THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA.

CIVIL APPEAL NO. 071 OF 2009

5 **BELEX TOURS AND TRAVEL LTD================= APPELLANT**

VERSUS

1. **CRANE BANK LTD**
2. **M/S FANG MIN ========================== RESPONDENTS**

10

CORAM: HON. LADY JUSTICE FAITH E.K. MWONDHA, JA

HON. MR. JUSTICE KENNETH KAKURU, JA.

15 **HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA.**

JUDGMENT OF THE COURT

The background to this appeal was presented by the parties as 20 follows:-

The appellant was 1st plaintiff at the High Court and customer of the 1st respondent; the 1st and 2nd respondents were defendants. The Appellant company obtained credit facilities from the Bank (1st respondent) over a period of time between 1997 and 1999. As 25 security for the credit facilities the appellant executed a mortgage in favour of the 1st respondent in respect of property comprised in LeaseHold Register Volume 2490, Folio 4 Plot 9 Sezibwa Road Kampala.

At that time the appellant was operating a hotel business from the said mortgaged property. The Hotel was known as HOLIDAY HOTEL (U) Ltd. It seems the Hotel was operating as a business distinct from the appellant, registered as Holiday Hotel (U) Ltd in which the appellant held one third of the shares. Holiday Hotel (U) Ltd was the second plaintiff in the suit at the High Court.

The appellant in addition to the mortgage later executed two further charges. It also executed a debenture in favour of the 1st respondent.

As at May 15, 1999 the amount due to the 1st respondent from the appellant had accumulated to US $ 704,829/=, which the appellant conceded it had failed to pay.

On 21st May 1999 a deed of transfer of land was executed by the 1st respondent in favour of the 2nd respondent for a consideration of US Dollars 745,000/=. The deed was in respect of Leasehold Register Volume 2490, Folio 4, Plot 9 Sezibwa Road, Kampala, the property that had been mortgaged by the appellant.

Having realized US$ 745,000/= from the sale the 1st respondent with the consent of the appellant applied the money to recover the loan which was at US$ 704,829/=, together with legal charges and auctioneers fees which was agreed at 5% thereof making a total of US$ 739,200/=, with a balance of USD 5,800/=.

However the 1st respondent did not pay to appellant US$ 5,800/= which the appellant was claiming as balance from the proceeds of the sale. In addition, the appellant was claiming movable property

or the value thereof that was in the Hotel at the time of sale, including furniture, equipment and other movables.

The 1st respondent did not comply with the said demands and as a result the appellant sued, together with the Holiday Hotels (U) Ltd the former claiming the balance on the purchase price of the mortgaged property, the latter claiming return of movable property or their value.

At the hearing of the suit it was conceded by the appellant that the movable property that was in the Hotel at the time of sale belonged to it and not Holiday Hotels Ltd, the 2nd plaintiff.

The 1st respondent counter-claimed for USD 5,112.27/= being outstanding balance on the loan. The 2nd respondent who was in possession of the movable property at the time the suit was brought was sued for conversion in respect of the movable property as she had taken over the Hotel together with all the movable property therein.

The issues were;

1. **Whether the USD 745,000/= included the price of moveable asset or it was the price of the land only.**
2. **If so whether if the plaintiffs were entitled to the reliefs and from who?**

Judgment was delivered on 14th December, 2007 dismissing both the suit and the counter-claim, with orders for the plaintiffs to pay costs to the defendants and the defendants to pay costs to the plaintiffs, hence this appeal. Holiday Hotel (U) Ltd the 2nd plaintiff at the High Court did not appeal.

The memorandum of Appeal sets out only two grounds. They are set out as follows:-

1. **The learned trial judge erred in law and in fact and did not properly evaluate the evidence in holding that the US$745,000/= paid included land and moveables thereby dismissing the appellants' claim for Shs. 194,313,000/= with interest.**
2. **The learned trial judge erred in law and fact and did not properly evaluate the evidence in dismissing the appellants' claim of US$ 5,800/= with interest.**

At the hearing this appeal Mr. Nester Byamugisha appeared for the appellant and Mr. Gilbert Nuwagaba appeared for the 1st respondent.

Mr. Muwanga appeared for the 2nd respondent.

All counsel made oral presentations but also relied on their conferencing notes on record.

Mr. Byamugisha chose to argue both grounds together. He submitted that the issue to be resolved by this court is whether the US$ 745,000/= paid by the 2nd respondent to the 1st respondent included the price of movable assets or was for the land alone.

It was submitted by Mr. Byamugisha that the evidence adduced at the trial clearly indicates that only the land was sold.

That moveables were not sold and were not included in the purchase price. He relied basically on two documents

1. The application for consent to transfer filed with the land registry in respect of the suit property on 14th May, 1999.
2. The deed of transfer executed between the 1st respondent and the 2nd respondent dated 21st May 1999.

5 He submitted that the application for consent to transfer lodged by the 1st respondent with the commissioner for land registration on the 14th May, 1999 for assessment of registration fees indicated the consideration for the land as US$ 745,000/=. It also indicated that the subject matter was leasehold Register Volume 10 2490 Folio 4 Plot 9 Sezibwa Road. The application sought consent to transfer the said property from Belex Tours & Travel Ltd of P.O.Box 10542 Kampala to Ms Fang Min of P.O.Box 6323 Kampala, (the 2nd respondent).

The transferer was the appellant and the transferee the 2nd 15 respondent. The document was prepared by an advocate acting for the 1st respondent.

The chief government valuer, he submitted valued the property at Shs. 1,200,000,000/= as the indicated on the application form, the valuation was made on 17th May, 1999.

20 Counsel submitted that the consent to transfer was submitted to the land Registry on 14th May 1999. That was seven days before the deed of transfer was signed. The deed of transfer is dated 21st May of 1999.

It was further submitted for the appellant that in their letter dated 25 3rd May 1999 to the Advocates for the 1st respondent the appellants set the terms clearly. The terms separated the sale of

the property (Holiday Inn) from the sale of movable property. He further submitted that the Deed of transfer under mortgage executed between the 1st and the 2nd respondents on 21st May 1999 was only in respect of land. That it was executed under the Registration of Titles Act (RTA) and the mortgage Decree in respect of property comprised in Leasehold Register Volume 2490 Folio 4 Plot 9 Sezibwa Road Nakasero (Holiday Hotel). That it was also executed in pursuance of a mortgage deed registered on 13th August 1997 as instrument No. 28870, a further charge registered on 28th August, 1997 as instrument No.289080 and a second further charge registered on 27th May 1998 as instrument 244898. By this deed it was submitted, the 2nd respondent paid consideration of US$ 745,000/= for all the land and developments, thereon.

