IN THE COURT OF APPEAL

AT NAIROBI

CIVIL APPEAL NO. 36 OF 1996

UHURU HIGHWAY DEVELOPMENT LIMITED……..…….....…..APPELLANT

AND

CENTRAL BANK OF KENYA…….....……..1ST RESPONDENT

EXCHANGE BANK LTD (INVOLUNTARY LIQUIDATION)…..2NDRESPONDENT

KAMLESH MANSUKHLAL PATTNI……....……3RD RESPONDENT

(Appeal from the ruling of the High Court of Kenya at Nairobi (Hon. Mr. Justice Etyang) dated 19th February, 1996

in

H. C. C. C. NO. 29 OF 1995)

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JUDGMENT OF THE COURT

The appellant, hereinafter referred to as UHDL, on January 6, 1995, instructed proceedings in the superior court against the respondents. It is alleged in the plaint that in October 1993, the second respondent Bank prevailed upon UHDL to guarantee Shs. 2.5 billion of the debts owed by the second respondents to the first respondent, hereinafter referred to as the CBK, and by a charge dated 21st October,1993 and registered on 31st December, 1993, UHDL executed a charge over its piece of land namely Plot L. R. No. 209/9514 Nairobi together with all the buildings and other improvements thereon to secure the repayment of a sum not exceeding the Shs. 2.5 billion owed by the second respondent to the CBK. UHDL states further that at the time of the creation of this security there was an agreement or understanding between UHDL and the respondents that the charge created was only a stop-gap arrangement, not to be enforced and that the second respondent would meet its debt liability to the CBK from its own resources. UHDL further claims that it was also understood and agreed that the charge would not be enforced without the CBK first resorting to and exhausting its remedies against both the second and the third respondents. All this understanding and agreement not to enforce the security given to the CBK is said to have been oral and not evidenced by any writing.

The plaint avers that the charge in question is invalid, null and void and unenforceable on the grounds that it is ultra vires the objects of UHDL; it contravenes the provisions of the Central Bank of Kenya Act and is a fraudulent preference of the CBK over other creditors. It is further averred in the plaint that on

March 3, 1994, the second and third respondents reached an agreement to pay the said sum of 2.5 billion by 3 installments of Shs. 100 million, Shs. 2 billion and Shs. 400 million on 4th March, 1994, 31st March, 1994, and 15th April 1994 respectively. The first installment was paid on 4 March, 1994, but the other two instalments were not paid because, according to UHDL, the third respondent, hereinafter referred to as Mr. Pattni, was arrested on 31st march, 1994, and potential financiers who had agreed to lend him and the second respondent the money required to meet those installments, were scared off and no alternative financing was available. UHDL also challenged the CBK's right to appoint a receiver to take over and run the business of the Grand Regency Hotel which stands on the mortgaged property. UHDL claims that no demand was ever made under the guarantee and consequently no sum because due from it and that no debenture was ever given by it to the CBK. It also claims that the exact amount alleged to be due and payable was never specified.

UHDL further claims that after Mr. Pattni had been released from custody, he entered into negotiations with the CBK which culminated in an agreement dated 29th September, 1994, which contained an acknowledgement and confirmation that the CBK owed the second respondent a sum of Shs. 3.585 billion. UHDL had then requested the CBK to deduct from this amount the sum of Shs. 2.5 billion owed to it by UHDL under the charge. UHDL contended that as there was nothing due from the second respondent to the CBK its own liability to the CBK under the two instruments had been discharged. However, the CBK did not accept these contentions and proceeded to advertise the sale of the Grand Regency Hotel.

In addition to the injunction sought in the plaint other reliefs that were claimed included declarations that the charge and the guarantee are null and void and unenforceable as well as the appointment of the Receiver; an order that an account be taken of what has been received by the Receiver from the Grand Regency Hotel and for the payment of the amount found to be due to UHDL; and finally damages for trespass against the CBK. It is common knowledge that on the same day of filing its suit namely on 6th January, 1995 UHDL took out a chamber summons under a certificate of urgency under Order 39 rules 1 and 2 of the Civil Procedure Rules for a temporary injuction to restrain the CBK from selling the Grand Regency Hotel by public auction. The vacation judge, Githinji, J. heard and granted the said application the consequence of which was a myriad of applications culminating in this appeal. At the inter partes hearing of the summons ole Keiwua, J. dealt with two consolidated applications, one by the UHDL to confirm the ex parte injunction granted by Githinji, J. ; and, the other by CBK to vacate it. At the end of the day Ole Keiwua, J. dismissed UHDL's application and vacated the said ex parte order. He held that there was non-disclosure of material facts on the part of UHDL and also ruled that a prima facie case with a probability of success had not been presented before him. This court, composed of a different bench, in Civil Application No. 140 of 1995 on July 14, 1995, dismissed the UHDL's bid to stay execution under rule5(2)(b) of the Court of Appeal Rules. Four days later, on July 18, 1995, UHDL filed yet another application in the superior court again under order 39 rules 1 and 2 of the Civil Procedure Rules for another injunction this time, to restrain the CBK from selling the charged property together with the movables and other chattels until UHDL was properly and adequately allowed to remove and retrieve the chattels. Pall, J. dismissed the application holding that he was not prepared to order the release of the movable assets to UHDL until the determination of the suit and the counter-claim which had been lodged by CBK. On the question of the sale of the Grand Regency Hotel itself, the learned judge ruled that the matter was Res Judicata as the issue of injunction had been twice rejected "both by the High Court and the Court of Appeal on merits". It is apparent that no appeal was preferred against that ruling. Mr. Sharma had than conceded that the issue of the injunction as regards the sale of the mortgaged property had been exhausted.

This Court, in a bench comprising of the same coram as the present one, in Civil Appeal No. 126 of 1995 upheld the ruling of Ole Keiwua, J. and dismissed the appeal which had been lodged against the said ruling by UHDL.

