THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO.11 OF 2022

1. CTM UGANDA LIMITED

2. PRIME HOLDING LIMITED

3. CATHERINE MUWONGE MAGEZI ::::::::::::::::::::::APPELLANTS

(ADMINISTRATORS OF THE

ESTATE OF JOSEPH MAGEZI)

VERSUS

1. ALIMUSS PROPERTIES UGANDA LIMITED

2. ITALTILE CERAMICS LIMITED

3.ITALTILE LIMITED ::::::::::::::::::::::::::RESPONDENTS

4. GREGORY MAGEZI

(Appeal from the decision of the Court of Appeal (Kakuru, Kiryabwire and Madrama, JJA) in Civil Appeal No. 267 of 2018 dated 22nd February, 2021)

CORAM: (MWONDHA; TUHAISE; CHIBITA; MUSOKE; MUSOTA JJS.C)

JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JSC

This is an Appeal against the Judgment of the Court of Appeal before Kakuru, Kiryabwire and Madrama JJA in Civil Appeal No.267 of 2018, delivered on 22nd February, 2021.

Background of the Appeal

The facts as per the findings of the Court of Appeal are that;

CTM (U) Ltd (The 1st Appellant) is a Company which has been in the business of distribution and sale of tiles and related products from 2002. In 2005 Italtile Ceramic Limited (The 2nd Respondent) interested the 1st Appellant in what they referred to as an opportunity to "catapult" the business to greater heights and they accordingly entered into negotiations to do a joint venture. In October, 2008 CTM Uganda Ltd represented by its Director Gregory Magezi (the 4th Respondent) entered into the joint venture with the Italtile Ceramics (Pty) Ltd of South Africa represented by its director Peter David Swatton. The Joint Venture created another company as a special purpose vehicle called Allmus Properties (Uganda) Ltd. The parties thereto had a long working relationship because Italtile Ceramics (Pty) Ltd held the intellectual property rights to the name CTM which name the 1st Appellant company traded by.

The Joint venture Company Allmus Properties (Uganda) Ltd would be owned as follows;

1. 55% by Italtile Ceramics (Pty) Ltd and
2. 45% by CTM Uganda Ltd

However, for CTM Uganda Limited to pay up its 45% shareholding in Allmuss Properties (Uganda) Ltd, Italtile Ceramics (Pty) Ltd would advance them a loan of USD 337,500 against the security of the same 45% shares. Italtile Ceramics (Pty) Ltd (the 2nd Respondent) claims the 1st Appellant CTM Uganda Limited failed to repay the loan for the shares.

Another dispute arose when CTM Uganda Ltd was indebted to one Ceramics Industries Ltd in the amount of USD 631,161.21 which Italtile Mauritius Ltd cleared on behalf of CTM Uganda Ltd. It was agreed that CTM Uganda Limited would refund this money. Furthermore, CTM Uganda Ltd would borrow a further USD 380,000 from Italtile Maritius Ltd. Both sums (USD 1,011,161.67) would be treated as a loan to CTM Uganda Ltd attracting an interest of 5% p.a. In all these transactions. Gregory Magezi (the 4th Respondent) acted as Managing Director of CTM Uganda Ltd and Peter Swatton acted on behalf of the Italtile Group. It is the case of the "Italtile Group" (including 2nd and 3rd Respondent) that the 1st Appellant CTM Uganda Ltd defaulted on all the advances given to them and had an outstanding balance due of USD 884,942.08.

These defaults led to the litigation in the Ugandan Courts in High Court Civil Suit No.467 of 2013 for the USD 337,500.00 and High Court Civil Suit No.800 of 2014 for the USD 884,942.08. It is matters arising from these suits which form the subject of the impugned consent judgment whose negotiations were largely

between the 4th Respondent (Gregory Magezi) and Peter David Swatton with the assistance of their respective lawyers.

The Appellants claim that it was a term of the joint venture agreement that the 1st Appellant would contribute land and the 2nd Respondent would contribute funds totaling to USD 3,000,000 (Three Million United States Dollars) in the joint venture. The 1st Appellant claims to have met its obligations in the agreement by providing land comprised in LRV 4293 Folio 9 Plot 26-28 Kibuli Road and that the 2nd Respondent did not provide the funds as agreed. It is as a result of this failure that the shareholders of the 1st Appellant decided to institute a Civil Suit in the Commercial Court Division vide High Court Civil Suit No.467 of 2013 against the 2nd Respondent for among others specific performance.

The Appellants claim that unknown to the shareholders and other directors of the 1st Appellant, Mr. Gregory Magezi (the 4th Respondent) and Managing Director of the 1st Appellant company, who was not a shareholder in the 1st Appellant, signed a consent judgment with the 1st, 2nd and 3rd respondents (who were not parties to the suit), compromising the entire Civil Suit No.467 of 2013.

The effect of the consent Judgment was that the 1st Appellant would change its name, cease using intellectual property associated with it and pay USD 1,650,000 to the 1st, 2nd and 3rd Respondents. It was claimed that the shareholders were not consulted and were not aware that the 4th Respondent had entered the Consent Judgment.

They were aggrieved and as a result on 2nd November, 2015 they filed High Court Miscellaneous Application No.904 of 2015 by way of Notice of Motion seeking orders that;

"1. The consent Judgment signed by the 1st Appellant and the Respondents on the 20th of February 2015 and endorsed/entered by the learned Deputy Registrar of the High Court Commercial Division on the 2nd of March 2015 be set aside

2. A consequential order doth issue setting aside the share/stock transfer form, the land transfer form dated 17th October, 2015 and the Special Resolution dated 25th of May 2015 signed or made pursuant to the impugned consent judgment.

