

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

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**CORAM: HON LADY JUSTICE L.E.M. MUKASA-KIKONYOGO, DCJ
HON MR JUSTICE G.M. OKELLO, JA
HON MR JUSTICE A. TWINOMUJUNI, JA**

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CIVIL APPLICATION NO.50 OF 2007

ALCON INTERNATIONAL LTD APPLICANT

15

V E R S U S

KAMPALA ASSOCIATED ADVOCATES..... RESPONDENT

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**(Arising from Civil Appeal No.2 of 2004
and HCCS No.1255 of 1990)**

RULING OF THE COURT:

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[1] INTRODUCTION

This is an application by Notice of Motion by which the applicant, M/s Alcon International Ltd, seeks to move this court for the following orders:-

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1. That M/s Kampala Associated Advocates be struck off the record in Civil Appeal No.2 of 2004 in which they purport to represent the applicant.
2. That costs of this application be provided for.

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The background to this application is rather complicated and controversial. However, a careful perusal of all the affidavits filed in this application by both parties and the documents attached to the affidavits reveals the following:-

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On 21st July 1994 the National Social Security Fund (NSSF) entered into a contract with M/s Alcon International Ltd, a company incorporated in the Republic of Kenya, for erection and completion of a partially constructed structure (now commonly

known as Workers House) on Plot No.1 Pilkington Road Kampala. Shortly thereafter the construction works began. From then, there is a controversy as to who actually carried out the construction of the Workers House. This is due to the fact that though the contract was awarded to M/s Alcon International Ltd Kenya; there existed another company known as M/s Alcon International Ltd Uganda belonging to the same family as the Kenya one, which appears to have carried out all the works. The controversy over this matter will be discussed later on in this ruling.

During the course of execution of the contract, there arose disputes between NSSF and Alcon International Ltd which led to the termination of the building contract. In May 1998, the Directors of Alcon International Uganda instructed M/s Tumusiime, Kabega & Co Advocates to sue NSSF for breach of the building contract in the High Court of Uganda. The advocates filed HCCS No.1255 of 1998. After a protracted but unsuccessful attempt at arbitration which was conducted by the advocates on behalf of Alcon International Ltd, the Civil Suit was heard in the High Court and was decided in favour of Alcon International Ltd. NSSF appealed to this court in Civil Appeal No.2 of 2004. Alcon International instructed the firm of Tumusiime, Kabega & Co Advocate to continue with the appeal.

On 15th May 2006 the advocates for both parties in the appeal wrote to court indicating that they intended to apply for an adjournment of the case to enable them negotiate a settlement out of court. When the case came up for hearing on 23rd May 2006, an Indian of Kenyan nationality called Davinder Singh Hanspal, whom Alcon's advocates had never seen before, stood up before Justice Kavuma (single Judge) and stated that Alcon International had never instructed Tumusiime, Kabega & Co Advocates to file or appear on its behalf in court. He asked for adjournment of the case to enable him brief an advocate to represent Alcon International Ltd which adjournment was granted. Shortly thereafter, the respondent in this application gave Notice of Change of Advocates and indicated that their firm had been instructed to continue with the appeal on behalf of Alcon International Ltd. The applicants filed this application seeking orders as already stated above, hence this ruling.

At the hearing of this application, both parties agreed that there was only one triable issue namely, who should represent Alcon International Ltd in court in Civil Appeal No.2 of 2004 which is now pending.

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[2] **WHO IS ALCON INTERNATIONAL LTD**

10 The most confusing aspect behind this dispute is to determine exactly the identity of the applicant company and who owns it. According to the affidavits on the record of this application, the personalities behind the company are three Indian brothers who are Kenya nationals:-

- 1) Inderjit Singh Hanspal (Eldest)
- 15 2) Kultar Singh Hanspal (Middle)
- 3) Davinder Singh Hanspal (Youngest).

According to Inderjit Singh Hanspal, Alcon International Ltd was incorporated in Kenya in 1971 as Alcon International (Kenya) Ltd and has ever since been run by the three brothers and has operated in East Africa as a construction company. The version of Kultar Singh is very different. According to him, the company was incorporated in Kenya as company No.9648 on 6th January 1971 with the names ALLIED CONCRETE WORKS LIMITED with the following history and change of names:-

<u>DATE</u>	<u>NAME</u>
25 1. 6 th January 1971	Allied Concrete Works Limited
2. 24 th November 1971 Change name to	Allied Contractors Limited
30 3. 26 th July 1984 Change name to:	Allcon International Limited
4. 11 th December 1990 Change name to:	Allied Contractors Limited
35 5. 12 th April 1994 Change name to:	Allcon Intentional Limited

At the time it won the tender to construct the Workers House in Kampala on 21st July 1994 it had just reverted to the name of Alcon International Limited after a spell of almost four years.

5 The other players in this drama are also family members of the Singh Hanspal brothers and they are:-

- 1) Manjit Kent who is a sister of the three brothers.
- 2) Rajesh Kent who is the husband of Manjit Kent.
- 3) Alka R. Hanspal who is the estranged wife of Kultar Singh Hanspal.

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According to the Hanspal brothers, these latter three have never had anything to do with the shareholding or running a construction company and have no experience in that business whatsoever.

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Kultar Singh Hanspal testifies in paragraph 14 of his affidavit that:-

“I wish to state on the other hand that in July 1983 I incorporated under Company No. C. 25979 another Company Alcon International Limited together with my sister Manjit Kent. This company changed its names as follows:-

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<u>DATE</u>	<u>NAME</u>
1. 12 TH July 1983	Alcon International Limited
2. 25 th July 1984	Alcon International Limited to Allied Constructors
3. 11 th December 1990	Allied Contractors Limited to Alcon International Limited
4. 12 th April 1994 to	Allied Contractors Limited to Allied Contractors Limited

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Annexed hereto are marked “KSH 2” are copies and Articles of the Company No.2507 which is called Allied Contractors Limited from 12th April 1994 to date. This is the Company where Manjit Kent has sworn an affidavit as being a Director in. It has never been engaged in construction and neither is it engaged in Construction business.”

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It is worthy noting that paragraph 3(a), (b) and (c) of the Memorandum of Association of the Company states the purpose of the company as carrying out civil works,

mechanical and electrical engineers, general contractors, architectural work and generally builders. It will become clear shortly why the three Hanspal brothers are at pains to repeatedly state, contrary to known facts that Manjit and Rajesh Kent have never engaged in construction business. It should further be noted that since 1983, whenever the directors of Alcon International Limited or Allied Contractors Limited [the same Hanspal Brothers] passed a resolution to change the company name, they would take away the name of the company registered by Kultar Hanspal and Manjit Kent and call it their Kenya registered company name and the Kultar – Manjit company would take on that day the name the Kenya Company had just dropped. A look at the evidence of Kultar Hanspal we have just tabled above shows, for example, that on 26th July 1984 when Alcon International dropped the name Allied Constructors, the name belonged to the Kultar-Manjit company which they also dropped that day to become Allied Constructors Limited. Again, on 12th April 1994 when the contract to build the Workers House was about to be signed, the Kultar-Manjit company which was then called Alcon International Limited dropped the name and became Allied Contractors Limited and on that very day the company of the three Hanspal brother became known as Alcon International Limited. It is very difficult for us to try and speculate the exact nature of the game the Hanspal Brothers were playing. However, this was the state of affairs on 21st July 1994 when the contract to construct the Workers House was signed by Alcon International Kenya Limited.

Rajesh and Manjit Kent also swore affidavits to support this application. According to Manjit Kent, on 20th July 1983, together with her brother Kultar Hanspal, they incorporated a company in Nairobi called Alcon International Limited and they became the directors and shareholders of the company. She believes that up to this day she is still a shareholder and a director of that company. Manjit Kent is confused as to which of the two Alcon Internationals, i.e. Alcon Kenya 1971 company and Alcon Kenya the 1983 Company, she is a director of. The cause of her confusion is understandable. In continuously interchanging the names of the two companies, she could not tell which Company herself and her brothers were directors. We cannot help thinking that this is exactly what Kultar Hanspal intended.

According to Manjit Kent, in 1987 Kultar Hanspal incorporated yet another company in United Kingdom and called it Alcon International Limited (UK). Manjit Kent further testified:-

- 5 **“4. That in 1993, while we (Kultar Hanspal and I) were still in Nairobi, Alcon International Ltd of Nairobi, Kenya tendered for the construction of Workers’ House in Kampala and won the tender and signed the construction agreement in 1994. Thereafter Alcon International Ltd of Kenya through me and my brother Kultar decided for purposes of expediency, good business sense and continuity to reincorporate Alcon International Ltd, UK in Uganda and have Alcon International Limited Uganda carry out and execute in full the contract works.**
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- 15 **5. That it was agreed between us then that Alcon International Limited Uganda will and would henceforth be the sole and exclusive beneficiary and proprietor of the work proceeds of the said project of the Workers House including but not limited to take any Court Arbitration actions arising out of execution of the said contract.**
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- 25 **6. That after the said Agreement which was reduced to writing and resolved by the said Alcon International Limited Kenya, Mr. Kultar Hanspal, Mr. Rajesh Kent relocated from Nairobi, Kenya to Kampala, Uganda for the construction of Workers House in 1994 under Alcon International Ltd, Uganda, which company executed the building Agreement right from inception. I later very soon thereafter joined the two at Kampala and stayed thereon to help with execution and supervision of the said project.**
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- 35 **7. That I was reliably informed by Mr. Kultar Hanspal which information I verily believe to be true that he, Mr. Kultar Hanspal, through Kasirye, Byaruhanga & Co Advocates reincorporated Alcon International Ltd in Uganda and registered it under a place of business in Uganda, P. O. Box 9598, Kampala and this is the company that executed the contract of building the Workers House, dealt with all the Government’s Labour and Statutory requirements in respect of the said construction and received payments from NSSF for works done on certificates. See Annexure “C”.**
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- 45 **8. That I was appointed a Director and Secretary of Alcon International Ltd Uganda and later Mr. Rajesh Kent was appointed a Director of Alcon International Ltd Uganda vide Annexure “D” hereto. The said Mr. Rajesh Kent was also the Project Manager and Director.**
- 9. That it is Alcon International Ltd of United Kingdom which was reincorporated in Uganda as Alcon International Limited Uganda of the address in paragraph 6 above that executed the contract of building Workers’ House up to the time of termination in 1998 and it’s the company which instituted Civil Suit No.1255 of 1998 and it’s the respondent in Civil Appeal No. 2 of 2004 and therefore the applicant herein.**