That the deed confirms that the payment was for the land and not moveables.

He submitted that the value of the moveables Ug.Shs.194,313,000/= was not in dispute; neither was US$ 5,800/= being the difference between the purchase price paid and the loan amount inclusive of agreed legal charges.

He prayed for the appeal to be allowed.

For the respondent learned Counsel Gilbert Nuwagaba submitted that the claim for Shs. 194,313,000/= is not tenable, because it was made only by the 2nd plaintiff at the High Court. The 2nd plaintiff did not appeal. The appellant he contended could not

make a claim on appeal in respect of property that did not belong to it. He referred court to the plaint.

He further contended that although the agreement of sale exhibit P7 is headed "The Registration of Titles Act" in the body of the agreement the 3rd preamble refers as to the debenture and paragraph 5 details the moveable property, that were subject of sale. He contended that it was just a style of writing and had little effect on the intention of the parties. He submitted that under the debenture deeds executed a 30th July 1997 and 19th August 1997, 26th June 1998 all assets, businesses, undertakings, good will, uncalled capital and property of whatever nature, kind or discription belonging to the appellant were charged in favour of the 1st respondent.

He supported the findings of the trial judge, that the terms of sale are contained in the sale agreement, which indicated USD 745,000/= as total consideration. This he argued was supported by the evidence of the 2nd respondent which was to the effect that she made a bid for a total package. That she bought and paid for a going concern that included the Hotel, the chattels and all. He prayed for this appeal to be dismissed.

The 2nd respondent's counsel in reply, simply stated that his client bought the suit property including all moveable property and had nothing more to say. He associated himself with the submissions of counsel for the 1st respondent.

In rejoinder, Mr. Byamugisha contended that the issue of ownership of moveable property was resolved at High court. It was conceded that the moveables were imported by the appellant using money advanced by the 1st respondent bank. That therefore, it was common ground that the moveables belonged to the appellant. He generally reiterated his earlier prayers.

Although the 1st respondent filed a list of authorities, counsel did not refer to any of them. Neither did counsel for the appellant refer to any authorities in support of his submissions.

We shall now proceed to answer the issues raised to this appeal. We prefer to deal with the grounds of appeal rather than issues which will be covered in the reevaluation of evidence. At the commencement of this appeal, counsel for the respondent raised an objection in respect of ground one of appeal. It is to the effect that the claim for moveable properties or their value cannot be a subject of this appeal. He argued that, this claim was made by the 2nd plaintiff only at the High court and not the appellant. The 2nd plaintiff did not appeal and as such he contended the appellant cannot claim for what does not belong to him.

We agree with learned counsel for the respondent that at the trial the claim for Shs. 194,313,000/= was made by the 2nd plaintiff, who did not appeal and not by the appellant. However the 1st respondents Written Statement of Defence paragraphs 9 and 11 states as follows;

9). Paragraph 8 is denied and the 1st defendant will aver and contend that all assets moveable and immoveable belonged to the 1st plaintiff.

11). In further reply to paragraph 8 of the plaint, this defendant will aver that all moveable assets and furnishings in the Hotel were purchased by the 1st plaintiff using funds loaned to it by the 1st defendant. Under a loan facility that was realized on default.

The 1st respondent went on to prove the above averments, upon which the appellants counsel conceded that indeed all the moveable assets in issue belonged to the appellant.

Both parties having agreed that the moveable assets belonged to the appellants the 1st respondent cannot turn around and assert that they do not. It is trite that pleadings have to be looked at as a whole and not in isolation of each other. Since, it was established at the trial that the moveable assets belonged to the appellant, he has a right to pursue that claim on appeal.

In any event, the claim for moveable properties as pleaded in the plaint paragraph 4 was made by both the appellant and the 2nd plaintiff. It states as follows:

4**. *The plaintiffs' claim against defendants jointly and severally is for general damages and special damages, interest and costs arising from the willful conversion of or trespass to the plaintiffs chattels.***

The phase "plaintiffs' claims" clearly is in plural and refers to both plaintiffs; otherwise it would have just referred to the 2nd plaintiff alone. The appellant has a right to claim the value of moveable assets in this appeal. We find no merit in this objection.

5 This court has an obligation when determining a first appeal to appraise/evaluate the evidence afresh and come to its own conclusion. The legal duty of a first appellate court to appraise/evaluate evidence is founded in the common law as well as in the rules of procedure. Rule 30 (1) (a) of the Rules of this 10 Court provides as follows:-

> ***30(1) on any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the Court may***
>
> ***(a) reappraise the evidence and draw inferences of 15 fact.***

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 of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the evidence and 20 draw its own inference and conclusions. In **Coghlan vs. Cumberland** (1898) Ch. 704, the Court of Appeal (of England) put the matter as follows-

> ***"Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in 25 mind that its duty is to rehear the case, other***

materials as it may have decided to admit. The court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the court comes to the conclusion that the judgment is wrong.... when the question arises which witness is to be believed rather than another and that question turns on demeanor, the Court of Appeal always is, and must be, guided by the impression made on the judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanor which may show whether a statement is credible or not; and these circumstances may warrant the court in differing from the judge even on a question of fact turning on the credibility of witnesses whom the court has not seen.”

