IN THE COURT OF APPEAL OF SEYCHELLES

Reportable
[2023] SCCA 42 (25 August 2023)
SCA 31/2021
(Arising in [2021] SCSC 519 CC 15/2017)

Hari Builders (Pty) Ltd **Appellant**
(rep. by Mr. S. Rajasundaram)

versus

S A Fabrication Workshop **Respondent**
(rep. by Mr. Frank Elizabeth)

Neutral Citation: *Hari Builders (Pty) Ltd v S A Fabrication* [2023] SCCA 42 Civil Appeal SCA 31 of 2021 (Arising in [2021] SCSC 519 CC 15/2017)
Before: Twomey-Woods, Robinson, Tibatemwa-Ekirikubinza, JJA
Summary: **Damages for loss of rental income**
Damages for inconvenience and embarrassment
Heard: 9 August 2023
Delivered: 25 August 2023.

ORDER

The Respondent awarded 781,200 SR for loss of rental income.
The Respondent awarded 100,000 SR as moral damages.
Since the appeal has partially succeeded, I make no orders as to costs.

JUDGMENT

DR. LILLIAN TIBATEMWA-EKIRIKUBINZA, JA.

The Facts

1. On or around 17th July 2015, the parties signed a contract for a total consideration of SR 3,600,000.00. It was agreed that the Appellant, which is a construction company, would

build for the Respondent a workshop, store, offices and a boundary wall (hereafter "the building") on land parcel V11607 at Providence, Mahe in accordance with approved drawings.

2. As per the agreement, construction was to be completed within a period of ten months. The Respondent alleges that the Appellant did not follow the plans when constructing the building.

3. The Appellant started the construction as per the contract. The Respondent was to supply the Appellant with some building materials of mainly iron rods which amounted to SR310,000.00. The Respondent also paid the Appellant a deposit of SR 1,258,250.00 for the works. It was also a term of the contract that the Appellant was to be liable for rebuilding and repairing any defects in the building upon request of the Respondent, either during the construction period or the maintenance period.

4. The Appellant commenced construction as per the contract. At the time, the Respondent had enlisted the service of Ted Confait, an engineer to oversee the works. After the works had reached the columns and the first floor slab, the Respondent complained that hairline cracks were observed on both the columns and the slab. Mr. Dereck Marie of the Seychelles Planning Authority visited the work site and by letter dated 22nd February 2016 made proposals as to how such defects could be cured. That was after tests (both hammer and core tests) had been carried out on the concrete that was used and found to be of different thickness and strength in different parts of the slab. At one point it was discussed that a strengthening agent under the brand name of 'Sika' could be utilized to cure both the cracks and slab. However, the Respondent rejected this suggestion.

5. Subsequently, a decision was taken by the Respondent to terminate the contract and for the construction to be demolished at the Appellant's cost and for the Respondent to be refunded all the expenses it had incurred so far. The Appellant proceeded to reimburse the Respondent all sums incurred.

6. The Respondent also filed a suit in the Supreme Court claiming the following sums:
   i. sum due and outstanding for loss of rentals for 6 months SR 1,116,000.
   ii. damages for inconvenience, delay and embarrassment SR 500,000.
   iii. damages for loss and use and enjoyment of the building SR 500,000.00.
   iv. damages in cost of hiring another contractor SR 695,000.
   v. additional cost incurred in hiring two foreign workers SR 156,000.
   Total sum - SR 2,967,000.00.

7. The Respondent also prayed for interest on the above total sum as well as costs of the suit.

8. The Appellant filed a defence denying the breach of contract. It averred that the works commenced on the agreed date of 28th July 2015 and the Respondent's own engineer, Ted Confait made no complaints about the quality of their work. The Appellant therefore stated that the works were not defective and that cracks as the ones that appeared in the columns and slab were normal in any construction. Furthermore, the Appellant stated in its defence that after the demolition, it paid the Respondent the sum of SR1,568,750.00 as full and final settlement of all the claims; thus, any further claims by the Respondent were devoid of merit.

