**Shenoi and another v Maximov**

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

**Date of judgment:** 17 August 2005

**Case Number:** 9/03

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

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

**Sourced by:** Lawafrica

*[1] Contract – Breach of contract – Formation of contract – Misrepresentation – Whether there had*

*been a misrepresentation by the appellants.*

*[2] Evidence – Written document – Authorship of document contested – Modes of proving authorship of*

*disputed handwriting – Whether the first appellant was author of disputed fax – Section 66 – Evidence*

*Act.*

*[3] Judgment – Interest – Award of interest – Award of interest a matter for the court’s discretion –*

*Whether the court had properly exercised its discretion in substituting a higher rate of interest.*

**Editor’s Summary**

In May 1994, the respondent, a Russian businessman dealing in finance and investment, was introduced to the first appellant. The first appellant informed the respondent that he was the owner of a company, Shivam Limited, which dealt in gold and diamonds. The two discussed the possibility of going into the mineral business together. As a result of the discussions, the two entered into an agreement between Shivam Limited, as the first participant, and the respondent together with two of his associates, Ponsov and Kolganov, as the second participants. The agreement was executed on 9 June 1994 and provided that the respondent and his associates would provide US$ 42 000 as a token deposit to the first participant on the signing of the agreement. It also provided that the agreement would terminate if the deposit was not paid within a stipulated time and that the first participant would appoint the second participants as directors of Shivam. After the execution, the name of Shivam Limited was changed to Shivam MKP Limited. In the event, the respondent was only able to remit US$ 20 000 to the Shivam bank account. The following month the respondent received a handwritten fax informing him of the prospects of the joint venture and inviting him to invest US$ 200 000 in the joint venture with a prospect of earning US$ 20 to 25 million a year. In August, the respondent arranged for US$ 200 000 to be sent to Shivam MKP’s account. The money was duly credited to Shivam’s account on 23 August and although the appellant did not acknowledge receipt of the money, Ponsov sent a fax to the respondent telling him that the money had been received. Thereafter, there was a breakdown in communications between the first appellant and the respondent. In October 1994, the respondent travelled to Uganda to meet the first appellant but did not obtain a satisfactory explanation. In November 1994, another meeting was arranged between the parties and their lawyers to try and reach an amicable settlement. The negotiations failed and the respondent returned to Moscow leaving instructions with his lawyers to take action. Later, the first appellant’s lawyers wrote to the respondent informing him that the first appellant was ready to pay him US$ 161 623 in total satisfaction of the debt. However, the only money that the respondent received was a sum of US$ 26 000. The respondent then sued the appellants jointly seeking US$ 220 000 being money had and received to the use of the respondent by the appellants, general damages, and costs (*sic*). The appellants denied the claim and averred, *inter alia*, that they never received any money from the respondent and put it to their own use. The trial court found in favour of the respondent and ordered that the appellants refund US$ 194 000 to the respondent, as well as pay him US$ 275 000 in general damages, as well as interest of 6 percent and costs. The appellants appealed to the Court of Appeal which partially allowed the appeal, set aside the award of US$ 275 000 and reduced the amount to be refunded to US$ 184 000 but raised the rate of interest to 20 percent. The appellants now appealed to the Supreme Court on the grounds that the Court of Appeal had erred in finding that the first appellant was the author of the fax, in finding that the appellants admitted receipt of US$ 200 000 and in finding that an interest rate of 20 percent per annum was due. Counsel for the appellants argued, *inter alia*, that the procedure set out in section 66 of the Evidence Act ought to have been followed in proving the authorship of the fax and that the principle of money had and received was not applicable because there was no evidence that the first appellant received any money from the respondent (*sic*). In reply, counsel for the respondent argued that the Evidence Act did not exclude other types of evidence for proof of disputed handwriting. Moreover, in his evidence, the first appellant had departed from his pleadings in which he had denied receiving the money and had instead attempted to account for it and this provided grounds for rejecting his evidence.

**Held** – The Court of Appeal had adequately re-evaluated the evidence on record and its conclusion, that the first appellant was the author of the fax, could not be faulted. In the circumstances of the case, the Court of Appeal was justified in upholding the trial court’s findings that the appellants had admitted receipt of US$ 200 000 and that they were jointly liable to refund the money as money had and received (*sic*). The award of interest was a matter for the court’s discretion; *Sietco v Noble Builders* applied. In this instance, the Court of Appeal had rightly held that the money had been received for a commercial transaction and that a rate of 20 percent was more appropriate than the court’s rate of 6 percent. Appeal dismissed. **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***

*Biteremo v Munyanda*, Civil appeal number 15 of 1991 (SCU) (UR)

*Century Automobiles Ltd v Hurchings Bienois Ltd* [1965] EA 304

*Interfreight Forwarders* (*U*) *Ltd v East African Development Bank* Civil appeal number 33 of 1992

(SCU) (UR)

*Nurdin Bandali v Lambank Tanganyika Ltd* [1963] EA 304

*Sietco v Noble Builders* (*U*) *Ltd* Supreme Court civil appeal number 31 of 1995 – **AP**

***United Kingdom***

*Hanbutts’ Plasticine Ltd, Wayne, Tank and Pump* [1970] 1 QB 447

*Solomon v*