THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT NO 357 OF 2010

UGANDA DEVELOPMENT BANK LIMITED} .....PLAINTIFF

VERSUS

1. **ABA TRADE INTERNATIONAL LIMITED}**
2. **UGANDA REVENUE AUTHORITY } .....DEFENDANTS**
3. **MWESIGYE ROBERT}**
4. **HAKIM SSEBANAKITTA }**

BEFORE HON JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The plaintiff is a statutory corporation established by the Uganda Development Bank Act cap 56 laws of Uganda and filed this suit against the defendants firstly for a declaration that the plaintiff is the legal owner of Mercedes-Benz tractor head chassis number WDB 944332K 900 180 registration number UAN 520 Z. Secondly a declaration that the second defendant's registration of the first defendant as owner of the Mercedes tractor head chassis number WDB 9442332K900180 registration number UAN 520 Z was unlawful. The plaintiff seeks an order that the second defendant cancels the registration of the first defendant as owner of the vehicle in question and a declaration that the sale of the said motor vehicle by the first and third defendants to the fourth defendant is illegal. The plaintiff prays that a permanent injunction issues to restrain the fourth defendant from making any claim of right and ownership to the vehicle and for costs of the suit.

The facts averred in the plaint giving rise to the action is that between January and March 2010 the first defendant ordered for the importation of tyres and for Mercedes-Benz trucks including Mercedes-Benz truck chassis number WDB 9442332K 900 180 engine number 45793700038494 consigned for delivery to the plaintiff within the terms of the trade finance facility. The plaintiff appointed ACE Audit Control and Expertise Uganda limited as the collateral manager responsible for the warehousing of the goods until the first defendants payment of the monies due under the facility. Upon payment of the monies the plaintiff was supposed to give authorisation for the processing of the logbook of the vehicles and order for the release of the goods to the first defendant or his agents. It is averred that on 23 August 2010 the goods including the vehicles described above were delivered to the collateral manager at a designated

inland car depot and warehouse. Subsequently around 25 September 2010, the first defendant introduced DFCU bank to the plaintiff as a party interested in the purchase of three of the four imported trucks for a total sum of US$190,500. The three tracks intended to be purchased included Mercedes-Benz model 2543 chassis number WDB 9442332K900 180. On 5 October 2010 the fourth defendant appeared at the inland car depot claiming that he had bought the vehicle for a sum of Uganda shillings 80,000,000/= from the first and third defendants on 9 September 2010. The defendant also furnished a copy of the logbook issued by the second defendant showing that the truck had been issued with registration number UAN 520 Z and ownership thereof registered in the names of the first defendant. The plaintiff on various occasions met with the second defendant who agreed to deregister the vehicle upon payment of deregistration fees and applicable taxes and fees but has not yet deregistered the truck.

The plaintiff avers that the registration of the truck by the second defendant and the sale of the truck by the first and third defendants were fraudulent. This is because the first and third defendants sold the vehicle to the 4th defendant before paying monies owed to the plaintiff under a trade finance facility. Secondly it is alleged that the defendants colluded to sell and obtained registration for the truck to defeat the plaintiff's legal interests. Thirdly the third defendant purported to undersell the vehicle to the fourth defendant at 80,000,000/= Uganda shillings when the vehicle was valued at US$63,500. Fourthly the third defendant received proceeds of the sale on his personal account. Fifthly the first and third defendants attempted to sell the said vehicle to two persons namely the fourth defendant and DFCU bank. Lastly the second defendant processed and issued a logbook in the names of the first defendant without the plaintiffs consent. It is alleged that the second defendant was aware at all material times of the plaintiff's interest in the vehicle reflected in the bill of lading. The issuance of the logbook and registration of the first defendant as owner was in contravention of the customs and practices governing trade financing in Uganda. Despite the plaintiffs protests about the irregular issuance of the logbook the second defendant refused/neglected to recall or cancel the logbook thereby compromising the plaintiff's interest in the vehicle. The plaintiff holds the defendants jointly and severally liable.

In its written statement of defence the first defendant denies that it authorised the sale of the suit motor vehicle to the fourth defendant. They further contended that it was gross negligence on the part of ACE Audit Control and Expertise Uganda Limited to release the vehicle to the third defendant without carrying out due diligence on the first defendant in utter violation of the collateral management and storage agreement. The defendant's case is that the collateral manager released goods to persons who were not in possession of proof that the monies due to the plaintiff had been paid. Secondly the collateral manager in conjunction with the plaintiff misinterpreted the provisions of the collateral management agreement by interpreting the word "depositor" to mean the third defendant. The plaintiff authorised the release of the motor vehicle and processing of the logbook without receiving payment. The defendant neither instigated the issuance of the logbook nor the registration of ownership in the first defendant's names. The third defendant executed the sale agreement on his own.

The fourth defendant's case in his written statement of defence is that he was approached by the third defendant in his capacity as the managing director of the first defendant with an offer to sell to him the vehicle in question. The fourth defendant carried out due diligence by scrutinising the documents of importation of the vehicle and established that it had been imported by the first defendant. Upon being satisfied, a sale agreement was duly executed between the fourth defendant and the first defendant acting through the third defendant by which the fourth defendant bought the vehicle at Uganda shillings 80,000,000/= deposited on the account of the first defendant.

The fourth defendant denies any fraud and contends that the price of the vehicle was negotiated between him and the third defendant acting on the behalf of the first defendant. In addition to the payment of the sale price of the vehicle, the fourth defendant paid registration fees and other dues. Registration was made by the second defendant upon presentation of proper documents. Any agreements between the first defendant and the plaintiff were not binding on the fourth defendant because he was not a party thereto.

The third defendant generally denies the claims in the plaint. He contends that he was at all material times the managing director of the first defendant and that whatever they did in respect of the sale and purchase of Mercedes Benz tractor head chassis number WDB 9442332K900180 registration number UAN 520 Z was done in his capacity as the managing director for and on behalf of the first defendant. He denies any fraud and contends that the plaintiffs claim for one unit tractor head without mention of other units which formed the first consignment was far-fetched and a waste of the courts time. The third defendant therefore avers that the suit is premature as no attempt to settle the dispute by means of negotiations as provided in the facility agreement had been attempted. Furthermore no arbitration had been attempted as provided for in the trade finance facility agreement.

The second defendant's written statement is to the effect that the plaintiffs claim is denied. The registration of the first defendant as owner of the motor vehicle was done upon fulfilment of the requisite requirements as by law established. Consequently the plaintiff is not entitled to the remedies sought in the plaint.

At the hearing of the suit the plaintiff was represented by counsel Kabito Karamagi of Messrs Ligomarc Advocates, the first defendant was represented by Mafabi Madibo of Messrs Mafabi Madibo and Co. Advocates; the second defendant was represented by Angela Nairuba of the Commissioner Legal Services and Board Affairs Uganda Revenue Authority; the 3rd defendant was represented by Henry Kyalimpa of Messrs Mugarura, Kwarisiima And Co Advocates while the 4th defendant was represented by Gilbert Nuwagaba of Messrs KGN Advocates.

On the 29th of May 2012, Messrs Mafabi Madibo and company advocates in a letter dated 29th of May 2012 and filed on court record on the same day, withdrew from the conduct of the case of the first defendant following disagreement with the client on the best way to conduct the matter

and their clients refusal to submit to courts directives. In a joint scheduling memorandum endorsed by counsel for the plaintiff, counsel for the third defendant and counsel for the fourth defendant filed on court record on 27 June 2012, the following facts are agreed.

Admitted facts:

i. ***Sometime between January and March 2010, the plaintiff advanced to the defendant a trade finance facility of Euros 1,142,056 to finance the purchase and importation of tyres, containers and trucks.***
ii. ***Consequently in June 2010, the first defendant ordered for the importation of the tyres and four Mercedes-Benz trucks including Mercedes-Benz truck chassis number WDB 9442332K900180.***
iii. ***The plaintiff and the first defendant appointed Messieurs ACE Audit Control and Expertise Uganda Limited, as the collateral manager responsible for the warehousing of the goods until the first defendants payment of the monies.***
iv. ***The plaintiff and the first defendant further entered into an agreement with COIN ICD Ltd to keep the imported properties including the vehicle under the supervision of ACE.***
v. ***The goods including Mercedes-Benz chassis number WDB 9442332K900180 where delivered to COIN the designated inland car depot and warehouses situated at plot 28 Mukabya Road, Nakawa industrial area Kampala under the management of ACE.***
vi. ***On 5 October 2010, the fourth defendant went to the inland car depot claiming that he had bought the vehicle from the first and third defendants at a consideration of Uganda shillings 80,000,000/=.***
vii. ***The fourth defendant further furnished a copy of the logbook issued by the second defendant showing that the truck had been issued the registration UAN 520 Z and ownership had been registered in the names of the first defendant.***
viii. ***The plaintiff on various occasions met with the second defendant who agreed to deregister the truck upon payment of deregistration fees and applicable taxes and fees.***

Issues for trial

i. ***Whether the registration of the vehicle by the second defendant in the names of the first defendant was unlawful.***

ii. ***Whether the alleged/purported sale of the suit vehicle by the third defendant to the fourth defendant was lawful.***

iii. ***What remedies are available to the parties?***

The following documents of the plaintiff were admitted as exhibits and marked by the parties:

P1. ***Application for a credit facility dated the 11th of May 2009.***

P2. Facility offer letter dated fifth of February 2010.

P3. Facility agreement between the plaintiff and ABA trade international Ltd dated 16th of March 2010.

P4. Bill of lading; Buy a truck invoice and European Union certificate of origin.

P5. Collateral and storage agreement between the plaintiff, first defendant and ACE Audit Control and Expertise Uganda Limited dated 10th of August 2010.

P6. Corporation agreement between ACE Audit Control and Expertise Uganda Limited, COIN ICD Ltd, plaintiff and first defendant dated 17th of August 2010.

P7. ACE Audit Control and Expertise Uganda Limited letter dated 27th of August 2010 and secondly ACE Audit Control and Expertise Uganda Limited warehouse receipt dated 27th of August 2010.

P8. DFCU local purchasing order dated 25th of September 2010.

P9. Plaintiff's letter to DFCU bank dated 27th of September 2010.

P10. Sale agreement between the first defendant and fourth defendant dated 9th of September 2010.

P11. United Bank of Africa cash deposit slip dated 9th of September 2010.

P12. Logbook for motor vehicle UAN 520 Z issued on 16 September 2010.

P13. The plaintiffs letter to the second defendant dated fifth of October 2010.

D1. A letter from the Managing Director to the Company Secretary relating to the conduct of business of the first defendant

Learned counsels for the parties agreed to and filed witness statements and the witnesses appeared in court to confirm their statements on oath whereupon they were cross examined and re-examined. Subsequently the court was addressed in written submissions on behalf of the plaintiff and the defendants severally. The relevant facts for resolution of the agreed issues are sufficiently stated in the written submissions of the parties.

The plaintiff's submissions

W**hether the registration of the vehicle by the second defendant in the names of the first defendant was lawful?**

The plaintiff contends that the registration of the suit vehicle/property in the names of the first defendant by the second defendant was unlawful. He invited the court to first consider who had title to the goods at the time of registration of the vehicle. It was not in dispute that the plaintiff financed the purchase and importation of the truck in question. The bill of lading for shipping of the trucks named the consignee as "the order of Uganda Development Bank Ltd". The first defendant on the other hand being the financed party, is named as the notify party.

Learned counsel proceeded to submit on the character of a bill of lading as a document of title. In the case of **Rapid Shipping and Freight Uganda Ltd and another versus Copy Lines Ltd** this court held that a bill of lading is by its nature a document of title. This is the law in **P & O Nedlloyd Uganda Ltd vs. Tesco International Ltd CACA No. 86 of 2004** and **Rahima Nagitta and others vs. Richard Bukenya and three others** for general rule that the owner of the goods is the person named in the bill of lading as consignee and one who has possession of the original bill of lading. Counsel referred to **The Law and Practice of International Trade** 9th edition London, Steven and Sons 1990 at page 561 – 562 where **Prof Clive M Schmitthoff** explains the character of a bill of lading as a document of title which was first recognised by the courts as far back as 1794. It is a document of title to goods that enables the consignee to dispose of the goods by endorsement and delivery of the bill of lading. A bill of lading may either be negotiable or non-negotiable. Where a shipper issues a negotiable bill of lading, the consignee would be named with the words "order of" before his name. The shipper will also state the notify party who normally has an interest in the goods. Where a negotiable bill of lading is issued, transfer of title by the consignee can only be done by the consignee's endorsement on the bill of lading and physical delivery thereof. In this case the goods were consigned to the "order of" of the plaintiff in the bill of lading consequently first and foremost title of the goods was vested in the plaintiff. It followed that title in the good could only be transferred from the plaintiff by the plaintiff endorsing and physically delivering the bill of lading.

Secondly the plaintiff’s counsel submitted on the nature of trade financing. He referred to the evidence of PW1 Mr. Charles Orwothwum a senior trade officer with the plaintiff and a certified international trade finance specialist. The testimony is that the plaintiff entered into this transaction purposely to finance the first defendant's purchase and importation of the truck in issue. As the financier, the bank was named as consignee so that it could hold legal ownership of the goods as security for its monies. The second defendant was named as the notify party in the bill of lading, and having beneficial ownership of the goods which crystallised upon its settlement of the plaintiffs money. The bank was to hold title to the goods and maintain control of physical possession thereof until its monies were realised. The first defendant’s role was to market the goods and sell it with the consent of the plaintiff. The proceeds of the sale will then be applied to payment of the facility upon which the plaintiff would release the goods to the purchaser identified by the first defendant. In the International Uniform Customs and Practice for Documentary Credits, ownership of imported goods remains with the bank until it receives payment from the client. DW3 Mr Amos Tumwesigye supported the testimony of PW1. The

mechanism through which the bank was to control possession of the goods was through the appointment of the collateral manager. The plaintiff appointed ACE (Audit Control and Expertise Global Ltd) and as its regional manager PW3 testified that the company offered collateral management services to financial institutions in the management of their trade finance facilities. The plaintiff had given the witness endorsed bills of lading for the goods for the purpose of overseeing tax clearance of all the goods and maintaining possession on his behalf until the financed goods were disposed of and the plaintiff's money repaid.

The plaintiff's counsel referred to the procedure provided for under clause 17 of the offer letter exhibit P2 whose terms are also made applicable in the transaction by virtue of clause (b) of the recital of the facility agreement exhibit P3. Upon selling any of the items proceeds would be applied towards a deduction of the facility. Upon payment of the monies, the plaintiff through its collateral manager arranges for the clearance of the goods, pay taxes and releases goods to the buyer. Security for repayment of the loan monies was the requirement of the first defendant to create a lien and execute a deed of assignment of all the rights to the goods purchased according to clause 3 of exhibit P3.

Counsel submitted on registration that the law of motor vehicle registration is found under the Traffic and Road Safety Act cap 361. Under section 12 of the Act an application for the registration of a motor vehicle or trailer can only be done upon submission by the owner of the motor vehicle, trailer or engineering plant to a licensing officer. The applicant shall state the name and address of any person not being the owner in whom property or conditional or absolute right to take possession may be vested. The application for registration exhibit 2 D4 does not mention the interest of the plaintiff anywhere. It is the testimony of PW1 and PW2 that in the process of registration of imported vehicles, applicants are required to surrender a bill of lading to the second defendant. Where the applicant is not the consignee, the bill of lading will be endorsed in his favour to obtain title and right to registration. The original bill of lading is still in the possession of the plaintiff and was produced during the trial. The facts surrounding of the registration of the suit vehicle are unclear. Counsel submitted that the fourth defendant claims that he was shown importation documents that indicated that the vehicle was imported by the first defendant. On cross examination the fourth defendant answered that the documents he was shown were importation documents which included the bill of lading but that the one exhibited (exhibit P4) was different from the one he was shown by the third defendant. He was however unable to exhibit the one he was shown because he was unable to get it from the clearing agent two years after the commencement of the suit. Secondly counsel submitted that he challenged the second defendant to produce the bill of lading and importation documents that were used for registration of the suit vehicle. The defendant availed photocopies of selected import documents including those contained in exhibit P4. The second defendant failed to produce the original bill of lading it relied on to register the vehicle. Mrs Hope Kasurra DW 1 justified the defendant's action by arguing that the first defendant was named as the notify party and further that the other importation documents namely the export permit and "buy a truck" invoice were issued in the

first defendant name. She further testified that she relied on entry documents SAD or manifests which showed that the first defendant was the importer of the goods. She agreed that the information contained in the entry documents had to correspond with those contained in the bill of lading. Counsel submitted that the following inconsistencies and irregularities were pointed out to the witness namely:

a. ***The consignee stated in the entry documents was different from the one named in the bill of lading;***
b. ***The entry documents did not mention the plaintiffs interests as a lender/financier;***
c. ***The description of the vehicle and the bill of lading was different from those stated in the entry documents;***
d. ***The entry documents stated that the vehicle was warehoused at a warehouse described as number W0011 whereas the same together with all the other goods were warehoused at COIN ICD depot described as W0088***

DW1 was unable to account for the missing interests of the plaintiff within the second defendant's documents.

Counsel submitted that the plaintiff having not endorsed a bill of lading to the first defendant and having kept physical possession of the bill of lading to this date, the second defendant should not have registered the vehicle in the names of the first defendant. Additionally they failed to produce the original bill of lading. Consequently counsel submitted that the registration of the vehicle in the names of the first defendant was illegal on account of lack of proper documentation. Furthermore the second defendant failed in its public duty to ensure that the vehicle was registered in the names of the right owner using proper documentation.

Reply by the second defendant on the first issue.

Counsel for the second defendant submitted that ABA Trade International Ltd, (the first defendant) through its managing director applied for registration of the motor vehicle Mercedes-Benz tractor chassis number WDB 9442332K900180. The first defendant was in possession of an export permit relating to the motor vehicle by which it was lawfully imported into Uganda. The notify party in the bill of lading was the first defendant. The invoices LC No UDB LC012/10 presented by the first defendant for registration of the suit vehicle were in the names of the first defendant. Entry documents C 17 (SAD) vide C67387 presented for the registration of the motor vehicle were in the names of the first defendant. Customs duty in respect of the vehicle was paid by the first defendant. The second defendant did not receive any prior information on the structure of the facility or interest in the motor vehicle registered by the plaintiff so as to caveat the motor vehicles. The vehicle was registered in the first defendant's name as UAN 520 Z. The first defendant also applied for the registration of Mercedes-Benz tractor chassis number WDB 9442332K893237 using similar documents, paid taxes due and was registered as UAP 517 C. The plaintiff disputed the registration of motor vehicle chassis number WDB

9442332K900180 into the first defendant's name but not with respect to the registration of UAP 517C.

Counsel contended that the registration of the motor vehicle in the names of the first defendant was unlawful. He argued that the law governing vehicle licensing in Uganda is Part III of the Traffic and Road Safety Act 1998 cap 361. Section 10 of the Act prohibited possession of a motor vehicle, trailer or engineering plant other than a motor vehicle, trailer engineering plant exempted from the provisions of the Act, without registration. Registration is carried out by Uganda Revenue Authority. Under section 12 (1) an application for registration of a motor vehicle, trailer or engineering plant is required to be made in the prescribed form by the owner thereof to a licensing officer and to be accompanied by the prescribed fee. See section 12 (2) permits any person, whatever his or her age to be registered as the owner of the motor vehicle, trailer or engineering plant if he/she has a legal capacity to own it. Every application for registration of the motor vehicle has to be accompanied or combined with an application for a licence and insurance. Section 13 (1) requires a licensing officer to verify the particulars in the application for registration. Section 13 (1) (b) provides that the licensing officer shall satisfy himself or herself that the motor vehicle, trailer or engineering plant has been lawfully exported from its country of origin or the country in which it was last registered and that the applicant is in possession of an export permit relating to the motor vehicle, trailer or engineering permit or permit for exportation for a limited period only. The testimony of PW1 is that the first defendant was reflected as the importer of the motor vehicle under reference LC number UDB LC012/10. Secondly the licensing officer has to satisfy him or herself that the goods have been lawfully imported into Uganda and any tax or duty due in respect of the motor vehicle, trailer or engineering plant under any written law has been paid. Counsel submitted that DW1 testified that the entry documents C 17 SAD vide C67387 presented for registration of the vehicle were in the names of the first defendant. The first defendant also paid the customs duties in respect of the said motor vehicle. Counsel argued that the documents presented by the first defendant for registration of the vehicle were sufficient in the opinion of the second defendant to entitle the first defendant registration as owner. The business arrangement between the plaintiff, the first defendant and the third defendant was never communicated or brought to the attention of the second defendant. This was a commercial transaction which ought to have been brought to the attention of the second defendant.

The second defendant's counsel contended that in such commercial transactions it would have been prudent to notify all parties that may be involved. Exhibit P3 is evidence of a credit facility agreement between the plaintiff and the first defendant. The same document shows that the parties were represented by lawyers who ought to have provided proper legal advice to protect their client's. The nature of the transaction necessitated informing the second defendant to protect the interest of all parties which was not done. In another transaction involving the plaintiff and the first defendant concerning motor vehicle registration number UAP 517 C DW1 testified that the same procedure was followed for registration of the motor vehicle. The vehicle was

registered in the first defendant's name and the plaintiff never challenged or objected to the registration.

Alternatively counsel submitted that the plaintiff ought to be held responsible for not taking an equitable step to protect his interests. In a transaction involving €1,142,056, the plaintiff ought to have lodged a caveat to protect its interests. The second defendant had no way of knowing the plaintiffs interest in the vehicle in the absence of notification. Counsel submitted that the plaintiff failed to register a caveat to protect its interests. The plaintiff's lawyer failed to provide legal advice to their client to protect their interests. The plaintiff's case in this honourable court against the second defendant under Equity was with dirty hands. The entry documents presented to the second defendant's witness DW1 namely C 17 (SAD) vide C67387 where in the first defendant's names and it would be unfair and unjust to hold that the second defendant was responsible for the negligence of the plaintiff.

The registration of the said motor vehicle in the names of the first defendant was bona fide, lawful and done with due diligence. The second defendant first satisfied itself that the vehicle had been lawfully exported from its country of origin and imported into Uganda by the first defendant. The first defendant was in possession of an export permit relating to the said vehicle in question. The customs duty in respect of the said vehicle was paid by the first defendant. Counsel concluded that the second defendant expended all its duties under section 13 of the Traffic and Road Safety Act 1998 cap 361 and therefore acted bona fide. She prayed that the honourable court be pleased to dismiss the plaintiff's suit with costs as against the second defendant.

Reply by the third defendant on the first issue.

Learned counsel for the third defendant submitted that the third defendant did on 9 September 2012 in his capacity as the managing director of the first defendant and acting in the course of his duty as the managing director of the first defendant sold Mercedes-Benz truck model number 2543 chassis number WDB the 9442332K900 180. The fourth defendant duly paid the agreed price and commenced transfer into the fourth defendant's names. The third defendant first banked the proceeds of the sale into his personal account for safekeeping and eventually declared it to the first defendant for further management. Counsel submitted that the first defendant does not dispute this fact.

On the first issue as to whether the registration of the vehicle by the second defendant in the names of the first defendant was lawful, learned counsel associated himself with the submissions of the second defendant's counsel. He also submitted that the first issue had been properly argued by both the second and fourth defendants counsel and therefore reiterated their positions.

Reply by the fourth defendant.

On the first issue the fourth defendant's counsel associated with the submissions of the second defendant. He added that Uganda Revenue Authority is by law mandated to register all vehicles in Uganda. In so doing it has guiding principles which had not been flouted. Hope Kasurra DW1 testified that she looked at various documents such as the bill of lading, invoice, manifest/declaration in respect of the vehicle in issue, exhibits 2D1, the customer single administrative document and the verification accounts and Exhibit 2 D4, application for registration. The truck was duly registered in the names of the first defendant in accordance with the procedures set up by the second defendant under the law. Counsel referred to the testimony of PW1 that before a vehicle could be registered in the names of the first defendant, the plaintiff had to endorse on the bill of lading. DW1 informed court that all the other three trucks of which there is no complaint were registered in the names of the first defendant without any form of endorsement. The bill of lading that was used to clear the suit trucks is the same that was used to clear truck number UAP 517C and others all of which were properly registered in the names of the first defendant.

Counsel for the 4th defendant submitted that the plaintiff should distinguish between recovering money for the truck under the loan agreement and registration of ownership. He submitted that it is double standards to keep silent about registration of some vehicles in the names of the first defendant because the money was paid to them directly by DFCU bank and sue against registration of the suit vehicle because money was not received. The suit truck was registered first and the other trucks registered subsequently. They should not have accepted to enter into any transaction in which the first defendant sold the truck to DFCU bank. Counsel referred to exhibit P9 which is a letter dated 27th of September 2012 and addressed to the managing director of DFCU bank in which the plaintiff confirms that some trucks were imported by the first defendant. Pursuant to the letter DFCU bank in exhibit PE 8 issued a local purchase order to the first defendant for the purchase of the three trucks. This evidence demonstrates ownership of the trucks by the first defendant and not the plaintiff. Additionally counsel referred to exhibit P1 which is the application for a credit facility and paragraph 2 thereof which provides that under the structured facility programme, ABA Trade International Ltd will import the trucks and tyres and ACE would carry out the inspection to ensure quality control and warehousing of the goods. In exhibit P2 the first defendant was appropriately described as the borrower of the facility of up to €1,142,056 revolving for a period of one year. Security was a charge on the goods, a personal guarantee by some of the shareholders, debenture of the rest of the company assets and any other documents as evidenced by schedule 1 to the document exhibit P2. Exhibit P3 is the facility agreement setting out the terms of the facility between the plaintiff and the first defendant. In article 1 thereof, is clearly indicated that the transaction was for the importation by the company of tyres, containers and tractor units. Counsel referred to articles 1 up to article 3 of exhibit P3. He submitted that the totality of the provisions mean that the plaintiff merely finances and did not purchase the trucks. The plaintiff was supposed to obtain the deed of assignment as one of the securities but PW1 failed to produce such a deed of assignment and none is exhibited in evidence. The conclusion is that the first defendant did not assign its rights to the plaintiff.

Counsel sought to distinguish authorities cited by the plaintiff's counsel namely Rapid Shipping and Freight Uganda Ltd and another versus Copy Lines Ltd MA No. 216 of 2012; **P & O Nedlloyd Uganda limited versus Tesco international Court of Appeal civil appeal number 86 of 2004** and **Rahima Nagitta and others versus Richard Bukenya and three others High Court civil suit number 389 of 2010.** As far as the last case cited is concerned counsel contended that the owner of the goods is the person named in the bill of lading as consignee and the one who holds the original bill of lading. In **P & O Nedlloyd Uganda limited** (supra) the Court of Appeal held that a bill of lading is a document of title. The general rule however has exceptions. Counsel submitted that the evidence shows that the plaintiff was only a financier but never obtained any title to the goods. DW 2 Mrs Hope Kasurra testified that the documents presented for registration were an invoice reflecting that the first defendant as purchaser, a fact not disputed by the plaintiff. Consequently considering all exhibits including exhibit P4 the truck belonged to the first defendant and registration of the same in the first defendant's names was neither a mistake nor unlawful.

As far as the submission that the second defendant did not record the plaintiffs interests in the goods pursuant to the provisions of section 12 (4) of the Traffic and Road Safety Act 1998 cap 361, this amounted to an admission that the proper party to be registered was the first defendant and not the plaintiff. Counsel reiterated the submissions of the second defendant that the licensing officer was satisfied in terms of section 13 of the Traffic and Road Safety Act that the first defendant was the proper party to be registered as the owner of the vehicle.

Counsel for the fourth defendant further submitted that under section 37 (a) of the Financial Institutions Act 2004, registration of the four trucks in the names of the plaintiff would have meant that the bank was engaged in trade contrary to the provision quoted above which forbids a financial institution from engaging directly or indirectly for its own account, alone or with others in commerce, industry, insurance or agriculture except in the course of satisfaction of its debts. Counsel concluded that this could be the reason why the other three trucks were registered names of the first defendant without any form of protest and submitted that the plaintiff was estopped from raising the issue of illegal registration. Counsel prayed that the court finds that the first defendant was the proper and lawful owner of the vehicle and the registration of the first defendant was lawful.

Rejoinder by Plaintiff

The plaintiff made a lengthy rejoinder on the first issue which is whether the registration of the vehicle by the second defendant in the names of the first defendant was lawful. Counsel contended that the licensing officer was required to notify whether the applicant was indeed the person entitled to make the application by checking the title documents namely the bill of lading. He further relied on the testimony of PW1 that in the process of importation the bill of lading is handed over to Uganda Revenue Authority upon clearance of taxes and registration of the vehicle. He reiterated submissions that the plaintiffs had the original bill of lading in respect of

the vehicle and never endorsed it to any party. This raises questions as to how the vehicle was registered. The export permit and invoice relied on by the second defendant were neither contracts nor documents of title. Exhibit P4, the European Community export permit on record, states that the goods were consigned to the order of the plaintiff.

As far as the defendant's submission that the interest of the plaintiff should have been notified to the second defendant, the plaintiff submits that the bill of lading was sufficient notice. The photocopy of the bill produced in court proves that the second defendant had notice of the bill of lading. Secondly to register a caveat on the vehicle's logbook is only possible when the vehicle has first been registered.

On the submission that the plaintiff should have objected to the registration of the vehicles which had been registered in a similar fashion, counsel submitted that the plaintiff did not object because the plaintiff had endorsed the registration of those vehicles.

As far as the transaction documents are concerned the plaintiff does not deny being a financier in the transaction. Where the goods being the financed are consigned to the order of the plaintiff, title in the goods belonged to the plaintiff until it endorses the bill of lading to another party. The defendant wrongfully dealt with the goods and should not be seen to argue that what the plaintiff was only entitled to was the proceeds of the sale of the goods. Remittance of funds to the owner would not render an unlawful transaction lawful.

As far as exceptions to the general principle that the consignee named in the bill of lading is also the holder of title, the general exceptions are where the consignee has endorsed it to someone else in which case that person shall be deemed to be the holder of title or where the consignee is an agent of an undisclosed principals. As far as section 37 of the Financial Institutions Act is concerned, it allows a financial institution to engage in trade and commerce for as long as it is in the course of satisfaction of debt due to it and such interests shall be disposed of at the earliest reasonable opportunity. The plaintiff was not engaging in trade as such and its interest in the ownership of the goods was for purposes of securing its credit facility. Counsel further referred to the testimony of PW1 who explained the structure of the facility as one in which the plaintiff had title in the goods to secure the repayment of debt due to it and the bank would relinquish its interest as soon as settlement is reached. In any case counsel contended that many financial institutions were engaged in this kind of financing and if they were engaged unlawfully, the central bank would have halted them by now.

Resolution of issue No 1

I have carefully considered the submissions on the first issue and will restate the issue:

Whether the registration of the vehicle by the second defendant in the names of the first defendant was lawful?

The nature of the transaction between the parties is clearly reflected in the documents exhibited. The first defendant applied to the plaintiff for a credit facility in a letter dated 11th of May 2009 exhibit P1. Part of the letter reads as follows:

> ***"Under this structured credit facility program ABA Trade International Ltd, will import the trucks and tyres, ACE (Audit Control and Expertise Company) will carry out the inspection to ensure quality control and warehousing the goods to ensure that the bank recovers the funds invested in the transaction. Find details of the adventure in our comprehensive proposal and business plan."***

Subsequently the parties signed an offer for the facility of up to **€1,142,056** dated 8th of February 2010. Interest agreed was 10% per annum variable at the instance of the bank. Paragraph 13 states that the borrower shall execute the security documents and provide the security requirements specified in schedule 1 to the offer. In paragraph 14 it is provided that the bank shall appoint a collateral manager whose responsibilities and obligations will be set out in a tripartite collateral management agreement to be signed between the bank, the borrower and the collateral manager. The goods were stored in a warehouse under the custody of the collateral manager to be appointed by the bank. The procedure of the transaction is spelt out in paragraph 17 of the loan offer agreement. It provides that the plaintiff shall endorse the original shipping documents in favour of the collateral manager. Thereafter the collateral manager shall release the original shipping documents to the nominated clearing agent. The nominated clearing agent would clear the goods under the supervision of the collateral manager. The goods would then be transported and discharged into a warehouse in Uganda. The warehouse shall be pre-inspected and certified by the collateral manager. Prior to the release of the goods or any part thereof the borrower would make a payment that sufficiently covers any charges, any accrued interest and principal value of the goods requested for to the plaintiff at a designated account. The plaintiff would then issue release instructions to the collateral manager for the goods paid for, indicating quantity to be released and to whom the goods should be released. The collateral manager would then release the specified quantities of the financed product to the borrower according to instructions of the plaintiff. It is further provided that the conditions for release of the goods will be repeated on a condition that the borrower effects payment of all amounts due to the plaintiff. The parties were supposed to sign an agreement and security documents containing the terms and conditions spelt out above. The loan offer is signed by the plaintiff's executives and that of the first defendant. The security documents provided for in schedule 1 in paragraph 20 of the offer was supposed to be kept pledged to the bank during the facility period.

Subsequently the parties signed the facility agreement exhibit P3. The facility agreement is between Uganda Development Bank Ltd and ABA Trade International Ltd (the borrower) and executed on 16 March 2010. Paragraph 10.11 of the facility agreement specifically provides that the letter of offer shall form an integral part of the facility agreement. It further provides that in case of any conflict, the facility offer letter dated 8th of February 2010 shall prevail.

The third document of interest is the bill of lading. As agreed in the scheduling memorandum the bill of lading has named as the consignee the words "the order of Uganda Development Bank Ltd". The Bill of lading is exhibit P4 and names the first defendant ABA Trade International Ltd as a party to be notified. The suit property is described in the Bill of lading as WDB 9442332K900180 as the chassis number and the engine number as 45793700038494. It provides that the goods are CIF Mombasa goods in transit to Kampala Uganda at the consignee costs L/C number UDB LC 012/10. The vehicle was imported from Buy a Truck Ltd East Yorkshire England. The customer invoice is addressed to ABA Trade International Ltd.

Exhibit P5 is the collateral management and storage agreement executed between ABA Trade International Ltd, Uganda Development Bank Ltd, ACE – Audit Control and Expertise Uganda Limited as the parties. The agreement is dated 10th of August 2010. Under the agreement the first defendant is referred to as the depositor. The plaintiff is referred to as the bank and the third-party as ACE. The duties of the depositor are provided for under clause 9. Clause 9.1 is pertinent and provides as follows:

> ***"The depositor acknowledges that the bank has requested ACE to provide certain collateral management services under this agreement for the purposes of securing title to the goods in favour of the bank. The depositor hereby confirms that all goods covered by warehouse receipts issued by ACE are, upon the issuance of such warehouse receipts, pledged to the bank, and that such goods may not be released from the storage facilities unless and until such release is authorised by the bank under written instructions given to ACE.***

Clause 9.9 provides that the depositor represents and warrants that all the goods deposited pursuant to the terms of the agreement is its exclusive property and are free of any pledge, claim or demand. The obligations of the bank are provided for under clause 10 of the agreement. Clause 10.4 provides that the bank would provide ACE with clear written instructions as to the release of the goods during normal business hours. The bank was also to ensure timely payment by the depositor of ACE fees as set out in the agreement. The bank guaranteed the payment of the fees of ACE. Finally clause 17.1 provides that ACE and the depositor shall not be entitled to assign, transfer or dispose of any of the rights or obligations in terms of this agreement to another person.

Warehouse receipt exhibit P7 attached to a letter dated 27th of August 2010 addressed to the plaintiff from ACE audit control and expertise Uganda limited shows that the goods were received on 25th of August 2010. On 25 September 2010 DFCU bank in a local purchase order addressed to ABA Trade International offered to pay US$190,500 for three trucks out of four trucks imported.

In a letter dated 27th of September 2010 the plaintiff wrote to the managing director of DFCU bank confirming that the trucks in issue were imported by ABA Trade International Ltd and are

warehoused under the said facility arrangement and are being sold at US$63,500 per truck, tax and all other expenses inclusive. The plaintiff requested DFCU bank to release the fund to its account. The plaintiff undertook to release the three trucks and deliver the logbooks according to instructions of DFCU bank.

Exhibit P 10 is the sale contract between the managing director of the first defendant and the fourth defendant. It provides that ABA Trade International Ltd sold Mercedes-Benz model 2543 chassis number WDB 9442332K900180 to the fourth defendant for a sum of Uganda shillings 80,000,000/=. Additionally it is shown that the vehicle was registered in the names of ABA Trade International Ltd on 16th of September 2010 according to exhibit P12 which is the logbook in question. On 5 October 2010 the plaintiff wrote to the Manager Non-Tax Revenue Uganda Revenue Authority/second defendant bringing to their notice that the managing director of the first defendant had entered into a sale agreement with the third-party and got payment into his personal account. Secondly, that the vehicle was registered without the knowledge of the bank as UAN 520 Z. The plaintiff requested the second defendant to deregister the vehicle and cancel the logbook.

I have carefully reviewed the documents admitted in evidence by consent of all parties. The document supports the testimony of PW1 that the plaintiff financed the first defendant to import vehicles into Uganda. As a way of securing the borrowed money, it ensured that the first defendant signed security documents that are indicated in schedule 1 to the offer letter exhibit P2. These documents were supposed to include deeds of assignment and charge on the goods, personal guarantees of some or all shareholders of the first defendant, debenture of the rest of the company assets and any other document designated as security by the plaintiff. There was supposed to be a tripartite collateral management agreement and insurance policy/policies in respect of the goods and warehousing naming the plaintiff as loss payee. The arrangements allowed the first defendant to market the goods and sell them. The bank retained a lien on the goods by having the power to withhold the goods until after its monies were paid. The bank had the power to withhold the goods through ACE Audit Control and Expertise Uganda Limited. The power to withhold the goods does not however expressly forbid the first defendant from dealing with the goods as the owner thereof.

I have carefully considered the submissions on the issue of the first defendant obtaining registered title to the goods. Was the second defendant wrong to register the first defendant as the owner of the goods in the circumstances of the case?

It is generally accepted by both parties that a bill of lading is a document of title to the goods. It is also an agreed fact that the bill of lading was "to the order of Uganda Development Bank", the plaintiff in this case. The second defendant/Uganda Revenue Authority was not privy to the arrangements between the plaintiff, the first defendant and ACE Audit Control and Expertise Uganda Limited. Section 1 (e) of the Sale of Goods Act cap 82 provides that a bill of lading is a document of title. I will set out the relevant provision hereunder as follows:

> ***"(e) "document of title to goods" includes any bill of lading, dock warrant, warehouse-keeper's certificate, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods represented by it;"***

In this case the document of title to the goods was in the possession of the plaintiff. Secondly, the document named the plaintiff as the consignee. The documentary evidence shows that the bill of lading had several vehicles listed in it. There is further uncontroverted evidence that the importer of the vehicles was the first defendant. According to P.S. Atiyah in THE SALE OF GOODS 9th edition at page 95 documents of title are defined by the statute. The peculiar feature of the documents of title is that mere transfer or endorsement of the document, if accompanied by the necessary intention, suffices to transfer the possession and the property in the goods. The practice in international trade is as follows:

> ***"By far the most important type of document of title is the bill of lading. When goods are shipped, the ship owner or his agents deliver to the shipper a bill of lading, and this document 'in law and in fact represents the goods. Possession of the Bill of lading places the goods at the disposal of the purchaser'." (Biddell Bros Ltd v E. Clemens Horst & Co Ltd [1911] 1 KB 934, 956 – 7)***

According to The Law and Practice of Banking volume 2, Securities for Bankers Advances, by J Milnes Holden 8th Edition at page 274 a bill of lading:

> ***"...is a document signed by the master of the ship or by his agent and given to the person keeping goods on board the vessel. The document performs three functions; (1) it is evidence of the terms of the contract of affreightment; (2) it is evidence of the shipment of goods; and (3) it is evidence that the holder of it has the property in the goods, i.e. it is a document of title. A bill of lading was the only document of title to goods known to the common law. It states that the goods will be delivered by "X or his assigns" or to "X or order" and, when endorsed in the blank by X, it passes by delivery. Thus, the delivery of an endorsed bill "is equivalent to delivery of the goods themselves, and is ineffectual to transfer ownership if made with the intention. The bill of lading is the symbol of the goods."***

It has been observed that a lot of commerce depends on the accuracy of the Bill of lading. In **Heskell v Continental Express Ltd and Another [1950] 1 All ER 1033** Devlin J held at 1040:

> ***"In particular, I think that, in matters connected with the issue of a bill of lading, the broker is acting on behalf of the owner, for it is as the owner's agent and under his instructions and authority that he must issue or withhold the bill."***

At page 1042 Devlin J gives the reason why a bill lading is a document of title when he said:

> ***"A bill of lading, which is in the popular sense a negotiable instrument, is a document on the accuracy of which much commerce may depend, and carelessness with regard to it is surely something, counsel argues, for which the law can find a remedy. On the commercial aspects of this argument, I shall say a word later. On the legal issues, my views are confined by the authorities. The reason why a bill of lading is a document of title is because it contains a statement by the master of a ship that he is in possession of cargo, and an undertaking to deliver it." (Emphasis added)***

In the absence of any evidence to the contrary a bill of lading should be taken as a document of title in which the person named as the consignee is entitled to possession of the goods. All persons dealing in the property or processing documents with regard to the property should acknowledge and recognise the title of the consignee. In this case, the second defendant neither acknowledged nor recognised the title of the consignee. The argument of the second defendant which has been supported by the rest of the defendants is that the documents for importation of the goods were in the names of the first defendant who was eventually registered as the owner of the vehicle in issue. All the parties relied on the provisions of section 12 and 13 of the Traffic and Road Safety Act 1998 cap 361.

Having carefully considered the two provisions of law referred to above, I am of the considered opinion that section 13 deals with considerations the licensing officer should have before the registration of the vehicle or engineering plant after the application has been lodged. It is section 12 which is relevant to the identity of the person who lodges the application for registration of a vehicle, trailer or engineering plant. It specifically provides that an application shall be made by the owner or agent of the owner of the vehicle, trailer or engineering plant. For emphasis I will quote section 12 (1) of the Traffic and Road Safety Act 1998, 361 which provides as follows:

> **"12. Application for registration of motor vehicles, etc.**
>
> **(1) An application for the registration of a motor vehicle, trailer or engineering plant *shall be made in the prescribed form by the owner of the motor vehicle, trailer or engineering plant to a licensing officer* and shall be accompanied by the prescribed fee. (Emphasis added)**

Section 12 (1) of the Traffic and Road Safety Act 1998 cap 361 provides that the application shall be made in the prescribed form by the owner of the motor vehicle, trailer or engineering plant. Prima facie, the owner of the vehicle, trailer or engineering plant is stipulated in the bill of lading, which is the document of title, exhibit P4 and is the plaintiff who is named therein as the consignee. This is expressly a document of title and the licensing officer DW 1 took a risk to rely on the documents of importation. This is because it is expressly indicated that the application shall be made by the owner. In international business transactions the owner is the holder of a bill of lading or endorsee. Section 13 of the Traffic and Road Safety Act 1998 cap 361 does not assist the second defendant's case. As I have held above the provision deals with an application

which has already been lodged with the licensing officer by the owner under section 12 (1) of the Act. For clarity section 13 (1) on which the defendants relied is quoted for ease of reference:

> "***13. Registration of motor vehicles, etc.***
>
> ***(1) A licensing officer shall, prior to the registration of a motor vehicle, trailer or engineering plant, verify the particulars in the application for registration and shall satisfy himself or herself that—***
>
> ***(a) the motor vehicle, trailer or engineering plant is in a fit and proper condition for the purpose for which it is intended to be used, and he or she shall, for that purpose send the motor vehicle, trailer or engineering plant to a vehicle inspector for examination;***
>
> ***(b) the motor vehicle, trailer or engineering plant has been lawfully exported from its country of origin or the country in which it was last registered, and that the applicant is in possession of an export permit relating to the motor vehicle, trailer or engineering plant other than a temporary permit or permit for exportation for a limited period only, if that is required by the law of the country of origin or of last registration;***
>
> ***(c) the motor vehicle, trailer or engineering plant has been lawfully imported into Uganda; and***
>
> ***(d) any tax or duty due in respect of the motor vehicle, trailer or engineering plant under any written law has been paid."***

Section 13 (1) of the Traffic and Road Safety Act 1998 cap 361 deals with an existing application. It deals with the verification of the particulars in the application. It should be read in harmony with section 12 (1) which provides that an application shall be made by an owner. For that reason the submissions of the defendants based on the provisions of section 13 (1) paragraphs (a) to (d) of the Traffic and Road Safety Act 1998 cap 361 was erroneous. The licensing officer is obliged to receive an application from the owner of the vehicle, trailer or engineering plant before proceeding to verify the particulars by taking into account the matters set out in section 13 (1) of the Traffic and Road Safety Act 1998 cap 361. The fact that ownership is dealt with by section 12 (1) which is a separate provisions is made clearer by section 13 (5). It provides that authority of other owners where there was more than one owner should first be obtained before registration. It provides:

> "(5) Where a motor vehicle, trailer or engineering plant is owned by more than one person, the registration shall be effected in the name of one of the owners nominated by all of the owners or, where the owners are the members of an unincorporated body, by the governing body of that unincorporated body."

It should also be noted that the licensing officer uses documentation and does not take evidence as such to establish whether the first defendant is the owner. It is risky for the licensing officer to ignore the document of title and proceed to establish through other documentation who the real owner of the vehicle, trailer or engineering plant is. In any case in this particular matter the second defendant purported to rely on the provisions of section 13 (1) of the Traffic and Road Safety Act 1998 which does not deal with the verification of ownership but the matters to be taken into account prior to registration of a motor vehicle, trailer or engineering plant. Because of the express provisions of section 12 (1), reliance on section 13 (1) was erroneous.

The term 'owner' is defined by the East African Community Customs Management Act 2004 section 2 (1) as follows:

> "***"owner" in respect of -***
>
> ***(a) an aircraft, vessel, or vehicle, includes every person acting as agent for the owner, or who receives freight or other charges payable in respect of, or who is in possession or control of, the aircraft, vessel, or vehicle;***
>
> ***(b) goods, includes any person other than an officer acting in his or her official capacity being or holding himself or herself out to be the owner, importer, exporter, consignee, agent, or the person in possession of, or beneficially interested in, or having control of, or power of disposition over, the goods;"***

The relevant provision in subsection (b) which includes representatives of the owner but specifically "the consignee, agent or the person in possession of or beneficially interested in, or having control of, or power of disposition over the goods." Once you have the consignee, there is no need to seek for additional authority other than the authority of the consignee in the appointment of an agent or any other person authorised to deal on the behalf of the consignee. The categories mentioned are not alternatives but distinct categories which stand on their own right. It was the duty of the licensing officer to establish whether the first defendant had authority of the consignee to deal with the goods. The bill of lading is expressly clear that the first defendant was the notify party. International business practice accepts a bill of lading as a document of title. Consequently in establishing who the owner of the vehicle is, it was the bill of lading which was the material document to be considered and not other documents. From the evidence on record ACE Audit Control and Expertise Uganda Limited could have dealt with the goods on the basis of the bills of lading. The first defendant could deal with the goods but not to the extent of having the vehicle registered in its names without consulting the plaintiff. It could pay any taxes or fees to the satisfaction of the licensing officer but it could not seek to be registered without authority of the consignee named in the bill of lading.

Counsel for the 4th defendant relied on the case of **Rahima Nagitta and Others vs. Richard Bukenya and others** where reference was made to the case of **S.S. Ardennes (Owner of Cargo) v. S.S. Ardennes (Owners) [1950] 2 ALL ER 517** for the proposition that a bill of

lading was not in itself the contract between the ship owner and the shipper, and, therefore, evidence was admissible of the true contract which was made before the bill of lading was signed and which contained a different term. From this authority counsel proposed that the court should consider the evidence as to ownership of the vehicle in question under fact that the plaintiff was only a financier but never obtained any title to the goods.

In the above authority, the question of the existence of another contract was between the ship owner and the shipper. In this case, as I have held above, the second defendant was not obliged to receive additional evidence beyond the documents of title. To do so would be risky from the point of view of commercial transactions involving shipping of goods from another country to Uganda. The licensing officer is duty bound to establish that the application for registration of the motor vehicle is made by the owner. Ownership is established by the bill of lading. It is either the consignee of the goods or the person to whom it is endorsed.

Before taking leave of this matter, as far as the evidence is concerned it is established that the goods were imported by the first defendant. It was a safeguard to secure the interests of the plaintiff that the goods were consigned to the plaintiff. Additionally the contractual obligations between the plaintiff, the first defendant and ACE Audit Control and Expertise Uganda Limited made it clear that the goods could not be released without authority of the plaintiff. In other words the plaintiff had a lien on the goods. Additionally the plaintiff had formal title to the goods as far as the bill of lading is concerned. Of course the goods were supposed to vest in the first defendant after the obligations of the first defendant to the plaintiff had been fulfilled. It was not the duty of the licensing officer to question why the goods were consigned to the plaintiff. It is sufficient that the bill of lading says so.

As far as section 37 of the Financial Institutions Act 2004 is concerned, there is no evidence to suggest that by holding onto the title to the goods, the plaintiff was engaging in trade, commerce, industry, insurance or agriculture. The plaintiff was merely securing the loan it had granted to the first defendant to import the trucks and other goods. In the case of financial leases, the goods remain the property of the bank until after all the rentals have been paid and upon payment of a nominal fee it is transferred to the borrower. The facts that the goods remain in the names of the financier does not mean that the bank engages in trade, commerce, industry, insurance or agriculture. It would be immaterial that the goods are used for commerce, industry, or agriculture and remain in the names of the bank. The nature of the transaction remains the same and the bank would not have contravened the provisions of section 37 of the Financial Institutions Act.

In conclusion the issue of whether the registration of the vehicle by the second defendant in the names of the first defendant was lawful is that the registration of the vehicle by the second defendant in the names of the first defendant was unlawful. This is because it was registered without consent of the consignee named in the bill of lading. The licensing officer took a risk to register the name of the first defendant in the logbook. There are still ongoing disputes between the parties which could have been frustrated by the acts of the licensing officer in registering the

vehicle in the names of the first defendant. Consequently issue number one is answered in favour of the plaintiff.

The second issue is whether the purported sale of this suit vehicle by the third defendant to the fourth defendant was lawful?

The above issue has partially been resolved. However the plaintiff submitted that the first defendant lacked title to the goods. He relied on the case of **Hebert Niwamanya vs. URA HCCS 003 of 2008** that under section 22 of the Sale of Goods Act cap 82 that no person can pass a better title to the goods than he has. Additionally counsel submitted that the first defendant denied the sale of the vehicle in its written statement of defence. It denied the issuance of the logbook. The third defendant on the other hand confirmed that he sold the vehicle on behalf of the first defendant in his capacity as the managing director of the first defendant. Consequently learned counsel submitted that the first defendant cannot escape liability according to the principle in **Lennard's Carrying Co vs. Asiatic Co Ltd vs. (1915) AC 705** that liability could be imposed on the Corporation for the acts of its directors who are the controlling mind of the company.

The plaintiff's counsel submitted that the sole purpose of the sale was to defraud it of its monies and rights in the vehicle. Counsel further relied on exhibit D1 which is the third defendant's letter of resignation that he did not follow the laid out procedures in the sale of the truck. He sold the vehicle to settle his personal debts. Counsel submitted that the evidence of PW1 was that DFCU bank Ltd paid for the truck but the same had to be refunded on account of the dispute. Each truck was US$63,500 each.

Counsel further submitted that the truck was grossly under sold for a meagre 80,000,000/= which was conveniently deposited on the third defendant's account.

Counsel further submitted on the conduct of the fourth defendant. He submitted that the fourth defendant failed to produce the bill of lading he relied on for the transaction. Secondly the truck would fetch up to **US$63,500** and the market and the fourth defendant should have cautioned himself when it was offered the vehicle at **shillings 80,000,000/=**. Instead he willingly defended the scheme and proceeded to finance the unlawful registration of the vehicle in the first defendant's names. Counsel submitted that in ordinary cases the fourth defendant could have demanded for a return of its money on account of frustration or loss of trust in the seller. Instead the fourth defendant has taken on the plaintiff in the fight for possession and ownership of the truck and left the person who cheated him to go scot-free to enjoy his loot. Counsel concluded that the fourth defendant was working in a cohort in an elaborate scheme to defraud the plaintiff.

Counsel further submitted on the conduct of the second defendant through its customs and motor vehicle registry officials who participated in the fraud by unlawfully registered in the vehicle in the first defendant's name. The fourth defendant was the financier of the registration process and facilitated the fraudulent registration that was supposed to benefit him and the third defendant.

The second defendant did not make any submissions except on the first issue on the registration of the first defendant as owner of the vehicle in question. The third defendant's counsel submitted that the plaintiff was a financier only entitled to be paid the principal amount advanced and interest. He submitted that it defeats logic for one to claim the principal amount advanced only money borrowed, interest and the motor vehicle.

Counsel submitted that the first defendant was supposed to serve the goods and pay the plaintiff the principal amount advanced plus interest. Obviously this would be after the first defendant has identified the buyer, sold the vehicle and remitted the proceeds of sale to the plaintiff. Consequently the sale of the motor vehicle by the fourth defendant by the third defendant was lawful. The third defendant was the managing director of the first defendant and had implied warranty of sale that vehicle. He agreed with the plaintiff submission that the first defendant cannot escape liability bearing in mind the principal that the company is liable for the acts of its directors. Counsel contended that this was an admission that the third defendant did actually sell the vehicle to the fourth defendant and that the third defendant was acting in good faith in the course of his duties as the director of the first defendant. Consequently counsel submitted that the sale was lawful.

On the second issue the fourth defendant counsel submitted that the plaintiff was never an owner of the vehicle imported under the trade finance facility. There was no deed of assignment of title, rights or interests in the truck to the plaintiff by the first defendant. The plaintiff merely financed the importation of the vehicle. A right to sell the vehicle vested in the first defendant. Counsel submitted that in the other transactions money was paid direct to the plaintiff after the vehicle was sold by the first defendant to DFCU bank. The only difference with the current transaction was that money had not been paid directly to the plaintiff. To pay the money directly to the plaintiff was an arrangement between the plaintiff and the first defendant. The fourth defendant was not bound by the agreement. The fourth defendant had no obligation at all to pay the plaintiff and it was not brought to his attention to do so.

As far as the Sale of Goods Act is concerned, counsel submitted that the conduct of the plaintiff was that all sales were to be done by the first defendant as confirmed by exhibit P8 and P9. Counsel highlighted the provision in section 22 that a buyer cannot acquire better title than the seller heard unless the owner of the goods is by his conduct or her conduct precluded from denying the seller's authority to sell. He further submitted that even if the first defendant was not the owner as to bill of lading may indicate, section 23 of the Sale of Goods Act provides that where a sale of goods as avoidable title to the goods, but his or her title has not been avoided at the time of the sale, the buyer acquires good title to the goods provided he or she buys them in good faith without notice of the seller's defect in title.

Counsel contended that the fourth defendant stated on 9 September 2010 he bought the vehicle from the first defendant and the sale agreement was entered into between himself and the third defendant acting on behalf of the first defendant. This is exhibit P10. He paid Uganda shillings

80,000,000/= and the vehicle was registered and it was given a logbook in the names of the first defendant.

Counsel contended that the price of US$63,500 was not the one negotiated between the fourth defendant and the first defendant through the third defendant. He submitted that sufficiency of consideration is not a ground for setting aside a sale.

Counsel submitted that the plaintiff has failed to link the fourth defendant to any fraudulent scheme. The fourth defendant testified that he approached the plaintiff to have the matter resolved that the bank did not respond. Counsel concluded that the fourth defendant bought the vehicle in good faith and without notice of any fraud. Furthermore the ownership of the truck was clearly vested in the first defendant. Even if the court were to take the view that the first defendant was wrongly registered as owner on the basis of the bill of lading, it was for all intents and purposes the owner having applied for the facility, travelled to the United Kingdom and purchased the trucks as per the “buy a truck” invoices and export permits. Alternatively if the court were to take the view that the plaintiff is the absolute owner, then the first defendant acted under a voidable title which give the fourth defendant good title under section 23 of the Sale of Goods Act.

Resolution of Issue No. 2

I have carefully considered the submissions on issue two. As I have noted above, the issue has been partially resolved in the resolution of the first issue.

Firstly it is abundantly clear that under the facility agreement and the collateral management agreement the first defendant had authority to market the goods and sell them. Secondly the plaintiff retained a right to hold onto the goods until after its monies have been secured. The difficulty with this issue is the fact that counsel for the first defendant withdrew from the conduct of the first defendant's case. Subsequently the first defendant was served personally and the suit proceeded ex parte as against the first defendant. To make matters worse, the third defendant who was the managing director of the first defendant admitted selling the vehicle on behalf of the first defendant. The written statement of defence of the first defendant however denies that the third defendant acted on its behalf. The question of whether the third defendant acted on behalf of the first defendant was never fully tried. This question is crucial in establishing whether the sale by the third defendant purportedly on behalf of the first defendant was lawful. The admitted documentary evidence from the third defendant is his letter dated 22nd of October 2010 addressed to the company secretary of the first defendant and written on the letterhead of the first defendant. The letter reads as follows:

> ***"I concede that I took some decisions which did not follow the laid down procedures of the company. The decisions include the sale of the truck to a customer and the spending of the proceeds without informing you. The said acts are indeed irregular.***

However, I wish to state that although I acted rash and unilaterally, which indeed offended the company's normal conduct of business, I acted in utmost good faith and in the best interest of the company.

You will bear in mind that I had earlier personally borrowed a lot of money at very high interest rates from some Kampala moneylenders to salvage the company's business. As you are well aware, those lenders have been on my neck and I had to get money to cool them down.

All in all I have decided to quit the conduct of the business of the company, regarding the deal with Uganda Development Bank forthwith.…"

Paragraph 9 of the first defendant's written statement of defence denies that the first defendant authorised the third defendant to sell the vehicle. The first defendant in his written statement of defence alleges negligence on the part of ACE Audit Control and Expertise Uganda Limited. No evidence was adduced by the first defendant in support of its averments in its written statement of defence. The only evidence on the matter is that of the managing director of the first defendant who is also the third defendant to this suit. This evidence has not been rebutted. It is to the effect that sometime in September 2010 the third defendant communicated to the first defendant's directors who were then domiciled in Teheran Iran about the financial situation of the company. The directors advised him to find a solution and salvage the company's business which was on the verge of collapse. Among other suggestions the directors advised him to find a buyer to salvage the company at least Uganda shillings 80,000,000/= and that they would rectify the decision and harmonise the arrangement with the plaintiff which was supposed to be followed while selling trucks. Consequently the third defendant testifies that he sold the vehicle in utmost good faith and in the best interests of the company to the fourth defendant. The proceeds were spent according to the director's verbal instructions.

First of all the third defendant admits that he did not follow the procedures of the first defendant and also the arrangement with the plaintiff in the sale of the trucks. As against the third defendant it is proven that he did not follow the procedure set out in the arrangement between the plaintiff and the first defendant. He further admits that the directors of the first defendant authorised him to sell the vehicle. At best the sale of the vehicle at the sum of Uganda shillings 80,000,000/= is questionable. There is no clear evidence as to how much money is owing to the plaintiff after the sale of the other trucks without any complaint from the plaintiff. The third defendant was eventually relieved of his duties by the first defendant.

From the evidence and the documentation admitted in evidence, the first defendant had authority to sell the vehicle the subject matter of the suit. The third defendant as managing director of the first defendant sold the vehicle to the fourth defendant. The vehicle was sold subject to the terms of agreement between the plaintiff and the first defendant. The fact that the fourth defendant had no notice of the terms of agreement between the first defendant and the plaintiff cannot help the

fourth defendant. This is because the plaintiff had a right to hold onto the vehicle until its monies are paid. So long as its monies are not paid, the plaintiff can exercise any right under the agreement between itself and the first defendant to realise its money. The way I see it, the fourth defendant agrees that the vehicle was lawfully sold to him by the third defendant acting on behalf of the first defendant. If he has been disadvantaged by the acts of the first defendant or the third defendant, his remedy is against them for not disclosing that they could not access the vehicle without first paying some monies to the plaintiff. The terms under which the vehicle was held and sold was that the first defendant could only have it released upon the authority of the plaintiff. The third defendant was under obligation to inform the fourth defendant about that arrangement. The third defendant has unashamedly testified in his witness statement that the directors would harmonise the arrangement with the plaintiff which was supposed to be followed while selling the trucks. Because the fourth defendant was not informed of this arrangement, he has been placed at a great disadvantage. The obligation of the first defendant under the agreement with the plaintiff first of all is contained in exhibit P2 which is the offer of the facility of up to **€1,142,056**. Under that agreement paragraph 17 thereof the collateral manager was supposed to release the specified quantities of the financed product to the borrower according to instructions of the plaintiff. Secondly the arrangement with the plaintiff confirmed by exhibit P3 paragraph 10.11 which confirms that the letter of the plaintiff being the letter of facility offer dated eighth of February 2010 and any amendments thereto shall form part and parcel of the agreement between the plaintiff and the first defendant dated 16th of March 2010. The offer letter superseded the terms of the agreement. Last but not least exhibit P5 which is the collateral management and storage agreement would puts a duty on the collateral manager under paragraph 7.2 not grant access to the storage facilities to any person unless authorised in writing by the bank save authorised personnel, contractors or agents of ACE and of the depositor who shall have unrestricted access to the goods. Particularly paragraphs 7.7 puts a duty on the collateral manager not to release any goods unless it has received written instructions from the bank stating the person to whom to release the goods and the receipt and/or issuance of documents against which the goods shall be released. The obligations of the bank are contained in paragraph 10.4 where it is provided that the plaintiff will provide ACE with clear written instructions as to the release of the goods during normal business hours. Tied to the obligation of the plaintiff to give clear written instructions for release of the goods is its obligation to ensure that there is timely payment by the depositor of ACE fees provided for in the agreement under paragraph 10.5 thereof.

These obligations cannot be wished away by the sale of the vehicle the subject matter of this suit to the fourth defendant. It was upon the seller of the vehicle to notify the buyer namely the fourth defendant about the arrangements for release of the vehicle. The fourth defendant cannot claim that it was ignorant that the consignee of the vehicle was the plaintiff. He ought to have sought an undertaking from the third defendant who purported to act on behalf of the first defendant that they would obtain consent of the consignee mentioned in the bill of lading. The licensing officer DW1 claimed to have seen a copy of the bill of lading where the first defendant was the notify

party. The 4th defendant claimed to have seen the B.O.L. It is also clear that it was the managing director of the first defendant who applied for registration of the motor vehicle sometime in September 2010 on behalf of the first defendant. The fourth defendant was aware of the application because it was made after the sale agreement exhibit P 10. Exhibit P 10 is a handwritten agreement on a headed letter of the first defendant dated 9th of September 2010. The logbook of the motor vehicle was issued around 16 September 2010 after this agreement. The application for registration is Exhibit 2 D4 and is dated 11th of September 2010. It is stamped by ABA Trade International Ltd stamp near the signature in the application on 11 September 2010. In other words the application was made one day after the sale agreement between the first defendant and the fourth defendant. The manifest exhibit 2 D1 relied on by the witness of the second defendant falsely reflects the first defendant as the consignee of the goods. The other details of importer are accurately filled up in the names of the first defendant ABA Trade International Ltd. Exhibit P 4 which is the bill of lading proves that the legal title to the goods remained with the plaintiff. The conclusion from the evidence is that the formal or nominal legal title enjoyed by the plaintiff was only for assurance that the plaintiff would be paid its monies advanced to the first defendant. The right was exercisable by the plaintiff through the right to authorise the release of the goods after it has been satisfied through payment of its monies.

The conclusion is that the first defendant had the right to sell the vehicle to the fourth defendant. Consequently the purported sale of the suit vehicle by the third defendant to the fourth defendant was lawful though irregular. The sale was voidable at the instance of the fourth defendant. I agree with learned counsel for the fourth defendant that the documentation gives the first defendant a right to sell the vehicle and the latter part of section 22 of the Sale of Goods Act applies.

> ***"… Where goods are sold by a person who is not the owner of the goods and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his or her conduct precluded from denying the seller's authority to sell." (Emphasis added)***

In this case the owner of the goods namely the plaintiff by its conduct and through express documents is precluded from denying the seller's authority to sell. It was the duty of the first defendant to market and sell the goods subject of course to the right of the plaintiff to receive payment and authorise the release of the goods. The fourth defendant has not tried to avoid the contract on the ground of failure of the first defendant to deliver the goods. I have indeed shown that the goods can only be released upon request of the first defendant to the plaintiff to release the goods to the fourth defendant. The plaintiff is entitled to hold onto the goods until its monies have been paid. This is a formality that assures the plaintiff is paid before release of the vehicle.

Remedies

The Plaintiff submitted that the remedies that the plaintiff seeks is based on the principle argument that it is the holder of the Bill of lading in respect of the vehicle and named therein as the consignee. The remedies are that:

a. A declaration that the plaintiff is the legal owner of Mercedes-Benz tractor head chassis number WDB 9442332K900 180 registration number UAN 520 Z.
b. A declaration that the second defendant's registration of the first defendant as owner of Mercedes-Benz tractor head chassis number WDB 9442332K900180 registration number UAN 520 Z was unlawful.
c. An order that the second defendant cancels the registration of the first defendant as owner of Mercedes-Benz tractor head chassis number WDB 9442332K900180 registration number UAN 520 Z.
d. A declaration that the first and third defendant's sale of the motor vehicle to the fourth defendant is illegal.
e. A permanent injunction to restrain the fourth defendant from making any claim of right and ownership to the vehicle.
f. Costs of the suit.

The plaintiff's counsel submitted that having not endorsed the bill of lading or handed over possession to the first defendant, it was illegal and unlawful for the second defendant to transfer ownership of the vehicle to the first defendant. Counsel submitted that the first defendant could not legally pass any title to the fourth defendant.

In the alternative, if the court finds that there was a proper sale of the vehicle to the fourth defendant, the plaintiff's counsel submits that the second defendant should be ordered to pay to the plaintiff the value of the vehicle already established at 63,500 United States dollars as at the time of the transaction. The second defendant having created the logbook and transferred the vehicle into the names of the first defendant without the requisite documents should be held accountable.

In reply the submissions of the second defendant are embodied in the answer to the first issue has already been resolved. The third defendant's counsel submitted that it defeats logic for one to have his cake and the same time eat it. Counsel submitted that it is a notorious fact that the plaintiff is a financial institution and not a fleet owner or a fleet manager and therefore cannot be seen to push for deregistration of the motor vehicle but its' worth. The plaintiff offered to finance the first defendant who was in the business of selling trucks and as such the plaintiff would be entitled to its pay after the trucks had been sold. Counsel contended that it would have been a different case altogether if the plaintiff had come to this honourable court seeking to recover the proceeds of the sale of the motor vehicle in question.

Counsel submitted that the plaintiff never sought recovery of US$63,500 from the second defendant though it could have been the right prayer. Secondly similar vehicles had been

registered in similar circumstances. Counsel contended that those vehicles had been registered without any complaint raised and therefore this suit was frivolous and vexatious, full of double standards calculated to gain unfair enrichment by the plaintiff. Lastly the plaintiff prayed that the declaration be made to the effect that the first and third defendant's sale of the vehicle to the fourth defendant is illegal. No further prayer is made against the third defendant. The third defendant submitted that the sale was lawful and so was the registration. Consequently counsel prayed that the suit against the third defendant is dismissed with costs to the third defendant.

On the issue of remedies the fourth defendant's counsel submitted that the fourth defendant acquired a good title and it is therefore fair that the prayer for a declaration that the plaintiff is the legal owner of the tractor be refused. Secondly the declaration that the registration of the vehicle be declared unlawful is refused. Counsel further contended that if registration was not unlawful, then it cannot be cancelled at all. The order of a temporary injunction barring the plaintiff from taking possession of the vehicle should be vacated and the fourth defendant allowed possession of his vehicle. Counsel submitted that the fourth defendant has already made colossal losses for non-use of the vehicle. Finally counsel prayed that the plaintiff's suit against the fourth defendant be dismissed with costs. Counsel further added that the prayer against the second defendant is redundant because it was not pleaded in the plaint. The court cannot grant the prayers sought without amendment of the pleadings.

Decision on remedies

Pursuant to resolution of the issues number one and two, the following declarations follow and will be granted namely:

1. A declaration issues that the plaintiff is the legal owner of Mercedes-Benz tractor head chassis number WDB 944-2332 K9001 80 registration number UAN 520Z with specific right to hold on to the goods for enforcement of its right to payment only. The first defendant is the beneficial or equitable owner of Mercedes-Benz tractor head chassis number WDB 944-2332 K9001 80 registration number UAN 520Z and its right to registration, possession and transfer of legal title to the vehicle is exercisable upon payment of any outstanding monies to the plaintiff.
2. A declaration issues that the second defendant's registration of the first defendant as owner of Mercedes-Benz tractor head chassis number WDB 944-2332 K9001 80 registration number UAN 520 Z contrary to the naming of the plaintiff as consignee in the bill of lading is unlawful.
3. An order issues that the second defendant shall cancel the registration of the first defendant as owner of Mercedes-Benz tractor head chassis number WDB 944-2332K900180.
4. The court declines to issue a declaration that the first and third defendant's sale of the motor vehicle to the 4th defendant is illegal. In lieu thereof the court makes a declaration that the first defendant was entitled to sell the vehicle to the fourth defendant with full

disclosure as to the terms upon which the vehicles were held by ACE and the transaction of sale is voidable at the instance of the fourth defendant and also enforceable against the first defendant.

I further agree with the submissions of learned counsel for the fourth defendant and the third defendant's that the prayer of the plaintiff as against the second defendant for payment of 63,500 US$ is not supported by the pleadings and has no legal basis. The plaintiff is awarded general damages for breach of its rights as a consignee of US$ 2,000 as against the second defendant.

The plaintiff is entitled to pursue its remedies under the contract under exhibit P2 which is the offer of a facility of €1,142,056. The facility agreement exhibit P3 between Uganda Development Bank Ltd and ABA Trade International Ltd section 3.01 thereof provides that as a continuing security for the due and proper performance by the company of its obligations under the principal sum of the facility, interest and other charges shall be secured (a) by a lien on the goods to be procured using the financing provided secondly by a floating charge on the company's assets created pursuant to the debenture to be issued to the plaintiff company thirdly by personal guarantees of some or all of the shareholders of the company and fourthly by a deed of assignment of the rights, title and interest in the goods to be procured. It is explicitly clear that the right to release the goods preserved the lien of the bank/plaintiff to the goods. Additionally the collateral management and storage agreement exhibit P5 in paragraph 1 thereof provides in subparagraph (A) that the depositor is subject to the security interests of the bank, the owner of the tyres, trucks and containers referred to as the goods which shall be delivered by the depositor for storage, inspection, monitoring and collateral management by ACE at the designated storage facility. Paragraph 7.7 thereof ensured that the goods could not be released without written instructions of the bank. Paragraph 9.11 provides that the depositor (the first defendant) waives its lien in respect of the goods stored in storage facilities owned or used by it. Under the agreement the bank guaranteed repayment of the fees of the collateral manager in case the first defendant/depositor fails to pay the fees. Paragraph 11.4 provides that all fees and charges payable to ACE shall be net of any and all taxes and other mandatory payments, including VAT, charged or which may be imposed in the future in the relation to services described and the bank agrees that it shall be responsible for the payment of all such taxes on behalf of the depositor, and the depositor irrevocably authorised the bank to debit all such taxes from its account to the bank. Most importantly paragraph 14 provides and I quote: "ACE hereby waives in favour of UDBL any lien, right of retention or right of attachment and sale, which it may have on or over the product for unpaid fees." The parties initially agreed that any disputes would be resolved through arbitration.

The matter however proceeded for trial and it is now the duty of this court to finally resolve the question. As noted above, no specific outstanding amount has been claimed by the plaintiff and none has been proved in evidence. What has been proved is that the plaintiff is entitled to a lien in respect of the goods. If the plaintiff proceeds to sell the goods to the prejudice of the fourth defendant, the fourth defendant would have been entitled to a refund of its monies by the first

defendant with interest. However in the absence of a counterclaim or cross action against the first defendant, it is sufficient for the court to find that the plaintiff is entitled to hold onto the goods and exercise its contractual right of lien to the goods. The fourth defendant did not make any counterclaim against the first defendant or the third defendant and no remedy can be granted to him. This decision does not cut out his right to a remedy as against the first defendant in any subsequent proceedings as the same has not been adjudicated upon by this court.

In the premises, the sale of the vehicle to the fourth defendant by the first defendant acting through the third defendant did not extinguish the right of the plaintiff to hold onto the vehicle to realise any outstanding monies. In the circumstances the fourth defendant cannot directly claim the vehicle. In lieu of a permanent injunction, sought by the plaintiff against the fourth defendant, the first defendant is given 30 days within which to pay any outstanding amounts to the plaintiff. The 30 days shall be reckoned from the date of service of this order upon the first defendant. Upon failure to pay any outstanding sums by the first defendant, the plaintiff would be entitled to exercise its lien in respect to the goods. The plaintiff shall file an account with the registrar and serve the first defendant indicating the outstanding amount claimed against the first defendant.

Costs of the suit are awarded to the plaintiff as against the 1st and 2nd defendants only. The 3rd and 4th defendants will bear their own costs.

Judgment delivered in open court this 11th day of January 2013

Hon. Mr. Justice Christopher Madrama

Judge

Judgment delivered in the presence of:

Kabito Karamagi for the plaintiff

Angela Mugisha Nairuba for the second defendant

Gilbert Nuwagaba for 4th defendant

First defendant not represented

Counsel for 3rd defendant absent

Charles Okuni: Court Clerk

Hon. Mr. Justice Christopher Madrama

Judge

11th January 2013