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CIV APPEAL 13/2013

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN

SIERRA LEONEROAD TRANSPORT AUTHOURITY - **APPELLANT**

AND

ALIE ABESS - **RESPONDENT**

COUNSEL:

E.E.C SHEARS MOSES Esq for the Appellant

C.F. MARGAI Esq for the Respondent

CORAM:

The Honourable Mr Justice E.E. Roberts JSC then JA

The Hon Mrs Justice Nyawo Matturi Jones JA

The Hon Mr Justice Desmond Babatunde Edwards J

Judgement delivered this 15TH Day of DECEMBER 2015

APPEAL

1. By Notice of Appeal filed on the 18th of March 2013 the Appellant herein appealed to this Honourable Court against the Judgement of the Hon Mrs Justice Musu D. Kamara J. dated the 1st of February 2013. The grounds of the appeal are stated as follows-:

i) The Learned Trial Judge ignored the primary duty of the Sierra Leone Road Transport Authority to work in tandem with the Sierra Leone Police in ensuring that the vehicles on the roads are qualified to be there.

ii) The Learned Trial Judge erred when she admitted that the plaintiff was wrong to have allowed unlicensed vehicles to ply the road, and at the same time disapprove the steps taken by the defendant to ensure that it was kept off the road by detaining it until regularised.

iii) The Learned Trial Judge erred in Law when she held that only the court and no one else has the power of detention of vehicles that are wrongly on the road.

iv) The Learned Trial Judge failed to consider that the defendants have a duty to keep unlicensed vehicles off the road by detention in the interest of safety of other road users, lives and property as they will not be covered by an insurance.This she said was a wrongful act by the plaintiff.

v) The Learned Trial Judge having held that the plaintiff failed to mitigate his loss by communicating his having licensed the vehicle to the defendants erred in not considering this in the award of damages.

vi) The Learned Trial Judge contradicted herself in saying that a publication of all registered / licensed vehicles would have informed the Director of Safety and Enforcement that the vehicle ACN 379 had been licensed while at the same time making the plaintiff blameworthy for not communicating to the appropriate office that the vehicle had been licensed.

vii) The Learned Trial Judge before delivering her judgment, had on the 13th of January 2013 invited the head of the defendant's firm of solicitors and the counsel for the plaintiff into her chambers and stated in the presence of one Mr. Coker of National petroleum, Walpole Street Freetown that she intended to find against the defendant so both sides should go into discussions, and further invited the said Mr. Coker who had no link with the matter to proffer opinion on the case.

viii) The Learned Trial Judge erred in law by inviting counsel to address her on the issue of special damages though she had concluded that it had not been strictly proved.

ix) That the decision is against the weight of the evidence.

Further grounds where filed on 21st of May 2013 to wit:

x) The Learned Trial Judge having concluded the matter and delivered Judgment on 1st February 2013 and so *functus officio* erred in law to invite the plaintiff to give further evidence for assessment of special Damages on the 15th February 2013.

xi) The Learned Trial Judge erred in law to have awarded the sum of 295, 404,000.00 as special damages on 26th March 2013 when nothing was strictly proved as required by law.

The reliefs sought from this court are as follows-:

i) That the Judgment be set aside and substituted by one in favour of the defendant.
ii) That the costs of the Appeal and that in the court below be the Appellant's

Facts of the case

2. The Respondent herein the plaintiff in the High Court is a businessman trading under the name of Alie Abess Transport and General Merchandise and operates a business of public transport ferrying passengers to various parts of the country including Freetown, Kenema and Kono.

3. The Appellant, the defendant in the High Court is the Authority set up by an Act of Parliament-"The Sierra Leone Road Transport Authority Act No 4 of 1996 to supervise, direct, control and regulate the operation of vehicles on the roads throughout the country. Their primary duty is to ensure that all vehicles operating on the roads throughout the country do so within the ambit of the laws of the state as provided. These laws included the aforesaid Act; The Road Transport Authority (Amendment) Act 2003; The Road Traffic Act 1964; The Road Traffic Regulations of 1960, The Road Traffic Act 2007 and the Road Traffic Regulations of 2011 which came into force on the 1st of March 2012. They therefore have a sacred duty to ensure that there is compliance with the law so as to ensure safety of lives and property.

4. The Respondent's Mini bus with registration No ACN379 was on the 6th of June 2011 stopped and found plying the roads in Sierra Leone returning from a trip from the Provinces without a valid vehicle licence as the one previously in use had expired since the end April 2011.The vehicle when stopped was found to have accumulated some 12 or more ticket fines still unpaid for. The vehicle ACN 379 was asked to drive into the Appellant's Compound where it was then detained. Even after payments were effected in respect of documents viz exhibit B1-15 as levied by the Appellant Authority and the licence for the vehicle obtained on the 10th of June 2011 the vehicle was not released to the owner.

5. By letter dated 14th June 2011 the Respondent's solicitor wrote to the Appellant Authority demanding the release of the vehicle with a warning of imminent litigation if there was failure to comply to this demand for release of his vehicle. The Appellant refused and their solicitor replied on the 24th of June 2014 stating that while the vehicle was in their custody it continued to accumulate charges for each night. To this the Respondent's solicitor replied on the 28th of June 2011 that he would be grateful if the Appellant's solicitor could enlighten them as to the law which gives the Appellant the right to detain vehicle for non-payment of fines as alleged. The replied followed on the 4th of July 2011. It being a short reply I will quote it verbatim.

> ***"We would want to invite your attention that your client's vehicle was arrested by SLRTA staff working in accordance with provisions of the SLRTA Act 2003, the Road Traffic Regulations 1960 and the Road Traffic Act 1964, for the commission of certain offences for which he is to pay certain fines which are being awaited'***

Meanwhile those fines as levied by the Appellant Authority had been paid since the 7th of June 2011as evidenced by receipts exhibit B1-15 and the licence obtained from the very Appellant since the 10th of June 2011.

6. The plaintiff, respondent herein, had no option but to issue a Writ of Summons against the Defendant/Appellant herein for which the Learned Trial Judge in her wisdom gave Judgment on the 1st of February 2013 for the plaintiff respondent herein. It is this Judgment dated the 1st of February 2013 that the Appellant SLRTA now SLRSA has appealed against on the aforesaid grounds.

ISSUES IN THIS APPEAL

7. The main issues in this Appeal may be stated thus:

Firstly, Whether the refusal of the Appellant Authority to release Mini bus ACN 379 to its owner ALIE ABESS the Respondent herein as the Institution with the authority to supervise, direct, control and regulate the operation of vehicles on the roads throughout the country and moreso in the light of the provisions contained in section 2(B)(2) (e) and 2(C)(1)-(5) of the Sierra Leone Road Traffic (amendment) Act No5 of 2003, was unlawful and constitute detention of that vehicle amounting to detinue.

Secondly, if the detention was unlawful whether the award of damages was carried out in accordance with law.

The second question becomes irrelevant if the actions of the Appellant were lawful.

CONSIDERATION OF THE GROUNDS OF APPEAL

8. GROUNDS 1-1V were argued together and it behoves this court to consider them together rather than *seriatim.* These grounds concerned and justified the detention of the vehicle ACN379, to wit, that the defendant's actions in refusing to release the Respondents vehicle was definitely within the law and correct and not in contravention of the primary duty of the SLRTA to work in tandem with Sierra Leone Police in ensuring that only vehicles that are qualified to be on the road are there on the one hand ; that the said refusal to release the aforesaid vehicle ACN 379 was geared towards ensuring that any vehicle on the road had a valid licence and that keeping unlicensed vehicles off the road was necessary in the interest of safety of other road users and the lives and property as they will not be covered by insurance.

9. The learned Appellant's counsel submitted that because of those reasons the Appellant had the power and authority to take hold over and detain unlicensed vehicles until they are sure it was qualified to be on the road. The appellant relied heavily on section 26(B)(2)e) which provided that ***"without prejudice the generality of subsection 1 the functions of traffic warden shall include to enforce all rules and regulations pertaining to the conduct of road users including pedestrians, for the promotion of Road safety"*** and he submitted that this court ought to take Judicial notice of the fact that on the road a vehicle must be covered with insurance which cannot be so when the vehicle is not licensed.

10. The above according to the Appellant's solicitor represented the state of law and noting that the ACN379 was according to them without a valid licence and having refused to pay all the fines plus administrative charges there was more than enough reason to detain the Respondent's vehicle for long as they failed to comply with payment of administrative charges and take out a valid licence.

Respondent Solicitor's Response vis a' vis GROUNDS 1-IV

11. The Respondent's reply was assuming what was alleged is true, without conceding, whether the Appellant acted within its statutory mandate? To this he answered No.

12. In considering these arguments on these 4 grounds it is clear to the Court that both the Appellant and the respondent are referring to the Statutes of the SLRTA- Appellant Authority as the reason why they say the action by the Appellant was wrong or correct. The Acts/Statutes of relevance here are as rightly pointed out by the Appellant's solicitor in his letter of 4th July 2011 exhibit D in the High Court proceedings is "The Sierra Leone Road Traffic (Amendment) Act No 5 of 2003, the Road Traffic Act of 1964 and the Road Traffic Regulations of 1960. Sections 26 B(2)(e) and 26C (1)-(5) are the most important in so far this Appeal is concerned. The first of these sections and or provisions having been previously reproduced verbatim this court now turns to 26 C (1) -(5) and reproduce same verbatim. It provides thus:

> ***"26C (1) A traffic warden shall have power to issue in respect of any offence specified in the First Schedule, a ticket in the form set out in the Second Schedule, stating the circumstances of the offence and the penalty thereof as prescribed by the appropriate enactment referred to in the FIRST SCHEDULE, together with the administrative charges for the handling or processing the offence out of court.***
>
> ***26C (2) The administrative charges for the offence specified in the First Schedule are as prescribed in the Third Schedule.***
>
> ***26C (3) The Prescribed fine together with the administrative charge shall be paid by the offender at the nearest office of the Authority.***
>
> ***26C(4) Where an offender fails to pay the fine and prescribed administrative charge within seventy –two hours , the traffic warden shall refer the matter to the police who shall institute criminal proceedings against the offender.***
>
> ***26C(5) Where the offender is convicted by the court, the court shall order the payment by the offender, the administrative charge and updated fines together with the costs of prosecution or any other moneys due under any law."***

13. The above no doubt represents in clear concise and specific terms what is expected of the Appellant in the dealing with vehicles such as ACN379 as they ply the roads in Sierra Leone and fail to observe rules and regulations regarding the use of their vehicle on the road. An interpretation of these provisions would produce these features.

1. That for any or every offence specified in the First Schedule – (69 offences in all) a traffic offence ticket must be issued signed by a traffic warden dated and witnessed.
2. That the Traffic offence ticket must have levied for any specific offence a fine and an administrative charge by the traffic warden. See 26C (1) ***A traffic warden shall have power to issue in respect of any offence specified in the First Schedule, a ticket in***

the form set out in the Second Schedule, stating .....the penalty thereof (fine) as prescribed .....together with the administrative charges for the handling or processing the offence out of court.

Both the fine and the administrative charge to be paid must be stated on the Traffic offence ticket See 26(C)(1).

3. That for any specific offence there must be paid a fine and an administrative charge. See 26(C)(1)
4. How is the fine determined? – It is determined by the specific offence committed; what the SPECIFIC enactment or law breached in the First SCHEDULE prescribes by way of fine in the Specific Act/Enactment. There are 69 offences listed on the First Schedule for which you have to turn to their respective enactments to know the fines payable. How is the administrative charge determined – by the number of wheels of the vehicle committing the offence as prescribed in the Third SCHEDULE.
5. Both the fine and administrative charge must be paid together.
6. Both the fine and administrative charge must be paid within a time limit of 72 hours - 3 days
7. Where the fine and administrative charge or charges have not been paid within 72 hours the matter must (no discretion) be transferred to the POLICE to institute criminal proceedings against defaulter/offender.

14. How do the findings of her Learned Justice Musu D. Kamara fit into all this? She found that the vehicle was arrested on the 6th of June 2011; that the Respondent Alie Abess paid the sum of LE1,120,000.00 representing 15 unpaid tickets plus a surplus of Le 80,000.00 on the 7th of June 2011; that on the 10th of JUNE 2011 the plaintiff respondent herein had secured a valid licence from the Appellant yet still the vehicle was not returned to its owner even when demand for the return was made on the 14th of June 2011 and continued to held kept and detained under the Appellant's custody against the Respondent's wish and against the law therefore constituting Detinue as claimed.

15. A claim for Detinue is an action under the law of Tort. It is the wrongful retention of the possession of a chattel/personalty or title deeds of land. According to **P.H. WINFIELD ON TORTS 3rd Edition page 339** it does not matter how the possession of the property may have been acquired; it may have been by a bailment but then the bailee is liable if he holds over after the bailment is determined; or it may be by finding but then the finder is liable if he wrongfully refuses to give up the property to the owner, or it may be by any other mode of acquisition. In a claim for detinue firstly, the plaintiff must prove that he is entitled to immediate possession of the property and unless there is defect in his right to immediate possession, provided the other conditions are met, he must succeed **SEE JARVIS V WILLIAMS (1955) 1 WLR 71 and also TRAPPENDEN V ARTUS (1964) 2Q.B.185.** In the present scenario the respondent is the owner of Vehicle Mini bus registration number ACN 379 and the same was proved by the vehicle life card exhibit M.

16. Secondly, it must be proved that the Appellant detained or wrongfully retained the vehicle after demand had been made for its restoration see **GLEDSTANE V HEWITT (1831) 1 CR &J 565 at page 570**. In **ANDERSON V PASSMAN (1857) 7C&P** it was held where the plaintiff is successful in Detinue, the court would be enjoined to give judgement in his favour ordering that he recovers the goods or their value and in any event damages for their detention; but as the gist of the grievance is mere unlawful detention, the damages will be nominal unless the plaintiff proves that he has suffered special damages. A consideration of the Judgment of Justice Musu D. Kamara J. shows that this was exactly what the learned Trial Judge did.

17. From the records in this Appeal it could be seen that the possession of ACN379 was properly acquired in the sense that it was within the authority's power to stop and inspect the vehicle on the 6th of June 2011and take action as appropriate against the defaulting/ offending respondent within 72hours from the arrest of his vehicle. That authority expired when the Appellant held over. There is a dispute about the fact that administrative charges were not paid in the sense that the Appellant considered it not yet paid to the point of even counterclaiming for it. Even if the Respondent had not paid for same this would not have in any way equipped or clothed the Appellant with powers to detain the vehicle ACN 379 beyond 72 hours because section 26C (4) is clear that the traffic warden must refer the matter to the police to institute criminal proceedings; and with criminal proceedings there is a possibility that the offender be sent to prisons for 6months in addition to paying the updated fine. The Appellant's power of detention, if at all, is veiled, implied and short lived and expired by effluxion of time after 72 hours from the issuance of ticket and/or arrest.

18. This court notes with consternation the glaringly irregular operations by the Appellant Authority as gleaned from the records. These were constituted as follows:

i. That no traffic Offence Ticket as shown in the Second Schedule was produced at the proceedings with respect to the vehicle ACN 379 for any of the alledged offences. In the mind of this court this constitutes the most appropriate evidence and or report of what transpired at the scene of the crime.

ii. That the Traffic Offence ticket must as required by section 26(C)(1) state or levy a fine together with an administrative charge but that the traffic Offence ticket not being produced you cannot for sure and certainty say it was issued. The claim of PW1 under examination in chief see page 62 of the records is that they only knew about the tickets when it was time to licence their vehicle. The absence of traffic offence tickets lay credence to these claims. From exhibit B1-15 the receipts which the Appellant improvised as their payment receipts it only stated "an amount". The Respondent could therefore be spared in saying it was the fine and administrative charge combined that was paid for nowhere does those receipts use the word "fine" nor "Administrative Charge" or both but rather "amount" . The counterclaim by the Appellant was therefore a non-starter.

iii. Further still while those receipts attempted to state the offence committed there is no date as to when the alledged traffic offences were committed creating the impression that all those

offences were committed on the same day- 7th June2011. It was wrong for the Appellant to have required payment for 15 unpaid tickets when 72 hours, the time given to demand payment had expired since the apparent alledged issuance of same.

iv. It would appear that with respect to "the driving of an unlicensed vehicle" no ticket was issued even though the 1st offence under the First Schedule did provide that it was an offence warranting a ticket fine and administrative charge. A perusal of the specific provision i.e. Section 7 (3) of the Road Traffic Act 1964, it states that the fine should be Le200.00 for contravention of the provision("Two hundred Leones") which according to the Pénalties (Amendment of Specified Fines) Decree No 9 of 1993 would have been Le200,000.00 (Two hundred thousand leones).This was clearly not issued. This brings to light the irregularity of their whole operations. Even if the Appellant say they ignored that provision and went under Section 5 of The Road Traffic Act No 5 of 2007 which was in operation by then they could not have acted in any other way than to issue a ticket with a fine and administrative charge which they did not do. To do otherwise will be ultra vires the powers given to them by the Sierra Leone Road Transport Authority Act 2003 as Amended. Thus the Appellant's power or authority to even demand the said fine plus administrative charges expired after 72 hours from it being stopped at the UP- Gun Round about whether demanded /levied and /or unpaid which meant they ought to hand over the matter to the police to institute criminal proceedings. This was not done and was the main reason for them incurring damages nominal and special for Detinue. The failure to release the Respondent's Vehicle in such circumstances after a demand has been made and moreso with license obtained no doubt constitutes Detinue.

19. We note in particular that the Appellant had been embolden to say that they detained the vehicle ACN379 for purposes of road safety and safety of lives and property but clearly with such abysmal derogation from their functions rules and regulations they cannot by any stretch of imagination be protecting lives and property. Those are the laws rules and regulations made to guarantee safety and if the same cannot be followed to the letter they ought to be culpable and punished so as not to repeat the same. These laws were provided so as to protect lives and property and indeed other road users and represent what is the law and not what the law in the figment of imagination ought to be.

20. Thus regarding the first question whether the detention was unlawful. The answer is clearly in the affirmative and grounds i), ii), iii) and iv) ought to fail and hereby fail.

21. Grounds V, VIII, X and XI dealt with award of special damages and it behoves this court to consider them. On ground V, this court noted and considered the submission by learned counsel for the Appellant that the Learned Trial Judge failed in not taking into consideration the mitigation of the plaintiff's loss in the Award of damages. This notwithstanding, the court is of the view that her Lady ship Justice Musu D. Kamara more than amply took that into consideration in the award of damages. With reference to ground viii there was a cogent reason why this had to be so.

22.A perusal of the pleadings show that the plaintiff now respondent pleaded in paragraph 10 thereof as special DAMAGE the sum of Le1,500,000.00 per day as the loss of use of the vehicle from the 6th of June 2011 till judgement. In answer thereto the defendant now Appellant in their defence and counterclaim pleaded: ***"The defendant denies that the plaintiff has suffered loss and damage as alleged in paragraph 10 or at all and puts the plaintiff to strict proof thereof".*** When it came to proof the plaintiff now respondent led evidence through the witness statement of Alie Abess which witness statement was pursuant to Order 30 Rule 1(9)(a) of the High Court Rules CI No 8 of 2007 admitted as part of the evidence of PW1. The said witness while being cross examined was however quite unwittingly never cross-examined on this point or issue about his loss of use so that the claim was uncontroverted, unimpeached and a fact already proven before the court which the court could have used to award damages.

23. Proceeding on the guise, it would appear, that the award of damages would be too huge, untested and unsafe without being challenged she proceeded *ex abundante cautela* by calling on the defence counsels to address her on special damage and by putting PW1 again on the witness stand. PW 1's Invitation/ recall to testify was not at the instance of any of the parties but the court which a Judge in appropriate circumstances, like this, for clarification purposes is entitled to do; and both parties were entitled to ask questions. Here again the defence chose not to cross-examine but accept as God sent what the Plaintiff had said. At this juncture it is convenient to bring in the 10th ground of Appeal. This court notes what the counsel for the Appellant states to wit "The Learned Trial Judge having concluded the matter and delivered judgment on 1st February 2013 and so *functus officio* erred in law to invite the plaintiff to give further evidence for assessment of special Damages on the 15th February 2013.

24. It is the view of this court that she was not *functus officio* this being so for the simple reason that the matter was still not yet closed there being an issue of special damages which in the considered view of the learned Judge was strictly not proven so that there was need for full and final determination of the matter before her and that this was part of her Order. She would have been *functus officio* if she had closed the case, gave her orders and then freshly bring up the matter of assessing special damages. But the issue of assessing special damages all came up as part of her Judgment and ancillary orders and there was a nexus between her Judgment and the award of special Damage. The words used are "I order that counsel on both sides address me on the issue of special damage as this has not been proved strictly". Her Lady, it would appear, was able to see that the evidence of PW1 with respect to his Witness statement to the effect that Le 1,500,000.00 was loss of use per day was through the courtesy of the complacency and inaction by Defence counsel for Appellants, uncontroverted and therefore proven but not strictly proven in that if she was to award damages she needed more information that would justify her given out that huge sum of money as damages. Proceeding *ex abundante Cautella* she again in the opinion of this court protected the Appellant Authority by mitigating 1/3rd of the strictly proven Special damage because as part of her findings she found the plaintiff owed himself a duty to mitigate his loss by communicating that the vehicle had been licensed.

25. For the fact that obtaining of the licence was known and communicated to the Plaintiff Respondent herein, the learned trial Judge decided that failure of this plaintiff/respondent herein to disclose at the earliest opportunity to the Appellant officials who were obstructing him from accessing /refusing return of his detained vehicle, one third of the assessed and proven special damages shall be discounted as the Defendant/ respondent owed himself a duty to mitigate his loss and not to profit from his omission and this she did after subtracting Le 258,894000 as expenditure from total earnings of Le 702,000,00 less 1/3rd of that total of Le 443,106,000 and this is what gives the total sum of Le295,404,000.00. Without painstakingly requesting for the respondent to be recalled to testify and just by using the Witness statement which was unimpeached & uncontroverted the sum of Le810, 000,000.00 would have been awarded as damages against the Appellant.

26. How can the Appellant's solicitor say the mitigation of loss was not taken into consideration in the award of Damages. Clearly and truly it was taken into consideration and the facts speak so.

27. The above notwithstanding, if this court decides to give judgment otherwise by varying the award of damages to refuse and /or remove the 1/3rd Mitigation of damages or even cause the astronomical sum of Le 1,500,000.00 as loss of use by day it would have been justified . This is so because the House of Lords in the case of **BENMAX V AUSTIN MOTOR CO LTD (1955) 1 ALL ER** held

> ***"Where there is no question of the credibility of Witness, but the sole question is the proper inference to be drawn from specific facts, an Appellate Court is in as good a position to evaluate the evidence as the trial judge, and should form its own independent opinion, though it will give weight to the opinion of the trial judge."***

The provisions in Rules 31 and 32 of the Appeal Court Rules PN29 of 1985 are consistent with this Ruling of the House of Lords.

28. Clearly the inference of facts we see here is a totally irresponsible Institution which has no regard for the laws rules and regulations under which it was formed. That Institution to compound the problem gave out a valid licence to the respondent's vehicle without its Safety and Enforcement department which should be recommending the giving out of such licences after inspection knowing; and in fact being the last to know. Against such a scenario it is unnecessary to mitigate Damages and it would not be wrong to award damages based on the Le1, 500,000.00 as loss of use per day. The fact of the matter was that the Appellant Institution must have been totally irresponsible to have kept the vehicle to themselves even when a letter had been issued and the same followed by writ of summons all of which were claiming a loss of earning per day of that magnitude.

29. As an Appellate Court, nonetheless, we give heavy weight to the findings of the trial Judge and have decided not to disturb same and compound the Institution into further misery. Against the foregoing, as submitted in ground eleven and argued that the learned trial Judge erred in law to have awarded the sum of 295,404,000.00 as special damages on 26th March

2013 when nothing was strictly proved as required by law, it was clearly a matter of splitting ears. Noting cases like **BUCKLEY V REYNOLDS (1846) 8 Q.B.779, STRAND ELECTRICALS CO V BRITISH FORD ENTERTAINMENTS (1952) 2 Q.B242,** the award of damages was carefully and meticulously arrived at with a noble intent of meting out justice to both parties to say the least. Grounds V, VII, X and XI therefore fail.

30. Turning to ground VI, it is true that the Trial judge contradicted herself but this does not affect the judgment in any way. A publication would have helped the defendant, obviating the need for the Director of Safety and Enforcement to be communicated to by the plaintiff so as to mitigate damages. Because there was no such publication there was need for the plaintiff to communicate his receipt of a valid licence to the Director of Safety and the Enforcement which he did not do, hence the loss of damages thrown away to the extent of 1/3rd in mitigation of damages.

31. On ground VII, this being done in the presence of somebody may seem untidy but the fact that it was done in the presence of both counsels and with a 3rd party being around shows that there was nothing amiss.

32. On ground IX, it is but clear that against the foregoing the decision of the learned Judge was not against the weight of the evidence.

The Appeal as a whole fails.

Cost of this Appeal to be borne by the Appellant. Cost to be taxed if not agreed.

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JUSTICE E.E ROBERTS JSC

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JUTICE NYAWO MATTURI-JONES JA

..... 15/12/2015

JUSTICE D. B. EDWARDS J