IN THE SUPREME COURT OF UGANDA

AT MENGO
(CORAM: WAMBUZI, CJ, AHO. ODER, JSC & PLATT JSC)

CIVIL APPEAL NO. 15 OF 1992

BETWEEN
UGANDA BLANKET MANUFACTURERS
(1973) LIMITED : : : :: APPELLANT
AND
ATTORNEY GENERAL : : : :: RESPONDENT
(Appeal from a Judgment of the High Court of Uganda at Kampala
(Mrs. Justice L.E.M. Kikonyogo) dated 18th May, 1990)

IN

HIGH COURT CIVIL SUIT NO. 573 OF 1988

JUDGEMENT OF PLATT, J.S.C:

The Appellant company, Uganda Blanket Manufacturers (1973) Ltd; had sued the Attorney General seeking an order that the Appellant Company be declared the rightful owner of the business premises — factory assets and properties (it took over in 1973). Secondly, it sought exemplary arid general damages for trespass nuisance and inconvenience because the Ministry of Industry, using the Police and other security agencies locked management and other employees of the Company. Thirdly, it claimed an order for taking an account to ascertain the appellant's income occasioned by the defendant's use of the property and assets belonging to the Appellant.

The nature of the suit was somewhat ambiguous, but the learned trial Judge unravelled the difficulties as best as she could. The facts found by the trial Court, where briefly as follows. On the expulsion of the Asians in 1972 many industries were left behind, and business of manufacturing blankets was one of them. six persons, amongst who was John Gwati Oloya (PW2), set up the Appellant Company, to which the business was allocated in 1973. This explains the relevance of the Appellant's name Uganda Blanket Manufacturers (1973) Ltd. Then in 1974 the Appellant Company came under the direct management of the National Textiles Board by virtue of Decree No. 22 of 1974. The latter Board was created to promote better management and control of the textile industry in Uganda. At the time of the take-over Mr. Oloya was the Appellant's Production Manager; but then became it General Manager. The Board carried out secretarial duties as well as the marketing and distribution of the Appellant's products. these services were paid for on a commission basis.

Meetings were held to arrange for the Capital Holdings in the Appellant Company. Apparently it was agreed that the six promoters would not purchase more than 49% of the total shares in the Appellant Company, the Government holding the majority 51%. It was

emphasized that the Minister could always appoint the General Manager of the Appellant Company. The Solicitor General was to oversee the changes that were necessary. But the appellant complained that the Government did not pay for its shares, and the Solicitor General never amended the memorandum and articles of association of the Company. Nevertheless the business of the company continued, blankets were produced at the factory at Plot 2A/2B Old Port Bell Road, and sold.

Mr. Timon Langoya (DW1) a Commissioner for Industries in the Ministry of Industry and Technology explained that after the Appellant Company became a "Government Company" under the National Textiles Board, the latter was a holding company, the Board having a separate Board of Directors from the Company which retained its own management and board of directors. But the overall management of the company was vested in the National Textiles Board, which inter alia was responsible for the appointment of Managers. So Mr. Oloya, who had been Production Manager was appointed General Manager in which position he served until 1981. Then a person from Tororo took over the position until 1985, when Mr. Oloya returned as general Manager once again.

The position then seems to have been that the changes in the structure of the Appellant Company were never carried into effect. The Board did not purchase any shares nor have them registered in its name. It was not the Minister who could directly appoint the General Manger. He could only act through the Board. He could appoint the Chairman and members of the Board and he could remove a member for inability to perform his office or another cause — (see 2(2) and (3) of the National Textile Board Decree No. 22 of 1974). The Minister could give the Board directions of a general or specific nature relating to the functions of the Board.

Then the Board had the duty to organise and control the management of any company specified in the schedule, such as the Appellant Company. It had to supervise and as far as possible co-ordinate the affairs and activities of the specified companies. It was to advise on the criteria for appointment and promotion of the staff in the service of the companies (See sec. 3 of the Decree No. 22 of 1974).

Apart from that the Companies continued to operate.

What caused the final trouble which led to this action was that a dispute arose between the Ministry and Mr. Oloya concerning Mr. Oloya's continued presence as General Manager of the Appellant Company. The Deputy Minister wanted to transfer Mr. Oloya to Uganda Rayon Textiles Manufacturers. The workforce was behind Mr.Oloya and although the Rayon Company workforce also wanted Mr. Oloya, as he was an efficient General Manager, Mr. Oloya declined to be transferred. The Minister exercised powers which he supposed he had inherited from the Board and dismissed Mr. Oloya. On 11th June 1987, the factory premises were closed and Mr. Oloya and the workforce were locked out. There had been no industrial unrest before the lock out.

Mr. Oloya and Mr. Musoke feel that the six promoters were being squeezed out. Only Mr. Oloya remained of the original six persons. The Board itself was suspended or came to an end around 1986. Then the Minister usurped the powers of the Board according to the witnesses. The effect of the termination of the Board's control on companies like the Appellant Company is not clearly in evidence.

The learned Judge held that the agreement as to the share capital in and running of the Company was an invalid agreement, because of the terms of section 14 of the Decree No. 22. She held that the transfer of the shares to the Board was a statutory requirement, without payment. Section 14 of the Decree would appear to support the Judge.

The learned Judge then posed the question whether the Minister could dismiss Mr. Oloya, or whether he could only act through the Board? She decided that the Minister could act as he did. That was supposed to have been based on Section 2, 3 and 15 of the Decree No. 22 of 1974.

The learned Judge held that the removal of Mr. Oloya did not affect the ownership of the Company assets by the Appellant Company. She observed:

"Ownership of the business premises, properties assets and names in the Bank remained with the Plaintiff company."

But she also held that the company was Government Company. It is not clear what that concept is.

Finally, she held that the lockout did not affect the Company's fortunes; and was subject to the rights of the six promoters who form minority of the shareholders.

For all these reasons the Appellant's suit failed. It is not easy to see how that result followed from at least one of the issues set out by the judge herself. The first issue was whether the acts of the Minister were lawful or unlawful. The Judge did decide that issue in favour of the Minister. Secondly, the question was who owned the assets of the Appellant Company at Plot 2A/2B Old Port Bell Road. Here the learned Judge decided that the assets were owned by the Appellant Company, Accordingly some order should have reflected that conclusion.

Thirdly, the learned Judge decided that neither the Appellant Company nor the six promoters were entitled to any relief.

At this stage one must refer back to the plaint set out at the beginning of this judgment. On the finding of the learned Judge I would have expected her to grant the first prayer, that the Appellant Company be declared the rightful owner of the assets and properties of the Company. Secondly of course, if the Minister had acted properly, there could be no question of damages against the Attorney General. Lastly if the Minister acted properly there could be no question of accounts to be taken,

The Appellant appeals and seeks the following orders:

(a) a declaration that the Appellant Company is entitled to exclusive possession of its business assets (inter alia

(b) an order for vacant possession of the premises and delivery up of chattels seized;

(c) an order for an account to be taken;

(d) an order for the shares if any held for the Respondent be forfeited;

(e) general damages for trespass and inconvenience;

(f) exemplary damages;

(g) Costs

(h) interest at 45%

At the hearing of the appeal, the Appellant could not support prayers (b) and (d), because they had not been pleaded in the plaint, in which no issues arose on vacant possession of the premises or delivery up of chattels seized; nor the return of shares. I must confess that I failed to grasp any real substance in grounds 1 and 2 of the memorandum. The long preliminary arguments as to the difference between the Asian-owned company and the 1973 Appellant company, showed no misunderstanding by the learned Judge; the transfer of shares has some theoretical significance; but it seems that ground 3 is the most fruitful ground. It is said that the judge erred in law when she held that the Appellant's ownership of its property and assets was not affected by the respondent's high-handed acts.

In prayer (a) of the plaint, the appellant Company sought an order that the Appellant was the rightful owner of its business premises, factory, assets and properties. It is also claimed that the Respondent had used the Appellant's property and assets.

In one sense, as the Appellant company stayed in existence even after the Board had ceased to operate, the Company as such always owned the property in which the business was carried on. Though the Ministry directed the Company's operation and sometimes claimed that the Company was "Government-owned", the Appellant Company remained a private company limited by shares. On that basis there is no real sense in which the Company was divested of its permanent assets, the factory premises, residential premises plant and machinery, the bank accounts which were not closed, and similarly the vehicles. It is in this sense, I think, that the learned Judge remarked that the business premises, properties, assets and "name in the Banks" always remained the property of the Company. Equally the minority shareholders held their shares. It is not clear what shares the Board held. The new management appointed by the Ministry did not alter the business or share structure of the Company. No doubt the new management used equipment stock materials and probably finished off work in progress. It no doubt used some of the cash at the Bank. The list of assets is set out by Mr. Oloya.

It is not exactly clear to me what the Company was seeking by way of the declaration in prayer (a) of the plaint. I would have thought that there were two possibilities; either it wanted a declaration that all the assets permanent were owned by the Company on 11th June 1987 (in which case it is a pity that prayer (a) did not say so); or, it simply wanted confirmation that the most important permanent assets had always remained with the Company despite the interference by the Ministry. It seems to me that the learned trial Judge considered the problem in the second sense, in which case I should have thought that she should have given a declaration to that extent. Whatever the share structure of the Company, what is owned was a question of fact, and on this point there was undisputed evidence of Mr. Oloya. As against the Ministry, the Appellant company owned all the

assets set out by Mr. Oloya on 11th June, 1987, and despite trading, still owns what is left of these assets, of which an account must be taken.

The remainder of ground 3 concerns the Respondent's high-handed acts. These acts were:—
1) locking out the management on 11th June, 1987,
2) at first ordering the transfer of Mr. Oloya to another company and then when Mr Oloya refused, dismissing him,
3) continuing to run the Appellant Company in place of the Board.

Decree No. 22 did not have provisions for the winding up of the Board. A statutory organ can normally only be wound up by some statutory provisions, No such provision has been produced to us or indeed found by us. It was admitted as an administrative act. The Ministry, with great respect, acted illegally when it directly controlled the management of the Company. That is especially clear in the way Mr. Oloya was to be transferred and then dismissed. The learned trial Judge has helpfully set out all the relevant provisions of decree 22 of 1974. I need only say that the combined effects of section 2, 3 and 15 of the Decree give the Minister powers to control the appointment of the officers of the Board and *o* give them general and specific directions, but it was for the Board to control the Company. There was no direct statutory link between the Minister and the Company. Consequently the Minister ought not to have locked out the management and employees of the Company, it ought not to have transferred Mr. Oloya against his wish and then later dismiss him, and it ought not to have continued to control and operate the Company with new management.

In case there is any doubt as to the administrative nature of these Acts, I should refer to the Ministry's letters dated 18th June, 1986 when the winding-up of the Board was proposed, leaving the Company still standing, and 8th May, 1987 when the ministry announced that the Board had been dissolved and the Company had fallen directly under the Ministry. In this second letter the three Bank accounts of the Company mentioned by Mr. Oloya were still being operated, and the 1973 Company was still in operation.

The Appellant did not ask the Court to consider the situation of the Board, which is not before the Court. In case the assets in the Company concern shares held by the Board, I can only say that there is no evidence when or how the Board famed any shares in the Company, or what has happened to them. I would merely say that if ground 4 of the memorandum requires a specific answer, then I would have agreed with learned Judge that section 14 requires that the share of the Company may be transferred directly to the Board without payment. It seems to me the Section 14 was designed to give the Board the basis of control without beneficial ownership. But as the share structure explained by the Assistant Registrar of Companies, Mr. Bisereke Kyamulande (PW1) does riot show what shares the Board may have, all I can say is that the Board's existence may need to be dealt with by Statute, and its duties discharged.

The Appellant has complained that these wrongful acts were high—handed. It seems to me that the Ministry misconceived its task. It thought it was operating a Government-owned Company by virtue of Decree No. 22 as the Ministry itself stated in its letter of 8th May, 1987. Clearly, the Ministry thought that it was preserving Government property and looking to the wider interests of the textile industry. The learned Judge thought that the Company was Government-owned also. Mr. Musoke an original shareholder had been

successfully transferred to another Company without a problem. The Judge thought that the Minister acted lawfully but rather high-handedly. Looking at both sides, I would not say that the Minister was being vindictive. I would say that his• action was misguided and might be called over zealous.

