S.C. CIV. APP N0.1/98

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN

CASTROL LIMITED -APPELLANT

AND

JOHN MICHAEL MOTORS LIMITED -RESPONDENT

CORAM:

HON. MR. JUSTICE A.R.D. RENNER-THOMAS	-CHIEF JUSTICE
HON. MR. JUSTICE S.C.E. WARNE	-J.S.C.
HON. MR. JUSTICE E.C.THOMPSON-DAVIS	-J.S.C.
HON MR.JUSTICE M.E.TOLLA THOMPSON	-J.S.C.
HON.JUSTICE SIR JOHN MURIA	-J.A.

Berthan Macaulay (Jnr) Esq. for the Appellant
Abdul Tejan-Cole Esq. and Martin Michael Esq. for the Respondent

JUDGMENT DELIVERED THE 5th DAY OF July 2005

Renner-Thomas, C.J. The Appellant in this Appeal, Castrol Limited (hereinafter referred to as "Castrol") is an English Company and was at all material times wholesalers of various lubricants and other allied products (hereinafter referred to as "Castrol products") in respect of which they had appointed the Respondent John Michael Motors Limited, the Respondent herein, (hereinafter referred to as "John Michael Motors") as sole distributor in Sierra Leone sometime in 1971. John Michael Motors was at all material times a local Company engaged in the business of importing, marketing and distributing the said Castrol products as well as in the sale and servicing of motor vehicles, motor cycles and other allied products.

The terms and conditions of the agreement under which John Michael Motors was appointed sole distributor of Castrol products were not pleaded nor was evidence led on the same. Until September 1987 John Michael Motors continued to act as sole distributor of Castrol products in Sierra Leone. Thereafter, it was agreed between the parties that the Second

Defendant in the High Court, Datsun Motors Limited, (hereinafter referred to as "Datsun Motors") would also be allowed to import and distribute Castrol products in Sierra Leone. It was further agreed that for each consignment of Castrol products Datsun Motors imported into Sierra Leone Castrol would pay John Michael Motors a commission of 5 per cent of the C.I.F. value of the consignment.

On the 5th day of November 1987 Castrol addressed the following communication to John Michael Motors:-

" WE HEREBY GIVE YOU NOTICE terminating the Distribution Agreement or arrangements between Castrol Limited and John Michael Motors Limited on 7th February 1988. From such date you must not hold yourself out as being authorised to distribute Castrol Limited lubricants and allied products in the Territory of Sierra Leone and you must remove from all stationery and other literature any reference to your company being a distributor of Castrol Lubricants and Allied Products. Castrol Limited reserves its rights against John Michael Motors Limited in respect of the outstanding sterling account of £16,238.42 payment of which we understand Mr. John Michael of 9 Cherrington Close, Shankhill Co. Dublin, Republic of Ireland has accepted primary responsibility. We put you on Notice that we reserve rights against you in the event that Mr.John Michael does not settle these outstanding amounts within the next 30 days".

The document was admitted in evidence during the trial and marked as Exhibit "D2".

Quite understandably, the management of John Michael Motors was quite displeased at this development. In a letter addressed to Castrol, the General Manager of John Michael Motors stated that management was completely surprised to have received such a letter without any previous comment on the subject; He continued as follows:-

"We have been selling and distributing your products since the early 1972 even at the time when companies like Shell, BP, Mobil,Texaco were not to be competed with.

We have done a lot to push your products in this part of the world and if there is success today, it is because of our past effort. We have

been advertising, printing signs and made adverts on Television and Radio at our own expense. What Castrol has provided in terms of adverts is not even 20% what we have spent locally."

The letter was admitted evidence as Exhibit "E".

This was followed by another more detailed letter dated 26th November 1987 from Mr. John Michael to Mr Scott of Castrol. For the first time, the issue of the inadequacy of the notice to terminate the distribution agreement was raised. The reply from Castrol was contained in a letter dated 22nd January 1988 signed by Mr. Scott, as Solicitor and Assistant Legal Adviser, addressed to Mr. John Michael. First, Mr. Scott gave as reason for terminating the agreement the poor sales performance *"during the last few years compared with* [Castrol's] *assessment of the real market potential in Sierra Leone for Castrol lubricants, if marketed aggressively"*. Secondly, he said Castrol's decision to terminate the agency agreement was irrevocable. Thirdly, and most importantly for this matter, Castrol refused to extend the period of notice.

Consequently, John Michael Motors instituted an action in the High Court in which Castrol was First Defendant and Datsun Motors was Second Defendant. In their amended Statement of claim John Michael Motors contended, *inter alia*, that in the absence of any agreed period for the termination of the distributorship agreement reasonable notice should have been twelve months rather than the three months given by Castrol. It claimed, *inter alia,* damages for breach of contract and £240,000/00 apparently as special damages.

At the trial the General Manager of John Michael Motors gave uncontroverted evidence of their contention that the Plaintiff Company had spent a lot of time and money in promoting Castrol products in Sierra Leone and that it stood to lose a considerable amount of profit on lost sales of Castrol products and on collateral business because of the alleged unlawful termination of the agreement. The trial Judge agreed with the contention of John Michael Motors that three months notice was unreasonable in the circumstances to terminate the agreement. He held that twelve months notice was reasonable in the circumstances of this case. However, the trial judge rejected the claim for £240,000/00 which he dealt with as special damages but went on to award the John Michael Motors

general damages of £200,000.00. Perhaps, I should mention for completeness that the trial judge allowed the claim of John Michael Motors against Datsun Motors.

Being dissatisfied with the decision of the trial judge as far as it affected them Castrol appealed to the Court of Appeal on several grounds. The Court of Appeal rejected the appeal and agreed with the trial judge that twelve months notice should have been given for the termination of the distributorship agreement instead of three months. The Court of Appeal also upheld the award of the sum of £200,000/00 as general damages. It is against this Judgment of the Court of Appeal that Castrol has appealed to this Court on the following grounds:

> *" (1) The Court of Appeal having failed to draw the proper and or correct inferences from the facts established at the trial wrongly affirmed the decision of the Learned Trial Judge that reasonable notice in the instant case was twelve months and that the Appellant wee in breach of their agreement with the Respondents by not giving them twelve months notice to determine the said Agreement.*
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> *(2) The Court of Appeal in upholding the decision of the Learned Trial Judge that twelve months notice was reasonable in the instant case misdirected itself in holding that the case of DECRO-WALL INTERNATIONAL S. A. VSPRACTITIONERS IN MARKETING LIMITED (1971) 2 ALL .E. R. 216 "played a pivotal role" in that the said case was clearly distinguishable from the case before the Court and that the award of twelve months notice in that case ought not to have been replicated by the Learned Trial Judge nor confirmed by the Court of appeal in the instant case.*
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> *(3) The Court of Appeal failed to consider or adequately consider the Appellant's case on the question of reasonable notice in the circumstances of the particular case that was before the Court.*
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> *(4) The Court of Appeal in dismissing ground two (2) of the Appellant's grounds of appeal, which was couched in the following terms:-*

