THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 0069 OF 2013

1. JOHN TIBORUGABA KASANGAKI
(TRADING AS JOKAS, BULLION MINERS J.K, ROADMASTER JOKAS)
2. BULLION MINERS LTD::APPELLANTS

VERSUS

1. RAJEEV JAIN
2. RAJESH JAIN
3. SANJEEV JAIN T/A R & R BIKES
4. VISHAL BHAKSHI::RESPONDENTS

(Appeal from the decision of the High Court of Uganda at Kampala (Commercial Division) before Lameck N. Mukasa, J. dated the 18th day of May, 2012 in Civil Suit No. 0100 of 2004.)

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA
HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. LADY JUSTICE IRENE MULYAGONJA, JA

JUDGMENT OF ELIZABETH MUSOKE, JA

This appeal is from the decision of the High Court (Lameck N. Mukasa, J.) in a suit filed by the respondents against the appellants in which judgment was entered in favour of the respondents.

Background

The facts of the case are that the 1st, 2nd and 3rd respondents are Indian Citizens, and were at all material times trading in a partnership known as R & R Bikes registered under the Indian Partnership Act, 1932. The 1st appellant is a Ugandan Citizen, who, with regards to the contracts in issue traded under different names, to wit: Jokas, Bullion Miners J.K and Roadmaster Jokas. The 1st appellant is also a shareholder and director in the 2nd appellant company.

Sometime in 1997, a contract was concluded between the 1st appellant on his behalf and as the learned trial Judge found, on behalf of the 2nd appellant,

on the one hand; and the 1st, 2nd and 3rd respondents, trading as R & R Bikes on the other hand. The learned trial Judge found that this contract was concluded with the 4th respondent as an agent of R & R Bikes in which the 1st, 2nd and 3rd respondents were partners. The contract was for sale of goods, consisting of bicycles and bicycle parts, by R & R to the appellants. The learned trial Judge found that under the relevant contracts, the appellants were to pay for the goods supplied by telegraphic transfer from Uganda Commercial Bank (UCB) to an account held by R & R Bikes in the State Bank of India. Goods worth US Dollars 151,271 were supplied to the appellant in 5 separate consignments between May 2001 and January 2002. The appellants remitted payments of US Dollars 97,400, leaving an outstanding amount of US Dollars 53,871. R & R Bikes never received the outstanding amounts despite requests to the appellants to remit the same. As a result, the suit in the High Court was filed against the appellants for recovery of the outstanding sums of money under the relevant contracts.

The suit was filed by the 1st, 2nd and 3rd respondents as partners in R & R Bikes; as well as the 4th respondent as an agent of R & R Bikes, against the appellants. The respondents' claim against the appellants, jointly and severally, was for recovery of US Dollars 53,871 or its equivalent in Ugandan currency with interest; general damages and costs of the suit. The 1st appellant's defence was that he never dealt with the 1st, 2nd or 3rd respondents, either as individuals, or while they traded as R & R Bikes. Instead, the 1st appellant pleaded, that he dealt with the 4th respondent who was known to him as a person engaged in the business of sale of bicycles and bicycle parts in his individual capacity and not as an agent of the 1st, 2nd and 3rd respondents. The 1st appellant claimed that all the goods supplied by the 4th respondent were paid for, and no monies were left outstanding to him. The 2nd appellant pleaded that it had never dealt with the respondents at all.

After hearing the evidence adduced for the parties, the learned trial Judge believed the respondents' case and entered judgment in their favour. He found that the appellants dealt with the 4th respondent as an agent of the

1st, 2nd and 3rd respondents in their partnership R & R Bikes. The respondents supplied the appellants with goods which were partly paid for, leaving an outstanding balance of US Dollars 53,872. The learned trial Judge entered judgment for the respondents for that sum with interest at court rate from the date of judgment till payment in full. He also awarded general damages in the sum of Ug. Shs. 15,000,000/=, with interest at court rate till payment in full; as well as costs of the suit. Being dissatisfied with the decision of the learned trial Judge, the appellants now appeal to this Court on the following grounds:

"1. **The learned trial Judge erred in law and fact when he held that there was an oral contract between the appellants and the 1st, 2nd and 3rd respondents.**

2. **The learned trial Judge erred in law and fact when he extended the oral contract between the 1st appellant and the 4th respondent to include the 1st, 2nd and 3rd respondents who were strangers to the 1st appellant.**

3. **The trial Judge erred in law and fact when having found that the respondents entered into an oral agreement with the 1st appellant he proceeded to enter judgment and make orders against the 2nd appellant.**

4. **The learned trial Judge erred in law and fact when he found that the 4th respondent who contracted with the 1st appellant was a commission agent of the other respondents and proceeded to disassociate and exclude him from the rest of the respondents.**

5. **The learned trial Judge erred in law and fact when he held that the 1st appellant who contracted with the 4th respondent dealt with the 1st, 2nd and 3rd respondents as principals.**

6. **The learned trial Judge erred in law and fact when he ignored the money the 1st appellant paid to 4th respondent in discharge of the contract between them and held that the only recognized mode of payment in the oral agreement was through the bank.**

7. **The learned trial Judge erred in law and fact when he found that the money in figures and words paid to and acknowledged on receipts signed by the 4th respondent were insertions.**

8. **The learned trial Judge erred in law and fact when he relied on an inclusive (sic) handwriting expert's report and without examining its author.**

9. **The learned trial Judge erred in law and fact when he found that the money the 4th respondent received from the appellants did not discharge the 1st appellant's contractual obligations.**

10. **The trial Judge erred in law and fact when he made a finding of fraud and forgery which were not specifically pleaded and particularized by the respondents in their pleadings.**

11. **The learned trial Judge erred in law and fact when he failed to properly evaluate and appraise the evidence on record as a whole and thereby arrived at wrong conclusions and findings."**

The appellants prayed this Court to allow the appeal; set aside the orders of the lower Court and substitute there for such orders as this Court deems appropriate; and award the costs of this appeal and those in the lower Court with certificate of two counsel to the appellants. The respondents opposed the appeal.

Representation

When the appeal was called for hearing, Dr. James Akampumuza, learned counsel appeared for the appellants. Mr. Ntende Fredrick Samuel, appeared for the respondents. The 1st appellant was present. The Court gave the parties a schedule for filing written submissions which was adhered with. The parties' written submissions are on Court record and have been considered in this judgment.

Appellants' submissions

Counsel for the appellants proposed 12 issues to guide in the determination of this appeal. Although those issues are related to the grounds set out in the appellant's memorandum of appeal, they are not worded in the same manner as the grounds and neither is their numbering similar to that of the grounds. The issues are as follows:

"1. Whether the learned trial Judge erred in law and fact when he held that there was an oral contract between the appellants and the 1st, 2nd and 3rd respondents.

2. Whether the trial Judge erred in law and fact when having found that Vishal entered into an oral agreement with the 1st appellant he proceeded to enter judgment against the 2nd appellant.

3. Whether the learned trial Judge erred in law and fact when he made orders against the 2nd appellant based on an oral contract between the 1st appellant and 4th respondent to which it was never a party.

4. Whether the learned trial Judge erred in law and fact when having found that Vishal was a commission agent of the rest, he proceeded to exclude him from them.

5. Whether the learned trial Judge erred in law and fact when he held that the appellants who contracted with Vishal dealt with the 1st, 2nd and 3rd respondents as principals.

