SC. CIV. APP. 4/2007

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

IBRAHIM A.H. BASMA - APPELLANT

AND

ADNAN Y. WANZA (ORIGINAL APPEAL) - RESPONDENT

BASAM IBRAHIM BASMA (AS ADMINISTRATOR OF THE ESTATE OF IBRAHIM A.H BASMA (DECEASED INTESTATE) - APPELLANT

AND

ADNAN Y. WANZA - RESPONDENT

(BY ORDER OF COURT DATED 19TH SEPTEMBER 2008)

CORAM:

HON. MRS. JUSTICE S. BASH-TAQI	-	J.S.C.
HON. MRS. JUSTICE V.A.D. WRIGHT	-	J.S.C.
HON. MR. JUSTICE M.E. TOLLA THOMPSON	-	J.S.C.
HON. MR. JUSTICE G.B. SEMEGA-JANNEH	-	J.S.C.
HON. MR. JUSTICE S.A. ADEMOSU	-	J.A.

COUNSEL:

S.M. SESAY FOR THE APPELLANT
YADA WILLIAMS AND OSMAN JALLOH FOR THE RESPONDENT

JUDGEMENT DELIVERED ON THE 8TH DAY OF FEBRUARY 2010

SEMEGA-JANNEH, J.S.C.

Mr. Adnan Yousseh Wanza (Appellant/Plaintiff) was a friend and

a good customer of the father of Mr. Ibrahim A.H, Basma (the original Respondent/Defendant) from whom he purchased various goods and, I guess, at various times. Mr. Wanza is a businessman and so was Mr. Basma. Prior to 1994 there had been a number of money lending transactions between Mr. Wanza and Mr. Basma by which Mr. Wanza lent money to Mr. Basma. Mr. Wanza could not remember the number of occasions prior to 1994 and the respective amounts involved. Mr. Basma himself did not provide the court with the number of the money lending transactions or the amounts involved before1994. What is clear is that the transactions were on diverse occasions and, at least, span as far back as 1986. In 1994 Mr. Wanza and Mr. Basma agreed to evidence the debt in writing. As a result Mr. Basma acknowledged the debt in the document titled: ACKNOWLEDGEMENT OF DEBT (Exhibit A1) and issued same to Mr. Wanza. In 1997 the debt account between the parties was updated by taking into account interest that had accrued and payments made. The current debt was then acknowledged by Mr. Basma in a document titled: ACKNOWLEDGEMENT of A DEBT (Exhibit B1) and issued same to Mr. Wanza. The breakdown of the debt on this occasion was evidenced at the back of exhibit B1 and reflected the debt account into separate Leone and Dollar components. Both exhibits A1 and B1 indicated the debt acknowledged into Leone and Dollar components. The loans were made before Mr. Wanza left Sierra Leone in 1992 for the USA; and he remained overseas upto 1997. The documents, exhibits "A1" and "B1", were prepared and executed before a notary public in England in 1994 and 1997 respectively.

On the 17th November, 1999, Mr. Wanza caused a writ to issue claiming against Mr. Basma the following:

1) *Money due and owing to the Plaintiff (Mr. Wanza) in the sum of US $ 395057-00 or its equivalent in Leones due under a deed dated the 30th January 1997.*

2) *Money due and owing to the plaintiff in the sum of Le 438,725-00 due under a deed dated the 30th January 1997.*

3) *Interest on the said sums, at the prevailing bank rate from the 1st day of July, 1997.*

4) *Any further or other reliefs.*

The claim is based, simpliciter, on the acknowledgment of the debt evidenced in exhibit B1 and this fact is reflected by the particulars of claim. Mr. Basma in his defence pleaded the provisions of the Money lenders Act Cap. 240 of the laws of Sierra Leone 1960. Mr. Basma pleaded, further or in the alternative, satisfaction of the debt and payment in excess and counter-claimed for the excess payment. In the Reply and Counter-claim Mr. Wanza joined issue with Mr. Basma and also denied the Counter-claim. The pleadings, in my view, could have been crafted to better reflect the issues in controversy.

