THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 0198 OF 2014

LIBYAN ARAB FOREIGN INVESTMENT CO (LAFICO)::::::::::APPELLANT

VERSUS

SOUTHERN INVESTMENTS LIMITED::::::::::::::::::::::::;;;;;;;;;RESPONDENT

(Appeal from the decision of the High Court of Uganda at Nakawa before Mwondha, J. (as she then was) dated the 7th day of February, 2013 in Civil Suit No. 250 of 2011)

CORAM: HON. MR. JUSTICE CHEBORION BARISHAKI, JA
HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA
HON. LADY JUSTICE IRENE MULYAGONJA, JA

JUDGMENT OF CHEBORION BARISHAKI, JA

This appeal is from the decision of the High Court (Mwondha, J. (as she then was)) in a suit filed by the respondent against the appellant.

Background

The Respondent, by its suit, sought to recover USD 9,500,000 as money due under a commission agreement it had executed with the appellant. The respondent claimed that the commission agreement was executed on 9th September, 2001, and by that agreement, the appellant engaged the respondent

to recover debts owed by the Government of Uganda to the state of Libya, to the tune of USD 166,757,826.86. The appellant had been appointed for that purpose by the Government of Libya. The appellant executed powers of attorney authorizing the respondent to act on its behalf.

The respondent further claimed that the agreement stipulated that it would be paid 15% if it collected the whole debt or 10% if the amount recovered did not exceed 75% of the whole debt. Further, that after exercising all necessary skill and diligence, it managed to collect only part of the debt, to the tune of USD 95,000,000. The respondent claimed that the appellant however failed and or refused to pay the commission which had accrued to the respondent despite several demands, hence the suit for recovery of the commission.

The appellant filed a written statement of defence conceding that it executed the agreement as claimed by the respondent. The appellant however stated that the agreement had lapsed on 9th September, 2003. The appellant further claimed that on 25th January, 2006, the parties entered a further agreement in which they agreed on payment to the respondent of US Dollars 2,560,628 as the full and final outstanding amount for the services rendered by the respondent. The appellant claimed that it duly paid the said monies to the respondent and thereby remained with no outstanding obligations under the commission agreement. The appellant also pleaded that the respondent's suit was time barred, as it was lodged in 2011, more than 8 years after the cause of action accrued upon lapsing of the agreement between the parties. The appellant also pleaded that the respondent's suit was premature as it was filed before the parties attempted amicable settlement and arbitration.

The learned trial Judge, in her Judgment overruled the preliminary points. She found that the respondent's suit was filed within time. In her view, the respondent's cause of action accrued after 31st July, 2009, the date when the last of the monies recovered by the respondent were paid by the Government of Uganda. With regard to the plea that the respondent was supposed to attempt

amicable settlement and arbitration before filing the suit, the learned trial Judge found that there was a lot of room for arbitration or settlement, but the parties had not succeeded in getting a positive outcome. The learned trial Judge also stated that the Court was, under Article 126 (2) (e) of the 1995 Constitution, enjoined to consider the case on its merits without undue regard to technicalities like insisting on amicable settlement or arbitration.

On the merits of the case, the learned trial Judge found that the appellant was, under the commission agreement, liable to pay 10% which amounts to US Dollars 9,500,000 of the amount of US Dollars 95,000,000 that the appellant had recovered on its behalf, but had not done so. She also found that although the parties had made a subsequent agreement fixing the commission payable to the respondent at US Dollars 2,560,628 but the appellant had also not paid this money to the respondent. The learned trial Judge entered judgment for the appellant to pay US 9,500,000, because in her view, there was evidence that the appellant agreed to be bound by the earlier agreement, despite having concluded the latter agreement for a lower commission.

Being dissatisfied with the decision of the learned trial Judge, the appellant now appeals to this Court on the following grounds:

1. *The learned trial Judge erred in law and fact when she failed to properly evaluate the evidence on record and thus came to a wrong conclusion occasioning a miscarriage of justice to the appellant.*

2. *The learned trial Judge erred in law and fact when she failed to properly evaluate the evidence on record and came to the conclusion that the cause of action in respect of which the plaintiff/respondent company had to sue was after 31st July, 2009 and therefore the suit could not be time barred.*

3. *The learned trial Judge erred in law and fact when she failed to properly evaluate the evidence on record and came to the conclusion*

that the suit was not premature in relation to Article 10 of the agreement providing for arbitration prior to a suit between the parties.