3. The costs for this application be provided for."

The grounds for the Application were stated to be as follows;

"a. The Consent Judgment was entered into by and between Mr. Gregory Magezi on behalf of the 1st Applicant and the Respondents/Defendants without authority, instructions or resolution to do so by shareholders of the 1st Applicant Company.

b. The Consent judgment encompassed unpleaded issues in Civil Suit 487 of 2018 and included legal entities or Companies which were not parties to the suit much to the prejudice of the 1st Applicant and or its shareholders as a whole.

c. There was collusion and or connivance between the said Mr. Gregory Magezi and the Respondents/Defendants to fraudulently and illegally enter very oppressive and unfavorable terms for the 1st Applicant.

d. No General or special meeting has ever sat and no special resolution has ever been passed by the 1st Applicant Company to allow a change of name offering the 1st Applicants interests in land comprised in LRV 4293 Folio 9 Plot 26-28 Kibuli Road and the 1st Applicant's shares in 1st Respondents/Defendants as assets to be attached in execution of the impugned illegal consent judgment.

e. No General or special meeting has ever sat and no special resolution has ever been passed by the 1st Applicant Company to authorize Mr. Gregory Magezi to agree not to oppose the trade mark registration of the italtile group.

f. Clause 6 of the impugned Consent Judgment is illegal null and void for want of sanction by the shareholders of the Applicant Company.

g. The applicants are in imminent danger of suffering irreparable damage if this application is not granted.

h. It is in the interest of Justice that the consent judgment is set aside and the consequential orders are issued."

The Respondents opposed the Application and filed affidavits in reply thereto to which the Appellants rejoined at the High Court. In

summary the Respondents grounds for opposition of the Application were that the parties extensively negotiated the Settlement Agreement and applied themselves to the content thereof. There can be no doubt that Magezi on behalf of CTM Uganda as well as his appointed attorneys Mugenyi, carefully considered all of the terms of the Settlement Agreement and applied their minds to the content and effect thereof. That there can be no further doubt that Magezi acted in his capacity as Managing Director of CTM Uganda and that CTM Uganda was well aware of the contents of the Settlement Agreement as it was witnessed by its company secretary Ojambo Robert Mugeni from Wejuli-Wabwire & Co, the same legal representative that was responsible for the drawing and filing of CTM Uganda's Articles of Association as attached to the Appellants affidavit in support of the motion. That the settlement agreement was made into a consent judgment with the two sets of advocates representing CTM Uganda signing the consent.

The application to set aside the consent judgment proceeded for hearing interparty before Wangutusi J. of the Commercial Court Division of the High Court (as he then was). The parties made oral submissions which were considered by the trial Judge. On 25th October, 2017 the ruling was delivered concluding as follows;

> *"The sum total is that the Applicants have failed to establish any ground upon which the Consent Judgment may be set aside.*

The Applicants also sought for a Consequential order to set aside the share/stock transfer form and the land transfer dated 17th October 2015 and the special Resolution dated 25th May 2015. A Consequential order in this would be one giving effect to this Ruling. It is one that follows as a result of the Ruling. The order must not detract from the ruling or contain extraneous matters.

In the instant Application, since the Consent Judgment has not been set aside to grant the prayer of the Applicants to set aside what was the result of the Consent Judgment would be to detract from the Judgment.

Since the Consent Judgment has not been set aside the Consequential order sought is denied.

Lastly, I now end by saying the Application was a non-starter for the 1st Applicant because She filed a similar Application 806 of 2015

The sum total is that I find no merit in the Application and it is dismissed with costs."

The Appellants were dissatisfied with the Ruling and Order of the High Court. As a result, they lodged an Appeal in the Court of Appeal vide Court of Appeal Civil Appeal No.267 of 2018 on grounds that;

1. *The Learned Trial Judge erred in law and fact when he found that all necessary steps for the change of name of 1st Appellant*

to Deco Tiles Limited has been taken and that the change of name was valid and or lawful.

2. *The Learned Trial Judge erred in law and in fact when he based on the resolution of the 2nd Appellant dated 12th of November 2005 to find that the 4th Respondent had power and authority to bind the 1st Appellant in the terms contained in the consent.*
3. *The Learned Trial Judge erred in law and in fact when he found that the 1st, 2nd, 3rd, and 4th Respondents had acted in good faith and did not have to inquire as to the authenticity of the 4th Respondent to enter into the agreement and to sign the impugned consent judgment.*
4. *The Learned Trial Judge erred in law and in fact when he failed to find that the impugned consent judgment was entered into through collusion and fraud and when he failed to find that the 1st, 2nd and 3rd Respondents had unjustly enriched themselves thereby.*
5. *The learned Judge erred in law and in fact when he found that the 4th Respondent had shares in the 1st Appellant.*
6. *The Learned Trial Judge erred in law and fact when he failed to properly evaluate the evidence on record thereby arriving at the wrong conclusions.*

On 22nd February 2021 the Court of Appeal delivered its judgment unanimously dismissing the appeal with costs in the Court of Appeal and in the trial court. The appellants were still dissatisfied hence this appeal.

The Appeal

In the Memorandum of Appeal filed in this Court, the Appellants raise the following grounds of Appeal;

1. ***The Learned Justices of Appeal erred in law when they found that the change of name of the 1st Appellant to Deco Tiles Limited without a shareholders' resolution was an indoor management matter.***

2. ***The Learned Justices of Appeal erred in law when they found that the change of name of the 1st Appellant to Deco Tiles Limited was legal and enforceable.***

3. ***The Learned Justices of Appeal erred in law when they held that since the Registrar of Companies accepted the change of name of the 1st Appellant which was then advertised in the Uganda Gazette, then the change of name was legal.***

4. ***The Learned Justices of Appeal erred in law when they abdicated their duty as a first appellate court to properly evaluate and re-appraise the evidence on record thereby arriving at the wrong conclusion that the change of name of the 1st Appellant was legal and enforceable.***

5. ***The Learned Justices of Appeal erred in law when they held the consent judgment executed by the 1st Appellant and the Respondents in Civil Suit No.467 of 2013 was valid, thereby declining to set it aside.***

The Appellants propose that this Court grants orders that;

1. ***The appeal be allowed and the consent Judgment that was signed by the 1st Appellant and the Respondents on the 20th day of February 2015 and endorsed by the Learned Registrar on the 2nd day of March 2015 be set aside.***

2. ***Civil Suit No.467 of 2013 be heard on its merits.***

3. ***Costs of this appeal and the courts below be awarded***

Representations/appearances

At the hearing of the Appeal, John Mary Mugisha S.C, Emoru Emmanuel and Wesonga Ivan appeared for the Appellants. Idoot Augustine and Patience Akampulira appeared for the 1st, 2nd and 3rd Respondents. There was no appearance made for the 4th Respondent who was also not present in Court. It appears he also did not participate in the proceedings at the Court of Appeal.

