THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO.07 OF 2020

[Coram: Hon. Justice Prof. Lillian Tibatemwa-Ekirikubinza, JSC (as a Single Judge)]

BETWEEN

CRANE BANK LIMITED (in receivership) ..... APPELLANT

AND

1. SUDHIR RUPARELIA
2. MEERA INVESTMENTS LIMITED..... RESPONDENTS

Representation:

The Appellant was represented by Counsel Albert Byamugisha while the Respondents were represented by Counsel Peter Kabatsi and Edison Karuhanga.

The 1st respondent was present in Court.

DECISION OF COURT

Introduction

This Ruling is premised on a hearing under **Rule 34(2) (a) and (c)** of the **Rules of this Court**.[1] Following the parties' failure to agree on the content of the orders of the decree ensuing from Civil Appeal No.07 of 2021, counsel for the Respondents moved Court under the said rule which provides that:

> **(2) Where a decision of the court was given in an application or appeal of a civil nature—**
>
> **(a) the party who has been substantially successful shall, as soon as practicable, prepare a draft of the order and shall submit it for the approval of the other parties;**
>
> **(b) if all parties approve the draft, the order shall, unless the presiding judge otherwise directs, be in accordance with it;**
>
> **(c) if the parties do not agree on the form of the order, or if there is unreasonable delay in the preparation or approval of a draft, the form of the order shall be settled by the presiding judge or by any judge who sat at the hearing as the presiding judge shall direct, after giving all the parties an opportunity of being heard.** (My emphasis)

Background

The background of this matter is that the Appellant filed an appeal in this Court on 1st August 2020. Before the appeal could be heard, the Appellant withdrew the appeal on 15th September 2020.

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[1] The Judicature (Supreme Court Rules) Directions.

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The Respondents objected to the withdrawal and prayed that the appeal be dismissed with costs under **Rule 90 (4)** of the **Rules of this Court**.

Following a court hearing, on 11th February 2022, Court ruled that the appeal be dismissed with costs to the Respondents in the terms found by the lower courts. Furthermore, that the dismissal took effect on the date of endorsement of the Court's ruling which was 11th February 2022.

In accordance with **Rule 34(2) (a) (supra)**, the Respondents who were the successful parties in the application prepared a draft decree of the orders and submitted the same to the Appellant for approval. The decree was in the following terms:

1. *The appeal is hereby dismissed with costs in the terms found by the Court of Appeal. The costs shall be borne by Bank of Uganda.*
2. *The dismissal of the Appeal shall take effect from the date of this judgment, being 11th February 2022.*
3. *The Appellant's receivership ended on 20th January 2018 and thereafter its management reverted to the shareholders.*

The Appellant, agreed with the first two orders but raised objection to the third order and re-drafted the decree as follows:

1. *The appeal is hereby dismissed with costs in the terms found by the Court of Appeal. The costs shall be borne by Bank of Uganda.*
2. *The dismissal of the Appeal shall take effect from the date of endorsement of this judgment, being 11th February 2022.*

The parties appeared before the Registrar of the Court on 25th February 2022 and presented the two versions of the decree referred to above.

On 17th June 2022 and in line with **Rule 34(2) (c)** of the **Rules of this Court (Supra),** I proceeded to hear the parties.

In court, both Counsel agreed that the only contention is in respect of the latter part of order 3 which appeared in the Respondents' drafted decree. The contested part is high-lighted below:

The Appellant's receivership ended on 20th January 2018 and **thereafter its management reverted to the shareholders.**

In other words, the appellant did not contest the order that receivership ended on 20th January 2018.

Respondents' submissions

It was the argument of the Respondents' Counsel that what they drafted was derived from the Ruling of Court at page 20 paragraphs 5-10 which stated as follows:

"Before we take leave of this matter, we note that the Court of Appeal in its judgment ... made orders to the effect that the receivership of the appellant had ended on 20th January, 2018. We equally considered this aspect in our Ruling in Civil Application No.32 of 2020 and found that indeed, receivership of the applicant had ended on the 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 January, 2018."

Counsel therefore submitted that the contested order was not a concoction of the Respondents but appears in the Ruling of Court. It was on this basis that it was included in the decree extracted by the Respondents. That according to **Rule 33** of the **Rules of this Court**, every decision of the Court shall be embodied in an Order.

Counsel further submitted that even if as stated by the appellant's counsel, the said order was made *per incuriam*, it was still part of the decision of Court.

Counsel argued that the contested order was a consequential order and this Court is empowered by **Rule 31** of the **Rules of this Court** to make such orders. The Rule provides that:

> **On any appeal the court may, so far as its jurisdiction permits, confirm, reverse or vary the decision of the Court of Appeal with such directions as may be appropriate, or order the rehearing of the appeal before**

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the Court of Appeal and as the justice of the case demands, the court may order a trial denovo in the court of first instance, including a constitutional matter and may make any necessary, incidental or consequential orders, including orders as to costs.

On the premise of the above provision of the law, Counsel submitted that if the order indicating that receivership ended formed part of the decree, it then followed that reverting of the management to shareholders was a consequential order which this Court should include as part of the orders in the decree extracted.

On the issue of jurisdiction to make the impugned order, counsel submitted that this Court is vested with powers as those of the original court which heard the matter to make the order. For the foregoing submission, counsel relied on **Section 7** of the **Judicature Act** which provides that:

> **For the purposes of hearing and determining an appeal, the Supreme Court shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the original jurisdiction of which the appeal originally emanated.**

In conclusion, the respondents' counsel prayed that the contested order should constitute part of the orders in the decree.

Appellant's submissions

The appellant's counsel based his rejection of the decree drafted by the Respondents on the fact that the Decree of the Court of Appeal did not include an order that **the management of Crane Bank Ltd reverted to the shareholders.**

The orders contained in the Court of Appeal decree were as follows:

1. *The applicant's receivership ended on 20th January 2018.*
2. *The Appeal is hereby dismissed.*

3. Bank of Uganda is to pay costs herein and in the Court below.

Counsel submitted that this Court had no jurisdiction to make an order reverting the management to the shareholders because the only issue which was before Court on the day the parties appeared to formally withdraw the appeal was in respect of which party would pay costs.

In reply to the reliance on Rule 31 of the Rules of this Court and Section 7 of the Judicature Act by Counsel for the Respondents, Counsel for the Appellant argued that the powers inherent in each of these provisions would only be applicable if the Court had heard the appeal. And that since Civil Appeal No.7 of 2020 was withdrawn and not heard, the provisions were not applicable.[2]

Counsel submitted that since the appeal was withdrawn, no hearing in the form of an appeal against the Court of Appeal decision occurred. Thus, the Court had no power to vary the orders of the Court of Appeal.

Counsel also submitted that even if it were to be taken that the order to revert management to the shareholders was a consequential order,[3] the fact that the appeal was not heard on its merits meant that the Court did not have jurisdiction to make the impugned order. That in fact the said order was made *per incuriam.*

Furthermore, Counsel submitted that the Court could not handover management of Crane Bank Limited (in receivership) because under Part IX of the Financial Institutions Act, the power to manage a distressed financial institution is vested in Bank of Uganda. That Crane Bank Limited remains a distressed financial institution and under the law can only be managed by Bank of Uganda. That Part IX of the Act still applies to the Appellant Bank.

Counsel argued further that the assets of the financial institution cannot be returned to the shareholders and directors who

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[2] It is noted that Rule 31 opens with the words "On any appeal the court may ...". Similarly, Section 7 of the Judicature Act opens as follows: "For the purposes of hearing and determining an appeal the Supreme Court shall ..."

[3] Envisaged under Rule 31.

mismanaged the entity to the detriment of the creditors. That the Bank of Uganda must exercise its statutory duty of resolving the financial institution's business. And then the residual assets, if any, would be handed back to the shareholders. In Counsel's view, since Crane Bank was in a distressed financial position and subjected to management by Bank of Uganda through the receivership process, the assets remain under control of the Bank of Uganda and it is only residual assets that can be handed back to the shareholders but not management.

Counsel further submitted that Crane Bank Ltd which was a functional financial institution was a different entity from Crane Bank (in receivership) and Crane Bank (in liquidation) although the two latter institutions evolved from the former. That there is a distinction between a company which is a going concern and a company under receivership or a company under liquidation. Counsel emphasized that the management of the three mentioned institutions is distinct and different from each other. In conclusion, counsel prayed that only the first two uncontested orders form basis of the decree.

In rejoinder, the respondents' counsel submitted that the Appellant was re-arguing matters that the Court considered closed following the withdrawal of the appeal.

Counsel submitted that the appellant's arguments were in essence an appeal against the Court's decisions and orders in Civil Appeal No.7 of 2020 as well as Supreme Court Civil Application No.32 of 2020. Counsel submitted that this Court, presided over by a single Judge, has no power to overturn a decision of a full Bench.

Consideration of the Court

The issue to be settled is *whether the order that management of the Appellant Bank reverted to its shareholders should form part of the orders in the decree sought to be extracted by the respondents.*

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The issue highlighted above necessitates an interrogation of the consequences of receivership on the one hand and what happens to an entity once receivership ends on the other?

Receivership is a process through which a company's assets are managed by a neutral party to assist the company recover funds due to its creditors. This process may also aid the company to return to profitability.

According to **Section 94 (1)** of the **Financial Institutions Act**, the Central Bank may close a financial institution and place it under receivership. Under Section 94 (3) if a financial institution is placed under receivership, the Central Bank shall become the receiver of the closed financial institution. In other words, the Central Bank is a statutory receiver.

Once a financial institution goes into receivership, the Central Bank takes control of the management of the affairs of the company as well as the assets of the Company in order to realize sufficient assets to pay its creditors.