4. *The learned trial Judge erred in law and fact when she failed to properly evaluate the evidence on record and came to the conclusion that the defendant/appellant conceded to the plaintiff's services as well as the monetary value.*

5. *The learned trial Judge erred in law and fact when she failed to properly evaluate the evidence on record and came to the conclusion that the defendant/appellant did not prove at all that USD 2,560,687 (United States Dollars Two Million Five Hundred Sixty Thousand Six Hundred Eighty-Seven) was paid and further that the payment was reduced from 10% of the amount recovered in a manner that is final and binding.*

The appellant prayed this Court to allow the appeal, set aside the judgment and decree of the trial Court and grant costs of the appeal to the appellant.

The respondent opposed the appeal.

Representation

At the hearing, Mr. Yesse Mugenyi, Mr. David Ssempala and Mr. Richard Ceaser Obonyo, all learned counsel, jointly appeared for the appellant. Mr. Simon Peter Kinobe, Senior Counsel and Mr. Kavuma Kabenge and Mr. Solomon Sadam both learned counsel appeared for the respondent.

Both sides filed written submissions in support of their respective cases which have been considered in this judgment.

Appellant's submissions

Counsel for the appellant in their submissions argued ground 2 independently, grounds 1, 4 and 5 jointly, and ground 3 independently.

Counsel submitted on ground 2 that the learned trial Judge erred when she found that the respondent's suit was not time barred. He contended that the learned trial Judge misconstrued that the respondent's cause of action arose on 31st January, 2009, the date when the Government of Uganda was, expected to pay the final amount of the debt owing to the state of Libya per schedule agreed to with the Government of Libya. In counsel's view, the schedule had been given by the Government of Uganda to the Government of Libya and therefore did not affect the relationship between the appellant and the respondent and thus the learned trial Judge had erred in relying on it to compute the limitation period.

Counsel further submitted that what governed the relationship between the appellant and the respondent was the debt recovery agreement they executed on 9th September, 2001 to run for a period of one year which had expired on 10th September, 2002. Counsel contended that the respondent's cause of action therefore arose on 10th September, 2002 and since the action was based on contract, it became time barred after 6 years that is on 10th September, 2008. Counsel submitted that, therefore, the respondent's suit which was filed in 2011 was time barred.

On grounds 1,4 and 5 counsel faulted the learned trial Judge for finding that the respondent recovered USD 95,000,000 from the Government of Uganda. Counsel submitted that the evidence contained in the agreement of the parties dated 25th January, 2006 exhibit D1 showed that the Government of Uganda paid cash of USD 22,000,000 and equity in the National Housing and Construction Cooperation Ltd valued at USD 20,300,000 for a combined amount of USD 42,300,000. Counsel contended that there was no other evidence on record supporting the respondent's claim that it recovered USD 95,000,000. Counsel further submitted that it was on the basis of the cash received that the appellant agreed to pay and actually paid USD 2,560,628 to the respondent.

It was further submitted that learned trial Judge had misconstrued the evidence on the amount of money payable to the respondent. Counsel contended that the

debt recovery agreement exhibit P1 between the parties provided that if the respondent collected less than 50% of the whole debt of USD 166,757,826.82, the respondent would not be entitled to 10% of the amount collected and the appellant would be entitled to negotiate for reduction of the commission payable. Counsel pointed out that this is what happened because the respondent recovered only USD 43,200,000 which was less than 50% of the total debt, the appellant obtained an agreement for the reduction of the fees payable hence the payment of USD 2,560,628 to the respondent. Counsel submitted that the parties according to the agreement exhibit D1 agreed that the payment of USD 2,560,628 would be the final entitlement of the respondent. The learned trial judge therefore erred when she found that the higher amount of USD 9,500,000 was payable.

Counsel further submitted that the learned trial judge erred when she found that the appellant never paid USD 2,560,628 contrary to the evidence on record contained in exhibit D2 which shows that the respondent was paid via its account in Tropical Bank.

