THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KOLOLO

(CORAM: *MWANGUSYA, OPIO-AWERI, MWONDHA, TIBATEMWA EKIRIKUBINZA, JJ.SC AND TUMWESIGYE, AG.JSC.***)**

CIVIL APPEAL NO. 09 OF 2016

BETWEEN

DR.SHEIK AHMED MOHAMMED KISUULE:::::::::::::::::::::::::::::::: APPELLANT

VERSUS

GREEN LAND BANK LTD (IN LIQUIDATION) ::::::::::::::::::::::::::RESPONDENT

[Appeal from a decision of the Court of Appeal at Kampala (Buteera, Kakuru and Mugamba, JJ.A.) dated 28th June 2016 in Civil Appeal No.159 of 2012]

JUDGMENT OF MWANGUSYA, JSC

This a second appeal. It arises from the decision of the Court of Appeal confirming the decision of the High Court in Miscellaneous Application No 616 of 2007 dismissing the appellant's application for review of its judgment and decree in HCCS No. 469 of 2001 handed down on 3rd October, 2005.

BACKGROUND

The appellant together with one Kiriisa Yahaya obtained a loan of Shs.30,000,000/= (Thirty million) from the respondent on the 17th November, 1995 intending to start a cooking oil factory. The appellant deposited two Certificates of Title in respect to his land comprised in Block 27 Plots 246 and 238 Makerere Kikoni. They defaulted in repayment of the loan .Thereafter the appellant reached an agreement with the bank whereby he assumed sole responsibility to repay the said loan. A new account, No 104919,

was opened for the new arrangement. The appellant undertook to pay 1,500,000/= per month but he defaulted once again. It was then that the respondent Bank sold the appellant's two securities that he had pledged at Shs. 7,265,000/=. That left a balance of Shs.78,196,958/=.

According to a certificate of balances from Greenland Bank (In liquidation) the figure arose from a debit of Shs43,569,750/= on the account, a debit of Shs12,936,723/= which was interest in suspense, a credit of Shs.7,265,000/= from sale of securities, a debit of Shs28,410,212/= arising out of interest from post liquidation interest and a debit of Shs545,300/= arising from valuation, advertising and auctioneers fees.

Consequently the respondent sued the applicant for recovery of Shs.78,196,986/=, general damages for breach of contract plus interest and costs of the suit. During the trial at the High Court the appellant admitted having obtained the loan from the respondent bank. He however, claimed that after Kirisa had withdrawn from the business he negotiated new terms of the loan in which the respondent bank agreed to freeze/waive interest on the loan. The bank denied having waived or frozen interest on the loan.

During the scheduling conference at the trial the agreed issues were:-

(1) Whether or not the plaintiff waived or froze the interest.

(2) Whether the securities were undervalued.

(3) Whether the defendant was indebted to the plaintiff.

(4) Whether the plaintiff is entitled to the relief claimed.

In her judgment the learned trial Judge resolved the first and second issues in the negative. She answered the third and fourth issues in the affirmative. She entered judgment in favour of the plaintiff, now respondent and ordered the defendant, now appellant

to pay a sum of Shs78,190,985/= with interest at the rate of 15% per annum and costs of the suit to the respondent.

The finding in issue number one that the bank never waived/froze the interest on the loan is the genesis of the Miscellaneous Application No 616/2007 to have the judgment in HCCS No 469 of 2001 reviewed on the ground that the appellant had discovered a letter dated 14th July, 1998 written by the respondent according to the appellant's request to have the interest on the loan froze. According to the appellant the letter was a new and important matter of evidence which he was unable to produce at the trial because it had been misplaced in Saudi Arabia where he had worked as an Ambassador.

In her ruling the trial Judge declined to admit the letter on the ground it was suspect. The appellant being dissatisfied with the ruling of the learned Judge, appealed to the Court of Appeal. The Memorandum of Appeal raised three grounds, namely:

1. **That the Learned trial Judge erred in law and fact when she dismissed the appellant's application for review under the pretext that it had no merit.**
2. **That the Learned trial Judge erred in law and fact when she failed to consider the letter dated 14th July 1998 while hearing the application for review on the ground that the said letter was suspect.**
3. **That the Learned trial Judge erred in law and fact when she failed to evaluate the evidence on record and chose to believe the respondent's case and not that of the appellant.**

Counsel for the appellant abandoned the first ground of the appeal. The Court of Appeal heard the appeal on the remaining grounds and dismissed it for lack of merit with costs to the respondent.

The appellant being dissatisfied with the judgment of the Court of Appeal, appealed to this Court. The memorandum of appeal raised five grounds of appeal, namely;

1. **That the Learned Justices of Court of Appeal erred in law and fact when they held that the appellant brought his application for review to the High Court five years after the delivery of the Judgment of High Court.**
2. **That the Learned Justices of Court of Appeal erred in law and fact when they supported the learned trial Judge's erroneous finding that the letter of 14th July 1998 was suspect and was not a new and important matter that could have been available at the trial.**
3. **That the Learned Justices of Court of Appeal erred in law and fact when they held that they were in agreement with the learned trial Judge that the appellant had failed to adduce credible evidence to support his claim that the respondent had waived interest on the loan in issue.**
4. **That the Learned Justices of Court of Appeal erred in law and fact when they failed to address themselves to the new terms of fresh agreement in Exhibit P3 and consequently failed to established the relationship between the said Exhibit P3 and the letter of 14th July 1998**
5. **That the Learned Justices of Court of Appeal erred in law and fact when as the first appellate court failed to re-evaluate the evidence on the record as whole let alone**

subjecting it to fresh scrutiny thereby arriving at a wrong conclusion.

Representation

At the hearing of the appeal, learned senior Counsel John Mary Mugisha assisted by Mr.Solomon Kisambira Balise appeared for the appellant while learned Counsel Mr. Isaac Walukagga appeared for the respondent. The appellant was in court. Both Counsel filed written submissions which they highlighted at the hearing.

In his written submissions Counsel for the appellant reduced the above grounds into the following issues:-

1. **Whether the learned justices of the Court of Appeal erred in law and fact when they held that; the appellant brought his application No.616 of 2007 for review to the High Court five years after delivery of the judgement of the High Court.**
2. **Whether the learned justices of the Court of Appeal erred in law and fact when they supported the learned trial Judge's erroneous finding that; the letter of 14th July, 1998 was suspect and was not a new and important matter that could not be produced at the trial.**
3. **Whether the learned Justices of the Court of Appeal erred in law and fact when they held that; they were in agreement with the learned trial Judge's reasoning and conclusion that the application for review had no merit.**
4. **Whether the learned Justices of the Court of Appeal erred in law and fact when they held that they were in agreement with the learned trial Judge that the appellant**

had failed to produce credible evidence to support his claim of waiver of interest by the respondent on the loan in issue consequently, they failed to establish the relationship between the new letter dated 14/7/1998, the letter dated 16/6/1998 and the letter dated 10th January 1999.

5. **Whether the learned justices of the Court of Appeal erred in law and fact when they failed to re-evaluate the evidence on record as whole and to subject it to fresh scrutiny there by arriving at a wrong conclusion that the application No.616 of 2007 had no merit.**

Appellant's submissions

On issue one, Counsel for appellant submitted that the learned Justices of Appeal erred in law and fact when they held that the appellant had brought his application for review five years after the delivery of the judgment. He asserted that the delay in filing the application was approximately one year and eleven months, not five years. He added that the Court of Appeal should not have relied on the ground of delay because it was not one of the grounds relied on by the trial Judge.

Counsel submitted that the case of **Muyodi vs Industrial & Commercial Development Corp & Anor (2006) 1 EA 243** was misapplied by the learned Justices because in that case, the document in issue was on the Court file but that in this case, the appellant's document was in Saudi Arabia many miles away.

Counsel submitted that the Justices of Appeal erred in law by relying on a ground other than the purported forgery by the respondent.

According to counsel the Court of Appeal contravened its own Rule 92(1) and (2) as the Respondent had not filed Notice of ground for affirming decision of the High Court.

