

UGANDA / JUDGMENT

Mukwano Enterprises Limited v Ranchhobhai & Another (Civil Application 16 of 2019) [2021] UGSC 39 (19 March 2021) [2021] UGSC 39

COURT

Supreme Court of Uganda

BEFORE

Opio-Aweri, JSC, Mugamba, JSC, Muhanguzi, JSC,
Tuhaise, JSC, Mike Chibita, JSC

CASE / FILE NUMBER

Civil Application 16 of 2019

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THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: OPIO-AWERI, MUGAMBA, MUHANGUZI, TUHAISE, CHIBITA, JJ. S. C)

CIVIL APPLICATION No. 16 of 2019

MUKWANO ENTERPRISES LIMITED::::::::::::::::::::::::::::

AND

1. RANCHHOBHAI SHIVABHAI PATEL

2. HENRY WAMBUGA (LIQUIDATOR OF

AFRICAN TEXTILE MILL LIMITED)::::::::::::::::::::RESPONDENTS

(Correction of errors under rule 2(2) & 35(1) of the Judicature (Supreme Court Rules) Directions
arising from the ruling by the Court in Supreme Court Civil Application No. 16 of 2019.)

DECISION OF THE COURT.

Under rule 35(1) of the Judicature (Supreme Court Rules) Directions, it is provided as follows:

"A clerical or arithmetical mistake in any judgment of the court or any error arising in it from an accidental slip or omission may, at any time whether before or after the judgment has been embodied in an order, be corrected by court, either of its own motion or on application of any interested person so as to give effect to what was the intention of the Court when judgment was **given**." (Emphasis ours)

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The Court's ruling in respect of Civil Application No. 16 of 2019, stated as follows:

- 1. The judgment of the Honourable Court in Civil Appeal No. 6 of 2017, is maintained subject to the following clarifications.
- 2. The Applicant immediately returns to \$M/s\$ African Textile Mills Ltd (In Liquidation), the plant, machinery that was in the factory at the time it took over.
- 3. In the event, the return of the plant and machinery is not immediately practicable, the Applicant shall pay to the 1st respondent the equivalent of \$ Uganda **Shillings** 11,944,127,000/= per valuation certificate dated 14th May, 2004, being the replacement value of the plant and machinery.

There was an accidental slip in this order. The Court intended for the recovered properties that had been unlawfully disposed of by Mr. Sylvester Henry Wambuga (the Liquidator) to be returned to African Textiles Mills Ltd (in liquidation) on whose behalf the shareholders' derivative suit was brought.

Similarly, it was never the intention of the Court to return the same properties recovered herein to the liquidator who perpetrated the fraud against African Textile Mills Limited (in liquidation). This would be a mockery of the justice system.

Accordingly, Order 3 is corrected to read as follows:

In the event the return of the plant and machinery is not immediately practicable, the Applicant shall pay to African Textile Mills Limited (in liquidation), the equivalent of Uganda shillings 11,944,127,000 per valuation certificate dated 14th May, 2004 being the replacement value of the plant and machinery.

The Court is permitted under rule 2(2) of the Court's rules to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of court. We therefore, make the following additional orders to give effect to the Court's decision.

- 5. The 2nd respondent, Mr. Sylvester Henry Wambuga, is removed as liquidator of African Textiles Mills Ltd (in liquidation) with immediate effect.
- 6. We hereby direct that the shareholders take appropriate steps to complete the liquidation process and also recover what has been decreed to African Textile Mills Ltd (in liquidation) in the judgment of this Court.

Dated at Kampala this Hon. Justice Rubby Opio-Aweri JUSTICE OF THE SUPREME COURT

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Hon. Justice Paul K. Mugamba JUSTICE OF THE SUPREME COURT

Hon. Justice Ezekiel Muhanguzi

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JUSTICE OF THE SUPREME COURT

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Hon. Justice Percy Night Tuhaise

JUSTICE OF THE SUPREME COURT

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Hon. Justice Mike J. Chibita JUSTICE OF SUPREME COURT

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