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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 468 OF 2006**

HABRE INTERNATIONAL (K) LTD..... PLAINTIFF

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VERSUS

HAJJI M. MAGID BAGALAALIWO DEFENDANT/COUNTER CLAIMANT

VERSUS

1.HABRRE INTERNATIONAL (K) LTD.::: 1ST DEFENDANT BY COUNTER CLAIM

2.HUSSEIN ABDALLAH 2ND DEFENDANT BY COUNTER CLAIM

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BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

J U G M E N T:

M/s.Habre International(K)Ltd.(*hereinafter referred to as the “plaintiff”/“1stcounterdefendant”*) filed this suit against Hajji M. Magid Bagalaaliwo(*hereinafter referred to as “defendant”/“counterclaimant”*) seeking a declaration that the plaintiff is the lawful owner of land comprised in LRV 2930 Folio 23 Kyadondo Block 244 Plot 3779 (*hereinafter referred to as the “suit land”*) or any subsequent description thereof, an order nullifying the transfer of the suit land to the defendant, and directing the Registrar of Titles to cancel the defendant’s name from the register and to replace it with that of the plaintiff as registered proprietor, general damages, a permanent injunction, and costs of the suit.

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Background:

The plaintiff was initially the registered proprietor of the suit land. The One Hussein Abdallah, a director to the plaintiff company entered into a transaction with defendant in respect of the suit land. He signed a transfer and subsequently on 12/01/1998 the defendant was registered as proprietor on the suit land. The lease for the suit land expired in 2000. The defendant applied to the controlling authority, the Kampala District Land Board (KDBL) which granted him a new lease of six years

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effective from 1/2/2000 and the defendant was registered on the title on 19/10/2001. That lease also expired and the defendant applied again and was issued with a new certificate of title by KDLB under LRV 3825 Folio 23 Plot 3779 Kyadondo Block 244 for 78 years effective from 1/2/2006.

35 Earlier on around 02/01/2002, the defendant evicted the plaintiff and distrained for rent. This was, however, challenged by Hussein Abdallah the director of the plaintiff. It is contended for the plaintiff that it was after the botched eviction that the plaintiff's directors learnt that the suit land had been transferred and registered in the names of the defendant and hence the plaintiff filed this suit.

In his defence the defendant denied all the plaintiff's allegations. He also filed a counterclaim
40 against the plaintiff /1st counterdefendant and Hussein Abdallah /2nd counterdefendant. The defendant sought in the counterclaim orders of vacant possession of the suit land, *mesne* profits, general and exemplary damages, interest, and costs of the counterclaim.

The defendant primarily averred that he is the registered owner of the suit land having bought the same from the plaintiff duly represented the 2nd counterdefendant its director. That under the terms
45 of the purchase, the counterdefendants were to give vacant possession within one month from 10/6/1998, but that they refused to do despite several requests. That sometime in 2002 the defendant evicted the plaintiff from the suit land and the 2nd counterdefendant in his own capacity and/or on behalf of the plaintiff wrote several letters claiming that he was in personal physical occupation having had his occupation re-instated by use of the Police force. That the counter defendants have
50 since continued being in illegal occupation on the suit land up to now.

The following issues were framed pursuant to the joint scheduling conference;

1. ***Whether the transfer and sale (if any) of the land to the defendant was valid.***
2. ***Whether the plaintiff has locus to institute this suit.***
3. ***What are the remedies available to the parties?***

55 The plaintiff/counterdefendants were represented by *M/s Alliance Advocates* while the defendant/counterclaimant was represented by *M/s. MSM Advocates*. Both counsel filed written submissions which I have taken into account in arriving at a decision in this judgment. I thank them for providing court with copies of authorities they cited. **Resolution of issues:**

Issue No.1: Whether the transfer and sale (if any) of the land to the defendant was valid.

60 This particular issue stems from the plaintiff’s allegation that the defendant got registered on the tile to the suit land through fraud. The law on fraud is settled. In the case of ***Fredrick J.K. Zaabwe vs. Orient Bank Ltd. & 2 O’rs SCCA No. 04 of 2006***, the Supreme Court adopted the definition of the term “fraud” in ***Black’s Law Dictionary (6 Edition)*** at page 660, and in the judgment of Katureebe JSC, at page 28 defined fraud as;

65 ***“An intentional perversion of truth for the purpose of inducing another in reliance upon it or to part with some valuable thing belonging to him or to surrender a legal right...A false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or any concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury....”***

70 Further, in ***Kampala Bottlers Ltd. vs. Damanico (U) Ltd., SCCA No.22 of 1992***, it was held that fraud in which it sought to impeach the title of a registered proprietor must be actual fraud. It must be attributable to the transferee who must have known or participated in the fraud or known of it and taken advantage of it. Wambuzi C.J as he then was went on to hold that;

“...fraud must be proved strictly the burden being heavier than a balance of probabilities generally applied in civil matters.”