On issue 2, Counsel submitted that the two courts below made the requirement (mentioning) which necessitates prior specific knowledge of the existence of evidence (new letter dated 14th) as a condition sine qua non whereas Section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules elaborately spells out the requisite condition precedent and prior specific knowledge is not one of them. He relied on the case of **Mohammed Allibhai vs Bukenya and Departed Asians Custodian Board Supreme Court Civil Appeal No. 56 of 1999** where an aggrieved party is defined as one who has suffered legal grievance which the appellant has.

Counsel submitted that the two lower Courts were misled by the respondent's reference to the new letter as a forgery in absence of proof of forgery. The Bank never produced to Court the relevant loan file in order to disprove the existence of documents despite the respondent's claim that all documents were available.

Counsel submitted that the two Courts were misled by respondent's submission that the demand letter of 13/12/1999 was the reply to the respondent's letter Exhibit P.3 at page 1 and not the new letter dated 14/7/1998 and yet the letter dated 13/12/1999 was a reply

to appellant's letter dated 10/1/1991 (sic) but not to the new letter as misleadingly submitted by respondent's Counsel.

That the two Courts erred in accepting the respondent's evidence and rejecting that of Fred Mutebi's a former employee of the bank who was not cross examined and his schedule of duties never produced in Court. The former employees of the bank in particular recovery managers Mr. B. Kayondo and Ahmed Kibirige were not utilized to dispute the existence of the new letter.

Counsel submitted that the necessity of Sekindi's affidavit was a misdirection and superfluous since circumstance of the discovery were clear in affidavit in support of the application for review and Mutebi the author of the letter, had appeared and owned up the letter. That Mutebi's averments in his affidavit in reply were not controverted by the respondent.

Counsel argued that both Courts erred in law by pre-supposing that mention of a letter/document was a pre-requisite for review. That the appellant's Written Statement of Defence SWD of the 12th November 2001 and scheduling conference of 6/2/2002 took place before discovery of new letter in 2007. That even if mentioning of the existence of the letter was requirement, the appellant had mentioned his failure to access correspondences on the loan and requested for copies vide his letter of 4/1/2000 and this include new piece of evidence and had testified that he had general knowledge but not specific.

Counsel submitted that asking for an Order of discovery was not a condition precedent and therefore the respondent never discharged its burden as required by SS100-102 of the Evidence Act.

Counsel submitted that both Courts erred in law by relying on erroneous testimony of respondent's witness one Benedict Sekabira which was countered by Mutebi's affidavit, defective documents such as certificate of balance, invoice, interest, computation and evaluation report. The poorly kept records by the bank, deliberate omission of key documents, selective use of exhibits, misquotation, mis-underlining and misunderstanding of the content of exhibits and lastly contradictory evidence should have led to allowing the application for review.

On issue 3, Counsel submitted that the learned Justices of Court of Appeal erred in law and fact when they held that they were in agreement with the trial Judge that the appellant had failed to produce credible evidence to support his claim that the respondent had waived interest on the loan.

Counsel submitted that both Courts erred in law by relying on misleading evidence of the respondent, where he mixed up the bank statement of the old joint account 3033443 and the statement of the new account 104919.

Counsel submitted that the learned Justices erred in law when they failed to fault the trial Judge for finding that waiver/suspension of interest was a baseless claim or wishful thinking since it was advice by auditor of the bank Ernest &Young and Mutebi's evidence. That

the two Courts failed to juxtapose or establish the link between Exhit P1, Exhibit .P3 letter dated 10th January 1999 and new letter of 14/7/1998 and find that all these letter have similar terms mentioned or implied resulting into their erroneous finding that interest was not waived.

Counsel faulted Court of Appeal for failing to fault the trial judge for her observation that exhibit P.3 talked about stopping interest but on the contrary she accepted Sekabira's evidence that interest was not stopped/waived which was contrary to Section 58 and 59 of the Evidence Act.

On issue 5, Counsel submitted that the Court of Appeal as a first appellate Court failed in its duty when it concurred with the trial Judges blanket agreement with submission of the respondent's Counsel which were misleading Court that the letter dated 13th December 1999 was rightful reply to Exhibit P.3 and ought to have found that it was a reply to that of 10th January 1999 and ought further found that letter of 14/7/1998 was the rightful reply to Exhibit P.3. That the demand letter of 13/12/1999 was written belatedly, one year and seven months after the new agreement had legally come in to force on 7/7/1998 the day of endorsement on exhibit P.3.