6. Whether the learned trial Judge erred in law and fact to hold that the only recognized mode of payment was through the bank.

7. Whether the learned trial Judge erred in law and fact when he ignored incontrovertible evidence that the 1st appellant paid moneys to 4th respondent as a mode of execution of the contract.

8. Whether the learned trial Judge erred in law and fact when he found that some figures were insertions and exonerated Vishal.

9. Whether the learned trial Judge erred in law in failing to find that money received by 4th respondent discharged the appellant's obligations.

10. Whether the trial Judge erred in law and fact when he made a finding of fraud and forgery when the same were not pleaded and particularized by the respondent's pleadings.

11. Whether the learned trial Judge erred in law and fact when he failed to properly appraise the evidence on record as a whole and thereby arrived at wrong conclusions and findings.

12. What remedies are available?

Issues 1, 2, 3, 4, 5, 6, and 11

Counsel argued the above issues jointly. He submitted that the learned trial Judge misdirected himself on whether the respondents as the plaintiffs discharged their burden of proving the case against the appellants. Counsel pointed out that there were three issues agreed upon for determination of the suit in the lower Court namely; 1) What was the relationship between the 4th plaintiff and the first three plaintiffs? 2) Whether at all the material times the 4th plaintiff was dealing with the defendants or any of them as a principal or as a commission agent of first three plaintiffs? 3) What were the modes of payment for the supplies received by the Defendants? Counsel contended that the 3 issues, which were central to the respondents' case were left unanswered and their case ought to have failed. Relying on **Section 101** of the **Evidence Act, Cap. 6**, counsel noted the general rule that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. Counsel asserted that in failing to answer the issues, the respondents failed to discharge their burden of proof and it was an exercise in futility for the learned trial Judge to delve into further evidence. He invited this Court to find this point in favour of the appellants and overrule the learned trial Judge's decision.

It was further the submission for the appellants that the learned trial Judge erred in entering judgment against the 2nd appellant, a separate legal entity which had no dealings with the respondents at all. Counsel submitted that at the trial, it was an agreed fact for the parties that the relevant contract was concluded between the 1st appellant and the 4th respondent. The learned trial Judge acknowledged as much in part of his judgment, yet counsel contended, he contradicted this finding with a different finding that the 1st appellant was trading as the 2nd appellant. Counsel submitted that the 1st and 2nd appellants were two separate legal entities, and the learned trial Judge's finding otherwise, amounted to him irregularly lifting the corporate veil without any hearing, basis or grounds for doing so. Counsel cited the authority of **Salomon vs. Salomon & Co. Ltd [1897] AC 22** in support of the notion of legal personality and separateness between a company and

its shareholders and directors. Relatedly, counsel pointed out that the learned trial Judge confused the 2nd appellant with "Bullion Miners J.K" a business name with which the 2nd appellant had no connection. Counsel submitted that the fact that the 2nd appellant was a separate legal entity with no dealings with the respondents was pleaded and there was no evidence adduced at the trial to rebut this assertion. In counsel's view, there was no cause of action for any of the respondents against the 2nd appellant. Counsel concluded by submitting that judgment was wrongfully entered against the 2nd appellant and prayed that this Court overrules the findings of the learned trial Judge against the 2nd appellant with costs.

Counsel also faulted the learned trial Judge for allegedly deviating from the facts agreed upon by the parties at the scheduling conference. One such agreed fact was that the 4th respondent was the only party privy to the relevant contract with the 1st appellant. The other fact was that the 4th respondent entered into an oral agreement with the 1st appellant and was therefore a principal in his own right. The learned trial Judge omitted to make reference to these facts in the opening statement of facts in his Judgment, something, which in counsel's view affected his evaluation of the evidence of the case. Counsel submitted that these facts, which arose out of the parties' pleadings and their admissions at scheduling were consistent with the parties' relations and therefore binding on the parties and the Court. Counsel cited the decisions in **Tororo Cement Co. Ltd vs. Frokina International Ltd, Supreme Court Civil Appeal No. 2 of 2001**; and **Stanbic Bank (U) Ltd vs. Uganda Crocs Ltd, Supreme Court Civil Appeal No. 4 of 2004** as providing authority in support of his submissions. In the Stanbic Bank (U) Ltd, it was observed that a scheduling conference is, inter alia, to sort out issues over which parties are agreed so that there is no litigation over them. Counsel also referred to **Section 22** of the **Evidence Act, Cap. 6** to the effect that facts which are admitted need not to be proved. Counsel submitted that the learned trial Judge failed to apply or bring to his aid the above authorities which were binding on him. Counsel further submitted that the learned trial Judge erroneously failed to take into account the appellants' submissions in the trial Court. Counsel cited the

Supreme Court decision in **Paul K. Ssemogerere and 2 Others vs. Attorney General, Constitutional Appeal No. 1 of 2002** where the Supreme Court faulted the Constitutional Court for rendering judgment without making reference to the parties' submissions. In the same decision, the Supreme Court also stated that "where a court ignores or overlooks a binding precedent and decides a case as if that precedent does not exist, its decision is said to be a decision per incuriam." Counsel prayed that this Court overrules the trial Judge's decision for having been entered in disregard of the parties' agreed facts and admissions and upholds the appeal.

Counsel further submitted that the learned trial Judge erred in finding that the 4th respondent was an agent of the 1st, 2nd and 3rd respondents as partners trading in the firm name of R & R Bikes. Counsel contended that this finding ignored the respondents' pleadings which stated that R & R Bikes was involved in the relevant contract which was concluded in 1997. Counsel pointed out that according to the relevant registration documents (Exhibits P.36 and P.37), R & R Bikes was registered in 2000. He then argued that a firm registered in 2000 could not retrospectively get involved in a contract which was concluded earlier in 1997, as brought out in the respondents' pleadings. Counsel cited Order 6 rules 6 and 7 of the CPR and the Supreme Court decision in **Interfreight Forwarders vs. East African Development Bank [1990-1994] EA 117** at page 125 in support of his submissions on this point.

It was further the submission of counsel that the learned trial Judge had erred to enter judgment in favour of the respondents on facts which involved departure from the respondents' pleadings. Counsel contended that before the plaint was amended, the 4th respondent averred that he never received any money from the appellants. In the amended plaint filed after the appellants had filed their defence, the respondents introduced the 4th respondent as a party to the relevant contract. While giving evidence, the 1st and the 4th respondents stated that the appellant had not made any payments to the 4th respondent, which represented a departure from their

pleadings. Counsel contended that the 1st to 3rd respondents should have sued the 4th respondent for money he received from the 1st appellant.

Counsel for the appellants further submitted that the 1st, 2nd and 3rd respondents were not privy to the oral contract for supply of bicycles and bicycle parts concluded between the 1st appellant and the 4th respondent. Counsel argued that under the doctrine of privity of contract, a contract cannot confer rights or obligations to a person not party to it. For the principles on privity of contract, counsel relied on the authorities of **Tweedle vs Atkinson [1861] 121 ER 762;** and **Dunlop Pneumatic Tyre Co. Ltd vs. Selfridge Ltd [1915] AC 847** in support of his submissions. Counsel contended that in the present case, the 1st appellant's unrebutted evidence was that he contracted with the 4th respondent and did not know the 1st, 2nd and 3rd respondents, whom he met for the first time in Court. The said respondents, were in counsel's view not identifiable in the relevant oral contract by which the relevant consignment of goods was supplied. Thus, in counsel's view the 4th respondent could not turn around and unilaterally claim that he was an agent in the said contract. Counsel contended that everything alleged by the 4th respondent connected to agency was untrue. Therefore, there was, in counsel's view no justification for the learned trial Judge's finding that a contractual relationship existed between the 1st, 2nd and 3rd respondents, who in counsel's view were strangers to the relevant contract, and the 1st appellant.

