THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT KAMPALA

CIVIL APPEAL NO. 61 OF 2003

(Arising from NPART Tribunal Case No. 003 of 1996)

KATO DDUNGU .....APPELLANT

VERSUS

NON-PERFORMING ASSETS RECOVERY TRUST (NPART) .....RESPONDENT

THIS APPEAL IS FROM THE JUDGMENT / DECISION AND DECREE OF THE NON-PERFORMING ASSETS RECOVERY TRUST TRIBUNAL DATED 26TH OCTOBER, 2000.

CORAM: HON. MR. JUSTICE REMMY KASULE, JA

HON LADY JUSTICE FAITH E.K MWONDHA, JA

HON. MR. JUSTICE KENNETH KAKURU, JA

JUDGMENT OF THE COURT

This appeal arises from the decision of Non-Performing Assets Recovery Trust (NPART) tribunal, *A.O.Ouma, J Chairman, G.S. Lule, Member, C.S.O'Bokk Member,* herein after referred to as "*the Tribunal*" dated 26th October 2000.

In that case the appellant together with Buyaga Farmers Coffee Factory Ltd referred to herein as *'the 1st defendant'* had been sued

jointly and severally by the respondent for recovery of shs. 818,445, 471/= together with interest at 36% per annum from 30th September 1995 until payment in full.

The claim arose from a bank loan obtained by the 1st defendant from the now defunct Uganda Commercial Bank (UCB) pursuant to an agreement dated 13th December 1990. The 1st defendant failed to pay the said loan, which became a non-performing asset. It was assigned to the respondent to recover the money. The respondent was a body established by an Act of Parliament to recover non-performing assets.

During the course of the trial before the Tribunal, the 1st defendant admitted the whole claim. On 26th August 1996 with the consent of the respondent and the 1st defendant, the Tribunal entered into a Judgment on admission for the whole claim together with interest and costs in favour of the respondent and against the 1st defendant. Subsequently on 4th September 1996 a consent decree to that effect was extracted.

Thereafter, the matter proceeded with the hearing against the appellant only. On 26th October 2000 Judgment was entered against the appellant for the whole claim of shs. 818,445,471/= with interest at 36% per annum from 30th September 1995 until payment in full.

Being dissatisfied with the decision of the Tribunal the appellant filed this appeal on the following grounds;-

1. ***The Honourable Members of the Tribunal erred in law and fact by considering or relying on the original Written Statement of Defence after the Written Statement of Defence had been duly amended.***

2. *The Honourable Members of the Tribunal failed to appreciate the import of an amendment and thereby came to wrong conclusions.*

3. *The Honourable Members of the Tribunal erred in law and fact by not properly evaluating the evidence on record and thereby came to wrong conclusions.*

4. ***The Honourable Members of the Tribunal erred when they failed to determine that Regulation No. 1 of the Schedule to the Non-Performing Assets Recovery Trust Statute, Statute 11 of 1994 is bad in law.***

5. ***The Honourable Members of the Tribunal erred when they failed to determine that Regulation No. 1 of the Schedule to the Non-Performing Assets Recovery Trust Statute, Statute 11 of 1994 is bad in law because of its retrospective effect***

When this appeal came up for hearing on 31st October 2005 learned counsel **Dr. Joseph Byamugisha** represented the respondent while **Mr. Christopher Madrama** represented the appellant. Mr. Madrama sought leave of Court to add another ground of appeal. Leave was granted. That ground of appeal was framed as follows;-

> ***"That the decree appealed from for the sum of shs. 818,445,471/= was unlawful as against the appellant."***

It became ground 6 of the grounds of appeal.

Both counsel sought and were granted leave to file written submission which they did. There were no oral submissions.

For reasons we could not ascertain, the Coram before which this appeal first came on 31st October 2005, did not write the Judgment within time. Subsequently one of the Justices on that Coram retired and the other was elevated to the Supreme Court. A new Coram was constituted and on 2nd June 2014 the appeal came up for hearing afresh. The parties adopted their earlier submissions and court reserved Judgment.

Counsel for the appellant in his written submissions argued ground six first, contending that, it was a point of law capable of disposing of the whole appeal at once.

