

UGANDA / JUDGMENT

Uganda Ecumenical Church Loan Fund Ltd v Nankabirwa Harriet (HCT-00-CC-CS 307 of 2002) [2006] UGCommC 50 (27 November 2006) [2006] UGCommC 50

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

HCT-00-CC-CS 307 of 2002

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{\f45\froman\fcharset177\fprq2 Times New Roman (Hebrew);}{\f46\froman\fcharset178\fprq2 Times New Roman (Arabic);}{\f47\froman\fcharset186\fprq2 Times New Roman Baltic;}{\f48\froman\fcharset163\fprq2 Times New Roman (Vietnamese);}

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\pararsid732468 {\f1\lang2057\langfe1033\langnp2057\insrsid7349351\charrsid7349351 In this suit
the plaintiff}{\f1\lang2057\langfe1033\langnp2057\insrsid7349351

, Uganda Ecumenical Church Loan Fund, Ltd. Claims that in December, 1998 it advanced to the
defendant, Nankabirwa Harriet}{\f1\lang2057\langfe1033\langnp2057\insrsid8192638 ,}
{\f1\lang2057\langfe1033\langnp2057\insrsid7349351 trading as '93

The New Generation\94 a loan facility of Ugshs49,800,000/= with a total interest on the principle
loan of Ugshs8,442,000/= all payable within one year by twelve}
{\f1\lang2057\langfe1033\langnp2057\insrsid6820946 }

\f1\lang2057\langfe1033\langnp2057\insrsid12927537

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid14759079 Instalments effective 1}
{\f1\lang2057\langfe1033\super\langnp2057\insrsid14759079\charrsid14759079 st}
{\f1\lang2057\langfe1033\langnp2057\insrsid14759079 March 1999 until }

\f1\lang2057\langfe1033\langnp2057\insrsid8061127 30}
{\f1\lang2057\langfe1033\super\langnp2057\insrsid8061127\charrsid14759079 th}
{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 March}
{\f1\lang2057\langfe1033\langnp2057\insrsid14759079

2000. The plaintiff is claiming shs41,978,000/= being unpaid contractual due }
{\f1\lang2057\langfe1033\langnp2057\insrsid8192638 balance}
{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 Shs}
{\f1\lang2057\langfe1033\langnp2057\insrsid10384132 .}

\f1\lang2057\langfe1033\langnp2057\insrsid8061127 6,510,000/= being unpaid contracted due}
{\f1\lang2057\langfe1033\langnp2057\insrsid8192638 }
{\f1\lang2057\langfe1033\langnp2057\insrsid14759079 interest o}

\f1\lang2057\langfe1033\langnp2057\insrsid1925011 n}
{\f1\lang2057\langfe1033\langnp2057\insrsid14759079 the principal loan, shs6,5}
{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 0}
{\f1\lang2057\langfe1033\langnp2057\insrsid14759079

0,000/= being unpaid contractual surcharge on the aforesaid unpaid two total}
{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 s}
{\f1\lang2057\langfe1033\langnp2057\insrsid14759079 .

\par

\par When the suit came up for hearing Mr. Peter Katutsi}

{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 ,}

{\f1\lang2057\langfe1033\langnp2057\insrsid14759079 Counsel for }

{\f1\lang2057\langfe1033\langnp2057\insrsid8792810 the defendant}{

\f1\lang2057\langfe1033\langnp2057\insrsid8061127 ,}

{\f1\lang2057\langfe1033\langnp2057\insrsid8792810 raised a preliminary objection that the plaintiff}{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 \rquote s}{

\f1\lang2057\langfe1033\langnp2057\insrsid8792810 suit was time barred by the provisions of section 19(I) of the }{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 M}

{\f1\lang2057\langfe1033\langnp2057\insrsid8792810 oney }{

\f1\lang2057\langfe1033\langnp2057\insrsid8061127 L}

{\f1\lang2057\langfe1033\langnp2057\insrsid8792810 ender}

{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 s}

{\f1\lang2057\langfe1033\langnp2057\insrsid8792810 Act. The subsection provides:-

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid13715910

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{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 19(I) No proceedings shall li}

{\f1\lang2057\langfe1033\langnp2057\insrsid11283072 e for the recovery by a money lender }

{\f1\lang2057\langfe1033\langnp2057\insrsid13120315 of any money lent by him or her after the commence}{\f1\lang2057\langfe1033\langnp2057\insrsid11539349 me}{

\f1\lang2057\langfe1033\langnp2057\insrsid13120315 nt of this Act, or of any interest in respect of that money }{\f1\lang2057\langfe1033\langnp2057\insrsid10239825 lent by him or her after the commencement }{

\f1\lang2057\langfe1033\langnp2057\insrsid13715910 of this}

{\f1\lang2057\langfe1033\langnp2057\insrsid14946057

Act, in respect of any loan made by the money lender unless the proceedings are commenced before the expiration of twelve months from the date on which the cause of }

{\f1\lang2057\langfe1033\langnp2057\insrsid10384132 action accrued}{

\f1\lang2057\langfe1033\langnp2057\insrsid14946057 \94}

{\f1\lang2057\langfe1033\langnp2057\insrsid14759079

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid13715910

\par } \pard \qj \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0 \pararsid13715910 {\f1\lang2057\langfe1033\langnp2057\insrsid13715910 Annexure A to the plaint is a Loan Agreement which shows that the loan was granted on 11}{

\f1\lang2057\langfe1033\super\langnp2057\insrsid13715910\charrsid13715910 th}
 {\f1\lang2057\langfe1033\langnp2057\insrsid13715910 December 1998. The loan was payable
 within a period of one year commencing from 1}{

\f1\lang2057\langfe1033\super\langnp2057\insrsid13715910\charrsid13715910 st}
 {\f1\lang2057\langfe1033\langnp2057\insrsid13715910 March 1999, that is not later than 30}
 {\f1\lang2057\langfe1033\super\langnp2057\insrsid13715910\charrsid13715910 th}{

\f1\lang2057\langfe1033\langnp2057\insrsid13715910 March 2000. By letter dated 30}
 {\f1\lang2057\langfe1033\super\langnp2057\insrsid13715910\charrsid13715910 th}
 {\f1\lang2057\langfe1033\langnp2057\insrsid13715910

November, 1999 the defendant sought for the extension of the repayment period to up to
 December 2000. In the plaintiff\quote s letter in reply dated 20}
 {\f1\lang2057\langfe1033\super\langnp2057\insrsid13715910\charrsid13715910 th}{

\f1\lang2057\langfe1033\langnp2057\insrsid13715910 March 2000, the defendant\quote s request
 was rejected and the letter stated:-

\par }\pard \qj \li567\ri567\sl360\smult1\widctlpar\aspalpha\aspnum\faauto\adjustright\lin567\lin
 567\itap0\pararsid732468 {\i\f1\lang2057\langfe1033\langnp2057\insrsid13715910

\par }{\i\f1\lang2057\langfe1033\langnp2057\insrsid8061127 \93--- T}
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid14946057\charrsid2497477 herefore, you }
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid13715910\charrsid2497477 are reminded}{

\i\f1\lang2057\langfe1033\langnp2057\insrsid14946057\charrsid2497477 to clear all dues owing of
 Ug}{\i\f1\lang2057\langfe1033\langnp2057\insrsid2497477\charrsid2497477 . }
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid14946057\charrsid2497477

ECLOF not letter than 30}
 {\i\f1\lang2057\langfe1033\super\langnp2057\insrsid14946057\charrsid2497477 th}
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid14946057\charrsid2497477 March 2000 }
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid10384132 i}{

\i\f1\lang2057\langfe1033\langnp2057\insrsid14946057\charrsid2497477 n order to avoid }
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid10384132\charrsid2497477 the unpleasant}
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid14946057\charrsid2497477

legal action.\94

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid14946057

\par }\pard \qj \li0\ri0\sl360\smult1\widctlpar\aspalpha\aspnum\faauto\adjustright\lin0\lin0\itap0
 \pararsid732468 {\f1\lang2057\langfe1033\langnp2057\insrsid14946057 Though not }
 {\f1\lang2057\langfe1033\langnp2057\insrsid8061127 marked}{

\f1\lang2057\langfe1033\langnp2057\insrsid14946057 photocopies }

{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 of }

{\f1\lang2057\langfe1033\langnp2057\insrsid14946057 both letters we}

{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 r}{

\f1\lang2057\langfe1033\langnp2057\insrsid14946057 e annexed to the plaint and listed a}

{\f1\lang2057\langfe1033\langnp2057\insrsid8005969 m}

{\f1\lang2057\langfe1033\langnp2057\insrsid14946057 ong }

{\f1\lang2057\langfe1033\langnp2057\insrsid13715910

the plaintiff\quote s}{\f1\lang2057\langfe1033\langnp2057\insrsid14946057 list of documents
accompanying the plaint.

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid8005969

\par Counsel for the defendant argue}{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 d that }

{\f1\lang2057\langfe1033\langnp2057\insrsid13715910 the last}

{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 day of payment}{

\f1\lang2057\langfe1033\langnp2057\insrsid8005969 was 30}

{\f1\lang2057\langfe1033\super\langnp2057\insrsid8005969\charrsid8005969 th}

{\f1\lang2057\langfe1033\langnp2057\insrsid8005969

March 2000. That the defendant having failed to pay by then the plaintiff\quote s cause of action
arose on 30}{\f1\lang2057\langfe1033\super\langnp2057\insrsid8005969\charrsid8005969 th}
{\f1\lang2057\langfe1033\langnp2057\insrsid8005969

March 2000. This suit was filed on 14}

{\f1\lang2057\langfe1033\super\langnp2057\insrsid8005969\charrsid8005969 th}

{\f1\lang2057\langfe1033\langnp2057\insrsid8005969

June 2002 after a period of two years and three months. In paragraph 1 of the plaint it }

{\f1\lang2057\langfe1033\langnp2057\insrsid1925011 was }

{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 stated that the }}

\f1\lang2057\langfe1033\langnp2057\insrsid8005969 plaintiff is a company carrying on business of
money lending in Uganda. Mr. Katutsi argued that the plaintiff was a money lender and had de}

{\f1\lang2057\langfe1033\langnp2057\insrsid1925011 a}{

\f1\lang2057\langfe1033\langnp2057\insrsid8005969 lt with the defendant as such. He su}

{\f1\lang2057\langfe1033\langnp2057\insrsid13851255 b}

{\f1\lang2057\langfe1033\langnp2057\insrsid8005969 mitted that the plaintiffs suit was time
barred by the }}

\f1\lang2057\langfe1033\langnp2057\insrsid9581246 provisions of}
{\f1\lang2057\langfe1033\langnp2057\insrsid8005969 section 109 of }
{\f1\lang2057\langfe1033\langnp2057\insrsid9581246 t}
{\f1\lang2057\langfe1033\langnp2057\insrsid8005969 he Money }}

\f1\lang2057\langfe1033\langnp2057\insrsid8061127 L}
{\f1\lang2057\langfe1033\langnp2057\insrsid8005969 enders Act and prayed that the suit be
rejected. I was referred to O.7 rule 11 (d) of the Civil Procedure Rules and the case of }}

\i\f1\ul\lang2057\langfe1033\langnp2057\insrsid8005969\charrsid13851255 Peter Mangeni t/a
Makerere Institute of Commerce Vs Department Asians Property Custodian Board (1998) }
{\i\f1\ul\lang2057\langfe1033\langnp2057\insrsid8061127 V}{

\i\f1\ul\lang2057\langfe1033\langnp2057\insrsid8005969\charrsid13851255 KALR 5}
{\f1\lang2057\langfe1033\langnp2057\insrsid8005969

\par

\par Order 7 rule 11 (d) CPR provides that the plaint shall be rejected where the suit appears from
the statement in the plaint to be barred by any law. Under }
{\f1\lang2057\langfe1033\langnp2057\insrsid13851255 section}{

\f1\lang2057\langfe1033\langnp2057\insrsid8005969 19(2) (b) of the M}
{\f1\lang2057\langfe1033\langnp2057\insrsid13851255 oney Lenders Act the time limit}
{\f1\lang2057\langfe1033\langnp2057\insrsid8005969

for the commencement of proceedings shall not beg}
{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 in}
{\f1\lang2057\langfe1033\langnp2057\insrsid8005969 to run }
{\f1\lang2057\langfe1033\langnp2057\insrsid13851255

in respect of any payment from time to time becoming due to a money lender until a cause of
action accrues in respect of the last payment becoming due under the contract. From }
{\f1\lang2057\langfe1033\langnp2057\insrsid9325056 the plaint}{

\f1\lang2057\langfe1033\langnp2057\insrsid13851255 an}
{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 d}
{\f1\lang2057\langfe1033\langnp2057\insrsid13851255 the annextures thereto it is clear that the
last payment was due on 30}{

\f1\lang2057\langfe1033\super\langnp2057\insrsid13851255\charrsid13851255 th}
{\f1\lang2057\langfe1033\langnp2057\insrsid13851255 March 2000. By 14}
{\f1\lang2057\langfe1033\super\langnp2057\insrsid13851255\charrsid13851255 th}{

\f1\lang2057\langfe1033\langnp2057\insrsid13851255 June 2002 when this suit was filed the
limitation period of twelve months under the Money Lender}
{\f1\lang2057\langfe1033\langnp2057\insrsid8061127 s Act had}{

\f1\lang2057\langfe1033\langnp2057\insrsid13851255 long lapsed. In }
 {\i\f1\ul\lang2057\langfe1033\langnp2057\insrsid13851255\charrsid13851255 Peter Mangeni Vs
 DAPCB}{\f1\lang2057\langfe1033\langnp2057\insrsid13851255 (supra) the }{

\f1\lang2057\langfe1033\langnp2057\insrsid8061127 S}
 {\f1\lang2057\langfe1033\langnp2057\insrsid13851255 upreme Court upheld a dismissal of the suit
 which had been filed six months outside the limitation period as required by section 2(I) (c) }{

\f1\lang2057\langfe1033\langnp2057\insrsid8061127 of the Civil Procedure }
 {\f1\lang2057\langfe1033\langnp2057\insrsid1925011 and }
 {\f1\lang2057\langfe1033\langnp2057\insrsid8061127 Limitation }
 {\f1\lang2057\langfe1033\langnp2057\insrsid13851255 (Misc){}

\f1\lang2057\langfe1033\langnp2057\insrsid11539349 .}
 {\f1\lang2057\langfe1033\langnp2057\insrsid13851255 Provisions) Act. }
 {\f1\lang2057\langfe1033\langnp2057\insrsid8005969

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid13851255

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid12210687 Mr. Kwemara- Kafuzi Counsel }
 {\f1\lang2057\langfe1033\langnp2057\insrsid8922941 for the}
 {\f1\lang2057\langfe1033\langnp2057\insrsid8061127 plaintiff, in his submission}{

\f1\lang2057\langfe1033\langnp2057\insrsid12210687 argued that the plaintiff\rsquote s suit was }
 {\f1\lang2057\langfe1033\langnp2057\insrsid8061127 sa}
 {\f1\lang2057\langfe1033\langnp2057\insrsid12210687 ved }{

\f1\lang2057\langfe1033\langnp2057\insrsid12143666 by section}
 {\f1\lang2057\langfe1033\langnp2057\insrsid12210687 21(I) }
 {\f1\lang2057\langfe1033\langnp2057\insrsid8061127 (c) }
 {\f1\lang2057\langfe1033\langnp2057\insrsid12210687 of the Money Lender}{

\f1\lang2057\langfe1033\langnp2057\insrsid8061127 s}
 {\f1\lang2057\langfe1033\langnp2057\insrsid12210687 Act. It provides.}
 {\f1\lang2057\langfe1033\langnp2057\insrsid13851255

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid12210687

\par }{\pard \qj \f720\li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0
 \itap0\pararsid732468 {\i\f1\lang2057\langfe1033\langnp2057\insrsid12210687\charrsid2497477
 \93(I){

\i\f1\lang2057\langfe1033\langnp2057\insrsid11539349\charrsid2497477)}
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid8061127 T}
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid12210687\charrsid2497477 his Act shall not apply ----

\par }\pard \qj \fi360\li360\ri0\sl360\smult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin360\itap0\pararsid732468

{\i\fi1\lang2057\langfe1033\langnp2057\insrsid11539349\charrsid2497477 (c) }

\i\fi1\lang2057\langfe1033\langnp2057\insrsid11086057\charrsid2497477 to any money lending transaction }{\i\fi1\lang2057\langfe1033\langnp2057\insrsid4865496\charrsid2497477 where the security for repayment of }

\i\fi1\lang2057\langfe1033\langnp2057\insrsid11539349\charrsid2497477

\par }\pard \qj \li1080\ri0\sl360\smult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin1080\itap0\pararsid732468 {\i\fi1\lang2057\langfe1033\langnp2057\insrsid4865496\charrsid2497477 a loan and interest on the loan is }

\i\fi1\lang2057\langfe1033\langnp2057\insrsid8061127 e}

{\i\fi1\lang2057\langfe1033\langnp2057\insrsid4865496\charrsid2497477 ffected by execution of a legal or equitable mortgage upon immovable property }

{\i\fi1\lang2057\langfe1033\langnp2057\insrsid8061127

or of the cha}{\i\fi1\lang2057\langfe1033\langnp2057\insrsid1925011 r}

{\i\fi1\lang2057\langfe1033\langnp2057\insrsid8061127 ge upon immovable property or }

{\i\fi1\lang2057\langfe1033\langnp2057\insrsid4865496\charrsid2497477

of any bonafide transaction of money lending upon such mortgage or cha}

{\i\fi1\lang2057\langfe1033\langnp2057\insrsid8061127 r}

{\i\fi1\lang2057\langfe1033\langnp2057\insrsid4865496\charrsid2497477 ge.\'94

\par }\pard \qj \li0\ri0\sl360\smult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid732468 {\i\fi1\lang2057\langfe1033\langnp2057\insrsid4865496\charrsid2497477

\par }{\fi1\lang2057\langfe1033\langnp2057\insrsid4865496 Counsel referred to annextures

\'93C\'94 and \\'93D}{\fi1\lang2057\langfe1033\langnp2057\insrsid12143666 \\'94 to}

{\fi1\lang2057\langfe1033\langnp2057\insrsid4865496

the plaint and argued that the two letters show that the defendant pledged immovable property as security for }{\fi1\lang2057\langfe1033\langnp2057\insrsid12143666 the loan. That the land }

{\fi1\lang2057\langfe1033\langnp2057\insrsid7747275

being unregistered}{\fi1\lang2057\langfe1033\langnp2057\insrsid12143666 constituted an

equitable mortgage at common law. }{\fi1\lang2057\langfe1033\langnp2057\insrsid4865496

\par }{\fi1\lang2057\langfe1033\langnp2057\insrsid12143666

\par In her letter dated }{\fi1\lang2057\langfe1033\langnp2057\insrsid7747275 7}

{\fi1\lang2057\langfe1033\super\langnp2057\insrsid7747275\charrsid12143666 th}

{\fi1\lang2057\langfe1033\langnp2057\insrsid7747275 November}{

\f1\lang2057\langfe1033\langnp2057\insrsid12143666 1998 anexture D to the plaint, the defendant states:

\par }\pard \qj \li567\ri567\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin567\lin567\itap0\pararsid732468 {\f1\lang2057\langfe1033\langnp2057\insrsid12143666

\par }{\i\f1\lang2057\langfe1033\langnp2057\insrsid7747275 T}
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid12143666\charrsid2497477 his is }
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid7747275 to}{

\i\f1\lang2057\langfe1033\langnp2057\insrsid12143666\charrsid2497477 guarantee my House Plot No 5. Namawayaya Zone, Mbiko, Njeru}{\i\f1\lang2057\langfe1033\langnp2057\insrsid7747275 T}
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid12143666\charrsid2497477

own Council, Mukono District.\'94

\par

\par }\pard \qj \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid732468 {\f1\lang2057\langfe1033\langnp2057\insrsid12143666 And in her letter dated 27}{

\f1\lang2057\langfe1033\super\langnp2057\insrsid12143666\charrsid12143666 th}
 {\f1\lang2057\langfe1033\langnp2057\insrsid12143666 November 1998}
 {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 },
 {\f1\lang2057\langfe1033\langnp2057\insrsid12143666 an}{

\f1\lang2057\langfe1033\langnp2057\insrsid2363941 n}
 {\f1\lang2057\langfe1033\langnp2057\insrsid12143666 exture \'93C\'94 to the plaint, the defendant states:-

\par }{\i\f1\lang2057\langfe1033\langnp2057\insrsid12143666\charrsid2497477

\par }\pard \qj \li567\ri567\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin567\lin567\itap0\pararsid732468 {\i\f1\lang2057\langfe1033\langnp2057\insrsid7747275 \'93I do hereby stake}{

\i\f1\lang2057\langfe1033\langnp2057\insrsid12143666\charrsid2497477 my house located in Namuwa}{\i\f1\lang2057\langfe1033\langnp2057\insrsid13314302\charrsid2497477 ya zone, Mbiko in Mukono Distric}{

\i\f1\lang2057\langfe1033\langnp2057\insrsid12143666\charrsid2497477 t}
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid13314302\charrsid2497477 }
 {\i\f1\lang2057\langfe1033\langnp2057\insrsid12143666\charrsid2497477 as Guarantor of THE NEW GENERATION GROUP

\'94

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid12143666

\par }\pard \qj \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0
 \pararsid732468 {\f1\lang2057\langfe1033\langnp2057\insrsid12143666 In his reply Mr. Katutsi
 argued that the suit }}

\f1\lang2057\langfe1033\langnp2057\insrsid7747275 is }

{\f1\lang2057\langfe1033\langnp2057\insrsid12143666 purely for recovery of money lent and
 interest thereon and not to enforce on agreement of }

{\f1\lang2057\langfe1033\langnp2057\insrsid12016562

security taken. Further that the defendant }{\f1\lang2057\langfe1033\langnp2057\insrsid7747275 i}
 {\f1\lang2057\langfe1033\langnp2057\insrsid12016562

s being sued not as the borrower but as a guarantor and that the security for the repayment was
 by way of post-dated cheques. }{\f1\lang2057\langfe1033\langnp2057\insrsid12143666

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid12016562

\par Secondly, Counsel argued that the defendant has not mortgaged her property but merely
 pledged it. He submitted that a pledge is not one of the securities stated in section 21(I) of the
 Act. He ar}{\f1\lang2057\langfe1033\langnp2057\insrsid7747275

gued that if the legislature had}{\f1\lang2057\langfe1033\langnp2057\insrsid12016562 intended
 the above section to cover pledges as well, it would have }

{\f1\lang2057\langfe1033\langnp2057\insrsid15689726 specifically provided}{

\f1\lang2057\langfe1033\langnp2057\insrsid12016562 so.

\par

\par Thirdly, that annextures \93C\94 and \93D}

{\f1\lang2057\langfe1033\langnp2057\insrsid15689726 \94 above}

{\f1\lang2057\langfe1033\langnp2057\insrsid3223766 did not constitute an equitable mortgage.

Counsel submitted that section 129 of the }}

\f1\lang2057\langfe1033\langnp2057\insrsid15689726 Registration to}

{\f1\lang2057\langfe1033\langnp2057\insrsid3223766 Titles Act clearly }

{\f1\lang2057\langfe1033\langnp2057\insrsid15689726 specify what}

{\f1\lang2057\langfe1033\langnp2057\insrsid3223766

an equitable mortgage is and how it is created. He argued that an equitable mortgage can only be
 made on registered land who}{\f1\lang2057\langfe1033\langnp2057\insrsid870674 se}

{\f1\lang2057\langfe1033\langnp2057\insrsid3223766

title must be deposited by the registered proprietor to the mortgage}

{\f1\lang2057\langfe1033\langnp2057\insrsid1925011 e}

{\f1\lang2057\langfe1033\langnp2057\insrsid3223766 and the }

{\f1\lang2057\langfe1033\langnp2057\insrsid15689726 mortgage}{

\f1\lang2057\langfe1033\langnp2057\insrsid7747275 e}
 {\f1\lang2057\langfe1033\langnp2057\insrsid15689726 must lodge a caveat thereon. Counsel also
 re}{\f1\lang2057\langfe1033\langnp2057\insrsid7747275 f}
 {\f1\lang2057\langfe1033\langnp2057\insrsid9325056
 e}{\f1\lang2057\langfe1033\langnp2057\insrsid7747275 r}
 {\f1\lang2057\langfe1033\langnp2057\insrsid9325056 r}
 {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 ed to sections 8 (2) }
 {\f1\lang2057\langfe1033\langnp2057\insrsid1925011 (c)}{
 \f1\lang2057\langfe1033\langnp2057\insrsid7747275 and 39 (i) (a) of the }
 {\f1\lang2057\langfe1033\langnp2057\insrsid1925011 L}
 {\f1\lang2057\langfe1033\langnp2057\insrsid15689726 and Act and submitted that even under the }
 {
 \f1\lang2057\langfe1033\langnp2057\insrsid7747275 L}
 {\f1\lang2057\langfe1033\langnp2057\insrsid15689726 and Act fo}
 {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 r}
 {\f1\lang2057\langfe1033\langnp2057\insrsid15689726 }{
 \f1\lang2057\langfe1033\langnp2057\insrsid1925011 a }
 {\f1\lang2057\langfe1033\langnp2057\insrsid15689726 person to mortgage or pledge }
 {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 im}
 {\f1\lang2057\langfe1033\langnp2057\insrsid15689726
 movable property he or she must have a }{\f1\lang2057\langfe1033\langnp2057\insrsid7747275 C}
 {\f1\lang2057\langfe1033\langnp2057\insrsid15689726 ertificate of Customary ownership or
 Occupancy under section 34(I) of the Land Act.}{
 \f1\lang2057\langfe1033\langnp2057\insrsid12016562
 \par }{\f1\lang2057\langfe1033\langnp2057\insrsid15689726
 \par In paragraph 4 of the plaint it }{\f1\lang2057\langfe1033\langnp2057\insrsid7747275 is }
 {\f1\lang2057\langfe1033\langnp2057\insrsid15689726 stated that the plaintiff}
 {\f1\lang2057\langfe1033\langnp2057\insrsid870674 }{
 \f1\lang2057\langfe1033\langnp2057\insrsid5535913 adva}
 {\f1\lang2057\langfe1033\langnp2057\insrsid870674 nced money to Nankabirwa Harriet, trading
 as '93The }{\f1\lang2057\langfe1033\langnp2057\insrsid7747275 New }{
 \f1\lang2057\langfe1033\langnp2057\insrsid870674 Generation.\94 But in paragraphs 2 and 5 of
 the plaint its specifically stated that the defendant is sued as guarantor and in}
 {\f1\lang2057\langfe1033\langnp2057\insrsid6033842 }{

\f1\lang2057\langfe1033\langnp2057\insrsid870674 th}
 {\f1\lang2057\langfe1033\langnp2057\insrsid6033842 e}
 {\f1\lang2057\langfe1033\langnp2057\insrsid870674 Loan Agre}
 {\f1\lang2057\langfe1033\langnp2057\insrsid3498743 e}{

\f1\lang2057\langfe1033\langnp2057\insrsid870674 ment Annexure '\93A'\94 to the plaint the
 borrower is New Generation Group and the defendant is a party thereto only a}
 {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 s}{

\f1\lang2057\langfe1033\langnp2057\insrsid870674 Guarantor, and she therein pledges to pay
 both interest and principal in case the borrower fails to pay. I therefore agree with Co}
 {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 unsel}{

\f1\lang2057\langfe1033\langnp2057\insrsid870674 for the defendant that the defen}
 {\f1\lang2057\langfe1033\langnp2057\insrsid2245879 d}
 {\f1\lang2057\langfe1033\langnp2057\insrsid870674 a}
 {\f1\lang2057\langfe1033\langnp2057\insrsid2245879 n}{

\f1\lang2057\langfe1033\langnp2057\insrsid870674 t is sued as guarantor of the loan and not a}
 {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 s}
 {\f1\lang2057\langfe1033\langnp2057\insrsid870674 borrower. }{

\f1\lang2057\langfe1033\langnp2057\insrsid15689726

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid3498743

\par Pursuant to the provisions of section 21 of the Money Lenders Act clearly t}
 {\f1\lang2057\langfe1033\langnp2057\insrsid873903 h}
 {\f1\lang2057\langfe1033\langnp2057\insrsid3498743 e Act does not }
 {\f1\lang2057\langfe1033\langnp2057\insrsid12602758

apply where}{\f1\lang2057\langfe1033\langnp2057\insrsid3498743 security for repayment of the
 loan and interest the}{\f1\lang2057\langfe1033\langnp2057\insrsid873903 r}
 {\f1\lang2057\langfe1033\langnp2057\insrsid3498743 e}{

\f1\lang2057\langfe1033\langnp2057\insrsid873903 }
 {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 on is e}
 {\f1\lang2057\langfe1033\langnp2057\insrsid3498743 ffected by

the execution of legal or equitable mortgage upon immovable property. The plaintiff\quote s
 counsel contends that vide }{\f1\lang2057\langfe1033\langnp2057\insrsid873903 the letters annex
 '\93C'\94 and '\93D'\94

to the plaint the defendant extended an equitable mortgage over her land. According to the
 defendant the letters }{\f1\lang2057\langfe1033\langnp2057\insrsid14122513 only created}
 {\f1\lang2057\langfe1033\langnp2057\insrsid873903 a pledge as }{

\f1\lang2057\langfe1033\langnp2057\insrsid7747275 o}

{\f1\lang2057\langfe1033\langnp2057\insrsid873903 pposed to a mortgage, whether legal or equitable. The }{\f1\lang2057\langfe1033\langnp2057\insrsid14122513 defendant contends}{

\f1\lang2057\langfe1033\langnp2057\insrsid873903 that the security for the loan were post-dated cheques worth the total principal and interest.}

{\f1\lang2057\langfe1033\langnp2057\insrsid3498743

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid873903

\par Section 129 of the Registration of Titles Act make}

{\f1\lang2057\langfe1033\langnp2057\insrsid7747275 s}

{\f1\lang2057\langfe1033\langnp2057\insrsid873903 provision for equitable mortgages. It state}

{\f1\lang2057\langfe1033\langnp2057\insrsid7747275 s}{

\f1\lang2057\langfe1033\langnp2057\insrsid873903 :-

\par }{\i\f1\lang2057\langfe1033\langnp2057\insrsid873903\charrsid2497477

\par }{\pard \qj \li720\ri567\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin567\lin720\itap0\pararsid732468 {\i\f1\lang2057\langfe1033\langnp2057\insrsid873903\charrsid2497477
'93(I) }}

\i\f1\lang2057\langfe1033\langnp2057\insrsid5192023\charrsid2497477 }

{\i\f1\lang2057\langfe1033\langnp2057\insrsid4749026\charrsid2497477 }

{\i\f1\lang2057\langfe1033\langnp2057\insrsid873903\charrsid2497477

Notwithstanding anything in this Act, an equitable mortgage }

{\i\f1\lang2057\langfe1033\langnp2057\insrsid5992044\charrsid2497477 o}

{\i\f1\lang2057\langfe1033\langnp2057\insrsid873903\charrsid2497477 f}{

\i\f1\lang2057\langfe1033\langnp2057\insrsid4749026\charrsid2497477

\par }{\pard \qj \fi15\li1170\ri567\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin567\lin1170\itap0\pararsid732468

{\i\f1\lang2057\langfe1033\langnp2057\insrsid873903\charrsid2497477

land may be made by deposit by the registered proprietor of his or her certificate of title with intent to create a security thereon whether}{\i\f1\lang2057\langfe1033\langnp2057\insrsid7747275 accompanied or not by a note or}{

\i\f1\lang2057\langfe1033\langnp2057\insrsid873903\charrsid2497477 memo}

{\i\f1\lang2057\langfe1033\langnp2057\insrsid5992044\charrsid2497477 random of deposit subject to the provisions hereinafter contained.}{

\i\f1\lang2057\langfe1033\langnp2057\insrsid873903\charrsid2497477

\par {\listtext\pard\plain\i\fi\lang2057\langfe1033\langfenp1033\insrsid5192023\charrsid2497477
 \hich\af1\dbch\af0\loch\fi (2)\tab}}\pard \qj \fi-405\li1170\ri567\sl360\slmult1\widctlpar

\jclisttab\tx1170\aspalpha\aspnum\faauto\ls2\adjustright\ri567\lin1170\itap0\pararsid732468
 {\i\fi\lang2057\langfe1033\langnp2057\insrsid5192023\charrsid2497477 Every equitable}
 {\i\fi\lang2057\langfe1033\langnp2057\insrsid5992044\charrsid2497477

mortgage as aforesaid shall be deemed to create an interest in land.

\par {\listtext\pard\plain\i\fi\lang2057\langfe1033\langfenp1033\insrsid5992044\charrsid2497477
 \hich\af1\dbch\af0\loch\fi (3)\tab}Every equitable mortgage}
 {\i\fi\lang2057\langfe1033\langnp2057\insrsid7747275 e}{

\i\fi\lang2057\langfe1033\langnp2057\insrsid5992044\charrsid2497477 shall ca}
 {\i\fi\lang2057\langfe1033\langnp2057\insrsid7747275 u}
 {\i\fi\lang2057\langfe1033\langnp2057\insrsid5992044\charrsid2497477 se a caveat to be entered
 as provided }

\i\fi\lang2057\langfe1033\langnp2057\insrsid7747275 f}
 {\i\fi\lang2057\langfe1033\langnp2057\insrsid5992044\charrsid2497477 or by section 139\94

\par }\pard \qj \li567\ri567\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\ri567\lin
 567\itap0\pararsid732468 {\i\fi\lang2057\langfe1033\langnp2057\insrsid5992044\charrsid2497477

\par }\pard \qj \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\ri0\lin0\itap0
 \pararsid732468 {\f1\lang2057\langfe1033\langnp2057\insrsid5992044

Section 139 of the RTA provides for the procedure for lodgement of caveats. Section 129 above
 pre-supposes land registered under the {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 A}
 {\f1\lang2057\langfe1033\langnp2057\insrsid5992044

ct. It appears the defendant}{\f1\lang2057\langfe1033\langnp2057\insrsid7747275 \rquote }
 {\f1\lang2057\langfe1033\langnp2057\insrsid5992044 s land was not registered land under the Act.

\par

\par The {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 L}
 {\f1\lang2057\langfe1033\langnp2057\insrsid5992044 and Act}
 {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 ,}
 {\f1\lang2057\langfe1033\langnp2057\insrsid5992044 which commenced in July 1998}{

\f1\lang2057\langfe1033\langnp2057\insrsid7747275 ,}
 {\f1\lang2057\langfe1033\langnp2057\insrsid5992044 provides for the following te}
 {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 nure}
 {\f1\lang2057\langfe1033\langnp2057\insrsid5992044 systems:-

\par {\listtext\pard\plain\f1\lang2057\langfe1033\langfenp1033\insrsid96000
 \hich\af1\dbch\af0\loch\f1 (a)\tab}}\pard \qj \fi-405\li765\ri0\sl360\slmult1\widctlpar\jclisttab\tx765
 \aspalpha\aspnum\faauto\ls3\adjustright\rin0\lin765\itap0\pararsid732468 {
 \f1\lang2057\langfe1033\langnp2057\insrsid96000 Customary
 \par {\listtext\pard\plain\f1\lang2057\langfe1033\langfenp1033\insrsid96000
 \hich\af1\dbch\af0\loch\f1 (b)\tab}Freehold
 \par {\listtext\pard\plain\f1\lang2057\langfe1033\langfenp1033\insrsid96000
 \hich\af1\dbch\af0\loch\f1 (c)\tab}Mailo
 \par {\listtext\pard\plain\f1\lang2057\langfe1033\langfenp1033\insrsid96000
 \hich\af1\dbch\af0\loch\f1 (d)\tab}Lease Hold
 \par }\pard \qj \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0
 \pararsid732468 {\f1\lang2057\langfe1033\langnp2057\insrsid96000
 \par Prior to {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 the }
 {\f1\lang2057\langfe1033\langnp2057\insrsid96000 enactment of the Land Act i}
 {\f1\lang2057\langfe1033\langnp2057\insrsid7747275 t was only Freehold, Mailo and L}
 \f1\lang2057\langfe1033\langnp2057\insrsid96000 eas}
 {\f1\lang2057\langfe1033\langnp2057\insrsid1925011 ehold interests which were regist}
 {\f1\lang2057\langfe1033\langnp2057\insrsid3635 ra}
 {\f1\lang2057\langfe1033\langnp2057\insrsid96000
 ble. The Land Act now provides for registration of customary holdings and for issuance of
 Certificate of {\f1\lang2057\langfe1033\langnp2057\insrsid3635 Customary ownership which
 confer}{\f1\lang2057\langfe1033\langnp2057\insrsid96000
 s on the holder thereof the right}{\f1\lang2057\langfe1033\langnp2057\insrsid3635 ,}
 {\f1\lang2057\langfe1033\langnp2057\insrsid96000 under section 8 (2) (c) of the Act}
 {\f1\lang2057\langfe1033\langnp2057\insrsid3635 , to mortgage or}
 \f1\lang2057\langfe1033\langnp2057\insrsid96000 pledge the land where the certificate does not
 restrict it. As observed by John Tamukedde Mugusibwa in his book }
 {\f1\ul\lang2057\langfe1033\langnp2057\insrsid96000\charrsid3635 Principles of Land Law in}
 \f1\lang2057\langfe1033\langnp2057\insrsid96000 }
 {\f1\ul\lang2057\langfe1033\langnp2057\insrsid96000\charrsid3635 Uganda}
 {\f1\lang2057\langfe1033\langnp2057\insrsid96000 at page 116, under section 8 }
 {\f1\lang2057\langfe1033\langnp2057\insrsid3635 ({

\f1\lang2057\langfe1033\langnp2057\insrsid96000 2}
 {\f1\lang2057\langfe1033\langnp2057\insrsid3635)}
 {\f1\lang2057\langfe1033\langnp2057\insrsid96000 (c) of the Land Act, a holder of a }
 {\f1\lang2057\langfe1033\langnp2057\insrsid3635 C}{

\f1\lang2057\langfe1033\langnp2057\insrsid96000 ustomary Certificate of ownership of land has a
 right to mortgage his or her land and under section 34(I) of

the Act, a tenant by occupancy (a lawful or bonafide occupant) is entitled to pledge his or her
 occupancy. Since neither customary land nor tenancy by occupancy are registered under the
 Registration of Titles Act, th}{

\f1\lang2057\langfe1033\langnp2057\insrsid5192023 e provisions of that Act do not }
 {\f1\lang2057\langfe1033\langnp2057\insrsid3635 apply to them. The Land Act does not }
 {\f1\lang2057\langfe1033\langnp2057\insrsid5192023 prescribe }{

\f1\lang2057\langfe1033\langnp2057\insrsid14122513 the procedure}
 {\f1\lang2057\langfe1033\langnp2057\insrsid5192023 for the creation of a mortgage over land
 owned under customary tenure or right to occupancy.}{

\f1\lang2057\langfe1033\langnp2057\insrsid96000

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid5192023

\par However, section 8(4) of the Land Act provides:-

\par } \pard \qj \li567\ri567\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin567\lin
 567\itap0\pararsid732468 {\i\f1\lang2057\langfe1033\langnp2057\insrsid5192023\charrsid2497477
 \93No transaction referred to in subsection 2(a), (c) or

(f) shall have the effect of passing any interest in the land to which the transaction relates
 unless it is registered by the re}{\i\f1\lang2057\langfe1033\langnp2057\insrsid3635 corder}{

\i\f1\lang2057\langfe1033\langnp2057\insrsid5192023\charrsid2497477 under subsections (3).\94

\par } \pard \qj \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0
 \pararsid732468 {\i\f1\lang2057\langfe1033\langnp2057\insrsid5192023\charrsid2497477

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid5192023 Subsection 3 requires the hold}
 {\f1\lang2057\langfe1033\langnp2057\insrsid3635 er}
 {\f1\lang2057\langfe1033\langnp2057\insrsid5192023 of a Certificate of customary ownership who
 undertakes any tra

nsaction in respect }{\f1\lang2057\langfe1033\langnp2057\insrsid90670 of the}
 {\f1\lang2057\langfe1033\langnp2057\insrsid5192023 land to which }
 {\f1\lang2057\langfe1033\langnp2057\insrsid11364454 the Certificate}{

\f1\lang2057\langfe1033\langnp2057\insrsid6033842 relates to register a copy of the transaction }
 {\f1\lang2057\langfe1033\langnp2057\insrsid11364454 with the}
 {\f1\lang2057\langfe1033\langnp2057\insrsid6033842

recorder. Section 68 of the Land Act provides for the office of a }
 {\f1\lang2057\langfe1033\langnp2057\insrsid11364454 record}
 {\f1\lang2057\langfe1033\langnp2057\insrsid3635 er}
 {\f1\lang2057\langfe1033\langnp2057\insrsid11364454 }{

\f1\lang2057\langfe1033\langnp2057\insrsid6033842 for each sub}
 {\f1\lang2057\langfe1033\langnp2057\insrsid11364454 -}
 {\f1\lang2057\langfe1033\langnp2057\insrsid6033842 county, each gazetted area and each division
 in the case of a city}{

\f1\lang2057\langfe1033\langnp2057\insrsid533151 ,}
 {\f1\lang2057\langfe1033\langnp2057\insrsid6033842 responsible for keeping records relating to
 certificates of customary ownership and certificate of occupancy.}{

\f1\lang2057\langfe1033\langnp2057\insrsid5192023

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid6033842

\par In }{\f1\ul\lang2057\langfe1033\langnp2057\insrsid6033842\charrsid1925011 Govindji Poptlal
 Vs Premachand Rainchaud Ltd (1963) EA 69}
 {\f1\lang2057\langfe1033\langnp2057\insrsid6033842 .}
 {\f1\lang2057\langfe1033\langnp2057\insrsid1925011 ,}{

\f1\lang2057\langfe1033\langnp2057\insrsid6033842 }
 {\f1\lang2057\langfe1033\langnp2057\insrsid533151 i}
 {\f1\lang2057\langfe1033\langnp2057\insrsid6033842 n November 1957, the respondent, a money
 lender made a loan to th

e appellant which purported to be secure}{\f1\lang2057\langfe1033\langnp2057\insrsid533151 d}
 {\f1\lang2057\langfe1033\langnp2057\insrsid6033842 by an equitable deposit of title deed on a
 piece of land, accompanied by a memorandum}{

\f1\lang2057\langfe1033\langnp2057\insrsid8206082 um}
 {\f1\lang2057\langfe1033\langnp2057\insrsid6033842 of equitable mortgage.}
 {\f1\lang2057\langfe1033\langnp2057\insrsid1925011 }
 {\f1\lang2057\langfe1033\langnp2057\insrsid14101225

The memorandum was not registered, registration not being required under Se}
 {\f1\lang2057\langfe1033\langnp2057\insrsid533151 ction 59 of the Land Titles Ordinance}
 {\f1\lang2057\langfe1033\langnp2057\insrsid13456766

until it was amended retrospectively by Section 9 of the Land Titles (Amendment) Ordinance, 1959 which came into force on January 1961. Section 9 of the Land Title (Amendment) Ordinance 1959 provided that the amendment to the Land Titles Ordinance shall be deemed to have come into operation on the date upon which section 9 came into force, which was 1910. It was argued that the equitable deposit of title deeds had created a valid security and that accordingly the Money Lenders Ordinance by virtue of Section 3(I) (b) thereof, had no application to the transaction.

It was held that by virtue of section 9 of the Land Titles Ordinance, the amendment to Section 59 of the Land Titles Ordinance must be deemed to have been operative at the time of the loan transaction, that is 1957, and it was accordingly held that the memorandum of equitable mortgage was invalid for want of registration. It was further held that

the equitable deposit of title deeds had created a valid security and that accordingly the Money Lenders Ordinance by virtue of Section 3(I) (b) thereof, had no application to the transaction.

It was held that by virtue of section 9 of the Land Titles Ordinance, the amendment to Section 59 of the Land Titles Ordinance must be deemed to have been operative at the time of the loan transaction, that is 1957, and it was accordingly held that the memorandum of equitable mortgage was invalid for want of registration. It was further held that

the equitable deposit of title deeds had created a valid security and that accordingly the Money Lenders Ordinance by virtue of Section 3(I) (b) thereof, had no application to the transaction.

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It was held that by virtue of section 9 of the Land Titles Ordinance, the amendment to Section 59 of the Land Titles Ordinance must be deemed to have been operative at the time of the loan transaction, that is 1957, and it was accordingly held that the memorandum of equitable mortgage was invalid for want of registration. It was further held that

by virtue of section 59 of the Land Titles Ordinance (as so amended) }

{\f1\lang2057\langfe1033\langnp2057\insrsid533151 the deposit}

{\f1\lang2057\langfe1033\langnp2057\insrsid9861989 deeds did not effectively create a valid }}

\f1\lang2057\langfe1033\langnp2057\insrsid4356324 mortgage}

{\f1\lang2057\langfe1033\langnp2057\insrsid9861989 and the }

{\f1\lang2057\langfe1033\langnp2057\insrsid4356324 purported}

{\f1\lang2057\langfe1033\langnp2057\insrsid9861989

equitable mortgage therefore was not an effective security '\93upon immovable property'\94 for}

{\f1\lang2057\langfe1033\langnp2057\insrsid4356324 t}

{\f1\lang2057\langfe1033\langnp2057\insrsid9861989 he purposes of sec

tion 3(I) (b) of the Money Lenders Ordinance with the result that the loan transaction was

exempted from the operation of the later Ordinanc}

{\f1\lang2057\langfe1033\langnp2057\insrsid4748 e}

{\f1\lang2057\langfe1033\langnp2057\insrsid9861989 b}{

\f1\lang2057\langfe1033\langnp2057\insrsid533151 y the provisions of section 3(I)}

{\f1\lang2057\langfe1033\langnp2057\insrsid9861989 (b) thereof.}

{\f1\lang2057\langfe1033\langnp2057\insrsid13456766

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid4356324

\par To mortgage or pledge land is a transaction referred to in Section 8 (2) }

{\f1\lang2057\langfe1033\langnp2057\insrsid533151 (c)}

{\f1\lang2057\langfe1033\langnp2057\insrsid4356324 of the Land Act and it was required to be registered by the Rec}{

\f1\lang2057\langfe1033\langnp2057\insrsid533151 order}

{\f1\lang2057\langfe1033\langnp2057\insrsid4356324 under section 9(3) of the Act and if not so registered such transaction would pursuant to subsection 4 not p}{

\f1\lang2057\langfe1033\langnp2057\insrsid4748 ass}

{\f1\lang2057\langfe1033\langnp2057\insrsid4356324 any interest in the mortgage or pledge. On the authority }{\f1\ul\lang2057\langfe1033\langnp2057\insrsid4356324\charrsid4356324 Govind}{

\f1\ul\lang2057\langfe1033\langnp2057\insrsid7935078 j}

{\f1\ul\lang2057\langfe1033\langnp2057\insrsid4356324\charrsid4356324 i Popatlal V}

{\f1\ul\lang2057\langfe1033\langnp2057\insrsid7935078 s}{

\f1\ul\lang2057\langfe1033\langnp2057\insrsid4356324\charrsid4356324 }

{\f1\ul\lang2057\langfe1033\langnp2057\insrsid7935078 P}

{\f1\ul\lang2057\langfe1033\langnp2057\insrsid4356324\charrsid4356324 recurchard Rainchard Ltd}{

\f1\lang2057\langfe1033\langnp2057\insrsid4356324 (supra) such a mortgage or pledge would be invalid for want of registration with the }

{\f1\lang2057\langfe1033\langnp2057\insrsid533151\charrsid533151 Recorder}{

\f1\lang2057\langfe1033\langnp2057\insrsid4356324\charrsid533151 }

{\f1\lang2057\langfe1033\langnp2057\insrsid4356324 and would not create a valid }

{\f1\lang2057\langfe1033\langnp2057\insrsid7935078 equitable mortgage and th}{

\f1\lang2057\langfe1033\langnp2057\insrsid533151 erefore}

{\f1\lang2057\langfe1033\langnp2057\insrsid7935078 not qualified to enjoy the pr}

{\f1\lang2057\langfe1033\langnp2057\insrsid533151 otection}

{\f1\lang2057\langfe1033\langnp2057\insrsid7935078

of section 21(I){\f1\lang2057\langfe1033\langnp2057\insrsid533151) (c) }

{\f1\lang2057\langfe1033\langnp2057\insrsid7935078 the Money Lenders Act.. In }

{\f1\lang2057\langfe1033\langnp2057\insrsid4748 the instant}{

\f1\lang2057\langfe1033\langnp2057\insrsid7935078 case there is no evidence or pleading to show that }{\f1\lang2057\langfe1033\langnp2057\insrsid4748 the charge}

{\f1\lang2057\langfe1033\langnp2057\insrsid7935078

created by the defendant was registered. Equally the}

{\f1\lang2057\langfe1033\langnp2057\insrsid533151 r}

{\f1\lang2057\langfe1033\langnp2057\insrsid7935078 e is no evidence to show that }

{\f1\lang2057\langfe1033\langnp2057\insrsid4748 the defendant}{

\f1\lang2057\langfe1033\langnp2057\insrsid7935078 had registered her interests in the land pur}

{\f1\lang2057\langfe1033\langnp2057\insrsid533151 suant}

{\f1\lang2057\langfe1033\langnp2057\insrsid7935078 to the provisions of the Land Act}{

\f1\lang2057\langfe1033\langnp2057\insrsid533151 in which case the provisions of }

{\f1\lang2057\langfe1033\langnp2057\insrsid7935078 Section 8 of the Act would not apply to such land. }{\f1\lang2057\langfe1033\langnp2057\insrsid4356324

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid7935078

\par The defendant does not appear to hold }{\f1\lang2057\langfe1033\langnp2057\insrsid533151 a}

{\f1\lang2057\langfe1033\langnp2057\insrsid7935078 Customary Certificate o}

{\f1\lang2057\langfe1033\langnp2057\insrsid533151 f}{

\f1\lang2057\langfe1033\langnp2057\insrsid7935078 ownership of the land or a certificate of occupancy. I have not b

een helped with any evidence to show, and I am not aware either, that such certificates and / or the recorder are in place yet. Mr. Katutsi further argued that the transaction between the plaintiff and the defendant was not }{

\f1\lang2057\langfe1033\langnp2057\insrsid533151 a }
 {\f1\lang2057\langfe1033\langnp2057\insrsid7935078 mortgage but a pledge. Section 21(I) (c) of
 the Money \endash Lenders Act relates to \93legal or equitable mortgage\94 or \93cha}{

\f1\lang2057\langfe1033\langnp2057\insrsid533151 r}
 {\f1\lang2057\langfe1033\langnp2057\insrsid7935078 ge\94 Counsel submitted that as a ple}
 {\f1\lang2057\langfe1033\langnp2057\insrsid11295098 d}
 {\f1\lang2057\langfe1033\langnp2057\insrsid7935078

ge the transaction was {\f1\lang2057\langfe1033\langnp2057\insrsid533151 not }
 {\f1\lang2057\langfe1033\langnp2057\insrsid7935078 saved from the provisions of the }
 {\f1\lang2057\langfe1033\langnp2057\insrsid11295098

Money Lenders Act by section 21(I) (c) thereof.

\par

\par Mr. Kwemara Kafuzi for the plaintiff contends that the transaction created an equitable mortgage.

\par

\par A pledge is a bailment of personal property as a security for some de}
 {\f1\lang2057\langfe1033\langnp2057\insrsid533151 b}
 {\f1\lang2057\langfe1033\langnp2057\insrsid11295098 t or engagement. It is distinguishable from
 a transaction }{

\f1\lang2057\langfe1033\langnp2057\insrsid533151 of mortgage}
 {\f1\lang2057\langfe1033\langnp2057\insrsid11295098 in two main ways. The first distinguishing
 factor is that the property pledged should be actually or constructively delivered to the pledge
 }{\f1\lang2057\langfe1033\langnp2057\insrsid533151 e}
 {\f1\lang2057\langfe1033\langnp2057\insrsid11295098 , whereas on a mortgage the property pas}
 {\f1\lang2057\langfe1033\langnp2057\insrsid15497975 s}
 {\f1\lang2057\langfe1033\langnp2057\insrsid11295098

es by assignment and possession by the mortgage}
 {\f1\lang2057\langfe1033\langnp2057\insrsid533151 e}
 {\f1\lang2057\langfe1033\langnp2057\insrsid11295098 is not essential in every case. A pledge
 involves a tra

nsfer of possession of the property deposited as security for the debt to the pledge}
 {\f1\lang2057\langfe1033\langnp2057\insrsid9718871 e}
 {\f1\lang2057\langfe1033\langnp2057\insrsid11295098 and the}
 {\f1\lang2057\langfe1033\langnp2057\insrsid4748

\par }{\i\l1\lang2057\langfe1033\langnp2057\insrsid14489131\charrsid11364454

\par }{\pard \qj \li567\ri567\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\lin567\lin567\itap0\pararsid732468

{\i\l1\lang2057\langfe1033\langnp2057\insrsid14489131\charrsid11364454 \93

I pledge to pay ECLOF both interest and principle in case the project fails to pay\94

\par }{\l1\lang2057\langfe1033\langnp2057\insrsid14489131

\par }{\pard \qj \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\lin0\lin0\itap0\pararsid732468 {\l1\lang2057\langfe1033\langnp2057\insrsid14489131 In annextures \93C\94 and \93D\94 the defendant does not deliver possession of her }}

\l1\lang2057\langfe1033\langnp2057\insrsid11366579 house at Mbiko to the plaintiff. The w}
 {\l1\lang2057\langfe1033\langnp2057\insrsid9718871 o}
 {\l1\lang2057\langfe1033\langnp2057\insrsid11366579 rding of the plaint does not indicate
 anywhere t

hat possession of the said house, actual or constructive, was ever passed to the plaintiff. The
 transaction between the plaintiff and the defendant therefore could not have been }
 {\l1\lang2057\langfe1033\langnp2057\insrsid9718871 a }}

\l1\lang2057\langfe1033\langnp2057\insrsid11366579 pledge as it l}
 {\l1\lang2057\langfe1033\langnp2057\insrsid732468 a}
 {\l1\lang2057\langfe1033\langnp2057\insrsid11366579 cked }
 {\l1\lang2057\langfe1033\langnp2057\insrsid2958734 that necessary element}{

\l1\lang2057\langfe1033\langnp2057\insrsid11366579 of passing possession.}
 {\l1\lang2057\langfe1033\langnp2057\insrsid14489131

\par }{\l1\lang2057\langfe1033\langnp2057\insrsid11366579

\par In}{\l1\lang2057\langfe1033\langnp2057\insrsid9718871 . }
 {\l1\ul\lang2057\langfe1033\langnp2057\insrsid9718871\charrsid9718871 Words and Phrases
 legally defined Vol}{\l1\ul\lang2057\langfe1033\langnp2057\insrsid9718871 .}{

\l1\ul\lang2057\langfe1033\langnp2057\insrsid9718871\charrsid9718871 3}
 {\l1\lang2057\langfe1033\langnp2057\insrsid9718871 at page 179 a}
 {\l1\lang2057\langfe1033\langnp2057\insrsid12276601 n equitab}
 {\l1\lang2057\langfe1033\langnp2057\insrsid9718871

le mortgage is defined as a char}{\l1\lang2057\langfe1033\langnp2057\insrsid12276601 ge which
 creates a cha}{\l1\lang2057\langfe1033\langnp2057\insrsid9718871 r}
 {\l1\lang2057\langfe1033\langnp2057\insrsid12276601

ge on the property but does not convey any legal estate }

{\f1\lang2057\langfe1033\langnp2057\insrsid2958734 or interest. Its operation is that of an execution}{\f1\lang2057\langfe1033\langnp2057\insrsid2569113 e}{

\f1\lang2057\langfe1033\langnp2057\insrsid2958734 ry assurance which, as between the parties, and so far as equitable rights and remedies is equivale}

{\f1\lang2057\langfe1033\langnp2057\insrsid9718871 nt to an actual assurance and is}{

\f1\lang2057\langfe1033\langnp2057\insrsid2958734 enforceable under the }

{\f1\lang2057\langfe1033\langnp2057\insrsid732468 C}

{\f1\lang2057\langfe1033\langnp2057\insrsid2958734 ourts equitable jurisdiction. }{

\f1\lang2057\langfe1033\langnp2057\insrsid11366579

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid2958734

\par In both letter, annexure '93C'94 and '93D'94 the plaintiff used the word '93Stake'94 In annexure '93C'94 she states:-

\par

\par } \pard \qj \li567\ri567\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin567\lin567\itap0\pararsid732468 {\i\f1\lang2057\langfe1033\langnp2057\insrsid2958734\charrsid11364454 '93 I do hereby stake in my house --- as Gu}{

\i\f1\lang2057\langfe1033\langnp2057\insrsid14309338\charrsid11364454 a}

{\i\f1\lang2057\langfe1033\langnp2057\insrsid2958734\charrsid11364454 rantor --- '93

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid9718871 And in the annexure '93D'94 the subject is stated as:- '93Re: stating property for New Generation Project'94}

{\f1\lang2057\langfe1033\langnp2057\insrsid2958734

\par } \pard \qj \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid732468 {\f1\lang2057\langfe1033\langnp2057\insrsid2958734 The letters were written by the defendant prior to the execution of the loan }{

\f1\lang2057\langfe1033\langnp2057\insrsid12258798 agreement. In the loan agreement beside her signature the defendant states:-}{\f1\lang2057\langfe1033\langnp2057\insrsid2958734

\par }{\i\f1\lang2057\langfe1033\langnp2057\insrsid12258798\charrsid11364454

\par } \pard \qj \li567\ri567\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin567\lin567\itap0\pararsid732468

{\i\f1\lang2057\langfe1033\langnp2057\insrsid12258798\charrsid11364454 '93

I pledge to pay to ECLOF both interest and principals in case the project fails to pay.
'94

\par }\pard \qj \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0
 \pararsid732468 {\i\l1\lang2057\langfe1033\langnp2057\insrsid12258798\charrsid11364454

\par }{\l1\lang2057\langfe1033\langnp2057\insrsid12258798 The plaintiff must have }
 {\l1\lang2057\langfe1033\langnp2057\insrsid16214358 written the}
 {\l1\lang2057\langfe1033\langnp2057\insrsid12258798

two letters with an intention to create some form of bailment of }
 {\l1\lang2057\langfe1033\langnp2057\insrsid3355613 her house and /or land as security for the
 loan granted to New Generation Project. In }{

\i\l1\ul\lang2057\langfe1033\langnp2057\insrsid3355613\charrsid9718871 Y Muta}
 {\i\l1\ul\lang2057\langfe1033\langnp2057\insrsid9718871\charrsid9718871 m}
 {\i\l1\ul\lang2057\langfe1033\langnp2057\insrsid3355613\charrsid9718871

bulire Vs Yosefu Kimera H. C. C. Appeal No: 37 of 1972}
 {\l1\lang2057\langfe1033\langnp2057\insrsid3355613 as security for a loan the respondent offered
 his Kibanja and house. Sekandi Ag J. held that the transaction was }{

\l1\lang2057\langfe1033\langnp2057\insrsid9718871 a }
 {\l1\lang2057\langfe1033\langnp2057\insrsid3355613 mortgage and was guaranteed by }
 {\l1\lang2057\langfe1033\langnp2057\insrsid6359604 t}
 {\l1\lang2057\langfe1033\langnp2057\insrsid3355613

he law regulating mortgages. I accordingly find that the transaction created between the plaintiff
 and the defendant was a mortgage.}{\l1\lang2057\langfe1033\langnp2057\insrsid12258798

\par }{\l1\lang2057\langfe1033\langnp2057\insrsid416182

\par In the}{\l1\lang2057\langfe1033\langnp2057\insrsid4748 Muta}
 {\i\l1\ul\lang2057\langfe1033\langnp2057\insrsid416182\charrsid9718871 mbulire Vs K}
 {\i\l1\ul\lang2057\langfe1033\langnp2057\insrsid4748 imera}{

\i\l1\ul\lang2057\langfe1033\langnp2057\insrsid9718871\charrsid9718871 }
 {\i\l1\ul\lang2057\langfe1033\langnp2057\insrsid416182\charrsid9718871 case}
 {\l1\lang2057\langfe1033\langnp2057\insrsid416182 (supra) Court held that in Uganda the law re
 gulating mortgages is two fold. If the land }{\l1\lang2057\langfe1033\langnp2057\insrsid9718871
 mortgaged }{\l1\lang2057\langfe1033\langnp2057\insrsid416182 is regulated by the Registra}
 {\l1\lang2057\langfe1033\langnp2057\insrsid4748 tion}{

\l1\lang2057\langfe1033\langnp2057\insrsid416182 of Titles Act, then that }
 {\l1\lang2057\langfe1033\langnp2057\insrsid4748 A}
 {\l1\lang2057\langfe1033\langnp2057\insrsid416182

ct applied. In the case of unregistered interest in land the applicable law was }
 {\f1\lang2057\langfe1033\langnp2057\insrsid9718871 the common}
 {\f1\lang2057\langfe1033\langnp2057\insrsid416182 law and the doctrine of equity. The }{

\f1\lang2057\langfe1033\langnp2057\insrsid9718871 respondent}
 {\f1\lang2057\langfe1033\langnp2057\insrsid2569113 \rquote }
 {\f1\lang2057\langfe1033\langnp2057\insrsid9718871 s interest}
 {\f1\lang2057\langfe1033\langnp2057\insrsid416182

in that case was a Kibanja and was unregistered}
 {\f1\lang2057\langfe1033\langnp2057\insrsid9718871 . }
 {\f1\lang2057\langfe1033\langnp2057\insrsid416182 Court held that the law applicable was the
 common law and the doctrine of equity. See also }{

\i\f1\ul\lang2057\langfe1033\langnp2057\insrsid416182\charrsid9718871 Waswa Vs Kikungwe
 (1952-6) ULRI

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid416182

\par In }{\f1\lang2057\langfe1033\langnp2057\insrsid8283434 the instant}
 {\f1\lang2057\langfe1033\langnp2057\insrsid416182 case }
 {\f1\lang2057\langfe1033\langnp2057\insrsid8283434 the defendant}
 {\f1\lang2057\langfe1033\langnp2057\insrsid2569113 \rquote }{

\f1\lang2057\langfe1033\langnp2057\insrsid8283434 s}
 {\f1\lang2057\langfe1033\langnp2057\insrsid416182 interest in the land was not }
 {\f1\lang2057\langfe1033\langnp2057\insrsid8283434 registered under}
 {\f1\lang2057\langfe1033\langnp2057\insrsid416182

the }{\f1\lang2057\langfe1033\langnp2057\insrsid4748 R}
 {\f1\lang2057\langfe1033\langnp2057\insrsid416182 egistration of Titles Act. Therefor}
 {\f1\lang2057\langfe1033\langnp2057\insrsid4748 e}
 {\f1\lang2057\langfe1033\langnp2057\insrsid416182

the requirement of registration of the equitable mortgage under the act did not apply to this }
 {\f1\lang2057\langfe1033\langnp2057\insrsid11145625 transaction. Also there is no evidence to
 show }{\f1\lang2057\langfe1033\langnp2057\insrsid8283434

or pleading}{\f1\lang2057\langfe1033\langnp2057\insrsid11145625 that the land was registered
 under }{\f1\lang2057\langfe1033\langnp2057\insrsid8283434 the Land}
 {\f1\lang2057\langfe1033\langnp2057\insrsid11145625 Act therefore the }{

\f1\lang2057\langfe1033\langnp2057\insrsid8283434 requirement for}
 {\f1\lang2057\langfe1033\langnp2057\insrsid11145625 registration of a mortgage with the
 recorder under the Land Act }{\f1\lang2057\langfe1033\langnp2057\insrsid8283434

did not apply to this transaction either. However since judgment in }
 {\i\fl\ul\lang2057\langfe1033\langnp2057\insrsid8283434\charrsid9718871 Mutambulire Vs
 Kimera}{\f1\lang2057\langfe1033\langnp2057\insrsid8283434

(supra) the Mortgage Act has also been enacted and it came into force on 9}
 {\f1\lang2057\langfe1033\super\langnp2057\insrsid8283434\charrsid8283434 th}
 {\f1\lang2057\langfe1033\langnp2057\insrsid8283434 August 1974. }{

\f1\lang2057\langfe1033\langnp2057\insrsid416182

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid8283434

\par Section 1(b) of the Mortgage Act defines '93mortgage'94 to mean:-

\par }{\pard \qj \li567\ri567\sl360\smult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin567\lin
 567\itap0\pararsid732468 {\i\fl\lang2057\langfe1033\langnp2057\insrsid8283434\charrsid11364454
 '93any mortgage , cha}{

\i\fl\lang2057\langfe1033\langnp2057\insrsid9718871 r}
 {\i\fl\lang2057\langfe1033\langnp2057\insrsid8283434\charrsid11364454 ge, debenture, loan
 agreement or other }{\i\fl\lang2057\langfe1033\langnp2057\insrsid9718871 en}{

\i\fl\lang2057\langfe1033\langnp2057\insrsid9718871\charrsid11364454 cum}
 {\i\fl\lang2057\langfe1033\langnp2057\insrsid9718871 bra}
 {\i\fl\lang2057\langfe1033\langnp2057\insrsid9718871\charrsid11364454 nce}{

\i\fl\lang2057\langfe1033\langnp2057\insrsid8283434\charrsid11364454 , whether legal or
 equitable which con}{\i\fl\lang2057\langfe1033\langnp2057\insrsid9718871 stitutes}
 {\i\fl\lang2057\langfe1033\langnp2057\insrsid8283434\charrsid11364454 a cha}{

\i\fl\lang2057\langfe1033\langnp2057\insrsid4748 r}
 {\i\fl\lang2057\langfe1033\langnp2057\insrsid8283434\charrsid11364454 ge over }
 {\i\fl\lang2057\langfe1033\langnp2057\insrsid7931731 an}{

\i\fl\lang2057\langfe1033\langnp2057\insrsid15931463\charrsid11364454 estate or interest in land
 in Uganda or partly in Uganda and partly elsewhere and which is registered under the Act.'94}{

\i\fl\lang2057\langfe1033\langnp2057\insrsid8283434\charrsid11364454

\par }{\i\fl\lang2057\langfe1033\langnp2057\insrsid15931463\charrsid11364454

\par }{\pard \qj \li0\ri0\sl360\smult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0
 \pararsid732468 {\f1\lang2057\langfe1033\langnp2057\insrsid15931463 The }
 {\f1\lang2057\langfe1033\langnp2057\insrsid7931731 L}{

\f1\lang2057\langfe1033\langnp2057\insrsid15931463 and Act section (5) implies that the
 provision of the Mortgage Act applies }{\f1\lang2057\langfe1033\langnp2057\insrsid4279450 to a
 mortgage of }{\f1\lang2057\langfe1033\langnp2057\insrsid7931731

Customary}{\f1\lang2057\langfe1033\langnp2057\insrsid4279450 Land made under the Mortgage Act. However, the definition of '93mortgage'\94

appears to imply that the Mortgage Act only applies to registered and equitable mortgages created over land registered under the Registration of Titles Act since the Mortgage Act came into force in {\f1\lang2057\langfe1033\langnp2057\insrsid7931731

1974 yet Land Act came into force in 1998}{\f1\lang2057\langfe1033\langnp2057\insrsid4279450 . The Mortgage }{\f1\lang2057\langfe1033\langnp2057\insrsid7931731 A} {\f1\lang2057\langfe1033\langnp2057\insrsid4279450 ct presupposes }{\f1\lang2057\langfe1033\langnp2057\insrsid7931731 that }

{\f1\lang2057\langfe1033\langnp2057\insrsid4279450 any Mortgage} {\f1\lang2057\langfe1033\langnp2057\insrsid7931731 ,} {\f1\lang2057\langfe1033\langnp2057\insrsid4279450 be }{\f1\lang2057\langfe1033\langnp2057\insrsid4748 it }

{\f1\lang2057\langfe1033\langnp2057\insrsid4279450 legal or equitable, be } {\f1\lang2057\langfe1033\langnp2057\insrsid7931731 registered } {\f1\lang2057\langfe1033\langnp2057\insrsid4279450 under the Act.}

{\f1\lang2057\langfe1033\langnp2057\insrsid15931463

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid4279450

\par In }{\f1\lang2057\langfe1033\langnp2057\insrsid12848168 the instant} {\f1\lang2057\langfe1033\langnp2057\insrsid4279450 case there was } {\f1\lang2057\langfe1033\langnp2057\insrsid3243102

no registration of the transaction of any form. In the premises I find that though the transaction was an equitable mortgage, it was not a mortgage under the provisions of the Mortgage Act so as to enjoy the protection of section}{\f1\lang2057\langfe1033\langnp2057\insrsid7931731 21(I) (c)}

{\f1\lang2057\langfe1033\langnp2057\insrsid3243102 of the Money Lender Act. The Mortgage } {\f1\lang2057\langfe1033\langnp2057\insrsid4748 A} {\f1\lang2057\langfe1033\langnp2057\insrsid3243102

ct is the principle law which now governs }{\f1\lang2057\langfe1033\langnp2057\insrsid16719789 mortgages in Uganda}{\f1\lang2057\langfe1033\langnp2057\insrsid4748 .} {\f1\lang2057\langfe1033\langnp2057\insrsid16719789 In }{\f1\lang2057\langfe1033\langnp2057\insrsid16719789\charrsid7931731 Govindji Popatlal Vs Premachard Raichant Ltd (Supra)}{\f1\lang2057\langfe1033\langnp2057\insrsid16719789

court found that mere deposit of the title deed where the law required the deposit}

{\f1\lang2057\langfe1033\langnp2057\insrsid4748 ed}

{\f1\lang2057\langfe1033\langnp2057\insrsid16719789 instrument to be registered di}{

\f1\lang2057\langfe1033\langnp2057\insrsid7931731 d}

{\f1\lang2057\langfe1033\langnp2057\insrsid16719789 not create an equitable mortgage as effectual security upon immovable property for purposes of the Money Lender}{

\f1\lang2057\langfe1033\langnp2057\insrsid7931731 s}

{\f1\lang2057\langfe1033\langnp2057\insrsid16719789 Act. The result was that the loan transaction was not exe}{\f1\lang2057\langfe1033\langnp2057\insrsid7931731 mpted}{

\f1\lang2057\langfe1033\langnp2057\insrsid16719789 fr}

{\f1\lang2057\langfe1033\langnp2057\insrsid7931731 om}

{\f1\lang2057\langfe1033\langnp2057\insrsid16719789 the operation of the Act.}

{\f1\lang2057\langfe1033\langnp2057\insrsid4279450

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid16719789

\par In his submission Mr. Kwemara \endash Kafuzi argued Court on morality and public policy to invoke the provisions }{\f1\lang2057\langfe1033\langnp2057\insrsid732468 }

{\f1\lang2057\langfe1033\langnp2057\insrsid4748 of }{

\f1\lang2057\langfe1033\langnp2057\insrsid732468 Article 126(2) (e) of the }

{\f1\lang2057\langfe1033\langnp2057\insrsid7931731 C}

{\f1\lang2057\langfe1033\langnp2057\insrsid732468 onstitution to waive the p

rovisions of the Money Lenders Act concerning limitation. In }

{\i\fi\ul\lang2057\langfe1033\langnp2057\insrsid732468\charrsid7931731 Attorney General Vs Obote Foundation (1994) KALR 47}{\f1\lang2057\langfe1033\langnp2057\insrsid732468

Ntabgoba PJ (as he was) held that Court\rsquote s }

{\f1\lang2057\langfe1033\langnp2057\insrsid7931731 inherent powers}

{\f1\lang2057\langfe1033\langnp2057\insrsid732468 are not invoked where a matter is time barred by }{

\f1\lang2057\langfe1033\langnp2057\insrsid7931731 limitation}

{\f1\lang2057\langfe1033\langnp2057\insrsid732468 . In }

{\i\fi\ul\lang2057\langfe1033\langnp2057\insrsid732468\charrsid7931731 Francis Nansio Michael Vs Nuwa Walakira (1993) VI KALR 14}{

\f1\lang2057\langfe1033\langnp2057\insrsid7931731 i}

{\f1\lang2057\langfe1033\langnp2057\insrsid732468 t was held by the Supreme Court that clearly if the action was time barred then that was the end of it. }{

\f1\lang2057\langfe1033\langnp2057\insrsid16719789

\par }{\f1\lang2057\langfe1033\langnp2057\insrsid732468

\par All in all I find that this suit was time-barred by the provision}

{\f1\lang2057\langfe1033\langnp2057\insrsid4748 s}

{\f1\lang2057\langfe1033\langnp2057\insrsid732468 of Section 19(I) of the Money \endash Lender
Ac

t. It is accordingly rejected and dismissed under Order 7 rule 11 (d) }

{\f1\lang2057\langfe1033\langnp2057\insrsid7931731 o}

{\f1\lang2057\langfe1033\langnp2057\insrsid732468 f the Civil Procedure Rules with costs to
the defendant. I so order.

\par

\par

\par }{\pard \ql \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0
\pararsid96000 {\f1\lang2057\langfe1033\langnp2057\insrsid732468

\par

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