Counsel submitted that Court of Appeal failed to observe that exhibit PII the old joint account showed that the interest for months of July, August and September 1998 had not been charged which is proof that the bank before its closure on 31/3/1999 had honored

terms of the new arrangement contrary to the liquidator's allegation. That Court failed to appreciate the fact that the bank statement exhibit PII had 32 entries in respect of interest but no effort was made by respondent to utilize recovery manager mentioned in Sekabira's affidavit to substantiate on the entries as required by law that he asserts must prove under Section 101,102,103 of the Evidence Act.

Counsel submitted that the certificate of balance attached to Sekabira's affidavit contradicted itself because the interest continued to accrue at 25% yet it brought the interest of 12,936,723 from suspense after 2 years and 5 month from 23/9/1998 to 7/3/2002 without any increment and that that amount was wrong. That further the certificate of balance contradicted the interest computation, invoice, receipt No.1600 and oral evidence of PW2.

Counsel submitted that interest computation lacked supporting documents such payment of 7,265,000 to Bank of Uganda from sale of security and selling of securities was done in clear breach of duty of care set by law, there were no copies of adverts in new papers, receipts and buyer were not presented in Court

Counsel submitted that Court erred in law by disregarding the report of an independent valuer appointed by Court and instead relied on PW2 Mr. Bamwanga evidence in exhibit P7 despite its contradiction of his qualifying and limiting conditions.

Lastly Counsel argued that amount of shs.78, 196,985 claimed was wrong and that the Court of Appeal failed in its duty as 1st appellate Court and prayed that appellate be granted remedies in his memorandum of appeal.

Respondent's submissions

The Respondent argued issues 1 and 2 separately and then issues 3, 4,5 together.

On issue one Counsel submitted that the period between the time of delivery of the judgment to the time of filing the application was never a consideration for refusal to grant the application for judicial review. The period was approximately two years and the five years period was the period between the filing of the defense and judgment.

Counsel submitted that it was not in doubt that the appellant had at the time of filing his defence on 9/11/2001 never mentioned the letter. It was introduced in 2007 a period of over 6 years and that there was no error on the part of Justices of Court of Appeal in computation of the period of five years. Counsel submitted that Justices of the Court of Appeal did not in reaching the decision to dismiss the appeal, rely on alleged delay in filing the application for review.

On issue two, Counsel submitted that the Court of Appeal was justified in upholding the decision of the trial Judge that the letter dated 14th July 1998 was suspect and not a new and important

matter that could have been availed at the trial. The appellant failed to demonstrate that the letter was new evidence which was not within his knowledge or that it could not be adduced by him at the time the decree in question was entered. That appellant in paragraph 7 of affidavit admitted that the letter was within his knowledge and he had failed to trace it.

Counsel submitted that the trial Judge noted as one of the reasons for her suspicion about the letter was that appellant did not at any time mention it. That the appellant admitted that in fact the evidence was within his knowledge and he could not have the judgment reviewed.

Counsel cited the learned authors of A.I.R Commentaries: **THE CODE OF CIVIL PROCEDURE BY CHITALEY & K.N.RAO 7th EDITION at page 4463,paragragh 10,page 4466 paragraph 12 and page .4467 paragraph 13 to** support his argument .

Counsel submitted that Justices of Court of Appeal addressed their minds on decision of trial Judge whereby she evaluated the evidence on record and concluded that letter of 14th July, 1998 was suspect and did not meet the strict proof requirement to justify the grant of an order for review.

On issues 3, 4 and 5

Counsel submitted that the question of waiver of interest was relevant to the trial of the suit between parties. Court found that there was no such waiver and when the appellant filed an

application for review, the trial Judge analyzed the affidavits in support and found that there was no waiver of interest and that the Court of Appeal reproduced trial Judges observation, evaluation and evaluated the evidence on their own and found that the trial Judge was justified to disregard the letter dated 14th July, 1998 as there was no basis to review her judgment on strength of this letter.

Counsel submitted that the complaint in ground 2 of the alleged failure by Court of Appeal to address their minds to alleged new terms of the agreement Exh. P.3 between the appellant and the respondent was unjustified.