10. That to the best of my knowledge Alcon International Limited United Kingdom relinquished all rights that it may have had on the proceeds of the said project to Alcon International Limited Uganda.

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11. That in 1998, when NSSF decided to terminate the applicant's building Agreement with NSSF by serving a Termination Notice upon Alcon International Limited Uganda, Mr. Kultar Hanspal, Mr. Rajesh Kent and myself instructed Tumusiime, Kabega & Co Advocates to represent the Alcon International Limited Uganda, the applicant herein and to the best of my knowledge no competent official of the applicant herein has ever withdrawn those instructions and they remain the Advocates of the applicant.

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12. That Mr Davinder has no authority, power or position whatsoever in the applicant company to withdraw instructions from M/s Tumusiime, Kabega & Co Advocates or to instruct M/s Kampala Associated Advocates to represent the applicant."

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On his part Rajesh Kent deponed (in part) as follows:-

"1. That I am a Director of Alcon International Limited, the applicant herein and respondent in Civil Appeal No.2 of 2004 and therefore I am competent to swear this affidavit.

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2. That in 1994, Mr. Kultar Hanspal, the Managing Director of the applicant signed a building contract on behalf of Alcon International Limited Kenya, with National Social Security Fund for the construction of Workers House, Kampala – ANNEXTURE 'A' hereto.

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3. That immediately thereafter and upon agreement between shareholders and directors, and resolution of Alcon International Limited Kenya that the said entire contract and construction works be carried out by and the proceeds and liabilities be beneficially bequeathed to Alcon International Limited Uganda, Mr. Kultar Hanspal and my self immediately, and later Manjit Kent relocated to Kampala from Nairobi and carried on the construction under the reincorporated Alcon International Limited in Uganda Annexature "B" hereto. Thus as proof of this fact, I have attached hereto Alcon International Ltd, Kenya's Financial Statements for the years 1995 to 1996 to show that Alcon International Ltd Kenya had no liabilities or assets or income from abroad, (Uganda) during these years. See Annexature "B1".

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4. That on 1st October 1997. I was appointed the Director of the applicant and have continued to serve as one to date, along with

Mr. Kultar Hanspal Managing Director, Manjit Kent and Inderjit Hanspal.

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6. That as the project director and manager I hereby categorically state that the NSSF dealt exclusively with myself Mr. Kultar and Manjit Kent as Directors of the applicant herein and nobody else.
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7. That it is the applicant herein that was paid by NSSF for certificates of work through its bank in Kampala, Uganda. See Annexure "C".
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8. That it is further the applicant herein, the Uganda Company that after receiving the bequeath stated herein before that arranged through its financial partners in Uganda and overseas for collateral financing of the project in complete agreement with NSSF.
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9. That when NSSF terminated the contract it was the applicant herein, the Ugandan Company that was served with the termination notice to that effect. See Annexure "D".
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10. That in March, 1998, Kultar Hanspal, Manjit Kent and myself went to Tumusiimwe, Kabega & Co Advocates, then at Rwenzori House, Lumumba Avenue and instructed M/s Tumusiime, Kabega & Co Advocates to represent the applicant and serve as the applicant's Advocates in all matters."

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The gist of these two affidavits contradicts the testimony of the Hanspal Brothers that those two have never got involved in construction business at all. The evidence by the Hanspal Brothers was also contradicted by that of their eldest brother Inderjit Singh Hanspal who deponed:-

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8. That the latest registration status and the Directors and Shareholders of Alcon International Limited at the time of the appointment of Kampala Associated Advocates are as stated in the affidavit of my brother Davinder Singh Hanspal whose contents I reiterate herein.
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9. That the subject contract has, at all material times, got nothing to do with Alcon Interantional Limited, Uganda or Alcon International, UK, because at the commencement, execution and negotiations for the contract both NSSF and the Government of Uganda insisted on dealing with the company with a track record in building construction business.
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10. That it is true my brother Kultar Singh Hanspal employed Mr. Rajesh Kent in Kampala in 1994 and that they later incorporated

Alcon International Uganda but I am aware, and I have been informed by Mr. Kultar, which information I believe to be true, that he sacked Mr. Rajesh Kent in 1996 when Mr. Rajesh engaged in acts of sabotage of the company's business and affairs. Mr. Rajesh and my sister Manjit were engaged in the business of export of vegetables to the UK through their company VEGAIR LIMITED. They have no track record or at all in building construction business.”