9. The Appellant also stated in its defence that the Respondent decided to choose another contractor of its own wish. And that therefore, the Respondent cannot claim for the difference in price between them and the other contractor because the Appellant paid a sum as full and final settlement. In turn, the Appellant also filed a Counterclaim in the sum of SR671,210.00 and €3,340.00 for the constant interference with their work by the Respondent, stress, mental agony, anxiety and costs incurred in importing materials necessary for application of Sika concrete and demolition of works.

10. During the trial at the lower court, the Appellant admitted liability and therefore the court found it unnecessary to address the counterclaim. It only dealt with the sole issue of the quantum of damages sought by the Respondent.

11. On the claim that the Respondent needed to engage two foreign workers, the Judge held that the same was not established. No proof of such persons being employed nor payment being made to them was provided.

12. As regards the claim no. 4, in respect of the difference between hiring an alternative contractor, which amounted to SR695,000.00, the Judge held that the Respondent did not present to court the final contract between them and the new contractor. It only provided a Bill of Quantities which was not sufficient to support the said claim.

13. Regarding the claim in respect of damages for loss of earnings on rental income, the Judge held that, even if some of the floors were yet to be let out and part of the space was being occupied by the Respondent, this was a loss incurred by the Respondent.

14. Furthermore, the trial Judge held that the Respondent did not enjoy the benefit of use of such space in time. The judge considered the market value of rent at SR200.00 per meter square and allowed the claim at 70% (a sum of SR781,200.00). For the loss of enjoyment of the building, the Judge awarded SR50,000.

15. As for the claim on delay, the trial Judge held that the Respondent cannot make such claim because they have already been compensated for loss of rent.

16. As to inconvenience and embarrassment, the Judge awarded SR100,000.00.

17. In total, the Judge awarded the Respondent SR881,250.00 with interest at the commercial rate from the date of the judgment and costs of the suit.

18. Dissatisfied with the judgment, the Appellant appealed to this court on the following 3 grounds:

1. The learned Judge, despite having raised his own doubt if the space was to be used for rental, has grossly failed to justify his assessment of 70% of the claim and erroneously arrived at the award of SR781,200.00 while the Respondent was admittedly, found to have occupied the premises for itself. The award of SR781,000.00 (Seychelles Rupees Seven Hundred and Eighty Thousand only) is devoid of merits

and is lacking financial assessment while periods of rents payable, size and the quantum payable are not referred to but a random figure 70% of the claim was chosen without any rationale.

2. The learned Judge having clearly found himself of the Respondent's scanty evidence on damages for Plaint claim 2 and also having found that the Respondent is barred from such claim as it claimed damages for loss on rental, he erroneously and arbitrarily awarded SR100,000.00, inconsistent to his own decision and finding.

3. The learned Judge's approach on loss of use and enjoyment is wrongly footed while the claim of damages was addressed and awarded sum of money for loss of use, the additional award of SR50,00.00 is baseless and is repetitive, thus not payable by the Appellant.

Reliefs sought:

a) That the Judgment in Civil Side No. 15/2017 dated 9th August 2021 be set aside, reversed and suitably modified.

b) Any decision that may meet the justice of this case.

c) Costs for the Appellant at the trial and in the Appellate Court.

Parties submissions

19. To avoid unnecessary repetition, the parties' submissions will be reproduced at the point where the Court will be resolving each ground of appeal.

20. But before delving into the resolution of the grounds of appeal, I will first deal with the Respondent's preliminary point of law to the effect that the Appellant's Notice of Appeal ought to be struck out on the premise that the grounds are argumentative and vague.

21. The Respondent submitted that a ground of appeal which only sets out the findings of fact and conclusions of law amounts to a vague ground. The Respondent relied on various cases to *wit* **Salameh v North Island Company Limited[1]; Chetty v Esther[2]; Elmasry and Anor v Hua Sun[3]; Petrescu v Iliescu**[4]. All these cases emphasize the principle that, grounds of appeal in a Notice of Appeal must be devoid of repetition, long quotations from the judgment appealed against, narration, arguments and being vague. Rather, the grounds must state concisely the points of law and fact being contested.

22. **Rule 18 (3) of the Court of Appeal Rules**[5] provides that:

> **[the] grounds of appeal shall set forth in separate numbered paragraphs the findings of fact and conclusions of law to which the appellant is objecting and shall also state the particular respect in which the variation of the judgment or order is sought.**

23. Furthermore, **Rule 18 (7)** of the said **Rules** provides that:

> **No ground of appeal which is vague or general in terms shall be entertained, save the general ground that the verdict is unsafe or that the decision is unreasonable or cannot be supported by the evidence.**

24. **Rules 5** and **6 of Practice Direction No. 1 of 2017** also provide that:

> **(5) The identified grounds shall be in plain English and be Clear, simple, concise and readily intelligible to the as well as to the Court so as to enable them to respondent Properly respond to the challenge of a court decision already**

[1] SCA 5/2022.
[2] [2021] SCCA 1.
[3] [2021] SCCA 66.
[4] SCA 22/2021.
[5] [2005].

handed down.

(6) The grounds of appeal shall not be unduly lengthy, verbose, prolix or argumentative.

25. Applying the above Rules to the present matter, *can it be said the grounds of appeal are argumentative and vague?*

26. An argumentative ground of appeal is one which contains averments which are evaluative, suggesting desired conclusion, or includes inferences and characterization of facts.

27. A vague ground of appeal on the other hand refers to a ground that lacks clarity or specificity in identifying the precise legal error or issue being challenged. It is a ground which fails to provide clear and specific reasons or points of contention regarding the lower court's decision.

28. In ground 1 of appeal, the appellant faulted the trial Judge for not showing how he arrived at his assessment of the award of SR 781,200.00 an equivalent of 70% of the claim for loss of rental income. I do not find the ground argumentative or vague. The said ground clearly points out the legal error alleged to have been made by the lower court in arriving at its decision. The legal error is the failure by the trial Judge to show how he arrived at the said sum. The said ground also set forth the basis on which the Appellant was objecting.

29. For ground 2, the appellant faulted the trial Judge for arbitrarily awarding damages to the Respondent in the sum of SR 100,000.00. The Appellant specifically pointed out that their award was not supported by evidence and that the sum was excessive. This cannot amount to vagueness and neither does the ground amount to being argumentative.

30. For ground 3, the Appellant faulted the trial Judge's approach on the assessment of loss of use and enjoyment of the suit premises. The Appellant stated that the award of damages

for loss of use of the premises in the sum of SR50,000.00 was baseless and repetitive. I find the ground neither vague nor argumentative.

31. From the foregoing analysis, I hold that the Respondent's preliminary point of law fails.

32. I will therefore move on to consider the merits of the appeal.

Ground 1

Appellant's submissions

33. The appellant's counsel submitted that any person who avers loss of rental income should basically provide the following to satisfy, at the said claim:
    a. whether the building first of all, was for rental purposes
    b. as to how long did the building remain without any rents
    c. what was the quantum of rents receivable
    d. what was the extent / area and the unit rate for the room, or the entire building that the rents were being claimed, etc.
    e. any proof such as lease arrangements that the Respondent had leased out to third parties to establish at the time of hearing or any proposed lease agreements to show the fact that the building is for lease. (if at all the building or its part was rented out after the completion of the building, there should have been evidence of lease arrangements but there is none before this Court).

34. Counsel argued that the Respondent claimed loss of rent but grossly failed to establish the claim. Counsel relied on the classic case of **Suleman & Ors v Joubert and Ors** [6] where Twomey JA emphasized the maxim that he who avers must prove.