However, as L S Sealy and Sarah Worthington[4] noted, appointment of a receiver does not affect the legal existence of a company, directors still remain in office but their powers are limited depending upon the powers granted to the receiver and the extent of the assets over which the receiver is appointed. (My emphasis)

I am persuaded by the said philosophy.

In the context of the Financial Institutions Act, closure of the Bank meant it lost its licence to operate as a financial institution. However, the company as a legal personality did not cease to exist. It must be noted that an entity must first be incorporated or registered as a company under the Companies Act before it can be licensed to operate as a financial institution.[5] An entity which

[4] Cases and Materials in Company law' Len Sealy and Sarah Worthington Oxford University Press 2008, New York.
[5] Section 4 (2) of the Financial Institutions Act provides that: No person shall be granted a licence to transact business as a financial institution unless it is a company within the meaning of this Act.

intends to operate as a bank must first acquire corporate legal personality before the Central Bank can grant it the relevant licence. Such is the interplay between company law/the Companies Act and the Law of Banking/the Financial Institutions Act.

Under what circumstances does receivership of a Financial Institution end?

Inherent in Section 95 (1) of the Financial Institutions Act, are circumstances under which receivership of a financial institution ends. It provides as follows-

> **95. Options available to the receiver**
> **(1) The Central Bank shall *within twelve months from the date of taking over as a receiver*, consider and implement any or all of the following options either singly or in combination—**
>
> ***(a)*arrange a merger with another financial institution**
> ***(b)*arrange for the purchase of assets and assumption of all or some of the liabilities by other financial institutions;**
> ***(c)*arrange to sell the financial institution;**
> ***(d)*liquidate the assets of the financial institution.**

Section 95 (1) of FIA obliges the Central Bank as the receiver to *consider and implement* any or all of the options listed in section 95 (1) *within twelve months from the date of taking over as a receiver.*

It is not in dispute that receivership ended on 20th January 2018 - 12 months after the company had been closed and its management had been taken over by the Central Bank.

After the expiration of 12 months from the date of takeover by the receiver, receivership must be deemed to have lapsed by operation of law/by **effluxion of time**.

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It is a position at common law that where a legal relationship is terminated by effluxion of time then the rights accruing revert back to the owner. Thus, in **Tumushabe and another v. Anglo African Ltd and another,**[6] this Court cited *Halsbury's Laws of England,*[7] in which the learned authors observe:

> *If a tenancy determines by effluxion of time or otherwise, and the former tenant remains in possession against the will of the rightful owner the former tenant is, apart from statutory protection, a trespasser from the date of the determination of the tenancy (emphasis added).*

Drawing an analogy from the above authority, since receivership ended by effluxion of time under section 95 (1) of the FIA, the assets and liabilities of the Financial Institution hitherto under receivership revert to the shareholders, with the attendant right to manage the institution. As already noted above, the entity existed as a legal person before it was licensed to operate as a financial institution.

Furthermore, the return of management to the shareholders is a logical result of the fact that the Central Bank is no longer receiver, no longer manager. Law abhors a vacuum.

Counsel for the Appellant objects to the order that with the ending of receivership, the management of the financial institution reverts to its shareholders. Counsel argued that the assets from the financial institution cannot be returned to the shareholders and directors who managed the entity to the detriment of the creditors. That Crane Bank Limited remains a distressed financial institution and (despite the end of receivership) Part IX of the Financial Institutions Act still applies to the bank.

That under the law, the power to manage a distressed financial institution is vested in the Bank of Uganda. That the Bank of Uganda must exercise its statutory duty of resolving the financial institution's

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[6] Supreme Court Civil Appeal No.7 Of 1999.

[7] Third Edition, vol.38, at p.741, paragraph 1207.

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business. And then the residual assets if any would be handed back to the shareholders.

The Appellant's argument that even after receivership ended, management cannot revert to the shareholders on the basis that that part IX of the Financial Institutions Act still applies to the Company, is to presume that the Appellant is still operating as a financial institution. And yet, the consequence of the Bank of Uganda placing Crane Bank under receivership and closing it, was that the Company **ceased operating as a financial institution.** It lost its licence. It is only when, and if, the Appellant company commences operations as a financial institution that the supervisory role of the Central Bank would resume, with the consequence that Part IX can be applicable. And it is not lost on ~~us~~ court that under Section 4 (1) of the Financial Institutions Act: A person shall not transact any deposit-taking or other financial institution business in Uganda without a valid licence granted for that purpose under this Act.

Following the above analysis, the form of the decree is to read as follows:

1. **The appeal is hereby dismissed with costs in the terms found by the Court of Appeal. The costs shall be borne by Bank of Uganda.**
2. **The dismissal of the Appeal shall take effect from the date of this judgment, being 11th February 2022.**
3. **The Appellant's receivership ended on 20th January 2018 and consequently its management reverted to the shareholders.**

Dated at Kampala this 1st day of July 2022.

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PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT.