THE REPUBLIC OF UGANDA

THE COURT OF APPEAL OF UGANDA
AT KAMPALA

CORAM: MADRAMA, MULYAGONJA AND MUGENYI, JJA

CIVIL APPEAL NO. 212 OF 2020

BETWEEN

ELLIS R KASOLO ..... APPELLANT

AND

1. SECURITY GROUP (U) LIMITED
2. SECURITY GROUP CASH IN TRANSIT LIMITED ..... RESPONDENTS

(Second Appeal from the Judgment of the High Court of Uganda at Kampala (Wamala, J) in Civil Appeal No. 7 of 2020)

JUDGMENT OF MONICA K. MUGENYI, JA

A. Introduction

1. Mr. Ellis R. Kasolo ('the Appellant') is the holder of 0.01% shares (precisely 1 share) in Security Group (U) Limited and Security Group Cash In Transit Limited ('the Respondents'), as well as the only surviving Subscriber and Executive Director thereof. The Respondents are successor entities to Group 4 Security (U) Limited and Group 4 Cash In Transit Limited respectively, companies that had been incorporated in Uganda under the Companies Act as amended.[1]

2. On 21st November 2019, the Appellant filed a summary suit – **Civil Suit No. 653 of 2019** – before the Chief Magistrates Court of Nakawa ('the Trial Court') under Order 36 rules 2 and 3 of the Civil Procedure Rules (CPR). He sought to have the Respondents pay to him jointly and severally the sum of USD $ 7,500, purportedly representing his monthly remuneration as Director/ Shareholder for the period June – November 2019 at the rate of USD $ 1,500 per month.

3. On 29th November 2019, the Respondents filed an application for leave to appear and defend themselves in that suit – **Miscellaneous Application No. 461 of 2019**, which application was opposed by the Appellant vide an Affidavit in Reply filed by him on 12th December 2019. At the hearing of the application the Appellant raised two preliminary points of law as follows:

    i. The application for leave to appear in the summary suit was incurably defective in so far as it was supported by the affidavit of a deponent that was neither a director nor shareholder of the Respondent companies, and had neither provided a Board Resolution authorizing him to depose the said affidavit on their behalf nor a Power of Attorney under which the law firm that filed the application on the Respondents' behalf had been retained by them.

    ii. The said affidavit was further impugned for being riddled with falsehoods and hearsay in so far as it relied upon information derived

[1] Act No. 1 of 2012.

from unsigned and unapproved Minutes in respect of a Board Meeting of 30th July 2019 that neither the deponent nor his disclosed sources of information attended.

B. **Factual Background**

4. The Trial Court dismissed **Miscellaneous Application No. 461 of 2019** on the premise that the affidavit in support of the application offended Order 3 rule 2 of the CPR in so far as the deponent thereof was neither the Respondents' agent nor did he have requisite authority to represent their interests in the matter, and entered summary judgment in the Appellant's favour.

5. Dissatisfied with that decision, the Respondents lodged **Civil Appeal No. 7 of 2020** before the High Court ('the First Appellate Court'). It was their contention that a Country Manager of any company does not require the company's written authorization to file an application for leave to appear and defend it in court proceedings. On the question of agency, they argued that once the Respondent Companies contracted the Country Manager to run and operate their affairs, he became an agent of theirs by virtue of that appointment. In addition, it was proposed to be in the interests of justice that the question of the Appellant's remuneration be determined on its merits without undue regard for technicalities.

6. Conversely, the Appellant opposed that appeal on the premise that written authority by way of a Power of Attorney is required of any person that seeks to act on behalf of another in terms of Order 3 rules 1 and 2(a) of the CPR, and this requirement was applicable to Mr. George Musumba Dacha Ahenda, the deponent of the impugned affidavit and Country Manager of the respondent companies. This was contested in rejoinder with the assertion that, as a principal officer of a company, the Country Manager would have had authority to attest to matters of Directors' remuneration, which would have been within his knowledge.

7. The First Appellate Court adjudged the Country Manager to have been a principal officer of the Respondent Companies and thus a representative (as opposed to agent) thereof; was duly authorized to depose an affidavit on its behalf under Order 29 rule 1 of the CPR, and did not require corporate authority in terms of a Board

Resolution or Power of Attorney to do so. It made no finding on the issue of supposed falsehoods in the impugned affidavit given that the Trial Court had not addressed it, and it had not been raised either as a ground of appeal or by way of cross appeal.

