THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM; ODOKI C.J, ODER, TSEKOOKO, KAROKORA, KANYEIHAMBA, JJSC)

CIVIL APPEAL NO. 1/2001

B E T W E E N

BANK OF UGANDA ::APPELLANT

A N D

BANCO ARABE ESPANOL ::::::..::::::.::::::::::::::::::::::::::::::::RESPONDENT

(Appeal from the decision of the Court of Appeal (Kato, Engwau, Kitumba. JJ.A) at Kampala, dated the 20th day of October, 2000 in Civil Appeal No. 23 of 2000)

JUDGMENT OF KANYEIHAMBA, J.S.C

This is a second appeal against the judgment of the Court of Appeal dismissing an appeal with costs from the judgment of the High Court dated 22/2/2000 entered against the appellant in favour of the respondent.

The facts giving rise to this appeal may be summarised as follows:

On **11/11/1987,** the Uganda Government signed a loan agreement with the respondent in Madrid, Spain. The loan was for US$1,000,000. The appellant's representative, one George Nteeba, signed the agreement on behalf of the appellant as a guarantor. It was provided in the agreement, that the loan would be repaid in 7 instalments on the following named dates. 11/10/90, **11/4/91. 11/10**/91, 13/04/92. 13/10/92, 13/04/93 and 13/10/93. The respondent was to release and remit the loan money to the Uganda Government within 180 days from the date of signing the loan agreement. However, the period was later extended.

On 21/05/91, the first instalment was paid together with accrued interest which by then had accumulated to US $52,767.36. Following the first instalment, no further instalments were subsequently paid despite the respondent's several demands for such payment. Ultimately, the respondent made a final demand for the repayment of the loan by the appellant in its capacity as guarantor.

As time passed, it became increasingly clear that the appellant was either unwilling or unable to repay or acknowledge liability under the loan agreement. The respondent decided to sue the appellant under clause 18 of the agreement and, for this purpose, filed a plaint in the High Court against both the appellant and the Government of Uganda. In its defence, the appellant denied liability. At the trial in the High Court, a preliminary objection was raised on behalf of the Government of Uganda that the suit was statute barred. The learned trial judge upheld the objection and dismissed the suit against the Government of Uganda. This left the appellant as the sole defendant. The appellant raised a number of defences. One of those defences was that the appellant's sole liability was limited to merely causing the borrower, that is the Government of Uganda, to pay the debt. Another defence was that the loan agreement had been frustrated

by the borrower's policy of liberalising the coffee trade and of deciding to deal in foreign currency. The trial judge rejected the appellant's defences and entered judgment for the respondent and made specific orders of the court to which I will advert later in this judgment. The appellant appealed to the Court of Appeal which dismissed the appeal and ordered that the appellant pays the loan and interest thereon which by now had accumulated to the sum of US$ 1.762.347.51, plus interest at a rate of 18% per annum from the date of the judgment of the Court of Appeal to the date of payment. The Court also awarded to the respondent general damages in the sum of Shs.20,000,000 with interest thereon. The judgment of the Court of Appeal was delivered on 20.10.2000. It is against that judgment and orders that this appeal has been brought to this Court.

Peculiarly, both in this Court and in the Court of Appeal, the respondent's counsel chose to file written submissions of defence under Rule 93(1) and (2) of the Rules of this Court even though the appellant's counsel had chosen not to and did not do so. Indeed, in the Court of Appeal and in this Court, counsel for the appellant addressed the courts orally. In my view, counsel who file plaints or appeals and defences in courts should endeavour to mutually agree as to what rules of the court they wish to follow as this would save parties costs and the courts time.

Be that as it may, there seems to be no obligation upon any counsel to proceed one way or the other even if opposing counsel is willing or unwilling to proceed in the manner chosen by the other counsel.