On December 19, 1995, the CBK re-advertised the mortgaged property together with the Grand Regency Hotel for sale by public auction and which prompted the appellant's second application dated January 2, 1996 which was brought under Order 39 rules 1, 2 and 3 of the Civil Procedure Rules and the Vacation

(Practice and Procedure) Rules. It is convenient now to set out the prayers of the appellant's previous application dated January 6, 1995 which are as follows:-

1. That the Defendants whether by themselves or their servants or agents, or advocates, or auctioneers or any of them or otherwise be restrained by injunction until judgement in this action or further order from doing the following acts, or any of them, that is to say form selling, by public auction as advertised or otherwise howsoever as any other time, or by completing by conveyance or transfer of any sale concluded by auction or otherwise howsoever of the charged property known as L. R. NO. 209/9514, Nairobi and the movables in the pleading mentioned; enforcing or taking any steps towards enforcing the guarantee in the pleadings mentioned.

2. Service upon the Defendants be dispensed with, upon grounds that the object of granting the injunction would be defeated by delay as the property may be sold by private treaty in the meantime and time is sort to allow service, filing of opposing and replying affidavits.

3. The Plaintiff undertakes to abide by any order this Court may make as to damages incase this Court shall be of opinion that the Defendants shall have sustained any by reasons of the Order of Injunction, which the Plaintiff ought to pay.

4. The plaintiff be at liberty to file affidavit in reply at any time before the hearing.

5. The application is urgent, be dealt with during vacation.

6. The cost of this application be costs in the cause.

The appellant's second application dated January 2, 1996 sought the following reliefs:-

1. The 1st defendant whether by itself or its servants or agents, or advocates, or auctioneers or any of them or otherwise be restrained by injunction until judgment in this action or further order from doing the following acts, or any of them, that is to say from selling, by public auction as advertised or otherwise howsoever at any other time, or by completing by conveyance or transfer of any sale concluded by auction or otherwise howsoever of the charged property known as L. R. NO. 209/9514, Nairobi and the MOVABLES (chattels) including the vehicles lying in or at the suit premises in the pleadings mentioned; enforcing or taking any steps towards enforcing the guarantee in the pleadings mentioned.

2. Service upon the 1st Defendant be dispensed within the first instance, upon grounds that the object of granting the injunction would be defeated by delay as the service would precipitate action by the 1st Defendant to sell the property by private treaty in the mean time.

3. The Governor of the Central Bank of Kenya should be committed to Civil jail for contempt of court in that he has advertised the Grand Regency Hotel for sale while there is a valid order of this Honourable Court directing that the Status Quo be maintained until final determination of the suit.

4. The advertised sale of the Grand Regency Hotel be stopped.

5. The plaintiff undertakes to abide by any order this court may make as to damages in case this court shall be of opinion that the Defendants shall have sustained any by reasons of the Order of Injunction, which the Plaintiff ought to pay.

6. The application is urgent, be dealt with during vacation.

On the same day that the second application was brought, Mr. Sharma, counsel for UHDL in that application and in this appeal, appeared before the vacation judge, Etyang, J. and urged him to admit the application to hearing during vacation and to grant the orders sought ex parte because the matter was urgent and the service of application might precipitate the sale of the Grand Regency Hotel by private treaty though advertised for sale by public auction on January 17, 1996. The learned judge admitted the

application to hearing during vacation but declined to hear it ex parte. He however, directed that the respondents herein, who were also respondents in the application, be served and the hearing to commence on January 4, 1996. On that day, and before, the application could be heard Mr. Murgor, counsel for the CBK, raised three preliminary objections against it. His main ground was that the application was res judicata, the same having been fully and finally determined "thrice by the High Court and twice the Court of Appeal". What this actually meant was that three applications for injunction were heard and declined by the High Court and this Court, too, refused an application for a stay under the well-know rule 5(2)(b) of the rules of this Court and further proceeded to dismiss the appeal by UHDL arising from that refusal by Ole Keiwua, J. Mr. Murgor's other grounds of objection are actually immaterial and are not relevant in the determination of this appeal. However, it suffices to say that we may revert to them later should the need arise.

After some hesitation by Mr. Murgor as to whether to appeal against or seek the review of Etyang J. 's order that he was properly seized of the application, would hear and determine it himself and would not seek directions from the Honourable the Chief Justice, Mr. Murgor then informed the judge that he would not resort to any of those alternatives but would straightway argue his preliminary objections.

Looking at the prayers in the two applications there can be no doubt that the applications are of identical nature. Both applications sought in the same breath injunctions to restrain the CBK from selling the mortgaged property. Further, both applications were brought under 39 rules 1 and 2 of the Civil Procedure Rules which can only be invoked if here is a suit pending, or filed along with the application for temporary injunction.

Order 39 Rule 1(a) of the Civil Procedure Rules caters for grant of temporary injunctions to restrain a party from wasting, damaging, alienating, selling, removing or disposing of real property until further orders, primarily until determination of the suit itself. Rule 1(b) thereof caters for the grant of temporary injunctions in respect of matters which we are not concerned with here.

On 24th may, 1995 the superior court (Ole Keiwua J.) as pointed out earlier, had declined to grant a temporary injunction against the CBK on two grounds, firstly, that UHDL had not been candid enough to the court and had not disclosed material facts it knew in obtaining the ex parte injunction before Githinji, J. and; secondly, that UHDL had not met the requirements for the grant of a temporary injunction as laid down per the principles enunciated in the celebrated case of Giella Vs Cassman-Brown & Co. Ltd.[1973] E.A. 358. UHDL was thus facing a situation, as a result of refusal of the said injunction, whereby the Grand Regency Hotel was liable to be sold under the CBK's statutory power of sale. Here, we must make it clear that courts do not order exercise of a statutory power of sale. It is a statutory. Courts can only stop such exercise if circumstances so warrant. If a court declines to grant an injunction stopping the exercise of such a statutory power of sale, the sale proceeds under the statute that gives such a power. Mr. Sharma, however, urged for days on end that UHDL had, nevertheless, every right to bring a fresh application for injunction. His urgings can be summarized as follows:

1. There being no final adjudication in H. C. C. C. No. 29 of 1995 the doctrine of res judicata as defined in section 7 of the Civil Procedure Act cannot apply and hence UHDL can bring the second application.

2. In any event there were sufficient new facts to justify UHDL in bringing in a fresh application for the superior court to consider de novo.

3. It was not open to the superior court (Ole Keiwua J.) or this court to go into the issue of merits once the two courts had come to the conclusion that UHDL ought not be granted the temporary injunction on the basis of non-disclosure of material facts; that the two courts should have stopped there and told UHDL to try properly again.

4. That the observations by the courts on merits which were mere obiter dicta did not therefore constitute a bar to UHDL bringing another application for temporary injunction to stop the statutory sale of the Grand Regency Hotel.

5. That further, and in any event as the suit that UHDL had brought to court was really a REDEMPTION SUIT there could be no bar to the number of redemption suits that UHDL as mortgagor/charger could bring, or to the number of temporary injunctions applications that it made.

The first of the points noted above is covered by grounds 1, 2, 3, and 4 of the UHDL's grounds of appeal before us. The second point is covered by grounds 8, 17 and 18 of the grounds of appeal. The third of the said points is covered by ground 5 and partly by ground 6 and ground 7 of the grounds of appeal. The fifth point noted above is covered by grounds 9, 10, 11 and 15 of the grounds of appeal. We will consider grounds 12, 13, 14, and 19 of the grounds of appeal separately later.

Grounds 1, 2 and 3 of grounds of appeal relate, as pointed out, to the issue to the issue of res judicata. Section 7 of the Civil Procedure Act (the Act) reads:

"7. No court shall try any suit or issue or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by court."

The sum total of Mr. Sharma's argument on the issue of res judicata is that there was not and thee is no former suit to support the proposition that what was decided by Ole Keiwua, J,. and by this court is 'res judicata'. True, there is no former suit by way of plaint. The issue simply is and was: can UHDL, having lost one injunction application, apply for same or similar injunction once again? We will revert to this later.

In support of the first three grounds of appeal Mr. Sharma relied on 47 authorities. We ought to state right here that it is not the number of authorities that matter. Authorities numbered 1, 11, 42, 51, 63, 69, 77, 151, 79, 85, 89, 99, 128, 138, and 144 (15 authorities) relate to ground 1 of the appeal. The very first authority is KANSHI RAM V BANSI LAL AIR 1977 Himachal Pradesh 61 which deals with order 39 rules 1 and 2 of the Indian Civil Procedure Rules which are terms similar to 0.39 rules 1 and 2 of the our own Civil Procedure Rules. The ratio decidendi of the KANSHI RAM case is that opinions expressed on the merits of a case at the stage of interlocutory proceedings for the issuance of a temporary injunction are not binding on the trial court. By trial court is meant the court which finally hears the suit on merits. It would be convenient to se out the head-not in that case:

"In every application for an interim injunction in a pending suit it is necessary for the court to enter, to some degree, into the merits of the case in order to determine whether a prima facie case exists. To what degree the court will enter will vary with the facts of each case. When the court declares that prima facie case exists it intends to say that the case of the plaintiff is not without merits. Any opinion expressed by the court, whether it be of the trial court or an appellate court or revisional court cannot in law preclude the trial court from considering the issue afresh when deciding the suit (emphasis added by us) and for that purpose it must have regard to all the material then before it. In deciding that issue, it will properly have no regard to the finding rendered on the point while disposing of the application for interim injunction. No matter how superior the court rendering that finding including High Court, the trial court is bound in the proper discharge of its duties to ignore the finding when it proceeds to dispose of the suit and to apply its mind independently to the decision of the issue."

Stated simply, a trial court, as opposed to a judge sitting in chambers hearing a interlocutory application, applies and must apply its own mind to facts on evidence before it without regard to what may have been expressed by the judge or an appellate court in regard to the merits of a case in determining whether or not there is a prima facie case. We have no quarrel with that. That is what we said in Civil Appeal No. 126 of 1995 in which the parties were the same and litigating under the same title. We said that to express a concluded view on the merits of the case would hamstring the decision by the High Court. It is for this reason that views expressed by us at an interlocutory stage are not binding on the trial court as facts may emerge in a different light then, or views may change, decisions may change or this court may not follow its own decision when found to be wrong. Concluded views can

only be expressed on facts not in dispute or not disputable facts which stand out as clear as day light.

Authority numbered 11, the case of RAMJI GIR & OTHERS V ELAICHIDEVI AIR 1974 patna 280, decides that a rejection of a petition does not determine the rights of the parties. That must be so since a rejected petition is like a struck our appeal as opposed to a petition dismissed after a full hearing.

We hope we will be forgiven for not referring to all other authorities on this ground of appeal. We need not set them out seriatim, for the reason that no one has any quarrel with them. In order to rely on the defence of res judicata there must be:

(i.) a previous suit in which the matter was in issue;

(ii.) the parties were the same or litigating under the same title.

(iii.) a competent court heard the matter in issue;

(iv.) the issue has been raised once again in a fresh suit.

What is before us is: can a matter of interlocutory nature decided in one suit be subject of another similar application in the same suit? Does the principle of res judicata apply to an application heard and determined in the same suit? We would like to refer to the decision in the case of RAM KIRPAL VS RUP KUARI reported in I.L.R. Vol. VI 1883 Allahabad series. The Privy Council sitting on appeal from a decision of the full bench of Allahabad High Court said:

"The questions, if the term "res judicata" was intended, as it doubtless was, and was understood by the full Bench, to refer to a matter decided by a court of competent jurisdiction in a former suit, was irrelevant and inapplicable to the case (emphasis ours). The matter decided by Mr. Probyn was not decided in a former suit, but in a proceeding of which the application, in which the orders reversed by the High Court were made, was reversed by the High Court were made, was merely a continuation. It was as binding between the parties and those claiming under them as an interlocutory judgement in a suit is binding upon the parties in every proceeding in that suit, or as a final judgement in a suit is binding upon them in carrying the judgement into execution. The binding force of such a judgement depends not upon S.13, Act I of 1877 but upon general principles of law. If it were not binding, there would be no end to litigation."

What did the Privy Council say in RAM KIRPAL's case? Their Lordships clearly were concerned about the desirability of bringing an end to litigation and went on to say that Section 13 of act I of the 1877 which is equivalent to Section 7 of our Civil Procedure Act, was not exhaustive, really; and that the law of "res judicata" did apply to a matter decided in the same suit and that upon its general principles it applied to interlocutory proceedings in the same suit.