C. **The Appeal**

8. Dissatisfied with the First Appellate Court's decision, the Appellant has now lodged this Second Appeal before this Court, preferring the following grounds of appeal:

    I. *The Learned First Appellate Judge erred in law when he failed to properly evaluate all the pleadings and materials on record before him and thereby came to a wrong and unjust conclusion.*

    II. *The Learned First Appellate Judge erred in law in finding that there should have been a cross appeal.*

    III. *The Learned First Appellate Judge erred in law in finding that the Country Manager was competent to swear an affidavit on the matters at trial.*

    IV. *The Learned First Appellate Judge erred in law in failing to act on the material inconsistencies apparent on the face of the Respondents' pleadings before him with those before the Trial Court and thereby occasioned a miscarriage of justice.*

    V. *The Learned First Appellate Judge, having directed that the appeal do proceed on the basis of written submissions, erred in law when he ignored or deemphasized the issue of material falsehoods in the affidavit of George Musumba Dacha Ahenda.*

    VI. *The Learned First Appellate Judge erred in law and in fact when he handled long-standing judicial precedents superficially and in a cavalier fashion.*

9. The Appellant seeks the following Orders:

    i. The setting aside of the decision of the High Court (Commercial Division) dated 28th August 2020 and all orders therein.

    ii. The upholding of the Ruling and Order of the Chief Magistrates court of Nakawa.

    iii. Costs in this Court and the lower court.

10. The Appellant did also file **Civil Application No. 155 of 2021** in this Court, in which they sought a temporary injunction restraining the respondent companies from convening any meeting on or about the 28th day of 2021 to renew the employment contract of the former Country Manager of the Respondent companies, Mr. George Musumba Dacha Ahenda, until the final determination of this Appeal.

11. At the hearing of this Appeal, the Appellant was represented by Mr. Francis Tumusiime, while Messrs. Esau Isingoma and Usam Sebuufu appeared for the Respondents. Both parties relied upon written submissions filed in the matter. I propose to consider *Grounds 1, 2* and *5* of the Appeal together, and conclude with the determination of *Grounds 3, 4* and *6* together as well. I shall, however, commence my interrogation of the Appeal with the determination of a preliminary objection that has been raised in respect of *Ground 6* of the Appeal.

D. **Preliminary Objection**

12. In submissions, learned Counsel for the Respondents raised an objection to *Ground 6* in so far as it impugns the trial court for an error of mixed law and fact (as opposed solely to error of law) contrary to the provisions of sections 72(1) and 74 of the Civil Procedure Act, Cap. 71 (CPA). They cited this Court's decision in **Lubanga Jamada v Dr. Dumba Edward, Civil Appeal No. 10 of 2011** in support of their case, particularly invoking the following aspect of the decision:

> It follows therefore that the grounds of Appeal in case of a second Civil Appeal to this Court must be those of law and not grounds of fact or mixed law and fact. Accordingly, part IV which consists of Rules 75 up to 102 of the Judicature (Court of Appeal) Rules, SI 13-10 that govern the procedure of Civil Appeals to the Court of Appeal must be applied and interpreted in accordance with and in strict compliance with Sections 72 and 74 of the Civil Procedure Act as far as second civil appeals to the Court of Appeal are concerned. In particular, Rule 86 of the said Rules which provides for the contents of the Memorandum of Appeal in an Appeal that is civil in nature must be applied in strict compliance with the said Sections 72 and 74 of the Civil Procedure Act.

13. In that case, citing the Supreme Court case of **Mitwalo Magyengo v Medadi Mutyaba, Civil Appeal No. 11 of 1996**, the Court further held that '**where on a second appeal in a Civil Cause, the grounds of appeal are not of law but are**

findings of fact or mixed law and fact, then such grounds are wrong in law and are either abandoned by the appellant or are struck out by the Court.'

14. For ease of reference, sections 72(1) and 74 of the CPA are reproduced below.

> **72.** ***Second appeal***
>
> **(1)** **Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely that —**
>
> **(a)** **the decision is contrary to law or to some usage having the force of law;**
>
> **(b)** **the decision has failed to determine some material issue of law or usage having the force of law;**
>
> **(c)** **a substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, has occurred which may possibly have produced error or defect in the decision of the case upon the merits.**
>
> **(2)** **An appeal may lie under this section from an appellate decree passed *ex parte*.**
>
> ***74.*** ***Second appeal on no other grounds***
>
> **Subject to section 73, no appeal to the Court of Appeal shall lie except on the grounds mentioned in section 72.** (my emphasis)

15. On his part, Counsel for the Appellant conceded the inclusion of the word 'fact' in that ground of appeal, contending that it was a typographical error that had inadvertently escaped the attention of the Appellant but had since been corrected in paragraph 2.6 of the Appellant's written submissions where the ground was rephrased to read '**whether the Learned First Appellate Judge erred in law when he handled long-standing judicial precedents superficially and in cavalier fashion.**' He urged the Court to invoke its inherent powers under Rule 2(2) of the Rules of its Rules of Procedure Court to strike out the word 'fact' and maintain Ground 6 to stand. Rule 2(2) of the Judicature (Court of Appeal Rules) Directions, SI 13–10 ('Court of Appeal Rules') provides as follows:

> **Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court ... to make such orders as may be necessary for attaining the ends of justice or to prevent the abuse of the process of court.**

