

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT MASAKA**

**HOLDEN AT MASAKA**

**HCT-06-CV-CS-0001-2017**

**KYEWALYANGA PROPERTIES LIMITED:.....PLAINTIFF**

**VERSUS**

**KIGONGO WILLIAM:.....DEFENDANT**

***Land Case-***

***Held-****The Plaintiff Company's case has no Merits and is dismissed with Orders set forth in this Judgement.*

**BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE**

**JUDGMENT**

The Plaintiff Company brought this claim against the Defendant seeking for the following orders:-

1. A declaration that the purported sale of the land comprised in Buddu Block 147 Plots 15, 24 & 51 situate at Lutente between the plaintiff and the defendant is null and void;
2. An order directing the defendant to hand over the Duplicate Certificates of Title to the land comprised in Buddu Block 147 Plots 15, 24 & 51 situate at Lutente, Lukaya in Kalungu District, measuring approximately 230 acres to the Plaintiff Company.
3. Permanent Injunction issues against the defendant restraining him, his agents or any person or body claiming under him from entering, using or in any way dealing with the suit land;
4. General Damages;
5. Interest of the General Damages; and
6. Costs of the suit.

**BRIEF FACTS**

The brief facts according to learned counsel for the Plaintiff Company are that the Plaintiff is the registered proprietor and in physical possession of the land comprised in Buddu Block 147 Plots 15, 24 and 51 situate at Lutente, Lukaaya measuring approximately 230 acres (***hereinafter referred to as the suit lands***). That the Duplicate Certificates of Title of the suit lands were in the

possession of the late Dr. Kyewalyanga Kikambi Joseph, the former Managing Director of the Company; and that without any authority from the Company and through fraud the late Dr. Kikambi together with M/S. Margaret Nalufusa purported to sell the suit lands to the Defendant, who was well aware of the want of authority and complicit in the fraud, pursuant to three sale agreements dated 2<sup>nd</sup> February 2013, 10<sup>th</sup> March 2013 and 22<sup>nd</sup> August 2015.

That the Defendant was notified of the lack of authority of the late Dr. Kikambi and M/S. Nalufusa to sell the lands, but ignored the same and went ahead to execute further agreements dated 10<sup>th</sup> March 2013 and 22<sup>nd</sup> August 2015 for the purported sale of the lands. That the late Dr. Kikambi was removed from office by the Company Shareholders in an Extra-Ordinary Meeting of the Company held on the 28<sup>th</sup> June 2014; and the Company subsequently filed this suit seeking *inter alia*; nullification of the purported sale of land to the Defendant, recovery of the Duplicate Certificates of Title of the suit lands, a permanent injunction, general damages and costs.

**In reply**, learned counsel for the Defendant presented his brief facts that the Plaintiff has at material times been the registered proprietor of the suit land comprised in Buddu Block 147 Plots 15, 24 and 51 measuring 230 acres. That the Plaintiff Company sold land comprised in Buddu Block 147 Plots 15, 24 and 51 measuring 230 acres at a sum of UGX. 178,000,000/= (One hundred and Seventy Eight Millions Only).

That the Defendant and the Directors of the Plaintiff Company signed Sales Agreements dated 2<sup>nd</sup> February 2013, 10<sup>th</sup> March 2013 and 22<sup>nd</sup> August 2015: Dr. Kyewalyanga Kikambi Joseph Mary as the Managing Director, Margaret Nalufusa Kyewalyanga as the Director and Philo Nakulila Kasule as the Company Secretary/ Director for the Plaintiff; and upon completion of payment of the purchase price, the Plaintiff through its Directors handed over the titles, executed transfer forms, passport photos and identity cards for the Directors to the Defendant to enable him transfer into his names.

Further, that the Plaintiff is challenging the sale of the suit land claiming that it was illegal and void and that the Defendant was fully aware that the persons that signed the alleged Sale Agreements had no authority to do so; and above all he was aware that the said suit land was not available for sale by the Plaintiff Company. That Emmanuel Kikambi, Francis Sserufusa, Gyavira Nteete, Mugumya Gonzaga, Gwotakute Kato and Edward Muwuma lodged a caveat on all the titles above mentioned forming the suit land.

That the Plaintiff Company filed **Miscellaneous Cause Application No: 13 of 2013** challenging the said caveat and it was finally vacated by a Court Order which enabled the Registrar to transfer the said titles. That on the 27<sup>th</sup> day of June 2014, Dr. Tibyasa Mugagga, Jennifer Nakayita, Sarah Nabibubu, Muwuma Ponsiano and Gyaviira Nteente purportedly convened a meeting and elected themselves into the office of the Board of Directors for the plaintiff company.

That the Plaintiff Company later on filed **Civil Suit No. 001 of 2017** against the defendant, challenging the said sale of land contract and obtained an interim order without a valid Company Resolution. That the Plaintiff has no cause of action against the Defendant because it sold the suit property to the Defendant; and the whole purchase price was paid and the Plaintiff no longer has any interest in the suit land whatsoever.

**From my own analysis**, the brief facts of this case are that the Plaintiff Company on the 5<sup>th</sup> of January 2017 filed a suit against the Defendants for the orders aforementioned in this Judgement. Dr. Kyewalyanga Kikambi Joseph Mary was the then Managing Director of the Plaintiff Company and had in his possession, by virtue of his position as the Managing Director, the Duplicate Certificates of Title of the land comprised in Buddu Block 147, plots 15, 24 and 51 land situate at Luteete, Kalungu District measuring approximately 230 acres.

The Plaintiff Company's purportedly newly elected Board of Directors in an Extra Ordinary Meeting held on the 27<sup>th</sup> day of June 2014 subsequently removed the said Dr. Kyewalyanga Kikambi Joseph Mary from the position of the Managing Director of the Plaintiff Company, and in his place, appointed Dr. Tibyasa Mugaga Bekalaze as the Managing Director. They also removed Margaret Nalufusa Kyewalyanga as the Director and Philo Nakulila Kasule as the Company Secretary/ Director. Dr. Kyewalyanga Kikambi Joseph Mary remained the only as a member in the Plaintiff Company from that date, and he refused to hand over the Duplicate Certificate of Titles for land comprised in Buddu Block 147 plots 15,24 and 51 land at Luteete to the Plaintiff Company.

The Plaintiff Company then filed a case against the said Dr. Kikambi Kyewalyanga under **Civil Suit No: 066 of 2016** and **Miscellaneous Cause No: 212 of 2016**; and in one of the affidavits, the Plaintiff Company averred that Dr. Kyewalyanga had sold the suit land to Kigongo William who was now in possession of the Duplicate Certificates of Title. They also averred that the purported sell of the Plaintiffs' land was illegal, null and void because there was no Company Resolution to sale its land at the time of the purported sale, the

defendant entered into the purported sale with persons who were not authorized to act for and on behalf of the Plaintiff Company and the defendant was aware and that the Defendant entered into the purported land sale when the land was encumbered with a caveat and with knowledge that the land was not available for sale.

**In his Written Statement of Defence**, the Defendant stated that the Plaintiff Company sold land comprised in Buddu Block 147 plots 15, 24 and 51 measuring approximately 230 acres at a sum of 178,000,000/= [one hundred and seventy eight million shillings only] to him; and that the Defendant and the Directors of the Plaintiff Company signed Sales Agreements dated the 10<sup>th</sup> day of March, 2013 and 22<sup>nd</sup> day of August, 2015. That Dr. Kyewalyanga Kikambi Joseph Mary was the Managing Director, Margret Nalufusa Kyewalyanga was the Director and Philo Nakulila Kasule as the Company Secretary.

That upon completion of payment of the purchase price, the Plaintiff handed over the titles, executed transfer forms, passports photos and identity cards for the directors to enable the defendant transfer into his names.

In addition, that Emmanuel Kikambi, Francis Sserufusa, Gyavira Nteente, Mugumya Gonzaga, Gwotakute Kato and Edward Muwuma lodged a caveat on all the titles above mentioned forming the suit property; and the Plaintiff Company filed **Miscellaneous Cause No. 103/ 2013** challenging the said caveat. However, this caveat was finally vacated by a High Court Order, which enabled the Registrar of Titles to transfer the said titles to the Defendant.

That on the 27<sup>th</sup> day of June, 2014 Dr. Tibyasa Mugaga, Jennifer Nakayita, Sarah Nabibubu Muwuma Ponsiono and Gyavira Nteente purportedly convened a meeting and elected themselves into the Board of Directors for the Plaintiff Company; and the Plaintiff Company later on filed **Civil Suit No.001 of 2017** against the Respondent/ Defendant challenging the said sale of land contract and obtained an interim order without valid a Company Resolution.

That the Plaintiff Company has no cause of action against the Defendant because it legally sold the property to the Defendant and the purchase price was paid; and the Plaintiff Company no longer has any interest in the suit land whatsoever.

## **REPRESENTATION**

When I took over this matter for further hearing, the Plaintiff Company was represented by learned counsel Mr. Kizito Ssekitoleko of M/S. KBW Advocates Kampala, while learned counsel Mr. Ggingo Christopher of M/S. Jingo, Ssempijja & Co Advocates Kampala represented the Defendant.

## ISSUES FOR RESOLUTION

The following are the issues for resolution as agreed upon during the scheduling of this case:-

1. Whether the Plaintiff has a cause of action against the Defendants?
2. Whether the alleged sale of the suit land by the Plaintiff to the Defendant is valid and legal?
3. Whether the suit land should be transferred in the names of the Defendant?
4. What are the remedies available to the Parties?

## PRELIMINARY POINTS OF LAW

Before I proceed to analyze the main issues before me, as is the practice in our courts, I will first resolve the preliminary objections. In his Written Submissions, learned counsel for the Defendant raised a preliminary objection that the Plaintiff's counsel instituted the suit without authority. They submitted that this suit was instituted in the name of the Plaintiff Company without its authority and was instituted by M/S. Nnyanzi & Nnyanzi Advocates, Plot 37 Kampala Road, P.O Box 821 Masaka, without a valid resolution by the Directors of the said Company resolving to file a suit and instructing counsel to file the same.

That the only Resolution that was presented in court is dated the 3<sup>rd</sup> day of October, 2014, given Number 14 on the Plaintiff's bundle, its signed by Dr. Tibyasa Mugagga as Managing Director, Muwuma Ponsiano Edward director, Gyavira Nteete as Secretary and thumb printed by Sarah Nabibubbu Kyewalyanga.

They argued that when a person who is illiterate thumb prints a document, the said document must be verified according to the **Illiterates Protection Act**; and cited **Section 3 of the Illiterates Protection Act** which provides that;

*“Any person who shall write any document for or the request , on behalf or in the name of any illiterate shall also write on the document his or her own true and full names as the writer of the document and his or her true and full address, and his or her doing shall imply a statement that he or she was instructed to write the document by the person for whom it purports to have been written and that it fully and correctly represents his or her instructions and was read over and explained to him or her.”*

They submitted that failure to verify the said document amounts to commission of a crime.

Further, that **Section 4 of the Illiterates Protection Act** provides that:-

*“If the writer of or witness to the signature on any document fails to write on it his or her true and full name and address as provided in section 2 or 3 , or if he or she has done so and the statement which under this Act is implied by the writing is untrue in any particular, then and in every such case the person commits an offence and is liable on conviction to a fine not exceeding three hundred shillings, or in default of payment to imprisonment for a period not exceeding three months, but without prejudice to any criminal or civil liability which he or she may have incurred in the circumstances by reason of fraud, forgery, misrepresentation or otherwise.”*

They also relied on the Supreme Court Case in **Civil Application No. 19 of 2010 Kasaala Growers Co-operatives Society vs Kakooza Johathan & Kalemera Edson** before His Lordship G.M. Okello JSC stated that: *“In Ngoma-Ngime-vs-Electoral Commission and Hon. Winnie Byanyima, Election Petition Appeal No. 11 of 2002, the Court of Appeal confirmed the rejection by the trial High Court judge of an affidavit by an illiterate deponent which did not comply with the provision of that Act”.*

They agreed with and endorsed that decision as the correct one; and that the Act was intended to protect illiterate persons and the provision is couched in mandatory terms; and failure to comply with it must render the document inadmissible. That likewise in the instant case, failure of the said Charles Kaddu to write his full name and address and to state in the document that the same was read over and explained to Bumbakali Sande in the language he understands and that he appeared to have understood it rendered the affidavit inadmissible.

Further, that in the instant case the said Resolution was drafted by M/S. Byamugisha Gabriel & Co. Advocates, located at Total Deluxe, Jinja road and thumb printed by Sarah Nabibubbu Kyewalyanga on 7<sup>th</sup> day of October, 2014, and unfortunately the said M/S. Byamugisha Gabriel & Co. Advocates did not comply with the provisions of **Section 3 of the Illiterates Protection Act** above, which renders the said document inadmissible.

Secondly, there is another resolution dated the 27<sup>th</sup> day of June, 2014 which purports to dissolve the old Board of Directors and appoint a new one, note should be taken that the old Board of Directors is the one that sold the suit land to Kigongo William, whereas the new one is comprised of Jennifer Nakayita

Kyewalyanga, Dr. Tibyasa Mugagga Bekalaze, Sarah Nabibibbu Kyewalyanga and Muwuma Ponsiano Edward.

In addition, that that very Resolution was subject of contention in **Masaka High Court Civil Miscellaneous Cause No: 13 of 2013** before Hon. Justice Dr. Flavian Zeija where he clearly stated that: *“According to the resolution that appointed DR. Joseph Kikambi Kyewalyanga dated 24<sup>th</sup> of November, 1998, the respondents do not appear as being directors at all. However, there is a resolution which purports to remove Dr. Joseph Kikambi Kyewalyanga and appointing a new board of Directors dated the 27<sup>th</sup> day of June, 2014 annexed to the affidavit in reply. It is this Board that purports to withdraw the application and confirm the caveat. However the resolution has problems. It is fingerprinted and yet there is no jurat contrary to the illiterates Protection Act. The resolution therefore is illegal, DR. Joseph Kikambi Kyewalyanga, was not legally removed as director. It therefore follows that the resolution recognizing the caveat is also illegal.”*

They further relied on the **Supreme Court case Civil Appeal No: 10 of 1994 Navichandra Kakubhai Radia vs Kakubhai Kalidas and Co. Ltd** at page 7 quoting Justice Benet wherein court stated that; *“In the instant case the question as to whether or not the plaintiff’s advocate had been dully authorized to sue will depend upon the court finding as to who are the lawful directors. That is the matter which can only be determined after evidence has been heard. In my judgment, want of authority to sue does not plainly appear at the present stage of the suit, and the suit ought not to be struck out at this juncture. If it should therefore appear that the plaintiff’s advocate has not been dully authorized by the lawful directors whoever they may be) to institute proceedings on behalf of the company, the advocate can be ordered to pay the costs of the suit personally.* They relied on the judgment of Jenkins L in **Danish Mercantile Co. Ltd vs Beaumont (1951) Ch. 680 at p.682.”**

That this passage was quoted by this court with approval in **United Assurance Co. Ltd vs Attorney General (supra)** and they agree with the principle enunciated therein. That in the instant case all the two Resolutions relied on by the Plaintiff witnesses are illegal and Court has already even pronounced its position on the same. That the current purported Board of Directors is illegally in office because there is no valid Resolution passed by the Members of the Plaintiff Company electing them in office following the law. That such a Board of Directors lacks the authority to instruct an advocate to file a case for and on behalf of the Plaintiff Company. That the net effect lack of authority by an

advocate to file a suit for and on behalf of a Company is dismissal of the said suit.

They also relied on the case of **John Shaw and Sons (Salford) Limited vs Peter Shaw and John Shaw (1935)2 KB 113** where Justice Greer L.J at page 131 stated that: *“I understand Daimler Co. vs Continental Tyre and Rubber Co. to be a decision to the effect that where the court is informed of facts which prove conclusively that the solicitors had no authority to bring the action, the action should be struck out.”*

They therefore submitted and prayed that this suit should be dismissed in favor of the Defendant with costs.

Secondly, that Court should order the Commissioner for Land Registration transfer the suit land into the names of the Defendant, direct the Commissioner for Land Registration to vacate all the caveats on the suit land and the Defendant should be granted vacant possession of the suit land forthwith and damages in respect to this case.

**In reply**, it was submitted for the submitted the Plaintiff that counsel essentially submits that the since the suit was instituted without a valid Resolution appointing then counsel for the Defendant, M/S. Nyanzi & Nyanzi Advocates, that suit was instituted without authority. They responded that this premise is flawed as the reasoning behind that assertion is not backed by any law, whether by statute or case law. That there is no law that requires the existence of a formal resolution before a Company may institute a suit; and that the correct position of the law was highlighted in **M/S. Tatu Naiga & Co. Emporium vs Verjee Brothers Limited (Civil Appeal No. 8 of 2000)**.

That in that case one Director of the Company instructed a firm of advocates to file a suit against the Defendant and an objection was raised that there was no requisite authority to file the suit. The Supreme Court overruled the objection and stated as follows; *‘I cannot fault the learned trial judge on the above findings. He stated the position of the law regarding authority for filing a suit in the name of a company accurately. The decision in Bugerere Coffee Growers Ltd vs Zulubabari Kikuyo is no longer good law...Any authorized director can give the necessary authority to institute such a suit (emphasis added).*

That in this case the Directors of the Company have given this firm (M/S Kwesigabo, Bamwine and Walubiri Advocates) authority to pursue this suit. **Exhibit 1** includes a filed Company Return indicating the list of directors of the



company at the filing of this suit. These includes **PW2 (Jennifer Nakayitta)**, **PW3 (Nteete Gyaviira)** and **PW4 (Tibyasa Mugaga)** who all gave evidence in support of the plaintiff company against the defendant. That this alone suffices to show that the suit was instituted and prosecuted with the requisite authority of the company directors.

Furthermore, that the Defendant's counsel refers to the Resolution dated 3<sup>rd</sup> October, 2014 (**P.Exhibit 9**) purportedly as the Resolution that gives authority to file this suit. That they are at pains in attempting to find the linkage between that Resolution and authority to file this suit and that nowhere in the Resolution is it claimed that the Directors are giving authority to this firm or any other to file this suit. That indeed, authority to file and prosecute this suit is not derived from that Resolution nor do they claim as such and therefore reference to it by Defendant's counsel is immaterial to this objection.

Without prejudice to their submissions in Paragraph 5 above, they submitted that the Resolution (**P.Ex 9**) is valid and legal. That Counsel submits that the Resolution having been thumb printed by Sarah Nabibubbu Kyewalyanga immediately came under the provisions of the **Illiterates Protection Act, Cap 78; S.1** defines an illiterate as *a person who is unable to read and understand the script or language in which the document is written or printed*. That it has been observed by the Court of Appeal in **Stanbic Bank Uganda Limited vs Ssenyonjo Moses and Nakibuka Nusula Civil Appeal No. 147 of 2012** that the mere signing of a document does not prove that one is literate. Conversely, the mere fact that a person appends his/her thumbprint on a document does not entail illiteracy.

That in the instant case, the Plaintiff adduced a **Medical Report dated 12<sup>th</sup> February, 2015 (Document 9 in the Trial Bundle)** indicating that M/S. Nabibubbu suffers from Parkinson's disease and therefore is incapable of signing properly. They cited **S.101 of the Evidence Act, Cap 6** as explicit in stating that; *"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exists"*

Further, that in the instant case, the Defendant had the burden in proving that indeed M/S. Nabibubbu was illiterate. That this burden was not discharged. Rather the Medical Report referred to above sufficiently shows that M/S. Nabibubbu is incapable of signing due to her Parkinson disease diagnosis and not due to the alleged illiteracy as stated by counsel for the Defendant.

That accordingly, the facts in the authority cited by counsel, ***Kasaala Growers Co-operatives Society v Kakooza Jonathan and Anor*** are distinguishable to the current facts and in that case the witness in question confessed his own illiteracy in the English language and therefore requiring the need to comply with the provisions of the Act.

That in this case, there is no such admission and neither is there any evidence to prove illiteracy in the English Language as was assessed by the court in ***Stanbic Bank Uganda Limited (supra)***. That in fact there is evidence showing the contrary as to the reason why M/S. Nabibubbu is incapable of signing her name.

In the premises, the provisions of the **Illiterate Protection Act** are inapplicable to the said Resolution, which is therefore valid and legal.

Finally, that Counsel for the Defendant refers to the Resolution dated 27<sup>th</sup> June, 2014 and the decision of ***Navichandra Kakubhai Radia vs Kakubhai Kalidas*** in support of his objection. It was their rebuttal that the authority cited actually supports the position that where there is a dispute as to who the lawful Directors of a Company are, the matter can only be determined after evidence has been adduced. That in this case, the Defendant claims to have dealt with the rightful Directors while the Plaintiff Company asserts that such persons were not the rightful Directors and had no authority to bind the Company. That this is a question that can only be determined through a full trial making this Preliminary Objection, is premature and incompetent.

Further still, that even in the unlikely event that this court is to find that this firm had no authority to prosecute the suit, the Supreme Court decision on ***Navichandra Kakubhai Radia*** is clear that the option of the court is to have the advocate pay the costs of the suit and not to have the full suit dismissed.

In summary, that the Plaintiff's counsel had authority to institute the suit per the instructions of the Company's Directors. That the need to file a Resolution instruction counsel to file a suit is irrelevant and immaterial. That the Plaintiff's counsel does not derive authority to file this suit from the Resolution dated 3<sup>rd</sup> October, 2014 which is immaterial to this objection. That given that there is discrepancy as to who the lawful Directors of the Company are, this Preliminary Objection is immaterial as the dispute can only be resolved through a full hearing.

From the foregoing, they accordingly prayed that this Objection is overruled and this matter be decided on its merits.

**I have carefully analyzed** these Preliminary Points of Law and the submissions of both sides as captured above. The question to be determined is ‘*Whether the plaintiff’s advocate was duly authorized to bring this suit?*’ To answer this question. I will first of all determine who the lawful Directors for the Plaintiff Company were at the time the suit was filed; and whether there was a valid authority to instruct the law firm to bring the current suit.

The position of the law under **section 52 (1) of the Company Act 2012** reads that:-

**“Power of Directors to bind the Company**

*The power of the Board of Directors to bind the Company or authorize others to do so in favour of a person dealing with the company in good faith shall not be limited by the Company’s Memorandum.”*

The above means that any Director (or Directors) who is authorized to act on behalf of a Company, unless the contrary is shown, has the power of the Board of Directors to act on behalf of that Company.

Secondly, the person or persons exercising the authority must also have the authority. This means that one cannot exercise an authority he or she does not have. In the case of ***Marendrah K. Radia vs. Kakabhai Kalidas & Co. Ltd SCCA No.10 of 1994***, the Supreme Court stated that: “*We accept the submission of learned Counsel for the respondent that the question whether or not an advocate has been duly instructed to institute a suit on behalf of his client is a matter of evidence. In case of a Company, how such authority is given, whether by resolution of the Company or that of its Board of Directors, will depend on the Constitution of the Company.*”

The effect of the above authority is that while a Director can authorize the institution of a suit in the name of the Company (and it does not matter what form that authority takes, but this depends on the dictates of the Company’s Constitution. One way of giving authority to commence legal action is by way of a Board Resolution, but it could also be in any other form allowed by the Company Constitution. What therefore is of importance is that authority is given for doing an act and not whether a Resolution has been passed or authority given in any other form.

Further, unlike the circumstances in the case of ***United Assurance Co. Ltd vs. Attorney General (Civil Appeal No. 1/1986)*** cited in ***Marendrah K. Radia vs. Kakabhai Kalidas & Co. Ltd SCCA No.10 of 1994***, where it was one Directors who gave authority, in ***Marendrah K. Radia vs. Kakabhai Kalidas & Co. Ltd***

**SCCA** involved four directors as was confirmed by **annexure ‘A’** to the affidavit in rejoinder. Their Lordships therefore held that the authority of the so called majority shareholders/directors to act on behalf of the Applicant Company cannot, be presumed as it was in that later case.

They further held that the authority in this case has to be proved and the question for investigation should therefore be whether any such authority to instruct the law firm that filed this suit on behalf of the Company exists. Once this is answered in the affirmative, it would not matter how it was exercised, unless specific means are dictated by the Company’s Constitution.

Following the above decision, I have carefully examined the Articles of Association of the Plaintiff Company and found that in respect of transfer of shares, they are silent on the disposal of assets and or property belonging to the Company. The burden of proving that the persons who instructed the Law Firm to file this suit lies on the current Directors of the Company per **section 102 of the Evidence Act Cap.6**. This must be discharged by at least adducing a copy of the Company’s Constitution and citing a specific article alluding to that authority.

Secondly, while I agree with the decision in ***M/S. Tatu Naiga & Co. Emporium vs Verjee Brothers Limited (Civil Appeal No. 8 of 2000)*** relied upon by learned counsel for the Plaintiff Company, it is noted that the documents relied upon in this case i.e. **P. Exhibit 1** the filed Company Returns indicates the list of Directors of the Company at the filing of this suit as **PW2 (Jennifer Nakayitta), PW3 (Nteete Gyaviira)** and **PW4 (Tibyasa Mugaga)**.

To me, this document only enumerates the said persons as Directors of the Company, but it does not conclusively confirm that any of them gave authority to bring the current suit. This means that it does not suffice to show that the suit was instituted and prosecuted with the requisite authority of the current Company Directors or any other person authorized in the Company Constitution.

As to the relevance of **P. Exhibit 9, the Special Resolution dated 7<sup>th</sup> October 2014**, it is still also silent on whether any of the four Directors named therein authorized the Law Firm to file the current suit on behalf of the Company.

From the above, while I agree with learned counsel for the Plaintiff Company that the observation in ***Bugerere Coffee Growers Ltd vs Zulubabari Kikuyo [1970] 1EA 147***, to the effect that; “When companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or board of directors’ meeting and recorded in the minutes” was overruled by the Supreme Court in the case of ***M/S Tatu Naiga & Co.***

***Emporium vs Verjee Brothers Limited (Civil Appeal No. 8 of 2000***, I'm also alive to the position of the law that unless a person is a Shareholder or a Director in a Company, that person cannot bring a suit on behalf of the Company. What is clear at this point is that the evidence before me reveals that there is no form of authorization in whatever form that was passed by the current purported Board of Directors or any of the Directors to instruct the law firm to file this suit.

As to how the current Board came into the picture and whether it was legally in office and had powers to make decisions binding the Company, this shall be dealt with at length in the first issue in this case after fully analyzing all the evidence of both sides.

Lastly, as to whether the Resolution thumb printed by M/S. Sarah Nabibubbu Kyewalyanga immediately came under the provisions of the ***Illiterates Protection Act, Cap 78, S.1***, I agree with the decision in ***Stanbic Bank Uganda Limited vs Ssenyonjo Moses and Nakibuka Nusula Civil Appeal No. 147 of 2012*** to the effect that the mere signing of a document does not prove that one is literate applies; and Conversely, the mere fact that a person appends his/her thumbprint on a document does not entail illiteracy.

In regard to the above, I have found and relied on the **Medical Report dated 12<sup>th</sup> February, 2015 (Document 9 in the Trial Bundle)** indicating that M/S. Nabibubbu suffers from Parkinson's disease and therefore is incapable of signing properly of relevance. Since there is proof that she was afflicted by this disease in the later years of her life, this cannot be interpreted as prima facie evidence of illiteracy on her part especially as there is no admission to prove illiteracy in the English Language on her part; and I agree with the findings of learned counsel for the Plaintiff on this point.

My findings are that the submissions based on the above are extraneous matters that ought to be ignored and they cannot divert this Honorable Court from the actual issues to be resolved. My decision and I agree with the case of ***Navichandra Kakubhai Radia vs Kakubhai Kalidas*** is that in this case, there is a dispute as to who the lawful Directors of the Company were at the time the transactions with Defendant were entered into and also at the time the suit was filed; and these are the ones that Court must resolve in a full trial after fully analyzing the evidence led by both sides; and on this I agree with learned counsel for the Plaintiff.

**The second preliminary objection is in respect to Contempt of Court Orders.** It was submitted by learned counsel for the Defendant that on the 7<sup>th</sup> day of June 2022 when court was on locus visit **PW3 Nteente Gyavira** clearly

stated during cross-examination that: “*Am aware of the court order. Some people who are farmers came in after the court order was passed by this court.*”

That upon Nteente Gyavira’s own admission on court record, he is aware of the existence of the temporary injunction order which clearly spell out that the status quo be maintained among other orders, but the said person well aware of the existence of the court order chooses not to comply with the same and he contracts more other people to come and work on the suit land, this is a contemptuous conduct. That in the case of ***Madhavani Jayant Meena vs Madhvan Muljibhai Pratabhi Civil Suit No: 774 of 88***, Justice Bahigeine held that: “*An injunction although discharged subsequently for one reason or another must be obeyed while it lasts.*”

They also relied on the case of ***Megha Industries (u) Limited vs Comform Uganda Limited Miscellaneous Application no: 21 of 2014***, Justice Flavia Ssenoga Anglin stated that; “*Relying on the case of Stanbic Bank (u) limited & Jacobsen Power Plant ltd vs Uganda Revenue Authority MA 42 of 2010 by Lady Justice Mulyagonja and the case of Hon Sitenda Sebalu vs Secretary General of East Africa Community Ref no; 8 of 2012, counsel recited the conditions necessary in order to prove contempt of court to writ: Existence of a lawful order, the potential contemnor’s knowledge of the order, and the potential contemnor’s failure to comply, ie disobedience of the order.*”

That there is a temporary injunction order on the court record keeping the status quo of the suit land; **PW3** Nteente Gyavira in his own admission states that he is aware of the existence of the said court order, however in his own admission states that he brought in more people to farm on the land and pay him money after the court order was passed by court. That such conduct amounts to disobedience of a lawful court order and a person’s refusal to comply with the court order is making a mockery of this court and the justice system.

They therefore prayed that Nteente Gyavira be sent to a civil prison for a period of six months or he pay a fine worth Shs. 30,000,000/= and damages worth 30,000,000/= too.

**In reply to the above**, learned counsel for the Plaintiffs pointed out the impropriety of counsel’s option to raise these allegations in the Defendant’s final submissions. That given the gravity of the allegations, Counsel ought to have filed a separate application against the persons alleged to be in contempt and the latter be given an opportunity to respond as was properly followed by the

Plaintiff when it filed **HCMA No. 085 of 2017: Kyewalyanga Properties Limited vs Kigongo William** where it was found that the Defendant was in contempt of the court's interim order dated 12<sup>th</sup> January, 2017 when he transferred the Duplicate Certificates of Title into his name. That in this instant case, the Defendant seeks to bring contempt proceedings against Mr. Nteete Gyaviira in his individual capacity.

They submitted that such proceedings being smuggled in in the final submissions in a case where Mr. Nteete is not a party are brought in bad faith and ultimately defective and that Mr. Nteete is not a party to this suit despite the fact being a director and shareholder in the Plaintiff Company. That any contempt proceedings ought to have been filed against him personally and given an opportunity to respond accordingly.

That notwithstanding, they submitted that contents of their submissions in the preceding paragraphs, they stated that Mr. Nteete has not been in contempt in any of the orders of this court. That the injunction order being referred to by Counsel for the Defendant is the Interim Order dated 12/01/2017 arising from **Misc. Appln: No. 003 of 2017: Kyewalyanga Properties Ltd. v Kigongo William**; the substantive application was abandoned by both parties and therefore this order is still in force.

That at the locus visit, this court tasked **Mr. Nteete (PW3)** to provide documentation that authorized the company to engage third parties to utilize the land. In a letter dated 17/06/2022, the Defendant furnished court with a company **resolution dated 12<sup>th</sup> March, 2016** authorizing the Company to enter into agreements with third parties for the use of the land.

Further, that the defendant provided eight agreements dated 05/02/2016, 05/02/2016, 05/02/2016-08/01/2016, 07/06/2020, 08/01/2020, 06/01/2020 and 02/01/2020. That it is worth noting that the Resolution and four of these agreements preceded the filing of this suit or the interim order. That this entails that the Company was already engaging third parties to utilize the land before the interim order.

Further, that the status quo has been defined in the case of **Wasswa Sekyonda vs Tumusiime Festus Misc. Application No. 1344 of 2020** as; *"...the existing state of affairs before a given point in time at which the acts complained of as affecting or likely to affect the existing state of things occurred..."*

That the presiding status quo of the suit lands was acknowledged in the earlier referred contempt decision of **HCMA No. 85 of 2017: Kyewalyanga Properties Limited vs Kigongo William** as the Applicant/Defendant Company being the

registered proprietor of the suit land and in possession of the same. That the Plaintiff has been exercising its right of possession by hiring third party individuals to till the land, Mr. Nteete never acted in his own capacity nor in contempt of court.

That at the locus, it was explained that the reason was to ensure that the land does not go to waste and further testified that he had not received any money from the third parties in his individual capacity.

That the Plaintiff has been utilizing the land through engaging third parties to till the land even before the interim order came into force; and that all acts done by Mr. Nteete in furtherance of such were not in his individual capacity but on authorization of the company. That the mere fact that the Defendant further engaged four more persons to till the land after the issuance of the interim order does not amount to altering of the status quo since this was the position before the order.

Accordingly, they submitted that there have been no acts of contempt neither by the company nor Mr. Nteete in his individual capacity; and prayed that court dismisses this ground for the reasons stated herein.

Secondly, that it was submitted by learned counsel for the defendant that on the 7<sup>th</sup> day of June, 2022 when court was on locus visit **PW3 Nteente Gyavira** clearly stated during cross-examination that: *“Am aware of the court order. Some people who are farmers came in after the court order was passed by this court.”*

Learned counsel for the Defendant submitted that the said person was well aware of the existence of the Court Order chooses not to comply with the same and he contracts more other people to come and work on the suit land, this is a contemptuous conduct. That learned counsel for the Plaintiff submitted that such proceedings being smuggled in in the final submissions in a case where Mr. Nteente is not a party are brought in bad faith and ultimately defective. That Mr. Nteente is not a party to this suit despite the fact being a Director and Shareholder in the Plaintiff Company.

That any contempt proceedings ought to have been filed against him personally and given an opportunity to respond accordingly and that Mr. Nteente has not been in any contempt of any court orders.

**I have carefully analyzed the above** and noted during the locus in quo visit, it was found that the Plaintiff's current directors through their agents had continued to utilize and hire out the suit land to various people to carry out cultivation on the suit land well aware of the injunctive order this court had



made in respect of maintaining the status quo of the suit land. This was clearly observed and recorded during that visit and admitted to by Mr. Nteente Gyaviira.

**Black's Law Dictionary 6<sup>th</sup> Edn. at page 319** which defines contempt of court is defined as:-

*“ any act which is calculated to embarrass, hinder or obstruct Court in the administration of justice, or which is calculated to lessen its authority or its dignity committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the Court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he was given”.*

Again in **Osborne's Concise Law Dictionary at page 102**, it is defined as:-

*“Contempt of court consists of conduct which interferes with the administration of justice or impedes or perverts the course of justice. Civil contempt consists of a failure to comply with a judgment or order of a court or breach of an undertaking of court.”*

From the foregoing definition, it can be discerned that in order for one to be found in contempt of Court Orders, the following must be established:-

- a) The alleged contemnor must have calculated, or otherwise willfully done the alleged act;
- b) That the person must have been a party to the proceedings or is somewhat connected thereto;
- c) The person must have disobeyed or failed to comply with orders of Court.

The law on contempt of court was also well articulated in the often quoted case of ***Megha Industries (U) Ltd vs Conform (U) Ltd*** where court citing the ***Sitenda Sebalu Case***.

I have analyzed the submissions of both sides and in the case of ***Bashaija vs Electoral Commission & Anor Mbra HCT EP No. 4/2011***, Justice Bamugemereire held that in order for the Respondent's noncompliance to amount to Contempt of Court, there must be proof of conscious willful disobedience of the orders of Court, with impunity. The position of the law is that for contempt of court to be found, the following conditions must exist;

- i. a lawful order;

- ii. the potential contemnor's knowledge of the order; and
- iii. the potential contemnor's failure to comply i.e. disobedience of the order as per the case of ***Stanbic Bank (U) Ltd & Jacobsen Power Plant Ltd vs. The Commissioner General Uganda Revenue Authority MA No. 42 of 2010.***

#### **The existence of a lawful order**

In respect of this matter, it is not disputed that Court issued in **Miscellaneous Application No. 003/2017 (Arising from Civil Suit No. 01/2017)** the Interim Order which was extended by Justice Dr. Flavian Zeija on 20<sup>th</sup> March 2017 to maintain the status quo until the disposal of the main application. It is also on record that **Miscellaneous Application No. 002/2017 (Arising from Civil Suit No. 01/2017)** was set aside in favor of proceeding with the main suit, thereby making the above stated orders in the Interim Application to remain in force and legally binding on both sides until the disposal of the main suit.

It is not in dispute that Court indeed visited the *locus in quo* in this case and observed the extent of the depletion made and admitted by **PW3 Nteente Gyaviira**. This therefore is not in dispute and has been proved.

#### **The potential contemnor's knowledge of the order**

There is no doubt that in this case, **PW3 Nteente Gyaviira** one of the current Directors of the Plaintiff was well aware of the Court Orders in existence and in his own words chose to ignore the same. This is not just a mere denial as learned counsel for the Plaintiff Company would want court to believe since he was a party to the court decision and he was very much informed about all the provisions of the same.

It would therefore be unfortunate that even after six years; he wants this Honorable Court to believe his ungrounded position.

My decision is that this is answered in the positive.

#### **iv. The potential contemnor's ability to comply**

As to whether **PW3 Nteente Gyaviira** had ability to comply, without wasting time, this is also answered in the positive. It is clear that learned counsel for the Plaintiff in his submissions is instead trying to brush this point aside by submitting that it is the Company in this case and not it's individual Directors who may be held to be at fault. As already noted above, **PW3 Nteente Gyaviira**

clearly chose to ignore the orders of court in his capacity as a Current Director of the Plaintiff Company; and whereas it is true the Plaintiffs are still in possession of the suit property, this is not a licence for **PW3 Nteente Gyaviira** to disobey the Court Orders that he was well aware of with impunity.

**v. The potential contemnor's failure to comply**

Having found as I have above, it is clear that the potential contemnor failed to obey Court Orders which were well within his knowledge. In the case of **Barbra Nambi v. Raymond Lwanga; Misc. Application No.213 of 2017**, Court held that: *"Court orders have to be obeyed and to indicate to contemnors that there are consequences for disobedience of court orders."*

Further, in the case of **Ekau David v. Dr. Jane Ruth Aceng & 2 others, Misc Application No. 746 of 2018** held that *"the reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. That it has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. That neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. That a party who walks through the justice door with the court order in his hands must be assured that the other order will be obeyed by those to whom it is directed"*.

In the current case, despite having knowledge of the existence of the Court Orders, **PW3 Nteente Gyaviira** on behalf of the Plaintiff Company and acting with its knowledge adamantly refused to abide by the same without any justifiable reason, yet he expected it to be respected by the Defendant.

I therefore find that **PW3 Nteente Gyaviira's** actions being one of the Current Directors of the Plaintiff Company cannot be divorced from the Plaintiff Company's actions since a Company can only act through its Directors and Shareholders. As such, I hold the Plaintiff Company in contempt of a lawful Court Order by continuing to change the status quo of the suit land with impunity.

I therefore find this submission by the Defendant's counsel valid, but I will address the effect when pronouncing myself in the final decisions after resolving all the major issues in this case.

Having resolved all the Preliminary Points of Law as I have, I have found that the justice of this case demands that all the issues that were raised in this suit

during scheduling are conclusively resolved by analyzing all the evidence of both sides.

I will now turn to the said issues.

**Issue 1: Whether the Plaintiff has a cause of action against the Defendants?**

It was submitted by learned counsel for the Plaintiff that a cause of action has been defined as *“every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain judgment”*.

They relied on **Steven Semakula vs Samuel Serunjogi HCCS No. 187 of 2012**. Further, in **Tororo Cement Co. Ltd vs Frokina International Ltd; Civil Appeal No. 21 of 2001** the court laid down the three essential elements to support of a cause of action:

- a) The plaintiff enjoyed a right;
- b) The right has been violated; and
- c) The defendant is liable.

In addition, that it is also settled law that in determining whether the suit discloses a cause of action, the court only considers the Complaint and annexures, if any, without delving into the merits of the suit. They cited the cases of **Uganda Telecom Limited vs ZTE Corporation SCCA No. 3 of 2017** and **Baku Raphael Obudra and Obiga Kania vs The Attorney General (Constitutional Appeal No.1 of 2003)**.

Further, that in the instant case, a plain reading of the Complaint explicitly shows that the Plaintiff has a cause of action against the Defendant. That the Plaintiff has a right to the use and enjoyment of the suit lands as the registered proprietor. That the Plaintiff's right was violated by the purported purchase of the said lands by the Defendant; the Defendant was liable for this violation as he knew of the want of authority and was complicit in the fraud.

They submitted that from the foregoing, the Plaintiff has a cause of action against the Defendant; and that the determination of the merits of the suit are immaterial at this point. They thus prayed that the first issue be ruled in the affirmative.

**In reply**, learned counsel for the Defendant relied on the case of **Walakira Jimmy vs Ssendendo Lubwama Isaac & 2 others, High Court Family**

**Division Civil Suit No: 152 of 2018**, before Justice Olive Kazaarwe Mukwaya where she stated that: *“Under O. 7 R. 11(a) of the Civil Procedure Rules, a plaint may be rejected by the court if it does not disclose a cause of action.*

That the Court of Appeal in **Kapeka Coffee Works Ltd vs. NPART CACA No.3/2000** held that; *“in determining whether a plaint discloses a cause of action, the court must look only at the plaint and its annexures if any and nowhere else. That in order to prove there is a cause of action, the plaint must show that the plaintiff enjoyed a right; that the right has been violated; and that the defendant is liable. If the three elements are present, a cause of action is disclosed and any defect or omission can be put right by amendment.*

They also relied on **Tororo Cement Co Ltd vs Frokina International Ltd Civil Appeal No. 2/2001**.

They submitted that on perusal of the Plaint, paragraph 4(a) states that *“The Plaintiff Company is registered proprietor of the suit land comprised in Buddu Block 147 Plots 15, 24 and 51 measuring 230 acres, located in Lukaya kalungu District”.*

That under paragraph 4(b) that *“Dr. Kyewlyanga Kikambi Joseph Marry was a previous Managing Director of the Plaintiff Company and had in his possession by virtual of his position as the Managing Director, the duplicate certificate of title of the land comprised in Buddu Block 147 Plots 15, 24 and 51 at Lukaya Luteete in Kalungu District measuring 230 acres”.*

That under paragraph 4 (g) *“The purported sale of the Plaintiff Companies’ said land was illegal, null and void because of the following:*

- I. *There was no Company Resolution to sell its land at the time of the purported sale.*
- II. *The defendant entered into the purported land sale /purchase transaction with person who was not authorized to act for on behalf of the Plaintiff Company and the defendant was aware of this.*
- III. *The defendant entered into the purported land sale /purchase transaction when the land was encumbered with a caveat.*
- IV. *The defendant entered into the purported land sale/purchase transaction with knowledge that the land was not available for sale”.*

That in answer to the question of Whether the Plaintiff Company’s two directors’ and a Company Secretary act could bind the Company in contract as raised in

the Plaintiff, they made reference to **Section 50 of the Companies Act** which provides for forms of contracts that *“a Company may make a contract by execution under its common seal or on behalf of the Company, by a person acting under its authority, express or implied”*.

**Sub section (2) Contracts on behalf of a company may be made as follows;**

*“(a) a contract which if made between private persons would by law be required to be in writing, signed by the parties to be charged with, may be made on behalf of the company in writing executed by any person acting under its authority, express or implied”*

That **Section 53 of the Companies Act** is to the effect that *“a party to a transaction with the company is not bound to inquire whether it is authorized by the company’s memorandum or to any limitation on the powers of the board of directors to bind the company”*.

**Section 55 of the companies Act** further provides that *“documents executed by two directors and expressed to be executed by the company has the same effect as if executed under a common seal of the company”*.

They submitted that in the case of **Candiru Asina Binnia vs Centenary Rural Development Bank Limited, High Court Civil Suit No: 0022 of 2016**, Justice Stephen Mubiru states that: *“From the foregoing, the decision as to whether a claim is tainted with turpitude depends not on whether the person against whom the claim is made will suffer disadvantage, but rather on whether there is a discernible public interest which will be damaged by the court’s sanctioning of the prosecution of the claim. No court will lend its aid to a person who founds his or her cause of action upon an immoral or an illegal act. If, from the plaintiff’s pleadings, evidence or otherwise, the cause of action appears to arise ex turpi causa, or is the transgression of a positive law of this country, then the court will find that such a person has no right to be assisted.”*

Further, that the Plaintiff Company’s claim of the illegality of the transaction is purely based on the fact that the very Company did not make a Resolution to sell the said suit property. That such a Plaintiff cannot be relying on its own illegality to bring a claim against the Defendant as stated in the Plaintiff’s pleadings.

Secondly, that the Plaintiff is estopped from denying the validity of transaction in question having taken benefit of the transaction.

They relied on the case of **Stephen Seruwagi Kavuma vs Barclays Bank (u) Limited Commercial Court Division Miscellaneous Application No: 0634 of 2010**, where Justice Irene Mulyagonja Kakooza stated that: *“It is a well-known principle of equity that one cannot approbate and reprobate all at the same time. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage...”*

That as the principle above states the Plaintiff choose to enter into a contract with the Defendant to sell to him the suit land at a cost of 178,000,000/= (One Hundred Seventy Eighty Million Shillings Only). That the Defendant paid the above said money to the Plaintiff and it was received by the Directors of the Plaintiff. That now the same Company has sued the Defendant claiming that the contract was illegal so that they obtain another advantage of not paying back the money and not transferring the suit land into the names of the Defendant.

That the law prohibits that kind of behavior. It was their case that if the Plaintiff entered into a contract with the Defendant then they should honor the terms of the said land Sale Agreements and transfer the said land into the names of the defendant, pay damages and costs of the suit herein and that the Plaintiff has no right to enjoy in the said suit land.

That the Plaintiff has stated under paragraph 4(c) of the Plaint that the Plaintiff Company Board of Directors removed the said Dr. Kyewalyanga Kikambi Joseph Marry from the position of Managing Director of the Plaintiff Company and appointed Dr. Tibyasa Mugagga Bekalaze as the Managing Director and also from the position of Director in an Extra Ordinary Meeting on the 28<sup>th</sup> day of June, 2014. That under 4(d) states that the Plaintiff Company subsequently removed the said Dr. Kyewalyanga Kikambi Joseph Mary from the position of Director in the Plaintiff Company and the said Dr. Kyewalyanga Kikambi Joseph Mary remained only as a Member in the Plaintiff Company.

That the Resolution referred in the pleading is that one dated the 27<sup>th</sup> day of June, 2014 which purports to dissolve the old Board of Directors and appoint a new one; and that note be taken that the old Board of Directors is the one that sold the suit land to Kigongo William, whereas the new one is comprised on Jenniffer Nakayita Kyewalyanga, Dr. Tibyasa Mugagga Bekalaze, Sarah Nabibibbu Kyewalyanga and Muwuma Ponsiano Edward. That this very

Resolution was subject of contention in **Masaka High Court Civil Miscellaneous Cause No: 13 of 2013** before Justice Dr. Flavian Zeija where he clearly stated that:-

*“According to the resolution that appointed Dr. Joseph Kikambi Kyewalyanga dated 24<sup>th</sup> day of November, 1998, the respondents do not appear as being directors at all. However, there is a resolution which purports to remove Dr. Joseph Kikambi Kyewalyanga and appointing a new board of Directors dated the 27<sup>th</sup> day of June, 2014 annexed to the affidavit in reply. It is this Board that purports to withdraw the application and confirm the caveat. However the resolution has problems. It is fingerprinted and yet there is no jurat contrary to the illiterates Protection Act. The resolution therefore is illegal, Dr. Joseph Kikambi Kyewalyanga, was not legally removed as director. It therefore follows that the resolution recognizing then caveat is also illegal.”*

That **during cross-examination PW3 Nteete Gyavira** clearly stated that: *“That in the ruling delivered on the 27<sup>th</sup> day of March, 2017 by Justice Flavian Zeija. That Dr. Kikambi remained the managing director of the plaintiff company. I did not agree with the ruling but we did not appeal against it as accompany...No, there is no other resolution which puts the new directors in office”.*

That the said Resolution was declared null and *void abinitio* by the Court, therefore there is no valid Resolution that appoints the Plaintiff witnesses in the office of the Board of Directors as they purport to act. That they have no rights whatsoever to assert before this Honorable Court; and thus no cause of action against the Defendant in this matter.

They further prayed that the said suit is dismissed with costs for lack of a cause of action against the defendant, for an order directing the Commissioner for Land Registration to transfer the land into the names of the Defendant and the vacant possession of the suit land.

**In rejoinder**, learned counsel for the Plaintiff submitted that this suit discloses a cause of action against the Defendant. That counsel for the Defendant raises three arguments in response to their earlier submissions. That the Plaintiff Company’s claim of illegality of the transaction is purely based on the fact that the very company did not make a Resolution to sell the suit property. That the Plaintiff is estopped from denying the validity of transaction in question having taken benefit of the transaction. That the Resolution dated 27<sup>th</sup> June, 2014 dissolving the old Board of Directors is null and void.



The Plaintiff Company's claim of illegality of the transaction is purely based on the fact that the very Company did not make a Resolution to sell the suit property. That Counsel's argument is an inaccurate and oversimplification of the Plaintiff's claim. The Plaintiff's claim is not purely based on the missing Resolution. This is only one of grounds of illegality stated by the Plaintiff in paragraph 4 (g) of the Plaint to signify that no valid Sale Agreement was ever executed between the Plaintiff and the Defendant. That counsel relies on **Section 50, 53 and 55 of the Companies Act**, however, given that the question of whether the Defendant acted with persons who had authority to bind the Company is a question of fact, this can only be determined through a full trial and submission of evidence on of both parties. That it would be premature to make a determination of this fact solely based on the pleadings.

Finally, that counsel cites the case of ***Candiru Asina Binnia v Centenary Rural Development Bank Limited*** in support of his submissions; however from perusing the case and the extract highlighted, it is clear that the facts in that case are not only clearly distinguishable but also the resultant holding is inapplicable in this case.

That in the instant case there is no immoral or illegal act alleged to have been committed by the Plaintiff.

That even in the highly unlikely event this court is to find that the Plaintiff Company omitted to make the Resolution, such an act cannot be found to be illegal or make the cause of action arise *ex turpi causa*. That the Plaintiff at the hearing adduced evidence illustrating the lack of due diligence and illegal acts committed by the Defendant in pursuing the transaction.

They therefore prayed that this court finds no ground in counsel's submission and determines this suit on its merits.

In addition, that the Plaintiff is estopped from denying the validity of transaction in question having taken benefit of the transaction. That the Plaintiff did not derive any benefit from the transaction. They reiterated that the Defendant illegally transacted with two persons, the late Dr. Kikambi and M/S. Margaret Nalufusa with full knowledge that the suit land was not for sale. That the Plaintiff cannot therefore be estopped from challenging the transaction since the purported monies paid were not made to the benefit of the Company.

Further, that the case of ***Stephen Kavuma vs Barclays Bank (U) Limited*** is distinguishable from the current case given that in the former case, the Applicant did not deny having signed the Consent Agreement that he sought to challenge.

That accordingly, having benefited from the same he could not then challenge its validity.

That in this case, the Plaintiff Company did not benefit from the impugned transaction, further there is challenge as to validity of the sale transaction. In the premises, this ground equally has no merit. That the Resolution dated 27<sup>th</sup> June, 2014 dissolving the old Board of Directors is null and void. That the legality and effect of this Resolution cannot be determined by mere use of the pleadings and annexures. In Counsel's submissions reference is made to the decision in **Misc. Cause No. 13 of 2013**, which was not referred to in the pleadings nor attached as annexure.

Furthermore, that Counsel refers to an extract of a testimony of **PW3** in support of his submissions. This also goes beyond the scope of determining a cause of action that requires only reference to the Pleadings and Annexures, therefore, Counsel's submissions that include elements of evidence adduced at the hearing illustrate that the legality of the Resolution can only be determined through consideration of the merits of the case. That in respect to the relevance of the said resolution and effect of the judgment in **Misc. Cause 13 of 2013**, **PW3** explained the reason why there was no appeal to the said decision. In his **re-examination** he states; *"We did not appeal, we were already directors transacting business"*

They also submitted that this shows the peculiar position in which the Directors of the Company were in. Filing an appeal would have been to file to direct the company to institute proceedings against themselves. That this would be a blatant abuse of court process and therefore, the Directors continued to operate the Company as they deemed fit.

That it is trite law that courts of law must be reluctant to interfere with internal mechanisms of a Company where a majority of members may lawfully ratify the conduct in question. This principle was espoused in the leading case of **Foss vs Harbottle [1843] 67 ER 189**. In that case the court reasoned as follows;

*"The proposition I have advanced is that, although the Act should prove to be voidable, the cestui que trusts may elect to confirm it. Now, who are the cestui que trusts this case? The corporation, in a sense, is undoubtedly the cestui que trust but the majority of the proprietors at a special general meeting assembled, independently of any general rules of law upon the subject, by the very terms of the incorporation in the present case, has power to bind the whole body, and every individual corporator or must be taken to have come into the corporation upon the terms of being liable to be so bound. What then can this Court act in a suit*

*constituted as this is, if it is to be assumed, for the purposes of the argument, that the powers of the body of the proprietors are still in existence, and may lawfully be exercised for a purpose like that I have suggested. Whilst the Court may be declaring the acts complained of to be void at the suit of the present Plaintiffs, who in fact may be the only proprietors who disapprove of them, the governing body of proprietors may defeat the decree by lawfully resolving upon the confirmation of the very acts which are the subject of the suit. The very fact that the governing body of proprietors assembled at the special general meeting may so bind even a reluctant minority is decisive to shew that the frame of this suit cannot be sustained whilst that body retains its functions.”*

That in this case, **PW2, PW3** and **PW4** were all appointed and recognized by directors in the Company (*per Company Annual Return marked P.Ex. 1*) with no objection from any member in the Company. That **P.Ex.1** also shows that the three persons hold the majority shareholding in the Company being 1450 of the 2188 allotted shares if there was any objection to the positions held, the shareholders through the General Meeting would have them removed as directors or if there is any irregularity to their appointment this can be easily rectified in the general meeting where **PW2, PW3** and **PW4** are the majority shareholders. That the shareholders actions clearly show that the current board of Directors was legitimately appointed and carrying on business legally.

They prayed that this court finds that the Plaintiff has a cause of action against the Defendant for the reasons stated herein and in their earlier submissions. That **Order 7 Rule 11 of the Civil Procedure Rules** provides for a Plaintiff to be rejected where it does not disclose a cause of action; and in **Auto Garage and another vs. Motokov (supra)**, it was held that for a plaintiff to disclose a cause of action, it should be demonstrated that the Plaintiff enjoyed a right, that the right has been violated; and thirdly that the Defendant is liable.

That if one of the essential ingredients of a cause of action is missing, the Plaintiff is a nullity and no Amendment can be made to it and if these principles are answered, then *locus standi* of a Plaintiff to bring a suit would be established. That in **Dima Dominic Poro vs Inyani and Another Civil Appeal No. 007 of 2016** it was held that; “The term *locus standi* literally means a place of standing. It means a right to appear in court, and conversely, to say that a person has no *locus standi* means that he has no right to appear or be heard in a specified proceeding.”

**In resolving this issue**, I have carefully analyzed all the evidence of both sides and the submissions of both learned counsel as captured above. I have also

taken time to critically examine the pleadings in this case and the exhibits (PLAINT) as filed in this case.

**Order 4 rule 1 of the Civil Procedure Rules (S1 71-1 (as amended))** stipulates that every suit shall be instituted by presenting a Plaint in the court; although the above does not mean that every suit shall be commenced by way of a Plaint, but implies that where the subject matter and the mode of evidence and the nature of the dispute ordinarily requires specific pleading and proof, the appropriate procedure is a Plaint.

On the other hand, **Order 7 rule 1 of the Civil Procedure Rules (S171-1 (as amended))** stipulates what to look for in a valid Plaint.

It is also settled law that in determining whether the suit discloses a cause of action, the court only considers the Plaint and annexures, if any, without delving into the merits of the suit. I therefore agree with the case law of ***Auto Garage and another vs. Motokov (supra)***, relied upon by both sides to determine what court should look at in resolving whether the Plaintiff had a cause of action at the time of filing the suit. The above is beefed up with the Court of Appeal decision in the case of ***Kapeka Coffee Works Ltd vs. NPART CACA No. 03 of 2000***, where it was held that “*in determining whether a plaint discloses a cause of action, the court must look only at the plaint and its annexures and nowhere else; and in this case, save for the plaint*”.

The elements of a cause of action were discussed in the case of ***Auto Garage vs Motokov [1971] E.A 514*** to wit;-

1. *That the plaintiff enjoyed a right.*
2. *That the right must have been infringed, and*
3. *That the defendant is liable for the infringement.*

The same elements were stated in the case of ***Tororo Cement Co. Ltd vs Frokina International Ltd CA No. 2 of 2001***. See also ***Uganda Telecom Limited vs ZTE Corporation SCCA No. 3 of 2017*** and ***Baku Raphael Obudra and Obiga Kania vs The Attorney General (Constitutional Appeal No.1 of 2003)***.

Also in ***Kebirungi vs Road Trainers Ltd & 2 Others [2008] HCB 72***, Court held that; *the question whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone together with anything attached so as to form part of it.*

From the above position, I in the first place, I agree with learned counsel for the Plaintiff and find that the arguments forwarded by learned counsel for the Defendant analyzing the evidence which was adduced at trial should be excluded from this issue and Court must only look at the Plaintiff and its Annexures.

In that regard, I have carefully examined the Plaintiff and its Annexures as filed by the Plaintiff Company in this case; and I will look at the same in respect of the questions that Court must answer.

### **1. Whether the Plaintiff enjoyed a right?**

In respect of the first issue, from a perusal of the Plaintiff and its Annexures, Paragraph 1 only introduces the Plaintiff as a Private Limited Liability Company. Paragraph 3 of the Plaintiff states what they refer to as their Cause of Action; and in paragraph 4, the Plaintiff enumerates the facts giving rise to the said Cause of Action.

Other than the above, it is clear that the Plaintiff does not disclose in any way whether the Plaintiff Company's Shareholders, Directors, Members, Beneficiaries or Appointees or Proxies had any authorization, Company Resolution or special Powers of Attorney bestowing upon them the right to bring this case on behalf of the Company.

It is trite law that although a Company is legal person under the law; and as such, it can only operate its business through its Directors who have a right to transact on its behalf. Such Directors must be legally in office at the time; and in this case, they cannot be regarded as minorities to sustain a derivative or representative action against the Defendant since they never stated the same.

It was argued by learned counsel for the Defendant that the Plaintiff never enjoyed any right to bring this suit and that there was no Company Resolution to sell its land at the time of the purported sale; and that the Resolution dated 5<sup>th</sup> January 2017 removing Dr. Kyewalyanga Kikambi Joseph Mary as Director of the Plaintiff Company was an afterthought.

Together with the Plaintiff, I have also analyzed the Annexures relied upon by the Plaintiff Company in this case and found that at the time of filing the Plaintiff, no written authorization or consent in any form whatsoever was attached to the Plaintiff from the Shareholders, Board of Directors or Members of the Company. The same cannot be said of any of its Directors filing a Resolution to do so.

The Plaintiff Company does not even refer to any such authorization in their Plaintiff.

My findings after analyzing the Plaintiff only and its Annexures are therefore that without any proper Express or Written Authorization/Consent/ Powers of Attorney or other documentation by either the Shareholders or Company Directors, to use its name to bring the current suit, this leaves Court to act on speculations only since the Plaintiff reveals no clear basis on which the Plaintiff Company has any claim at all against the Defendant.

## **2. Whether the right was infringed?**

As to whether there was any right infringed, in the case of ***Elly B Mugabi vs Nyanza Textile Industries Ltd [1992- 1993] HCB 227***, Court held that “*a cause of action arises when a right of the Plaintiff is affected by the Defendant’s act or omission*”.

**Order 7 Rule 14 of the Civil Procedure Rules (supra)** provides that “*where a Plaintiff sues upon a document in his possession or power, he shall produce it in court when the Plaintiff is presented and shall at the same time deliver the document or a copy of it to be filed with the Plaintiff*”.

In this case, it is clear that the Plaintiff Company did not attach any documentation from its Constitution or Articles of Association or otherwise that would have persuaded this Honourable Court to prove that there was a right infringed by the Defendant.

## **3. Whether the Defendant is liable for the infringement?**

After resolving the above two, to the effect that the Plaintiff Company did not attach anything on its pleadings as stated above, which would have prompted them to file the current suit, they cannot therefore be held liable for violation of any rights they purportedly enjoyed; and this means that the entire Plaintiff and its Annexures offends **Order 7 rule 1 (e), 11 (a), 14 and Order 30 (1) of the Civil Procedure Rules S.I 71-1**.

The above leaves it hanging and makes it fatally defective and incurable. My final decision on the first issue is that the Plaintiff Company failed to prove that it has a valid cause of action against the Defendant in this case.

## **Issue 2: Whether the alleged sale of the suit land by the Plaintiff to the Defendant is valid and legal?**

It was submitted by learned counsel for the Plaintiff that this issue is the crux of the suit. That the alleged purchase of the suit lands by the Plaintiff was tainted with fraud, illegal and therefore invalid with no legal consequence for the following reasons. That the Defendant at the time of the purported purchase of the suit lands had full knowledge that the suit lands were not for sale and that the parties he dealt with had no authority to bind the company.

That the Defendant without carrying out any requisite due diligence purportedly executed three (3) sale agreements for the lands with persons without authority to bind the company. That the Defendant at the time of the purported purchase of the suit lands had full knowledge that the suit lands were not for sale and that the parties he dealt with had no authority to bind the Company.

Further, that the Respondent led evidence at the hearing to show that that the Defendant was fully aware that the lands were not for sale before purportedly executing the impugned sale agreements. **PW2 (Ms. Jennifer Nakayitta), PW3 (Nteete Gyaviira Byekwaso), PW4 (Tibyassa Mugagga), PW5 (Ms. Phillow Kasule)** all testified that there was no decision ever made by the Company nor Resolution passed approving the sale. That the Defendant sought to rely on a purported Resolution dated 10<sup>th</sup> March, 2014 (**D. Ex. 4**) as proof of authorization of sale; this Resolution has anomalies that put into question its veracity.

That first it was passed after the execution of the first two agreements had purportedly been executed, that dated; 28/02/2013 (**P.Ex 11**) and that dated 10/03/2013 (**DE 9**). This entails that at the execution of the Sale Agreements, there was no valid Resolution approving the sale. That indeed, **in cross-examination** the Defendant admitted to the fact that he never saw a Resolution to this effect before executing the Sale Agreements. That he tried to assert that his lawyer, **DW4**, prepared the necessary Resolution, however on **cross-examination DW4** testified that he never prepared nor received a copy of any Resolution in directing the sale of the suit land.

Secondly, that the said Resolution only ratified the sale of Plots 15 and 51. It never authorized the sale of Plot 24 of the suit land yet the Defendant falsely claims to have legally purchased all the plots from the Company.

Third and most crucial is that, in an attempt to legitimize the illegal transaction, Dr. Joseph Kikambi, Nalufusa Margaret and the Defendant forged onto the

Resolution and the purported Sale Agreements the signature of M/S. Phillow Kasule Nakulira **(PW5)**.

That in her evidence in chief, **PW5** testified that she never signed the Resolution **(DE4)** that was adduced by the Defendant. That **in cross-examination**, her position was re-affirmed that she never signed the Resolution nor was she the Secretary of the Company at the time of the purported sale. She stated affirmatively **in re-examination and examination by court** that the signatures were a forgery and not hers on the Resolutions and purported Sale Agreements. That indeed, the Defendant's witnesses all had grave contradictory accounts as to the execution of the Sale Agreements. The Defendant **(DW1)** testified that all three of; Dr. Kikambi Emmanuel, Nalufusa Margaret and Phillow Kasule signed the Agreements in the presence of his lawyer.

That on the other hand, **M/S. Nalufusa Margaret (DW2)** who was a Director in the company at the time and the Defendant's own witness testified that Ms. Kasule was not in attendance at the time the Agreements were signed in the presence of the Defendant's lawyers. **On examination by court**, she states that Dr. Kikambi took the Agreements to Ms. Kasule for her signature, therefore, she never witnessed Ms. Kasule signing on the agreement.

That further contradiction is in the testimony of **Mr. Buyondo Farouk Thahit (DW3)** who states that Ms. Kasule was not present in the Defendant's lawyer's office to execute the Agreement. He states that he, **Ms. Nalufusa (DW2)** and **Dr. Emmanuel Kikambi** went to Ms. Kasule's home so that she could sign on the Sale Agreements; and this contradicts both the Defendant's and **M/S. Nalufusa's** testimonies.

Finally, that the Defendant's last witness, **Mr. Tusingwiire Andrew (DW4)**, who was the Defendant's lawyer in the transaction states that all 3 of; **Dr. Kikambi, Ms. Nalufusa and M/S. Kasule** appeared in his office to sign. This is in direct contradiction of the testimonies of **DW3** and **DW2** who are said to have been present at the purported execution of the Sale Agreements. That the contradictions between the evidence of the Defendant and his witnesses are grave as they go to a material fact to be established by this court. That all four witnesses who were supposedly present at the execution of the Sale Agreements give diverging accounts as to how **M/S. Kasule's** alleged signature was placed on the Agreements.

That the direct contradictions render the testimonies of the witnesses unreliable. **Ms. Kasule (PW5)** on the other hand affirmatively stated that she did not sign on the Agreements. She was accosted by the Defendant and Dr. Kikambi at her



home who tried to have her sign the Agreements which she refused to do so. This evidence was not challenged in **cross-examination**, the only inexorable deduction from this is that after Ms. Kasule having refused to sign on the agreements, the Defendant together with Mr. Kikambi and **M/S. Nalufusa (DW2)** forged her signature on the Agreements and the Resolution dated 10/03/2014 in a fraudulent attempt to affect the sale transaction. That this blatant act of fraud should not be used to the benefit of the Defendant who is relying on an illegal Sale Agreement.

That further evidence of the Defendant's knowledge of that the suit lands was not for sale was in the witness testimonies of **Mr. Nteete Gyaviira (PW3)** and **Mr. Kikambi Emmanuel (PW1)**. In paragraphs 12 and 13 of the witness statement of **PW3** he stated that the Defendant was served a letter addressed to him from the Plaintiff Company notifying him that the land was not for sale. (**PE No.11**) That this was corroborated by the evidence of **PW1** who stated that he escorted Mr. Nteete to serve the Defendant the letter notifying him that the land was not for sale. That the letter was served on the Defendant on the 4<sup>th</sup> March, 2013, before the purported execution of the second (10/03/2013) and third Sale Agreements (22/08/2015) relied on by the Defendant. The Defendant was thus put on notice of the illegal transaction but still went ahead to engage **Dr. Kikambi and M/S. Margaret Nalufusa** to complete the illegal transaction.

In addition to the above **PW3** testified that the Defendant was summoned to the Land Protection Unit by Police authorities on matters attaching to the suit lands. The Defendant ignored the said summons. Similarly, the Defendant on several occasions tried to persecute **PW3** and **PW1** on trumped Charges of Forgery in an attempt to go ahead with the illegal transaction. (See paragraphs 38 of the witness statement of **PW3**).

They further submitted that the combination of the Defendant's actions in paragraphs 26 to 28 above is explicit in showing that the Defendant was made aware that the land was not for sale and that the persons he had engaged; **Dr. Kikambi and Ms. Nalufusa** had no authority to sale off the land. The Defendant thereafter engaged in intimidating behavior against members of the Plaintiff Company in an attempt to implement the illegal transaction which he was well aware of. That the combination of the Defendant's actions highlighted above clearly show that the Defendant was fully aware that the land was not for sale by the Company and the persons he engaged had no authority to execute the said Agreements on behalf of the Company. The Defendant was complicit in the fraud between him and the late **Dr. Kikambi and Margaret Nalufusa** in an attempt to deprive the Plaintiff of its land.

That the Defendant without carrying out any requisite due diligence purportedly executed three (3) Sale Agreements for the lands with persons without authority to bind the Company. That it is trite law that before purchasing land, a prospective purchaser has to carry out the requisite due diligence. That in the case of ***Hajji Nasser Katende vs. Vithalidas Halidas & Co. Ltd., CACA No.84 of 2003*** citing the case of ***Sir John Bageire vs. Ausi Matovu, CACA No.07 of 1996***, at page 26, Kikonyogo, DCJ, quoting Okello JA. (as he then was) emphasized the value of land property and the need for thorough investigations before purchase, and held *inter alia* that; “*Lands are not vegetables that are bought from unknown sellers. Lands are valuable properties and buyers are expected to make thorough investigations; not only of the land but of the sellers before purchase.*” (*Emphasis added*)

They added that in the instant case the Defendant was mandated to carry out thorough investigations in the nature of the land and the vendor. The vendor being a company in this case, the Defendant ought to have carried out investigations as to the persons authorized to affect the sale on behalf of the Company. That at the hearing the Defendant (**DW1**) admitted to having never seen a Resolution for Sale by the Company before purportedly entering into the sale agreements. That he alleged that his lawyers carried out a Company search to verify the Directors. That he contradicted his own statement at the *locus* visit claiming to have seen a Resolution before the signing of the Sale Agreements, however, this is in direct contradiction with the testimony of his own very lawyer at the time; (**DW4**) that stated that he never received a registered Resolution approving the sale by the Company.

Secondly **DW4** affirmed that no search was ever carried on the Company books of association to verify the directors of the Company.

That accordingly, all that was relied on to ascertain the Directorship and authority of the Directors was the representations made by **Dr. Kikambi and Margaret Nalufusa**. This alone cannot amount to due diligence before entering a land transaction. That indeed, had the Defendant went further to ascertain the Directorship of the Company or perused the Company Books, he would have been put on notice that the people he was dealing with had no authority to bind the company.

They therefore submitted that the Defendant knew of this position and thus did not know bother to carry out any due diligence in respect of the Company. That all this was done in an attempt to defraud the Company together with the late **Dr. Kikambi and Margaret Nalufusa**.

Furthermore, that **Mr. Kikambi Emmanuel (PW1)** testified that he has been residing on the suit land with his family since 2011 on the direction of the Company. This fact was corroborated by all of the Plaintiff's witnesses (**PW2 – PW5**) and also the Defendant's own witness; **Mr. Buyondo Farouk Thahit (DW3)**, a resident and leader in the Lutente area where the land is located, who confirmed that **Mr. Kikambi Emmanuel** has lived on the disputed land for about 10 years. That this statement was reaffirmed by **DW3** at the locus visit when he stated that **Mr. Kikambi (PW1)** has been residing on the land for about 8 to 10 years. That in his evidence in chief (the witness statement) the Defendant does not state that he ever visited the land before purchasing the same, it is only in **cross-examination** that the Defendant attempts to state that he actually visited the land.

That despite this false statement, it is clear that the Defendant actually never visited the land as he cannot correctly identify the structures on the land at the time of the purported purchase. That the Defendant stated at the hearing that at the time of the purported purchase there was only a hut for the herdsman and a cattle dip. That this is grossly in contradiction to the testimonies of his own witnesses; **DW2** and **DW3** that accurately stated that there are at least three (3) structures on the land being 2 houses and a hut for the herdsman. That this was confirmed at the locus visit where the three structures being; residential home for **PW1**, residential home for the mother to **PW1** and a house for the herdsman.

That from the plain viewing of these structures, these are old structures that were existing at the time the Defendant purportedly claims to have purchased the suit lands.

That from the *locus* visit it is evident that these structures are very visible and not in some inconspicuous part of the land, any person that genuinely visited the land at the time of purchase would have been able to identify them before entering into a sale transaction in respect of the land.

That accordingly had the Defendant visited the land, he would not only have been able to identify the three structures on the land but also would have been able to establish from **Mr. Kikambi (PW1)** that the land was not for sale; and failure to do so amounted to fraud on the part of the Defendant. They also relied on the case of ***Nabanoba Desiranta & Another vs. Kayiwa Joseph & Another, HCCS No. 496 of 2005*** quoting the case of ***UP & TC vs. Abraham Katumba [1997] IV KALR 103***, it was held that as the law now stands, a person who purchases an estate which he knows to be in occupation and use of another

other than the vendor without carrying out the due inquiries from the persons in occupation and use commits fraud; thus, in this case by the Defendant failing and/or refusing to carry out inquiries of the land from Mr. Kikambi Emmanuel amounted to fraud.

That from the foregoing, they submitted that purported sale transaction between the Defendant and **Dr. Kikambi Emmanuel and Margaret Nalufusa** was illegal and invalid and pray that this Honorable Court resolves this issue in the negative.

**In reply**, it was submitted by learned counsel for the Defendant that as to **(1). Whether the plaintiff had capacity to contract with the defendant?**; this is a question of fact that can be answered from the testimony and documentary evidence.

That **DW1** testified **during cross examination** that; *"I agreed with the directors of the company and they sold to me that land. I do not sit on the company board. I did not see the resolution of the company before I entered into the agreement. I know the land in question before. They allowed me to visit the land and they led me on it, where I found a small house for the herdsman and a deep for the cattle."...I signed three agreements in respect of this land. I signed the 1<sup>st</sup> agreement on 28<sup>th</sup> day of February, 2013 for 100 acres and I can recognize the agreement if showed to me."* (This agreement is **P.Exht No. 14**).

*"Then Defendant exhibit no. 9 is availed as the second agreement dated the 10<sup>th</sup> day of March 2013 ...The last agreement is Defence Exhibit no 10. The said agreement was signed by all these people in the presence of my lawyers. It is dated the 22<sup>nd</sup> day of August, 2015; the same directors who sold to me originally are the same who sold to me again. They were directors and secretary of the company. I relied on the documents to confirm that they are still directors as a buyer when paying."*

Further that: *"I paid money to the company, I used to pay in cash and they would sign the agreement. I used to pay in cash installments before my lawyers. I used to pay Kikambi, Nalufusa and Margaret....."*

That **DW2 Margaret Kyewalyanga during cross-examination** clearly stated as follows: *"Yes the company sold land. The company lawyer advised the directors to make a resolution to sell the land. We made the resolution... (Attached to evidence in chief of DW2) it is are solution. It does not say we sold to Kigongo but it shows the land we sold and would change it to his names. It is dated the 10<sup>th</sup> day of March, 2014. By the time of the 2013 sale, there was a resolution. In 2014,*

*we just confirmed that we had rightly sold to Kigongo Block 147 plots 15 and 51. We sold to him the third plot 24. When Kigongo was paying he did not pay into the bank. He paid through the office of his lawyers to Dr. Kikambi and me. I was a signatory and Dr. Kikambi received it. I signed after he had counted the money."*

Further, that even the Plaintiff's witness **PW2 Dr. Jenifer Nakayita Kyewalyanga during cross examination** stated that: *"Now am aware that Kigongo William purchased the suit land. I am aware he paid 178,000,000/= for the Suitland. Dr. Kikambi Johnmary Kyewalyanga was the managing Director by the time of sale. Nalufusa was a director of the company and not in management of the plaintiff company. Phillow Nakulira Kasule was also a director of the plaintiff company. No the agreement signed by then does not bind the company. Yes the 178,000,000/= has never been paid back to Kigongo. I can't tell if it wrong or right for the company to claim the titles as well after receiving the 178,000,000/="*

Furthermore, **PW3 Nteete Gyavira during cross-examination** stated that; *"It is true Dr. Kikambi Kyewalyanga John Mary was the managing Director and Nalufusa Kyewalyanga matgarete was a director"*.

They submitted that **Section 2 of the Contract's Act No. 7 of 2010** for the definition of a contract as a promise or set of promises forming consideration for each other. A promise was defined in the **Blacks' Law Dictionary 9<sup>th</sup> Edition at page 1332** as *"the manifestation of an intention to act or refrain from acting in a specified manner, conveyed in such a way that another is justified in understanding that a commitment has been made: a person's assurance that the person will or will not do something. A binding promise-one that the law will enforce-is the essence of a contract."*

That the evidence of the witnesses is uncontroverted that the Plaintiff Company through its directors approached the Defendant with an offer to sell the suit land at a total sum of UGX. 178,000,000/=(One hundred and Seventy Eight Millions Shillings Only) and within the Sale Agreements signed by both parties, the Plaintiff promised to sign transfer forms and hand over the titles upon completion of the payment of the purchase price which amounted to an offer to the Plaintiff; and this was a binding promise and a one that can be enforced under the law.

That under **Section 8 of the Contracts Act** which is to the effect that the performance of the conditions of an offer or the acceptance of any consideration for a reciprocal promise which may be offered with an offer is an acceptance of the offer.

**Section 7(1) of the Contracts Act** further requires an acceptance to be absolute that an offer is converted into a promise where the acceptance is-

(a) Absolute and unqualified; and

(b) Expressed in a usual and reasonable manner except where the offer prescribes the manner in which it is to be accepted.

That once the Defendant accepted to purchase the suit land and paid a sum of UGX. Shs 178,000,000/= (One hundred and Seventy Eight Million Shillings Only) to the Plaintiff, a promise was thereon created. That **Section 10(1) of the Contracts Act** is to the effect that a contract is an Agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object with the intention to be legally bound. In Agreement to **Section 11(1) of the Contracts Act** and the Defendant's testimony he has the capacity to contract. The Plaintiff Company was duly registered in Uganda and by virtue of **Section 50 of the Companies Act No. 1 of 2012** it had the capacity to contract with third parties.

That in answer to the question of whether the Plaintiff Company's two Directors' and a company secretary act could bind the company in contract as raised in the Plaint; and made reference is made to **Section 50 of the Companies Act** which provides for forms of contracts that a Company may make a contract by execution under its common seal or on behalf of the Company, by a person acting under its authority, express or implied.

(2) Contracts on behalf of a company may be made as follows that; *"(a) a contract which if made between private persons would by law be required to be in writing, signed by the parties to be charged with, may be made on behalf of the company in writing executed by any person acting under its authority, express or implied"*.

That it is the Defendant's case that **Dr. Kyewlyanga Kikambi .M. Joseph Managing Director, Margret Nalufusa Kyewalyanga-Director and Philo Nakulila Kasule Secretary /Director** sealed and executed a valid contract with Kigongo William when he paid the consideration of UGX. 178,000,000 (One hundred and Seventy Eight Million Shillings Only) for the suit land and when they signed on the Sales Agreements on behalf of Kyewalyanga Properties Limited they bound the Company into a valid contract.

#### **(11) Whether there was breach of contract by the parties to the contract?**

That breach of contract is defined as per **Black's Law Dictionary 9<sup>th</sup> Edition page 213** as a Violation of a contractual obligation by failing to perform one's

own promise, by repudiating it, or by interfering with another party's performance. That **DW1's** statement in **Re-Examination** states that; *"After we visited the land, I told my lawyer to carry out a search. He found the land in the names of Kyewalyanga Company. He searched the directors. He found DR. Kikambi Kyewalyanga was the Managing director, Margaret Kyewalyanga was a director, Philomera as the company secretary. The 1<sup>st</sup> agreement I bought 100 acres on plot 51, 15 and 24. That the company approached me to sell other land. The addition is the 2<sup>nd</sup> agreement dated the 12<sup>th</sup> day of March 2013. That the third agreement was made on the 22<sup>nd</sup> day of September, 2015..."*

That **Margaret Kiwalyanga DW2** confirms in **Re-Examination in chief** that; *"I said that we made a resolution for the sale of the land to kigongo at our lawyers Matovu's place and signed it. How would he have changed the titles without a resolution? We sold the land and he was paying money in cash. The total was a sum of UGX. 178,000,000 (One hundred and Seventy Eight Million Shillings Only). I confirm we received all that money on behalf of the company. He gave us all the money. That is all."*

In **Shaw & Sons Ltd vs. Shaw (1935) 2 KB 113**, it was held that the Resolution of the General Meeting was a nullity, Greer L.J stated; *"A company is an entity distinct from its shareholders and its directors. Some of its powers may be according to its articles exercised by the directors and certain other powers may be reserved for shareholders in general meeting. If powers of management are vested in the directors, they and they alone can exercise these powers."*

That the Defendant contends that the Plaintiff Company's Directors had the authority to sale the suit land to him worth UGX. 178,000,000 (One hundred and Seventy Eight Million Shillings Only). That **DW2 Magrete Kyewalyanga** clearly states that as directors they were fully aware of the transaction. This is because **Dr. Kyewlyanga Kikambi M. Joseph, Margret Nalufusa Kyewalyanga and Philo Nakulila Kasule** action of signing on the Sales Agreements on behalf of the Plaintiff Limited acknowledging receipt of the consideration / purchase price from the Defendant was binding on the Plaintiff Company.

They made reference to **The Organic Theory of Companies** where the courts have elected to treat the acts of certain officers as those of the Company itself. This theory can be traced to the case of **Lennard's Carrying Co. vs. Asiatic Petroleum Co. Ltd (1915) A.C 705** where a ship and her cargo were lost owing to unseaworthiness, the owners of the ship were a Limited Company. The Managers of the Company were another Limited Company whose managing director Mr. Lennard managed the ship on behalf of the owners. He knew or ought to have known of the ship's unseaworthiness but took no steps to prevent

the ship from going to sea. Under the relevant **Shipping Act** the owner of a sea going ship was not liable to make good any loss or damage happening without his fault. The issue was whether Lennard's knowledge was also the Company's knowledge that the ship was unseaworthy. That the court held that Lennard was the directing mind and will of the Company his knowledge was the knowledge of the Company, his fault is the fault of the Company and since he knew that the ship was unseaworthy, his fault was also the Company's fault and therefore the company was liable. Viscount Haldane held: *"My Lords a corporation is an abstraction. It has no mind of its own anymore than it has a body of its own. Its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent but who is really the directing mind and will of the corporation, the very ego and center of the personality of the corporation."*

They submitted that it is the Defendant's case that the Plaintiff Company Limited's intentions to sale the suit land to the Defendant were declared in the Sales Agreements that were signed by the Dr. **Kyewlyanga Kikambi M. Joseph, Margret Nalufusa Kyewalyanga and Philo Nakulila Kasule** on behalf of the Company as agents and received the consideration on behalf of the Plaintiff Company too. **Section 53 of the Companies Act** is to the effect that a party to a transaction with the Company is not bound to inquire whether it is authorized by the Company's Memorandum or to any limitation on the powers of the Board of Directors to bind the Company.

That **Section 55 of the Companies Act** further provides that documents executed by two directors and expressed to be executed by the Company has the same effect as if executed under a Common Seal of the Company.

They relied on **Royal British Bank vs. Turquand (1856) 6 E & B 327** and in the Company's Constitution the Directors were given power to borrow on bond such sums of money as from time to time by a General Resolution be authorized to be borrowed; and without any such Resolution having been passed, the Directors borrowed a certain sum of money from the Plaintiff's bank. Upon the Company's liquidation the bank sought to recover from the liquidator who argued that the bank was not bound to recover it as it was borrowed without authority from the general meeting.

The court held that even though no Resolution had been passed, the Company was nevertheless bound by the act of the Directors and therefore was bound to repay the money. It was held that: *"Persons dealing with the company were bound to make themselves acquainted with the statute and the deed of settlement of the company, but they were not bound to do more: a person, on reading the deed of*



*settlement ,would find , not a prohibition against borrowing ,but a permission to borrow on certain conditions ,and ,learning that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorizing that which on the face of the document appeared to be legitimately done: and, therefore ,the company was liable whether or not a resolution had been passed.”*

*“A party dealing with a company is bound to read the company’s deed of settlement (Memorandum of Association) but he is not bound to do more. In this case a third party reading a company’s documents will find not a prohibition from borrowing but permission to do so on certain conditions. Finding that the authority might be made complete by resolution, he would have had a right to infer the fact of a resolution authorizing that which on the face of the document appeared to be legitimately done.”*

That the rule in **Turquand’s Case** also known as the indoor management rule is premised not on logic but on business convenience because;

1. A 3<sup>rd</sup> party dealing with a Company has no access to the Company’s indoor activities.
2. It would be very difficult to run a business if everyone who had dealings with the Company’s internal operations before engaging in any business with the Company.
3. It would be very unfair to the Company’s creditors if their Company could escape liability on the ground that its officials acted irregularly.

They therefore submitted that the Defendant is under no duty to inquire beyond the law governing the Company and the Articles and Memorandum of the company; and that according to **D.Exht 1, D.Exht 2, D.Exht 3 and Exht 4** clearly shows that **Dr.Kikambi Kyewalyanga** is a Managing Director of the Company, **Margaret Nalufusa Kyewalyanga** Director and **Phillow Kasule Nakulira** as Director/ Company Secretary with powers under the Articles and Memorandum to contract for and on behalf of the said Company as agents. The third party dealing with the Plaintiff Company will have a right to infer the fact of a Resolution authorizing that which on the face of the document appeared to be legitimately done and therefore the Plaintiff Company is liable whether or not a resolution had been passed. That once directors executed the Sales Agreement for sale of the suit land to the Defendant, the Plaintiff Company was legally bound by those agreements. That therefore failure to implement the terms of the Sale of Land contracts, the Company is liable in breach of the contract executed for sale of the suit land.

**(111) whether the contract between the Plaintiff and the Defendant is enforceable.**

It was submitted that it's the Plaintiff's case that the Company sold land to the defendant without making a Resolution and it claims it was an illegality, yet it was the responsibility of the Plaintiff to make the said Resolution. They relied on the case of **Stephen Seruwagi Kavuma vs Barclays Bank (U) Limited Commercial Court Division Miscellaneous Application No: 0634 of 2010**, before Justice Irene Mulyagonja Kakooza stated that: *"It is a well-known principle of equity that one cannot approbate and reprobate all at the same time. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage....."*

The Judge further quoted that *"And according to **Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol. 16, para. 1055**, after taking advantage of an order, a party may be precluded from saying that it is invalid and asking to set it aside. I therefore find that after he obtained respite from investigations and possible criminal prosecution by signing the consent order and decree, the applicant could not now turn round and say that he did not owe the amount claimed in the suit whose order and decree he acquiesced in."*

That it's the Defendant's case that the Plaintiff's pleadings claim that the transaction the Plaintiff Company entered into with the Defendant was illegal reason being that the Plaintiff never made a Resolution allowing the Company to sell the land to the Defendant. They took note that the Plaintiff Company in this very transaction received 178,000,000/= from the Defendant as the purchase price for the suit land and at that time the Plaintiff considered the transaction valid and binding.

That when it comes to the Plaintiff to perform its side of the bargain it claims now the same transaction where it got a benefit that it is invalid, so that it can retain both the land and the 178,000,000/= that was paid by the defendant as the purchase price for the suit land; and therefore the Plaintiff should be stopped from denying the validity of the transaction in question having taken benefit of the transaction.

**(1V). Relevance of ratification of the sale of land contract between the plaintiff and the defendant.**

That a Resolution ratifying the Sales Agreement contract between the Plaintiff and the Defendant dated 10<sup>th</sup> day of March, 2014 in respect to the suit land was admitted in Court as **DE 4** and the certified copy of the same is on record. That this Resolution has the net effect of binding the Plaintiff Company in the transaction which is the basis of this suit. They relied on **Gower and Davies, Principles of Modern Company Law, 8<sup>th</sup> Edition page 176 paragraph 7-21** where states that:-

*“We have already noted that the legal effect of lack of authority on the agent’s part is that the transaction is not binding on the company unless it is ratified by the company. However, it is not necessary that ratification should take the form of an express decision to approve the transaction. Ratification can be implied from conduct and the conduct may amount to ratification if the company has knowledge of the essentials of what the agent has done, even if it did not know that the agent had acted without authority.*

*If there is ratification, it has retrospective effect, i.e it renders the transaction with the company binding on it as from the time it was entered into by the agent. It is sometimes difficult to distinguish a subsequent ratification (which is a unilateral act of the company) from the entering into by the company and the third party of a new transaction which replaces the one entered into by the agent without authority. There is also a time limit on the ratification process in the sense that ratification will not be permitted if it would unfairly prejudice a third party.”*

Further that **DW2 Margaret Kyewalyanga during cross-examination** stated that: *“It is the resolution. It does not say we sell to Kigongo, but it shows the land we sold and he would change it to his names. It is dated the 10<sup>th</sup> day of March, 2014. By the time of sale in 2013, there was a resolution. In 2014, we were just confirming that we had rightfully sold to Kigongo block 147 plots 15, 51. We sold his also a third plot 24.”*

That the fact that the Directors of the Plaintiff Company ratified the transaction with the Defendant in respect to the suit land. That the said transaction is now binding on the Plaintiff Company from the time it entered into it.

**In rejoinder**, it was submitted for the Plaintiffs that counsel for the Defendant has divided this issue into four segments to which they rejoin as follows; *whether the plaintiff had capacity to contract with the defendant?* That the question of capacity to contract is not in contention in this case. The Plaintiff being a legally Registered Company has the legal capacity to contract with the Defendant. That their contention is that the transaction and the impugned Sale Agreements relied

on by the Defendant are tainted in fraud thus rendering the whole transaction illegal and unenforceable. That counsel relies on the evidence of **DW1** that states that all three of **Dr. Kikambi Emmanuel, M/S. Margaret Nalufusa and Ms. Phillow Kasule** signed the Sale Agreements in the presence of his lawyer. That this fact is heavily contradicted by the Defendant's own witnesses; **Margaret Nalufusa (DW2), Buyondo Farouk Thahit (DW3), Mr. Tusingwiire Andrew (DW4).**

That all of the Defendant's witnesses have gravely different accounts on how these purported Sale Agreements were signed; on the other hand, **Ms. Phillow Kasule (PW5)** affirmed that she never signed on the purported Sale Agreements or the Resolution authorizing the sale as claimed by the Defendant. That in paragraphs 15 to 18 of **PW5's** Witness Statement she states how she was approached by the Defendant and Dr. Kikambi who tried to have her sign on the Agreements as a Secretary to the Company but refused to do so.

That **PW5 in cross examination** restates clearly; *"...Dr. Kikambi brought the sale agreement, I refused to sign. He said that I should sign as secretary, I was not the secretary of the company....My role in the company then I was just a member, I was not a director, I was a director in 2005..."* That in further examination by court, **PW5** confirmed; *"...I did not sign any of the documents which bear any signature..."*

That the only logical conclusion from the above evidence is that **M/S. Phillow Kasule (PW5)** never signed on the Sale Agreements; **P.Ex 11** and **D.Ex 9** relied on by the defendant nor the purported resolution (**D.Ex.4**) authorizing the Sale; and gaving refused to sign on the documents, the Defendant together with the late Dr. Kikambi forged her signature on the Agreements and Resolution trying to give legitimacy to their otherwise illegal transactions. That in the case of **Margaret Namatovu v Tom Kaaya & Anor (Civil Suit 432 of 2005)** it was held that;

*"...I do agree with the principle enunciated in the **Chao & Others (Trading as Zung Fu Co.) case (supra)** that forgery of a signature, when proved, renders a document null and void...in the absence of cogent proof that the signature on the sale agreement was the plaintiff's known signature, the signature thereon remained unexplained, disputed and unauthentic.." (Emphasis added).*

That in this case, once **PW5** denied having signed onto the Agreements and Resolution, the burden was on the Defendant to show that the alleged signature was authentic. That this burden was not discharged from the testimony of the defendant and other witnesses who failed to consistently affirm having seen **PW5**

sign the documents. That the Defendant also had the option to refer the documents to a handwriting expert for examination, which was never done. That even in counsel's current submissions, no explanation is made to this fact as stated by **PW5** and accordingly, we submit that the Defendant failed to discharge this burden, therefore, signatures on the Sale Agreements and Resolution purporting to be that of **PW5** were all forgeries leaving the signature unexplained, disputed and unauthentic rendering all the said documents null and void.

That in summation, though the Plaintiff does have capacity to contract, the purported agreements in this case were all invalid stemming from the illegalities stated above. They prayed that this court finds there was no valid Sale Agreement between the plaintiff and the defendant as alleged.

***Whether there was breach of contract by the parties to the contract?***

They reiterated the contents in their submissions above to state that there was no valid contract signed between the parties, and therefore there was no breach as claimed by the Defendant. That counsel refers to the Defendant's own testimony where the latter claims to have directed his lawyer to make a search on the land and directors of the Company, however, the Defendant's own lawyer (**DW4**) gave evidence to the effect that no search on the Company was ever carried out.

That in the instant case, the actions of the Defendant cannot be said to amount to the thorough investigations envisaged by Court in the above decision. That at the very least, one would be required to make a search on the Company to confirm whether he or she is dealing with the rightful authorities. That reliance on the word of mouth of the purported seller cannot entail proper due diligence when buying property owned by a company.

Secondly, that Counsel submits that the Defendant dealt with the directing mind and will of the Company being **Dr. Kikambi, Ms. Margaret Nalufusa and Ms. Phillow Kasule**. From her own testimony and earlier submissions, **M/S. Kasule** distanced herself from the transaction. That the Defendant together with **Mr. Kikambi and Margaret Nalufusa** conspired to forge her signature on the agreements and this therefore confirms there was no valid Sale transaction to bind the company.

Finally, that Counsel refers to the indoor management rule espoused in the **Royal British Bank v. Turquand** and now codified in the **Companies Act, 2012**. That they are alive to the application of this principle but submit that the same principle is subject to numerous exceptions existing in this current case.

Further that in his book; **Company Law, 2<sup>nd</sup> Edition by Simon Goulding**, the learned author highlights the limitations to the rule as follows; *the scope of the rule in Turquand was, however, restricted in the following ways:*

- a. *The rule could only operate in favour of a person acting in good faith without notice of the irregularity and this was interpreted to include absence of grounds for suspicion that there was any failure to comply with internal irregularities.*
- b.
- c. *The rule does not operate to protect outsiders from the consequences of forgery. If a document is discovered to be a forgery, it is a nullity, and no legal consequences can flow from it. The definition of what constitutes a forgery, though, is the subject of some difficulty. Certainly, if an unauthorized outsider obtains the company's seal and uses it on a document, forging the signatures of the directors, this will be held to be a forgery.*

That the rule in itself is only available to persons that deal in good faith with the company. Not only should the outsider have no actual notice of any irregularity but he or she should have no suspicion of failure to comply with the internal irregularities. That in the instant case, the Defendant was served with a letter dated **4<sup>th</sup> March, 2013 (Document No. 5 in the Plaintiff's Trial Bundle)** by **PW1** and **PW3** informing the Defendant that he was not dealing with the rightful persons in respect of the land.

Further that at the time of purchase there was a caveat (**P.Ex. 5**) registered forbidding any transaction on the lands.

Furthermore, the Defendant was summoned to police (**P.Ex.10**) over the same transaction.

That all these acts were sufficient to put the defendant at notice to inquire further whether the land was actually on Sale by the Company and whether he was dealing with the rightful persons. That the Defendant ignored all notices and went ahead to execute the now impugned transaction. That the Defendant was aware or at the very least had grounds of suspicion of the legality of the transaction and therefore cannot rely on the indoor management rule in this case.

Similarly, that **PW5** gave evidence to the effect that the Defendant and **Dr. Kikambi** tried to persuade her to sign the Agreements which she refused to do.

The Defendant and **Dr. Kikambi** thereafter forged her signature onto the sale agreements and resolution authorizing sale. That the signature of **PW5** being a forgery prevents the Defendant from relying on the indoor management rule as attempted. That it is trite law that ‘fraud unravels everything’ this principle was enunciated by Denning L.J in **Lazarus Estates Ltd v. Beasley (1956) 1QB702 at 712** cited with approval by the Supreme Court in **Fam International Limited & another v Muhammed Hamid (Civil Appeal No.16 Of 1993)** where it is was stated; “...No court in this land will allow a person to keep an advantage which he has obtained by fraud No judgment of a court no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved, but once it is proved it vitiates judgments, contracts and all transactions whatsoever...”

That in the instant case, the entire transaction is tainted with fraud. The Defendant did not bother to make thorough investigations on the company before purchasing the land, the defendant was put at constant notice about the potential illegality of the transaction, and the defendant even went further to forge a signature on the agreements and company resolution.

In addition, at the locus visit, it is clear that the Defendant never visited the land. That the latter testified that the land at the time of purchase only had a cattle dip and one structure. That at the *locus* visit there was evidence of three permanent structures, one of which being that of a caretaker on the land that has been residing on the land even before the purported purchase. That this fact was admitted by the Defendant’s own witness **PW3**, the local area LC1 who stated in examination; “*I know Kikambi Emmanuel, He stays on the disputed land. He has lived there for about 10 years*”

That had the Defendant actually visited the land and in good faith inquired about the land, the caretaker was in position to tell him that the land was not for sale and he was not dealing with the rightful persons. That the indoor management rule does not negate a person’s obligation to carry out the necessary due diligence in land purchase or waive the purchaser’s duty to act in good faith. That having not carried out the relevant due diligence to purchase the land and also having acting mala fides, the defendant is estopped from relying on the indoor management rule for protection.

That similarly, it has been held that the rule cannot be invoked in favor of a person that did not read the Company’s Memorandum and Articles. In **Rama Corporation Ltd v. Proved Tin & General Investments Limited [1952] 1 All E.R. 554, Slade J** opined the reasoning behind this position by stating; “*The*

*doctrine of constructive notice of a company's registered documents such as its memorandum and articles and its special resolutions does not operate against the company, but only in its favour. The doctrine operates against the person who failed to inquire but does not operate in his favour..."*

That the rule is based on the principle of estoppel and thus a person who did not consult the Company's Memorandum and Articles cannot be protected by it. In this case, the Defendant admitted to never having consulted the Articles or done a Company search. That he claimed that this was done by his lawyer (**DW4**), however, **in examination DW4** confirmed no search was ever done on the Company File, accordingly, having not consulted the Company's Books of Association, the Defendant cannot now seek to claim protection under the indoor management rule.

In the premises, for the reasons stated herein, they prayed that this court finds there was no breach of any contract by the Plaintiff as claimed by the Defendant.

***Whether the contract between the plaintiff and the defendant is enforceable?***

They reiterated the content in their submissions above to state that there was no valid contract executed between the parties and therefore, there is no contract to enforce. That counsel restates that the Defendant dealt with the persons who were the directing mind and will of the Company and that the Defendant was essentially protected by the indoor management rule. In response they echoed their submissions above to effect that one of the purported Directors (**PW5**) distanced herself from the transaction and that her signature was forged on the relevant documents.

Secondly, that the indoor management rule is inapplicable given the forgery and that the Defendant had notice or at the very least suspicion of the irregularity of the transaction. That under this segment, counsel submits that the Plaintiff's case is that the Company sold the land to the Defendant without making a resolution and the same company claims this was an illegality. That the Plaintiff's case is not hinged on the availability of one Resolution. It is the Plaintiff's case that the entire transaction was tainted with fraud of which the Defendant was a party as stated in earlier filed submissions and in response to segments (1) and (2) above. The lack of the Resolution is only one element to corroborate all the evidence of the other fraudulent actions committed by the Defendant. That the Plaintiff Company never took any benefit from the purported transaction and neither has the Company committed any illegality as submitted



by Counsel; therefore, the facts and holding of the case cited by Counsel- **Steven Seruwagi Kavuma v Barclays Bank** are inapplicable to the current case.

Accordingly, they prayed that this court finds that there was no enforceable contract executed between the parties. That relevance of ratification of the land contract between the Plaintiff and Defendant. That counsel refers to the Resolution dated 10<sup>th</sup> March, 2014 (**D.Ex. 4**) as ratifying the land transaction between the Plaintiff and Defendant. That as earlier submitted, this Resolution is null and void for the reason of having the signature of **PW5** forged onto it. They relied on **Margaret Namatovu v Tom Kaaya & Anor (supra)** and submitted that therefore, this Resolution cannot ratify any transaction as claimed by counsel for the Defendant.

Similarly, that the actions of the Directors do not show any ratification of the purported Sale. **Dr. Jennifer Kyewalyanga (PW2)** and **Dr. Tibyasa Mugaga (PW4)** were all Directors in the Company at the time of the alleged Sale. That they all challenge the validity of the same stating it was done without authority of the Company. **Phillow Kasule (PW5)** whom the Defendant alleged was a Director and Secretary in the Company at the time, distances herself from the sale and denies having signed the impugned Sale Agreements produced in court. That suffice to say that there were no actions by the Directors to ratify the impugned sale therefore.

In conclusion, they restated their prayer that this court finds that there was no valid sale between the parties and resolves this issue in the negative.

**In resolving this issue**, I have carefully analyzed all the evidence and submissions of both sides, exhibits and authorities relied upon. The Defendant testified and exhibited before court Sale Agreements which were executed to reflect that the Plaintiff Company through its then Directors entered into transactions and sold to him various parcels of land which were owned by the company. The evidence also confirms that at the time those transactions were entered into, the Certificates of Title in respect of those parcels of land sold to the Defendant were also handed over to the Defendant with transfer documents to the effect. The transfer documents were endorsed by the then Directors who also attached their respective identifications and photographs.

Having received undisputed evidence to that effect, the question that I believe has to be addressed by this court is **‘Whether the Plaintiff Company had authority as per its Constitution /Articles of Association to carry out the above mentioned sale?’**.

The Plaintiff Company's evidence in this case is that at all times, without any authority from the Company and through fraud the late **Dr. Kikambi** who was the then Company Managing Director together with **M/S. Margaret Nalufusa** purported to sell parcels of land which are the subject of this suit and signed transfer forms to the Defendant, who was well aware of the lack of authority. They argued that the late **Dr. Kikambi** the then Company Managing Director was removed from office by the Company Shareholders in an Extra-Ordinary Meeting of the Company held on the 28<sup>th</sup> June, 2014 which was only availed to court for identification purposes and marked as **PID.1**.

I have examined the **Articles of Association of Kyewalyanga Properties Ltd dated 24<sup>th</sup> December 1998**. The Directors listed therein are as follows:-

1. **Emmanuel Bakalaze.**
2. **Joseph Kikambi.**
3. **Jennifer Nakayita, Margaret Nalufusa.**
4. **Alex Lwanga and Victoria Nabikindu; and**
5. **Emmanuel Kyewalyanga was named as the Managing Director of the Plaintiff Company**

According to those **Articles of Association of the Plaintiff Company**, it's only the Managing Director who had authority to delegate the powers of the Company to any other members.

Again, **P. Exhibit 3/ D. Exhibit No. 2**, a Resolution to elect the Company Directors filed in the Company Registry on 24<sup>th</sup>/6/2005 confirms that **Dr. Joseph Kikambi Kyewalyanga, Dr. Francis Serufusa, Dr. Nightingale Presley Kyewalyanga, Dr. Tibyasa, Victoria Nabikindu and Phillow Kasule** were the Directors of the Company as of that date. **Dr. Joseph Kikambi Kyewalyanga was the Managing Director, Dr. Jennifer Nakayita Kyewalyanga and Dr. Nightingale Pressler Kyewalyanga** were appointed as signatories to the Company Bank Accounts and all official Company documents.

Another document, **P. Exhibit No.2** Resolution passed by the Company on 19/01/2013 reveals the Board of Directors as **Dr. Joseph Kikambi Kyewalyanga-Managing Director, Miss Margaret Nalufusa Kyewalyanga** as Manageress/ Director, **Mr. Nteete Gyaviira Kyewalyanga** as estate Manager/ Secretary and **Mr. Felix Serufusa Kyewalyanga** as Estate Manager. **Dr. Tibyasa** was appointed Company Secretary, **Dr. Nightingale Pressler Kyewalyanga** was Financial controller and **Margaret Nalufusa** as Manageress.

The fact that **Dr. Kikambi Kyewalyanga John Mary** was the Managing Director and **Nalufusa Kyewalyanga Margaret** was a Director was confirmed by **Dr. PW3 Nteete Gyavira during cross-examination.**

I have also carefully analyzed **P. Exhibit No.3/ D. Exhibit No. 2**, and it clearly confirms that the three Directors who signed on the Sale agreements had a right to enter into transactions on behalf of the Company that bound it at the time.

The above finding is reinforced by the Company Resolution filed on 14<sup>th</sup> May 2009 admitted as **D. Exhibit No. 3** which gave the **Managing Director Dr. Joseph Kikambi Kyewalyanga** authority with any of the two signatories i.e. **Margaret Nalufusa Kyewalyanga, Dr. Tibyasa Mugagga** or **Dr. Jenifer Nakayita Kyewalyanga** to sign cheques drawn on the Company Bank Account.

It is also not in dispute from the witnesses of both sides that the Plaintiff Company through its directors approached the defendant with an offer to sell the suit land at a total sum of UGX. 178,000,000/= (One hundred and Seventy Eight Millions Shillings Only) and within the Sale Agreements duly endorsed by both parties to them.

Further, it is not disputed that as per the Sale Agreement dated 10<sup>th</sup> March 2013 admitted as **D. Exhibit 9**, Buddu Masaka Block 147, Plot 51 and Buddu Masaka Block 147 plot 15 measuring 8.229 hectares were sold to the Defendant. Dr. Joseph Kikambi Kyewalyanga, Margaret Nalufusa Kyewalyanga and Philow Nakulira Kasule signed the said Sale Agreements on behalf of Kyewalyanga Properties Ltd, the Plaintiff Company in this case. It is also not disputed by the Plaintiff Company that the above named persons held the positions of Managing Director, Director/ Manageress and Company Secretary respectively at the time the sale took place.

In further proof, the trio on behalf of the Plaintiff Company signed Transfer Forms in favor of the Defendant and attached their photographs and copies of their National Identify Cards.

The above therefore is in line with the definition of a contract as per **Section 2 of the Contract's Act No. 7 of 2010.**

In a contrary turn of events, the Plaintiffs relied on a Company Resolution dated 3<sup>rd</sup> October 2014 admitted as **P. Exhibit No. 9** which purportedly introduced new persons who as the Board of Directors as of that date.

I have carefully analyzed this document *vis a vis* the rest of the evidence above in light of **DW1's** evidence **during cross-examination** where he testified that he agreed with the Directors of the Plaintiff Company before he entered into the Sale

Agreement admitted as **Exhibit No. 14. DW1** the Defendant was supported by **DW2 Margaret Kyewalyanga** who was one the Directors who endorsed the Sale Agreements **during cross-examination**; and the evidence of both was also confirmed by **PW2 Dr. Jenifer Nakayita Kyewalyanga during cross examination.**

My findings are that the Plaintiff Company which was duly registered in Uganda as per its **Articles of Association** and had capacity to contract through its then Directors and the Defendant also had the capacity to contract as is required under **Section 11(1) of the Contracts Act**; and by virtue of **Section 50 of the Companies Act No. 1 of 2012**, it had the capacity to contract with third parties through its lawful Directors.

The above uncontroverted evidence leads me to a conclusion that there was a valid a valid offer by the Plaintiff Company which was accepted by the Defendant in this case and that upon full completion of the payment of the agreed purchase price this amounted to a binding contract entered into by both parties. The Plaintiff Company does not in any way deny having received the contract sum in respect of the suit lands from the Defendant and indeed none of its witnesses deny this fact.

Secondly, I have also not found any evidence that would lead me to believe that after the defendant after accepting to pay the purchase price for the suit lands defaulted on his obligations to the Plaintiff Company. What is undisputed is that the Defendant indeed paid a sum of Ug. Shs 178,000,000/= (One hundred and Seventy Eight Million Shillings Only) to the Plaintiff Company which money the Plaintiff Company received.

As such, I have not found any evidence to the contrary which would persuade me to believe that the performance of the conditions of an offer or the acceptance of any consideration for the reciprocal promise offered was not fulfilled as is required under **Section 8 of the Contracts Act**. Instead what comes out of the evidence of both sides is that the Sale Agreements made were arrived at with the free consent of parties with capacity to contract; and that a lawful consideration was paid and this legally bound is legally binding and fulfills the requirements of **Section 10(1) of the Contracts Act**.

Thirdly, **Section 50 of the Companies Act No. 1 of 2012** provides for forms of contracts that a company may make a contract by execution under its common seal or on behalf of the Company, by a person acting under its authority, express or implied.

**Sub section (2)** provided that Contracts on behalf of a Company may be made as follows that;-

*“(a) a contract which if made between private persons would by law be required to be in writing, signed by the parties to be charged with, may be made on behalf of the company in writing executed by any person acting under its authority, express or implied”.*

In reference to the current suit, the Defendant exhibited a Plaintiff Company Resolution passed in a meeting dated 10<sup>th</sup> March 2014 at the Company premises where it was resolved:-

1. *“ Kyewalyanga Properties Ltd shall sale its land comprised in Block 147, plot 24 Buddu Masaka, Block 147, plot 51 Buddu Masaka and Block 147, plot 15 Buddu Masaka.*
2. *That the directors of Kyewalyanga Properties Ltd do hereby ratify the sale of the above land to Kigongo William and we shall transfer the same to him.*
3. *The Registrar of Companies be notified accordingly.”*

The above was signed by **Dr. Joseph Kikambi Kyewalyanga** in his capacity as Managing Director, as Seller and **Kigongo William** as Buyer and witnesses by **Margaret Nalufusa as Kyewalyanga** as Director and admitted as **D. Exhibit No. 4.**

I have also considered the evidence of **DW1** and the three Sale Agreements in respect of the suit land. The first Sale Agreement was signed the 1<sup>st</sup> on 28<sup>th</sup> day of February, 2013 for 100 acres and was admitted as **P. Exhibit No. 14** between the Plaintiff Company and Kigongo William dated 28/02/2013 in which the Plaintiff Company which was the registered owner of land comprised in Block 147, plot 24 Buddu Masaka, Block 147, plot 51 Buddu Masaka and Block 147, plot 15 Buddu Masaka. It was duly endorsed by **Dr. Joseph Kikambi Kyewalyanga** in his capacity as Managing Director, as Seller and **Kigongo William** as Buyer and witnessed by **Margaret Nalufusa Kyewalyanga** as Director.

The second Sale Agreement between the same parties was executed on dated the 10<sup>th</sup> day of March 2013 and was admitted as **D. Exhibit No. 9** in this case. It is also clear that this sale took place when the Company was headed by the same Directors long before there was any purported change of Directors by the Plaintiff Company.

The above is supported by **P. Exhibit No. 8/ D. Exhibit No.1** filed on the 20<sup>th</sup> October 2014 the Company Resolution that confirmed that **Dr. Joseph Kikambi**

**Kyewalyanga** continues to be the Managing Director, **Nalufusa Margaret Kyewalyanga and Phillow Kasule Nakulira** as Directors.

The third agreement dated the 22<sup>nd</sup> day of August, 2015 was admitted as **D. Exhibit No. 10**.

It is also noted that a Transfer to Kigongo William was executed by the Plaintiff Company Directors as per **DID No. 5** and it bore the photographs of all the three directors of the Plaintiff Company and the Defendant. Payment of transfer fees was made vide **D. Exhibit No. 5**. Diamond Trust Bank.

I have also examined the evidence of **Dr. Jennifer Nakayita Kyewalyanga, PW3 Nteete Gyavira**, who **during cross-examination** confirmed that *“Kikambi Kyewalyanga John Mary was the Managing Director and Nalufusa Kyewalyanga Margaret was a Director”*.

The above position was also confirmed by **DW2 Margaret Kyewalyanga** a Director of the Company and **DW1**. Also in the same regard, **P. Exhibit No. 12** dated 28<sup>th</sup> June 2014 chaired by **Dr. Tibyasa Mugagga Bekalaze** indicates that in that meeting under paragraph 3, reads that *“Dr. Tibyasa Mugagga Bekalaze was elected chairperson due to the absence of the M.D Dr. Mary Joseph Kikambi Kyewalyanga.”*

It was attended by **Sarah Nabibubbu Kywealyanga, Mr. Edward Muwuma Ponsiano, Dr. Nakayita Nkata Kyewalyanga** was represented by proxy of **Mr. Steven K Ssebunya and Dr. Tibyasa Bekalaze Mugagga**.

The above is a confirmation that **Dr. Mary Joseph Kikambi Kyewalyanga** was still recognized as the Managing Director of the Plaintiff Company and had a right to transact on behalf of the Company.

The Plaintiff Company also relied on **P. Exhibit No. 11** in which the Defendant was reported to Police following the Sale of the suit land; however, the fact that this Sale was legal is also reinforced by the findings in the reported case of Alleged Forgery and intermeddling with Deceased's Properties vide **SID GEF 153/2016** admitted as **D. Exhibit No. 5**. This confirmed that the Company Directors who signed the Agreements of Sale were indeed the legal Directors on the Plaintiff Company. **DID No. 2** dated 11<sup>th</sup> December 2016 which analyzed the fingerprints also confirmed the same.

The Special Resolution that allegedly changed Directors was allegedly made in a meeting dated 3<sup>rd</sup> October 2014 as per **P. Exhibit No. 9** relied upon by the Plaintiff Company and was dated 7<sup>th</sup> October 2014.

Compared to the undisputed evidence I have received in this case which proves and confirms that the initial Sales of the suit land which took place on 28<sup>th</sup> day of February, 2013 for 100 acres and was admitted as **P. Exhibit No. 14** was legal and so was the second agreement entered into on the 10<sup>th</sup> day of March 2013 and was admitted as **D. Exhibit No. 9** which all happened when **Dr. Joseph Kikambi Kyewalyanga** was the Managing Director and is not disputed by either side, my decision is that such a promise was binding to both parties and this fulfills the requirements of **Section 7(1) of the Contracts Act**.

As already confirmed in this case, it is not in dispute that the same three Directors who sold to the suit land to the Defendant originally under the first agreement are the same persons who acted on behalf of the Company to sell to the defendant the second and third portions.

It is also not disputed by the Plaintiff Company that in respect of all the three transactions, the Plaintiff Company's Directors **Dr. Kikambi the Company Managing Director, Nalufusa and Margaret** received valuable consideration in cash installments from the Defendant before their lawyers at the time of executing the agreements in question as was confirmed by **DW2 Margaret Kyewalyanga**, a Director of the Company and signatory to the transactions that took place between the Plaintiff Company and the Defendant who **during cross-examination** clearly confirmed that the Plaintiff Company sold the land to none other than the defendant in this case; and that at the time of doing so, the Company Lawyer advised the Directors to make a Resolution to sell the land.

It is clear that indeed a Company Resolution (*attached to evidence in chief of DW2*) was made to the effect. **DW2** was also clear in her evidence that the said money was accepted by all the Company Shareholders and proof of how the some amounts of money was shared amongst the Shareholders of the Company is found in **Court Document No.1** dated 03/04/2013 and sealed by the Company Stamp.

The same was corroborated by Plaintiff's witness **PW2 Dr. Jennifer Nakayita Kyewalyanga** during cross examination as elaborately captured by learned counsel for the Defendant.

Further, **P. Exhibit No.3**, the Company Resolution dated 24<sup>th</sup> June 2005 electing the following Directors; **Dr. Joseph Kikambi Kyewalyanga, Dr. Francis Serufusa, Dr. Jennifer Nakayita Kyewalyanga, Dr. Nightingale Pressler Kyewalyanga, Dr. Tibyasa, Victoria Nabikindu and Phillow Kasule** was undisputedly valid and gave them full powers to act on behalf of the Plaintiff Company. **D.Exhibit.1** the Company Resolution dated 26<sup>th</sup> of April 2014 which

continued to put **Dr. Joseph Kikambi Kyewalyanga** as the Managing Director and **M/S. Margaret Nalufusa** as his Deputy; and in the same vein, **PID 3**, the requisition for an extra Ordinary Meeting dated 30<sup>th</sup> May 2014 thumb printed by **Miss Sarah Kyewayanga, Dr. Jennifer Nakayita Kyewalyanga** and signed by **Dr. Tibyasa Mugagga and Mr. Muwuma Edward Sr**; and **P. Exhibit No.12** the Minutes of the General Meeting of the Plaintiff Company held on 28<sup>th</sup> June 2014.

A careful analysis of all the above two documents shows that this was called after the Plaintiff Company had already entered into Sales Agreements with the Defendant in this case. The Defendant **Kigongo William** in order to prove his claim, presented in court a Company Resolution dated 10<sup>th</sup> of March 2014 admitted in evidence and marked as **D. Exhibit No. 4**. This Resolution authorized the Directors to sale of the Company land comprised in Buddu Block 147 Plots 15 and 51 land at Lutente Lukaya to any potential buyer.

I have also examined **P. Exhibit No. 1**, the Form for Annual Return of a Company having a share capital which as filed in URSB on 29<sup>th</sup> April 2019 and it shows **Dr. Tibyasa Mugagga as Managing Director, Dr. Jennifer Nkayita as Medical Director, Mr. Nteete Gyaviira Byekwaso as Business Director, M/S Sarah Nabibubbu as Business Director and Mr. Muwuma Ponsiano Edward as Business Executive**.

Following up on the decisions taken in the above meeting, **P. Exhibit No. 6**, the Notification of Change of Directors or Secretary or their particulars was dated 30<sup>th</sup> June 2014; and indicated **Dr. Mugagga Bekalaze, Dr. Jennifer Nakayita Kyewalyanga, Miss Sarah Nabibubbu and Mr. Muwuma Edward** as the new Directors; and was filed. **Dr. Kikambi Kyewalyanga John Mary** who did not attend the meeting of 28<sup>th</sup> June 2014 was allegedly informed by a letter dated 25/07/2014 admitted as **PID 6** to transfer business documentation by **Nteete Gyavira**; and a reminder written on 4/08/2014.

I have nevertheless not found any proof of his having received the two communications above.

Another communication to the Registrar land Office was written by **Nteete Gyavira** informing that office of the new Managing Director on 18/08/2014 and was admitted as **P. Exhibit No. 7**.

While the current directors of the Plaintiff Company alleged breach of contract and I agree with the definition of breach of contract as submitted by learned counsel for the Defendant, I have gone ahead and analyzed the above in relation to the evidence in this case and found that it is clear that **DW1** made due diligence before paying the purchase price; and after the Sale, **DW2 Margaret**



**Kiwalyanga** confirms in **re-examination** that they made a Resolution to the effect. Having found as I have above that the Plaintiff Company's Directors at the time had the authority to sale the suit land to him worth UGX. 178,000,000 (One hundred and Seventy Eight Million Shillings Only), then **Section 53 of the Companies Act** which is to the effect that a party to a transaction with the company is not bound to inquire whether it is authorized by the Company's Memorandum or to any limitation on the powers of the Board of Directors to bind the Company applies to this case.

Further, **Section 55 of the Companies Act**, which provides that documents executed by two directors and expressed to be executed by the Company has the same effect as if executed under a common seal of the Company is also applicable to this case.

I therefore agree with the case law relied upon by learned counsel for the Defendant and hasten to add that the Defendant in this was under no duty to inquire beyond the law governing the Company and the Articles and Memorandum of the Company. His duty was to ascertain that **Dr. Kikambi Kyewalyanga is a Managing Director of the Company and that Margaret Nalufusa Kyewalyanga Director and Phillow Kasule Nakulira were Directors** with powers under the Articles and Memorandum to contract for and on behalf of the said Company as agents.

The above was ascertained by **D. Exhibit No.1, D. Exhibit No. 2, D. Exhibit No. 3 and D. Exhibit No. 4** respectively.

It is therefore my finding and decision that the Plaintiff Company is legally bound by the Sale Agreements entered into by its then Directors and any failure to implement the terms of the said agreements makes the Plaintiff Company liable in breach of the contract executed for sale of the suit land.

It is not denied that it was the responsibility of the Plaintiff Company to make a resolution to the effect and indeed made a Resolution after the fact of Sale dated 10<sup>th</sup> day of March, 2014 in respect to the suit land was admitted in Court as **D. Exhibit No. 4**. As confirmed by **DW2 Margaret Kyewalyanga during cross-examination**, the said Resolution and as such, it is now binding on the Plaintiff Company

I have considered the above with the Company Resolution dated 27<sup>th</sup> June 2014 which purportedly removed **Dr. Joseph Kikambi Kyewalyanga** as the Managing Director and found that this purported Resolution has no legal effect on the Sale agreement entered into by the Company. The net effect is that whatever transactions the Plaintiff Company entered into when **Dr. Joseph Kikambi**

**Kyewalyanga** was validly in office legally binds the Plaintiff Company. It is also noted that the removal of **Dr. Joseph Kikambi Kyewalyanga** was just a fire fighting technique by the current shareholders who are trying to have their cake and eat it at the same time; and it came too late to invalidate any decisions **Dr. Joseph Kikambi Kyewalyanga** and the previous Directors entered into on behalf of the Plaintiff Company.

Although the Plaintiff Company now claims that the Sale was illegal and relies on the letter admitted as **P. Exhibit No. 11** written to the Defendant by **Nteete Gyaviira** on 4<sup>th</sup> March 2013 claiming that it was an illegal Sale, this has no legal effect since the undisputed evidence confirms that by the time of the Sale, **Mr. Nteete Gyaviira** was just a Company Secretary and not the Managing Director who had capacity to bind the Company.

The sum total of the above evidence is that the Sale of the land in dispute was carried out lawfully by the persons who had the right to enter into Agreements on behalf of the Company, carry out transactions including disposing of some Company assets including but not limited to land by sale or otherwise; and there is no doubt in my mind that the said agreements entered into by both sides fit the description of a contract as provided for under **Section 2 of the Contract's Act**; and comply with the requirements of a valid contract as provided for under **Sections 7(1) of the Contracts Act 8 of the Contracts Act**.

I therefore wish to emphasize that the Plaintiff Company as the seller in this case is a Company duly registered in Uganda and by virtue of **Section 50 of the Companies Act No. 1 of 2012** and as such, it had the capacity to contract with third parties in respect of its assets. This could only be executed through its lawful office bearers at the time and the evidence in this case confirms that at the time when the sale took place, the lawful persons to act on behalf of the Plaintiff Company were Dr. Kikambi the Company Managing Director, Nalufusa and Margaret.

Further, I see no legal value of **PID No.5 the Medical Report from Nsambya Hospital Home Care Dept.** dated 12<sup>th</sup> February 2015 which confirms that Sarah Nabibubbu Kyewalyanga suffers from Parkinson's disease and is not able to sign as of that date because the first two Agreements were signed long before that date. The third agreement is dated 22<sup>nd</sup> day of August, 2015 admitted as **D. Exhibit No 10**, but be that as it is, **PID 5** does not in any way confirm that she had no mental capacity to act for the Plaintiff Company as is confirmed by **D. Exhibit No. 8** dated 9<sup>th</sup> February 2015 when the said **Sarah Nabibubbu Kyewalyanga** filed a caveat in respect of the suit land titles.

My findings are that the Agreements in question all comply with **Section 50 of the Companies Act**. I have therefore found no valid reason as to why the Plaintiff Company is at this stage acting in breach of the contract it entered into with the defendant.

Before I leave this issue, I have also taken note of the decision in **Misc. Cause No. 13 of 2013** by this same Court admitted and marked as **D.Exh.6** which ruled that **Dr. Joseph Kikambi Kyewalyanga was never legally removed as the Company Director**. This decision was never appealed or set aside by any subsequent proceedings; and as such, remains valid. It is also beefed up by **D. Exhibit No. 7**, the order vacating the caveats.

I however see no need to waste my time addressing the caveat admitted as **P. Exhibit No. 5/ D. Exhibit No. 7** which had been lodged by the Plaintiff Company since this was a subject of **Misc. Cause No. 13 of 2013** admitted as **D. Exhibit No.6** by this Honorable Court and an order to the effect was made by Dr. Flavian Zeija on 4<sup>th</sup> April 2017 admitted as **D.Exhibit No.7**.

I therefore do not have any reason to depart from this decision and to, there are no valid reasons why I should revisit it. Suffice it to stress that this order was never appealed against and in bringing the current suit, the purported current Directors of the Plaintiff Company cannot succeed in any way to invalidate the previous actions of the Plaintiff Company.

It is undisputed in this case that a Resolution ratifying the Sales Agreement contract between the plaintiff and the defendant dated 10<sup>th</sup> day of March, 2014 in respect to the suit land was admitted in Court as **DE 4**.

Turning to the relevance of ratification of the Resolution after the sale of the land between the Plaintiff Company and the defendant was concluded, it is my finding that this was only executed to reinforce a contract which was already valid between the parties and for the sole purpose of allowing the Defendant to transfer his land titles which had already been lawfully handed to him into his own names.

As such, I'm therefore in agreement with the submissions of learned counsel for the Defendant that the said Resolution has the net effect of binding the Plaintiff Company in the transaction which is the basis of this suit and there is no way can it be used to invalidate the sale itself by subsequent Directors of the Plaintiff Company.

Having found as I have above, as to whether the contract between the plaintiff and the defendant is enforceable, I agree with the submissions of learned counsel

for the Defendant; and only wish to add that after the Plaintiff Company or any of its witnesses /current Directors) does not deny receiving UGX. 178,000,000/= from the defendant as the full purchase price for the suit land in consideration for the purchase of the suit land. This makes the transaction between the two valid and binding on both sides.

Lastly, although learned counsel for the Plaintiff Company tried to import elements of Fraud in his Written Submissions, there is nowhere in the Plaintiff Company's pleadings and or evidence led on oath where they imputed Fraud on the part of the Defendant or any other person; I therefore cannot agree with him on these submissions since these are clearly submissions from the bar and can only be termed as reflecting a sinking man clinging onto a serpent.

My decision is that the Plaintiff Company cannot invoke Fraud at this stage, since the law is clear that a party can only succeed on its pleadings and evidence and not on extraneous matters imported during counsel's submissions from the bar.

Secondly, learned counsel for the Plaintiff Company should not lose focus of the legal provision to the effect that for a party to have a cause of action of Fraud, it must be strictly pleaded in the Complaint and the particulars of Fraud enumerated in the Complaint.

This is obviously lacking in the Complaint and Court cannot entertain it at this stage.

Thirdly, the precepts of justice in this case demand that Plaintiff Company cannot turn around and expect to benefit from both the land it already sold and the consideration amount UGX. 178,000,000/= already paid by the defendant as the purchase price for the suit land and undeniably received by them.

For all the above stated reasons, it is therefore my finding and decision that the sale of the suit land by the then Managing Director and two other directors was in line with the Constitution of the Company and remains valid and legal.

My final decision is that there is a breach of contract by the Plaintiff Company when it purported to rescind the sale it had entered into with the Defendant in this case.

Accordingly this issue is answered in favor of the Defendant.

### **Issue 3: Whether the suit land should be transferred in the names of the Defendant?**

It was submitted for the plaintiff that from the foregoing submissions under Issue 2, they state that the Plaintiff is the lawful proprietor of the suit lands. The

Defendant's purported Sale Agreements for the suit lands are tainted with fraud and illegality and cannot confer any interests or ownership of the same to the Defendant.

Furthermore, that under **O.8 rule 7 of the Civil Procedure Rules S.I. 71 -1** a defendant who has any right or claim is mandated to raise it by way of counterclaim against the claims of the Plaintiff, so as to enable the court to pronounce a final judgment in the same action, both on the original suit and on the cross-claim by way of counterclaim. They cited the case of **Okot Nelson Ojuk vs Nyeko Esanueri Civil Appeal No.058 of 2018)**

That in the same case, the court stated at **page 9** that; *"...I find that in absence of a counterclaim to the suit, the respondent was not entitled to any affirmative remedies. The award of damages was misconceived. The proper order should have been dismissing the suit for failure to prove the appellant's claim, with an award of costs..."*

They submitted that in this case, no counterclaim was ever filed by the Defendant. Therefore, the Defendant cannot benefit from any affirmative remedies including the declaration that the land be transferred in his event in the very unlikely case that this suit is resolved in his favor. That in the premises we pray that this issue is resolved in the negative.

**In reply**, it was submitted for the Defendant that all parties have freedom to contract with each other. Both the plaintiff and the defendant had the freedom to contract and they intended to be bound by the terms and condition set out in writing in the several sales agreements that they signed; therefore they intended to be bound by the terms of the said Sales Agreements. That in the case of **CTM Uganda Limited vs Italtile Limited High Court Commercial Division, Miscellaneous Application no: 806 of 2015** Justice David Wangutusi states that: *"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"*.

That 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."*

That 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 Tools Sales 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.”*

*That 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.”*

That in all the Sale Agreements entered into by both the Plaintiff and the Defendant they clearly specified the following:

- I. The buyer has at the signing of this Agreement taken possession on the land.
- II. The seller guarantees that there are no encumbrance on the said land, be it bonafide or lawful occupants
- III. The buyer shall meet the costs of processing and registering the Certificate of Title into his names
- IV. The seller has at the signing of this Agreement, handed over transfer forms signed in favour of the buyer.

That it is the Defendant's case that the Plaintiff intended the suit land to be transferred into the names of the defendant. Therefore this Honorable Court should direct the Commissioner for Land Registration should transfer the suit land into the names of the Defendant and that the Defendant be given vacant possession of the same. That in the instant case where the Plaintiff wants to run away from its obligations under the said Sales Agreements that they signed through their agents, then they are estopped from doing so. That in the case of **Pan African Insurance Company (u) Ltd vs International Air Transport Association**, High court Commercial Division civil suit no; 0667 of 2003, Justice Lameck .N. Mukasa stated that: *“The doctrine of estoppel by conduct prevents a party against whom it is set up from denying the truth of the matter. The principle is that where a party has by his declaration, act or omission intentionally caused the other to believe a thing to be true and to act upon such belief he cannot be*

*allowed to deny the truthfulness of that thing". See Section 114 of the Evidence Act. In Development Finance Co of Kenya Vs Wino Industries Ltd (1995 – 98) 2EA 65 at page 73 Justice Gachuhi of the Kenya Court of Appeal stated: “--This defence of estoppel and acquiesce was considered in the case of **Clison vs Hawley (1966)EA 41** at 51B and C where Harris J referred to the decision of the House of Lords in **Cairncross vs Lorimer (18600 3 LT 130 at 117** where the following conclusion was quoted:- “It is well settled that if a party has so acted that the fair inference to be drawn from his conduct is that he consents to a transaction to which he might quite properly have objected he cannot be heard to question the legality of the transaction as against persons who, on the faith of his conduct, have acted on the view that that transaction was legal.”*

The learned Justice further stated: - *“The citation also adds in case of **Day vs Lala** ---- that: “the principle applies even if the party whose conduct is in question was himself acting without full knowledge or in error.”*

That it's the Defendant's case that when he entered into a contract with the Plaintiff, he acted by paying the purchase price worth 178,000,000/= and the inference to be drawn from his conduct is that he consents to a transaction with the Plaintiff. Therefore the Plaintiff cannot be heard to question the legality of the transaction against the Defendant, who on the faith of his conduct, has acted on the view that that transaction was legal. That the Plaintiff is therefore stopped from running away from the said transaction and therefore must honor the terms of the land Sale Agreements transaction.

**In rejoinder**, the plaintiff submitted that as stated in earlier submissions, the Defendant having not filed a counterclaim is precluded from asserting for any affirmative remedies; per **O.8 rule 7 CPR S.I. 71 -1** and **Okot Nelson Ojuk v Nyeko Esanueri** cited in their earlier submissions; therefore, an order directing for the transfer of the titles to the defendant cannot be issued in the suit solely based on the Defendant's defense even in the unlikely event that the defense is successful.

Further, that the parties were bound by the Sale Agreements and that the Defendant is therefore estopped from running away from its obligations under the same. That the said Sale Agreements were tainted with fraud as the possessed a forged signature of **PW5**. The Plaintiff cannot be bound by these agreements as they are null and void. That in the same vein, the principles of estoppel are inapplicable as against the Plaintiff since the Company cannot be bound by Agreements that are null and void with no legal effect.

They therefore prayed that this issue be resolved in the negative for the reasons stated above.

**I have carefully analyzed the evidence and submissions of both sides on this issue.** Having found as I have in the first two issues in this case, I see no need to labor this point. It is also noted that the Defendant after paying the full purchase price as due consideration for the land he bought from the Plaintiff Company, I only wish to emphasize that both the Plaintiff Company and the defendant had the freedom to contract and they intended to be bound by the terms and condition set out in writing in the Sales Agreements that they signed. **DW2** in her evidence was clear that they also passed a Resolution allowing the defendant to transfer the titles to the suit land in his names.

The Transfer Forms bearing the names and photographs of the Directors of the Company were attached to **D. Exhibit No.9** and marked as **DID 5** together with copies of the **National Identify Cards of the same Directors** and that of the Defendant.

It is also noted that the defendant after paying the full purchase price as due consideration for the land he bought from the Plaintiff Company, went ahead and transferred titles to the suit lands into his own names. **D. Exhibit No. 5** on the other hand proves that the Defendant fulfilled his tax obligations when transferring his Certificates of title into his own names.

My final decision on this issue is that the Defendant is therefore declared to be a bonafide purchaser for value of all the lands comprised in the suit property; and I have not found any reason to stop him from transferring his land titles into his own names on the basis of the Transfer Forms signed in his favor since his title to the same cannot be impeached.

The Interim Order made earlier by this Court forbidding him to effect that transfer is hereby vacated by this decision.

#### **Issue 4: What are the remedies available to the Parties?**

In respect of this issue learned counsel for the Plaintiff reiterated their submissions above and state that the Plaintiff is the lawful proprietor of the suit land. The Defendant has no rights or interests in the same and pray for the remedies articulated in the Plaintiff's Complaint. That in their above submissions under Issue 2, it has been established that the Defendant's land Sale transaction was tainted in fraud and illegalities, accordingly the subsequent Sale is null and void with no legal effect. That an order directing the Defendant to handover the



Duplicate Certificates of Title to the land comprised in Buddu Block 147 Plots 15, 24 and 51 situate at Lutente to the Plaintiff Company.

That at **cross-examination** the Defendant readily admitted that he is currently in possession of the Duplicate Certificates of Title of the suit lands, therefore they prayed that the Defendant be ordered to handover the said Duplicate Certificates of Title to the Plaintiff as the lawful proprietor of the suit lands.

That a permanent injunction issue against the Defendant restraining him, his agents or any person or body claiming under or through him from entering, using or in any way dealing with the land comprised in Buddu Block 147 Plots 15, 24 and 51 situate at Lutente, Lukaya in Kalungu district.

Further, that at the hearing, the Plaintiff proved that it is the rightful owner of the suit land, the Defendant on several occasions has illegally attempted to take over the possession of the suit land but in vain.

Accordingly, they prayed that the Defendant and his agents and/or servants be restrained from further interference of the Plaintiff's use and enjoyment of the suit lands.

On General damages, they submitted that those are those which will be presumed natural or probable consequence of the wrong complained of, with the result that the Plaintiff is required only to assert that such damage has been suffered. That it is trite law that such consequences may include; loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. In the instant case, the Defendant's actions have deprived the Plaintiff quiet use and enjoyment of its land. That the Defendant is also illegally in custody of the Duplicate Certificates of title, this has deprived the Defendant full utilization of the suit lands as it pertains to access to capital and obtaining maximum value from the land. In light of the same and prayed that the Plaintiff be awarded general damages to the tune of UGX 100,000,000/= and interest thereon till payment in full.

Finally, they submitted that it is a rule of law that costs follow the event and a successful litigant must be compensated for his or her costs by the adverse party. In the instant case, the Plaintiff has made out its case against the Defendant who should now bear the costs of this suit.

**In reply**, it was submitted for the Defendant that the principles for awarding General damages were enunciated in the case of **Charles Harry Twagira and Sanctum Investments Limited vs DFCU Bank Limited High Court**

**Commercial Division, Civil Suit No: 188 of 2018.** That the Defendant contracted with the plaintiff company the first Agreement was on the 10<sup>th</sup> day of March, 2013 and the second Agreement was on the 22<sup>nd</sup> day of August, 2015 purchasing the whole of the suit land. That ever since up to date the Defendant has never taken possession of the said land, the said land is not yet transferred in the names of the Defendant, however the Plaintiff agents are in possession of the said land, they have rented it out to several individuals from whom they earn a lot of money.

That during Locus visit **PW1 Kikambi Emmanuel during cross- examination** stated as follows: “ *Medi Sonko I can’t remember the year he came to the land , he cultivates maize and passion fruits...Miti Canan grows passion fruits on the land. I received money from Sonko, he paid 700,000, and he sent it on my mobile money like six months ago. Canan paid 300,000/= about 4 months ago. They are about 18 other people working on the company land, they pay money when seasons are good.*”

That **PW3 Ntente Gyaviira** during locus visit **in cross examination** stated that: “*Some cultivate and we contribute herbicides. They are between 17 and 20 people we have a memorandum of understanding. I receive most of the money.*”

That the Plaintiff’s agents have been hiring out the land to outsiders and getting money ever since this matter began way back in 2017. That Kigongo William the defendant who is the rightful owner of the suit land is being deprived of the said monies; and on that note they prayed for damages worth 50,000,000/= (Fifty Million Shillings only) from the Plaintiff.

### **Interest**

That in the case of **Pan African Insurance Company (U) Ltd vs International Air Transport Assoc , High Court Commercial Court**, before Justice Lameck . N. Mukasa stated that:-

“*As regards interest the principle is that where a party is entitled to a liquidated amount or specific goods and has been deprived of them through the wrongful act of another party, he should be awarded interest from the date of filing the suit. Where however, damages have to be assessed by the court, the right to these damages does not arise until they are assessed. In such event, interest is only given from the date of judgment. See Sietco vs Noble Builders (U) Ltd SCCA no. 31 of 1995.*”

They prayed for interest on the general damages at the rate of 20% percent per annum from the date of judgment until payment in full. They also prayed for dismissal of the suit against the Plaintiff with costs; that it is trite Law that costs follow the event and a successful litigant must be compensated for his or her costs by the adverse party.

That in the instant case, the Defendant has made out his case against the Plaintiff who should now bear the costs of the suit.

**In rejoinder**, the Plaintiffs reiterated that the Plaintiff is entitled to the reliefs sought in the Plaint and our earlier submissions remain unchanged. That on the other hand, counsel submits that the Defendant is entitled to general damages. That on legal principle alone, this argument cannot be sustained.

That the Defendant having not filed a counter claim cannot seek affirmative orders from this court. They relied on **O.8 rule 7 CPR S.I. 71-1** and **Okot Nelson Ojuk v Nyeko Esanueri**, therefore, the Defendant's claim for general damages is misplaced and cannot be considered in this case.

That counsel further submits that the plaintiff's agents **PW2** and **PW3** have been hiring out the land since the inception of the case and for that reason, the Defendant is entitled to general damages. That as earlier stated, the Company had a valid Resolution dated 12<sup>th</sup> March, 2016 that was executed permitting the company to engage other third parties to till the land. That the Company further furnished Agreements signed prior to the suit illustrating that the Company had already engaged some third parties to till the land, there is no loss or damage that the Defendant can be said to have incurred from the Company utilizing its land as the rightful owner and in possession of the same before the filing of the suit.

They accordingly prayed that the remedies sought by the Defendant be disallowed and the Plaintiff be granted the remedies sought for in the Plaint for the reasons sated herein and our earlier submissions.

**In respect of this issue**, the Defendant prayed that while it has been established that the Defendant contracted with the Plaintiff Company the first Agreement was on the 10<sup>th</sup> day of March, 2013, the second Agreement was on the 22<sup>nd</sup> day of August, 2015 purchasing the whole of the suit land, there is uncontroverted evidence that ever since then, up to date the Defendant has never taken possession of the said land.

It is also clear that the Defendant attempted to transfer the suit land in his names, however the Plaintiff agents are in possession of the said land, and they

have rented it out to several individuals from whom they earn colossal sums of money. This state of affairs was confirmed during the *locus in quo* visit and indeed **PW1 Kikambi Emmanuel** and **PW3 Ntente Gyaviira** admitted during locus visit in **cross-examination** that they were renting the land to various persons who included Kenyans who were planting maize, sand miners amongst other cultivators.

The above state of affairs has been going on since 2017, while the Defendant was defending this case in court with impunity by the current directors of the Plaintiff Company.

The principles for awarding general damages are well settled. The settled position is that the award of general damages is in the discretion of court, and is always as the law will presume to be the natural and probable consequence of the defendant's act or omission. See: **James Fredrick Nsubuga v. Attorney General, H.C.C.S No. 13 of 1993; Erukan Kuwe v. Isaac Patrick Matovu & A'nor H.C.C.S. No. 177 of 2003 per Tuhaise J.**

Also, in the assessment of the quantum of damages, courts are mainly guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered. See: **Uganda Commercial Bank v. Kigozi [2002] 1 EA. 305.** A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong. See: **Charles Acire v. Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd. v. Umar Salim, S.C.C.A. No.17 of 1992.**

The party claiming general damages is expected to lead evidence to give an indication of what damages should be awarded on inquiry as the quantum. See: **Robert Cuossens v. Attorney General, S.C.C.A No. 8 of 1999; Ongom v. Attorney General. [1979] HCB 267.**

In the instant case, the Plaintiff Company has failed to satisfy this court that they suffered great inconvenience at the instance of the Defendant; instead, I have found that it is the Defendant who has gone through intolerable suffering at the hands of the current directors of the Plaintiff Company.

I therefore agree with learned counsel for the Defendant and find that they are entitled to general damages.

In my analysis, given the length of time the Plaintiff Company has been utilizing the suit lands to the detriment of the Defendant an amount of Shs. 200,000,000/= (Two Hundred Million Shillings Only) has been found sufficient in this case.

In addition to the general damages above, it has been proved that the Company through its current Directors and Managers have been in contempt of Court Orders referred to earlier in the Preliminary Points of Law. I have found concrete evidence to prove this and as such, the contemnors are directed to pay the Defendant Shs. 20,000,000/= (Twenty Million only) as damages in respect of Contempt of Court Orders.

Secondly, **section 27 (2) of the CPA** makes provision for interest on claims for monetary payment. In the instant case, the Defendant has succeeded in Defending this case against him, and given the time his money has been tied in this land, the Plaintiff Company on the other hand has been maximally utilizing the suit and the amount of depletion of the suit land observed by court during the locus in quo visit, I find no any compelling and or justifiable reason to deny the Defendant interest on the general damages awarded.

It is therefore my decision that interest on the general damages from the time of this judgment until full payment. A just and reasonable interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. In that regard I would consider a commercial rate of interest of 23% per annum to be just and fair. It shall be applicable to the general damages.

Further, it is now well established law that costs generally follow the event. See **Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC)** and **Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35**. Indeed, in the case of **Sutherland vs. Canada (Attorney General) 2008 BCCA 27** it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

Applying the decisions arrived at in the above cases, and for the reasons I have given in this judgment, the Defendant is awarded full costs in this case.

Lastly, the Commissioner for Land Registration Masaka Zonal Office is directed to effect the said transfer the suit land into the names of the defendant and that the defendant be given vacant possession of the same.

It is the final decision of this court is that judgment is entered for the Defendant against the Plaintiff Company with the following orders:-

1. The Plaintiff Company is found to have no cause of action against the Defendant and the hereby dismissed.
2. A declaration is hereby made that the Defendant acquired the suit lands comprised in Buddu Block 147 Plots 15, 24 & 51 situate at Lutente, Lukaya in Kalungu District measuring approximately 230 acres lawfully through binding contracts of sale; and is declared a bonafide purchaser for value.
3. The Defendant has proved that the Certificates of Title he was given by the then Directors of the Plaintiff Company in respect of Buddu Block 147 Plots 15, 24 & 51 situate at Lutente, Lukaya in Kalungu District are lawfully his; and it is hereby declared that he is free to transfer the same into his names.
4. The Interim Order by this Honourable Court forbidding him to do so is hereby vacated.
5. It is Ordered that Vacant Possession, Eviction and Permanent Injunction be issued against the Plaintiff Company, its current Managing Director and all Directors, Shareholders, their agents, servants and anybody claiming under any of them in this case in respect of the suit lands comprised in Buddu Block 147 Plots 15, 24 & 51 situate at Lutente, Lukaya in Kalungu District.
6. The Defendant being the successful party in this case is awarded General Damages of Ug. Shs. (Two Hundred Million Only (200,000,000/= Only).
7. The Defendant is also awarded Shs. 20,000,000/= (Twenty Million only) as damages in respect of Contempt of Court Orders.
8. The Defendant is are awarded interest at a commercial rate of 23% per annum applicable to the General Damages until payment in full.
9. The Defendant is also awarded full costs of the suit from the time of filing till Judgment.
10. A consequential order doth issue to the Commissioner Land Registration Masaka Zonal Area for the rectification of the title and transferring of the Certificate of Titles for land comprised in Buddu Block 147 Plots 15, 24 & 51 situate at Lutente, Lukaya in Kalungu District with immediate effect into the names of the Defendant.

I SO ORDER.

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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**23/08/2023**

This Judgment shall be delivered by the Honorable Deputy Registrar of the High Court Masaka who shall also explain the right of appeal against this Judgment to the Court of Appeal of Uganda.

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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**23/08/2023**