In **<u>Pandya vs. R</u> (1957) EA 336**, the Court of Appeal for Eastern Africa quoted this passage with approval, observing that the principles declared therein are basic and applicable to all first appeals within its jurisdiction. It held that the High Court sitting on an appeal from a Magistrate’s Court had-

“Erred in law in that it had not treated the evidence as a whole to that fresh and exhaustive scrutiny which the appellant was entitled to expect”

The principle behind **Pandya vs. R** (supra) was subsequently stressed in **Ruwala vs. R** (1957) EA 570, but with explanation that it was applicable only where the first appellate court had failed to consider and weigh the evidence. More recently, the Supreme Court considered the principle in **Kifamunte Henry vs. Uganda**, Criminal Appeal No. 10/97 and **Bogere Moses & Another vs. Uganda**, Criminal Appeal No. 1/97. In the latter case, the Supreme Court had this to say -

> ***"What causes concern to us about the judgment, however, is that it is not apparent that the Court of Appeal subjected the evidence as a whole to scrutiny that it ought to have done. And in particular it is not indicated anywhere in the judgment that the material issues raised in the appeal receive the court's due consideration. While we would not attempt to prescribe any format in which a judgment of the court should be written we think that where the material issue of objection is raised on appeal, the appellant is entitled to receive an adjudication on such issue from the appellate court even if the adjudication be handed out in summary form...***
>
> ***In our recent decision in Kifamunte Henry vs. Uganda we reiterated that it was the duty of the first appellate court to rehear the case on appeal by reconsidering all the materials which were before the***

trial court and make up its own mind.... Needless to say that failure by a first appellate court to evaluate the material evidence as a whole constitutes an error in law."

5 The duty to reappraise/evaluate evidence was also discussed in the Supreme Court **Civil Appeal No. 21 of 2001 Active Automobile Spares Ltd vs. Crane Bank and another (see the judgment of ODER JSC).**

We will therefore proceed to reappraise the evidence as a whole
10 and to draw our own inferences and conclusions therefrom.

As we understand this case, the events that lead to the suit at the High court unfolded as follows.

On 7th July 1998 the 1st respondents advocates wrote/served on to the appellant a **"notice of intention to institute recovery**
15 **measures**"

Apparently, the appellant had borrowed money from the 1st respondent and had failed to pay. The loan was secured by a mortgage registered on the appellants property on Plot 9 Sezibwa Road Kampala. We will refer to it here as the 'suit property'. At
20 that time US$604,241/= was owing. As additional security the appellant had executed three debentures in favour of the 1st respondent. All were registered with the Registrar of companies under the Companies Act.

The first one was dated on 30th July 1997 securing a sum of US$
25 425,000/= and it was registered on 1st August 1997. The second one securing US$100,000 /=t is dated 22nd August 1997 and the

third was dated 26th June 1998 securing US$ 75,000/= it is dated 16th July 1998.

The appellant also filed with the Registrar of Companies, Company form No. 4 on 22nd August 1997 notifying the Registrar of the particulars of mortgage or charge created by the company. The debenture according to that particular company form 4 was in respect of “All its undertaking, goodwill, current assets and all other movable assets uncalled capital and property whatsoever and wheresoever, present and future”.

In addition to the above the appellant executed a legal mortgage in respect of the suit property dated 30th July 1997, and a further charge on the same property dated 19th August 1997.

On 3rd May 1999 the appellant’s Managing Director wrote to the 1st respondent’s Advocate proposing a settlement of his loan. He made four proposals in that letter, as follows:-

1. **He proposed to settle the entire liability within 5 days from date of the letter.**
2. **He stated his willingness to handover vacant possession of the security being holiday inn to the 1st respondent to take it over and conclude the process of foreclosure and/or sale of the said property.**
3. **To negotiate for purchase of the furniture, utensils and other moveable assets in the property.**

4. **He undertook not to request for any further extension.**

On the same day 3rd May,1999 the advocates for the 1st respondent replied rejecting the proposal for settlement. They described the proposal as-

> "Superfluous and unacceptable when it refers to "negotiations for purchase of furniture, utensils and other moveable assets in the property".

They wanted him to surrender the suit property and the Hotel in "as is" condition i.e. in running condition, with everything intact as the moveable were covered by the debenture. It seems after this response there were more negotiations between the parties. This is because on 5th May 1999 the appellant and the 1st respondent entered into a memorandum of understanding as to repayment of the loan. The memorandum was briefly as follows.

a) ***The appellant acknowledged the indebtedness,***
b) ***The appellant was granted opportunity to redeem the property by repaying the loan entirely by 11th May 1999.***
c) ***Failure to redeem the property the appellant would handover vacant possession of the property at Plot 9 Sezibwa Road to 'the 1st respondent' to takeover, manage, and/or conclude the foreclosure and or sale exercise of the property.***

d) ***The appellant was to "relinquish all claims to titles, property or interest whatsoever and the property shall be treated in accordance with the provisions of the mortgage deed and further charge regarding releasization of security"***

Nothing was said about moveable property in this Memorandum of Understanding. Clearly this memorandum was only in respect of Plot 9 Sezibwa Road.

Under the above memorandum of understanding the appellant was to have settled the loan by 11th May, 1999. It failed to do so.

On 15th of May 1999 the appellant again wrote to the 1st respondent begging for another extension of only 4 days to 19th May 1999.

The appellant explained in that letter that it expected Barclays Bank (U) Ltd to furnish a written confirmation of payment to the 1st respondent on Monday 17th May 1999.

It seems clear to us that the appellant had been negotiating with Barclays Bank (U) Ltd to finance the loan or take it over. The 1st respondent was aware of this. The negotiations according to the above letter of 15th May 1999 were about to be concluded.

The 1st respondent promptly rejected the offer by a letter from his lawyers to the appellant dated 16th May 1999. It reads in part, as follows:

"Your letter dated 15th May 1999 seeking extension of completion of the <u>foreclosure and sale exercise refers</u>;

Considering that you have since November 1998 been asking for extensions and at all times nothing has materialized, our clients have rejected your request and you are supposed to vacate and handover the property today midday!"

On that exhibit P12 there is a hand written inscription **"received on 17th May, 1999, 12:00noon"**.

In court the Managing Director of the appellant testified as follows (page 104 of the record)

"Exhibit P11 is an appeal (15th May 1999) for setting indebtedness. <u>We had got an offer from Barclays Bank to pay the loan.</u>

<u>Crane Bank refused to offer</u> saying they had wanted their draft by midday 16th May, 1999. The bank went out of the picture. They had requested for more time up to 17th May, 1999.

Exhibit P12 is a letter from Crane Bank through their lawyers rejecting our offer (Dated 16th May, 1999) Sunday. They took over on Friday 14th May, 1999.

Exhibit P11 was written on Saturday 15th May, 1999 I received exhibit P12 on 17th May 1999 at noon on Monday"

The first appellant seems to have been "hell bent" on having the
5 property taken over before Barclays Banks offer fell through. We say so, because there is no other explanation. By the time the appellant wrote requesting for four days extension on 15th May 1999 which was a Saturday, the 1st respondent had already taken over physically the property and business at Plot 9 Sezibwa Road
10 the day before as the witness testified. The letter rejecting the request for any further extension and also rejecting the proposal by Barclays Bank (U) Ltd was written on Sunday 16th May 1999.

