

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL AT KAMPALA

CIVIL APPEAL NO.70 OF 2009

NOBLE BUILDERS (UGANDA) LIMITED ::::::::::::::::::::APPELLANT

5

VERSUS

BALWINDER KAUR SANDHU ::::::::::::::::::::RESPONDENT

CORAM: HON. JUSTICE A.S. NSHIMYE, JA;

HON. LADY JUSTICE M.S. ARACH AMOKO, JA

HON. JUSTICE REMMY KASULE, JA.

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JUDGEMENT

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This judgement is in respect of an appeal against the decision of the High Court at Kampala in **Company Cause No.31 of 2005 (Commercial Division)** and later **Company Cause No.8/2005 (Civil Division)** given by the **Honourable Justice Yorokamu Bamwine**, as he then was, on 05.08.2009.

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In the application before the High Court, Balwinder Kaur Sandhu, hereinafter to be referred to as **“the Respondent”**, applied under **Section 118 of the Companies Act** that the Members register of the company **Noble Builders (Uganda) Limited**, to be referred to as **“the Appellant Company”** hereinafter, be rectified in a number of respects.

The learned trial judge allowed the application in part and ordered the appellant company to pay to the respondent the costs of the application. Dissatisfied, the appellant company
25 lodged this appeal.

Legal Representation:

Learned Counsel Ebert Byenkya of Byenkya, Kihika & Co., Advocates appeared for the appellant, while Kibuka-Musoke of Kibuka-Musoke & Co., Advocates & Solicitors, represented the
30 respondent.

Background:

The appellant company was incorporated as a limited liability company with the Registrar of Companies, Uganda, on 05.01.1984. Its Memorandum of Association, has, as its main
35 object, to carry on the business of builders and building contractors.

At incorporation the company had two subscribers as its members and directors: Mr. Raghbir Singh Sandhu with 255 ordinary shares and Mr. Jaspal Singh Sandhu with 245 ordinary
40 shares. The company share capital was Shs.500,000/= divided into 500 ordinary shares of Shs.1000/= each. All the shares were allotted and subscribed to between the stated two.

On 30.04.1984 the said two shareholders/directors executed by each one signing a **Notification of Change of Directors or**
45 **Secretary or in their particulars** on Company Form No.8

pursuant to **Section 201 (4) of the Companies Act**, in these words:

50 **“With effect from 12th Jan. 1984 Mr. Jaspal Singh Sandhu ceased to be a director/member of the company. On the same day/date Mrs. Balwinder Kaur is appointed a new director/member of the Company”**

The particulars of the new director or secretary of the appellant company were stated as **Balwinder Kaur**, Indian by nationality born on 05.10.1945.

55 Balwinder Kaur Sandhu happened to be the wife of Jaspal Singh Sandhu and subsequent to the execution of the above notification, both Jaspal Singh Sandhu and Balwinder Kaur Sandhu moved and now stay in Canada. Raghbir Singh Sandhu remained in Uganda carrying on the operations of the appellant company.

60 The company made some profits. Later, Jaspal Singh Sandhu, claiming he still held shares in the company, demanded of the company and Raghbir Singh Sandhu, as shareholder and director, to account for the profits so that he too (Jaspal Singh Sandhu) could have his share as shareholder in the company. The

65 appellant company and Raghbir Singh Sandhu dismissed the said demand to give an account. They contended that Jaspal Singh Sandhu had ceased to be a shareholder in the company as from 12.01.1984 and that it was his wife Balwinder Kaur Sandhu who had become a director/member in the appellant company. The

70 parties failing to agree, they took the dispute to the High Court, Kampala for adjudication.

On 07.06.2001 the High Court, Kampala, (**Okumu-Wengi, J.**) in **Company Cause No.16 of 2000**, held in favour of Jaspal Singh Sandhu by ordering that Raghbir Singh Sandhu was a delinquent director and that he should account for all the monies and assets of the company. The learned Judge also ordered that Jaspal Singh Sandhu be restored on the appellant company's register as shareholder/director. The appellant company and Raghbir Singh Sandhu appealed to the Court of Appeal against the said High Court decision in **Court of Appeal Civil Appeal No.41 of 2001**.

On 20.05.2002, the Court of Appeal allowed the appeal, set aside the judgement and orders of the High Court and awarded costs of the appeal and those of the High Court to the appellant. The Court of Appeal held that **Jaspal Singh Sandhu** had ceased to be a member/director in the appellant company and that his interests in the appellant company had passed over to **Balwinder Kaur Sandhu**.

Dissatisfied with the Court of Appeal decision Jaspal Singh Sandhu appealed to the Supreme Court in **Supreme Court Civil Appeal No.13 of 2002: Jaspal Singh Sandhu V Noble Builders (U) Ltd and Raghbir Singh Sandhu**.

The Supreme Court, on 22.02.2005, confirmed the decision of the Court of Appeal and dismissed **Civil Appeal No.13 of 2002**

95 with costs to the respondents in that appeal and in the courts below. In the lead judgement of the Supreme Court by **Kanyehamba JSC**, as he then was, to which the rest of the members of the court agreed to, it was stated:

100 **“Before leaving this appeal, I am constrained to observe that it was inadvisable for the appellant’s wife: Balwinder Kaur Singh not to be joined as a party to the proceedings in this case. The fact that she may not have attended board meetings or fulfilled her responsibilities as a**
105 **director, does not adversely affect her rights and obligations as a shareholder and owner of the 49% of the equities of Noble Builders (U) Ltd. I agree with Kato, JA; the learned justice who wrote the lead judgement in the Court of Appeal,**
110 **that it is remarkable that the appellant’s wife has not chosen to pursue her rights. Of course this judgement and all previous proceedings in this case do not in any way affect her right as shareholder in Noble Builders (U) Ltd”.**

115 On 04.03.2005, the respondent, still staying in Canada, executed a special power of Attorney appointing **William Novoty Edwards**, a Ugandan, to represent, prosecute and defend her in any proceedings, protect her interests, be her unlimited agent with powers to sign and execute instruments in her names as
120 regards her interests in **Noble Builders (U) Limited**.

Thereafter the respondent lodged in the High Court, Kampala, the application through **Company Cause No.8 of 2005** to rectify the company register of **Noble Builders (Uganda) Limited** by inserting therein her name as holder of 245 ordinary shares as
125 from 12.01.84, deleting the names of **Ms Gurmeet Kaur Sandhu** and **Mr. Bhagwart Singh** from the register as shareholders, altering the shareholding of Mr. Raghbir Singh Sandhu in the company from 70 to 255 ordinary shares, altering the company share capital from Shs.10,000,000/= divided into
130 100 ordinary shares of Shs.100,000/= each to a share capital of Shs.500,000/= divided into 500 ordinary shares of Shs.1000/= each, which was the shareholding at the time of registration of the company. The respondent also prayed to be awarded damages representing her fair share of 49% of the moneys the
135 company had received over the material time.

The High Court, (**Bamwine, J.**, as he then was) as already stated, determined the application, by partly allowing it by ordering that the register of members of the company **Noble Builders (Uganda) Limited** be rectified within three (3) months
140 from 05.08.09 (date of delivery of ruling) by registering Balwinder Kaur Sandhu as transferee of her husband's shareholding and directorship in the company. The Court also ordered, pursuant to **Section 135 of the Companies Act**, that the company convenes and holds a meeting at least within six (6) months from
145 the date of the court order, after due notification of Raghbir Singh Sandhu of that meeting, to discuss the affairs of the company. In

the event of the failure or refusal by Raghbir Singh Sandhu to attend the meeting, then Balwinder Kaur Sandhu would form a quorum of the appellant company meeting and carry out the court ordered rectification of the company register. Notice of the rectification of the register was to be submitted to the Registrar of Companies. The Court ordered the appellant company to meet the applicant's costs of the application. It is this ruling that is the subject of this appeal.

Grounds of Appeal:

1. The learned trial Judge erred in law and fact in holding that the respondent's application was not an action founded on contract and was not therefore time barred under Section 3 (1) (a) of the Limitation Act.

2. The learned trial Judge erred in law and fact in relying upon observations of the learned Justice Kanyeihamba of the Supreme Court in Jaspal Singh Sandhu V Noble Builders Civil Appeal No.13 of 2002 which were obiter dictum to hold that there was a valid transfer of 245 shares to the respondent.

3. The learned trial Judge erred in law and fact in ordering that the respondent, a Canadian citizen, be registered as transferee of 245 shares in the appellant company when the articles of association do

not permit the transfer of shares to non-Ugandan or non-Africans.

