

LDC LEGAL ALERT

The Court of Appeal took judicial notice that **asset acquisition agreements** often place careful restrictions on liabilities existing before transfer. It guided that it would be wrong to assume that merely by acquiring a company's assets, a purchaser automatically inherits all liabilities, including torts committed by the seller. Such agreements specify the assets acquired and the liabilities assumed, and most limit/exclude liabilities incurred before the transaction closing date. In this case, the Court noted that the Respondents had the burden to prove, including through discovery, that the Appellant assumed such liabilities, including tortious liability.

COA further noted that **for interest to be awarded from the date of filing the suit, the sums claimed must be ascertained or known before filing the suit, as in debt recovery or actual expenses incurred.** It added that **high interest rates, such as 18% per annum**, usually apply only to ascertained amounts, for example in commercial contracts.



Stirling Civil Engineering Ltd v Abram Kitumba Peter Mulangira Lutaya & Others, Civil Appeal No. 58 of 2020. Judgment delivered on 19 Sept 2025 by the COA (Cheborion Barishaki, Esta Nambayo & Musa Ssekaana, JJA).

Key highlights from the Court of Appeals Judgment

- The COA took judicial notice that asset acquisition agreements often restrict liabilities existing before transfer and guided that it would be wrong to assume that by acquiring assets a purchaser automatically inherits all liabilities, including torts of the seller. In this case, a suit was originally filed in 1995 against **Stirling International Civil Engineering Ltd**, seeking damages for trespass, but the company was later wound up in 1999. The Appellant, **Stirling Civil Engineering Ltd**, was only incorporated in 2002, while the case had been filed in 1995, **7 yrs earlier**. The Respondents, in their Amended Complaint, alleged that the Appellant was its successor in title. However, there was no evidence that the Appellant took over all liabilities of the original defendant, including tortious liabilities. The Respondents bore the burden to prove that the Appellant acceded to such liabilities, including through discovery.
- The Court further noted that for interest to be awarded from the date of filing, the sums claimed must be ascertained or known before filing the suit. The sums claimed in this case were not ascertained or known at the time of filing, as this was a claim of damages for trespass to be assessed and ascertained by the court. Court also determined that high interest rates, such as **18% per annum** usually apply only to ascertained amounts, for example in commercial contracts and since the amount claimed in this case was not ascertained, this rate was not warranted

Legal Representation

On appeal, the Appellant was represented by **Mr. Absalom Mubangizi and Mr. Milton Zziwa, both of M/s BKA Advocates**, while **Mr. Joseph Luswata of S & L Advocates** appeared for the Respondents.



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Prepared by the Department of Law Reporting, Research
and Law Reform at the Law Development Centre

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