leave to abandon grounds (ii) and (iii). Leave was granted. Counsel for the respondent referred the court to the Local Courts Act, 1963, s.13(1)(b), and to the definition of "general law" in s.2. He also referred to s.28(7) of the Provinces Act (*cap.* 60), to which I directed my attention earlier in this judgment. He cited the case of *Allie* v. *Katah* (1), and stressed the non-production of the decree book and the failure to call those who took part in the boundary-marking to give evidence before the group local appeal court although new witnesses were called at the hearing by the group local appeal court who had not been called to give evidence before the local court. Finally, he referred to s.33(1)(f) of the Local Courts Act, 1963. I have looked up all the references and carefully considered the various points raised by counsel. I find the judgment of the group local appeal court well-founded and correct and hold it should be restored. I consequently allow the appeal, set aside the judgment of the district appeal court and enter judgment for the appellant. I order that the description of the boundary of the disputed land, as confirmed by the local court at Yonibana on February 2nd, 1966, be inscribed in the district decree book together with this order. The respondent will pay the costs of this appeal and the costs in the district appeal court. The registrar of the district appeal court is to carry out this order. Costs are to be taxed.

Order accordingly.

KAMARA *v.* KABIA

SUPREME COURT (Beoku-Betts, J.): February 20th, 1967
(Civil Case No. 310/66)

[1] **Arbitration—agreement of reference—effect of agreement—ouster of jurisdiction of court—agreement of reference no bar to action:** A mere agreement to refer a matter in dispute between two parties to arbitration cannot bar legal proceedings in respect of the dispute (page 62, lines 20–23).

[2] **Building Contracts, Architects and Engineers—damages—measure of damages—labour costs not recoverable separately if award made for lost profits:** The measure of damages recoverable by a building contractor for his employer's breach of contract in preventing him completing work contracted for at a contract price intended to cover the builder's costs and profits is the profit the contractor would have earned on the completed contract, and it does not include labour

and other costs which the contractor has not incurred or which, having been incurred, have been covered by damages awarded in compensation for loss of profits (page 63, lines 40–41; page 64, lines 25–27).

[3] **Contract—damages—measure of damages—damages for breach of building contract—labour costs not recoverable separately if award made for lost profits:** See [2] above.

[4] **Contract—damages—measure of damages—restitutio in integrum:** The damages payable for breach of contract to an aggrieved party are those which will put the aggrieved party, as far as monetary restitution is able, in the same position as if the contract had been performed (page 61, lines 1–6).

The plaintiff brought an action against the defendant to recover: (a) the amount due on a building contract between them as special damages; (b) general damages for the defendant's breach; or (c) specific performance of the building contract and an injunction to prevent the defendant from stopping construction.

The plaintiff contractor entered into an agreement with the defendant for the construction of a building. The contract price was intended to cover the plaintiff's labour costs and profits. When the plaintiff had completed three floors of the building, he requested a certain sum as payment in advance, but the defendant, who said he had no money, could only give him part of that sum. Some time later, the construction was stopped at the defendant's request, whereupon the plaintiff instituted the present proceedings to recover the amount due on the contract, less the amount paid, as special damages, in addition to general damages. In the alternative, he sought specific performance and an injunction.

The plaintiff contended that: (a) this was a straightforward breach of contract by the defendant in engaging him to construct a complete building and stopping construction before completion, thus entitling the plaintiff to a remedy in damages including the amount of the contract price; or (b) the defendant should be prevented from stopping construction by an injunction and compelled to perform the contract.

The defendant maintained that: (a) the agreement between them was abrogated by the consent, and at the request, of the plaintiff; (b) the plaintiff had entered into a subsequent oral agreement, whereby he was to become a superintendent of the building at an agreed monthly salary; (c) in any event, the court had no jurisdiction to decide the case, as the dispute should have been taken to

arbitration first; and (d) the measure of damages, if any, was the profit the plaintiff would have earned on the completed contract, and it did not include labour and other costs which the plaintiff had not incurred.

D.E.F. Luke for the plaintiff;
Marcus-Jones for the defendant.

BEOKU-BETTS, J.:

The plaintiff brought this action against the defendant for breach of an agreement dated April 20th, 1966, which was tendered and marked Exhibit A. The defendant's case is that there was no breach of the agreement but that the agreement had been abrogated by the consent and at the request of the plaintiff. The issue therefore is one of fact as to whether the agreement was in fact broken by the plaintiff or not.

