THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT KAMPALA

*(Coram: Eva Luswata, Florence Nakachwa & Musa Ssekaana JJA)*

CIVIL APPEAL NO. 147 OF 2014

1. STANDARD CHARTERED BANK(U) LIMITED
2. STANBIC BANK (U) LIMITED
3. BANK OF UGANDA :::::::

6. **AISHA BASAJJA**

7. **YUDAYA INTERNATIONAL LTD**

8. **HABA GROUP (U) LIMITED**

9. **AZIDA BASAJJA :::::::::::::::::::::::::::::::::::::::::::::::::::: APPELLANTS**

-VERSUS-

1. **STANDARD CHARTERED BANK(U) LIMITED**

2. **STANBIC BANK (U) LIMITED**

3. **BANK OF UGANDA :::::::::::::::::::::::::::::::::::::::::::::::::::: RESPONDENTS**

*[Appeal from the Ruling and Orders of the High Court at Kampala before the Hon. Lady Justice Hellen Obura dated 18th March 2014 in High Court Miscellaneous Application No. 234/2013 itself arising out of Civil Suit No. 571 &572/2012]*

JUDGMENT OF MUSA SSEKAANA, JA

**Introduction**

Before this court are two appeals, that is; Civil Appeal No. 147 of 2014; Standard Chartered Bank(U) Limited & 2 Others versus Hassan Basajja & 8 others and Civil Appeal No. 140 of 2015; Hassan Basajja & 8 others versus Standard Chartered Bank (U) Limited & 3 Others. Both appeals were instituted and arose out of the ruling and orders issued by Hon. Lady Justice Hellen Obura in High Court Miscellaneous Application No. 234/2013 Hassan Basajja & 8 Others versus Standard Chartered Bank (U) Limited & 2 others.

When the appeals were called for hearing, the consensus of all counsel for the parties was that since the appeals arose from the same decision as between the same parties, it was only prudent that they be consolidated. The court thus granted an order consolidating the two appeals.

**The Background of the Appeal**

The background, as is discerned from the pleadings, the ruling of the trial court and the submissions of counsel for the parties in this appeal is summarized as hereunder;

Sometime in 2002, Basajjabalaba Hides & Skins Limited obtained two loan facilities; to wit; a loan in the sum of USD 5, 000, 000 from Stanbic Bank (U) Limited concluded vide; letter dated 14th March 2002. On 5th November 2002, the same company obtained facilities in the sum of USD18, 500,000 and UGX433, 340, 000 from Standard Chartered Bank (U) Limited. These loans were guaranteed. In respect of the loans from Stanbic Bank, the guarantors were three (3) individuals namely Hassan Basajja, Mary Basajja and Azida Basajja. For the loan monies obtained from Standard Chartered Bank (U) Limited, the guarantors were eight (8) individuals namely, Hassan Basajja, Musa Basajja, Iddi Basajja, Mary Basajja, Shamim Basajja, Aisha Basajja and Azida Basajja together with two (2) corporate entities that is; Yudaya International Limited and Haba Group (U) Limited.

The principal debtor company, M/s Basajjabalaba Hides & Skins Limited defaulted on servicing of the loans as obtained from Stanbic Bank (U) Limited and Standard Chartered Bank (U) Limited. At the time of default, the loans stood as at 1st April, 2003 at USD3,464, 467 in relation to the loan obtained from Stanbic Bank (U) Limited and as at 23rd January, 2004 stood at USD18,300,000 in respect of the second bank Standard Chartered Bank (U) Limited.

After the default, the private commercial banks of Stanbic Bank (U) Limited and Standard Chartered Bank (U) Limited assigned all the rights to Bank of Uganda. Standard Chartered Bank assigned through a deed of assignment that was dated

30th March 2006. In that deed of assignment, the assignor Standard Chartered acknowledged that it had received a consideration of USD 9,150,000 (United States Dollars Nine Million One hundred fifty thousand) and assigned all its interest in the debt due and owing from Basajjabalaba Hides & Skins Limited standing at USD18,300,000 to Bank of Uganda. The securities used for purposes of securing the loan were accordingly handed over to Bank of Uganda to enable the debt recovery. Under clause 4 of the same deed of assignment, the assignor bank appointed the assignee as its attorney for purposes of demanding, suing, recovery, enforcement of payment and any other steps that would be necessary to collect the debt.

On the other hand, Stanbic Bank Limited too assigned its rights to Bank of Uganda. The assignment was concluded by a deed dated 13th June 2008. In the said assignment deed, the assignor bank assigned to Bank of Uganda the debt due and owing from Basajjabalaba Hides & Skins Limited which at the time of assignment stood at USD3,464, 467. Under clause 1.3 of this assignment deed, it was provided that upon execution of the deed of assignment, the assignor would have no right to or liability in respect of the debt and any security assigned.

Subsequently, a dispute arose between the parties. Basajjabalaba Hides & Skins Ltd sued Standard Chartered Bank Limited, Stanbic Bank Limited and Bank of Uganda, vide HCCS OS No. 09/2005. The subject matter in dispute were the debts hitherto assigned by the said Banks to Bank of Uganda, together with the securities mortgaged by Basajjabalaba Hides & Skins Ltd. The said suit was wholly settled by consent judgment duly executed by the parties on 29th January 2010 but endorsed by Court on 3rd February 2010.

The terms of the Consent judgment were that Basajjabalaba Hides & Skins Limited would pay to the Bank of Uganda for the benefit of the Government of the Republic of Uganda, a total compromised sum of US$ 11,575,000, inclusive of the USD $9,150,000 being amounts owed to Standard Chartered Bank Limited and USD $ 2,425,000 in respect of amounts owed to Stanbic Bank Uganda Limited, sums paid by the Government of Uganda through the Bank of Uganda, otherwise in the event of default, Bank of Uganda would be at liberty to realize and enforce recovery pursuant to the assignment against the mortgaged securities.

Pursuant to the terms of the consent Judgement, Basajjabalaba Hides & Skins Limited filed HCMA No. 238 of 2011 against Bank of Uganda and the Commissioner Land Registration seeking consequential orders and recovery of the mortgaged securities, on ground that the decretal sum of US$ 11,575,000 agreed to in the Consent Judgment in HCCS OS 09/2005 had been fully paid and that it was thus entitled to a release of the mortgaged securities. The application was allowed by Kwesiga J, who upon being satisfied that the decretal of US$ 11,575,000 had been paid granted the consequential order for the release of the 18 certificates of title together with the releases of mortgage encumbrances thereon.

**The summary suits by the Banks brought against the guarantors**

Subsequent to the execution of the deeds of assignment with Bank of Uganda, and the Consent Judgment in HCCS OS No.09/2005, Stanbic Bank Uganda and Bank of Uganda filed a summary suit vide; Civil Suit No. 571 of 2012 against the guarantors of the loans extended to M/s Basajjabalaba Hides and Skins for recovery of US $ 5, 623, 782 (United States Dollars Five Million Six hundred twenty three thousand Seven hundred Eighty two*)* alleged to be the amount owed by them as guarantors

of the indebtedness of Basajjabalaba Hides and Skins Limited as at the 31st October 2012.

Similarly, Standard Chartered Bank and Bank of Uganda also, filed High Court Civil Suit No. 572 of 2012 by way of a summary suit against the guarantors of the loans extended to M/s Basajjabalaba Hides and Skins Limited seeking to recover US $34, 637, 238 (United States Dollars Thirty-Four Million Six Hundred Thirty-Seven thousand two hundred thirty-eight) being the amount allegedly owed by them as guarantors of the indebtedness of Basajjabalaba Hides and Skins Limited.

The guarantors were granted leave to appear and defend and they filed their respective defences to the claim. The suits were subsequently consolidated. Thereafter, the guarantors filed High Court Miscellaneous Application No. 234 of 2013 against Bank of Uganda, Stanbic Bank Ltd and Standard Chartered Bank Ltd seeking to strike out the said suits on grounds inter-alia that; through assignment of all rights held in relation to the loan monies to Bank of Uganda, Stanbic Bank Ltd and Standard Chartered Bank Ltd no longer had locus to institute an action seeking to recover the loan monies; that Bank of Uganda could not institute an action meant to recover monies that are owed to Government of Uganda, this being a constitutional preserve of the Attorney General. The guarantors also claimed that the said suits did not disclose a cause of action and were in any case affected by res judicata, the claim having been fully settled by consent judgment in HCCS OS No.09/2010.

**The findings and Orders of the Trial Court**

In her ruling, the learned Judge made the following findings and orders; (i) that the deeds of assignment executed between Stanbic Bank Ltd and Standard Chartered

Bank Ltd and Bank of Uganda were absolute and that, upon assignment, the ownership of the debts changed from being owned by Stanbic Bank Ltd and Standard Chartered Bank Ltd to being owned by the Government of the Republic of Uganda; (ii) that Stanbic Bank Ltd and Standard Chartered Bank Ltd had no capacity to sue on behalf of Government of Uganda and therefore had no capacity to commence HCCS No. 571 of 2012 & HCCS No. 572 of 2012; (iii) that the said banks be stuck out for having been improperly joined; (iv) that, unlike Stanbic Bank Ltd and Standard Chartered Bank Ltd, Bank of Uganda had locus to sue, deriving the same from the express provisions of the deeds of assignment and from Section 2(2) and 5 of the Bank of Uganda Act, which clothed it with corporate status from which it derived its locus standi to sue; (v) that the principle that an agent of a named principal cannot sue in its name for recovery of a debt belonging to the principal was not applicable as the principal–agent relationship between Government of Uganda and Bank of Uganda was regulated by Statute; (vi) that the presence of the Attorney General was necessary to enable the Court to effectually and completely adjudicate and settle all questions involved and pursuant to **Order 1 Rule 10 (2) of the CPR**, the Attorney General be added as the 2nd Plaintiff to Civil Suits No. 571 & 572; (vii) that since Bank of Uganda had capacity to sue on behalf of Government of Uganda, the plaints disclosed a cause of action.

Regarding the plea of res judicata, and the applicant's contention that the claims in Civil Suits No. 571 of 2012 & 572 of 2012 had been determined by the consent judgment in HCCS OS No. 9 of 2005 BHSL versus Standard Chartered Bank (U) Limited, Stanbic Bank (U) Limited and Bank of Uganda, followed by the payments of the sums indicated in the consent, the trial court found that the consent judgment was in respect of the debts that were assigned to Bank of Uganda as an

agent of Government of Uganda, discounted to the total sum of US $ 11,575,000. The Learned trial Judge found that; (i) by the consent judgment, the monies due were supposed to be paid within 6 months and in default, Bank of Uganda would be at liberty to realize and enforce recovery pursuant to assignment against the mortgaged property; (ii) realization and enforcement would be in accordance with the assignment and not merely by executing the consent judgment; (iii), that if the payment of US $ 11,575,000 had been made within the stipulated 6 months, Civil suits No. 571 & 572 of 2012 would be *res judicata* and if the payments were not made as agreed then the suits would not be *res judicata* as the issues for determination would be much wider.

Further, upon consideration of the ruling of Hon. Justice Wilson Kwesiga in Miscellaneous Application No. 738 of 2011, the learned Judge noted that, there was a difference in the parties, the issues in the suits 571 & 572 were wider than the issue of payment of US$ 11,575,000 that was handled by Hon. Justice Wilson Kwesiga and as such that the absence of those two key elements made *res judicata* inapplicable. Consequently, the Trial Court made the following orders;

i. *The 1st and 2nd Respondents (that is Stanbic Bank and Standard Chartered Bank) are struck out of Civil Suit No. 571 &572 of 2012 for lacking capacity to sue.*
ii. *The Attorney General is added as the 2nd Plaintiff in the consolidated suits.*
iii. *The pleadings be amended to capture the proper parties and consolidate the claims.*
iv. *Costs of the application shall be in the cause.*

**Grounds of Appeal**

In Civil Appeal No. 140 of 2014, the Appeal was premised on two grounds to wit;

i. *The learned trial Judge erred in law and fact when she held that the 1st and 2nd Appellants had no cause of action in the suit by reason of having assigned their interest in the debts and securities held to the 3rd Appellant in striking the 1st and 2nd Appellants off the Plaints in H.C.C.S Nos. 571 and 572 of 2012.*

ii. *The learned Trial Judge erred in law and fact when she held that the basis for the 3rd Appellant's entitlement to sue was the statutory agent of the Government of Uganda.*

In Civil Appeal No. 147 of 2015, the guarantors as the appellants premised their appeal on 5 grounds to wit;

i. *The Learned Trial Judge erred in law and in fact when, upon holding that Stanbic Bank and Standard Chartered Bank, had no locus and no cause of action against the Appellants, she wrongly and injudiciously exercised her discretion on award of costs.*

ii. *The learned Trial Judge erred in law and fact when she held that the Bank of Uganda has capacity to sue on behalf of the Government of Uganda.*

iii. *The learned Trial Judge erred in law and in fact when she held that the plaint in CS No. 571 & 572 of 2012 disclosed a cause of action by the 3rd respondent against the appellant.*

iv. *The Learned Trial Judge erred in law and in fact when she held that the consent judgment entered in HCCS No. "OS" 09 of 2005 did not render CS No. 571 & 572 of 2012 res judicata.*

v. *The Learned Judge erred in law and fact when she ordered that the Attorney General be added as a Plaintiff to the suit.*

At the hearing, following the order of consolidation of the appeals and with the consent of learned counsel for the parties, it was ordered that grounds 1 & 2 of the Civil Appeal No. 140 of 2014 would be grounds 1 & 2 of the consolidated appeal while grounds 1, 4 and 5 of Civil Appeal No. 147 of 2015 would respectively be grounds 3, 4 and 5 of the Consolidated appeal. Thus, grounds 2 and 3 of Civil Appeal No. 147 of 2015 were deemed to be covered by the 5 agreed grounds and were abandoned. It is therefore the agreed five grounds that have been considered for purposes of determination of this appeal, namely;

i. *The learned trial Judge erred in law and fact when she held that the 1st and 2nd Appellants had no cause of action in the suit by reason of having assigned their interest in the debts and securities held to the 3rd Appellant in striking the 1st and 2nd Appellants off the Plaints in H.C.C.S Nos. 571 and 572 of 2012.*

ii. *The learned trial Judge erred in law and fact when she held that the basis for the 3rd Appellant's entitlement to sue was the statutory agent of the Government of Uganda.*

iii. *The Learned trial Judge erred in law and in fact when, upon holding that Stanbic Bank and Standard Chartered Bank, had no locus and no cause of action against the Appellants, she wrongly and injudiciously exercised her discretion on award of costs.*

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iv. *The Learned trial Judge erred in law and in fact when she held that the consent judgment entered in HCCS No. "OS" 09 of 2005 did not render CS No. 571 & 572 of 2012 res judicata.*

v. *The Learned trial Judge erred in law and fact when she ordered that the Attorney General be added as a Plaintiff to the suit.*

**Legal Representation**

The Banks were represented by ***Mr. Joel Roy Mucunguzi*** from M/s MMAKS Advocates holding brief for ***Mr. Stephen Zimula,*** while the guarantors were represented by ***Mr. Caleb Alaka*** from M/s Alaka & Co Advocates appearing jointly with ***Mr. Joseph Kyazze*** from M/s Magna Advocates.

***Analysis and Decision of the Court***

**Duty of the 1st appellate Court**

This is a first appeal from the ruling and decision issued in High Court Miscellaneous Application No. 234/2013. Under Rule **30 of the Judicature (Court of Appeal Rules) Directions**, this Court is required to re-appraise the evidence of the trial Court and come to its own decision. In particular Rule 30(1) (a) provides as follows:-

*"Power to reappraise evidence and to take additional evidence"*

*(1) On any appeal from a decision of the High Court acting in its original jurisdiction, the court may-*

*(a) Reappraise the evidence and draw inferences of fact*

The duty of this court as a first appellate court was succinctly elaborated by Mulenga JSC in ***Supreme Court Civil Appeal No. 17 of 2002; Fr. Narcensio Begumisa & Others versus Eric Tibebaaga,*** in the following terms:-

*"It is well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions. This principle has been consistently enforced, both before and after the slight change I have alluded to. In Coghlan vs. Cumberland (1898) 1 Ch. 704, the Court of Appeal (of England) put the matter as follows:-*

*"Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the court must reconsider the materials before the judge with such other materials as it may have decided to admit. The Court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it: and not shrinking from overruling it if on full consideration the Court comes to the conclusion that the judgment is wrong.... When the question arises which witness is to be believed rather than another and that question turns on manner and demeanor, the Court of Appeal always is, and must be guided by the impression made on the judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanor, which may show whether a statement is credible or not: and these circumstances may warrant the court in differing from the Judge, even on a*

*question of fact turning on the credibility of witnesses whom the court has not seem."*

In **Pandya vs. R [1957] EA 336**, the Court of Appeal for Eastern Africa noted that, the principles declared therein are basic and applicable to all first appeals within its jurisdiction. See also; ***Bogere Moses vs. Uganda Supreme Court Criminal Appeal No. 1of 1997*** *and* ***Kifamunte Henry vs. Uganda Supreme Court Criminal No. 10 of 1997****.*

I am also alive to the fact that some of the orders sought and granted by the learned Trial Judge were ones emanating from exercise of the court's inherent discretion. In appeals from such orders, the appellant is required to prove that there was injudicious or improper exercise of discretion by the trial judge, otherwise the appellate court does not ordinarily interfere with exercise of discretion by the trial judge merely because it thinks it would have made different orders. See: ***Uganda Telecom vs ZTE Corporation SSCA No. 3 of 2017.***

In the consideration and determination of the grounds of this Consolidated Appeal, the above principles have been taken into account.

I have had the benefit of reading the submissions of the parties, and I must applaud counsel for their research and effort. I have considered the submissions in the determination of the appeal, without necessarily having to reproduce them verbatim.

**Ground 1**

***The learned trial Judge erred in law and fact when she held that the 1st and 2nd Appellants had no cause of action in the suit by reason of having assigned their***

***interest in the debts and securities held to the 3rd Appellant in striking the 1st and 2nd Appellants off the Plaints in H.C.C.S Nos. 571 and 572 of 2012***

It was submitted for the appellant Banks that the question for determination is; to who does the cause of action in regards to the recovery suits belong and secondly, whether the Attorney General was properly added as co-Plaintiff to the consolidated suits. The appellant Banks' contention is that HCCS No. 571 of 2012 and 572 of 2012 were based on a claim in contract by the lending banks (Standard Chartered Bank and Stanbic Bank) as assignors, and Bank of Uganda as assignee seeking recovery of monies under facilities which were assigned to Bank of Uganda. They further argued that the question of indebtedness of Basajjabalaba Hides and Skins could not be heard in the application but rather, at trial of the suits for recovery. It was also contended that, under privity of contract, it was only entities or persons that are parties that can derive rights to enforce such a contract. The assignment for consideration by the Banks (Stanbic and Standard Chartered) of their rights under both the debt and the securities held, did not as a matter of law take away their cause of action held under the loan contracts that had been executed between the Banks and Basajjabalaba Hides and Skins, together with its guarantors.

Additionally, the appellant's counsel submitted that the assignment introduced a separate entitlement between the lending banks and the assignee (Bank of Uganda) as to the benefit of the recoveries from Basajjabalaba Hides and Skins Limited under the loan facilities. It did not and could not change the entitlement to enforce the contract against principal debtor Bassajabalaba Hides and Skins Limited. which remained with the lending banks. It was submitted that in the Assignment Deeds, the monies paid by Bank of Uganda was consideration for the

assignment of the full debt owed to Stanbic Bank and Standard Chartered by Basajjabalaba Hides and Skins, that the Assignee took upon purchase, the rights to recover in full the advances by the lending banks. Thus, the assignors are the proper parties to the suits for recovery of these debts under privity of contract, but they were meant to do it for the benefit of Bank of Uganda and the Government of Uganda.

Submitting on whether Bank of Uganda should have been added as a co-plaintiff, counsel drew court's attention to the types of assignment. Reference was made specifically to legal assignment, equitable assignment and assignment by operation of law. In analysing the same, Counsel relied on *Halsbury's Laws of England, 4th Edition, Volume 6 paragraphs 6, 9, 10, 26, 30 and 69* contending that; in the case of equitable choses in action, the assignee could bring an action in his own name, but in the case of legal choses in action, the action had to be brought in the name of the assignor. Further, that an equitable assignment of a chose in action passes to the assignee the right to sue for its recovery. If the chose in action is equitable and the assignment is absolute, the assignee can sue under his own name without making the assignor party to the action. All necessary parties must be before the court, however, and accordingly, where part of a debt has been subject of an equitable assignment, neither the assignor nor the assignee can sue the debtor without joining the assignee or assignor as the case may be.

Relying on extracts from ***Halsbury's Laws of England and Practical Law Commercial UK Practice Note 7-381-7509 © 2026, published by Thompson Reuters,*** it was submitted that a debt is a legal chose in action and since there is no statute in Uganda that provides for assignment of a legal chose in action, there

can only be equitable assignment. The assignment to Bank of Uganda was therefore an equitable assignment. It was emphasized that the joinder of the private commercial banks was proper as a matter of privity. In addition, it was asserted that an equitable assignee must bring proceedings to enforce the chose in action in the name of, or with the joinder of, the assignor. Assignment did not abrogate the doctrine of privity of contract, under which a contract may only be enforced by a party privy to it. The effect of an assignment is merely to transfer the beneficial interest in the proceeds of enforcement from the assignor to the assignee; it does not alter the identity of the party entitled, at law, to enforce the contractual obligation. The learned trial Judge erred in law in holding that the assigning banks had no cause of action and that the assignee could sue in its own name without their joinder. The learned trial Judge effectively treated an equitable assignment as though it were a statutory legal assignment, thereby permitting enforcement in the assignee's name alone in circumstances where, under the applicable law, the assignors were required to be parties to the suit.

For the Respondents, it was submitted that all the Appellant Banks did not have locus to sue for recovery of the monies owed. It was contended that Stanbic Bank and Standard Chartered Bank had absolutely assigned their rights inclusive of the right to sue to Bank of Uganda and could therefore not maintain an action for recovery of the monies. They had been paid all their monies and could clearly not bring an action to recover money on behalf of the Government of Uganda.

In respect of the action by Bank of Uganda, it was contended that despite Bank of Uganda being assigned the recovery rights, the monies, the subject of the assignment were owed to the Government of Uganda. Bank of Uganda could not

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sue to recover the said monies on behalf of Government. Counsel agreed with the finding of the Learned trial Judge that the deeds of assignment were absolute. Citing ***Ham Enterprises Limited & 2 Others-versus- Diamond Trust Bank (U) Limited & Anor SCCA No. 13 of 2021***, counsel defined a cause of action as every fact which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the Court. Alluding to the decision in ***Ismail Serugo-versus- Kampala City Council SCCA No. 2/1998*** *cited with* approval in ***Ham Enterprises Limited & 2 Others-versus- Diamond Trust Bank (U) Limited & Anor SCCA No. 13 of 2021*** for the proposition that a cause of action is disclosed if three elements are disclosed in a plaint to wit; existence of the Plaintiff's right, violation of the right, and the defendant being liable for that violation. Further, and relying on the same authority, once a party raises an objection premised on the non-existence of a cause of action, the role of the Court is to examine the plaint together with all the attached annexures. Counsel submitted that the learned Trial Judge was right only to the extent that the Banks had no cause of action against the guarantors, but it was erroneous to hold that the Bank of Uganda could maintain an action on behalf of Government of Uganda.

Counsel added that Stanbic Bank and Standard Chartered did not have any right necessary to sustain a cause of action having absolutely assigned all their rights to Bank of Uganda. It was submitted that private commercial Banks, Stanbic and Standard Chartered having absolutely assigned their benefits for a consideration to the Bank of Uganda by way of a deed of assignment, fell into the category of legal assignment. They could only purport to disregard the same by instituting consolidated Civil Suits No. 571 & 572 of 2012. Counsel concluded by asserting that assignment of the debt outstripped the Banks (Stanbic and Standard

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Chartered) of any cause of action against the guarantors thus the findings of the learned Trial judge were in conformity with the law on cause of action, and ought to be upheld.

In their supplementary submissions, the Respondents' counsel contended that the assignment deeds executed by Stanbic Bank and Standard Chartered Banks were unequivocal in regards to recovery of the assigned monies. The right to recover was reserved for the assignee and not the assignor. The rights reserved for the assignor were specifically defined. For the assignment between Standard Chartered and Bank of Uganda, the assignor's only responsibility in regards to the recovery of the monies was to offer reasonable assistance in providing evidence or witnesses as may be necessary to recover the debt. Standard Chartered Bank through the deed appointed Bank of Uganda as its attorney for purposes of recovery. With this irrevocable assignment of powers and rights to sue for recovery, Standard Chartered Bank lost the pre-requisite *locus standi* to commence any suit against Basajjabalaba and the rest in regards to the said monies. Similarly, Stanbic Bank assigned all rights and remedies in relation to the assigned monies to Bank of Uganda.

Counsel submitted that the sums due to both Standard Chartered Bank and Stanbic Bank and which had been assigned to Bank of Uganda were settled in the Consent Judgment in HCCS O9/2005. It was clear from clauses 1, 2 & 3 thereof that the said Banks were settled and Bank of Uganda retained the right to realize and enforce recovery of the decretal sum of USD 11,575.000, in the event that it was not paid by the Basajjabalaba Hides and Skins. Counsel drew court's attention to the ruling of Hon. Justice Kwesiga in HCMA No. 738/238 of 2011, in which court confirmed

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that the said decretal sum had been settled, the basis upon which the court issued consequential orders releasing the certificates titles that had been pledged as security for the impugned loans. Counsel cited ***Njau and others v. City Council of Nairobi [1976–1985] 1 EA 397 at 407*** and submitted *locus standi* literally means a place of standing. It means a right to appear in court, and, conversely, to say that a person has no *locus standi* means that he has no right to appear or be heard in a specified proceeding. Counsel added that *Locus standi* is a condition precedent for maintaining a suit. The court must be satisfied that the party commencing an action has legal right and capacity to commence such an action. Counsel cited the case of ***Madukolu versus Nkemdilim (1962) 1 All NLR 587 at 595*** *cited in* ***Adegbite versus Amosun (SC.673/2013) [2016] NGSC 5 (30 June 2016).***

Counsel further cited an authority which he sought was in *pari materia* with the scenarios in existence between the parties. The cause cited was ***National Bank of Kenya Limited-versus- Virginia Milanoi Pertet Civil Case No. 204 of 1999*** where the Kenyan High Court considering a scenario similar to the instant appeal, to the extent that it involved assignment of a book debt and pursuance of recovery of the debt by the assignor. The court in that case, held that, upon execution of the deed of assignment by the three parties, the Plaintiff was required to cease pursuit of the Defendant for payment of the book debt. Counsel added that the private Banks that assigned all their rights in relation to recovery to Bank of Uganda, factual and by law, ceased to have any *locus standi* to pursue the same.

Counsel further supplemented that the attempts made in the submissions for the Banks under this ground to categorize the transaction as an equitable assignment, are a feeble attempt at side stepping the doctrine of freedom of contracting, a

concept that even the Courts of law are not allowed to overlook. Court cited **Chief *Distillers Uganda Limited-versus- Damco Logistics Uganda Limited High Court Civil Suit No. 004 of 2019*** where it was held that *court* must treat as sacrosanct the terms of an agreement freely entered into by the parties. This is because parties to a contract enjoy their freedom to contract on their own terms for any transaction that is lawful. Counsel further supplemented on his submission that by the deeds of assignments, the right to sue for recovery of the monies was exclusively bequeathed to the assignee. Therefore, the assignor without amending the deeds of assignment, could not turn against that position. By that alone, the private Banks lacked *locus standi* to recover the monies thus validating the findings of the learned Trial Judge.

Counsel supported the finding and conclusion of the learned Trial Judge that, the private Banks; Stanbic Bank and Standard Chartered Bank upon execution of the assignment deeds ceased to have any cause of action against the guarantors; Basajabalaba and others, for the reason for that their rights were now exclusively owned by Bank of Uganda that had paid valuable consideration for the same. Therefore, without a right against Basajabalaba and the rest, the private banks had no cause of action. The starting point of possessing a cause of action is enjoying a right. Counsel relied on the *Supreme Court decision of* ***Tororo Cement Co. Ltd v Frokina International Limited SCCA No.2 of 2001.*** Counsel added that without a cause of action, the law views such a party as a party without any *locus standi* to commence legal actions and consequently seek the audience of the Courts. See ***Crane Bank Ltd [In Receivership] versus Sudhir Ruparelia & Anor CACA No. 252/2019.***

In rejoinder, Counsel for the appellant Banks, submitted that the cause of action in the recovery suits under the privity of contract doctrine, belonged to Stanbic Bank and Standard Chartered Bank in law. Further, in Uganda, there being no statutory equivalent to section 136 of the UK Law of Property Act that provides for the legal assignment of a chose in action, the assignment of the debts by Stanbic and Standard Chartered Bank was an equitable assignment. That being the case, Bank of Uganda as the assignee, needed to join the assignors, Stanbic Bank Limited and Standard Chartered Bank as plaintiffs in the recovery suits. Counsel submitted that the issues raised in their main submissions to the effect that in an equitable assignment of a legal chose in action, the assignee needs to join the assignor to the claim unless such joinder is dispensed with by the trial judge; the rationale for this being the privity of contract doctrine. Counsel added that the guarantor's submissions frame the question as being one of freedom of contract. Provided that the contract stipulates that the assignment is absolute and irrevocable, and vests the right to sue in the assignee, then pursuant to those contractual terms, the assignee has exclusive *locus standi* to sue to enforce the assigned rights. This contention is erroneous in law as a party cannot contract out of legal doctrines such as privity and seek to confer on a non-party to a contract, rights that are by law only enforceable by contractual parties. Counsel added that the authorities cited by the Respondent on *locus standi* and freedom of contract are accordingly inapplicable to the question at hand.

Counsel further rejoined that the alternative argument in relation to whether or not Stanbic and Standard Chartered Bank are proper parties as plaintiffs in the recovery suits since the amounts due to those two entities were held to have been settled through payment in the ruling of Hon. Justice Kwesiga in HCMA No. 738/238

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of 2021. For that reason, the trial judge was right in striking them off the suit as there was no actionable claim to be brought in the recovery suits. Counsel asserted that this contention although properly the subject of Ground 4 in which it is fully addressed, the Bank's main submission is unsustainable as the point to be determined in this Ground 1 is as to whether Stanbic and Standard Chartered Banks are proper plaintiffs in law to the recovery suits. It is not whether the debt sought to be recovered is outstanding, or whether the recovery suits are *res judicata.* Counsel re-iterated his earlier submissions that as a matter of law, Stanbic and Standard Chartered are proper plaintiffs to the recovery suits as assignors who need to join the claim with Bank of Uganda as assignee.

***Court's Consideration and Analysis***

The crux of this ground is whether Stanbic Bank and Standard Chartered still had a cause of action against the respondents/guarantors after the two banks had assigned their rights to Bank of Uganda through deeds of assignment executed on the 13th of June 2008 and 30th March 2006 respectively. Secondly, having executed a Consent Judgment in HCCS OS No.09/2005 wherein they acknowledged that the sums due to them had been paid and surrendered the right of enforcement and recovery to Bank of Uganda, could the said banks then have *locus* to sue for the same debt?

The question of what is and what constitutes a cause of action has been extensively dealt with by the Supreme Court in numerous decisions. In ***Ham Enterprises Limited & 2 Others versus Diamond Trust Bank Civil Appeal No. 13 of 2021 [2023] UGSC 13,*** the court noted as follows:

*" A cause of action means every fact, which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a Judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the Plaintiff a right to relief against the Defendant. It is, in other words, a bundle of facts necessary for the Plaintiff to prove in order to succeed in the suit. But it has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It is a media upon which the Plaintiff asks the Court to arrive at a conclusion in his favour. The cause of action must be antecedent to the institution of the suit." Extract from Mulla on Indian Code of Civil Procedure (Vol.1 14th Edition at page 206) relied on in* ***Ham Enterprises Limited & 2 Others versus Diamond Trust Bank Civil Appeal No. 13 of 2021 [2023] UGSC 13"***

Further ***Civil Appeal No. 2 of 2001 [2002]*** **UGSC 24,** ***Tororo Cement versus Frokina International Limited*** defined a cause of action as meaning; every fact which is material to be proved to enable the plaintiff to succeed or every fact which, if denied, the plaintiff must prove in order to obtain judgment.

It follows that, every litigant/claimant /plaintiff that institutes a claim must plead and have a cause of action against the defendant. A cause of action is said to exist if the filed pleadings disclose that, a plaintiff had or enjoyed a legal or equitable right, that right was violated and the defendant is liable for that violation. *See;* ***Ismail Serugo versus Kampala City Council & Anor (Supra).*** If all the three elements are present, then, the plaint or pleading discloses a cause of action. The plaint must show that the plaintiff had a right, the right was violated and that the Defendant

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was responsible for the violation. **See; *Tororo Cement versus Frokina International Limited Civil Appeal No. 2 of 2001 [2002]* UGSC 24.**

I must say that in case one of the elements of a cause of action does not exist or is not pleaded in the plaint, no cause of action can be said to exist in such a plaint. Such a plaint is liable to be struck out under ***Order 7 Rule 11 (a) of the Civil Procedure Rules.*** It is also settled law that, in analyzing and determining whether a plaint discloses or does not disclose a cause of action, the Court is meant to look at the plaint as filed by the plaintiff and its annexures. **See *Ismail Serugo versus Kampala City Council & Anor (Supra)***cited with approval in ***Ham Enterprises Limited & 2 Others versus Diamond Trust Bank Civil Appeal No. 13 of 2021 [2023] UGSC 13,*** where it was held that it is now settled law that when the Court is considering whether a plaint discloses a cause of action or not, under Order 7 Rule 11, it must only look at the plaint and its annexures thereto assuming the contents therein to be true.

In the instant appeal, the fact that the banks assigned their rights in the impugned loans to Bank of Uganda is not in contention. The fact that, subsequently, the banks, together with Bank of Uganda executed a consent judgment in HCCS OS No. 09/2005 with the principal debtor Basajjabalaba Hides & Skins Limited, is also not in dispute. What appears to be in dispute is the legal effect of both the deeds of assignment and the terms of the consent judgment on the capacity of the said Banks to sue for recovery of what is claimed to be the outstanding sums under the loan facilities.

It would appear that, in order to determine whether the said banks had *locus* to sue and could thus maintain a cause of action, the court must consider the terms

of the deeds of assignment and the Consent Judgment. It is on the basis of the said terms in the said documents that the banks would derive their cause of action and the *locus standi* to sue. Indeed, under *order 7 Rule 14 (1) of the Civil Procedure Rules*, it is a mandatory requirement that the plaintiff attaches to the plaint, the document, on the basis of which they derive their right to sue. *See* ***Fakrudin Vallibhai Kapasi & Another vs. KDLB & Another HCCS No. 570/2015.*** In the instant case, the deeds of assignment and the consent judgment would form the basis of determination of whether the said banks derived any locus or right to sue for recovery of the impugned loan sums thereunder. The court would consider the terms therein to determine, which right if any accrued in favour of the plaintiff banks, whether the said right was violated and whether the defendants in the suit were respnsible for the alleged violation

I note that, in the consideration of the question of cause or action and *locus* of the banks to sue, the Learned Judge considered the averments in the pleadings, together with the terms of the deeds of assignment that had been attached as annexures to the plaint in Summary Suit No. 571 of 2012 and 572 of 2012. In my view, since the objections to the competence of the suit were raised by way of application and the Consent Judgement hitherto executed by the parties was equally alluded to and attached to the application, the court was bound to consider the legal effect of that consent judgment on the capacity or *locus standi* of the said private Banks. I find useful guidance in the decision in ***Ismail Serugo versus Kampala City Council & Anor Supreme Court Constitutional Appeal No. 2 of 1998.***

In Civil Suit No. 571 of 2012, the plaintiff's claim as against the defendants as disclosed in the plaint was for payment by the defendants jointly and severally of

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USD 5,623,782 being the amount owed by them as guarantors of (the debtor), Basajjabalaba Hides and Skins Limited (BHSL) as at 31st October 2012. The plaintiffs further pleaded under paragraph 4(c) of the plaint as disclosed below:

> *"By a Deed of Assignment of Debts and securities" dated the 13th June 2008 and entered into between the 1st Plaintiff and the 2nd Plaintiff, the 1st Plaintiff assigned to the 2nd Plaintiff all its estate and interest in the debt due and owing to it by BHSL, which as at the 1st April 2003 stood at US $ 3,464,467 (United States Dollars Three Million Four Hundred Sixty Four Thousand Four Hundred Sixty Seven) as well as the benefit of all the securities held in relation to this debt, in consideration of payment by the 2nd Plaintiff to the 1st Plaintiff of the discounted sum of US $ 2,425,500 (United States Dollars Two Million Four Hundred Twenty Five Thousand Five Hundred)"[A Copy of the Deed of Assignment of Deed and Securities dated 13th June 2008 and entered into between the 1st and 2nd Plaintiffs is annexed hereto and marked "C"]"* ***Emphasis mine***

Since the appellant Banks claimed to derive their locus and cause of action from the Assignment Deed, it is pertinent to reproduce the critical terms therein;

*"1. ASSIGNMENT*

*1.1. The Assignor hereby assigns, sells and transfers unto the Assignee each of the following for the Assignee's own use and benefit absolutely and forever and without recourse (save and except as expressly set out herein)*

*1.1.1. The Debt and the monies owing to the Assignor in that regard, including all unpaid principal and interest and including the right to collect the same from any person liable therefor;*

*1.1.2. The Security and all right, title and interest of the Assignor arising thereunder including all remedies to or contained therein, and including all rights under the applicable law*

*1.2. The Assignor hereby cedes to the Assignee the letter of offer under which the Debt arose*

*1.3. The Assignor shall hereafter have no right or liability in respect of the Debt and the security hereby assigned*

*"4. COMPLETION.*

.....

.....

*4.2. The Assignor undertakes to provide all assistance reasonably requested by the assignee that may be necessary for the Assignee to prove the Debt and its rights hereunder or enforce the Security"*

I have also looked at the plaint in Civil Suit No. 572 of 2012, where the claim was for the payment of USD 36, 637,238 and it was also pleaded that through a Deed of Assignment of Debt and Securities dated 30th March 2006, the 1st plaintiff assigned to the 2nd plaintiff all its estate and interest in the debt due and owing to it by BHSL, which was on 23rd January 2004, stood at USD 18, 300,000 as well as the benefit of all the securities held in relation to the debt, in consideration of payment by the 2nd plaintiff to the 1st plaintiff of the discounted sum of USD 9,150, 000. The critical terms of the said Deed are reproduced hereunder;

*"NOW THIS DEED WITNESSETH as follows;*

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1. *In consideration of the payment to it as aforementioned of USD 9,150, 000 (United States Dollars Nine Million One Hundred and Fifty Thousand Dollars), receipt whereof is hereby acknowledged. The Assignor hereby assigns to the Assignee all its interests in the debt due and owing to it by the debtors as at 23 January 2004 being the sum of USD 18,300,000 (United States Dollars Eighteen Million Three Hundred Thousand) as well as the full benefit of the securities"*
2. *.....*
3. *The Assignee acknowledges receipt of the following*

   *.....*

   *.....*

   *.....*

   *iv The security documents in relation to the debt including all mortgage deeds, debenture deeds, personal guarantees, certificates of registration and title deed comprising the securities*

I note from the evidence on record, that, subsequent to the execution of the said deeds of assignment, Stanbic Bank Limited and Standard Chartered Bank Limited and the principal debtor Basajjabala Hides and Skins Limited, executed a Consent Judgment in HCCS OS No. 09/2005. The Consent judgment was endorsed by the Court on 3rd February 2010. Hereunder are the key clauses in the consent judgment.

**CONSENT JUDGMENT**

**BY CONSENT** of the parties hereto, it is hereby agreed and ordered as follows;

1. *The 2nd Defendant be added to this suit as a holder of securities mortgaged by the Plaintiff in relation to the debt mentioned below assigned by the 2nd Defendant to the 3rd Defendant.*

2. *The 1st and 2nd Defendant were owed various sums of money by the Plaintiff which debts were assigned by the 1st and 2nd Defendants to the 3rd Defendant, on account of the Government of Uganda ("GOU"), together with the benefit of the securities held, upon payment by the GOU through the 3rd Defendant of* ***US$ 9,150,000*** *in respect of the amounts owed to the 1st Defendant and* ***USD $ 2,425,000*** *in respect of the amounts owed to the 2nd Defendant, being a total sum paid by the GOU through the 3rd Defendant of* ***US$ 11,575,000.***

3. *It is hereby agreed that the Plaintiff shall pay to the 3rd Defendant for the benefit of GOU the said sum of US$ 11,575,000 paid by it for the aforementioned assignment within six (6) months from the date hereof and in default of payment the 3rd Defendant shall be at liberty to realize and enforce recovery pursuant to the assignment against the securities mortgaged to the 1st and 2nd Defendants by the Plaintiff. For the avoidance of doubt, the securities held are those listed as regards the 1st defendant in the schedule to the assignment deed dated 30th March 2006 annexed hereto as* ***"A"*** *and as regards the 2nd Defendant in preamble B to the assignment deed dated the 30th June 2008 annexed hereto as* ***"B"***

4. *The Plaintiff shall pay the 1st, 2nd and 3rd Defendant's costs of this suit as well as the 1st and 2nd Defendant's costs in Misc. Application No. 566 of 2008 arising from HCCS No.320/2007 plus the insurance and receivership costs incurred by the 3rd Defendant in the receivership of the Plaintiff and in insuring by the said Receiver of the said securities held.*

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The underlying duty of this court is to properly construe the terms of the Deeds of assignment and the Consent Judgment and ascertain whether the two private banks could derive any legal right to sue the defendants in the said consolidated suits for recovery of money under the deeds of assignment.

I agree with the submission of counsel for the appellants that the law recognizes three types of assignments; namely; legal assignment, equitable assignment and assignment by operation of law. Legal assignment is a transfer of rights that is in conformity with the provisions of a particular statutory instrument. Equitable assignment is where there is a transfer of rights but the said transfer does not fully comply with all the provisions of a statutory instrument, take for instance, the need to have a written agreement transferring the rights registered but the same is not registered. The parties may act in a way that shows that rights were assigned by one party to another but without complying with the statutory instruments that governs the subject matter of the rights transferred. On the other hand, assignment by operation of law is an involuntary transfer of rights, the transfer of rights is not a creation of the parties through an agreement but rather, through a law or an order of Court.

Equitable assignment had initially been developed in response to the need to 'transfer' equitable *choses* in action (such as the interest of a beneficiary of a trust in the trust assets). What was required was for the equitable assignor to adequately manifest his required intention to effect such assignment-no particular formalities or special form of words was required and it may be effected orally.

Further, regardless of the type, an assignment may be absolute or partial. Tthe former implies that all rights as held are assigned, while the later means that part

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of the rights held were assigned and some were reserved. I do not agree with the submission by learned counsel for the Appellants that there is no statutory law in Uganda that particularly provides for or governs assignment. In my view, assignment and in particular, legal assignment is contractual and would therefore primarily be governed by provisions of the Contracts Act, Cap 284 which regulate written contracts although it was originally developed by courts of equity.

The question is whether on the proper construction of the terms in the Deeds of assignment, the private banks reserved a right of action for recovery of any sums accruing under the said Deeds of assignment. In her ruling, the learned Trial Judge held as follows;

> *"An assignment can either be absolute or partial. This is determined by the intent of the parties which is a question of fact derived from the instruments and the surrounding circumstances. According to Black's Law Dictionary, an absolute assignment leaves the assignor no interest in the assigned property or right. It also defines partial assignment as the immediate transfer of part but not all of the assignor's rights"*
>
> *"In the instant case, I have looked at the terms of two Deeds of assignment and I find that there were absolute assignments of both debts to the 3rd respondent as agent of GOU for a consideration which was received by the assignors. Under the Deed of Assignment executed between the 1st respondent & the 3rd Respondent, the 1st respondent handed over all documents including those that relate to the securities to the 3rd respondent and under clause 4 thereof for purposes of giving effect to the assignment duly appointed the 3rd respondent its attorney to demand, sue for, recovery, receive and enforce payment or take such action as are necessary to collect the assigned debt. In clause 5, the 1st respondent undertook to provide reasonable assistance to enable the assignee (3rd respondent) in providing such witnesses or other evidence to prove the debt, its right to recover it and*

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*its rights to recover the securities as might be required in any Court of law or tribunal."*

*"Similarly, I have looked at the deed of assignment executed between the 2nd Respondent and 3rd Respondent and the terms are also quite explicit. Indeed, the assignor in the wordings of the deed "Absolutely and forever and without recourse" assigned, sold and transferred to the assignee for its own use and benefit the debt and monies owed to the assignor by BHSL all the securities and documents relating to the debt were ceded to assignee. It was expressly stated in clause 1.3 of the Deed of Assignment that the assignor shall hereafter have no right to or liability in respect of the debt and the security assigned. In clause 4.2, the assignor undertook to provide all assistance reasonably requested by the assignee that may be necessary for the assignee prove the debt and its rights under the deed of assignment to enforce the security."*

*"To mind, the intent of the assignor in both deeds of assignment was to absolutely assign the debts to the 3rd Respondent and that is exactly what was done. The pertinent question to be answered therefore is whether the two assignors can again sue in respect of the assigned debts, ....."*

I am not persuaded by the appellant's submission that the learned Judge erred in her finding as above. It was a correct decision that the assignment by the private commercial banks was absolute. They retained no legal or equitable right or interest in the assigned loans and in the properties, whose certificates of title had been pledged by the principal borrower as security. The only rights reserved were in relation to giving Bank of Uganda assistance in case an action was commenced by or against it in respect of the debts assigned or if execution of the deeds of assignment ever came into issue. Such assistance in my view would be in form of presenting witnesses. That *per se* did not confer any legal right upon the private banks to sue under the deed of assignment for recovery of the assigned loans.

In essence, the appellant banks are inviting the court to imply a term reserving the right of the private banks to sue, contrary to the explicit clauses in the deeds of assignment. The court declines the invitation. Because the terms in the said deeds of assignment were freely agreed too, with neither assignor nor assignee being under duress at the time of execution thereof when these deeds of assignment were being executed. In the case of ***Trade Mark East Africa Limited-versus-National Organic Agricultural Movement of Uganda Limited (NOGAMU) HCCS No. 127 of 2019*** it held that:

> *"The court must treat as sacrosanct the terms of an agreement freely entered into by the parties. This is because parties to a contract enjoy their freedom to contract on their own terms as long as is lawful. The terms of a contract between parties are clothed with some degree of sanctity and if any question should arise with regard to the contract, the terms in any document which constitute the contract are invariably the guide to its interpretation. When parties enter into a contract, they are bound by the terms of the contract as set out by them. The court's duty in interpreting contracts made by the parties and not rewriting them for the parties "A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of the contract unless coercion, fraud or undue influence are pleaded and proved" See; also* ***National Bank of Kenya v Pipe Plastic Sankolit (K) Ltd & Anor [2001] EA.*** *(emphasis mine)*

I am persuaded by the above cited precedent of the High Court. I am unable to imply extraneous terms into the deeds of assignment, as that would amount to re-writing the contract of the parties. The banks cannot advance two mutually

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exclusive positions within the same document. They cannot have absolutely assigned their rights and interest in the assigned loans and securities for which they received monetary consideration and at the same time, commence an action purporting to sue for recovery of the assigned loans or enforcement of the assigned securities. I find as correct the decision of the learned Judge that upon assignment, Stanbic Bank and Standard Chartered Bank ceased to have any rights in relation to the assigned monies and securities attendant thereto.

Furthermore, the money sought to be recovered by the banks under the deed of assignment and the attendant securities were assigned to Bank of Uganda for the benefit of the Government of Uganda. The entitled party with a legal right over the assigned loans and securities is the Government of Uganda. Suits by or against the Government are required to be commenced by or in the names of the Attorney General. That is the import or *Article 250 of the Constitution of the Republic of Uganda 1995 and Section 10 of the Government Proceedings Act*. See: ***SCCA No. 4/2007 Charles Harry Twagira versus AG & Others.*** It would therefore be a stretch for two private banks to claim that they were suing to recover money under the assigned loans and securities on behalf and for the benefit of the Government of Uganda. The law required under equitable assignment to add the assignor, but it suffered from a major inconvenience and posed practical problems when the assignor could not be traced or had ceased to exist. The court started to dispense with the old rule of joinder of the assignor and it is nolonger a requirement to join the assignor.

This was an absolute assignment and therefore a legal assignment by writing under the hand of the assignor and it was not purporting to be by way of a charge or other legal chose in action.

Where a third party like Bank of Uganda to a contract has been either equitably or statutorily assigned the benefit of the performance stipulated in that contract, that third party may be able to overcome the strictures imposed by the privity rule that would have otherwise prevented the third party from bringing legal proceedings upon the contract.

Aside from the deeds of assignment, there is evidence on court record that the appellant banks subsequently executed a consent judgement in HCCS OS No. 09/2005, Basajjabalaba Hides and Skins Limited versus Stanbic Bank Ltd, Standard Chartered Bank and Bank of Uganda. It is worth noting that the subject matter of the consent judgment were the assigned loans and securities. Basajjabalaba Hides and Skins Limited as the plaintiff in that suit, was the principal borrower of the loans, guaranteed by the defendants who were sued by the private banks, in HCCS No. 571 & 572/2012. The consent judgment was endorsed by Court on 3rd February 2010, which was before filing of the two suits, from which this appeal arose. Clauses 2 and 3 of the said consent judgment provides that;

2. *The 1st and 2nd Defendant were owed various sums of money by the Plaintiff which debts were assigned by the 1st and 2nd Defendants to the 3rd Defendant, on account of the Government of Uganda ("GOU"), together with the benefit of the securities held, upon payment by the GOU through the 3rd Defendant of* ***US$ 9,150,000*** *in respect of the amounts owed to the 1st Defendant and* ***USD $ 2,425,000*** *in respect*

*of the amounts owed to the 2nd Defendant, being a total sum paid by the GOU through the 3rd Defendant of* ***US$ 11,575,000.***

3. *It is hereby agreed that the Plaintiff shall pay to the 3rd Defendant for the benefit of GOU the said sum of US$ 11,575,000 paid by it for the aforementioned assignment within six (6) months from the date hereof and in default of payment the 3rd Defendant shall be at liberty to realize and enforce recovery pursuant to the assignment against the securities mortgaged to the 1st and 2nd Defendants by the Plaintiff. For the avoidance of doubt, the securities held are those listed as regards the 1st defendant in the schedule to the assignment deed dated 30th March 2006 annexed hereto as* ***"A"*** *and as regards the 2nd Defendant in preamble B to the assignment deed dated the 30th June 2008 annexed hereto as* ***"B"***

What is apparent from the above clauses is that the parties agreed to compromise the claim from the previously outstanding sums under the loan facilities to a compromised or discounted sum of ***US$ 11,575,000.*** The reasons that informed the two banks' decision to discount and compromise the original outstanding sums to a sum of **US$ 11,575,000** are not the concern of this Court. The court's role is restricted to considering the terms of the consent judgment as is and enforcing them as such. ***See: SCCA No. 13 of 2009 Saroj Gandesha versus Transroad, SCCA No. 13 of 2009***

My understanding of the legal effect of a consent judgment, which has been duly endorsed by the Court is that; it constitutes an order or decree of the Court, binds the parties and their privies and further supersedes any earlier claims, agreements, correspondences and pleadings. I am fortified by the decision of the Supreme Court in ***Saroj Gandesha versus Transroad (supra),*** where it was held that; a consent judgment connotes a judgment, the provisions and terms of which are settled and agreed to by

the parties to the action. It is a judgment entered on agreement of the parties, which receives the sanction of the court. It therefore constitutes a contract between the parties to the agreement, operates as an adjudication between them and when court gives the agreement its sanction, becomes a judgment of the court. This same principle was re-iterated by the Supreme Court in ***Dison Okumu & Others Versus Uganda Electricity Transmission Co. Ltd & Others, SCCA No.18/2020*** where it was held that; although compromises are treated as agreements, they are in actual sense not mere agreements but orders of the court and can be executed as such.

In my view, the consent judgement was executed and endorsed, subsequent to the execution of the deeds of assignment. Indeed, the deeds of assignment are alluded to in clauses 1, 2 & 3 of the said consent judgment. The liability of Basajjabalaba Hides & Skins Ltd under the impugned loans and deeds of assignment was compromised by consent of the parties to a discounted sum of USD$ 11,575,000 payable by the principal borrower, by 2nd August 2010. Under clause 3 of the consent judgment, the defendants in the suit, being Stanbic Bank Ltd, Standard Chartered Bank and Bank of Uganda explicitly agreed that, in the event of default by the Plaintiff in paying the said sum of USD$ 11,575,000 by the deadline date, *the 3rd Defendant (Bank of Uganda) shall be at liberty to realize and enforce recovery pursuant to the assignment against the securities mortgaged to the 1st and 2nd Defendants by the Plaintiff.*

It is not provided anywhere in the consent Judgment that, in the event of default, the parties shall revert to the pre-consent status, in which case the plaintiff/ principal borrower shall be liable and bound to pay the original outstanding sums under the deeds of assignment and loan facilities. It is also not provided in the

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impugned consent judgment that Stanbic Bank Ltd and Standard Chartered Bank, that had hitherto assigned all their rights and interests under the loan facilities to Bank of Uganda, shall have any right to sue for recovery of the original claimed outstanding sums. What is provided as a consequence of default, is the liberty of Bank of Uganda to enforce recovery pursuant to the assignment against the securities mortgaged to the 1st and 2nd Defendants by the Plaintiff. That in my view leans in favour of recourse to execution of the terms of the consent judgment by Bank of Uganda, by way of attachment and sale of the mortgaged securities to recover the compromised sum in the consent judgment. Clause 3 of the consent judgment cannot be construed as having created a right in favour of the appellant banks to sue for recovery of sums claimed to have been outstanding before the execution of the Consent judgement either from the principal borrower or the guarantors thereof. Adopting such a construction would amount to the court, varying or otherwise modifying the terms of the consent judgment. See: ***Saroj Gandesha versus Transroad (supra).***

I therefore find that, on the reading of the terms of the deeds of assignment and the terms of the subsequently executed consent judgement, the appellant Banks had no legal right whatsoever to enforce recovery of the originally claimed outstanding sums under the loan facilities through filing a suit against the principal borrower or the guarantors. They clearly reserved no such right, whether under the deeds of assignment or the consent judgment. They had ceased to have any legal claim or interest in the assigned loan sums and the titles to the properties that had been pledged as security. The said banks, by the terms of deeds of assignment and the subsequent consent judgment acknowledged that they had received full consideration for the assigned debts.

Since, the said appellant banks had no legal right nor interest in the assigned loans, no such right could be said to have been violated by the defendants. They clearly had no cause of action and locus to maintain an action for recovery of the claimed outstanding sums. A plea of *locus standi* is by its very nature an *objection in point of law*. It strikes at the very root of the cause of action. It is like a plea as to jurisdiction. If it is sustained that must be the end of the matter. The plea connotes that the capacity of the plaintiff to bring this action is challenged. It is being said that they are not the proper persons to present this action. In such situation, the plaintiff cannot succeed without proving that they had relevant capacity to sue. The order striking them out of the suit was the appropriate order under both *order 7 Rule 11 and Order 6 Rule 30 of the Civil Procedure Rules*.

Accordingly ground one fails and the trial Judge was right when she held that the 1st and 2nd Appellants (banks) had no cause of action in the suit by reason of having assigned their interest in the debts and securities held to the 3rd Appellant.

**Ground 2**

***The learned Trial Judge erred in law and fact when she held that the basis for the 3rd Appellant's entitlement to sue was the statutory agent of the Government of Uganda***.

It was submitted that Bank of Uganda as an assignee was entitled to sue. Under the Deeds of assignment, Bank of Uganda was vested with the right to sue for recovery of the outstanding loan facility amounts. The Learned Trial Judge erred in recognizing Bank of Uganda as an agent of Government of Uganda in the context envisaged under *Section 4(2) of Bank of Uganda Act.*

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Discussing the addition of the Attorney General and whether the recovery suits could have been instituted by Government of Uganda, the submission for the Banks was that despite the monies sought to be recovered being tax payers' monies, the relationship between Bank of Uganda and the Government of Uganda was not an agent-disclosed principal situation. Bank of Uganda was suing as an assignee and not an agent of Government of Uganda. It was contended that, despite the Government being the ultimate beneficiary of the recovery of these taxpayers' monies, it was not joined to the suit as a principal but merely as a necessary and proper party as Government of Uganda would have had no cause of action, it not being the assignee nor the assignor of the debts. The appellant submitted that, conclusively, it was an error for the learned trial Judge to attribute Bank of Uganda's right to sue to *Section 4(2) of the Bank of Uganda Act.*

For the respondent, counsel submitted that the Learned Trial Judge acknowledged that the debt belonged to Government of Uganda and not Bank of Uganda, which made Bank of Uganda, an agent of Government of Uganda. Citing ***Montgomerie vs. United Kingdom Mutual Steamship Association [1891] 1 QB 370 at 370***, counsel submitted that at common law where an agent makes a contract on behalf of the principal, the contract in law is for the principal and never of the agent and as such, it is only the principal that has locus to sue or be sued in regards to such a contract. That an agent can only sue in their name on behalf of the principal where there is a contract between the principal and the agent authorizing him or her to do so.

It was submitted that the deeds of assignment constitute contracts wherein it was recognized that the monies owed belonged to Government of Uganda, it was thus