"That the award of £200,000/00 (TWO HUNDRED POUNDS STERLING) awarded by the Learned Trial Judge, as damages for breach of contract on the ground of termination, is so inordinately high, in that no evidence, or insufficient evidence, was available to the Judge to justify any quantification of damages and also in view of the dismissal of the Plaintiff's claim for special damages, that it must have been an entirely erroneous estimate of the damage suffered." (emphasis mine)

misdirected itself in-

(a) addressing the issues of remoteness and categorisation of damages, either as general or special damages, when the issue complained of was the quantum of damages, and

(b) referring to irrelevant matters by citing the following passage from the judgment in the case of Strom Bucks Akie Bolag vs John and Peter Hutchinson (1905) AC 515:

" I do not think the court ought to be astute in defeating an honest claim in favour of persons who have wilfully disregarded their obligations……." (emphasis mine)

In that there was no basis for such a reference and assuming without conceding that there was evidence of such a behaviour on the part of the Appellant, such conduct was totally irrelevant in deciding whether the quantum of general damages awarded was inordinately high or not, thereby failing to property adjudicate on the issue of quantum of damages.

(5) Further and or in the alternative the Court of Appeal having referred to the dicta of Lord McNaghten in the Stroms Bucks Akie Bolag vs John & Peter Hutchinson (1905) A.C. 515at 526 in the following terms:

" I am unable to see what difference it can make whether you claim damages generally and shew that an award of

general damages would include and cover special loss from which you seek relief, or whether you seek compensation for a special loss and shew that the loss would more than be covered or compensated by an award of special damages."

erred in upholding the award by the Learned Trial Judge of £200,000/00 (Two Hundred Thousand Pounds Sterling) as General Damages having regard to the fact that the said Learned Trial Judge had rejected the Respondent's claim for special damages, which included a general claim at large of 2loss of sale of Castrol products" (not referable to any specific contract/ agreement) of £100,000 which said claim was in the nature of general damages.

(6) The Court of Appeal misdirected itself when it held as follows:

" It is therefore justified in the circumstances that it is for the respondent to select the currency in which to make his claim seeing that such currency would most truly express the respondent loss and invariably most fully and exactly compensate him for that loss. See the Folias (1979) 1 ALL E.R. 421" (emphasis mine).

in upholding the Learned Trial judge's award of general damages in foreign currency in the sum of £200,000.00 in that in The Folias the Court had held, inter alia, that

" If then the contract fails to provide a decisive interpretation, the damage should be calculated in the currency in which the loss was felt by the Plaintiff or "which most truly expresses his loss"

and that the Respondent itself had led evidence to show that the earning from sales of Castrol products were in Leones and had not led any evidence to show that the loss of profits from future sales, as a result of the insufficient notice in sterling.

(7) The Court of Appeal in adjudicating upon the Appellant's appeal against the award of damages in foreign currency failed to consider or adequately consider the Appellant's case especially the authority of Attorney-General of the Republic of Ghana and Ghana National Petroleum Corporation v. Texaco Overseas Tank ships Limited (1994) 1 Lloyds Law Report 473 which was cited to the Court.

(8) The judgment is against the weight of the evidence."

Despite these rather detailed grounds of appeal the issues to be determined by this Court could be summarized as follows:-

1. Taking into account all the circumstances of the case, was the Court of Appeal right in upholding the decision of the trial judge that twelve months notice, rather than three months notice, was reasonable for the termination of the distributorship agreement?

2. Was the Court of Appeal right in upholding the amount of £200,000.00 awarded by the trial judge as general damages?

3. Taking into account all the circumstances of the instant case, was the Court of Appeal right in upholding the decision of the trial judge to award damages in a foreign currency?

To be able to answer the first question this Court should first enquire whether there was any available evidence upon which the trial judge could have relied in reaching the conclusion that a period of twelve months rather than three months was reasonable notice for the termination of the agreement.

There are several reasons why this exercise has got to be undertaken. First, all appeals are by way of rehearing. Rule 9 (1) of the Court of Appeal Rules, Statutory Instrument No. 29 of 1985, makes this plain in the case of the Court of Appeal. Though there is no similar provision in the Rules of this Court, Statutory Instrument No.1 of 1982, this Court can apply the provision of the said Rule 9(1) as it has the same powers, authority and jurisdiction vested in any court

established by the Constitution or any other law (see Section 121 (3) of the Constitution, Act. No.6 of 1991.

The provision of Rule 9(1) of the Court of Appeal Rules was applied by this Court in the case of *Amadu Wurie v. Edward Wilson Shomefun and Foday Bangura* S.C. Civ. App. No.8/81, judgment delivered on the 29th day of December 1983, (unreported) in which Tejan J.S.C. stated as follows:-

> *" it should be noted that in rule 9 (1) of the Court of Appeal Rules, the expression "by way of rehearing" is used .The expression does not mean that the parties and their witnesses are to appear before the Court of Appeal and to give their evidence. The words "by way of rehearing" express the practice of the old Chancery appeal (which was not strictly an appeal so much as a rehearing before a higher Court). (See Quilter v Walpleson (1882) 9 Q.B.D. at page 676; see order 58 Rule 3 of the English Rules (1959) edition. It is simply a rehearing on the record."*

Secondly, I am obliged by law to satisfy myself that there was evidence on which the trial judge could properly have relied in reaching the conclusion that twelve months notice as opposed to three months notice was reasonable in the circumstances of this case. I am obliged to do this notwithstanding the existence of a concurrent finding by the Court of Appeal. The decision whether there is such evidence is a question of law and the search for the answer to that question is one of those special circumstances that would justify a departure from the practice of declining to review the evidence for the third time where there are concurrent findings of two lower courts on a pure question of fact. In the case of *Agip (S.L.) Limited v. Edmask* 1972-73 ALR S.L. 218 this Court cited with approval the dicta of Lord Thankerton to that effect in the case of *Srimati Bibhati Devi v.Kumar Ramendra Narayan Roy* (1946) A.C.508 at 521.

In dealing with this issue Acquah J.S.C (as he then was) had this say in delivering the Judgment of the Ghana Supreme Court in the case of *Koglex (No. 2) v. Field* (2000) SC. GLR 175 at 185:-

> *"The very fact that the first appellate court has confirmed the judgment of the trial court does not relieve the second appellate court of its duty to satisfy itself that the first appellate court's judgment i.e. like the trial court is also justified by the evidence on record. For an appeal, at whatever stage, is by way of rehearing, and every appellate court has a*

duty to make its own independent examination of the record of proceedings."

I cannot agree more.

