

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 013 OF 2020**

AND

CIVIL APPLICATION NO. 007 OF 2023

- 1. FORMULA FEEDS LTD**
- 2. GICHOHI NGARI**
- 3. SAMSON NGARI**
- 4. ANNE WANGUI GICHOHI:::::::::::::::::::::::::::::::::APPELLANTS**

VERSUS

KCB BANK LTD:::::::::::::::::::::::::::::::::RESPONDENT

(Appeal from the decision of the Court of Appeal (Kakuru, Kiryabwire and Madrama ,JJA) in Civil Appeal No. 0076 of 2016 dated 8th July, 2019)

**CORAM: HON. MR. JUSTICE ALFONSE OWINY-DOLLO, CJ
HON. LADY JUSTICE FAITH MWONDHA, JSC
HON. MR. JUSTICE MIKE CHIBITA, JSC
HON. LADY JUSTICE ELIZABETH MUSOKE, JSC
HON. MR. JUSTICE STEPHEN MUSOTA, JSC**

JUDGMENT OF ELIZABETH MUSOKE, JSC

This appeal is from the decision of the Court of Appeal (Kakuru, Kiryabwire and Madrama, JJA) in Civil Appeal No. 0076 of 2016 dated 8th July, 2019.

Background

The 1st and 2nd appellants sued the respondent in the High Court seeking various reliefs arising from the respondent's alleged breach of a loan contract made between the 1st appellant and the respondent, and guaranteed by the 2nd, 3rd and 4th appellants. The respondent filed a counter-claim against all the appellants, also arising from the same transaction. The High Court substantially dismissed the suit and in large part allowed the counter-claim. The appellants appealed against the dismissal of the suit to the Court of



Appeal, which dismissed their appeal. The appellants thereafter lodged this further appeal to this Court.

The facts of the case are that the 1st appellant borrowed money to the tune of Ug. Shs. 4,531,000,000/= from the respondent bank on terms set out in two facility agreements executed between the parties. The 1st appellant and the respondent also executed a debenture and a legal mortgage in respect of the said loan. In addition, the 2nd, 3rd and 4th appellants signed personal guarantees undertaking to pay the loan in case the 1st appellant defaulted. It appears that the 1st appellant was subsequently unable to pay the loan which prompted the respondent to treat all the loan monies as due and to demand payment from the 1st appellant and the guarantors.

The 1st and 2nd appellants filed the High Court suit challenging the move by the respondent to enforce repayment of the outstanding loan. The 1st and 2nd appellants' challenge was based on breach by the respondent of the loan agreements, in some respects, by failing to open letters of credit and unilaterally and erroneously converting some of the loan monies from US Dollars to Uganda Shillings. They also claimed that the respondent had not fully disbursed the entire Ug. Shs. 3,700,000,000/= it demanded as due and outstanding; and had unlawfully utilized part of the loan money to pay interest instead of disbursing it to the 1st appellant. The 1st and 2nd appellants also claimed that the respondent had wrongfully charged certain amounts as interest on all loan facilities, had illegally opened loan accounts for the 1st appellant, and had wrongfully debited monies amounting to Ug. Shs. 2,950,238,297/= and applied it to illegal interest and bank charges. The 1st and 2nd appellants claimed that all the above acts were in breach of contract and the 1st appellant had suffered loss arising therefrom for which the respondent was liable in damages.

The 1st and 2nd appellants also claimed that the various mortgages connected with the loans were illegal as they had been secured by land which the 1st appellant could not legally own.

The respondent denied breaching the loan agreement as alleged by the 1st and 2nd appellants. It claimed that it acted fairly and lawfully in accordance with the loan contracts in its relationship with the 1st appellant. In relation