

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO 07 OF 2020

CRANE BANK LIMITED (IN RECIEVERSHIP:.....APPELLANT

VERSUS

1. SUDHIR RUPARELLA

2. MEERA INVESTMENTS LIMITED:.....RESPONDENTS

CORAM: OPIO-AWERI; MWONDHA; TIBATEMWA; MUHANGUZI;
TUHAISE; JJSC

DATE: 11TH FEB, 2022

AT

9:30 A.M.

C/ Peter Kabisi for
both the Respondents
1st Dr. Sudhir
2nd Meera Investments.
The 1st Respondent is
Court
Assisted by C/ Joshua

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C/ Bwku Muesingji

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C/ Alboant Byampung

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EKIRIKUBINZA; MUHANGUZI; TUHAISE-
JJSC**

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**CRANE BANK LIMITED (IN
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VERSUS**

**1. SUDHIR RUPARELIA
2. MEERA INVETMENTS
LIMITED:::::::::::::::::::::::::::::::::RESPONDENTS**

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RULING OF THE COURT

Introduction:

This is a ruling on an application to withdraw an appeal and the party that is supposed to meet the costs of the withdraw of the appeal.

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Background:

Crane Bank Limited (In receivership) hereinafter the applicant/appellant, sued the 1st respondent and Meera Investments Limited in the High Court Commercial Division, vide Civil Suit No.493 of 2017. In that suit, the appellant sought recovery of money, allegedly

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5 misappropriated by the 1st respondent as a Director and Shareholder of the appellant. The appellant also sought delivery of Freehold Certificates of title to 48 properties with duly executed transfer deeds in her favour.

10 Through their written statement of defence, the respondents denied the appellant's assertions and instead challenged the competency of the suit contending that the appellant did not have locus standi to bring the suit, the suit did not disclose a cause of action and that the suit was generally barred in law.

15 Prior to the institution of the suit, Bank of Uganda had placed the appellant under Statutory Management and later under Receivership in line with the provisions of the Financial Institutions Act.

20 Consequently, the respondents (defendants in High Court Civil Suit No.493 of 2017) filed Miscellaneous Application No. 320 of 2019 arising from the head suit, wherein they sought the dismissal of the suit on grounds that the appellant was not clothed with locus standi, the suit did not disclose a cause of action and that the same
25 was barred in law. Wangutusi J. allowed the application and dismissed the suit with costs which were to be borne by the Bank of Uganda. Aggrieved with the decision of the High Court, the appellant lodged an appeal to the

5 Court of Appeal challenging the dismissal. The Court of Appeal heard the appeal and on 23rd June, 2020 delivered its judgment dismissing the appeal with costs in the terms held by the High Court.

10 Dissatisfied with the finding of the Court of Appeal, the appellant filed the instant appeal in this court on Eleven (11) grounds to wit;

- 15 1. The learned Justices of Appeal erred in law in holding that the respondents raised the objections which were relied upon by the High Court to dismiss the appellant's suit in their written statement of defence.
- 20 2. The learned Justices of Appeal erred in law in holding that the points of law were raised on the presumption that the facts in the plaint were true and there was no need to adduce additional evidence.
3. The learned Justices of Appeal erred in law in holding that the points of law raised were based on Order 7 rule 11 and Order 6 rule 29.
- 25 4. The learned Justices of Appeal erred in holding that the appellant, as a receiver, is not granted the powers to sue under the Financial Institutions Act.

- 5 5. The learned Justices of Appeal erred in law when they upheld the decision of the learned Judge that on being placed under receivership, Crane Bank Ltd lost its legal capacity to institute legal proceedings.
- 10 6. The learned Justices of Appeal erred in law in holding that the learned Judge was right to find that a person who cannot be sued cannot sue.
- 15 7. The learned Justices of Appeal erred in law in holding that after the twelve months, the receiver was expected to have completed the options listed in section 95(1) and that in this case, the receivership ended on the 20th January, 2018.
- 20 8. The learned Justices of Appeal erred in law in holding that as a point of law, the receivership had indeed ceased to exist by the time the learned Judge made his ruling.
- 25 9. The learned Justices of Appeal erred in holding that by operation of law, the receivership had expired after 12 months could easily be ascertained from the plaint.
10. The learned Justices of Appeal erred in considering and determining the issue;
“Whether the shares are beneficially owned by the 1st respondent in which case the appellant

5 would become a Ugandan Citizen”, without any evidence having been taken.

11. The learned Justices of Appeal erred in holding that the request for delivery of the freehold title was illegal.

10 The appellant prayed that the appeal be allowed, the decision of the Court of Appeal set aside with a consequential order that the High Court proceeds with the hearing of the suit before another judge.

This appeal has had a checkered history since it was filed
15 in this court with several applications instituted emanating from it, to be specific, six in number to wit Miscellaneous Application No. 32 of 2021, Miscellaneous Application No.33 of 2020, Miscellaneous Application No.39 of 2020, Miscellaneous Application No.40 of 2020,
20 Miscellaneous Application No.02 of 2021 which were all heard and determined. Miscellaneous Application No.44 of 2021 was filed later and the same is yet to be heard and disposed of.

Before the appeal could be fixed for hearing, the
25 appellant through her lawyers on 15th September, 2020 filed a Notice to withdraw the appeal under Rule 90(1) of the Rules of this court. Pursuant to the filing of that notice, the Registrar of this court endorsed the Notice on

5 the same day and consequently wrote to the Lawyers of the respondents informing them of the withdraw of the appeal and also served them with the Notice of Withdrawal.

10 However, the lawyers of the respondents objected to the withdraw through a letter addressed to the Hon. The Chief Justice dated 20th September, 2021. The respondents' objection was based on Rule 90(4) of the Rules of this court wherein they argued that the appeal should be dismissed with costs.

15 Consequently, this appeal was fixed for mention on 9th November, 2021 for this court to determine the issues in contention to wit the notice of withdraw by the appellant vis avi the objection from the respondents.

Representation:

20 On the 9th November, 2021 when this appeal came up for mention, Mr. Peter Kabatsi, Mr. Joseph Matsiko, Mr. Elison Karuhanga represented the respondents while Mr. Albert Byamugisha represented appeared for the appellant.

25 **Arguments on the Notice to withdraw the Appeal:**

For the appellant, Mr. Albert Byamugisha argued that on 15th September, 2021, the appellant lodged a notice of

5 withdrawal of the appeal under Rule 90(1) of the rules of
this court which notice of withdrawal was signed and
sealed by the Registrar of this court on the same day.
Counsel further submitted that the notice of withdrawal
was served on the respondents' advocates, but in a letter
10 dated 20th September, 2021, the respondents' advocates
indicated that the appeal stood dismissed with costs in
accordance with rule 90(4) of the rules of this court.

Mr. Byamugisha also argued that following the filing of
the notice of Withdrawal, they were served with a ruling
15 notice in **Supreme Court Civil Application No.39 of
2020, Sudhir Ruparelia versus Crane Bank Limited
(In Receivership) and Bank of Uganda** for 4th October,
2021 at 10.00am. In response to that notice, counsel for
the appellant wrote to the Registrar of this court
20 indicating that that application abated with the withdraw
of the main appeal as there was no pending appeal. Mr.
Byamugisha informed court that despite the objection,
the court proceeded to deliver the ruling, the
consequence of which is that the appellant filed **Civil**
25 **Application No.44 of 2021, Crane Bank Limited [In
Receivership], Crane Bank Limited [In Liquidation]
and Bank of Uganda versus Sudhir Ruparelia** in which
they sought to set aside the ruling in Civil Application
No. 39 of 2020. Counsel informed court that he was

5 advised by the Registrar of this Court that all applications for review or recall of judgments and rulings were to be de-cause listed.

According to Mr. Byamugsiha, the instant appeal stood dismissed on 20th September, 2021 when the respondent
10 advocates wrote to the court in respect of the notice to withdrawal.

On the issue of costs, Mr. Byamugisha argued that the proposal by the respondents that Bank of Uganda pays costs is not visible as Bank of Uganda is not a party to
15 the instant appeal and as a consequence, it would be unconstitutional, under article 28 to condemn Bank of Uganda unheard. He thus contended that the mere fact that Ms. Kasule swore affidavits as legal counsel for Bank of Uganda does not mean that they should be
20 condemned to pay costs.

On whether the appellant was trying to change the decisions of the lower courts on award of costs, counsel conceded that it is indeed true that the High Court in its ruling indicated that Bank of Uganda should pay the
25 costs but as regards the decision of the Court of Appeal, he was of the view that there is a contradiction as to the award of costs as the court merely held that there was no reason to deny the respondent costs of the suit. He thus

5 prayed that the appeal be dismissed with costs as per the notice of withdrawal.

For the respondent, Mr. Kabatsi argued that it is true that the appellant filed a notice of withdrawal but the same does not speak in finality. Mr. Kabatsi submitted
10 that the respondents do not accept the conclusion of the withdrawal as it intends to overturn the decision of the High Court and Court of Appeal as to who should pay costs. To Mr. Kabatsi, the issue as to who should meet the costs of the suit and the subsequent actions arising
15 therefrom was argued by both parties before the lower Courts and both courts agreed that Bank of Uganda pays the costs. Mr. Kabatsi thus advanced the argument that any attempt by anyone other than a higher court to try and overturn, and vary the decision of those courts is not
20 sustainable. It was further the contention of counsel for the respondent that the issues in the instant appeal shall be effective after they have been settled and decided by this court, and until this court directs otherwise, this appeal was, as of the date of the mention still pending
25 before this court, the reason it was cause listed. Mr. Kabatsi was also of the view that not only does the withdrawal purport to reverse the decisions of the Court of Appeal and High Court but equally purports to usurp

5 the powers of this court by determining who pays the costs.

Counsel for the respondents further submitted that the reason Bank of Uganda should meet the costs of this appeal and in the courts below is because it is on record
10 that it is Bank of Uganda behind the filing of the incompetent suit which argument was bought by the High Court and thus awarded costs against it. Mr. Kabatsi was of the view that the appellant was not in existence and thus could not be compelled to pay its own
15 costs. To buttress this argument, counsel cited the case of **Kyaninga Royal Cottages Ltd versus Kyaninga Lodge Limited HCMA No.551 of 2018** where the director of the company was condemned to pay costs as he was behind the filing of the suit for a none existent
20 company.

In regard to the instant appeal, Mr. Kabatsi argued that the deponent of the affidavit in reply put it on oath that Bank of Uganda instructed advocates and it must have been the one that paid the fees and thus behind the filing
25 of the plaint. Counsel further argued that when the Court of Appeal delivered its judgment, the appellant consented to the terms of the decree and signed it. That the decree clearly provided that Bank of Uganda was to

5 pay the costs of the Appeal. He thus prayed that this court should condemn the attempts of the appellant and Bank of Uganda to substitute binding orders of the court by a notice of withdrawal. To Mr. Kabatsi, this court has already found Bank of Uganda in contempt of court
10 orders and this is yet another act of contempt of the orders of the lower courts.

In conclusion, Mr. Kabatsi prayed that the instant appeal be dismissed, the decisions of the lower courts maintained and that Bank of Uganda should pay the
15 costs of the lower courts and in this court.

Consideration by the Court:

In determining the issue in controversy, we have fully considered the record of Appeal, submissions by respective counsel, the law and the authorities cited in
20 their entirety.

The question to be determined in this appeal is whether the appeal should be withdrawn with costs or dismissed with costs, and as to who should meet those costs.

For the appellant, it was the contention of Mr. Byamugisha that the appeal stood dismissed on the date
25 when counsel for the respondent objected to the withdraw of the appeal and that the costs of the appeal are to be met by the appellant. On the contrary, counsel

5 for the respondent contends that the appeal stood dismissed in line with rule 90(4) of the rules of this court.

Withdraw of appeals in this court is governed by Rule 90 of the rules of this court. In our view, subrules 1 and 4 of Rule 90 are the most relevant subrules in the
10 determination of the issue in contention. The rule provides as follows:

Rule 90; Withdraw of Appeals

1) *An appellant may at any time after instituting his or her appeal and before the appeal is called on for
15 hearing lodge in the registry notice in writing that he or she does not intend further to prosecute the appeal.*

2)

3)

20 4) *If all the parties to the appeal do not consent to the withdrawal of the appeal, the appeal shall stand dismissed with costs, except as against any party who has consented, unless the court on the
25 application of the appellant, otherwise orders.*

5)

5 What is not in dispute is that the appellant on 15th
September, 2021 lodged in the registry of this court a
notice to withdraw the instant appeal which notice was
communicated to the lawyers of the respondents by the
Registrar of this court on 16th September, 2021. Upon
10 receipt of that notice, the lawyers of the respondent
immediately objected to the withdraw through a letter
dated 20th September, 2021 to the Hon. The Chief
Justice. In that letter, the respondent's lawyers elucidate
several aspects justifying their objection to the withdraw.
15 We have however found it necessary to reproduce
paragraph 2 of that letter which in our view brings out
the respondents' objection.

*"From the onset, we humbly state that we object to
the withdrawal in accordance with Rule 90(4) of the
20 Supreme Court Rules. The Appellants have failed to
follow the well stated procedure in Rule 90 of the
Supreme Court Rules and we demand that the appeal
is dismissed with costs subject to other
considerations below".*

25 In that letter, the respondents' lawyers highlight several
legal principles which in our view were re-echoed on the
day this matter came up for mention. Most importantly,
the respondents contend that appeal stood dismissed as

5 of the day of the objection and not on the day when the notice of withdrawal was filed in court.

In line with rule 90(4) of the rules of this court, where either party to the appeal objects to the withdrawal, the appeal stands dismissed with costs. As to which party is
10 supposed to meet the costs of the instant appeal is the issue that should be resolved.

We have perused the record of appeal and at page 253 is the ruling of Wangutusi J. dismissing the suit with costs to be borne by Bank of Uganda. In justifying the award of
15 costs against Bank of Uganda, the trial judge noted and we quote;

*“At the time of filing the suit, Bank of Uganda had taken over management. Counsel for the Plaintiff/Respondent submitted that the proceedings
20 were not commenced by the Bank of Uganda but by Crane Bank Limited in Liquidation. A perusal of the affidavit in reply to the application throws light on who brought the suit to court. The affidavit is deponed by Margret K. Kisule who describes herself
25 and occupation in paragraph 1 thus;*

I am an adult female Ugandan of sound mind and the Legal Counsel of Bank of Uganda which is the statutory receiver of Crane Bank Ltd in

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Receivership and I swear this affidavit in that capacity.

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From the foregoing, there is no doubt that the suit was filed by Bank of Uganda. Since section 96 of the Financial Institutions Act insulated Crane Bank under receivership from court proceedings, execution or other legal processes, the person that should pay costs should be the person who instituted the suit and that is Bank of Uganda. This is so because Crane Bank in Receivership had no capacity to foot the costs and much so, the Bank of Uganda that instituted the suit was aware of this incapacity”.

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In her appeal to the Court of Appeal, one of the grounds raised by the appellant related to the award of costs. That is ground 9 of the Memorandum of Appeal to the Court of Appeal found at page 6-7 of the record of appeal in this court. Ground 9 is worded in the following terms;

“The learned Judge erred in law and in fact in awarding costs of the suit as he did”.

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In its judgment, the Court of Appeal dealt with the issue in regard to the award of costs whereof they upheld the finding of the High Court. In addressing this question, the Court of Appeal held thus;

5 “.....we agree with the learned Judge in
dismissing HCCS 493 of 2017 and awarding costs
following the dismissal. The preliminary objection in
this case wholly disposed off HCCS 493 of 2017.
There was therefore nothing left to try following the
10 dismissal. We for those reasons find this ground in
the negative.....in the instant case, we find no
such misconduct relating to litigation on the part of
the respondents and as such, we find no reason to
deny the respondents costs of the suit. We therefore
15 uphold the trial Judge’s order as to costs”.

When the Court of Appeal dismissed the appeal, a decree
was extracted from its judgment which decree was
endorsed by both counsel to the appeal in line with Rule
35(2) (a) of the Judicature (Court of Appeal Rules)
20 Directions S.I. 13-10. This in effect implied that counsel
for the appellant consented to the contents of the
judgment and decree of the Court of Appeal.

The appellant like we have indicated before was
dissatisfied with the finding of the Court of Appeal and
25 instituted the instant appeal in this court. The instant
appeal is premised on eleven (11) grounds and none of
those grounds relates to the issue of costs as held by the
Court of Appeal. This, in our view is conclusive that the

5 appellant was not aggrieved with the decision of the
Court of Appeal that upheld in totality the finding of the
High Court on the issue of award of costs against Bank
of Uganda and since the appellant chose to withdraw her
appeal in its entirety, it is evident that the decision of the
10 Court of Appeal stands and the same cannot callously be
overturned by a notice of withdraw endorsed by the
Registrar of this court.

The powers of Registrars are well stated under Order 50
of the Civil Procedure Rules S.I. 71-1 as amended. Those
15 powers do not extend to Registrars constituting
themselves as appellate courts and thus overturn
decisions of the lower courts. For the instant appeal, the
Registrar of this court by endorsing that notice of
withdrawal without appreciating its import in our view
20 had the effect of overturning a decision of the Court of
Appeal, heard by a full bench of that Court. In **Blasio
Konde versus Bulandina Nankya & Another, SCCA
No.07 of 1980**, this court largely addressed the question
of parties entering into a consent which has the effect of
25 overturning the decision of the lower court. However, the
court further laid down several principles one of which
relates to the reversal of a decision of a lower court
without a formal hearing by an appellate court. This
court observed thus:

5 *“Only an appellate court can reverse a decision of the court below after hearing the appeal”.*

This court did not fully hear the instant appeal. The Registrar of this court was not an appellate court above the Court of Appeal. It is only a full bench of this court
10 that can reverse a decision of the Court of Appeal. The endorsement of the notice of withdrawal by the Registrar of this court had the effect of overturning the decision of the Court of Appeal on the issue of costs which in our view was erroneous. When the appellant chose to
15 withdraw her appeal, the decision of the Court of Appeal remained standing since there was no pending appeal against it.

A critical perusal of the Notice of Withdrawal of the appeal filed by the appellant would imply that the
20 appellant and its shareholders are to pay the costs of this appeal and from the courts below to themselves! Logically, that does not make legal sense since the reason the appellant was taken over by Bank of Uganda was because it was financially distressed and
25 incapacitated, neither can a shareholder of the appellant who is entitled to costs of an action pay costs to himself.

In further reference to the **Blasio decision (supra)**, this court stated that: “An appeal may, of course, be

5 dismissed by consent; for the appellant thereby merely
gives up his right of appeal, and the decision of the court
or tribunal below is left standing". Like we observed
before, the Blasio decision dealt with the issue of parties
consenting to withdraw their actions but at the same
10 time sets general principles of application. If an appellant
chose to withdraw their appeal, the effect is that the
decision of the lower court remains standing.
Consequently, the Court of Appeal decision and the
orders it made from which the instant appeal emanates
15 stand. That includes the order as to who should meet the
costs of the instant appeal and in the courts below.

However, the law that guides the withdraw of appeals in
this court; Rule 90(4) provides that where either party to
the appeal objects to the withdrawal, then the appeal
20 shall stand dismissed with costs. In line with this
provision, we accordingly dismiss this appeal with costs
in the terms found by the Court of Appeal.

For avoidance of doubt, the Court of Appeal upheld the
finding of the trial court which ordered that the costs of
25 the suit were to be borne by the Bank of Uganda, since it
was the Bank of Uganda behind the filing of the suit and
other subsequent actions. That order shall stand.

5 Before we take leave of this matter, we note that the
Court of Appeal in its judgment found at page 155 of the
record of appeal in this court made orders to the effect
that the receivership of the appellant had ended on 20th
January, 2018. We equally considered this aspect in our
10 ruling in Civil application No.32 of 2020 and found that
indeed, Receivership of the applicant had ended on 20th
January, 2018. The implication of that finding in our
view is that the management of the appellant reverted to
the shareholders after the 20th of January, 2018.

15 In the result, this appeal is dismissed with costs to the
respondents in the terms found by the lower courts. The
dismissal of the instant appeal takes effect as of the date
of endorsement of this ruling.


We so order.

20 Dated at Kampala this.....^{11th}.....day of.....^{Feb}.....2022



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RUBBY OPIO-AWERI
JUSTICE OF THE SUPREME COURT

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.....
FAITH MWONDHA
JUSTICE OF THE SUPREME COURT


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PROF. TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT


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EZEKIEL MUHANGUZI
JUSTICE OF THE SUPREME COURT

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PERCY NIGHT TUHAISE
JUSTICE OF THE SUPREME COURT

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