In his judgement the learned trial Judge went to great length in restating the pleadings and narrating the evidence of the witnesses and the addresses of counsel. This covered pages 159 to 174 inclusive. Thereafter he proceeded upon what he called a consideration of the provisions of the Moneylenders Act, 1960, Cap 240, by reproducing sections 2 to 5, inclusive, and then repeated some portions of the evidence relating to the loans and percentages of interest charged. Thereafter, he cited some foreign cases relevant to the issue of moneylending. The learned trial Judge then concluded thus:

> *"Having considered the evidence in its entirety, I have to ask myself this question. As it (sic) established that the plaintiff gave a friendly loan to the defendant considering the extortionate and oppressive interest rates on the loan of one hundred percent per annum? The only opinion I am able to form is that in no stretch*

of the imagination can these loan transaction be called friendly loans"

With due respect to the trial Judge, I do not think he gave due consideration of the evidence by carrying out a proper analysis of the evidence and there from making primary findings of fact relevant in the application of the law relating to Moneylending in the determination of the several issues pertaining to the claim, not the least, answers to questions that can lead to the conclusion whether a lender is a money lender or not under the provisions of the Moneylenders Act, 1960, Cap 240. The exceptions are what amounted to findings of fact of high interest rates reaching 100 percent per annum on some of the loans and that the loans were not friendly due to the ***"extortionate and oppressive interest rates"***. These findings of fact led the learned trial Judge to conclude that Mr. Wanza was a moneylender and, since there was evidence that he had no moneylender's licence, he further concluded that the loans to Mr. Basma were illegal and therefore void.

In the judgement of the Court of Appeal the Court held the view that ***"the main issue at the trial was whether the transaction was a money lending transaction which offended the MoneyLenders Act Cap 240 of the laws of Sierra Leone, and if it does was illegal and void".*** The court then reproduced section 2 of the Moneylenders Act,1960, which defines ***"Moneylender"*** under the Act and proceeded to illustrate who is and who is not a money lender by quoting dicta from foreign sources. In conclusion, the presiding Justice concluded that in his opinion Mr. Basma ***"has led no evidence to raise the claim of a money lender on the part of Appellant (Mr. Wanza) as such the exceptions in section 2 of the Act does not arise for consideration".*** The presiding Justice proceeded to deal with the issue of interest and repeated the quotation by the trial Judge of the dicta of Lord Deolin in Hone V. Choong Fah Rubber Manufactory (1962) AC 209 at pp. 218 and 219 thus:

> *"Where it is found that a person has lent money at interest or has lent money in consideration of a larger sum being repaid such person is under section 3 of the money lenders ordinance presumed to be a money lender unless he proves the contrary"*

Of course Lord Deolin was not referring to our Moneylenders Act, 1960, which has no similar section. This was correctly pointed out by the learned presiding Justice and who also concluded that an (***"extortionate and oppressive interest rate"***) on a loan does not make one a moneylender. This may well be so but is it not legitimate to consider drawing the inference from the charges of ***"extortionate and oppressive interest rates",*** especially where the rates in many of the instances exceeded or exceeded by far the bar set by law, that the loan transactions were not friendly in the ordinary sense of the word and thereby reflect business transactions by a moneylender – hopefully not of the perjorative or offensive term that FARWELL J. had in mind in the quotation from Litchfield Vs Dreyfus (1906) 1KB 584 at PP 589 – 590 by the presiding Justice.

In my view the Court of Appeal did not consider or evaluate the facts of the case. The Court considered the law relating to what constitute a moneylender and then concluded that charges of ***"extortionate and oppressive interest rates"*** on loans do not make someone a moneylender under the provisions of the Moneylenders Act, 1960. Apart from the question of interest, there are other factors to be considered in determing whether Mr. Wanza was carrying on the business of a money lender, such as, the number, frequency and regularity of the loan transactions to connote ***"a system and continuity"*** and whether the establishment of such a system and continuity of loan transactions in respect of one borrower can amount to a moneylending business under the Moneylenders Act, 1960. Failure to consider or properly evaluate the

evidence as it pertains to the issues in the controversy or that need to be determined by the trial court opens the way for the appellate court to evaluate the evidence and make findings of fact necessary for a proper application of the relevant law and for the determination of the issues

Like the trial Judge and the Court of Appeal, I am very much interested in the issue of the interest charges. The interest of the trial Judge and that of the Court of Appeal in the issue of the interest charges was based on their relevance in determining whether Mr. Wanza was a moneylender under the provisions of the Moneylenders Act, 1960. My interest in the issue of the interest charges is directed to the question of their legality/illegality. However, my perception of the issue is bi-faceted and so will be my approach.

The learned trial Judge, unlike the Court Appeal, did make a finding of fact in regard to the rates of interest charged; he concluded that rates up to 100 percent per annum were charged. I have read the evidence, particularly that of Mr. Wanza and Mr. Basma, and have come to the conclusion that the loan transactions started way back in 1986 and since then a ***"running loan account"*** was established between the parties. The evidence shows that the loans were not one off ***"loan"*** in which a loan was given and subsequently payment concluded before another loan was granted but that accrued interest and further loans were added and these too bore interest. (See the evidence of Mr. Basma (DW1) from pages 47 to 52 of the record). From the same body of evidence, I conclude that the interest rates charged were varied and that at the initial stages interest of 100 percent per annum were charged by Mr. Wanza (See P. 47 L 32-33; P 48 L 16-17 and L 22; P 49 L19-20 and L 35; P 50 L 17 and L 28; P 51 L29; P 52 L2) but these gradually reduced as the quantum of the debt inereased. Under cross-examination (See PP 71 to 74 of the record), Mr. Basma was not challenged as regard the rates of interest charged and of the nature of the accumulation of the debt. Mr. Edwards, of Counsel, in cross-examining Mr. Basma, appeared

more interested in establishing the debt as acknowledged by the acknowledgement of the debt (Exhibit B1) and not as to how the debt came about and accumulated. The evidence of Mr. Basma on the high rates and changing rates of interest is given credence by the almost total absence of evidence by Mr. Wanza on the interest rates charged and the lack of any definitive rate of interest claimed on the writ. In conclusion, I find that interest rates ranging from 100 to 48 percent per annum were charged; and only after the debt account was converted into a Leone and Dollar components that the rates for the Leone and Dollar components stabilized at about 48% and 19% respectively.

I would have to consider the effect of the provisions of section 12 of the Moneylenders Act, 1960, which provides:

> 12(1)The interest which may be charged on loans, whether by a moneylender or by any person other than a moneylender shall not exceed the respective rates specified hereunder, namely:
>
> *(a) one loans secured by a first charge on any real or personal property, or by the indemnity or personal guarantee of a third party, simple interest at the rate of 15 per centum per annum for the first £500 or part thereof and at the rate of 12½ per centum per annum on any amount in excess of £500;*
>
> *(b) on loans secured by a second charge on any real or personal property, simple interest at the rate of 17½ per centum per annum for the first £500 or part thereof and at the rate of 15 per centum per annum on any amount in excess of £500;*

(c) on unsecured loans simple interest at the rate of 48 per centum per annum

Even the rates charged and/or compounded contravened the provisions of section 12. In fact, which-ever way you look at the rates charged they simply exceeded the rates stipulated in paragraphs (a) (b) and (c) of section 12. Even Mr. Wanza's Statement of Case admits rates higher than the rates permitted by section 12(1) (a) and (b) bearing in mind that the loans were secured by cheques from Mr. Basma. For instance paragraph 2.9.6. of Mr. Wanza's Statement of Case dated the 11th November, 2008 states:

> *"compound interest was then calculated on the said sum at the rate of 42.5% percent per annum for the period 30-6-1992 to 30-6-1994. This constitutes the Leone acknowledgement of debt by the Appellant (Mr. Basma) at page 184 of the records"*
> **(Brackets provided)**

Page 184 depicts exhibit *"A1"* - the acknowledgement of debt by Mr. Basma to Mr. Wanza. Again at paragraph 2.9.12 Mr. Wanza admits in his said Statement of Case as follows:

> *"Compound interest on the Leone account was initially 42.5% which by the year 1997 when the Appellant (Mr. Basma) failed to liquidate his indebtness to the respondent (Mr. Wanza) dropped to 40%"*
> *(Bracket Provided)*

Both the 42.5% and the 40% rates exceed the stipulated rates in section 12(1)(a) and (b) without even bringing into play the compound nature of the rates charged. Further, the admissions do not even take into account that the debts predate 1992 and that prior 1992 when the debts were

first incurred interests was charged upto 100%. (See the evidence of Mr. Basma at P. 48 L 17 and 22 of the record). It was these loans and accrued interests in the running loan account that were computed and acknowledged in exhibit *"A1"* and further updated in exhibit *"B1"*.

It is clear from the provisions that the rates Mr. Wanza charged interest on the loans, secured or unsecured, granted to Mr. Basma contravened the provisions of section 12 of Moneylenders Act. The loans could rightly be said to have been secured (guaranteed) by the cheques issued by Mr. Basma to Mr. Wanza (See P 48 L 6 of the record) Section 12 only permits simple interest. Mr. Yada Williams, of counsel for Mr. Wanza, had ably argued that contravention of section 12 merely attracts a fine as a penalty under section 13 which states:

> *"13 any money lender who loans at a rate of interest higher than that authorized by this Act shall be liable on conviction to a penalty not exceeding fifty pounds in respect of each such loan"*

He further argued that the loan is not void by reason of such a breach. This may well be so but I fail to see how the argument can be extended to protect the illegally/unlawfully obtained gains of Mr. Wanza from acts which the Moneylenders Act, 1960, is intended to prevent in order to protect people from being over charged interest. The provisions of section 13 is no bar to the Court ordering the interest, or excess interest, void; or order forfeiture of such ill gotten gains; or refusing to allow Mr. Wanza to continue to enjoy benefits derived from illegal acts or advantages.

It is clear that Mr. Wanza breached the provisions of section 12 of the Moneylenders Act, 1960, in terms of the interest rates charged being higher than permitted by the section and that he also breached the provisions by charging compound interest. That Mr. Wanza did charge compound interest is not contested but Mr. Yada Williams argued with

characteristic lucidity that an agreement to charge compound interest, or evidence of a course of dealings between the parties, makes the charging of compound interest lawful and enforceable and, in the instant case, takes that element of the transaction outside the ambit of the provisions of the Moneylenders Act, 1960, in particular, section 12(1) (c). Mr. Yada Williams referred to the two documents (Exhibits A1 and B1) acknowledging the debt as evidence of an agreement to charge compound interest and/or manifest a course of dealing between Mr. Wanza and Mr. Basma. In support of the submission, Mr. Yada Williams cited Halsburys laws of England, 4th edition, at P. 53, paragraph 107, under the rubric *"compound interest"* and also cited a few ancient case law.

Mr. Yada Williams exposition of the law on compound interest, in my view, is a reflection of case law or the common law and has no negative impact and does not reflect the law on statutory provisions, in particular, section 12 of the Moneylenders Act, 1960. The quotation of the learned authors of Halsburys laws of England, 4 "edition; ibid, made by counsel and stated thus: ***"compound interest will not be allowed except there is an agreement, express or implied, to pay it or where the debtor has employed the money in trade and has presumably earned it, or unless its allowance is in accordance with the usage of a particular trade or business"*** does not advance the argument of Mr. Yada Williams in terms of the meaning and effect of section 12 of the Moneylenders Act, 1960 – statutory provisions as opposed to case law. Clearly, that the quotation is based on case law is made manifest by the numbered references in the quotation of decided cases dating back to the 1800s. The quotation is better appreciated in the broader context of when interest is payable at common law and, in this regard note what the learned authors of Halsburys laws of England, 4th Edition, at P. 54, paragraph 108, had to say:

> *"At common law interest is payable (1) where there is an express agreement to pay interest; (2) where an*

agreement to pay interest can be implied from the course of dealings between the parties or from the nature of the transaction or a custom of the trade or profession. concerned; (3) in certain cases by way of damages for breach of contract (other than a contract merely to pay money) where the contract if performed, would to the knowledge of the parties have entitled the plaintiff to receive interest.

Except in the cases mentioned, debts do not carry interest at common law".

It is trite law that a common law position can be modified or altered or extended or replaced by or incorporated within a statute and that as a matter of law statutory provisions override case law or the common law. The cases cited by Mr. Yada Williams merely reflect the interpretation of the common law by judges in relation to the principles of law applicable where interest is charged. The cases cited generally did not deal with loans regulated by statute but dealt with debts that arose out of business transactions or dealings. The circumstances of the cases are not similar to the circumstances and the material issues of the present case. Take for instance the cases of Bruce and others v Hunter 1813, 3 CAMP 486 and Newell and Another v Jones 1830, 4 CAR and P. 123 It has been established under the common law by a line of cases, such as the above, that if a person in an action for money lent, can prove that there was agreement between them to charge interest and/or that it was the course of dealing between them to calculate the interest every year, and add that to the principal, and the next year to calculate upon the total, the plaintiff would be entitled to the claim. These cases established the principles upon which interest and the nature by which interest can be calculated under the common law. It should be observed that the interest in the cited cases is added to principal at the end of each accounting year and then the total bore interest for the following year. The situation

is akin to a fresh loan of the accrued interest to the Defendant. The principle is miles apart from the common practice of adding the interest at the end of each day on the principal and, which then, starts to attract interest upon the day following. It is these common law principles as they relate to moneylending that the Moneylenders Act, 1960, modified in terms of its provisions. It is significant that section 12 of the Moneylenders Act, 1960, deals specifically with loans and not debts or money advances that arose in the course of business or trade or professional dealings.

The Moneylenders Act, 1960, is intended to regulate the business of a moneylender within a certain legal framework; and section 12 of the Act specifically regulates the rates and nature of the interest chargeable for the specified different loan transactions. The language of section 12 is simple and direct; and the meanings the section conveys are clear and unambiguous. There is no allowance in the language for the charging of interest rates higher than those specified for the stated types of loans determined by the security given or not given and for compound interest; higher rates of interest than those authorized cannot by any stretch of the imagination be read into the section. This view is reinforced by the provisions of section 13 which criminalizes acts that contravene the provisions of section 12.

The claim by Mr. Wanza is grounded on exhibit A1. – the acknowledgement of the debt by Mr. Basma. An action on an acknowledgement of a debt is valid and judicially recognized process. In Barons Dictionary of legal terms, an acknowledgement of a debt is defined as ***"an acceptance of responsibility or undertaking an obligation to pay a debt owed to claimant"***. In the Oxford Dictionary of Law, Sixth Edition, 2006, an acknowledgement of a debt is defined as ***"the admission by a debtor that a debt is due or a claim exists"***. Usually, an acknowledgement of a debt is in writing; and may extend the life of a debt beyond the ordinary period allowed by statute for bringing a

claim on a debt. Exhibit A1, per se, is a valid document upon which to base a claim or action; and it is this option that Mr. Wanza properly exercised in commencing this action. However, Mr. Basma in his defence introduced in the action other elements, such as, how the debt acknowledged was created and how it contravened the provisions of the Moneylenders Act, 1960. This properly brings in issue the make up of the debt (sums) stated in exhibit A1; how it came to be so constituted and whether in the process, the provisions of the Moneylenders Act, 1960, were contravened and, if contravened, the legal consequences. It is clear to me that the origins of the debt comprise of principals; simple interests charged and the compounding of the interests charged. I could have been inclined to separate the sum (or sums) that could properly be attributed to the excess on the authorized interest rates charged from the sums claimed, assuming Mr. Wanza was not caught by the definition of a money lender under the Moneylenders Act, 1960, and allow Mr. Wanza to enjoy any sum (or sums) of accrued interest calculated at the maximum rate of interest authorized. But, alas, I find doing this difficult, if not impossible, because of the long history of the loans and the changing interest rates over the period; principals and accrued interests have become enmeshed and blended into a paste so that separating the wheat from the chaff is well, nay, impractical. In the premises this Court will not allow Mr. Wanza to enjoy benefits derived from his illegal/unlawful acts of charging interest above the stipulated rates and, also, compound interest.

In respect of the appeal by Mr. Wanza numbered S.C Civ. App No. 6/2007 Mr. S.M. Sesay, of counsel for Mr. Basma, raised a preliminary objection on the ground that the appeal was intended to be a cross appeal to the appeal numbered SC. Civ. App No. 4/2007 against the judgement of the Court of Appeal dated the 24th day of May 2007 and, therefore, the appeal is void since the provisions of rule 27(1) of the Supreme Court Rules, 1982, which provides:

"A respondent may cross appeal by lodging a notice of cross appeal within one month from the date of the service of the Notice of Appeal on him"

have not been complied with. However evidence of when the Notice of Appeal was served on Mr. Wanza was not provided and the Court is left to assume that the appeal filed by Mr. Wanza was over one month after he was served with the Notice of Appeal filed on behalf of Mr. Basma. Another misconception of the appeal filed on behalf of Mr. Wanza is the unwarranted assumption by Mr. S.M. Sesay that the appeal by Mr. Wanza was intended to be a cross appeal. The question that arises is: what is the basis of such an assumption? Again the basis for the assumption is not provided to the Court and yet Mr. S.M. Sesay wants the Court to adopt the same assumption.

