THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

CIVIL SUIT NO 3 OF 2011 (O.S)

1. **PEARL IMPEX (U) LTD }**
2. **EDISON MUBANDIZI T/A }**

   MIRAMBI CENTRAL STORES}
3. **AFRISTOCK COMPANY LTD}..... PLAINTIFFS**

VERSUS

1. **ATTORNEY GENERAL OF UGANDA}**
2. **KAMPALA CAPITAL CITY AUTHORITY}..... DEFENDANTS**

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA

JUDGMENT

By this originating summons the plaintiffs claim to be interested in the proper construction of the investment code act chapter 92 laws of Uganda as regards the legality of entry permits and trade licence is issued by the directorate of the migration and the Kampala Capital City Authority respectively, foreign investors in Uganda without complying with the provisions of the investment code act, for the purpose of cancelling all permits and trade licence is not complying with the requirements of the act and for declaration of the rights of the plaintiffs. The questions the plaintiffs were determined at the following:

1. Whether or not a foreign investor engaging in trade only can validly be issued with an entry permit by the directorate of immigration without a certificate of remittance from bank of Uganda in accordance with section 10 (5) (6) (7) and (8) of the Investment Code Act chapter 92 laws of Uganda.

2. Whether or not a foreign investor can validly be issued with a trading licence by the Kampala Capital City Authority without a certificate of remittance from bank of Uganda in accordance with section 10 (5) (6) (7) (8) and (9) Investment Code Act chapter 92 laws of Uganda.

3. Whether entry permits and trading licences issued by the above authorities without the requisite certificate of remittance from bank of Uganda are liable to cancellation.

The originating summons is supported by the affidavit of Edison Mubandizi a director of the first plaintiff and a proprietor of the second plaintiff's sworn on 11 February 2011.

When the matter came for hearing, Counsel Muwema Fred appeared for the applicants assisted by Counsel Terrence Kavuma while the Attorney General was represented by Mwaka State Attorney and Richard Lubaale appeared for 2nd Defendant.

Fred Muwema applied to amend the face of the application to read after the mention of the defendants the 5th last sentence which refers to "Foreign Traders in Uganda" and any other same references appearing on the next page items 1 and 2 being questions framed in summons to be substituted with the words "Foreign Investor engaging in trade". After listening to arguments from both sides, I allowed the amendment to so that the terms foreign investor engaging in trade fitted within the language of the Investment Code Act section 10 (5) onwards. Counsel also prayed that the second defendant with the new successor Authority namely Kampala Capital City Authority which application was also allowed.

Counsels for the respondents asked the court to disallow the amendment of foreign Trader to read foreign Investor as far as the affidavit is concerned and this was conceded to by the plaintiff's counsel.

I ruled that as amendment prayed for was allowed so that as far as the originating summons is concerned, the words "foreign trader" was substituted by the words "Foreign Investor engaging in trade" wherever it appears. As far as the affidavit in support of the application is concerned, wherever the words "foreign trader" appears, the paragraph shall be severed from the affidavits in so far as they relate to foreign trader, where the words can be severed without doing damage to the paragraph of the affidavit, the same shall remain intact." And lastly that the name Kampala Capital City Authority is substituted for Kampala City Council under order 1 rule 10 and 13 of the Civil Procedure Rules. I further ordered that the application is amended accordingly to reflect the orders of court. The parties continued with arguments in the main application. By the time of writing this judgment no amended application had been filed in court as ordered.

The lead counsel for the plaintiff Fred Muwema submitted that the suit has framed three questions, for interpretation which questions I have reproduced above. He submitted that the substance of the evidence in support of originating summons is in paragraph 3 of the affidavit in support. That the plaintiffs case is that the Directorate of Immigration cannot issue an entry permit to a foreign investor engaging in trade without a certificate of remittance from the Bank of Uganda as provided for under section 10 (8) of the Investment Code Act hereinafter referred to as the principal Act. Section 10 (8) of the Principal Act makes a certificate of remittance a necessary requirement for the issuance of an entry permit. He contended that whereas the Directorate of Immigration has powers to grant entry permits to foreign investments under the Uganda Citizenship and Immigration control

Act section 53 thereof, the same law in section 7 subsection 1 (g) provides that in performing its duties, the immigration board shall also comply with the provisions of any other enactment. He contended that reference to "any other enactment" is a reference to the Investment Code Act. By extension the Immigration Department is enjoined to comply with that section 10 (8) of the principal Act. He invited court to note that the Uganda Citizenship and Immigration Control Act is not the principal Act regulating foreign investment in Uganda. It is the investment Code which says so in its title. As far as the first question is concerned, counsel prayed that I be pleased to answer the first question in the negative that no such permit can be issued without a certificate of remittance as stated above.

As regards the second question, counsel for the plaintiffs submitted that the plaintiffs case likewise is that the second defendant cannot issue trading licences because under section 10 (9) of the Investment Code Act, the second defendant can only issue a trading licence to a foreign investor engaging in trade after they have obtained an entry permit and secondly if they have a certificate of remittance.

Whereas second defendant issues trading licences under the Trade Licensing Act cap 101 sections 11 thereof. The same Act in section 12 (c) thereof, forbids the second defendant from granting any trading licence in contravention of any provision of any other written law.

He prayed that the court answers the second question for interpretation in the negative that they cannot issue trading licences without a certificate of remittance from BOU.

The 3rd question regards the cancellation of trading licences and entry permits issued without certificate of remittances. Counsel submitted that the requirement of prior obtaining of a certificate of remittance under section 10 (5) of the Investment Code Act is mandatory and not directory. He contended that non compliance with a mandatory requirement renders any entry permits or licences issued without the certificate of remittances illegal, null and void. It is the duty of this court whenever an illegality is raised to act swiftly and address the illegality by ordering cancellation of the entry permits and trading licences. Counsel further referred to the case of **Makula International vs. Cardinal Nsubuga** for the proposition that an illegality brought to the attention of court overrides all questions of pleadings including any admissions made therein and the court would deal with the illegality.

In conclusion counsel submitted that as far as the affidavit in reply by both defendants is concerned, they have not offered anything by way of reply as regards the provisions of law he has quoted. He contended that this is a matter only heard by affidavit evidence and therefore the defendants have no evidenced in rebuttal.

As far as the affidavit in reply of State Attorney Kasibayo Kosia is concerned, he submitted that all the affidavit raises is in paragraph 3 that the affidavit in support is misconceived and

that no instance of non compliance is raised. And secondly that the suit concerns a complex matter not appropriate for originating summons.

Plaintiff's counsel submitted that it was not available at this stage for the first defendant to raise issues relating to the originating summons issues. He contended that the competence of the originating summons was determined by the court when it made a ruling on the 9th of March 2011 to grant an order of issuance of the originating summons. As far as instances of non compliance is concerned, he submitted that the success or failure of the suit does not depend on how foreign investors engaging in trade are being issued with entry permits or trading licences per se but on the construction of section 10 (5) of the Investment Code Act as to whether or not a certificate of remittance is required before the defendants are issued with permits or licences. He argued that for the above reasons the objections of the first respondent's/defendants has not merit.

As far as the second defendant is concerned, the plaintiff's counsel submitted that there is an affidavit of the then Town Clerk who avers that the second respondent is not a proper party to the suit. Secondly that it does not issue trading licences as a question of fact. This affidavit was replied to by way of an affidavit in rejoinder which in paragraph 3 thereof, states that the second defendant is the proper and necessary party with a statutory duty to regulate control, and administer trading licences.

Counsel grounded his answer on the principal law that provides for the powers of the second defendant over or in respect of trading licences issued under the Local Governments Act cap 243 section 30 (2) thereof which provides that a district council, which includes a city council shall carry out functions set out in part 2 of the second schedule to the Act. When you look at part 2, (5) provides that the decentralised services for which a district council shall be responsible include services in relations to trading licenses.

Part 2 (5) (n) deals with trading licences. He submitted that it is worth noting that section 32 and attendant part 2 thereof are only subject to article 176 (2) of the Constitution of the Republic of Uganda and section 96 and 97 of the LGA which deal with powers of ministers over local government.

Part 2 is not subject to part 5. Part 5 deal with functions and services which remained at the city council. 5 (a) (5). 5 deal which functions which include the setting of levels of trading licences and fees.

Whereas functions of trading licenses is not taken away by part 5 (a). Part 5 (a) gives the second defendant a function or duty in relation to trading licences. Consequently the second defendant has a statutory interest in trading licences, its legal control and management. He contended that Part 5 (b) is where response from the 1st defendant arises. It deals with functions to be devolved by the city councils to the divisions. He submitted that devolution is not automatic and section 35 (5) of the Local Governments Act sets conditions for devolution to take place. In cases of devolution, both parties must agree. Secondly the

necessary resources are made available and thirdly it must be brought to attention of public. He submitted that whereas part 5 (b) Para 5 says that administration of trade licences may be devolved to a lower council or division; there is no evidence before court to suggest that this devolution took place.

Based on the above, the plaintiff's case is that the second defendant is a proper party to be sued and has a statutory duty to play concerning issuance of trading licences. He prayed that I answer the questions framed in favour of the plaintiffs.

Mwaka State Attorney in reply opposed the suit. Firstly he pointed out that paragraphs 4 – 10 of the affidavit in reply has no meaning without the words foreign trader (which had been severed by court). He submitted that this is because the suit concerns specific classifications which cannot be assumed. He contended that the said paragraphs without the words "foreign trader" were hanging.

Secondly counsel submitted that the application was not suitable because it involved great complexity and required a lot of evidence. Thirdly it was likely to affect a multitude of individuals who have not been heard. For instance the plaintiffs seek cancellation of entry permits issued contrary to the Investment Code Act, yet these persons likely to be affected are not parties. That it is only the 2 respondents who are parties. Counsel further contended that the applicant is seeking orders against the whole world and not against designated parties. The consequences would be far reaching as the persons affected would not have been heard and this breaches the right to a fair hearing

As to whether the provisions of the Investment Code Act are mandatory or directory. There are issues that it may not be as simple as counsel suggests. There is no penal sanction within the Investment Code Act for issuance of a licence without a certificate of remittance. These are matters of complexity which require interpretation and it also requires evidence. Records of the Respondents have to be examined. Why was a penal provision not included? As far as the specific order is concerned he submitted that there is an issue of whether it can be done by court and whether it is not an executive prerogative.

The State Attorney further submitted that originating summonses are inappropriate for this matter and the court should use its discretion to order it to be heard in an ordinary suit. He contended that if court proceeded as counsel wanted, the decision of the court would be subject to abuse misinterpretation. If the court does make sweeping declarations, the plaintiffs will get consequential orders against the people. As far as the ruling of the court issuing the OS is concerned, the respondents were not party and the court's ruling would be a prima facie ruling. This is the proper time to show court that OS should not be used to determine this matter.

As far as the question of the affidavits in reply is concerned, the respondents reply is that in order to get the full contribution of the respondent evidence has to be called regarding how

department of immigration implements granting of permits, its policy and whether the provisions are mandatory or directory. It would make the matter detailed and complex.

To sum up, he prayed that the court declines to grant the prayers and direct applicants to pursue matter through an ordinary suit and this would not prejudice the applicant in any way. It may be possible that we may be in agreement but to emphasise that his complex question should not be hurried through Originating Summons. Finally counsel referred to two authorities, where courts have declined to grant OS on the basis of complexity. These were Makabugo vs. Francis Drake Serunjogi 1981 HCVB 58 and Kibutiri vs. Kibutiri Civil Appeal 30 of 1982 (Kenyan case).

For the second respondent counsel Richard Lubaale submitted that the second respondent is a wrong party. That Part 5 (b) of second schedule paragraph 5 and part 5 (a) paragraphs 5 of the LGA, the role of administering trading licences falls under the divisions. See part B third schedule Kampala Capital City Act. The issue of whether trading licences are issued or not is a question of fact. He relied on paragraphs 3 and 4 of the second respondents which are not denied by the plaintiffs.

He referred to section 30 (5) of the LGA on devolution section 35 Kampala Capital City Act and submitted that there is no requirement of LGA not reproduced in the new Act. The issue is whether the second defendant complies with the Investment Code Act. It does not issue licences. Application is inter parties, it follows that the correct parties be brought to court are the divisions which issue licences. Any decision will condemn divisions unheard contrary to rules of natural justice. He prayed that the suit against second defendant be dismissed on grounds of being brought against the wrong party.

In the alternative the second respondents counsel associated himself with submissions of the Attorney General and contended that section 10 (9) of the Investment Code Act does not create an obligation on the second defendant. The requirement there under is that the applicants must have an entry permit to qualify. He prayed that I dismiss the suit against the second respondent with costs.

Rejoinder of plaintiff's counsel

In rejoinder counsel Fred Muwema submitted that the provisions of Kampala Capital City Authority cited only apply when devolution has taken place and that there must be evidence of devolution. He reiterated his earlier submissions that the second defendant is a proper party.

As to the first defendant is concerned he submitted that the alleged complexity of the suit has not been enumerated and the court has no basis to act on complexities not demonstrated.

As far as the issue of proceeding as an ordinary suit is concerned he submitted that there is no need to call witnesses to talk about provisions of law. Secondly the third parties who may be affected by the court are not responsible to issue entry permits. Lastly the second defendant he submitted that the respondents have not given the government position on the provisions of section 10 of the Investment Code Act and their silence would only leave the court to consider only arguments advanced by the plaintiffs in submissions. He prayed that I grant the suit with costs.

I have carefully considered the pleadings in the originating summons and the affidavits filed in support and opposition as well as submissions of counsel and the law. I am inclined to consider the questions raised for interpretation as currently framed in the originating summons on grounds stated below but while doing so I will demonstrate the limitations, if any of the remedies sought by the plaintiffs:

1. The originating summons raises pure questions of law which require interpretation of the Investment Code Act, the Local Governments Act, the Citizenship and Immigration Control Act, The Immigration Act, the Constitution and regional instruments and not necessarily questions of fact.

2. The interpretation can be a guide on the concern of the plaintiffs of whether trading licences and entry permits can be issued to foreign investors without certificates of remittances from Bank of Uganda as provided for under section 10 of the Investment Code Act cap 92 Laws of Uganda 2000 edition. In answering this question I will also consider whether the questions raised in the Originating Summons can be answered in the manner anticipated by the plaintiffs as affirmative or negatives answers.

3. There is no need to call or adduce any further evidence for purposes of interpretation on the questions raised in the originating summons.

On the 9th of March 2011 I ruled that the originating summons for the questions of interpretation raised in this matter should issue. In the ruling I noted that no instances of actual infringement of the Act had been cited by the plaintiffs and that the summons would be issued anyway to determine pure questions of law which may be interpreted without further evidence. (See pages 11 – 14 of my ruling in Civil Suit No 3 of 2011 (O.S.) when determining the plaintiff's application for leave of court to issue the current originating summons)

I noted in my ruling that the questions raised by the plaintiffs for interpretation would determine the correct procedure for issuance of entry permits and trading licences by the relevant authorities to foreign investors. I noted that the Investment Code Act can be interpreted without facts of infringement and that potential denial by the respondent as to whether entry permits and trading licences had actually been issued by the respondents in contravention of section 10 of the Act could not stop the parties from interpreting the law for the benefit of law enforcement agencies and the public at large. I also held that where it

is alleged that the law is being infringed or is likely to be infringed, there would be sufficient interest in a trader such as the plaintiffs to come to court to ensure that the law dealing with issuance of trading licences to foreign investors is enforced according to the letter of the law and not in contravention. As far as standing is concerned I was persuaded by the Judgment of Lord Denning in **Attorney General (on the relation of McWhirter) v Independent Broadcasting Authority [1973] 1 All ER 689** at page 699 that where there are good grounds for supposing that the authorities are violating the law a citizen can bring it to the attention of courts as a last resort and seek to have the law enforced. I noted that the plaintiffs certainly have interest in the matter and I could see no prejudice to the defendants in seeing that the law is enforced according to the wording of the enactment and the intention of Parliament. Last but not least interpretation of pure points of law per se is in the public interest.

Counsel Mwaka State Attorney who represented the Attorney General submitted that at that time they had not been represented and he argued that this was not a good case to be tried by originating summons and should be tried in an ordinary suit. I will deal with this question when answering the questions for interpretation raised in the originating motion itself. As far as the potential effect of the decision of the court is concerned, nobody can be prejudicially affected by any correct interpretation of the law. As far as the immigration department is concerned, it is sufficient to engage the Attorney General as a defendant under section 10 of the Governments Proceedings Act cap 77 laws of Uganda 2000 edition and article 119 (4) (c) of the Constitution of the Republic of Uganda which provides that the Attorney General shall represent Government in all proceedings brought against the Government. The Attorney General's input on the questions sought to be interpreted should have been sufficient. Last but not least an issue was raised as to whether the second respondent is a proper party to this suit. I shall deal with that question later in this judgment.

As far as the declarations which may affect third parties not before the court is concerned, interpretation of law will not only affect third parties who are not parties to this suit but it will affect the way the law is implemented in future wherever, if at all, it had hitherto (an assumption) been implemented differently. This is not illegal or contrary to the rules of fair hearing which is a principle of fundamental justice. Not everybody who will be affected by a law interpreted by court need to be a party. Representation by the Attorney General is sufficient as far as legislation affecting the public is concerned. Moreover declaratory orders are by their nature orders which may be granted with or without consequential relief being sought. The question of any consequential relief is corollary to the interpretation of the questions raised. Declaratory reliefs are provided for under order 2 rule 9 of the Civil Procedure Rules which provide:

> "9. Declaratory judgment

> No suit shall be open to objection on the ground that a merely declaratory judgment or order is sought by the suit, and the court may make binding declarations of right whether any consequential relief is or could be claimed or not."

When a declaratory judgment of right is sought, the court granting the judgment has jurisdiction to grant consequential relief. In this suit the only reliefs sought are declaratory. What could have been of concern to the defendants is the last declaration sought which is on the question "whether entry permits and trading licences issued by the above authorities without the requisite certificate of remittance from the Bank of Uganda are liable to cancellation." If the question is answered in the affirmative it would not lead to a consequential relief without further proceedings which might even be brought by the authority or the applicants to compel the authority to cancel any entry permit or trading licence issued by any relevant authority as envisaged in the Investment Code Act cap 92 Laws of Uganda. The nature of order 2 rule 9 of the Civil Procedure Rules is given in the interpretation of a rule which is in *pari materia* with order 2 rule 9 of the Ugandan Civil Procedure Rules as cited in the case of **Guaranty Trust Company of New York versus Hannay and Company Limited [**1915] 2 KB 536 at page 562 where Pickford LJ held that a declaration of right could be made even where no consequential relief can be given. Further on at page 568 last sentence Bankes L.J. held the rule "enables the court to make the declaration irrespective of whether consequential relief could be claimed or not…" Bankes L.J. Further defines what a "declaration of right" is at page 571 in the following terms:

> "Declaration of right in that rule must be read in the sense in which it has always previously borne, that is to say, a declaration of some right which the plaintiff maintains that he has against the person or persons whom he has made parties to his suit …" page 574 ".. the claim for a declaration is not in itself a claim for relief …"

It is clear that declarations under order 2 rules 9 may give rise to a separate action for consequential relief if it has not been claimed in the originating summons or plaint itself as in the current suit. This is made clearer in **Halsbury's laws of England 3rd edition volume 22 paragraph 1610 pages 746 – 747** which provides:

> "It is however sometimes convenient to obtain a judicial decision upon a state of facts which has not yet arisen, or a declaration of the rights of a party without reference to their enforcement. Such merely declaratory judgments may now be given and the court is authorised to make binding declarations of right whether any consequential relief is or could be claimed or not …"

Last but not least the effect of a bare declaration was considered in the case of **Gray vs. Spyer [1922] 2 CH page 22.** In this case the plaintiff who was a landlord sought a declaration that his notice to quit was effectual. He however did not pray for an order for vacant possession. On the other hand, the defendant/a tenant who had an agreement for a lease

sought by counterclaim a declaration that they had a tenancy from year to year. He however sought no order for specific performance for executing a formal lease. The court on appeal dismissed both prayers for declarations and observed that the action was useless since both parties who were entitled to relief did not ask for vacant possession or specific performance respectively.

It follows that interpretative declarations sought by the plaintiffs in this action if granted cannot automatically lead to enforcement to the prejudice of any third party not in court. Such third parties would have a chance if at all the declarations are granted whenever anyone wants it to be enforced against them to be heard in the enforcement action as no consequential relief has been sought in this matter nor can one be granted on the basis of the affidavit in support of the originating summons. No third party has been named. As I have noted the representation by the Attorney General is sufficient to take care of the Public Interest so long as they perform their statutory role of being guardians of the public interest under the Government Proceedings Act. I would therefore without much ado proceed with the questions sought to be interpreted and the question of whether the second Respondent is a property party to any declaration sought or question to be interpreted will be handled in answering the relevant interpretative question.

The questions the plaintiffs want determined are the following:

1. Whether or not a foreign investor engaging in trade only can validly be issued with an entry permit by the directorate of immigration without a certificate of remittance from bank of Uganda in accordance with section 10 (5) (6) (7) and (8) of the investment code act chapter 92 laws of Uganda.

2. Whether or not a foreign investor engaging in trade only can validly be issued with a trading licence by the Kampala Capital City Authority without a certificate of remittance from bank of Uganda in accordance with section 10 (5) (6) (7) (8) and (9) investment code act chapter 92 laws of Uganda.

3. Whether entry permits and trading licence issued by the above authorities (if any) without the requisite certificate of remittance from bank of Uganda are liable to cancellation.

The first question is "**Whether or not a foreign investor engaging in trade only can validly be issued with an entry permit by the directorate of immigration without a certificate of remittance from bank of Uganda in accordance with section 10 (5) (6) (7) and (8) of the investment code act chapter 92 laws of Uganda.**"

After careful perusal of the relevant provisions on the first question, we need to commence analysis by establishing the meaning of the term *foreign investor*. Under section 1 (f) of the Investment Code Act cap 92 laws of Uganda "*foreign investor*" is to be construed in accordance with section 9. Section 9 subsection 1 defines a foreign investor in the following terms:

> “(1) in this Code, “foreign investor” means—
>
> (a) A person who is not a citizen of Uganda;
>
> (b) A company, other than a company referred to in subsection (2), in which more than 50 percent of the shares are held by a person who is not a citizen of Uganda;
>
> (c) A partnership in which the majority of partners are not citizens of Uganda.

By using the word "in this code", section 9 subsection 1 restricts the term "*foreign investor*" to a context specific location within the context of the Act. The definition can only be used for purposes of the Act and is not meant to be of general application. So for purposes of the Investment Code Act, a foreign investor is a person who is not a citizen of Uganda, or a company other than a company referred to in subsection 2 of section 9 of the Act which has 50% or more of its shareholding held by persons who are not citizens of Uganda or a partnership where the majority of partners are not citizens of Uganda. Subsection 2 of section 9 gives a negative definition of what a foreign investor is by defining what he or she is not. It provides that a foreign investor shall not be deemed to be any of the following categories namely: a registered company incorporated in Uganda in which the Government of Uganda holds majority shares; a body corporate established under Ugandan law; an international development agency duly vetted by the Uganda Investment Authority; a cooperative society registered under the Cooperative Societies Act; a trade union registered under the Trade Unions Act and in any other case not expressly provided for, the Uganda Investment Authority determines whether or not the person or corporate personality in question is a foreign investor.

Section 10 (1) of the Act provides that a foreign investor shall not operate a business enterprise in Uganda otherwise than in accordance with an investment licences issued under the Act. However subsection 5 of section 10 of the Act provides that a foreign investor who is intending to engage in *trade only* shall not be required to comply with subsection 1. This is among the provisions namely section 10, (5) – (9) that that the plaintiffs want this court to interpret. The provisions under section 10 (5) – (9) are:

> “(5) A foreign investor who is intending to engage in trade only shall not be required to comply with subsection (1) but shall—
>
> (a) Incorporate a company with the Registrar General as is required by law;

(b) Deposit a sum of one hundred thousand United States dollars or its equivalent in Uganda shillings at the Bank of Uganda, which shall be specifically used for importation or direct purchase of goods for the business.

(6) Upon compliance with subsection (5), the Bank of Uganda shall issue a certificate of remittance to the foreign investor.

(7) A foreign investor who obtains a certificate of remittance under subsection (6) shall lodge an application, in writing, to the immigration department which shall contain the certificate of remittance and other information that may be required by the department.

(8) Subject to compliance with the provisions of this section and the immigration laws, the immigration department may issue an entry permit to the foreign investor.

(9) A foreign investor who obtains an entry permit under subsection (8) shall lodge an application, in writing, to the local authority where the business will principally be carried out for a trade license."

These provisions provide that a foreign investor who intends to engage in *trade only* shall firstly (a) incorporate a company with the registrar of companies; (b) deposit a sum of 100,000 United States dollars or its equivalent in Uganda shillings with the Bank of Uganda which money is to be specifically used for importation or direct purchase of goods for the business of the foreign investor. The purpose of the deposit of 100,000 United States dollars or its equivalent in Uganda shillings is for the business of the foreign investor as clearly stipulated. In other words the Bank of Uganda ensures that the foreign investor who wishes to invest in Uganda as intended by legislature under the Investment Code Act has the capital cover to be licensed to do so. The Bank of Uganda would only issue a certificate of remittance to a foreign investor if (a) the foreign investor has incorporated a company with the registrar of companies in Uganda and (b) the person has deposited with the Bank of Uganda an amount of 100,000 United States dollars or its equivalent in Uganda shillings.

It is necessary to highlight the words "*trade only*" used in section 10 (5) of the Investment Code Act. It means that subsection 5 applies to those foreign investors who wish to engage in trade only. The word "trade" or term *trade only* is not defined by the Act. The Interpretation Act cap 3 laws of Uganda do not define the word "trade".

Stroud's Judicial Dictionary Sweet and Maxwell 2000 edition defines the term "trade" very widely as follows:

" Formerly "trade" was used in the sense of an "art or mystery", e.g. that of a brewer (see Art), or a tailor (Norris v. Staps Hob. 211; see further Inferior Tradesman), but

now "trade" has the technical meaning of buying and selling" (per Willes J., Harris v. Amery L.R. 1 C.P. 148; see also 2 Bl. Com. 476; s.19, Weights and Measures Act 1878 (c. 49); per Halsbury C., Sao Paulo Railway v. Carter [1896] A.C. 38; per Lord Davey, Grainger v. Gough [1896] A.C. 325; cp. Commerce). Thus, a covenant in a lease not to carry on any "offensive" trade does not prohibit a private lunatic asylum, "trade", in such a connection, being only applicable to a business of buying and selling (Doe d. Wetherell v. Bird 4 L.J.K.B. 52, cited Offensive).

But "trade" "may have a larger meaning so as to include manufactures" (Commissioners of Taxation v. Kirk [1900] A.C. 588, cited Derive). So, the business of a telegraph company is a "trade" as regards house duty (Bank of India v. Wilson 3 Ex. D. 108, cited Dwelling-House, Cleasby B., dissenting). See further Apprentice.

"Trade" is not only etymologically but in legal usage a term of the widest scope. It is connected originally with the word "tread" and indicates a way of life or an occupation. In ordinary usage it may mean the occupation of a small shopkeeper equally with that of a commercial magnate. It may mean a skilled craft. Although it is often used in contrast with a profession the word "trade" is used in the widest application in the appellation "trade unions". Professions have their trade unions (National Association of Local Government Officers v. Bolton Corporation [1943] A.C. 166).

It is not essential to a "trade" that the persons carrying it on should make, or desire to make, a profit (per Coleridge C.J., Re Law Reporting Council 22 Q.B.D. 279, which see also, inf.; but see per Halsbury C., and Lord Davey, sup.).

Trustee savings banking was a "trade" within art. 1 of the Industrial Disputes Order 1951 (No. 1376) (R. v. Industrial Disputes Tribunal, ex p. East Anglian Trustee Savings Bank [1954] 1 W.L.R. 1093).

The business of a jobbing builder was held to be a trade within a covenant not to use premises for the purposes of trade (Westripp v. Baldock [1939] 1 All E.R. 279).

"Trade, profession or employment" (Landlord and Tenant Act 1954 (c. 56), s.23(2)). The holding of a Sunday school (free of charge) does not amount to a trade, profession or employment within the meaning of this section (Abernethie v. Kleiman (A. M. & J.) [1970] 1 Q.B. 10). Taking in lodgers and making virtually no profit by so doing was held not to be a "trade, profession or employment" within the meaning of this section (Lewis v. Weld crest [1978] 1 W.L.R. 1107).'

The dictionary definitions have been couched in the widest terms possible and cannot be applied in the context of the Investment Code Act. The definitions of "trade" include an art, buying and selling of goods and services, a way of life or occupation. The above definition on the face of it demonstrates that literally there is a problem with the terms *trade only* as used

in section 10 (5) of the Investment Code Act and the definitions are necessary for a resolution of this matter. The terms *trade only* when considered at face value include virtually any kind of investment. A deeper analysis and the way the term is applied in the Act shows that it is applied in a restricted sense to the buying and selling of goods and services. The term "trade only" is meant to distinguish the business of buying and selling of goods and services from other kinds of investment such as manufacture, value addition and specifically those investments which will attract incentives under the Act. The term *trade only* is also restricted to buying and selling of goods when one considers the wording of 10 (5) (b) which provides for the deposit of money with the central bank. The money is deposited for and *shall be specifically used for importation and direct purchase of goods for the business*. For comparison, the kinds of investments other than *trade only* are considered here in below.

Suffice it to say that where a foreign investor has incorporated a company with the Registrar General as required by law and also deposited a sum of United States dollars 100,000 or its equivalent in Uganda shillings with the Bank of Uganda, he or she is required to lodge an application to the immigration Department who may issue the foreign investor with an entry permit subject to immigration laws. Last but not least upon obtaining an entry permit a foreign investor is expected to lodge an application in writing for a trade licence to the local authority where the business will be principally carried out.

Before a further and deeper analysis of the above provisions, it is necessary to first comment about the intention of Parliament in enacting the Investment Code Act cap 92 laws of Uganda 2000 edition. The preamble to the Act provides that it is "*An Act to establish a code to make provision in the law relating to local and foreign investments in Uganda by providing more favourable conditions for investments, to establish the Uganda Investment Authority and to provide for other related matters.*"

From the preamble the clear intention of Parliament is to establish favourable conditions for investments. This intention can also be discerned from the definition section that is section 1 subsection (g) of the Act which defines the term "investment" to mean "the creation of new business assets and includes expansion, restructuring or rehabilitation of an existing business enterprise". The intention of the Act can be further discerned from section 6 of the Act which provides for functions of the Uganda Investment Authority. Section 6 subsection (a) includes among the functions of the authority the function to promote, facilitate and supervise investments in Uganda; (b) to receive all applications for investment licences for investors intending to establish or set up business enterprises in Uganda under the code, to issue licences and certificates of incentives in accordance with the code; (c) to secure all licences, authorisations, approvals and permits required to enable any approval granted by the authority to have full effect; (d) to recommend to the government national policies and programs designed to promote investment in Uganda; (e) to provide information on matters relating to investment in Uganda; (f) to assist potential investors in identifying and establishing investment projects in Uganda; (g) in accordance with the provisions of the

code, to determine the terms and conditions which may be imposed in relation to operation of the business enterprise.

A critical examination of the functions of Uganda Investment Authority leads to the inevitable inference that its functions are to promote, create and facilitate a favourable environment for foreign investment. This includes the attraction of foreign direct investment, the creation of employment and value addition to local production of goods and services. Among other things, the favourable foreign investment climate includes the provision of incentives, to grant certificates of incentives to foreign investors who qualify, to facilitate obtaining of licences to carry out the investment. In carrying out its function of issuing certificates of incentives under section 12 of the Investment Code Act, the Uganda Investment Authority takes into account several factors; namely: (a) the generation of new earnings or savings of foreign exchange through export, resource-based import substitution or service activities; (b) the utilisation of local materials, supplies and services; (c) the creation of employment opportunities in Uganda; (d) the introduction of advanced technology or upgrading of indigenous technology; (e) the contribution to locally or regionally balanced social economic development; or (f) any other objectives that the authority considers relevant for achieving the objects of the statute. Under section 22 subsection 1 (a) of the Investment Code Act an investor who commences business after the commencement of the Act qualifies for incentives under the Act if he or she satisfies at least three of the above objectives specified in section 12 of the Investment Code Act.

In addition, the provision for the deposit of 100,000 United States dollars or its equivalent in Uganda shillings with the bank of Uganda on the face of it ensures that a foreign investor who wishes to engage in trade only has the requisite capital at a minimum deposited with the bank of Uganda hence attracting foreign capital to fulfil one of the objectives of the Act.

The Act is couched as I have noted in positive terms and is meant to give an attractive destination for foreign investment. Can it be used to prevent foreign investors or foreigners as will not fulfil the first two requirements under section 10 subsection 5 of the Investment Code Act from carrying on business activities in Uganda? The first thing to be noted is that the term *foreign investor* has been used to include any person who is not a citizen of Uganda. This by necessary implication includes Kenyans, Tanzanians, Rwandese, Congolese, Indians, Chinese, Britons, Frenchmen, Germans, Arabs, Jews, Americans and any others who are not citizens of Uganda. The underlying question is whether any foreigner who intends to do business in Uganda should be restricted from doing *trade only* in the manner suggested by the plaintiffs if they do not incorporate a company and deposit a minimum of USD 100,000 or its equivalent in Uganda shillings? Secondly the term *trade only* as used in subsection 5 of section 10 of the Investment Code Act leaves a lot to be desired though its meaning as I have noted should be restricted in the context of the principal Act to buying and selling of goods and services.

The question the plaintiffs want interpreted cannot be determined without an examination of other laws that deal with investment, business and immigration. These include the EAC and COMESA treaties which deal with the promotion of trade and business in the region. Needless to say domestic or national legislation should be interpreted in a manner that preserves the obligations of Uganda under International Treaties which override Domestic conflicting domestic Legislation. Suffice it here to examine two treaties that are concerned with business and trade in the East African and COMESA regions.

As far as the COMESA Treaty is concerned, the aims and objectives of the treaty under article 3 thereof among other things are to establish a common market. The objectives of the common market are to obtain sustainable growth and development of the member states by promoting a more balanced and harmonious development of its production and marketing structures; to promote joint development in all fields of economic activity and the joint adoption of macroeconomic policies and programmes to raise the standard of living of its people and to foster close relations among its member states; to cooperate in the creation of an enabling environment for foreign, cross-border and domestic investment including the joint promotion of research and adoption of science and technology for development. It is clear from article 3 (c) of the COMESA treaty that an enabling environment for foreign, cross-border and domestic investment is to be promoted among the member states. The treaty provides that the membership of the common market is open to the following countries: The Republic of Uganda; The Republic of Angola; The Republic of Burundi; The Federal Islamic Republic of the Comoros; The Democratic Republic of Congo; The Republic of Djibouti; The Republic of Egypt; The State of Eritrea; The Government of Ethiopia; The Republic of Kenya; The Republic of Madagascar; The Republic of Malawi; The Republic of Mauritius; The Republic of Namibia; The Republic of Rwanda; The Republic of Seychelles; The Republic of Sudan; The Kingdom of Swaziland; The United Republic of Tanzania; The Republic of Zambia; and The Republic of Zimbabwe.

The question of whether foreign investors from members of the COMESA states and who are not citizens of Uganda and have interest in engaging in *trade only* as envisaged by section 10 subsection 5 of the Investment Code Act of Uganda should have an enabling environment for foreign cross-border and domestic investment as envisaged under the COMESA treaty is relevant. This is a matter of policy best determined by the Uganda Investment Authority.

As far as the treaty creating the East African community is concerned the preamble indicates among other things that the partner states agreed to create an "enabling environment in all the partner states in order to attract investments and allow the private sector and civil society to play a leading role in the social economic development activities for the development of sound macroeconomic and sectoral policies and their efficient management while taking cognizance of the developments in the world economy as contained in the Marrakesh agreement establishing the World Trade Organisation, 1995. Article 1 of the treaty creating the East African community defines the common market to mean "the

partner states markets integrated into a single market in which *there is free movement of capital*, *labour*, *goods and services*"(Emphasis added). The question is whether the Investment Code Act is consistent with the concept of free movement of capital, labour and goods and services in the East African common market. The treaty creating the East African community under article 2 thereof establishes the East African community. Article 2 (2) of the treaty establishing the East African community provides that the partner states shall establish an East African Customs union and a common market as transitional stages to and integral parts of the EA community.

Again the question arises as to whether section 10 subsection 5 of the Investment Code Act insofar as it provides for the deposit of 100,000 United States dollars and the incorporation of a company with the Registrar General is consistent with the objective of the East African community whose aim is to provide a common market where there is free movement of capital, labour, goods and services as stated above among the member states. This is because as I have noted above, the basic definition of a foreign investor is that the he or she is not a citizen of Uganda. When it is a company at least 50% of its shareholding belongs to non citizens.

It must be noted that a *foreign investor* as widely defined above cannot operate a business without an investment license issued by the Uganda Investment Authority under section 10 (1) of the Investment Code Act except where the foreign investor wishes to engage in *trade only* as provided for under section 10 (5) thereof.

Before I conclude this matter, there are some pertinent matters that must be set out before the first question of the originating summons is resolved. The first matter is that there are two relevant authorities that deal with the control of immigration and the question of investment by foreigners.

As far as the Investment Code Act is concerned, the Uganda investment authority is responsible for the supervision and implementation of the Investment Code Act. Secondly it is responsible for recommending to the government national policies and programs designed to promote investment in Uganda. Thirdly it is primarily responsible to promote facilitate and supervise investments in Uganda generally. It is supposed to receive all applications for investment licenses for investors intending to establish and set up business enterprises in Uganda under the Investment Code Act and to issue licenses and certificates of incentives in accordance with the code (see section 6). Fourthly as far as the definition of a foreign investor is concerned under section 9 of the Investment Code Act, subsection 3 of section 9 provides that in any other case not expressly provided for, the authority shall determine whether or not a person is a foreign investor. The Uganda investment authority is an agency of the government with corporate personality whose governing body is a board.

The second institution that must be considered is created under the Ugandan Citizenship and Immigration Control Act. The preamble to the Act shows that it is among other things an

Act to provide for the regulation and control of aliens in Uganda. Section 2 (a) of the Ugandan Citizenship and Immigration Control Act, cap 66 laws of Uganda 2000 defines "alien" as any person who is not a citizen of Uganda. This Act is read together with the Immigration Act cap 63 which Act is in harmony with the Uganda Citizenship and Immigration Control Act.

Section 3 of the Ugandan Citizenship and Immigration Control Act creates a board. The functions of the board are provided for under section 7 of the Act. The functions of the board include inter alia the granting and canceling of immigration permits; registering and issuing identity cards to aliens; determining any questions which may arise in the implementation of the Act or any questions which may be referred to it by the Minister and to perform such other functions as may be assigned to it by or under the Act or other enactment. An appeal lies from the decisions of the board to the Minister and from the Minister to the High Court. Section 67 of the Act provides that the board is responsible for the registration of aliens and the general administration of the part of the act that deals with aliens. Aliens are required to register within 90 days of arrival in Uganda under section 68 of the act. The registration officer shall on behalf of the board issue an entry permit to an alien. Under section 75 of the Ugandan Citizenship and Immigration Control Act the registrar of companies is supposed to furnish the Commissioner in writing from time to time and upon request all registered businesses owned by aliens in Uganda.

In view of the above matters I will attempt to answer the first question of “Whether or not a foreign investor engaging in trade only can validly be issued with an entry permit by the directorate of immigration without a certificate of remittance from bank of Uganda in accordance with section 10 (5) (6) (7) and (8) of the Investment Code Act chapter 92 laws of Uganda.” The underlying issue is whether an entry permit should be issued to a foreigner without a certificate of remittance from the Bank of Uganda. Section 10 (8) gives the immigration authority discretion whether to issue an entry permit to a foreign investor who has complied with the section by (a) registering a company and (b) depositing a minimum of USD 100,000 or its equivalent in Uganda shillings with the Bank of Uganda. The issuance of the entry permit is subject to immigration laws and as we noted above, the implementation of the immigration laws lies in the hands of the board created under the Citizenship and Immigration Act cap 66 2000 laws of Uganda and Immigration Act chapter 63 laws of Uganda.

The question of issuance of entry permits to any alien should be handled on individual basis and its merits assessed on a case by case basis. Secondly the Uganda Investment Authority may participate in helping a foreign investor who has arrived in Uganda and who is to be registered in accordance with the immigration laws to obtain an entry permit.

Consequently it is my finding that the authorities namely the Uganda Investment Authority, are responsible for implementing the law and formulation of policy under the Investment Code Act and should ensure that the Act is implemented. They can determine who a foreign

investor is, which question is material in any controversy under the Act. As far as entry permits are concerned, the effectiveness of the law and implementation of its objectives depends on enforcement of the provision that a foreign investor who wishes to engage in *trade only* is required to open an bank account with the Bank of Uganda and deposit a minimum of United States Dollars 100,000 or its equivalent in Uganda shillings and obtain from the Bank of Uganda a certificate of remittance. This provision of law has ramifications on regional common market policies due to the citizen based definition of a foreign investor. Because of this the enforcement of a certificate of remittance prior to issuance of an entry permit should be left at the hands of the relevant authorities. Moreover no single case of the issuance of an entry permit without a certificate of remittance has been produced in evidence before the court and I agree with the Attorney Generals counsel that a general declaration in terms suggested by the plaintiffs is inappropriate for the reasons I will outline below.

The question whether a foreign investor wishes to engage in *trade only* is a question of fact that has to be determined by the immigration department for the reasons that I will give herein below. This ensures that it is a factor to be taken into account when deciding under section 10 (8) of the Investment Code Act whether to issue an entry permit to an alien or not.

The issuance of an entry permit as envisaged under the Investment Code Act very much depends on the definition of a *foreign investor* under the Act Vis a Vis whether a foreign investor is a natural person or a corporate personality created by law as we shall determine presently. The Investment Authority has the mandate to determine in any other case not defined under section 9 of the principal Act who a *foreign investor* is. The immigration authority must be satisfied firstly that the alien is a *foreign investor* and secondly that he or she intends to engage in *trade only*. What is of further interest is that the certificate of remittance is given to the company which will carry out the business.

For a company to be a foreign investor, it needs only to have 50% shares held by a non citizen or non citizens. Yet entry permits are given to individuals in such a company. For the benefit of the public four non Ugandan citizens can come together and contribute 25,000 USD each to their registered company in order to fulfil the requirements of section 10 (5) of the Investment Code Act for purposes of deposit of USD 100,000 or its equivalent in Uganda shillings which deposit of money is for use in the business as capital.

There is no doubt in my mind that such a business of *trade only* as envisaged in section 10 (5) (a) is run by a company incorporated with the Registrar General. It follows that the Bank of Uganda gives the certificate of remittance to a company registered according to the requirements of section 10 (5) (a) of the Investment Code Act. This has absurd ramifications because of the facts outlined below that an entry permit is given to an individual.

It is therefore technically incorrect to make a declaration that a person who wishes to engage in trade only and who is given an entry permit must have produced a certificate of remittance in his or her names. This is because the company incorporated with the Registrar General meant to carry out the business is a separate legal personality and is the company which should deposit the money for the business with Bank of Uganda.

Therefore the certificate of remittance will technically be in the names of a corporate personality. Further absurd scenarios arise from the inherent contradiction between section 10 (5) (a) and section 10 (8) which makes the issuance of an entry permit conditional upon prove of a certificate of remittance indicating compliance with the requirement or deposit USD 100,000 of its equivalent in Uganda shillings.

Among the absurd ramifications of the law is the scenario where a foreign investor who wishes to engage in *trade only* indicates to the immigration authorities that he or she wishes to engage in *trade only* and is advised to comply with section 10 (5) (a) and (b) of the Investment Code Act. Upon incorporation of a company, he or she becomes a minority shareholder. The company technically is not a foreign investor. Can this initially foreign investor now get an entry permit? The underlying question is whether the company is obliged to deposit the 100,000 US $ or its equivalent in local currency? In the second scenario the foreign investor teams up with 10 others and they contribute USD 10,000 each to the company to make up the 100,000 USD and obtain one certificate of remittance. Can they not go (all ten of them) and obtain entry permits pursuant to one certificate of remittance in the name of their company?

I must add that it is the duty of the Uganda Investment Authority to ensure that the policy and the law is consistent with Uganda's strides towards regional integration and common markets as far as the intended flow of investment capital as envisaged under the COMESA treaty and the Treaty creating the East African community and its common market is concerned.

For the above reasons, the interpretation given by court above of section 10 (5) and 10 (8) of the Investment Code Act is sufficient and a blanket declaration cannot be made. The law should be enforced by the immigration department and the Uganda Investment Authority while ensuring that the objectives of the Act are met. It is clear that the law requires that a foreign investor engaging in trade only to first obtain a certificate of remittance from the bank of Uganda. However because of what I have outlined above, the implementation of the law cannot be so straight forward and therefore the above interpretation of the law should suffice until the law is made clearer.

As far as the second question is concerned, the question is "**whether or not a foreign investor engaging in trade only can validly be issued with a trading licence by the city Council of Kampala without a certificate of remittance from bank of Uganda in accordance with section 10 (5) (6) (7) (8) and (9) investment code act chapter 92 laws of Uganda**."

An answer to this question depends on the interpretation of section 10 (9) of the investment code act. They said subsection 9 of section 10 provides as follows: "a foreign investor who obtains an entry permit under subsection (8) shall lodge an application, in writing, to the local authority where the business will principally be carried out for a trade licence."

The second respondent submitted that it is not the right party to this suit and to this question. This section only requires the local authority which issues a licence to be satisfied on one question that is whether an entry permit has been granted by the immigration authority. It is the duty of the immigration department to ensure that the provisions of subsection 5 of section 10 of the Investment Code Act with regard the incorporation of the company and the deposit of money with the bank of Uganda have been complied with prior to the issuance of an entry permit. As we have noted above, there are latent contradictions between sections 10 (9) and section 10 (5) of the Investment Code Act.

In the first place the incorporation of the company with the registrar general is mandatory. What is the use of incorporation of the company except for the purposes of carrying on trade only as envisaged by subsection 5 of section 10 of the Investment Code Act? Consequently, when a business company has been incorporated it follows that it is that company which would carry out the business and be entitled to a trade licence. It is the company which ought to open an account with the Bank of Uganda and it also follows logically in my view that it is the company which will apply for a trade licence. On the other hand an entry permit is issued to an individual.

This latent contradiction needs to be resolved by the Uganda Investment Authority by harmonising the two provisions. An assessment of the provision simply means that the term "foreign investor" who has obtained an entry permit under section 10 (9) of the Investment Code Act means that the entry permit could have been issued to a registered company.

There is absurdity in this proposition. A company which is a foreign investor obtains permits for its individual directors and employees. Entry permits under section 2 (k) of the Uganda Citizenship and Immigration Control Act cap 66 means a permit granted under section 54 of the Act. There are four classes of entry permits granted under the fourth schedule to the Act. Class D of the fourth schedule to the Ugandan Citizenship and Immigration Control Act and regulation 5 five thereof deals with business and trade. It provides "A person intending to carry on the business of trade on his or her own account, or as partners in the firm in Uganda, or who satisfies the board that – (a) if a licence is required to enable him or her to engage in the trade or business, he or she is in possession of such licence or be able to obtain one; and (b) he or she has in his or her own right at his or her full and free disposition such sum as may be prescribed by the responsible Minister in respect of any particular trade or business."

The Immigration Act cap 63 is an Act to consolidate and amend the law regulating immigration into Uganda and for other purposes incidental to and connected there with. In

section 1 (g) "entry permit" means a permit granted under section 12. An entry permit is granted if the board is satisfied that it shall be for the benefit to Uganda or part of Uganda; and it shall not be to the prejudice of the inhabitants generally of Uganda. Again class D of the first schedule to the Act deals with a person intending to carry on trade, business or profession other than the prescribed profession on his or her own account or as a partner in the firm, in Uganda who satisfies the board that (a) if a licence is required to enable him or her to engage in the trade, business or profession, he or she is in possession of that licence or will be able to obtain one; and (b) he or she has in his or her own right and at his or her full and free disposition such sum as may be prescribed by the Minister in respect of any particular class of such trade, business or profession."

The clear wording of the Uganda Citizenship and Immigration Act and the Immigration Act is that an entry permit is granted to individual and natural persons. Consequently the word foreign investor in terms of the grant of entry permits is not straightforward. The business entity which is registered in Uganda under section 10 (5) of the Investment Code Act does not require an entry permit. It is the employees and directors who are non citizens who do. It is not automatic that the person who requires an entry permit should pay 100,000 US $. A company requires a minimum of 2 persons for purposes of incorporation.

In conclusion, there is no obligation on the part of the local authority in the grant of an entry permit and therefore they have no obligation to ensure that US $ 100,000 or its equivalent in local currency has been deposited with the bank of Uganda. Section 10 (9) restricts the duty of the Local authority on ascertaining that an entry permit has been granted by the Immigration department. Once an entry permit is produced, they need not ask further questions. They may exercise their discretion to grant licenses which theoretically may go to a company registered in Uganda that does not even require an entry permit.

It is my further finding that as far as the policy implications of the suit on interpretation touching on issuance of licenses is concerned the second respondent is a proper party to the suit. It is directly or indirectly a beneficiary and concerned with the management of the questions of licenses generally. A City Council is the highest local council authority in the district with the division councils though separate legal entities falling within it.

Unlike other kinds of suits, a suit for interpretation seeks guidelines and is not a claim for damages but compliance with law. For the reasons given above the second question as to whether or not a foreign investor engaging in trade only can be validly issued with a license by the relevant local authority without a certificate of remittance from the Bank of Uganda in accordance with section 10 of the Investment Code Act will be answered as follows:

There is no requirement for a local authority to satisfy itself that a certificate of remittance has been issued by the Bank of Uganda under section 10 (9) of the Investment Code Act. The only requirement provided by the law is for the local authority responsible for issuing a license of the carrying out of the business of *trade only* to a *foreign investor* to satisfy itself

that the foreign investor or its directors have entry permits issued by the Immigration department and that the entry permits are valid.

As far as the third question as to whether entry permits and trading licenses issued by the above authorities is concerned without the requisite certificate of remittance from the bank of Uganda, the question has been cast too widely and cannot be answered on its terms. Suffice it to say that an entry permit issued to a foreign investor without compliance with section 10 (5) as far as the foreign investor engages in *trade only* shall be liable to cancellation by the Immigration Board upon it being satisfied that there has been a breach of the provisions of section 10 (5) and (8) of the Investment Code Act. As noted above, where the certificate of remittance has been issued to the company by the Bank of Uganda, the entry permit may be issued to members of the company and their directors. How the law is to be implemented requires an examination of each case on its merits.

As far as trading licenses are concerned, once it is established that an entry permit ought not to be granted before the immigration authorities, then it follows that where an entry permit is cancelled, the relevant business licenses based on the entry permit would be liable to cancellation using the procedure for cancellation of licenses under the Local Governments Act.

This being a public interest case which has revealed that there is a latent problem with the law; each party shall bear its own costs of this suit.

Judgment delivered in open court on the 8th of July 2011

Hon. Mr. Justice Christopher Madrama

Judgment delivered in the presence of:

Kakembo Timothy from Muwema and Mugerwa Advocates for the plaintiffs,

Richard Lubaale for second defendant,

No body for Attorney General

Ojambo Makoha Court Clerk

Hon. Mr. Justice Christopher Madrama

8 July 2011