THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, CJ; TSEKOOKO, MULENGA, KANYEIHAMBA AND KATUREEBE, JJ.S.C.)

CIVIL APPEAL No. 10 OF 2006

BETWEEN

1. MUMTAZ KASSAM
2. MOSHIN KASSAM *(AS ADMINISTRATOR OF THE ESTATE OF THE LATE SHERALI KASSAM)* **:::::: APPELLANTS**

VERSUS

1. EBRAHIM KASSAM
2. AKILA KASSAM **:::::::::::::::::::::::::::::: RESPONDENTS**

[Appeal from a decision of the Court of Appeal at Kampala (Mpagi-Bahigeine, Twinomujuni and Kavuma, JJ.A.) dated 14th March, 2006, in Civil Appeal No. 48 of 2002]

JUDGMENT OF TSEKOOKO, JSC.

This appeal is against the decision of the Court of Appeal reversing a judgment of the High Court (Byamugisha, J.). The judge had

dismissed a suit filed by the present respondents. She upheld a counter-claim by the present appellants.

For the record, I should point out that by consent of counsel for both sides, the name of the original second respondent was on 26/6/2007 replaced with that of Akila Kassam. who is now the 2nd respondent.

FACT AND BACKGROUND

The facts of this case as found by the two courts below are interesting. The parties to these proceedings are Ugandans of Asian origin and are close blood relatives, their respective fathers being brothers and sons of one KASSAM, a common patriarch. Like many other Ugandan Asians, these were expelled from Uganda in 1972 by the military Government of Idd Amin. Indeed other Asians, both Ugandan and non Ugandans, left on their own out of fear. Those who left abandoned businesses and real properties in Uganda. The properties in this case include plots No. 3, DeWinton Road, and No. 51, Kampala Road. (suit properties) The 1st respondent at the time of the expulsion was the sole registered proprietor of plot 3, De Winton Road, and held a 50% share in plot 51, Kampala Road. The second respondent and the late father of the first appellant each owned 25% of the same property.

In 1982, the Uganda Parliament enacted the Expropriated Properties Act, 1982, whose objectives were, inter alia, to enable former owners to repossess their abandoned properties. Subsequently by powers of attorney dated 20th June, 1990 the owners of the two suit properties appointed the first appellant their Attorney to repossess and manage those properties. She repossessed the properties. In the course of her management of the properties, a dispute arose between her and the 1st respondent. The respondents later claimed that she failed to account for funds (rents) collected from the properties.

It appears that on 31st May, 1994, the powers of attorney granted to the 1st appellant were revoked. On 24th and 28th November, 1994, the 1st respondent advertised notice of revocation in the New Vision newspaper which prompted the 1st appellant to react in an article in the same paper denying service on her of notice of the revocation. She further contended that the first respondent's notice was malicious and designed to, *inter alia*, cause confusion among tenants.

Early in 1995, the respondents instituted a suit against the first appellant claiming for recovery of the suit properties and for an account of funds received by her in the course of her management of the same. On 27th/6/1995, the written statement of defence was

amended. Between 27th June 1995 and 29 August 1995, some five issues were framed for determination by Kityo, J, (RIP).

After the hearing of the suit had commenced in the High Court before Kityo, J., (RIP), the first appellant caused a transfer of 50% of Plot 3 De Winton Road and 25% of plot 51 Kampala Road to her father Sherali Ahmed Kassam. The transfer was registered. This prompted the respondents to amend their plaint and claim that the transfer was fraudulent. In response the appellants filled a further amended defence and added a counter-claim. The 1st appellant denied liability and maintained that the powers of attorney had not been validly terminated, contending that the respondents expressly consented to the transfer.

Meantime in July, 1998, Byamugisha, J., as she then was, took over the hearing of the case. Parties agreed on hearing the suit de novo. Attempts to settle were made. Eventually issues for determination were reduced to two couched thus:

1. Settlement of accounts.
2. Ownership interest in the suit properties.

Byamugisha, J., heard the suit. She held that the powers of attorney "*were not legally revoked*" and that the transfer of property to the father of the first appellant was not fraudulent. She dismissed the

suit and upheld the counterclaim. In effect the transfers made by the first appellant to her father were confirmed. Upon appeal by the respondents, the Court of Appeal reversed her judgment. In effect that court held that the transfers were fraudulent and the powers of attorney were revoked. Hence this appeal which was initially based on three grounds.

COUNSEL

This appeal was instituted belatedly (with the consent of respondents' counsel), on 9th October, 2006, by Messrs Masembe, Makubuya, Adriko, Karugaba & Ssekatawa, Advocates. However on 7/8/2007, a notice of appearance by joint advocates was filed by Mumtaz Kassam & Co., Advocates, in the registry. On 9th August, 2007, the two firms filed a 38 page statement of arguments in support of the appeal. Mumtaz Kassam & Co. Advocates was apparently the lead counsel. This long statement of arguments breaches the current Practice Direction of the Chief Justice on presentation of written arguments. I go to these lengths to indicate the various irregularities in the conduct of this appeal. Thus contrary to the initial statement by counsel for the appellants that the three grounds *"over lap to a great extent that we have opted to argue them together"*, the statement was made unnecessarily lengthy by subdividing it into subheads (A) to (F). In my opinion, this is a veiled and an unusual way of amending the memorandum

of appeal by introducing fresh grounds of appeal without leave of the Court. Further, and strangely, counsel for the appellants informally sought to introduce additional evidence at this stage of the case both in arguments and by two letters both dated 8th October, 2007, lodged in Court on the day of the hearing of the appeal. The two letters originate from Mumtaz Kassam & Co. Advocates. The respondents have justifiably criticised this mode of conducting the appeal. To appreciate these observations, I consider it appropriate to produce the three original grounds.

ORIGINAL GROUNDS

1. **The learned Justices of Appeal erred in law and fact in holding that the transfers carried out by the first appellant on plot No. 51 Kampala Road, and plot No. 3, De Winton Road, in favour of her father, Sherali Kassam, were nullified on account of fraud on the part of the 1st appellant.**

2. **The learned justices of Appeal erred in law and in fact in holding that the transfers carried out by the first appellant on plot 51 Kampala Road and plot 3 De Winton Road in favour of her father, Sherali Kassam were done fraudulently in collusion with him.**

3. **The learned Justices of Appeal erred in law and fact in holding that the transfers of plot 51 Kampala Road and plot 3 De Winton Road by the first appellant to her father were not authorised.**

Clearly these grounds revolved around the issue of whether or not there was fraud in the transfer of the two plots and any arguments for or against the appeal should have centered on this. Counsel for the respondents did not object to the new grounds as reformulated in arguments. I will reluctantly consider them in the order they were argued by both sides.

Subhead A

The learned Justices of Appeal erred in holding that Ebrahim had 50% share in plot 51 Kampala Road and that Sherali and Onali each had 25% share in the property.

Both original and rebuttal submissions on this subhead are partly evidence which should have been given by appellants, or elicited from the respondents and or their witnesses during cross-examination, at the trial. Counsel for the appellant alleges that there are missing gaps in evidence. On that basis, counsel faults the Court of Appeal. Should the Court of Appeal have filled those gaps on its own? I think not. The first appellant, herself a lawyer,

participated in the case during the trial and in the Court of Appeal. At the two levels she had the opportunity to fill the so called gaps, but did not.

Be that as it may, in the Court of Appeal, the lead judgment was delivered by Twinomujuni, JA. Counsel for the appellants selectively quoted from page 60 of the record of appeal which is the beginning of part of the summary of the facts of the case by the learned Justice of Appeal. The quotation reads –

"The registered title to the proprietors show that at that time (Ebrahim) ……. had 50% share in plot 51 Kampala Road. (Onali) and the late father of [Mumtaz] each owned 25% shares in plot 51 Kampala Road. …… in August, 1995 ……. (Mumtaz) caused a 50% transfer of plot No. 3 De Winton Road and 25% of plot 51 Kampala Road, both properties of [Ebrahim], to her father Sherali Kassam ……."

This quotation is a small portion of the background given by the learned Justice and is not a finding which would found a proper ground of appeal. Appellants' counsel then argues or rather gives the following opinion or rather evidence.

"the share of 50% in plot 51 Kampala Road attributed to Ebrahim (1st respondent) existed only on paper, not in substance and not in fact, because Ebrahim's father, Alarakhia, did not have any

interest at all in that property at any time during his life and up to the moment of his death."

In reply, counsel for the respondents supports the decision of the Court of Appeal which relied on the certificate of title as evidence to prove the ownership of the suit properties. Learned counsel argues that although the certificate of title to plot No. 51 was issued in the joint names of the father of the appellants and of the executors of the deceased father of the respondents, the two fathers who were brothers must have jointly applied for the grant of the lease together before the father of the respondents died.

In their rebuttal submissions, counsel for the appellants repeated what they had earlier argued under paragraphs 27 to 31 of their original written arguments namely that the father of the first respondent could not have had any interest in plot 51 Kampala Road and consequently the first respondent and his mother could not inherit anything and therefore their claim is a falsehood amounting to an illegality which this court should not ignore.

As I pointed out earlier in this judgment, the quotation by appellants' counsel is not a finding by the learned Justice of Appeal. In any case the argument that follows is evidence by the appellants' counsel. The arguments in rejoinder do not in my opinion enhance the appellants' case.

First there is Exh. PII which is an English translation of the will of the late Alarakhiabh Kassam, father of the respondents, dated 4th September, 1950. In it he appointed his wife and their eldest son, the first respondent, as the persons who would manage his business and his immovable properties in the event of his death.

Secondly Exh. PIV is the probate issued by the High Court of Uganda on 25th September, 1959 showing that the said will was proved in court whereby those two appointees were confirmed as executors of the will.

Subsequently on 7th October, 1963, Exh. P6, the certificate of title to plot 51, Kampala Road, was issued showing that the first respondent and his mother as executors owned a half (½) of the interest in that land whilst the father of the appellants and another person were registered as tenants in common in equal shares as to the other half. At the trial no evidence was adduced by the appellants to destroy the registered interests of the respondents. It is now too late for the appellants to attempt to adduce evidence through written arguments in this Court. As correctly contended by counsel for the respondents, the appellants have not put forward any legally tenable or sound reason to explain why the first respondent and his mother should have remained registered as owners of half of the plot since 1963 up to the time the case was taken to court in 1995, a period of 32 years. It was at that time and

while there was a live case in court when the first appellant transferred the share of the two into her father's names.

I am not persuaded that the Court of Appeal erred in its conclusion that Ebrahim had 50% shares in plot 51, Kampala Road. Therefore this ground ought to fail.

SUBHEAD B

The complaint here is that the learned Justices of Appeal erred in holding that there was no evidence that the disputed properties were partnership properties.

The appellants rely on exh. D2 which is an Application to Repossess Property or Business purporting to have been made by the 1st respondent on 20th April, 1985 and argue that the schedule to the application shows, under a list of partnership property, that the 1st respondent included the two suit properties on that application form. Counsel referred to a portion of the evidence of the 1st respondent recorded by Kityo, J., (RIP). The evidence is somewhat confusing and incoherent. But the record shows that while under cross-examination, the 1st respondent (as PW1 p.195) appears to have stated –

"…….. our application was made and I signed it. I saw a copy again I can identify it. I can see this document, a typed application

but it is the one I typed (sic). I filled the application and I gave it to my brother. The contents are similar to what I wrote but this is typed. Application was made in London and the fee was paid, my brother took it to London. I don't know whether a fee was paid ……..

*I apply (sic) for six different properties as I apply (sic) on my own behalf as on behalf …. Of beneficiaries to my father's estate. I don't remember allocating (**attaching?**) a schedule of properties to the application. I remember mention further in items 1 – 6 from No. 7. I don't remember giving the heading. I repossessed all the 6 properties mention but not No. 7. The repossession was processed by Mumtaz Kassam. I know Ahamed Kassim put to 1972 the income was share business in and Ahamed Kassim Plot 3, Dewinton Road. ……."*

There are some obvious typographical errors but it is evident from this passage that Ebrahim asserted that –

- his application was handwritten and not typed,
- the application did not include item 7
- He did not attach a schedule to his application for possession.

On the basis of this evidence, counsel for the appellant both in the original arguments and in the rebuttal criticized the Court of Appeal for holding that there was no evidence proving that the suit properties belonged to a partnership. Counsel contended that there

was evidence of the existence of partnership and of the fact that Plot 3 De Winton Road was partnership property of which Sherali owned 50% and, therefore, the first appellant acted properly by transferring 50% of it into the names of Ebrahim and Sherali.

Appellants' counsel criticised Onali's failure to give evidence at the trial to prove his share in Plot 3 De Winton Road before his death in 2006.

Mr. Lule, for the respondents, supported the decision of the Court of Appeal that the suit properties were not partnership properties and that that Court correctly construed the term partnership and arrived at the proper conclusion.

He contended, correctly in my opinion, that the relationship of co-owners of registered land is contractual in essence and is construed on legal principles governing contracts. He referred to Sections 55 and 56 of Registration of Titles Act (RTA) regarding ownership of registered land. He argued, correctly, that under Section 59 of the Act, the Certificate of Title is conclusive evidence of ownership and that S.64 of RTA gives paramountcy to the estate of a registered proprietor.

Counsel further argued –

- That suit properties are not appellants trust properties in any aspect.
- That during the trial before Kityo, J. the 1st respondent (Ebrahim) owned only the application which he signed and sent to the Uganda High Commission. Ebrahim's assertion that his own application was handwritten was not refuted by the appellants or their witnesses. So Exh. DII (application for repossession) is suspect.
- That that portion of Exh. D II mentioning Plot 3, De Winton Road, was not shown to be in the handwriting of the 1st respondent so as to make it an admitted partnership property.
- That the Certificate of Title in respect of Plot 51, Kampala Road, is sufficient evidence as to the shares of ownership.
- That in the will, (Exh. P2), there is clear distinction between partnership business and real properties. The latter were not listed as partnership.
- That the 1st respondent justifiably presented himself as the sole owner of his father's interests in the suit properties
- In effect that the failure by Onali to testify does not advance the appellants' case.

Appellants' counsel filed arguments in rejoinder. Learned counsel contends that the evidence recorded by Kityo.J., should not be relied upon. However I have noted from a perusal of the record that

during cross-examination of the 1st respondent during the trial by Byamugisha.J., Mr.Nangwala, who then represented the appellants, caused the record of proceedings before Kityo.J., to be typed and a copy thereof containing the evidence of the 1st respondent was used to cross-examine him for purposes of contradicting him. I do not appreciate why counsel for the same parties should now urge us not to look at the same part of the same record.

The present respondents were the appellants in the Court of Appeal where they were represented by Mr. Lule. Their memorandum of appeal contained fourteen grounds of appeal and ended with ten prayers. The first ground which was the bedrock of the appeal alleged that the trial judge misdirected herself and erred in law when she held that the registration of Sherali Ahamed was not fraudulently procured. The rest of the grounds really revolved around her misdirection or nondirection on relevant law and her failure to evaluate evidence properly. In his written submissions for the (respondents) in that court, Mr. Lule reduced the fourteen grounds of appeal into one namely,

Whether the trial Judge failed to properly evaluate the evidence, facts and law thus came to wrong conclusions.

He then argued this ground at length. In response, (present appellants) counsel argued each ground separately save for grounds 3 and 4 which were argued together.

Twinomujuni, JA., concluded that on the basis of all the materials before him the principal question in that appeal was *whether the transfers carried out by the 1st (appellant) on Plot 51, Kampala Road and Plot 3 Dewinton Road in August, 1995 in favour of her father was done fraudulently in collusion with him (father).*

The learned Justice of Appeal referred to the allegations of fraud as set forth in the amended plaint. He considered whether by August, 1995, the powers of attorney were valid and held that they were not. This holding is now the subject of ground "E" in the present appellants' arguments to be considered later.

In regard to the holding by the trial Judge that the first appellant was entitled to transfer the suit properties, because of being partnership property, the learned Justice of Appeal quoted in extenso the relevant portion of her judgment before he disagreed with the learned trial Judge. He reasoned thus:

"…… this suit is not on partnership business at all. It is about property which is registered under the Registration of Titles Act. Under our law a partnership cannot own registerable property.

Only individual members of the partnership can register individually or jointly as owners. At all material times the property in dispute was registered in the names of the parties, grandfathers, fathers or themselves in their individual capacities solely or jointly. ***There was no evidence in this suit*** *that the disputed property was owned by a partnership. No partnership was named and there is no partnership deed on the record. Though the partnership ownership of the disputed properties was pleaded in the amended statement of defence, it was never made an issue in the trial and it was never raised as one of the reasons why the respondents transferred the suit properties into the names of the father of the 1st respondent. I am, therefore, unable to agree with her that there was no proof of fraud in this case.*

Having considered the evidence on record, written arguments for both sides, including the rejoinder by counsel for appellants, I agree with the conclusions of the learned Justices of Appeal and this ground described as Subhead B therefore ought to fail.

SUBHEAD C

The complaint here is that the learned Justices of Appeal erred in holding that the Power of Attorney did not authorise the transfer of the properties concerned or any part of them to third parties without resort to the owners.

Counsel for the appellants misconstrued the words "*claim complete and execute any property conveyance transfers, mortgages and assurances and other interests situate in Uganda on my behalf*", appearing in the Instrument setting out the Powers of Attorney to assert in their original as well as in the rebuttal arguments that this gave her powers to do what she did.

Counsel for the respondents assert, correctly in my view, that the said power of attorney did not authorize the 1st appellant to vest any of the 1st respondents' interest in any of the suit properties to any one at all, let alone her father.

This ground is wholly misconceived and has no substance whatsoever because the power of attorney does not mention any where that Mumtaz was given any authority to transfer property to anybody other than the donor of the powers of attorney (1st respondent). Therefore the Court of Appeal was correct in its holding and so this Subhead ought to fail.

SUBHEAD D

In this head the complaint is that *the Justices erred in holding that the power of attorney in question as intended, inter alia, to enable the first appellant to manage the repossessed properties.*

First of all this Subhead is vague. But submissions of appellant's counsel are to the effect that both sides in their pleadings were mistaken in assuming that the powers of attorney authorized the first appellant to manage the properties in question. Counsel then strangely criticised the Court of Appeal on the basis of counsel's mistaken opinion that that Court should have vigorously examined the powers of attorney presumably to arrive at a conclusion favourable to the appellants.

Counsel for the respondents contended, correctly in my opinion, that in an adversarial system of litigation, such as ours, a court is supposed to hear from the parties and not to act for the parties. Learned counsel argued that the power of attorney did not authorise the first appellant to transfer the 1st respondent's interest in the suit property to her father.

Under our justice system, the role of the judge or court is clear. A court, least of all an appellate court, has neither duty nor obligation to correct or distort parties' primary pleadings in order to give judgment for one of the parties, as contended by appellants' counsel. The ground is certainly ill-conceived and must fail.

SUBHEAD E

Here the appellants contend that the learned Justices erred in holding that the power of attorney had been terminated almost a

year before the transfers were effected. Appellant's Counsel attempted to adduce fresh evidence, through written submissions, to support this ground. However the learned counsel rightly conceded that no effort was made to adduce evidence at the trial and neither was leave sought to get additional evidence in the Court of Appeal to support the appellants' case that the power of attorney had not been so terminated. With due respect, the attempt by counsel to introduce fresh evidence through the backdoor by way of submissions is misconceived, as the type of evidence, even if it were admissible, cannot be tendered in written submissions at this level. No effort was made to produce such evidence, if it was admissible at all, either during the trial of the suit or during the hearing of the appeal in the Court of Appeal where the rules of that Court give the Court discretion, for sufficient reasons, to take additional evidence or to direct that additional evidence be taken. In the case before us, because of Rule 30(1) of the Rules of this Court, in second appeals we have no discretion to take additional evidence. Whatever the case, no legally sound reason has been advanced for the alleged omission. I am not aware of any legal principle which allows admission of evidence in the mode proposed in this appeal. I do not agree with the submission of the appellants' counsel that admission of "the new evidence" would not prejudice the 1st respondent. The ground and the arguments thereon have no sound basis.

I would state without hesitation that having perused the record of appeal and the written submissions of counsel for both sides in this Court, I agree with the reasoning and the conclusions of the learned Justice of Appeal that the powers of attorney were effectively revoked in November, 1994 and the first appellant got notice of the revocation at that time, i.e., on 24th and 28th November 1994. Her response of 29/11/94 confirms this. I do not agree that non-registration vitiates the revocation. I agree that by August, 1995, when she purported to transfer the interest of the respondents in the said properties, she no longer had powers to do so. In their arguments in rebutall, appellants counsel claim that because the Court of appeal "had no grounds at all for making findings of fraud" new evidence ought to be admitted on behalf of the appellant. My short answer is that litigation in courts of law is conducted according to well known principles and practices. Accordingly, the so called subhead E has no substance and it must fail.

SUBHEAD E AND F.

There is yet another ground mis-described as subhead E which is intertwined with subhead F.

The complaints in the two subheads are that the Justices of the Court of Appeal erred in the holding that the 1st appellant:

E …… *had acted fraudulently*,

and

F …… *acted in collusion with her father*.

Submissions on the so called subhead E were based on the assumption that the power of attorney had not been revoked and this has already been considered.

Regarding the notice which the 1st respondent published in the New Vision in September, 1994, counsel for the appellants argued that the notice was intended to stop the 1st appellant from managing the relevant properties and not to terminate the power of attorney. Thereafter counsel attempted to again rely on new evidence, which, as learned counsel rightly conceded, was neither adduced at the trial nor in the Court of Appeal, suggesting that subsequent to the publication of the said notice, the first appellant carried out fresh transactions on behalf of 1st respondent regarding a different property (15 Rashid Khamis Road).

Counsel for the respondents urged Court not to accept the so called evidence first because it was neither produced in the trial Court nor in Court of Appeal,and,secondly,because acting on it now would violate the principle of fair hearing enshrined in Article 28(1) of the Constitution.

Counsel contended that production of the new evidence is yet an example of the 1st appellant's fraudulent disposition. Counsel argued that there was sufficient evidence before Court to attribute fraud to the appellants. Learned counsel asked Court to uphold the decision of the Court of Appeal.

Clearly, appellants' counsel does not deny the transfer of the property. Paragraphs 89, 90 to 92 of counsel's arguments are attempts to explain that the transfers were intended to correct an existing anomaly. With respect I do not accept this argument. Exh. P.6 is the certificate of title. It shows that until the time of the disputed transfers in August, 1995, it was the respondents (particularly the 1st respondent) who were(or was)the registered proprietor. I have no doubt in my mind that effecting transfer in August 1995 when the 1st appellant was aware of the cancellation of the power of attorney in September, 1994, and when the ownership of the same properties were the central issue in a court case is clear evidence of fraud. In my opinion the Court of Appeal reached correct conclusions. 1st appellant's claim that at the trial she was not questioned on fraud does not advance her case. The dispute was on ownership. And the evidence of the 1st respondent given before Byamugisha, J., (from page 219 et seq.) shows clearly she had no power to transfer. So called subhead E ought therefore to fail.

In support of Subhead F, counsel for the appellants argues that there is no evidence to support collusion between the 1st appellant and her father in the transfer transaction. Counsel for the respondents, submitted that collusion is deducible from events and also from proposition of law. He relies on exh. P.6, the certificate of title inclusive of the lease annexed thereto which shows shares of ownership by 1963 when both 1st appellant and 1st respondent were young. The father of the 1st appellant could not have signed the said lease which showed that at the time of signingon14th September, 1963 the 1st respondent owned 50%. This state of affairs could not be allowed to continue until August, 1998 (for a period of 35 years) and be changed only when there was a live case in court for the father of the 1st appellant to claim more shares in the disputed plot. The Court of Appeal decision is correct on the facts.

