**Crown Beverages Limited v Sendu**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 15 March 2006

**Case Number:** 1/05

**Before:** Odoki CJ, Oder, Tsekooko, Karokora, and Kaneihamba JJSC

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**Summarised by:** H Kibet

*[1] Damages – General damages – Award of general damages a matter of discretion for the court –*

*Principles to be applied in determining quantum of general damages – Whether the courts below had*

*applied the principles properly.*

*[2] Negligence – Impurities in soda bottle – Respondent becoming ill as a result of drinking soda –*

*Whether the appellants were negligent in bottling the soda.*

**Editor’s Summary**

The respondent herein (plaintiff below) had bought a bottle of Mirinda fruity soft drink at a retailer’s shop. As he drank the drink, he felt some small stones on his tongue. Upon looking at the bottle, he noticed some impurities in it. He also noticed some impurities in a second bottle of Mirinda Lemon being sold at the shop. He paid for both bottles and took them to the LCI Chairman who advised him to take them to the Government Chemist. The Chemist analysed them and found some suspended substances in the bottles which made them unsafe for human consumption. On returning home, the respondent became ill and went to see his doctor who prescribed treatment. His doctor also referred him to a specialist urologist after he complained about his diminishing sexual prowess and shrinking manhood. Due to lack of funds he neither completed the treatment prescribed by the doctor nor did he consult the urologist. He thereafter sued the appellant seeking UShs 30 million as general damages in negligence for breach of duty and the resulting injuries. The appellant denied the allegations in the plaint and contended that they adhered to strict quality control standards in their factory and were not responsible for the adulteration of the drinks. The trial judge dismissed the suit on the ground that the respondent had failed to prove that the appellant had breached the duty of care owed to him. On appeal, the Court of Appeal allowed the appeal and awarded the respondent UShs 15 million in general damages together with one third of the costs. The appellant now appealed to the Supreme Court on the grounds that the Justices of Appeal had erred in granting damages in respect of a head that had not been claimed. In the alternative, they argued that the damages were excessive in the circumstances. Counsel for the appellant contended, *inter alia*, that the Court of Appeal had not stated any principle in support of the award they made. In reply, counsel for the respondent submitted that the award was not excessive.

**Held** – An appellate court will not interfere with the award of damages by a trial court unless the court acted upon wrong principles of law or the amount awarded was so large or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff was entitled; *Robert Coussens v Attorney General* considered and followed. It was trite law that the amount of general damages which a plaintiff would be awarded was a matter of discretion for the court. In this instance, the court was entitled to interfere with the award of damages on the ground that the respondent had erred in praying for a specific sum as though his claim was a claim for special damages. It was also entitled to interfere on the ground that there had also been no expert evidence to prove that the disability was likely to result in permanent impotence. In view of the evidence, the sum of UShs 15 million was so high as to be an entirely erroneous estimate of the damages to which the respondent was entitled. Damages awarded would be reduced to UShs 3 million with one third of the costs. Page 45 of [2006] 2 EA 43 (SCU) **Cases referred to in judgment** (“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means explained; “**F**” means followed; “**O**” means overruled) ***East Africa***

*Milly Masembe v Sugar Corporation of Uganda and another* [2000] LLR 101 (SCU)

*Mitford Bowker* (1947) 14 EACA 20

*Muljibhai v the particular Anor* (1944) EACA

*Obonyo v Municipal Council of Kisumu* [1971] EA 91 of 1996

*Robert Coussens v Attorney General* [1999] LLR 126 (SCU) – **C** and **F**

***United Kingdom***

*Flint v*