Having said this, it must be pointed out that in carrying out its functions of rehearing the case an appellate court should be guided by certain principles particularly when dealing with the trial judge's findings on questions of fact. This Court has restated those principles and applied them in a long list of cases starting with *El Nasr Export and Import Co. Ltd. v. Mohie El Deen Mansour S.C.*Civ. App. No. 3/73 judgment delivered on the 25th April, 1974. (unreported) in which this Court stated, *inter alia*, as follows:–

> *" It is true that Rule 21 of the Court of Appeal Rules 1973 (Public Notice No. 28 of 1973)[*now replaced by Rule 9(1)of the present Court of Appeal Rules*] gives very wide and sweeping powers to the Court of Appeal even to the extent of re-hearing the whole case. At the same time it is settled law and good sense that it should be in the rarest occasions and in circumstances where the appellate court is convinced by the plainest considerations, that it would be justified in finding that the trial judge had formed a wrong opinion. In this connection I quote with approval the words of Lord Thankerten in WATT or THOMAS v. THOMAS (1947) A.C. at page 487 referred to in the House of Lords in the case of BENMAX v. AUSTIN MOTOR CO. LTD. (1955)1 A.E.R. 326:*
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> 1. *Where a question of fact has been tried by a Judge without a jury, and there is no question of misdirection of himself by the Judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge, by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion.*
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> 2. *The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.*
>
> 3. *The appellate court, either because the reasons given by the trial judge are not satisfactory, because it unmistakably so*

appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court".

. (See also the cases of *KPONUGLO v. KODADJA (1933) 2 W.A.C.A. 24 and KIZIDGU v. DOMPREH (1937) 2 W.A.C.A. 281,)*

This Court has reiterated these same guidelines in following cases:_

1. *Ayo Wilson v.James Samura & Anor* S.C. Civ. App No. 3/ 74 judgment delivered on 3rd June 1975 (unreported);
2. *Seymour Wilson v. Musa Abess*_S.C. Civ. App. No.5/79, judgment delivered on 17h June1981 (unreported);
3. *J.S. Bangura v. Sierra Leone Electricity Corporation* S.C. Civ. App. No.10/81, judgment delivered on 5th May1983 (unreported); and
4. *Amadu Wurie v. Edward Shomefun Wilson* (supra).

Let me hasten to say that having evaluated the findings of facts by the trial judge in the instant case and bearing in mind those guidelines laid by this Court in the authorities I have just cited I see no justifiable reason for interfering with those findings of fact which the trial judge relied on to reach the conclusion that twelve months was reasonable notice for the termination of the agreement.

Having said that the question still has to be answered whether on the facts as found the trial judge was justified in holding that twelve months notice was reasonable in the circumstances.

Indeed, quite a lot of emphasis was placed by Counsel for both parties in this appeal on the similarities on the one hand and the dissimilarities on the other hand between the facts in the instant case and those in *Decro-Wall International SA v Practitioners in Marketing Limited* [1971] 2 All ER 216. With the greatest respect to Counsel on either side, though I find the *Decro-Wall* case helpful for some of the principles stated therein the emphasis placed on the similarities by the Counsel for the Appellant on the

one hand and on the dissimilarities by Counsel for the Respondent on the other hand was not very helpful.

Indeed, according to Buckley L.J. in the *Decro-Wall* case the question what is reasonable notice must be answered in the light of all the relevant surrounding circumstances of each particular case

The question of what is reasonable notice to terminate a contract came before this Court in the case of *Thomas O. Vincent v. B.P (Sierra Leone) Limited*, S. C. Civ. App. No. 2/81 judgment delivered on the 3rd day of April 1984 (unreported). Though that case dealt with the termination of a contract of employment I find some of the principles laid down therein helpful and I do adopt them. The basic principle to be gleaned from that case is that what is reasonable notice to determinate a contract where the parties thereto have not made any express provision is a question of fact for the Court to determine. Further, in determining that question regard must be had to the circumstances of the case.

There is also cited in the *Vincent* case the following passage from Batt on Master and Servant 5th Edition at page 78:-

> *" Decided cases do not conclude this matter, each case must depend on its own particular facts and a previous case of similar facts is merely a guide as to the future and not binding either on the judges or the jury as governing the case to be decided".*

I have no hesitation in adapting that passage to the circumstances of the instant case.

What then are the particular facts of this case? I shall first set out those found by the trial judge. In addition, I shall highlight further facts which, in my opinion, tend to lend support to the conclusion I have reached that both the trial judge and the Court of Appeal were right in concluding that three months notice was not reasonable.

The trial judge accepted the evidence of PW1 that in 1971 when the agency started Castrol was a new product in the Sierra Leone market. John Michael Motors was faced with stiff competition from other brands and it

took them time and effort between 1971 and 1979 to conquer the market. He relied particularly on the following account by PW1:

> *" In the beginning Castrol was a new product and we were faced with very strong competition from other brands and as such it took us quite a long time to break into the market. We had to do a lot in terms of adverts. e.g. Radio Commercials, Newspaper Adverts, Road Signs. We also sponsored Golf Tournaments in Freetown and Yengema and we gave out lots of donations to charity, Dances and Raffles. We gave out free samples of our products to Motor Companies. The adverts went on from 1971 up to 1979. John Michael Motors spent at least £20,000.00- £30,000.00 sterling on Adverts during this period. In the late 70's up to 1986 we knew one Mr Bruce Whorley with whom we worked for a period of over ten years. He wrote us a commendable letter and thanked us for our past efforts before we left Sierra Leon. From 1971-1975 we did at least one or more containers at an average value of between £4000-£5000 sterling per container.*
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> *From 1975-79 we did between 2-4 containers per annum at an average value of between £6000-£7000 sterling per container, 1979-80 we did a total of 10 containers at an average vale of between £8000-£10000 sterling per container,1981-84 we did no imports but in 1985, 1988 we did one container only valued around £17000 sterling, 1986 we did a total of three containers at a total value of over £40,000.00 sterling, 1987 we did only one container valued at around £11,000.00 sterling. "*
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> *" At the time we were given the notice in November 1987 we already had one container of products on the high seas consigned to us. The container arrived in mid December 1987. We had just over one month to sell the goods in the container. We also had old stock that we had to get rid of and we had to make new arrangements with other sub agents and customers. Most of their booked orders were cancelled."*

He found as a fact that sometime in September 1987 the parties agreed to a variation of the agreement. Under the new arrangement John Michael Motors was to cease being sole agent/ distributor of Castrol products in

Sierra Leone in exchange for a commission of 5% of the value of each container of Castrol products imported into Sierra Leone by third parties.

Immediately after this variation John Michael Motors was going to order three containers of Castrol products in respect of which they were going to open letters of credit for three containers of Castrol products. As it turned out, they had only been able to open the letter of credit for just one container by the agreement was terminated in early November 1987. This container of Castrol products was in fact still on the high seas when the agreement was terminated.

The trial judge also took note of the exchange of correspondence between the parties after the termination of the agreement. He seems to have put some weight on the various issues raised by Mr. John Michael in his letter of 26th November 1987, Exh "F" addressed to Mr. Scott to which I referred earlier.