Furthermore, counsel contended that the appellant was wrongly sued for recovery of the monies since it was an agent for a disclosed principal. Counsel referred to the debt recovery agreement exhibit P1 wherein the appellant disclosed that it had been authorized by the Libya Government to recover the monies in issue. Counsel contended that the Libya Government was the right party to be sued in the circumstances. In support of the submissions on this point counsel referred to the decision of the High Court in **Kashogyera and Another vs. Magara and Another, High Court Civil Suit No. 576 of 2004.**

Counsel submitted on ground 3 that the learned trial Judge erred when she failed to refer the dispute between the parties for arbitration yet article 10 of the debt recovery agreement contained a clause mandating the parties conduct arbitration should a dispute arise. Counsel submitted that under Section 5 of the Arbitration and Conciliation Act cap. 4, where a dispute with an applicable

arbitration agreement is brought before a Court, it should, before proceeding to hear the matter, refer it for arbitration. Counsel further submitted that the import of the foregoing provision was discussed in **NSSF vs. Alcon International Supreme Court Civil Appeal No. 2 of 2008 (unreported).** Counsel also cited the case of **Power and City Contractors vs. UTL, High Court Miscellaneous Application No. 0062 of 2011** where Musota, J. (as he then was) stated that a clause to refer a dispute for arbitration is a contract with enduring and special effect. An arbitration agreement has a binding effect on the parties therein.

Respondent's submissions

Counsel for the respondent argued each ground independently in ascending order and on ground 1 he submitted that the ground offended Rule 86 (1) of the Rules of this Court in that, contrary to that rule, the ground was general and did not specify the evidence which was poorly evaluated by the learned trial Judge. Counsel submitted that the practice of this Court is to strike out such poorly drafted grounds as was done in the case of **Celtel Uganda Ltd t/a Zain Uganda vs. Karungi, Civil Appeal No. 73 of 2013 (unreported).** Counsel urged this Court to strike out ground 1.

On ground 2 counsel submitted that the learned trial Judge made no error in her computation of the timelines as to when the respondent's cause of action accrued. He pointed out that the parties' agreement was for the respondent to recover debt owing to the State of Libya by the Government of Uganda and for the appellant to pay a commission depending on the amount recovered. The respondents' counsel further pointed out that the recovered debt amounted to USD 95,000,000/=. Furthermore, counsel pointed out that the Government of Uganda gave a schedule for paying the debt, with the last instalment paid on 31st July, 2009, and thus the respondent's cause of action accrued on that date. Counsel submitted that the respondent was therefore within time when it filed the suit in 2011 to recover commission from the appellant.

On ground number 3 of the Appeal it was submitted foe the respondent that the learned trial Judge proceeded correctly when she decided the matter without referring the parties to arbitration. Counsel contended that the appellant did not satisfy the necessary conditions before a matter can be referred to arbitration and referred to the case of **Shell (U) Ltd vs. Agip (U) Ltd, Supreme Court Civil Appeal No. 49 of 1995 (unreported)** where Tsekooko, JSC discussed the conditions to be satisfied before a court can refer a matter to arbitration. The conditions include inter alia; that an application for stay must be made by one of the parties; the application is made after appearance by that party, and before the party has delivered any pleadings or taken any step in the proceedings and the party applying for the stay was and is ready and willing to do all the things necessary for the proper conduct of the arbitration. Counsel submitted that the appellant failed to make an application for stay of proceedings yet it had ample time to do so between the date of filing the suit in 2011 and the conclusion of the hearing in 2013. Counsel pointed out that the appellant only raised the issue on reference for arbitration in the final submissions when the parties had closed their respective cases. Counsel contended that the learned trial Judge was right when she found that the appellant had no interest in pursuing arbitration and was raising the matter as a delaying tactic.

Counsel submitted that learned trial Judge did not make any finding from which ground 4 could arise and therefore the ground was misconceived.

As for ground 5, counsel submitted that the evidence clearly indicated that the appellant recovered USD 95,000,000 owing to the respondent's input, and as per the parties' agreement, the respondent was entitled to receive 10% of the amount recovered, which was USD 9,500,000/=. Counsel pointed out that although there was a subsequent agreement exhibit D1 where it was agreed that the respondent would accept a lesser sum of USD 2,560,628, the appellant was not a party to that agreement and could not enforce it. In addition, counsel

contended that the agreement was unenforceable by virtue of the common law rule, articulated in **Pinnel's case [1602] 5 Co. Rep 117 and in Foakes vs. Beer, 9 App. Cas. 605**, that a contract for payment of a lesser sum without fresh consideration does not extinguish the entire debt. Counsel submitted that the appellant did not furnish fresh consideration to justify the respondent to accept a lesser sum.

Furthermore, counsel submitted that in any case, there was no evidence that the appellant paid the lesser sum of USD 2,560,628. Counsel noted that the appellant adduced evidence of a transfer document exhibit D2 indicating that funds were transferred to the respondent, but he submitted that the learned trial Judge rightly found that the document did not provide credible evidence that the money in issue was transferred to the respondent's account in Tropical Bank.