Before going into the merits of the case, the defence raised a point of jurisdiction, that the matter should have been taken to arbitration before a resort to court action. Exhibit A, cl. 5 was referred to. It is clearly the law, as can be seen in 1 *Chitty on Contracts,* 21st ed., at 317 (1955), that—"a mere agreement to refer a certain matter or all matters in difference between two parties to arbitration, cannot be pleaded in bar of an action brought in respect thereof. . . ." I need not amplify.

The plaintiff's case is that he entered into an agreement with the defendant to be a contractor in respect of the defendant's building at Kissy Road. When he had completed three floors, he received a total amount of Le548, though he had requested Le800 as an advance between June and September. He stated that the defendant said that he had no money and did not give him Le800. The situation deteriorated and on September 17th, when he went to work, the defendant terminated his employment. The plaintiff is claiming the amount on the contract, Le2,200, less Le548, which was the amount he had received. He says he would have been entitled to this amount had the defendant not stopped him from working.

The defence is that the contract agreement in Exhibit A had been totally abrogated at the request of the plaintiff and that an oral agreement had been entered into in which the plaintiff agreed to be a superintendent of the building at a salary of Le60 per month. The defendant said that the arrangement was made in July when the plaintiff handed him the plan of the building. He said all the workmen were present.

If this story is true, then the plaintiff has nothing to complain about. On the examination of the evidence as a whole, certain facts emerge. The defendant could have called at least one of the workmen whom he said were present when the plaintiff made the request. On looking at Exhibit B, the plan of the building tendered by the plaintiff, and comparing it with Exhibit J, the plan produced by the defendant, it seems to me that Exhibit B has been much used, whilst Exhibit J does not appear to have been. From appearances alone, I am inclined to believe that the plaintiff did not hand his plan to the defendant. If I am to choose between the plaintiff and the defendant on their respective words, I would certainly choose the plaintiff. Apart from the word of the defendant on the issue, there is nothing reliable, whereas the plaintiff has the written agreement to show that there existed a contractual relationship between himself and the defendant. I believe that the defendant broke the contract without good reason and his defence that the plaintiff preferred to be a supervisor at a salary of Le60 monthly cannot be believed in the absence of reliable evidence.

Having held that the defendant did break the agreement, I will now examine the agreement itself in order to assess the damages likely to flow from the breach. The most important conditions are cll. 1 and 3. Clause 1 states, *inter alia,* that the contract was to take effect from June 21st, 1966, the total remuneration for the successful completion of the construction of the building was to be Le2,200 and the building was to be completed within five months, with provision for extension of time if necessary. Clause 3 deals with employment of labour by the plaintiff, which was to be under his supervision.

The plaintiff sought—(a) special damages called contract considerations; (b) in the alternative, specific performance and an injunction; and (c) general damages. Two of these reliefs are equitable. They are sought where damages could be given which would wholly satisfy the claim. The facts show that the whole contract has been broken and, what is more, the defendant has employed another contractor to take the place of the plaintiff. This is to be found in para. 5 of the statement of defence.

I must now consider the damages to be awarded. These must relate to the actual loss suffered by the plaintiff and there is evidence that the amount of Le2,200 comprises the labour cost and the profit. In awarding damages, I can only give the plaintiff an amount as near as possible to the profit. This can be assessed on the facts

of the case. The law is clear from all the leading cases on measure of damages that damages for breach of contract are compensation to the party aggrieved by the breach for that breach. A restitution of what the aggrieved party has lost by the breach, as far as money can do it, must be made to place him in the same position as if the contract had been performed.

It is agreed by both parties that the plaintiff had received Le548, under the agreement but the defendant insisted that Le800 had been spent in addition, for and on behalf of the plaintiff. On examination of the facts, it was revealed that the whole amount of Le800 alleged to have been spent was in fact spent prior to June 1966. When the defendant was asked why he paid certain amounts on behalf of the plaintiff, he said it was because the contract agreement commenced on June 8th, 1966. The agreement itself stated that the agreement should commence on June 21st. It is therefore clear to me that the amount of Le800 could not have been utilised on behalf of the plaintiff. The amount actually received by the plaintiff stands at Le548. For me to get an idea of the nature of the work, the court moved to the site and I observed that the building was a three-storey building with concrete walls and floors. The building is of immense dimensions and solidly constructed. It would have taken longer to complete, as it had not been roofed. Taking all the facts into consideration, I award the plaintiff the sum of Le800 as enough compensation for his loss resulting from the breach. This amount is exclusive of the amount of Le548. I reject the plaintiff's claim for Le2,200 as the amount claimed includes labour costs that were not a loss to the plaintiff. Costs are agreed at Le200.

Order accordingly.