These issues related *inter alia* to the nature of the relationship during the 17 years the agreement had been in force. He also took into account the reason proferred by Mr, Scott, the legal adviser of Castrol, for the termination of the agreement but accepted the evidence of PW1 that the only reason why John Michael Motors did not import more Castrol products before the termination of the agreement was because of the difficulty they were experiencing in obtaining foreign exchange.

Finally, he highlighted what, strangely in my view, were apparent similarities between the facts in the instant case and those in the *Decro-Wall* as follows:-

> "1. *The plaintiff company in the instant case imports markets distributes and sells motor vehicles in this country.*
> 2 *On or about 1971 the 1st defendant company appointed the plaintiff company as their Sole Agents in this country to Import, market, distribute and sell their products (Castrol Products) especially lubricants.*
> 3 *The Agreement was an oral Agreement and the liabilities of the parties vis-a-vis their duties and obligations is as is shown in the Decro-Wall case."*

I would have hesitated to hold that based on the above findings alone the trial judge was justified in holding that twelve months notice was reasonable for terminating the agreement.

However, there are other factors which I have myself taken into account ,based on the circumstances of this particular case which make me inclined to share the view that twelve months notice was reasonable.

First, the only inference one can possibly draw from the fact that the parties agreed to vary the agreement in September 1987, as stated above, was that it was the intention of each side that this new agreement was to last for more than six months. It could not have been in the contemplation of the parties that this new agreement was going to be terminated without adequate notice for a reason which was already known to both parties at the time when it was entered into i.e. that John Michael Motors was having difficulties getting foreign exchange to pay for their imports of Castrol products or even for the reason ultimately proferred by the legal officer of Castrol, viz. John Michael Motors' failure to market the products *"aggressively"*.

Secondly, the Castrol knew in November 1987 that the container ordered by John Michael Motors under the new arrangement had not yet arrived in Sierra Leone and that it would take, most probably, more than three months to dispose of the products contained therein especially in the light of the fact that Datsun Motors were also now allowed to import the same products into Sierra Leone. In addition, there was the uncontroverted evidence of PW1 that some of the products ordered in 1986 had still not been sold at the time the agreement was terminated..

Thirdly, from the very wording of the letter of termination Castrol must have known that John Michael Motors had built up quite an outfit for the distribution and marketing of Castrol products in Sierra Leone which had to be dismantled. Not only did they not want John Michael Motors to stop importing Castrol products but they also wanted them to stop holding themselves out as distributors of Castrol products in Sierra Leone. My understanding of that is that within three months of the notice of termination John Michael Motors should have stopped offering Castrol products for sale in Sierra Leone as agents of Castrol.

In this regard, John Michael Motors was under an obligation too remove all reference in their letter head and other Company literature to their being distributors of Castrol products in Sierra Leone. What John Michael Motors was faced with was the task of undoing in three months a network of distributorship and sub-agencies which it had been built-up over 17 years, and this at a time when one-container load of Castrol products was on the high seas en route to them and an unspecified quantity of these products still remained unsold in their stores

In the course of the arguments in this court Mr. Berthan Macaulay Jnr, Counsel for Castrol, conceded that three months notice to terminate the agreement in the instant case was not reasonable but, quite rightly, he would not be drawn into saying what, in the circumstances of this case, was reasonable. Having reviewed the evidence, and for the several reasons I have stated above, I see no reason for reversing the conclusion of the trial judge and of the Court of Appeal that reasonable notice to terminate the agreement between the parties herein should have been twelve months notice. As a result grounds 1, 2 and 3 in the amended Notice of Appeal fail.

I now turn to the second issue raised by this appeal, namely, whether the award of £200,000.00 as general damages was justified in the circumstances of this case.

I am of the view that before seeking to answer this question it is important to state that an appeal against an award of damages is, like appeals generally, by way of rehearing and therefore an appellate court has power to review the award. (See *Idrissa Conteh vs Abdul K. Kamara* S.C. Civ.App No.2/79 judgment delivered 1st April 1980 (unreported))

However, there are certain principles on which an appellate court must apply in the exercise of its power to review an award of damages by a judge sitting alone. These have been laid down in a long line of cases by our courts and are well established. In the *Idrissa Conteh* case this court stated that:

" the rule is that an appellate court will not interfere with the award of damages unless it is satisfied that the judge acted on wrong principles

of law, or has misapprehended the facts or has made a wholly erroneous estimate of the damages to which the claimant is entitled."

This Court then went on to cite with approval dicta from the following cases;

a) *Flint v. Lovell* (1935) 1. K.B. 354 at 360 per Greer L.J.;

b) *Owen v.Sykes* (1936) 1 K.B. 192 C.A. where Greer L.J. elaborated on the rule as stated in the *Flint* case in the following terms:-

" it has been laid down in Flint v. Lovell that this court does not readily interfere with the estimate of damages made by a learned judge at the trial. An assessment of damages is necessarily an estimate and an estimate is necessarily a matter of degree and it seems to me that unless we come to the conclusion that the learned judge took an erroneous view of the evidence as to the damage suffered by the plaintiff or made some mistake in giving weight to evidence that ought not to have affected his mind, or in leaving out of consideration something that ought to have affected his mind, we ought not to interfere".

c) *Davies v Powelll Duffryn Associated Collieries Limited* (1942) A.C. 601 at 617 per Lord Wright that *"The scale must go down heavily against the figure if the appellate court is to interfere, whether on the grounds of excess or insufficiency"*

(See also *Alimamy Turay v Cecilia Koroma* S.C. Civ. App. 3/80 judgment delivered on the 17th December 1981, (unreported)).

I shall now proceed to apply the above principles to the facts of the instant case. According to the prayer in the amended Statement of Claim John Michael Motors claimed, *inter alia,* the following:-

"1. Damage for breach of the agency and distribution contract between the plaintiff and the 1st Defendant;

2) *£240,000/00".*

The breakdown of the sum of £240,000/00 was given in paragraph 13 of the Statement of Claim under the heading "*Particulars of loss and damage*" as follows: -

"a)Loss on sale of Castrol products; - £100,000/00;
b) Loss of profit on service of vehicles and sales of spare parts- £40,000/00;
c) Loss of sales on care, vans trucks motorcycles, generators and agricultural equipment- £60,000/00;
d) Adverts and stationery - £30,000/00;
e) Re-organization of business - £10,000/00."

The trial judge treated the above as the same as "*particulars of special damages*" even though they were not pleaded as such.