16. It is indeed trite law that second appeals to this Court should be grounded in pure points of law and matters of mixed fact and law. *See* ***Beatrice Kobusingye v Fiona Nyakana, Civil Appeal No. 31 of 2013*** *(Supreme Court).* What would amount to an appeal on a point of law was clarified by this Court in **Lubanga Jamada v Dr. Dumba Edward** (supra) as follows:

> An appeal on a point of law arises when the Court, whose decision is being appealed against, made a finding on the case before it, but got the relevant law wrong or applied it wrongly in arriving at that finding. The Court reaches a conclusion on the facts, which is outside the range that the said Court would have arrived at, had that Court properly directed itself as to the applicable law. The error must be as a result of misapplication or misapprehension of the law. A manifest disregard of the law is an error of law. A question of law is about what the correct legal test is, as contrasted with a question of fact, which is concerned with what actually took place between the parties to the dispute. When the issue is whether the facts satisfy the legal test, then a question of mixed law and fact arises. (my emphasis)

17. My appreciation of *Ground 6* of this Appeal is that it questions the manner in which the appellate judge addressed judicial precedents in the matter before him. The first appellate court is thus faulted for misapplying binding case law to the facts before it on first appeal. To my mind, this would clearly raise the question of whether the correct principles of the law were applied to the facts that were before the first appellate court. on second appeal, that would undoubtedly be a question of law. This finding would support the position of learned Counsel for the Appellant that the inclusion of the term 'fact' in *Ground 6* was but a mere typographical error.

18. Consequently, I would defer to the following observation by the Supreme Court in **Banco Arabe Espanol v Bank of Uganda (1999) 2 EA 22**:

> The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors or lapses should not necessarily debar a litigant from the pursuit of his rights and unless a lack of adherence

> to rules renders the appeal process difficult and inoperative, it would seem that the main purpose of litigation, namely the hearing and determination of disputes, should be fostered unhindered.

19. In the interests of justice, therefore, I would disallow the preliminary objection raised by the Respondents and maintain *Ground 6* of the Appeal albeit to the exclusion of questions of fact.

E. **Determination**

20. This being a Second Appeal, this Court is not required to re-evaluate the evidence as is the case with a first appellate court, but is restricted to a determination of whether the first appellate court did in fact abide the judicial duty expected of it. A second appellate court should only '**consider the facts of the appeal to the extent of considering the relevant point of law or mixed law and fact raised in the appeal, ...** (and) **can interfere with the conclusions of the** (first appellate court) **if it appears that in its consideration of the appeal as a first appellate court, it misapplied or failed to apply the principles as set out**.' *See* ***Banco Arabe Espanol v Bank of Uganda*** *(supra)*.[2]

21. That decision was relied upon in **Boutique Shazim Ltd v Norattan Bhatia & Another, Civil Appeal No. 4 of 2020**, where the Supreme Court cited with approval its decision in **Milly Masembe v Sugar Corporation (U) Ltd, Civil Appeal No. 1 of 2000** as follows:

> On second appeal, the Supreme Court was not required to re-evaluate the evidence in the same manner as a first appellate court would as doing so would create unnecessary uncertainty. It was sufficient to decide whether the first appellate court on approaching its task has applied the relevant principles correctly.[3]

22. It becomes necessary, for the avoidance of doubt, to restate the duty upon a first appellate court. As garnered from **Banco Arabe Espanol v Bank of Uganda** (supra), that duty can be summed up as follows:

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[2] Henry Kifamunte v Uganda, Criminal Appeal No. 10 of 1997 (Supreme Court) cited with approval.
[3] Reference was also made to Francis Sembatya v Alport Services Ltd, Civil Appeal No. 6 of 1999 (Supreme Court).

i. The first appellate court is required to subject the evidence and any other materials that were before the trial court to fresh judicial scrutiny then draw its own conclusions therefrom, with appropriate regard for *bona fides* of the judgment appealed from.

ii. Even where it unearths errors by the trial court, a first appellate court should only interfere with the trial court's judgment where the errors have occasioned a miscarriage of justice.

iii. Where the cogency of the evidence hinges on the manner and demeanour of a witness(es), deference should be made to the trial judge's impression of the credibility of the witness; otherwise (or where it does not), other factors may be considered to determine the credibility of evidence and warrant a departure from the trial judge's position even on a question of fact arising from evidence the appellate court did not see.

23. These principles were adjudged in the **Banco Arab Espanol** case to be applicable to the re-appraisal of both oral and affidavit evidence albeit without recourse to the demeanour of witnesses.

