

UGANDA / JUDGMENT

E.B Nyakana & Sons Limited v Kobusinge & 16 Others (Civil Appeal 2 of 2017) [2018] UGSC 58 (22 May 2018) [2018] UGSC 58

COURT

Supreme Court of Uganda

BEFORE

Katureebe, CJ, Mwangusya, JSC, Opio Aweri, JSC,
Tibatemwa, JSC, Buteera, JSC

CASE / FILE NUMBER

Civil Appeal 2 of 2017

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THE REPUBLIC OF UGANDA

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IN THE SUPREME COURT OF UGANDA AT KAMPALA CIVIL APPEAL NO. 02 OF 2017

CORAM: KATUREEBE, CJ; MWANGUSYA; OPIO-AWERI; TIBATEMWA; BUTEERA; JJ. S. C

BETWEEN

E. B NYAKAANA & SONS LIMITED::::::::::::::::::::::::::::

AND

1. MRS. BEATRICE KOBUSINGE 2. MR. KIZZA SAMUEL 3. MRS. ROSEMARY BALINDA 4. MS. TEREZA KAAHWA 5. SAM IRUMBA 6. MRS. MARY LEEKI 7. MRS. BEATRICE SAGORO NYAKAANA 8. NOAH NYINDOMBI NYAKAANA 9. KUGONZA JENNIFER 10. APOLLO NYAKAANA 11. BOB KAGABA 12. EDITH BYANJERU LUCY 13. MRS. BEATRICE MUGISA NYAKAANA 14. LYDIA NYAKAANA 15. KENNETH KWABISA NYAKAANA 16. DOROTHY NYAKAANA 17. OFFICIAL RECEIVER::::::::::::::::::::::::::::

(Appeal from a Judgment of the Court of Appeal of Uganda at Kampala, before Hon. Justice Kenneth Kakuru, Hon. Lady Justices Elizabeth Musoke and Hellen Obura, JJA, dated the 14th day of December 2016, in Civil Appeal No. 243 of 2013)

THE JUDGMENT OF THE COURT

This is a second Appeal from the judgment of the High Court.

Background facts

The background facts of the Appeal as agreed by all parties are briefly as follows: The late Eriza Binondo Nyakaana (the deceased) was a promoter of the appellant Company together with his three sons, Charles Nyakaana, John Mugisa and Samwiri Kiiza. Samwiri was the 2nd petitioner in the trial Court. By the time the deceased passed on, Charles Nyakaana and John Mugisa had predeceased him leaving only Samwiri Kiiza as the surviving promoter/director of the Company.

The appellant Company had registered a share capital of shs.500,000/= divided into 100 ordinary shares of shs.5,000/= each. The deceased subscribed for and held five shares while Samwiri Kiiza, Charles Nyakaana and John Mugisa held one share each. Long after the separate death of the deceased and his two sons, the position still obtained.

The deceased by his Will "conferred" membership of the appellant Company on all his children and gave each of them who survived him and were of good character and hardworking, ten (10) shares of shs.100/= each and of the directors twenty-five (25) shares of shs. 100 each.

The appellant Company gave the deceased's beneficiaries the 10 shares each starting with an initial allotment of four (4) shares and subsequently an additional allotment of six (6) shares to each beneficiary.

By the same instrument, the deceased bequeathed his prime properties to the appellant Company with a direction that the income accruing therefrom be used for the education of his children and grandchildren. The Director's powers to

manage the income was residuary and deferred to a time after completion of education by the said beneficiaries.

The 1st, 2nd, 3rd, 4th and 5th respondents filed a winding up petition in the High Court in 2005. In their petition, they complained of mismanagement/misappropriation of Company funds and the estate of the late E. B Nyakaana. The petition was verified by an affidavit sworn by the 1st petitioner, Mrs. Beatrice Kobusinge. The appellant in turn filed an affidavit in opposition sworn by Fiona Nyakaana. The appellant also subsequently filed a number of supplementary affidavits which were responded to by counter affidavits filed by the respondents.

On the 4th day of July 2013, the trial Court made a final winding up order and appointed a Receiver who later rendered two reports.

Dissatisfied with the winding up order, the appellant appealed to the Court of Appeal against the whole decision and orders of the High Court. The Honourable Justices of Appeal upheld the decision of the High Court to wind up the appellant Company.

Being aggrieved by the Judgment of the Court of Appeal, the appellant appealed to this court on the following grounds: -

- 1. The learned Justices of Appeal erred in law and fact when they held that there was sufficient evidence on record by way of affidavits to enable the Trial Judge to arrive at the decision he arrived at of winding up the company.
- 2. The learned Justices of Appeal erred in law and fact when they held that the Trial Judge availed the appellant with an opportunity to be

heard and that the evidence in support of their case that was adduced by way of affidavit was sufficient to determine the Petition of winding up.

- 3. The learned Justices of Appeal erred in law and fact when they held that the Trial Judge took account of all evidence before concluding that it was equitable and just to windup the appellant company under section 222(f) of the Companies Act.
- 4. The learned Justices of Appeal erred in law and failed to properly evaluate the evidence on record and thereby came to the wrong conclusion that it was equitable and just to wind up the appellant company.
- 5. The learned Justices of Appeal erred in law and fact when they delivered a Judgment in which they stated that they had heard the appellant's submissions in the main appeal whose submissions were never recorded and are not on the record of proceedings.
- 6. The learned Justices of Appeal erred in law and facts when they perused pleadings in other civil suits namely; Civil Suit No.16 of 93, Civil Suit No.033 of 2010, Civil Suit No. 32 of 2011, Company Cause No.1/98, Civil Suit No.84 of 1999, which suits are not on the record and concluded that these series of events culminated into the petition of winding up and were therefore relevant in resolution of the issues raised in the appeal.
- 7. The learned Justices of Appeal erred in law and fact when they held that it was proper for the Trial Judge to make a winding up order

without hearing and determining the other suits pending by and against the appellant Company.

- 8. The learned Justices of Appeal erred in law and facts in deciding the Appeal on an entirely new basis and not based on the three grounds of appeal in the main appeal in Civil Appeal No. 243 of 2013 before them being;
- \$(i)\$ The learned Judge of the High Court misdirected himself when he made a final winding up order and appointed a liquidator without hearing the appellant's case.

- The learned Judge of the High Court misdirected himself when \$(ii)\$ he made a final winding up order without hearing and determining other suits by and against the appellant pending before him, namely HCT-01-CS-033 of 2010, civil suit No.32 of 2011 and HCT 011 of 2013.
- The learned Judge of the High Court misdirected himself when \$(iii)\$ he made a final decision without hearing and determining Miscellaneous Application No.0046 of 2013 for review, which was fixed for 4th July 2013 for hearing before him.
- The learned Judge of the High Court erred in law and fact \$(iv)\$ when he failed to evaluate the evidence on record and came to the wrong decision.
- 9. The learned Justices of Appeal erred in law and fact in considering entirely new questions upon which their decision was based namely;
 - a) That bequest made by E. B Nyakaana in respect of the shares in the respondent were invalid.
 - b) That the directives that the deceased E. B Nyakaana made in running his company were invalid.
 - c) That the respondent was a means of administering his estate in perpetuity.
- 10. The learned Justices of Appeal erred in law and fact when they held that the provisions of the E. B Nyakaana's will that vested the property in the appellant company are invalid as they contravene and offend section 101 of the Succession Act and void and enforceable.
- 11. The learned Justices of Appeal erred in law and fact when they held that all the property belonging to the appellant ought to be reinstated in the names of the executors of the Will.
- 12. The learned Justices of Appeal erred in law and fact to determine issues relating to a will in company cause in which the respondent were petitioning for winding up order.

The Appellant prayed to Court that:-

- a) This appeal be allowed
- b) The judgment of the Court of Appeal be set aside
- c) That the petition lodged in the High Court against the appellant be dismissed and orders made therein be set aside
- d) The respondent to pay the cost of the Appeal and in the High Court
- e) Any further such relief as this Court may deem fit

Representation

At the hearing of this appeal, learned counsel, Mr. Yesse Mugenyi, appeared for the appellant.

Mr. Charles Tibeijuka appeared for the 1st, 2nd, 3rd, 4th and 5th respondents.

Mr. Geoffrey Komakech appeared for the 12th, 13th, 14th, 15th and 16th respondents.

Mr. Anthony Mbazira who was holding brief for Mr. Oscar Kihika appeared for the 6th, 7th, 8th, 9th, 10th and 11th respondents.

The 17th respondent was not in Court and was not represented.

Counsel for all the parties adopted their written submissions.