Counsel submitted that the Tribunal acted without jurisdiction when it passed a judgment against the appellant for the sum of Shs. 818,445,471/= when there was at that time a consent decree between the 1st defendant and the respondent for the same amount dated 27th August 1996.

That the appellant had objected to the tribunal proceedings with a claim against him after the consent judgment had been entered but the tribunal had overruled his objection and proceeded with the trial. Counsel submitted further that the Tribunal became *functus officio* after it had entered judgment in favour of the respondent for the whole claim. By then, he argued, the issue before the tribunal had been conclusively determined.

He referred to the definition of judgment under Section 2 of the Civil Procedure Act (CAP 71) which defines **"a judgment"** as a statement given by the judge of the grounds of a decree or order. He also referred to the definition of **"the decree"** under the same Act as the

formal expression of an adjudication, which in as far as regards the court, the court expressing it conclusively determines the rights of the parties with regard to all or any matters in controversy in the suit and may either be preliminary or final.

Counsel submitted further that the matter was *res-judicata* as far as the entire money claim and interest in the plaint was concerned. He submitted that the consent decree was binding on all parties to the suit. For the argument that the matter against the appellant was *res-judicata* after the consent decree had been entered by the Tribunal, counsel cited the decision of the then Court of Appeal of Uganda (Now the Supreme Court) in ***Semakula vs Magala and others (1979) HCB 90.***

In reply, counsel for the respondent submitted that the 1st defendant had been sued as a borrower who had failed to pay a loan. The appellant on the other hand had been sued on the basis of **Section 27** of the NPART Statute and Regulation 1 of the schedule to that statute for having granted a loan to the 1st defendant in disregard of established Bank procedures and regulations. The 1st defendant and the appellant had been sued individually and or severally. The appellant had filed his own written statement of defence and did not do so jointly with the 1st defendant.

Further, when the consent judgment was entered between the respondent and the 1st defendant, the issues which affected the second defendant, now appellant, namely issues 4,5 and 6 were not decided, and as such the Tribunal had rightly ruled that the plaintiff now respondent, reserved the right to proceed against the second defendant. Counsel also supported the Tribunal's holding that where there is joint and several liability, a judgment against a co-defendant under **Order 9 Rule 6** of the Civil

Procedure Rules (CPA) does not exonerate the other unless by some conduct amounting to estoppel, the plaintiff is estopped from proceeding against the remaining defendant.

In rejoinder counsel for the appellant contended that issues 4, 5 and 6 dealt with the applicability of the NPART Act to the second defendant. The consent decree had conclusively, as between all the parties to the suit, determined the question of liability. He submitted that two decrees in respect of the same claim for the same amount could not exist concurrently. He prayed for the appeal to be allowed on this ground alone.

We shall proceed to determine this ground first, as we agree with counsel for the appellant, that it is capable of determining this appeal on its own. Although counsel for the appellant contends that this ground is one of law, we find that it is one of mixed fact and law.

That being the case, as a first appellate court we are required under **Rule 30 (1)** of the Rules of this court to re-evaluate the evidence and to come to our own conclusion on all issues of law and fact. *See;* ***Fr. Narcensio Begumisa & others vs Eric Tibebaga (Supreme Court Civil Appeal No. 17 of 2002.*** (unreported)

The claim against the 1st defendant and the appellant was coined in the following words in paragraph 4 of the plaint.

> ***4 "The plaintiff claims against the defendants jointly and or severally a sum of Ug. Shs 818, 445, 471/- with interest at 36% from 30th September, 1995 till payment in full and it arose as under;-***

The plaintiff then makes the following prayers at the end of the plaint.

> ***"WHEREFORE the plaint prays for judgment against***
>
> ***(i) The defendants jointly and or severally for***
>
> ***(a) Shs 818, 445, 471 with interest at 36% per annum from 30th Sept 1995 till payment in full.***
>
> ***(b) Costs."***

On 27th August 1996 when the suit came up before the Tribunal for hearing Mr. Buyondo, counsel for the 1st defendant addressed the Tribunal as follows;-

> ***"in view of what transpired last time, I concede that to save time Judgment should be entered against the first defendant as prayed i.e shs. 818, 445, 471/= with interest at 36%."***

The Tribunal then noted as follows on its record of proceedings.

> ***"Judgment : As the first defendant Buyaga Farmers Coffee Factory Ltd admits liability as prayed , Judgment is entered against the first defendant and in favour of the plaintiff for a sum of shs 818, 445, 471/= with interest at 30% from 30th September 1995 till payment in full'*** 36
>
> ***The 1st defendant will pay the plaintiff costs ...."***

After the Tribunal had entered Judgment as above Dr. Joseph Byamugisha counsel for the plaintiff, now respondent, made the following remarks.

> ***"Dr. Byamugisha:*** ***First defendant is surrendering the factory to the plaintiff to sell. Sale maybe at a loss. So the second defendant cannot be discharged until the whole liability has been discharged. Judgment obtained cannot exonerate the 2nd defendant until full liability is discharged. If the plaintiff succeeds against the 2nd defendant, there may be an order that there should be execution against the 2nd defendant until the 1st defendant is unable to discharge liability."***

As already stated above the Tribunal in its Ruling on this issue agreed with Dr. Byamugisha that the Judgment against the 1st defendant did not exonerate the appellant from liability.

The appellant, then 2nd defendant, sought leave to appeal against the order, which leave was granted. Nonetheless the matter proceeded and judgment was delivered as already noted above. It appears no appeal was ever preferred against the Ruling of the Tribunal, which was delivered on 27th February 1997.

After the Tribunal had entered Judgment against the 1st defendant as set out above on 27th August 1996, the plaintiff now respondent's counsel extracted a decree which was approved by counsel for the 1st defendant.

It reads as follows;-

"DECREE

This suit coming before the Tribunal for final disposal as regards the first defendant this 27th day of August, 1996 and after hearing Mr. Buyondo for the first defendant and Dr. Byamugisha for the plaintiff it is ordered and decreed that by consent of both parties judgment be and is hereby entered for the plaintiff against the first defendant for: *(Emphasis added)*

a. Shs. 818,445,471/=.

b. Interest thereon at 36% per annum from 30th September, 1995 until payment in full.

c) Costs.

GIVEN under my hand and the Seal of the Tribunal this 4th day of September 1996.

.....

REGISTRAR

I approve

COUNSEL FOR THE 1ST DEFENDANT

DRAWN & FILED by:
BYAMUGISHA & RWAHERU,
ADVOCATES.

After the matter had been heard and finally determined between the respondent and the appellant another decree was extracted in the following terms:-

"FINAL DECREE

This case coming up this 26th day of October 2000 before Justice A.O. Ouma Chairman, Mr. G.S Lule, member, Mr.C.S. O'Bokk member in the presence of Ms. Edroma E. for the plaintiff and Ms. Jane Akiteng for the 2nd defendant,

It is hereby decreed and ordered as follows:-

Judgment is entered in favour of the plaintiff, against the 2nd defendant, jointly and or severally together with the 1st defendant for:-

(a) Shs. 818,445,471/- (Uganda shillings Eight hundred Eighteen million Four Hundred Forty Five Thousand Four Hundred Seventy One only with interest at 36 % per annum from 30th September 1995 till payment in full.

(b) Costs

Given under my hand and the seal of this Honourable Tribunal at Kampala this 16th day of June 2003.

D. Registrar

Extracted by:
Katende , Ssempebwa & Co.
Advocates, Solicitors and Legal Consultants
P.O Box 2344,
Kampala

It is now contended that this decree from which this appeal arises is unlawful as against the appellant.

When a plaintiff institutes a joint action against two or more defendants a judgment on admission against one would exonerate the other or the rest.

However, when as in this case, an action is brought jointly and or severally a Judgment on admission or otherwise against one of the defendants does not exonerate the other or the rest, if there remains issues to be tried between the plaintiff and the remaining defendants.

In this regard Order 1 Rule 3 of the Civil Procedure Rules stipulates as follows;-

> ***3. "Who may be joined as defendants.***
>
> ***All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against those persons, any common question of law or fact would arise."***

In order for an action to be brought severally against two or more defendants the plaintiff must show that the right to relief arises out of the same transaction or a series of transactions and that the case is such that a common question of law or fact would arise See; ***Stroud vs Lawson and others [1895-9] 469 ALL ER at P. 473*** and ***Bank of India vs. Shah [1965] EA 18.***

Upon obtaining Judgment against the defendants jointly and or severally, the plaintiff would be at liberty to enforce it against any one or both of them. However, in the event that the plaintiff chooses to recover the decretal sum from both of them he would only be permitted to recover no more than the decretal sum.

The question then arises. Was there any other issue or claim to be determined between the plaintiff now respondent and the 2nd defendant now appellant? In answer to this question, we agree with the Tribunal's finding that judgment on admission did not determine the issue of the appellant's liability. That issue remained to be determined. The Tribunal, in our view, was correct when it proceeded to determine the issue of the appellant's liability.

We also find that the Judgment on admission entered against the 1st defendant did not render the claim against the appellant *res-judicata.*

What constitutes *res-judicata* is set out in Section 7 of the Civil Procedure Act as follows:-

> ***7. "Res judicata.***
>
> ***No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court."***

In the case of ***Fredrick Sekyaya versus Daniel Katunda (1979) HCB*** P.46 P.J. Allen J (as he then was) held that *res-judicata* does not apply in respect of an order granted in the same suit. That section 7 of Civil Procedure Act refers to "a former suit" as a necessary condition for application of the principle of *res-judicata.*

We agree with the above interpretation of the law. In this particular case the Judgment against the 1st defendant was not resulting from a former suit and as such *res-judicata* was inapplicable.

However, we find that the entering of the consent judgment against the 1st defendant, given the nature of the claim and the pleadings setting out that claim, resulted in a gross injustice to the 2nd defendant in that;

(i) *It deprived of him and the tribunal of the opportunity to know exactly from the 1st defendant as to who actually disbursed the funds of the loan to the 1st defendant before all the necessary security documents had been executed and registered.*

(ii) *Since the claims against the 1st and 2nd defendants were so intrinsically intertwined with each other in that they were both concerned with the same subject matter and both originated from the same source, that is the defunct Uganda Commercial Bank where witnesses for the 1st and 2nd defendants as well as those for NPART were coming from , the entering of the consent Judgment against the 1st Defendant in favour of NPART in a way amounted to condemning the 2nd defendant unheard. He was in a way deprived of the opportunity of putting his case to the 1st defendant and to the witnesses of the 1st defendant and those of NPART either through examination in chief or cross-examination.*

Once a consent Judgment was entered against the 1st defendant, it became unnecessary for those witnesses to testify before the Tribunal. The same witnesses could not also testify contrary to the terms of the entered consent Judgment as they were witnesses from parties who were beneficiaries of the said consent Judgment. This came out clearly on 15th February 1999 when the 2nd defendant could not call as a witness, one Lidia Kyomukama, because counsel for NPART objected to the 2nd defendant calling that witness when he stated that:-

> *"All Uganda Commercial Bank ~~persons~~ personnel would be likely witnesses for the plaintiff. I want them protected for the plaintiff" See page 48 of the record.*

Thus the appellant was deprived of the opportunity to rely on witnesses from Uganda Commercial Bank.

The injustice to the 2nd defendant would have been avoided if the Tribunal, given the close relationship of the facts of the cases whether for or against the claim, had restrained itself from entering the Judgment on admission until all the parties had put their respective cases before the Tribunal. The Tribunal would then have come out with one decision, after hearing from all parties to the claim and their witnesses. That way, the 2nd defendant would not have been prejudiced and would have exercised his right to cross-examine witnesses and thus put up his case.

We find that prejudice was caused to 2nd defendant, now the appellant, by the Tribunal entering a judgment against the 1st defendant on admission, given the circumstances of this case. We would therefore allow this ground of the appeal.

Grounds 1,2,3,4 and 5:

These grounds are inter-related as it will be shown.

The main issues for determination in this appeal arise from ground No.3 of the of appeal namely "*whether the Tribunal members properly evaluated the evidence on record before they reached the conclusions they reached. Was there sufficient evidence to prove that the 2nd defendant ordered disbursement of funds to 1st defendant before the security documents were executed?*"

The signing of the loan agreement *per se* by the appellant did not amount to disbursing funds of the loan to 1st defendant or at all.

No one asserted that the 2nd defendant was not authorized to sign the Agreement. After all a loan agreement has to first be signed before security documents are signed and registered.

There was no evidence that the 2nd defendant ordered disbursement of funds before security documents had been executed and registered or at all. Indeed there was no evidence adduced before the Tribunal as to who ordered disbursement of funds which disbursement started as early as December 1990.

The evidence on record indicates that the 2nd defendant was not General Manager of The Development Finance Group (DFG) of U.C.B at the material time. He was the Assistant Manager. PW1 confirmed this in his evidence to the Tribunal. The loan agreement he signed on behalf of the Bank clearly shows that he signed as Assistant Manager DFG. Therefore, 2nd defendant was acting under instructions of others, who had powers to order disbursement of funds. These others included the General Manager, Chief Manager Industrial, Deputy Chief Manager Industrial, Project Manager IDA1328 and the Coffee Engineer, who all appear from the documents submitted to the Tribunal by NPART to have been involved in the disbursement of funds. None of them asserted that the 2nd defendant ordered disbursement of funds.

We also find that the 2nd defendant never shifted blame when he amended his written statement of defence. From the very beginning he asserted in his defence that the legal department of Uganda Commercial Bank was responsible for drawing up the agreements, seeing to it that the same are signed and that the same are registered and for notifying others if all this had been done. This is contained in paragraph 2 of his original written statement of defence dated 5th March 1996. If the legal department failed to do so, then liability was with them and not the 2nd defendant. The Tribunal was thus not justified to draw an adverse inference against the 2nd defendant from the amendment of the written statement of defence that the 2nd defendant was shifting the responsibility of ordering disbursement of funds to others.

We accordingly find merit in ground 1 and 2 of the appeal. We allow both of them.

As to grounds 3, 4 and 5, a careful perusal of the Tribunal proceedings and exhibits admitted show that the loan in issue was granted to the 1st defendant (Buyaga Famers Coffee Factory) by Uganda Commercial Bank as a sub-lender on behalf of the Ministry of Finance. It appears the loan was a line of credit granted to the Government of Uganda under the World Bank (IDA) line of credit.

This money from the World Bank was availed to the Government of Uganda, wholly or partially, to boost the agricultural sector, through a Government project known as Agricultural Rehabilitation Project. The Government was required to use this line of credit within a specific period. This period, it appears from the evidence, was about to expire at the time the 1st defendant applied for the facility.

The background to this loan is explained in a letter to the respondent by the 1st defendant dated 27th June 1995. The relevant part of that letter reads as follows:-

"BUYAGA FARMERS' COFFEE FACTORY LTD

P. O. Box 43
KAGADI

P.O BOX 8771
KAMPALA

Our Ref:

27th June 1995

Your Ref:

The chairman
NON PERFORMING ASSETS RECOVERY TRUST
P.O Box Kampala

Dear Sir,

RE: OUR COFFEE HULLERY loan obtained from U.C.B

In 1986 we applied for a USAID Loan of Shs, 200 Million (Old Currency) to construct a coffee factory through U. C. B.

Our application remained pending until November, 1990 when the Bank offered us an I.D.A 1328 Part A. Loan of $600,217 to completely finance the project.
Some of the terms were as below:-

1. Tender Price	$600,217
2. Contingency sum	10%
3. Engineering fees	10%
4. Interest rate	36%
5. Commitment fees	1%
6. Surcharge on arrears	1%
7. Administration fees	1%

8. Repayment period 5 years including 2 years of grace.

Our original plan had been to obtain moderate funding from U.C.B then:-

1. Erect the factory buildings using locally available materials at the cheapest cost possible.

2. Have the machinery locally fabricated, again at very small cost.

3. ....."

Thus the loan was for erection of buildings, installation of Coffee processing machinery and associated equipment including civil engineering works, mechanical and electrical services and the procurement and delivery of machinery e.t.c. The above works were described as "the investment project".

The actual implementation of the project above described was to be carried out by a company appointed and or approved by the bank. This company was WADE ADAMS CONSTRUCTIONS LTD mentioned in the 1st defendant's letter above.

The money for the project, it appears, was to be released directly to WADE ADAMS CONSTRUCTIONS LTD upon certificates issued by a coffee engineer, project engineer and a project manager.

The project manager was Eng. A.S. Kagga. The Coffee Engineer was A. Semukutu. From the correspondences on record the above appear to have been employees of U.C.B. Disbursements of money

to the contractor could only be made upon certificates signed by the above persons which they regularly did on U.C.B stationery.

On 12th December 1990 A.S. Kagga the project manager wrote the following letter to the 1st defendant.

"TELEGRAPHIC ADDRESS
UGACOMBANK & UCBANK UGA
TELEPHONE NO.234710/24
TELEX NO 61073/61114

P.O Box 973
Kampala
(Uganda)

UGANDA COMMERCIAL BANK
HEAD OFFICE

REF. ARP/1328/PRJ

12th December 1990

Buyaga Farmer's coffee factory
P.O Box 8771
Kampala

Dear Sir,

IDA 1328 PART A CONSTRUCTION WORKS FOR THE COFFEE HULLERY

Following completion of signing all necessary agreements the Contractor is mobilizing and will take possession of the site on 1st January 1991.

Further this is to inform you that a Caterpillar generator set 3304T will be supplied at an additional cost of US$ 18,006 including spares for two years of operation. The above set will have about 30% reserve power.

As a matter of urgency you are required to recruit a counterpart engineer who will be working along with the UCB engineers in supervision of the works. Further this same engineer will run the factory after testing and commissioning.

The commissioning and testing of the plant is supposed to be done during the month of May to June 1991. It will be your duty to provide kiboko coffee and gunny bags for testing and commissioning

Yours faithfully

A.S. Kagga
Project Manager

C.C. Coffee Engineer"

On 2nd January 1990 (It appears to have been 1991) the same person wrote another letter to 1st defendant as follows;-

"TELEGRAPHIC ADDRESS
UGACOMBANK & UCBANK UGA
TELEPHONE NO.234710/24
TELEX NO 61073/61114

P.O Box 973

Kampala
(Uganda)

UGANDA COMMERCIAL BANK
HEAD OFFICE

REF. ARP/1328/CFEX

2nd January 1990

Buyaga Farmer's coffee factory
P.O Box 8771
Kampala

Dear Sir,

RE: DISBURSEMENT OF ADVANCE PAYMENT

Please find herewith the detailed Schedule of advance payment approved for disbursement to the contractor in lieu of works at your side

Yours faithfully

A.S. Kagga
Project Manager

C.C. Coffee Engineer"

The schedule mentioned in that letter was signed by the Coffee Engineer and the Project Manager (Development Finance Group). It bears a rubber stamp of U.C.B.

Similar certificates dated 25th January1991, 7th May1991, 20th May 1991, 12th June 1991, 21st August 1991 and 17th October 1991 followed. The final certificate was issued on 20th December 1991.

It appears to us from the above evidence on record that whereas the loan agreement between U.C.B and 1st defendant was signed on 13th December 1990, by the appellant on behalf of U.C.B, the funds were not released directly to the borrower, the 1st defendant and the whole loan amount was not released in one lump sum, but rather the money was disbursed directly to the contractors WADE ADAMS CONSTRUCTIONS LTD in installments over a period of about 12 months.

While the loan agreement was signed by the appellant on 13th December 1990, the documents required for the registration of mortgage and other securities were only sent to Legal Services Group of UCB on 12th March 1991, by a letter written by Ben O.Opiny Chief Manager LIME. That letter reads as follows;-

"MEMORANDUM

UGANDA COMMERCIAL BANK

REF: IND/455

Date: 12th March 1991

From: DFG

To: LEGAL SERVICES GROUP

BLOOK 100, PLOT 43 AT SUNGA

BORROWERS: BUYAGA FARMERS COFFEE FACTORY LTD

We enclose the following documents for registration of securities to cover the borrowings;-

1) Letter of offer
2) Title Deed Block 100/43
3) Resolution to Borrow
4) Income tax clearance Cert.

5) Memo/Articles of Association

Kindly return the security documents to us after registration of the securities. In the meantime. Please acknowledge receipt of the same.

Ben. O. Opiny
CHIEF MANAGER LIME"

They were returned from Legal Services Group to the Chief Manager Lime on 6th June 1991, almost three months later. The letter forwarding those documents reads as follow;-

"MEMORANDUM

UGANDA COMMERCIAL BANK

REF: B06/87

Date: 6th June 1991

From: Legal Services Group

To: Chief Manager Lime"

REGISTRATION OF MORTGAGE

BORROWERS: BUYAGA FARMERS COFFEE FACTORY LTD

With reference to your memo of 12th March, 1991, we write to advise that the mortgage instrument has been prepared.

We therefore return the following documents for your further action.
Please summon the Directors of the company to come and sign the document with a company seal.

Enclosed find:

1. ***Certificate to title Freehold Block 100 Plot 3 at Sunga***
2. ***Mortgage forms***
3. ***Income tax clearance***
4. ***Memo & Articles of Association***

Acknowledge receipt by signing against the enclosed copy of this memo.

S.E.R Wanyingi
For: Gen. Manager/LSG"

On 12th June 1991, the Manager LIME wrote to the 1st defendant requesting its Directors to come to the Bank and sign the security documents. The letter is signed by Ben. O. Opiny.

As already set out above, by this time a lot of money had already been disbursed by the bank to the contractor Wade Adams Constructions LTD by other officers and departments of the bank, and not by the appellant.

From the above evidence it cannot be correct to state, as the respondent did in paragraph 4 (c) of its plaint that:

"the 2nd defendant, in blatant disregard of rules, regulations and or bank practices regulating the granting of loans and in further blatant disregard of the clear provisions of the loan agreement, disbursed and / or caused the disbursement of the loan funds without ensuring that the said loan was properly secured or at all..."

We find no evidence to the effect that the appellant ordered the disbursement of the funds before the necessary documents had been executed or at all.

Further, we also find that the circulars dated 2/10/1975, 9/5/1977 and 2/10/1979 to all Branch managers of Uganda Commercial Bank related to other transactions and not to the one from which this appeal arises.

Those circulars were addressed to U.C.B Branch Managers. There is no evidence that departments at the U.C.B Head Office such LIME, DFG, LSG, were the same as or could be equated to Bank Branches. It appears from those circulars that Branch Managers had more autonomy, power and discretion in running Bank Branches and could single handedly grant credit to customers at the time the said circulars were issued. This appears not to have been the case with the head office departments which appear to have been working as a team, with each department playing a specific but complimentary role. This sharply contrasts with the role of Branch Managers as the evidence out lined above clearly indicates.

Further, we find that this loan in issue was not an 'ordinary loan' to which the circulars stated above applied. This loan as already noted, was a special arrangement that was governed by other agreements and conditions between the Bank and the Government of Uganda. One such condition was that the loan had to be disbursed within a specified period which condition had to be fulfilled without waiting for the internal mechanisms of U.C.B including the execution and registration of security documents.

We find that Regulation 1 of the schedule to the NPART Statute was not applicable, because *"the established regulations"* stated in that

Rule did not apply to this specific case. We do not need to re-emphasize the fact that this was a special case which fell outside the established Bank regulations. It appears that in this case the loan had to be disbursed very quickly and as such it was disbursed before the securities were registered because the circumstances of the case so required.

Be that as it may, the signing of the loan agreement by the 2nd defendant, now appellant was not the act that authorized the disbursement of the funds. It was only a one step in a long process. The appellant cannot be described as "a staff of the bank who granted the loan" as to fall within the ambit of Regulation 1.

We have found no evidence to suggest that appellant was the person responsible for ensuring that the securities were signed by the 1st defendant. He was not the person responsible for the registration of the securities, both of which appear to have been the responsibilities of Mr. Ben Opiny Chief Manager LIME and the Legal department of U.C.B.

Accordingly we find merit in grounds 3, 4 and 5 of the appeal. We accordingly allow the said grounds. This appeal therefore succeeds and it is hereby allowed with costs to the appellant.

The judgment and decree of the NPART Tribunal are hereby set aside and substituted with an order dismissing the suit with costs to the 2nd defendant, now appellant.

Dated at **Kampala** this .....04..... day of March..2015.

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HON. MR. JUSTICE REMMY KASULE,
JUSTICE OF APPEAL

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HON LADY JUSTICE FAITH E.K MWONDHA
JUSTICE OF APPEAL

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HON. MR. JUSTICE KENNETH KAKURU
JUSTICE OF APPEAL