Counsel submitted that the Court of Appeal re-visited the evidence on record, and they agreed with the trial Judge's finding that the said letter was suspect. The application was rightly dismissed.

Counsel prayed that appeal be dismissed with costs to both in this court and lower courts.

Appellant's Submission in Rejoinder

Counsel submitted that the respondent had failed to rebut the erroneous finding of the Court of Appeal that the appellant brought his application after 5 years had elapsed. That was not accidental slip but an erroneous finding.

Counsel submitted that the respondent had totally failed to address their concerns on alleged forgery, identified errors in judgment and ruling of two Courts.

Counsel reiterated his argument that there was new and important matter of evidence, which after the exercise of due diligence, was not within the appellants specific knowledge but general knowledge and could not be produced by him at the time the decree was passed.

Counsel argued that regarding Order 46 (2) about the standard of proof, the appellant had fulfilled this requirement by adducing Sekindi's forwarding letter and DHL shipment Air Way Bill No.300-9501-277 addressed to Uganda Embassy in Tehran in Republic of Iran from Uganda Embassy in Riyadh kingdom of Saudi Arabia and there was more proof by Fred Mutebi who owned up in full the new piece of evidence.

On issues 3,4and 5 Counsel submitted that the respondent ought to have relied on the evidence adduced at trial, the evidence at the review since their lordships failed to come to the right position basing on the distorted presentation of facts to them by the respondent.

Counsel submitted that the major basis of errors of the two Courts were relying on erroneous testimony of the respondent's witness Benedict Sekabira which contradicted itself on several points, and defective documents as mentioned in the submissions.

Counsel submitted that all those factors were intently used by the respondent to mislead the two Courts and that therefore relying on selected quotation from ruling and judgment was adding in salt to injury.

On issue 5, Counsel reiterated that the Court of Appeal as a first appellate Court failed in its duty to subject the evidence to fresh scrutiny and instead quoted the judgment of the trial Judge without re-evaluation.

Consideration of the court.

The jurisdiction of this Court as a second appellate Court has been defined in a number of decisions. In the case of **Administrator General vs Bwanika James and Others, Supreme Court Civil Appeal No.7 of 2003,** Justice Oder, JSC, held:

"It is a well-settled legal principle, embodied in Rule 29 (1) of the Court of Appeal Rules, that on a first appeal, the parties are entitled to obtain from the appeal Court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal Court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inferences and conclusions: See *Coghland Vs. Cumberland (1898) 1 ch. 704 (Court of Appeal of England)* and *Pandya V R. (1957) E.A 336).* The authorities also state that a second appellate Court will not interfere with the findings of fact by the first appellate Court. It will do so only where the first appellate Court has erred in law in that it has not treated the evidence as a whole to that fresh and exhaustive scrutiny which the appellant was entitled to expect. See also *Shartilal M. Ruwala Vs R (Supra), Kifamunte Henry Vs Uganda, Criminal Appeal No. 10/97 (SCU)*

(unreported) ***Bogere Moses Vs Uganda, Criminal Appeal 1/97 (SCU)*** **(unreported)."** (underlining is mine for emphasis)

On issue number one the assertion by Counsel for the appellant that the appellant brought his application for review of the High Court judgment after one year and eleven months and not five year is correct. The High Court Judge did not consider inordinate delay as a criteria for dismissing the application for review but the Court of Appeal did. Relying on the case of **Muyodi vs Industrial & Commercial Development Corporation & Anor (2006) 1 EA 243** the Court re-stated the criteria for grant of an order for review under section 82 of Civil Procedure Act and Order 46 Rule 1 of the Civil Procedure Rules. The Court held as follows:-

"it is incumbent upon the applicant if his application for review under order XLIV rule 1 of the Civil Procedure Rules were to succeed to show that there has been discovery of new and important matter or evidence which after due diligence was not within his knowledge or could be produced at that time or he must show that there was some mistake or error apparent on the face of the record or that there was any other sufficient reason and most importantly, the applicant must make the application for review without unreasonable delay in the present appeal it cannot be denied that the application for review was made after a period of eight months. Clearly in the particular circumstances of this case that was along delay and we agree with the learned judge that the appellant was guilty of

laches. Even if the delay was to be ignored what was the main reason for the review sought?"

Counsel for appellant argued that it was misapplied by the learned Justices because in that case, the document in issue was on the Court file but in this case, the appellant's document was in Saudi Arabia many miles away.

The period between judgment and the application for review was one year and eleven months and not five years. The appellant attributed the delay to the fact that he had misplaced the impugned letter in Saudi Arabia. This is evident in paragraph two of his affidavit in rejoinder where he stated:

"That the letter dated July, 1998 was within my knowledge and I had misplaced the copy of the same" and in paragraph three "That Greenland Bank and the respondent must be in possession of a copy of the said letters."

So Counsel's argument that the Court of Appeal misapplied the authority of **Muyondi vs Industries & Commercial Development Corporation & Another** (Supra) where the Court found a period of eight months unreasonable is not correct. I would consider the period of one year and eleven months between the date of judgment and filing the application for review unreasonable and it is compounded by the period of five years between filing the suit and the delivery of judgment when there was not mention of the letter. Although the trial Judge did not base her refusal to grant a review on delay that factor cannot be ignored and the Court of Appeal

rightly considered it. The fact that the trial Judge did not consider the five year period between the filing of the suit and delivery of the judgment did not preclude the Court of Appeal from taking it into account. As a first appellate Court the Court of Appeal was required to re-appraise the entire case and come to its own conclusion which was done. In the case of Fr. Narsensio Begumisa and Others Vs Eric Tibebaga (SCCA No. 17 of 202 it was stated that:-

"The legal obligation on a first appellate Court to re-appraise evidence is founded in the common law rather that the rules of procedure. It is a well settled principle that on a first appeal, the parties are entitled to obtain from the appeal Court its own decision on issues of fact as well as law." (underlining for emphasis) Ground one fails

The second issue is whether the Learned Justices of Court of Appeal erred in law and fact when they supported the learned trial Judge's finding that the letter of 14th July 1998 was suspect and was not a new and important matter that could have been available at the trial. The trial Judge gave three reasons which are summarized below why the said letter was suspect:

1. The source from Riyadh Embassy was suspect as there was no evidence in form of an affidavit from Mr. Sekindi who discovered the letter and Nakatanzi Twaha who forwarded the letter to the appellant.

2. That the applicant did not mention the existence of such an important letter before or during the proceedings and lastly.

3. The said letter of 14th July 1998 relied on was inconsistent with the Bank position.

The above reasons were re-evaluated by the Court of Appeal which found that the trial Judge was right to have found the letter suspect and correctly rejected it.

The appellant had further obligation to show by evidence how and when the respondent bank sent the said letter to Uganda Embassy in Riyadh. Ground two fails.

On ground three the complaint that the Court of Appeal erred when they held that they were in agreement with the trial judge that the appellant had failed to adduce credible evidence to support his claim that the respondent had waived interest on the loan in issue is misconceived. The issue of waiver of the interest was resolved at the trial and unless it was on the appeal or the application to admit the letter was granted the Court would not delve into evaluation of evidence regarding the waiver. This ground fails.

Issue number four is similarly misconceived. The terms of the fresh agreement would not arise unless the new evidence contained in the impugned letter was adduced. Since the letter was rejected by both Courts below the Court of Appeal would not be at liberty to discuss the terms of the fresh agreement in relation to the letter whose authenticity was in doubt.

Issue No five has been resolved. The Court of Appeal re-appraised the entire case and came to its own conclusion.

According to the appellant he was aware of the existence of the letter and so was the author, one Mutebi but it took a year and eleven months after judgment for it to surface. Throughout the trial no mention was made of the letter. That is why both Courts cast doubt on the authenticity of the letter which was described as suspect. I am not inclined to interfere with the concurrent finding of both Courts because if the letter existed and it was the main defence of the appellant it would not have taken that long to surface.

In conclusion of the grounds of appeal raised by the appellant have been found to be without merit. The appeal therefore fails. The judgment and orders of the Court of Appeal are upheld.

As all the other members of the Court agree the appeal fails and is hereby dismissed with costs in this Court and the Courts below.

Dated at Kampala this 28th day of November 2019.