Further, in his submissions, counsel for the appellants contended that the learned trial Judge treated the respondents' cause of action in a disjointed manner which was prejudicial to the appellants' case. The 4th respondent did not disclose the fact of his being an agent to the 1st appellant at the time of concluding the relevant contract. Counsel contended that even at the trial, not only was it an agreed fact that the 4th respondent concluded the relevant contract with the 1st appellant, in his own right, but he also gave evidence at the trial to the effect that he dealt with the 1st appellant in that manner. Counsel submitted that the learned trial Judge erred when he relied on documents of export and import to reach a contrary finding. Counsel further

submitted that even if the 4th respondent was a commission agent, his principals could not approbate and reprobate to deny that the 4th respondent received money as the appellant alleged him to have done.

Counsel further faulted the learned trial Judge for awarding the respondents sums of money with figures which were inconsistent with those set out in the respondent's pleadings. This in counsel's view proved that the learned trial Judge had failed to properly appraise the evidence on record.

Counsel concluded with a prayer that this Court resolves issues 1, 2, 3, 4, 5 and 11, and answers grounds 1, 2, 3, 4, 5, 6 and 12 in favour of the appellants.

Issues 6, 7, 8 and 9

Counsel submitted that the evidence adduced for the appellants at trial established that payments were made to the 4th respondent, with whom the relevant contract on which the respondents' cause of action was based, was concluded. Counsel referred Court to the evidence of the 1st appellant and that of Kyomukama in support of the appellants' case. Counsel faulted the learned trial Judge for erroneously concluding that there was one static mode of payment which was made through the bank in disregard of evidence which showed that at times cash payments were made to the 4th respondent. Counsel contended that the learned trial Judge's conclusions on this point overlooked the 4th respondent's admissions that he received cash payments from the 1st appellant in both Uganda shillings and dollars. In any case, according to counsel, evidence that the 1st appellant paid cash to the 4th respondent was a departure from the respondents' pleadings which claimed that they had received no money at all from the appellant in respect to the supplies in issue. Counsel argued that this departure diminished the respondents' case.

Counsel further submitted that the respondents failed to exhibit their accounts which would have proved that no money was paid by them to the 1st appellant. In counsel's view, the monetary awards of damages, interest

and costs made to the respondents notwithstanding the above failure were "against equity and violated known legal principle".

Counsel submitted that the respondents had at the trial, withheld the evidence showing that the 4th respondent had received money. Further that the learned trial Judge erred when despite earlier finding that the relevant contract was an oral one between the 4th respondent and the 1st appellant, he proceeded to rely on the evidence of the 1st respondent concerning a contract they were not party to.

Counsel submitted that the key evidence for the respondents given by the 4th respondent should not have been relied on. While the 4th respondent first stated that the mode of payment under the relevant contract was done through telegraphic transfer, and that money to the tune of US Dollars 53,700 had not been paid by the 1st appellant, the 4th respondent later stated that he went to the 1st appellant's offices in Kampala and Mbarara to demand for payment of the outstanding monies, where he was given money for sustenance and upkeep. During cross examination, the 4th respondent admitted to having received and signed for cash payments indicated in exhibits D1 and D2, but denied the figures included therein stating that they were altered by insertions. Counsel noted that while the respondents adduced evidence of a handwriting expert to prove the insertions as alleged, that evidence was not credible. Counsel submitted that the respondents' evidence was further discredited by several lies told by the 4th respondent. Counsel further pointed out that in cross examination, the 4th respondent had changed his evidence stating, not that he wasn't paid any money at all, but that the money he was paid by the 1st appellant was not to the tune indicated in exhibits D1 and D2.

Counsel invited this Court to re-evaluate the evidence on record and find in the appellants' favour. This evidence shows that the payments contained in exhibits D1 and D2, which were belatedly admitted in the 4th respondent's evidence negated the respondent's cause of action. Thus, in counsel's view, the learned trial Judge erred in believing the 4th respondent's evidence.

Counsel further faulted the learned trial Judge for relying on the relevant expert evidence, namely: a report on examination of documents (Exhibit P. 38) and PW3's evidence, as corroboration for the 4th respondent's evidence that he was not paid any money by the 1st appellant. Counsel contended that the 4th respondent himself testified that he had been paid by the 1st appellant as indicated in exhibits D1 and D2. If those exhibits were fraudulent, it was incumbent on the respondents to report the fraud to the police, which they never did. Failure to so report could not be fixed by handwriting evidence to show that the relevant exhibits had alterations. Moreover, the expert evidence was hearsay evidence arising from a report, whose author did not testify as a witness. Counsel submitted that considering the entirety of the circumstances, the expert evidence was weakened and should not have been relied on as there was a proper and cogent basis for rejecting the same on the strength of the principles articulated in the authority of **Kimani vs. Republic [2000] EA 417.**

Counsel further submitted that in denying his signatures on exhibits D1 and D2, the 4th respondent attempted to set up the defence of non-est factum, which was not open to him on the facts. Counsel cited the authority of **Saunders vs. Anglia Building Society [1971] AC 1004** in support of his submissions, and prayed that this Court resolves issues 6, 7, 8 and 9 in the appellant's favour.

Issue 10

Counsel submitted that this issue concerned the learned trial Judge's legal error in making a finding based on fraud and forgery in favour of the respondents, yet the cause of action in that regard was not pleaded as stipulated in order 6 rule 3 of the Civil Procedure Rules S.I 71-1. The respondents raised the allegations on fraud in their evidence which was inappropriate, and yet, the learned trial Judge believed those allegations. In counsel's view, this was erroneous. Counsel thus prayed that this Court resolves issue 10 in the affirmative.

As to the remedies, counsel for the appellants prayed that this Court allows the appeal, sets aside the orders of the lower Court and substitutes there for

orders dismissing the respondents' suit in the trial Court. On costs, counsel prayed that this Court grants costs to the appellants, with costs of two counsel, the costs of this appeal and those in the lower Court.

Respondents' submissions

Grounds 1, 2, 3, 4 and 5

Counsel for the respondents, in support of the lower Court's decision, refuted the assertions by counsel for the appellants that the learned trial Judge found that the relevant contract was an oral one concluded between the 4th respondent and the 1st appellant only. Counsel submitted that contrary to the appellant's contention that they had no contractual relationship with the 1st, 2nd and 3rd respondents, the documentary evidence as well as the 1st appellant's admissions in his pleadings indicated that the appellants acknowledged having received 5 consignments of goods originating from R & R Bikes, the trade name for the 1st, 2nd and 3rd respondents. In counsel's view, this was an admission by the appellants of the existence of a contract with the 1st, 2nd and 3rd respondents.

Making reference to documentary evidence consisting of drafts, invoices, packing lists, bills of lading and release orders in respect to the consignments in issue, counsel for the respondents prepared by the 1st respondent, acting in the name of the partnership R & R Bikes, when he consigned goods to the appellants. Counsel contended that the 1st appellant received the said documents on his behalf and on behalf of the 2nd appellant. Counsel submitted that the documents raised the question whether, if the appellants were dealing with the 4th respondent as the principal, would it make sense for the 1st appellant and the 4th respondent, jointly to place orders with the 1st respondent in respect of the same transaction? Counsel contended that the answer to the question, must necessarily be given in the negative and would contradict the appellants' assertion that they did not know or deal with the 1st, 2nd and 3rd respondents.

Counsel pointed out that in his testimony, the 1st appellant admitted that none of the relevant documents were signed by the 4th respondent, this in

counsel's view indicated that the 4th respondent did not act as a principal in respect to the relevant contract. This supported the 4th respondent's evidence that he was a commission agent for R & R Bikes. The 4th respondent also clearly stated the appellants still owed money to the respondents in the sum claimed in the pleadings. Counsel submitted that the drafts, bills and other documents form part of the contract between the appellants and the respondents, a position which the appellants were precluded from denying. In counsel's view, by doing so, the appellants were seeking to avoid their contractual obligations, something this Court should not endorse.

Counsel for the respondents making reference to the bills and drafts relating to the transaction in issue, pointed out that those documents were drawn by R & R Bikes on the 1st appellant who provided his name and the name of the 2nd appellant, whom counsel referred to as the former's "alter ego". Counsel further submitted that at trial, the 1st appellant admitted that none of the relevant payment documents was signed by the 4th respondent as would have been the case if the 4th respondent had dealt with the appellants in his own right as a principal. The evidence of the 4th respondent, counsel submitted was that he was a commission agent for R & R Bikes.

Counsel submitted that the relevant contractual documents included the joint order made by the appellants and the 4th respondent to R & R Bikes, and the appellants could not, after having received goods dispatched by the 1st respondent now turn around and claim that they only dealt with the 4th respondent. Counsel contended that by doing so, the appellants were merely seeking to avoid their obligations to pay for the goods they had received, and urged this Court to ensure that the appellants abide by the terms of the bills of exchange which were drawn on them.

Counsel further submitted that a contract between parties may be inferred from the nature of their dealings. In the present case, bills of exchange were drawn on the 1st appellant in favour of R & R Bikes. Thus the relevant contract for supply of bicycles and bicycle parts could only be completed upon the 1st appellant satisfying his obligations to R & R Bikes arising out of the relevant bills of exchange, that is, by honouring the same. Counsel

asserted that by accepting the bills of exchange drawn on him, the 1st appellant is deemed to have acknowledged that mode of payment as the only recognized payment method. The 1st appellant was supposed to pay on the relevant bills of exchange within 90 days after he received the bill of lading. The respondents, however, went to their banker and found that the appellant had not honoured those bills of exchange in the agreed time. Counsel submitted that this was breach of contract by the 1st appellant. He relied on **Sections 46** and **53** of the **Bills of Exchange Act, Cap. 68** in support of his submissions.

Counsel further submitted, while placing reliance on **Section 38 (1)** of the **Sale of Goods Act, Cap. 82** that the due to the conduct of the 1st appellant highlighted above, the respondents became unpaid sellers within the meaning the highlighted provision. The respondents were unlawfully deprived of the full purchase price of the goods in issue owing to them by the appellant's failure to pay as agreed.

Counsel urged this Court to find that grounds 1, 2, 3, 4 and 5 of the appeal fail on account of the appellant's acceptance of the relevant bills of exchange, and their subsequent failure/deliberate refusal to settle their obligations arising thereunder.

Grounds 6 and 9

Counsel contended that the appellants, do not, on this appeal contest that they were supplied with goods as alleged by the respondents. The only contention is whether the goods were fully paid for by the appellants. Counsel noted the appellants' claim that they had paid for the relevant goods in cash to the 4th respondent, and submitted that that assertion has been discredited by the respondents' earlier submissions. Counsel further submitted that, even assuming that the appellants paid cash to the 4th respondent that would amount to breach of the payment terms agreed upon by the parties which was supposed to be conducted through the bank. Counsel urged this Court to uphold the learned trial Judge's findings that the mode of payment agreed to by the parties in the present case was through the bank.

Counsel further noted that the appellants in their submissions had alleged the existence of an oral agreement which varied the terms of the agreement, but submitted that there was no evidence to back up those allegations. He further pointed out that the appellants, had at trial adduced documentary evidence (Exhibits D1 and D2) purportedly showing that the 4th respondent had been paid some moneys by the appellants, with the last such payment having been made on 18/08/2002. Counsel, however, submitted that the 4th respondent had told the lower Court that the money in the relevant exhibits had been given to him by the appellants to cover accommodation expenses and not to cover indebtedness of the appellants arising out of the supply of goods by R & R Bikes to the appellants. Counsel supported the learned trial Judge's handling of the evidence on whether the relevant cash payments, if any, had been made to satisfy indebtedness. Counsel submitted that the learned trial Judge reached the correct conclusion that the cash payments were unrelated to the relevant contract for supply of goods.

Counsel submitted that because the mode of payment under the relevant contract was agreed to be through the bank and there was no evidence that cash payments were accepted by the respondents, the appellants cannot claim to have legally settled the outstanding claims to the respondents by paying cash to the 4th respondent. Therefore, the respondents' claims remained outstanding and the learned trial Judge correctly found that the purported cash payments were unverifiable. Moreover, according to counsel, the learned trial Judge considered the evidence of a handwriting expert which did not support the appellant's claims. Counsel asked this Court to disallow grounds 6 and 9.

Grounds 7 and 8

Counsel noted that these grounds relate to the criticism of the learned trial Judge's handling of documentary evidence which showed that the 1st appellant had made cash payments to the 4th respondent in connection to the relevant contract. Those documents had been examined by a handwriting evidence who prepared a report which was presented in the trial Court by PW3. The learned trial Judge had, in his judgment, exhaustively

handled all the relevant evidence and reached the correct conclusion that the appellant's evidence was tailored to deceive court. Counsel further submitted that the learned trial Judge could not be criticized for accepting the handwriting evidence, because the provisions of **Section 62 (e)** and **64 (5)** of the **Evidence Act, Cap. 6** permit for the Court to take into account an oral account on the contents of a public document if the same is given by a person who saw witness the making of the said document. This was the case with regards to Exhibit P.9 which was a public document produced by an officer in the office of the Government Forensic Analyst.

Counsel prayed that this Court finds that grounds 7 and 8 of the appeal must fail.

Grounds 10 and 11

Counsel supported the decision of the learned trial Judge in finding that in asserting that they had settled their outstanding obligations to the respondents, the appellants had carried out acts of fraud and forgery and therefore had acted illegally. This finding was supported by the evidence that the appellants had presented false documents purporting to indicate that they had fully settled their obligations to the respondents whereas not. Such documents were an illegality that the trial Court could not ignore. In support of his submissions, counsel relied on the authorities in **National Social Security Fund and Another vs. Alcon International Limited, Supreme Court Civil Appeal No. 15 of 2009**; **Fredrick J.K Zaabwe vs. Orient Bank Ltd and 5 Others, Supreme Court Civil Appeal No. 004 of 2006**; **Makula International vs. His Eminence Cardinal Nsubuga, Supreme Court Civil Appeal No. 4 of 1981**; and **Active Automobile Spares Ltd vs. Crane Bank Supreme Court Civil Appeal No. 21 of 2001.**

Counsel prayed that this Court finds that grounds 10 and 11 too, must fail.