In conclusion, counsel prayed this Court to disallow all grounds of appeal.

Counsel for the appellant made submissions in rejoinder in which he mostly reiterated his earlier submissions.

Resolution of the Appeal

I have carefully studied the record, and considered the submissions of counsel for both sides and the law and authorities cited. This is a first appeal and under Rule 30 (1) (a) of the Rules of this Court, this Court, when handling such appeals, is expected to reappraise the evidence and make inferences of fact. Further, in **Kifamunte vs. Uganda, Criminal Appeal No. 10 of 1997 (unreported),** the Supreme Court stated that a first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge, and thereafter arrive at its own conclusions.

Ground 1 was framed thus; "the learned trial Judge erred in law and fact when she failed to properly evaluate the evidence on record and thus came to a wrong conclusion occasioning a miscarriage of justice to the appellant".

Rule 86 (1) of the Rules of this Court which sets out what should be contained in a memorandum of appeal. It provides that;

(1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongfully decided, and the nature of the order which it is proposed to ask the court to make.

It is now trite that Rule 86 (1) imposes a requirement that grounds of appeal must specify the points in the decision of the lower Court which are being disputed. General grounds cannot suffice and will be struck out for contravening the highlighted rule. In my view, ground 1 is a general ground which does not specify the evidence that the learned trial Judge poorly evaluated. I therefore find that it contravenes Rule 86 (1) and I accordingly strike it out.

On ground 2 , I am of the view that , the learned trial Judge committed no error when she found that the respondent's cause of action arose after 31st July, 2009 and was therefore not time barred. The parties' agreement was for the respondent to assist the appellant to secure the Government of Uganda to pay outstanding debt to the State of Libya. The process of recovering debts may require negotiations that take place over a period of time, and this appears to have been the case with the debt in the present case. From the time the appellant engaged the respondent in 2001, the Government of Uganda finally paid the outstanding monies in 2009. The respondent's case was that it was involved in securing the Government of Uganda to pay the said monies and was entitled to commission for doing so. Since the debt was finally paid in 2009, I agree with the learned trial Judge that the respondent's cause of action accrued then and thus at the time of filing the suit in 2011, the respondent was still within the prescribed time of 6 years for filing actions based on contract.

Ground 2 must therefore fail.

Ground 3 faults the learned trial Judge for having overruled the appellant's request, although made in counsel's submissions, to have the parties' dispute referred to arbitration, in accordance with provisions in the relevant contract. In resolving this ground, I am persuaded by the submission of counsel for the respondent based on the principles articulated in **Shell (U) Ltd vs. Agip (U) Ltd, Supreme Court Civil Appeal No. 49 of 1995 (unreported)**, to the effect that a party seeking the Court to stay proceedings and refer a matter for arbitration must make an application for the purpose at an early stage in the proceedings. In that case, Tsekooko, JSC guided that ; the application to refer a matter to arbitration ought to be made after appearance by the party seeking the said reference and before the party has delivered any pleadings or taken any other steps in the proceedings. In the present case, the appellant made no application to refer the dispute for arbitration. The appellant participated in the proceedings and only raised the issue of arbitration through counsel's submissions. In those circumstances, I think that the learned trial Judge was right when she concluded that the appellant did not show any interest in pursuing arbitration.

Ground 3 of the appeal fails.

I agree with counsel for the respondent that the learned trial Judge did not make any finding from which ground 4 arises and will not delve into it.

The appellant's case in ground 5 is that the learned trial Judge erred when she found that the parties did not make a binding agreement for the appellant to pay to the respondent a sum of USD 2,560,687 as the latter's full entitlement under the commission agreement. The appellant's case is further that the learned trial Judge erred when she found that the said sum was not paid to the appellant.

In order to resolve ground 5, it is worth going over the factual background to the case. Before 2001, the State of Libya advanced several loans to the Government of Uganda, and as at 9th September, 2001 the debt payable by the latter to the former stood at USD 166,757,826.86. The State of Libya, through the Libyan

Treasury authorized the appellant to recover the outstanding debt and the appellant in turn sought the services of the respondent for the same purpose. The appellant and the respondent on 9th September, 2001 executed an agreement for the purpose of setting out the commission payable to the respondent.