175 ***4. The learned trial Judge erred in fact and in law in ordering that the respondent be registered as transferee of 245 shares when she had not produced a proper instrument of transfer of shares.***

180 ***5. The learned trial Judge erred in law and fact in ordering a rectification of appellant company's register even though the respondent had never made any application to the appellant to have her name entered onto the register of its members.***

185 ***6. The learned trial Judge erred in law and fact in ordering a meeting of the appellant company under Section 135 of the Companies Act when no application had been made for the same.***

190 ***7. The learned Judge ignored evidence of changes to the membership and capital structure of the appellant and made orders which affected the interests of other shareholders without according them a hearing, effectively depriving them of their proprietary interests in the appellant.***

8. The learned trial Judge failed to properly exercise his discretion, when he failed to award costs to the appellant company despite disallowing the

195 ***respondent's claim for damages amounting to ug.Shs.475,300,000/= and United States Dollars 1,586,038.***

The grounds of appeal constituted the issues to be resolved by court.

200 **Submissions of Counsel:**

Appellant's Counsel:

Issue 1:

Counsel submitted that **Section 21 of the Companies Act** creates a statutory contract amongst the members of the
205 company themselves. By applying to have her name entered as a shareholder on the register of the appellant company, the respondent was therefore enforcing a contractual right.

Accordingly her action in contract was time barred in terms of **Section 3 (1) of the Limitation Act** since the same was being
210 brought in 2005 after expiry of six (6) years from 30.04.1984 when her cause of action arose with the execution of Company Form No.8 transferring the 245 ordinary shares to her.

Issue 2:

It was submitted for the appellant that the statement made
215 both in the Court of Appeal (**Kato,JA**, as he then was) and in the Supreme Court (**Kanyeihamba JSC**, as he then was) in their respective court judgements, with which the rest of their

Lordships respectively agreed, that the **“Notification of Change of Directors or Secretaries or their particulars”** had the effect of transferring the 245 ordinary shares from Jaspal Singh Sandhu to Balwinder Kaur Sandhu in the appellant company, was obiter dicta and thus could not be a basis for the respondent to base upon her action for rectification of the register. The learned High Court trial Judge thus erred to hold otherwise.

225 **Issue 3:**

It was submitted for the appellant that the respondent, being a Canadian citizen, was barred by **Article 4 of the Appellant Company’s Articles of Association** from holding shares in the company which could only be held by Africans/Ugandans.

230 **Issue 4 and 5 were submitted upon together by Counsel for the appellant.**

The respondent, according to appellant’s Counsel, could not be registered as holder of shares in the appellant company because she had no instrument of transfer of shares to her in terms of **Section 75 of the Companies Act and Article 17 of the Appellant Company’s Articles of Association.** The executed company Form No.8 dealing with **“Notification of Change of Directors or Secretaries or their Particulars”** upon which the respondent based her claim that 245 ordinary shares were transferred to her is not in law an instrument of transfer of shares.

Appellant's Counsel further contended that the respondent never had shares transferred to her pursuant to the procedure set out by **article 21 to 25 of the Articles of Association**. She had never applied to the board of directors of the appellant
245 company to have her name entered on the register of members.

Issue 6:

This issue was abandoned by Counsel for the appellant.

Issue 7:

Counsel for the appellant company submitted that there were
250 other members of the company whose interests were affected by the orders made by the trial Court, and yet they were never heard in the cause as the respondent never made them a party to the application. Thus the orders made by the learned trial judge were contrary to the non derogable constitutional right of one being
255 given a fair hearing.

Issue 8:

Appellant's Counsel argued that the appellant company had been successful on the issue of damages as none were awarded. The appellant company was thus entitled, on proper exercise of
260 discretion by Court, to costs of the application in respect of the issue of payment of damages to the respondent where court held in favour of the appellant company by declining to order that any moneys be paid to the respondent.

Respondent's Counsel:

265 This Counsel supported the Judgement of the High Court in his
submissions on the respective issues.

Issue 1:

He submitted that the **Limitation Act** does not apply to
270 rectification of a company register and as such an application
pursuant to **Section 118 of the Companies Act** has no time
limitation and **Section 21** of the same Act does not apply to a
transfer of shares to a third person by a shareholder.

The Notification of Change of Directors/Secretary dated
275 30.04.1984 executed by the then two directors/shareholders in
the appellant company had been held both by the Court of Appeal
(Civil Appeal No.41 of 2001) and **Supreme Court (Civil
appeal No.13 of 2002)** as a valid transfer of shares to the
respondent by shareholder/director Jaspal Singh Sandhu in the
280 appellant company. The respondent was thus a beneficiary of the
transfer of shares and as such was not time barred under **Section
3 (1) (a) of the Limitation Act** in her application to have the
appellant company's members' register rectified to reflect her
being the owner of 245 ordinary shares in the appellant company.