The Appellants filed submissions on 26th June, 2023. The 1st, 2nd and 3rd Respondents filed the written submissions on 13th July 2023. The appellants on 14th August 2023 filed their submissions in rejoinder. The parties prayed and this Court agreed to consider the parties' written submissions on our court record in deciding this Appeal.

Duty of this court as a second Appellate Court.

This is a second appeal it is therefore important for this court to remind itself of its duty as a second Appellate Court. In the case of ***Kifamunte Henry v. Uganda Criminal Appeal No. 10 of 1997*** this Court on the duty of a first and a second appellate court held thus;

> ***"We agree that on a first appeal, from a conviction by a Judge the appellant is entitled to have the appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour the appellate Court must be guided by the impressions made on the judge who saw the witnesses. However, there may be other circumstances quite apart from the manner and demeanour, which may show whether a statement is credible or not which may warrant a court in differing from the Judge even on a question of fact turning on credibility of witness which the appellate Court has not seen. See Pandya v. R [1957] EA 336, Okeno v. Republic [1972] EA 32 and Charles Bitwire v. Uganda Supreme Court Criminal Appeal No. 23 of 1985 at page 5.***

Furthermore, even where a trial Court has erred, the appellate Court will interfere where the error has occasioned a miscarriage of justice: See S. 33(i) of the Criminal Procedure Act. It does not seem to us that except in the clearest of cases, we are required to re-evaluate the evidence like is a first appellate Court save in Constitutional cases. On second appeal it is sufficient to decide whether the first appellate Court on approaching its task, applied or failed to apply such principles: See P.R. Pandya v. R (supra), Kairu v. Uganda 1978 HCB 123....”

Therefore, the duty of a second Appellate Court is to examine whether the principles which a first Appellate Court should have applied, (that is to re-examine and re-evaluate the evidence, and come to its own conclusion), were properly applied and if it did not, for it to proceed and apply the said principles. I shall abide by this duty as I resolve the issues in this appeal.

Consideration of the Appeal

Since the parties submitted on grounds 1, 2, 3 and 4 together, I shall deal with the grounds of Appeal in a similar manner starting with Grounds 1, 2, 3 and 4 together and lastly ground 5.

Ground 1 The Learned Justices of Appeal erred in law when they found that the change of name of the 1st Appellant to Deco Tiles Limited without a shareholders' resolution was an indoor management matter;

Ground 2 The Learned Justices of Appeal erred in law when they found that the change of name of the 1st Appellant to Deco Tiles Limited was legal and enforceable;

Ground 3 The Learned Justices of Appeal erred in law when they held that since the Registrar of Companies accepted the change of name of the 1st Appellant which was then advertised in the Uganda Gazette, then the change of name was legal;

AND Ground 4 The Learned Justices of Appeal erred in law when they abdicated their duty as a first appellate court to properly evaluate and re-appraise the evidence on record thereby arriving at the wrong conclusion that the change of name of the 1st Appellant was legal and enforceable.

Appellants' Submissions

The submissions of the appellants, in summary, are that change of name is Governed by ***Section 40(1) of the Companies Act 2012***. That in the said section two things had to exist for a change of name of the 1st Appellant Company to be lawfully effected. First there has to be a special resolution of the 1st Appellant and second there had to be approval in writing by the Registrar of Companies. That the Resolution referred to in this case as the basis for the change of name did not qualify to be referred to as a Special Resolution because it was not passed by a majority of not less than three fourths of such members of the Company at a general meeting.

That for a resolution to qualify as a special resolution it must meet the following criteria;

a) It must have been passed by three fourths of the shareholders at general meeting;

b) The General meeting at which it was passed should have been duly convened with the requisite notice and;

c) The notice calling for the meeting should have specified the intention to propose the change of name as a special resolution.

In the current case, all these essential requirements were not met and the Court of Appeal indeed made a finding that there was no Special Resolution that was made to change the name of the 1st Appellant from CTM (U) Ltd to Deco Tiles. That the court misdirected itself by whittling down a mandatory provision contained in an Act of Parliament that is; the Companies Act (2012) as a mere indoor matter thereby relegating it and placing the provisions of the written law in the same category or specie with a company's Articles of Association.

That the indoor management rule as enunciated in the *Locus Classicus* case of **Royal British Bank versus Turquand (1856)** is only applicable to documents that are public, the memorandum and articles of association of the company. That it does not apply to documents that are not public. That the exception to the indoor management rule is in circumstances where the outsiders have knowledge of the irregularities in the internal management and fail

to carry out proper inquiry for instance where there is suspicion of forgery of documents relied upon by the outsider. That the import of this principle is that persons dealing with a company are entitled to assume that internal procedures of the company have been complied with even if they are not. That this principle began a common law principle but it is now part and parcel of the Companies Act 2012. That whereas this position of law is correct when it comes to authority or lack of it as provided for in the Articles of Association of the Company, the principle does not apply and extend to mandatory provisions of the Companies Act which law everybody is presumed to know.

That under sections 21 of the Companies Act 2012, the Articles of Association is a contract between the shareholders *inter se* and between the shareholders and the Company while Section 40 (1) of the Companies Act is a section in an Act passed by the Parliament of Uganda and it has equal force with all other laws passed by the Parliament of Uganda. That this provision cannot and should not be equated to Articles of Association, Compliance with this provision cannot and should not be taken to be a mere "indoor management matter". Compliance with it is in fact a matter of law.

That change of name of the Company is one of the very few instances where shareholders are given a sole voice to decide. Relegating it to be a mere indoor management matter and creating a precedent that actually directors can sit and validly cause a change of name of company without the consent of the shareholders will be

a very dangerous precedent given the intrinsic value and goodwill that can be associated with a Company name over time and companies spend lots of money in branding and promoting their names.

That as regards the reasoning adopted by the learned Justices of Appeal that since the Registrar of Companies accepted the change of name which was then advertised in the Uganda Gazette as a notice to all, it meant therefore that the process of the change of the 1st Applicant's name was legal and enforceable, which the appellants do not agree with.

That the Justices of the Court of Appeal abdicated their duty to re-appraise the evidence on record when they totally ignored Exhibit PD2 22 annexed to the Affidavit in reply of Peter David Swanton which is a Gazette notice dated 10th July 2015 signed by the Asst. Registrar of Companies stating that the name was changed pursuant to a special resolution.

That the Registrar relied on what they mistakenly thought was a special resolution of the members of the Company yet it was a resolution of the Directors. That this renders the entire change of the name of the 1st Appellant to Deco Tiles (U) Ltd illegal and null and void. That a Court of law cannot sanction what is illegal and once that illegality is brought to the attention of the Court it overrides all questions of pleading including admissions thereon. That to decide otherwise would be to condone an illegality since the award had been made contrary to established procedure.

That in the case of **Clear Channel Independent (U) Ltd versus Public Procurement & Disposal of Public Assets Authority (PPDA) miscellaneous Cause 156 of 2008** it was held that if a Statute prescribes the procedure to be followed, that procedure must be observed.

That the effect of illegality or an act which is a nullity is clearly brought out in the case of **Macfay versus United Africa Co. Ltd [1961] 3 ALL E.R 1169** where it was held that if an act is void then it is a nullity. That it is not only bad but incurably bad and every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there, it will collapse.

That applying these principles to the instant case, since the Resolution submitted was not a Special Resolution as required by section 40(1) of the Companies Act, it was therefore a nullity in law. That the subsequent consent by the Registrar was not effectual and did not in law operate to validate the impugned resolution or cloth it with legal effect.

That the law on setting aside consent Judgments is well settled. That in Supreme Court case of **Attorney General and Another versus James Mark Kamoga & Another SCCA 8 of 2004 quoted with approval Seton on Judgments and Orders 7th Edition Vol 1 page 124** which is to the effect that an order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action and cannot be varied or discharged unless

obtained by fraud or collusion or in general for a reason which would enable a court set aside an agreement. That the same was held in **Sinba (K) Ltd & 4 others vs Uganda Broadcasting Corporation Supreme Court Civil Appeal No. 3 of 2014.**

That the illegality relating to the change of name vitiates the entire consent judgment because the center of the eight core Clauses of the impugned consent judgment that all the actions required of the 1st Appellant in the consent judgment relate to the use of the name "CTM" and all trademarks or intellectual property related to it. That these could not be made effective without a change of name being done first. That therefore it was important that the change of name be done in accordance with the law for the rest of the Clauses 3-10 of the Consent Judgment to stand. That in the absence of a proper change of name the orders in the Consent judgment are fruits from the same poisoned tree and cannot similarly stand.

That having found as the Court of Appeal did that the change of name of the 1st Appellant was not a special resolution of the shareholders but rather a resolution by the Board of Directors, the Court of Appeal ought to have gone ahead to declare that the change of name of the 1st Appellant was not done in compliance with the law and was therefore illegal null and void *ab initio.*

That the Court of Appeal should have proceeded to find that since the entire consent judgment was hinged on the change of name of the 1st Appellant to Deco Tiles Ltd which has been found to be illegal, this suit in itself violates the Consent Judgment and the

same would have been set aside which they did not do, hence causing a miscarriage of justice.

Respondents' Submissions

The 1st 2nd and 3rd Respondents counsel submitted that grounds 1, 2, 3 and 4 have no merit. That the Appellants arguments are misconceived and deserve to be disregarded.

That the word "may" as used in the context of section 40(1) of the Companies Act is not mandatory as alleged by the Appellants without citing any authority. That whereas the word "shall" as used in Statutes can also be taken to be directory rather than mandatory the same cannot apply to the word "May". That the interpretation of the words May and Shall was highlighted by this Court in **Foundation Initiative Vs Attorney General Supreme Court Constitutional Appeal No.03 of 2009** and at page 16 Kisakye JSC held in the lead judgment that the use of the word may is instructive. She went on to cite the **Australian Case of Massy V Council of the Municipality of Yass (1922) 22 SR (NSW) 499, Cullen CJ** as follows;

> *"The use of the word 'may' prima facie conveys that the authority which has the power to do such an act has an option to do it or not to do it.*
>
> *In another Australian case of Johnson's Tyne Foundry Pty Ltd V. Shire of Maffra [1949] ALR 89 at 101, It was also held as follows 'may' unlike shall is not a mandatory but a permissive*

word although it may acquire a mandatory meaning from the context in which it is used, just as 'shall' which is a mandatory word may be deprived of the obligatory force and become permissive in the context in which it appears."

That Katureebe CJ. (as he then was) while agreeing with the above position gave the word shall as used in section 15(1) of the TIA the effect of granting discretion to the court to decide whether to grant or to refuse bail.

That in accordance with the decision of this court above cited, the use of the word may under Section 40(1) of the Companies Act, 2012 is merely instructive to the Company and not mandatory as submitted by the appellants. That section 40(1) of the Companies Act was enacted to offer guidance to the Companies on how to deal with the change of their names. That additionally as held in the Australian authority it means that a Company has the authority to change its name by way of special resolution or otherwise. That it also means that the Registrar of Companies has the power to approve the change of name of the company.

That accordingly the change of the name by way of a board resolution rather than a special resolution as stated under Section 40(1) cannot be said to amount to illegality as submitted by the Appellants. That the use of the word may instead of shall means that it is not illegal because it means the section is couched in an instructive rather than a mandatory manner. That the exception to

the indoor management rule which the Appellants appear to argue does not apply to the instant case.

That the Respondents support the decision of the Court of appeal at page108 of the record of appeal where the Court while relying on the decision of **Leonards Carrying Co. Ltd vs Asiatic Co. Ltd [1915]** held that a corporation has no mind of its own and acts by way of agency of its directors or shareholders.

That the term indoor management rule was expounded in the case of **Royal British Bank versus Turquand (1856) 6 E&B 327** and is to the effect that an outsider whose actions are in good faith and has entered into a transaction with a Company can have a presumption that there are no irregularities internally and all the procedural requirements have been complied with by the Company. That under Section 52 of the Companies Act 2012 the Board of Directors of a company have a very wide latitude to bind a Company notwithstanding provisions of the company's memorandum and articles of association subject always to good faith.

That according to D.J Bakibinga in his Book Company Law in Uganda he opines that an individual director may be able to bind the company in transactions with outsiders on the basis of the application of the constructive notice as modified by the indoor management rule in Royal Bank v Turquand. That change of name being done by board resolution obtained by the 4th Respondent instead of special resolution is an internal affair hence shielded by the indoor management rule.

That the exception to the rule is in circumstances where the outsider has knowledge of irregularities in the internal management and fails to carry out proper inquiry in instances of suspicion and forgery of documents relied on by the outsider. That this is premised on the understanding that an outsider is oblivious to the internal procedures of the Company and hence the outsiders are entitled to presume that all the internal procedures are catered for by the Company as was stated by DJ Bakibinga at page 126 of his book. That as such the error in the type of resolution to be used to change a name cannot be visited on the respondents. That the respondents support the decision of the High Court and the Court of Appeal.

That the change of name was never contested by the shareholders and is still being used to date and is accordingly legal and enforceable. That the claim of illegality of the change of name is self-defeating because the shareholders did not challenge it or take any steps to remedy the Company name. That all these arguments are moot.

The managing director did everything in good faith and on behalf of the Company. He at all material times held out and acted as the duly authorized agent of the Company.

That the Registrar of Companies exercised the power to consent to the registration of the change of name as rightly empowered by section 40(1) of the Companies Act. It is the Respondent's case that the Registrar signed the Resolution with the presumption that all

the essential requirements had been met by the 1st Appellant and he relied on what he honestly believed was true.

Business would be difficult if persons dealing with the Company in good faith would always have to ascertain for themselves that the internal processes and procedure of a Company have been complied with before they conclude a transaction.

Counsel for the respondents further submits that the High Court case of **Clear Channel Independent (U) Ltd vs Public Procurement and Disposal of Public Assets Authority (PPDA) MC 156 of 2008** is distinguishable from the instant case. In that case the Court was dealing with aspects of judicial review wherein the tribunal's failure to follow procedure as set out in statutes or regulations amounted to an illegality for having acted *ultra vires.* Juxtaposing the clear channel case with the instant case it is clear that in this case the Registrar of Companies did not commit an illegality by consenting to the change of name of the 1st appellant by way of a resolution from a board meeting. That on the other hand the registrar duly exercised their power to consent to the said resolution as instructed by the provisions of sections 40(1) Companies Act 2012. That this is entirely different from the clear channel case where procurement processes were marred by procedural irregularities.

As a result following the consent of the Registrar of Companies to change of the 1st appellant's name, all the actions subsequent thereto cannot be said to be nullity as there was no illegality

committed by the Registrar of Companies' consent to the registration of the change.

That the learned justices of Appeal evaluated and re-appraised the evidence on record and came up with their judgment on the issue. The 1st appellant, its shareholders and directors cannot rely on their own alleged failure to comply with the internal Company requirements in order to escape the consequences of the impugned consent judgment that they now seek to set aside.

The Respondents then pray that the appeal be dismissed with costs to the 1st -3rd Respondents in this appeal the court of appeal and the high court.

Determination of the Grounds 1,2,3 and 4

I have carefully considered the submissions of the parties and the authorities cited together with the provisions of the relevant laws. The determination of this case entirely depends on answering the question whether or not failure to strictly follow the provisions of the Companies Act prescribing the procedure for name change, renders the entire action invalid or illegal? My quick answer to this is yes it does.

The purpose of the amendment of the Companies Act 2012 was to replace and reform the law relating to incorporation regulation and administration of Companies. This means that the amended Companies Act was intended to move away from the common law principles as much as possible by codifying it, the Ugandan way, so

as to allow a new beginning for corporate governance and management. The long title to the Companies Act 2012 clearly demonstrates this purpose as it states as follows;

> ***"An Act to amend, replace and reform the law relating to the incorporation, regulation and administration of companies and to make provision for related matters."***

I am therefore inclined not to be persuaded by common law arguments especially in the presence of statutory provisions of the Laws of Uganda in this case the Companies Act 2012. We cannot treat what the law expressly provides for as a mere suggestion which may or may not be complied with. In my assessment the fact that the Companies Act made a special provision for how the name of any Company may be changed, it means that the procedure is important in Uganda. This provision is in ***Section 40 of the Companies Act 2012*** and states as follows;

> *"40. Change of name*
>
> ***(1) A company may by special resolution and with the approval of the registrar signified in writing change its name.***
>
> *(2) Where, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the registrar, is too similar to the name by which a company in existence is previously registered, the first-mentioned company may change*

its name with the consent of the registrar and, if the registrar so directs within six months after it is registered by that name, shall change it within six weeks from the date of the direction or such longer period as the registrar may allow.

(3) Where a company defaults in complying with a direction under this subsection, it is liable to a fine of five currency points or a fine of five currency points for every day on which the offence continues.

(4) Where a company changes its name under this section, it shall, within fourteen days, give to the registrar notice of the change of name and the registrar shall enter the new name on the register in place of the former name, and shall issue to the company a certificate of change of name and notify the change of name in the Gazette and in a newspaper of wide circulation.

(5) A change of name by a company under this section shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name."

My understanding of ***Section 40(1) of the Companies Act 2012*** is not the same as that of counsel for the 1st 2nd and 3rd Respondents. In my construction of the section, it means;

1. *It is possible for a company to change its name and it is up to the company to decide whether to do so or not to do so.*
2. *Where the company decides to change the name, then it has to pass a special resolution*
3. *Thereafter the approval of the registrar must be obtained and then it can be said that the name has been changed.*

The use of the word may in this ***section 40(1) of the Companies Act 2012*** only relates to the decision of the Company to change the name or not. Meaning it is up to the Company to decide whether to make the change or not. The use of the word may in this ***section 40(1) of the Companies Act 2012*** was not to make it optional for the Company to follow the procedure or not.

Further, in my view ***section 40(1) of the Companies Act 2012*** brings into contention two things; first the meaning of the word special resolution as used in ***Section 40(1) of the Companies Act 2012*** and second whether the resolution passed and registered in this case to change the name of the 1st Appellant fits within the meaning of the term special resolution as used in the section. The interpretation section of the Act does not state what the term "special resolution" means. However, in ***Section 148 of the Companies Act, 2012*** Special Resolution is defined and the section states as follows;

"148. Special resolution

(1) A resolution shall be a special resolution when it has been passed by a majority of not less than three fourths

of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given.

(2) Subject to subsection (1), if it is agreed by a majority in number of the members having the right to attend and vote at a meeting referred to in subsection (1), being a majority together holding not less than ninety five per cent in nominal value of the shares giving that right or in the case of a company not having a share capital, together representing not less than ninety five percent of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty one days' notice has been given.

(3) At any meeting at which a special resolution is submitted to be passed, a declaration of the chairperson that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) In computing the majority on a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution

(5) For the purposes of this section, notice of a meeting shall be taken to be duly given and the meeting to be duly

held when the notice is given and the meeting held in the manner provided by this Act or the articles."

This section means that for a resolution to be referred to as a special resolution, it must have been passed by a majority of not less than three fourths of *such members of the company* as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given. ***Subsection 5 of section 148*** makes it clear that notice specifying the intention to propose the resolution as a special resolution is duly given when the procedure to be followed in giving the notice of a meeting and the calling of a meeting has been followed. When this procedure is followed then the meeting is deemed validly held and the resolution validly passed and the reverse is true where the procedure is not followed. This means what makes a resolution special is both the numbers required and the procedure. The numbers are specifically limited to *members of the company* and the procedure is elaborated by section 149 which states that;

"149. Resolution requiring special notice

(1) Where by any provisions of this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved.

(2) The company shall give its members notice of a resolution under subsection (1) at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable shall give them notice either through any advertisement in a newspaper of wide circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting.

(3) Subject to subsection (1), if after notice of the intention to move the resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice though not given within the time required by this section shall be taken to have been properly given for the specified purposes."

This provision makes it clear that where special notice for a resolution to be passed is given it does not matter the number of days' notice given for the meeting. Meaning that what is more important is the numbers of days' notice given of the intention to pass a special resolution. Once that is complied with then the notice for the meeting can be flexibly adjusted as the circumstances may require.

The question still remains who are *these members* which the provisions herein above refer to? In ordinary understanding a member of a company is one of the company's owners whose name has been entered on the register of members. Members delegate

certain powers to the company's directors *to run the company on their behalf*. This means that the directors only run the company on behalf of the shareholders/members. A shareholder is a person who buys and holds shares in a company having a share capital. They become a member once their name is entered on the register of members. Many Companies limited by guarantee do not have a share capital, and consequently, their members are not shareholders.

I have not seen evidence to prove that the consent was procured with the authorization of the members of the Company. As such I am inclined to agree with the submissions of the Appellants that the failure to procure the consent/special resolution of the shareholders/members as required by law is an illegality. It is not an indoor management rule issue it is a statutory issue. Any change of a company name which does not follow the procedure provided for in ***Section 40 of the Companies Act*** is invalid and illegal.

The High Court dealt with this matter in its Ruling in Miscellaneous Application No.904 of 2015 at pages 330-335 of volume 2 of the record of Appeal. The trial Judge reasoned that Gregory Magezi and the 1st Applicant's Advocates participated in the negotiations that led to the Consent Judgment which was signed by both of them on the 20th February 2017. That at the time the two signed the consent they knew that the value of the land would be equated to USD 1,650,000. That they even had the authority to enter into the

consent judgment because the 2nd Applicant; Prime Holdings Ltd, seated at the CTM Office Kampala held a meeting passing a resolution which appointed Gregory Magezi and empowered him to handle the liabilities of the 1st Applicant and this resolution was not challenged. That the resolution gave the 4th Respondent wide powers to deal with the 1st Applicant's shares and assets. It empowered him to sell execute documents and perform all things in respect of the 1st Applicant's liabilities and the activities in respect of the shares by transferring them was authorized by the resolution and his entering into negotiations and subsequently signing the Consent Judgment was based on the fact that the resolution empowered him to sign documents pertaining to the liabilities of the 1st Applicant.

The learned trial Judge at the High court also reasoned that parties outside the contract did not have to enquire as to the 4th Respondent's authority as Director to enter into any agreements even the signing of the Consent Judgment. For this conclusion the learned trial Judge relied on ***Sections 52(1), 52(2)(a), 52(2)(b) and 53 of the Companies Act 2012*** which state as follows;

> ***"52. Power of directors to bind the company***
>
> ***(1) The power of the board of directors to bind the company or authorise others to do so in favour of a person dealing with the company in good faith shall not be limited by the company's memorandum.***
>
> ***(2) For the purposes of subsection (1)—***

(a) a person "deals with" a company if he or she is a party to any transaction or other act to which the company is a party; and

(b) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The references in this section to limitations on the directors' power under the company's memorandum include limitations deriving from—

(a) a resolution of the company in a general meeting or a meeting of any class of shareholders; or

(b) any agreement between the members of the company or of any class of shareholders.

(4) Subsection (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfillment of a legal obligation arising from a previous act of the company.

(5) Subsection (1) does not affect any liability incurred by the directors or any other person, by reason of the directors' exceeding their powers.

53. No duty to enquire as to capacity of a company or authority of directors

A party to a transaction with a company is not bound to enquire whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorize others to do so."

The learned trial Judge further relied on the ***Royal British Bank vs Turquand (1856) 6 E&B 327*** to reason that it is well settled position of the law that an outsider dealing with a company is deemed to have constructive notice of its Articles of Association and not any documents that are not public unless the outsider has knowledge of the irregularities in the internal management and fails to carry out proper inquiry in instances of suspicion and forgery of documents relied on by the outsider. That people transacting with companies are entitled to assume that internal rules are complied with even if they are not. Under the indoor management rule, the company's indoor affairs are the company's problems.

The learned trial Judge further reasoned that the rule is entrenched in the law by the endorsement of ***Lord Hatherly in Mahony vs East Holyford Mining Co. (1875) L R HL 869*** in the following words;

"When there are persons conducting the affairs of the Company in a manner which appears to be perfectly consonant with the articles of association, those so dealing with them externally are not to be affected by

irregularities which may take on the internal management of the company."

That therefore every outsider who dealt with the 4th Respondent who has by resolution been appointed to handle the Applicants' liabilities, was entitled to assume that the internal requirements and procedures had been complied with. The learned trial Judge went on to reason why he thought the applicants had not made out a case for setting aside the consent Judgment and eventually dismissed the application with costs to the applicants.

I have not seen in the ruling of the trial Court any reasoning as to the import of ***Section 40 of the Companies Act 2012*** on the consent judgment.

The Court of Appeal on the other hand dealt with these issues at *pages 108-114 of Volume 2 of the Record of Appeal* where Kiryabwire JA substantially agreed with the reasoning of the trial Judge as I have stated herein above to which Madrama and Kakuru JJA (as they then were) agreed entirely.

Most importantly however, the Court of Appeal dealt with the issues of change of name which the Appellants strongly argued as the basis to persuade this court to set aside the consent judgment for being tainted with illegalities of failure to follow the procedure for change of name. The Court of Appeal stated and reasoned that since the 4th Respondent was a Managing Director of the 1st Appellant, he had the power and authority to bind the Company by

his actions. However, the learned Appellate Judge went further to state as follows;

> ***"...Whereas it is true that the Special Resolution dated 25th May 2015 to change the company name states in the body that the meeting that was held authorizing the resolution was a board of directors meeting and not a shareholders meeting, I find that under the indoor management rule this error cannot be used against third parties especially if such action was done in good faith as stated in the company's letter of the 31st August 2015. In any event as the trial Judge pointed out the letter of the Registrar of Companies by letter dated 10th July 2015 accepted the change of name which was advertised in the Uganda Gazette as notice to all. I am therefore unable to find this process illegal and unenforceable as alleged. Reference to the issues on change of name and authority to sign fail."***

Clearly the reasoning of the Court of Appeal was that matters of whether or not the Special Resolution was of the members of the company or the directors was an indoor management issue which could not be used against the outsiders/the respondents. That for this reason the court could not find the change of name illegal or invalid.

Further the Court of Appeal in its Judgment at pages 111-113 of Volume 1 of the Record of Appeal clearly stated the history of the

transactions that led to the civil suit in which the impugned consent judgment was entered. From this summary it can be seen that the 2nd Appellant is a shareholder in the 1st Appellant but the 4th Respondent is not. However, the 4th Respondent is the Managing Director of the 1st Appellant Company. The 4th Respondent is however, a shareholder in the 2nd Appellant and also a director therein. All the individuals involved in the transactions were from what the learned Justices of Appeal in their judgment described as "The Magezi Family". They are related in some way. It is also clear that meetings of the 2nd Respondent sometimes were held in the offices of the 1st Appellant where the 4th Respondent is Managing Director.

A further study of Volume 2 of the Record of Appeal reveals at pages 109 – 115 that prior to the signing of the consent Judgment there was a settlement agreement which clearly shows that with or without the change of name of the 1st Appellant ("CTM") by virtue of the Settlement Agreement had to cease using the name "CTM". Even if this Court were to find that the change of name was illegal by virtue of the failure to obtain a valid Special Resolution of the members of the 1st Appellant Company the provision of paragraph 7 the Settlement Agreement would still stand to prohibit the 1st Appellant from using the name CTM. The settlement agreement states as follows;

"7. Severability

If any of the previsions of this Agreement become invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way by such invalidity, illegality or unenforceability."

Most importantly the relevant part of the Consent Judgment relating to the change and use of name is paragraphs 5 and 6 thereof which states as follows;

"5. CTM Uganda shall within 6 (six) months from 16th January 2015 phase out the use of all the Italtile Group's intellectual property, including inter alia, undertaking a name change and removing all references to and association with the Italtile Group, with the name CTM and with the name "Allmuss".

6. CTM Uganda shall change the name "CTM Uganda" within 6(six) calendar months from 16th January 2015 and the name "Allmus" upon the transfer of Italtile Ceramics' 55% shareholding in Allmus as per 7(b) below;"

The Change of the Name was supposed to happen anytime within 6 months from the specified date. It could even happen after the signing of the Consent Judgment. Therefore, in my assessment the procedure for changing the name has no effect or impact on the validity of the consent judgment. The consent Judgment is not the instrument that changed the name of the 1st Appellant Company. The 1st Appellant had a duty to follow the due process in ***section 40***

of the Companies Act 2012 in executing the consent judgment or the settlement agreement. The 1st, 2nd and 3rd Respondents had no control over that.

However, for purposes of the instant case I see no effect on the consent Judgment of the 4th Respondent's failure to follow the procedure. With or without a valid name change in my view the consent judgment stands because the failure to follow the process of name change did not directly arise from the consent Judgment. It was a transaction completely separate from the signing of the consent.

It is on this basis that I agree with the reasoning of the trial Judge and the Court of Appeal in finding that the Respondents would unfairly be prejudiced if this Court found the consent judgment invalid on the basis of the failure of the 1st Appellant's Managing Director to follow the procedure for name change. I further agree with the Courts below that parties outside the Company do not have to enquire as to the directors' authority to enter into any agreements even the signing of the Consent Judgment in this case as can be seen in ***Sections 52(1), 52(2)(a), 52(2)(b) and 53 of the Companies Act 2012***.

Since this was an Application to set aside a consent Judgment, it is not proper for this Court to investigate the process of change of name this not being a Company cause. For this reason, I would not be inclined to grant any orders other than those that would

naturally flow from the application to set aside the consent Judgment.

I would for the reasons herein above stated find no merit in grounds 1, 2, 3 and 4 of the Appeal.

Ground 5 The Learned Justices of Appeal erred in law when they held the consent judgment executed by the 1st Appellant and the Respondents in Civil Suit No.467 of 2013 was valid, thereby declining to set it aside.

The relevant part of the Consent Judgment relating to the change and use of name is paragraphs 5 and 6 thereof which only stated the duty of the 1st Appellant to change the name within a specified period of time. The Change of the Name was supposed to happen anytime within 6 months from the specified date.

Therefore, in my assessment the procedure for changing the name has no effect or impact on the validity of the consent judgment. The consent Judgment is not the instrument that changed the name of the 1st Appellant Company. The 1st Appellant had a duty to follow the due process in ***section 40 of the Companies Act, 2012*** in executing the consent judgment or the settlement agreement. The 1st, 2nd and 3rd Respondents had no control over that.

I see no effect, of the 4th Respondent's failure to follow the procedure, on the Consent Judgment. With or without a valid name change in my view the consent judgment stands because the failure to follow the process of name change did not directly arise from the

consent Judgment. It is a fact far removed from the process of consenting.

I agree with the reasoning of the trial Judge and the Court of Appeal in finding that the Respondents would unfairly be prejudiced if this court found the consent judgment invalid on the basis of the failure of the 1st Appellant's Managing Director to follow the procedure for name change. I further agree with the Courts below that parties outside the Company do not have to enquire as to the directors' authority to enter into any agreements even the signing of the Consent Judgment as can be seen in ***Sections 52(1), 52(2)(a), 52(2)(b) and 53 of the Companies Act 2012***.

I accordingly would find no merit in ground 5 of the Appeal as well.

Conclusion

For the reasons I have given I would dismiss this Appeal with costs to the 1st,2nd,3rd and 4th respondents and I hereby do so.

I so order

Before I take leave of this matter, I have noticed many cases in the Court system which appear to be arising from the failure of the Registrar of Companies to carefully execute their duty. For example, in this case the Resolution should have been examined before the Registrar of Companies accepts it and issues their consent to the same. The law did not require the consent of the Registrar of Companies just as a matter of formality. The Registrar of Companies should have detected that the Resolution was not of the

members but rather of the directors and should have been able to withhold her consent at that stage. Just stating the word "Special Resolution" on the document should not be sufficient. It is also important that the names of the members in attendance of the meeting be stated on the resolution submitted for registration at the Registrar of Companies' office. The office of Registrar of Companies should be served with a copy of this decision to reform the way they deals with such matters.

Dated this 29th day of Jan 2024

Stephen Musota
JUSTICE OF THE SUPREME COURT

The judgment delivered in Court as directed

29/01/2024

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

Coram: (Mwondha, Tuhaise, Chibita, Musoke, Musota, JJ.SC)

CIVIL APPEAL NO. 11 OF 2022

1. **CTM UGANDA LIMITED**
2. **PRIME HOLDING LIMITED**
3. **CATHERINE MUWONGE MAGEZI**

(Administrators of the Estate of Joseph Magezi).....APPELLANTS

VERSUS

1. **ALLIMUS PROPERTIES UGANDA LIMITED**
2. **ITALITIES CERAMICS LIMITED**
3. **ITALYTILE LIMITED**
4. **GREGORY MAGEZI.....RESPONDENTS**

(An appeal arising from Court of Appeal Civil Appeal No. 267 of 2018 before (Kakuru, Kiryabwire and Madrama, JJA) dated 22nd February 2021)

JUDGMENT OF MWONDHA, JSC

I have had the benefit of reading in draft the judgment of my learned brother Musota, JSC. I concur with his analysis, reasoning and the decision. I also concur with the proposed orders he made.

Decision of Court

Since all members of the Coram agree with the lead judgment, Hon. Justice Tuhaise, Hon. Justice Chibita, Hon. Justice Musoke, the appeal is dismissed with the orders as proposed in the judgment.

Dated at Kampala this .....29th.....day of .....Jan.....2024.

.....

Mwondha

Justice of the Supreme Court.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: MWONDHA; TUHAISE; CHIBITA; MUSOKE; MUSOTA JJSC)

CIVIL APPEAL NO. 11 OF 2022

1. CTM (U) LIMITED

2. PRIME HOLDINGS LIMITED

3. CATHERINE MUWONGE MAGEZI (ADMINISTRATOR OF THE ESTATE OF THE LATE JOSEPH MAGEZI) .....APPELLANTS

VERSUS

1. ALLMUSS PROPERTIES UGANDA LIMITED

2. ITALTILE CERAMICS LIMITED

3. ITALTILE LIMITED

4. GREGORY MAGEZI.....RESPONDENTS

[Appeal arising from the decision of the Court of Appeal at Kampala before Hon. Justices Kakuru, Kiryabwire and Madrama, JJA, in Civil Appeal No. 267 of 2018, dated 22nd February 2021]

JUDGMENT OF TUHAISE, JSC.

I have had the benefit of reading in draft the Judgment prepared by Hon. Justice Stephen Musota, JSC.

I agree with his decision that the appeal be dismissed with costs to the Respondent.

Dated at Kampala, this 29th day of Jan ..2024.

Percy Night Tuhaise

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: MWONDHA; TUHAISE; CHIBITA; MUSOKE; MUSOTA; JJ.S.C.)

CIVIL APPEAL NO: 17 OF 2022

BETWEEN

CTM (U) LTD & ORS :: APPELLANTS

VERSUS

ALLMUS PROPERTY (U) & ORS :::::::::::::::: RESPONDENTS

[Appeal from the decision of the Court of Appeal (Kakuru, Kiryabwire and Madrama, JJA) in Civil Appeal No. 267 of 2018 dated 22nd February, 2021]

JUDGMENT OF CHIBITA, JSC.

I have had the advantage of reading in advance the judgment of my learned brother, Hon. Justice Musota, JSC. I agree with his judgment that this appeal should be dismissed.

I also agree with the orders he has proposed on costs.

Dated at Kampala this ....29th....day of....Jan.....2024

Justice Mike Chibita
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 11 OF 2022

1. CTM (U) LIMITED
2. PRIME HOLDINGS LIMITED
3. CATHERINE MUWONGE MAGEZI
(ADMINISTRATOR OF THE ESTATE OF THE LATE JOSEPH MAGEZI)::::::::::::::::::::::::::::::::APPELLANTS

VERSUS

1. ALLMUSS PROPERTIES UGANDA LIMITED
2. ITALTILE CERAMICS LIMITED
3. ITALTILE LIMITED
4. GREGORY MAGEZI::::::::::::::::::::::::::::::::::::RESPONDENTS

(Appeal from the decision of the Court of Appeal (Kakuru, Kiryabwire and Madrama, JJA) in Civil Appeal No. 267 of 2018 dated 22nd February, 2021)

CORAM: HON. LADY JUSTICE FAITH MWONDHA, JSC
HON. LADY JUSTICE PERCY TUHAISE, JSC
HON. MR. JUSTICE MIKE CHIBITA, JSC
HON. LADY JUSTICE ELIZABETH MUSOKE, JSC
HON. MR. JUSTICE STEPHEN MUSOTA, JSC

JUDGMENT OF ELIZABETH MUSOKE, JSC

I have had the benefit of reading the judgment of my learned brother Musota, JSC. I concur with his conclusion that the appeal be dismissed, and with the order on costs that he makes.

Dated at Kampala this ..... 29th day of..... Jan .....2024.

.....

Elizabeth Musoke

Justice of the Supreme Court