In conclusion, counsel prayed that this Court answers all the grounds of appeal in the negative, dismisses the appeal and upholds the judgment of

the trial Court. Counsel also prayed that the costs of this appeal and those in the Court below be awarded to the respondents.

Resolution of the appeal

I have carefully studied the Court record, considered the submissions of counsel and the law and authorities relied on therein. I have, also, where necessary put into consideration the law and authorities not cited by counsel but relevant to the determination of the appeal. I note that on a first appeal from the decision of the High Court, such as the present appeal, this Court is required to reappraise the evidence and draw its own inferences of fact. **(See: Rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions S.I 13-10)**. Further in the authority of **Uganda vs. George Wilson Simbwa, Criminal Appeal No. 37 of 2005**, the Supreme Court observed as follows on its duty as a first appellate Court:

> **"...our duty is to give the evidence on record as a whole that fresh and exhaustive scrutiny which the appellant is entitled to expect, and draw our own conclusions of fact. However, as we never saw or heard the witnesses give evidence, we must make due allowance in that respect."**

With those principles in mind, I will proceed to determine the grounds of appeal in the order set out below.

Ground 3

In this ground, the appellants assert that the 2nd appellant was wrongly sued in the trial Court as it did not have any dealings with the respondents. I observe that the dispute between the parties arises out of certain transactions of sale of goods in which R & R Bikes supplied a consignment of goods consisting of bicycles and bicycle spare parts to the 1st appellant, trading either as himself or as one of several business names, namely; Jokas, Road Master Jokas or Bullion Miners J.K. The 2nd appellant, Bullion Miners Ltd, is a private limited liability company, incorporated on 7th November, 1984, which was sued jointly with the 1st appellant. Its connection with the relevant dispute is contested by both parties. It would appear that the question of whether the 2nd appellant had any dealings with R & R Bikes was not given adequate consideration by the learned trial Judge. He merely noted

that the relevant suit had been brought jointly against the 1st and 2nd appellants. The learned trial Judge, then found that both appellants were liable to settle the monies deemed outstanding to the respondents.

I have re-evaluated the evidence on record. There is no evidence indicating that the 2nd respondent was supplied with goods by R & R Bikes. On the contrary, the evidence led for the respondents at trial established that R & R Bikes dealt with the 1st appellant alone. The only connection with the 2nd appellant is the fact that the 1st appellant was a shareholder and/or director in it. This fact was alluded to in paragraph 4 of the amended plaint at page 20 of the record where it was pleaded as follows:

> **"The second Defendant [2nd appellant] is a body corporate in which the first defendant [1st appellant] is a member and is believed to have been another of the aliases which the first defendant used its name to place orders and collect shipments of various containers assigned by the first three plaintiffs into the country."**

It is a well-established principle of law that a company has separate legal existence from the persons who are either shareholder or directors in it, such that acts done by the company's shareholders or directors, will not as a general rule be attributed to the company. This principle was enunciated in the authority of **Salomon vs. Salomon and Company Ltd [1897] AC 22 (per Lord Halsbury, L.C)** as follows:

> **"...once a company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself."**

If the above principle is applied to this case, it becomes clear that the 2nd respondent is an independent person of its own, and not an alias of the 1st appellant as erroneously claimed in the respondents' pleadings. One of the well-known exceptions to the principle of legal separateness of a company from its shareholders and directors is the principle of lifting the corporate veil, which is based on well-known principles. I have found no evidence adduced by the respondents linking the 2nd appellant with the relevant transactions on which money is purportedly owing to R & R Bikes. Therefore, there is no basis for lifting the 2nd appellant's corporate veil so as to impute

liability on it for the acts of the 1st appellant. For the above-stated reasons, I would sustain the preliminary objection raised in the appellants' pleadings about the competence of the respondents' suit in the trial Court against the 2nd appellant. I would make an order striking out the 2nd appellant from the respondent's pleadings in the trial Court and off the record. This appeal will proceed against the 1st appellant only. Ground 3 of the appeal must succeed.

Grounds 1, 2, 4 and 5

The gist of grounds 1, 2, 4 and 5 is the 1st appellant's assertion that the learned trial Judge erred in entering judgment in favour of the 1st, 2nd and 3rd respondents as partners in R & R Bikes basing on a contract to which they were not privy to. I observe that the respondents' claim against the 1st appellant as pleaded, was for the recovery of a sum of money owing under the relevant transactions amounting to US Dollars 53,871 with interest. The respondents further claimed for general damages and costs of the suit in the trial Court. PW1 Rajeev Jain gave evidence in support of the respondents' claim. He testified that he was an Indian business man, who at the material time, and relevant to the transactions in issue traded alongside the 2nd and 3rd respondents, his biological brothers, in a partnership referred to as R & R Bikes. PW1 tendered in evidence financial documents which indicated that R & R Bikes had business dealings with the 1st appellant. PW1's evidence was that R & R Bikes supplied bicycles and bicycle parts to the 1st respondent. Exhibit P1 at page 42 of the record, a document titled "draft" for the amount of US Dollars 21,022 is reproduced below:

"

DRAFT 25-11-2001

AMOUNT: US$21022=00 CIF KAMPALA (UGANDA)

DRAWN UNDER UGANDA COMMERCIAL BANK INTERNATIONAL BANKING GROUP, P.O.BOX 973, KAMPALA UGANDA

AT 90 (NINETY) DAYS FROM BILL OF LADING DATE ON DEMAND OF THIS FIRST/SECOND OF EXHANGE (SECOND/FIRST OF SAME TENOR AND THE DATE BEING UNPAID) PLEASE PAY TO THE ORDER OF STATE BANK OF INDIA MILLER GANG, LUDHIANA 141003-INDIA THE SUM OF U.S DOLLARS TWENTY ONE THOUSAND TWENTY TWO ONLY CIF KAMPALA (UGANDA)

AGAINST BILLS OF LADING NO: NO. 42001110036 DT. 25-11-2001 SHIPPED PER SAFMARINE TANA S145 FROM MUMBAI TO MOMBASA THEN BY ROAD TO KAMPALA, UGANDA VIDE OUR INVOICE NO. RR/EXP/200&200A DT. 09-11-2001 FOR THE VALUE RECEIVED.

DRAWN ON; JOKAS
P.O BOX 756
KAMPALA,
UGANDA."

Accompanying the above document was Exhibit P2 an invoice confirming the transaction and the amount of money payable thereunder; Exhibit P3 a packing list setting out the description of the goods supplied in the 1st transaction namely Bicycles, Bicycle parts and accessories; Exhibit P4, a bill of lading and Exhibit P5 a pro forma invoice. All the above documents indicated that R & R Bikes supplied goods to the 1st appellant either acting in his name or under any of his trading names, namely: Jokas, Bullion Miners J.K.

Exhibits P6, P7, P8, and P9 were respectively, a draft, packing list, bill of lading, and a release order with respect to the 2nd transaction for the sale of bicycles and bicycle parts. This set of documents showed that R & R Bikes sent a consignment of goods worth US$21,349 to the 1st appellant in his name or while trading as Jokas. Exhibits P10, P11 and P13 were respectively, a draft, an invoice, bill of lading, and a release order with respect to the 3rd transaction for the sale of bicycles and bicycle parts. This set of documents showed that R & R Bikes sent a consignment of goods worth US$21,520 to the 1st appellant in his name or while trading as Jokas. The 1st appellant's evidence on the consignments sent to him was that he been supplied with about 5 consignments of bicycles and bicycle parts. At page 322 of the record, the 1st appellant stated that the 5 consignments were worth approximately US Dollars 140,000 or 160,000. He had, through the bank paid for about US Dollars 97,000 of those goods. It was the appellant's evidence that the rest of the payments for the goods were made in cash to the 4th respondent.

