

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA**  
**AT KAMPALA**

5 (CORAM: ODOKI, CJ; TSEKOOKO; KATUREEBE; TUMWESIGYE;  
KISAAKYE; JJSC.)

**CIVIL APPEAL NO. 10 OF 2008**

10 1. **F.L KADERBHAI**  
2. **N.H VALIJI :::::::::::::::::::: APPELLANTS**

**VERSUS**

15 **SHAMSHERALI ZAVER VIRJI :::::::::::::::::::: RESPONDENT**

*(An appeal from the judgment of the Court of Appeal at Kampala  
(Before Mpagi-Bahigeine, Kitumba, Byamugisha, JJA) Civil Appeal  
20 No. 10 of 2008 dated 12<sup>th</sup> November 2007)*

**Land Law – powers of Attorney** – conflict of laws – whether the absence of express choice of law clause in the powers or in the agreement it means there Land is conflict of laws.

25 **Conflict of laws** - Whether if the property is situate in Uganda, in the event of conflict of laws, the law applicable is the law of Uganda.

**Tenants for life** - Whether the Powers of a tenant for life under the settled Land Act gives a donee powers to sale – whether the Settled Land Act 1925 referred to in this case is that of UK.

30 **Grounds of appeal** – whether court can pronounce itself on grounds of appeal not submitted on or raised by counsel.

35 The main suit in this appeal was dismissed and the counterclaim allowed. On appeal the Court of appeal reversed the judgment and orders of the lower court hence this appeal. The 1<sup>st</sup>, 2<sup>nd</sup> appellants and a one Gulamabhai Kapacee were tenants in common. On 2/6/1992 the 1<sup>st</sup> appellant executed powers of Attorney appointing the respondents to reposes the suit property on his behalf under the Expropriated Properties Act 1982. The respondent  
40 successfully reposed the property.

In 1994 the 1<sup>st</sup> & 2<sup>nd</sup> appellants each executed powers of attorney in favor of Shabeer Kapacee to manage their interests in the suit property. The two powers of Attorney executed in favor of Shabeer were identical in their  
45 terms.

On 26/5/1994 Gulambhas Rajbhai Kapacee by a power of Attorney appointed Shabeer Kapacee to manage his affairs in Uganda including his interests in the suit property.

5 On 27<sup>th</sup>/5/1994 Shabeer Kapacee & the respondent signed a memorandum of agreement for the sale of the suit property to the respondent. In the memorandum Shabeer stated he was selling on behalf of the appellants and Gulamabhas Rajbhai Kapacee by virtue of powers of attorney.

10 The respondents however, failed to deliver the transfer documents on the basis that the powers given to Shabeer Kapacee did not include powers to sell. Failing to recover the deposit of the \$55,000 the respondent sued the 1<sup>st</sup> & 2<sup>nd</sup> appellants, Gulamabhas Rajbhai Kapacee. The appeal was dismissed with costs.

### 15 **JUDGMENT OF TUMWESIGYE, JSC**

This appeal arises from the decision of the Court of Appeal given on 12<sup>th</sup> November 2007 in favour of Shamsherali Zaver Virji (the respondent). It originates from a suit which the respondent filed in the High Court against F.L  
20 Kadherbhai and N.H. Valiji (the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively) and two other people for breach of a memorandum of agreement for sale of property (herein referred to as “the suit property”).

The trial judge, Ntabgoba, PJ, dismissed the suit and allowed a counterclaim  
25 which the appellants had filed against the respondent. On appeal by the respondent to the Court of Appeal, that court allowed the appeal and reversed the judgment and orders of the trial judge.

#### **Background.**

30 A brief background to this appeal is that the 1<sup>st</sup> and 2<sup>nd</sup> appellants together with one Gulamabbas Rajbhai Kapacee owned as tenants in common property comprised in Leasehold Register Volume 621 Folio 3 Plot 25 Nasser Road, Kampala.

35 On 2<sup>nd</sup> June 1992, the 1<sup>st</sup> appellant executed a Power of Attorney appointing the respondent to repossess on his behalf the suit property from the

Government under the Expropriated Properties Act 1982. The respondent successfully repossessed the suit property but he was also desirous of purchasing it from its owners.

- 5 On 9<sup>th</sup> May 1994 the 1<sup>st</sup> appellant and the 2<sup>nd</sup> appellant each executed a Power of Attorney in favour of one Shabeer Kapacee to, among other things, manage their interests in the suit property. The two powers executed in favour of Shabeer Kapacee were identical in their terms.
- 10 On 26<sup>th</sup> May 1994 Gulambbas Rajbhai Kapacee by a Power of Attorney also appointed Shabeer Kapacee to manage his affairs in Uganda including his interest in the suit property.

15 On 27<sup>th</sup> May 1994 Shabeer Kapacee and the respondent signed a memorandum of agreement for the sale of the suit property to the respondent. Shabeer Kapacee stated in the memorandum of sale that he was signing it on behalf of the 1<sup>st</sup> and the 2<sup>nd</sup> appellants, and Gulamabbas Rajbhai Kapacee, by virtue of the Powers of Attorney they executed in his favour.

- 20 The memorandum of sale included the following terms: the purchaser was to pay US \$ 110,000 to the vendors as the purchase price of the suit property. US \$ 55,000 was to be paid on execution of the memorandum of sale and the balance of US \$ 55,000 was to be paid after the vendors had obtained and delivered to the purchaser all the necessary documents including duly  
25 executed transfer papers. Breach of the covenants in the memorandum of agreement would result in payment of US \$ 20,000 as liquidated damages to the innocent party.

30 The respondent paid the first installment of US \$ 55,000 on execution of the memorandum of sale. However, the appellants did not later give him the documents mentioned in the memorandum of sale. They based their refusal

to do so on several grounds but the ground relevant to this appeal is their claim that the Powers of Attorney by which they appointed Shabeer Kapacee as their agent did not include power to sell the suit property.

- 5 Failing to get the documents or the refund of US \$ 55,000 the respondent filed a suit against the 1<sup>st</sup> and 2<sup>nd</sup> appellants, Gulamabbas Rajbhai Kapacee and Shabeer Kapacee (the agent) in the High Court. In his suit the respondent, among other things, claimed specific performance, liquidated damages of US \$ 20,000 and costs of the suit.

10

The appellants in their defence denied the respondent's claim and counter-claimed against the respondent general damages and other orders. The learned trial judge dismissed the respondent's suit and allowed the appellants' counter-claim. Being dissatisfied with the High Court judgment  
15 the respondent appealed to the Court of Appeal. The Court of Appeal allowed the appeal and reversed the judgment and orders of the trial judge. The appellants, dissatisfied with the Court of Appeal's decision, appealed to this court.

- 20 The appellants filed a memorandum of appeal with the following two grounds:

1. **The learned Justices of Appeal erred in law when they held, without the benefit of evidence on record or argument from counsel, that the statutory powers of the tenant for life and  
25 trustees under the Settled Land Act 1925 (as amended) of England and Wales vested the 4<sup>th</sup> Respondent with powers of sale; and**
2. **The learned Justices of Appeal erred in law and fact when they  
30 construed paragraph 10 of the powers of attorney exhibited**

**as Ex. P II and P III so as to vest powers of sale in the Respondent.**

5 The appellants asked the court to allow the appeal, reverse the orders of the Court of Appeal and award them the costs in this court and the courts below. On his part, the respondent asked the court to dismiss the appeal with costs.

10 In this court the appellants were represented by Mr. Kanyerezi Masembe assisted by Mr. Chris Luwaga. The respondent was represented by Mr. Kandebe Ntambirweki. The appellants and the respondent both filed written submissions.

