

- 1) The Consent Judgment stipulated that if the Applicant failed to pay USD 1,650,000 they would lose land whose value at the time of the Application was 4,000,000 USD.
- 2) That to allow the Consent Judgment to stand would be illegal and unconscionable, an overt act and unjust enrichment by USD 2,350,000.
- 3) That the Applicant was not properly guided by its Advocates and the negligence of Counsel should not be visited on an innocent party.
- 4) The Application has been brought within time and the Applicant is not guilty of any dilatory conduct.

The Consent Judgment the Applicant seeks to set aside emanates from Civil Suit 467 of 2013 filed by the Applicant against the Respondents. The matter was settled by Consent in terms as provided below;

- 1) CTM Uganda shall pay to Italtile Limited, Italtile Ceramics (Pty) Ltd, Italtile Mauritius Limited and Italtile Franchising(Pty) Ltd (**“the Italtile Group”**) the amount of USD 1,650,000.00 (One million six hundred and fifty thousand, United States Dollars), on or before 17 October 2015;
- 2) CTM Uganda is to make payment in 1 above into the following bank account
Webber Wentzel
First National Bank
Main Street Johannesburg
Branch code: 251705
Account No: 505 100 292 30
Reference: 2437845/1 Gouws

- 3) CTM Uganda shall within 6(six) calendar months from 16 January 2015 withdraw its opposition to all of the Italtile Group's trademark applications and will not oppose any new applications to register its intellectual property in Uganda;
- 4) CTM Uganda shall within 6(six) calendar months from 16 January 2015 provide the Italtile Group with a copy of the notice to the Uganda Registration Services Bureau of its withdrawal of the opposition in 3 above;
- 5) CTM Uganda shall within 6 (six) months from 16 January 2015 phase out the use of all the Italtile Group's intellectual property, including interalia, undertaking a name change and removing all references to and association with the Italtile Group, with the name CTM and the name "Allmuss" ;
- 6) CTM Uganda shall change the name "CTM Uganda" within 6(six) calendar months from 16 January 2015 and the name "Allmuss" upon the transfer of Italtile Ceramics' 55 % shareholding in Allmuss as per 7(b) below.
- 7) CTM Uganda will not enforce the order in terms of Miscellaneous Application no 637/2014; Should CTM Uganda comply with the terms above:
 - a. the Italtile Group shall not trade in Uganda for 2(two) years from 16 January 2015;
 - b. Italtile Ceramics will transfer its 55% shareholding held in Allmuss to CTM Uganda or its appointed nominee;
- 8) In the event that CTM Uganda fails to meet its obligations above the Italtile Group shall be entitled to execute against CTM Uganda for the amount of US \$ 1,650,000.00 by doing the following:

a) Transferring LRV 4293, Folio 9, Plot 26- 28, Kibuli Road, Nsambya into the names of Italtile Ceramics or its nominated beneficiary; and

b) Transferring CTM Uganda's 45% shareholding in Allmuss into the names of the Italtile Ceramics or its nominated beneficiary;

9) Upon execution of this consent, there shall be no further claim by Italtile Ceramics Limited, Italtile Limited or any company in the Italtile Group against CTM (U) Limited.

10) Pursuant to paragraph 9 above, Italtile Ceramics which owns 100% shares in Italtile Mauritius Limited shall cause Italtile Mauritius Limited to withdraw Civil Suit No. 800 of 2014 in the High Court of Uganda at Kampala (Commercial Division) with each party meeting its own costs.

11) Each party shall bear its own costs of Civil Suit 467 of 2013 (High Court Commercial Division).

Pursuant to the terms of the Consent Judgment the Applicant transferred share stock on 17th October 2015, passed a Board Resolution to transfer Land comprised in LRV 4293, Folio 9, Plot 26-28 Kibuli Road, Nsambya to Italtile Ceramics and 45% shareholding in Allmuss Uganda Limited to Italtile Ceramics Limited.

On 12th January 2016 the 1st Respondent passed a resolution approving and authorizing the transfer of 45 % shares from the Applicant. On the 31st August 2015 the Managing Director of the Applicant wrote a letter to the Respondents exhibiting discontent of the Consent Judgment in as far as the transfer of the land was concerned. He sought a revaluation of the property and mode of allocation of money agreed upon.

On the 7th October 2015 the Applicant filed this Application seeking orders that the Consent Judgment be set aside.

The grounds as set out earlier are that if it is not set aside, the Respondents would be unjustly enriched in as far as the value of the land in exchange was worth USD 4,000,000 compared to the USD 1,650,000 the Applicant was to pay.

Also that the Advocates had not guided them well and to uphold the Consent Judgment would be visiting Counsel's negligence on the client.

Submitting on behalf of the Applicant, Counsel conceded that the parties indeed consented, they signed and that at the time they did so, they knew the value of the property in question. The only contention was that to have the Consent Judgment the way it was would unjustly enrich the Respondent.

The Consent Judgment was endorsed by the Advocates of the Applicant and its Managing Director Gregory Magezi fully empowered by the Respondent to conduct the affairs of the Applicant.

Gregory Magezi was given that responsibility by the Applicant because of his ability and understanding of Company matters. Gregory Magezi got the authority to transact business for the Applicant in a Resolution dated 12th November 2005. It provided;

"At the meeting of M/S Prime Holdings Ltd dully held on the 12th November 2005 at the CTM Office Kampala, the following resolution was unanimously passed;

1) The Managing Director of Prime Holdings Ltd Gregory Magezi be and is hereby authorised for purposes of raising additional capital to pay off CTM's liabilities

and or to finance the businesses of CTM Ltd, to transact in the shares of Prime Holdings Ltd in any way he deems appropriate including but not limited to selling, mortgaging, charging and or assigning the said shares.

2) That the Managing Director of Prime Holdings Ltd is hereby authorised to enter into negotiations in respect of the above, and to execute any documents and perform all things requisite or necessary to the selling, mortgaging, charging and or assigning of the said shares”

The foregoing thus empowered Gregory Magezi to sign all documents pertaining to the financial matters, selling and mortgaging empowered by the words,

“authorised to enter into negotiations.....to execute documents and perform all things requisite”

Clearly spelt out in the resolution Gregory Magezi in my view signed the Consent Judgment fully aware of its consequences. In that I am fortified by the fact that he followed this signing by performing some of the terms of the Consent Judgment. He might have signed because he thought in the temporary relief, the Applicant would find the USD 1,650,000.

This however did not vitiate the contents of the Judgment and his subsequent activities towards its fulfillment.

One of the grounds on which the Application is based is that *“the Advocates of the Applicant did not guide her well.”* Mr. Magezi a signatory to the Consent Judgment deposed in paragraph 14;

“That the Applicant was not guided well by its Advocates and the negligence of Counsel should not be visited on an innocent party.”

And in paragraph 19 he deposed;

“That the actual value of the land was ignored at the time the Consent Judgment was executed and this has greatly affected the interests of the Applicant owing to the overt error or an apparent error.”

I am not convinced that the Applicant was misled by her Advocate for the following reasons; the Advocate signed the Consent together with the Managing Director of Prime Holdings Ltd, Gregory Magezi who had full authority to do so by the Resolution.

Gregory Magezi can be viewed through his letter to M/S Kampala Associated Advocates as an astute businessman who understands business and land transactions.

As I have said earlier in this Ruling, at the time he signed the Consent Judgment he knew its implications. Gregory Magezi also suggested that Counsel did not follow the Applicant’s instructions. In my view what the Advocate did was what he was instructed. I say so because after the Consent Judgment, Gregory Magezi took steps to effectuate it.

The Applicant has in ways attempted to disassociate herself from the acts of her Counsel.

I am afraid it is not that easy because the actions of Counsel are binding. In this I am fortified by **Seton on Judgments and Orders 7th Edition Vol 1 pg 124 also approved and adopted in Hirani vs Karman [1952] EA 131** which reads;

“Prima facie, any orders made in the presence of and with the consent of Counsel is binding on all parties to the proceedings or action and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary or if the consent was given without sufficient material fact....”

In this Application there is nothing to show collusion or fraud. The Consent Judgment was entered into with all material facts available to the parties. It has further been conceded by the Applicant that at the time the parties signed the Consent Judgment, they were well aware of the value of the land.

The signing of the Consent was preceded by negotiations and evaluations whose final position was signed by both parties expressed in the Consent Judgment.

It is trite that when parties have put their agreement in writing, it is conclusively presumed between them that they intended such writing to form the full and final settlement of their intentions; **Muddu Oils Refinery Ltd & Anor vs Centenary Rural Development Bank (CERUDEB) & 5 Others HCCS 159 of 2009.**

The foregoing position was clearly enunciated in **Stockloser vs Johnson (1954)1 ALLER 630** in these words;

“People who freely negotiate and conclude a contract should be held to their bargain and judges should not intervene by substituting, according to their sense of fairness, terms which are contrary to those which the parties have agreed upon themselves.”

The parties herein are businessmen who are free to enter into whatever agreement they wish. That freedom should not be interfered with as long as they act within the law. In **L Schules A.G vs Wickman Machine ToolsSales Ltd [1974] AC 234** Lord Morris of the House of Lords summarized the effect of such a contract in these words;

“ Subject to any legal requirements businessmen are free to make what contracts they choose but when the terms of their agreements are unclear a court will not be disposed to accept that they have agreed on something utterly fantastic. If it is clear of what they have agreed a court will not be influenced by any suggestion that they would have been wiser to have made a different agreement.”

Accordingly the parties to the Consent Judgment were bound by the agreement they reached. They gave no exceptions in their clearly worded consent which was to the effect that if the 1,650,000 USD was not forthcoming the land would go.

In view of the foregoing I do not see why, in the absence of fraud, this court should suggest that the figure 1,650,000 USD was too low and that if the parties stick to the Consent Judgment, the Respondent would be unjustly enriched.

In that case the Applicant who willingly agreed to the terms in the Consent Judgment cannot in absence of fraud or misrepresentation turn around and claim that the terms regarding the value of the land was unconscionable and harsh.

I also want to say that the Consent Judgment which was reached with the parties' concessions here and there took on a new understanding

forming a new contract, thus superseding any earlier claim; **Chitty on Contract 26 Edition Volume 1.**

The Applicant also alleged that the Consent Judgment was obtained through duress. Mr. Magezi deposed that ***“there was economic duress on the part of the Applicant by the Respondents.”***

I am not convinced that there was any duress for the following reason, that duress can only give protection to an Applicant if he or she has acted immediately after the act complained of by taking steps to counter it.

The Consent Judgment was executed on 20th February 2015. It provided in paragraph one that the Applicant would either pay USD 1,650,000 or lose the land, in these words;

“CTM Uganda shall pay to Italtile Limited Ceramics (Pty) Ltd, Italtile Mauritius Limited and Italtile Franchising (Pty) Ltd (The Italtile Group) the amount of USD 1,650,000 (One million Six hundred and fifty thousand United States Dollars) on or before 17th October 2015.”

The Applicant had between 20th of February 2015 up to 17th October 2015. It is not until 31st August 2015, 8 months later and realizing that the agreed date was just seventeen days away that the Applicant wrote to the Respondents seeking revaluation of the property which had obviously appreciated in value.

It was also not until the 7th October 2015, ten days to the agreed date that the Applicant filed this Application. Furthermore, She filed the Application after She had taken steps to fulfill what had been agreed in the consent. The fact that she took steps to effectuate the Consent is a

clear indication that there was no duress because if it had existed, the Applicant would have immediately she got that partial relief on 20th February 2015 rushed to court. She did the contrary by signing all sorts of transfers and change of names as agreed by both parties. In my view, the Applicant has failed to prove any duress.

Lastly the Applicant tried to divorce the acts of Gregory Magezi from the Applicant namely that the Applicant was a different person from Magezi and that what he did could not bind the company.

I also find this argument untenable. While a company becomes a legal person on incorporation it has no will or mind of its own. The purpose for such will or mind arises because of the civil law intention of knowledge as an ingredient for the cause of action or defence; **El Ajou vs Dollar land Holdings [1994]2 ALL ER 685.**

What attributes to the company the will and mind of natural persons who manage and control its actions was pronounced by **Viscount Haldane L.C in Lenards Carrying Co. vs Asiatic Petroleum Co. Ltd [1915] AC 705 AT 713** in these words;

“My Lords a corporation is an abstraction it has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person or somebody, who for some purposes may be called an agent but who is really the mind and will of the corporation, the very ego and center of the personality of the company.”

The foregoing clearly states that the activities of the person in charge of the management of the company would under certain

circumstances be considered those of the company. Management and control should therefore not be considered lightly.

It is necessary to identify the natural person having management and control of the company in relation to the issue in point. This position was ably enunciated in **R vs Andrews Weatherfoil Ltd (1972) WLR 118 at 124** by Eve Leigh J who said;

“It is necessary to establish whether the natural person or persons in question have the status and authority which in law makes their acts in the matter under consideration the acts of the company so that the natural person is treated as the company itself.”

I have already considered the position of Gregory Magezi in relation to the Applicant. It is not in doubt that he was by resolution empowered to deal with the liabilities of the Applicant. He was responsible for the financial administration of the Applicant.

His status and activities in the Applicant was also made clear in an affidavit deposed on 29th August 2016 filed in the court on 30th August 2016 in which he stated that he was a Director of the Applicant and it was in that capacity he entered into negotiations with the Respondents on behalf of the Applicant.

Lastly the Applicant and her associates made decisions as to how they would deal with her liabilities. These were things agreed upon within the Company and yet in action to involve outsiders like the Respondents. The Respondents were not duty bound to know what was agreed upon. What mattered was that a Director representing the Applicant and having power to bind it by his action had participated.

It is a settled position of the law that an outsider dealing with a Company is deemed to have constructive notice of its Articles of Association and not any documents that are not public; **Royal British Bank vs Turquand (1856) 6 E&B 327**. The exception to this rule would be in circumstances where the outsider has knowledge of irregularities in the internal management and fails to carry out proper inquiry in instances of suspicion and forgery of documents relied on by the outsider.

In any case people transacting business with companies are entitled to assume that internal rules are complied with even if they are not. Under the Indoor Management rule, the Company's indoor affairs are the Company's problems.

The foregoing rule was later entrenched in the law by the endorsement of Lord **Hatherly in Mahony vs East Holyford Mining Co. (1875) L R 7 HL 869** in the following words;

“ When there are persons conducting the affairs of the Company in a manner which appears to be perfectly consonant with the articles of association, those so dealing with them externally are not to be affected by irregularities which may take on the internal management of the Company.”

In the Mahoney case, the Company articles provided that cheques should be signed by any two of the three named directors and by the secretary. The fact that the directors who had signed the cheques had never been properly appointed was held to be a matter of internal management, and the 3rd parties who received those cheques were entitled to presume that the directors had been properly appointed.

In the instant case every outsider who in good faith dealt with Gregory Magezi who had by resolution been appointed to handle the Applicants' liabilities, was entitled to assume that the internal requirements and procedures had been complied with. In the instant case there were resolutions and that would suffice as long as there was nothing to indicate they were false.

Gregory Magezi signed the Consent Judgment, and subsequently the necessary documents to put into effect what had been agreed upon. He was the mind of the Applicant and whatever he did was done in his capacity as empowered by the resolution. His acts were therefore, those of the Applicant.

The sum total is that the Applicant fails to establish the requirements that set aside a Consent Judgment. There is no proof of fraud, mistake, misrepresentation or contravention of court policy in the making of the judgment as would vitiate it to set it aside. That being the case, I find no merit in setting aside the Consent Judgment the result of which I dismiss the Application with costs.

Dated at Kampala this 25th day of October 2017

**HON. JUSTICE DAVID WANGUTUSI
JUDGE**