The trial judge then went on to review the evidenced led in support of each of these items and rejected each of them. After referring to the cases of *Chatin & Sons v. Epope* (1963) GLR at 168 where Blay J.S.C. cited the following dicta in Benham-Carter v. Hyde Park Hotel Limited (1948) 64 TLR at178:-

"Plaintiffs *must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and so to speak, throw them at the face of the Court, saying "this is what I have lost, I ask you to give me these damages." They have to prove it."*

the trial judge concluded as follows:-

"In the light of the claims put forward by Counsel for the Plaintiff Company I would be bold to say that he has merely presented a list of figures which they allege was [sic] amounts they have lost without attempting in any way to prove how he came about them and expects this Court to award them damages to the tune of these amounts claimed. I am, therefore in agreement with the submission of Counsel for the 1st Defendant Company that the Plaintiff Company's claim for special damages must fail in the circumstances".

To be able to determine whether the trial judge was right in rejecting John Michael Motors' claim for £240,000/00 by way of special damages it is

necessary to restate the basic principles of law governing the award of special damages.

First, it is important to deal with the distinction between general damages and special damages. Indeed, Counsel for the Appellant was unhappy .about the use that the Court of Appeal made of the dicta of Lord McNaghten in *Stroms Bruks Aktie v. John & Peter Hutchinson* (1905) A.C. 515 at 526 in the following terms:-

> *" I am unable to see what difference it can make whether you claim damages generally and shew that an award of general damages would include and cover loss from which you seek relief, or whether you seek relief, or whether you seek compensation for a special loss and shew that the loss would more than be covered or compensated by an award of special damages."*

In my view, it is useful to recognize the variety of meanings attributed to the terms "general damages" and "special damages". In McGregor on Damages 15th edition at pages19-23 three meanings are identified:

The first meaning concerns liability coinciding with the distinction between the first and second rules in *Hadley v Baxendale* (1854) 9 Ex.341 " best expressed by Lord Wright in *Monarch S.S. Co. v Karlshamns Oljefabriker* (1949) A.C. 196 at 221 where he said:

> *"the distinction drawn [viz. in Hadley v Baxendale] is between damages arising naturally (which means in the normal course of things) and cases where they are special and extraordinary circumstances beyond the reasonable provision of the parties."*

The second meaning, according to McGregor, concerns proof and is clearly illustrated in the contract case of *Prehn v Royal Bank of Liverpool* (1870) L.R.5 Ex. 92 where Martin B. distinguished between general damages being such as

> *"the jury may give when the judge cannot point out any measure by which they are to be assessed, except the opinion and judgment of a reasonable man and on the other hand special damages which are given in respect of any consequences reasonably and probably arising from the breach complained of."*

This type of general damages according to Mcgregor is usually concerned with non-pecuniary losses which are difficult to estimate, such as injury to reputation in defamation cases or pain and suffering in personal injury claims.

The third and find distinction between general and special damages concerns pleading and evidence. In my view, this is the most relevant for the instant case. In this context, special damages is that precise amount of pecuniary loss which the claimant can prove to have resulted from the particular facts set out in his pleading. They must be specifically pleaded and strictly proved. Examples are out of pocket expenses, loss of earnings and loss of profit. If proved, they will be awarded. If not proved, they will be rejected. On the other hand, general damages in this context are given in respect of such loss as the law presumes to result from the infringement of a legal right or duty. The loss must equally be proved but, invariably, the claimant cannot quantify exactly any particular items in it.

Though the calculation is a matter for either the jury or the judge sitting alone evidence to assist the Court in doing the calculation must be given if the plaintiff wishes to obtain substantial damages on the general head. (see Mcgregor (ibid) and Chitty on Contracts 27th edition, Volume 1, pages 1199/1200 under the rubric "Kinds of Damages-General and Special Damages."

Having thus disposed of the significance of the distinction between special damages and general damages, I now turn to the law relating to the measure of damages to which the innocent party may be entitled in contract cases. This is how it is stated in Halsbury's Law of England, 4th edition, Volume 12 at pp.262-263 in paragraph1174:

> *"In cases of breach of contract the contract breaker is responsible and responsible only for resultant damage which he ought to have foreseen or contemplated when the contract was made as being not unlikely or liable to result from such breach, or of which there was a serious possibility of real damage. The requisite degree of likelihood is in general higher than in tort since the parties make their own bargain, but special knowledge may apparently affix a contract*

breaker with a greater liability than a tortfeasor with no special knowledge".

Then follows paragraph 1175 in these terms:

> *" The requisite degree of foresight may be attributed to the contract breaker under what is known as the rule in* ***Hadley v Baxendale*** *(supra) either (1)because the damage is such as may fairly and reasonably be regarded as arising naturally, that is to sa,y according to the usual course of things, from the breach, or (2) because of special knowledge which he had at the time of making the contract.*
>
> *These principles may be regarded as two branches of one rule, and may run into each other and, indeed, be one. It is not necessary that responsibility for the relevant loss should have been assumed as a term of the contract".*

Finally in paragraph 1176 we find the following statement dealing with reasonable foresight based upon presumed or actual knowledge:.

> *"Subject to the principles governing the degree of likelihood necessary to render a contract breaker liable for damage, a contract breaker should be presumed to have had knowledge of the fact of everyday life when making the contract, and this includes knowledge of the general course of business and of the general circumstance of the business of the parties at that time and place.*
>
> *Further, the contract breaker may be liable for consequences resulting from special circumstances brought to his notice at the time of making the contract".*

Having evaluated the evidence in support of the items claimed by the John Michael Motors totalling £240,000/00 and treated by the trial judge as a claim for special damages, I agree with the trial judge that the various claims were not strictly proven as required by law.

Having said that, was there any basis for the learned trial judge to have awarded £200,000/00 as general damages? The trial judge did not give

any breakdown of this award. Indeed, except in the case of general damages awarded for personal injuries where it is possible and desirable to apportion the award of general damages between various accepted heads, I doubt whether a judge is obliged to give a breakdown of an award of general damages. (See dicta of Livesey Luke C.J. in the case of *Idrissa Conteh v Abdul J. Kamara* (supra) and *Alimamy Turay v Cecilia Koroma* both decisions of this Court.)

Mr. Berthan Macaulay Jr., Counsel for Castrol, the Appellant, contended that the items under "Particulars of Loss and Damage" in the amended Statement of Claim were in the nature of general damages. For reasons which I have already stated above I entirely agree with him. However, he further contended that if the trial judge had found these claims not proven for the purposes of an award of special damages he should not have taken them into account in making an award of general damages. With respect I do not agree.

First, in a claim for general damages, the amount of compensation to be awarded for any loss suffered is at large. Evidence may be given in monetary terms of the loss suffered but this can only serve as a guide to the judge or jury in calculating the quantum of damages to be awarded.

As stated earlier, in awarding general damages, particularly in contract cases, where the law presumes that some loss has resulted from the breach of contract it is not for the claimant to quantify exactly any particular item to be included in the award. All he needs to do is to adduce evidence which will assist the court in making the calculation.

