THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 267 OF 2018

1. **CTM UGANDA LIMITED**
2. **PRIME HOLDING**
3. **JOSEPH MAGEZI..... APPELLANT**

VERSUS

1. **ALLMUSS PROPERTIES UGANDA LTD**
2. **ITALTILE CERAMICS LTD**
3. **ITALILE LIMITED**
4. **GREGORY MAAGEZI..... RESPONDENTS**

(Appeal from the Ruling of the High Court of Uganda (Commercial Division) before His Lordship Justice David Wangutusi, J dated the 25th day of October, 2017 in High Court Misc. Application No. 904 of 2015)

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Geoffrey Kiryabwire, JA

Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the Judgment of my learned brother the Hon. Mr. Justice Geoffrey Kiryabwire, JA.

I agree with him that, this appeal substantially fails and ought to be dismissed for the reasons he has set out in his judgment. As Hon. Madrama, JA also agrees, it is so ordered.

Dated at **Kampala** this 22nd day of Feb 2021.

.....

Kenneth Kakuru
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 0267 OF 2018

(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)

1. **CTM UGANDA LTD}**
2. **PRIME HOLDING LTD}**
3. **JOSEPH MAGEZI} .....APPELLANTS**

VERSUS

1. **ALLMUSS PROPERTIES UGANDA LTD}**
2. **ITALTILE CERAMICS LTD}**
3. **ITALTITE LIMITED}**
4. **GREGORY MAGEZI} .....RESPONDENT**

(Arising from the Ruling of High Court of Uganda (Commercial Division) in Misc. Application No. 904 of 2015 dated 25th October, 2017 by Hon. Mr. Justice David Wangututsi)

JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Geoffrey Kiryabwire, JA.

I agree with the facts and analysis of the issues set out in the judgment. I concur with the judgment and orders of my learned brother Hon. Mr. Justice Geoffrey Kiryabwire, JA and I have nothing useful to add.

Dated at Kampala the ____ day of _____ 2021

Christopher Madrama

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 0267 OF 2018

(Arising from the Ruling of the High Court (Commercial Division) in Misc. Application No. 904 of 2015 dated 25th October 2017 by Hon. Mr. Justice David Wangtutsi)

1. **CTM UGANDA LIMITED**
2. **PRIME HOLDING LIMITED** ::**APPELLANTS**
3. **JOSEPH MAGEZI**

VS

1. **ALLMUSS PROPERTIES UGANDA**
2. **ITALTILE CERAMICS LIMITED** ::::::::::::::::::::::::**RESPONDENTS**
3. **ITALTILE LIMITED**
4. **GREGORY MAGEZI**

CORAM

HON. MR. JUSTICE KENNETH KAKURU, JA

HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

BACKGROUND

This is a first Appeal from the Ruling of the High Court (Commercial Division) in Misc. Application No. 904 of 2015 arising from Misc. Application No. 904 of 2015 dated 25th October, 2017 to set aside a consent Judgment delivered by the Hon. Justice David Wangtutsi. The trial court dismissed the Application to set aside the Consent Judgment with costs to the Respondents. The Applicants were dissatisfied with the Ruling hence this Appeal.

INTRODUCTION

The Appellants filed an Application in the High Court seeking orders that the Consent Judgment in the head suit H.C.C.S No. 467 of 2013, signed by the fourth Respondent on the one hand on behalf of the of the first Appellant and the first to third Respondents on the other hand be set aside.

The reasons for this Application were;

a) The consent was signed by the fourth Respondent without the authority or resolution of the shareholders;
b) No shareholders meeting had ever been called to resolve on the change of the name of the first Appellant as required by law.
c) There was collusion and or connivance between the fourth Respondent and the 1st -3rd Respondents to fraudulently and illegally enter into very oppressive and unfavorable terms against the first Appellant in the consent.

On the other hand, the first to third Respondent argued that the fourth Respondent was authorized to legally sign the consent agreement on behalf of

the first Appellant. Furthermore, that the change of name was legal and that there was no collusion or connivance as alleged.

The trial Judge found that the Board of Directors had authorized the fourth Respondent to handle transactions of the first Appellant which included the negotiations that led to the consent Judgment. On the issue of whether the necessary steps had been taken to effect the change of name of the first Appellant as required by law the trial court found that all necessary steps had been taken. The trial Judge also found that there was no proof of collusion as claimed. He concluded by finding that there was no ground upon which the consent Judgment could be set aside. He accordingly dismissed the Application with costs.

GROUNDS OF APPEAL

The following are the grounds of Appeal in this matter;

1. **The Trial Judge erred in law and in fact when he found that that all necessary steps for the change of the name of first Appellant's to Deco Tiles Limited had been taken and that the change of name was valid or lawful.**
2. **The trial Judge erred in Law and in fact when he based on the resolution of the 2nd Appellant dated the 12th of November 2005 to find that the 4th Respondent had power and authority to bind the 1st Appellant in the terms contained in the consent.**
3. **The Trial Judge erred in law and in fact when he found that the 1st, 2nd, 3rd and 4th Respondents had acted in good faith and did not have to inquire as to the authority of the 4th Respondent to enter into the agreement and to sign the impugned consent Judgment.**

4. **The trial Judge erred in law and in fact when he failed to find that the consent was entered into through collusion and fraud and when he failed to find that the 1st, 2nd, 3rd Respondents had unjustly enriched themselves.**
5. **The trial Judge erred in law and in fact when he found that the 4th Respondent had shares in the 1st Appellant.**
6. **The Trial Judge erred in law and in fact when he failed to properly evaluate the evidence on the record thereby arriving at the wrong conclusion.**

ISSUES FOR DETERMINATION ON APPEAL

The following issues were formulated by the parties for determination by this court.

1. **Whether the trial Judge erred in law and fact when he found that all necessary steps for the change of name of the 1st Appellant to Deco Tiles Limited had been taken and the change of name was valid and lawful.**
2. **Whether the Judge erred in law and fact when he based on the resolution of the 2nd Respondent dated 12th of November 2005 to find that the 4th Respondent had power and authority to bind first Appellant in the terms contained in the consent.**
3. **Whether the trial Judge erred in law and fact when he found that the 1st 2nd and 3rd Respondent had acted in good faith and did not have to inquire as to the authority of the fourth Respondent to enter into the agreement and sign the impugned consent judgment.**

4. **Whether the trial Judge erred in law and fact when he failed to find that the impugned consent Judgment was entered through collusion and fraud and when he failed to find that the 1st, 2nd and 3rd Respondents had unjustly enriched themselves thereby.**
5. **Whether the trial Judge erred in law and fact when he found that the 4th Respondent had shares in the 1st Appellant.**
6. **Whether the trial Judge erred in law and fact when he failed to properly evaluate the evidence on record thereby arriving at the wrong conclusions.**

To my mind the first three issues are inter-related as they refer to the question as to whether the fourth Respondent had the authority to commit the first Applicant as regards the consent Judgment. I shall therefore for brevity of argument handle the three issues together.

REPRESENTATIONS

The Appellant was represented by Mr. Emmanuel Emoru while the Respondents were represented by Mr. Augustine Obilil Idoot.

DUTY OF THE COURT

This is a first Appeal and this court is charged with the duty of reappraising the evidence and drawing inferences of fact as provided for under Rule 30(1) (a) of the **Judicature (Court of Appeal Rules) Directions SI 13-10.** This court also has the duty to caution itself that it has not heard the witnesses who gave testimony first hand. On the basis of its evaluation this court must decide whether to support the decision of the High Court or not as illustrated

in **Pandya v R [1957] EA 336 and Kifamunte Henry v Uganda Supreme Court Criminal Appeal No.10 of 1997.**

PRELIMINARY POINTS OF LAW AND MISCELLANEOUS APPLICATION NO. 379 OF 2017

This Appeal had the rare occurrence of having different aspects of it being fixed before different panels of the same Court.

On 11th January 2018 a different panel of Justices of this court sat and heard Misc. Application No. 379 of 2017 which sought orders to strike out the Notice of Appeal filed by the Respondents because it was filed without the leave of Court. The Court reserved their Ruling on the matter.

While the Ruling of this Application was still pending a year or so later the main Appeal was cause listed to be heard on 2nd April 2019 by this panel. Counsel for the Appellant notified us about the pendency of the said ruling. Given the history of this Appeal, we proceeded to make a Ruling on it. We found that the Appellants did not need leave to Appeal and we reserved our reasons to be given with this Judgment. We then proceeded to hear the main Appeal.

However, on 25th of April 2019 the other panel of Justices proceeded to issue a Ruling in respect of Misc. Application No. 379 of 2017. They came to another finding and allowed the Application to strike out the Appeal because the Notice of Appeal was incompetent.

On 12th October 2020, counsel for the Appellant brought an Application under Rule 2(2), 43 and 44 of the Rules of this court seeking orders to set aside the other panel's Ruling in Misc. Application No 379 of 2017. The grounds were

that at the time the Ruling was rendered, the Court was *functus officio* and the matter was *res judicata*. He also argued that that the decision was illegal and a nullity.

Counsel for the Respondent conceded the ground of the Application that it was in the interests of the substantive Justice and proper Administration of justice that the Ruling and Orders of the 25th of April 2019 be set aside.

Accordingly, we exercise our inherent powers under Rule 2 (2) of the Rules of this court to set aside Civil Application No. 379 of 2017 which file now stands closed.

I shall now address the reasons as regards the preliminary objections.

First, counsel for the Respondent submitted that the Appeal was incompetent by reason of the Appellant's failure to obtain leave to Appeal. He argued that Order 44 of the Civil Procedure Rules (CPR) lists the Orders from which Appeals lie as of right and those that are not listed are supposed to be subject to leave of court.

Secondly, he submitted that this Appeal was filed outside the time that is provided for under law that is Rule 83 of the Court of Appeal Rules. He submitted that the Record of proceedings was availed to them on 24th November 2017 and the Ruling was delivered on the 25th of October 2017 but the Appeal was filed on 25th of October 2018 which was outside the 60 days that is provided for under Rule 83 of the court of Appeal Rules.

In reply to the first objection Mr. Emoru counsel for the Appellant submitted that they did not require leave to file the current Appeal because this matter involved a consent judgment that finally settled the disputes between the

parties. He argued that when the trial Judge ruled that the Application was dismissed, this in effect was a final determination of the dispute between the parties and therefore there was no need to obtain leave to Appeal.

He referred us to the case of **Hwan Sung Ltd v M & D Timber Merchants and Transporters** CA No 02 of 2018 for the definition of a decree. In that case a decree was defined under section 2 of the Civil Procedure Act (CPA), in which court held that where there is no live dispute between the parties and nothing remains to be heard by court such an order is appealable as of right. He argued that Section 2 of the CPA had precedence over Order 44 Rule 2 of the (CPR) because it was a principal Act.

Ruling on the preliminary points of law

I have considered the submissions of both counsel and carefully studied the record raised by the Respondent counsel for which I thank them. I have no doubt and accordingly find that the order appealed from is an Appeal that is appealable from as of right and no leave is required; for the following reasons.

The first issue for determination is whether the Appellant could Appeal to this court against the Order of the trial Court without leave of court. The trial Judge dismissed the Applicant's Application to set aside the consent Judgment.

The Appellant maintains that they have a right of Appeal against the decision of the trial Judge as it was conclusive determination of the suit and the Judge's order was in effect a decree appealable as of right which the Respondent contests.

In Supreme Court of Uganda in **Hwan Sung Limited v M and D Timber Merchants and Transporters Limited** (supra) the Supreme Court

considered the provisions of section 2(c) of the Civil Procedure Act. The court followed the decision of the Court of Appeal for East Africa in **South British Insec. Co. Ltd V Mahamedali Taibji Ltd [1973] EA** 210 where court considered provisions equivalent to our section 2 (c) of the Civil Procedure Act.

A decree is defined by the section as follows;

"Decree" means the formal expression of an adjudication which, so far as the court expressing it, conclusively determines the rights of the parties with regard to any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint or writ and the determination of any question within section 34 or 92, but shall not include;

(1) Any adjudication from which an Appeal lies as an Appeal from an order, or

(2) any order of dismissal for default;

***Explanation**---- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when the adjudication completely disposes of the suit. It may be partly preliminary and partly final."*

The court considered the definition above provisions and held that the Judge's decision in the case was in fact a decree although the formal document was contained in a document headed "Order". The court found that the decision was in substance and in fact a decree and therefore the Appeal was competent and properly brought.

Justice Mustafa with whom all the other Justices agreed held;

"if the decision conclusively determines the rights of the parties, then it would be a decree, otherwise it would be an order. If for instance portions of a plaint are struck out as being frivolous or vexatious, or if a suit is stayed, such a decision would be an order, whereas if a suit is dismissed with costs, that would be a decree. A decree is appealable, and an order made in terms of 0.6 r. 29 is made appealable as of right also."

The interpretation of sections 2(c) of the Civil Procedure Act is interpretation of principle legislation whereas the provisions of Order 44 Rule 2 of the Civil Procedure Rules are subsidiary legislation. The former takes precedence over the latter. The decision in **South British Insce. Ltd** (supra) therefore clarifies the legal position. The trial Judge in the instant case dismissed an Application to set aside a consent Judgment with costs. The Judge's decision wholly in my finding, determined the controversy between the parties since nothing else remained to be heard. The decision was therefore was convertible into a decree within the meaning of section 2 (c) of the Civil Procedure Act. The Appellant therefore had a right of Appeal as against the decision and did not need to apply for leave to Appeal to the court of Appeal. The first preliminary objection is therefore dismissed.

I also find that this Appeal was filed in time. According to the record of Appeal page 365 the letter to receive the typed record of proceeding was received by M/s Web Advocates on 8th October 2018. The Memorandum of Appeal was filed on 12th October 2018 which means it was filed within the statutory requirement of sixty days. This preliminary objection is also dismissed.

I shall now address the merits of the Appeal.

Issues Nos: 1; 2; 3 and 4

Issue No 1: Whether the trial Judge erred in law and fact when he found that all necessary steps for the change of name of the 1st Appellant to Deco Tiles Limited had been taken and the change of name was valid and lawful.

And

Issue No 2: Whether the Judge erred in law and fact when he based on the resolution of the 2nd Respondent dated 12th of November 2005 to find that the 4th Respondent had power and authority to bind first Appellant in the terms contained in the consent.

And

Issue No. 3: Whether the trial Judge erred in law and fact when he found that the 1st 2nd and 3rd Respondent had acted in good faith and did not have to inquire as to the authority of the fourth Respondent to enter into the agreement and sign the impugned consent judgment.

And

Issue No. 4: Whether the trial Judge erred in law and fact when he failed to find that the impugned consent Judgment was entered through collusion and fraud and when he failed to find that the 1st, 2nd and 3rd Respondents had unjustly enriched themselves thereby.

Arguments for the Appellants

Counsel for the Appellants submitted that the actions of Gregory Magezi (the fourth Respondent) did not have the authority or legal right to conclude the consent Judgment and that in doing so, prejudiced the Appellants.

In regard to the change of name of the first Appellant's name from M/s CTM Uganda Ltd to M/s Deco Ltd, it is the case for the Appellant that Gregory Magezi did not have the authority to do so because he did not follow the requirements of the law especially Section 40 of the Companies Act to obtain a resolution in agreement of the shareholders of the first Appellant. This made the said change of name illegal and unenforceable.

It was also argued that the fourth Respondent Gregory Magezi was not a shareholder in the first Appellant Company and so could not sign a resolution to change the company's name.

He relied on the case of **Makula International Ltd v His Eminence Cardinal Nsubuga & Anor [1982] HCB 11** for the proposition that a court of law cannot sanction what is illegal and an illegality once brought to the attention of court overrides all questions of pleading including admissions thereon.

Counsel for the Appellant also referred us to the case of **Macfay v United Africa Co. Ltd [1961] 3 ALL ER 1169** for the proposition that;

"If an act is void, then it is a nullity. It is not only bad but incurably bad. There no need for an order of the court to it set aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court to declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."

On this issue of change of name, Counsel for the Respondent disagreed. Counsel for the Respondent submitted that the trial found that any failure by Gregory Magezi to follow the procedure in change of name was a failure of the internal processes of the company which in self would have no effect on the Respondent.

Furthermore, the Appellant still refer to the first Appellant by its changed name which shows that the shareholders have already embraced and used the new name and so cannot be heard to complain at this late stage.

The second line of attack by the Appellants is that the trial Court erred when it found that Gregory Magezi could use a Resolution made in the names of the second Appellant company (Prime Holdings Ltd) as authority to sign the consent Judgment which is now binding on the first Appellant company (CTM Uganda Ltd). This is because the shareholders of the first Appellant did not by way of special resolution approve the change of name of the said company.

Counsel for the Respondent disagreed that Gregory Magezi did not have the authority of shareholders of the first Appellant to sign the consent Judgement on their behalf. He submitted that Gregory Magezi was a Director in the first Appellant and had been appointed and delegated to act on its behalf in relation to the affairs of the first Appellant.

He submitted that Gregory Magezi duly represented the Appellants in the civil suits in court and furthermore during the negotiations that led to the consent Judgment. Counsel argued that the shareholders of the first Appellant Company were bound under the provisions of Section 52 of the Companies Act.

On the ground that the trial Judge erred in not finding that the consent Judgment was a product of fraud, counsel for the Appellant submitted that the trial Court ignored vital evidence on record. He argued that four pieces of evidence showed that there was fraud and collusion between the Respondents.

First, counsel for the Appellant submitted that the failure to call a shareholders meeting to decide on matters which only the shareholders are empowered by law to do showed that there was fraud and collusion between the Respondents.

He argued that there was uncontested evidence in paragraph 16, 17 and 22 of the affidavit in support of the application that the terms of the consent were kept a secret and were never shared with the shareholders.

Secondly, counsel for the Appellant submitted that registering **a board resolution** as **a special resolution** showed that there was a fraudulent intent. He argued that the fourth Respondent knew that a special resolution is only made by shareholders during a general meeting but he instead used this resolution to mislead the Registrar of Companies.

Thirdly, it was submitted by counsel for the Appellant the amount which was payable to the first to third Respondents was USD 1,221,942 and not USD 1,650,000 as stated in the consent judgment. He submitted that the dispute involved two claims one a being a claim by the second Respondent in Civil Suit No. 467 of 2013 where the outstanding amount from the first Appellant to the second Respondent was USD 337,000. The second claim was by CTM Mauritius against the first Appellant where the Appellant was to pay USD

884,942. The third claim was the dispute over the use by the first Appellant of the name CTM Uganda and all the trademarks related to CTM Uganda.

Counsel for the Appellant also submitted that later on the first to third Respondents in a letter dated 13th November 2014 proposed that the first Appellant pay them USD 2,000,000 in full and final settlement of the claims. He argued that this amount could not be accounted for or justified even though the Fourth Respondent in a letter dated 5th December 2015 replied by counter offering USD 1,500,000. To this amount the first to third Respondent counter offered to accept USD 1, 700, 000. They finally agreed on USD 1,650,000 in full and final settlement of the suits.

Counsel for the Appellant submitted that the chronology of how the fourth Respondent and the first to third Respondent arrived at the Figure USD 1,650,000 pointed to fraud because there was no basis for the funds being over and above the total amount of USD 1,221,942 in the suits in court.

Finally, counsel for the Appellant submitted that the land that was staked for execution in case of breach of the consent was more valuable than the USD 1,650,000 that the first Appellant undertook to pay in the consent agreement. He submitted that the land comprised in LRV 4293 Plots 26-28 Kibuli in Kampala was valued at USD 4,000,000.

In reply to the general ground on fraud, counsel for the Respondent submitted that the Appellants had not demonstrated how the fourth Respondent had colluded or conspired or acted with intention to defraud the Appellants. He argued that there was no evidence that was produced in courts to prove the fraud.

Counsel for the Respondent submitted that the affidavit of Peter Swanton merely showed the chronology of negotiation and the series of discussions between the first to third Respondents and the Appellants represented by their agent Gregory Magezi.

In reply to the submission that the default self -executing clause within the consent Judgment was fraudulent, counsel for the Respondent submitted that that this clause was only operational in the event the Appellants failed to pay the Appellants. That is when the land would be transferred to the first to third Respondents. He further argued that the Parties knew the value of the land at the time the consent was being made.

Findings and decision of Court

I have addressed my mind to the submissions of both counsel on these four grounds and the authorities relied on for which I am grateful.

At the heart of the contestations is how companies are governed and how company decisions are taken. In other words, the grounds revolve around the subject of corporate governance. I shall address these grounds generally to espouse the general principles before I focus on the actual grounds presented in this appeal.

The starting point cannot be better put than what the trial Judge did when he (at page 353 of the Record of Appeal) referred to the speech of Viscount Haldane L.C. in **Lennards Carrying Co V Asiatic Petroleum Co. Ltd** [1915] AC 705 when he stated:

'My Lords, a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be

sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. That person may be under the direction of the shareholders in general meeting; that person may be the board of directors itself, or it may be, and in some companies it is so, that that person has an authority co-ordinate with the board of directors given to him under the articles of association, and is appointed by the general meeting of the company, and can only be removed by the general meeting of the company.'

It is therefore important to understand that a company acts by way the agency of its directors, shareholders or directors. The question then is and indeed this is the argument of the Appellants – how then do you establish the authority to act for the company?

The Companies Act 2012 provides as follows in Section 52:

"52. Power of directors to bind the company.

(1) The power of the board of directors to bind the company or authorise others to do so in favour of a person dealing with the company in good faith shall not be limited by the company's memorandum.

(2) For the purposes of subsection (1)— (a) a person "deals with" a company if he or she is a party to any transaction or other act to which the company is a party; and (b) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The references in this section to limitations on the directors' power under the company's memorandum include limitations deriving from—

(a) a resolution of the company in a general meeting or a meeting of any class of shareholders; or

(b) any agreement between the members of the company or of any class of shareholders.

(4) Subsection (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfillment of a legal obligation arising from a previous act of the company.

(5) Subsection (1) does not affect any liability incurred by the directors or any other person, by reason of the directors' exceeding their powers..."

The board of directors of a company will therefore have wide latitude to bind a company notwithstanding provisions of the company's memorandum and articles of association subject always to the test of good faith. This is expected because shareholders (who have invested in the company expecting a return) will not always have time to manage a company on a day to day basis so would delegate management to a board of directors and the company's management. A third party or person dealing with the company then can feel confident that in dealing with a company's board of directors that they will commit the company. Even before the preceding provisions of the law, at common law Lord Hatherly in the case of **Mahoney V East Holyford Mining Co** (1875) L R 7 HL 869 established what has now become known as the "indoor management rule" when he held:

[W]hen there are persons conducting the affairs of the company in a manner which appears to be perfectly consonant with the articles of association, then

those so dealing with them, externally, are not to be affected by any irregularities which may take place in the internal management of the company. They are entitled to presume that that of which only they can have knowledge, namely, the external acts, are rightly done, when those external acts purport to be performed in the mode in which they ought to be performed."

It would make business difficult if persons dealing with a company in good faith would always have to ascertain for themselves that the internal procedures of a company have been complied with before they conclude a transaction. If a company through its directors holds out that they are authorised to deal with external persons then the onus is on them to ensure that all internal authorisations have been secured. A lot of course will revolve around the facts of the said dealings.

I shall now briefly return to the facts of this case to establish the course of dealings in this dispute. From the facts it does not take much to deduce that the third Appellant (Joseph Magezi) and the fourth Respondent (Gregory Magezi) are part of the same family (sometimes referred to as the "Magezi family" see page 266 of the Record of Appeal). From the Company Register (page 21 of the Record of Appeal) it can further be deduced that the first Appellant Company is owned by:

1. Prime Holdings Ltd (shares not clear because of poor photocopying)
2. Tim Magezi (10 shares)
3. Paul Magezi (10 Shares)
4. Joseph Magezi (10 Shares)

Prime Holdings Ltd (pages 254 to 259) is owned a collection of other shareholders namely:

1. Fam Holdings Ltd (34 shares)
2. Focus Holdings Ltd (34 Shares)
3. Gregory Magezi (32 shares)

The Directors of Prime Holdings Ltd are:

1. Gregory Magezi
2. Tony Murungi
3. Benedict Wandera

From the pleadings and correspondences (which fact is not denied See pages 158 and 170 of the Record of Proceedings) Gregory Magezi was the Managing Director of the first Appellant Company CTM Uganda Ltd. Another director of the first Appellant Company was Benedict Wandera (Page 198 of the Record of Appeal). The first Appellant Company dealt in tiles and other ceramic products.

In October 2008, CTM Uganda Ltd represented by its Managing Director Gregory Magezi entered into a joint venture with Italtile Ceramics (Pty) Ltd of South Africa represented by it director Peter David Swatton. The joint venture created another joint company as a special purpose vehicle called Allmuss Properties (Uganda) Ltd. It would appear to that the parties hereto had a long working relationship because Italtile Ceramics (Pty) Ltd held the intellectual rights to the name CTM which name the first Appellant company traded by.

The joint venture company Allmuss Properties (Uganda) Ltd would be owned as follows:

1. 55% by Italtile Ceramics (Pty) Ltd and

2. 45% by CTM Uganda Ltd.

However, for CTM Uganda Ltd to pay up its 45% shareholding in Allmuss Properties (Uganda) Ltd, Italtile Ceramics (Pty) Ltd would advance them a loan of USD 337,500; against the security of the same 45% shares. It is the case for the second Respondent that CTM Uganda Ltd failed to repay the loan for shares.

However, another dispute arose when CTM Uganda Ltd was indebted to one Ceramics Industries Ltd in the amount of USD 631,161.21 which Italtile Mauritius Ltd cleared on behalf of CTM Uganda Ltd. It was agreed that CTM Uganda Ltd would refund this money. Furthermore, CTM Uganda Ltd would borrow a further USD 380,000 from Italtile Mauritius Ltd. Both sums (USD 1,011,161.67) would be treated as loan to CTM Uganda Ltd attracting an interest of 5% pa. in all these transactions Gregory Magezi as Managing Director of CTM Uganda Ltd and Peter Swatton on behalf of the "Italtile group" were involved. It is the case for the "Italtile group", that CTM Uganda Ltd defaulted on all the advances given to them and has an outstanding balance due of USD 884,942.08.

These defaults led to litigation in the Ugandan Courts in High Court Civil Suit No. 467 of 2013 for the USD 337.00 and High Court Civil Suit No 800 of 2104 for the USD 884,942.08. It is these suits and the various interlocutory applications that arose from them which are the subject of the impugned consent judgment. I shall not reproduce the entire consent Judgment but rather deal with the specific areas referred to it where there are contentions leading to the prayers of the Appellant that it be set aside. But suffice to say that the bulk of the negotiations leading to the consent Judgment were done

between Gregory Magezi and Peter David Swatton with the assistance of their respective lawyers.

Change of name.

It case of the Appellants that the change of name from M/s CTM Uganda Ltd to M/s Deco Tiles Ltd (effected under para 6 of the consent Judgment), was illegal and unenforceable because it did not follow the requirements of the law especially Section 40 of the Companies Act to obtain a resolution in agreement of the shareholders of the first Appellant. It was pleaded for the Appellants that there was no general or special meeting of the first Appellant Company to sanction the name change and therefore no resolution to that effect.

Section 40 (1) of the Companies Act provides:

"A company may by special resolution and with the approval of the registrar signified in writing change its name..."

The trial Judge addresses this question of change of name at pages 356 to 357 of the Record of Appeal. He pointed to the letter dated 31st August 2015 from the first Respondent Company which inter alia stated that:

"...CTM Uganda Limited conceded ***in good faith*** *to a name change notwithstanding the fact that this subject was not part of the main suit..." (Emphasis mine)*

The Judge noted that this letter was before the Appellant went to Court to challenge the consent Judgment. I agree. Why was the change of name contested at this early stage? It has also been argued that Gregory Magezi was

not a shareholder in the Appellant Company and so could not sign a resolution to change the name of the first Appellant Company. This argument I find to be self-defeating because it has not been denied that Gregory Magezi was the Managing Director of the first Appellant Company and it is settled that companies express their will through the actions of their directors. Throughout the dealings of the protagonists in this dispute, Gregory Magezi held out as duly authorised to represent the first Appellant company and this was never contested; leading significant amounts of money being extended to the first Appellant company. Whereas the it is true that the Special Resolution dated 25th May 2015 to change the company name states in the body that the meeting that was held authorizing the resolution was a board of directors meeting and not a shareholders meeting, I finding that under the indoor management rule this error cannot be used against third parties especially if such action was done in good faith as stated in the company's letter of the 31st August 2015. In any event as the trial Judge pointed out the Registrar of Companies by letter dated 10th July 2015 accepted the change of name which was then advertised in the Uganda Gazette as notice to all. I am therefore unable to find this process illegal and unenforceable as alleged. Reference to the issues on change of name and authority to sign fail.

Resolution in the names of Prime Holdings Ltd

The Appellants argued that the trial Court erred when it found that Gregory Magezi could use a Resolution made in the names of the second Appellant company (Prime Holdings Ltd) as authority to sign the consent Judgment which is now binding on the first Appellants (CTM Uganda Ltd).

I shall reproduce this Resolution here for clarity;

"that the managing Director of Prime Holding Ltd, Mr. Gregory Magezi be and is hereby authorized for purposes of raising additional capital to pay of ***CTM'S*** *liabilities and or to finance the business of CTM Ltd, to transact the shares of Prime Holdings Ltd in any way he deems appropriate including but not limited to selling, mortgaging, charging and or assigning the said shares.*

"That the Managing Director of Prime Holding Ltd is hereby authorized to enter into negotiations in respect of the above, and to execute any documents and perform all things requisite or necessary to the selling, mortgaging, charging and or assigning of the said shares."

The trial Judge deals with this matter at pages 349 to 352 of the Record of Appeal. He noted that this resolution which gave the fourth Respondent very wide powers was dated 12 November, 2005 long before any of the disputes referred to herein took place. Furthermore, the Appellants relied on this resolution when entering into the joint venture with the first to third Respondents in 2008 without any challenge to it. The trial Judge then relied on Section 53 of the Companies Act which provides:

"...A party to a transaction with a company is not bound to enquire whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorize others to do so..."

He found that any outsider to the first Respondent company was entitled to assume that internal procedures to effect this long standing relation between had been complied with without cross checking for any irregularities. I agree. Certainly the Resolution in question is problematic as it relates to just one shareholder of the first Appellant company. However, the first Respondent company at the time took full benefit of the now impugned Resolution to deal

with the first to third Respondent, borrowing money and even paying some back. I find that given the period over which these dealing took place (about ten years), this ground is nothing more than an afterthought. Reference to the issues of the resolution and the duty of the Respondents to inquire into the procedures of the first Respondent Company also fail.

Allegations of fraud.

It is a ground that the trial Judge erred in not finding that the consent Judgment was a product of fraud, counsel for the Appellant submitted that the trial Court ignored vital evidence on record.

The trial Judge dealt with the allegation of fraud at page 356 of the Record of Appeal and found:

"... on the allegation that the 4th Respondent colluded with the other Respondents to defraud the Applicants, I find no proof of such collusion as claimed. The 4th Respondent was authorised by the Applicants to represent it. He may have made errors in his mandate that however does not amount to collusion or fraud. I find no merit in this ground and it fails..."

I generally agree with this finding as well and for the reason that follow.