Grounds 1, 2 & 5: *The Learned First Appellate Judge erred in law when he failed to properly evaluate all the pleadings and materials on record before him and thereby came to a wrong and unjust conclusion; in finding that there should have been a cross appeal, and having directed that the appeal do proceed on the basis of written submissions, when he ignored or deemphasized the issue of material falsehoods in the affidavit of George Musumba Dacha Ahenda.*

24. Under *Ground 1* of the Appeal, the appellate judge is faulted for disregarding the duty upon a first appellate court to re-evaluate the evidence that had been before the trial court and come up with his own independent conclusion. Reference in that regard is made to the Supreme Court decisions in **Banco Arabe Espanol v Bank of Uganda** (supra) and **Omunyokol Akol Johnson v Attorney General, Civil Appeal No. 6 of 2012**. Under *Ground 5*, the judge is particularly faulted for declining to address the question of material falsehoods in the affidavit of George Musumba Dacha Ahenda, which issue had been raised before the trial court as a preliminary point of law on the competence of the said affidavit. In Counsel's view,

had the appellate judge subjected the evidence to fresh scrutiny he would have found that Mr. Ahenda's evidence amounted to hearsay since the deponent had not participated in the Respondent entities' meetings. With regard to Ground 2, it is opined that the appellate court erred in disregarding the provisions of Order 43 rule 27 of the CPR to find that in the absence of a cross appeal the issue of the second preliminary point of law was not before the appellate court for adjudication. This is argued to have been a fundamental misdirection by the appellate court.

25. It is the Respondents' contention, on the other hand, that the matter before the trial court having been determined on preliminary points of law, the first appellate court was confined to the appeal against the trial court's findings on those points of law without recourse to the merits of the case. It is argued that given the failure by the trial court to address the second preliminary point of law that had been raised before it, namely the issue of falsehoods and hearsay in the affidavit in support of **Miscellaneous Application No. 461 of 2019**, it was incumbent upon the Appellant to raise the issue under a cross appeal if he had wanted the matter adjudicated by the first appellate court. Failure to do so, the appellate court was compelled to restrict its determination of the appeal within the confines of the parties' pleadings to the exclusion of the issue of affidavit falsehoods.

26. It is further argued that the appellate judge was in fact mindful of the duty upon him as a first appellate court but exercised that duty within the parameters of the appeal before him which, as stated earlier herein, was grounded in preliminary points of law with no recourse to the merits of the matter before the trial court. The confinement of the appellate court to the matters raised by the parties on appeal is supported with the following decision in **Esso Petroleum Co. Ltd v Southport Corporation (1956) AC 218** that was cited with approval in **Alwi Abdulrehman Saggaf v Abed Ali Ageredi (1961) EA 767**. It was held (per Lord Normand)[4]:

> The function of pleadings is to give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issue disclosed by them ... To condemn a party on a ground of which no fair notice has been given may be as great

[4] **Esso Petroleum Co. Ltd v Southport Corporation (1956) AC 218 at 238**.

a denial of justice as to condemn him on a ground on which his evidence has been improperly excluded.

27. On the question of a cross appeal, Counsel for the Respondents relied upon Order 43 rule of the Civil Procedure Rules (CPR) and the authority of **Betuco (U) Ltd & Another v Barclays Bank of Uganda Ltd & 3 Others, Civil Appeal No. 1 of 2017** to argue that the appellate could neither entertain a matter that was not set forth in the memorandum of appeal nor address an issue that was never raised before it.

28. Order 43 rule 2 of the CPR reads as follows:

> **The appellant shall not, except by leave of the court, urge, or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the High Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the court under this rule; except that the High Court shall not rest its decision on any other ground unless the party who may be affected by the decision has had a sufficient opportunity of contesting the case on that ground.**

29. Meanwhile, in **Betuco (U) Ltd & Another v Barclays Bank of Uganda Ltd & 3 Others** (supra) the Supreme Court held:

> The Justices of Appeal could not fault the trial judge on a matter/ issue that was not raised before him. The trial judge may be faulted on matters they handled and not what was never before them.

30. By way of rejoinder, Counsel for the Appellant re-echoed the duty of a first appellate court to re-evaluate the evidence on record, the evidence in the case of a preliminary objection supposedly being the pleadings of the parties. In his view, Mr. Ahenda's competence to depone to what transpired in a meeting that he did not attend curtailed on the evidential worth of his affidavit evidence and begged re-evaluation by the first appellate judge so as to draw its own conclusions.

31. On the matter of a cross appeal, the Appellant invoked Order 43 rule 27 of the CPR to contend that the High Court sitting in appellate capacity does have the mandate to make an order which ought to have been made, even where a cross appeal has not been lodged. That legal provision reads as follows:

> **The High Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents although the respondents may not have filed any appeal or cross appeal**. (my emphasis)

32. The background to this Appeal is that two preliminary objections were raised before the trial court as follows: one on the incompetence of the Respondents' application for leave to appear and defend for being supported by an affidavit deposed by a deponent without requisite authority, and another on the falsehoods and hearsay allegedly inherent in the same affidavit. The trial magistrate dismissed the application on the basis of the first preliminary point of law and did not bother addressing the second objection. She rendered herself as follows:

> *This court hereby finds that the affidavit in support sworn by Mr. Dacha Ahenda offends the provisions of O.3 r.2 CPR since the said Dacha Ahenda is not an agent of the Applicant company since he has no written authority filed on court record, and he does not have power of attorney to ably represent the applicants in this matter. There's no company resolution filed in court by the company authorizing the deponent Dacha Ahenda to represent them. The objections by counsel Isingoma that the deponent is not an imposter since he was part of the consent are unsustainable since the deponent is not an agent recognized in law to represent the applicant company and he is not a shareholder or director in the said company.*

33. I cannot fault the trial court for the procedure adopted given that the second preliminary objection raised questions of mixed law and fact. It could not have been resolved purely on the basis of the law and to that extent was improperly raised as a preliminary objection. *See* ***Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd (1969) EA 696***.