There is therefore a need to evaluate the evidence in the instant case to see if there are any facts which could have guided the trial judge in assessing general damages. All the evidence of the consequences of the appellant's failure to give adequate notice came from P.W1. In my opinion, the trial judge did take cognizance of such evidence. This becomes clear in the following passage from his judgment leading up to the award of the amount of £200,000/00:-

> *" P.W1 Victor Sayhoun gave the evidence as to what happened to the plaintiff company as a result of the Notice of Termination of the Agency dated 5th November 1987 [as follows]:-" At the time we were giving the notice in November 1987 we already had one*

container of products on the high seas consigned to us. The container arrived in mid December 1987. We had just over a month to sell the good in the container. We had to sell the container at cost price and we lost out on the profit. We also had old stock that we had to got rid off at cost price and we also lost on the profit. We had to stop selling Castrol products after February 1988. we had to remove signs and do away with letter heads that had any reference to John Michael Motors being Agent of Castrol Ltd. We had to do away with business books such as Invoice and Cash Sales Books. Our entire business was virtually on the brinks of collapse. After February 1988 it took us at least two years to get our business back on its normal footing. We placed an order sometime between December 1987 and January 1988 that is after the notice of termination. The order was rejected outright. It was for a container of Castol Products valued around outright. It was for a container of Castrol Produce valued around £11,000-£12,000 sterling. He lost majority of our customers as a result of the termination of the Agency. Customers used to come in with their trucks, cars, motor cycle to do servicing and buy oil, change Filters, Plugs and other parts. We used to have Agents and Sub-Agents whom we used to supply Castrol Products. As a result of the termination of the Agency we had to do some re-organisation."

When examined on behalf of the 1st defendant the witness said: " In 1988 we had access to Castrol products from Datsun Motors although we had stopped importing from 1988-90 August. We were buying Castrol Products from our Garage. The products were available for the use of our customers. Our business was a company involved in the Importation of Motor vehicles, motorcycles, Lubricants, Garage Service, Spare Parts, Manufacturing of Steel Trucks etc."

The trial judge then referred to Exhibit "E" the letter written by P.W. 1 to Castrol after the termination of the agreement and to Exhibit "F" the reply thereto. He also referred to Exhibit "D" the letter of termination and to a passage from Salmon L.J.'s judgment in the *Decro-Wall* case and then concluded as follows:-

"Having said this and having taken into consideration the entire evidence and the submissions of Counsel on both sides. I award the

plaintiff company general damages of £200,000/00 and the costs of this action such costs to be taxed."

In my view, if the trial judge had properly evaluated the relevant evidence and drawn the right inferences there was no way he could have awarded the Respondents £200,000/00 as general damages.

I have in accordance with the principles stated earlier properly evaluated the evidence given on behalf of John Michael Motors which could assist this Court in assessing the general damages to be awarded for the failure of Castrol to give adequate notice for the termination of the agreement.

I shall now endeavour to apply the above principles to the particular facts of the instant case paying attention to the situation that obtained just before the termination of the agreement and to the period thereafter up till November 1988 when the requisite notice would have expired. In September 1987 the parties it would be recalled had agreed to a variation of the original agreement between Castrol, as supplier of Castrol products and John Michael Motors, as sole distributor in Sierra Leone of those products, which agreement had lasted sixteen years, that is, since 1971. During this period John Michael Motors, as wholesaler and retailer of Castrol products in Sierra Leone, had built up quite a network of market and sub-agencies for the products. According to P.W.1 between 1970 and 1980 John Michael Motors imported ten containers of Castrol products. Between 1981 and 1984 nothing was imported. In 1985 one container was imported. In 1986 John Michael Motors managed to import three containers load of Castrol products.

Against this background Castrol was willing to continue the relationship but on different terms. John Michael Motors was going to be allowed to import Castrol products for distribution and marketing in Sierra Leone but no longer as sole agents. To compensate them for this change in status Castrol was going to pay John Michael Motors 5% commission on the value of all Castrol products imported into Sierra Leone by third parties. Nothing else was to change.

Based on these new circumstances John Michael Motors arranged to import three container load of Castrol products into Sierra Leone. They managed to pay for one only because of the foreign exchange constraint that Castrol was aware of at the time of the variation. There then followed

the letter of termination of the relationship between the parties. This time it was to be a complete break. Not only was John Michael Motors no longer to be sole distributor of Castrol products but they were no longer to act as distributor of the products.

As a result Castrol refused to supply a second container load ordered by John Michael Motors in January 1988. On the available evidence, John Michael Motors was forced to sell the existing stock and the new stock ordered in September 1987 at cost losing the profit it would have made on the distribution and marketing of the stock in hand and the stock it was prevented from ordering because of Castrol's breach.

John Michael Motors contend that they would have ordered between ten and twelve containers during the period the notice should have lasted i.e. between September 1987 and September 1988. Based on their track record over the years I hold that this was most improbable. The most John Michael Motors was likely to have ordered during the notice period was three containers as they did in 1986.

John Michael Motors also claims that it would have made a profit of #100,000/00 on the twelve containers. There is no evidence of what profit John Michael Motors had made in previous years. Besides, since September 1986, for the first time, John Michael Motors was being faced with competition from a third party, viz. Datsun Motors.

If John Michael Motors was to be believed on the quantum of profit it stood to make in 1986/1987 it would have earned the equivalent in leones of £8333/33 for each container ordered after the termination of the contract. But John Michael Motors has failed to take into account the diminution in their sales as a result of the competition from Datsun Motors and the 5 percent commission it was going to receive on the value of the products ordered by Datsun Motors or any other third party.

Even if the trial judge allowed John Michael Motors the full amount of profit estimated for the three containers which I have held was the maximum it was likely to order the total profit lost would have been in the region of the equivalent in leones of £25,000/00.

For all these reasons, I hold that the award of £200,000/00 was excessive and in no way justified by the evidence. I would defer the question of what

figure I would substitute in lieu of the £200,000/00 until I have answered the third question i.e. whether the trial judge was right in making the award in foreign currency instead of in leones.

Indeed, the next question I have to answer in this appeal is whether the Court of Appeal was right in upholding the award of damages by the trial judge in foreign currency, to wit, pound sterling. Before attempting to answer this question, I should state that a distinction ought to be drawn between the pronouncement of a judgment in foreign currency by our courts and the enforcement of a money judgment in any currency other than leones.

As far as the issue of enforcement is concerned, because the leone is the only legal tender in Sierra Leone, no one can compel a judgment debtor to satisfy a money judgment in any currency other than the leone. One may retort that it makes no difference then whether the judgment is pronounced in leones or in some other currency since when it comes to enforcement the only relevant currency is the leone. But on closer examination the problem is not so simple, for where a judgment is pronounced in a foreign currency and the judgment is not satisfied so that enforcement becomes necessary, this raises issues which could be problematic. The most important of these issues is the answer to the question: for the purpose of enforcement, what rate of exchange should be utilized to convert the foreign currency award into leones? Should it be the rate of exchange prevailing at the date the cause of action arose, or should it be that at the date of judgment, or yet still should it be that at the date of payment?