Issue 2:

Respondent's Counsel maintained that their Lordships **Kato, JA**, of Court of Appeal in **Civil Appeal No.41 of 2001** and Kanyeihamba, JSC, of Supreme Court in **Civil Appeal No.13 of 2002**, did not express themselves obiter dicta, but conclusively
290 decided, after proper evaluation of evidence before them and after due consideration of the law, that the respondent had acquired the 245 ordinary shares of her husband, Jaspal Singh Sandhu, in the appellant company as from 12.01.1984.

Issue 3:

295 Respondent's Counsel submitted that **Article 4 of the appellant company's Articles of Association** to the effect that the appellant company "**is made purely for Africans/Ugandans and the right to transfer shares is hereby restricted**" was contrary to **Article 21 of the Constitution** for being
300 discriminatory and thus unenforceable. Further, restriction is not prohibition and as such the respondent was entitled to owning her shares in the appellant company.

Issues 4 and 5:

According to respondent's Counsel the document on company
305 form 8: "**Notification of change of directors.....**" dated 30.04.1984, had been held by both the Court of Appeal and the Supreme Court to be a valid transfer of shares to the respondent. Further, the company never had a properly constituted board to which the respondent could apply to have her shares placed on
310 the company register. Therefore because there was no proper

board of directors, no lawful organ of the company ever rejected company form No.8 as a valid transfer of shares to the respondent.

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Issue 6:

The respondent's Counsel agreed to the abandoning of this issue by Counsel for the appellant company.

Issue 7.

320 It was the respondent's case that her cause of action was against the appellant company as a corporate entity as at the time she acquired by transfer the 245 ordinary shares on 12.01.1984. It was up to a shareholder/director who felt aggrieved to apply to be joined to the Cause. None had done so and as such the
325 respondent's course of action could not be taken as invalid in law.

Issue 8:

The respondent submitted that the High Court partly allowed the respondent's application and, in the judicious exercise of its discretion, awarded costs to the respondent payable by the
330 appellant company. There was no basis for interfering with the court's exercise of such discretion.

Respondent counsel prayed court to dismiss the appeal with costs.

Resolution of the issues by court.

335 **Issue 1.**

It is necessary to decide under this issue whether the respondent's **Company Cause No.31 of 2005 (Commercial Division)** and later **Company Cause No. 8 of 2005 (Civil Division)** by way of Chamber Summons lodged in court on
340 16.09.05 was time barred.

Through this company cause the respondent prayed for court Orders to have the appellant company's members register rectified by inserting therein the name of the respondent as holder of 245 ordinary shares transferred to her on 12.01.84 by
345 Jaspal Singh Sandhu, delete Ms Gurmeet Kaur Sandhu and Mr. Bhagwart Singh from the register as shareholders, alter the shares of Mr. Raghbir Singh Sandhu to read 255 ordinary shares instead of 70 ordinary shares and to have the share capital of the appellant company changed from the present Shs.10,000,000/=
350 divided into 100 ordinary shares of Shs.100,000/= each to the original share capital of Shs.500,000/= divided into 500 ordinary shares of Shs.1000/= each, being the original share capital at the time of registration of the appellant company. The applicant also prayed to be awarded damages representing her fair share of
355 moneys earned by the appellant company on a number of works carried out by the company.

The Company Cause was supported by the affidavit of William Edwards, appointed attorney of the respondent.

Through the affidavit of Raghbir Singh Sandhu and Jaspal
360 Singh Sandhu, the appellant company resisted the Company
Cause.

The learned High Court trial Judge **Bamwine, J.**, as he then
was, rejected the submission that the respondent's application to
rectify the register was time barred by holding that **section 118**
365 **of the Companies Act**, has no stipulation as to limitation of time
as to when a company's register of members has to be rectified.

Limitation of time relates to causes of action in law. A fact (or
a combination of facts) that give rise to a right of action by a
claimant in civil law constitutes a cause of action.

370 The **Limitation Act, Cap.80**, prescribes the periods within
which proceedings to enforce a right to a cause of action must be
taken, otherwise the right to such a cause of action will be time
barred if that period expires. Thus under **Section 3 of the said**
Act, actions founded on contracts/torts (other than torts involving
375 personal injuries) extinguish after six years, actions for personal
injuries three years and twelve years for actions for recovery of
land. The date from which limitation time begins to run may be
postponed for disability of the claimant, fraudulent concealment
or mistake or such time may begin running afresh by a signed
380 written acknowledgement of the claimant's claim or by part
payment or part performance.