Submissions of counsel for the appellant

Counsel conceded that the supplementary record of appeal filed by counsel for the 1st to 5th respondents was a true record of the Court of Appeal and as a result abandoned ground 5 of the appeal.

Grounds 1, 2 and 3

Counsel for the appellant submitted that the Court of Appeal was wrong to have held that the appellant had been availed an opportunity to be heard and that evidence had been adduced by way of affidavits. Counsel submitted further that the Court of Appeal erred when it held that there was sufficient evidence on record for the trial Judge to have arrived at the decision to wind up the Company.

According to Counsel, rule 5 of the Companies (winding up rules) Rules requires that winding up petitions be heard in open Court and it does not empower the trial Court to dispose of a winding up matter by way of affidavit evidence.

Counsel contended that the appellant was denied a right to be heard at the trial and there was insufficient evidence to support the pleadings of mismanagement on the part of the directors as the affidavit evidence and the oral evidence on record did not substantiate the allegations of mismanagement or misdeeds on the part of the directors.

Counsel contended further that misdeeds and misconduct of directors cannot be visited on a Company and their conduct would not be ground for winding up of a Company and therefore the whole petition was misconceived.

Grounds 6 and 12

Counsel submitted that the Justices of Appeal erred in law when they relied on Civil Suits No.16 of 1993, Civil Suit No.33 of 2010, Civil Suit No.32 of 2011 and Company Cause No. 1/1998 which were extrinsic matters to the petition but the Justices used them in determining the issues before the court. They submitted further that the Court of Appeal Justices erred when they addressed issues relating to succession in a petition for winding up of a Company.

Grounds 8, 9, 10 and 11

Counsel submitted that the Court of Appeal erred when it decided the appeal on the basis of new grounds and issues that had not been raised at the trial or in the Court of Appeal.

According to counsel, the respondents sought only a relief for a winding up order and the Court of Appeal considered new matters relating to probate which were outside the winding up petition, which was in error as these matters were not addressed at the trial nor on Appeal.

Grounds 10, 11 and 12

Counsel submitted that the Court of Appeal erred when it held that the Will of E. B Nyakaana contravened the provisions of section 101 of the Succession Act when no evidence was adduced to show that a particular bequest conferred by the Will was calculated to delay vesting anything beyond the lifetime of one or more persons. According to counsel, the shares stated in the Will vested immediately on the death of the deceased and it was wrong for the Court of Appeal to suggest that the bequest had been deferred in the lifetime of the beneficiaries.

Counsel contended further that if the Court of Appeal had discovered any bequest that deferred the vesting, the Court should have expunged that bequest but not to render the whole Will invalid as they did.

Submissions of counsel for the Respondents

All the respondents opposed the Appeal and prayed this court to dismiss the appeal with costs and uphold the decision of the Court of Appeal.

Grounds \$1\$, \$2\$ and \$3\$

Counsel submitted that the appellant misconstrued the phrase "Open Court" to exclude a hearing by way of affidavits. According to counsel, "Open Court" refers to a court venue accessible to the public. It does not necessarily connote procedure by way of oral evidence.

Counsel contended that rule 201 of the Companies (winding up) Rules imports the procedure under the Civil Procedure Rules (S. I No.71-1) under which applications by motion are required to be heard in Open Court and are usually grounded on affidavit evidence and the hearing in Open Court is based on affidavit evidence rather than oral evidence.

Counsel submitted further that the Court has the mandate to order, at any time and for sufficient reason, that any particular fact may be proved by affidavit or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable. (Order 19, r.1)

Counsel submitted that in the instant Appeal the appellant had treated the case before the trial Court as one that was to be heard on the basis of affidavit evidence in that she filed supplementary affidavits, followed by affidavits in reply and then affidavits in rejoinder. That as a result of the procedure adopted by the appellant, the trial Judge noted on 18.02.2009 that the evidence to be relied on was "by way of affidavit hence all on record" and the parties agreed that upon a joint scheduling memorandum being filed, a date should be fixed for the ruling.

Counsel contended that there was ample evidence in the affidavits, the oral evidence of 4 witnesses, the official receiver's report, as well as the appellant's audited accounts, bank statements and handover report and all that evidence established serious mismanagement that led to the Company's records reflecting insolvency and the appellant's losses for all the years the directors were in office. That there was sufficient evidence on Court record upon which the trial Court and the Court of Appeal based their decisions.

Grounds 6 and 12

Counsel submitted that the court documents and pleadings relating to the civil suits which the appellant complained about were in fact introduced in the pleadings by the appellant in the trial Court. He also included them in the record filed in the Court of Appeal, having initially introduced them at the trial in an effort to have the winding up petition stayed. According to counsel, the Court of Appeal never relied upon the said suits in its determination of any of the four grounds of appeal before it.

Grounds 8, 9, 10, 11 and 12

Counsel submitted that the Court of Appeal as a first appellant Court had a duty to evaluate the evidence on the Court record and come to its own conclusion. According to counsel, the Will and the Memorandum and Articles of Association were pleaded and exhibited by the appellant. In evaluating them as part of the evidence on record, the Court of Appeal was not considering any new matter as claimed by the appellant. The Court of Appeal in consideration of the evidence on record realised that some clauses in the deceased's Will appeared to be invalid when compared with provisions in the appellant's Articles of Association and the Companies Act. The appellate Justices had invited the parties and gave them an opportunity to be heard on these matters when hearing the appeal.

According to counsel, the appellant addressed the issue and conceded that some clauses of the Will were indeed invalid and unenforceable, including the clause that purported to make a bequest of the deceased's shares in contravention of the Company's Articles of Association.

Counsel contended further that all the four grounds of Appeal were considered and rejected by the Court of Appeal before delving with what the appellant

called "new matters" which the Court only referred to in its "conclusion" part of the Judgment. Counsel argued that the conclusion part of the Judgment only gave the *raison d'être* for the 2nd, 3rd and 4th orders made by the Court of Appeal at the end of its Judgment but were not the grounds for disposal of the appeal. Counsel prayed for dismissal of the appeal with costs.

CONSIDERATION BY COURT OF THE GROUNDS OF APPEAL

First, we wish to point out that the grounds of appeal as framed offend Rule 82 (1) of the Rules of this Court because they are clearly not concise, they are repetitive and argumentative. We later show in this Judgment that a number of the grounds could have been combined and that would have reduced the number of grounds of appeal.

Rule 82(1) of the Judicature (Supreme Court Rules) Directions provides;

"82. Contents of a Memorandum of Appeal

- (1) A Memorandum of Appeal shall set forth concisely and under distinct heads without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the court to make."

The rule was not complied with but we choose to proceed to handle the appeal on its merits in the interest of justice.

In resolving the issues raised in this appeal, we are guided by what was held by this Court in *Kifamunte Henry vs. Uganda SCCA No. 10 of 1997*:-

"on a second appeal, a second appellate court is precluded from questioning the findings of fact of the trial court, provided that there was evidence to support those findings, though it may think it

possible, or even probable, that it would not have itself come to the same conclusion, it can only interfere where it considers that there was no evidence to support the finding of fact, this being a question of law."

Keeping that in mind, we shall now proceed to consider the grounds of appeal.

Grounds 1, 2, 3 and 4

On these grounds of the appeal, the Justices of the Court of Appeal were faulted for relying on affidavit evidence contrary to Rule 5 of the Companies (winding up) Rules and thus failing to hear the winding up petition in Open Court and thereby denying the appellant an opportunity to be heard.

The Justices were also faulted for failure to properly evaluate the evidence on record and thus upholding the decision of the trial Court that there was sufficient evidence for ordering the winding up of the Company.

We shall first consider what an Open Court is.

According to Blacks law dictionary, 9th Edition, page 1199, 'Open Court' refers to:-

"A Court that is in session, presided over by a judge, attended by the parties and their attorneys, and engaged in judicial business."

It also defines it as a "court session that the public is free to attend."

In Attorney General vs. Leveller Magazine Ltd [1979] AC 440, Lord Diplock pointed out that the open Justice system requires that proceedings in court itself should be held in open Court to which the press and public are admitted.

In the instant case the appellant is not contesting that the trial Court sat in a Court open to the public. His contention is that the trial Judge relied on affidavit evidence and that amounts to failure to proceed in Open Court.

In respect of the trial Court relying on affidavit evidence, Order 19, Rule 1 of the Civil Procedure Rules (S. I No.71-1) provides:-

"1. Power to order any point to be proved by affidavit.

Any court may at any time for sufficient reason order that any particular fact may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the court thinks reasonable; except that where it appears to the court that either party bona fide desires the production of a witness for cross-examination and that such witness can be produced, an order shall not be made authorising the evidence of that witness to be given by affidavit."

The Justices of Appeal in their judgment held on this issue as follows:-

"It appears clearly from the records, parts of which we have reproduced above that the parties in the winding up petition, the subject of this appeal, especially the appellants, decided from the onset to adduce evidence by affidavit. Indeed, a number of affidavits were filed in support of their case. At the commencement of the hearing, the appellants did tender in court a number of documents that had been attached to their affidavits as annexures. Those documents were admitted in court as exhibits and marked as such. It is trite law that contents of an affidavit constitute evidence.

Needless to say, that a number of suits in courts of law are determined solely on affidavit evidence. The procedure in this case should have been for parties to indicate which witnesses of the

opposite side they required to be re-called for cross-examination on the evidence adduced by way of affidavit. The oral evidence in chief adduced by the respondents at the hearing was therefore unnecessary and a waste of time since the evidence in support of their case was already on record and exhibits had already been admitted. There is no indication that the appellant sought court's permission to call any deponent for cross examination and was denied the same.

We do not accept the appellant's contention that the Judge made the order winding up the company without giving them an opportunity to be heard. We find that the appellants were availed an opportunity to be heard and that the evidence in support of their case was adduced by affidavits and the documentary evidence they intended to adduce was admitted as exhibits and formed part of the court record."

Following Order 19 above, the trial Judge cannot be faulted for relying on the affidavit evidence presented by the appellant.

We find that the trial Judge sat in a Court open to the public. He relied on affidavit evidence which he was empowered to do in exercise of his discretion and the Justices of Appeal were justified in upholding the trial Judge's decision.

On the issue of re-evaluation of evidence, we have studied the Court of Appeal record and the Judgment.

The Justices of Appeal in their judgment held:-

"The Directors and Shareholders of the Company had failed to agree on how the company should be run. The company does not appear to have been carrying out the objectives set out in its Memorandum of Association. Instead it was being used to run the affairs of the estate

of its late Director and Shareholder. Even then it had failed in that role hence the petition to have it wound up.

We are satisfied that there existed sufficient evidence on record for the Judge to arrive at the decision that he did....

We are satisfied that the Judge took into account all the evidence available before him before coming to the decision that he did. In a Company Cause of this nature, brought under Section 222(f) of the then Companies Act (CAP 110) all that is required of Court is to satisfy itself as to whether or not it is just and equitable to wind up the Company.

The Judge could have done better by writing a more detailed and reasoned Ruling. However, we find that this Ruling was sufficient to determine the matter under the provisions of Section 222(f). As a first appellant Court we have carefully re-evaluated the evidence and have come to the same conclusion as the trial Judge."

It is clear from the above quoted portion of the Judgment that the Justices of Appeal re-evaluated the evidence on record and it was as a result of that reevaluation that they reached their decision to uphold the lower Court decision to wind up the appellant Company.

In re-evaluation of evidence by a first appellant Court, there is no set format to which they should conform. In *Uganda Breweries Limited vs. Uganda Railways corporation* (Civil Appeal No.6 of 2001) [2002] UGSC 1 this Court held:-

"There is no set format to which a re-evaluation of evidence by a first appellate court should conform. The extent and manner in which reevaluation may be done depends on the circumstances of each case and the style used by the first appellate court."

In the instant case, it is clear from the Judgment of the Court of Appeal that the learned Justices of Appeal were alive to their duty as the first appellate Court to re-appraise the evidence and drew inferences of fact.

We find no reason to interfere with the Court of Appeal's re-evaluation of the evidence as was done and the conclusion that the Court reached in relation to grounds 1, 2, 3 and 4 of the Appeal.

The appeal on these grounds is hence dismissed.

Ground 6

It was the contention of the appellants on ground 6 that the Justices of the Court of Appeal relied on Civil Suits No.16 of 1993, Civil Suit No.33 of 2010, Civil Suit No.32 of 2011 and Company Cause No.1/98, Civil Suit No.84 of 1999 in resolution of the four grounds before them when the said suits were not pleaded in the winding up petition and were not adduced in evidence.

