THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 167 OF 2019
(ARISING FROM CIVIL SUIT NO.601 OF 2016)

Coram:
[Buteera DCJ, Bamugemereire & Gashirabake, JJA]

KIBOKO ENTERPRISES LTD :::::::::::::::::::::::: APPELLANT
VERSUS
1. **PHILIPS EAST AFRICA LIMITED**
2. **PHILIPS LIGHTING EGYPT LLC:::RESPONDENTS**

(Appeal from the Judgement of David Wangutusi J, delivered on the 3rd of May 2019 at the High Court of Uganda Commercial Division)

Contract – Breach of Contract – alteration in the specification of procurement products (country of origin) – Subcontract – lapse of time to perform Subcontract/Failure to perform subcontract – compensation - apportionment of loss and liability- general damages – interest.

Civil Law – Preliminary objection on grounds of appeal -

JUDGMENT OF CATHERINE BAMUGEMEREIRE, JA

Introduction

This is an appeal from the decision of David Wangutusi J, in which the Appellant was found liable for the delay in the execution of the contract. His lawsuit was dismissed with costs.

Background

The background of this suit as discerned from the pleadings is that Kampala Capital City Authority (KCCA) issued

invitations for bids regarding the installation of streetlights along designated roads in Kampala city in preparation for the Pope visit that was scheduled for November 2015. The 1st respondent, Phillips East Africa Limited, expressed interest in submitting a bid to KCCA. Given their status as a foreign entity, they requested Kiboko Enterprises, the appellant, to submit and execute the bid on their behalf.

Following the bid process, the 1st respondent was awarded a two-month contract worth UGX 6,994,637,275 to install 750 streetlights on selected roads within Kampala city. The contract specified the use of Phillips-branded products manufactured from Philips factories in China. The Appellant received an advance payment of UGX 2.1 billion (Ugandan Shillings Two Billion and One Hundred Million) from KCCA and was tasked with paying for the goods supplied by the 1st respondent for the primary contract. The Appellant subsequently procured products from India instead of China.

The project was not finished within the initial two-month period, leading to an extension granted by KCCA to the 1st respondent until January 21st, 2016, and subsequently to April 6th, 2016. The main contract was to be performed by 22nd December 2015.

During the project's execution, KCCA raised concerns about the origin of the imported products, which were not from China, but India. The parties met to address these concerns and devise ways to progress the project to KCCA's satisfaction. As a result, on March 11th, 2016, a formal subcontract was signed, resulting in the novation of the 1st respondent's obligations to the 2nd respondent. Nonetheless, the subcontract expired before completion, despite the respondents' request to extend the agreement, KCCA denied it, thereby enforcing the advance payment and performance guarantees arranged by the Appellant on behalf of the 1st respondent.

Following the sub-contract's provisions, the Appellant then submitted a compensation claim against the respondents, which they refused to pay, leading to the lawsuit at the High Court. During the trial, the learned trial judge found the Appellant responsible for the main contract's performance delay and dismissed the suit while ordering the Appellant to pay the costs. Hence, this appeal on the following grounds:

Grounds of Appeal

1. The trial Judge misconceived the facts relating to the case, in particular the intention, meaning and effect of the sub-contract.

2. The trial Judge failed to properly evaluate the evidence adduced before the court in arriving at his decision.
3. The trial Judge considered and delved in unnecessary matters as the basis for his judgment.
4. The trial Judge erred in holding the appellant was responsible for breach of the main contract with KCCA.
5. The trial Judge erred in failing to award the Appellant the admitted/ agreed claims under the sub-contract. (Exh. P2)

Representation

At the hearing of the appeal, Mssrs Kinobe, Mutyaba (KMT) Advocates appearing together with Mssrs Bitangaro & Co. Advocates appeared for the appellants while S & L Advocates appeared for the respondents. Counsel relied on written submissions that were adopted by this court.

Preliminary Objection

At the date of the hearing, counsel for the respondents informed court that he intended to raise a preliminary objection on a point of law. Court granted the counsel leave

to raise the preliminary objection in his submissions and for the appellant to make a rejoinder.

With respect to the preliminary objection, Counsel for the respondents submitted that the 2nd and 3rd grounds of appeal were drafted in a manner that offended the rules of this court.

The Counsel queried the 2nd ground of appeal, the ground stated that the learned trial Judge failed to evaluate evidence. However, the wrong decision as a consequence of the Judge's failure to evaluate the evidence was not identified. They also criticized the 3rd ground for addressing unnecessary matters without specifying the wrong decision made. Counsel emphasized that grounds of appeal should clearly indicate the allegedly incorrect decision for easy understanding.

Counsel relied on the authority of **Yunusa Ismail t/a Bombo City Store v Alex Kamukama, Civil Appeal 7 of 1987 (1992) KLR 466** where the Supreme Court found that a ground of appeal would fail because it was too general and unsustainable and offended against rule 84 which required the memorandum of appeal to state concisely the grounds of objection to the decision appealed against and specify the points which are alleged to have been wrongly decided.

Counsel concluded by submitting that grounds 2 and 3

should be rejected, and the submissions filed under them be struck out.

In response to the preliminary objection, counsel for the appellant argued that the error that grounds 2 and 3 of the appeal sought to address is the trial Judge's failure to evaluate the evidence as presented by the parties at the trial and that in failing to evaluate said evidence, the trial Judge delved other matters which did not form part of the record. Counsel also submitted that the respondents' arguments on the rejection of the aforesaid grounds of appeal is redundant, given the legal notion that this court being the first appellate court is enjoined to re-evaluate evidence as presented in the lower court and come up with its own conclusions. Counsel submitted that the appellant highlighted and submitted on those unnecessary matters which the Judge delved into in its submissions and still stands by them and therefore accordingly, grounds 2 and 3 as framed and the appellant's submissions regarding the same should be maintained.

Decision on Preliminary Objection

It is the duty of this court to consider and rule on any preliminary questions raised by any party involved in this appeal. On the basis of a preliminary question of law and its resolution, the entire appeal may resolve at the earliest

possible time since the resolution of the preliminary point of law has the effect of making the examination of the rest of the case unnecessary.

Counsel for the respondents invoked rule 86 of this court to render grounds 2 and 3 of the appeal redundant. This rule states that:

> "(1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongfully decided, and the nature of the order which it is proposed to ask the court to make."

The queried grounds of appeal are;

> Ground No.2
>
> That the learned trial Judge erred in law and fact when he failed to properly evaluate the evidence on record and hence arrived at a wrong decision.

Ground No.3

> That the learned trial judge erred in law and fact when he considered and delved in unnecessary matters as a basis for his judgement.

Counsel for the respondents argued that the grounds presented were too general and failed to identify the specific error in the court's judgment. Counsel suggested to strike the grounds out as they did not comply with rule 86.

In **Celtel Uganda limited v Karungi Susan CACA No.0073 of 2013**, Remmy Kasule JA cited with approval **Ranchobhai Shivabhai Patel Ltd and Anor v Henry Wambuga & anor CA No.06 of 2017** which found the following ground superfluous:

> "The learned trial Judge erred in law and fact when they failed to evaluate the evidence on record and thereby arrived at a wrong conclusion."

Celtel v Karungi Susan (supra) articulates the point that,

> "This ground is too general and does not specify in what way and in which specific areas the learned trial justices of appeal failed to evaluate the evidence. It does not set out the particular wrong decision arrived at by the learned justices of appeal..."

The impugned ground was consequently struck out for contravening rule 86 of the rules of this court. In **Yunusa Ismail t/a Bombo city store v Alex Kamukama SCCA No.7 of 1987 (1992) KLR 466**, as relied upon by the respondents, the Supreme Court rejected a ground of appeal for being too general. The court held that:

> "the 7th ground of appeal would fail because it was too general and unsustainable and offended against rule

84 which requires that a memorandum of appeal should state concisely the grounds of objection to the decision appealed against and specify the points which are alleged to have been wrongly decided".

The appellant's claim that this court is obligated to reassess evidence as a basis for upholding grounds 2 and 3 appears unfounded. While it's true that an appellate court has the authority to re-evaluate evidence, presenting grounds that are empty bellied can be futile. By the time an appeal is lodged, the appellant is assumed to be well aware of the issues that prompted their dissatisfaction. Therefore, in the absence of specific points of contention, grounds No.2 and No.3 are deemed superfluous, incompetent, and in violation of rule 86 of the Rules of this Court. Consequently, grounds 2 and 3 are struck off, and the preliminary objection is upheld.

I will now proceed with the appeal, taking only Grounds No.1, 4, and 5 into consideration.

Appellant's Submissions

In regard to ground No.1 as to whether the trial Judge misconceived the facts relating to the case, in particular the intention, meaning and effect of the sub-contract.

Counsel for the Appellant submitted that as a result of KCCA's rejection of the Indian-sourced products on the

project, the idea of signing a formal sub-contract was born. Counsel for the appellant submitted that the signing of the sub-contract displaced the 1st respondent's mandate to the Appellant. It was counsel's submission that the performing most of the aspects of the main contract by the respondents reduced the appellant's role in scope as the respondents assumed the responsibility of procuring all project equipment and products from China, relegating the appellant to only doing the civil works. Counsel submitted that the sub-contract also provided that the appellant would be compensated for all the Indian products it had earlier imported for the project and for the civil works, irrespective of the fate of the main contract. Counsel argued that the appellant was entitled to compensation in the sums indicated and agreed upon in **annex 1** to the sub-contract hence it was error on the part of the trial Judge to hold otherwise and to deny the Appellant the admitted sums which the parties agreed on of their free will.

On ground 4, Counsel criticised the learned trial judge for finding that the Appellant was responsible for breach of the main contract between KCCA and the 1st respondent. It was submitted for the appellant that the appellant prepared and handed over the tendered bid document to the 1st respondent on 5th October 2015 inclusive of a comprehensive

price list containing quotations for both China and non-China products intended for use on the project.

Counsel also submitted that DWI was cross-examined on the alleged breaches and actually testified that all the alleged breaches were corrected upon signing the sub-contract. It therefore became unnecessary and inconsequential for the trial Judge to rely on the corrected breaches as the basis for deciding the case before him and that it did not in any way prove that the Appellant committed the alleged breaches.

Counsel for the Appellant averred that the Appellant cannot be blamed for sourcing third party components for the project because the Appellant was not aware of the specifications required by KCCA at that time. Counsel averred that the main contract which was signed on 22nd October 2015 by KCCA and the 1st respondent was only witnessed by the Appellant's representative (PW1) and he was not knowledgeable about the contents thereof, more so on the requirement for use of Chinese products on the project. Counsel also submitted that in the minutes of a meeting between the Appellants and the respondents on the 25th of January 2016, the respondents acknowledge that it is them who issued instructions for third party sourcing and therefore agreed to reimburse the Appellant for items purchased.

In regard to ground No.5, Counsel for the appellant criticised the learned trial judge for failing to award the admitted claims under Annex 1 of the sub-contract yet the parties voluntarily agreed to the same. Counsel submitted that any attempt by the trial Judge to interfere with those items as provided for and agreed to by the Parties amounted to re-drafting the contract, rather than enforcing the terms thereof.

Counsel further submitted that the 50% battery costs under the sub-contract which were agreed upon by the parties to be made in kind was no longer a viable option as the respondents did not renew their distributorship contract.

Counsel contended that the respondents themselves acknowledged in their submissions that the cumulative amount proven totalling USD $653,211 and UGX 808,180,000 and it was surprising that the Judge did not consider this admitted amount, despite it being less than that which the Parties agreed upon under the sub-contract. Counsel concluded that the courts of law are mandated to prove claims even when not to the fullest extent (see **Uganda Commercial Bank v Kigozi, [2002] 1 EA 305)** and that the argument by the respondents that a 50% share of the loss be applied towards the admitted sum would not be applicable, since it was already shown that the Appellant

was not liable for any fraudulent behaviour or breach of the main contract.

Respondents' Submissions

Counsel for the respondents proposed to argue ground 4 first, they averred that the learned trial judge rightly found that the delay to perform the contract was caused by the appellant who failed in its roles as they breached the main contract with KCCA by importing third party goods well knowing that the required goods were those from Phillips factories in China and when the goods were rejected by KCCA, the Appellant failed for three months to order for proper goods despite repeated urging from the respondents. The importation of third-party goods damaged the relationship with KCCA and made any extension of the main contract difficult.

Counsel submitted that the third-party goods were imported without the authorisation of the respondents when the appellant knew and had reason to believe that the approved source of goods for the project was China and were not to import alternative goods but for reasons of profit, imported those goods.

Counsel also submitted that the signing of the sub-contract agreement did not remedy any previous breaches as it was not a new contract but a formal contract codifying what existed before and the evidence of DW1 cannot be relied

upon when the written document (Pexh2) states to the contrary.

In regard to ground 1, Counsel argued that the appellant had an erroneous view of the subcontract, that its intention, meaning, and effect was to recognize the value of the perfumed sub-contract activities and to cure all the alleged previous breaches or wrongs by the Appellant. It was argued for the respondents that the sub-contract agreement was a formal agreement embodying the sub-contract terms for the orderly execution of the project by the parties hence it was not a new contract but a formal one for the relationship that started with the tender for the project. The sub-contract agreement provided for estimates of value of the works and imports made by the Appellant as at the date of its execution but it did not provide for compensation of the Appellant for work done (Civil works or imports) except for batteries. In short, it was not a compensation agreement but simply a framework agreement under which the main contract was to be executed going forward and in any event, the Appellant failed to perform its obligations under the sub-contract.

On ground 5, Counsel submitted that the subcontract agreement never obliged the respondents to compensate the Appellant for civil work done or imports made except for

import of batteries to the extent provided for in the sub-contract (and only after the respondents performed its obligations under the same, which it failed to do). Counsel submitted that in a successful action against the respondents for breach of the sub-contract agreement, the appellant would have been under obligation to prove its claims. Again, the appellant erroneously misrepresents that the respondents had conceded to the sums of USD 653,211 and UGX 808,180,000. Counsel further submitted that they had already stated that even if the Appellants action succeeded to the full, at best, the only amount proved was that stated above. The respondents' primary position is they are not liable to pay the sum to the appellant at all.

In the alternative, Counsel for the respondents averred that the appellant should be substantially blamed for the loss of time and that the stated amount should as a consequence be apportioned to reflect each party's share of the blame.

On the issue of apportionment of loss, Counsel argued that the appellant was primarily responsible for contract non-performance due to fraudulent procurements, delayed payment despite having advance funds, and negligent execution of civil works, contributing 80% to the breach of the main contract.

On the issue of return of accountability for compensated goods, Counsel submitted that the Appellant cannot claim

compensation for goods it has used as admitted by PW1 that the rejected goods as well as the Respondents' goods (luminaries valued at USD. 96,000) were being used for KCCA projects hence it would be unjust on their part to ask for compensation in any way.

On the issue of accountability for the advance payment, Counsel argued that the appellant should be held accountable for expenses covered by the advance payment from the principal. The appellant can only claim Bank guarantee costs of USD 23,095 and advance payment guarantee of UGX 700M unless proven to have spent more.

On the last issue relating to the Notice of affirmation of decision, Counsel submitted that it had been admitted that the 2nd respondent replaced and assumed the responsibilities of the 1st Respondent on the execution of the sub-contract agreement. Counsel submitted that the claim if any, arising from the breach of the sub-contract agreement lies against the 2nd respondent and to that extent therefore, the suit against the 1st respondent is incompetent.

The respondents prayed that the Appeal be dismissed with costs to the respondents and that the notice of affirmation be allowed with costs here and in the court below. In the alternative, counsel prayed that if the appeal is allowed, the apportionment of liability to the appellant to be at 80% and the only costs the respondent would share would be those

relating to civil works, bank guarantee costs and advance payment only.

Rejoinder

In regard to ground 4, Counsel maintained that the Appellant's sourcing of third-party components from India, was as a result of lack of information on the requirement to source those components from China as they were not party to the main contract signed between the 1st Respondent and KCCA and this was clarified by DW1 during his re-examination.

Counsel argued that the 2nd Respondent cannot be divorced from the appellant's decision to source third party components for use on the main contract as they consented to the same.

On grounds No. 1 and 5, the appellant reiterated its earlier submissions that all such admitted/ recognized claims under the sub-contract be paid, less the amounts relating to the Nabico (USD. 75,250) and luminaries (USD. 96000).

On the alternative arguments, Counsel dismissed the respondents submission of apportioning the loss 80:20 in favour of the Respondents as baseless and ought to be rejected.

Counsel further submitted that the Appellant reiterates its earlier submissions on the need to pay to it both general damages and interest on the sums claimed. The Appellant

concluded by reiterating its prayer that the appeal be allowed in the terms stated.

Resolution of Appeal

The primary responsibility of a 1st appellate court is to reassess the evidence presented in the case and formulate its own conclusions. Rule 30(1)(a) of the Judicature (Court of Appeal Rules) Directions SI 13-10 outlines the authority vested in the court, stating that:

> 1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may;
>
> a) Reappraise the evidence and draw inferences of fact.

The duty of the 1st appellate court was well-articulated in the Supreme Court decision of **Kifamunte Henry v Uganda, SCCA No. 10 of 1997 (unreported)**. The court highlighted that,

> "The first appellate Court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate court must then make up its own mind not disregarding the judgement appealed from but carefully weighing and considering it".

This principle is further underscored in the cases of **Father Narsensio Begumisa & 3 Ors v Eric Tibebaga, SCCA No.170 of 2002**, **Pandya v R [1957] EAA 336**, and **Bogere Moses v Uganda SCCA No.1 of 1997**, which uphold the above principle.

I will initially address the 4th ground of this appeal, which pertains to the following issue, that:

> The learned trial judge erred in law and fact when he held that the appellant was responsible for breach of the main contract.

As can be discerned from above, the appellant seeks to disassociate themselves from liability regarding the procurement error that resulted in a contract breach. The appellant's claim is supported by five key arguments, that;

1. The appellant prepared and handed over the bid documents to the 1st respondent on 5th October 2015 with quotations for both Chinese and non-chinese products. The submission of the bid document and the said quotation to KCCA was done by the respondents.
2. The appellant was not aware of the specifications required by KCCA at the time of availing the quotation to the 1st respondent with non-China products.

3. The main contract was signed on 22nd October 2015 by KCCA and the 1st respondent. The appellant's representative only witnessed the signing.
4. The appellant held a meeting with the respondents on 25th January 2016 where they acknowledged that they issued instructions for third party sourcing. The respondents agreed to reimburse the appellants for the items purchased.
5. Subcontract remedied the issues.

It is on record that the agreement between the 1st respondent and the appellant for the supply of products and civil works was verbally agreed.

Section 10(1) of the Contracts Act 2010 defines a contract as an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.

Moreover, according to Section 10(2), a contract can take various forms - oral, written, a combination of both, or inferred from the actions of the involved parties.

In regard to the preparation of the bid document with both China and non-China products, the appellant prepared a document with a price schedule for supplies and related services, Procurement reference No.KCCA/SUPLS/2015-16/00213 dated **5th October 2015**, this document provided

that the country of origin of supplies was China but also provided that 21% and 42% (lighting centre pole, complete raw materials, and labour for the electrical and civil works) were of Ugandan origin. It was not provided for anywhere in the Bid-Submission Sheet or Procurement Reference Document that the appellant intended to procure goods from India.

Therefore, in as much as the appellant may claim not to have been aware of the specifications required by KCCA at the time of availing the quotation, which claim I find doubtful, the appellant did not disclose to the respondents his intention to procure from India. What is true is that the appellant prepared a bid document which had specifications with China and non-China products, the non-China products were specified to be a percentage of Ugandan origin. The non-China products were stipulated to have Ugandan origin. This in my view, does not exonerate responsibility for mis-procurement of products but rather constitutes a breach of contract.

A breach of contract is defined in Black's Law Dictionary, 5th Edition, page 171, as the failure of one party to uphold a contractual term. In **Nakana Trading Co. Ltd v Coffee Marketing Board Civil Suit No. 137 of 1991**, the court defined a breach of contract as one where one or both parties fails to fulfil the obligations imposed by the terms of contract.

It is no doubt that the appellant omitted shipment of goods from China and instead, and without disclosure or clearance, shipped goods from India.

Secondly, the appellant averred that their representative only witnessed the main contract that was signed on **22nd October 2015** between KCCA and the 1st respondent but was not party to the contract nor did he have knowledge of the contents of the contract and therefore it could not be assumed that he knew about the major condition of shipment of goods from China only.

A witness is a person who has knowledge of an event, a witness has acquired a sense of a person who is present at and observes a transaction.

It is well-established practice that a contracting party cannot act as a witness within the same contract. A witness should maintain impartiality and independence, devoid of any personal interests in the contract. This separation is crucial, especially in cases where disputes arise, as witnesses may be required to attest to the validity of the document before a court of law. Something that would be problematic if the witness holds personal interests in the contract.

In this case, Mr. Kasula Praveen Kumar, PW1, acting as the appellant's representative, served as a witness to the main contract. It is evident that his role was to have an in-

depth understanding of the contract's contents. Therefore, his responsibility can be inferred from his position as a witness to the contract and therefore one with knowledge of its details. He himself became party to a subcontract he entered with the 2nd respondent.

Section 33(1) of the Contracts Act outlines the obligation of parties to fulfil their contractual commitments. It states that, the parties to a contract shall perform or offer to perform, their respective promises, unless the performance is dispensed with or excused under this Act or any other law.

Section 36 further stipulates that where it appears from the nature of a case that it was the intention of the parties to a contract that a promise contained in it is to be performed by the promisor— (a) the promise shall be performed by the promisor; or (b) the promisor or the representative of the promisor may employ a competent person to perform the promise.

I agree with the respondents that the subcontract was the formal arrangement which embodied the contract terms for the orderly execution of the project by both parties. For the above reasons I do not accept the appellants' argument that

the appellant's representative's signature on the main contract does not imply the appellant's liability for contract performance.

Having had knowledge of the contents of the main contract as a witness, and being bound as a party to the subcontract and given his role as the lead contractor who interfaced with KCCA, I would not fault the trial Judge for finding that the appellant breached the contract when, knowing that the pre-qualified products were to be imported from Phillips factories in China, wilfully and without authorisation, imported parts from India thereby breaching the contract with KCCA. A breach of contract is a material non-compliance with the terms of a legally binding contract. Enforcement of contracts is a necessary part of any legally binding contract: each party expects to obtain the benefit of the deal agreed by the contract. If a party does not receive the benefit of the contract by reason of the other party's breach, the innocent party has a legal right to recover.

My findings above settle grounds 1 and 4.

I would disallow grounds No.1 and 4 of the appeal. Having disallowed what I consider to be the grounds that determine whether there was breach on the part of the 2nd respondent, I find that the appellant would not be entitled to any damages or costs relating to this appeal.

I agree with the respondents that the appellant adduced no evidence against and did not disclose cause of action against the 1st respondent.

This appeal is herewith dismissed with costs to the respondents and I agree that the appellant was more to blame for non-performance on the contract and for procurements which were below the pale. The maxim ***pacta sunt servanda***, "agreements must be kept", is still good law. **Robinson v Harman (1848) 1 Exch 850** is an English contract law case, which is best known for a classic formulation by Parke B (at 855) on the purpose and measure of compensatory damages for breach of contract. Parke B proposed that, the rule of the common law is, that "where a party sustains loss by reason of a breach of contract, he is, so far as money can do it to be placed in the same situation, with respect to damages, as if the contract had been performed." **Greaves and Co. (Contractors) Ltd. V Baynham Meikle & Partners [1975] 3 All ER 99** espoused the legal principle that, "it was, therefore, the duty of the contractors to see that the finished work was reasonably fit for the purpose for which they knew it was required. It was not merely an obligation to use reasonable care. The contractors were obliged to ensure that the finished work was reasonably fit for the purpose. See also— **Miller v Cannon Hill Estates Limited. (1931) 2 KB. 113; Hancock v**

B. W. Brazier (Anerley) Limited. (1966) 1 W.L.R. 1317 for the proposition that:

> "It is a term implied by law that the builder will do his work in a food and workmanlike manner; that he will supply good and proper materials; and it will be reasonably fit for human habitation."

In this case the subcontractor, Kiboko Enterprises, who was the main contractor in the performance of the contract, was under obligation to abide the terms of the contract and to produce lighting on the streets of Kampala Capital City using the agreed methods and to the standard required under the contract. I agree with the respondents that responsibility for the failure to perform on the execution of the civil works fell on the appellant who should therefore bear 80% of the loss. The responsibility of the 2nd respondent is assessed at 20%.

Both respondents are awarded costs of this appeal.

Dated this 28th day of March 2024.

HON.LADY JUSTICE CATHERINE BAMUGEMEREIRE
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 167 OF 2019

(Coram: R. Buteera DCJ, C. Bamugemereire & C. Gashirabake, JJA)

KIBOKO ENTERPRISES LTD :::::::::::::::::::::::::::: APPELLANT

VERSUS

1. PHILIPS EAST AFRICA LIMITED
2. PHILIPS LIGHTING EGYPT LLC ::::::::::::::: RESPONDENTS

(Appeal from the Judgement of David Wangutusi J, delivered on the 3rd of May 2019 at the High Court of Uganda Commercial Division)

JUDGMENT OF BUTEERA, DCJ

I have had the benefit of reading in draft the Judgment of my learned sister C. Bamugemereire, JA in respect of this appeal. I do agree with her reasoning, conclusion and orders she proposed.

Since C. Gashirabake, JA also agrees, the appeal succeeds in the term as C. Bamugemereire proposed in her lead Judgment.

Dated this ..28th.. Day of ..March.. 2024

Richard Buteera
DEPUTY CHIEF JUSTICE

THE REPUBLIC OF UGANDA

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(CORAM: Buteera, DCJ; Bamugemereire and Gashirabake, JJA)

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(Arising from HCCS NO. 601 of 2016)

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VERSUS

PHILIPS EA LTD & ANOR::RESPONDENT

JUDGMENT OF CHRISTOPHER GASHIRABAKE, JA.

I have had the benefit of reading in draft the judgment of Hon. Lady Justice Catherine Bamugemereire in the above mentioned Civil Appeal.

I concur with the analysis, conclusions and orders therein and I have nothing useful to add.

Dated at Kampala the ..25th.... day of .....March.....2024.

Christopher Gashirabake
JUSTICE OF APPEAL.