In the letter the 1st respondent demanded that the whole loan be repaid by midday, on the same day. 16th May 1999 was a
15 Sunday. The urgency that required an advocate to open his office on a Sunday just to write a demand letter requiring the appellant to pay US$ 704,829/= before midday on that very Sunday, leaves the question as to his and his client's intentions open.

We have no doubt that this demand letter was intended to defeat
20 the appellant's offer from Barclays Bank (U) Ltd which was expected to crystalise on Monday 17th May 1999 as had been confirmed by the appellant.

But there is more to that. The first respondent had already taken over the property, having been instructed to do so on 14th May
25 1999 by the appellant's lawyers. Apparently the 1st respondent

had by that date already commenced the process of transferring the property in to the names of the 2nd respondent.

A close look at exhibit P5 "Application for consent to transfer (Land Form 6) in page 270 of the record) reveals that in fact that form had been lodged into the registry as early as 14th May 1999 or earlier as submitted by Mr. Byamugisha. The date can be ascertained from the rubber stamp on the form, it reads:- The Revenue Department of the Ministry of Water, Lands and Environment, P.O.Box 7122, Kampala, Uganda 14th May 1999.

We take judicial notice of the fact that this form must be accompanied the transfer form indicating the 'vendor' and the 'purchaser', duly signed and or sealed and witnessed. Upon filing those two documents the same are sent to the government valuer for ascertaining the value of the property for the purpose of assessing stamp duty. We have stated here is what we think is likely to have happened.

Section 113 of the Evidence Act (CAP 6) allows us to do so. It reads as follows:-

> **"The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case"**

Indeed that very form exhibit P5 has a valuation report made by the government valuer duly signed and stamped. It is dated 17th May 1999.

Clearly therefore by 17th May 1999 the sale transaction was complete. We are unable to ascertain for sure when the transfer into the names of the 2nd respondent was made, as the title was never exhibited. Nonetheless we have no doubt whatsoever that the transfer was made on that day 17th May 1999 or so soon thereafter. Whatever the case, the record confirms that by 14th May 1999 the process of transferring the title into the names of the 2nd respondent had already irreversibly commenced.

In his testimony DW1 head of the 1st respondent's Credit Division one Rwegu Nair at page 120 of the record sates as follows:

> ***"The property was sold to the 2nd defendant under an agreement dated 21/5/99 (exhibit P7)"***

At page 121 of the record the same witness testified that interest on the appellant's loan was still being charged on 22nd May1999 and was last charged for the period 15th May, 1999 to 28th May, 1999. At page 132 he states that interest was charged up to 22nd May 1999. At page 122 of the record the same witness states;

> ***"We valued the property <u>before sale</u> (Referred to Exh D24). This is a report of valuation dated 15/5/1999 from Bageine & Co addressed to Crane Bank"***

But as already noted by 15th May 1999 the sale had been concluded. What remained if at all was Registration of Transfer.

Interestingly the same witness contends that foreclosure took place on 14th May 1999, and that the sale took place on 21st May 1999.

On the other hand however DW2 Fang Ming the 2nd respondent in her testimony states that she came to know about the intended sale of the suit property "Holiday Hotel" from a Newspaper. That the advertisement was made in March 1999. That the sale was by public auction and she made the best offer for the property of USD 745,000/=.

If the property was indeed advertised for sale under the mortgage decree (as it was then) then the advert must have run for 30 days. It is not possible that the property which was advertised for 30 days in March 1999 could have been sold by public auction in May of the same year. Clearly the defence evidence points to the fact that there was no public auction. Even if the public auction took place it must have been carried out in contravention of the law.

The testimony of Mr. Rwegu DW1 Credit Manager of the respondent, clearly confirms that no public auction ever took place. In cross examination he states;

> ***"....there were two major buyers -***
>
> ***1. Baggery trading Co Ltd and***
>
> ***2. Fang Min***

We negotiated with both of them, managed to improve their offers and sold for the best price we got from Fang

<u>Min. I don't think she offered cash. She paid by cheque</u> in full USD 745,000/=".

Our finding is that this was a negotiated sale; it was not a sale by a public auction. The testimony in that regard therefore is false.

5 If the property was advertised soon after foreclosure and under the Mortgage Decree, the advertised property would have been clearly Plot 9 Sezibwa Road Kampala. That is the property that was subject of the mortgage and subject to be sold following foreclosure. The power of sale could only have been invoked

10 under the Mortgage Decree and the mortgage deed. Such a sale under the Mortgage Decree could in no way have related to the moveable property.

Moveable property is advertised for sale for 14 days not 30. Accordingly both the moveable and the real property could never

15 have been advertised in the same advertisement, for sale on the same day.

The contention that the 1st respondent was selling the business as a going concern makes no legal sense. Because he had no power to sell the business as a going concern. He had power to sale

20 derived from two distinct legislation.

1. The Mortgage Decree in respect of Plot 9 Sezibwa Road.
2. The Companies Act for sale of moveables, shares, goodwill etc as set out in the debenture.

The 1st respondent could only any optic exercise the powers

25 separately. If the property at Sezibwa Road had been sold and the proceeds of sale were not enough to cover the whole of the

outstanding loan only then could the 1st respondent have exercised his powers under the debenture to recover the balance but not otherwise.

The evidence on record points to the fact that the 1st and second respondents committed a series of illegalities and fraud to defeat the interest of the appellant and to deprive him unlawfully of his property. This is a classical "case of shylock".

Narrating his ordeal at the hands of the 1st respondent and his lawyer the appellant states in his testimony.

> ***"I had sat with Sudhir; he changed his mind after someday. He said he would take over the Hotel with the moveables and the rest. Exhibit D7 this is my letter to the Bank's lawyers. They have the same date 3/5/99. I made a distinction because the value of the land was high. I was also being put on pressure by Sudhir and Rukutana in Sudhir's office. I called for my letter head and the letter was typed in their office"***

As already stated earlier in this judgment the 1st respondent and his lawyers even opened their offices on Sunday to write to the appellant demanding full payment before Sunday Midday 16th May 1999.

There was never any sale conducted on 21st May 1999 as the 1st and 2nd respondent assert.

By 14th May 1999 the transfer forms had already been signed and lodged at the Land Registry. The transfer was under way.

Upon the completion of the transfer the sale agreement was then executed on 21st May 1999. This was important because apparently the 2nd respondent did not have the money to purchase the property. The evidence that she paid in full by
5 cheque at time of sale is false. Dw1's testified that:

> ***"We realized US$ 745,000/= from the sale of the property. The entire amount was deposited in the overdraft A/C of BT&T Ltd (The appellant in this Court) as the statement proves"***

10 This testimony is false. This is because later he testifies that:-

> ***"She got a facility of USD 600,000/= from the Bank as part payment" (exh.P21). This is a mortgage deed dated 21st May,1999 between Fang Min and the Crane Bank for a loan of USD 600,000/=. This is the facility***
> 15 ***she got in order to be able to purchase the property"***

This mortgage was signed on 21st May 1999 therefore the money could not have been available to the 2nd respondent before then. Clearly therefore the property had been sold and transferred to the 2nd respondent by the 1st respondent on 14th May, 1999
20 without any payment having been made.

The 2nd respondent in her testimony at page 151 of the record states;

> ***"I didn't have all the money to pay for this property. I had my own money USD 145,000/=, the rest was a***
> 25 ***loan from Crane Bank. I bought the property from Crane Bank"***

So the puzzle starts getting together. Indeed on 21st May 1999 the 1st respondent executed mortgage in favour of the 1st respondent. The property mortgaged was Plot 9 Sezibwa Road! Exhibit D1 page 238 of the record. Paragraph 1 there of states as follows.

5 ***"The borrower is the registered proprietor of the lands comprised in the above mentioned title together* with all the buildings and improvements situate thereon free from all incumberances"**

Therefore by 21st May, 1999 the 2nd respondent was already the

10 registered proprietor of Plot 9 Sezibwa Road the suit property. She had by then not paid a penny.

This very property was then used to secure a loan of USD 600,000/= by the 2nd respondent from the 1st respondent. With the said money she added her own USD 145,000/= to make a

15 total of USD 745,000/= which was then "paid" to the appellants account to offset the loan.

By the time the agreements dated 21st May, 1999 were made the whole transaction had been completed behind doors. The 2nd respondent executed a mortgage in favour of the 1st respondent

20 on 21st May, 1999. The mortgage was in respect of Plot 9 Sezibwa Road. It was drawn by Ms Mwesigwa-Rukutana & Company Advocates, the 1st respondent lawyers.

The loan for USD 600,000/= was, payable over a period of 24 months at an interest rate of 17% per annum.

25 We take judicial notice of the fact that before a title is transferred, a mortgage registered thereon must first be released, unless the

property is being sold subject to the mortgage. In this particular case the mortgage must have been released before the transfer was made from the name of the appellant to that of the 2nd respondent.

5 That being so, it would have been legally impossible for the 1st respondent to sell Plot 9 Sezibwa Road to the 2nd respondent on 21st of May 1999 under the mortgage deed dated 30th June 1997 because that very mortgage had been released.

The deed of transfer also dated 21st May 1999 between the 1st
10 respondent and the 2nd respondent names the 1st respondent as mortgagee. But this cannot be true because by this time the mortgage had been released. We are well aware that a series of transactions can be completed in one single day or even one hour.

15 We are also aware that a series of instruments can be registered on a certificate of title in one day or even one hour. In this particular case the process of registration commenced on 14th May 1999, when the transfer forms were lodged at the registry of lands and stamp duty was assessed.

20 Section 92 of the RTA provides the procedure of transfer of land. Transfer forms are provided for in the 7th schedule of the Act.

Section 92(2) clearly indicates that upon transfer the estate vests in the transferee.

Section 95 of the Registration of Titles Act (RTA) is to the effect
25 that when a transfer is signed and registered it has the same efficiency as a deed of acknowledgement.

The transfer form provides in part as follows –

"I............... (insert name and addition of transfer) being the registered proprietor of the lands comprised in the above mentioned folio in consideration of the sum of Shs.......... put to me by..........(insert name and addition of transferee) on or before the execution of these presents receipt of which I acknowledge hereby transfer that land to...........(name of transferee).........."

The transfer form requires the applicant to indicate the vendor and the purchaser and the consideration.

Clearly at the time of lodging transfer forms the process of sale must be complete as the form clearly stipulates.

It is our finding that the purported transfer of the suit property from the 1st respondent purporting to exercise power under the mortgage that had already been released was null and void and of no effect.

Having found as such the 1st Respondent was in danger of putting itself in the position of a seller/vendor in its own right as the mortgage had been released instead of a financial institution realizing its loan when it sold the suit property to the 2nd Respondent. It will be recalled that Section 37 of the Financial Institutions Act provides;

"....A financial institution shall not –

a) Engage directly or indirectly for its own account, alone or with others in trade, commerce, industry,

insurance or agriculture, except in the course of the satisfaction of debts due to it in which case all such activities and interests shall be disposed of at the earliest reasonable opportunity…"

5 It is thus questionable whether this sell of the suit property by the 1st respondent to the 2nd respondent could still be said to be in the course of satisfaction of the debt of the appellant due to the 1st respondent. It should further be recalled that the core business of the 1st respondent as a financial institution is to take deposit and 10 give advances and innovate transactions such as these could turn out to be in violation of the Financial Institutions Act and should be avoided.

We also find separately that the 1st respondent in collusion with the 2nd respondent in a series of transactions dating from 5th May 15 1999 to 27th May 1999 as outlined above constituted fraud or amounted to fraudulent dealing in the suit land. The sale and transfer of the suit land from the 1st respondent to the 2nd respondent was tainted with fraud.

It is now settled law since the case of **Makula international vs.** 20 **His Eminence Cardinal Nsubuga and another** 1982 HCB P11 that:-

> ***"Despite the fact the appeal was incompetent. A court of law cannot sanction what is illegal and illegality once brought to the attention of the*** 25 ***court overrides all questions of pleadings, including admissions made thereon"***

This position of the law has been upheld and applied by all courts of law in this country and recently by the Supreme Court in (Supreme Court Civil Appeal No. 15 of 2009, **National Social Security fund, W.H Sentongo vs. Alcon International Ltd)**
5 per Hon. B. Odoki C.J at page 30.

> ***"One of the principles of law stated in Makula International (supra) is that as long as there is an illegality it can be raised at anytime as "a court as a court of law cannot sanction that which is illegal"***
> 10 ***counsel for the appellant maintains that the arbitral award was procured by fraudulent means, which is an illegality, which this court must act upon. I agree and hold that due to the fact that fraud was discovered on appeal, the appellants were not barred from raising it***
> 15 ***in this Court. The Allen Managers and Directors knew this fact and why they concealed it. This conduct cannot be anything other than a deliberate concealment of pertinent information"***

We agree entirely with above proposition of the law, and hasten
20 to add that fraud and or an illegality can be discovered by court itself in the process of reappraising evidence. Even then the court cannot ignore the illegality. The Supreme Court rejected the argument based on the authority of **Stephen Lubega vs. Barclays Bank Civil Appeal No. 2 of 1992** that "fraud must
25 not only be pleaded, it must be particularized".

This is a good authority where the initial action was based on fraud. But certainly does not apply in cases where fraud is concealed only to be discovered on appeal. What constitutes fraud has been given a wider interpretation since the case of

5 **Stephen Lubega vs. Barclays Bank in 1992(supra)**.

The Supreme Court went to great length to define fraud or what constitutes fraudulent dealings in the case of **Fredrick J.K. Zaabwe vs. Orient Bank Ltd and 5 others Supreme Court Civil Appeal No. 4 of 2006**. In the lead judgment of

10 **Katureebe JSC** had this to say at P14 of his judgment.

> **"In my view, an allegation of fraud needs to be fully and carefully inquired into. Fraud is a serious matter, particularly where it is alleged that a person lost his property as a result of fraud committed upon him by**
>
> 15 **others. In this case it was necessary to ask the following questions; was any fraud committed upon the appellant? Who committed the fraud, if at all? Were the respondents singly or collectively involved in the fraud, or did they become aware of the fraud? I**
>
> 20 **find the definition of fraud in *BLACK'S LAW DICTIONARY 6TH Edition* page 660, very illustrative**.
>
> > *"**An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him***
> >
> > 25 ***or to surrender a legal right. A false representation of a matter of fact, whether by***

words or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether it is by a single act or combination, or by suppression of truth, or suggest ion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth, or look or gesture........... A generic term, embracing all multifarious, means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth and any unfair way by which another is cheated, dissembling, and any unfair way by which another is cheated. "Bad faith and "fraud" are synonymous, and also synonymous of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc.

....

As distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the

suppression of truth or the suggestion of what is false whether it be by direct falsehoods or by innuendo, by speech or by silence, by word of mouth or by look or gesture...."

5 We have quoted this definition of fraud at length because all the elements of fraud contained therein appear to be present in the present case with respect to the actions of the directors/shareholders of the 2nd respondent.

We agree with this definition of fraud. We have no doubt that both 10 respondents acted fraudulently within the meaning of fraud as defined above. We have already outlined the fraudulent acts earlier in this judgment, we shall not repeat them.

The case of Fredrick Zaabwe vs. Orient Bank & others (supra) is almost or all fours with this one. Again in that case **Katureebe** 15 **JSC** at page 15 of his judgment held;

"I have no doubt that the director of 2nd respondent throughout the transaction acted fraudulently. They had a clear intention to defraud the appellant of his legal right to his property. In terms of the definition 20 ***of 'fraudulent' in Black's Law dictionary."***

"To act with intent to defraud, means to act willfully and with specific intent to deceive or cheat. Ordinarily for the purpose of either causing some financial loss to another or bring about some financial 25 ***gain to oneself"***

The 2nd respondent gained financially in that he obtained a loan on the security of the appellant properly"

5 Similarly in this case both respondents gained financially when they acted willfully and with the specific intent to deceive or cheat for the purpose of bringing about some financial gain to themselves.

They both lied about a sale by public auction which never took 10 place. Infact all the evidence establishes that it was a sale by private treaty. They lied about the fact that the 2nd respondent was a successful bidder whereas she had no money to purchase the property. The source of money would never have been an issue but in this particular case it is, because the buyer had to 15 borrow from the seller using the property on sale as security. They filed false transfer forms purporting that the sale had been completed on 14th May 1999 whereas not. It should be pointed out that uttering a false document is an offence under sections 351 of the Penal Code Act. The 1st respondent frustrated the efforts of 20 the appellant to obtain financing from Barclays Bank. They both concealed vital information from the appellant as already outlined. They procured execution of documents by false pretences which could amount to an offence under Section 353 of the Penal Code Act. These and other illegalities and falsehoods 25 which we have already outlined are all evidence of fraud.

The 2nd respondent participated in the fraud. Fraud is clearly attributable to her directly and indirectly. Directly in that she

signed transfer forms as purchase on or before 14th May 1999 well knowing she had not paid any consideration for the property.

She lied that she had purchased the property on 21st May, 1999. But by this time transfer had already been lodged at the registry. She participated in having a mortgage registered in her name on the 1st respondents title before she had paid a coin and went on to use the title to obtain USD 600,000/= loan for the 1st respondent to 'purchase' the property that was already hers by fraud.

In the case of **Kampala Bottlers Ltd vs. Damanico (U) Ltd (SCC Appeal No. 22 of 1992)** per Wambuzi CJ P.7

> ***"....fraud must be attributed to the transferee. I must add here that it must be attributed either directly or by necessary implication. By this I mean the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act."***

In this case evidence on record clearly proves that the 2nd respondent was involved in this fraud directly or by necessary implication.

She must have been aware that the whole process was fraudulent and she took advantage of it. She is certainly not a bona fide purchaser for value without notice.

We therefore find that the whole transaction of the sale and transfer of the suit property from the appellant to the 2nd

respondent by the 1st respondent under the mortgage was illegal and fraudulent. We hold that it was null and void and of no effect.

There is yet another interesting aspect of this case. A close look at the mortgage executed between the appellant and 1st respondent in 1997 will reveals that there was non-compliance with section 148 of the RTA.

We have carefully looked at the mortgage deed which was produced in court at page 248 of the Court Record.

The parties to the deed are stated to be Belex Tours and Travel Ltd as the Borrower and Crane Bank Ltd "The Bank". In essence the appellant is the mortgagor and the 1st respondent the mortgagee.

The execution page is at page 10 of the mortgage agreement and at page 257 of the court record.

For Belex Tours and Travel Ltd two signatures are scribbled against the name of the company. Below the first signature is a word "DIRECTOR" and below the second signature is a word Secretary.

For the mortgagor Crane Bank Ltd, there is a rubber stamp with inscriptions CB for Crane Bank Ltd senior branch manager. The word Director is below the stamp. There is a scribbled signature above the words "Senior Branch Manager". Below that stamp and signature there is another scribbled signature below which there is a word SECRETARY. The execution of this mortgage in our view

clearly offends the provisions of Section 148 of the Registration of Titles Act. The Section states;

148. No instrument of power of attorney shall be deemed to be duly executed unless either

5 a) The signatures of each party to it is in Latin character or

b) A transliterature into Latin character of the signature of any party whose signature is not in Latin character and the name of any party who has affixed a mark instead

10 of signing his or her name are added to the instrument or power of attorney by or in the presence of the attesting witnesses at the time of execution and beneath the signature or mark there is inserted certificate in the form in the eighteenth schedule to this

15 Act"

The Supreme Court held in the case of **General Parts (U) Ltd vs. NPART (Civil Appeal No. 5 of 1999)** that when the signatures to a mortgage are not on Latin character the mortgage is not valid and the Sections 147 and 148 of RTA are mandatory

20 legal requirements.

This decision was followed in the case of Fredrick Zaabwe vs. Orient Bank and others (supra), in which the Supreme Court observed and held as follows:-

"Therefore, as to whether the signature on the

25 ***mortgage complied with section 148, I must note the following: The names of the signatures are***

not given nor their capacity to sign on behalf of the company. One cannot tell whether they are Directors, Secretary or ever offices of the company at all. There is no company seal or stamp at all. Furthermore even the witness to the signatures has neither disclosed his name nor his capacity to witness instruments as provided by section 147 of the Act. In the circumstances how would the registrar know the persons who signed the mortgage deed on behalf of the company had authority to execute the deed? It is to be noted that the company had opted for signatures instead of the company seal as would have been permitted under Section 132 of the RTA".

In our view the execution of the mortgage by the 1st and 2nd respondents did not comply with the provisions of Section 147 and 148 of the R.T.A. We agree with the decision in the General Parts case (supra) that such irregularity renders the mortgage invalid.

This appeal is almost on all fours with both the General Parts case (supra) and the Zaabwe vs. Orient Bank case (supra) as regards execution of mortgage or other instruments. We have no reason to differ from the Supreme Court's holdings in those two cases. In any event they bind me.

The deed of transfer between the 1st respondent and the second respondent dated 21st May 1999 at page 271 of the record was also executed in a similar manner, it contravened Section 148 of the RTA.

5 Accordingly we hold that the execution of mortgage between the 1st respondent and the appellant did not comply with the provisions of section 147 and 148 of the RTA and as such the said mortgage was invalid.

Similarly we hold that the deed of transfer between the 1st 10 respondent and the second respondent is also invalid. Since the power of sale of the suit property was derived from the mortgage, it follows that the sale too, was invalid. In any event the deed of transfer was also invalid. The other aspect of this that was dwelt on at length at the trial is the interpretation of agreements 15 documents that related to the sale of the suit property and the moveable property.

The learned trial judge based her judgment almost exclusively on interpretation of exhibit p7 which was <u>"The agreement of sale of landed property and Hotel Business</u>"

20 This agreement of sale also dated 21st May 1999 was made under the RTA in respect of Leasehold Register volume 2490 Folio 4 Plot 9 Sezibwa Road, Kampala (Holiday Hotel).

Paragraph 5 thereof covers the sale of moveable properties. It states that the inventory is attached.

25 The judge found there was no such inventory attached. We agree that an agreement for sale of land under the RTA could also at the

same time have been an agreement for sale of chattels, such omnibus agreements are not uncommon in commercial transactions, and they are legal. However whenever such omnibus agreements are made, they are concluded in different ways. The aspect of that agreement that relates to land, must end up with the registration and transfer of that land under the RTA. On the other hand the sale for example of shares ends up with registration and transfer at the Company Registry.

In this particular case everything ended up at the Registry of Titles under the R.T.A. The full consideration of USD 745,000/= was reflected as the purchase price for the land and stamp duty paid thereon. In our view therefore although the agreement could have also related to the moveables all the money was paid only in respect of the land.

We find that the evidence of Mr. Guma Byomugisha was false, when he stated in his testimony that he inserted the whole value on the transfer form by mistake. He had no other value to insert. His actions were consistent with all the earlier transactions. We are inclined to think that exhibit P7 was made as part of the calculated fraud to deprive the appellant both his real property and the moveables. That is why in our view both the 1st respondent and the second respondent went ahead to execute the transfer deed separately. The deed at P.271 of the record was specifically for the transfer of Plot 9 Sezibwa Road. It reads in part, as follows:

(P.272 of the record).

"Ms FANG MIN of P.O.Box 6323 Kampala for a consideration of US D 745,000 /= (Seven Hundred and forty Five Thousand United States dollars) has bought and the Bank has sold on account of the mortgage, all the land and developments described therein above. Wherefore the mortgagee hereby acknowledges receipt and doth transfer the said property into the purchaser names to hold the same into the purchaser for all the mortgagers estate and interest therein"

We have no doubt whatsoever that this deed referred to the sale of the Plot 9 Sezibwa alone. It had nothing to do with moveables. It does not even once mention either moveable property or the debenture. The only explanation why two parties could execute two different documents in respect of the same subject matter on the same day has only one explanation. Fraud.

The real agreement of sale was the mortgage deed. It stated the property and the full consideration. It was the one that was lodged at the registry of titles. It is the one upon which stamp duty was assessed. The second document which the judge relied on was a decoy, only intended deprive the appellant of his property.

Be that as it may, the agreement exhibit P.7 upon which the learned judge relied was in admissible in evidence as no stamp duty had been paid on it. Yet the transfer deed that was in respect of the same subject matter and upon which stamp duty had been paid was not relied upon, by the learned trial judge.

Payment of stamp duty is evidenced by revenue stamp embossed on the agreement which do not appear on exhibit P.7.