### **Counsel's Submissions**

15 In his submissions learned counsel for the appellants dropped ground two of the memorandum of appeal and submitted on ground one alone. He argued that the two Powers of Attorney (Exhibits P2 and P3) did not grant Shabeer Kapacee power to sell the suit property as the learned Justices of Appeal had found.

20 Counsel submitted that the learned Justices of the Court of Appeal erred to apply the Settled Land Act 1925 (as amended) of United Kingdom as "The Settled Land Act 1925" mentioned in Clause 9 (which had been mistakenly cited by the Court of Appeal as Clause 10) of the said Powers  
25 of Attorney. There was no reference made to English law or the word "England" or "United Kingdom" in clause 9 or in the said Powers of Attorney generally, he argued.

30 Learned Counsel contended that since there was no express choice of law clause in the said Powers of Attorney or in the memorandum of Agreement, it means that there was a conflict of laws and, therefore, the

law to be applied is the law of Uganda where the suit property is situate. As there is no Settled Land Act 1925 in the laws of Uganda it follows that clause 9 in the said Powers of Attorney is redundant and meaningless and it should be disregarded, he argued.

5

Counsel argued further that even if it were to be held that the reference to the Settled Land Act 1925 was a reference to an Act of the United Kingdom, still the respondent would be required to prove the content of that Act by calling an expert practitioner in English law or by reference to a book published under the authority of the United Kingdom Government or to an authorized English law report with reference to those powers, all of which the respondent did not do.

10

Learned counsel for the appellants argued further that even assuming that the Settled Land Act 1925 was that of the United Kingdom and that it had been properly proved, it would still be inapplicable to the suit property as the suit property is not settled land. Therefore, he concluded, the Court of Appeal erred in interpreting Clause 9 of the Powers of Attorney as giving Shabeer Kapacee powers to sell the suit property.

15

Mr. Ntambirweki Kandebe, learned counsel for the respondent argued that it was not in dispute that the learned trial judge made a mistake by quoting a wrong exhibit in place of Exhibit P2. The learned Principal Judge's finding was that Exhibit P1 and Exhibit P3 authorized sale. Clause 9 of Exhibit P3 was in pari materia with that of Exhibit P2. Therefore, it follows that the trial judge, but for the mistake he made, would have found that all the three powers of attorney granted Shabeer Kapacee power of sale. The findings of the Court of Appeal on the Settled Land Act was therefore, "for avoidance of doubt but superfluous", learned counsel argued.

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He argued that the appellants did not cross-appeal on the findings of the trial judge on Exhibit P3 and the appellants could not fault the Court of Appeal on a finding that they did not ask the Court of Appeal to overturn by way of cross-appeal.

5

Learned counsel argued further that Clause 9 of the Powers of Attorney (Exhibits P2 and P3) gave Shabeer Kapacee powers of a tenant for life under the Settled Land Act. Exhibits P2 and P3 show that the appellants were resident in England where they executed the Powers of Attorney. Therefore, he argued, the Settled Land Act 1925 must be that of England where the donors resided and if that law was of a different country, the appellants should have stated so since they are the authors of the Powers of Attorney.

10

15

The Court of Appeal was right to hold that powers of a tenant for life under the Settled Land Act 1925 include powers of sale and that this law vested Shabeer Kapacee with powers of sale, learned counsel submitted.

### **Consideration of Issues**

20

Learned counsel for the appellants in his written submissions raised a number of issues derived from the only ground of appeal the appellants retained after dropping the second one. I will now proceed to consider them and then finally consider one issue (as issue No. 5) which was canvassed by learned counsel for the respondent in his written submissions.

25

#### **1. Whether the Settled Land Act 1925 is of the United Kingdom.**

30

The paramount issue in this appeal is whether the learned Justices of Appeal erred by holding that Clause 9 (which was mistakenly referred to in the Court of Appeal judgment as Clause 10) of the 1<sup>st</sup> and 2<sup>nd</sup>

appellants' Powers of Attorney (Exhibits P2 and P3) vested Shabeer Kapacee with power to sell the suit property. This, however, depends in part on whether or not the Settled Land 1925 is that of the United Kingdom.

5

Clause 9 of Exhibits 2 and 3 states:

**“In regard to land generally and without prejudice to the generality of the foregoing powers to exercise all powers which are by the Settled Land Act 1925 (as amended) conferred on a tenant for life and on the life and (sic) trustees of the settlement.”**

10

The learned Justices of Appeal found that the above-quoted clause conferred powers of sale on Shabeer Kapacee. In her lead judgment Mpagi-Bahigeine, JA, stated: **“It is trite that wide powers of sale are conferred by this Act - see Ss 38 and 72 of the Settled Land Act 1925. These powers may be extended but not curtailed, ousted or hampered in any way. The powers are so wide that they have even removed the necessity of inserting express powers of sale and exchange. ‘A tenant for life is king of the castle’ see Law of Trusts, 2<sup>nd</sup> Edition - DJ Hayton - Sweet & Maxwell - Halsbury’s 3<sup>rd</sup> Edition. Pp 219 Para 389.”**

15

20

In his written submissions learned counsel for the appellants argues that the learned Justices of Appeal erred by considering Clause 9 quoted above as referring to English law and that there was no basis for construing the clause as a reference to an Act of the United Kingdom as opposed, for example, to an Act of Canada, New Zealand, Australia or any other country for that matter.

25

30



It is true that Clause 9 of Exhibits 2 and 3 refers to “the Settled Land Act 1925 (as amended)” and does not mention a specific country to which the Act belongs. It is also true that Uganda does not have an Act of Parliament called the Settled Land Act 1925.

5

However, Clause 9 was inserted by the appellants in their Powers of Attorney. It is a fact that the appellants were residents of the United Kingdom at the time they executed the two Powers of Attorney.

10 The witnesses to the same Powers of Attorney were also residents of the United Kingdom. The Notary Public who certified the copies of the Powers of Attorney was also based in England.

15 The Powers of Attorney in question were granted to Shabeer Kapacee of P.O. Box 640, Kampala, Uganda, but nowhere do they state that he will exercise the powers only in Uganda. The powers, it seems to me, were exercisable in respect of the donors’ estate wherever it might be. For these Powers of Attorney to be exercised in Uganda, however, the law requires that they should be registered with the Registrar of Documents  
20 and Shabeer Kapacee indeed registered them with that authority.

The only country which is mentioned in these powers of Attorney is Great Britain. Clause 13 of the same Powers of Attorney states: “**To appoint and remove at pleasure any substitute or agent either in Great  
25 Britain or elsewhere for all or any of the matters aforesaid upon such terms as my Attorney shall think fit.**” It is noteworthy that the power Shabeer Kapacee was given to remove any substitute or agent was exercisable in Great Britain though not in Great Britain alone.

30 Therefore, the statement made by counsel for the appellants in his submissions that there was no reference to the United Kingdom in Clause

9 “or for that matter anywhere in the whole text of the Power of Attorney”  
is not correct. Given that the appellants were residents of the United  
Kingdom and that they executed their Powers of Attorney in England, and  
that the only country specifically mentioned by name in the two Powers of  
5 Attorney is Great Britain, the learned Justices of Appeal did not in my view  
err to consider the Settled Land Act 1925 mentioned in Clause 9 to be  
that of Great Britain.

10 Exhibits P2 and P3 whose terms are identical were made by the 1<sup>st</sup> and 2<sup>nd</sup>  
appellants. If their complaint is that they had in mind another country  
other than Great Britain to which the Settled Land Act 1925 belonged,  
they should have stated so. I respectfully agree with learned counsel for  
the respondent that *the contra proferentum rule* applies in this case. The  
15 rule of construction is that an ambiguity in a document will be construed  
against the party who drafted it.

**2. Whether there was Conflict of Laws in the application of  
Powers of Attorney.**

20 Counsel for the appellants went to great lengths to argue that since there  
is no express choice of law clause in the Powers of Attorney and since the  
Powers of Attorney were to be exercised in relation to land situate in  
Uganda the system of law to be applied in respect of the suit property is a  
25 matter of “Private International Law” or “Conflict of Laws”.

30 With respect, I think the question of conflict of laws does not arise in this  
case. The powers as given to the agent were such as his principals, the  
donors of the Powers of Attorney, would themselves exercise in Uganda if  
they did not choose to appoint their agent. If the principals had chosen to  
come to Uganda themselves and sell the suit property, the question of

conflict of laws would not arise. They would not come to Uganda and sell their land according to English law. They would have had to comply with Ugandan Laws.

5 Similarly the powers given to the agent in respect of property in Uganda have to comply with Ugandan laws. The reference to the Settled Land Act 1925 in Clause 9 of the Powers of Attorney was merely to show what power, among others, the appellants had decided to give to their agent. It could not have been the intention of the donors of the Powers of Attorney  
10 that the Settled Land Act 1925 of the United Kingdom should be applied to Uganda. Therefore, the question of conflict of laws does not arise in this case. There is no power given to the agent in the Powers of Attorney that conflicts with the laws of Uganda. If there was one, then obviously the rule of **lex situs**, heavily dwelt on by the appellants in their written  
15 submissions, would apply in respect of the suit property but there is none.

3. **Whether the learned Justices of Appeal erred by consulting Halsbury's Laws of England to establish the powers which the Settled Land Act of the United Kingdom confers on the tenant  
20 for life.**

I will not go into the question of whether the respondent should have called an English law expert witness to give evidence on the Settled Land Act of the United Kingdom. The law, as both counsel readily  
25 agree, is that oral evidence cannot be admitted to prove or vary contents of documents – See Section 91 of the Evidence Act.

If it is correct, as I find, that the learned Justices of Appeal did not err in deciding that the Settled Land Act was that of the United Kingdom the  
30 next question to consider is whether the learned Justices were right to consult **Halsbury's Laws of England** for their finding that the Settled

Land Act of the United Kingdom confers powers of sale on the tenant for life.

5 Learned counsel for the appellants argues that the learned Justices erred in so finding since the respondent did not tender a book containing the Act published under the authority of the Government of the United Kingdom, or tender a law report in which the relevant provisions of the Act are reproduced, that counsel for the respondent merely referred to **Halsbury's Laws of England** in his submissions.

10 I respectfully do not agree with learned counsel for the appellants in their argument. I agree with learned counsel for the respondent that Section 59(e) of the Evidence Act provides an exception to Section 36 of the same Act and that the opinions of experts expressed in any  
15 treatise commonly offered for sale may be proved by production of those treatises.

**Halsbury's Laws of England** are such treatise. They have become so common in our law libraries and our law chambers because of their  
20 reliability that they are often cited by judges, advocates and other lawyers in this country as a correct statement of the laws of England as at the date of their publication. They have become so notorious that courts no longer require their formal proof as it would be mere waste of time.

25 Therefore, it was proper, in my view, for the learned Justices of Appeal to rely on **Halsbury's Laws of England**, to find proof that the Settled Land Act 1925 of the United Kingdom confers on the tenant for life power of sale. If the appellants think that the learned Justices erred in  
30 their interpretation of the relevant section of the Settled Land Act, they

should have stated so in their submissions and suggested what, in their view, the correct interpretation should have been.

5 Counsel for the respondent has consistently submitted on Clause 9 of Exhibits P1 and P2, in the High Court, in the Court of Appeal and now in this Court to show that that the clause granted power of sale to the agent. The appellants, on the other hand, who put this clause in their Powers of Attorney, have either not submitted on it at all or have argued as they do here that the clause should be declared redundant and meaningless as there is no Act in the Laws of Uganda known as  
10 the Settled Land Act 1925.

They have cited *Halsbury's Laws of England* about meaningless phrases in documents to the effect that the court may disregard a subsidiary term therein on the ground that it is meaningless. However,  
15 Clause 9 of Exhibits P2 and P3 is not a phrase or a subsidiary term. It is a fully fledged clause standing independently on its own. What the appellants should have done, in my view, is to give meaning to the clause since they put it in their documents instead of evading that  
20 responsibility by arguing that it should be declared redundant and meaningless.

4. **Whether the powers of sale conferred by the Settled Land Act of the United Kingdom on a tenant for life are applicable to  
25 the suit property.**

Counsel for the appellants argues that even if it was to be accepted that the Settled Land Act of the United Kingdom gives powers of sale to the tenant for life, still the powers of the tenant for life would not be  
30 applicable to the suit property since the suit property is not settled land.

5 I have stated earlier in this judgment that the Settled Land Act 1925, in  
my view, was not put in Clause 9 of Exhibits P2 and P3 so that it should  
be applied to Uganda. It was put in the two Powers of Attorney merely  
as a reference to the powers, among others, which the appellants  
decided to give to their agent. The duty of the Justices of Appeal was  
limited to finding out the intention of the donors who put Clause 9 in  
their Powers of Attorney by interpreting the relevant Sections of the  
Settled Land Act 1925 of the United Kingdom. They correctly did that,  
10 in my view. Their duty was not to find out whether or not the Settled  
Land Act 1925 was applicable to Uganda.

15 **5. Whether the appellants should have filed a cross-appeal in  
the court of Appeal against the finding of the learned  
Principal Judge on Exhibit P3.**

20 Counsel for the respondent argued in his written submissions that the  
appellants should have cross-appealed against the finding of the trial  
judge on Exhibit P3 in the Court of Appeal; that in the Court of Appeal it  
was agreed that exhibits P2 and P3 were in pari materia; that the High  
Court found that Exhibits P1 and P3 authorized sale; that it was agreed  
in the Court of Appeal that the trial judge quoted a wrong exhibit when  
he was considering the Power of Attorney which the 1<sup>st</sup> appellant  
granted to Shabeer Kapacee, his agent, and that if the trial court had  
25 not made that mistake it would have found that all the three Powers of  
Attorney – Exhibits P1, P2 and P3 –conferred on the agent powers of  
sale.

30 In his written reply to the respondent's submissions learned counsel for  
the appellants totally ignored this issue. This was surprising since this  
point was the respondent's main argument against the appeal.

It is not clear to me why the appellants did not realise that the finding of the trial judge on Exhibit P3 was against their case. The learned trial judge stated in his judgment: **“It is not really clear though, but the following extract from the Clause tends to convince [me] that the Power of Attorney Exhibit P3 intended to authorize the sale of the donor’s property: -**

**“ To sign my name and set my seal to and as my act and deed to deliver any assignment conveyance transfer or other deed for sale and transfer into my name of any land and generally to do all things necessary to complete any purchase.”**

**In the instant case, only two principals authorized the 4<sup>th</sup> defendant (the agent) to sell the common tenancy. The third did not give his authority. Therefore the 4<sup>th</sup> defendant had no power to sell the suit property on behalf of all the common tenants. The sale .....was null and void.”**

The learned trial judge declared the sale to be null and void because he considered a wrong exhibit. If he had not made that mistake he would no doubt have found that all the three Powers of Attorney authorized sale since Exhibits P2 and P3 were identical. It is inconceivable that he could have held that Exhibit P3 authorized sale but Exhibit P2 did not.

Instead of filing a cross-appeal against the finding of the trial judge or even attacking it in their submissions in the Court of Appeal, counsel for the appellants hardly said anything about it. Instead Mr. Lule, SC, who appeared for the appellants in the Court of Appeal stated in his submissions that the trial judge’s evaluation of the Powers of Attorney “is quite correct and I support it”.

5 In my view the Court of Appeal could have allowed the respondent's  
appeal on this ground alone since the finding of the trial judge that one  
of the three Powers of Attorney did not authorize sale was based on an  
obvious mistake of fact which was even admitted by the appellants'  
counsel in the Court of Appeal. Since the appellants did not specifically  
ask the Court of Appeal to overturn the finding of the trial judge by  
filing a cross-appeal or making clear submissions against the trial  
judge's finding on Exhibit P3 it must remain standing. The failure of the  
10 appellants to do so denied the Court of Appeal jurisdiction to  
pronounce itself on the finding of the learned trial judge on Exhibit P3.

**Conclusion**

15 For the reasons stated above I find that the appellants' only ground of  
appeal lacks merit and should fail. I would dismiss this appeal with  
costs both here and in the two courts below.

20 **Dated** at Kampala this **9<sup>th</sup>** Day of **December**, 2010

25 .....  
**J. TUMWESIGYE**  
**JUSTICE OF THE SUPREME COURT**



**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA  
AT KAMPALA**

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**(CORAM: ODOKI, CJ; TSEKOOKO; KATUREEBE; TUMWESIGYE;  
KISAAKYE; JJSC.)**

**CIVIL APPEAL NO. 10 OF 2008**

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**BETWEEN**

1. **F.L KADERBHAI**

2. **N.H VALIJI :::::::::::::::::::: APPELLANTS**

**AND**

15

**SHAMSHERALI ZAVER VIRJI :::::::::::::: RESPONDENT**

***(An appeal from the decision of the Court of Appeal at Kampala  
(Mpagi-Bahigeine, Kitumba, Byamugisha, JJA) dated 12<sup>th</sup> November,  
2007 in Civil Appeal No. 81 of 2004)***

20

**JUDGMENT OF ODOKI, CJ**

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

25

As the other members of the Court also agree, this appeal is dismissed with costs here and in the Courts below.

**Dated** at Kampala this **9<sup>th</sup>** day of **December**, 2010

30

B J Odoki  
**CHIEF JUSTICE**

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA**  
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(CORAM: ODOKI, CJ; TSEKOOKO; KATUREEBE; TUMWESIGYE;  
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*[An appeal from a decision of the Court of Appeal at Kampala  
(Mpagi-Bahigeine, Kitumba & Byamugisha, JJ.A) dated 12<sup>th</sup>  
November, 2007 in Civil Appeal No. 81 of 2004]*

**JUDGMENT OF JWN TSEKOOKO, JSC**

I have had the advantage of reading in draft the judgment prepared by my learned brother, Tumwesigye, JSC, and I agree with his reasoning and the orders that this appeal be dismissed with costs here and in the two Courts below.

Delivered at Kampala **9<sup>th</sup>** this day of **December**, 2010

**JWN Tsekooko**  
**Justice of the Supreme Court**

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA**  
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2007 in Civil Appeal No. 81 of 2004].*

**JUDGMENT OF KATUREEBE, JSC.**

I had the benefit of reading, in draft, the judgment of my learned brother,  
25 Tumwesigye, JSC, and I agree with him for reasons he has given, that this  
appeal be dismissed with costs in this court and the courts below.

**Delivered** at Kampala this **9<sup>th</sup>** day of **December**, 2010.

30  
Bart M. Katureebe  
**Justice of the Supreme Court**

**THE REPUBLIC OF UGANDA**  
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25  
**JUDGMENT OF DR. E. M. KISAAKYE, JSC**

I have had the benefit of reading in draft the judgment of my learned  
brother, Tumwesigye, JSC.

30 I agree with him that the appeal be dismissed with costs in this Court and the  
Courts below.

**Dated** at Kampala this **9<sup>th</sup>** day of **December**, 2010.

35  
.....  
**DR. ESTHER M. KISAAKYE**  
**JUSTICE OF THE SUPREME COURT**