As illustrated in the case of *Attorney-General of the Republic of Ghana and the Ghana National Petroleum Corporation v Texaco Overseas Tankships Limited (The "Texaco Melbourne")* [1994)1 Lloyd's Law Report 473 (herein after referred as "The Texaco Melbourne"), to which I shall be returning later, the answer to each of these questions could provide a result that might appear unjust depending on whether one is the judgment creditor or the judgment debtor.

However, before addressing the question of the consequences and implications of the pronouncement of a judgment in foreign currency, I have to address the fundamental question of whether our courts do have jurisdiction to pronounce a judgment in foreign currency.

It is significant to note that as far as my research reveals this is the first time that this issue has come up for determination by this Court. In searching for authority my first source was statute law. As our laws now stand there is no legislation which prohibits the pronouncement by our courts of any judgment in foreign currency. In saying this, I have taken cognizance of the provisions of Exchange Control Act Cap 265 of the Laws of Sierra Leone, 1960 and amendments thereto. I have come to the conclusions that its provisions may only apply when one comes to deal with the issue of enforcement and the receipt and disposal of the proceeds of a foreign currency judgment satisfied in a currency other than the leone.

The next source I turned to was precedent or judge-made law. As I said earlier, there is no decision of this Court bearing on the issue. As a result, I have had to look elsewhere, to those jurisdictions whose precedents have guided our decisions over the years as illustrated earlier in the instant case regarding several other issues. The most obvious source in this regard is English case law. So I pose the question: how then has the case law on this point evolved in England?

Prior to 1975, there was a basic presupposition that, procedurally, an action could not be brought in England for recovery or payment of a sum expressed in foreign currency. It could only be brought for a sum expressed in sterling, recoverable by way of damages. This was reaffirmed by the House of Lords in the leading case of *Re United Railways of the Havana and Regla Warehouses, Ltd* [1960]2 All ER 332 where Viscount Simmonds had this to say:

> *"it is established by authority binding on this House that a claim for damages for breach of contract or for tort in terms of a foreign currency must be converted into sterling at the rate prevailing at the date of breach or tortuous act"*

Viscount Simmonds continued by stating that a claim for damages and one for debt could not be distinguished as had been contended in the *Havanna* case where the claim was for payment of a debt owed in dollars.

Lord Denning put it more emphatically in the following terms:

"And if there is one thing more clear in our law, it is that a claim must be made in sterling and the judgment given in sterling. We do not give

judgment in dollars any more than the United States courts give judgment in sterling." [1960] 2 All ER at 351.

But this was in 1960. By 1975 Lord Denning, sitting in the Court of Appeal in the case of *Schorsch Meir Gmbh v. Hennin* [1975 1All ER at 156, 157, had had a change of heart and was part of the majority of that Court which held that changed circumstances had nullified the reasons which had led the House of Lords to the formulation of the rules in the *Havanna* case, and that applying the maxim "*cessante ratione cessat ipsa lex*" made it necessary or at least permissible for that Court to declare that the rules of law so established and endorsed were no longer of binding force-in effect were abrogated

This refusal by the Court of Appeal to follow the rules laid down by the House of Lords in the *Havanna* case presented Bristow J. with a dilemma when he came to decide the case of *Milangos v. George Frank (Textiles) Ltd* [1975] 1All ER at 1079 which dilemma he expressed in the following terms:

> *"I am faced with a judgment of the majority of the Court of Appeal, which in its application to the issue raised before me says that a rule of English law taken for granted by the Court of Appeal and the House of Lords for some 350 years is no longer a rule of English law"*

When the *Milangos* case came before the House of Lords Lord Wilberforce sought to answer the question whether any fresh considerations of any substance had emerged since 1961 which should induce the House to follow a different rule from that laid down in the *Havanna* case. He then identified several considerations which he held were significant among which are the following:

a) The courts had evolved a procedure under which orders could be made for payment of foreign currency debts in foreign currency. The form which had been approved by the Court of Appeal in the *Schorsch Meir* case was expressed thus: *"It is adjudged.... that the defendant do pay the plaintiff [the sum in foreign currency] or the sterling equivalent at the time of payment";*

b) The situation as regards currency stability had substantially changed since 1961. World currencies were no longer fixed or fairly stable in value but were then "floating" i.e. they no longer had fixed value from day to day and that was true of the sterling;
c) This state of facts under "b" above had become recognised in those commercial circles closely concerned with commercial contracts. In the case of *Jugoslavenska Oceanska Plovidba v. Castle Investment Co Inc.*[1973] 3 All ER 498 the Court of Appeal had held that an arbitration award expressed in terms of US dollars was valid;
d) In the *Halcyon the Great* [1973] an order had been made in admiralty for the sale of a ship in US dollars, and for the lodgement of the price in a separate dollar account.

Lord Wilberforce then continued by stating:

> *"These considerations and the circumstances I have set forth, when related to the arguments which moved their Lordships in the Havanna Railways case, lead me to the conclusion that, if these circumstances had been shown to exist in 1950, some at least of their Lordships, assuming always that the interests of justice in the particular case so required, would have been led, as one of them very notably has been led, to take a different view."*

His Lordship then concluded as follows:

> *"The law on this topic is judge made; it has been built up over the years from case to case. It is entirely within the House's duty, in the course of administering justice, to give the law a new direction in a particular case, where, on principle and in reason, it appears right to do so. I cannot accept the suggestion that because a rule is long established only legislation can change it-that may be so when the rule is so deeply entrenched that it has infected the whole legal system, or the choice of a new rule involves more far-reaching research than courts can carry out.*

This is very sound reasoning and I would readily adopt it.

Though after the *Milangos* case it became clear that English courts could pronounce judgment for a sum of money expressed in a foreign currency the matter did not end there. The next question, where there were several currencies to choose from, was the following: based on what principle was the appropriate currency to be identified? This was resolved by the House Lords in the two subsequent landmark cases decided together and reported in (1979) L Lloyds Report 1 and in (1979) A.C. 685.

The first, *Owners of M.V. Eleqtheroma v Owners of M.V. Despina R. ("The Despina R.)* was concerned with a claim for damages for tort whilst the second, *Services Europe Atlantique Sud(Seas)ofParis v Stockholm Rederiaktiebolag Svea of Stockholm (The Folias)* concerned a claim in foreign currency for damages for breach of a contract of carriage by sea. It is not necessary for present purposes to go into the details of the principles laid down in the *Despina R* as they are not applicable here. On the other hand, the principles laid down by Lord Wilberforce in *The Folias* may properly be applied to the instant case. I shall state them briefly borrowing the dicta of Lord Goff in the case of *The "Texaco Melbourne"*:.

