

REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-CS-0314-2005

STANBIC BANK UGANDA LTD

PLAINTIFF

VERSUS

JOSEPH AINE

DEFENDANTS

JIMMY TUMWINE

DEBORAH TUHIRIRWE TUMWINE

PROVIDER GENERAL ENTERPRISES LTD

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

JUDGMENT

1. The plaintiff is a commercial bank carrying on business in Uganda who is seeking the recovery from the defendants no.1 and no.2 US\$513,577.00 and interest. The plaintiff seeks to recover from the defendants' no.2, 3, and 4 an order lifting the veil of incorporation of defendant no.4 and the 'tracing' of the 2 buses, and monies on a bank account of defendant no.4, as the result of the fraud perpetuated on the plaintiff by defendant no.2.
2. Defendant no.1 is a customer of the plaintiff holding a dollar account that was the conduit for fraudulent scheme. Defendant no.2 is a former employee of the plaintiff, and the alleged mastermind of the fraudulent scheme. He is a director of defendant no.4. Defendant no.3 is a wife of defendant no.2, and a director of defendant no.4. Defendant no. 4 is a limited liability company incorporated by defendants 2 and 3, that is the holder of two buses, and a bank account which the plaintiff seeks to 'trace' and take hold of.
3. The case for the plaintiff is that defendant no.1 and no.2 fraudulently diverted from the plaintiff's contingent liability accounts US\$513,577.00, and paid the same into defendant no.1's dollar account, who drew the same, and paid it, to defendant no.2, save for a commission of US\$500.00 on each of 7 transactions and bank charges.

4. The plaintiff contends that two buses registered in the names of the defendant no.4, which is wholly owned by defendant no.2 and no.3, and the money on defendant no.4's account with Standard Chartered Bank, Kampala, are the proceeds of the fraud of the defendant no.2, referred to above. The plaintiff seeks that the veil of incorporation be lifted, and the plaintiff be allowed to 'trace' the said properties.
5. In the alternative the plaintiff contends that defendant no.4 was a constructive trustee in respect of the funds fraudulently diverted from the plaintiff's contingent liability accounts for the benefit of the plaintiff.
6. Defendant no.1, in his written statement of defence acknowledged that the diversion of the funds occurred, as alleged, save for the fact, that he was unaware of the fraudulent nature of the diversion. He contended that he had been approached by defendant no.2, who he knew as an officer of the plaintiff that he needed to help a customer who had a Kenyan shilling account but wanted to get dollars, to allow his account to be the vehicle for this transaction. He contended that on learning of the full facts, he paid back the commission that had been paid back to him, back to the plaintiff. He contended that he now owed the plaintiff nothing.
7. Defendants no.2,3 and 4 denied in toto any knowledge of the claim by the plaintiff, putting the plaintiff to strict proof thereof. However, during the course of his testimony the defendant no.2 accepted that he had received from the defendant no.1, on five occasions, the sums alleged, totalling to US\$375,000.00. He denied receiving money on the first two occasions.
8. The story as can be gathered from the admitted facts by the parties at scheduling, and the testimony of witnesses, which is not in contention started on the 6th December 2002. On this day a sum of US\$66,577.08 was transferred from the plaintiff's contingent liability account to the account of the defendant no.1. Defendant no.1 withdrew the US\$65,412.00 on the same day. Defendant no.1 testifies that he paid this money to defendant no.2, but defendant no.2 denies receipt of the said sum.
9. On 3rd March 2003 a sum of US\$72,000.00 was paid into the account of defendant no.1 from the plaintiff's contingent liability account. On the same day the defendant no.1 withdrew cash US\$70,280.00. He testified that he paid it to defendant no.2, but defendant no.2 denies receipt of the same. For both these two payments, the defendant no.1 was

unable to trace and present the documentary proof of receipt that defendant no.2 had allegedly signed acknowledging the said payments.

10. Subsequently, on each of the following five dates, 30th April 2003, 30th May 2003, 2nd July 2003, 1st August 2003 and 22nd August 2003, a sum of US\$75,000.00 was transferred from the plaintiff's contingent liability account to the defendant no.1's account. On the same dates the defendant no.1 drew his account, US\$73,500.00, and paid to the defendant no.2, who acknowledged receipt of the same, on each occasion by signing on the counterfoil of the cheque that withdrew the sum, and affixed an official stamp of the plaintiff thereon. All these 5 transactions were initiated by defendant no.2.
11. At this stage it is necessary to determine whether the defendant no.2 participated in all the 7 transactions complained of, as contended by the plaintiff and defendant no.1 or as contended by the defendant no.2, he participated only in the latter 5 transactions. Put differently did the defendant no.2 participate in the first 2 transactions or not?
12. PW2 was Sylvia Kibirige, banking officer with the plaintiff. At the material time she was employed in the back treasury office, in the International Business Centre and defendant no.2 was her Supervisor. She testified that with regard to all the 'Aine' transactions, they were initiated by defendant no.2, who instructed her to transfer particular sums of money to the account of defendant no.1. She complied with those instructions. In respect of the first two transactions no documents upon which defendant no.2 signed are traceable but the teller logs exhibit P33 (a) and P33(b) have details of those 2 transactions.
13. Defendant no.1, testified with regard to these 2 transactions, as with regard to the 5 later transactions that he was approached by defendant no.2, with the story that it was to help a bank customer. He testified that he paid on those two occasions the sum of US\$65,412.00 and US\$70,280.00 to defendant no.2.
14. The defendant no.2 denies receipt of these two payments. I am inclined to accept the version for the plaintiff, given the pattern of the latter 5 transactions. They were similar in every respect save the amounts. PW2's testimony indicates that defendant no.2 was the originator of the transactions, and I have no reason to disbelieve the same. It is backed by the testimony of defendant no.1, in so far as he states that he was approached by defendant no.2 with his story of helping a bank customer. And it is to defendant no.2 that he paid these two sums of money.

15. I am satisfied that the defendant is taking advantage of absence of documentary proof to deny receipt of these 2 payments. This is not surprising. He had initially denied any knowledge of all the 7 transactions in his written statement of defence. After being confronted with documentary proof with regard to the 5 transactions, he caved in. Given the very credible testimony of PW2 and defendant no.2, this denial is rejected. I find that defendant no.2 received from the defendant no.1 US\$65,412.00 and US\$70,280.00 on 6th December 2002 and 3rd March 2003 respectively, just as he did receive the 5 latter payments.
16. Issue no.3 is whether defendant no.1 is liable to account to the plaintiff for US\$513,577.00 diverted from the plaintiff's account to his account. Defendant no.1 accepts that he is liable to account, and in fact did account to the plaintiff, for the whole sum, showing how the whole was disbursed. As for the sums that were retained by him, on recognising that they were not due to him at all, he paid back to the plaintiff those sums of money he had retained.
17. Issue no.4 is whether the defendant no.2 is a constructive trustee and liable to account to the plaintiff including all profits and benefits obtained by him from the diverted funds. Mr. Masembe, learned counsel for the plaintiff referred me to the case of *Paragon Finance v D B Thakerar & Co.* [1999] 1 All E R 400 for the definition of a constructive trustee. At Page 408, Millet LJ, states,

Regrettably, however, the expressions 'constructive trust' and 'constructive trustee' have been used by equity lawyers to describe two entirely different situations. The first covers those cases already mentioned, where the defendant, though not expressly appointed as trustee, has assumed the duties of a trustee by a lawful transaction which was independent of and preceded the breach of trust **408** and is not impeached by the plaintiff. The second covers those cases where the trust obligation arises as a direct consequence of the unlawful transaction which is impeached by the plaintiff.

A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property (usually but not necessarily the legal estate) to assert his own beneficial interest in the property and deny the beneficial interest of another. In the first class of case, however, the constructive trustee really is a trustee. He does not receive the trust property in his own right but by a transaction by which both parties intend to create a trust from the outset and which is not impugned by the plaintiff. His possession of the property is coloured from the first by the trust and confidence by means of which he obtained it, and his subsequent appropriation of the property to his own use is a breach of that trust. Well-known examples of such a constructive trust are *McCormick v Grogan* (1869) LR 4 HL 82 (a case of a secret trust) and *Rochefoucauld v Boustead* [1897] 1 Ch 196 (where the defendant agreed to buy property for the plaintiff but the trust was imperfectly recorded). *Pallant v Morgan* [1952] 2 All ER 951, [1953] Ch 43 (where the defendant

sought to keep for himself property which the plaintiff trusted him to buy for both parties) is another. In these cases the plaintiff does not impugn the transaction by which the defendant obtained control of the property. He alleges that the circumstances in which the defendant obtained control make it unconscionable for him thereafter to assert a beneficial interest in the property.

The second class of case is different. It arises when the defendant is implicated in a fraud. Equity has always given relief against fraud by making any person sufficiently implicated in the fraud accountable in equity. In such a case he is traditionally though I think unfortunately described as a constructive trustee and said to be 'liable to account as constructive trustee'. Such a person is not in fact a trustee at all, even though he may be liable to account as if he were. He never assumes the position of a trustee, and if he receives the trust property at all it is adversely to the plaintiff by an unlawful transaction which is impugned by the plaintiff. In such a case the expressions 'constructive trust' and 'constructive trustee' are misleading, for there is no trust and usually no possibility of a proprietary remedy; they are 'nothing more than a formula for equitable relief': *Selangor United Rubber Estates Ltd v Cradock (No 3)* [1968] 2 All ER 1073 at 1097, [1968] 1 WLR 1555 at 1582 per Ungood-Thomas J.'

18. Defendant no.2 was the brain and immediate beneficiary of this fraudulent scheme that saw the diversion of US\$513,577.00 from the plaintiff's contingent liability accounts to himself. As an officer of the plaintiff, he was in a fiduciary relationship with his employer. He had authority to initiate transactions on the contingent liability accounts of the plaintiff, including transfer of those funds for certain purposes. In that sense he was a trustee with regard to the funds thereby in his control. Defendant no.2 then, instead of acting for a proper purpose in regard to those funds, devised a fraudulent scheme, whereby he converted the funds to himself.
19. Defendant no.2 is definitely accountable in equity in respect of the funds that he fraudulently removed from the plaintiff's contingent liability accounts. He is liable to account to the plaintiff for this sum of money, including the profits, and any other benefits that he may have derived there from. It would appear to me that liability against the plaintiff could be under either of the 2 categories of a constructive trustee discussed in the *Paragon Finance v D B Thakerar & Co.* (Supra).
20. The last transaction of the defendant no.2, with his accomplice, defendant no.1, was carried out on the 22nd August 2003. Two months later defendant no.2, and his wife, defendant no.3 then incorporated defendant no.4, on 24th November 2003. Defendant no. 4 then proceeded to receive two Isuzu buses, UAF392M and UAF007J. It is contended for the plaintiffs it is the funds obtained from the plaintiff as above noted that was applied to the purchase of the said buses, and the plaintiff ought to be allowed to trace the said

property, including the money on account of defendant no.4 with Standard Chartered Bank Uganda Ltd, by lifting the veil of incorporation protecting defendant no.4

21. Defendants no.2, 3 and 4 contend that the plaintiff is not so entitled, pleading the separate personality of a company from its members, or the veil of incorporation, and secondly, further contending that the money that actually bought the buses, and or capitalised defendant no.4 came from a different source, other than the impugned source. I shall first deal with the latter, which is a question of fact, and then return to the former, which is a question of law.
22. In the written statement of defence, defendants no.2,3 and 4 contended that ‘the money used in capitalisation of defendant no.4 were mobilised by defendant no.2 and 3 both as shareholders and directors through, friendly loans, loans from money lenders, finance and assistance/advances by family and close friends and personal savings.’
23. Defendant no.2 in his testimony stated together with his wife, defendant no.3, they borrowed Shs.420,000,000.00. He personally borrowed Shs.120,000,000.00 from Kampala Auto Centre Ltd for the purchase of the second bus, and he produced an agreement between himself and Kampala Auto Centre Ltd for that amount. The agreement was admitted into evidence as exhibit D8. The purchase of the two buses and the deposit of money for a third bus were done, not with the money he had received from DW1, Joseph Aine, but from the shareholders subordinated loan to defendant no.4 of about Shs.450,000,000.00. His wife borrowed Shs300,000,000.00 from Hassan Bassajabalaba.
24. In addition they used their personal savings, and money from friends and relatives.
25. DW4 was Fred Tumuhirwe, the Managing Director of Kampala Auto Centre Ltd that sold the two buses and accepted deposit for a third from Jimmy Tumwine. The first bus was paid for by cash. For the second bus a credit of Shs.120,000,000.00 was extended to Jimmy Tumwine. So far the company had received only Shs.85,000,000.00 with Shs.75,000,000.00 remaining outstanding to date. The security for the credit was two post dated cheques, which have now grown stale, and the log book. The company did not register any interest on the log book of the bus.
26. In cross examination DW4 further stated that his profit on the second bus was Shs24,000,000.00. The profit and a further Shs.50,000,000.00 of his capital is still held

by the Jimmy Tumwine unpaid. He did not charge Tumwine any interest. Tumwine told him that they would pay him as soon as they have sorted out the case in court against them. He denied that he was paid to sign the agreement between Tumwine and Kampala Auto Centre Ltd.

27. DW5 was the defendant no.3. She testified that they sat down with Jimmy Tumwine and agreed on how they were to start the company and how they would obtain the money for it. She made deposits at Kampala Auto Centre for the first bus. She initially deposited Shs.80,000,000.00 followed by Shs.50,000,000.00, Shs.30,000,000.00 and lastly Shs.10,000,000.00. For the second bus they deposited Shs.40,000,000.00, followed by Shs30,000,000.00. The balance was provided by a loan of Shs.120,000,000.00.
28. DW5 stated that she contributed to the capitalisation of the company Shs.25,000,000.00 from her cattle trading business, and Shs.10,000,000.00 from her interior decoration business. During cross examination she testified that exhibit D9 was true. She borrowed money from Bassajabalaba. He called her to his office in Industrial Area. She drove there alone, picked Shs.300,000,000.00, without escort and drove home. She arrived home after lunch. She could not sleep with this kind of money. They went to Auto Centre and made a deposit of Shs.100,000,000.00 for the first bus. When she was confronted with her earlier testimony where she said she had deposited Shs.80,000,000.00, she replied that may be she had forgotten. She had given Shs.100,000,000.00 to Jimmy Tumwine, who went inside and paid. He brought her back a receipt for Shs.80,000,000.00. They did not pay the whole purchase price because she had other businesses she was thinking of.
29. DW3 did not bank the balance of the money, though she has bank accounts. She kept it at home. She put some of the money, Shs.50,000,000.00 into her cattle business and some into her interior decoration business.
30. The repayment terms for the loan from Bassajabalaba were not recorded. They were between her and Bassajabalaba. This was a friendly loan. It did not carry an interest. There was no security. She was supposed to pay him Shs.50,000,000.00 every year, starting from 2005. She has not paid him. Her business has been at standstill. She explained to him, and he understood. She denied that she was telling court a pack of lies.
31. DW6 was Hassan Bassajabalaba, who testified that he knew Deborah Tumwine, who had gone to school with one of his sisters. She requested for a loan from him early in 2003

and towards the end of the year he gave her a loan of Shs.300,000,000.00 repayable at the rate of Shs.50,000,000.00 per year from 2005. She has not started paying back the money because she had problems including a court case.

32. In cross examination he stated that exhibit D9 was prepared in his office. He called his lawyer to prepare the agreement in his office, which was done. This agreement was the standard kind of agreement for people he trusted. The agreement was necessary to ensure that he was paid, as this was a lot of money. He needed a lawyer to witness it, and to know when he was to be paid back.
33. He further stated that it was not unusual that the particulars of the lender were not typed in but filled in handwriting. Asked why the agreement bore the years 2002/2003, he stated that the financial year of the witness ended in June, and that is why the date of the agreement was stated to be 2002/2003, as the financial year was to end in June 2003. His financial year of 2003 started in June 2003, and every document produced in his office had 2 years. Pressed further he stated that in this case his financial year was ending in December for his personal account.
34. He further stated that when he lends money he intends that it is paid back. The terms of payment would usually be captured in the agreement. The terms as to repayment were verbally agreed upon. Exhibit D9 is just a receipt. The date of the agreement is in December. In this case the terms of repayment did not matter. This was a personal matter. In case of anything his family would know. He continued to state that there are circumstances when it does not matter whether he recovered the money or not. And this was one of the occasions that it did not matter whether he recovered the money or not.
35. To Mr. Bassajabalaba Shs.300,000,000.00 is small change. Whether or not it is paid back to him, did not bother him in the least! If this is true, as Mr. Bassajabalaba in effect claimed in his testimony, it is rather strange that he instructed a lawyer to draft an agreement at all! This seems not to make sense given that earlier on in his testimony he stated that he made the agreement in question to ensure that he was paid back, and to know when he was to be re-paid. The agreement he proceeded to sign did not contain repayment terms. Neither did it contain a repayment date.
36. I am constrained to agree with Mr. Bassajabalaba that he did not care whether he was repaid the Shs.300, 000,000.00 or not. And there is a reason for this. He actually did not

advance the money to defendant no.3 at all. He therefore did not care whether it was repaid or not, not that it was simply loose change in his portfolio. The whole story about a loan is a concoction to explain the bulk of the shareholders' subordinate loan to defendant no.4 and the money that financed the purchase of the buses bought by Jimmy Tumwine and registered in the names of defendant no.4.

37. The testimony of DW5, defendant no.3, is equally devoid of truth. After stating that she could not sleep with this kind of money in her house, and they proceeded to pay a portion thereof to Kampala Auto Centre Ltd, she retained the balance, Shs.200,000,000.00, and slept with it in her house for a couple of days, though she had a bank account, as if Shs200,000,000.00 is the kind of money she was comfortable to sleep with in her house. On the very day she claims to have got it, she drove around town with the same in her car, for the rest of the day. She drove home but did not leave the money at home. She then drove to Ndeeba with her husband, and her money in the car. Such conduct may be possible, for anything is possible in this world, but it is improbable.
38. Defendant no.3 claimed that she was unable to start repayments as agreed with Bassajabalaba because her business has been at standstill. This would be surprising given that she was into extensive cattle trading business and the interior decoration business which are not affected by the proceedings against Tumwine over the fraud in the bank, and freezing of defendant no.4's bank account. She has not paid back because there is simply no money due to Bassajabalaba, the loan being a concoction to explain the shareholders' subordinated loan to defendant no.4.
39. I am satisfied that Jimmy Tumwine, after coming into funds, as we have seen above, sat down with his wife, and agreed to form a company. They also agreed to put as much distance between Jimmy Tumwine, and the funds that capitalised defendant no.4, and purchased the buses, knowing that sooner than later, the plaintiff would discover the fraud committed on its accounts by Mr. Tumwine. The fabrication of the loan agreement between Mr. Bassajabalaba and Mrs Deborah Tumwine was part of this fraudulent scheme to put the money 'siphoned' from the plaintiff beyond 'reach'.
40. This conduct of defendant no.3 qualifies her to be a constructive trustee, given that she had constructive notice of the fraud of her husband, in respect of the funds siphoned by the husband from the plaintiff. Both defendant no.2 and 3 are liable to account to the

plaintiff, not only in respect of the funds so feloniously obtained, but for an account and the profits made there from.

41. Jimmy Tumwine claimed that he borrowed Shs.120,000,000.00 from Kampala Auto Centre Ltd for the purchase of second bus. DW4 testified to similar effect on behalf of the alleged lender, Kampala Auto Centre Ltd. In reality no money exchanged hands in this transaction of borrowing. If taken at its face value, defendant no.4 received a second bus, registered in its names, with Jimmy Tumwine undertaking to pay the balance of the purchase price, not paid at the time of delivery. What is odd about this agreement, exhibit D8, is that in reality Kampala Auto Centre Ltd, got no security at all, for the credit extended to Mr. Jimmy Tumwine.
42. The agreement states that the money will be covered by two post dated cheques, which are now stale by the admission of DW4 in his testimony. Secondly, though the log book of the bus purchased with this credit transaction was to be left in the hands of Kampala Auto Centre Ltd, there was no written agreement between Kampala Auto Centre Ltd and Provider General Enterprises Ltd, the registered proprietor of the bus. Retaining the log book alone, provides very little security for the payment of the sums of money allegedly due from Jimmy Tumwine.
43. What the agreement does prove though, without doubt, is that it is Mr. Jimmy Tumwine who was the real purchaser of the buses in questions, and that it is Jimmy Tumwine who made the deposit for the purchase of this second bus and paid for the purchase of the first bus. This is evident from its recitation or preamble at beginning, which states,

‘Whereas Kampala Auto Centre Ltd of PO Box 5316 Kampala. Located at plot 644, Kalinda Road—Ndeeba and **whereas Mr. Jimmy Tumwine is a transporter and is purchasing Isuzu buses from the said Kampala Auto Centre Ltd**, now, they agree that;’
44. Mr. Jimmy Tumwine purchased the buses in question, and as I have noted above with the funds stolen from the plaintiff, in the manner we have seen above. Mr. Tumwine was in a fiduciary relationship with the plaintiff being its employee controlling the accounts from which the money in question was stolen. As he was a fiduciary, he was a trustee in respect of the monies stolen. The conversion of cash into buses, made the buses trust property, regardless of the fact that they were registered in the names of defendant no.4,

at the instance of the Jimmy Tumwine, and which was, in any case, controlled by Jimmy Tumwine, and his wife. Defendant no.4 did not purchase the buses in question.

45. The claim that Provider General Enterprises Ltd, and its properties are protected, by the veil of corporate of personality from the liability of its owners, and directors, can no longer hold, given that it is a vehicle intended to hide the proceeds of funds obtained in a fraudulent scheme perpetrated by the defendant no. 2, with the constructive knowledge of defendant no.3 and defendant no.4. The purchase of buses was done by Mr. Jimmy Tumwine. Mr. Tumwine acknowledged this in writing in exhibit D8. He is the purchaser of the said buses. The seller treated him so.
46. Defendant no.4, is a mask for Jimmy Tumwine, and deliberately so constructed, to put beyond the plaintiff's reach, the proceeds of defendant no.2's theft of the plaintiff's funds, which he used for purchase of the two Isuzu buses, UAF392M and UAF007J. I am satisfied that the plaintiff is entitled to trace its money now converted into buses and other assets and currently put into the names of the defendant no.4.
47. Turning to Issue No.6, and the position of strangers to a trust, that receive trust property, I refer to the principle set out in 48 Halsbury's Laws of England, 4th Edition, Para 587, in the following words,
- 'A constructive trust attaches by law to specific property which is neither expressly subject to any trusts nor subject to a resulting trust but which is held by a person in circumstances where it would be inequitable to allow him to assert full ownership of the property..... A stranger who receives property in the circumstances where he has actual or constructive notice that it is trust property being transferred to him in breach of trust will, however, also be a constructive trustee of that property.'
48. I take it, given the nature of control of Provider General Enterprises Ltd by Jimmy Tumwine and his wife, that Provider General Enterprises Ltd, had actual notice of the fraud committed by Jimmy Tumwine, and the scheme to transfer the proceeds of such fraud, in the form of buses, to Provider General Enterprises Ltd, on account that Jimmy Tumwine and his wife, were its mind, as its directors. Provider General Enterprises Ltd is a constructive trustee, to the plaintiff, in respect of the buses, and any income accruing there from.
49. In equity and good conscience this property should be held and enjoyed by the plaintiff, and not the defendant no.4, or its only directors and shareholders, defendants no.2 and 3.

Defendant no.4 is a constructive trustee of the property. It holds the property in trust for the plaintiff.

50. Turning to remedies, I enter judgment for the plaintiff as against defendant no.2 for the sum of US\$512,077.00, (US\$ 513,077.00 less US\$3500.00 (already re-paid by defendant no.1 to the plaintiff)), being the sums of money wrongly diverted from the plaintiff's contingent liability accounts to defendant no.2, by defendant no.2 and still outstanding. As the defendant no.1 has already paid the portion he received, I will make no award against him on this account.
51. Given the felonious nature of the conversion of the plaintiff's funds by the defendant no.2, together with the fact the taking of the said money was in breach of the defendant no.2's duty as a fiduciary of the plaintiff, and in that sense a trustee, this is a fitting case, in which to order compound interest to be levied on the same sum, at the rate of 11% per annum, the sums of money being expressed in the dollar value, from the date of its taking until realisation in full.
52. The power to order to compound interest, in appropriate cases, is a power courts of equity have. As was stated by Lord Brandon in *President of India v La Pintada Compania Navigacion S.A.* [1984] 2 All ER 773, at page 779,

‘Chancery courts had further regularly awarded interest, including not only simple interest but also compound interest, when they thought that justice so demanded, that is to say in cases where money had been obtained and retained by fraud, or where it had been withheld or misapplied by a trustee or anyone else in a fiduciary position.’
53. As against defendants no.2, 3 and 4, I lift the veil of incorporation of defendant no.4, allowing the plaintiff to trace the two Isuzu buses, UAF392M and UAF007J and the monies on defendant no.4's account no.01020-127006-00 with Standard Chartered Bank, which are the proceeds of the defendant no.2's fraud. I order the same to be conveyed to the plaintiff with immediate effect by the said defendants, or whosoever is in possession thereof, without any further orders of this court.
54. I declare defendant no.4 to be a constructive trustee in respect of the two buses aforesaid, the monies on its bank accounts, liable, not only to convey the same to the plaintiff, but to account for any income derived there from to the plaintiff.
55. I order the defendants no.2, 3 and 4 to pay the plaintiff costs of this suit. The defendant no.1 shall bear his own costs.

56. I order accordingly.

Dated, signed and delivered at Kampala this 8th day of August 2006

FMS Egonda-Ntende
Judge