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This testimony tends to confirm the incorporation in Uganda of Alcon International in which Rajesh and Manjit were engaged under the leadership of Kultar who was the Managing Director of the company that did the actual construction of the Workers House in Kampala. This evidence shows that Mr. Rajesh and Manjit Kent were at all material times involved in construction business.

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The affidavit evidence we have discussed above is only that of witnesses whose evidence tends to shed light on the identity of the company that entered into a construction agreement with NSSF in 1994 and whether it is the one which actually constructed the Workers House up to 1998 when the contract was rescinded by the NSSF.

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The issue to be resolved in this application remains whether or not Davinder Hanspal and Alcon International Kenya have authority to withdraw instruction from M/s Tumusiimwe, Kabega & Company Advocates from representing the applicant in Civil Appeal No.2 of 2004.

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[3] THE CASE FOR THE APPLICANT

At the hearing of this application, Mr. D. Kabega of Tumusiimwe, Kabega & Co Advocates represented the applicant, Alcon International Ltd. One of the issues we must resolve is: **Which Alcon International Ltd did he represent?** In the last 37 years, four companies have registered themselves with the name ALCON INTERNATIONAL LIMITED. This is derived from the testimonies of the Hanspal Brothers and Manjit and Rajesh Kent. The Companies are:

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1) Alcon International Ltd registered by the three Hanspal Brothers in 1971 as Allied Concrete Works Ltd in Kenya and has changed its names several times from Allied Concrete Works Ltd to Allied Cosntractors Ltd and to Alcon International Ltd on and off. It is common ground that this is now the company known as Alcon International Ltd Kenya, the very company that allegedly signed a construction contract with NSSF in 1994.

2) Alcon International Ltd registered in 1983 in Kenya by Kultar Hanspal and his sister Manjit Kent, which, according to the evidence of Kultar Hanspal, kept exchanging names with the company now known as Alcon International Ltd Kenya until 12th April 1994 when it became known as Allied Contractors Ltd and is still registered in those names.

3) Alcon International Ltd (United Kingdom). This company was registered by Kultar Hanspal in 1987. According to Manjit and Rajesh Kent, it is this company that was later registered in Uganda in 1993 and is being referred to in these proceedings as Alcon International Ltd (Uganda).

4) Alcon International Ltd (Uganda). It is the evidence of Manjit and Rajesh Kent that shortly after Alcon International Ltd (Kenya) signed the contract with NSSF, Hanspal family and assigned their entire interest in the construction contract of Workers House and it is this assignee, Alcon International Ltd (Uganda) which constructed the House.

While M/s Tumusiime, Kabega & Co Advocates case is that the Worker's House contract was signed by Alcon International Ltd (Kenya) they never met any Directors or acted for that company at all. For them, they were instructed by Alcon International Ltd (Uganda) in 1998 whose Managing Director was Kultar Hanspal and had Mr. Rajesh Kent as a Director and Manjit Kent as the Secretary. Mr. Kabega's arguments are based on the evidence we have endeavoured to summarise above. He argued that shortly after Alcon International Ltd (Kenya) signed the contract with NSSF, it phased itself out and Alcon International Ltd (Uganda) of P. O. Box 9598 Kampala took over the entire operations. He relies on the following affidavit

evidence which in his view establishes beyond doubt that it is not the Kenya company but the Uganda company which performed the construction contract with NSSF:-

- 5 (1) All correspondence between NSSF and Alcon International Ltd were addressed to its Managing Director, Kultar Hanspal of Alcon International Ltd of P.O. Box 9598 Kampala and not P.O. Box 47160 Nairobi which is the address of Alcon International Ltd (Kenya).
- 10 (2) It is that Alcon International Ltd Uganda to which all payments were made by NSSF and it is the company which was served with notice of termination of the contract in 1998.
- 15 (3) The NSSF recognised Mr. Kultar Hanspal as the Managing Director of Alcon International Ltd, the Uganda Company and did not ever corresponded with Davinder Hanspal who is the Managing Director of the Kenya Company.
- (4) Both the NSSF and the Ministry of Labour in Uganda recognised Kultar and Rajesh as Directors of the Uganda Company.
- 20 (5) All financial statements of Alcon International Kenya for the duration of 1995 up to 1997 which are on record do not show that Alcon International Ltd Kenya had any assets of any kind in Uganda or any operations in Uganda. If they had, it could not have been omitted in the statements.
- 25 (6) All Minutes of Meetings between Alcon International Limited and NSSF held between 1994 and 2002 revealed the active participation of Kultar Hanspal and Rajesh Kent as Directors of the company. Davinder Hanspal and Inderjt Hanspal, who are the Directors of Alcon International Ltd Kenya, do not feature anywhere at all.
- 30 (7) The letter addressed to M/s Tumusiime, Kabega & Co Advocates dated 15th May 1998 instructed the firm to be the legal representative of Alcon International Ltd to handle the dispute between itself and NSSF. It was signed by Kultar, Rajesh and Manjit Kent, as Managing Directors and Directors of Alcon International Ltd

respectively. Up to that point and thereafter till 2006, the advocates had never met Davinder or Inderjit Hanspal despite the fact that the advocates handled over thirty suits and applications in court on behalf of Alcon International Ltd including lengthy arbitrations proceedings in which they were always in constant contact with the Directors of their client.

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Mr. Kabega called our attention to the fact that though many of the cases are still pending in our courts, Davinder Hanspal only shows interest in only one suit which is pending here on appeal and where an out of court settlement was due to be reached shortly before he intervened. In his view, Davinder is only interested in harvesting where he did not sow.

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(8) During their stay in Uganda, between 1994 and 2002, Kultar Hanspal and Rajesh were charged of 156 Counts of failing to pay workers. They were being charged in their capacity as Managing Director and Director of Alcon International Ltd respectively. Davinder and Inderjit do not feature anywhere as they were unknown in Uganda.

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Mr. Kabega submitted that the history of Alcon International Ltd (Kenya) of constantly changing its name shows that it was dealing in dubious business. He invited us to hold that it had no locus standi in Uganda and it is the local Alcon International Ltd Uganda which instructed his firm and has never withdrawn those instructions. He requested us to strike M/s Kampala Associated Advocates off the record of Civil Appeal No.2 of 2004 because they know nothing about those proceedings and to order the appeal to proceed.

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[4] THE CASE FOR THE RESPONDENT

Mr. Peter Kabatsi of Kampala Associated Advocates appeared before us on behalf of the respondent. His arguments are base on the affidavit evidence of himself, Davinder Singh Hanspal, Kultar Singh Hanspal and Inderjit Singh Hanspal which we have already alluded to several times above. Mr. Peter Kabatsi stated in his affidavit dated 22nd May 2007 that in July 2006 he received instructions to take over the conduct of Court of Appeal C.A. No.2 of 2004 from M/s Tumusiime, Kabega & Co Advocates. The instructions were in writing and were accompanied by a company resolution of

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Alcon International Ltd (Kenya) to the same effect. That following the instructions, he filed on behalf of the respondent a Notice of Change of Advocates in the Court of Appeal Registry and that since then, he is the only one authorised to handle all matters pertaining to that case. His instructions were that the applicant did not obtain instructions to file this application on its behalf and therefore according to him it is a nullity which should be struck off by this court.

In reply to Mr. Kabega's submission, Mr. Kabatsi submitted that it is Alcon International Ltd Kenya which signed the contract to construct Workers House and it was the one which actually did it through one of its directors, Kultar Hanspal. In his view, though Alcon International Ltd had earlier instructed M/s Tumusiime, Kabega & Co Advocates to handle its cases, it retained the right to withdraw those instructions and to instruct another firm of advocates as in fact they did in July 2006. He reiterated his prayer that the application should be struck off as a nullity and that the advocates in M/s Tumusiime, Kabega & Co Advocates should be ordered to personally pay the costs of this application and not Alcon International Ltd which never instructed them to file this application.

[5] THE EVALUATION AND CREDIBILITY OF WITNESSES

All evidence in this application was by affidavit. It is not always easy for a court to assess the credibility of a witness it did not see in the witness box. However, taking all the evidence adduced together, it is possible to determine which evidence is reliable and which one is not reliable. In our attempt to answer the main issue in this application, we evaluate all the affidavit evidence adduced by both parties and the documentary evidence attached to the affidavits. In this regard we evaluate the evidence for the applicant of Mr. Enos Tumusiime, Mrs Alka Hanspal, Mr. Kultar Hanspal, Mr. Rajesh Kent and Mrs Manjit Kent. For the respondent, we evaluate the evidence of Mr. Davinder Hanspal, Mr. Inderjit Hanspal, Mr. Kultar Hanspal and Mr. Elly Karuhanga of Kampala Associated Advocates. In order to arrive at the truth, the whole evidence must not be evaluated in isolation but together as an integrated whole.

- (a) From the whole of this evidence, there is no doubt that on 21st July 1994, National Social Security Fund [NSSF] entered into a construction

agreement to construct Workers House with ALCON INTERNATIONAL LIMITED (KENYA) Enterprise Road, Industrial Area, P. O. Box 47160, Nairobi Kenya. Looking at the document itself and the evidence of Rajesh Kent, it was Kultar Hanspal who signed the contract on behalf of the “contractor” who is Alcon International Limited Kenya. At that time there was in existence in Uganda a company called Alcon International Limited of P. O. Box 9598 Kampala which was registered by the same Kultar Hanspal on 7th September 1993 which had been incorporated in England in 1987. He was in fact its Managing Director . It is not clear why this company was not the one which signed the Workers House contract. There is evidence from Inderjit Hanspal to the effect that NSSF insisted on a company with a track record of construction, which this latter company did not have, and so it was decided that for the Workers House contract, the Kenya Company be used.