Whichever way it was, I would hold that the Minister trespassed into the premises of the Appellant Company and caused inconvenience. How long the inconvenience lasted and what special damage if any was caused to the Company, is not known. Nor is it known whether the new management was just as efficient as Mr. Oloya's in the long term. I would therefore decline to grant aggravated damages, but certainly substantial damages are called for. On that figure, 45% interest is much too high. I would award interest at normal Court rates.

During the course of the appeal, Counsel asked whether the Appellant Company should have brought this action, or whether the shareholders Oloya and Musoke should have sued as minority shareholders. There are statements such as that the Appellant Company was forcefully ejected. That is another eliptical statement, such as the one that the Appellant is a Government- owned. It was neither Government-owned nor forcefully ejected. The management of Mr. Oloya was ejected, a new management replaced the one ejected, and the Company continued with its business. The management ejected was that over which Mr. Oloya was General Manager. Mr. Oloya could have sued the Company and the Ministry for his personal distress. I have come to the conclusion, however, that while a minority shareholder's action might have challenged the Company on clearer issues, nevertheless the proceedings may stand as they are.

Normally the Company itself is the proper plaintiff, under the rule in Foss Vs. Harbottle (1843) 2 HARE 461 discussed by Gower in "The Principle of Modern Company Law" pp 581. The appropriate agency to start an action on the Company's behalf is the board of Directors. If they decline, the power reverts to the general meeting. If that fails, it has been known for a single share-holder to risk an action in the Company's name, and if he loses he may be made to pay the costs. This practice is only likely according to Gower, if a new group has assumed control. That would appear to be the position here. The Ministry cannot have allowed the action to be brought, nor the board of directors nor general meeting. The Company was in fact allowing itself to be run on an ultra vires basis. It is sometimes the case, that one set of circumstances may give rise to both types of action, one by the Company and one by the minority. Mr. Oloya and Mr. Musoke have successfully brought this suit in the Company's name without challenge from the Attorney General. It would have been less confusing if they had sued for a declaration that the actions of the Ministry were ultra vires, and therefore to call for its removal from control of the Company and repossession of its assets. There is no point in citing the approach to the Inspector General of Government, and his unheeded advice to the Ministry. It was for the Company or shareholders to call for possession, damages or compensation.

Consequently, I would allow the appeal, set aside the judgment of the learned Judge and substitute a Judgment in the following terms: —
a) a declaration that the Appellant Company was possessed of its business and residential premises at all material times from 11th June, 1987, and was entitled to exclusive possession of them when the Judgement of the High Court was delivered on 18th May, 1990. This is without prejudice to the Certificate of Repossession of the Minister of

Finance dated 3rd April, 1991.
b) An order for an account in respect of the Appellant's business including the assets, since 11th June, 1987;
c) general damages for trespass and inconvenience awarded at shs. 200,000/=;
d) costs of this appeal and in the Court below. Interest at normal court rates.
DELIVERED at Mengo this 12th day of January, 1992.

H.G. PLATT
JUSTICE OF THE SUPREME COURT.

JUDGEMENT OF WAMBUZI C.J:

I have had the benefit of reading in draft the Judgement prepared by Platt JSC and I agree that this appeal should be allowed.

I would however like to make a few observation. There is no dispute that the National Textiles Board Decree, 1974 established the National Textiles Board with functions intended to promote the proper development of the textile industry in Uganda. One such function was to organise and control the management of any company specified in the Schedule to the Decree. The Appellant was such a specified company.

As I understand, Mr Tibeijuka's argument on this ground he says,
(a) that the shares purportedly transferred to the National Textiles Board were unissued shares and therefore incapable of being transferred;
(b) that the shares were not in any case transferred in accordance with the Appellant's articles of association; and
(c) that the purported transfer was not in according with section 14 (2) of the National Textiles Board Decree 1974.

The learned Counsel argued that the Board had to acquire shares in accordance with the Appellant's articles of association after due payment and registration of the shares in accordance with the provisions of the Companies Act relating to acquisition of shares in a company. Learned Counsel submitted that section 14 of the National Textiles Board Decree is subject to the Companies Act. Learned Counsel argued in effect that as the National textiles Board had no shares in the Appellant Company, it could not take over the assets of the Appellant.