[6] SLR No. 27 of 2010.

35. Furthermore, counsel submitted that the court failed to note that the area of 980 square meters was for the entire building comprising of the ground, first and second floors. That it was never established or proved that the entire building was for rent.

36. Counsel further submitted that the Respondent failed to bring any independent report to substantiate the rate of SR 200 per square meter as being the rent base at Providence, Mahe. That the Judge's reliance on SR 200.00 per square meter as market value was not at all supported by any independent technical report.

37. Counsel also pointed out that the learned Judge to the contrary concluded that the Respondent themselves occupied some of the space but that there was definitely a cost to that event.

38. It was therefore the submission of the Appellant's counsel that in absence of evidence proving the claim of loss of rental income, the learned Judge's award was erroneous. That the court was mandated to give reasons how it arrived at the award of 70% of the claim.

Respondent's reply

39. The Respondent submitted that the learned Judge was correct in his assessment of the damages. The Respondent sufficiently proved the different heads of damages and on a balance of probabilities. Counsel contended that proof of damages must be only as is reasonable and not beyond reasonable doubt - which is the standard of proof for criminal cases.

40. In support of the above submission, counsel relied on the case of **Ratcliffe v Evans**[7]. Counsel also referred to the Record of Proceedings to show that the Respondent had proved its claims. He specifically pointed to pages 1 and 175 of the Record where it was testified

[7] (1982) 2 QB 524 at page 532.

that the Appellant agreed to pay the Respondent SR 200 per square meter for 10 months' rental income to remedy the poor workmanship on the building.

41. Furthermore, counsel referred to page 184 of the Record of proceedings, where the respondent confirmed that the appellant had agreed to SR200 per square meter as loss of rental income instead of paying a lump sum of SR1,860,000.00.

42. Counsel asserted that the building was 980 square meters and SR200 x 980SM equals to monthly rent of SR 196,000 and thus rent for 10 months is SR 1,960,000.

43. The Respondent therefore submitted that since both parties agreed to rent of SR 200 per square meter, there was no dispute on the rental income. Therefore, the learned Judge should have granted the full amount of SR1,960,000.00 instead of 70% or SR781,200.00. Counsel stated that in fact the learned Judge was very generous to the Appellant by not condemning it to pay the full amount of the claim and no cross-appeal was made by the Respondent on this aspect.

44. Counsel therefore prayed that ground 1 of the Notice of Appeal be dismissed as it lacks merit.

ANALYSIS

45. As a starting point, it is important to note that appellate courts generally give deference to the factual findings made by the lower court, particularly those involving the assessment of damages based on evidence presented during the trial. However, if there is a clear error of law or a significant abuse of discretion, or if the amount awarded was so high or so small as to make it, in the judgment of the appellate court, an entirely erroneous estimate of the damage to which the plaintiff was entitled, the appellate court may intervene and modify the damages award.

46. This principle has been re-echoed several times by this court including in **Pillay v Nourrice & Ors (SCA 68 of 2019) [2022] SCCA 53 (19 August 2022)** wherein it was stated that

"It is trite law that an appellate court will not alter damages awarded by a trial court merely because it thinks it would have awarded a different figure, but rather the appellate court would interfere with the amount of damages awarded only if:

(i) the trial court acted on the wrong principle; or

(ii) the amount of damages is extremely high or extremely low to make it an erroneous estimate:

see, for example, Michel & Ors v Talma & Ors (SCA 22/10) and Government of Seychelles v Rose (SCA14/2011)."

47. In the appeal before us, it is not in dispute that the Appellant did not complete the work as it was defective and thus the reason he agreed to demolish the construction. It also follows that due to the demolition, there was delay in construction of the building which the Respondent sought rental income from. It is trite that according to Articles 1149 and 1150 of the Civil Code, if a debtor fails to perform an obligation under a contract, it gives rise to damages. Damages can be claimed in terms of Article 1150 if they could have been reasonably foreseen (Jumeau v Sinon (1977) SLR 78.