- (b) We have noted that on 21st July 1994, it was Mr. Kultar Hanspal who signed the Workers House contract on behalf of Alcon Kenya. At that time he was one of the three directors of the company. Davinder Hanspal who was its Managing Director and Inderjit Hanspal who was a director, did not sign the contract documents. The value of the contract was US\$16,160,000=.

On 8th June 1996 the original contract was amended to provide for additional improvements and other structures on the Workers House. The additions were valued at US\$9,066,917. Again it is Kultar Hanspal alone who signed on behalf of Alcon International Ltd. It is strange, to say the least, that Alcon Kenya would entrust this highly valuable transaction to only one director. It is also remarkable that there is no evidence whatsoever that a resolution was made by the directors of Alcon (Kenya) authorising Kultar to enter into these transactions at all. It appears to us that right from 1993 when he registered Alcon (UK) in Uganda as Alcon (Uganda), it was done to be able to bid for the Workers House contract using the Uganda Company. However, since the Uganda Company did not have the required track record, the name of Alcon (Kenya) was used in

order to win the contract only. It appears to us that it was never Kultar's intention in the first place to involve Alcon (Kenya) in the construction of the Workers House. This explains why the other directors of Alcon (Kenya) were never involved and why there is no resolution of the company authorising the transaction.

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We are fortified in the correctness of this conclusion because in 1997 when negotiation between Alcon International Ltd (Uganda) and Orient Bank to raise a loan to complete the construction contract were held, they did not involve any of the directors of Alcon (Kenya). The amount involved were US\$2,625,480 and no authority to borrow that money is available in form of a company resolution from Alcon (Kenya). However, this finding is not inconsistent with other evidence on record that after the signing of the construction contract, an agreement was reached in the Hanspal family to leave the execution and the proceeds of the contract entirely to Alcon (Uganda).

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(c) We accept the evidence of Rajesh and Manjit Kent that shortly after the signing of the contract, an arrangement was reached in the Hanspal family whereby the construction of the Workers House would be done by Alcon International Limited (Uganda) which would take responsibility for all assets and liabilities arising from the building contract. Though written evidence of this is not on the file, we accept the evidence of Mrs Alka Hanspal that a lot of documents were taken by force from her by Davinder Hanspal after her husband Kultar got a stroke in 2002. There is on record a lot of evidence to corroborate the evidence of the assignment of the construction contract. We shall here mention a few examples:-

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(i) From the date of the signing of the contract, only Kultar, who was the sole Director and the Managing director of Alcon Uganda and Manjit and Rajesh Kent are involved in all activities of the company in executing the building contract. From that time, Davinder Hanspal, Inderjit Hanspal or any other member of Alcon International Limited (Kenya) does not feature or surface in

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Uganda till 2006 when Davinder Hanspal appeared before Justice Kavuma in Civil Appeal No.2 of 2004.

5 (ii) In all the numerous meetings held between NSSF and Alcon International Ltd, the minutes which appear on record, no one else other than Kultar, Rajesh and Manjit Kent appears therein. It is these three who did everything for Alcon International Ltd Uganda. Kultar was its acknowledged Managing Director (MD), Rajesh was at first the Works Supervisor and Accountant but was later elevated to director of the company of the Alcon International Ltd Uganda at a Meeting of the Board of Directors held on 1st October 1997 at 4 p.m. Manjit Kent was also appointed the Company Secretary at that meeting. It was these three who received all the payment and all correspondence was directed to Kultar Hanspal as Managing Director of Alcon Uganda. It is this company which received notice of termination of the Workers House contract and it is these three who on behalf of Alcon International Ltd (Uganda) instructed Tumusiime, Kabega & Co Advocates to represent the company in the disputes with the NSSF that followed. Alcon International Ltd (Kenya) was at that time only remembered for having signed the 1994 contract. Even then Kultar Hanspal, the only signatory of Alcon International Kenya Limited was also the sole director and Managing Director of Alcon International Uganda which executed the building contract.

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25 (iii) From May 1998 when M/s Tumusiime, Kabega, & Co Advocates got instructions from Alcon Uganda, they have handled numerous cases for their client. Let the affidavit of Mr. Enos Tumusiime speak for itself:-

30 **“4. That pursuant to Alcon International Ltd’s instructions, our law firm has handled the following cases:-**

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- (a) **High Court Misc. Cause No.502 of 1998, Alcon vs NSSF in which Alcon applied for an Order of Certiorari to quash NSSF’s decision to terminate the contract with Alcon.**
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- (b) **High Court Civil Suit No.1255 of 1998, Alcon vs NSSF & Ssentogo (The main suit for breach of the building contract for “Workers House”).**
- (c) **High Court Misc. Application No.542 of 1999 Application by Alcon for a Temporary Injunction (arising out of HCCS No.1255 of 1998).**
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- (d) **High Court, Misc. App. No.543 of 1999, Alcon vs NSSF (Application for an Interim Order).**
- (e) **High Court, Misc. App. No.172 of 1999(Arising out of HCCS No.1255 of 1998), Alcon’s application to strike out NSSF’s Notice of Appeal.**
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- (f) **High Court, Arbitration Cause No.4 of 2001, Alcon vs NSSF and Ssentogo and Partners. The Arbitration commenced in 1999 and the Award was made in 2001.**
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- (g) **High Court, Misc. App. No.9 of 2001, Alcon vs NSSF and Anor, Application for security for costs.**
- (h) **High Court, Misc. App. No.417 of 2001, NSSF vs Alcon, NSSF’s Application to remove the Arbitrator.**
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- (i) **High Court, Misc. App. No.616 of 2001, Alcon’s Application for security for cots.**
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- (j) **Defending Directors of Alcon, Kultar Hanspal and Rajesh Kent Criminal Case No.NAK/10A/CO/LB/0033/99, Ug. Vs Kultar Hanspal and Rajesh Kent (The Charge Sheet had 156 Counts covering 50 pages. Tumusiime, Kabega & Co. successfully defended the Directors for a period over 2 years and the charges was dismissed.**
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- (k) **Successfully defended Directors of Alcon, Kultar Hanspal and Rajesh Kent – Criminal Case No. BUG-CO-8569-2000 against charges of theft of NSSF’s US\$1,055,000 which was allegedly paid to Alcon for the Curtain Walling Sub-contract.**
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- (l) **High Court Civil Suit No.1210 of 1999, Alcon International Ltd vs Milisaljevic Milivoje – Micha**
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- (m) **Misc App. No.1282 of 2000, Alcon Int. Ltd vs Milisaljevic Milivoje Micha.**

5. **In addition to the foregoing cases, we represented Alcon International Ltd and its Directors in various other matters from 1998 to date, to wit;**

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(a) **Challenging Garnishee Applications by Hima Cement, Gold Trust Bank, DFCU Bank, Trans Africa Assurance and Orient Bank in the High Court.**

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i. **Alcon Int. Ltd vs Orient Bank Ltd, HCCS No.925 of 1998.**

ii. **Transafrica vs Alcon International HCCS No.402 of 1998.**

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iii. **Orient Bank vs Alcon Int. Ltd HCCS No. 828 of 1998.**

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iv. **Alcon Int. Ltd vs Orient Bank Ltd, Misc. App. No.44 of 2002.**

v. **HCCS No.193 of 2000
Gold Trust Bank vs 1- Manjit Kent
2- Rajesh Kent
3-**

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vi. **Mis. App No.335 of 2000 (Arising from HCCS No.193/2000)
Gold Trust Bank vs 1- Manjit Kent
2- Rajesh Kent
3-**

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vii. **Celtel Ltd vs Alcon International Ltd and HCCS No.38 of 2002**

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viii. **Celtel Ltd vs Alcon International Ltd and NSSF – Garnishee Proceedings**

ix. **Misc. App.819 of 2001, Transafrica vs Alcon International Ltd and NSSF**

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x. **Misc. App.1062 of 1998, Orient Bank Ltd vs Alcon International Ltd.**

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xi. **Orient Bank Ltd vs Alcon International Ltd – (JD) and NSSF – (Garnishee), Misc. App. No.552 of 2001.**

xii. **Orient Bank Ltd vs Alcon International Ltd Misc. App. No.269 of 1998.**

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xiii. **Orient Bank Ltd vs Alcon International Ltd Misc. App. No.209 of 2000.**