> *" First, it is necessary to ascertain whether there is an intention, to be derived from the terms of the contract, that damages for breach of contract should be awarded in any particular currency or currencies.*
>
> *In the absence of such an intention the damage should be calculated in the currency in which the loss was felt by the plaintiff or which most truly expresses his loss".*

The above principles are sound and have indeed have been frequently applied by the courts in this country in cases between landlords and tenants for the recovery of arrears of rent or mesne profits where the evidence disclosed that it had been agreed by the parties that payment of rent was to be effected in some currency other than the leone. The same is also true of admiralty cases where the practice has been to order the payment of damages or to settle maritime claims in foreign currency (see the case entitled CC487/96 *Ibrahim Bazzy & Sons(a firm) v. The Owners and/or Persons Interested in the Vessel "The Santiago de Cuba"*, judgment of Nylander J. delivered on the 4th day of October 1996) (unreported).

However, it is plain from the totality of the evidence in the instant case that the parties to the distributorship agreement never intended that damages for its breach were to be awarded in any foreign currency. The currency in which the loss suffered by John Michael was felt or to put it another way the one which most truly expresses its loss was the leone. Foreign currency considerations should never have entered into the calculation of the damages due John Michael Motors for breach by Castrol of the agreement for distributorship. The measure of damages in a case of this kind is the difference between what the plaintiff would have earned if the appropriate period of notice had been given to terminate the contract less what he actually earned from the date of the notice until the end of the correct period of notice, in this case between September 1987 and September 1988.

It is clear in this case that the currency in which the Respondent carried on business in Sierra Leone was at all material times the leone. Whatever profit it earned was in leones. The only time a foreign currency came into the reckoning was when John Michael Motors had to settle Castrol's invoices for the supply of Castrol products.

Having said this, this Court is faced with the dilemma arising from the fact that the only available evidence of the loss suffered by John Michael Motors as a result of Castrol's breach of the distributorship agreement is in a foreign currency, viz. pounds sterling. At no time throughout the trial nor in the Court of Appeal was any attempt made to give evidence of the leone equivalent prevailing at the date of the breach. Presumably, this was what misled the trial judge in expressing the award of damages in pound sterling.

Now what are the options open to this Court? Should it ignore the available evidence and refuse to make an award because of its inability to place a leone value on the loss suffered by the Respondent? In my view this would not be just.

The proper solution, I venture to say would be to remit the case to the High Court with a direction that it should take further evidence on the exchange rate of the pound sterling to the leone at the date the cause of action arose.

I also feel convinced the case ought to be remitted for another reason. Though John Michael Motors claimed interest at the trial the trial judge omitted to address this issue. In my view, the trial judge should have exercised the discretion granted to him by the Section 4 of the Law Reform (Miscellaneous Provisions) Act Cap 19 of the Laws of Sierra Leone 1960 to award interest on the amount awarded as general damages at the appropriate rate from the date of breach till the date of judgment. Such interest will compensate John Michael Motors for the delay that has occurred in this case between the date of breach and the date of judgment and for the depreciation of the leone that has taken place since the date of breach and of which this court is bound to take judicial notice.(see *The "Texaco Melbourne"*).

I therefore order that this case be remitted to the High Court solely for the purpose of receiving evidence as to the exchange rate between the pound sterling and the leone and as to the prime rate of interest for overdrafts prevailing, in both cases, at the date of the breach i.e. the 7th November 1987. I further order that this be done not later than the 23rd June 2005.

Thereafter, I shall make the final orders in this appeal.

This is a continuation of the judgment I started to deliver on the 13th June 2005. Pursuant to the Order made by this Court on that date that the action herein be remitted to the High Court for the sole purpose of adducing evidence as to the prime rate of interest for overdrafts prevailing on the 7th day of November 1987 as well as the rate of exchange between the leone and the pound sterling on the same date i.e. the 7th day of November 1987 the matter came up before the High Court on the 29th June 2005.

According to the certified record of proceedings at the High Court on the 29th June 2005 two additional witnesses testified in support of the Plaintiff's case. The first witness testified that the prime rate of interest for overdraft facilities at the relevant date was Le30/00 per centum per annum.

This evidence was not controverted. The second additional witness testified that the buying rate of exchange between the pound sterling and the leone as at 7th November 1987 was Le39/80 to £1/00, sterling the selling rate being Le39/99 to £1/00 sterling. This evidence was also not controverted.

I accept both pieces of evidence and would rely on them in arriving at a final decision in this matter as to the quantum of damages John Michael Motors the Plaintiff in the Court below should have been awarded and the rate of interest to which it is entitled.

I had earlier said that the relevant currency for the award of damages in this case is the leone. However, it is pertinent to observe that based on the additional evidence that has been adduced pursuant to the Order of this Court, it is clear that there has been a significant fluctuation in the value of the leone between the date of the breach in 1987 and the present day value of which I take judicial notice. The House of Lords was confronted with a similar situation in *The "Texaco Melbourne"* (1974) 1 Lloyds Law Reports 472 and this was how Lord GOFF OF CHIEVELEY addressed the issue at page 476:

"We have at all times to bear in mind that fluctuations in the relevant currency between the date of breach and the date of judgment are not taken into account. The award of damages is assessed as at the date of breach and, the appropriate currency (usually sterling) in which that award is to be made as at date is identified. Delay between the date of breach and the date of judgment is compensated for by the award of interest (as indeed is delay in the satisfaction of the judgment). But, as I have said, no account is taken of fluctuations in the relevant currency as against other currencies between the date of breach and the date of judgment.
So, if that currency appreciates as against other currencies, no compensating reduction is made in the amount of the award; nor is any compensating increase made if the currency depreciates. Indeed, it would in any event not be easy to select and identify another particular currency against which any such appreciation or depreciation is to be measured".

I would readily adopt the above principles in this case and hereby do so.

What rate of interest and for what period should this court award on the damages as assessed? This is governed by section 4 (1)of the Law Reform (Miscellaneous Provisions) Act, Cap19 of the Laws of Sierra Leone 1960 which provide as follows:

"In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that shall

be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment".

In this case the cause of action arose on the 7th November 1987 and judgment was delivered by the High Court on the 23rd November 1992.

Based on the totality of the evidence before the Court, I am of the view that the award of £200,000/00 was excessive and there was no basis for making the award in pound sterling. I would therefore set aside the award of £200,000 made by the trial Judge as general damages to John Michael Motors, the plaintiff in the court below, and in lieu thereof make an award of general damages in leones. To that extent, the appeal succeeds and I make the following Orders:-

1. That Castrol, the Appellant, do pay to John Michael Motors, the Respondent, the sum of Le1,000,000/00 as general damages;

2. That the Appellant do pay the Plaintiff simple interest on the said sum of Le1,000,000/00 at the rate of Le30/00 per centum per annum from the 7th day of November 1987 till the 23rd day of November 1992, the date of the date of the judgment in the Court below;

3. Each party to bear its own costs here and in the courts below.

Let me before I close express my gratitude to Counsel on both sides for the invaluable assistance I received from them during the argument of this appeal.

ADE RENNER-THOMAS
CHIEF JUSTICE

I agree

I agree

I agree

I agree