48. The bone of contention in this matter is that the award and quantum of damages awarded were erroneously reached at by the Supreme Court.

49. Article 1149 of the Civil Code provides the various categories of damages recoverable arising from breach of Contract as follows:

1. The damages which are due to the creditor cover in general the loss that he has sustained and the profit of which he has been deprived, except as provided hereafter.

2. Damages shall also be recoverable for any injury to or loss of rights of personality. These include rights which cannot be measured in money such as pain and suffering, and aesthetic loss and the loss of any of the amenities of life.

3. The damages payable under paragraphs 1 and 2 of this article, and as provided in the following articles, shall apply as appropriate to the breach of contract and the activity of the victim.

50. Further Article 1147 of the Civil Code is to the effect that

"The debtor shall be ordered to pay damages, if any, either by reason of his failure to perform the obligation or by reason of his delay in the performance, provided that he is unable to prove that his failure to perform is due to a cause which cannot be imputed to him and that in this respect he was not in bad faith."

51. Following the above provision of law, having evaluated the evidence, the trial court found that there was loss of rental earnings.

> *Claim 1 is respect of damages for loss of earnings on rental. As yet some of these floor outlets are yet to be rented out but some of the space is being occupied by the Plaintiff themselves. There is definitely a cost to that even if it is occupied by the Plaintiff themselves. The Plaintiff did not enjoy the benefit of use of such space in time. The market value of rent is set at SR200.00 per meter square. It is unclear if the space was to be used for rental to any third parties. In any case, albeit that it was to be rented out or to be used by the Plaintiff themselves, there is a loss suffered. In the circumstances, I shall allow only 70% of that claim. Therefore, I award the Plaintiff the sum of SR781,200.00.*

52. The burden of proving loss of rental does indeed lie on the Plaintiff alleging it as the Appellant submits. See the case of **Ebrahim Suleman and others v Marie-Therese Joubert and others SCA No.27 of 2010** in which Twomey, JA, stated,

> '12. In such circumstances applying evidentiary rules we need to find that the Respondents discharged both their evidentiary or burden of proof as is required by law. The maxim "he who avers must prove" obtains and prove he must on a balance of

probabilities. In Re B [2008] UKHL 35, Lord Hoffman using a mathematical analogy explaining the burden of proof stated:

> "If a legal rule requires a fact to be proved (a fact in issue), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates on a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."

53. Further reference is given to the dictum of Lord Goddard, C.J. in Bonham-Carter v Hyde Park Hotel Ltd. (1948) TLR 177 at page 178 cited with approval by Egonda-Ntende CJ in **Marie-France Marguerite v Wilfred Alcindor CC6 2013** wherein he stated that:

> *"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 head of the court, saying: "This is what I have lost; I ask you to give me these damages. They have to prove it".*

54. Egonda-Ntende CJ goes on to cite Bowen LJ in Ratcliffe v Evans (1892) 2 QB 524 at page 532:

> *"As much certainty and particularity must be insisted on both in pleading and proof of damages as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage was done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry."*

55. During the cross examination of Mr. Mark Guiyum, Managing Director of the Respondent on page 234 of the record of proceedings, he states that the rate of SR 200 per square meter was arrived at by both parties. Counsel for the Respondent further points to an email exchange between the parties (on page 252 of the record of proceedings), stating that it was Mr. Harish Patel who proposed the figure of SR 200 per square meter. Further on page 184 of the record of proceedings, the Respondent states that the Appellant agreed to SCR 200 per square meter as loss of rental instead of SR 1,860,000.00.

56. There is also a letter dated 17th September 2018 from the Respondent informing the Appellant that the latter had agreed to the rate of 200 per square meter for a building area of 930 square meters for 10 months equaling to SCR 1,860,000.00.