The appellant did not dispute that the respondent made input in securing the Government of Uganda to pay its debt. But in my view, the nature of the task of recovering the debt in issue involved the input of other players such as officials from the Government of Uganda and the State of Libya. On 12th October, 2001, then Minister responsible for Finance Mr. Gerald M. Ssendaula held a meeting with a Libyan Official Dr. Khaled Zenner at which the Government of Uganda requested the State of Libya to reschedule the payment of the debt because the Government was facing difficulty in paying the loan. Subsequently, the parties entered into a further agreement on 5th June, 2005, wherein the State of Libya agreed to cancel up to 49% of the debt and that USD 95,000,000 would be paid to the State of Libya as full and final settlement of the remaining debt. As for the outstanding debt it was agreed that the Government of Uganda would sell to the State of Libya, equity constituting 49% of the shares in the National Housing and Construction Corporation (NHCC) valued at USD 20,300,000. It was also agreed that the balance of USD 74,700,000 would be paid in cash but in an amortized manner, with diverse periodic payments expected to be made between 30th June, 2005 and 31st July, 2009.

On 25th January, 2006, the State of Libya, through its General Popular Committee for Treasury concluded an agreement with the respondent. In that agreement, the parties acknowledged that whereas the Government of Uganda had agreed to pay USD 95,000,000, it had as at the date of the agreement paid a combined sum of USD 42,100,000 comprising of USD 20,100,000 in equity in NHCC and a cash payment of USD 22,000,000. It was further agreed that the respondent would be paid USD 2,560,628 and specifically that: Upon receipt of the amount of money mentioned in paragraph 3 of this agreement by the second

party (respondent), the second party will have received all its entitlement for having followed up the recovery of the Great Jamahiriya's loan to the Republic of Uganda. It was also an obligation on the first party to offer any assistance in an effort to recover the remaining loans.

According to the agreement, at the time of its signing, the respondent had already received USD 500,000 with a balance of USD 2,060,628 outstanding. It is worth pointing out that the agreement of 25th January, 2006 constituted a new agreement wherein the respondent agreed to receive USD 2,560,628 for its assistance in securing the Government of Uganda to pay the relevant debt. Further, although the Government of Uganda agreed to pay a debt of USD 95,000,000, as at 25th January, 2006, only part of the debt had been paid. The respondent pleaded that as at the date of filing its plaint on 28th November, 2011, the entire amount of USD 95,000,000 had been paid. The defendant now appellant did not deny this fact in its Written Statement of Defence.

Having found that since the respondent accepted payment of USD 2,560,628 which constituted a lesser sum than it would have been entitled to, the question for determination then is whether the respondent's acceptance constituted a new agreement. The general rule is that parties are bound by the contracts they make where no vitiating factors exist. Counsel for the respondent however submitted that the agreement to accept USD 2,560,628 was not binding on the respondent for lack of consideration. Counsel relied on the rule articulated in **Pinnel's case [1602] 5 Rep. 117 a**. and discussed in **Foakes vs. Beer [1884] UKHL 1** that payment of lesser sum in satisfaction of a greater sum of a debt is unenforceable unless the person paying the lesser sum offers consideration. However , counsel for the respondent did not address himself to the fact that several exceptions have been developed against this rule including the promissory estoppel exception. This exception is based on the principle of promissory estoppel which was discussed by Denning, J. in **Central London Property Trust Ltd v High Trees House Ltd [1956] 1 All ER 256** as follows:

"As to estoppel, this representation with reference to reducing the rent was not a representation of existing fact, which is the essence of common law estoppel; it was a representation in effect as to the future—a representation that the rent would not be enforced at the full rate but only at the reduced rate. At common law, that would not give rise to an estoppel, because, as was said in Jorden v Money (1854) (5 HL Cas 185), a representation as to the future must be embodied as a contract or be nothing. So at common law it seems to me there would be no answer to the whole claim. What, then, is the position in view of developments in the law in recent years? The law has not been standing still even since Jorden v Money. There have been a series of decisions over the last fifty years which, although said to be cases of estoppel, are not really such. They are cases of promises which were intended to create legal relations and which, in the knowledge of the person making the promise, were going to be acted on by the party to whom the promise was made, and have in fact been so acted on. In such cases the courts have said these promises must be honoured. There are certain cases to which I particularly refer: Fenner v Blake ([1900] 1 QB 426), Re Wickham (1917) (34 TLR 158), Re William Porter & Co Ltd ([1937] 2 All ER 361) and Buttery v Pickard (1946) (174 LT 144). Although said by the learned judges who decided them to be cases of estoppel, all these cases are not estoppel in the strict sense. They are cases of promises which were intended to be binding, which the parties making them knew would be acted on and which the parties to whom they were made did act on. Jorden v Money can be distinguished because there the promisor made it clear that she did not intend to be legally bound, whereas in the cases to which I refer the promisor did intend to be bound. In each case the court held the promise to be binding on the party making it, even though under the old common law it might be said to be difficult to find any consideration for it. The courts have not gone so far as to give a cause of action in damages for