I further note that the 1st appellant did not, in his pleadings deny having received the goods which the 1st respondent testified about. The 1st appellant's claim was that despite the transaction documents referred to earlier in this Judgment indicating otherwise, he had no dealings with R & R Bikes. The 1st appellant claimed that he only dealt with Vishal, the 4th respondent whom he expected to manufacture and supply to him the relevant goods. The 1st appellant claimed that he had paid for those goods after they were supplied to him by Vishal. Further, that although initially payment for those goods was agreed to be by telegraphic transfer, the mode of payment had, with agreement of the 4th respondent changed over time. As a result, he had paid cash to the 4th respondent which satisfied his indebtedness to him. The 1st appellant claimed that at the time of the hearing, he had settled his indebtedness regarding the transaction in issue.

When he testified, the 1st appellant stated in evidence that he had only dealt with Vishal, whom he knew as the owner of R & R Bikes. The two had concluded an oral contract by which the 4th respondent, would in his own right, supply the 1st appellant with bicycles and bicycle parts. During examination in chief, the 1st appellant said that he did not know the 1st respondent. His own counsel showed him Exhibit P23, a letter in which the 1st appellant wrote to R & R Bikes with attention to the 1st respondent. The 1st appellant testified that he had brought the letter to the 1st respondent's attention because he had been informed by the 4th respondent that the 1st respondent was a colleague in R & R Bikes. At page 315 of the record, the 1st appellant said that in his view the 1st respondent was a person who was assisting the 4th respondent. During cross-examination, Exhibits P21 to 31 were put to the 1st appellant by counsel for the respondents. Counsel informed the 1st appellant that they were written by him (the 1st appellant) to Mr. Rajeev (the 1st respondent) in respect to the transactions in issue. This evidence totally destroyed the 1st appellant's assertion that he never dealt with R & R Bikes or the 1st respondent as a partner in R & R Bikes.

I would therefore find that the 1st, 2nd and 3rd respondents trading in the partnership of R & R Bikes dealt with the 1st appellant. It was R & R Bikes

which supplied the 5 consignments of goods consisting of bicycles and bicycle parts which the 1st appellant acknowledged having received. Of the said 5 consignments, 3 consignments as indicated earlier were never fully paid for. In my view, for the 1st appellant to allege that the 1st, 2nd and 3rd appellants were strangers to him, even after they disclosed that they were partners in R & R Bikes which he dealt with is not only deceitful, and a show of bad faith but an attempt by the 1st appellant to evade the outstanding obligations to pay for goods which he received.

But what was the precise nature of the 4th respondent's role with regards to the relevant transactions? It was pleaded by the respondents that he was a commission agent with R & R Bikes. Evidence for the respondents indicated that the 4th respondent, with respect to the relevant transactions, acted either as a commission agent with R & R Bikes or as a middleman between R & R Bikes and the 1st appellant. According to the **Black's Law Dictionary (8th Edition),** a middleman is an intermediary or agent between two parties. In this sense a middleman is akin to a broker who is defined by the same dictionary as a person who acts as an intermediary or negotiator [between two parties to a transaction].

In my view, the 1st appellant's assertion that the 4th respondent supplied the consignments of goods in his own right is false and must be rejected. The 1st appellant testified at page 310 of the record that in about 1999 to 2000 when he first met the 4th respondent, the latter was working as a marketing officer with a company known as Road Master Uganda Ltd and was based at Nalukolongo. The 4th respondent had sold bicycles and bicycle parts on behalf of Road Master to the appellant. At a time, subsequent to that, the 4th respondent had intimated to the 1st appellant that he wanted to start his own business. According to the 1st appellant, it was agreed that the 4th respondent would source for bicycles and bicycle parts from India to supply to the 1st appellant. In his further evidence, the 1st appellant stated that before he left for India, the 4th respondent could not even afford an air ticket and it was the 1st appellant who bought one for him.

The evidence for the 1st appellant established that the 4th respondent did not have the financial ability to run a manufacturing business let alone to manufacture and ship goods in the huge quantity as the consignments in issue. Logically, therefore, the 4th respondent was a middleman as asserted by the 1st respondent or a broker whose only role was to connect the 1st appellant with his supplier R & R Bikes. Thus, to claim that the 1st, 2nd and 3rd respondents trading in their business name R & R Bikes were strangers to the relevant contract as asserted by the 1st appellant was false and must be rejected as the learned trial Judge did. The above findings dispose of grounds 1, 2, 4 and 5 as set out in the appellant's memorandum of appeal, which must fail.

Ground 6

Resolution of grounds 6 and 8 leads me to the next point which was argued by the 1st appellant on this appeal, that no monies were outstanding on the relevant transactions. The 1st appellant asserts that he paid for all the goods supplied to him; that he paid in cash to the 4th respondent. The 1st respondent asserted that the 1st appellant owed R & R Bikes US Dollars 53,891 for goods which were supplied to him but for which he had not paid. The evidence is clear, R & R Bikes prepared bills of exchange which were perhaps informally titled as "drafts" for all the goods they supplied to the 1st appellant. Those bills of exchange were drawn on the appellant and were supposed to be honoured by telegraphic transfer within 90 days.

I noted that the 1st appellant claimed that with the agreement of the 4th respondent, the requirement to honour the bills of exchange within the stipulated timelines was dealt away with. Counsel for the appellants labored on this point and argued in his submissions that there was an agreement between the 1st appellant and the 4th respondent to pay cash in order to clear the outstanding sums. Counsel for the respondents argued that it was agreed upon between R & R Bikes and the 1st appellant, that payment for the goods supplied would be by telegraphic transfer through the bank. There having been no agreement to alter the mode of payment to allow for cash payments, the 1st appellant could not claim to have paid in cash.

I have already set out the documentary evidence in the form of drafts which showed that the 1st appellant was expected to pay for the relevant transactions by telegraphic transfer through the bank. The drafts (Exhibits P1, P6 and P10), in my view, qualify as bills of exchange. By **Section 2 (1)** of the **Bills of Exchange Act, Cap. 68**, a bill of exchange is defined as follows:

> **"A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to bearer."**

The relevant drafts were drawn on the 1st appellant (drawee) by R & R Bikes (drawer), and this was not disputed by him. Under **Section 46 (2)** of the **Bills of Exchange Act, Cap. 68** a drawer of a bill has a right of recourse when the drawee dishonours the bill of exchange by non-payment. This recourse is by bringing an action for the outstanding moneys as was done by the respondents. In my view, upon considering the law and evidence on the point, I find that the 1st appellant was obligated to honour the "drafts" drawn on him by R & R Bikes by effecting a telegraphic transfer through Uganda Commercial Bank, the relevant banker. However, the 1st appellant defaulted on his obligations. I have considered the 1st appellant's evidence that his dishonour of the relevant bills of exchange was remedied when he paid cash for the goods to the 4th respondent. Like the learned trial Judge, I am unpersuaded by this contention. First, the 4th respondent was not a party to the relevant bills of exchange or drafts. Therefore, he could not be the person with whom they could be cleared. The 4th respondent could not countermand the requirement to honour bills of exchange to which he was not a party. Furthermore, the 4th respondent's evidence at page 256 of the record was that the 1st appellant was supposed to pay for the goods supplied to him by Telegraphic Transfer through the Bank.

Further, I have considered the 1st appellant's evidence that he paid cash to the 4th respondent. The 1st appellant tendered in evidence Exhibits D1 and D2, documentary evidence which he purported were signed by the 4th

respondent acknowledging receipt of money from the 1st appellant. The 1st appellant alleged that the monies were paid to the 4th respondent purporting to clear the monies he owed out of the relevant transactions. This was contested by the 4th respondent. The 4th respondent testified that due to the 1st appellant's failure to honour the relevant drafts, he was sent from India by R & R Bikes to meet with the 1st appellant and follow up on the payment which were due. The 4th respondent's evidence is that he incurred accommodation and upkeep expenses in the process of reaching the appellant.

In conclusion, it is my finding that payment for the relevant goods was supposed to be effected by honouring the relevant bills of exchange drawn on the 1st appellant in favour of R & R Bikes. As this was not done, the moneys paid to the 4th respondent could not be considered as having settled the 1st appellant's outstanding obligations.

Ground 6 must therefore fail.

Grounds 7, 8, 9 and 10

The substance of Grounds 7, 8, 9 and 10 is the 1st appellant's contention that the learned trial Judge erred in finding that there were insertions made on the documents purporting to be acknowledgment of receipt of money by the 4th respondent from the 1st appellant. The 1st appellant further contended that as a result the learned trial Judge erroneously found that no such monies had been paid to the 4th respondent.

I note that the 4th respondent testified that he received lesser amounts of money than was indicated in Exhibits D1 and D2. He said that the amounts indicated on Exhibit D2 as "US Dollars 19,500" and "USD 10,500" were false. The 4th respondent testified that he had never received money in dollars and only received a total of Ug. Shs. 30,000/=. At page 260 of the record, the 4th respondent contradicted himself by stating that he signed for and received "195" and "105" from the 1st appellant. If the 4th respondent's assertions that he never received any money in the dollar currency, then would the logical conclusion be that he received shillings? Counsel for the

appellants pointed out that the small amounts the 4th respondent alleged to have received from the 1st appellant did not have any purchasing power at the relevant time. He then submitted that claiming to have received such money is indicative that the 4th respondent's testimony was false and ought to have been rejected by the trial Court. I accept that indeed it was false for the 4th respondent to say that he received such small amounts of money as Ug. Shs. 195 and Ug. Shs. 105 from the 1st appellant to use for paying accommodation and upkeep expenses. However, the evidence must be considered in totality and in relation to the evidence of the rest of the witnesses before arriving at any conclusions in relation to it.

I further note that the 4th respondent also gave evidence in relation to Exhibit D2 at page 111 of the record. Exhibit D2 showed that the 4th respondent had on 5th July, 2002 received Ug. Shs. 6, 100,000/=; on 9th July, 2002 he received Ug. Shs. 4,070,000/=; on 15th July, 2002 he received Ug. Shs. 4,100,000/= and on 14th July, 2002 he received a further Ug. Shs. 5,050,000/=. The 4th respondent testified at page 264 of the record that the figures indicated on Exhibit D2 were alterations from the money he actually received. Thus he received 100,000/= where it is indicated as 6,100,000/=; 70,000/= where it is indicated as 4,070,000/=; 100,000/= where it is indicated as 4,100,000/= and 50,000/= where it is indicated as 5,050,000/=. The 4th respondent further testified that the money indicated in D1 also contained fraudulent additions.

Exhibits D1 and D2 were submitted to an expert for examination as to their authenticity. The expert gave his opinion via a report which was tendered in evidence in the trial Court as Exhibit P.38, with agreement of counsel for both sides. The report is at pages 91 to 92 of the record. The report was aimed at establishing whether the 4th respondent wrote any of the writings on Exhibits D1 and D2 attributed to him; and whether the said documents included any insertions. On the insertions on Exhibits D1 and D2, alleged to be fraudulent by the 4th respondent, it was written in the report at page 92 of the record that, "there appears to be insertions on the figures. It is very possible that insertions were added onto existing figures."

Counsel for the appellants contends on this appeal that undue weight was given to the said expert evidence, and submits that the said evidence ought to have been rejected instead. Counsel for the respondents supported the handling of the handwriting expert evidence by the learned trial Judge. I have re-evaluated the evidence on this point. The trial Court proceedings at pages 189 to 196 of the record show that counsel for the parties agreed on procuring an expert report on several contentious issues relating to the writings in Exhibits D1 and D2. At page 196 of the record, it is indicated that on 20th December, 2006, the Court was informed that such a handwriting report had been filed with the Court. Mr. Ntende, counsel for the respondents and Mr. Kwarisima, then counsel for the appellants agreed to the tendering in of the report as an exhibit. In the authority of **Attorney General vs. Baranga [1976] HCB 45** cited with approval by **Madrama, J. (as he then was) in Mawanda and Another vs. Kobil (U) Ltd [2013] UGComC 167,** then Court of Appeal of East Africa held that admission in evidence of a document tendered in court by consent of the parties dispenses with the need to prove the authenticity of the report but does not amount to an admission that the contents of the document are true and correct. In view of that principle, it follows that the relevant expert report in the present case having been admitted in evidence with consent of the parties, it was not open for counsel for the appellants to question its authenticity both in the trial Court, and on this appeal. Therefore, I would reject the appellants' submissions questioning the authenticity of the report on grounds that it was tendered in by a person who was not its author.

With regards to the substantive challenges to the expert report, counsel for the appellants submitted that the report was lacking in cogency and could not, when viewed in relation with the rest of the evidence support the 4th respondent's assertions that the examined documents (Exhibits D1 and D2) were fraudulent. The report was tendered in by PW3, Mr. Ezati Samuel on behalf of Mr. Apollo Ntarirwa, its author. PW3 testified that he worked as forensic examiner of documents, and worked at the Police Scientific Aids Laboratory at the Police Headquarters. Mr. Ntarirwa, the author of the report was a colleague at the same work station. PW3 testified, that like Mr.

Ntarirwa, he had participated in the examination of the documents covered by the report and had shared an opinion on the question documents with the report's author. PW3 stated that he was familiar with the subject matter of the report; and that that at the time of the hearing, Mr. Ntarirwa, was away from Kampala and could not attend Court. PW3's evidence at pages 291 to 296 of the record supported the evidence of the 4th respondent that the figures indicated on Exhibits D1 and D2 contained fraudulent insertions.