It is an admitted fact that both the Court of Appeal in **Noble
Builders (U) Ltd And Another Vs Jaspal Singh Sandhu: Civil**

385 **Appeal No.41 of 2001** and also the **Supreme Court** in **Jaspal Singh Sandhu Vs Noble Builders (U) Ltd And Another: Civil Appeal No.13 of 2002**, held that as from 12.01.84 Jaspal Singh Sandhu ceased to be a shareholder/director in the appellant company having transferred his 245 ordinary shares in the appellant company to the respondent, who also happened to be
390 his wife.

By moving the High Court through **Company Cause No.8 of 2005** for the said court to order that the appellant company's register of members be rectified by noting the shares transferred to the respondent as stated above, the said respondent was not
395 commencing a fresh cause of action for the court to determine whether or not she was the rightful owner of such shares. All that the respondent prayed court to do was for the court, through the exercise of its discretion, to order rectification of the appellant company's register of members by the said register clearly
400 showing the shares the respondent holds in the appellant company.

A company register is prima facie evidence of any matters which the Companies Act directs or authorizes to be inserted in the said register. It shows the name and address of a member of
405 the company, the date a member became or ceased to be such a member and, in case of a company with a share capital, the register also states the number and class of shares a member holds and the amount paid up on each share. The register is normally kept at the company's registered office. A company

410 register is thus one of the several means through which the
fundamental principle underlying the Companies Act of full
disclosure is carried out. It contains relevant information about
the company for the public and other members of the company,
subject to some restrictions to access, so that they are
415 knowledgeable about the company: See: **Gowers Principles of
Modern Company Law, 6th Ed pp 505 and 509.**

This court's appreciation of the pleadings, the submissions of
respective Counsel and the law applicable, leads court to
conclude that by applying through **Company Cause No.8 of**
420 **2005** to have the appellant company's register of members
rectified, the respondent was not asserting a contractual cause of
action and as such the operation of the **Limitation Act** did not
cover the respondent's stated act. All that the respondent sought
was to have, through court orders, what she regarded as relevant
425 information about her interests in the appellant company to be
properly recorded and set out in the register of the company, and
to remove therefrom what she took to be incorrect information.

We are satisfied that the decision of the Court of Appeal (**Civil
Appeal No.41 of 2001**) confirmed by the Supreme Court (**Civil**
430 **Appeal No.13 of 2003**) conclusively settled the fact that the
respondent was the holder of 245 ordinary shares in the appellant
company. Therefore by applying to have the appellant company
members register rectified the respondent was not enforcing a
contractual right in terms of **Section 21 (1) of the Companies**
435 **Act** as submitted by counsel for the appellant.

We accordingly hold in respect of issue No.1 that the learned trial judge came to the right conclusion when he held that the respondent's action was not founded on contract and was therefore not time barred. We disallow ground No.1 of the
440 appeal.

In issue 2 of the appeal, the appellant faults the trial judge for relying upon what appellant's counsel referred to as observations of **Justices Kato, JA**, in the lead Judgement in **Court of Appeal No.41 of 2001** and **Kanyeihamba, JSC**, of the Supreme Court in
445 **Civil Appeal No.13 of 2002** that there was a valid transfer of 245 shares by Jaspal Singh Sandhu to the respondent, the transaction having taken place in the appellant company. Appellant's Counsel asserts that what the two learned Justices stated in their respective judgements was obiter dictum and as
450 such ought not to have been relied upon by the learned trial judge.

Obiter dictum is an observation by a judge on a legal question arising from and/or suggested by a case presided over by that judge, but not arising in such a manner as to require a decision.
455 Such observation is not binding as a precedent. See: **Osborn's Concise Law Dictionary, 6th Edition, page 238.**

In **Civil Appeal No.41 of 2001: Noble Builders (U) Ltd and Raghbir Singh Sandhu Vs Jaspal.S. Sanhhu, Kato, JA**, as he then was, in the lead judgement held:

460 **“Mr. Mubiru-Kalenge’s argument that shares could**
only be transferred in accordance with the provisions
of Section 75 of the Companies Act is valid. That
section in fact requires shares to be transferred in
465 **accordance with the Articles of Association of the**
company. In the present case the respondent
surrendered his shares to his wife and that was
perfectly in order under article 25 of the Articles of
Association of the first appellant.”

Later on the learned justice continued in the same judgement:

470 **“It is my considered opinion that as from 12/1/84 the**
respondent ceased to be a member of the first
appellant and his rights in that company were vested
in his wife. It is remarkable that the wife has not
chosen to pursue her rights.”