The appellant's Memorandum of Appeal contains 10 grounds of appeal framed in such a way that grounds 4 - 1 0 inclusive are indicated as being alternative to the first three grounds. At the hearing of the appeal counsel for the

appellant abandoned grounds 8, 9 and 10 The remainder of the grounds are framed as follows:

1- The learned Judges of the Court of Appeal erred in law in holding that the validity and enforceability of the loan agreement against the appellant as guarantor was governed by the Corporate Bodies Contract Act 1960 of the United Kingdom and not by the Bank of Uganda Bye-Laws of 1968.

2- The learned Judges of the Court of Appeal erred in law in holding that the loan agreement was enforceable against the appellant as guarantor although it was not executed under the appellant's seal.

3- The learned Judges of the Court of Appeal erred in law and in fact in holding that the telex of the appellants Ag. Director of External Debt Management dated 15th February. 1991, estopped the appellant from contesting the validity and enforceability of the guarantee as against it.

IN THE ALTERNATIVE TO GROUNDS 1,2 3 ABOVE

4- The learned judges of the Court of Appeal erred in law and in fact in holding that the appellant's liability was not

discharged by the variation of the draw down date for the loan by the respondent and the Government of Uganda without the consent of the appellant as guarantor and outside the scope of clause 4 of the loan agreement.

5- The learned Judges of the Court of Appeal erred in law and in fact in applying the wrong test in law in deciding whether the alteration of the draw down date for the loan by the respondent and the Government of Uganda without the consent of the appellant did not amount to alterations of the terms of the loan agreement.

6- The learned Judges of the Court of Appeal erred in law and in fact in holding that the alterations and extensions of the repayment dates for the loan instalments granted to the respondent to the Government of Uganda without the

consent of the appellant did not amount to alterations of the terms of the loan agreement.

7- The learned Trial Judges (sic) of the Court of Appeal erred in law and in fact in holding that even if the alterations and extensions of the repayment dates of the loan instalments without the consent of the appellant were alterations of the terms of the loan agreement, this did not discharge the appellant's obligations as guarantor.

Mr. Masembe - Kanyerezi, counsel for the appellant, urged grounds 1 & 2 together, ground 3 on its own, grounds 4 and 5 together and grounds 6 and 7 together. Counsel substantially adopted the submissions he had made in the Court of Appeal in arguing grounds 1 and 2. He submitted that the law applicable in this case should have been the Bank of Uganda Bye-Laws which stipulate the manner in which a contract intended to bind the Bank must be made. The making of such a contract, in this case the loan agreement, must comply with Rule 2 of Statutory Instrument No. 157 of 1968. He contended that the Court of Appeal had erroneously confirmed the finding of the learned trial judge that the absence of the Bank's seal did not affect the validity of the loan agreement because the appellant's agent, Mr. Nteeba, had signed the loan agreement on behalf of the appellant. Mr. Masembe-Kanyerezi, contended that for the loan agreement to be validly effected, it had to comply with the Bank of Uganda's bye - laws requiring the fixing of a seal. Counsel criticised the opinion of the learned Attorney- General of Uganda which supported the loan agreement as validly made and enforceable in courts of law. He contended that the Attorney-General, being the principal legal adviser to the Government of Uganda was not the proper person to advise the Bank and the respondent on the proper law applicable and that in any event, his opinion was ***per incurium*** since it ignored the Bye-laws of the Bank of Uganda.

Counsel submitted that two sets of laws ought to have been recognized and applied by the courts below. The first related to the capacity of parties to enter into a contract with the Bank of Uganda. That capacity was strictly governed by Uganda laws which in this case, were the Bye-laws of the Bank of Uganda which provide that such a contract must be made under the seal of the Bank and be witnessed by specified Bank officials. Failure to apply these bye laws and procedures invalidates any alleged agreement or contract. Counsel contended that it is only when the agreement is validly made in accordance with the bye laws and procedures of the Bank that it may be enforced under any other law, in this case, English law and in particular under the Corporate Bodies Contract Act, 1960, of the United Kingdom.

Counsel cited **Chitty on Contracts 22nd Edition, Volume 1, A.R. Wright and Sons Ltd v. Romford Borough Council,** (1957) Q.B., 431 and **Hunt v. Wimbledon Local Board** (1878) CPD vol. III 208 in support of his submissions.