In his evidence, PW3 gave details of the nature of insertions. However, during cross-examination, it was put to PW3 that Mr. Ntarirwa, the report's author never stated in detail the nature of the insertions on the questioned documents. At pages 296 to 297 of the record, the following is recorded:

> **"Kwarisima (counsel for the appellants): So can you tell court where these insertions are indicated in the report are they part of this report?**
>
> **Ezati (PW3): His [the author, Mr. Ntarirwa in the report] only reference to insertions is [paragraph] number 3 [where he writes] that there appears to be insertions on the figures, it is very possible that insertions were added onto existing figures, that's where he mentions the insertions.**
>
> **Kwarisima: But he never highlighted any.**
>
> **Ezati: Yes, he didn't find here I have not seen him highlighting.**
>
> **Kwarisima: That's it my Lord.**

At page 297 of the record, the trial Court asked PW3 whether, if, he was the one who had prepared the handwriting expert report, he would have found it necessary to write in the report, his observations on the nature of the insertions on the question documents. PW3's response at page 297 of the record was as follows:

> **"Yes I would have because each person has his way of putting his report but I am convinced if I had made a final report I would have included indicators of which particular things we are talking of."**

I observe that PW3 was called as an expert to give evidence on Exhibit P.38, the expert opinion report of another person, Mr. Ntarirwa. PW3's testimony contained reference to certain opinions he held about the questioned

documents which were not expressed in the relevant report. Counsel for the appellants submitted that the evidence of PW3 was hearsay evidence in that regard. The sub-issue for consideration is whether the testimony of PW3 in so far as it makes additions not included in Exhibit P.38, by its author was rightly relied on by the trial Court. In the Ugandan law of evidence, expert opinion is relevant in determining any matter where such opinions may be needed. **Section 43** of the **Evidence Act, Cap. 6**, relevant to the subject of expert opinions provides as follows:

> **"43. Opinions of experts.**
>
> **When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to the identity of handwriting or finger impressions, are relevant facts. Such persons are called experts."**

Further, I note that expert opinion evidence is an exception to the general rule that evidence based on opinions is inadmissible. The authors of the **Halsbury's Laws of England/Criminal Law, Evidence and Procedure (Volume 11(1) (2006** Reissue) summarized the law on expert opinion, stating at paragraph 1482 as follows:

> **"As a general rule, witnesses may testify only as to facts perceived or experienced by them, and must not seek to influence the court or jury by expressing opinions or judgments concerning those facts or by drawing inferences as to the causes or significance of those facts. The rationale behind this rule is that such opinions, if not founded upon evidence, are worthless; and, in so far as they may be founded upon legally admissible evidence, they may tend to usurp the function of the court or jury, whose task it is to draw inferences from the evidence and apportion blame or responsibility where appropriate. It follows that evidence as to the opinion or belief of a witness or of any other person is generally inadmissible to prove the correctness of the opinion held.**
>
> **There are various exceptions to this general rule, notably in respect of expert evidence."**

In the present case, both Mr. Ntarirwa and PW3 gave expert evidence. Both were experts in the area of conducting forensic examination of handwritings

on documents, and each had examined the relevant documents Exhibits D1 and D2. At page 289 of the record, PW3 testified that he received instructions to review the relevant documents from Mr. Ntende, counsel for the respondents in the trial Court and on this appeal. After examining the relevant documents, PW3 had formed a similar opinion to that of Mr. Ntarirwa. Due to the similarity in opinions, PW3 felt it unnecessary to prepare a separate report and had left Mr. Ntarirwa to write the final report on the relevant documents (Exhibit P.38).

PW3 supported the findings in Mr. Ntarirwa's report that there had been fraudulent alterations/insertions on the relevant documents. He testified that on examining the documents, he too, had found fraudulent alterations to have been made thereon. PW3 highlighted what these fraudulent alterations were at page 291 of the record, and gave detailed reasons to support his findings at pages 292 to 294 of the record. During cross-examination, PW3 remained steadfast maintaining that he had participated in the examination of the relevant documents. In view of PW3's evidence, I would therefore find that the said evidence was relevant and the learned trial Judge was right in relying on it as establishing that there were some fraudulent alterations/insertions on the relevant documents D1 and D2. Grounds 7, 8 and 10, too, must fail.

With regards to ground 9 alleging that the learned trial Judge erred in finding that the money paid by the appellants to the 4th respondent did not discharge the 1st appellant's outstanding contractual obligations, I earlier found that payment for the relevant goods was agreed to be done by honouring the bills of exchange drawn on the 1st appellant in favour of R & R Bikes, which was not done. Accordingly, I do not see how making payments to the 4th respondent could discharge the 1st appellant's obligations to R & R Bikes.

I must observe that while the 4th respondent's evidence was somewhat unsatisfactory and left the possibility that he might have received some money from the 1st appellant, any such money could not be said to have been received on account of R & R Bikes nor could it be applied towards settling the 1st appellant's indebtedness to R & R Bikes. The 1st appellant

might, of course bring an action against the 4th respondent to recover any money he paid to the 4th respondent.

All in all, ground 9, too, must fail.

In conclusion, all but one of the grounds having failed, I would dismiss the appeal and award 4/5 of the costs of this appeal to the 1st, 2nd and 3rd respondents to be paid by the 1st appellant alone. I would also uphold the trial Court's decision to award to the 1st, 2nd and 3rd respondents; US Dollars 53,872 as special damages; Ug. Shs. 15,000,000/= as general damages, with interest on each respective head of damages at court rate from the date of the Judgment of the trial Court until payment in full; as well as the costs of the suit in the trial Court. In line with the findings in this judgment, however, the said awards shall be covered by the 1st appellant only.

It is so ordered.

Dated at Kampala this ..... day of.....2021.

.....

Elizabeth Musoke

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 0069 OF 2013

(Appeal from the decision of the High Court of Uganda at Kampala (Commercial division) before Lameck N. Mukasa dated 18th day of May 2012 in Civil Suit No.0100 of 2004)

1. **JOHN TIBORUGABA KASANGAKI**
   (T/ A JOKAS, BULLION MINERS J. K, ROADMASTER JOKAS)
2. **BULLIONMINERS LTD==========APPELLANTS**

VERSUS

1. **RAJEEV JAIN**
2. **RAJESH JAIN**
3. **SANJEEV JAIN T/A R & R BIKES**
4. **VISHAL BHAKSHI ==========RESPONDENTS**

CORAM HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

HON. LADY JUSTICE ELIZABETH MUSOKE, J. A.

HON. LADY JUSTICE IRENE MULYAGONJA, J. A.

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

I have had the benefit of reading in draft the Judgment of my learned sister, Hon. Lady Justice Elizabeth Musoke JA. I agree with her reasons and conclusions. Since Hon. Lady Justice Irene Mulyagonja J.A, also agrees. It is now hereby ordered as follows;

1) This Appeal is hereby dismissed.
2) The 1st Appellant shall pay 4/5 of the costs of this Appeal to the 1st, 2nd and 3rd Respondents.
3) The 1st, 2nd and 3rd Respondents are awarded special damages of US Dollars 53,872 and general damages of Ug. Shs. 15,000,000/=.
4) Interest on damages and costs of the suit to be at a Court rate from the date of the Judgment of the trial court until payment in full.

Dated at Kampala this.....29th.....day of.....April.....2021.

.....

HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram; Kiryabwire, Musoke, Mulyagonja, JJA)

CIVIL APPEAL NO.0069 OF 2013

1. **JOHN TIBORUGABA KASANGAKI (TRADING AS JOKAS, BULLION MINERS J.K, ROADMASTER JOKAS)**
2. **BULLION MINERS LTD.....APPELLANTS**

VERSUS

1. **RAJEEV JAIN**
2. **RAJESH JAIN**
3. **SANJEEV JAIN T/A R&R BIKES**
4. **VISHAL BHAKSHI.....RESPONDENTS**

JUDGMENT OF IRENE MULYAGONJA, JA

I have had the benefit of reading in draft the judgment of my learned sister Hon. Lady Justice Elizabeth Musoke, JA.

I entirely agree that the appeal should be dismissed with orders as to costs as she has proposed.

Dated at Kampala this ....29th.... day of ....April..... 2021

Irene Mulyagonja

Justice of Appeal