THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 013 OF 2020

AND

CIVIL APPLICATION NO. 007 OF 2023

1. FORMULA FEEDS LTD
2. GICHOHI NGARI
3. SAMSON NGARI
4. ANNE WANGUI GICHOHI::::::::::::::::::::::::::::APPELLANTS

VERSUS

KCB BANK LTD::RESPONDENT

(Appeal from the decision of the Court of Appeal (Kakuru, Kiryabwire and Madrama ,JJA) in Civil Appeal No. 0076 of 2016 dated 8th July, 2019)

CORAM: HON. MR. JUSTICE ALFONSE OWINY-DOLLO, CJ
HON. LADY JUSTICE FAITH MWONDHA, JSC
HON. MR. JUSTICE MIKE CHIBITA, JSC
HON. LADY JUSTICE ELIZABETH MUSOKE, JSC
HON. MR. JUSTICE STEPHEN MUSOTA, JSC

JUDGMENT OF ELIZABETH MUSOKE, JSC

This appeal is from the decision of the Court of Appeal (Kakuru, Kiryabwire and Madrama, JJA) in Civil Appeal No. 0076 of 2016 dated 8th July, 2019.

Background

The 1st and 2nd appellants sued the respondent in the High Court seeking various reliefs arising from the respondent's alleged breach of a loan contract made between the 1st appellant and the respondent, and guaranteed by the 2nd, 3rd and 4th appellants. The respondent filed a counter-claim against all the appellants, also arising from the same transaction. The High Court substantially dismissed the suit and in large part allowed the counter-claim. The appellants appealed against the dismissal of the suit to the Court of

Appeal, which dismissed their appeal. The appellants thereafter lodged this further appeal to this Court.

The facts of the case are that the 1st appellant borrowed money to the tune of Ug. Shs. 4,531,000,000/= from the respondent bank on terms set out in two facility agreements executed between the parties. The 1st appellant and the respondent also executed a debenture and a legal mortgage in respect of the said loan. In addition, the 2nd, 3rd and 4th appellants signed personal guarantees undertaking to pay the loan in case the 1st appellant defaulted. It appears that the 1st appellant was subsequently unable to pay the loan which prompted the respondent to treat all the loan monies as due and to demand payment from the 1st appellant and the guarantors.

The 1st and 2nd appellants filed the High Court suit challenging the move by the respondent to enforce repayment of the outstanding loan. The 1st and 2nd appellants' challenge was based on breach by the respondent of the loan agreements, in some respects, by failing to open letters of credit and unilaterally and erroneously converting some of the loan monies from US Dollars to Uganda Shillings. They also claimed that the respondent had not fully disbursed the entire Ug. Shs. 3,700,000,000/= it demanded as due and outstanding; and had unlawfully utilized part of the loan money to pay interest instead of disbursing it to the 1st appellant. The 1st and 2nd appellants also claimed that the respondent had wrongfully charged certain amounts as interest on all loan facilities, had illegally opened loan accounts for the 1st appellant, and had wrongfully debited monies amounting to Ug. Shs. 2,950,238,297/= and applied it to illegal interest and bank charges. The 1st and 2nd appellants claimed that all the above acts were in breach of contract and the 1st appellant had suffered loss arising therefrom for which the respondent was liable in damages.

The 1st and 2nd appellants also claimed that the various mortgages connected with the loans were illegal as they had been secured by land which the 1st appellant could not legally own.

The respondent denied breaching the loan agreement as alleged by the 1st and 2nd appellants. It claimed that it acted fairly and lawfully in accordance with the loan contracts in its relationship with the 1st appellant. In relation

to the illegality claim based on the allegation that the 1st appellant could not own the land that it pledged, the respondent averred that the 2nd and 4th appellants as directors of the 1st appellant had concealed their nationality at the time of making the mortgage. The respondent counterclaimed against the appellants for the outstanding loan owed by the 1st appellant to the tune of Ug. Shs. 3,704,674,108/=.

In its judgment, the High Court (Wangutusi, J.) found that the respective mortgages concluded between the parties were illegal and null and void because the 1st appellant as the mortgagor could not lawfully own the respective pieces of land it had pledged under the mortgages. The High Court rejected the appellants' claims that the respondent had breached the loan contracts, and instead found that it was the 1st appellant which had breached the contracts. The High Court also rejected the claim that the personal guarantees of the 2nd, 3rd and 4th appellants were illegal and instead found that they were enforceable. The High Court also found that the appellants were indebted to the respondent to the tune of Ug. Shs. 4,272,740,118/=, with the 1st appellant as the primary debtor and the 2nd, 3rd and 4th appellants as guarantors and awarded that sum with interest.

The High Court however found that the respondent could not foreclose on the property the subject of the mortgages because the relevant mortgages were illegal.

The appellants appealed to the Court of Appeal but their appeal was dismissed with costs. The Court of Appeal upheld all the findings and orders of the High Court.

Being dissatisfied with the decision of the Court of Appeal, the appellants appeal to this Court on the following grounds:

"1) **The learned Justices of Appeal erred in law when they upheld the High Court Judgment based on an illegality and on unpleaded matters before the Court.**

2) **The learned Justices of Appeal erred in law and in fact when they upheld a finding that the respondent was not in breach of its contract with the 1st appellant.**

3) **The learned Justices of Appeal erred in law and in fact in upholding the personal guarantees executed by the directors of the 1st appellant as legal and enforceable."**

The appellants made the following prayers:

"1) **That this Honourable Court allows the appeal and sets aside the judgment and orders of the Court of Appeal.**

2) **That the respondent pays the costs of the appeal and in the Courts below."**

The respondent opposed the appeal.

Representation

At the hearing, Mr. Ambrose Tebyasa and Mr. Derrick Bazekuketta, both learned counsel, jointly appeared for the appellants. Mr. Terence Kavuma, learned counsel, appeared for the respondent.

The respective counsel filed written submissions.

Appellant's submissions

Counsel for the appellants argued each ground of appeal independently.

Ground 1

Counsel submitted that the Court of Appeal erred in upholding the judgment of the High Court which was founded on an illegality and unpleaded matters. Counsel highlighted two errors in this regard, namely: a) upholding the High Court decision allowing the respondent's counter-claim yet the same was founded on an illegal mortgage and was therefore barred under the ex turpi causa doctrine; and b) upholding an alleged consent/admission/partial judgment which was erroneously entered by the High Court.

In relation to the contention on illegality of the respondent's counter-claim, counsel submitted that since the two lower Courts found that the mortgage between the 1st appellant and the respondent was illegal, they ought to have dismissed the respondent's counter-claim for being based on the said illegal mortgage. Counsel referred to paragraph 3 of the respondent's counter-claim which states that the respondent issued a notice of default under the

Mortgage Act, 2009 and the Regulations thereunder as evidence that the respondent's counter-claim was based on the illegal mortgage. Counsel further contended that if the respondent intended to enforce the loan agreement and not the illegal mortgage, it would have expressly stated so in its counter-claim. Counsel further submitted that the evidence indicated that the respondent intended to enforce the illegal mortgage and not the loan agreement because if it had intended to enforce the letter, it would have done so in accordance with Clause 12.2 of the loan agreement by giving notice to the 1st appellant but it did not do so.

Counsel submitted that parties are bound by their pleadings and that in the present case since the respondent stated in its pleadings that it was seeking to enforce the mortgage agreement, judgment could not be entered on the basis of the loan agreement.

With respect to the contention surrounding the illegality of the relevant consent/admission/partial judgment, counsel submitted that the judgment on admission which the Court of Appeal upheld arose from an illegality and should not have been upheld. Counsel pointed out that the record of the trial proceedings gives an impression that the learned trial Judge entered judgment against the appellants for Ug. Shs. 2,159,000,000/= upon admission of their lawyer in the High Court. Counsel then submitted that the impugned judgment was a judgment on admission and not a consent judgment. This was because the judgment was not drawn up in a manner consistent with the practice (which has gained the force of law) of drawing up a consent judgment which typically involves drawing up a consent judgment in appropriate terms, having the parties or their advocates sign it, and thereafter getting the same endorsed by the Court. Counsel submitted that the significance of the impugned judgment being a judgment on admission is that the same was appealable as was held in the persuasive decision of **Juliet Kalema vs. William Kalema, Court of Appeal Civil Appeal No. 95 of 2003 (unreported)** whereas a consent judgment is not appealable under **Section 67 (2)** of the **Civil Procedure Act, Cap. 71**.

Counsel advanced a further argument that in any case the lower Courts ought to have found the consent judgment or judgment on admission illegal

and set it aside since it was based on the respondent's counter-claim which itself was untenable as it was based on an illegal mortgage. Counsel contended that the trial Judge ought to have moved himself to make a finding in his final judgment and orders that the partial judgment on admission was premised on an illegality since he had evaluated the evidence that the mortgage between the 1st appellant and the respondent was illegal. Further still, that the Court of Appeal should have reached the same conclusion had it properly revaluated the counter-claim and the alleged judgment on admission. Counsel contended that upholding a consent or admission made on a counter-claim that was itself based on an illegal mortgage amounted to an illegality. Counsel cited **SINBA (K) Ltd and 4 Others vs. Uganda Broadcasting Corporation, Supreme Court Civil Appeal No. 03 of 2014** (unreported) where it was held that a court cannot ignore an illegality once it is brought to its attention. Counsel urged this Court to find that the relevant judgment on admission or consent judgment was illegal and that the Court of Appeal erred in upholding it.

Ground 2

In support of ground 2, counsel submitted that the Court of Appeal erred in upholding the trial Court's decision that the respondent did not breach the contract with the appellant yet there was evidence which proved that the respondent breached the contract in four respects, namely: 1) By failing to open fresh letters of credit; 2) By creating illegal loan accounts; 3) By charging illegal interest; and 4) By failing to give notice and negotiate the exchange rates when converting USD 549,000 to Uganda Shillings.

With respect to failing to open fresh letters of credit, counsel submitted that the Court of Appeal erroneously found that the appellants gave no specific instructions to the respondent to open fresh letters of credit. Counsel contended that this was not the case as the instructions were contained in several letters written by Bank of Baroda to the respondent. Counsel highlighted letters dated 25th July, 2011 and 19th July, 2011. In the latter, it was stated that, **"...we are of the view that you can open fresh letters of credit in favour of the beneficiary on our release of the securities and cancellation of the letters of credit which has (sic) already**

expired." Counsel contended that the statements in the highlighted letters created a fundamental obligation on the respondent to open fresh letters of credit.

Counsel also faulted the Court of Appeal for erroneously finding that the appellants' instruction to open a letter of undertaking/guarantee was given to the respondent three months before the relevant credit facility was concluded and that at the time the letters of credit were still valid. It was submitted that the correct position was that the facility agreement with the respondent was made on 30th June, 2011 while the letter of undertaking/guarantee was issued by the respondent on 12th August, 2011. It was also submitted that at the time of giving the guarantee, the 1st appellant's letters of credit had already expired.

Furthermore, counsel faulted the Court of Appeal for finding that the appellants had voluntarily given up the purchase of the feed mill. Counsel contended that the appellants' giving up on the purchase of the feed mill was prompted by the failure of the respondent to open fresh letters of credit on time which frustrated the purchase of the feed mill.

Counsel also submitted that the respondent's failure to open fresh letters of credit frustrated the purchase of an automated feed mill which was crucial to the success of the 1st appellant's business and led to the 1st appellant suffering damages for which the respondent was liable. According to counsel, the 1st appellant lost USD 350,000 (approximately Ug. Shs. 790,000,000/=) and USD 52,567 (approximately Ug. Shs. 222,383,076) which constituted the non-refundable monies paid to M/S Buhler SA (Pty) Ltd the supplier of the feed mill.

Counsel further contended that while it was true, as found by the Court of Appeal, that the appellants wrote a letter instructing the respondent not to open fresh letters of credit, the circumstances under which the appellants authored that letter were not fully considered. Counsel did not elaborate further

Counsel then proceeded to submit on the respondent's alleged breach of contract in creating illegal accounts for the 1st appellant. Counsel faulted the

Court of Appeal for finding that all the 1st appellant's loan accounts with the respondent were created after the signing of the facility agreement and that there was no evidence to support a contrary conclusion. Counsel submitted that there was evidence by way of an account statement showing that the respondent opened account number MD1214300005 for the 1st appellant on 18th October, 2008, way before the facility agreement was signed in 2011. Further, that DW1 had admitted in his evidence that a loan of Ug. Shs. 879,012,894 was disbursed on that account.

Furthermore, counsel submitted that the appellants adduced unchallenged evidence that the respondent illegally opened 8 accounts, namely, MG 1122000022 on 29th August, 2011, LD 11250000309 on 7th September, 2011, LD 11250000308 on 7th September, 2011, MG 112500006 on 7th September, 2011, MG 11250000121 on 7th September, 2011, PDMG 112500000 on 26th October, 2011, PDLD 1125000309 ON 10th November, 2011, LD 1125000305 on 10th November, 2011, PDLD 112500030 on 11th May, 2012 and MG 1214300005 on 18th October, 2008 before the appellants became customers of the respondent. It was submitted that as a result of the opening of the highlighted illegal accounts, the appellant lost money to the tune of Ug. Shs. 21,000,000/= in administrative expenses alone and also lost further money as interest charged on the illegal accounts.

In relation to the respondent's breach of contract by charging interest which was alleged to be illegal, counsel submitted that there was evidence to that effect. First, the respondent charged interest arising from a mortgage with the 1st appellant which the lower Courts found to be illegal. Counsel contended that any interest arising from an illegal mortgage is no interest at all and in support of this contention cited **Makula International vs. Cardinal Nsubuga, Supreme Court Civil Appeal No. 4 of 1981**. Secondly, it was submitted that the respondent charged higher rates of interest than originally agreed in the facility agreements. Counsel pointed out that the agreed interest in the respective four facilities was 18% for the first three facilities and 10% for the fourth facility but there was evidence that the respondent charged higher interest of up to 28%. Counsel submitted that under the facility agreements, the respondent was obligated to notify the 1st appellant in writing before charging higher interest but this was not

done. The respondent instead alleged that it had notified the 1st appellant through notices of interest rate increases in the print media, but in counsel's view, there was no notice of such publications.

Furthermore, counsel faulted the Court of Appeal for finding that the respondent's failure to give notice of increment of interest rates to the 1st appellant was not fatal because clause 5.4 of the facility agreement provided that, **"...failure to advise the borrower shall not prejudice the right of the bank to recover interest charged subsequent to any such charge."** Counsel submitted that the Court of Appeal erred to apply clause 5.4 yet it was contained in a mortgage which it had declared illegal.

Counsel submitted, in the alternative, that assuming that the relevant mortgage was legal, the respondent acted in contravention of **Section 12** of the **Mortgage Act, 2009** which requires a mortgagee to give 15 working days' notice to the mortgagor before increasing the interest rate. In this case, the respondent as the mortgagee gave no notice to the 1st appellant, the mortgagor, at all.

With respect to the respondent's breach of contract in regard to the conversion of USD 549,000 to Uganda Shillings, counsel submitted that the Court of Appeal erred when they failed to fault the respondent for using its bank rate when converting the highlighted money to Ug. Shs. According to counsel, the Court of Appeal's error was in two respects, namely: 1) there was no proof that the respondent undertook any such conversion as alleged; and 2) Assuming that the conversion was undertaken, it was done in breach of the respondent's fiduciary duty to the 1st appellant, its customer.

With regard to the first respect, counsel submitted that the respondent did not convert any money because it never committed nor disbursed the USD 549,000 it purported to have converted by paying it into the 1st appellant's account. Further, that there was no evidence of a valid letter of credit or similar undertaking to demonstrate that the respondent had committed the money it purported to have converted. In counsel's view, the respondent merely alleged conversion as a way of making an extra Ug. Shs. 300,000,000/=.

In the alternative, counsel submitted that if any conversion took place, it was done in breach of **paragraph 6 (1) (a)** of the **Bank of Uganda Financial Consumer Protection Guidelines** which provide that "a financial services provider shall act fairly and reasonably in all its dealings with a consumer." Further, that the conversion was done in breach of **paragraph 6 (1) (b) (iv)** of the same Guidelines which provide that a financial services provider shall not take advantage of a consumer whether or not he or she is able to fully understand the character or nature of a proposed transaction. The breaches complained of happened because the respondent, a financial services provider, went ahead with the conversion without advising the 1st appellant, its client, that it would lose up to Ug. Shs. 300,000,000/= in the process and without taking reasonable steps to ensure that the loss did not occasion to the 1st appellant. Consequently, the respondent's default led to the 1st appellant losing Ug. Shs. 280,000,000/=.

Ground 3

Counsel submitted that the Court of Appeal erred when it upheld the personal guarantees entered by the 2nd, 3rd and 4th appellants guaranteeing the impugned mortgage between the 1st appellant and the respondent yet the same were unenforceable as they were based on an illegal mortgage.

Respondent's submissions

Counsel for the respondent also submitted on each ground of appeal independently.

Ground 1

In reply to the appellants' submissions on ground 1, counsel for the respondent submitted that contrary to the appellants' submissions, the respondent's counter-claim was based on the respective facility agreements it executed with the appellants and not on the impugned mortgage. In support of this submission, counsel referred to paragraph 4 of the respondent's counter-claim where it was pleaded that:

"The counter-defendants have failed and or neglected to jointly pay to the counter-claimant the sum of Shs. 3,704,674,108/= in breach of their respective contractual obligations to the counter-claimant"

Counsel further referred to the first prayer in the respondent's counter-claim which was for:

"A declaration that the counter-claimant is entitled to the sum of Shs. 3,704,674,108/= with interest, from the counter-defendants being the sum due on the offer letter."

Counsel submitted that it was the facility agreement that the learned trial Judge examined before coming to his conclusion that the appellants had breached that agreement which warranted the sums awarded to the respondent.

In relation to the submission that the respondent breached the facility agreement by failing to give notice to the 1st appellant, counsel replied that it was optional for the respondent to give notice to the 1st appellant as clause 12.2 of the facility agreement provided that, "the bank may by notice to the borrower..." Counsel further submitted that clause 20.2 of the facility agreement provided that failure to exercise a right or defective exercise of a right did not preclude further exercise of any other right such as the right to take legal action embodied in clause 22 of the facility agreement. In those circumstances, counsel continued, even if the respondent did not give a default notice to the 1st appellant, it was not precluded from enforcing the facility agreement by legal action as it did when it instituted the counter-claim.

With regard to the submission that the consent judgment for Ug. Shs. 2,159,000,000/= was premised on an illegal mortgage, counsel replied that this was not the case. Counsel referred to the circumstances leading to the consent judgment which indicated that the appellants voluntarily accepted partial indebtedness to the respondent, hence the making of the consent judgment.

Furthermore, according to counsel, the appellants' admitted liability of Ug. Shs. 2,159,000,000/= arose from the facility agreement signed with the

respondent and not the mortgage deed that was declared illegal. Thus, as explained by the Court of Appeal, the mere fact that the mortgage deed was rendered illegal did not render the facility agreement illegal as well.

In response to the appellants' submission that the consent judgment was irregular for having been made without adhering to the practice that a consent judgment has to be signed by the counsel for the respective parties to it, counsel submitted that a consent judgment does not have to be signed by counsel in order to be valid. The consent judgment will be valid if the parties agree to part of the dispute as happened in the present case where counsel for the appellants at the trial informed the Court that the appellants agreed to part of the debt claimed by the respondent, which agreement was recorded by the trial Court. In those circumstances, counsel submitted that the parties' agreement amounted to a consent judgment and was therefore not appealable under **Section 67 (2)** of the **Civil Procedure Act, Cap. 71** as held by the Court of Appeal.

Ground 2

In response to the appellants' submissions on ground 2, counsel denied that the respondent breached its contract with the 1st appellant by failing to open fresh letters of credit. He submitted firstly that the contract between the parties as embodied in the facility agreements did not impose an obligation on the respondents to open fresh letters of credit.

In the alternative, counsel submitted that the letter written by Bank of Baroda which the appellants alluded to as having created an obligation on the respondent to open fresh letters of credit provided two options, namely; 1) the respondent opening fresh letters of credit or 2) the respondent amending the existing letters of credit by providing a 100% cash margin or a bank guarantee. Counsel contended that the respondent pursued the latter option and took out a guarantee to pay any outstanding money for purchase of the feed mill. Counsel further contended that as DW1 explained in his evidence, the outstanding monies for purchase of the feed mill became payable in piecemeal with the respondent being called upon to pay whenever there was an outstanding obligation, and in this regard, counsel referred to

an invoice for USD 52,667 that was paid by the respondent. Counsel further submitted that the respondent kept on honouring its obligations until the 1st and 2nd appellants, in a letter dated 19th April, 2012, instructing the respondent to **"cancel this margin and realise the Ugx equivalent to the USD 549,000 as soon as possible at the prevailing exchange rates,"** instructions which the respondent honoured.

As for the alleged breach in creation of illegal loan accounts, counsel responded that, firstly, the appellants did not raise a ground on illegal loan accounts, and were under **Rule 70 (1)** of the **Supreme Court Rules** precluded from arguing the same.

Notwithstanding the above submission, counsel submitted that the issue on creation of illegal loan accounts was not sufficiently pleaded. He referred to paragraph 5 (g) (viii) of the appellant's amended plaint where it was pleaded that, **"the defendant created 12 loan accounts out of the 4 authorised loan accounts and debited its illegal charges to the detriment of the plaintiffs' project."** Counsel submitted that the pleading did not specifically name the illegal loan accounts. Further, that PW1 did not also mention the illegally created loan accounts while testifying. For that reason, the trial Court was unable to uphold the appellants' pleading in relation to the illegally created loan accounts, and the Court of Appeal also declined to find that the respondent had illegally created loan accounts. Counsel submitted that the lower Court's decisions were premised on good grounds and ought not be interfered with by this Court.

Further still, counsel submitted that the 8 loan accounts which the appellants alleged had been illegally created were actually created lawfully as per the evidence of DW1. LD1125000309 was used by the respondent to manage an agricultural loan of Ug. Shs. 2,000,000,000/= that was disbursed to the 1st appellant on 7th September, 2011. MG121400005 was used to manage the term loan of Ug. Shs. 900,000,000/=. MG1125000005 was used to manage a term loan of Ug. Shs. 400,000,000/= which was disbursed to the appellant on 7th October, 2011. Counsel noted that this account was erroneously indicated in the statement as having been created on 18th October, 2008 which was not the case. However, that the error did not

prejudice the 1st appellant in any way especially considering that the 3rd and 4th appellants paid money to that account as a way of reducing the 1st appellant's indebtedness.

As for the appellants' submission that the respondent charged illegal interest, counsel replied that the respondent charged interest within the ambit of clauses 5.1, 5.2 and 5.6 of the facility letter which was never declared illegal in the lower Courts. He submitted that the appellant's reference to the authority of **Makula International Ltd (supra)** was misguided.

With regard to the submission that the respondent revised interest without notifying the 1st appellant, counsel submitted that that the facility agreement permitted the respondent to revise interest and advise the 1st appellant. However, that the facility agreement further provided that failure to advise the 1st appellant about increase of the interest rate would not prejudice the respondent's right to recover the increased interest. Counsel submitted that the 1st appellant signed up to the facility agreement and as such was bound by its terms, and therefore the lower Courts rightly rejected the appellant's arguments on this issue.

In relation to the appellants' submission of breach of contract relating to conversion of USD 549,000 into Uganda Shillings, counsel submitted that the pleading in the amended plaint was that the respondent had unilaterally converted the highlighted sum into shillings and thereby occasioned the 1st appellant a loss of Ug. Shs. 280,000,000/=. Counsel further pointed out that the evidence of PW1 in support of the pleading was that the respondent had unilaterally converted the USD amount into shillings. He then submitted that PW1's evidence was false since the 1st appellant had instructed the respondent to convert the USD 549,000 into Ug. Shs, which the respondent had duly honoured. Counsel submitted that the respondent cannot therefore be held to have acted in breach of contract for honouring the 1st appellant's instructions.

Furthermore, counsel submitted that the 1st appellant did not prove any loss arising from the conversion by leading evidence of higher comparative

exchange rates it would have obtained as compared to the one which the respondent applied in the conversion.

With regard to the appellants' submission that there was no proof of conversion of the USD 549,000 to Ug. Shs., counsel replied that that submission was dishonest since the appellants admitted to a conversion having taken place in their amended plaint.

Ground 3

In reply, counsel for the respondent submitted that the 2nd, 3rd and 4th appellants' personal guarantees were based on the respective agreements between the 1st appellant and the respondent and were intended to secure the 1st appellant's borrowing thereunder. Counsel therefore argued that the appellants' submission that the personal guarantees were based on the illegal mortgage were factually incorrect. Counsel further cited **Section 71 (1) and (2)** of the **Contract Act, 2010** governing the liability of guarantors which provides that:

> **"71. Liability of guarantor**
>
> **(1) The liability of a guarantor shall be to the extent to which a principal debtor is liable, unless otherwise provided by a contract.**
>
> **(2) For the purpose of this section the liability of a guarantor takes effect upon default by the principal debtor."**

Counsel submitted that it was an agreed fact in the joint scheduling memorandum that the 1st appellant defaulted on its loan obligations, and the default triggered the 2nd, 3rd and 4th appellants' liability on their guarantees. Therefore, the lower Courts correctly found that the 2nd, 3rd and 4th appellants were liable on their personal guarantees.

Appellants' submissions in rejoinder

In rejoinder to the respondent's submission that it was not mandatory for it to give notice to the 1st appellant before increasing the interest rates, counsel for the appellants submitted that although the facility agreement employed the word "may" in relation to giving notice, the use of the word imposed a mandatory requirement as it was informed by the fundamental rule of

natural justice that no one should be condemned unheard. For this submission, counsel relied on **Buwembo vs. Kiwanuka and Another, Supreme Court Civil Appeal No. 1670 of 2013 (unreported)**. According to counsel, it was mandatory for the respondent to give notice to the appellant since it intended to enforce the provisions of the facility agreement.

In relation to the respondent's submission that the appellants were unlawfully pursuing an issue on creation of illegal loan accounts which they did not pursue in the lower Courts, counsel rejoined that this was not the case as that issue was addressed under breach of contract in the lower Courts and is therefore not a new issue.

In all other respects, counsel reiterated his earlier submissions.

Consideration of the Appeal

I have carefully studied the record of appeal and considered the submissions of counsel for both sides and the authorities cited. I have also considered other applicable authorities that were not cited.

This is a second appeal, the trial having been conducted in the High Court, and the first appeal from the decision of the High Court having been heard and dismissed by the Court of Appeal. It is now well established from case law that when sitting as a second Appellate Court, this Court is not required to reevaluate the evidence as the first Appellate Court is under duty to do, except where it is clearly necessary, as for example, where the first appellate Court failed or did not properly re-evaluate the evidence. See: **Masembe v Sugar Corporation and another [2002] 2 EA 434 per Mulenga, JSC.**

I shall consider each ground of appeal separately.

Ground 1

The appellants, in ground 1, faulted the Court of Appeal for upholding the judgment of the High Court yet it was based on illegality and unpleaded matters. I shall consider each complaint under this ground separately.

First, counsel for the appellants contended that the respondent's case was founded on a mortgage with the 1st appellant which the two lower Courts had found illegal and which ought to have led the lower Courts to finding that the respondent's case as contained in its counterclaim was illegal and barred by the doctrine of ex-turpi causa.

It must be observed that the two lower Courts found that the respondent lent money to the 1st appellant and that the latter gave several securities for the loan including a mortgage and debenture, while the 2nd and 3rd appellants gave personal guarantees for the loan. The trial Court found that the mortgage between the 1st appellant and the respondent was illegal but considered that the mortgage was a separate transaction and could not absolve the 1st appellant from paying the outstanding loan to the respondent. The Court of Appeal took a similar view, and aptly commented as follows:

> **"First we agree with the finding of the trial Judge that the mortgage deed was illegal. However, a mortgage deed which is a security should be distinguished from a loan or credit facility. If the security is defective, then it simply means that the credit facility is not capable of being reimbursed from that source. This is because the mortgage is simply collateral to and independent from the credit facility."**

I entirely agree with the above statement by the Court of Appeal. It is common ground that the 1st appellant borrowed money from the respondent on terms contained in facility agreements concluded between the parties. It is also common ground that as at the time of the trial, the 1st appellant had not paid some instalments of the loan as required. It goes without saying that a person who borrows money is expected to pay it back in accordance with the loan agreement. The borrower may give securities to which the lender may resort for satisfaction of the outstanding loan. However, it is clear that the securities are independent of the loan, so that if one of the securities is found to be defective, the lender may proceed to recover against the valid securities, and if all the securities are defective, the lender may treat the loan as unsecured and proceed to recover from the borrower.

In the present case, the respondent as the lender filed a counter-claim to obtain payment of money owed by the 1st appellant which at the time of the

counter-claim was allegedly to the tune of Ug. Shs. 3,704,674,108/=. The respondent sought to rely on a mortgage executed with the 1st appellant which pledged certain land belonging to the latter as security for repayment of the loan. The submission by counsel for the appellants that the respondent's pleadings did not seek to enforce the loan facility but focused only on enforcing the mortgage is incorrect. A proper reading of the respondent's counter-claim clearly discloses that the respondent sought to recover outstanding monies from the 1st appellant.

I further note that the High Court, although it found that the 1st appellant was indebted as claimed in the respondent's pleadings, refused to enforce the mortgage because it found the same to be illegal. The Court of Appeal took the same view. It goes without saying that Courts are obligated to reach decisions that follow the law, and in the present case the lower Courts were expected to declare the mortgage between the 1st appellant and the respondent illegal, as they did, and for the reasons they gave. However, declaring the mortgage illegal did not extinguish the 1st appellant's indebtedness and therefore the lower Courts were expected to decree payment of the outstanding loan by the 1st appellant as they did and to enforce any valid securities. I would therefore reject the submissions of counsel for the appellants that fused the parties loan agreement with the illegal mortgage. I would find no merit in the first limb of ground 1 and hold that the lower Courts rightly considered that the illegality of the mortgage did not affect the respondent's right to seek payment of the outstanding loan from the appellants by other means.

In the second limb of the appellants' submissions on ground 1, counsel for the appellants submitted that the judgment on admission for the sum of Ug. Shs. 2,159,000,000/= that was entered in favour of the respondent was also illegal because it arose from an illegal mortgage. I would reject this submission because the admission was based on the 1st appellant's indebtedness to the respondent arising from the former's failure to pay the loan advanced by the latter and not on the illegal mortgage.

I also noted further submissions made by counsel for the appellants in relation to ground 1 which faulted the Court of Appeal for holding that the

judgment entered by the High Court, upon representation by counsel for the appellants, for the appellants to pay Ug. Shs. 2,159,000,000/= to the respondent was a consent judgment and not appealable under **Section 67 (2)** of the **Civil Procedure Act, Cap. 71**. I wish to point out that the submissions on the consent judgment cannot be sustained under ground 1 which concerns a separate complaint that faults the Court of Appeal for upholding the judgment of the trial Court despite certain overlooked illegalities and unpleaded matters. I would therefore have declined to consider the said arguments.

However, for completeness' sake, I would make the following brief comments. In my view, there is, in effect, no practical distinction between a judgment on admission and a consent judgment. The key difference is that a judgment on admission is made under the circumstances referred to under **Order 13 Rule 6** of the **Civil Procedure Rules, S.I 71-1** whereas a consent judgment arises out of agreement between the parties that is endorsed by the Court. However, both judgments arise due to an agreement between the parties, that is, for a judgment on admission, an acceptance by one party, of the case or part of the case of the other party and for a consent judgment, an agreement by the parties to resolve a case on certain terms, and because of the parties' agreement the trial of the whole or part of the case becomes unnecessary. Further, because both judgments are based on the parties' voluntary agreement, they should not be easily altered on appeal or on review. In my view, the agreement between the appellants and the respondent for the former to pay certain money to the respondent was rightly held by the Court of Appeal as not appealable pursuant to Section 67 (2) of the CPA.

In view of the above analysis, I would disallow ground 1 of the appeal.

Ground 2

The appellants complained, in ground 2, that the Court of Appeal erred in finding that the respondent had not breached the contract they executed. In their submissions, counsel for the appellant pointed to four respects in which the breach occurred, namely: a) failing to open fresh letters of credit; b)

creation of illegal loan accounts; c) charging of illegal interest; and d) failure to give notice and negotiate the exchange rates when converting USD 549,000 to Uganda Shillings.

The Court of Appeal was alive to the nature of the contract between the parties and observed in its judgment as follows:

> **"The relationship between a banker and its customer is one of contract. In this regard we agree with the authority of Esso Petroleum Co (supra) cited by counsel for the appellants. In this regard, therefore, the governing documents include the credit facility agreement dated 27th October, 2011 (page 181 ROA).**
>
> **The facility agreement was for a total of Ug. Shs. 4,531,000,000/= broken up as follows:**
>
> **1. An overdraft for UGX 400,000,000/= for working capital.**
>
> **2. A term loan for UGX 400,000,000/= for buy out of Bank of Baroda facilities.**
>
> **3. A term loan for UGX 900,000,000/= for construction and acquisition of capital assets.**
>
> **4. Asset based financing (ABF) for UGX 2,831,000,000/= for buy out of bank of baroda facilities for purchase of a feed mill."**

In relation to opening of fresh letters of credit, the Court of Appeal stated:

> **"We shall now turn to the grounds which cover the failure by the respondent bank opening of fresh letters of credit in favour of the appellants (sic).**
>
> **Here a timeline of events that needs to be carefully evaluated. In August, 2011, (12th August, 2011 to be precise page 32 ROA) well before the signing of the facility agreement, the respondents on instructions of the appellants wrote to Bank of Baroda providing a Letter of Undertaking/Guarantee (worth 601,662.16) to release all documents of title to the machinery imported from M/S Buhler SA (Pty) on behalf of the appellant under the letter of credit. It would appear that there was already a subsisting letter of credit in favour of the appellants with Bank of Baroda. It is under this Letter of Undertaking/Guarantee that a part payment of USD 52,652 for the feed mill under the said letter of credit**

from Bank of Uganda (LC No. 95011MPLC0012710 for the appellants) was paid on 12th September, 2011. We find that it was after this transaction that the credit facility agreement of October, 2011 replacing Bank of Baroda would have kicked (sic).

However, on the 24th February, 2012, in a letter from the appellants to the respondents (page 36 ROA), the appellants, because of a turn down (sic) in their business fortunes decided not to proceed with concluding the purchase of the feed mill. The respondent then decided to retire their Letter of Undertaking/Guarantee to the Bank of Baroda by letter dated 8th April, 2012. It is therefore clear to us that notwithstanding the credit facility being signed, the only letter of credit still operational was that of Bank of Baroda and no other had been authorized by the appellants. How then can the appellants claim that the respondent had failed to open fresh letters of credit when they had not specifically instructed the respondent to do so? Even the likelihood of the respondent opening fresh letters of credit had diminished by February, 2012 when the appellants informed the respondent that they were reluctant to continue to buy the feed mill when they had a business down turn. Even though the trial Judge did not pick up this sequence of events, he captured, well, the downturn of the appellant's business when he found:

"...this clearly indicates that the plaintiffs' limping business had nothing to do with failure of opening letters of credit and that they would even have been in a worse financial position had the mill been imported."

All in all, we cannot fault the trial Judge in his findings and find there was no breach in opening fresh letters of credit."

Counsel for the appellants submitted that the Court of Appeal erred in finding that the 1st appellant did not give specific instructions to the respondent to open fresh letters of credit. Counsel referred to a letter dated 25th July, 2011 written by Bank of Baroda to the respondent, where the need to open fresh letters of credit was mentioned, as imposing an obligation on the respondent to open fresh letters of credit. The Court of Appeal found that the 1st appellant did not give specific instructions to the respondent to open fresh letters of credit reasoning that the 1st neither included the obligation to do so in the facility agreement or in an express letter to the respondent. I agree. Whether or not the obligation to open fresh letters of credit could be inferred from the letter written by Bank of Baroda need not be decided because, as

rightly found by the lower Courts, the 1st appellant, citing bad business and the non-viability of purchasing the feed mill for which the letters of credit were intended, subsequently wrote directing the respondent not to open fresh letters of credit.

Counsel for the appellants also submitted that the Court of Appeal erred when they found that the appellants gave up on purchasing the feed mill but these arguments cannot be sustained especially given that in their own submissions counsel accepted that, as a matter of fact, the 1st appellant gave up on purchasing the feed mill.

Counsel for the appellants made further submissions alleging that the giving up on the feed mill was involuntary as it was caused by the respondent's failure to open letters of credit. However, there was no evidence to suggest that the letter written by the 1st appellant requesting the respondent not to open fresh letters of credit was involuntary. I would therefore uphold the finding of the lower Courts that the 1st appellant gave up on purchasing the feed mill on its own volition, as communicated in its letter to the respondent, and not because the respondent had failed to open for it fresh letters of credit.

In view of the above observations, I shall uphold the concurrent findings of the two lower Court that the respondent did not breach the contract in respect of the opening of fresh lines of credit.

With respect to the alleged breach of contract by opening illegal accounts, the Court of Appeal held that:

> **"As to the alleged breach of opening illegal and unauthorized accounts in favour of the appellant by the respondent, we find this assertion to be greatly misconceived. These were all loan accounts created under the facility agreements to manage funds disbursements and drawdowns by the appellants. There was no evidence that even account number MD1214300005 was opened in 2008 before the facility as alleged. The appellants actually do not deny the drawdown of funds so how can they call the disbursements accounts illegal? We find no breach here too."**

Counsel for the appellants submitted that eight accounts were opened by the respondent without the 1st appellant's consent and authorization. Further

that, one of those accounts MD1214300005 was opened in 2008 before the 1st appellant became a customer of the respondent. They relied on copies of the statements for the eight accounts.

Counsel for the respondent challenged the appellants' submissions relating to illegal creation of loan accounts and argued that the complaint on illegal accounts could not arise under ground 2. I accept this submission. The appellants' complaint in ground 2 was that **"the learned Justices of Appeal erred in law and in fact when they upheld a finding that the respondent was not in breach of its contract with the 1st appellant."** The submissions focus on breach of the loan facility whereas the opening of illegal accounts relates to breach of the customer-banker relationship and would not arise under the loan facility.

However, there is evidence that the respondent duly disbursed the outstanding loans to the 1st appellant. Accordingly, I would agree with the Court of Appeal that the contested loan accounts were not illegally created but were created to facilitate the management of the loan monies that were fully disbursed to the 1st appellant.

With respect to account MD1214300005, I accept the submission of counsel for the respondent that the account was erroneously reflected in the bank statement as having been opened in 2008. I say so because the 2nd appellant accepted having received the money that was disbursed through that account in a disbursement that happened after the signing of the facility agreements in 2011.

The last complaint in ground 2 was that the Court of Appeal erred in finding that the respondent did not charge illegal interest on some of the loan amounts advanced to the 1st appellant. Counsel for the appellants again submitted that the interest charged was illegal because it was charged on an illegal mortgage. This argument has no merit.

It was further argued that the interest charged was illegal because it was unilaterally adjusted by the respondent on several occasions without giving notice to the 1st appellant as required under Clause 5.4 of the facility agreement. Clause 5.4 stipulated that:

> **"The Bank may from time to time at its sole discretion and within the limits permitted by law revise the applicable rate of interest and will advise the borrower in writing of any change in the applicable rate. Failure by the Bank to advise the Borrower shall not prejudice the right of the Bank to recover interest charged subsequent to any such change."**

The Court of Appeal found as did the trial Court that the facility agreement permitted the respondent to adjust the rates of interest without notifying the 1st appellant. I agree with that finding as it is, in my view, supported by Clause 5.4 above which stipulates that **"failure by the bank to advise the borrower shall not prejudice the right of the bank to recover interest charged subsequent to any such charge."**

However, Clause 5.4 permitted the respondent to make adjustments that would charge the 1st appellant only with such rates of interest as "were permitted by law". The appellants did not attempt to argue that the interest rates charged by the respondent were in excess of those permitted by law. Therefore, I need not consider this point.

Counsel for the appellants further submitted that the manner in which the respondent adjusted the rates of interest contravened **Section 12** of the **Mortgage Act, 2009** which requires a mortgagee to give 15 working days' notice before increasing interest rates. However, I find the cited provision inapplicable as the manner of adjusting interest in the present case was governed by the parties' facility agreements.

The last complaint in ground 2 was that the Court of Appeal erred when it found that the conversion of USD 549,000 by the respondent to Uganda Shillings was properly done. The Court of Appeal held as follows:

> **"The last breach relates to the converting of USD 549,085 into Uganda Shillings without consulting the appellants or failure to exercise due diligence to avoid a big foreign exchange loss.**
>
> **It is the case for the appellants that there is no evidence that this transaction took place and even if it did, it was handled unfairly because up to UGX 280,000,000/= was lost in the currency exchange. Furthermore, if the transaction was necessary then a prudent banker**

would have allowed the client to participate in the negotiation of the exchange rate.

We are at a loss as to this line of argument. In the appellant's letter to the respondent bank dated 19th April, 2012, the appellants specifically acknowledged that the USD 549,000 was held, "as a margin for the LC but not disbursed. We are paying interest on this money. The appellants then wrote that it was imprudent to maintain this money due to the declining sales and the cancellation of the purchase of the feed mill. They then continue to write:

"We therefore request the bank to cancel this margin and realise the UGX equivalent of the USD 549,000 as soon as possible and at the prevailing exchange rates."

We find that it was the express instruction of the appellant to the respondent to convert this money into Uganda Shillings at the prevailing exchange rates and as soon as possible. The learned trial Judge ably (pages 407-8 ROA) addresses this in his judgment and does not fault the respondent for using their prevailing bank rate. In any event, this is fairly standard banking practice. Here too we find that the respondent did not cause any breach as alleged."

Counsel for the appellants raised two complaints in relation to conversion from US Dollars to Ugandan Shillings. First that there was no proof of disbursement of the money alleged to have been converted. Secondly, that the conversion was done in violation of **Para 6 (1) (a)** of the **Bank of Uganda Financial Consumer Guidelines** in that whereas the Guidelines required the respondent to act **"fairly and reasonably in all its dealings with a consumer,"** the conversion was conducted in an unfair manner. The particulars of the unfairness according to counsel for the appellants was the fact that the respondent failed to invite the 1st appellant, its customer, to negotiate the exchange rate when converting such a huge sum of money from dollars to shillings and that the omission resulted in the unjust enrichment of Ug. Shs. 280,000,000/=.

I would reject the submissions. As the Court of Appeal and the trial Court rightly found, the respondent held USD 549,000 to be applied to paying for letters of credit on behalf of the 1st appellant, if the need arose. At some point, the 1st appellant instructed the respondent to convert the said money

to Uganda Shillings and apply the obtained amount to reducing indebtedness, which the respondent duly did. The lower Courts rightly found that the respondent acted reasonably and applied its then prevailing exchange rate when it conducted the conversion. There is no evidence of a higher exchange rate that would have been applied in the circumstances, and if any such exchange rate existed, the appellants would have informed the respondent about it. I would therefore reject the last complaint under ground 2. In view of the above analysis, I would also disallow ground 2.

Ground 3

In ground 3, the appellants faulted the learned Justices of Appeal for having held that the personal guarantees executed by the 2nd, 3rd and 4th appellants in relation to the loan that the respondent advanced to the 1st appellant were legal and enforceable. In relation to these guarantees, the Court of Appeal held that the guarantees were an independent security to the mortgage which was found illegal and were enforceable on their own. The Court of Appeal noted:

> **"It has been argued for the appellants that the fact that the mortgages were illegal meant that the whole transaction was illegal. That cannot be the correct position of the law.**
>
> **...**
>
> **In this case, the respondent wisely executed multiple securities so if one failed then they would have recourse to another. The respondent bank hedged themselves better than the defunct Uganda Commercial Bank did in the General Parts case (supra).**
>
> **The trial Judge having found the fact of default and further having found that the mortgages were illegal correctly still found that the guarantees remained a separate and valid security to the main credit facility against which the respondent had the right to recover."**

I agree with the decision of the Court of Appeal and would therefore reject counsel for the appellants' renewed submission that the guarantees were illegal just like the mortgage executed between the 1st appellant and the respondent. I would emphasize that a guarantee is an independent security by which a guarantor undertakes to pay a loan on behalf of another person

should the second person be unable to pay. In the present case, and as the Court of Appeal rightly observed, the 2nd, 3rd and 4th appellants, made guarantees undertaking to pay the loan that the 1st appellant obtained from the respondent in case of the former's default. The fact that the respondent and the 1st appellant had, in relation to the loan, executed an unenforceable mortgage could not prevent the enforcement of the 2nd, 3rd and 4th appellants' guarantees which were lawful and independent of the unenforceable mortgage.

I find no merit in ground 3 and would also disallow it.

I also note that the 1st, 2nd, 3rd and 4th appellants filed Civil Application No. 007 of 2023 seeking this Court to issue an order staying execution of the decree of the High Court in Civil Suit No. 289 of 2014, from which this appeal arose, pending the hearing and determination of the same. But since, their appeal has been dismissed, I would deny the application for stay of execution, and it is hereby dismissed with no order as to costs.

In conclusion, for the above reasons, I would disallow all the three grounds of the appeal. I would accordingly find no merit in the appeal and dismiss it with costs to the respondent.

Dated at Kampala this .....13th..... day of.....October.....2023.

.....

Elizabeth Musoke

Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CORAM: OWINY - DOLLO CJ; MWONDHA, CHIBITA, MUSOTA AND MUSOKE JJSC

CIVIL APPEAL NO. 013 OF 2020

AND

CIVIL APPLICATION NO. 007 OF 2023

1. **FORMULA FEEDS LTD**
2. **GICHOHI NGARI**
3. **SAMSON NGARI**
4. **ANNE WANGULI**.....**APPELLANTS**

VERSUS

KCB BANK LTD..... **RESPONDENT**

(Arising from the decision of the Court of Appeal in Civil Appeal No. 0076 of 2016 before Kakuru, Kiryabwire and Madrama, JJA dated 8th July 2019)

JUDGMENT OF OWINY-DOLLO; CJ

I have had the benefit of reading in draft the judgment of my learned sister Elizabeth Musoke, JSC, and I concur with the reasoning, conclusions, and orders proposed therein.

Since Mwondha, Chibita, Musota, JJSC, also agree, orders are hereby issued in the terms proposed by Elizabeth Musoke JSC in her judgment.

Dated, and signed at Kampala this 13th day of October 2023

Alfonse C. Owiny - Dollo

Chief Justice

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: OWINY -DOLLO, C.J; MWONDHA; CHIBITA; MUSOKE; MUSOTA, JJSC)

CIVIL APPEAL NO. 013 OF 2020 AND
CIVIL APPLICATION NO. 007 OF 2023

(1) FORMULA FEEDS LTD
(2) GICHOLI NGARE
(3) SAMSON NGARE
(4) ANNE WANGUI GICHOLI
.....APPELLANTS

Versus

KCB BANK LTD ..... RESPONDENT

(An appeal from the decision of the Court of Appeal Kampala before Kakuru, Kiryabwire and Madrama JJA in Civil Appeal No. 007 of 201 dated 8th July 2019)

JUDGMENT OF MWONDHA, JSC

I have had the benefit of reading in draft the judgment of my learned sister Musoke JSC, I concur with the analysis and the decision that the appeal be dismissed with costs to the respondent of this Court and the Courts below. I also concur that Civil Application No. 007 of 2023 seeking for an order staying execution of the Decree of the High Court in Civil Suit No 289 of 2014 pending hearing and determination of this appeal is denied with no order as to the costs.

Dated at Kampala this 13th day of October 2023.

MWONDHA,
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: OWINY-DOLLO, C.J; MWONDHA; CHIBITA; MUSOKE; MUSOTA; JJ.SC)

CIVIL APPEAL NO: 013 OF 2020 AND CIVIL APPLICATION NO. 007 OF 2023

1. **FORMULA FEEDS LTD**
2. **GICHOLI NGARE**
3. **SAMSON NGARE :: APPELLANTS**
4. **ANNE WANGUI GICHOLI**

VERSUS

KCB BANK LIMITED ::RESPONDENT

[An appeal from the decision of the Court of Appeal at Kampala before Kakuru JA, Kiryabwire JA, and Madrama JA, in Civil Appeal No. 007 of 201 dated 08th July 2019]

JUDGMENT OF CHIBITA, JSC

I have had the benefit of reading in draft the judgment prepared by my learned sister, Hon. Justice Musoke, JSC and I agree with her reasoning and her conclusion.

I also agree with the orders that she has proposed.

Dated at Kampala this ....13th....day of ....October....2023

Justice Mike Chibita

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APEAL NO. 013 OF 2020 AND CIVIL APPLICATION NO. 007 OF 2023

(Arising from Court of Appeal Civil Appeal No. 0076 of 2016 dated 8th July 2019)

1. **FORMULA FEEDS LTD**
2. **GICHOHI NGARI**
3. **SAMSON NGARI :::::::::::::::::::::::::::::::::::: APPELLANTS**
4. **ANNE WANGUI GICHOHI**

VERSUS

KCB BANK LTD :::::::::::::::::::::::::::::::::::: RESPONDENT

CORAM: HON. JUSTICE ALFONSE CHIGAMOY OWINY_DOLLO, CJ
HON. JUSTICE FAITH MWONDHA, JSC
HON. JUSTICE MIKE CHIBITA, JSC
HON. JUSTICE ELIZABETH MUSOKE, JSC
HON. JUSTICE STEPHEN MUSOTA, JSC

JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JSC

I have had the benefit of reading in draft the judgment by my sister Hon. Justice Elizabeth Musoke, JSC.

I agree with her analysis, conclusions and the orders she has proposed. I have nothing useful to add.

Dated this 13th day of October 2023

Stephen Musota
JUSTICE OF THE SUPREME COURT