The original three grounds of appeal have no merit.

I would dismiss the appeal with costs to the respondents both here and in the two courts below. I would confirm the orders of the Court of Appeal.

Delivered at Mengo this 11th day of November 2008.

J. W. N. TSEKOOKO

JUSTICE OF THE SUPREME COURT.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, CJ, TSEKOOKO, MULENGA, KANYEIHAMBA AND KATUREEBE JJ.SC)

CIVIL APPEAL NO 10 OF 2006

BETWEEN

1. MUMTAZ KASSAM }
2. MOSHIN KASSAM (AS } :::::::::APPELLANT
ADMINISTRATOR OF ESTATE }
OF THE LATE SHERALI KASSAM }

AND

1. EBRAHIM KASSAMRAL}
2. AKILA KASSAM } ::::::::::::::::::::RESPONDENTS

[Appeal from the decision of the Constitutional Court at Kampala (Mpagi- Bahigeine, Twinomujuni, and Kavuma JJ.A) dated 14th March 2006 in Civil Appeal No. 48 of 2002]

JUDGMENT OF ODOKI, CJ

I have had the benefit of reading in draft the judgment prepared by my learned brother Tsekooko JSC, and I agree with it and the orders he has proposed.

As the other members of the Court also agree, this appeal is dismissed with orders in the terms proposed by Tsekooko JSC.

Dated at Mengo this 11th day of November 2008

B J Odoki
CHIEF JUSTICE

IN THE SUPREME COURT OF UGANDA

AT MENGO

CORAM: ODOKI C.J., TSEKOOKO, MULENGA, KANYEIHAMBA AND KATUREEBE JJ.S.C.

CIVIL APPEAL NO. 10 OF 2006

BETWEEN

1. MUMTAZ KASSAM

2. MOSHIN KASSAM (as Administrator of the estate of the late **SHERALI KASSAM):::::::::::APPELLANTS**

AND

1. EBRAHIM KASSAM

2. AKILA KASSAM:::RESPONDENTS

(Appeal from decision of the Court of Appeal (Mpagi-Bahigeine, Twinomujuni & Kavuma JJ.A) at Kampala in Civil Appeal No.48/02 dated 14th March 2006).

JUDGMENT OF MULENGA JSC.

I had the benefit of reading in draft the judgment prepared by my learned brother, Tsekooko J.S.C. I agree with him that the appeal ought to be dismissed with costs to the respondents here and in the courts below.

DATED at Mengo this 11th day of November 2008

J.N. Mulenga,
Justice of Supreme Court

REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, CJ. TSEKOOKO, MULENGA, KANYEIHAMBA, AND KATUREEBE, JJ.S.C)

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VERSUS

1. EBRAHIM KASSAM
2. AKILA KASSAM ::::::::::::::::::::::::::: :::::::RESPONDENTS

[Appeal from a decision of the Court of Appeal at Kampala (Mpagi-Bahigeine, Twinomujuni and Kavuma JJ.A) dated 14th March, 2006, in Civil Appeal No.48 of 2002]

JUDGMENT OF KANYEIHAMBA, J.S.C

I have had the benefit of reading in draft, the judgment of my learned brother, Tsekooko, J.S.C. and I agree with his decision that this appeal be dismissed.

I also agree with the orders he has proposed

Dated at Mengo 11th day of November 2008

G.W.KANYEIHAMBA
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, CJ, TSEKOOKO, MULENGA, KANYEIHAMBA AND KATUREEBE, JJ.SC.)

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JUDGMENT OF KATUREEBE, JSC.

I have had the benefit of reading in draft the judgment of my learned brother, Tsekooko, JSC. I fully concur with him that this appeal is devoid of merit and that it be dismissed with costs.

DATED at Mengo this 11th day of November 2008.

Bart M. Katureebe
Justice of the Supreme Court