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In the instant case the particulars of fraud as set out by the plaintiff are as follows;

- a) *Engaging in a transaction of purchase with one Hussein Abdallah knowing very well that Hussein Abdallah was not the registered proprietor of the said land.*
- 80 b) *Accepting and executing the transfer deed knowing very well that it was company property and that there was no resolution authorizing the sale of the same.*
- c) *Dealing with the company property without investigating the authority of the said Hussein Abdallah in the company.*
- d) *Accepting and executing the transfer deed knowing very well that it was not an authorized document /deed of the company.*
- 85 e) *Failing to find out whether the said Hussein Abdallah was authorized by the plaintiff to deal in the property.*
- f) *Treating the said property as security for a loan and thereafter affecting a transfer into his names.*

It is observed at the outset that the particulars of fraud alleged in items (a) to (e) specifically relate to
90 the 2nd counterdefendant, as the plaintiff's director, having dealt with the suit land devoid of the requisite authority to do so. It is thus necessary to examine how the alleged lack of authority of the 2nd counterdefendant could translate into fraud attributable to the defendant as the purchaser of the suit land.

The remaining allegations in item (e) relate to the defendant having used the suit land which was
95 given to him as security for a loan to instead effect a transfer into his name. This is primarily the singular the mainstay of the plaintiff's case of fraud against the defendant.

DW4 Hussein Abdallah the director of the plaintiff testified that in 1996, he had the title to the suit land. That he gave it to the defendant as a security for a friendly loan of Shs.20million, which was disbursed to him in installments. That later in 2002, the defendant attempted to evict the plaintiff

100 from the suit land, but the 2nd counterdefendant re – occupied it with help of the Police enforcing a court order from Nakawa Chief Magistrate’s Court. That it was after that botched eviction that he got to learn that the suit land had been transferred and registered in the name of the defendant. DW4 totally denied ever having signed the transfer to the defendant. He stated that being merely a director among other directors he had no authority to sign a transfer. That the defendant, therefore, obtained
105 registration through fraud.

For his part the defendant denied that the transaction was a loan. He stated that it was an outright sale in which he purchased the suit land and fully paid the consideration to DW4. He adduced in evidence *Exhibits DE₁A - DE₁P* as proof that he paid the full consideration for purchase of the suit land. The several exhibits are cheque counterfoils with inscriptions on them showing payments in
110 respect of purchase the suit land, or simply payments to DW4. Also adduced in evidence was a Greenland Bank Cheque with a counterfoil indicating that the amount thereon was in payment to the plaintiff company “...being further deposit on the plot at Muyenga water reserve”. The defendant also adduced in evidence *Exhibit DE₁O* - a transfer form together with consent to transfer form signed by DW4 in his capacity as a director of the plaintiff. The forms also bear the stamp of *Habre
115 International Trading Co.1993 Ltd.* It is indicated in the transfer form that Shs.70 million was paid as consideration of for the suit land the subject of transfer to the defendant.

Counsel for the plaintiff in his submissions raised issues with *Exhibit DE₁ (a)* and contended that the defendant himself wrote on the counterfoil words that;

120 ***“Hussein Abdallah loan to be deducted from the purchase of plot at Muyenga Ushs.1.100,000/= (Uganda Shillings One Million One Hundred Thousand Only).”***

Counsel raised similar issue with *Exhibit DE 1(d)* that the defendant himself wrote it that;

“Hussein Abdallah loan in connection with the purchase of land in Muyenga, Ushs. 1,580,000/= (Uganda Shillings One Million Five Hundred Eighty Thousand Only).”

Counsel singled out the use of the word “loan” and argued that these exhibits could not be evidence
125 of the defendant having paid consideration for the suit land in a sale but a loan transaction.

In submitting as such, it is apparently clear that counsel for the plaintiff did not consider the
defendant’s evidence especially clarifying why he used the word “loan,” on the particular
counterfoils in issue. He stated that at that time the plaintiff’s certificate of title for the suit land was
still under process. That he had indicated the amount as a loan to DW4 until the title was secured. In
130 my view, that explanation makes logical sense. Even going by the other statements on the
counterfoils in issue, it is evident that they do not convey the sense of the transaction having been a
loan but a sale. They all invariably refer to the purchase of land at Muyenga. This makes it
sufficiently clear that the transaction was purely a sale between the plaintiff and defendant.

It is also important to note that counterfoil *Exhibit DE₁A* is dated 24/05/96 while that in *Exhibit DE₁*
135 *(d)* is dated 08/08/96. It is on these two that counsel for the 2nd counterdefendant premised his
argument that the transaction was a loan and not a sale. However, that proposition cannot be
sustained in light of the copies of the cheques which DW4 adduced in court as *Exhibits CDE₁(a) -*
(d). They are variously dated 23/04/98, 16/05/98, 18/05/98, and 10/03/98 respectively. Their
corresponding counterfoils which are part of *Exhibit DE₁(a)-(n)* also bear the respective word
140 inscriptions as follows;

***“Hussein Abdallah for further payments of purchase of land in Tank Hill Muyenga
Shs.3,800,000/=”; “Hussein Abdallah Shs.300,000/= for Land at Muyenga Tank Hill”;
“Hussein Abdallah for further payment of purchase of land at Tank Hill Muyenga”.***

DW4 stated that he got a cash loan in 1996 from the defendant and that they never signed anywhere.
145 He attempted to deny any knowledge at all of the cheques *Exhibits CDE 1(a) - (d)*. It was not until
when his own lawyer pressed him hard in re-examination to clarify on the cheques *Exhibits CDE*
1(a) - (d) that DW4 relented and conceded that they were part of the money given to him by the
defendant, but still insisted that it was a loan. DW4 however could not reconcile this with his earlier
testimony that all the cheques he presented were issued in 1998 and not 1996; the latter being the
150 year he alleges to have received a friendly loan from the defendant.

I find that the word “loan” on the counterfoils in 1996 was satisfactorily clarified by the defendant.
Indeed after the title for the suit land was issued in 1997, the word “loan” was never used again. In
addition, there is consistency in all the payments on the cheque counterfoils which clearly show that
they were specifically payments against the suit land at Muyenga. This is further proof that the
155 transaction was a sale and not a loan.

An issue was raised by counsel for the 2nd counterdefendant as to why some payments were made in
the names of DW4 and not the plaintiff if at all it was a sale and not a loan. Indeed the defendant
testified that some of the payments were made in the names of “Hussein Abdallah”. He however
clarified that this was done on Hussein Abdallah’s instructions as MD of the plaintiff. In my view,
160 this evidence is sufficient answer to the issue. Besides, save for the only two occasions, all of the
other payments in *Exhibits DE 1(a) - (n)* were made in the name of the plaintiff company.

The evidence of DW3 Gertrude Kakaire further dispels any suggestion that the transaction as a loan.
She stated that she was employed by the plaintiff as manager/cashier from 1983 to 2005. That in that
capacity she knew about the sale of the suit land. She stated that she used operate bank accounts of
165 the plaintiff company and also pick several cheques from the defendant in the names of the plaintiff
against payment for the suit land on instruction of her boss DW4, and bank them on the plaintiff’s

bank accounts. In particular, DW3 acknowledged having received cheques *Exhibit DE₁(f), (g) and (h)* dated 13/02/97, 25/02/97 and 26/02/97 respectively, whose corresponding counter foils bear the inscriptions;

170 ***“Habre International Trading Co. Ltd Shs.5,000,000/=”; “Hawa Kakaire on behalf of Habre International, land at Muyenga Shs. 1,000,000/=.”***

The remaining counterfoils also part of *Exhibits DE₁(a) and DE₁(n)* are respectively inscribed with words;

175 ***“19/01/98 Habre International Shs. 1,500,000/= payment towards Muyenga Tank Hill Plot.”; “10th June 1998 Habre International Ltd Shs.15, 640,000/= final payment of purchase price of land at Muyenga Tank Hill 244 Pl 3779.”***

The defendant made the last payment on 10/06/1998, and that was the time when he received the certificate of title from the plaintiff after it had been duly transferred into his name.

180 As to how DW4 kept in occupation of the suit land, it is in the defendant’s evidence that DW4 requested to be given time to enable his children to get holidays before handing over complete vacant possession. The defendant allowed him but thereafter DW4 turned around and refused to vacate. This particular evidence was corroborated by DW3 Kakaire Gertrude the manager/ cashier of the plaintiff at the time.

185 In order to prove the allegations of fraud against the defendant, DW4 denied having ever signed *Exhibit DE₁O* - the transfer form in favour of the defendant. He claimed that the signature attributed to him on the transfer form is not his and that it was forged. He also stated that he is illiterate and does not know English. However, under cross examination, he conceded that as a business man, he used to obtain loans for the plaintiff company and that he would sign loan agreements. He confirmed that he very well knows how loan agreements look like. Given this evidence it would be futile for

190 DW4 to attempt to deny having signed the transfer or claim that when he was signing the transfer form he thought that he was signing a loan agreement. Being conversant with loan agreements, he could not have been under any illusion or mistake that he was not signing a transfer form but loan agreement.

The claim of DW4 being illiterate was further dispelled by the testimony of DW3 Kakaire Gertrude. 195 She confirmed that DW4 used to personally conduct several transactions in the Land Office. That sometimes he would even send her to follow up, and that DW4 very well knew of the processes in the Land Office. That on one such occasion DW4 sent her to make a follow up on the progress of the registration of the defendant on the particular title of the suit land in issue because they needed money which the defendant has stopped paying until the process of registration was completed.

200 Another claim raised by DW4 in the same regard was that when he handed over the certificate of title for the suit land, the defendant took him to a lawyer where DW4 was made to sign blank documents which he thought were for a loan. A look at the transfer; the supposedly blank document he signed, however shows that it was duly signed and sealed with the company seal. DW4 confirmed that he is actually the one who has custody of the company seal. A closer look at the transfer form 205 shows that it bears the company seal and stamp. These observations, certainly, render the allegations of DW4 quite unsustainable. They are far-fetched and just an afterthought.

Another issue that came up in the evidence of PW1 and DW4 was that it was after the distress for rent and eviction by the defendant in 2002 that the directors of the plaintiff learnt that DW4 had obtained a loan of Shs.20 million and pledged the certificate of title to the suit land as security. DW4 210 particularly stated that he first leant of the transfer into the defendant's name in 2002 when the defendant evicted the plaintiff from the suit land.

After evaluating the evidence on that point, I find that there nothing to support that particular claim by PW1 and DW4. On the contrary, there is ample evidence in *Exhibit D.21*, the ruling of the Supreme Court in *Civil Application No. 14 of 1999, Francis Bantariza vs. Habre International Ltd.*,
215 which was tendered in court by the defendant. It clearly shows that by 1999, the suit land had already been transferred into the names of the defendant. It is thus untrue for DW4 and PW1 to claim that they first learnt of the transfer in 2002 when defendant evicted the plaintiff from the suit land.

It is called for to comment on the meeting of the plaintiff that was attended by one Haji Doka, DW4,
220 Yusuf Ali, and the defendant. Counsel for the 1st counterdefendant referred to the same and seemed to suggest that it was at that meeting that the directors learnt of the said transfer. As earlier stated this is far from the truth. According to the evidence of DW3 Gertrude Kakaire and the defendant the meeting was mediation between the defendant and the plaintiff. It was precipitated by DW4 having changed the purchase price from what was initially agreed and instead wanted Shs.80 million. DW3
225 Gertrude Kakaire testified that Haji Doka, who was a very good friend of DW4, simply acted as chairman of the mediation. DW3 further stated that she used to come in and out of the meeting, and that she was seated in the immediate next office and could hear all the deliberations. Further, that DW4 her boss called her in and even introduced to her the defendant as the person one who was buying the Muyenga land. It is therefore clear that the purpose of the meeting was different from
230 what counsel for the plaintiff submitted it to be.

I wish to note that throughout his testimony, DW4 proved to be a very untruthful and unreliable witness. This had profound bearing on his evidence and indeed on the entire case of the plaintiff since he is the main witness of the plaintiff. Several instances demonstrate this. Firstly, he claimed to have had a certificate of title for the suit land in 1996, *Exhibit PE1*, and that he gave it to the

235 defendant as security for the loan. A look at *Exhibit PE1*, however, shows that it was issued on 14/11/1997 and the plaintiff was registered on the title on 12/11/1997. *Exhibit DE 12*, a letter written on 18/6/1996 by *M/s. Kayondo & Co. Advocates* on behalf of the plaintiff also shows that during that time there was no certificate of title in existence for the suit land.

Secondly, DW4 tried to deny that he was ever the MD of the plaintiff. However, in an earlier
240 affidavit he deponed in support of *HCMA No. 1091* arising from this suit, he actually stated that he was the MD of the plaintiff company. It follows that he was either lying in the affidavit or to this court in his evidence. In either case, it means he was lying on oath and that renders his evidence highly unreliable of diminished evidential value.

Thirdly, DW4 this time together with PW1, vainly attempted to deny that Mr. Kayondo SC (RIP)
245 was the plaintiff's lawyer and managing agent. It took a lot of pressure in cross examination that DW4 admitted that Kayondo SC was the plaintiff's lawyer, and that he also represented the plaintiff in *HCCS No. 499 of 1992, Francis Bantariza vs. Habre International Trading Co. Ltd. - Exhibit DE19*. In fact, that case was in respect of the same suit land in the instant case. *Exhibit D20*; a notice of appeal in *Civil Appeal No. 10 of 1997 Francis Bantariza vs. Habre International Trading Co. Ltd.*,
250 was also adduced in evidence as was *Exhibit D21*, the ruling in *SCC Appln. No. 14 of 1999, Francis Bantariza vs. Habre International Trading Co. Ltd.* Similarly tendered in evidence is *Exhibit D12*; a letter dated 18/6/1996 also written by *M/s. Kayondo & Co. Advocates* to Uganda Land Commission of behalf of the plaintiff following up on the suit land. In addition, *Exhibit P1* - the lease that was issued to the plaintiff was witnessed by Mr. Kayondo SC for the plaintiff. The transfer
255 form - *Exhibit P3A*, was also signed by Kayondo SC as "managing agent" and he also witnessed for the plaintiff. All these exhibits show that *M/s. Kayondo & Co. Advocates* were the lawyers for the

plaintiff. Therefore, the denials by DW4 of these very obvious documented facts in evidence were just an attempt by DW4 to conceal the truth. They were in vain.

260 Fourthly, DW4 stated that he used to communicate with Mr. Kayondo SC in Swahili who would in turn explain to him about any company proceedings in also in Swahili. DW4 stated that he trusted Mr. Kayondo SC and that if Mr. Kayondo SC told him to sign documents, DW4 would sign them. DW4 then attempted to deny that Mr. Kayondo SC was the plaintiff's lawyer. This scenario where in one breath DW4 denied facts and in the same breath admitted them portrayed him as a very unreliable and untruthful witness.

265 For his part, the defendant, DW1, testified that in December, 1997 after he had paid a substantial amount of the agreed consideration, he mutually agreed with DW4 the MD of the plaintiff and Mr. Kayondo S.C of *M/s Kayondo & Co. Advocates* the plaintiff's managing agent, that the suit land be transferred into the name of the defendant. The certificate of title and vacant possession would follow upon full payment of the outstanding balance. That pursuant to that undertaking, DW4
270 actually personally handed over to him the certificate of title upon full payment. That DW4 asked the defendant to pay Shs. 2 million to *M/s Kayondo & Co. Advocates* to cover the transfer fees, stamp duty, and all incidental costs, which he paid by cheque. As proof the defendant adduced in evidence a counter foil *Exhibit DE2* which shows that the payment was for;

“The transfer of land at Muyenga purchased from Habre International.”

275 The defendant stated that by *M/s Kayondo & Co. Advocates* effecting the transfer of the suit land into his name, they rendered him a service as it was his obligation as purchaser to transfer the land into his name. The defendant vehemently denied that *M/s Kayondo & Co. Advocates* were his lawyers before, and stated that it was DW4 who took the defendant to Mr. Kayondo SC since he was handling the suit property for the plaintiff.

280 The testimony of DW1 reinforces the earlier finding of this court that Mr. Kayondo S.C was the plaintiff's lawyer in respect of the suit land, during the sale and execution of the sale. Therefore, if there was any act of fraud committed by Kayondo SC in his role as a lawyer for the plaintiff, it cannot be reasonably and/or legally attributable to the defendant. It fails the test in ***Kampala Bottlers Ltd. vs. Damanico (U) Ltd***, case (supra).

285 Counsel for the plaintiff argued that the transfer form was an illegality. That it shows that defendant had on or by 3/12/ 1997 paid Shs.70 million yet the defendant had actually not paid that amount. Further that if the evidence of the defendant is to be believed, by December 1997 he had only paid Shs.18, 180,000/=.

I believe counsel misconstrued the defendant's evidence. DW1 simply stated that by 13/12/1997 he
290 had paid a substantial amount of the agreed Shs.70 million. They agreed with the plaintiff represented by DW4 and Mr.Kayondo S.C that the transfer would be effected into the defendant's names and the certificate of title and vacant possession handed over upon completion of payment of the consideration. The payments shown on the counterfoils are just some of the payments the defendant could obtain, and still show that the last payment was made the one on 10/6/ 1998. That is
295 when DW4 personally handed over the certificate of title to the defendant. One cannot read any illegality in the transfer form on that account.

It needs to be recognized that a transfer form is a standard form under the Schedules to the Registration of Titles Act, Cap 230. A cursory look at the form will show that it has no provision for part payment where parties have agreed. In the instant case the parties agreed for a consideration
300 Shs.70million which was fully paid prior to the defendant receiving the certificate of title from DW4. The same amount of the consideration is reflected in the transfer form and there is absolutely nothing illegal about that.

An issue was raised in submissions of counsel for the plaintiff that DW4 being illiterate, there was need for certification by the attesting witness under the Illiterates Protection Act, of the transactions
305 he entered into with the defendant over the suit land. Counsel seemed to imply that the transactions in respect of the suit land are therefore illegal and /or null and void on account of DW4 being illiterate.

At the risk of repetition, it has been pointed out that Mr.Kayondo SC was the plaintiff's lawyer. DW4 in his evidence confirmed that fact. DW4 also stated that he would communicate in Swahili
310 with the Mr.Kayondo SC who would explain to him all proceedings in Swahili. DW4 stated that he trusted Mr. Kayondo SC and whenever he would ask him to sign a document DW4 would sign it. Indeed DW4 signed several other documents which are in English and are now on court record. None of them bears any certification. He also admitted that he knows how loan agreements look like. That being a businessman he even dealt in the importation of goods and dealt with company
315 documents. Therefore, the defence of being an illiterate would not be available to him in the circumstances. He cannot choose to use it selectively to specific transactions and not to the others.

Counsel for the plaintiff also raised the issue that the transfer form was not properly and legally executed and attested to. He opined that because of lack of attestation by legally competent witnesses, the transfer was not properly and legally executed and attested to.

320 I wish to observe that this issue is a deviation from the plaintiff's pleadings as it never featured anywhere. That notwithstanding, section 132 RTA (supra) provides for the company affixing its seal in lieu of signature. The rationale of this was restated in the case of ***Fredrick J.K Zaabwe vs. Orient Bank & 5 Others SCCA No. 4 of 2006*** where it was held, inter alia, that;

325 ***“...it is to be noted that the company had opted for signatures instead of the company seal as would have been permitted under Section 132 of the RTA.”***

In the instant case, the transfer shows that the plaintiff used both its seal and rubber stamp. That was quite sufficient for the company to pass interest in the suit land to the defendant under section 132 RTA (supra).

Still on the issue of attestation, section 147 RTA(supra) provides for who can attest a transfer form. 330 Affixing a seal under section 132 (1) RTA (supra) does not require witnessing by the directors but a special set of witnesses peculiar to RTA under section147 (supra). As it is evident on *Exhibit PE 3(a)* the transfer form, the company seal was attested to by Mr. Kayondo SC, who was competent under the RTA to attest transfer forms. The testimony of PW2 Yusuf Kakerewe a Senior Registrar of Titles is further instructive on this point. He stated that once a transfer by a company has been sealed 335 and attested to as required under the relevant provision of the RTA, it is duly executed.

A point was also raised by counsel for the plaintiff that the attesting witness never did so in Latin character as required by the RTA. Counsel opined that this was fatal to the transfer and hence the entire transaction.

I am unable to agree with that proposition. It is evident from *Exhibit PE 3(a)* that the name of the 340 attesting witness H.M.B. KAYONDO SC. ADVOCATES is typed in Roman character. Apart from that, the attesting witness also put his signature. In the case of *Alice Okiror & Anor vs. Global Capital Save 2004 Ltd & Anor, HCCS No. 149 of 2010*, Obura J (as she then was) while distinguishing the case of *Fredrick J.K Zaabwe vs. Orient Bank & 5 O’rs SCCA No.4 of 2006* stated that;

345 ***“...The signature of the borrower in this case was accompanied by her full name which is in legible form.It is already in Latin character so there is no need to transliterate it. I do not therefore find any merit in counsel for the plaintiff’s submission that the signatures should have been in Latin character.....”***

In the present case, the name of H.M.B Kayondo S.C in Latin character as the attesting witness is
350 accompanied by his signature. There was no further requirement for its translation.

Another point was raised by counsel for the 1st counter defendant/plaintiff that the company seal
which was used was for *Habre International Trading Co. Ltd* and the stamp was for *Habre
International Trading Co. 1993 Ltd*, and the two were no longer in existence and that the appropriate
355 seal as at 3/10/1997 the date of execution of the transfer would have read “*Habre International
Kampala Ltd.*”

Firstly, this did not feature in the evidence of the parties. It only came up in counsel’s submissions
and it amounts to giving evidence from the bar; which is untenable. Secondly, it was never the case
of the plaintiff that a wrong seal was used. Suffice it to note that the type of seal used and the
writings thereon are matters within the domain of the internal management of the company to which
360 the defendant was not party. If the company chose to use an improper seal, it cannot turn around and
seek to benefit from its wrong actions by claiming it never did a proper transfer on account of using
a seal that was not in use at the time.

A point was raised again by counsel for the 1st counterdefendant/ plaintiff in reference to Article 46
of *Exhibit P7*. Counsel submitted that Mr.Kayondo SC does not appear in the company book as
365 managing agent. As earlier noted, this among other things, is also an internal matter the company.
The reading of the Article and Memorandum of Association shows that the MD is vested with very
wide powers to choose who can sign for the company. Article 46 which counsel specifically referred
to states in the relevant part that;

“... or by some other person appointed by the Directors for the purpose.”

370 Within that context, therefore, Kayondo SC could sign being that other person appointed by the
directors for that purpose.

The final aspect on this issue related to whether DW4 acted with authority while transferring the suit land. The defendant stated that he entered into transaction with the plaintiff in respect to the suit land through Hussein Abdallah, the director. A transfer was signed by the said director and subsequently
375 the defendant was registered as proprietor of the suit land 12/1/1998.

DW4 testifying for the plaintiff adduced in evidence three copies of Articles and Memorandum of Association. The first one *Exhibit P6*, is dated 14/10/1983 for *Habre International Trading Co. Ltd.* The second one *Exhibit D11* is dated 6/5/1994 for *Habre International Trading (1993)*. The third one *Exhibit P7* is for *Habre International Kampala Ltd.*

380 Under Articles 75, 89 and 91 of *Exhibit P6* the MD has power to transact all business on behalf of the company. The same applies to Article 95 and 96 of *Exhibit D11* and Article 43 of *Exhibit P7*. Apart from the foregoing, in *HCMA No. 1091 of 2012* arising from this suit, in paragraph 7 of the Affidavit in support, DW4 Hussein Abdallah swore that he is the MD and a shareholder of the plaintiff. He also signed *Exhibit D10*; a resolution of *Habre International Trading Co. Ltd* dated
385 6/5/94 as the MD/Chairman, and *Exhibit D18* also as MD/Chairman. Therefore it is evident that DW4 was clothed with the necessary authority to transact on behalf of and for the company and the company was bound by his actions. This finding is fortified by the decision in ***Royal British Bank vs. Turquand (1856) 6 E & 27*** which established the principle that;

390 ***“A person dealing with a company is entitled to assume in the absence of facts putting him to inquiry, that there has been due compliance with all matters of internal management and procedures required by the articles.”***

Also in the case of ***Hely-Hutchmson vs.. Brayhead Ltd. (1968) CL.D & C.O.A)***, which was also cited by counsel for the defendant, a one Richards was chairman of directors of the defendant company and its chief executive or *de facto* MD. He often committed the company to contracts on

395 his own initiative and only disclosed the matter to the Board subsequently. The Board acquiesced in this practice. When sued on these undertakings, the company alleged that Richards had no authority to make contract in question. Roskill J. held that Richards had apparent authority to bind his company. The Court of Appeal affirmed the decision but on the ground that Richards in fact had actual and not apparent authority.

400 Similarly in the instant case, I find that the transfer and sale of the property by DW4 to the defendant were valid. *Issue No.1* is answered in the affirmative.

Issue No.2: Whether the plaintiff has the locus to institute the suit

This issue essentially arose owing to the change in names of the plaintiff company. Counsel for the plaintiff submitted that *Habre International Trading Co. Ltd* ceased to have *locus* to transact
405 anything in those names by 16/12/1993 owing to change of name. He argued that by 3/12/1997 when the transfer was signed, the company which had the *locus* to sue was therefore *Habre International (Kampala) Ltd*.

As earlier found *Exhibit P1* - the certificate of title, shows that the first registered proprietor was “*M/s Habre International Trading Company Ltd*” having been registered on the on 12/11/97 and on
410 the lease agreement with ULC, the name which was used is *Habre International Trading Co. Ltd*. Since *Habre International (Kampala) Ltd* was not in existence at the time when *Habre International Trading Co. Ltd* got the lease over the suit land and transacted with the defendant, then it would equally have no *locus* to claim any rights in the suit land which it never had or which it had never been allocated. *Issue No.2* is answered in the affirmative.

415 ***Issue No.3: What are the remedies are available to the parties?***

Having answered *Issue 1 and 2* in the affirmative, the plaintiff is not entitled to any remedies it prayed, and its suit has no merit and it dismissed with costs. It is also noted that the plaintiff lodged a caveat on the suit land. It is ordered that it be immediately vacated.

The counterclaimant prayed for the award of *mesne* profits. Section 2(m) of the Civil Procedure Act
420 (Cap. 71) defines *mesne* profits as;

“Those profits which the person in wrongful possession of the property actually received or might with ordinary diligence have received from it together with interest on those profits, but shall not include profits due to improvements made by the person in wrongful possession.”

425 In the case of ***George Kasedde Mukasa vs. Emmanuel Wambedde & 4 Others HCCS No. 459 of 1998***, it was held that wrongful possession of the defendant is the very essence of a claim for *mesne* profits.

The counterclaimant prayed for profits at a rate of US\$1,000 per month from January 2000 until vacant possession of the premises. In his testimony, he stated that he had plans for constructing a
430 house on the suit property to be completed in December, 1999, which would fetch rent of US\$ 1,000 per month from January, 2000, which was halted by the counterdefendants’ occupation of the suit property.

In their pleadings and evidence the counterdefendants acknowledged being in possession of the suit land. They have therefore denied the counterclaimant of the proceeds he would have earned from the
435 property on the suit land. Therefore, since the counterclaimant led un rebutted evidence that he would have earned US\$ 1000 per month from developments on the suit land, the same amount is awarded as *mesne* profits from January, 2000 until vacant possession is delivered up to him by the

counterdefendants. An order for vacant possession is, therefore, issued against the counterdefendants in that regard.

440 The counterclaimant prayed for general and exemplary damages. At the outset I find that no case for exemplary damages has been made out by the counterclaimant. The circumstances do not exist for it in this case.

Regarding general damages, the position of the law in *James Fredrick Nsubuga vs. Attorney General, HCCS No. 13 of 1993*, is that they are in the discretion of court, and is always as the law
445 will presume to be the natural and probable consequence of the defendant's act or omission. In the case *Uganda Revenue Authority vs. Wanume David Kitamirike CACA No. 43 of 2010*, the Court of Appeal also held that;

*“.....general damages mean compensation in money terms through a process of the law for the loss of injury sustained by the plaintiff at the instance of the defendant....intended to restore the
450 wronged party into the position he would have been in if there had been no breach of contract.”*

Further, the Supreme Court in *Robert Coussens vs. Attorney General, SCCA No. 08 of 1999*, held that;

“The object of the award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered....”

455 In *Kibimba Rice Ltd. vs. Umar Salim, SCCA No.17 of 1992*, it was also held that 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 in had she or he not suffered the wrong. Also in the case of *Takiya Kashwahiri & A'nor v. Kajungu Denis, CACA No. 85 of 2011*, it was held that general damages should be compensatory in nature in that they should restore some satisfaction, as far as money can do it, to the injured
460 plaintiff.

In his evidence, the counterclaimant stated that he has been greatly inconvenienced, tormented by the counterdefendants' unlawful acts, including the use of Police to evict his guards from the premises and the counterdefendants' refusal to give vacant possession for over 18 years now. Counsel for the counterclaimant proposed Shs.80 million as general and exemplary damages. Based
465 on the particular circumstances of this case this court is, however, inclined to award Shs.50 million as general damages.

The counterclaimant prayed for interest on the amount of *mesne* profits and general damages at commercial rate from the date of judgment until payment in full. Section 26(2) of the Civil Procedure Act (supra) gives court discretion to grant interest on a decree for payment of money.
470 More importantly, section 2(m) of the Civil Procedure Act (supra) defines *mesne* profits to include interest thereon.

Considering the particular circumstances of this case, this court awards interest at a rate of 8% per annum only on the amount of general damages from the date of this judgment till payment in full. The *mesne* profits attract no interest as they were awarded in the standard US\$ dollar currency
475 against which other currencies are ordinarily measured and will continue to accrue until vacant possession is delivered up to the counterclaimant.

The counterclaimant prayed for costs of the suit. Section 27(2) of the Civil Procedure Act (supra) provides that the award of costs is in the discretion of court and costs of any action shall follow the event unless for good reasons court directs otherwise. In *Francis Butagira vs. Deborah Mukasa*
480 *SCCA No.6 of 1989*, it was further held that a successful party should not be deprived of costs except for good reasons. The counterclaimant/defendant has succeeded in his claim against the counterdefendants. He is awarded costs of the suit. In summary, it is ordered as follows;

1. *The plaintiff's suit is dismissed with costs to the defendant.*
2. *The counterclaim is allowed with costs to the counterclaimant.*
- 485 3. *The counterclaimant is awarded mesne profits of US\$ 1000 per month from 2000 until vacant possession is delivered up by the counterdefendants.*
4. *The counterclaimant is awarded general damages of Shs.50 million which shall attract interest at a rate of 8% per annum from the date of this judgment until payment in full.*
5. *The Commissioner for Land Registration is directed to vacate any caveats on the suit land.*

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BASHAIJA K. ANDREW
JUDGE
495 **15/02/2017.**

Mr. Brian Othieno Counsel for the plaintiff/counterdefendants present.

500 Mr. Musiige Ivan holding brief for Mr. Ali Sebagala Counsel for the Defendant/counterclaimant present.

All parties absent.

505 Mr. Godfrey Tumwiklirize Court Clerk present.

Court: Judgment read in open Court.

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BASHAIJA K. ANDREW
JUDGE
15/02/2017.