Mr. Semuyaba, learned counsel for the respondent, in written submissions, supported the findings and decisions of the courts below. He contended that the absence of a seal did not affect the validity of the loan agreement. He observed that in any case the loan agreement had been signed by Mr. George Nteeba who had a valid power of Attorney that had been duly sealed and signed by the Bank's officials who are the right witnesses to both the signature and the sealing of the Banks document. It was counsels contention that the purpose of granting to an official a power of attorney stamped with the Bank's seal is to enable that official to transact business on behalf of the Bank. Counsel, further contended that the effect of a power of attorney is that the donee of it has the full powers of the donor to do all that he or she is authorised to do. Indeed, according to learned counsel for the respondent, the power of attorney authorised Mr. Nteeba to sign the loan agreement and to do all other

things incidental thereto and the donor's Governor and Secretary undertook to confirm and ratify all the donee's actions.

Mr. Semuyaba supported the opinion of the Attorney General and indeed wondered how it could be challenged by counsel for the appellant, considering that both the Attorney-General and the Bank of Uganda were the Principal advisers to the Government of Uganda, one on legal matters and the other, on financial transactions. Lastly. Mr. Semuyaba, submitted that under clause 16 of the loan agreement. Exhibit P1, the parties to the agreement chose English Law to govern the loan agreement. Counsel cited **Chatney v The Brazilian Submarine Telegraph Co. Ltd.**, (1890) 10B 97, **Chitty on Contracts,** (supra), the **U.K. Corporate Bodies Contracts Act, 1960, General Parts (U) Ltd v. Non-performing Assets Recovery Trust,** C.A. No. 5 of 1999. (S.C.), (unreported), **Powis and Byran Ltd** v. **Bonquet DV People** (1967) IALR Comm 323 which counsel distinguished from the present case and contended that it is governed by English Law as stipulated in the loan agreement. He cited numerous other authorities which in my opinion were unnecessary in advancing the cause of the defence against this appeal.

In my view, the issues framed in grounds 1 and 2 of the Memorandum of Appeal constitute the main substance of this appeal. I will therefore first resolve those issues. The facts and history of this case which has dragged on in Ugandan courts for more than a decade are simple and clear and are not in dispute. The only matters which have occupied everyone's attention for so long are whether or not the loan agreement concluded between the Government of Uganda, the respondent Bank, and the appellant had been validly made and whether it was governed by Ugandan law or English law.

The loan agreement which was made in Madrid, Spain, on 11th November,1987, and was signed by representatives of all the parties to it, contains the following relevant clauses:

A- The BORROWER has requested Aresbank to grant to it a loan of up to a maximum of US$ One million (1.000.000) to finance 15% (Fifteen per cent) of the price under the contract signed on 12th of May, 1987 between the BORROWER and INIRAIL (the Exporter) for the supply of one hundred tank wagons.

B- The GUARANTOR (The Bank of Uganda) is willing to guarantee in favour of Aresbank, the BORROWER'S obligations, in consideration of ARESBANK's commitment for the granting of such loan,

C- The Bank (Aresbank) has agreed to provide the loan requested on the terms and conditions hereafter set forth. Now therefore this agreement witnessed as follows :-

3- CONDITION PRECEDENT. This agreement will enter into full force and effect as of the date on which ARESBANK receives a legal opinion, satisfactory to the Bank, about the legality, validity and enforceability of this agreement.

10 REPRESENTATION AND WARRANTIES:

The BORROWER hereby represents and warrants to the LENDER, that,

(a) The BORROWER has the power to enter into and perform its obligations and to borrow under this agreement, and has taken all necessary actions to authorise the execution of this Agreement and the borrowing under this Agreement, and furthermore, the BORROWER is acting subject to private law, not vested with any ***'de jure imperii'***

(b) This agreement constitutes and will constitute valid and binding obligations of the BORROWER.