34. Be that as it may, the present Respondents successfully contested that decision before the first appellate court and, in the absence of a cross appeal in respect thereof, the second point of law remained unresolved. The appellate judge rendered himself as follows:

> *Counsel for the Respondent raised another matter concerning the absence of a reply by the Appellants to the issue raised in the second objection. ... the trial Chief*

Magistrate ignored that part of the Respondent's objection. As such, the Appellants raised no ground of appeal over the same as they had no grievance in that regard. Unfortunately, the Respondent who was interested in a finding over the same brought no cross appeal which was possibly the route they could have used to raise the matter before this Court. In the absence of a finding by the trial court over a matter, a ground of appeal or cross appeal, such a matter is not before the Court for adjudication on appeal. ... I therefore do not intend to take that matter any further than this.

35. I would respectfully state from the outset that the provisions of Order 43 rules 2 and 27 of the CPR do not appear to support the appellate judge's decision above. As quite correctly proposed by Counsel for the Respondents, the first leg of Order 43 rule 2 prohibits (without the leave of court) the advancement of a ground of appeal that is not set out in the memorandum of appeal. However, the second leg of that provision empowers the High Court to look beyond the confines of a memorandum of appeal in its determination of an appeal, provided that the parties are heard on any additional ground that the court may so formulate.[5] Such a construction of Order 43 rule 2 does resonate with the provisions of rule 27 of the same Order that authorizes the High Court on appeal to make any order which ought to have been made by the lower court, regardless of the absence of a cross appeal by a respondent.

36. It further aligns with Order 43 rule 20 of the CPR, which provides for a scenario where there is sufficient evidence on the appellate record to enable the High Court pronounce itself with finality on a matter that was not otherwise canvassed by a lower court. It reads:

> **Where the evidence upon the record is sufficient to enable the High Court to pronounce judgment, the High Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the High Court proceeds**.

37. In the instant case, the question of falsehoods and hearsay in the affidavit in support of **Miscellaneous Application No. 461 of 2019** was rooted in the same

[5] Although the rule makes reference to 'the party who may be affected by the decision' to address an additional ground of objection on appeal, it seems to me that both parties would be affected by such an addition and should therefore be given an opportunity to be heard on it.

affidavit that the trial court considered in resolving the point of law it determined. That affidavit was on the record of appeal. Therefore, the present Appellant having raised the issue, the first appellate court ought to have determined it under Order 43 rule 20 of the CPR.

38. In the result, given the succinct provisions of Order 43 rules 2, 20 and 27 of the CPR, I find that the absence of a cross appeal was no reason for the first appellate court in this case to decline to entertain the preliminary point of law that was not addressed by the trial court. *Grounds 2* and *5* are therefore resolved in the affirmative. Having so held, it follows that by declining to address the point of law that the trial court had ignored, the appellate judge fell short on the duty of a first appellate court. Accordingly, *Ground 1* similarly succeeds.

39. I would hasten to add, nonetheless, that the foregoing findings do not necessarily mandate the High Court sitting in its original jurisdiction to disregard parties' pleadings. The applicability of Order 43 of the CPR is specifically restricted to appeals to the High Court from magisterial courts, the latter not being courts of record. In any event, the issue of falsehoods and misrepresentations that arose in the preceding issues is canvassed in more detail under *Grounds 3, 4* and *6*, to which I now turn.

Grounds 3, 4 & 6: *The Learned First Appellate Judge erred in law in finding that the Country Manager was competent to swear an affidavit on the matters at trial; in failing to act on the material inconsistencies apparent on the face of the Respondents' pleadings before him with those before the Trial Court and thereby occasioned a miscarriage of justice, and when he handled long-standing judicial precedents superficially and in a cavalier fashion.*

40. In respect of *Ground 3*, the Appellant faults the appellate judge for adjudging the respondent companies' Country Manager to have been competent to depose the impugned affidavit without corporate authority. Citing this Court's decision in **Necta (U) Ltd & Another v Crane Bank, Civil Appeal No. 219 of 2013**, it is opined that the Respondents flouted their own internal rules in terms of Articles 87 and 92 of the First Respondent's Articles of Association, and Article 25 of the Second

Respondent's Articles of Association. Reference in that regard is also made to *Gower & Davies, 'Modern Principles of Company Law', 9th Edition, p. 387, paras. 14 - 15* for the preposition that the division of powers between a company and its Board of Directors, as outlined in its Articles of Association, was binding on all persons.

41. The appellate judge is further faulted for disregarding the fact that the Appellant, as the only surviving member of the respondent companies and sole Executive Director, would have been involved in any decision to appoint a representative of the said companies. It is opined that the Respondents neither complied with their own internal rules in appointing someone to represent them, but they also flouted Order 3 rule 2(a) of the CPR; as well as the decisions in **Lena Nakalema Binaisa & 3 Other v Mucunguzi Myers, Miscellaneous Application No. 460 of 2013** (High Court) that a person swearing an affidavit on behalf of others ought to have their authority in writing, and **Kabale Housing Estate Tenants Association Ltd v Kabale Municipal Local Government, Civil Application No. 15 of 2013** (Supreme Court) that the actions of an advocate that acted on behalf of a company without a Board Resolution were a nullity. Order 29 rule 1 of the CPR, as invoked by the appellate judge, is opined to be inapplicable to this case, deference being made to Order 19 rule 3(1) on the confinement of affidavits to such facts as a deponent is able to prove.

42. Under *Ground 4*, the Appellant takes issue with the reference in pleadings before the trial court to the Country Manager as a recognized agent of the Respondents under Order 3 rule 2(b) of the CPR *viz a viz* the Respondents' written submissions before the first appellate court, where he is referred to as a principal officer of the respondent companies under Order 29 rule 1 of the CPR. The latter description is argued to be a departure from the Respondents' pleadings contrary to Order 6 rule 7 of the CPR. Citing **Makula International v Cardinal Nsubuga & Another (1982) HCB 11**, the appellate judge is faulted for disregarding that illegality despite it having been brought to his attention. It is further argued that the lack of precision in the description of the Country Manager is proof of his lack of authority to represent the respondent companies.

43. In the same vein, under *Ground 6*, the appellate judge is faulted for disregarding the authorities of **Bugerere Coffee Growers v Sebaduka (1970) EA 147** and **Kabale Housing Estate Tenants Association Ltd v Kabale Municipal Local Government** (supra) in his determination of the appeal before him. Whereas the gist of the decision in the latter case is reproduced earlier in this judgment, the former case advances the principle that a person acts on behalf of a company on the basis of a Board Resolution so authorizing him or her to do so.

44. Conversely and on the basis of Order 29 rule 1 of the CPR, it is the Respondents' contention in respect of *Ground 3* of the Appeal that a Country Manager of a company is a principal officer of the company and would not require written authority from the company to either file an application on behalf of the company or sign an affidavit in support thereof, as transpired in this case. It is argued that the parties having executed a consent judgment in **Civil Suit No. 777 of 2017** conceding the appointment of the Country manager by the Appellant, he was duly authorized to sign pleadings on behalf of the companies under Order 29 rule 1 of the CPR. Seeking to distinguish the circumstance of **Necta (U) Ltd & Another v Crane Bank** (supra) from the present case, it is argued that whereas the issue in that case related to corporate authority to borrow on behalf of the company, the issue herein is a principal officer's power to represent a company in court pleadings. Articles 92 and 25 of the respondent companies' respective Articles of Association are similarly opined to be inapplicable to the function of signing of court pleadings.

45. Order 3 rule 2(a) of the CPR, on the other hand, is opined to be inapplicable to a company director, secretary or principal officer as invoked in Order 29 rule 1 of the CPR. Similarly, the decisions in **Lena Nakalema Binaisa & 3 Other v Mucunguzi Myers** (supra) and **Kabale Housing Estate Tenants Association Ltd v Kabale Municipal Local Government** (supra) are opined to be untenable because the present dispute is not a representative action as transpired in the former case, nor is the corporate authority of an advocate in issue as arose in the latter case. It is a Country Manager's authority that is in issue presently.

46. Indeed, addressing *Ground 6* of the Appeal, it is argued that the appellate judge did in fact consider **Kabale Housing Estate Tenants Association Ltd v Kabale Municipal Local Government** (supra) but disregarded it for the same reason that it was inapplicable to the present case. in the same vein it is proposed that, not only was **Bugerere Coffee Growers v Sebaduka** (supra) of merely persuasive value to the appellate court, it was nonetheless considered and disregarded by the said court for being inapplicable to the offices of company director, secretary and principal officer.

47. The Appellant's submissions on *Ground 4* are roundly dismissed by the Respondents for being untrue in so far as their pleadings clearly refer to the Country Manager as such, and not as a recognized agent thereof. On the other hand, it is argued that submissions are not envisaged as pleadings legally therefore a difference in terminology therein cannot constitute a departure from a party's pleadings.

48. In a brief rejoinder, it is the Appellant's contention that the distinction between the facts in **Necta (U) Ltd & Another v Crane Bank** (supra) and the present case is immaterial, what matters being the law as laid down in that case. The same argument is advanced in respect of the distinction in circumstances between the present Appeal and **Lena Nakalema Binaisa & 3 Other v Mucunguzi Myers** (supra) and **Kabale Housing Estate Tenants Association Ltd v Kabale Municipal Local Government** (supra). With regard to **Bugerere Coffee Growers v Sebaduka** (supra), without attempting to illustrate what aspects of the case were referred to, it is opined that in so far as the decision in that case was adopted in the Supreme Court case of **Navichandra Kakubhai Radia v Kakubhai Kalidas & Co. Ltd, Civil Appeal No. 10 of 1994**, it is binding on the first appellate court herein. Furthermore, though conceding the applicability of Order 29 rule 1 of the CPR, it is nonetheless argued that there was no proof in this case that Mr. Ahenda was actually the principal officer of the respondent companies. It is further argued that in so far as submissions ensue in respect of pleadings, any inconsistencies therein were validly raised on behalf of the Appellant.

49. Having carefully considered the parties' respective submissions, I consider it necessary to reproduce the pertinent legal provisions cited for ease of reference.

Order 3 rules 1 & 2

1. **Any application to or appearance or act in any court required or authorised by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his or her recognised agent, or by an advocate duly appointed to act on his or her behalf; except that any such appearance shall, if the court so directs, be made by the party in person.**
2. **The recognised agents of parties by whom such appearances, applications and acts may be made or done are —**

(a) Persons holding powers of attorney authorising them to make such appearances and applications and do such acts on behalf of parties; and

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.

Order 19 rule 3(1)

Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated.

Order 29 rule 1

In a suit by or against a corporation any pleading may be signed on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

50. Order 3 rule 1 of the CPR literally requires all court motions, appearances and other court-related actions to be done by a party in person save '**where otherwise expressly provided by any law for the time being in force**.' For purposes of corporate entities such as the present Respondents, such express permission is to be found in Order 29 rule 1 of the CPR. That provision expressly permits any

pleading in respect of a corporate entity to be signed by its secretary, director or other principal officer that is able to depose to the facts of the case. Against that background, Order 3 rule (2) of the CPR would be inapplicable to a situation where a company secretary, director or other principal officer that is knowledgeable about the facts in issue before a court signed any pleadings in the matter.

51. In the instant case, the Appellant contests the legal competence of the respondent companies' Country Manager to depose an affidavit in support of an application for leave to defend a summary suit filed against them. To begin with, contrary to the Appellant's contestations, the plaint and consent judgment in **Civil Suit No. 777 of 2017** establish that although the Appellant had contested Mr. Ahenda's ratification as Country Manager of the respondent companies, that issue was abandoned under the consent judgment and the appointment thus stands. I have carefully considered the pleadings filed by the Respondents before the trial court and find no reference therein to Mr. Ahenda as the Respondent's recognized agent as alleged by the Appellant. On the contrary, in both the application and the affidavit in support thereof, he is referred to as the Respondents' Country Manager. I would therefore disallow *Ground 4* of the Appeal.

52. Turning to *Grounds 3* and *6*, it seems to me that as the Respondents' Country Manager, Mr. Ahenda was certainly a principal officer in the respondent companies and legally permitted to sign pleadings on their behalf under Order 29 rule 1 of the CPR. Upon careful consideration of the cases of **Lena Nakalema Binaisa & 3 Other v Mucunguzi Myers** (supra) and **Kabale Housing Estate Tenants Association Ltd v Kabale Municipal Local Government** (supra), as invoked by the Appellant under *Ground 6*, I would agree with the findings of the learned appellate judge that they are both inapplicable to the present Appeal for the reasons he advanced therein. With respect, I am unable to agree with Counsel for the Appellant that the facts of a judicial precedent are immaterial to its applicability to a latter dispute. Legal principles do not ensue in the abstract but, rather, are grounded in the intrinsic circumstances of a case, which would include the facts thereof. A decision taken in respect of the facts of a case would thus only be applicable to a latter dispute where it can be demonstrated that the circumstances of both cases are similar. Once the circumstances are distinguishable, a legal

principle advanced in a judicial precedent (however novel it be) would be inapplicable to the latter dispute.

53. Meanwhile the case of **Navichandra Kakubhai Radia v Kakubhai Kalidas & Co. Ltd** (supra) to which the Court was referred by Counsel for the Appellant, like **Kabale Housing Estate Tenants Association Ltd v Kabale Municipal Local Government** (supra), gravitates around the authority of an advocate to file a matter on behalf of a corporation. To that extent, it would similarly be inapplicable to the circumstances of the present Appeal given the disparity in the factual basis of the two cases. Furthermore, contrary to learned Counsel's assertion that the Supreme Court adopted the position advanced in **Bugerere Coffee Growers v Sebaduka** (supra), that court actually departed from the position advanced therein. It was observed:

> In Bugerere Coffee Growers v Sebaduka (supra), Youds J. held that for a company to authorize the commencement of proceedings it must do so either by a resolution of the company or that of its Board of Directors. But in United Assurance Co. Ltd v Attorney General (supra), Wambuzi C.J doubted the correctness of that statement when he observed,
>
> > 'every case must be decided on its own facts. Looking at the various authorities and the law, I would say that one way of providing a decision of board of directors is by its resolution in that behalf. But I would not go so far as to say as is suggested in Bugerere Coffee Growers v Sebaduka (supra), unless, of course the law specifically requires a resolution, as appears to be the case in instances specifically provided in the Companies Act, and authority to bring action in the name of the company is not one of those instances, where a resolution is required.'

54. With respect, therefore, I find no merit in *Grounds 3* and *6* of the Appeal.

F. **Disposition**

55. The Appellant seeks to have this Court interfere with the findings of the first appellate court and re-evaluate the evidence to reach its own conclusion, as transpired in **Active Automobile Spares Limited v Crane Bank limited & Another, Civil Appeal No. 21 of 2001**, where the Supreme Court interfered with

the findings of the Court of Appeal. He further seeks to have the Appeal allowed and the judgment of the first appellate court set aside with costs.

56. Having disallowed *Grounds 3, 4* and *6* that pertain to the point of law that was actually determined by the trial and first appellate courts, **Miscellaneous Application No. 461 of 2019** would be remitted back to the trial court for determination on its merits. In so far as the question of falsehoods and hearsay in the impugned affidavit of the Respondents' country Manager (as raised in *Grounds 2* and *5* of this Appeal) raises issues of mixed fact and law, it would be appropriately determined by the trial court on remission.

57. Given that the Appellant was unsuccessful in *Grounds 3, 4* and *6* that arose from a substantive decision by the lower courts, the Appeal would substantially fail. Nonetheless, considering that this Appeal does not fully dispose of the matters in contention between the parties, I would depart from the general rule in section 27(2) of the CPA for costs to follow the event and exercise my discretion to order that costs abide the cause.

58. Finally, the temporary injunction sought in respect of the then impending renewal of Mr. Ahenda's employment contract on or about the 28th day of 2021 has since been overtaken by events by both the passage of time and the determination of this Appeal. **Civil Application No. 155 of 2021** in respect thereof is thus dismissed with no order as to costs.

59. The upshot of this judgment is that this Appeal is hereby dismissed with the following orders:

    I. **Miscellaneous Application No. 461 of 2019** is remitted back to the Chief Magistrates Court of Nakawa for determination on its merits.

    II. **Civil Application No. 155 of 2021** is hereby dismissed with no order as to costs.

    III. Costs of the Appeal to abide the cause.

It is so ordered.

Dated and delivered at Kampala this 18th **day of** AUG **, 2022.**

Monica K. Mugenyi

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 212 OF 2020

(Coram: Madrama, Mulyagonja, Mugenyi, JJA)

ELLIS R. KASOLO::APPELLANT

VERSUS

1. **SECURITY GROUP (U) LTD**
2. **SECURITY GROUP CASH IN TRANSIT LTD::::::::::::::RESPONDENTS**

(Appeal from the Judgment of Wamala, J. in Kampala High Court Civil Appeal No. 7 of 2020)

JUDGEMENT OF IRENE MULYAGONJA, JA

I have had the benefit of reading in draft the judgment of my learned sister, Monica K. Mugenyi, JA. I agree with her decision that the appeal substantially fails and should be dismissed with the orders that she has proposed.

Dated at Kampala this 18th Day of AUG 2022.

Irene Mulyagonja

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(CORAM: MADRAMA, MULYAGONJA, MUGENYI, JJA)

CIVIL APPEAL NO 212 OF 2020

ELLIS R. KASOLO} ..... APPELLANT

VERSUS

1. **SECURITY GROUP (U) LIMITED}**
2. **SECURITY GROUP CASH IN TRANSIT LIMITED} ..... RESPONDENTS**

(Second appeal from the judgment of the High Court of Uganda at Kampala (Wamala, J) in Civil Appeal No. 7 of 2020)

JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the judgment of my learned sister Hon. Lady Justice Monica K. Mugenyi, JA.

I concur with her that the appeal ought to be dismissed for the reasons she set out her judgment and with the orders she has proposed and I have nothing useful to add. Since Hon. Lady Justice Irene Mulyagonja, JA also agrees, the appeal is dismissed with the following orders to issue that:

1. Miscellaneous Application No. 461 of 2019 is remitted back to the Chief Magistrates Court of Nakawa for determination on its merits.
2. Civil Application No. 155 of 2021 is hereby dismissed with no order as to costs.
3. The costs of this Appeal shall abide the outcome of the cause in the Magistrates Court.

Dated at Kampala the 1st day of April 2022

Christopher Madrama

Justice of Appeal