475 It is the above findings of **Kato, JA**, as he then was, agreed upon
by the rest of the members of the Court of Appeal, that
Kanyehamba, JSC, as he then was, found to be correct, after
appraising himself of all the evidence, submissions and the law
both at trial and appellate stages, when in the lead judgement in
480 **Supreme Court Civil Appeal No.13 of 2002**, being an appeal
against the decision in **Court of Appeal Civil Appeal No.41 of**
2001, he stated with the concurrence of the rest of the Supreme
Court Justices that:

485 “in my opinion, the learned justices of Appeal cannot
be faulted. In support of their decision I find further
evidence that the wife of the appellant acquired
shares of her husband who was the original
subscriber at the initial stage of the company’s
490 incorporation. The record shows that her husband
who is the appellant in this appeal owned 49% of the
shares and the first respondent owned the remaining
51% of the shares. Thereafter, the appellant
transferred both his directorship and membership of
the company to his wife, Mrs. Balwinder Kaur
495 Sandhu.”

This Court finds that both their Lordships **Kato, JA**, and
Kanyeihamba, JSC, arrived at the conclusion they arrived at on
the issue of transfer of shares, basing themselves on the evidence
that was adduced, the submissions made and the law applicable
500 as availed and made to their respective courts. It is accordingly
not right, as Counsel for the appellant seems to assert, that what
each one of their said Lordships stated was obiter. Each one of
their said Lordships supported by the respective justices of the
respective courts reached the decision each one reached based
505 on the evidence and the law applicable. Each one of their said
Lordships conclusively decided the point of transfer of shares.
What they decided were not mere observations on the subject.

The resolution of issue 2 is that the learned trial Judge was
right to hold that the question of transfer of 245 ordinary shares

510 by Jaspal Singh Sandhu to the Respondent had been conclusively
resolved by both the Court of Appeal and Supreme Court. There
is therefore no merit in the second ground of appeal. The same
stands disallowed.

The third issue is whether the appellant company's Articles of
515 Association permit the transfer of shares to the respondent who is
not an African or a Ugandan given that Article 4 of Association of
the appellant company provides that:

**“The company is made purely for Africans/Ugandans
and the right to transfer shares is hereby restricted.”**

520 As already pointed out, both their Lordships of the Court of Appeal
and the Supreme Court, who were aware of Article 4 of the
appellant company's Articles of Association, found and held, in
spite of the said Article, that there was a valid transfer of 245
ordinary shares by Jaspal Singh Sandhu to the respondent.
525 Therefore the principle of estoppel by record prevents the
appellant company to dispute, purportedly on the basis of Article
4, the fact that the respondent is the holder of 245 ordinary
shares in the appellant company. The issue of transfer of shares
to the respondent by Jaspal Singh Sandhu in the appellant
530 company was an essential element that was litigated upon by
both the Court of Appeal and the Supreme Court in the respective
appeals. The appellant was and is thus stopped from disputing
that fact in **Company Cause No.8 of 2005** or in this appeal.

See: **Dictionary of Law, 6th Edition, E.A. Martin and J. Law, Editors, Oxford University Press, pp 200 and 291.**

Further, and independent of the above, Article 25 of the appellant company's Articles of Association, is in its application, independent of and not subject to Article 4. Under the said Article 25 a member of the company has powers to transfer his shares to his spouse, child or some other close relative. There is no requirement in Article 25 that the spouse or child or relative to whom the shares are being transferred has to be African or Ugandan. It is the relationship that is material in this Article. It is a fact accepted by all the parties to **Company Cause No.8 of 2005** out of which this appeal arises, that the respondent was, at all material time, the wife of Jaspal Singh Sandhu, who transferred the 245 ordinary shares to her. The transfer of the said shares to the respondent was voluntarily done with the knowledge and consent of the then only two (2) shareholders/directors of the appellant company, namely Raghbir Singh Sandhu and Jaspal Singh Sandhu. Indeed at the time of the transfer both of them were aware and stated it in writing in **Company Forms 8** that the respondent at that time of the transfer on 30.04.1984 was an Indian by nationality and not a Ugandan or African. Both Raghbir Singh Sandhu and Jaspal Singh Sandhu signed that **Company Form 8**. Later the transferee of the shares, that is the respondent, became a Canadian citizen. There is no justification now to assert that the respondent cannot have acquired the shares because she is now a Canadian citizen, yet no such

560 objection was raised by the very same people on 30.04.1984
when the respondent became transferee of the shares and she
was an Indian national.

Both, as the only shareholders/members/directors of the
appellant company, had absolute control of the affairs of the
565 appellant company, including admitting to membership of the
appellant company whomever they chose to admit. They
admitted the respondent by transferring 245 ordinary shares to
her. None of them can backtrack from that decision now.