(c) The BORROWER has obtained and received all the necessary approvals and authorisations for this facility, and specially represents and warrants that:

i) The BORROWER is authorized to operate in foreign currency transactions.

ii) This facility has obtained the prior permission of the BANK OF UGANDA

11. SPECIAL COVENANT: The BORROWER hereby covenants and undertakes with the BANK that, from the date of this Agreement to the date upon which all monies owing by the BORROWER to the Bank under this Agreement are paid in full, it will not create or permit to subsist any encumbrance over any of the revenue or assets present or future without the written consent of the BANK.

16. APPLICABLE LAW AND JURISDICTION

(a) This Agreement shall be governed by and construed in accordance with English Law, and the parties hereto irrevocably submit to the non-exclusive jurisdiction of English courts----------

18- GUARANTEE.

(a) We, the BANK OF UGANDA (The Guarantor), a banking institution, established under the laws of Uganda, and being the Central Bank of the BORROWER, hereby unconditionally and irrevocably jointly and severally guarantee the due and punctual payment of any and all amounts payable by the BORROWER under the loan agreement in accordance with the provisions set forth herein. In the case of any failure

by the BORROWER to punctually pay any interest on, or principal of, or any other amount

due under the Loan Agreement, we hereby agree on first demand made by tested telex to cause such payment to be made to you in compliance with the obligations of the BORROWER. Payment by the Guarantor shall be made to ARESBANK in place and, in the manner specified in ARESBANK's Demand, without raising any exception or objection of whatever nature.(The State of Israel and the Republic of South Africa being excluded).

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(h) The BANK OF UGANDA guarantees ARESBANK that the foregoing undertaking and instructions will not be in any way modified or varied by any person or body or public authority of any kind, and that they will remain in full force and effect with all the payment obligations of the borrower hereunder are completely extinguished.

The loan agreement was duly signed by one Hon. Robert E.Ekinu. Deputy Minister of Transport, under a power of attorney granted by the Minister for Finance for and on behalf of the Government of the Republic of Uganda the presence of one O.M.J. Ndawula Senior Principal State Attorney of the office of the Attorney General of Uganda. It was also signed by Mr. George Nteeba, Chief Accountant of the Bank of Uganda, under a power of attorney granted by the Governor of the Bank of Uganda on behalf of the Bank of Uganda and witnessed by the above O.M.J Ndawula.

Lastly, the loan Agreement was signed by Mr. Salem Zenaty. General Manager, for and on behalf of BANCO ARABE ESPANOL, S.A. and witnessed by Mr. Domingo Lago, Attorney - at - law, of Banco Arabe Espanol,

S.A. It would appear from the foregoing provisions and terms that nothing could be more legally binding than this loan greement. Nevertheless, the borrower and the Guarantor proceeded to present a number of obstacles and objections which, after protracted correspondence and court proceedings, have found their way to this court by way of second appeal.

It is the contention of the appellant that both the learned trial judge and the Court of Appeal were wrong to hold and confirm, respectively, that the loan agreement is binding and enforceable when it was not made in accordance with the requirements of the law. The contention is to the effect that whereas it is true that the terms of the agreement are governed, by and enforced under English law, the capacity of the Bank to enter into the loan agreement is governed by the laws of Uganda and especially the bye-laws of the Bank of Uganda.

The loan agreement was made and signed on behalf of the parties by their representatives in Madrid, Spain. The issue that arises is whether they or any of them had capacity to contract on behalf of their principles. There is no dispute that both the agents of the Government of Uganda and of the respondent had full capacity to contract and bind the parties they represented. The only dispute relates to the capacity of the representative who represented the guarantor, namely, the Bank of Uganda, The agreement was signed by George Nteeba who possessed valid powers of attorney granted in accordance with the Bye Laws of the Bank of Uganda. 1968, Statutory Instrument 157/1968. In my opinion, the effect of a power of attorney which is duly signed and sealed in accordance with the regulations of a corporation and granted to that corporation's authorised agent to travel abroad on a contractual mission is to enable that agent, without further ado, to contract and enter into a binding and enforceable agreement with a named party.

On whether or not the loan agreement was valid and enforceable, the parties to this tripartite agreement had been particular to include a clause in it which sought legal opinion as a condition precedent. The appellant is the

principal financial adviser to the Government of Uganda and the Attorney General is the principal legal adviser to the same Government. In consequence, nothing could be more authoritative and aunthentic than the opinion of the Attorney-General of Uganda which he expressed and wrote on the loan agreement. Mr. Joseph Mulenga. learned Attorney General, as he then was wrote his legal opinion in which he stated, ***inter alia.***

"5. Under the Bank of Uganda Act (Act 5) of 1966, the Bank of Uganda is a body corporate capable of entering into an agreement and has a common seal which may he duly auntheticated by the Governor and Secretary to the Bank

6. In accordance with the laws of Uganda, an Agreement signed by a donor, of a power of attorney is as valid and effective as if it were signed by the donor of such a power of attorney.

7. In my considered opinion, the Agreement was concluded and executed for and on behalf of the Government and the Bank of Uganda by their respective attorneys in accordance with the Laws of Uganda.

8. Furthermore, in my considered opinion, the agreement is valid and constitutes legally binding and enforceable obligations on the Government and the Bank of Uganda, in accordance with the terms and conditions thereof and there are no more legal requirements to be fulfilled to make the Agreement more binding on the Government and the Bank of Uganda. "

This opinion was given on 22.12.1987 after the loan agreement had been signed. The opinion was in accordance with the contractual requirements of the parties as set forth in clause 3 of exhibit P1 Subsequently, the appellant accepted the validity and enforceability of the loan agreement. Thus, as late as 15.02.1991, the Ag. EDMO Director of the appellant sent a telex to the respondent, the message of which is not disputed, to the effect that:

"From: Bank of Uganda.

This refers to loan agreement dated Nov. 11.1987 for WDT 1.000.000 for purchase of p.p. Bank wagons, and To Telexes demanding payment of principal and interest amounting to USD 143,643.73 due on 28th January, 91 STP.

We do not dispute the claim. The delay in payment is being caused by our precarious Foreign Exchange position. We are however, doing everything in our means to ensure that payment is effected in due course STP.

Regards
T.Y.K. Walusimbi Ag.
Director. EDMO Bank
of Uganda"

It puzzles me that following these events, the appellant should turn round and question the applicability of the opinion of the learned Attorney General which confirmed loan agreement to be valid and enforceable through its director that it was bound by the same loan agreement and was only being delayed from paying by foreign exchange constraints.

I would therefore agree with the opinion of the learned Justice Kato,J.A. who gave the lead judgment of the Court of Appeal when he said,

> ***"My understanding of this clause (clause 3), is that although the contract was signed on 11/11/87 it could not be operational until the opinion of the Attorney-General about the legality of the agreement was received. The clause made the Attorney General's opinion a condition precedent The contract remained in abeyance until the respondent received the opinion in February, 1988, according to the evidence of Fernando Marques (PW1)"***

Following the opinion of the learned Attorney-General, the respondent proceeded to execute the loan agreement as evidenced by its correspondence in Exhibits PV, PV1 and PVII.

At the time the loan agreement was signed the Uganda Constituion designated the Attorney-General as the Principal Legal Advisor of the Government of Uganda with functions, ***inter alia,*** to give legal advice and legal services to the Government on any subject and to draw and peruse agreements, contract, treaties, conventions and documents by whatever name called, to which the Government is a party or in respect of which the Government has an interest.

In my view, the opinion of the Attorney General as autheticated by his own hand and signature regarding the laws of Uganda and their effect or binding nature on any agreement, contract or other legal transaction should be accorded the highest respect by government and public institutions and their agents. Unless there are other agreed conditions, third parties are entitled to believe and act on that opinion without further enquiries or verifications. It is also my view that it is improper and untenable for the Government, the Bank of Uganda or any other public institution or body in which the Government of Uganda has

an interest, to question the correctness or validity of that opinion in so far as it affects the rights and interests of third parties.

The contention by Mr. Masembe-Kanyerezi that the Attorney-General's opinion is erroneous or that in any event, it does not bind the Bank of Uganda is not persuasive and I reject it. I agree with Mr. Semuyaba, counsel for the respondent, that the opinion of the Attorney General accepted by the respondent was a condition precedent to the validation of the loan agreement and once given in writing as it was, it became the validing and authoritative opinion for the legality and enforceability of the loan agreement. While it is true that the Attorney-General plays a dual role as Government principal legal adviser on both political and legal matters. Nevertheless, in the latter role, the Attorney General is a law officer for the sole purpose of advancing the ends of justice. In

this role, the Attorney General has access to all types of advice from fellow ministers who may have negotiated and authorised the singing of contracts. He has a host of qualified and experienced advisers on legal matters of the kind that were involved in this loan agreement. Of the Attorney-General of England whose functions are legacies adopted in the Ugandan Constitution and laws, it was said in the House of Commons Debates. Vol.179, Cols 1213-1214 of December. 18, 1924, which is reported in John L.J. Edwards" **The Attorney General, Politics and the Public Interest,** 1984, that,

> ***"It is the duty of the Attorney General, in the discharge of his responsibilities - entrusted in hint, to inform himself of all relevant circumstances which might properly affect his decision."***

Consequently, the opinion of the Attorney General on this matter should not be taken lightly. All things being equal, the opinion of the learned Attorney-General on this loan agreement was the best any of the parties could have received and having received it, the appellant should not have a sound reason for seriously questioned its correctness or applicability in relation to the loan agreement. In the result grounds 1 and 2 of the appeal ought to fail.

I now turn to grounds 3 of the appeal. Mr. Kanyerezi submitted that both the High Court and the Court of Appeal were in error to hold and confirm, respectively, that the telex message sent on behalf of the appellant to the respondent on 15th February, 1991, Exhibit PIX, by the Ag. Director of EDMO of the appellant, Mr. Walusimbi, estopped the appellant from denying its liability under the loan agreement. The telex message was to the effect that the Bank of Uganda was not disputing the respondent's claim but wished to give reasons why it had delayed in keeping regular payments of the agreed instalments.

Appellant's counsels sole ground for faulting learned trial judge and the Justices of Appeal was that where a contract, like the present, lacks validity and enforceability on which he submitted on grounds 1 and 2 of this appeal, then it matters not that subsequently the appellant admits liability. Counsel contended that the admission has no legal consequences. Counsel cited **Chitty on Contracts** (supra), pages 191 and pages 191, paragraph 454, where the learned author observes,

> **"The** ***powers of a corporation whether sole or aggregate created by statute are confined to those given expressly or by reasonable inference by the statute concerned. If the subject matter of a contract made by such a corporation is outside the scope of its constitution as defined by the statute, the contract is ultra vires and void."***

In response, Mr. Semuyaba, learned counsel for the respondent, contended that the doctrine of estoppel applied in this case, He cited the case of **J.S. Mayanja Nkangi v. National Housing Corporation,** (1972) ULR, 37 in which the doctrine was applied. Kato **J.A.** in his lead judgment in the Court of Appeal agreed with counsel for the respondent that the learned trial judge was correct to hold that the doctrine applied in this case. Since I have held that the loan agreement was validly made and is enforceable, I must also agree with the findings of the learned Justices of Appeal that it was correct to hold that the doctrine of estopped was properly applied in this case.

Mr. Walusimbi's telex was clearly an admission by the appellant that it was indebted to the respondent. According to the Evidence Act. s. 113, when a party in its declaration, act, or omission, intentionally causes or permits another person to believe a thing to be true and that other person acts upon such belief, neither that party nor its agent shall be allowed in any suit or proceeding to deny the truth of what was admitted. Ground 3 of the appeal ought to fail. In my opinion the failure of grounds, 1 2 and 3 disposes of this appeal. However, the appellant through its counsel choose to list additional grounds, namely 4,5, 6

and 7 as additional but alternative grounds of appeal. I will briefly comment on these grounds.

