



25 The learned trial judge allowed the application in part and ordered the appellant company to pay to the respondent the costs of the application. Dissatisfied, the appellant company lodged this appeal.

**Legal Representation:**

30 Learned Counsel Ebert Byenkya of Byenkya, Kihika & Co., Advocates appeared for the appellant, while Kibuka-Musoke of Kibuka-Musoke & Co., Advocates & Solicitors, represented the respondent.

**Background:**

35 The appellant company was incorporated as a limited liability company with the Registrar of Companies, Uganda, on 05.01.1984. Its Memorandum of Association, has, as its main object, to carry on the business of builders and building contractors.

40 At incorporation the company had two subscribers as its members and directors: Mr. Raghbir Singh Sandhu with 255 ordinary shares and Mr. Jaspal Singh Sandhu with 245 ordinary shares. The company share capital was Shs.500,000/= divided into 500 ordinary shares of Shs.1000/= each. All the shares were allotted and subscribed to between the stated two.

On 30.04.1984 the said two shareholders/directors executed by each one signing a **Notification of Change of Directors or Secretary or in their particulars** on Company Form No.8

45 pursuant to **Section 201 (4) of the Companies Act**, in these  
words:

50 **“With effect from 12<sup>th</sup> Jan. 1984 Mr. Jaspal Singh Sandhu  
ceased to be a director/member of the company. On the  
same day/date Mrs. Balwinder Kaur is appointed a new  
director/member of the Company”**

The particulars of the new director or secretary of the appellant  
company were stated as **Balwinder Kaur**, Indian by nationality  
born on 05.10.1945.

Balwinder Kaur Sandhu happened to be the wife of Jaspal Singh  
55 Sandhu and subsequent to the execution of the above notification,  
both Jaspal Singh Sandhu and Balwinder Kaur Sandhu moved and  
now stay in Canada. Raghbir Singh Sandhu remained in Uganda  
carrying on the operations of the appellant company. The company  
made some profits. Later, Jaspal Singh Sandhu, claiming he still  
60 held shares in the company, demanded of the company and  
Raghbir Singh Sandhu, as shareholder and director, to account for  
the profits so that he too (Jaspal Singh Sandhu) could have his  
share as shareholder in the company. The appellant company and  
Raghbir Singh Sandhu dismissed the said demand to give an  
65 account. They contended that Jaspal Singh Sandhu had ceased to  
be a shareholder in the company as from 12.01.1984 and that it  
was his wife Balwinder Kaur Sandhu who had become a  
director/member in the appellant company. The parties failing to

agree, they took the dispute to the High Court, Kampala for  
70 adjudication.

On 07.06.2001 the High Court, Kampala, (**Okumu-Wengi, J.**) in  
**Company Cause No.16 of 2000**, held in favour of Jaspal Singh  
Sandhu by ordering that Raghbir Singh Sandhu was a delinquent  
director and that he should account for all the monies and assets of  
75 the company. The learned Judge also ordered that Jaspal Singh  
Sandhu be restored on the appellant company's register as  
shareholder/director. The appellant company and Raghbir Singh  
Sandhu appealed to the Court of Appeal against the said High  
Court decision in **Court of Appeal Civil Appeal No.41 of 2001**.

80 On 20.05.2002, the Court of Appeal allowed the appeal, set  
aside the judgement and orders of the High Court and awarded  
costs of the appeal and those of the High Court to the appellant.  
The Court of Appeal held that **Jaspal Singh Sandhu** had ceased to  
be a member/director in the appellant company and that his  
85 interests in the appellant company had passed over to **Balwinder  
Kaur Sandhu**.

Dissatisfied with the Court of Appeal decision Jaspal Singh  
Sandhu appealed to the Supreme Court in **Supreme Court Civil  
Appeal No.13 of 2002: Jaspal Singh Sandhu V Noble Builders (U)  
90 Ltd and Raghbir Singh Sandhu**.

The Supreme Court, on 22.02.2005, confirmed the decision of  
the Court of Appeal and dismissed **Civil Appeal No.13 of 2002**

with costs to the respondents in that appeal and in the courts below. In the lead judgement of the Supreme Court by 95 **Kanyeihamba JSC**, as he then was, to which the rest of the members of the court agreed to, it was stated:

100 **“Before leaving this appeal, I am constrained to observe that it was inadvisable for the appellant’s wife: Balwinder Kaur Singh not to be joined as a party to the proceedings in this case. The fact that she may not have attended board meetings or fulfilled her responsibilities as a director, does not adversely affect her rights and obligations as a shareholder and owner of the 49% of the equities of Noble Builders (U) Ltd. I agree with Kato, JA; the learned justice who wrote the lead judgement in the Court of Appeal, that it is remarkable that the appellant’s wife has not chosen to pursue her rights. Of course this judgement and all previous proceedings in this case do not in any way affect her right as shareholder in Noble Builders (U) Ltd”.**

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On 04.03.2005, the respondent, still staying in Canada, executed a special power of Attorney appointing **William Novoty Edwards**, a Ugandan, to represent, prosecute and defend her in 115 any proceedings, protect her interests, be her unlimited agent with powers to sign and execute instruments in her names as regards her interests in **Noble Builders (U) Limited**.

Thereafter the respondent lodged in the High Court, Kampala, the application through **Company Cause No.8 of 2005** to rectify the company register of **Noble Builders (Uganda) Limited** by inserting therein her name as holder of 245 ordinary shares as from 12.01.84, deleting the names of **Ms Gurmeet Kaur Sandhu** and **Mr. Bhagwart Singh** from the register as shareholders, altering the shareholding of Mr. Raghbir Singh Sandhu in the company from 70 to 255 ordinary shares, altering the company share capital from Shs.10,000,000/= divided into 100 ordinary shares of Shs.100,000/= each to a share capital of Shs.500,000/= divided into 500 ordinary shares of Shs.1000/= each, which was the shareholding at the time of registration of the company. The respondent also prayed to be awarded damages representing her fair share of 49% of the moneys the company had received over the material time.

The High Court, (**Bamwine, J.**, as he then was) as already stated, determined the application, by partly allowing it by ordering that the register of members of the company **Noble Builders (Uganda) Limited** be rectified within three (3) months from 05.08.09 (date of delivery of ruling) by registering Balwinder Kaur Sandhu as transferee of her husband's shareholding and directorship in the company. The Court also ordered, pursuant to **Section 135 of the Companies Act**, that the company convenes and holds a meeting at least within six (6) months from the date of the court order, after due notification of Raghbir Singh Sandhu of that meeting, to discuss the affairs of the company. In the event of

145 the failure or refusal by Raghbir Singh Sandhu to attend the  
meeting, then Balwinder Kaur Sandhu would form a quorum of the  
appellant company meeting and carry out the court ordered  
rectification of the company register. Notice of the rectification of  
the register was to be submitted to the Registrar of Companies. The  
Court ordered the appellant company to meet the applicant's costs  
150 of the application. It is this ruling that is the subject of this appeal.

**Grounds of Appeal:**

- 155 ***1. The learned trial Judge erred in law and fact in holding  
that the respondent's application was not an action  
founded on contract and was not therefore time barred  
under Section 3 (1) (a) of the Limitation Act.***
- 2. The learned trial Judge erred in law and fact in relying  
upon observations of the learned Justice Kanyeihamba of  
the Supreme Court in Jaspal Singh Sandhu V Noble  
Builders Civil Appeal No.13 of 2002 which were obiter  
160 dictum to hold that there was a valid transfer of 245  
shares to the respondent.***
- 3. The learned trial Judge erred in law and fact in ordering  
that the respondent, a Canadian citizen, be registered as  
transferee of 245 shares in the appellant company when  
165 the articles of association do not permit the transfer of  
shares to non-Ugandan or non-Africans.***

- 170 4. *The learned trial Judge erred in fact and in law in ordering that the respondent be registered as transferee of 245 shares when she had not produced a proper instrument of transfer of shares.*
- 175 5. *The learned trial Judge erred in law and fact in ordering a rectification of appellant company's register even though the respondent had never made any application to the appellant to have her name entered onto the register of its members.*
6. *The learned trial Judge erred in law and fact in ordering a meeting of the appellant company under Section 135 of the Companies Act when no application had been made for the same.*
- 180 7. *The learned Judge ignored evidence of changes to the membership and capital structure of the appellant and made orders which affected the interests of other shareholders without according them a hearing, effectively depriving them of their proprietary interests in*
- 185 *the appellant.*
- 190 8. *The learned trial Judge failed to properly exercise his discretion, when he failed to award costs to the appellant company despite disallowing the respondent's claim for damages amounting to ug.Shs.475,300,000/= and United States Dollars 1,586,038.*



The grounds of appeal constituted the issues to be resolved by court.

### **Submissions of Counsel:**

#### **Appellant's Counsel:**

195 **Issue 1:**

Counsel submitted that **Section 21 of the Companies Act** creates a statutory contract amongst the members of the company themselves. By applying to have her name entered as a shareholder on the register of the appellant company, the respondent was  
200 therefore enforcing a contractual right. Accordingly her action in contract was time barred in terms of **Section 3 (1) of the Limitation Act** since the same was being brought in 2005 after expiry of six (6) years from 30.04.1984 when her cause of action arose with the execution of Company Form No.8 transferring the  
205 245 ordinary shares to her.

#### **Issue 2:**

It was submitted for the appellant that the statement made both in the Court of Appeal (**Kato,JA**, as he then was) and in the Supreme Court (**Kanyeihamba JSC**, as he then was) in their  
210 respective court judgements, with which the rest of their Lordships respectively agreed, that the **“Notification of Change of Directors or Secretaries or their particulars”** had the effect of transferring the 245 ordinary shares from Jaspal Singh Sandhu to Balwinder Kaur Sandhu in the appellant company, was obiter dicta and thus

215 could not be a basis for the respondent to base upon her action for  
rectification of the register. The learned High Court trial Judge  
thus erred to hold otherwise.

**Issue 3:**

220 It was submitted for the appellant that the respondent, being a  
Canadian citizen, was barred by **Article 4 of the Appellant  
Company's Articles of Association** from holding shares in the  
company which could only be held by Africans/Ugandans.

**Issue 4 and 5 were submitted upon together by Counsel for the  
appellant.**

225 The respondent, according to appellant's Counsel, could not be  
registered as holder of shares in the appellant company because  
she had no instrument of transfer of shares to her in terms of  
**Section 75 of the Companies Act and Article 17 of the  
Appellant Company's Articles of Association.** The executed  
230 company Form No.8 dealing with "**Notification of Change of  
Directors or Secretaries or their Particulars**" upon which the  
respondent based her claim that 245 ordinary shares were  
transferred to her is not in law an instrument of transfer of shares.

235 Appellant's Counsel further contended that the respondent  
never had shares transferred to her pursuant to the procedure set  
out by **article 21 to 25 of the Articles of Association.** She had  
never applied to the board of directors of the appellant company to  
have her name entered on the register of members.

**Issue 6:**

240 This issue was abandoned by Counsel for the appellant.

**Issue 7:**

Counsel for the appellant company submitted that there were other members of the company whose interests were affected by the orders made by the trial Court, and yet they were never heard in the  
245 cause as the respondent never made them a party to the application. Thus the orders made by the learned trial judge were contrary to the non derogable constitutional right of one being given a fair hearing.

**Issue 8:**

250 Appellant's Counsel argued that the appellant company had been successful on the issue of damages as none were awarded. The appellant company was thus entitled, on proper exercise of discretion by Court, to costs of the application in respect of the issue of payment of damages to the respondent where court held in  
255 favour of the appellant company by declining to order that any moneys be paid to the respondent.

**Respondent's Counsel:**

This Counsel supported the Judgement of the High Court in his submissions on the respective issues.

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### **Issue 1:**

He submitted that the **Limitation Act** does not apply to rectification of a company register and as such an application pursuant to **Section 118 of the Companies Act** has no time  
265 limitation and **Section 21** of the same Act does not apply to a transfer of shares to a third person by a shareholder.

The Notification of Change of Directors/Secretary dated 30.04.1984 executed by the then two directors/shareholders in the appellant company had been held both by the Court of Appeal  
270 **(Civil Appeal No.41 of 2001)** and **Supreme Court (Civil appeal No.13 of 2002)** as a valid transfer of shares to the respondent by shareholder/director Jaspal Singh Sandhu in the appellant company. The respondent was thus a beneficiary of the transfer of shares and as such was not time barred under **Section 3 (1) (a) of**  
275 **the Limitation Act** in her application to have the appellant company's members' register rectified to reflect her being the owner of 245 ordinary shares in the appellant company.

### **Issue 2:**

Respondent's Counsel maintained that their Lordships **Kato, JA**, of  
280 Court of Appeal in **Civil Appeal No.41 of 2001** and Kanyeihamba, JSC, of Supreme Court in **Civil Appeal No.13 of 2002**, did not express themselves obiter dicta, but conclusively decided, after proper evaluation of evidence before them and after due consideration of the law, that the respondent had acquired the 245

285 ordinary shares of her husband, Jaspal Singh Sandhu, in the  
appellant company as from 12.01.1984.

**Issue 3:**

Respondent's Counsel submitted that **Article 4 of the appellant  
company's Articles of Association** to the effect that the appellant  
290 company **"is made purely for Africans/Ugandans and the right  
to transfer shares is hereby restricted"** was contrary to **Article  
21 of the Constitution** for being discriminatory and thus  
unenforceable. Further, restriction is not prohibition and as such  
the respondent was entitled to owning her shares in the appellant  
295 company.

**Issues 4 and 5:**

According to respondent's Counsel the document on company form  
8: **"Notification of change of directors....."** dated  
30.04.1984, had been held by both the Court of Appeal and the  
300 Supreme Court to be a valid transfer of shares to the respondent.  
Further, the company never had a properly constituted board to  
which the respondent could apply to have her shares placed on the  
company register. Therefore because there was no proper board of  
directors, no lawful organ of the company ever rejected company  
305 form No.8 as a valid transfer of shares to the respondent.

**Issue 6:**

The respondent's Counsel agreed to the abandoning of this issue by  
310 Counsel for the appellant company.

**Issue 7.**

It was the respondent's case that her cause of action was against  
the appellant company as a corporate entity as at the time she  
acquired by transfer the 245 ordinary shares on 12.01.1984. It was  
315 up to a shareholder/director who felt aggrieved to apply to be joined  
to the Cause. None had done so and as such the respondent's  
course of action could not be taken as invalid in law.

**Issue 8:**

The respondent submitted that the High Court partly allowed the  
320 respondent's application and, in the judicious exercise of its  
discretion, awarded costs to the respondent payable by the  
appellant company. There was no basis for interfering with the  
court's exercise of such discretion.

Respondent counsel prayed court to dismiss the appeal with  
325 costs.

**Resolution of the issues by court.**

**Issue 1.**

It is necessary to decide under this issue whether the  
respondent's **Company Cause No.31 of 2005 (Commercial**

330 **Division)** and later **Company Cause No. 8 of 2005 (Civil Division)**  
by way of Chamber Summons lodged in court on 16.09.05 was time  
barred.

Through this company cause the respondent prayed for court  
Orders to have the appellant company's members register rectified  
335 by inserting therein the name of the respondent as holder of 245  
ordinary shares transferred to her on 12.01.84 by Jaspal Singh  
Sandhu, delete Ms Gurmeet Kaur Sandhu and Mr. Bhagwart Singh  
from the register as shareholders, alter the shares of Mr. Raghbir  
Singh Sandhu to read 255 ordinary shares instead of 70 ordinary  
340 shares and to have the share capital of the appellant company  
changed from the present Shs.10,000,000/= divided into 100  
ordinary shares of Shs.100,000/= each to the original share capital  
of Shs.500,000/= divided into 500 ordinary shares of Shs.1000/=  
each, being the original share capital at the time of registration of  
345 the appellant company. The applicant also prayed to be awarded  
damages representing her fair share of moneys earned by the  
appellant company on a number of works carried out by the  
company.

The Company Cause was supported by the affidavit of William  
350 Edwards, appointed attorney of the respondent.

Through the affidavit of Raghbir Singh Sandhu and Jaspal Singh  
Sandhu, the appellant company resisted the Company Cause.

The learned High Court trial Judge **Bamwine, J.**, as he then  
was, rejected the submission that the respondent's application to

355 rectify the register was time barred by holding that **section 118 of the Companies Act**, has no stipulation as to limitation of time as to when a company's register of members has to be rectified.

Limitation of time relates to causes of action in law. A fact (or a combination of facts) that give rise to a right of action by a claimant  
360 in civil law constitutes a cause of action.

The **Limitation Act, Cap.80**, prescribes the periods within which proceedings to enforce a right to a cause of action must be taken, otherwise the right to such a cause of action will be time barred if that period expires. Thus under **Section 3 of the said**  
365 **Act**, actions founded on contracts/torts (other than torts involving personal injuries) extinguish after six years, actions for personal injuries three years and twelve years for actions for recovery of land. The date from which limitation time begins to run may be postponed for disability of the claimant, fraudulent concealment or  
370 mistake or such time may begin running afresh by a signed written acknowledgement of the claimant's claim or by part payment or part performance.

It is an admitted fact that both the Court of Appeal in **Noble Builders (U) Ltd And Another Vs Jaspal Singh Sandhu: Civil**  
375 **Appeal No.41 of 2001** and also the **Supreme Court** in **Jaspal Singh Sandhu Vs Noble Builders (U) Ltd And Another: Civil Appeal No.13 of 2002**, held that as from 12.01.84 Jaspal Singh Sandhu ceased to be a shareholder/director in the appellant company having transferred his 245 ordinary shares in the



380 appellant company to the respondent, who also happened to be his  
wife.

By moving the High Court through **Company Cause No.8 of  
2005** for the said court to order that the appellant company's  
register of members be rectified by noting the shares transferred to  
385 the respondent as stated above, the said respondent was not  
commencing a fresh cause of action for the court to determine  
whether or not she was the rightful owner of such shares. All that  
the respondent prayed court to do was for the court, through the  
exercise of its discretion, to order rectification of the appellant  
390 company's register of members by the said register clearly showing  
the shares the respondent holds in the appellant company.

A company register is prima facie evidence of any matters which  
the Companies Act directs or authorizes to be inserted in the said  
register. It shows the name and address of a member of the  
395 company, the date a member became or ceased to be such a  
member and, in case of a company with a share capital, the register  
also states the number and class of shares a member holds and the  
amount paid up on each share. The register is normally kept at the  
company's registered office. A company register is thus one of the  
400 several means through which the fundamental principle underlying  
the Companies Act of full disclosure is carried out. It contains  
relevant information about the company for the public and other  
members of the company, subject to some restrictions to access, so

that they are knowledgeable about the company: See: **Gowers**  
405 **Principles of Modern Company Law, 6<sup>th</sup> Ed pp 505 and 509.**

This court's appreciation of the pleadings, the submissions of  
respective Counsel and the law applicable, leads court to conclude  
that by applying through **Company Cause No.8 of 2005** to have  
the appellant company's register of members rectified, the  
410 respondent was not asserting a contractual cause of action and as  
such the operation of the **Limitation Act** did not cover the  
respondent's stated act. All that the respondent sought was to  
have, through court orders, what she regarded as relevant  
information about her interests in the appellant company to be  
415 properly recorded and set out in the register of the company, and to  
remove therefrom what she took to be incorrect information.

We are satisfied that the decision of the Court of Appeal (**Civil**  
**Appeal No.41 of 2001**) confirmed by the Supreme Court (**Civil**  
**Appeal No.13 of 2003**) conclusively settled the fact that the  
420 respondent was the holder of 245 ordinary shares in the appellant  
company. Therefore by applying to have the appellant company  
members register rectified the respondent was not enforcing a  
contractual right in terms of **Section 21 (1) of the Companies Act**  
as submitted by counsel for the appellant.

425 We accordingly hold in respect of issue No.1 that the learned  
trial judge came to the right conclusion when he held that the  
respondent's action was not founded on contract and was therefore  
not time barred. We disallow ground No.1 of the appeal.

430 In issue 2 of the appeal, the appellant faults the trial judge for  
relying upon what appellant's counsel referred to as observations of  
**Justices Kato, JA**, in the lead Judgement in **Court of Appeal  
No.41 of 2001** and **Kanyeihamba, JSC**, of the Supreme Court in  
**Civil Appeal No.13 of 2002** that there was a valid transfer of 245  
435 shares by Jaspal Singh Sandhu to the respondent, the transaction  
having taken place in the appellant company. Appellant's Counsel  
asserts that what the two learned Justices stated in their respective  
judgements was obiter dictum and as such ought not to have been  
relied upon by the learned trial judge.

**Obiter dictum** is an observation by a judge on a legal question  
440 arising from and/or suggested by a case presided over by that  
judge, but not arising in such a manner as to require a decision.  
Such observation is not binding as a precedent. See: **Osborn's  
Concise Law Dictionary, 6<sup>th</sup> Edition, page 238.**

In **Civil Appeal No.41 of 2001: Noble Builders (U) Ltd and  
445 Raghbir Singh Sandhu Vs Jaspal.S. Sanhhu, Kato, JA**, as he then  
was, in the lead judgement held:

450 **“Mr. Mubiru-Kalenge's argument that shares could only be  
transferred in accordance with the provisions of Section  
75 of the Companies Act is valid. That section in fact  
requires shares to be transferred in accordance with the  
Articles of Association of the company. In the present  
case the respondent surrendered his shares to his wife and**

**that was perfectly in order under article 25 of the Articles of Association of the first appellant.”**

455 Later on the learned justice continued in the same judgement:

**“It is my considered opinion that as from 12/1/84 the respondent ceased to be a member of the first appellant and his rights in that company were vested in his wife. It is remarkable that the wife has not chosen to pursue her rights.”**

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It is the above findings of **Kato, JA**, as he then was, agreed upon by the rest of the members of the Court of Appeal, that **Kanyeihamba, JSC**, as he then was, found to be correct, after appraising himself of all the evidence, submissions and the law both at trial and appellate stages, when in the lead judgement in **Supreme Court Civil Appeal No.13 of 2002**, being an appeal against the decision in **Court of Appeal Civil Appeal No.41 of 2001**, he stated with the concurrence of the rest of the Supreme Court Justices that:

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**“in my opinion, the learned justices of Appeal cannot be faulted. In support of their decision I find further evidence that the wife of the appellant acquired shares of her husband who was the original subscriber at the initial stage of the company’s incorporation. The record shows that her husband who is the appellant in this appeal owned 49% of the shares and the first respondent owned the remaining 51% of the shares. Thereafter, the**

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**appellant transferred both his directorship and membership of the company to his wife, Mrs. Balwinder Kaur Sandhu.”**

480 This Court finds that both their Lordships **Kato, JA,** and  
**Kanyeihamba, JSC,** arrived at the conclusion they arrived at on  
the issue of transfer of shares, basing themselves on the evidence  
that was adduced, the submissions made and the law applicable as  
availed and made to their respective courts. It is accordingly not  
485 right, as Counsel for the appellant seems to assert, that what each  
one of their said Lordships stated was obiter. Each one of their said  
Lordships supported by the respective justices of the respective  
courts reached the decision each one reached based on the evidence  
and the law applicable. Each one of their said Lordships  
490 conclusively decided the point of transfer of shares. What they  
decided were not mere observations on the subject.

The resolution of issue 2 is that the learned trial Judge was right  
to hold that the question of transfer of 245 ordinary shares by  
Jaspal Singh Sandhu to the Respondent had been conclusively  
495 resolved by both the Court of Appeal and Supreme Court. There is  
therefore no merit in the second ground of appeal. The same  
stands disallowed.

The third issue is whether the appellant company's Articles of  
Association permit the transfer of shares to the respondent who is  
500 not an African or a Ugandan given that Article 4 of Association of  
the appellant company provides that:

**“The company is made purely for Africans/Ugandans and the right to transfer shares is hereby restricted.”**

As already pointed out, both their Lordships of the Court of Appeal  
505 and the Supreme Court, who were aware of Article 4 of the  
appellant company’s Articles of Association, found and held, in  
spite of the said Article, that there was a valid transfer of 245  
ordinary shares by Jaspal Singh Sandhu to the respondent.  
Therefore the principle of estoppel by record prevents the appellant  
510 company to dispute, purportedly on the basis of Article 4, the fact  
that the respondent is the holder of 245 ordinary shares in the  
appellant company. The issue of transfer of shares to the  
respondent by Jaspal Singh Sandhu in the appellant company was  
an essential element that was litigated upon by both the Court of  
515 Appeal and the Supreme Court in the respective appeals. The  
appellant was and is thus stopped from disputing that fact in  
**Company Cause No.8 of 2005** or in this appeal. See: **Dictionary  
of Law, 6<sup>th</sup> Edition, E.A. Martin and J. Law, Editors, Oxford  
University Press, pp 200 and 291.**

520 Further, and independent of the above, Article 25 of the  
appellant company’s Articles of Association, is in its application,  
independent of and not subject to Article 4. Under the said Article  
25 a member of the company has powers to transfer his shares to  
his spouse, child or some other close relative. There is no  
525 requirement in Article 25 that the spouse or child or relative to  
whom the shares are being transferred has to be African or

Ugandan. It is the relationship that is material in this Article. It is a fact accepted by all the parties to **Company Cause No.8 of 2005** out of which this appeal arises, that the respondent was, at all  
530 material time, the wife of Jaspal Singh Sandhu, who transferred the 245 ordinary shares to her. The transfer of the said shares to the respondent was voluntarily done with the knowledge and consent of the then only two (2) shareholders/directors of the appellant company, namely Raghbir Singh Sandhu and Jaspal Sing Sandhu.  
535 Indeed at the time of the transfer both of them were aware and stated it in writing in **Company Forms 8** that the respondent at that time of the transfer on 30.04.1984 was an Indian by nationality and not a Ugandan or African. Both Raghbir Singh Sandhu and Jaspal Singh Sandhu signed that **Company Form 8**.  
540 Later the transferee of the shares, that is the respondent, became a Canadian citizen. There is no justification now to assert that the respondent cannot have acquired the shares because she is now a Canadian citizen, yet no such objection was raised by the very same people on 30.04.1984 when the respondent became transferee of  
545 the shares and she was an Indian national.

Both, as the only shareholders/members/directors of the appellant company, had absolute control of the affairs of the appellant company, including admitting to membership of the appellant company whomever they chose to admit. They admitted  
550 the respondent by transferring 245 ordinary shares to her. None of them can backtrack from that decision now.

For the above reasons we find that the trial judge arrived at the right conclusion as regards issue No.3. There is therefore no merit in the third ground of appeal. The same also stands dismissed.

555 Grounds 4 and 5 of the appeal were considered and submitted upon together respectively by both Counsel for the appellant and the respondent. This Court shall also resolve both grounds together.

As already held, both the Court of Appeal and the Supreme  
560 Court having conclusively resolved that Company Form 8 executed by the then two members of the appellant company, namely Raghbir Singh Sandhu and Jaspal Singh Sandhu was a proper and effective document of the transfer of 245 ordinary shares by Jaspal Singh Sandhu to the respondent, the submission of Counsel for the  
565 appellant company that there was no transfer of shares because there was no proper instrument of transfer of shares delivered to the company in terms of **section 77 of the Companies Act** loses legal validity. This court reiterates that both in law and in fact, on the basis of the decision of the Court of Appeal confirmed by the  
570 Supreme Court, Jaspal Singh Sandhu transferred his 245 ordinary shares to his wife, the respondent, as is borne out by Company Form 8 voluntarily executed by the then only two members of the company on 30.04.1984.

The above constitute answers to issues 4 and 5. We accordingly  
575 find no merit in grounds four (4) and five (5) of the appeal. The two grounds are accordingly also dismissed.



Both Counsel for the appellant company and for the respondent abandoned issue and ground six (6) of the appeal. This court allowed the abandonment of this ground. Accordingly the holding  
580 of the trial judge whereby he ordered that the appellant company holds a meeting under **section 135 of the Companies Act** remains unchallenged under this appeal.

In issue No.7, Counsel for the appellant company faults the trial judge for ignoring evidence of changes to the membership and  
585 capital structure of the appellant company by making orders which affected the interests of other shareholders when the said shareholders had not been afforded a hearing, thus effectively depriving them of their proprietary interests in the appeal and company.

This Court notes that **Company Cause No.8 of 2005** was  
590 instituted by the respondent against the appellant company to have the register of members of the appellant company to be rectified in the particulars prayed for by the respondent. It is the respondent's case that she became shareholder in the appellant company on  
595 12.01.1984 with acquisition by transfer of 245 ordinary shares. The trial judge, rightly in our view, only allowed the Company Cause in part. He ordered that the appellant company's register of members be rectified within three (3) months from the date of the court order by registering the respondent as transferee of 245  
600 ordinary shares transferred to her by her husband Jaspal Singh Sandhu and as such the respondent being also a director in the

appellant company. The learned Judge then also ordered that the company holds a meeting under **Section 135 of the Companies Act** within six (6) months from the date of the court's order to discuss the affairs of the company.

In the considered view of this Court it is after the noting on the members register of the appellant company that the respondent is the holder of 245 ordinary shares and is by virtue of that exercising her rights in the appellant company that the issues of any other persons claiming to have an interest in the company can be resolved upon by the company. The appellant company has in a way conceded abandoning issue No.6 of the appeal, that the trial judge acted properly in ordering the holding of the appellant company's meeting under **section 135 of the Companies Act**. This court finds that the learned trial judge properly exercised the discretion vested in him when he ordered for the company to hold such a meeting. It is at that meeting or thereafter, when the respondent is exercising her powers as shareholder/director in the company, that anyone claiming an interest in the appellant company will present those interests and the same will be dealt with there and then or thereafter. We accordingly find no merit in ground number seven (7) of the appeal. We dismiss the same.

In issue No.8 the appellant company faults the trial judge for having failed to properly exercise his discretion when he did not award costs to the appellant company despite disallowing the

respondent's claim for damages amounting to  
Ug.Shs.475,300,000/= and United States Dollars 1,586,038.

630 The law is that a successful party in a cause before the court is  
entitled to costs unless the court that has adjudicated the said  
cause, in its Judicious exercise of its discretion, and for shown  
reasons, decides otherwise. See: **Section 27 of the Civil  
Procedure Act, Cap.71.** See also **Supreme Court of Uganda Civil  
Appeal No.28 of 1995: Uganda Development Bank Vs National  
Insurance Corporation (U) Limited** and also **Civil Appeal No.51  
635 of 1996: Court of Appeal Civil Appeal No.51 of 1996: Uganda  
Bankers Employers Association Vs National Union of Clerical,  
Commercial, Professional and Technical Employees.**

It appears to this Court that, while it is true that the respondent  
claimed substantial damages from the appellant company in  
640 **Company Cause No.8 of 2005**, the trial judge did not actually  
resolve, one way or the other in his ruling, the issue of damages.  
The trial judge did not hold, as between the appellant company and  
the respondent, as whether or not the appellant company was liable  
to pay or whether or not the respondent was entitled to be paid by  
645 the appellant company such damages. Though the trial judge did  
not expressly state so in his ruling, he seems to have left the issue  
of what amounts of money, if any, the respondent is entitled to get  
from the appellant company, to be resolved as an internal matter of  
the company to be resolved by the company with the respondent  
650 participating as shareholder/director, at its meeting ordered by the

court to be convened under **section 135 of the Companies Act** and/or at subsequent meetings thereafter, if circumstances warranted so.

655 The appellant company lodged no appeal against the specific point that the learned trial judge did not, in his ruling, dispose of one way or the other, the issue of the respondent's claim for damages as her fair share of the receipts of money by the appellant company from various contracts.

660 The above being the case, Counsel for the appellant company is not right to assert that the trial judge disallowed the respondent's claim for damages and by reason thereof the appellant company should have been awarded costs for the disallowed damages. This Court takes the correct position to be that the learned trial judge did not express himself one way or the other on the issue of the  
665 claimed damages. The appellant company did not question this position adopted by the learned trial judge on this issue by way of appeal.

The trial judge however expressly dealt and found in favour of the respondent on the issues that **Company Cause No.8 of 2005**  
670 was not time barred, that the same was competent in law and that there was a valid transfer of 245 ordinary shares to the respondent.

Given the fact that the learned trial judge found in favour of the respondent on the above issues, which constituted the main substance of **Company Cause No.8 of 2005** and did not deal with

675 the issue of damages, one way or the other, this court finds no  
reason to interfere with the judicious exercise of the learned trial  
Judge's discretion when he ordered that the appellant company  
meets the respondent's costs arising out of the application in the  
nature of **Company Cause No.8 of 2005**. We thus see no merit in  
680 ground number eight (8) of the appeal.

All the grounds of the appeal having failed this appeal stands  
dismissed.

Given the lapse of time from 05.08.2009 when the trial judge  
delivered his ruling and now, September, 2013, which is a period of  
685 four (4) years, it is necessary, for the ends of justice to be met, that  
this court makes fresh orders in the matter. This court therefore  
orders that:-

1. The appellant company's register of members, if it has not yet  
been rectified, be rectified within a period of 14 days from the  
690 date of delivery of this Judgement by registering the  
respondent as transferee of Jaspal Singh Sandhu's  
shareholding of 245 ordinary shares and also that she is a  
director in the appellant company. Should such rectification  
be not done by the appellant company within the said period  
695 of 14 days from the date of delivery of this judgement, then the  
Registrar of Companies, Uganda, is, on the basis and  
authority of this Judgement, to proceed to register the  
respondent Balwinder Sandhu Kaur, as the holder of 245  
ordinary shares, as transferee of the said shares from Jaspal

700 Singh Sandhu and also as a director in the appellant company  
of **NOBLE BUILDERS (U) LIMITED**.

2. If no meeting of the appellant company has been held under  
**section 135 of the Companies Act** as ordered by the learned  
trial judge on 05.08.2009, it is hereby ordered that such a  
705 meeting be held within thirty (30) days as from the date of this  
Judgement and after giving notice of at least seven (7) days of  
such a meeting and the agenda of the topics to be discussed at  
the said meeting to Raghbir Singh Sandhu to discuss the  
affairs of the company with Balwinder Sandhu Kaur as  
710 shareholder and director in the appellant company.

In the event of the said Raghbir Singh Sandhu's failure or  
refusal to attend such a meeting, then Balwinder Sandhu  
Kaur shall form a quorum for such appellant company  
meeting and the deliberations and resolution(s) of that meeting  
715 shall be binding upon the company and the same shall be filed  
with the Registrar of Companies.

As to costs, the respondent is awarded the costs of this  
appeal as well as those of the court below, as already held in  
respect of the eighth (8) ground of appeal, as against the  
720 appellant company.

We so order.

This Judgement is signed by two of their Lordships A.S.  
Nshimye and Remmy Kasule, Justices of Appeal, as Lady

725 Justice M.S. Arach Amoko, who was part of the coram and  
took part in reaching the decision expressed in this  
Judgement, left the Court of Appeal on her being elevated to  
the Supreme Court before putting her signature on this  
Judgement.

Dated at Kampala this...4<sup>th</sup> .....day of September, 2013.

730

A.S. Nshimye  
**JUSTICE OF APPEAL**

735

M.S. Arach Amoko  
**JUSTICE OF APPEAL**

740

Remmy Kasule  
**JUSTICE OF APPEAL**