REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, CJ., ODER, TSEKOOKO, KAROKORA & KANYEIHAMBA,JJ.SC.)

CIVIL APPEAL No.20 OF 2002.

1. **MANSUKHLAL RAMJI KARIA** **]**

2. **CRANE FINANCE CO. LTD.** **]**

APPELLANTS

AND

1. **ATTORNEY GENERAL** **]**
2. **MAKERERE PROPERTIES. LTD.**

]

3. **AMIN MOHAMED PIRANI**

]

RESPONDENTS

[Appeal from the Judgement of the Court of Appeal at Kampala (Makasa-Kikonyogo, DCJ, Engwau and Kitumba, JJ.A) dated 1st August, 2002 in Civil Appeal No.69 of 2000]

JUDGMENT OF TSEKOOKO, JSC.

The appellants instituted an appeal by way of "a suit" in the High Court against the respondents. In the suit, the appellants claimed jointly and severally for diverse declarations. Mugamba. J, dismissed the suit following preliminary objections by the respondents' counsel concerning the competence of the suit. The appellants' appeal to the Court of Appeal was unsuccessful.

In this judgment I shall refer to the first appellant, Mansukhlal Ramji Karia, as A1 and the second appellant, Crane Finance Co. Ltd., as A**2**. Similarly I shall respectively refer to the first respondent, Attorney General, as "RI", the second respondent, Makerere Properties Ltd., as "**R2**" and the third respondent, Amin Mohamed Pirani, as "**R3**".

I will give the background to this appeal as reflected in pleadings and related documents. The case never reached fullfledged trial. **R2** was incorporated in **1959. R3** had brothers who were all Asians and directors of **R2.** The other brothers are Allibhai Abdulaziz Pirani, Sadrudin Abdulaziz Pirani and Badrudin Abdulaziz Pirani. On **23/3/60, R2** was registered as the proprietor of a piece of land comprised in plot **13,** Market Street, Kampala. The Plot is the subject of these proceedings. I shall hereinafter refer to the plot as the "suit land". During the **1972** expulsion of Asians from this country by the Military Government of Idd Amin, the brothers (directors of **R2)** were expelled by Idd Amin's regime. The suit land vested in Government by operation of law (the Departed Asians Property Decree, **1973)** and was managed by the Departed Asians Property Custodian Board (DAPC Board). In **1981,** Sadrudin Abdulaziz Pirani, **(Sadrudin)** returned to Uganda. He successfully claimed for repossession of his own properties. He also claimed for the suit land on behalf of **R2.** The DAPC Board purported to return the suit land to **R2** under the provisions of the Departed Asians Property Decree **1973,** (Decree NO. **27** of **1973)** . When returning the suit land to **R2,** a Mr. J. Ssonko, on behalf of the Ag. Executive Secretary of DAPC Board, by his letter CB/CL/12/641 dated 30th September, 1981 authorising R2 to

repossess the suit land clarified that **"the Government will have to issue you with a final certificate of ownership after finalisation of the administrative machinery and policy of returning properties to their previous owners."**

In 1981 Sadrudin manipulated shareholding in R2 and in the Company Registry whereby he became the shareholder of 90% of the total shareholding in R2. R3, remained with 10%. On 27/11/1981 Sadrudin sold the suit land to A1 who was subsequently registered as proprietor on 2nd August, 1982. Meantime Parliament passed the Expropriated Properties Act, 1982 (Act No. 9 of 1982) which came into force in early, 1983. However after the purported sale of the suit land, in 1981, Sadrudin and R3 sold their shares in R2 to A1 and two other persons at a nominal value in 1982. Subsequently, on 2nd April, 1991, the Minister of Finance, Economic Planning and Development **(MOFEPD)** issued a Certificate of Repossession (No.0607), not to R2, as promised in 1981, but to A1 to whom, as earlier noted the suit land had been transferred. During 1992, R3 instituted High Court Company Cause No.2 of 1992 against A1 and two others. In the accompanying affidavit, R3 alleged that Sadrudin acted fraudulently in acquiring more shares in R2. The High Court upheld R3's allegations that the transfer of the shares by Sadrudini was fraudulent. The Court ordered for the company-register to be rectified to reflect the 1972 position which was apparently done. There does not appear to have been any appeal against that High Court decision. A number of other suits were filed in respect of the suit land. There is no need to mention them here now.

On 10th April, 1996, the Minister rejected an application by R2 for repossession of the suit land on the ground that R2 transferred the property (to A1) on 27/11/1981.

Consequently R2 instituted a suit entitled Misc. appeal No.443 of 1996 against R1 **(Makerere Properties Ltd, Vs Attorney General)** praying for a Court to order the Minister to issue to R2 a repossession certificate. The High Court dismissed the

suit. R2 successfully appealed to the Court of Appeal in Civil Appeal No.3 6 of 1996. That Court directed the Minister to deal with the suit land under Act 9 of 1982.

Meantime during the same period, 1996, A1 sold the suit land to **Nadims Ltd** which in May, 1997 also sold and transferred the same suit land to **Meera Investment Ltd.** (Paragraph 10(a) of the plaint avers that A1 has interest in this company). Within 1 1/2 months the company also transferred the land to A2. But as result of the Court of Appeal order in Civil Appeal 36 of 1996, the Minister himself cancelled the previous repossession certificate (No.0607) which had been issued to A1. On 3/8/98 the **MOFEPD** issued a fresh certificate of repossession (No.3194) to R2. A1 and A2 felt aggrieved by the cancellation of the old certificate (0607) and the grant of repossession of suit land to R2, and so they promptly instituted HCCS No.918 of 1998 against the three respondents claiming for certain declarations and an injunction against the respondents. One of the main claims by the appellants in their plaint is that the Minister has no powers to cancel certificate No.0607. In their respective written statements of defence, the respondents averred that both appellants had no cause of action and they also pleaded the defences of res judicata and of misjoinder of parties and of causes of action. Further R1 pleaded lack of notice under Act 20 of 1969. The respondents also pleaded that Act 9 of 1982 nullified all dealings in the suit land.

The manner in which the suit was filed originally appeared as if it was an ordinary suit but during the hearing of the "suit", and on appeal, counsel for the plaintiffs/appellants stated that it was an appeal under section 15 (former S.14) of Act 9.of 1982. This case and a few other cases instituted in Courts under that section shows confusion which has persisted about the nature of the proceeding filed in the High Court challenging the decision of the Minister refusing to grant or for granting repossession certificates to applicants for repossession or cancelling such certificates after issuing them.

When the suit first came up in the High Court before Mugamba, J., for hearing, the respondents' counsel took three points of objection to the competence of the case. Counsel contended: -

1. That the suit did not disclose a cause of action against any of the three respondents.
2. That the suit was incompetent against the Attorney General (R1) because no statutory notice was served under Section 1 of Civil Procedure and Limitation (Miscellaneous Proceedings) Act, 1969 (Act 20 of 1969).
3. That the subject of the suit was res judicata because of the Court of Appeal decision in Civil Appeal No. 36 of 1996 **(Makerere Properties Ltd. Vs Attorney General).**

The trial judge (Mugamba, J) upheld all the three points of objection and so he dismissed the suit. (The pleadings on both sides in these proceedings raised serious allegations of fraud and claims which could have been better investigated during a fuller hearing).

Be that as it may, the appellants unsuccessfully appealed to the Court of Appeal. They have now brought this appeal to this Court. The original memorandum of appeal contained nine grounds, to most of which counsel for the respondents objected because of their form. This Court adjourned the hearing and granted the

appellants leave to improve formulation of the memorandum. When the appeal was called up again, Counsel for the appellants again objected to most of the grounds in the amended Memorandum of Appeal. This forced Mr. Lule, counsel for the appellants, to abandon grounds 2,3,4,7,8 and 9 of the amended memorandum of appeal. He argued the remaining ground 1 separately and grounds 5 and 6 together. These are the grounds the court is to consider and determine in this appeal.

Before considering the grounds of appeal and submissions made thereon, however, it is convenient to consider and dispose of a fundamental question which the Court raised later after hearing the appeal and while judgment was pending. The question

is whether this appeal is properly before us. In my opinion this question is of fundamental importance. We asked counsel to address us on it.

Our invitation to the parties to address us on the competence of this appeal is contained in a letter of the Registrar of the Court dated 16/6/2004.

It reads in part as follows: -

*"(a) On 28/7/1998 the Minister cancelled Repossession Certificate No.0607 dated 2/**4**/91 which had been issued to the first appellant, M.R.Karia.*

.(b) The Minister issued another Repossession Certificate to the second Respondent.

The appellants appealed first to the High Court against the said decision of the Minister under section 14(1) of the Expropriated Properties Act, 1982. Later the appellants unsuccessfully-appealed to the Court of appeal.

This Court would like the parties to address it on the following question:

If the matter in the High Court was an appeal, in view of the provisions of Article 132(2) of the Constitution and of section 6(1) of the Judicature Act, do the appellants have an unrestricted right of appeal from the Court of Appeal to this Court?

In response the parties filed written submissions. Mr. Lule for the appellants gave detailed background to the dispute before making submissions on the question. The summary submission by Mr. Lule on this point is that: -

(a) an appeal under S.15 (former S.14) of **Act 9 of 1982** is not an ordinary appeal but an ordinary suit. For this opinion he relied on Article 139 (2) of the Constitution, Regulation 15 of the **Expropriate Properties (Repossession and Disposal) Regulations,** 1983 (SI.1983 No.6) and section 39(1) of the **Judicature Act** and also on two recent cases decided by this Court. These cases are **Habre International Co. Ltd. Vs Ebrahim Arakhia Kassim & Others** (Civil Appl.14 of 1999) (unreported) and **Mohan Musisi Kiwanuka Vs Asha Chad -** Civil Appeal No.14 of 2002.(unreported)

(b) This Court is competent to hear and determine this appeal as a second appeal without leave. He relied on S.6 (1) of the **Judicature Act,** and **Article 132(2) of the Constitution.**

(c) The case in the High Court had the character of a judicial review upon deprivation of property without compensation and without the proprietors being given a chance to defend their interests in a court. Reliance by the High Court and by the Court of Appeal on Civil Appeal No. 36/1996 **(Makerere Properties Ltd Vs Attorney General)** to which the appellants were not parties nor upon which they were heard renders the trial in the High Court and the appeal in Court of Appeal a nullity under Article 126(2) (e). He argued that this Court should prevent a nullity from defeating justice.

(d) In the event the Court finds that it has no jurisdiction, the matter should be referred to the Constitutional Court for interpretation under **Article 137(5) (b) .**

For the first Respondent, Mr. Joseph Matsiko, Ag. Head, Civil Litigation, did not make separate submissions. He agreed with and fully associated himself with the submissions of Mr. Nangwala, counsel for the 2nd and 3rd Respondents.

Mr. Nangwala in summary contended: -

(a) That the ***"appeal did not lie as of right to"*** this Court within the spirit of S.6 (1) of the **Judicature Act.** In considering the matter under S.15 of **Act 9 of 1982,** the High Court exercised an appellate, and not an original, jurisdiction. He relied on **Hem Singh Vs Mahant Basant (1936) I ALL ER** 356 (PC)**, Secretary of State for India Vs Chelikan Rama Rao (1916) LR 43 1nd App 192 and Mityana Ginners Ltd Vs Public Health Officer, Kampala** (1958) EA. 339.

(b) The fact that an aggrieved party has to appeal within 30 days under S.15 is a characteristic of appeals and not of suits.

(c) It is irrelevant that this Court has in the past entertained similar appeals since the issue now under consideration by the Court has never been canvassed in any of those other cases. Indeed counsel appears to suggest that **Kiwanuka's case** (supra) was wrongly decided.

Act 9 of 1982 has been implemented for just over twenty years now. It would appear that a number of cases similar to this one have been brought to this Court under the provisions of that Act and were decided as normal 2nd appeals. Therefore if we have to upset those decisions the matters raised by the question have to be given due consideration. With respect it is not correct to say as argued by Mr. Nangwala, that this court should ignore its past decisions of cases similar to the present. This indeed is the time to correct past errors if there are any at all.

General appellate jurisdiction of this Court is conferred by Article 132(2) of the Constitution. Clause (2) thereof reads as follows: -

"**An** ***appeal shall lie to the Supreme Court from such decisions of the Court of Appeal as may be prescribed by law."*** In civil cases appeals come to this Court via the Court of Appeal because of subsection (1) of S.6 of the **Judicature Act.**

The subsection reads this way:

> ***"6(1) An appeal shall lie as of right to the Supreme Court where the Court of Appeal confirms, varies or reverses a judgment or order including interlocutory order given by the High Court in the exercise of its original jurisdiction and either confirmed, varied or reversed by the Court of Appeal."***

Clearly this subsection gives to parties an unrestricted right of appeal to this Court in civil causes emanating from trials by the High Court. Appeals are not restricted or made conditional on any procedure.

Subsection (2) of S.6 regulates third appeals which emanate from Courts presided over by Chief Magistrates or by Magistrates Grade I. Such appeals come to this Court only with leave of either the Court of Appeal or of this Court. I am satisfied that the present appeal is not governed by the provisions of subsection (2). The question raised and that needs court's answer is whether the present appeal falls under the appeals envisaged by subsection (1) or any other law authorising appeals to this Court. Mr Lule contends that it does. Messrs. Nangwala and Matsiko, on the other hand, hold the contrary views.

Mr. Lule argued strongly that the competence of this Court to entertain this appeal has to be determined on the basis of the character of the proceedings before the High Court from which this appeal arose, the nature of the proceeding as provided for under **Act 9 of 1982,**and the **Regulations** in S.I 1983 No.6, the kind of powers the Minister exercises under the Act and also on the basis of other statutory provisions and laws relating to interest in and title to land within the context of this case. I find it unnecessary to consider the last part of this submission because Mr. Lule himself conceded right from the High Court that the case was instituted under S.15 of Act 9/82.

Let me start with S.15(l) of the Act. It reads:

> ***"15(1). Any person who is aggrieved by any decision made by the Minister under this Act, may, within thirty days from the date of communication of the decision to him or her appeal to the High Court against that decision".***

It is argued that the word "**APPEAL**" as used in the subsection is not used in a technical sense of a "**judicial proceeding**" but rather it is used in the ordinary sense

meaning "**CHALLENGE**". For that opinion Mr. Lule relied on the words employed in framing Regulation 15 which reads as follows: -

> ***"15. The Rules of Civil Procedure governing institution of suits in the High Court shall apply to appeals made under section (15) of the Act"***

In this connection note should be taken of the definition of a "**suit**" as "all proceedings commenced in any manner prescribed": See S.2 of the Civil Procedure Act.

I note that neither Act 9 of 1982 nor Regulations in S.I. 1983 No.6 define the word "**appeal**". Nor does the Civil Procedure Act.

According to Mr. Lule if the decision of the Minister were considered a judicial decision appealable to the High Court in the same sense, for instance, as an appeal lies to the High Court from a Chief Magistrate's decision in a civil case or from a tribunal exercising judicial powers and subject to at least the basic judicial procedure. Regulation 15 would have been worded differently. It would instead say ***"the rules of Civil Procedure governing institution of appeals in the High Court."***

Learned counsel contended that in hearing an appeal against the Minister's decision made under S.15, the High Court is *enjoined to exercise its jurisdiction to determine the matter by trying the "**APPEAL**" by applying the rules which apply to an ordinary civil suit* instituted under the **Civil Procedure Rules,** but not those **Civil Procedure Rules** which govern ordinary civil appeals in the High Court. The trial of such a suit, contended learned counsel, would result in appeals ending in this Court. Therefore this Court is competent to determine this appeal as a second appeal.

Since it is not argued that the Minister is a court lower than the High Court, I do not think that the provisions of Clause (2) of Article 139 relied on by Mr. Lule are relevant to the question I am considering now.

The clause reads: -

> ***"(2) Subject to the provisions of this Constitution and any other law, the decisions of any court lower than the High Court shall be appealable to the High Court."***

Now, I have noted the use of the word "**suit**" in section 14 which immediately precedes S.15 in which the draftsman preferred to use the word "**appeal**" instead of "**sue**". I fail to appreciate any rational basis for the distinction created by the use of the two words in two separate but succeeding sections in the same Act. The provisions of section 14 appear under the heading **legal proceedings** and there the words "**sue**" and "**suit**" are used to signify the filing of an originating proceeding in the High Court. On the other hand, section 15 appears under the heading "**APPEAL**" and in its subsection (1) the words " **appeal to the High Court**" are employed. At first I thought that the two words were used deliberately in the subsection so that "**to sue**" and "**to appeal**" would respectively connote instituting a "**Civil Suit**" and a "**Civil Appeal**" in the ordinary way. However, in addition to suggested definition under English law authorities, (infra)some dictionaries provide clues to the use of the two words. The **Wordsworth Dictionary of Synonyms and Antonyms** gives the synonyms of the verb "**Appeal**" as address, invoke, entreat, implore, supplicate, sue and petition. The same dictionary gives the synonyms of the verb "**sue**" as to prosecute, accuse, take to court. It appears therefore that the two expressions i.e. "**appeal to court**" and "**to sue",** mean taking to Court.

In Vol.37 of **Halsbury's Laws of England,** 4th Ed, a general definition of a judicial appeal (para 677) is said to be an application to a superior Court or tribunal to reverse, vary or set a side the judgment, order, determination, decision or award of an inferior court or tribunal in the hierarchy of Courts or tribunals on the ground that it was wrongly made or that as a matter of justice or law it requires to be corrected. In so far as ordinary judicial appeals are concerned this definition is satisfactory as it is wide enough to cover all forms of appeal, whether on a point of law or of fact or of mixed fact and law or by way of case stated or by judicial review. The appellate

provisions for example, in our Judicature Act and the Civil Procedure Act bear out this definition.

Another English authority is **Strouds Judicial Dictionary,** 4th Ed, Vol.1. At page 155, it gives the following two meanings of **"appeal",** in Court among others which meanings are similar to that given above in Halsbury's Laws. *First it states that "**To appeal**" is the right of entering a superior Court and invoking its aid and interposition to redress the error of the Court below....." Secondly "An appeal" strictly so called is one in which the question* is *whether the order of the court from which the appeal is brought was right on the materials which that court had before it."* These meanings tend to support the view that a judicial appeal is not the one intended in S.15 because of the use of the expression " **appeal to the High Court."** With respect I do not agree with Mr. Nangwala's contention that the 30 days limitation period implies that the appeal is an ordinary judicial appeal. I think it would be a misnomar to describe a suit instituted under S.15 to challenge the Minister's rejection of an application for repossession as an ordinary judicial appeal.

Mr. Lule further relied on the two decisions of this Court **(Habre International and Musisi Kiwanuka)** (supra) to support his contention that the character of the appeal envisaged by S.15 is that of an ordinary suit.

In my opinion **Habre International** decision is not quite helpful. There the appellant sued the former owner of an expropriated property for compensation in respect of improvements carried out on the building repossessed by that former owner. The High Court decision granting relief to the appellant was overturned by the Court of Appeal which held that the High Court had no original jurisdiction to try the suit. On appeal to this Court, it was held that the former owner's liability to pay compensation lay under section 11 of Act No. 9 of 82 and not under S.15.
Indeed in his lead judgment, Karokora, JSC, held that:

----. there ***was no decision by the Minister made***

under the Act that aggrieved the appellants against which they could go to the High Court by way of appeal under section [15(1)1 of the Act."

It was in the concurring judgment of Mulenga, JSC, where, in relation to S.[15(l)], the learned Justice of Supreme Court doubted any judicial function of the Minister in making a decision under S.15 (1). The learned Justice of the Supreme Court expressed himself, in that connection, in the following words: -

"The provision of [S.15(1)] of the Expropriated Properties Act to the effect that a person aggrieved by the Minister's decision under the Act, may appeal to the High Court, cannot be construed as in any way affecting the original jurisdiction of the High Court----------

It seems to me that the Minister is not thereby given judicial appeal as from one court of law to another."

The definitions I have just quoted appear to support this view.

As already noted, the claim in the suit was for compensation, a matter governed by S.11 of the Act. So this Court held that the Court of Appeal erred in holding that because [S.15(l)] confers "**appellate**" jurisdiction on the High Court, the High Court could not exercise its original jurisdiction to try the suit.

In any event the opinion of Mulenga, JSC, in that appeal was that the appeal against the decision of the Minister was not a judicial appeal. He later reiterated that opinion in **Musisi Kiwanuka's case** (supra) . At page 14 of his typed judgment, he said,

"I would reiterate what I said in Habre International Co. Ltd. Vs. E.A. Kassak & Others_____ that "AN APPEAL" under S.14 of the Act is not a judicial appeal. The Minister in the exercise of power vested in him by the Act, makes administrative decisions. Section 14 of the Act directs that a person aggrieved by such a decision may appeal to the High Court,

within a period of thirty days. Apart from that time limit, the Act does not stipulate any special procedure for instituting the appeal or challenge against the Minister's decision. The challenge can be done in an ordinary civil suit."

It may be true to say, as implied in this passage, that sometimes a legislation providing for an appeal to a Court against a judicial decision, a quasi judicial or an administrative decision also sets out a procedure on how such an appeal may be instituted. However the absence of procedure, or of a procedure for appealing, is itself not sufficient evidence that no judicial appeal was intended by the legislature. Whether or not a legislation providing for exercise of a power provides for a "**judicial appeal**" will, in my opinion, depend on the wording of the particular legislation and these proceedings support this view.

The decision in **Hem Singh** (supra) on which Mr. Nangwala relied appears to support the appellants. The case arose in India, from three appeals originating from decisions of an administrative tribunal. From the tribunal the case went to the High Court which set aside the decisions of the tribunal. Eventually there was an appeal to the Privy Council where the respondents challenged the competence of the two appeals. The Privy Council reviewed a number of decided cases including **Secretary of State for India (supra)**, before concluding that the jurisdiction conferred upon the High Court of India was intended to include the new subject matter as part of the ordinary appellate jurisdiction of the High Court, and the case was within the general principle laid down by Viscount Haldane in **National Telephone Co. Vs Post Master General** (1913) A.C 546 at 552 that "when a question is stated to be referred to an established court without more, it..... imports that the ordinary incidents of the procedure of that court are to attach and also that any right of appeal from its decisions likewise attaches".

In **Mityana Ginners Case** (supra) a case originating from this country and which is of some interest, the Privy Council held that since the appeal to the District Court (against a notice under the Public Health Ordinance by the Medical Officer of Health) was not commenced in any manner prescribed by Rules to regulate the Civil Procedure of the Courts, that appeal was not a suit.

That holding distinguishes **Mityana case** from the present one. In the present case, Rule 15 (supra) stipulates that Civil Procedure Rules apply in instituting an "**appeal**" under S.15.

I fail to see any sound reason why a party seeking for compensation under S.12 of the Act for improvement made on an expropriated property can proceed by way of an ordinary suit whilst a party seeking to challenge a pure ministerial decision under S.15 (1) has to file an appeal. It seems to me that in the light of Rule 15, and the definition of "**suit**"(supra) challenging a ministerial decision is by way of suit even if the Act describes the challenge as an appeal. It is probably the better procedure because it enables parties to call witnesses, or adduce evidence, to support their claims. Furthermore, neither S.15 nor any other Provision in the Act indicates how far an appeal instituted under S.15 (1) can progress in the Court hierarchy. In other words the section neither prohibits nor expressly allows an aggrieved party to take or refrain from taking an appeal up to this Court. In the circumstances, I think that we have jurisdiction to hear and determine the appeal. It is now not necessary to deal with the last of Mr. Lule's arguments on the question.

I will now turn to the grounds of appeal and I start with ground one, which is formulated in these words: **-The Court of Appeal erred in law to hold that C A No.36 of 1996, to which the appellants were not parties applied to the instant case and operated as res judicata against the appellants.**

On this ground, Mr. Lule's submissions are a reflection of the averments in the plaint namely that none of the ingredients of **res judicata** are present because: -

(a) Neither of the appellants was a party to the proceedings in Civil Appeal No. 36 of 96 nor did any of them claim through a party to that appeal. He cited several authorities in support of his arguments. Later in rejoinder to Mr. Nangwala's counter arguments, Mr. Lule contended that in this appeal the issue is not on the status of, but on interest in, the suit land. So no question of a decision in rem arises to bar the appellants.

(b) The subject matter must be directly or substantially in issue in the dispute.

(c) Parties must have litigated under the same title.

(d) The Court of Appeal decided appeal No.3 6/96 contrary to law and to the facts of the case. The case cannot, therefore, operate as res judicata. Learned counsel argued that the **MOFEPD** originally returned the suit land to R2, a company, and not to Sadrudin, an individual, yet the Court of Appeal found to the Contrary. He relied on **United Assurance Co. Ltd. Vs Attorney General (Uganda Court of Appeal Civil Appeal No.1 of 1986)** for the view, which, as a general principle, is correct, that a director can act for and bind a company.

For the 2nd and 3rd respondents, Mr. Nangwala contended that:

(a) The Court of Appeal properly found that its previous decision in Civil Appeal No.36 of 1996 bound the appellants even though the appellants were not parties thereto.

(b) This Court can not set aside Civil Appeal No.36 of 1996 when that appeal is not a subject of Appeal here. He relied on **Jeraj Sharriff Vs Store** (1960) EA 374 and **Hulsbury's Law of England,** 3rd Ed., Vol. 15 paragraphs 351,366 and 367 where a distinction is made between a judgment in rem and a judgment inter partes and contended that a decision in rem is conclusive against strangers.

(c) The Court of Appeal that the suit land vested in Government, bound A1 and he A2.

decis

ion of (d) Res judicata has the same effect as a judgment in rem.

Mr. Matsiko, Principal State Attorney, representing R1, adopted the submissions of counsel for R2 and R3.

I will first discuss the meaning, operation and effect of the plea of res judicata. The respondents pleaded this defence on the basis of the decision of the Court of Appeal in Civil Appeal No.36 of 1996 (supra).

The doctrine of res judicata is set out in S.7 of the **Civil Procedure Act** in the following words -

> ***"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."***

The provision indicates that the following broad minimum conditions have to be satisfied: -

(1) *There have to be a former suit or issue decided by a competent court.*

(2) *The matter in dispute in the former suit between parties must also be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar.*

(3) *The parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title.*

In HCCS 553 of 1966 **(Ismail Karshe Vs Uganda Transport Ltd) cases on Civil Procedures and Evidence,** Vol.3 page.1, Sir Udo Udoma, former Chief Justice of Uganda, put it this way: Once a decision has been given by a

Court of competent jurisdiction between two persons over the same subject matter, neither of the parties would be allowed to relitigate the issue again or to deny that a decision had in fact been given, subject to certain conditions. In my opinion this is a correct summary of S.7.

There is no doubt that neither appellant was a party to Civil Appeal 36 of 1996.

As already noted, in 1982 the DAPC Board through a Mr. J. Ssonko, its Ag. Executive Secretary, purported to return the suit land to R2. The application for repossession had been lodged by Sadrudin, admittedly one of the Directors of R2. Sadrudin sold the suit land to A1 who on 2/8/1982 was registered as proprietor. The suit land was again transferred twice before it was sold to A2, it being the fourth transferee.

As summarised earlier, in 1991, R3, one of the Pirani brothers and a shareholder in R2, came to Uganda and discovered the sale and transfer of suit land. He obtained powers of Attorney from his other brothers who were then still in Canada, and themselves also Directors of R2. He successfully challenged Sadrudin's manipulation of shareholding in R2, by instituting High Court Company cause No.2 of 1992 **(Amin Mohamed**

Abdullaziz Pirani Vs Mansukhlal Ramji Karia (A1) and 2 others.

The High Court (Kalanda, J) concluded that the transfer of shares carried out by Sadrudin was fraudulent. The Court ordered the Registrar of Companies to rectify the company records to reflect the position as it was in 1972, meaning thereby that all the Pirani brothers remained shareholders in R2. After that court order, R2 filed

an application to the **MOFEPD** claiming for a repossession certificate. The former Minister,
Mayanja Nkangi, rejected the application on grounds that: -

> **"Government had through the Board already returned the property to R2".**

R2 appealed to the High Court against the decision of the Minister (See **Makerere Properties Ltd Vs Attorney General),** under section 15 of Act No.9 of 1982. One of the pleadings filed in the appeal in the High Court was an affidavit sworn by R3 setting out certain facts one of which was that no repossession certificate under Act 9 of 1982 had been issued to R2. There was apparently no evidence by way of affidavit or otherwise to challenge that assertion, but the High Court upheld the decision of the Minister. R2 appealed to the Court of Appeal under Civil Appeal 36 of 1996, The parties in the High Court and in Court of Appeal were **Makerere Properties Ltd Vs Attorney General, (i.e. R2 Vs R1).**

The Court of Appeal upheld the appeal and reversed the High Court decision. The former Court found that: -

(a) *The suit land had never been returned to R2 but was instead wrongfully returned to one Sadrudin who, though he was one of R2's Directors, was not R2 itself.*

(b) *That Sadrudin had fraudulently repossessed the suit land before he fraudulently sold and transferred it to AI. So the fraud affected AI's registration as a proprietor.*

(c) *That even if there had been no fraud, under S. 1(1) of Act 9 of 1982, repossession by Sadrudin and the transfer to A1 was nullified, since the transactions were both effected between 1973 and 21/2/1983, the latter date is when Act 9 of 1982 came into force.*

(d) *When in 1996, R2 applied for repossession of the suit land, the suit land had not been dealt with under Act 9 of 82 and it was still vested in Government. So the Minister erred in rejecting R2's application for repossession.*

(e) *That the decision of the Supreme Court in* ***Famous Cycles Agencies Ltd & 4 others Mansukhlal Raniji Karia & 2 others Civil Appeal No.16 of 1994***

Civil Appeal No.16 of 1994 did not decide the ownership of the suit land but rather it decided the issue of who was entitled to receive rent from tenants in the suit land. Mr.Lule has attacked finds (a) to (d)

With respect I must point out that the holding or references by the Court of Appeal in C.A. 36 of 1996 that property was returned to Sadrudin appears incorrect. It appears that the Departed Asians Property Custodian Board, through a Mr. J. Ssonko, the then Ag. Executive Secretary, returned the suit land to R2 by a letter dated 30/9/1981 to which I have already referred. It may be Sadrudin was the moving spirit behind the process of repossession and eventual sale of the suit land.

However it is clear that neither of the two appellants was a party to the suit in the High Court challenging the Minister's refusal to grant repossession certificate to R2 nor were they parties to the appeal from that decision to the Court of Appeal in C.A. 36 of 1996. It is possible to argue that as A1 had already sold the suit land his interests could not be affected and that on the face of it the interests of A2 were affected even though he was not a party. These are matters which could have been
properly investigated during a full trial.

There is no doubt that R2 was a party to those proceedings up to the Court of Appeal, where Civil Appeal

36 of 1996 ended. It is not evident from the resultant judgment of the Court of Appeal whether either appellant was aware of the proceedings of which the appeal is the last.

The question that needs to be answered, therefore, is whether or not both the High Court and or the Court of Appeal erred in holding in their respective decisions giving rise to the present proceedings that the decision in Civil Appeal 36 of 1996 constitutes **res judicata** and is applicable in these proceedings. If it applies, it bars the appellants from prosecuting the suit which Magamba, J. , dismissed. At the end of his ruling Magamba.J, stated that: -

> ***"The decision in Civil Appeal No.36/96 as I have observed earlier, dealt with the status of the property and the matter should be regarded as res judicata".***

Here the learned trial judge relied on only the pleadings and submissions of counsel for both sides and the judgment of the Court of Appeal in Civil Appeal No.36 of 1996 for his view that the suit land is **res judicata.** There was no evidence to show any relationship between the appellants and the parties in that appeal. In my opinion the proper practice normally is that where **res judicata** is pleaded as a defence, a trial court should, where the issue is contested, try that issue and receive some evidence to establish that the subject matter of the dispute between the parties has been litigated upon between the same parties, or parties through whom they claim:

Be that as it may, in the Court of Appeal, ground 2 of the memorandum of Appeal contained the complaint against the ruling of Magamba, J., that the suit was **res judicata.** The other two points were on misjoinder of parties and lack of a cause of action against R2 and R3. In the Court of Appeal, the lead judgment with which the other numbers concurred was given by **Mukasa-Kikonyo,** DCJ.

Mr. Lule, who represented the two appellants in the Court of Appeal had argued apparently forcefully, as he did before us, that neither of the appellants was affected

by the doctrine of res judicata because none of them was a party to the original HCCS No.443 of 1996, the offspring of which is Civil Appeal 36 of 1996. He further argued that even if A1 was affected by fraud, as alleged in the defence of R2, A2 was not tainted by the alleged fraud as the latter was a bonafide purchaser for value and without notice of any defect in his predecessor in title. The learned Deputy Chief Justice discussed the issue of res judicata this way: -

> ***"It is true that the parties in Civil Apeal No.36 of 1996 and this appeal may not be the same but the subject of the dispute. Counsel for the respondents raised the issue of res judicata in relation to the status of the suit property. This Court in Civil Appeal No. 36 of 1996 ruled on the status of the suit property which decision was binding on all the persons who had interest in the suit property even if they were not parties.***
>
> ***Most important of all the learned trial judge was bound by the decision of the Court of Appeal in Civil Appeal No. 36 of 1996 which was a superior Court. The Court of Appeal having ruled that the suit property has been vested in the Government under E.P.A, there was no way the High Court could have reversed it since the suit property was the same in both cases. Even if the Court of Appeal had reached a wrong decision the only course open to the appellant would have been to apply for a review or appeal to the Supreme Court but not to institute proceedings under S.14 of the Expropriated Properties Act."***

With greatest respect, assuming that by "appellant" the learned DCJ refers to the present appellants, the learned DCJ was in error to suggest that the appellants could appeal. They had not participated in the appeal, so they had no right of further appeal. Probably the option would have been for the appellants to seek to set the judgment aside by a suit or they could have applied at the trial stage to be joined in the suit.

Later the learned DCJ further referred to the ruling of the High Court where Magamba, J. , had relied on the said Civil Appeal No.36 of 1996 , and opined that the Court of Appeal laid all points in the matter concerning ownership of property to rest when it stated that:

> *"any purported return of the suit property to S.A. Pirani in 1981 and the subsequent registration of the property into the names of Mr. Karia were both nullified by Act 9 of 1982 as they were both effected between 1973 and 21st February, 1983."*

The learned Deputy Chief Justice then concluded: -

> **"Clearly as the Court of Appeal dealt with the status of the suit property although the parties were not exactly the same the issue of ownership of the suit property was settled and operated as res judicata against the appellants interest in it.....the appellant's appeal would fail on that ground alone."**

Although this appeal is not from Civil Appeal 36 of 1996 there are two points in the decision of the Court of Appeal about which I should make observation.

First, the court held that the property was returned to Sandrudin and not to R2. That appears to be incorrect. The letter of **J.Ssonko** dated 30/9/1981(supra) whose presence in the record of proceedings was deprecated by **Twinomujuni, JA,** and to which I have already referred was addressed to R2. If, as it is stated in the said judgment, opposing counsel in the High Court submitted that, **"My learned friend tendered a letter dated 30/9/81",** it seems to me that the appellate court should have acted on that evidence unless there is clear evidence that in fact the letter was not tendered or unless the tendering was successfully opposed. I am aware that I am not considering an appeal against the decision in C.A. 36 /96. So I won't go any further than that. What I can say about the letter, which was annexture KC 2 to the plaint in these proceedings, however, is that the authority given in the letter to R2 to repossess the suit land was **"provisional"** pending finalisation in future. This provisional authority was supposed to be

validated by an actual transfer. Annexture KCI dated 2/04/1991 appear to have intended to validate the provisional transfer, but in fact it purported to authorise not R2 but A1 to repossess the suit land. Even then, A1 had already sold and transferred the suit land. That of course is where the problem is. Whatever the case, the effect of the decision of the Court of Appeal in Civil Appeal No.36 of 1996 is that it nullified the said certificate dated 2/04/1991 when the Court directed the **MOFEPD** to deal with the suit land under Act 9 of 1982. Perhaps I ought to point out that the certificate was nullified twice. Besides that court's nullification in 1998 of the certificate (No.0607), earlier on 9/7/1991, barely three months after the certificate was issued, a Mr. Kabagambe, on behalf of the Verification Committee in the Ministry of Finance by letter, ref. VC7/COU/963/9PIR, advised M/s Mulira and Co. Advocates, that the same certificate had been cancelled because it was obtained fraudulently and that the property would be returned to R2, the rightful owner. The fact of the cancellation was indeed advertised in the Uganda Gazette of 8/11/1991 (Vol. LXXXIV No.49).

The said letter and a copy of the Gazettee were annexed to R2's written statement of defence. In spite of the two nullifications of the certificate, A1 appears surprisingly to have retained the nullified certificate which he caused to be entered on the certificate of title on 10/7/1996! A full trial would have thrown more light on these matters.

Be that as it may, in her judgment, the learned Deputy Chief Justice correctly found that the parties to Civil Appeal 36 of 1996 are different from parties in this case. This is so because in appeal 36 of 96, R2 was the appellant whereas the respondent there was the present R1. This time round those two parties are on the same side. So does the doctrine apply to bar the two appellants from prosecuting these proceedings? The trial judge and the Court of Appeal found that the doctrine applies because C.A.36 /96 decided the status of the suit land even though neither of the appellants was a party.

So the two court did not in reality decide the issue of res judicata.

I have said already that in order to establish **res judicata,** this issue should have been tried. As neither appellant was a party to the suit and the ensuing appeal 36/1996, in my opinion the Court below erred to hold that A1 and A2 were barred by res judicata. I would uphold ground 1. I shall consider the effect of C/A 36 of 96 on the status of the suit land later. Grounds 5 and 6 state as follows: -

(5) The Court of Appeal erred in law when they held that the appeal suit disclosed no cause of action against the 2nd and 3rd respondents as none of them had made the decision under S.14 of the Expropriated Properties Act.....

(6) The Court of Appeal erred in law and fact to hold that the appellants were not aggrieved parties because at the date of the Minister's decision they had no interest in the suit property.

In addition to his arguments before us, Mr. Lule adopted the written submissions he had filed in the Court of Appeal. In that Court the corresponding grounds were No.4 and No.5 although there, these were argued together with ground 7.

The two grounds were worded as follows: -

(4) That the learned judge misdirected himself to the facts of the case when he held that there was no cause of action whereas the issue of the appeal was whether the 1st appellant was a former owner and could pass title to the 2nd appellant plus other identified issues which warranted a full trial on evidence and merits of the case.

(5) The learned trial judge erred in law and misinterpreted the facts and pleadings to opine that the appellants were not aggrieved by the Ministers decision and that both appellants had no interests and rights exercisable under S.14 of Act 9 of 1982.

In his written arguments on these grounds in the Court of Appeal, Mr. Lule contended that S.15 of Act 9 of 1982 is wide enough to confer the right of appeal to any person whose rights are affected by the Minister's decision. Learned counsel relied on **Mohamed Allibhai Vs W.T.Bukenya and DAPC Board** (S.Civil Appeal No.56 of 1995) (unreported) for the view that a person suffers a legal grievance if the decision of the Minister affects his interest even if he or she is not a party to the application to the Minister for repossession of expropriated property or is not former owner of the expropriated property. So such a person has a cause of action. Counsel argued that Civil Appeal No.36/96 affected the appellants interests yet they were not parties to the case. Further the decision of the Minister to cancel the 1st appellant's certificate (0607) of repossession and the issuance of a new certificate to R2 as a consequence of which A2' s title in the lands Register was cancelled were decisions which aggrieved both appellants. Both were therefore entitled to appeal under S.14 of Act 9 of 1982.

Mr. Cheborion, Ag. Commissioner for Civil Litigation, who made written submissions on behalf of the first respondent, in the Court of Appeal, supported the decision of the trial judge and argued that the two appellants had no causes of action. For the second and third respondents, Messrs. Nangwala, Resida & Co. Advocates, in their written submissions in the Court of Appeal, supported the decision of the trial judge that the two appellants had no causes of action primarily because neither R2 nor R3 made any decision under act 9 of 1982 and so there could be no appeal under (S.15) against the two respondents and neither could any of them be held responsible for the decision of the Minister. Counsel further argued that on the facts of the case the two appellants had no right of statutory appeal under S.15.

In the trial court objection had been made on behalf of R2 and R3 that the plaint did not disclose a cause of action against either of them. The reasons raised then were the same reasons raised in Court of Appeal. In upholding that objection, Mugamba, J, referred to the averments in paragraph 7 (a) to 7(e), 7(g) to (m) of the plaint, the former being complaints under Act No. 9 of 82 against the **MOFEPD**

before the judge held that nothing averred in the plaint showed that the two appellants enjoyed a right which was violated by either R2 and R3 or both. He, therefore, held that there was no cause of action against these two. The learned judge also found that the appellants had no justification in joining R2 and R3 in an appeal under S.15 because there was no allegation in the plaint showing that either R2 or R3 caused grief to the (plaintiffs) appellants. Further, the learned judge found that even R1 was wrongly joined and that the action against him was misconceived.

On ground 4, the learned Deputy Chief Justice accepted the contentions of counsel for the respondents and held that there was no cause of action against R2 and R3 because neither of these two made a decision under Act 9 of 1982.
It was the Minister who did. On the complaint in ground 5, the learned Deputy Chief Justice held that in the appeal, "the appellants' interest in the suit land when the act of the Minister complained of was made, did not exist. The two appellants were not aggrieved parties because they had no interest in the suit land at the time the Minister made his decision. The learned Deputy Chief Justice stated:

> ***"Both appellants_____had no interest in rem to qualify as "AGGRIEVED PERSONS." The reasons for so holding are that at the time the Minister's decision cancelling allocation certificate No.0607 to A1, A1 had already sold the suit property. Further C/A 36/96 decided that A1 did not acquire a valid title. Furthermore A2 did not acquire a valid title from those other persons to whom A1 had sold and transferred the suit property."***

Clearly these findings were made on basis of submission based on C.A. 36 of 1996 where the appellants were not parties.
Mr. Lule criticised these conclusions when he argued the appeal before us. According to him it was necessary to join R2 and R3, in the proceedings by virtue of Order 1 Rule 10 (2) of the Civil Procedure Rules. He relied on **Departed Asians**

Property Custodian Board Vs Jaffer Brothers Ltd - Civil Appeal No. 9 of 1998 (S.Ct) (unreported), **Ladak A. Mohamed Hussein Vs. Griffiths Kakiiza & 2 Others,** S.Ct Civil Appeal No.8 of 1995 (unreported) and **Mohan Musisi Kiwanuka Vs Asha Chand** S.ct. Civil Appeal No.4 of 2002.

Again Counsel criticised the Court of Appeal for holding that in Civil Appeal No.36 /96 the title to land of the two appellants was nullified. He contended that in 1998, MOFPED had no power to grant repossession under Act 9 of 1982. If **MOFEPD** wanted to cancel repossession certificate of A1, **MOFEPD** should have gone to Court under Registration of Titles Act. Learned counsel therefore submitted that repossession certificate of A1 is still valid, while that given to R2 is invalid and that A2 acquired good title to the property after purchasing it. Counsel again relied on **Musisi Kiwanuka** (supra) and **Habre International Ltd. Vs Francis Rutagarama,** S.Ct. civil Appeal 3 of 1999.

Mr. Nangwala for R2 and R3 supported the decision of the Court of Appeal holding that neither of the two appellants had a cause of action. Learned counsel reiterated the arguments he had made in the court below. He contended that neither appellant was an aggrieved party under S.15 of Act 9 of 82. He relied on **Yahaya Kiriisa Vs. Attorney General,** S.Ct, Civil Appeal No.7 of 1994 and **Famous Cyle Agencies Ltd. and 4 Others -Vs-Mansukhlal Ramji Karia** S.Ct. Civil Appeal No.16/94 (unreported). Mr. Matsiko for R1 adopted the arguments of Mr. Nangwala.

In rejoinder Mr. Lule sought to draw a distinction between a judgment in rem which determines the status of the property. He argued that in this appeal the issue is interest in, and not status of, the suit property. He relied on **Halsbury's Laws of England** paragraphs 351 and 352 and **Famous Cycle Agency** Ltd (supra).

These grounds raise the following three material points:

- The effect of the decision in Civil Appeal No.36/96. Did it decide the status of the suit property or did it decide interest in the suit property? Since neither of the two appellants were parties in Civil Appeal No.36 of 1996 is either of them affected by that decision?

- Did either A1 or A2 or both of them have a cause of action against either R2 or R3 or both. In other words was it proper or not proper to join R2 and or R3 in the suit?

- Did either A1 or A2 or both of them have interest in the suit property at the time the minister cancelled certificate No.0607 in 1998 before he issued a fresh repossession certificate to R2? In that case is either A1 or A2 or are both of them aggrieved parties under S.15 of Act 9 of 1982?

In view of the provisions of S.9 (1) (d) it is possible to argue that the Minister has powers to cancel a repossession certificate.

Mr. Lule cited a number of authorities to show that the appellants suffered a legal grievance.

I shall briefly refer to some of the cases cited to us and which were decided by this Court in reference to who is an aggrieved person within the meaning of S.83 of the CP. Act and Order 42 Rule 1 of the Civil Procedure Rules. Of the cases cited **Mohamed Allibhai (supra) and Ladak A. Mohamed Hussein Case (supra)** both arose out of expropriated properties. In either case, a suit was filed and a consent judgment was given.

In the case of **Mohamed Allibhai,** originally he was not a party to the suit. He however applied to the High Court under S.83 of CP Act and Order 42 Rule 1 (1) (b) of CPR praying for the Court to review a consent judgment to which he was not a party. The High Court dismissed his application. He appealed to this Court. It transpired that

the appellant's, (Mohamed Allibhai's) interest in the suit property arose out of a grant to him on 28/6/1994 of letters of administration to the estate of a former owner. Repossession certificate of the suit property had been issued on 8/11/1994 yet the consent judgment had been given on 24/2/1994, about 4 months before Mohamed obtained letters of administration to enable him have a say in the affairs of the deceased and about 7 months before the certificate of repossession was issued to enable Mohamed Allibhai have any interest in the suit property. This court held that in those circumstance Mohamed could not have been an aggrieved party under 0.42 Rule 1 since the consent judgment was not passed against him. So he could not have the judgment reviewed. He was a stranger to it. The decision is therefore not helpful.

On the other hand, in **Hussein Case,** there was a consent judgment in the suit between Hussein and the Attorney General. The suit involved expropriated property which had been purchased at a public auction by the respondents on 2/5/1980 and the respondents were in physical occupation of the suit property when Hussein filed the suit in 1991. Hussein did not join the respondents in the suit. On 16/12/91 a Minister of State authorised Hussein to repossess the property. On 29/1/1992 parties caused a consent judgment to be entered. But on 11/2/1992, the Minister of State for Finance wrote to Hussein another letter revoking the repossession after which the respondents who had not been parties to the suit filed in the High Court an application under S.83 of CPA and Order 9 Rule 9 of CP Rules asking for the consent judgment to be set aside and for the respondents to be joined in the suit as defendants. The High Court allowed the application although Hussein opposed the application stating that the respondents Kakiizas had no interest in the property because Act 9 of 1982 had nullified their purchase. Hussein appealed to this Court. Odoki, JSC, as he then was, wrote the lead judgment, with which other members of the court agreed. He referred to both S.83 and 0.42 rule 1 and held that " a person considering himself aggrieved means a person who has suffered a legal

grievance. He doubted whether a 3rd party to a suit can cause a review of a judgment under S.83 or under 0.42 rule 1.

He expressed the opinion that in a suitable case a third party may apply for review under inherent powers of the court. However he held that under Order 9 Rule 9, the respondents had locus standi to apply for setting aside the consent judgment and for them to be joined in the suit" ***so that issues relating to the merits of the claims of the parties could be determined in a fuller hearing."*** The holding in that case is therefore that strictly speaking Kakiisas were not aggrieved parties within the meaning of S.83 or Order 42 Rule 1.

Halsbury's Laws of England 3rd Ed, Vol.25, page 251 states that a person claiming to be aggrieved must be a person whose legal rights are directly affected by the court's decision. In the present case, as the expression "aggrieved person" is not defined anywhere in Act 9/1982, I think that the expression must be construed by reference to the context of the Act itself and all the circumstances of the present case. Here the plaint shows that A1 sold and transferred suit land long before the second repossession certificate was issued to R2. In company cause case A1 had been a party where transfer to him was said to be improper.

It is clear from the record in this appeal, that the appellants did not seek to be joined in the proceedings giving rise to C.A. 36 /96 nor are they doing so in these proceedings. The thrust of their attack is to have C.A.36/96 declared null. The two cases I have discussed do not help the case of the appellants in the approach adopted.

I turn to the Effect of **Makerere Properties Ltd Vs Attorney General -Civil Appeal 36 of 1996.**

As has been pointed out earlier in this judgment, Sadrudin, one of the three brothers and a shareholder in R2 applied for and had suit land returned to R2. He manipulated the shareholding in R2. As a result he was able to sell the suit land to A1 in 1981. A1 became a registered proprietor on 2/8/1982. In 1992, R3

instituted in the High Court Company Cause No.2 of 1992 against A1 **(A.M.A. Pirina Vs Mansukhlal Ramji Karia).** The High Court held that the change in shareholding was fraudulently done and so it ordered the Registrar of Companies to rectify the company register so as to reflect the position in shareholding as it was in 1972. After that High Court order, R2 applied to **MOFEPD** for repossession of the suit property. On 10/4/1996 the Minister rejected the application because ***"Government had, through the Departed Asians Property Custodian Board, already returned the property to you in 1981."*** On 3/5/1996, R2 challenged the Minister's decision in the High Court by instituting Misc. Appeal No.443 of 1996 against the Attorney General. In that case, R2 prayed that it be granted certificate of repossession. To the misc. application was annexed an affidavit sworn on 10/5/1996 by R3 explaining what Sadrudin did in order to transfer the suit land to A1 in 1981 and how the latter became registered owner in 1982, and how in company cause 2/92 the High Court had declared the transfers to be fraudulent. According to the judgment in CA 36/96 those contents of the affidavit were apparently not challenged by any counter-affidavit. The Attorney General as defendant to the matter filed only a general defence. According to the same judgment of the Court of Appeal in C.A.36/96, during the hearing many facts deponed to by R3 in his said affidavit and some claims in pleadings were admitted. Admitted fact 3 stated that: - ***"No certificate authorising repossession as provided for in the Expropriated Properties Act,1982 has ever been issued to Makerere Properties Ltd."***

Again in admitted fact 4, it was agreed that: ***-The verification Committee in the Ministry of Finance on 9/7/91 intimated that a certificate authorising repossession by R2 was being prepared for issue to R2.***

As pointed out earlier the same Verification Committee had at that time "purported" to cancel certificate No.0607. The cancellation was advertised in the Gazattee in November, 1991.

On 10/4/ 1996 the Minister rejected the application by R2 for repossession of the suit land. Inspite of those admissions, Byamugisha.J., heard and dismissed Misc.

Appeal 443/96. Thereafter R2 appealed to the Court of Appeal by lodging Civil Appeal No.36 of 1996. On 1st June, 1998 the Court of Appeal allowed the appeal, set aside the decision and orders of Byamugisha, J. , and entered judgment for R2 and directed the Minister to deal with the matter under the provisions of Act 9 of 1982. In the appeal the lead judgment, with which the other members of the Court concurred, was written by Twinomujuni, JA. His main findings were that:

(a) The suit property which belonged to R2 in 1972 had never been returned to R2 but was instead wrongfully returned to Sadrudin, one of the Directors of the appellant.

(b) The return of the property to Sadrudin was wrong because Sadrudin had no authority to claim the property on behalf of the company.

(c) The High Court in Company Cause No.2 of 1992 found that Sadrudin had fraudulently repossessed the suit property and transferred it to A1.

(d) That transfer of property to A1 was affected by fraud so passed no valid title to A1.

(e) Alternatively on the basis of the principles set out in **Gokaldas Laximides Tanna Vs Sr. Rosemary Muyinza and Departed Asian Property Custodian Board** (S.Ct. Civil Appeal 12/92), the purported return of the suit property, to Sadrudin in 1981 and the subsequent registration of the property in the names of A1 were both nullified by Act 9 of 1982 as they were both effected between 1973 and 21st February 1983.

(f) By the time the judgment was delivered in Civil Appeal No. 36 of 1996, the suit property was still vested in the Government.

There was no appeal against that judgment.

Earlier in this judgment I said that the Court of Appeal was wrong to say that the suit land was returned to Sadrudin. It was returned to R2. But that does not Effect the conclusions I have reached.

Mr. Lule has argued that the decision in that appeal did not affect the status of the suit land in so far as the appellants are concerned because they were not parties to the litigation. Nangwala for R2 and R3 argues that the decision was about the status

of the suit property. **According to Halsbury's Laws of England, Vol. 15,** 3rd **Edition, page 178,** the meaning of a judgment in rem is defined in paragraph 351 as the ***judgment of the Court of competent jurisdiction determining the status of a thing, or the disposition of a thing as distinct from the particular interest in it of a party to the litigation.*** Further in paragraph 366, the most important distinction between judgments in rem and judgments inter partes is given as ***"Judgments inter partes are only binding as between the parties thereto and those who are privy to them. The judgment in rem of a court of competent jurisdiction is as regards property situate within the jurisdiction of the court pronouncing the judgment, conclusive against all the world in whatever it settles as to the status of the property, or as to the right or title to property, as to whatever disposition it makes of the property itself."***

These two principles are not contested in this appeal. I think that on the facts already outlined the status of the suit land was determined by the Court of Appeal in civil Appeal No. 36 of 1996.

It therefore follows that both appellants are bound by it even if they are strangers to the decision. I am not persuaded by Mr. Lules arguments that because the present appellants were not parties in C.A. 36 of 1996 the decision is a nullity and does not affect them in so far as the status of the property is concerned. The best which the appellants could have done if they had sufficient reasons was to apply during the trial to be joined as parties. They did not.

Further, A1 was a party in High Court Company Cause No.2 of 1992 wherein the High Court found that Sadrudin acted fraudulently in selling the suit property to him (A1). In my view, this affects not only A1' s title but also the title of whoever purchased the property subsequently. That means that A2 did not acquire a valid title. There are other matters which are instructive in this dispute.

A2 instituted in the High Court, Civil Suit No. 759 of 1998 against R2 apparently after the Court of Appeal had disposed of Civil Appeal No.36 of 1996. At the time

the appeal was disposed of, A2 had just acquired the suit land. When the case came up for hearing on 31/5/99, counsel for R2 objected to the competence of the suit on the grounds that the property is vested in Government. Lugayizi,J., upheld the objection and held that Civil Appeal No.36/96 established the status of the property to the effect that the property was vested in Government and so A2 had no cause of action. The learned judge also found that because of Civil Appeal No.36/96, the suit was frivolous and vexatious and so he dismissed the suit.

The point here is that all along, the proprietary rights of A1 in R2 was being challenged yet he purported to sell the property to a third party. I am aware that the High Court decided the case the subject of this appeal, without hearing evidence. So neither this Court nor the Court below had evidence to assess the credibility of the witnesses or parties. But certain matters are clear from the pleadings.

According to the certificate of title to the suit land, A1 became registered proprietor on 2/8/1982.

On 10/7/1996 , R2's caveat was removed. Nullified repossession certificate No. 0607, in A1's names, was noted on the title. This is perplexing because the pleadings for R2 show that that repossession certificate was cancelled in 1991 and that fact was advertised in Uganda Gazettee on 7/11/91. Further, one wonders how A1's name was entered on the title on 2/8/82 before repossession certificate was given. But that is not all. The certificate of title shows and this is reflected in the plaint that immediately Repossession Certificate No.0607 was noted on the title, A1 transferred the land to **Nadims Ltd,** who was entered on the title as the new proprietor. On 5/5/1997 proprietorship was changed from **Nadims** to **Meera** Investment Ltd. Hardly two months later, on 25/6/1997, A2 appears on the title as the new proprietor. All these changes in proprietorship took place during the period when various court battles, some of which have been mentioned in this judgment, were raging in courts. More light could have been shed on all these matters in a full trial. But a full trial

would not change the status of the suit land which is that because S. 2 of Act No. 9 of 1982 nullified the transactions of 1981 and 1982, by 1998 at the time repossession was granted to A2, the suit land remained vested in Government by Law. That was the status.

Section 2 in so far as relevant states:

> *"2(1) Any property or business which was: -*
>
> *(a) Vested in the Government and transferred to the Departed Asians' Property Custodian Board under the Assets of Departed Asians Act.*
>
> *Shall, from the commencement of this Act, remain vested in the Government and be managed by the Ministry responsible for finance."*
>
> *"(2) For the avoidance of doubt, and not with standing the provisions of any written law governing the conferring of title to land, property or business and the passing or transfer of the title, it is declared that:-*
>
> **(a)** *any purchases, transfers and grants of or any dealings of whatever kind in such property or business are nullified."*

In view of the foregoing discussions, I think that grounds 5 and 6 ought to fail. In the result, I think that this appeal has no merit. I would dismiss it and would award two thirds of the costs to the respondents here and in the two courts below.

JUDGEMENT OF ODER, JJSC

I have had the benefit of reading in draft the judgment of Tsekooko, JSC. I agree with him that the appeal should be dismissed with costs to the respondents in this court and the court below.

I have nothing useful to add.

JUDGMENT OF KAROKORA, JSC:

I have had the benefit of reading in draft the judgment prepared by my learned brother, Tsekooko, JSC, and I entirely agree with his conclusions that the appeal ought to be dismissed with two thirds of the

JUDGMENT OF ODOKI CJ

I have had the benefit of reading in draft the judgment of my learned brother, Tsekooko JSC, and I agree that for the reasons he has given, the appeal should be dismissed with costs to the respondents, in this Court and Courts below.

As the other members of the Court also agree with the judgment and orders proposed by Tsekooko JSC, this appeal is dismissed with two-thirds of costs to the respondents in this Court and the Courts below.

JUDGMENT OF KANYEIHAMBA. J.S.C.

I have had the benefit of reading in draft the judgment of my learned brother, Tsekooko, J.S.C. and I agree with him that this appeal ought to be dismissed with 2/3 of costs

Dated at Mengo this 16th day of December 2004.