We have read the Court of Appeal Judgement and find that the learned Justices of Appeal when summarising the background facts of the Appeal simply laid out the series of events which included the above mentioned suits, in order to show a brief background of the events that led to the winding up Petition. On resolution of the 4 grounds of Appeal before the Justices of Appeal, it is clear that none of the above mentioned suits were relied upon in determining the appeal.

It is our view that, the Justices of Appeal on writing the background facts of the appeal were simply pointing out the series of events that happened before the winding up petition was filed. The Justices of Appeal did not rely on the said civil suits in resolution of the four grounds that were before them.

The appeal on this ground is without merit and is therefore dismissed.

Ground 7

The appellant abandoned this ground of Appeal and counsel did not submit on it. We therefore dismiss it.

Grounds 8, 9, 10, 11 and 12

Under these grounds of appeal, the Justices of the Court of Appeal were faulted for deciding the appeal on the basis of new grounds and issues that were not raised at the trial or during the appeal hearing. That the Court decided the appeal based upon and considering new matters relating to probate and the succession Act which were outside the ambit of the winding up petition.

We perused the trial Court record and that of the Court of Appeal. It is evident that the Will of the late E. B Nyakaana and the appellant Company's Articles of Association were introduced and exhibited by the appellant at the trial and were later also introduced before the Justices of Appeal. The Will and the Articles of Association thus became part of the Court record.

As a first appellate Court, the Court of Appeal had a duty to evaluate all the evidence on record and come to its own conclusion. In fulfilment of their duty of evaluation of evidence under **Rule 30 (1)** of the Court of Appeal Rules, they perused the Will, the Memorandum and the Articles of Association.

The Justices noticed in the process of evaluation of evidence on record that some clauses in the deceased's Will appeared to be invalid when compared with provisions in the Appellant's Articles of Association and the Companies Act (Cap. 110).). The Justices then invited the parties and gave them an opportunity to be heard on these matters. The Appellant addressed Court at length and even conceded before the Justices of Appeal that some of the clauses of the Will were indeed invalid and unenforceable, including the crucial clause that purported to

make a bequest of the deceased's shares in contravention of the Company's Articles of Association.

The Justices of Appeal stated:-

"It would be unjust and an abdication of the duty of this Court if the issues that culminated into the winding up of the appellant company and which would certainly continue afterwards were not addressed and finally determined."

According to the Court record, the Court of Appeal went further to state:-

"From the above excerpts it appears clearly to us that bequests made by E. B Nyakana in respect of his shares in the respondent company were invalid and we hold so. We also find that the directives he made in his will regarding the running of the company were not legally binding on the company or on the other shareholders and directors.

We have carefully read the will of EB Nyakana. We find that the intention of the testator and the effect of his testament was to use the respondent company as a means of administering his estate in perpetuity. The will provides that most of the property would be transferred to the company which would thereafter manage it on behalf of the beneficiaries. The beneficiaries would then be paid by the company over an unspecified period of time. In effect he had tried to create a trust. We find that this would offend section 101 of the Succession Act which provides as follows:-

"101. Rule against perpetuity

No bequest is valid by which the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who is

in existence at the expiration of that period, and to whom, if she or he attains full age, the thing bequeathed is to belong."

We find that all the provisions of EB Nyakana's Will that vest property in the respondent company are invalid as they contravene and offend section 101 of the Succession Act. The bequests are therefore void and unenforceable."

We have considered the above and we do not find that the Justices of Appeal handled new matters that were not canvassed at the trial and at the appeal as submitted by counsel for the appellant.

We find no fault with the Court of Appeal's findings and the conclusion reached in relation to grounds 8,9,10 and 12 of the Appeal.

It is our conclusion that the Court of Appeal Justices adequately re-evaluated the evidence on record before coming to their findings and conclusions. There is no basis for this Court to interfere with the Court of Appeal's holding.

In the result, the appeal is hereby dismissed with costs. The decision and orders of the Court of Appeal are upheld.

Dated at this day. 22nd May

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Hon. Justice Bart M Katureebe **CHIEF JUSTICE**

Grave Engl Hon. Justice Eldad Mwangusya **JUSTICE OF THE SUPREME COURT**

Hon. Justice Opio-Aweri **JUSTICE OF THE SUPREME COURT**

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Fibalemure. Hon. Lady Justice Tibatemwa-Ekirikubinza **JUSTICE OF THE SUPREME COURT**

Hon. Justice Richrd Buteera **JUSTICE OF THE SUPREME COURT**

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