breach of such promises, but they have refused to allow the party making them act inconsistently with them. It is in that sense, and in that sense only, that such a promise gives rise to an estoppel. The cases are a natural result of the fusion of law and equity; for the cases of Hughes v Metropolitan Ry Co (1877) (2 App Cas 439), Birmingham & District Land Co v London & North Western Ry Co (1888) (40 Ch D 268), and Salisbury v Gilmore ([1942] 1 All ER 457), show that a party will not be allowed in equity to go back on such a promise. The time has now come for the validity of such a promise to be recognized. The logical consequence, no doubt, is that a promise to accept a smaller sum in discharge of a larger sum, if acted on, is binding, notwithstanding the absence of consideration, and if the fusion of law and equity leads to that result, so much the better." Emphasis added.

The principle as I understand is that where a first party agrees to a smaller sum as a full and final settlement of a larger sum and the second party acts on that agreement, the first party will be bound by the agreement and barred from insisting on the larger sum payable. In the present case, the respondent was bound by the agreement where it accepted to receive USD 2,560,628 as its full entitlement for securing the debt and could not insist on being paid more than that. The learned trial Judge therefore erred when she found that the respondent was entitled to be paid USD 9,500,000 which was more than what had been agreed upon.

The question to be resolved then is whether or not the respondent was paid the sum of USD 2,560,628 as per the agreement of 25th January, 2006. As I stated earlier, the respondent received USD 500,000 upon signing of the agreement. The appellant insists that the respondent was paid the balance of USD 2,060,628 via a bank transfer as indicted in exhibit DE2. That the money was deposited into the respondent's account in Tropical Africa Bank. Although the said bank transfer showed that a sum of USD 2,060,628 was transferred from Libya Foreign Bank, unlike the transfer and receipt of the USD 500,000 the bank

transfer for USD 2,060,628 on scrutiny by court did not indicate the recipient of the money. In my view, there was no credible evidence showing that the appellant paid to the respondent all the monies agreed upon in the agreement of 25th January, 2006. The evidence only pointed to payment of USD 500,000. Ground 5 of the appeal must therefore fail.

In the result the appeal substantially fails. I would find that the appellant paid to the respondent the sum of USD 500,000 leaving an outstanding balance of USD 2,060,628 which remains unpaid to date.

I accordingly set aside the judgment and decree of the learned trial Judge and substitute an order for payment by the appellant to the respondent of USD 2,060,628 together with interest at 10% pa from date of judgment till payment in full. The appellant shall pay costs of the appeal and those in the Court below.

Since Madrama and Mulyagonja JJA. also agree, the appeal partially succeeds with the following orders;

1. The judgment and orders of the High court in Civil Appeal No. 250 of 2011 are set aside
2. The appellant shall pay the respondent USD 2,060, 628 with interest at the rate of 10% pa from the date of judgment until payment in full
3. The appellant shall pay half of the costs of the appeal and in the court below to the respondent.

It is so ordered

Dated at Kampala this 18th day of October 2022.

Cheborion Barishaki

Justice of Appeal

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(CORAM: CHEBORION, MADRAMA AND MULYAGONJA, JJA)

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VERSUS

SOUTHERN INVESTMENTS LIMITED} .....RESPONDENT

(Appeal from the decision of the High Court of Uganda at Nakawa before Mwondha, J (as she then was) dated the 7th day of February, 2013 in Civil Suit No 250 of 2011)

JUDGMENT OF CHRISTOPHER MADRAMA, JA

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

I agree with him that the appeal be partially allowed with the orders proposed and for the reasons he set out in the judgment and I have nothing useful to add.

Dated at Kampala the 18th day of April 2022

Christopher Madrama Izama

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 0198 OF 2014

Coram: Cheborion Barishaki, Madrama & Mulyagonja, JJA

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JUDGMENT OF IRENE MULYAGONJA, JA

I have had the benefit of reading in draft the judgment of my learned brother Cheborion Barishaki, JA. I agree that the appeal partially succeeds and with the orders that he has proposed.

Dated at Kampala this 18th day of Oct 2022.

Irene Mulyagonja

Irene Mulyagonja

JUSTICE OF APPEAL