57. There is however no actual proof Mr. Patel ever agreed to or proposed this figure.

58. Mr. Mark Guiyum also testified that he had spoken with a contractor who informed him that since market rent rate in Victoria was SR 400 per square meter, an estimate of SR 200 per square meter for property in Providence would be reasonable.

59. The Respondent's initial claim was 930 square meters of the entire building multiplied by the SR 200 rate for 10 months totaling to SR 1,860,000. Evidence on record shows that during negotiations, this amount was later reduced by the Respondent to six months for a total sum SR 1,116,000. (930*200*6). During the hearing of the appeal, Counsel for the Appellant conceded that negotiations had resulted in the Respondent accepting a period of six months instead of ten months.

60. Having examined the evidence, the Judge set the rate at SR 200.00 per square meter. The Judge also states that although some of the floors in the building are yet to be rented out, and some of the space is occupied by the Respondent, there is definitely a cost to that. He states in paragraph 21 of his judgment that:

> *"it is unclear if the space was to be used for rental to any third parties. In any case, albeit that it was to be rented out or to be used by the Plaintiff themselves, there is a loss suffered."*

61. The judge provided a formula by which he arrived at the sum of SR 1,116,000.00. He then used his discretion to allow only 70% of the six months' rental income loss claim and thus the award of SR 781,200.00. It cannot therefore be said that the trial court zeroed down on an arbitrary sum. The Appellant argues that the Respondent should have provided a technical report to prove loss of rental income. This argument cannot be sustained because rent can be proved, on a balance of probabilities, through other means other than a report.

62. In light of the above circumstances, I find no justification for interfering with the trial judge's award.

63. Ground 1 of the appeal fails.

Ground 2

Appellant's submissions

64. Counsel submitted that the award of SR 100,000.00 for delay was excessive and no reason was given by the Judge for the said award.

65. That although the Learned Judge found that the Respondent could not make such a claim for delay, he arbitrarily went ahead to award the sum of SR 100,000.00. He supported this submission with the authority of **David & Ors v Government of Seychelles**[8] for the principle that damages must be assessed in such a manner that the Respondent suffers no loss and at the same time makes no profit.

66. That therefore the award of SR100,000.00 certainly amounted to enriching the Respondent than being compensatory given the fact that the Respondent had already been awarded damages for loss of rental income.

Respondent's reply

[8] (2007) SCSC 43.

67. Counsel referred to pages 371, and 372 of the Record of proceedings where the Appellant admitted that it spent 5 months on the site rectifying defects yet the contract period stipulated the works to be done within 18 months. Counsel submitted that this was ample evidence of delay, inconvenience and embarrassment suffered by the Respondent to justify the award of SR100,000.

ANALYSIS

68. The arguments raised by both counsel rotate around delay, inconvenience and embarrassment caused by the Appellant. The Trial Judge rightfully holds that loss for delay has already been compensated for under the loss for rent award.

69. In relation to inconvenience and embarrassment, the trial judge holds that although the evidence was scanty, it was sufficient to establish that claim. The Judge proceeds to use his discretion and reduce the claim from SR 500,000.00 to SR 100,000.00

70. Damages flowing from inconvenience and embarrassment are known as moral damages. Moral damages, also known as non-pecuniary damages or emotional distress damages, refer to compensation awarded to an individual for the psychological pain, suffering, emotional distress, or mental anguish they have experienced due to the wrongful actions of another party. Unlike pecuniary damages, which are monetary losses that can be quantified, moral damages are intended to address the intangible harm that a person has suffered as a result of the actions of another.

71. While moral damages are rarely awarded in contract matters, depending on the circumstances of a case, court can award moral damages in addition to material damages. In some cases, a breach of contract can lead to emotional distress, especially when the breach causes significant disappointment, inconvenience, or emotional harm. In **Pillay v Lesperance and Other [1991] SLR 88**. The Plaintiff contracted the Defendants to build a house for him for the sum of SR250,000. The Plaintiff terminated the contract prematurely because of poor workmanship and use of inferior material by the Defendants. The plaintiff claimed damages for breach of contract, and for moral damages following the breach of the contract. Liability was admitted. The Court held that although in principle moral

damage is not to be awarded for breach of contract, in certain circumstances the Court ought to do so.

72. **Barry Nicholas in his book 'The French Law of Contract' second edition** states: **"***dommage moral, include a very wide range of non-pecuniary loss***"**. **Article 1149 (2) of the Civil Code of Seychelles Act** states: **"***Damages shall also be recoverable for any injury or loss of rights of personality. These include the rights which cannot be measured in money such as pain and suffering, and aesthetic loss and loss of any amenities of life"*.

73. In the instant case, it was a condition of the contract that "*the contractor undertakes the construction work in accordance with approved plans"* and that "*the contractor further agrees to hand over the completed building subject to the client's satisfaction within a time limit of not more than ten months from the date of commencement of the building works and it also depends on weather condition".* The Appellant's failure to comply with these conditions is not in dispute. The Respondent's right to occupy the building within the contractual period was frustrated by the incompetence and poor workmanship of the Appellant. After evaluating the evidence, the trial judge made a finding that the Respondent suffered some inconvenience and embarrassment. The Judge used his discretion to reduce the claim from SR 500,000.00 to SR100,000.00 in light of scanty evidence.

74. I find this a reasonable award. The Appellant's claim that the Respondent had already been awarded rental income damages and as such should not be given moral damages related to the embarrassment the latter suffered is not sustainable. As seen in the above authority of **Pillay v Lespearance**, these are two separate sets of damages and can in appropriate cases, both be awarded in the same dispute. Between the delayed completion of the building and the Respondent having to procure another contractor, there was clearly evidence of inconvenience suffered on his part warranting some form of moral damages.

75. Ground 2 of the appeal fails.

Ground 3

Appellant's submissions

76. Counsel submitted that this category of damages was a repetitive award as it is correlated to claims 1 and 2. That the terminology "loss and use" pertains to the income and income pertains to the rental income which has already been dealt with in the first award.

77. Counsel also submitted that the word "enjoyment" in claim 3 does not exist without the terms loss and use flowing from rental income. That having received an award representing loss of income from rent, the Respondent was not entitled to another sum for loss of use and enjoyment.

Respondent's reply

78. In their written submission, Counsel for the Respondent does not specifically respond to the appellant's submission. He however does submit that the award was justified in as much there is evidence of delay by the Appellant. That the delay deprived the Respondent of the use and enjoyment of its building. That in fact, the award was on the conservative side.

ANALYSIS

79. I agree with the Respondent's submission that this is a repetitive award. Having awarded pecuniary damages in the form of loss of rental income under claim one and non-pecuniary damages in the form of moral damages under claim two, I find no basis for the award of SCR 50,000 for loss of enjoyment of the building.

80. However, it seems that the Supreme Court award under this heading, while erroneously given, may not have been added to the total sum of awards. Having awarded rental loss damages of SCR 781,200 and moral damages of SCR100,000 and loss of enjoyment of SCR50,000, the total award should have been SCR 931,200 and not SCR 881,250 as listed in the judgment.

Conclusion and Orders

81. Ground 1 of the appeal fails; ground 2 of the appeal fails; ground 3 succeeds.

82. An award of SR 781,200 for loss of rental income and SCR100,000 in moral damages.

83. Grand total of 881,250 is awarded.

84. Since the appeal has partially succeeded, I make no order as to costs.

Dr. Lillian Tibatemwa-Ekirikubinza, JA.

I concur

Dr. M. Twomey-Woods, JA.

I concur

F. Robinson, JA.

Signed, dated and delivered at Ile du Port on 25 August 2023.