See **Kananura Melvin Consultants Engineers & 7 others vs. Conee Kabanda (Supreme Court Civil Appeal No. 31 of 1992) The judgment of Manyindo DCJ.**

Faced with two similar documents the trial judge in our view should have relied upon the transfer deed upon which stamp duty had been paid and ignored exhibit P.7. Suffice it to say that with all due respect the learned trial judge did not exhaustively evaluate the evidence on record, had she done so she would have arrived as a different conclusion.

If we found the mortgage between the 1st respondent and the appellant to be valid, we would still have held the sale to be null and void on the authority of **Zaabwe vs. Orient Bank (supra).** This is because the mortgage deed is also a power of Attorney - Clause 6 of the mortgage deed between the appellant and the 1st respondent dated 30th July 1997 states as follows:-

> ***"The borrower hereby irrevocably appoints the Bank to be the attorney of the borrower in the name and on behalf of the borrower or otherwise to execute and do all such assurances acts and things as may appear necessary or expedient for the exercise of the power herein before set out and the Borrower hereby agrees to ratify and confirm all that the bank and any such receiver may so execute and do"***

The acts carried on by the 1st respondent in respect of the mortgaged property from 3rd May 1999 to 27th May 1999 already outlined in this judgment cannot be said, to have been done, in the interest of the appellant. We agree entirely with reasoning and holding of Justice Kanyeihamba, JSC (as he was then) in the case of Zaabwe vs. Orient Bank,(supra) where he stated in his judgment as follows:-

> ***"Power of attorney creates a fiduciary relationship between the donor or the principal and the donee of the power or the agent. In law, the consequence is a voluntary relationship between the two parties whereby one, the agent is authorized by express or implied consent to act on behalf of the other called the principal. The authorized acts of the agent are considered to be the acts of or in an implied form, the ostensible acts of the principal who is entitled to the benefits or responsible for the liabilities, if any, arising from the decisions, acts and consents of the agent as the holder of the power of attorney. The agent may be paid or receive a commission for the proper exercise of the power of attorney but may not exercise it to his or her own personal advantage.***
>
> ***In my opinion, the law does not permit a grantee of a power of attorney to derive personal***

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benefits directly from its exercise or the discharge of liabilities whether personal or corporate when they are not connected with the interests or business of the grantor unless it expressly provides so. In this case, there was ample evidence adduced and submissions made by or on behalf of the appellant to show that the directors of the 2nd respondent indulged in deception and fraud while the managers of the 1st respondent knew of the fraud. The 2nd respondent used the power of attorney to benefit itself and its shareholders. The following authorities were cited in support of the appellant's submission. Mattaka v. R. 1971, E.A. 499, Suleman v. Azzam, 1958, E.A 533, Elliahoo M. Cohen v. Syed Ali Abdulla E.P Safi and Brothers, 1956, 23, E.A.C.A 166 and Kajubi v. Kayanga, 1967, E.A.301.

In my view therefore, both the 1st and 2nd respondents through their respective managers and directors participated in or were privy or knowledgeable about the fraudulent transactions which adversely affected the interests of the appellant in the suit property and they are therefore severally and jointly liable for the same."

His Lordship's reasoning applies very well in this case. Both the 1st and 2nd respondents gained from this fraudulent transaction.

The 1st respondent was duly paid, when he recovered the loan, interest and expenses incurred. The Bank gained further from the interest and other bank charges and commissions paid on the loan granted to the 2nd respondent using the appellant's property as security.

The second respondent obtained a property fraudulently and illegally as we have already held. She paid only USD 145,000/= for a 745,000/= property. The rest of the money was a "loan" given by the 1st respondent using the appellant's property as security. She has benefited from this property all its moveables which moveables she never paid for more than 14 years. She must by now have repaid the whole loan and recouped all her investment and more. All this at the detriment of the appellant.

As the cases of Zaabwe vs. Orient Bank (supra) NSSF vs. Alcon International (supra) and a host of other cases in this court and at the Supreme Court have demonstrated, courts of law in this country will not permit parties to benefit from their illegal and fraudulent transactions to the detriment of others and society.

Justice demands that in all such cases courts stand firmly on guard at the gates of justice.

This appeal is accordingly allowed, we hereby set aside the judgment of the High Court and substitute it with the judgment of this court and order as follows:-

a) **That the Registrar of Titles shall forthwith cancel the registration of 2nd respondent as proprietor of Leasehold Register Volume 2490 Folio 4 Plot 9 Sezibwa Road Kampala and reinstate the appellant as the registered proprietor.**

b) **The registrar of Titles cancels all incumberances if any now existing on that title, Plot 9 Sezibwa Road, Kampala.**

c) **That the 2nd respondent immediately handovers vacant possession of the said property Plot 9 Sezibwa Road to the appellant. Or in event that at the time of delivering this judgment the said property has been transferred to an innocent purchaser for value without notice, that the 2nd respondent shall pay to the appellant USD 745,000/= or its equivalent in Uganda Shillings, the sum shall attract interest at 11% per annum from date of this judgment until payment in full.**

d) **That 1st and 2nd respondents jointly and severally pays to the appellant Shs. 194,313,000/=, with interest at 17% per annum from 15th of May 1999 until the date of this judgment and thereafter at 8% per annum from date of this judgment until payment in full.**

e) That the 1st respondent pays to the appellant US$ 5.800 with interest at 6% per annum from 15th May 1999 until payment in full.

f) The 1st and 2nd respondents pay to the appellant general damages for conversion of moveable property amounting to 20,000,000 /= (Shillings Twenty Million) with interest at court rate from date of judgment until payment in full.

g) The 1st respondent pays to the appellant general damages for loss of business and loss of use of his property from 15th May 1999 to date equivalent to USD 704,829/= which was the outstanding loan as at 15th May, 1999, together with interest at the commercial lending rate from that date to the date of this judgment. The general damages and interest shall be such that they completely offset the loan.

h) The 1st and 2nd respondents jointly and severally pays costs of this court and the court below.

It is so ordered.

Dated this....***24th***...... day of.....***October***.... 2013 at Kampala.

....

HON. FAITH E. K. MWONDHA
JUSTICE OF APPEAL.

....

HON. KENNETH KAKURU
JUSTICE OF APPEAL.

....

HON. GEOFFREY KIRYABWIRE

5 **JUSTICE OF APPEAL.**