On grounds 4 of the appeal, counsel for the appellant contended that liability on the loan agreement was discharged by the subsequent acts of the Government of Uganda and the respondent without consulting or obtaining the consent of the guarantor, the appellant. Mr. Masembe-Kanyerezi contended that the time within which to repay the loan agreement was extended by the respondent and borrower without the

consent of the guarantor and that this extension which amounted to a substantial alteration of the terms and conditions governing the loan agreement effectively discharged the appellant as guarantor from its obligations. Counsel further contended that the trial judge and the Justices of the Court of Appeal were in error to hold that the extensions and renewals of time were not material nor substantial in the alterations of the terms and conditions of the loan agreement nor, did they constitute a detriment to the appellant. Counsel for the appellant cited **Chitty on Contracts** (supra), at p. 446 and **Holm v. Brunkshill (1878) Q.B. 495,** in support of his submissions.

Mr. Semuyaba, learned counsel for the respondent, having traced the history and reasons for the extension and renewal of time allowed to the parties, submitted that all along the Bank of Uganda was well aware and consented to the extension and renewals. Consequently, counsel contended that both the trial court and the Court of Appeal were correct in holding and confirming, respectively, that the extensions and renewals were neither material nor constituted such prejudice or detriment as to amount to a discharge of the appellant from its obligations as a guarantor.

I find no reason to depart from the findings and decisions of the courts below. In my view, the appellant as principal financial adviser to the Government and guarantor of the loan knew or ought to have known the occurrences of the extensions and renewals and whether they affected its obligations in any material particulars. If so. it ought to have protested and given its intention to claim discharge from the loan agreement. It went along accepting all the alterations which incidentally were in favour of or suggested by the Government of Uganda for which the appellant was principal financial adviser, without denouncing them. Now that it finds itself bound to repay the loan and interest therof, it cannot, at this eleventh hour of the proceedings claim

successfully that the terms and conditions of the loan agreement had been altered substantially by the other two parties to that agreement. Ground 4 therefore ought to fail.

With respect, I can see no substance in grounds 5, 6 and 7 as alternative grounds to grounds 1,2 and 3. On the contrary, they appear to be nothing more than minor variations on the other grounds which I have considered. All in all, this appeal ought to fail with costs to the respondent in this court and in the courts below. I would uphold the judgment and confirm the decree of the Court of Appeal.

Before leaving this appeal, I am constrained to comment upon the length of time and the voluminous materials including many cases produced, photocopied and presented in courts by counsel for the Government and Bank of Uganda in their ingenious defences against the respondent's claim. The facts and circumstances of this case have always been simple, clear and admitted. Uganda, a sovereign state and its central bank, freely and willingly sent their emissaries to Spain looking for a loan which they got from the respondent, a respectable banking institution, and they accepted the terms and conditions of that loan which the Government received. In subsequent correspondence, the Government, finding it economically and financially difficult to meet its obligations under the loan agreement, the parties agreed to reschedule the repayment terms. Thereafter, the Government and the Bank of Uganda suddenly turned round and disclaimed liability. In pursuit of technical points and questionable arguments and authorities, the borrower and the guarantor hired the services of advocates to delay the repayments on sheer technicalities. It is now more than ten years and after some seven volumes of records of proceedings and submissions in this court, and in courts below that this case has been finally disposed of in favour of the respondent. The state will now have to finally pay more than double in repayments of the loan, interest and

costs, the sum of money it had borrowed all at the expense of the Uganda taxpayer.

There have been cases in the past and presumably there will be more such cases in the future, in which it is right and proper to plead and argue vigorously for the sovereignty of the state of Uganda and in its defence and its institutions against all sorts of claims. In my opinion, however, this was not one of them.

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft, the judgment of Kanyeihamba JSC and I agree that this appeal should be dismissed with costs here and in the court below.

As the other members of the Court agree with the judgment and orders proposed by Kanyeihamba JSC, this appeal is dismissed with costs here and in the courts below.

JUDGMENT OF ODER - JSC.

I have had the advantage of reading in draft the judgment of Kanyeihamba, J.S.C. I agree with him that the appeal should be dismissed with costs here and in the courts below.

JUDGMENT OF TSEKOOKO, JSC:

I have read in draft the judgment prepared by his Lordship, Kanyeihamba, JSC, and I agree with his conclusions that the appeal should fail and that the appellant ought to pay the respondent's costs here and in the courts below.

As I see it, the central issue in these proceedings is clause 18(a) of the loan agreement (Exh. P. 1) between the Government of the Republic of Uganda

and the respondent bank which loan agreement was executed by the parties on 11th November, 1987 in Madrid, Spain. The appellant acted as guarantor in respect of the Government of Uganda. Clause 18 of the agreement relates to the responsibility of the appellant as guarantor. It was provided in paragraph (a) thereof as follows: -

"We, the Bank of Uganda (the Guarantor), a banking institution established under the laws of Uganda, and being the Central Bank of the borrower, hereby unconditionally and irrevocably jointly and severally guarantee the due and punctual payment of any and all amounts payable by the BORROWER under the loan agreement in accordance with the provisions set forth herein. In the case of any failure by the BORROWER to punctually pay any interest on, or principal of, or any other amount due under the loan Agreement, we hereby agree on first demand made by tested telex to cause such payment to be made to you in compliance with the obligations of the Borrower. Payment by the guarantor shall be ade to ARESBANK in the place and in the manner specified in ARESBANK's demand, without raising any exception or objection of whatsoever nature" (underlining mine).

Clearly the appellant made a personal commitment to pay to the respondent any amount which the Uganda Government failed to pay regardless of any circumstances that may lead to the default on the part of the Uganda Government.

Mr. Masembe-Kanyerezi learned counsel for the appellant relied on the decision of this court in the case of ***General Parts (U) Vs Non-Performing Assets Recovery Trust*** (S.Ct. Civ. Appeal 5 of 1999) in support of the proposition that the loan agreement lacked the seal of the Appellant and therefore the loan agreement is invalid. It is my opinion that ***General Parts***

case is clearly distinguishable. In the present case the appellant knew that the loan agreement was to be executed outside Uganda in the absence of the Governor and or the Bank Secretary who would authenticate the sealing of the loan agreement. Therefore the appellant gave powers of Attorney sealed and dated 5th November, 1987 to its official, George Nteeba, authorising him to sign the agreement on behalf of the Appellant. The official under the authority of the powers of Attorney given to him duly executed the loan agreement on behalf of the Bank. The power of attorney did not require the official to authenticate the signing by affixing the seal of the appellant. I am not persuaded by the arguments of Mr. Masembe-Kenyerezi that the loan agreement executed by an official having powers of Attorney is utra vires or that absence of the seal was a failure of execution. I think that in this case Article 126(2) of the 1995 Constitution would take care of such arguments.

Mr. Masembe-Kanyerezi strenuously submitted that the guarantee was avoided because there was extension of date of commencement of payment without the consent of the appellant as guarantor; that the guarantor was only entitled to pay off the loan on due date as set out in the loan agreement and then sue the principal. This obviously is an attractive submission but in my opinion the wording of clause 18(a) (supra) makes the appellant liable to pay the loan under any circumstances. I am not persuaded that whatever happened in this case exonerated the appellant from its liability to pay the amount due because of default by the Government.

Accordingly I think that grounds 1 to 7 of the appeal must all fail.

I would dismiss this appeal with costs to the respondent here and below.

JUDGMENT OF KAROKORA, JSC.

I read in draft the judgment prepared by my learned brother Kanyeihamba, JSC. I entirely agree with him that the appeal has no merit and ought to be dismissed with cost here and in the courts below.

I have nothing useful to add on the merits of the appeal. However, in my view, costs, interest and time would have been avoided if the matter had been settled out of court.

Dated at Mengo this 18th day June of 2002.