Mr. Sharma was at pains to show that it was only in respect of execution proceedings in a suit that the Privy Council in RAM KIRPAL case held that the doctrine of res judicata did apply and that it did not apply in respect of other applications in the suit. He relied upon many authorities of Indian courts to say that it was only in respect of execution proceedings that the doctrine of res judicata applied in the same suit. He referred us to not less than 14 authorities to support this argument. He referred to Commentary on Mulla's Civil Procedure Code and Section 141 of the Indian Civil Procedure Code, which is equivalent of section 89 of our Civil Procedure Act. There is no doubt at all that provisions of section 7 of our Civil Procedure Act relating to res judicata in regard to suits do apply to applications for execution of decrees but there is no doubt, also that these provisions are governed by principles analogous to those of res judicata. See pages 536 and 537 of Mulla on the Code of Civil Procedure vol. 1 13th Edition.

In the case of TAKUR PRASAD V FAKIR-ULLAH I. L. R. (P.C.) 1894 Vol. XVII 106 the Privy Council referring to execution procedure held that proceedings spoken of in s.647 including original matters in the nature of suits such as (emphasis added) proceedings in probates, guardianship and so forth, and do not include execution. The Privy Council was of the view that as there was a complete code as

regards execution, to apply another procedure, mostly unsuitable, would be wrong. To appreciate this better we quote from the decision:

"By the Civil Procedure Code of 1882 it is enacted in section 373 that if the plaintiff withdraws from the suit or abandons part of the claim without the permission of the court to bring fresh suit for the same matter or in respect of the same part. By section 647 of the same code it is enacted that the procedure therein prescribed shall follow as far as it can be made applicable in all proceedings in any court of Civil Jurisdiction other than suits and appeals."

Section 647 of the 182 Indian Code of Civil Procedure read as follows:

"The procedure herein prescribed shall be followed, so far it can be made applicable, in all proceedings in any court of civil jurisdiction other than suits and appeals."

Section 647 aforesaid was, with amendments, incorporated in Section 141 of the Indian Code of Civil Procedure which section reads:

"141. The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction."

The words "other than suits and appeals" were omitted from section 141. This must have done obviously to widen the scope of the section to all proceedings in the courts of civil jurisdiction without hindering the courts by the use of the words "other than suits and appeals."

The learned author of Mulla on the Code of Civil Procedure 13th Edition, quite correctly, points out as follows:

"The question arose under that section whether the words proceedings other than suits and appeals" included proceedings in execution; in other words, whether that section had the effect of rendering the provisions of the code relating to suits applicable to proceedings in execution of a decree."

All the relevant authorities relied upon by Mr. Sharma in regard to section 141 of the Indian Code of Civil Procedure show that the provisions of Section 11 thereof(our section 7) relating to res judicata in regard to suits do no apply to applications for the execution of decrees. There is not one case cited to show that the execution of decrees. There is not one case cited to show that an application in a suit once again for a rehearing. This shows only one intention on the part of the legistrature in India and our Civil Procedure Act. That is to say, there must be an end to applications of similar nature; that is to say further, wider principles of res judicata apply to applications within the suit. If that was not the intention, we can imagine that the courts could and would be inundated by new applications filed after the original one was dismissed. There must be an end to interlocutory applications as much as there ought to be an end to litigation. It is this precise problem that section 89 of our Civil Procedure Act caters for.

The word "suit" is defined in section 2 of our Civil Procedure Act as:

"Means all civil proceedings commenced in a any manner prescribed."

Also the word "prescribed" has been defined to mean "prescribed by rules" and "rules" are defined to mean "rules and forms made by the Rules Committee to regulate the procedure of the courts". What stands out as most important here is that section 89 of our Civil Procedure Act makes it mandatory follow the procedure provided in the Act makes it mandatory to follow the procedure provided in the Act to all proceedings in any Court of Civil jurisdiction. That can only mean that interlocutory proceedings come within the purview of the word "suit" for the purpose of the issue of res judicata by virtue of section 89 of our Civil Procedure Act. Our view is reinforced by what was stated by the Judicial Committee of the Privy Council in Hook Vs Administrator-General (1921) 48 I.A.87. The Judicial Committee said that the plea res judicata still remains apart from the limited provisions of the Code, and referred to the decision of the Board in RAM KIRPAL'S case (supra) which held that the binding force of an interlocutory

judgement even in execution proceedings depends not upon the section of the code but upon general principle of law.

But we need not rely entirely on the Indian Authorities. Here at home in the case of Mburu Kinyua Vs Gachini Tuti (1978) K.L.R. 69 the majority of this court held that a second application to set aside a judgement entered ex-parte would be res-judicata when the fact upon which it was based were known to the appellant. The dissenting judgement of Madan J. A. (as he then was) is the one which Mr. Sharma and Mr. Rebello asked us to follow in contradistinction to the judgements of Wambuzi and Law JJ.A., Madan J. A. said this:

"I am not aware of any bar generally to presenting more than one applications until the conscience of the court comes to rest at ease that justice has been done. I would not go so far as to say that the court must act whether or not there is a right of appeal, review or application. It would depend on the circumstances in each case. Moreover, the liberty to present more than one application is always subject to the Court's power to prevent abuse of its process, including mulcting the offending party in costs. It is also of course subject to the rule of res judicata including what is laid down in explanation (4) to section 7, unless a special circumstance is present in which event I would be content to follow the following dictum of Wilgram V-C, in Henderson V Henderson (1843) 67 E R 313, 319, which the Privy Council described as the locus classicus of this aspect of res judicata, in Yat Tung Investment Co. Ltd. Vs Dao Hrng Bank Ltd. (1975) AC 581, 590:

Where a given matter becomes the subject of litigation in, and adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not(except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by parties to form an opinion and pronounce a judgement, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time"

With due respect, Madan J. A. does not say that a party can continue coming to court ad infinitum until such time as the courts conscience is clear. What he says is that the principle of res-judicata applies to a matter properly adjudicated upon by court but he was of the opinion that there was no full or proper adjudication as some of the facts disclosed in the second application were not before the superior court judge when he heard the first application, that is to say, the appellant's defence in that case was not disclosed in the first application and the superior court judge (Channan Singh, J.) did not consider it and that, therefore, he never pronounced a judgement upon or relating to it. This is where we differ from Madan J. A. and agree with Wambuzi and Law JJ.A. The facts regarding the merits of defence were known to the appellant at the material time and it was his duty to have brought out these facts at the time of the first application. With respect, a party cannot be allowed to have a second bite at the cherry.

Law J. A. put the matter in its proper perspective when he said:

"To sum up my view of this aspect of the case, an applicant whose application to set aside an ex parted judgement has been rejected has a right of appeal. Alternatively, he may apply for a review of the decision, under section 80 of the Civil Procedure Act. He can only successfully file a second application if its is based on facts not known to him at the time he made the first application. It the facts were known to him, his second application will be dismissed as res judicata, as happened here. The position otherwise would be intolerable. A decree-holder could be deprived of the benefit of his judgement by a succession of applications to set aside the judgement and judges would in effect be asked to sit an appeal over judges. As regards Madan J. A's expressed feeling that justice can only be done by giving the appellant the right to defend, I would respectfully point out that there are always two aspects to the concept of justice. A successful litigant is convinced that justice has been done, the loser is unlikely to share that view."

If Mr. Sharma's and Mr. Rebello's arguments to the effect that the doctrine of res judicata applies only to

suits concluded after a hearing on issues litigated upon and not to interlocutory applications, an impossible and intolerable situation would arise. A party who fails to stop a statutory sale would go from judge to judge until he may get orders suitable to him. The doctrine of res judicata would be far too limited. It should not be so and must be allowed to do be so. We have no hesitation whatsoever in saying that the general principles of res judicata cannot be limited by section 7 of the Civil Procedure Act and that the section (Section 7) is not exhaustive.

Mr. Rebello's argument is that as in a bail application where the applicant can go from a judge to judge until he gets bail, a litigant in a civil case an go from judge to judge to stop a chargee from exercising his statutory power of sale. The similarity between bail applications and civil proceedings by chamber summons is but a figment of the imagination. In our view, there can be no such similarity.

The most cogent argument propounded by Mr. Sharma is that new facts as become know to him would enable him to apply yet again for an injunction to restrain the CBK form selling the Grand Regency Hotel. What are those facts? Before we go into those new facts we must answer Mr. Sharma's argument to the effect that only the judge fellow could go into those "new facts" and then rule in the application was res judicata. He argued that until that was done, the judge below was in no position to say that the application was res judicata. He urged us to hold that the application ought to be remitted back to the judge below to decide upon it. He criticized the learned judge for not allowing him to file a further affidavit to adduce further evidence. It is trite law that a party must come to court with all facts in support of his application. That party cannot apply upon insufficient facts in the first instance hoping to file a further affidavit. In the instant matter UHDL had applied for an injunction upon facts deponed to in the affidavit of Mr. Mukesh Vaya sworn on 2nd day of January, 1996 and when confronted with preliminary objections by the CBK's advocates, it sought leave to file further affidavit. We had in Civil Appeal No. 126 of 1995 criticized such procedure. Akiwumi, J. A. said at page 21 of his judgement:

"The appellant, it would be remembered, had also cunningly, suspiciously in anticipation, and contrary to the spirit of an ex parte injunction, obtained, together with the ex parte injunction, leave to file an affidavit in reply which to mind, indicates that Mr. Vaya will knows that he had not disclosed all that he should have done in his supporting affidavit and was deliberately laying in wait for Mr. Marambi's affidavit before making his next move."

In the second application, as was done in the first application, UHDL kept some facts in reserve, obviously so, as UHDL sought leave to file further affidavit upon being confronted with the CBK's preliminary objections.

Mr. Sharma informed the learned judge as follows:

"I wish to make an application to file a supplementary affidavit in reply to the first respondent's affidavit and in support of my main application."

The supplementary affidavit which Mr. Sharma wanted to file appears in our record. New facts, argued Mr. Sharma, came on record after 18th July, 1995 and 16th November, 1995. These so called new facts are deponed to in the affidavit of Mr. Mukesh Vaya sworn on 10th January, 1996. We must go into them to decide if the same were not within the knowledge of Mr. Vaya or whether the same could not have been with reasonable diligence, within the knowledge of Mr. Vaya or anyone else connected with UHDL.

The issue of performance or otherwise of Agreement 'A' was gone into by this court in Civil Appeal No. 126 of 1995. All the correspondence which was proposed to be introduced by Mr. Vaya, we are referring here to the letters and documents exchanged between the offices of M/S D. V. Kapila and Company and M/S Murgor and Murgor, advocates, were within the knowledge of Mr. Pattni and hence Mr. Vaya. It was attempted by way of an application to adduce further evidence to put before us the thirteen documents referred to in Mr. Vaya's affidavit sworn on 10th January, 1996. We rejected that attempt and gave our reasons for such rejection on 1st December, 1995. Nothing new or nothing that could not have been known with reasonable diligence, was sought to be introduced. Agreements or documents "A", "B"

and "C" were duly considered by us in Civil Appeal No. 126 of 1995. The first 15 paragraphs of Mr. Vaya's said affidavit does not introduce anything which was not available earlier in relevant time. In paragraph 16 of he said affidavit Mr. Vaya accuses the CBK of not informing UHDL of the fact of the liquidation of Pan African Bank group of companies. This is one new 'fact' relied on. UHDL is certainly connected with Mr. Pattni, through Pansal Investments Limited and Mr. Pattni was connected with the Pan African Bank, which fact was advertised was allegedly known to Mr. Vaya or Mr. Pattni. We are not prepared to accept such a statement. We take judicial notice of Gazette Notice Number 5341 of 1994 appointing the Liquidator of Pan African Bank and Pan African Credit.

Another new set of facts UHDL and Mr. Pattni had wished to rely on was the proceedings and recommendations of the Public Accounts Committee. It must be recalled that it was argued at length that it was the Exchange Bank Limited which was owed monies by the CBK rather than the other way round. It was also the finding of the Public Accounts Committee that the CBK owned moneys to the Exchange Bank and it was the proceedings before the Public Accounts Committee which led to this finding which Mr. Sharma and Mr. Rebello wished to introduce the learned judge (Etyang J.) as a new fact or factor to justify the filing of another application for an injunction to restrain the CBK from selling the Grand Regency Hotel. The proceedings before the Public Accounts Committee which are not binding on courts, were available to UHDL and Mr. Pattni before the filing of the second application. It is easily detected that by attempting to introduce the proceedings before the Public Accounts Committee, UHDL and Mr. Pattni were trying to justify their stand throughout the suit, that is to say, that the CBK owed moneys to the Exchange Bank. This factor does not take account the fact that the Pan African Bank group was in liquidation at the time Mr. Pattni was seeking to be credited with the value of assets of that group and which on that account Mr. Pattni could not, in law, sell or transfer to the CBK.

We are, therefore unable to agree that there were sufficient new facts to enable UHDL to file another application for injunction to stop the sale of the Grand Regency Hotel. In any event, the facts deponed to in the affidavit of Mr. Vaya on 10th January, 1996, had been known to him by that day and to aver that some of those facts were not know to him on 2nd January, 1996 is certainly not an acceptable argument. The second application could well have been filed on 10th January, 1996 as it turned out that the steps to sell the Grand Regency Hotel were only then at a preliminary stage.

Mr. Sharma's third main argument was that Ole Keiwua, J. and this court should have stopped at the stage when the issue of non-disclosure of material facts at the ex parte hearing stage became clear. It was not for him to decide, argued Mr. Sharma, to tell the court to stop when it reached such a decision; it was for the court itself to do so. In our view, however, it is for the parties to conduct their civil litigation the way they deem fit. It is not for courts to direct the parties how to conduct their civil litigation. UHDL had a choice, that is, to have the application by the CBK heard first in time, but UHDL decided to have both applications, that is, the one filed by it on 6th January, 1995 and the other filed by the CBK on 12th January, 1995, heard first; but that is being wise after the event. We see no merit in this argument propounded by Mr. Sharma and we reject it.

Another argument which Mr. Sharma advanced was to say that the decision in the first application was not res judicata, was that after the court had concluded that thee was lack of candour on the part of UHDL in obtaining the ex parte injunction, all the observations which followed were obiter dicta had no binding force and could not therefore constitute the basis for the application of the principle of res judicata.

Any application for an interim injunction of necessity and prudence makes it obligatory upon the court to first inquire into the issue as to whether there is a prima facie case with a probability of success. Whilst such observations which lead the court to reach such a decision will not bind the trial court, the are nonetheless binding for the purposes of the interlocutory application. That is to say, no court will reopen the application on supposition that it could have been wrong, save by a review application, provided the application comes within the ambit of section 80 of he Civil Procedure Act and Order 44 of the Civil Procedure Rules, otherwise, as pointed out earlier, there would be no end to repeated applications by a party who does not succeed in the first instance.

Mr. Sharma confidently urged us to hold that as his client's suit was a redemption suit there was no limit

to the number of such redemption suits his client could file and by that reason, equally, there was no limit to the number of chamber applications his clients could file. The court, he urged, was not feted by even the doctrine of res judicata when it came to a redemption suit. The right of mortgagor to redeem, usually referred to as the equity of redemption, is part of our applied codified law and is set out in section 60 of the Transfer of Property Act of India as applicable to Kenya. That section reads as follows:

"60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver the mortgage deed, if any, to the mortgagor, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to retransfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right is in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court and is exercised before the mortgagee has under the provisions of this Act, either by public auction or private contract entered into a binding contract for sale of the mortgaged property.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to a reasonable notice before payment or tender of such money……."

This section as it is worded is clear. The section presupposes that there is clear. The section presupposes that there is a valid mortgage; that money was advanced on the security of the mortgaged property; that such money has become payable and that payment is made or the mortgagee is offered payment of that sum of money. The questions, therefore, that fall to be decided are (a) is the claim by UHDL a redemption suit? And ,(b)if UHDL claims to have executed the mortgage as a so called stop-gap arrangement, does the claim become a redemption suit? , and, (c) if UHDL is claiming that is does owe any money to the CBK by way of guarantee and security created to cover such a guarantee, does the claim in the superior court become a redemption suit?

In our view, the answer to all these questions or poser must be no. The claim by UHDL is not a redemption suit. Redemption suit can only lie when mortgage money payable is tendered or paid or offered to be paid or propose date of redemption. The plaint in he superior court cannot by any stretch of imagination be called a redemption suit. We further note that the re-amended plaint was filed without leave and whilst it is urged that the amended plaint was not necessary, we will not disregard the same. Moreover, the re-amended plaint does not say that UHDL is tendering or paying the moneys payable under the charge and no where does it aver that the charge ought to be discharged by virtue of payment now being offered. On the contrary, UHDL challenges the validity of the charge and baptizes the claim a redemption suit because it suits its needs at this stage. We do not believe that a redemption suit can be based on what the mortgagor or chargor calls a null and void charge, illegal charge, or unenforceable charge. Whilst section 60 of the Transfer of Property Act, envisages a limited multiplicity of suits without the application of the doctrine of res judicata, it cannot be correct to say that in such a suit an infinite number of chamber applications seeking an injunction to stop the statutory sale, can be filed. Even in redemption suits there must be a finality in regard to a decision in tan interlocutory application. It cannot be said, and such argument is not cogent, that because redemption suits can be filed so long as the equity or redemption exists, further interlocutory injunction applications can be filed despite one having been decided.

What we have said so far covers grounds, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17 and 18 of the grounds of appeal. Consequently, we find no merit in those grounds.

We now come to grounds 12, 13, 14, and 19 of the grounds of appeal. Ground 12 refers to the merits of he case with reference to the (3) three agreements of 29th September, 1993. These were gone into for the purposes of the injunction application and that closes that chapter in so far as the interlocutory sought is concerned.

The substance of the complaint is ground 13 has nothing to do with the issue of res judicata and reference to allegations as regards the CBK shedding crocodile tears over a public debt and non-collection of any income from the Grand Regency Hotel is a matter for damages, if any, and, of course if such entitlement occurs.