The appeal filed on behalf of Mr. Wanza is drafted and filed as a Notice of Appeal and the backing states clearly: Notice of Appeal. Mr. S.M. Sesay seems to agree when he submitted that the Notice of Appeal by Mr. Wanza numbered SC. Civ. App No. 6/2007 ***"as it is cannot be a cross appeal. It is an original appeal on its own right".*** In that case he argued the appeal is out of time since it was filed over three months after the judgement of the Court of Appeal dated the 24th May 2007 in contravention of rule 26 of the Supreme Court Rules, 1982. But what the objection failed to observe is that the appeal is against the order/decision of the Court of Appeal dated the 11th July 2007 as clearly stated in the first paragraph in the body of the Notice of Appeal. The grievance of Mr. Wanza did not arise when the Court of Appeal judgement was delivered on the 24th May 2007 but only arose at the time the judgement was *"completed"* by the order/decision of the Court of Appeal made on the 11th July 2007 when the judgement awards were determined, became a part of the Court of Appeal's judgement and failed to include an award of interest on the sums awarded on the 11th May 2007.

How Mr. Wanza can be expected to appeal against an order/decision that has not been made beats the imagination. An appeal against an order/decision can only be made after such an order/ decision is given. The order/decision that Mr. Wanza is aggrieved of was delivered on the 11th May 2007. The confusion may have arisen out of a misconception of what a judgement entails and against what an aggrieved party may appeal against under rule 6 (1) which provides:

> *"An appeal shall lie from a judgement, decree or order of the Court of Appeal to the Supreme Court"*

This right is also reflected in section 123 (1) of the Constitution, 1991. Coming back to the rules of the Supreme Court, *"Judgement"* is defined under ***Part 1 – Interpretation Section*** to "include decree, order sentence or decision of the Court of Appeal or any Court, Judge or Judicial Officer". Without going into the complexity of dating a judgement I am of the view that the broad definition of ***"judgement"*** covers the appeal filed on behalf of Mr. Wanza. Perhaps there should have been an application to consolidate the two appeals but this is of no moment now in the circumstances.

We had overruled the objection and promised to incorporate our reasons in the Court's judgement. The aforesaid are the reasons for dismissing the objection.

From the discourse of the appeal filed on behalf of Mr. Basma numbered SC. Civ. App No. 4/2007, it becomes clear that the appeal numbered SC. Civ. App No. 6/2007 is untenable. However, I would deal briefly with the award of interest under Section 4(1)(b) of the Law Reform Miscellaneous Provisions) Act, 1935, which provides in effect that the Court's discretion to grant interest under Section 4(1) shall not affect a claimant's right to interest payable as of right whether by virtue of any agreement or otherwise. In my view, for a party or claimant to benefit from the

provisions of paragraph (6) of subsection (1) of section 4 of the Act, he must plead and prove the agreement which includes the rate or rates of interest agreed upon. In the statement of claim endorsed on the writ, the pleading relating to an agreement on interest is that interest had accrued at the time the debt was acknowledged in exhibit "A1" and this was duly incorporated in the sums awarded in line with the claims on the writ. As regard continuing interest on the said sums, the claim for interest was not, by all intent and purpose, based on any agreement between the parties to pay any specified rate or rates of interest but rather on the discretion of the Court that flows from the provisions of section 4(1) of the Law Reform (Miscellaneous Provisions) Act, 1935. This conclusion can be clearly deduced from the wording of prayer 3 which claims:

> *"Interest on the said sums at the prevailing bank rate from the 1st day of July, 1997".*

There is no evidence that the Parties agreed to pay interest at the prevailing bank rate; and even if the Court was disposed to grant interest on the prevailing bank rate, no evidence was adduced by Mr. Wanza of the current bank rate and, therefore, the Court was not in the position to grant interest as claimed.

In the premises:

1. *I allow the appeal numbered SC. CIV APP NO 4/2007; set aside the judgment of the Court of Appeal dated the 24th May 2007 and, accordingly, dismiss the appeal numbered SC. CIV. APP. NO 6/2007.*

2. *Order (4) made by the Court of Appeal in its judgement dated the 24th day of May 2009 is hereby specifically set aside. Payments of costs, if any, made pursuant to the said order, to be refunded to Mr. Basma.*

3. *Parties to bear their respective costs in this Court and in the Courts below.*

HON. MR. JUSTICE G.B. SEMEGA-JANNEH - J.S.C.

I AGREE: HON. MRS. JUSTICE S. BASH-TAQI – J.S.C.

I AGREE: HON. MRS. JUSTICE V.A.D. WRIGHT - J.S.C.

I AGREE: HON. MR. JUSTICE M.E. TOLLA-THOMPSON - J.S.C.

I AGREE: HON. MR. JUSTICE S.A. ADEMOSU - J.A.