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Hon. Justice Mwangusya Eldad

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KOLOLO

(CORAM: *MWANGUSYA, OPIO-AWERI, MWONDHA, TIBATEMWA EKIRIKUBINZA, JJ.SC AND TUMWESIGYE, AG.JSC.***)**

CIVIL APPEAL NO. 09 OF 2016

BETWEEN

DR.SHEIK AHMED MOHAMMED KISUULE:::::::::::::::::::::::::::: APPELLANT

VERSUS

GREEN LAND BANK LTD (IN LIQUIDATION) ::::::::::::::::::::RESPONDENT

[Appeal from a decision of the Court of Appeal at Kampala (Buteera, Kakuru and Mugamba, JJ.A.) dated 28th June 2016 in Civil Appeal No.159 of 2012]

JUDGMENT OF OPIO-AWERI, JSC

I have had the benefit of reading in draft, the judgment of my learned brother Hon. Justice Eldad Mwangusya, JSC.

I agree also with his reasoning, conclusion and orders that this appeal be dismissed. I also agree with the proposed order of costs in this Court and Courts below.

Date at Kampala this ..... 28th day of ..... November 2019.

Hon. Justice Opio-Aweri

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KOLOLO

(CORAM: *MWANGUSYA, OPIO-AWERI, MWONDHA, TIBATEMWA EKIRIKUBINZA, JJ.SC AND TUMWESIGYE, AG.JSC.*)

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BETWEEN

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VERSUS

GREEN LAND BANK LTD (IN LIQUIDATION) ::::::::::::::::::::RESPONDENT

[Appeal from a decision of the Court of Appeal at Kampala (Buteera, Kakuru and Mugamba, JJ.A.) dated 28th June 2016 in Civil Appeal No.159 of 2012]

JUDGMENT OF MWONDHA, JSC

I have had the benefit of reading in draft the judgment of my learned brother Mwangusya Eldad, JSC. I agree with his analysis, and conclusion that appeal has no merit.

I agree also with the proposed order that the appeal fails and hereby dismissed with costs in this Court and the Courts below.

Dated at Kampala this ....28th..... day of .....NOVEMBER.....2019

Mwondha

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: MWANGUSYA; OPIO-AWERI; MWONDHA; TIBATEMWA-EKIRIKUBINZA;JJSC TUMWESIGYE,Ag.JSC.)

CIVIL APPEAL NO.09 OF 2016

BETWEEN

DR.SHEIK AHMED MOHAMMED KISUULE :::::::::: APPELLANT

AND

GREEN LAND BANK LTD (IN LIQUIDATION) ::::::::: RESPONDENT

[An appeal against the decision of the Court of Appeal at Kampala before (Hon. Justices: Buteera, Kakuru and Mugamba, JJA) in Civil Appeal No. 159 of 2012, dated 28th June 2016.]

JUDGMENT OF PROF.TIBATEMWA-EKIRIKUBINZA, JSC.

I have had the benefit of reading in draft the judgment prepared by my learned brother Hon. Justice Mwangusya, JSC and I agree with his analysis and conclusion as well as the Orders he has proposed.

Dated at Kampala this 28th day of NOVEMBER 2019.

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PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: MWANGUSYA, OPIO-AWERI, MWONDHA, TIBATEMWA; JJ.SC TUMWESIGYE, AG. JJ.S.C.)

CIVIL APPEAL NO: 09 OF 2016

BETWEEN

DR. SHIEK AHMED MOHAMMED KISULE :::::::::::::::::::::::::::::::: APPELLANT

AND

GREENLAND BANK LTD

(IN LIQUIDATION) ::RESPONDENT

[An appeal from the decision of the Court of Appeal at Kampala (Buteera, Kakuru, and Paul Mugamba, JJA, dated 28th June 2016 in Civil Appeal No. 159 of 2012]

JUDGMENT OF TUMWESIGYE, AG. JSC

I have had the benefit of reading in draft the judgment of Hon. Justice Eldad Mwangusya, JSC.

I agree with his conclusion that this appeal be dismissed.

I also agree with the orders he has proposed.

Dated at Kampala this ...28th...day of ...NOVEMBER...2019

Justice Jotham Tumwesigye
AG. JUSTICE OF THE SUPREME COURT