Ground 14 deals with the issue of movables in the hotel. It is common knowledge that the movables are not charged and that issue was decided upon by Pall, J. (as he then was) and no appeal has been filed against his decision. It is quite clear that the CBK cannot sell the movables and it has made that fact clear in it advertisements for sale of the Grand Regency Hotel. Should anyone want to buy a hotel without the contents which make the hotel prestigious landmark does so at his own risk. In any case, the issue of movables did not fall for determination by Etyang, J. since the only issue before him was to decide if the application was res judicata or not. Ground 19 has already been answered by us whilst dealing with Mr. Sharma's main argument.

Counsel in this appeal put in a lot of effort in the preparation and presentation of their submissions which were backed up by several authorities mainly foreign. We don do not wish to go into the myriad of authorities cited by Mr. Sharma as we do not think it is necessary. We would, however, want to point out to counsel that the success in a case or an appeal does not depend on the number of authorities cited but on their quality and relevance. During the hearing of this appeal we brought the local relevant case of Lali Swaleh Lali & Others vs. Stephen Mathenge Wachira & Others, Civil Application No. NAI. 257 of 1994 (unreported) to the attention of counsel where this court said:

"on the issue of res judicata, it would, in our view, require the skills of a spin-doctor to say that the Judge was wrong."

The judge in that case (Shah, J. as he then was) ruled that an application for interlocutory injunction having been decided on the principles laid down in the well known case of Giella Vs Cassman Brown a similar application cannot be brought once again even in a subsequent suit when the former suit, in which the application was dismissed, stood struck out on account of the proceedings therein being incontestably bad. Shah, J. said:

"My view is that what was decided by Githinji J. bars me from a very similar application now in a fresh suit filed to rectify the initial mistakes made procedurally by the applicants on the simple basis that Githinji, J. decided the injunction application on merits as laid down in Giella vs Cassman-Brown Principles."

"The Court of Appeal went further in Pop-in (Kenya) Limited appeal (Civil Appeal No. 80 of 1988, unreported) and relying upon the case of Yat Tuns Investment Co. Ltd. Vs. Dao Heng Bank & another [1975] A.C. 581 stated that,(putting it I a summary form) parties must bring before court, exercising reasonable diligence, all points that they could take and that points not taken then cannot be taken again as the same would amount to an abuse of the process of Court."

The long and short of all this is that once an application for injunction within a suit has been heard and determined under the principles as laid down in Giella vs. Cassman-Brown, a similar application cannot be brought unless there are new facts, not brought before court earlier after exercise of due diligence, which merit a re-hearing and possible departure form the previous ruling. Such cases, of course, must be very few and far in between. In the result, the appeal must fail and is hereby dismissed with costs.

We come now to the cross-appeal. Firstly, the CBK complains of the order as drawn. There is no doubt that the said order had to be drawn, approved, signed and sealed urgently as the appeal was to be filed with certain urgency. It is quite clear to us that the learned judge meant to say that if the appeal was filed

within seven days of 19th February, 1996, that is, by 26th February, 1996, the stay order made by him earlier would stand extended. The learned judge said:

"I will grant a sty until the 26th February, 1996. Thereafter if no appeal is filed, the 1st Respondent be at liberty to apply for vacation of this order. If the appeal is filed this order will elapse on 26th February, 1996."

Looking at the tenor and the meaning of what the learned judge said, we have no doubt that the stay order was extended in the event this appeal was filed.

But, what was the learned judge dealing with? He was dealing with preliminary points only as to whether or not a second application lies when the first application stood dismissed and the appeal against such dismissal also stood dismissed. He had no mandate, at that stage, to decide on anything as regards the merits or demerits of the application. What he said was obiter and what comes, as obiter from a judge cannot form part of the order. The order simply was that the second application did not lie, as it was res judicata. Order XX rule 6 (1) of the Civil Procedure Rules states: -

"The decree shall accord with the judgement: it shall contain the number of the suit, the names of the claim and shall specify clearly the relief granted or other determination of the suit."

Order 2o rule 7 (6) applies the same procedures as applicable to decrees to orders

It is not necessary to include in the formal order, orders numbers 1, 2, 6, 7, 8, 13, 14, included in the formal order drawn by Mr. Sharma and approved by the superior court. At this rate decrees and orders will start sounding like judgements or rulings.

With respect, the learned judge had no mandate to say: "the first respondent (Central Bank of Kenya) be at liberty to exercise its power of sale of the charged property, namely L.R.209/9514" because the exercise of a statutory power of sale arises from a statute and not by a court order. A court can only stop such exercise if circumstances so warrant(as already pointed out) but it cannot authorize the exercise of such power. It is for the mortgagee or chargee to decide, if it wants to exercise such power.

Again with respect, the learned judge erred in observing gratuitously as follows:

"The movables and chattels lying in or on the said charged property in the finding of he Court of Appeal and in my finding do not form part of the said charged property and are therefore not for sale. It must therefore follow that any advertisement regarding the sale of he charged property to be placed in new-papers must make this fact clear."

Pall, J. (as he then was) had already ruled on the fate of the movables and it was not for Etyang, J. to revisit this subject. There was no issue before Etyang, J. as regards movables or the form of he advertisement.

The cross appeal is also allowed with costs payable to the first the respondents by appellant. However, drawing up of a fresh formal order will now not serve any useful purpose.

Mr. Rebello's role as counsel for Mr. Pattni clearly was to support Mr. Sharma on the appeal. Mr. Rebello complained bitterly about a Press statement issued by the Registrar of the High Court on 16th February, 1996. Mr. Rebello accused the Hon, The Chief Justice of being pressurized by the Governor of the CBK into ruling in the CBK's favour. We are at a loss to understand how the learned Chief Justice was to do this when Etyang, J. was hearing the application on the issue of res judicata. A judge of the superior court runs his court in his own way. He is not under the directions of the Chief Justice in regard to his findings or observations on any matter before him and we cannot se how the press-release which appeared on 17th February, 1996, could have affected the lengthy ruling delivered by Etyang, J. on 19th February, 1996. We say no more and we term Mr. Rebello's outburst as totally misplaced and add simply

that courts do not function on "debts of gratitude" as Mr. Rebello was wont to put.

Mr. Pattni's role in this appeal is to support UHDL fully. He is neither the applicant nor the respondent to the application. He has, however, filed a notice of cross-appeal and complains that the learned judge did not allow him to file an affidavit in reply to the application dated 2nd January, 1996 made by UHDL and the affidavits filed on behalf of UHDL and the CBK. The application by UHDL was not against Mr. Pattni. The learned judge was, however, right in not involving Mr. Pattni in the issue raised, namely, that of the second application being the res judicata in that Mr. Pattni could not have added anything to the discussion on that issue.

Mr. Pattni's second ground in his Notice of Cross-appeal is that the learned judge shut him out from filing a supplementary affidavit. We do not see what a supplementary affidavit could have done to elucidate the court on the issue of res judicata. Both applications and all rulings were before the learned judge to enable him to decide whether or not the second application was res judicata and affidavits which would be irrelevant to the issues canvassed would be of no use. Moreover, both applications were by UHDL and none was by Mr. Pattni. The learned judge had only to decide what we have just set out. This criticism of the learned judge by Mr. Rebello is unjustified and we reject the second ground of Mr. Pattni's cross-appeal.

Before we come to the third ground of Mr. Pattni's cross-appeal we wish to point out that Mr. Rebello's arguments in support of Mr. Sharma's argument fall down in the same way as do Mr. Sharma's arguments.

We see no cogent argument advanced to apply the mareva injunction principles to the issue before us. The ratio decidendi in the case of Rasu maritima S. A. vs. Perusahaan Pentambangan (Govt. of Indonesia Intervening)[1978] IQ.B 644, was relied on to show that pall, J. (as he then was) granted such and injunction when it was not specifically sought. We are not really concerned with that argument here. As we have said there has been no appeal against that decision.

Mr. Rebello urged us to hold, as did Mr. Sharma, that the superior court (Ole Keiwua, J.) as well as this court sitting on appeal should not have looked into "contaminated' evidence to find no prima facie case. That is that if the court comes to the conclusion that the applicant had withheld material facts from the court at the ex parte hearing stage, the court ought to have stopped there and discharged the ex parte injunction and ought to have told the applicant to try de novo. It was wrong, they urged, for the court to did a no prima facie case upon such tainted evidence. It must be recalled that that court (Ole Keiwua, J.) also went into the affidavit of Mr. Pattni filed after the date the ex parte injunction was given. It must also be recalled that this court went into all the evidence on record at length before determining that there was no Prima facie case to entitle the applicant to the grant of the injunction sought. We reiterate that both applications (already referred to) were heard together by consent of the counsel for the parties. Mr. Rebello argued, relying at length upon the observations of Madan J. A. (as he the was) in Mburu Kinyua's case (supra) that the court ought to hear all applications until its conscience is clear. We have already stated what our views are. We subscribe to the majority judgment in that case.

Relying upon the English authority of the case of Attorney General vs. the mayor, Bailiffs, Burgesses of Liverpool [1835] 1MY. CR. 173 p. 342 Mr. Rebello argued that like that case, the present case was one where the applicant ought to have been given an opportunity to have the matter fully heard and discussed. But in that case, there was only one application heard, that is, whether or not to discharge the injunction granted ex-parte. It may be that the courts may in certain cases (like in the case of Republic of Peru vs. Dreyfus Bros.TLR vol. LV N.S. 802) decide to dissolve the ex parte injunction. But that case is no authority for the proposition that the court must not go beyond discharging such an injunction. We need not go into all cases cited on this point by Mr. Rebello, but it suffices to say that UHDL insisted on having its application heard, as it was, with the added affidavit of Mr. Pattni. Mr. Rebello insisted that we follow the ratio decidendi of the case of Castelli v. Cook S.C. 18L.S ch. 148 36, that is to say, that the superior court (ole Keiwua, J.) ought to have dissolved the injunction without prejudice to the parties moving for another if they could have altered their case. As we have pointed out, if counsel or parties decide to choose a particular mode of presenting their case, the court cannot force them to go any other

way. The court will then decide upon what is urged before it.

Coming to the third ground of Mr. Pattni's cross-appeal we fail to see what was materially different between the two applications. Both orders sought to stop the sale of the Grand Regency hotel. The issues in both were similar with some additional points which did not find favour with us for admission as further evidence on appeal.

The fourth ground of Mr. Pattni's cross-appeal accuses the learned judge (Etyang, j.)of accepting the CBK's undertaking not to sell the movables. The CBK had made this point clear in its advertisements. Anyone who wants to buy such a hotel as the Grand Regency Hotel obviously, will not jump into such a deal headlong without inquiring. We think this ground of cross-appeal is unmeritorious and in fact doe not really go to the issue of res judicata.

Mr. Rebello's role, in this appeal, was pointed out, was really to stand with Mr. Sharma when there was no application by Mr. Pattni. Mr. Pattni's cross-appeal is in the end result dismissed with costs which costs will be paid by Mr. Pattni to the CBK.

The upshot of all this it that this appeal is dismissed and the cross-appeal is allowed to the extent we have pointed out. The first respondent's costs shall be paid by the appellant. The third respondent will pay the first respondents costs in regard to cross-appeal as may have been incurred by the first respondent.

These are our orders

Before we depart from this appeal we must sound a stern warning. If advocates insist on filing and arguing applications similar to the ones dismissed, in future we will call upon such advocates to show cause why they should not be made personally liable for costs. As it is litigation is a luxury. This appeal lasted nearly two moths. Many other appeals were not listed for hearing because of this. Those litigants have suffered. Justice for all and all must have equal access to courts as well equal priorities in being heard.

When will the saga of the Grand Regency Hotel come to an end? Since the suit in its respect was first lodged in court on 6th January, 1995 it has landed in this Court three ties, once for an interlocutory injunction pending appeal and twice on substantive appeals against interlocutory orders. The suit, however, remains unheard in the superior court and there is not indication that it will ever be heard on merit in the near future. It is common knowledge that the matter involved in the suit in the superior court be disposed of expeditiously. We hereby direct that the parties conclude their preliminaries as regards issues within 60 days hereof and that the superior court do thereafter hear the suit on a day to day priority basis before any judge who has not previously handled the matter.

Dated and delivered at Nairobi this 12th day of November, 1996.

A.M. AKIWUMI

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

…….

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR