THE REPUBLIC OF UGANDA
IN THE HIGH OF UGANDA AT JINJA
MISCELLANEOUS APPLICATION NO. 334 OF 2023
(ARISING FROM MISCELLANEOUS APPLICATION NO.256 OF 2022)
(ARISING FROM LAND CIVIL SUIT NO.50 OF 2022)

DEPARTED ASIANS' PROPERTY CUSTODIAN BOARD===APPLICANT

VERSUS

MUSA BALIKOWA ==========RESPONDENT

BEFORE: HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI

RULING

Background

The applicant/appellant in this matter filed Civil Suit No. 50 of 2022 in this court. The Respondent then filed Miscellaneous Application No. 265 of 2022 wherein he prayed to court for orders that the applicant in this matter, the Departed Asians' Property Custodian Board (DAPCB) (who was the respondent in M.A 265 of 2022) furnishes security for costs of UGX 200,000,000 before the hearing of Civil Suit No. 50 of 2022. His Worship Fred Waninda K.B, the Deputy Registrar, while hearing the application, ruled in favour of the respondent and ordered DAPCB to deposit UGX 70,000,000 (Seventy million shillings) as security for costs within 30 days on the Registrar High Court Account in Bank of Uganda. The applicant (DAPCB) then filed this Application No. 334 of 2022 to set aside the orders in Misc. Application No. 265 of 2022.The applicant prayed to this court for orders that;

a) The ruling of the learned Deputy Registrar ordering the Respondent to deposit UGX 70,000,000 as security for costs be set aside.
b) That in the alternative, if court finds security for costs necessary, the amount of security for costs be significantly reduced.
c) Costs of the application be provided for.

The application was supported by the affidavit of George William Bizibu the Executive Director dated 6th December 2022 and briefly the grounds are that: -

1. The Learned Deputy Registrar erred when he ruled that the applicant dealt with the suit property and handed it over to the former owner.

2. The Learned Deputy Registrar erred when he ruled that the suit property was repossessed and was later transferred by authorized agents of the former owner.
3. That the Learned Deputy Registrar erred when he ruled that the respondent confirmed that repossession certificate was issued.
4. That the Learned Deputy Registrar erred in law and fact when he ordered the applicant to pay Ug.shs.70, 000,000 as security for costs.
5. The Learned Deputy Registrar failed to properly evaluate the evidence by both parties to determine the dispute.
6. It is in the interests of justice that this application is granted so that the matter is heard on merit.

The Respondent Musa Balikowa filed an Affidavit in Reply dated 16th January 2023 and briefly the grounds in this affidavit are: -

1. That paragraphs 4 and 5 of the affidavit in support of the motion vide Misc. Cause No. 334 of 2022 is noted and in reply, the property comprised in LRV No. 154 Folio 17 land at Butembe, Jinja Municipality Block Road Main Street Plot 54 was repossessed and any purported dealing in the property by the applicant was illegal and was not authorized by law.
2. That in reply to Paragraph 6 of the Affidavit sworn by Bizibu George William the Respondent stated that on the 14th Day of November 2022, this Honorable Court ordered the Applicant to furnish security for costs equivalent to UGX 70,000,000/= within 30 days from the date of the ruling and failure to comply would render Civil Suit No. 50 of 2022 struck off with costs.
3. That the applicant failed to comply with the Court Order Vide Misc. Application No. 256 of 2022 arising from Civil Suit No. 50 of 2022 and on 5th January 2023, the main suit was struck off with costs.
4. That in reply to Paragraphs 7,8,9 of the affidavit sworn by Bizibu George William, the respondent stated `that Misc. Application No. 334 of 2022 is a nonstarter and the applicant has no locus to file this application which is premised on a non-existing suit and that was struck of with costs for non-compliance to the deposit for security for costs in Court.

Legal Representation

The Applicant was represented by Counsel Bwire John together with Counsel Ssemaganda Sharif of M/s Wafula & Co. Advocates and Kian Associated Advocates while the Respondents were represented by Counsel Guma Davis of M/s Guma & Co. Advocates.

Submissions by the Respondent on the Preliminary Objections.

Counsel for the Respondent submitted that that it had been brought to Court's attention that the Respondent had been served late with the applicant's written submissions on 26/09/2023 and left with only one day to reply when the applicant filed her submissions on 21/09/2023. That Counsel had intimated that they had a preliminary point of law to raise on legal representation during the hearing of MA No. 61 of 2023 and as such would raise the point of law for determination by Court.

Whether the Procurement of Legal services of M/s Kian Associated Advocates and Wafula & Co. Advocates to represent the applicant is in compliance with the Public Procurement and Disposal of Public Assets Act 2003 and Regulations:

Counsel for the Respondent submitted that according to Section 4 of the Assets of Departed Asians Act CAP 83, Laws of Uganda, the Departed Asians Custodian Board(DAPCB) may sue and be sued in its corporate name. That by virtue of Sections 2, 3 and 24 of the Public Procurement and Disposal of Public Assets Act 2003, DAPCB as a public corporate entity derives its funding from the Consolidated Fund in accordance with Article 153 of the Constitution and is accountable to Parliament as per Article 164(3) of the Constitution 1995 as amended. In that regard, for any Statutory Body or Department to solicit services of a private law firm to represent it, there must be adherence to the Public Procurement and Disposal of Assets (PPDA) Act and the regulations thereunder in procuring those services.

That for the applicant to purport that she is represented by a private law firm and not the Attorney General Under as prescribed under Article 119 of the 1995 Constitution, she must follow the law in accordance with Sections 2, 3 and 24 of the PPDA. It was the Respondent's contention that the law requires that the Applicant or his lawyers in this case, possesses the requisite documents to prove that the services of the two law firms that represent the Applicant in this matter were legally procured in line with the PPDA Act which must include the following.

a) A call for bidders Notice
b) Solicitation Documents from the Procurement and Disposal Unit of the Applicant (DAPCB)
c) Bid Application documents
d) Best evaluated bidder notice (BEB)
e) Contract award Letter from the Procurement and Disposal Entity signed by the Executive Secretary as the Accounting Officer of the Departed Asians Property Custodian Board.

f) Approval / clearance from Solicitor General/ Attorney General in accordance with Article 119 of the 1995 Constitution as amended.

Counsel for the Respondent submitted that the law firms representing the Applicant are in breach of the procurement laws and Court should not be seen to condone such illegality in light of the law cited and the recent Attorney General's Circular under Ref: ADM.7/170/01, dated 11th March 2022.

Counsel relied on the case of **Justice Acungwire Vs Mumtaz Kassam & 2 others** where Justice Bernard Namanya relying on the case of **Attorney General & Hon. Nyombi Peter Vs Uganda Law Society M.C no. 312 of 2013** held that he had no difficulty in holding that there was non-compliance by the DAPCB in the procurement of the legal services of M/S Guma & Co. Advocates and that therefore, the continued legal representation of the DAPCB by Guma & Co. Advocates was rendered illegal.

Counsel submitted that in light of these authorities fortified by the case of **Makula International Ltd Vs His Eminence Cardinal Nsubuga & another CA no. 4 of 1981 (1982) UGSC 2 (8th April 1982)**, an illegality once brought to the attention of Court it overrides all pleadings. Counsel prayed that MA NO. 334 of 2022 arising from Civil Suit No. 50 of 2002 be struck off from Court with costs since it was commenced by the firms of Kian Associated Advocates and Wafula & Co. Advocates who were not lawfully procured under the PPDA Act (2003) and the regulations thereunder.

Applicant's reply on the Preliminary Objection.

Counsel for the applicant submitted that as regards to service, although they organized to serve Counsel Okello Bernard on 21st September 2023, he had advised them to wait for him since he was out of town. That on 24th September 2023, Counsel Okello Bernard refused service and instead referred the applicant's Counsel back to Counsel Guma Davis yet the last time they were in court, counsel Okello Bernard had represented the respondent and had served them with the Affidavit in reply. Counsel for the applicant therefore submitted that the delay in service was caused by respondent in his own as an attempt not to be served and thus the applicant cannot be blamed for late service since Counsel Okello Bernard was not holding brief for Counsel Guma Davis per the court record on 14th September 2023.

In response to the preliminary point of law raised by counsel for the respondent under paragraphs 1.3 – 1.16 of the respondent's written submissions, Counsel for the Applicant contended that under S.103 of the Evidence Act, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its

existence, that unless it is provided by any law that the proof of that fact shall lie on any particular person. Counsel for the applicant submitted that the respondent had failed to discharge this burden before this Honorable court to demonstrate that counsel for the applicant was not procured legitimately. Counsel further argued that in any case, the authority relied upon by the respondent's counsel is not binding on this court.

Counsel for applicant argued that even if the respondent's allegation had merit, which is not the case, there are circumstances where direct procurement of services by public entities is permitted. That further, documents filed by lawyers under circumstances where procurements procedures were faulted are not invalidated. That the respondent had no proof of the allegations and was merely raising this issue to distract Court's attention from the pending Application.

It was the Applicant's contention that this preliminary point is premature; That the respondent would have attached proof by way of a letter from PPDA Board to justify their allegations and that in the absence of such proof, moving court without any basis was procedurally wrong since parties cannot adduce evidence in submissions. Be as it may, the Respondent submitted that under section 79 (1) (a) of the Public Procurement and Disposal of Public Assets Act as amended, it is provided that a procuring and disposing entity shall in respect of procurement of goods, works, consulting services and non-consulting services, use any methods in sections 80, 81, 82, 83, 84, 85 and 86 of the Act.

Counsel submitted that they were alive to the provision of the law and that section 85 (1) of the same Act provides for Direct Procurement which is a sole source of procurement where exceptional circumstances prevent the use of competition. Further, Section 85 (2) of the PPDA provided that Direct Procurement shall be used to achieve efficient and timely procurement where the circumstances do not permit a competitive method. That the respondent seemed not to have addressed their minds to the fact that the law is one which ought to be read as a whole and not in parts.

Counsel argued that this Court should pay attention to the concept of emergency procurement. That under section 58 (7) of the Public Procurement and Disposal of Public Assets Act as amended, it is provided that procurement shall not be carried out outside the procurement plan except in cases of emergency.

Counsel argued that although it is not the intention of the applicant to carry out procurement outside the procurement plan, the law provides for procurement of services in emergency situations. This is observed under section 3 which defines emergency to mean circumstances which are urgent, unforeseeable or a situation

which is not caused by dilatory conduct. This includes situations where the quality of goods, buildings or publicly owned capital goods may seriously deteriorate unless action is necessarily taken to maintain them in their actual value or usefulness. That it is therefore unrealistic for the respondent to require 'A Call for bidders Notice' and all the items listed in their submissions.

Counsel for the applicant argued that Article 126(2) (e) of the Constitution provides for the courts to administer justice without undue regard to technicalities. Further that section 98 of the Civil Procedure Act provides this Honorable court with the discretion and power to grant such orders as are necessary to administer justice. Counsel submitted that the procurement process is one that is very technical and long yet this was a matter incapable of waiting as it required court's immediate attention since the respondent was in process of acquiring a title fraudulently and had started demolishing Government property and as such, the situation required emergency intervention.

Counsel for Applicant submitted that Section 14A of the Advocates (Amendment) Act provides that where;
(b) in any proceedings, for any reason, an advocate is lawfully denied audience or authority to represent a party by any court or tribunal; then;
(i) no pleading or contract or other document made or action taken by the advocate on behalf of any client shall be invalidated by any such event; and in the case of any proceedings, the case of the client shall not be dismissed by reason of any such event;
(ii) the client who is a party in the proceedings shall, where necessary, be allowed time to engage another advocate or otherwise to make good any defects arising out of any such event.

Counsel relied on the same case that was relied on by the respondents in their submissions in reply in **Attorney General & Anor v Uganda Law Society (Miscellaneous Cause No. 321 of 2013)** where court held inter alia that;

'*The right to a hearing is sacrosanct. I agree that the representation of the Attorney General by Kampala Associated Advocates does not affect the legality of the pleadings because under S. 14A of the Advocates (Amendment) Act: "No pleadings, contract, or other document made or actions taken on behalf of a client shall be invalidated by disqualification of an advocate from representing a client for any reason." Disqualification of an advocate, for example without a valid practicing certificate, or an advocate whose conduct violates the law including client confidentiality and conflict of interest or any other legal matter does not invalidate the proceedings. The courts are empowered to hear and determine the disputes between parties because an applicant who believes he has been wronged comes to*

court to seek relief. The administration of justice requires that the substance of disputes be investigated and decided on merits and lapses should not necessarily bar the litigant from pursuing his or her rights.' ***See Wanendeya Vs Gaboi & another [2002] 2 EA 662, (CAU)'.***

Counsel for the applicant submitted that they were alive to the facts in the case of **Acungwire v Mumtaz Kassam and Others (Civil Suit No. 339 of 2019)** which was relied on by Counsel for the respondent in his submissions, in which case he was the the legal representative. That it against this background that they wished to bring to court's attention a fact that, much as court declared continued legal representation of the DAPCB by M/s. Guma & Co Advocates as illegal, they were disqualified from further representing the board, but this did not affect the DAPCB's evidence on court record.

Counsel further relied on Article 126(2) (e) of the Constitution and the case of **Prof Syed Huq v Islamic University in Kampala (Supreme Court Civil Appeal No. 47 of 1995) [1997] UGSC 3 (6 November 1997)**, where the Supreme Court held that documents drawn by an advocate without a practicing certificate should not be regarded as illegal and invalid simply because the advocate had no valid practicing certificate when he drew or signed such documents. The rationale is to protect the litigant and address merits of the case.

Counsel for the Applicant argued that the decision of **Acungwire v Mumtaz Kassam and Others (Civil Suit No. 339 of 2019) [2023] UGHCLD 41** cited by the respondent's Counsel was only persuasive to this court and prayed that the preliminary point of law raised by the respondent be overruled with costs.

Counsel for the applicant also argued that in alternative and without prejudice that in the event that Counsel for the applicant is disqualified from further representing the applicant, the pleadings on court record should not be struck out but rather court should proceed to hear the pending application on its own merits.

Counsel for the applicant also raised a counter preliminary point of law for the determination by this Honorable Court regarding the conflict of interest of Guma & Co. Advocates in this matter being that it had come to the applicant's knowledge that the Respondent's Counsel, Guma Davis ,was the former lawyer of the Applicant in this matter and was also legal Counsel for the Executive Director of the Applicant, Mr. George Bizibu in the case of **Acungwire v Mumtaz Kassam and Others (Civil Suit No. 339 of 2019) [2023] UGHCLD**.

That Counsel Guma Davis having been the former lawyer for the Applicant, would at some point be inclined to share confidential information acquired in the fiduciary relationship as advocate for the Applicant. That contrary to regulation 4 of the Advocates (Professional Conduct) Regulations, there is a possibility for Counsel for the respondent to use the Applicant's confidential information in his own interest. That regulation 4 of the Advocates (Professional Conduct) Regulations provides that;

"An advocate shall not accept instructions from any person in respect of a contentious or non-contentious matter if the matter involves a former client and the advocate as a result of acting for the former client is aware of any facts which may be prejudicial to the client in that matter."

Counsel for the applicant argued that, it is apparent on the face of it that Guma & Co. Advocate is the former counsel for the Applicant and as such has a conflict of interest that is prejudicial to the Applicant. Counsel prayed that Guma & Co. Advocates be disqualified from further representing the respondent since Respondent's Counsel possesses confidential information as former counsel for the Applicant in this matter.

Applicant's submissions on the Appeal

Counsel for the Applicant submitted and reminded court that the duty of the 1st appellate Court is to review and re-evaluate the evidence before the trial Court and reach its own conclusion. **(Olanya James V Ociti Tom and Ors Civil appeal No.0064 of 2017 which Justice Stephen Mubiru cited with approval in the case of Fr.Venensio Begumisa and 3 ors V Eric Tiberrage SCC No.17 of 200 (2004) KALR 23).** Counsel proposed and argued the grounds of appeal in the following order: Ground 1-3, 4-5 and 6

GROUND 1, 2 & 3

1. *That the Learned Deputy Registrar erred when he ruled that the respondent dealt with the suit property and handed it over to the former owner.*
2. *That the Learned Deputy Registrar erred when he ruled that the suit property was repossessed and later transferred by authorized agents of the former owner.*
3. *That the Learned Deputy Registrar erred when he ruled that the respondent confirmed that repossession certificate was issued.*

Counsel for the applicant/appellant submitted that the Deputy Registrar was not right to rely on photocopies attached to the affidavit of the respondent which were not certified to conclude that the respondent dealt with the suit property and handed it over to the former owner. Further, that the Deputy Registrar erroneously ruled that

the property was repossessed and transferred by authorized agents of the former owner basing on a repossession certificate. That at page 3 paragraphs 5 of the ruling the Deputy Registrar ruled that;

"The applicant has adduced evidence that the suit property was repossessed and later on transferred by authorized agents of the former owner...."

Counsel for the applicant submitted and argued that the Executive Secretary of the applicant had stated in paragraph 4 (a-n) of his affidavit that, in 1972 (before expulsion of the Asians from Uganda), Gordhands Lalji Kotecha was the registered owner of the suit property comprised in the Leasehold Register Volume No. 154 Folio 17 Land at Butembe Jinja Municipality Block (Road) Main street Plot No.54.That following the expulsion of the Asians, the suit property was vested in the Government of Uganda and was managed by the applicant. That although the law changed to allow former owners of expropriated property to apply for repossession, this property was not repossessed. That on 29th June, 1994, the former owner wrote a letter to the applicant requesting for a certificate of repossession.

That on 29th July, 1994, the former owner was advised by the applicant to physically return to Uganda which he ignored. That having ignored to physically return and repossess the suit property, the former owner could not legally authorize Rohit Vasanji Kotecha to deal with the property. That Rohit Vasanji Kotecha did not have capacity to sell and or deal with the suit property. That to protect the Government's interest, the applicant lodged a caveat and registered it under Instrument No.JJA.00023721. That Gamwanga Emma Moses who is the 1st defendant in the main suit forged a withdrawal of caveat consent and illegally caused the removal of the caveat claiming that he had interest in the suit property. Counsel for the applicant contended that Gamwanga Emma Moses later connived with Musa Balikowa, the Respondent, to have the property transferred in the latter's name to defeat the applicant's interest. The respondent did not bother to conduct any due diligence prior to his engagement in the transaction.

Counsel for the applicant stated that all the above evidence was reiterated in the reply opposing application for security for costs in paragraph 3 to 15.

Counsel for the applicant submitted and argued that the Ruling by the Deputy Registrar ignored all the above evidence and instead relied on the annexures to the Rejoinder which was filed by the Respondent on 24th Oct, 2022 together with the respondent's submissions.

Counsel for the applicant contended that Court could not base its decision on uncertified documents attached to the respondent's affidavit to conclude that the property was repossessed as required by the Expropriated Properties Act especially where fraud has been pleaded in the main suit and referred to in the reply.

Counsel for applicant argued that in a related manner, the so called certificate authorizing repossession was signed by the Minister of Finance and the words "*and Economic Planning*" were merely added using a pen and were not counter signed. Besides, it is the authenticity of the document which is contested. Such a critical document cannot be taken casually by this Court to amount to a document as required under the law.

Counsel for the Applicant in reproducing the ruling of the Deputy Registrar stated that at page 1 in the last paragraph, of the Ruling stated that;

"*.... the Executive secretary in Para 6-9 in reply are to the effect that the suit property was expropriated. The former owner applied for repossession, the certificate of repossession was issued.*"

Counsel for the applicant indicated that they have found it necessary to reproduce the above paragraphs 6, 7,8 and 9 of the said reply as cited by the Deputy Registrar as below: -

6) Although the law changed to allow former owners of expropriated property to apply for repossession, this property was not repossessed.

7) That on 29th June, 1994, the former owner wrote a letter to the respondent requesting for certificate of repossession (A copy of the letter is attached as A)

8) That on 29th July, 1994, the former owner was advised by the respondent to physically return to Uganda which he ignored (A copy of the letter is attached as B).

9) That having ignored to physically return and repossess the suit property, the former owner could not legally authorize Rohit Vasanji Kotecha to deal with the property.

Counsel for the applicant submitted and argued that basing on such evidence, it was questionable how the Deputy Registrar arrived at such a conclusion that the property was repossessed. Counsel prayed that the Deputy Registrar's decision be overruled.

GROUND 4, 5 and 6

4. *That the Learned Deputy Registrar erred in law and fact when he ordered the applicant to pay UGX. 70,000,000 as security for costs.*

5. *That the Learned Deputy Registrar failed to properly evaluate the evidence by both parties to determine the dispute.*
6. *That it is in the interests of justice that this application is granted so that the matter is heard on merit.*

Counsel for the applicant in addressing court stated that in order to determine the question as to whether the Learned Deputy Registrar erred in law and fact when ordering the Applicant to pay UGX 70,000,000 as security for costs, it was imperative that the established legal framework is followed.

Counsel submitted that Order 26 Rule 1 of the CPR provides that the court may if it deems fit order a plaintiff in any suit to give security for the payment of all costs incurred by any defendant. Firstly, the principles governing the grant of an order for security for costs were comprehensively considered in the landmark case of **Namboro & Fabiana Waburo versus Henry Kaala [1975] HCB 315**. These principles include two fundamental elements;

1. *Whether the Applicant is incurring undue expenses defending a frivolous and vexatious suit.*
2. *Whether the Applicant possesses a strong defence that is likely to succeed.*

Counsel for the applicant noted that these two elements were uncontested in the present case, and therefore, their focus centered on the Respondent's assertion of the Applicant's inability to meet the costs. That in regards to the issue of the Applicant's financial capability, Counsel relied on **Anthony Namboro and Anor versus Henry Kaala (supra),** in which case court held the mere poverty of a Plaintiff does not constitute sufficient grounds for ordering security for costs.

Counsel for applicant argued that the Respondent, in paragraph 7 of the affidavit supporting the application, contends that the Applicant has been losing many cases and failing to meet legal costs because her assets are not known. That in response to this contention, the Applicant countered in paragraphs 16 and 17 of their affidavit and asserted that the Respondent's claims in paragraph 7 lacked substantiation and were merely speculative. Furthermore, that the Applicant had highlighted its status as a government entity established by an Act of Parliament with the inherent capacity to offset its financial liabilities.

The Applicant's Counsel also highlighted the applicant's ongoing management of multiple assets. In alignment with the principles elucidated in **Interfreight Forwarders (U) Ltd v East Africa Development Bank, Supreme Court Civil Appeal No.33 Of 1993,** it is incumbent upon any party seeking court's judgment on

legal rights or liabilities, dependent on certain facts to furnish concrete evidence in compliance with Section 101(1) of the Evidence Act, Cap 6.

Further Counsel relied on the decision by Mulenga JSC in **Bank of Uganda versus Joseph Nsereko & 2 Others Civil Application No. 7 of 2002,** in which case he held that the lack of knowledge regarding the Applicant's assets cannot be construed as evidence of the Respondent's inability to meet the costs.

That in summation, it was the Applicant's submission that the Respondent's claim regarding the Applicant's inability to pay costs stands devoid of a solid legal foundation. That consequently, it was Counsel for the Applicant's submission that the learned Deputy Registrar erred both in law and in fact when issuing the order for the Applicant to pay UGX. 70,000,000 as security for costs on these unfounded grounds.

Counsel for the Applicant submitted that the discretionary power to order security for costs must be sparingly used. **(See UCB Vs Multi constructors Civil Appeal 29 of 1994).**

Counsel for the applicant also argued that the applicant filed an affidavit to oppose the application for lack of merit. On the contrary, the respondent alleged that the applicant lacked locus standi and that the suit was barred by limitation. That locus standi was defined in the case of **Dima Dominic Poro vs Inyani & Anor, Civil appeal No.0017 of 2016** as a right to appear in court. Conversely, to say that a person has locus standi means that he has a right to appear or be heard in a specific proceeding. That in this particular case, the DAPCB is an entity created by an Act of Parliament to manage the properties expropriated during the military regime of the former President of Uganda, Idi Amin. That DAPCB is vested with the power one of which is to provide for the return of property to the former owners upon application and meeting the requirements.

Counsel argued that S.9 of Expropriated Properties Act (EPA) gave conditions that must be fulfilled before one can be allowed to repossess. S.9 (1) (d) states that;
"Having been authorized to repossess the property /business under S.6, if the former owner fails to physically return and reside in Uganda within 120 days from the date of authorization, the minister may either order the property to be retained by government or sold off."

Counsel for applicant submitted that in the instant case, the Executive Secretary of the applicant had averred in paragraph 4(c) of his affidavit in support of the appeal that;

"Following the expulsion of Asians, the suit property was vested in the Government of Uganda and managed by the applicant."

Counsel for the applicant argued that basing on the documents attached to the application and the evidence stated above, the property was not repossessed as required by the EPA. Therefore, it was DAPCB with interest in the suit property and can commence legal action against anyone to protect it. That even if this was doubted by Court, such a contentious issue cannot be settled by relying on affidavit evidence. Further, the allegation that the applicant may be barred by limitation was baseless since Section 5 of the Limitation Act provides that no action shall be brought to recover any land after the expiration of 12 years from the date the cause of action arose with an exception under S.25 which provides for the postponement of the limitation period in cases of fraud which was pleaded in the plaint.

Counsel for the applicant contended that the respondent had failed in the lower Court to demonstrate any of the principles of law stated above. That Counsel for the applicant stated that the respondent relied on **Mohan Musisi Kiwanuka Vs Asha Chanda SCCA 14 OF 202** in which case the Supreme Court held that once a minister issues a repossession certificate, he/she any other government cannot reverse, review or otherwise modify the decision. The only course of action available to any aggrieved party is to redress from courts of law.

Counsel for the applicant argued that the uncertified certificate of repossession that was attached by the Respondent to the affidavit in rejoinder was signed by the Minister of Finance and not by the Minister of Finance, Planning and Economic Development as required by law. Counsel for the applicant submitted that it was their view that no certificate of repossession was issued. That the case of **Mohan (supra)** is distinguishable from the current circumstances since in the instant case, the alleged forged certificate of repossession relied upon by the respondent was not received by the former owner having not come back to Uganda and no evidence was availed to confirm his return and that therefore, the same was not genuine.

Counsel for the applicant submitted that it is trite law that any illegality once brought to the attention of court supersedes any point of law raised (**Makula International Vs His Eminence Cardinal Nsubuga (1982).** In the instant case, it was the applicant's case that the respondent and the two defendants in the main suit illegally and fraudulently dealt in the suit property and as such, the applicant seeks for a declaration that the property is still vested in the Government of Uganda. Therefore, the above clearly shows that there is a serious triable issue and the appellant is not simply wasting the respondent's time in defending a frivolous and vexatious suit as alleged in the ruling.

Counsel for the applicant submitted that the Executive secretary of the applicant in paragraph 15 to 17 (reply in the lower Court) relied on lack of due diligence, fraud among others on the part of the respondent in the purchase of the suit land. He referred to fact that the applicant is a government entity created with capacity to offset liabilities and to date, the respondent is still managing a number of assets and what the respondent alleged about incapacity to pay costs was speculative and not backed by any evidence.

Counsel argued that pursuant to the law cited above in addition to Section 98 of the Civil Procedure Act which arms this Court to make such orders as are necessary to meet ends of justice, Counsel for applicant submitted and prayed that the orders of the Deputy Registrar requiring the applicant to pay security for costs and striking off Civil Suit No.50 of 2022 be set aside and the said suit be reinstated and heard to its logical conclusion. Further, counsel prayed for the costs for the lower Court and this application pursuant to Section 27 of the Civil Procedure Act.

Respondent's Submissions on the Appeal

Counsel for the respondent presented a background to the case and submitted that on 9th August 2022, the Applicant filed Civil Suit No. 050 of 2022 against Gamwanga Emma Moses, Balikowa Musa and the Commissioner Land Registration claiming that she had mandate to manage the suit property described as LRV 154 Folio 17 Plot 54 Land at Butembe, Main Street, Jinja City since it was never repossessed by the former owners. It was the Respondent's submission that the suit property which formerly belonged to Gordhhandas Lalji Kotecha was repossessed by the former owners vide a Certificate Authorizing Repossession No. 1419 issued by the Minister of Finance Planning and Economic Planning in 1993 of which an original Certificate was in possession of the Respondent and the same had never been recalled or cancelled. That the former owners had a mortgage on the suit property which was cleared and that the duplicate certificate of title was issued. That the property was sold to Gamwanga Moses Emma who later sold the same to Balikowa Musa who is the registered proprietor thereof.

That the respondents filed their defence and on 7/10/2022 in MA. No. 265 of 2022 filed by the respondent (Balikowa Musa), the application sought for security for costs of UGX 200,000,000/= on grounds that the respondent was bound to incur unnecessary expenses of defending a frivolous and vexatious suit where the applicant had no cause of action to file a suit on a property that had been repossessed. That the said application same was heard inter-parties and Court ordered the Applicant (DAPCB) to furnish security for costs worth UGX 70,000,000/= within 30 days if she wanted to prosecute Civil Suit No. 50 of 2023. That the Applicant

deliberately refused to comply with the Court order that had been issued by this Court and on 5th Day of January 2023, the main suit where MA No. 334 of 2022 was arising was struck off from the Court record hence this Appeal before Court.

Counsel for the Respondent adopted the format in which the grounds have been formulated by the applicant.

Counsel for the Respondent submitted that they were alive to the fact and law that this Court has jurisdiction to review and re- evaluate the evidence on appeal and arrive at its own conclusion but in exercising this duty, the same should be exercised judicially to meet the ends of justice. Counsel for the respondent submitted that for an application of this nature to succeed, Courts have set up principles to be followed when entertaining such matters.

That According to the Case of **Uganda Poultries Ltd vs Rhoda Kawuma & 2 others Justice Bashaijja K. Andrew relying on the case of Banco Arabe Espanol Vs Bank of Uganda (1992) 2 EA,** Court held that the applicant must at all times demonstrate to court why security for costs was not furnished within the time set in the Court order and once there was lapse or non-compliance, the axe fell. The subsequent deposit of the money in Court could not automatically revive the case and it automatically stood dismissed.

Counsel for the respondent argued that the applicant, upon being ordered on 14th November 2022 to pay security for costs continued to remain in defiance of the lawful orders that were issued by this Honorable Court against her.

Counsel for the respondent argued that the Applicant had not demonstrated to this court any sufficient cause why the order for security for costs should be waived to have Civil Suit No. 50 of 2022 reinstated. That the Applicant in her application did not state or suggest any amount of money she is in position to deposit in Court as security for costs to have Civil Suit No. 50 of 2022 reinstated and determined on merit. That the Applicant had not demonstrated if she has any real asset in form of land or cash that has been set aside to pay costs in the event that she is defeated in Civil Suit No 50 of 2022.

Counsel for the respondent argued that the appeal or application was hanging in a vacuum which casts a big doubt upon the respondent who will have no remedy if a decree is passed in his favor and fears that the fruits of the decree will not be realized from the Applicant.

Counsel for the respondent also argued that there was no Minute or resolution from the Applicant or Attorney General sanctioning the filing of Civil Suit No 50 of 2022 against the respondent which casts a big doubt in the event she loses the suit where the costs be recovered from. Counsel for the respondent submitted that Court should be reminded of the nature of the Applicant or litigant before it as she is a body corporate but all the finances that run DAPCB are drawn from the consolidated fund which makes it impossible to secure a garnishee order against a consolidated fund account to pay the costs.
Counsel for the respondent in support of their submissions relied on Article 164 (3) of the 1995 Constitution which gives Parliament authority to monitor all expenditure of Public Funds and DAPCB derives its funding from the Consolidated Fund as provided for Under Article 153 and 154 of the Constitution of the Republic of Uganda. Counsel for the respondent argued that they maintained and demonstrated in their submissions supported with the law, that it was prudent for the learned Deputy Registrar to order the Applicant to furnish security for costs to safeguard such repercussions after the disposal of Civil Suit No 50 of 2022.

Counsel for the respondent further submitted that Counsel for the Applicant cited Order 50 rule 8 CPR that allows any person aggrieved by the order of the Registrar to appeal against the order which was noted. However, it was their submission that Miscellaneous Application No 334 of 2022 was itself devoid of merit and did not demonstrate any sufficient or good cause.

Counsel for the respondent argued that having appreciated Grounds 1, 2 & 3 in the Applicant 's reply, the Applicant attempts are misguided and misleading to assert that the suit property was never dealt with by the Minister and as such it was still vested in the hands of the applicant is wrong. Counsel further submitted that Section 9 of the Expropriated Properties Act gives power to the Minister to repossess, sell or dispose of the Property for failure by the former owner to return to Uganda within 120 days and once the Minister had issued a certificate of repossession, the Minister or the Applicant in this case had no power to cancel or deal with the property, a fact the Applicant was alive to. **His Lordship Justice Mulenga JSC in the case of Mohan Musisi Kiwanuka Vs Asha Chanda SCCA No 14 of 2002** in which the Supreme Court confronted with a similar question held that Section 14 now Section 15 of the revised edition of Expropriated Properties Act provides that a person aggrieved by the decision made by the Minister under the Act may appeal to High Court within 90 days from the date of the Minister's decision issuing a certificate of repossession. But the Minister has no power to cancel a certificate of repossession once issued.

Counsel for the respondent also relied on the Legal Circular issued by the Attorney General dated March 11 of 2022 pages 3 and 4 to the Honorable Minister of Finance Planning & Economic Development on the Departed Asians Properties that guided and directed that once a certificate of repossession has been issued, DAPCB has no mandate whatsoever to deal with such property and neither does the Custodian Board Divesture Committee have power to repossess, manage or allocate any property that has been dealt with by the Minister.

Counsel also argued that the Applicant ceased to have control and management of Plot No. 54 LRV 154 Folio 17 Main Street Jinja when the Minster dealt with the Property in 1993 by issuing a Certificate Authorizing Repossession and that the same was and is still valid and has never been challenged. That the learned Deputy Registrar was therefore right to find that Civil Suit No. 50 of 2022 was a non-starter because the Applicant lacked locus and had no cause of action to institute a suit when the property had been dealt with in accordance with the Expropriated Properties Act. Consequently, the suit was frivolous, vexatious and barred by law and as such, Counsel for the respondent argued that the Applicant should not be allowed to prosecute the suit without depositing security for costs.

Counsel for the respondent argued that instead of concentrating on her application, the Applicant has decided to introduce new grounds that a certificate of repossession above stated was not certified and was forged an allegation which is false and denied. Counsel further submitted that the proceedings in MA No. 256 of 2022 were heard inter-party where parties were given time frames to file submissions and the Applicant now in this appeal did not request for an Original Certificate Authorizing Repossession which exists and is in the possession of the Respondent as provided for under sections 91 & 92 of the Evidence Act, Cap 6 Laws of Uganda.

Counsel submitted that the allegation of forgery and not having a certificated copy of the Certificate Authorizing repossession of Plot 54 should fail because allegations of forgery are not pleaded in the Plaint and there was no evidence alluded or attributed to it. That the original Certificate of repossession exists and the Applicant has never recalled it or demanded that the respondent produces it in Court and the findings of the learned Deputy Registrar were right and proper and as such it is not substituted and no evidence of forgery exist on Court record. Counsel for the Respondent prayed that grounds 1, 2 and 3 of MA No. 334 should fail.

GROUND 4, 5 and 6

Counsel for respondent submitted that grounds 4, 5 and 6 are a repetition of Ground 1, 2 and 3 on the issues to deal with repossession, certification of a Certificate of repossession and adopted the submissions made in the forgoing grounds 1,2 &3 already resolved.

Counsel for the respondent however submitted that it is the respondent's contention that the Learned Deputy Registrar was correct to order the applicant to furnish security for costs equivalent to UGX 70,000,000/ = within 30 days before Civil suit no. 50 of 2022 can be fixed for hearing. Counsel for the respondent adopted their previous Submissions.

Counsel for the respondent further submitted that an order for security for costs was an equitable remedy granted at the discretion and in the opinion on of Court as it appears just and equitable to do so. That case law had set a standard upon which an order to furnish security for costs should be based.
Counsel for the respondent argued that the respondent only had to prove that he or she had a good defence and the suit was unlikely to succeed as it was held in the case of **Paul Nyamarere & Others Vs Okum & other Supreme Court of Uganda Civil Application No 18 of 2020 Pages 6,7,9 10 and 12 Ruling by Late Justice Arach Amoko JSC** and fortified in the case of **Dr Medard Bitekyerezo Vs Nakawa Florence Obioha High Court MA No. 372 of 2022 arising from Civil Suit No. 373 of 2020.**

Counsel for the respondent argued that all the above cited authorities clearly elucidate in what circumstances an order of security for costs can be granted.

Counsel for the respondent submitted that in the circumstances, the respondent (Balikowa Musa) had satisfied court on the two principles highlighted. He was defending a frivolous and vexatious suit because this property was already repossessed, had been mortgaged to the former Grindlay's Bank which mortgage was cleared by previous owners and DAPCB had returned the duplicate certificate of title to the former owners who dealt with the suit property by selling it. That Balikowa Musa is the registered proprietor thereof and has a bonafide defence as a purchaser for value without notice or any fraud. That his building plans to construct proceed with the same due to the pending frivolous suit in Court.
Counsel argued that all these actions of the applicant continued to put the respondent in a precarious state since he spent money in acquisition of an approved architectural plans befitting of a city status. That money had been spent in securing clearance, authorizing demolition, excavation of the land to commence construction and the

legal costs incurred in litigation which could not be quantified. That it is proper that at least a security deposit be made in court if Civil Suit No. 50 of 2022 is to be entertained for hearing since the same will not occasion injustice to the applicant.

Counsel for the Respondent submitted that grounds 4, 5 and 6 lacked substance and the same should be resolved in favor of the Respondent.

Remedies

Counsel for the respondent submitted that this entire application before court was devoid of merit, and the orders of the Learned Deputy Registrar should be upheld since the applicant has not demonstrated any sufficient cause to set aside the said orders. In conclusion the respondent prayed that the Application should be dismissed with costs to the Respondent by granting costs in MA. No 256 and MA No. 334 of 2023 before Court.

Applicant's Submission in Rejoinder

In rejoinder to the matter regarding security of costs raised by the respondent, Counsel for the applicant argued that it was held in the case of **John Mukasa and Litho Park Ltd vs. M/S No. 215 of 2004** that the purpose for security of costs under Order 26 rule 1 was to defend a suit instituted by the plaintiff who cannot pay his costs.

Counsel for the applicant argued that the Applicant in the instant case is a government entity capable of paying its costs for which the respondent has not given any proof to the contrary. That to require a government entity to pay security for costs would mean the Government was soon closing, shutting down or disappearing from the country with no trace which is not the case. It will be unfortunate to create a precedent asking government organs and entities to pay security for costs before it can institute matters to protect itself against perpetrators. That the respondents were scared of hearing the main case and it is for this reason that they are clinging to the issue of security for costs as their last dying wish.

Counsel for applicant therefore prayed to this court to allow the appeal with costs to be paid by the respondent for the application and this Appeal, set aside all orders of the Deputy Registrar and also invoke is powers under S.98 of the Civil Procedure Act to reinstate the suit to be heard on merit.

Consideration by Court

Before proceeding into the merits of the application. I wish to first handle all the preliminary objections raised by both the applicant and the respondent's Counsel. With the full analysis of this court, all the preliminary objections raised by the parties were not found to be worthy of merit by this Court. This Court is guided by **Article 126(2)(e)** of the Constitution of the Republic of Uganda to administer substantial justice without undue regard to technicalities. **See Banco Arab Espanola Vs Bank of Uganda (1999) 2 EA 22.**

Further Sec 33 of the Judicature Act, Cap 13 provides that;

"The *High Court shall grant absolute or on such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties maybe completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided." (emphasis added)*

Justice L.E.M. Mukasa-Kikonyogo, DCJ (as she then was) in **Hikima Kyamanywa v. Sajjabi Chris CACA No. 1 of 2006,** explained that for effective administration of justice, the courts are enjoined to investigate all disputes and decide them on merit.

Therefore, from the foregoing, this court invokes its powers and finds that all the preliminary objections do not touch the merits of the case and as such, this Court is invigorated to handle the disputes between the parties to their final determination.

I therefore find no merit in these preliminary objections and overrule the same.

Analysis of this Appeal

Order 50 Rule 8 of the Civil Procedure Rules (CPR) SI 71-1 provides that: - *"Any person aggrieved by any order of a registrar may appeal from the order to the High Court. The appeal shall be by motion on notice." (emphasis added).*

The Applicant raised five grounds of appeal for determination of this court. This court has observed that some of the grounds that were raised by the applicant are not ascending from the final orders of the of the learned Deputy Registrar but from the perceptions of the learned Deputy Registrar which formed the basis of the final orders.

Section 2(o)of the Civil Procedure Act Cap 71 defines an "order" to *mean the formal expression of any decision of a civil court which is not a decree, and shall include a rule nisi.*

In matters of first appeals, the Supreme Court in **Father Nanensio Begumisa and 3 Ors v. Eric Tiberaga SCCA No. 17 of 2004,** *the Supreme Court observed that the legal obligation on a first appellate court to re-appraise evidence is founded in the common law, rather than in the rules of procedure. It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions.* **Also see F.K. Zabwe v. Orient bank and others SCCA No. 4 of 2006.)** I will adopt this standard in my assessment in this appeal.

I consider it the duty of court now to re-direct this appeal to the only ground which this court finds relevant which is namely: -

Whether the Learned Deputy Registrar erred in law and fact when he ordered the applicant to pay UGX70,000,000 as security for costs.

Order 26 Rule 1 of the Civil Procedure Rules SI 71-1 provides that: -:
"The court may if it deems fit order a plaintiff in any suit to give security for the payment of all costs incurred by any defendant."

The following principles have been considered by court while exercising the discretion to order for security for costs as determined in the case of **Namboro & Fabiana Waburo versus Henry Kaala [1975] HCB 315 and these are;**

a) Whether the Applicant is being put to undue expenses by defending a frivolous and vexatious suit,
b) That he or she has a good defence to the suit which is likely to succeed.
c) It is only after the above two elements have been considered that factors like inability to pay may be taken into account.

According to the same case, it was held that mere poverty of a plaintiff is not by itself a ground for ordering security for costs. If this were so, indigent litigants would be deterred from enforcing their legitimate rights through the legal process.

In determining whether the two elements above have been proved, the observations of Oder JSC in **G.M. Combined (U) Ltd versus A. K. Detergents (U) Ltd. SCC.A. No. 34 of 1995**, are instructive. He observed thus;
"In a nutshell, in my view, the court must consider the prima facie case of both the plaintiff and the defendant. Since a trial will not yet have taken place at this stage, an assessment of the merit of the respective cases of the parties can only be based on the pleadings, on the affidavits filed in support of or in opposition to the application for security for costs and any other material available at this stage."

I shall therefore proceed to determine this appeal to ascertain whether the learned Deputy Registrar in arriving at his decision considered the two elements as indicated above I have also considered the submissions of the parties regarding the two main elements.

a) **Whether the Applicant (respondent in this appeal) was being put to undue expenses by defending a frivolous and vexatious suit.**

While handling this issue the learned Deputy Registrar indicated that he had looked at the affidavit evidence adduced by both the parties and it was quite sufficient to guide the court about the suit itself.
He observed that the Applicant (Musa Balikowa) in that case had adduced evidence that the suit property was repossessed and later transferred by authorized agents of the former owner. That the respondent (DAPCB) in that case had confirmed that the repossession certificate was issued but that the former owner never returned within the 120 days as required under the law.

The learned Deputy Registrar further observed that although the respondent (DAPCB) had argued that the applicant had caveated the suit property under circumstances which were not clear to court, there was a letter dated 28/4/93 to E. Ssemwogerere and two other tenants indicating that DAPCB had dealt with the property and it had no business anymore. The Deputy Registrar wondered whether there was a re-entry after the repossession certificate had been issued to the former owner. He also questioned whether from the time of repossession and handover in 1993 of the suit property to date, the respondent (DAPCB) was not barred by the Limitation Act.
That in light of the above, the learned Deputy Registrar agreed with the Applicant (Musa Balikowa) that since DAPCB had dealt with the suit property and handed over the same, its case appeared frivolous and vexatious.

In the case of **Speke Hotel 1996 Limited (T/A Speke Hotel Apartments) Versus Sheila Nadege a.k.a Don Zella High Court Miscellaneous Application No. 456 of 2022**
Hon Justice Musa Ssekana stated that: -
"The relative strengths and weaknesses of the plaintiff's and defendant's cases are normally considered. Although the court does not normally conduct a detailed examination on merits of the case (unless the issues are clear), it does consider, on the face of the materials before it, whether the plaintiff or defendant has a good chance of succeeding. Frantonios Marine Services Pte Ltd v Kay Swee Twan [2008] 4 SLR(R)224 at (50-51).

The case of R vs Ajit Singh s/o Vir Singh [1957] EA 822 at 825 defined a frivolous and vexatious suit as one that is; "Paltry, trumpery; not worthy of serious attention; having no reasonable ground or purpose."

"Premised on the above authorities, the respondent filed the suit claiming negligence on the part of the applicant but it is clear that the respondent never had any contract between herself and the applicant. The said room was booked by a different person-Shanita Male; this therefore means the applicant has no cause of action against the respondent contractually or otherwise."

From the above ruling, it is clear that in determining whether the respondent in this appeal was being put to undue expenses by defending a frivolous and vexatious suit, court has to look at the merits and demerits of the pleadings of both parties at face value.

From the ruling of the Learned Deputy Registrar and as detailed above, it is clear to this court that in reaching that decision, the learned Deputy Registrar thoroughly reviewed the strengths and weaknesses of the plaintiff's and defendant's cases and considered the checkered history of the case. The facts remain the same. The issue is that there is a Repossession Certificate in respect of the disputed land. What is disputed by the Applicant is that the Repossession Certificate is forged and that the Deputy Registrar had no powers to go into issues of the forgery as this would require to conduct a detailed examination of the case which is a preserve of the High Court in the main suit.

In my view, the above findings were valid reasons to justify the grant by the learned Deputy Registrar of the order sought by the respondent.

b) That the Applicant has a good defence to the suit which is likely to succeed

As regards this element, in the case **of GM Combined (U) Ltd versus AK Detergents (U) Ltd (supra),** the observations of Oder JSC pertained to a finding of a prima facie defence.

The learned Deputy Registrar in this case observed that since DAPCB had dealt with the suit property and handed over the same, its case appeared frivolous and vexatious and thus putting the applicant (Musa Balikowa) to unreasonable expenses and that the applicant's case appears better than that of the Respondent (DAPCB).

In my view, the above findings were valid reasons to justify the grant by the learned Deputy Registrar of the order sought by the respondent since the respondent's defence that the applicant had issued a certificate of repossession in respect of the

property and as such no longer had control over the same has not been rebutted conclusively and it remains very plausible. The nature of the case before court shows that the applicant/appellant's claims are frivolous and vexatious since it had dealt with the property by issuing a repossession certificate to the former owner.

I shall now address the issue as to whether the applicant will be unable to pay costs to the respondents in case judgment in the main suit is passed against it. Court must consider all the circumstances of the case in order to determine whether it is just to order that security be provided.

The courts have emphasized that impecuniosity of the plaintiff is not a basis on which the court would order security for costs. The reasoning here is that an order for security for costs on this ground alone would prevent access to justice because of a party's pecuniary position despite the established principle that poverty must not be a bar to litigation. **Namboro & Fabiana Waburo versus Henry Kaala (Supra)**

Respondent's Counsel submitted that the applicant will not be able to meet costs of the main suit on grounds that there was no Minute or resolution from the Applicant or the Attorney General sanctioning the filing of Civil Suit No. 50 of 2022 against the respondent which casts a big doubt in the event she loses the suit as to where the costs will be recovered. Court is alive to the fact that Applicant is a body corporate that derives its finances from the consolidated fund which caters for the funding of various government agencies. It would therefore be difficult for the Respondent to secure a garnishee order against the consolidated fund to pay costs.

In the case of **Speke Hotel 1996 Limited (t/a Speke hotel apartments) versus Sheila Nadege a.k.a Don Zella High Court Miscellanoeus Application no. 456 of 2022,** Hon Justice Musa Ssekana stated that;

"An order of security for costs protects the defendant in some cases where, in the event of success, the defendant may have difficulty in realizing costs from the plaintiff. The mode of security should be of a type, and its amount should be sufficient, to protect the defendant's position as to costs and yet not to stifle the plaintiff's claim."

I agree with the Counsel for the respondent that although the Applicant is a body corporate, it is not autonomous when it comes to its finances which will be difficult in realizing costs in the event the main suit is determined in favour of the respondent. Secondly, funds for security for costs can be recovered by the Plaintiff/Applicant if successful in the main suit since they are deposited in Court.

From the foregoing reasons, this appeal is dismissed.

Further I find it appropriate to make the following orders since the time that was set by the Deputy Registrar has lapsed while hearing this appeal: -

a) The Applicant shall deposit security for costs of UGX. 70,000,000/= (Seventy Million Shillings) within a period of thirty days from the date of this order.
b) If the Applicant fails to comply with the orders in (a) above, both Civil Suit No.50 of 2022 and the temporary injunction granted by this Court in Miscellaneous Application No.61 of 2022 shall lapse forthwith.
c) Costs of this appeal shall be borne by the Applicant.

I so order.

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JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI

Ruling delivered in open court on 17th November 2023.