Section 14 of the National Textiles Board Decree, 1974 provides as follows, in sub—sections (1) and (2),

"(1) The whole of the shares in each of the specified companies except those owned by any individual, immediately before the commencement of this Decree, are hereby transferred to the Board, subject to the following conditions; that is to say,

(a) that, in respect of any shares held by an individual, for the avoidance of doubts only, any rights in the company, including the rights to participate in the management of the company conferred by such shares, shall not be affected by the transfer;
(b) that, in respect. of any shares held by the Custodian Board, the transfer shall operate,

subject to such terms and conditions regarding periodic payments as may be stipulated by the Custodian Board;

(c) that, except as provided in paragraph (b) of this sub-section, no moneys shall become payable to any other statutory corporation whether by way of compensation of otherwise, on account of the transfer affected by this section.

(2) For the avoidance of doubts, the transfer of shares effected by this section, shall not affect the continuance of any specified company as a separate entity or any liability or obligation owned by such company and, pursuant to sub-section (3) of section 3 of this Decree, each specified company shall maintain its separate accounts subject to the Corporation."
In my view the effect of these provisions is that,

(a) all the shares in the Appellant except those owned by individuals were transferred to the National Textiles Board upon the commencement of the Decree;

(b) that such transfer would not affect the rights in the company held by individual shareholders such as the rights to participate in the management of the company confe rred by such shares;

(c) that in the case of shares held by the Custodian Board there would be such periodic payments as the Custodian Board would stipulate;

(d) that in the case of shares held by any other statutory corporation there would be no payment whether by way of compensation or otherwise; and

(e) nothing is said about payment for shares in a specified company which had not been taken up on the commencement of the Decree which were therefore, transferred to the Board. Whether they were to be paid for is not stated in the Decree.

There is evidence that some arrangements had been made in respect of the number of shares to be owned by the National Textiles Board and the method of payment for those shares. The learned trial Judge doubted the validity of the arrangement but held, quite rightly in my view, that all the shares in the Appellant, other than those held by individuals, had been transferred to the National Textiles Board.

Be that as it may I doubt whether in this appeal anything turns on ownership of shares by the National Textiles Board in the Appellant company. Under section 3 of the National Textiles Board Decree, the functions of the Board, which include organising and controlling the management of a specified company, are set out and in respect of those functions and for that purpose the duties of the board are specified in sub—section (2) of the section. The duties include supervision and co-ordination of the affairs and activities of a specified company. The functions and duties of the Board are statutory and not related in any way to the share holding of the Board in a specified company.

In these circumstances I would agree that the only material ground to this appeal is ground 3. It reads as follows,

"The learned trial Judge erred in law when she held that the Appellant's ownership of this property/assets was not affected by the Respondent's high—handed acts."

In his argument, Mr. Tibeijuka referred to the following acts,
1. The transfer of directors of the Appellant, Musoke and Oloya, to other companies.
2. The management and staff of the company were locked out of the premises.
3. Certain property of the Appellant had been handed over.

It was pointed out that soon after the National Resistance Movement took power, the National Textiles Board was dissolved and was non existent at the time the dispute arose between the parties to this appeal.

As regards the transfer of Musoke and Oloya, Langoya (DW1), Commissioner for Industry, testified that Mr. Musoke was posted to manage another company called African Furnishing House. Mr. Oloya who became General Manager of the Appellant Company in 1985 was removed later and posted to Uganda Rayon Textiles Manufactures Limited to improve the management of that company. These transfers were effected by the Minister who was exercising the powers of the National Textiles Board. Oloya refused the transfer and he was dismissed by the Minister.

In her Judgement the learned Judges said on this issue,

The next question to ask is that since the plaintiff was a specified company under the National Textiles Board, a corporate body with a right to sue and to be sued did the Minister of Industry and Technology have a right to interfere in direct running of a specified company or give any directive relating to it, should it not have been the Board itself to take appropriate action?

The answers to these questions are not very hard to find because the law is very clear. Section 2(2) of the Decree provides that: —

"The Chairman and other members of the Board shall be appointed by the Minister upon such terms and conditions as may be specified in the instrument (sic) and shall subject……"

Sub—section 3 reads that: —
"A member of the Board may resign his office by writing under his hand addressed to the Minister for inability to perform the functions of his office or for another cause (sic)."

If the Minister has powers to appoint and remove members of the Board of the holding company he must have powers to exercise its functions. In the absence of the board he can rightly assume all its powers or taken any decision or other which the Board would have taken. Besides section 15 of the Decree provides that: —

"The Minister may, subject to the provisions of this Decree give to the Board written directives of general or specific nature relating to the functions of the Board and the Board shall comply."

"The Board had powers to interfere in the directing of the specified company and by implication could appoint and remove the management or advice on recruitment or deployment of staff. Section 3(1) of the Decree states that the functions of the Board include:

(a) to organise and control the management of my company specified in the Schedule to as specified company.

Further, sub—section 2 of section 3 provides that without prejudice to the effect of sub (1) (sic) of this section it shall be the duty of the Board,

(b) to supervise and as far as possible to coordinate the affairs and activities of the specified companies.

(c) advise on the criteria for appointment and promotion of staff in the service of the specified companies, the terms and conditions of staff and deployment of staff in or for the purposes of any specified company.

If the Board had powers to interfere with the direct running of the specified companies so did the Minister. For purposes of emphasis it is important to note that the management of any specified company was vested in that of the NTB being its holding company. The Minister, hence, had the same powers of appointments and removal of members of staff as he has in respect of NTB."

In short the learned trial Judge held that as the Minister had powers to appoint and transfer officers of the National Textiles Board and as the National Textiles Board had powers to appoint and transfer officers of the Appellant as a specified company, the Minister could, therefore, exercise the powers of the National Textiles Board in respect of the Appellant. With respect to the learned trial Judge this could not be the position in law. In the first place the National Textiles Board Decree does not say so. In the second place I know of no authority to that effect nor did the learned trial Judge refer to any. The conclusion reached by the learned trial Judge on the powers of the Minister with regard to appointments and transfers was therefore a mis-direction in law.

As regards the management and staff of the Appellant being locked out of the premises, the learned trial Judge had this to say on the matter,

"DWl testified that the Deputy Minister wanted Mr. Oloya transferred to Uganda Rayon Textiles to improve its management but refused to go on a transfer. This according to Exhibit No. P4, a letter written by the Minister of Industry and Technology caused industrial unrest which had to be arrested. The Minister, therefore, reacted by instructing the police and other security officers to take the necessary action to force PW2 to hand over.

In the circumstances the Minister was justified to remove the General Manager of the plaintiff although I dare say the acts of the agents or servants of the Minister were rather high handed, they were not unlawful.

I reject Mr. Mugenyi's submission that the removal of the General Manager of the plaintiff company and locking out its employees contravened with the provisions of section 14(2). The Minister, from the letter exhibited by Mr. Mugenyi on behalf of his client as Exhibit P4 wanted to force DW2 (sic) to hand over company properties. He did not stop operation of the

plaintiff company. The ejectment did not affect the continuance of the plantiff company as a separate entity."

I am a little at a loss to follow the reasoning of the learned trial Judge but, with respect, this is again a mis- direction in law. If the Minister had no powers to transfer the General Manager he would have no powers to enforce his wrong doing. I think the learned trial Judge was quite right to describe the acts of the agents or servants of the Minister as high handed.

It is a little difficult to see how the company could have operated, if its management was forceably ejected from the premises and locked out. On this ground alone I would allow the appeal, set aside the Judgement and decree of the High Court and substitute therefore Judgement in favour of the Appellant.

In its memorandum of appeal the Appellant prayed for:

"(a) a declaration that as between the Appellant and Respondent, the Appellant was at all material times and still is, entitled to the exclusive possession of its business and other premises, as well as its other assets;

(b) an order that the respondent give the Appellant vacant possession of its premises and deliver up to the Appellant chattels previously seized by the respondent;

(c) an order for an account in respect of the appellant's forceful ejectment;

(d) an order that the shares, if any, held by the respondent he forfeited;

(e) general damages for trespass, inconvenience and loss of business

(f) exemplary damages arising form the defendant's erratic, high handed unconstitutional and appressive acts;

(g) costs in this Court and in the court below;

(h) interest on the decretal sum at bank rate (45% p.a.) from the date of the Judgement till payment in full;

(i) any other remedy that this Honourable Court might meet (sic)."

These prayers are markedly different from the prayers in the lower court. There was nothing in the lower court about an order for vacant possession which in any case may not be made against the Respondent. There was nothing about forfeiture of shares, loss of business, exemplary damages for erratic high handed unconstitutional and appresive acts" and nothing about interest at 45%. The plaint is silent on the question of interest although was prayed for at 30%. I do not think that these matters which were not raised or considered in the court below can be entertained by this court.

As regards the declaration that as between the Appellant and the Respondent, the Appellant was at all material times and is still entitled to the exclusive possession of its business and

other premises as well as its other assets, learned counsel submitted in effect that the appellant company remained a private company after the commencement of the National Textiles Board Decree because the Board did, not pay for its shares and therefore had no interest in the company. This may be so but neither the lower court nor this Court had the benefit of hearing the views of the National Textiles Board on this matter.

On the evidence the appellant, the total number of declared shares was 400,000 of which 65,012 were taken up,. The question which arises is whether the balance of the shares is owned by the National Textiles Board and if not how many shares if any does the National Textiles Board own under section 14(1) of the National Textiles Board Decree? The National Textiles Board is a body corporate and capable of suing and being sued in its corporate name. It is not a party to these proceedings and I would not make a declaration which would affect the Board's rights in the Appellant Company without giving the Board an opportunity to be heard. Accordingly, in my view the declaration prayed for in as far as it seeks to exclude the National Textiles Board as a share holder should be refused. Otherwise there. can be no doubt in my mind that the appellant remained in a private company entitled to possession of its business, premises and assets, even when the Board acquired any shares in the Appellant.

However, as Oder JSC agrees with the orders proposed by Platt JSC it is ordered as proposed by the learned Justice of the Supreme Court.
GIVEN under my hand and the Seal of this Court this 12th day of 1993.

Sgd:…….
S.W.W. WAMBUZI

CHIEF JUSTICE

I CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL.
B.F.B. BABIGUMIRA
REGISTRAR SUPREME COURT

JUDGEMENT OF ODER, JSC:
I have had the benefit of reading in draft the Judgement of Wambuzi CJ, Platt, JSC and I agree with them that the appeal should succeed.

The action in this case should in, my view, have been brought by the minority shareholders in the names of the company. As it is the action was brought by the Company, which includes the National Textiles Board as the majority shareholders, and who is represented by the Attorney General. It would appear, therefore, that the Attorney General in addition to representing the majority shareholders who own part of the appellant company was also made a party to the action as the representative of the alleged offending Ministry, under the provisions of the Government Proceedings Act. Be that as it may nothing in this appeal probably turns on that procedural error.

Turning to the merits of the appeal, I think that only ground three has substance. In my view, section 14 of the National Textiles Board Decree, 1974 did not turn the appellant company into a Government company. The section transferred the whole of the shares of the appellant company to the Textiles Board save shares that were owned by individuals, whose rights in the company, including the rights to participate in the management of the company were preserved Further, the transfer of the appellant company's shares to the Board did not affect the continuance of the company as a separate entity. The Decree also conferred certain powers and functions on the Board which it exercised over the appellant company. These included the power to organise and control the company's management; to supervise and as far as possible co-ordinate the affairs and activities of the company; to advise on the criteria for appointment and promotion of staff in the service of the company, the terms and conditions of staff; and deployment of its staff.

No provisions of the Decree empowered the Board to appoint, transfer or remove the management or staff of the company, nor to take over the management or assets of the company.

Nor did the Decree empower the Minister to exercise over the appellant company those powers and functions which he was entitled to exercise over the National textiles Board.

In the circumstances I think that the action of the Minister on 11/6/1987 of locking out the management and staff of the appellant and of taking over its assets and management was unlawful. By so doing the Minister committed trespass.
Consequently, I would allow the appeal, set aside the Judgement of the lower court, and substitute it with a judgement in the following terms:—

(a) general damages for trespass; quantified at shs 200,000/=

(b) an order for account of the appellant company's business and assets since 11/6/1987.

(c*)* a declaration that the appellant company was entitled to exclusive possession of its business and residential premises since 11/6/1987, subject to the certificate of repossess issued on 3/4/1991

(d) costs of this appeal and of the suit; and

(e) interest at the current court rate.

DATE AT MENGO THIS 12th day of January 1993

Sgd: A.H.O. ODER
JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL.

B.F.B. BABIGUMIRA
REGISTRAR OF SUPREME COURT