For the above reasons we find that the trial judge arrived at
570 the right conclusion as regards issue No.3. There is therefore no
merit in the third ground of appeal. The same also stands
dismissed.

Grounds 4 and 5 of the appeal were considered and submitted
upon together respectively by both Counsel for the appellant and
575 the respondent. This Court shall also resolve both grounds
together.

As already held, both the Court of Appeal and the Supreme
Court having conclusively resolved that Company Form 8
executed by the then two members of the appellant company,
580 namely Raghbir Singh Sandhu and Jaspal Singh Sandhu was a
proper and effective document of the transfer of 245 ordinary
shares by Jaspal Singh Sandhu to the respondent, the submission
of Counsel for the appellant company that there was no transfer
of shares because there was no proper instrument of transfer of

585 shares delivered to the company in terms of **section 77 of the**
Companies Act loses legal validity. This court reiterates that
both in law and in fact, on the basis of the decision of the Court of
Appeal confirmed by the Supreme Court, Jaspal Singh Sandhu
transferred his 245 ordinary shares to his wife, the respondent, as
590 is borne out by Company Form 8 voluntarily executed by the then
only two members of the company on 30.04.1984.

The above constitute answers to issues 4 and 5. We
accordingly find no merit in grounds four (4) and five (5) of the
appeal. The two grounds are accordingly also dismissed.

595 Both Counsel for the appellant company and for the
respondent abandoned issue and ground six (6) of the appeal.
This court allowed the abandonment of this ground. Accordingly
the holding of the trial judge whereby he ordered that the
appellant company holds a meeting under **section 135 of the**
600 **Companies Act** remains unchallenged under this appeal.

In issue No.7, Counsel for the appellant company faults the
trial judge for ignoring evidence of changes to the membership
and capital structure of the appellant company by making orders
which affected the interests of other shareholders when the said
605 shareholders had not been afforded a hearing, thus effectively
depriving them of their proprietary interests in the appeal and
company.

This Court notes that **Company Cause No.8 of 2005** was
instituted by the respondent against the appellant company to

610 have the register of members of the appellant company to be
rectified in the particulars prayed for by the respondent. It is the
respondent's case that she became shareholder in the appellant
company on 12.01.1984 with acquisition by transfer of 245
ordinary shares. The trial judge, rightly in our view, only allowed
615 the Company Cause in part. He ordered that the appellant
company's register of members be rectified within three (3)
months from the date of the court order by registering the
respondent as transferee of 245 ordinary shares transferred to
her by her husband Jaspal Singh Sandhu and as such the
620 respondent being also a director in the appellant company. The
learned Judge then also ordered that the company holds a
meeting under **Section 135 of the Companies Act** within six
(6) months from the date of the court's order to discuss the affairs
of the company.

625 In the considered view of this Court it is after the noting on the
members register of the appellant company that the respondent
is the holder of 245 ordinary shares and is by virtue of that
exercising her rights in the appellant company that the issues of
any other persons claiming to have an interest in the company
630 can be resolved upon by the company. The appellant company
has in a way conceded abandoning issue No.6 of the appeal, that
the trial judge acted properly in ordering the holding of the
appellant company's meeting under **section 135 of the
Companies Act**. This court finds that the learned trial judge
635 properly exercised the discretion vested in him when he ordered

for the company to hold such a meeting. It is at that meeting or thereafter, when the respondent is exercising her powers as shareholder/director in the company, that anyone claiming an interest in the appellant company will present those interests and the same will be dealt with there and then or thereafter. We accordingly find no merit in ground number seven (7) of the appeal. We dismiss the same.

In issue No.8 the appellant company faults the trial judge for having failed to properly exercise his discretion when he did not award costs to the appellant company despite disallowing the respondent's claim for damages amounting to Ug.Shs.475,300,000/= and United States Dollars 1,586,038.

The law is that a successful party in a cause before the court is entitled to costs unless the court that has adjudicated the said cause, in its judicious exercise of its discretion, and for shown reasons, decides otherwise. See: **Section 27 of the Civil Procedure Act, Cap.71**. See also **Supreme Court of Uganda Civil Appeal No.28 of 1995: Uganda Development Bank Vs National Insurance Corporation (U) Limited** and also **Civil Appeal No.51 of 1996: Court of Appeal Civil Appeal No.51 of 1996: Uganda Bankers Employers Association Vs National Union of Clerical, Commercial, Professional and Technical Employees**.

It appears to this Court that, while it is true that the respondent claimed substantial damages from the appellant company in

Company Cause No.8 of 2005, the trial judge did not actually resolve, one way or the other in his ruling, the issue of damages. The trial judge did not hold, as between the appellant company and the respondent, as whether or not the appellant company
665 was liable to pay or whether or not the respondent was entitled to be paid by the appellant company such damages. Though the trial judge did not expressly state so in his ruling, he seems to have left the issue of what amounts of money, if any, the respondent is entitled to get from the appellant company, to be
670 resolved as an internal matter of the company to be resolved by the company with the respondent participating as shareholder/director, at its meeting ordered by the court to be convened under **section 135 of the Companies Act** and/or at subsequent meetings thereafter, if circumstances warranted so.

675 The appellant company lodged no appeal against the specific point that the learned trial judge did not, in his ruling, dispose of one way or the other, the issue of the respondent's claim for damages as her fair share of the receipts of money by the appellant company from various contracts.

680 The above being the case, Counsel for the appellant company is not right to assert that the trial judge disallowed the respondent's claim for damages and by reason thereof the appellant company should have been awarded costs for the disallowed damages. This Court takes the correct position to be
685 that the learned trial judge did not express himself one way or the other on the issue of the claimed damages. The appellant

company did not question this position adopted by the learned trial judge on this issue by way of appeal.

690 The trial judge however expressly dealt and found in favour of the respondent on the issues that **Company Cause No.8 of 2005** was not time barred, that the same was competent in law and that there was a valid transfer of 245 ordinary shares to the respondent.

695 Given the fact that the learned trial judge found in favour of the respondent on the above issues, which constituted the main substance of **Company Cause No.8 of 2005** and did not deal with the issue of damages, one way or the other, this court finds no reason to interfere with the judicious exercise of the learned trial Judge's discretion when he ordered that the appellant
700 company meets the respondent's costs arising out of the application in the nature of **Company Cause No.8 of 2005**. We thus see no merit in ground number eight (8) of the appeal.

All the grounds of the appeal having failed this appeal stands dismissed.

705 Given the lapse of time from 05.08.2009 when the trial judge delivered his ruling and now, September, 2013, which is a period of four (4) years, it is necessary, for the ends of justice to be met, that this court makes fresh orders in the matter. This court therefore orders that:-

710 1. The appellant company's register of members, if it has not
yet been rectified, be rectified within a period of 14 days
from the date of delivery of this Judgement by registering
the respondent as transferee of Jaspal Singh Sandhu's
715 shareholding of 245 ordinary shares and also that she is a
director in the appellant company. Should such rectification
be not done by the appellant company within the said period
of 14 days from the date of delivery of this judgement, then
the Registrar of Companies, Uganda, is, on the basis and
authority of this Judgement, to proceed to register the
720 respondent Balwinder Sandhu Kaur, as the holder of 245
ordinary shares, as transferee of the said shares from Jaspal
Singh Sandhu and also as a director in the appellant
company of **NOBLE BUILDERS (U) LIMITED.**

725 2. If no meeting of the appellant company has been held under
section 135 of the Companies Act as ordered by the
learned trial judge on 05.08.2009, it is hereby ordered that
such a meeting be held within thirty (30) days as from the
date of this Judgement and after giving notice of at least
seven (7) days of such a meeting and the agenda of the
730 topics to be discussed at the said meeting to Raghbir Singh
Sandhu to discuss the affairs of the company with Balwinder
Sandhu Kaur as shareholder and director in the appellant
company.

735 In the event of the said Raghbir Singh Sandhu's failure or
refusal to attend such a meeting, then Balwinder Sandhu

Kaur shall form a quorum for such appellant company meeting and the deliberations and resolution(s) of that meeting shall be binding upon the company and the same shall be filed with the Registrar of Companies.

740 As to costs, the respondent is awarded the costs of this appeal as well as those of the court below, as already held in respect of the eighth (8) ground of appeal, as against the appellant company.

We so order.

745 This Judgement is signed by two of their Lordships A.S. Nshimye and Remmy Kasule, Justices of Appeal, as Lady Justice M.S. Arach Amoko, who was part of the coram and took part in reaching the decision expressed in this Judgement, left the Court of Appeal on her being elevated to
750 the Supreme Court before putting her signature on this Judgement.

Dated at Kampala this...4thday of September, 2013.

755 A.S. Nshimye
JUSTICE OF APPEAL

M.S. Arach Amoko
JUSTICE OF APPEAL

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Remmy Kasule
JUSTICE OF APPEAL