Defendants are awarded the costs of the suit. The Plaintiff's action against the Defendant is dismissed with costs.

Before taking leave of this matter the parties never objected to the entitlement of the suit as against the Defendants jointly. The first Defendant is a managing director of the second Defendant which is the company which had a dealership with the Plaintiff. Nonetheless no prejudice has been occasioned to the first Defendant by the Plaintiff having proceeded against him personally. Secondly both parties submitted in the matter without regard to who the proper party ought to be in these proceedings. In those circumstances the Defendants are deemed to have been jointly sued and costs awarded are to the Defendants jointly.

Judgment delivered in open court the 15th of May 2015

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Anthony Ahimbisibwe Counsel for the Defendants

The first Defendant in court

Asaph Asiimwe Internal Auditor of the Plaintiff present in court

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

15th May 2015

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