- (b) **Handling tax claims by Uganda Revenue authority against Alcon International Ltd of shs.2,000,000/=.**
- 5 (c) **Defending Mr. Rajesh Kent in several suits in the High Court for rentals with Metropolitan Properties, in Bugolobi and 7th Street, Kampala.**
- 10 (d) **Represented, Alcon International Ltd at several meetings with Ministry of Labour, former employees and various claimants, from 1998 to date – Minutes of the Meetings are attached hereto as Annexure “B”.**
- 15 (e) **Attended to several matters between Alcon International Ltd and Kenya Commercial Bank and the Receiver, Mr. Rao from 2001 to 2006 over a debt of US\$3.5M. This involved several flights to and from meetings in Nairobi with Kenya Commercial Bank and Receivers.**
- 20 6. **That in all the above cases, we received instructions from Mr. Kultar Hanspal, Managing Director, Mr. Rajesh Kent, and Mrs Manjit Kent, Director and none whatsoever from Mr. Davinder. While Mr. Davinder purports to have instructed Kampala Associated Advocates to handle Civil Appeal No.2 of 2004, he is silent about the rest of the above cases, the majority of which are pending before the courts. This is due to the fact that he is not a Director of Alcon International Ltd and was never involved in the affairs of the company and ignorant of these cases that have far reaching financial implications to Alcon International Ltd and in particular Civil Appeal No.2 of 2004 and this application.**
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- 35 7. **That during the lengthy arbitration, Arb. Cause No.4 of 2001, and during the Court Sessions before and after the Arbitration, Mr. Kultar Hanspal and Mr. Rajesh Kent were the only witnesses who represented Alcon International Ltd as Directors, who gave evidence to the Tribunal and Courts respectively, who assisted our law firm to prepare the claim and further in the Criminal Cases cited in paragraph 3(x) and(xi) above, when the charges were preferred against the Directors of Alcon International Ltd, they were only against Mr. Kultar Hanspal and Mr. Rajesh Kent. There were no charges preferred against Mr. Davinder, which goes to prove that he is not a Director of Alcon International Ltd and is only now passing off as a Director for reasons stated in paragraph 12 hereunder. Copies of the Charge Sheets are attached hereto as Annexure “C”.**
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This testimony is completely unchallenged. During all this time when Alcon International Ltd was going through the most difficult and trying time in its life, when its Managing Director Kultar Hanspal was unconscious due to a severe stroke and was forcefully living with his brother Davinder Hanspal, not a single director of Alcon International (Kenya) appeared at the firm of M/s Tumusiime, Kabega & Co Advocates at all or in court to ascertain the nature of these cases many of which are still pending in court.

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(iv) On 26/5/1999, a Charge Sheet containing 156 Counts of offences relating to violation of the Uganda Employment Decree No.4 of 1975 was filed by the Kampala District Labour Officer against the following:—

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A1 – Kultar Hanspal, the Managing Director Alcon International Ltd.

A2 – Alcon International Ltd of P. O. Box 9598 Kampala.

A3 – Rajesh Kent, Director Alcon International Ltd P. O. Box 9598 Kampala.

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At no time did Alcon International Ltd of P.O. Box 47160 Nairobi or any of its other directors appear or feature to answer the offences allegedly committed by Alcon International Ltd Uganda or its local directors.

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To us, all this evidence corroborates the evidence of Rajesh and Manjit Kent that it was pursuant to an agreement in the Hanspal family, Alcon International Limited (Uganda) which constructed Workers House. It would follow from this conclusion that it is Alcon International Ltd Uganda which filed HCCS No.1255 of 1998 and the appeal which arose out of it, Civil Appeal No.2 of 2004.

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(d) We do not believe the lies told by Davinder Hanspal, Kultar Hanspal and Indejit Hanspal that Rajesh and Manjit Kent were just vegetable sellers and have never got involved in construction business. There is overwhelming evidence on record to disapprove these assertions.

(e) There are a lot of dubious practices in the business dealings of the Hanspal family. A few examples include the manipulation of the names of their companies in a manner calculated to confuse any tax authorities and those individuals and entities they deal with and the manner in which they contrived to fraudulently win the Workers House construction tender bid. Under the laws of Uganda, these practices would be considered criminal. The worst culprits of them all are Kultar and Davinder Hanspal. The two since 1971 crookedly registered and manipulated dubious companies variously called Alcon International Ltd (Kenya) (two companies), Alcon International Ltd Uganda [originally Alcon International Ltd (UK)]. The activities and the demise of their other companies, namely, Allied Concrete Works and Allied Contractors Limited are not known. Nevertheless, we hold the view that these men are not credible at all and they can only tell some truths by accident. The evidence of Rajesh and Manjit Kent as corroborated by numerous documents attached to the various affidavits of all the witnesses is preferable.

[6] CONCLUSION

From the above analysis, it is obvious to us that Alcon International Limited (Kenya) has no locus standi in Civil Appeal No.2 of 2004 or indeed any of the more than thirty cases filed on behalf of Alcon International Ltd (Uganda) still pending in our courts. Alcon International (Kenya), therefore, has no power to instruct any firm of Advocates to take them over. It is Alcon International Ltd (Uganda) which can do that. We, therefore, uphold M/s Tumusiime, Kabega & Co Advocates on behalf of Alcon International Ltd Uganda that this application will be allowed and is hereby allowed. Alcon International Limited (Kenya) is struck off the record of Civil Appeal No.2 of 2004. It is ordered that the company pays the costs of this application.

Dated this ...**18th** ... day of**February**..... 2008.

.....
Hon. Lady Justice L.E.M. Mukasa-Kikonyogo
DEPUTY CHIEF JUSTICE

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.....
Hon. Mr. Justice G.M. Okello
JUSTICE OF APPEAL

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.....
Hon. Mr. Justice A. Twinomujuni
JUSTICE OF APPEAL

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