The bulk shareholders in the first and second Appellant companies are family. It is incredible to imagine that for such a long time they did not know that dealings of such a magnitude were going on as they suggest in their letter of the 19th October, 2015. More significantly, that letter is totally silent as to the debt owed by the first Appellant company to the first to third Respondents. The letter dated 19th October, 2015 is addressed to:

"The Managing Director

CTM Uganda Limited

Kampala

Attn: Mr Gregory Magezi"

It refers to Gregory Magezi taking decisions without the consent of the shareholders or Board of Directors and yet there are resolutions which are signed of the Board where other persons also signed like the company secretary to change the name of the company (page 206 of the Record of Appeal) and another Director Benedict Wandera to transfer the interest in the land at Plots 26-28 Kibuli Road Nsambya (page 248 Record of Appeal). Since other persons on the Board also signed those Resolutions the allegations against Gregory Magezi (acting as Managing Director) alone are totally unfounded.

It was also argued that there was no basis for the funds settled at I the consent judgment being over and above the total amount of USD 1,221,942 in the suits in court. There was therefore no justification of how the fourth Respondent and the first to third Respondent arrived at the Figure USD 1,650,000 and this pointed to fraud. But again the arguments of the Appellants skirt the whole issue of interest at 5%pa on these figures.

Finally, it was also argued that the land that was staked for execution in case of breach of the consent was more valuable than the USD 1,650,000 that the first Appellant undertook to pay in the consent agreement. Counsel for the Appellants submitted that the land comprised in LRV 4293 Plots 26-28 Kibuli in Kampala was valued at USD 4,000,000. Whereas it is possible the land at

Kibuli was valued higher than the debt the Valuer's Report (Pages 172-182) only contains a fair market value without a forced sale value which is common in such reports. It is not possible as a result possible to estimate the value of the land if sold under stressed conditions. In any event, if the land was easy to sell it should have been sold earlier to avoid debt default which was not done. Reference to this ground also fails.

All in all, issues 1, 2, 3 and 4 fail.

Issue No 5: Whether the trial Judge erred in law and fact when he found that the 4th Respondent had shares in the 1st Appellant.

Appellant's Submissions

Counsel for the Appellant submitted that the trial Judge made an error of fact and law when he made a finding that the fourth Respondent as a shareholder in Prime Holdings also had shares in the first Applicant.

Counsel for the Appellant submitted that this was a misstatement of the law that went against the principles of corporate personality where a company upon incorporation becomes a corporate body in its own name and the shareholders are members of that company.

He submitted that for a person to be a shareholder he must either subscribe to the memorandum and articles of association of that particular company or become a shareholder by transfer or transmission of shares.

He submitted that this error occasioned a miscarriage of justice in so far as the trial Judge based on this wrong proposition of the law to hold that the fourth

Respondent as a shareholder could also sign the impugned resolution as a shareholder in the first Appellant.

Secondly, counsel for the Appellant submitted that the trial Judge ignored the fact that the fourth Respondent signed the resolution as a director in the first Appellant not a shareholder and the resolution clearly shows that it was a decision taken as Board of Directors.

Thirdly, it was submitted by counsel for the Appellant that the trial Judge ignored the memorandum and articles of association which clearly indicates that the fourth Respondent was not a shareholder.

Respondent's submissions

Counsel for the Respondent did not make any submissions on this ground.

Findings and Decision

The trial Judge at 357 of the Record of Appeal found:

"...In my view the 4th Respondent as a shareholder of Prime Holdings Ltd also had shares in the first Appellant. The annual returns filed on and on behalf Rime Holdings Ltd as of 31st December 2011 indicate that the 4th Respondent held 31% of the shares. He in my view signed the resolution as such..."

Here with due respect I find that the trial Judge erred in fact. The fact is that it was Prime Holdings Ltd that had shares in the first Appellant Company not the fourth Respondent. This error of fact notwithstanding I have already found that the fourth Respondent was the Managing Director of the first Appellant and could therefore sign any document in that capacity. So I still find that the fourth Respondent could sign the documents of the first

Respondent for other reasons because he was the company's Managing Director.

The fifth issue is answered in the affirmative.

Issue No 6: Whether the trial Judge erred in law and fact when he failed to properly evaluate the evidence on record thereby arriving at the wrong conclusions.

I have already answered this issue while resolving other issues so I will not repeat myself on it.

FINAL ORDERS

This Appeal therefore fails on all grounds with the exception of the 5th ground which succeeds in part.

Since the Respondents in the final event have successfully defended the Appeal, I award them the costs in this Appeal and the trial court.

I SO ORDER.

Dated at Kampala this 22nd **day of** Feb **2021.**

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HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA