

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO 408 OF 2007**

**PROMOTION OF RURAL INITIATIVES}
AND DEVELOPMENT ENTERPRISES}**

(UGANDA LIMITED } PLAINTIFF

VERSUS

- 1. ATTORNEY GENERAL }
2. PRIDE MICRO FINANCE LIMITED}..... DEFENDANT**

BEFORE HON MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiffs action is against the Attorney General in his representative capacity as the government of the Republic of Uganda under the provisions of the Government Proceedings Act. The second defendant on the other hand was added by court order on 1 April 2009.

The action is for declarations that the government of Uganda represented by the Ministry of Finance, Planning and Economic Development deprived the plaintiff of its property that is 9,795,918 ordinary shares in the second defendant without prompt payment of fair and adequate compensation prior to the taking, which violated the plaintiff's constitutional protection from deprivation of property. Secondly a declaration that the government of Uganda represented by the Ministry of Finance, Planning and Economic Development is liable to pay the plaintiffs Uganda shillings 14,693,877,700/= being the market or reasonable value of the shares. The plaintiff further seeks an order instructing firms to determine the market value or reasonable price of the said shares. An order directing the Government of Uganda through the Ministry of Finance Planning and Economic Development to pay the above amount being the market or reasonable value of the shares or such value as an the shares, it should forfeit 9,795,918 ordinary shares in the second defendant which would revert to the plaintiff and without. It is also for an order directing the registrar of companies to amend the records of the second defendant at the registry to reflect forfeiture of the shares by the Government of Uganda or its nominees. General damages for breach of contract/violation of the constitutional right and interest on the amount claimed at 30% per annum from 12 August 2005 until the date of judgement. The plaintiff claims

interest on general damages at court rate from the date of judgement until payment in full and costs of the suit.

The plaintiff's case in the plaint is that it caused the incorporation of the second defendant and became the holder of namely 9,795,918 ordinary shares in the capital of the company. On the advice of the bank of Uganda, the government of Uganda represented by the Minister and Permanent Secretary/Secretary to the Treasury of the Ministry of Finance Planning and Economic Development by a share transfer form executed on 27 June 2005 and on 12 August 2005 respectively acquired 1,400,000 and 8,395,918 ordinary shares held by the plaintiff in the second defendant at a consideration to be determined. Since acquisition of the shares the government of Uganda refused, failed or neglected to sit down with the plaintiff to agree on the mode of determining the consideration due to the plaintiff of the said ordinary shares acquired by the government. The plaintiff asserts that shares in the second defendant as at 12 August 2005 were valued at Uganda shillings 1400 up to Uganda shillings 1600 per share. The government of Uganda has refused or neglected to agree on and pay to the plaintiff Uganda shillings 14,693,877,700/= being the market or reasonable price of the shares. As a consequence of the failure or neglect to pay the plaintiffs, the plaintiff has suffered considerable financial loss and embarrassment for which it holds the government liable. Specifically the plaintiff claims the value of the shares as special damages.

The first defendant's defence to which the second defendant joined is that the government of Uganda together with the government of Norway and Austria entered into a bilateral agreement to set up and support a Micro finance project conceived by the government of Uganda called Pride Africa in Uganda Project. The Ministry of Labour and Social Welfare entered into an implementation agreement with Pride Africa, the entity enjoined to receive the finance from the government of Austria and Norway to implement and run the project. The plaintiff company was a successor company to Pride Africa which had been given the mandate to receive funds and operate a wholly government Micro project, called Promotion of Rural Initiatives and Development Enterprises (the plaintiff) which had been set up with donor funds from the government of Norway and Austria to implement the government Micro finance program.

Upon incorporation, the plaintiff company assumed all the functions of its predecessor project with the corporate structure of the company limited by guarantee and operated on behalf of the Uganda government as an intermediary of finance from the donors. All the finances that constituted the plaintiffs Micro finance business were grants to and for the benefit of the government of Uganda by the governments of Austria and Norway. It was agreed in the bilateral agreement between the government of Uganda and Norway that all equipment purchased under the bilateral agreements would become the property of the government of Uganda or a mutually agreed upon local institution. Therefore the plaintiff company was a special purpose vehicle created to act as a mutually agreed nominee owner of the assets of the government of Uganda. As a successor entity to the government Micro finance project, the plaintiff is beneficially owned by the government of Uganda and served as the asset holding company in trust for the

government of Uganda and accordingly no consideration was payable prior to the transfer of shares from the plaintiff to the defendant. The first defendant asserts that the plaintiff acting through its board of directors abuses its trusts, committed fraudulent acts and acted in bad faith during the process of incorporating the second defendant and indeed transfer of shares to the government of Uganda. Consequently its claim for payment for the shares is fraudulent.

The first defendant accordingly filed a counterclaim against the plaintiff for declaratory orders. That a resolution of the plaintiff/defendant to the counterclaim passed on 30 September 2005 purporting to amend its articles and memorandum of association is null and void; a declaration that the plaintiff/defendant to the counter claim valid memorandum and articles of Association are those adopted on the 16th of May 2001. An order expunging from the company registry the memorandum and articles of Association of the plaintiff dated 30th of September 2005. A declaration that the present members and directors of the plaintiff/defendant to the counterclaim or the assets in trust for the government of Uganda. A declaration that the directors and members of the plaintiff/defendant to the counterclaim are bound by the directions issued by the Attorney General and Norwegian Embassy with regard to the management of the affairs of the company and they were obliged to implement certain directives namely

- The directors Jonathan Campaigne and Rashid Malima should constitute a new board of directors in accordance with the provisions of the articles of Association and in consultation with the government of Uganda and Norway.
- The directors of Rashid Malima should resign from the membership of the board.
- Civil suit number 373 of 2006 between Pride Uganda versus Micro Finance Ltd and another should be withdrawn forthwith.

The counterclaimant/first defendant avers that about 1995 the government of Uganda conceived a policy of creating and promoting a sustainable financial and information services network for small-scale entrepreneurs to increase income and employment and stimulated business growth. The policy project was called Pride in Uganda Project and was funded by the government of Austria and Norway. Pride Africa in Uganda began its operations and was funded by the Austrian government through the Austrian Regional Bureau for Development Cooperation in November 1995 under a finding agreement with Pride Africa. In 1996 the government of Norway and Austria agreed to fund the project through the government of Uganda. All equipment purchased under the agreements became the property of the government of Uganda or a mutually agreed upon local institution. The implementation agency of the project was the Ministry of Labour and Social Welfare through Pride Africa. An implementation agreement was executed between the Ministry of Labour and Social Welfare and Pride Africa. NORAD funded the project up to 9.8 million kroner. Pride Africa was engaged as a consultant with the task of running the project by the implementation agency. Pride Africa operated as a project up to September 1999 when its assets and liabilities were transferred to a company limited by guarantee which company is the present plaintiff. The plaintiff was incorporated without the advice/authorisation of the government of Uganda and to the extent that public funds and assets

intended to be held in trust for the benefit of the people of Uganda was held by private individuals. Subsequently the government of Uganda and Norway made continued funding of the plaintiff conditional upon amending the memorandum and articles of Association to give them mandate to direct the decision or the resolutions in the company. Consequently the plaintiff amended its articles of Association recognise both the government of Uganda and NORAD as stakeholders and whose directives would be implemented.

On several occasions after amendment of the articles of Association, the plaintiff in breach of the terms of the articles of Association conducted the business of the company without authorisation, direction or consultation of the stakeholders. The breach of the agreement included entering into an agreement for the sale of the plaintiff as a going concern upon terms that were not authorised by the government of Uganda or Norway. The proceeds of the sale of assets were used in breach of the articles of Association by granting shares to its members of staff, directors and members of the second defendant paid for out of the assets it holds in trust for the government of Uganda. Secondly the plaintiff amended the memorandum and articles of Association without the authorisation or direction of the government of Uganda and Norway by dropping the government of Uganda and NORAD as stakeholders therein. The plaintiff further instituted a suit against the second defendant contrary to the directives of the stakeholders and without their consent. The plaintiff formed the second defendant under the direction of the government of Uganda and Norway and the transfer of assets from the government of Uganda was not intended to benefit any individuals. All funds and grants that capitalised the plaintiffs Micro finance business were grants to and for the benefit of the government of Uganda from the governments of Austria and Norway. None of the shareholders, directors and members of the plaintiff to the counterclaim made any personal financial investment in establishing the Micro finance business. The counterclaimant further avers that the plaintiff and the defendant never met to agree or discuss any consideration for shares as claimed in the plaint. Consequently the conduct of the plaintiff is illegal, in bad faith and in breach of the Articles of Association.

In the reply to the written statement of defence and a defence to the counterclaim the plaintiff denies being a successor to a government owned project. The plaintiff asserts that is a successor by agreement to the assets of Pride Africa in Uganda which is a non-governmental organisation registered as a company limited by guarantee. Furthermore the plaintiff asserts that it is not beneficially owned by the government of Uganda. The government neither owned the plaintiff nor did it ever own Pride Africa in Uganda. The government relinquished any claim of right to the assets and is barred by the doctrine of estoppels from claiming ownership of the plaintiff. It had been explicitly agreed upon conclusion of the Pride Uganda Project that the assets would vest in the plaintiff which was the agreed upon local institution in the relevant agreement. The plaintiff denies having been set up to hold any assets in trust for the government of Uganda. Additionally that the government of Uganda is barred by the doctrine of estoppels from asserting that no consideration was payable for the transfer of shares from the plaintiff having accepted the transfer on the express representation that consideration for this shares would be agreed upon

later. The first defendant's pleadings amount to express repudiation of the terms of the transfer and in the circumstances the plaintiff is entitled to have the shares transferred back to it for total failure of consideration. Alternatively the plaintiff asserts that there is rescission of the said transfer because it was procured by fraudulent misrepresentation.

As far as the allotment of shares to former workers, director's staff and clients of the original project company was concerned, it was done with the full knowledge and agreement of the Minister of Finance, Planning and Economic Development. Vesting of assets in the plaintiff from the project was envisaged by initial agreements and was consistent with the best international practices for winding up projects since the plaintiff's members are the ones who had contributed most to ensure the success of the Uganda Project. Furthermore the sum of Uganda shillings 300,000,000/= allegedly received from Pride Micro Finance Ltd was never paid to the plaintiff. In any event receiving the money in accordance with a duly signed commercial agreement cannot constitute an act of fraud. The incorporation of pride Micro finance Ltd was intended solely for the legal requirements for the issuance of an MDI licence. The legal requirement was that the company had to be incorporated with a share capital in order to hold such a licence. Furthermore transfer of shares in Pride Micro Finance Ltd to various individuals who had served under the project was agreed upon by all relevant parties and was consistent with the funding agreements. The transfer of shares to the government of Uganda was made under duress from the government which delayed consideration of the plaintiff's application for renewal of the licence. Pressure was applied on the plaintiffs to either transfer the shares to the government or go out of business. Consequently any fraudulent or improper actions were on the part of government authorities and not the plaintiffs.

The plaintiff further contends that whereas the Attorney General is the legal representative of the government, it denies that the Attorney General has no authority to represent the Austrian government in any proceedings without consent of the Austrian government. Secondly the remedies sought by the first defendant in its counterclaim were internal matters of the company actionable only by members of the plaintiff.

The plaintiff further avers that the relevant agreement provided two alternatives for dealing with residual equipment at the end of the project. The equipment could either be vested in the government or in a mutually agreed local institution like the plaintiff. In this case the assets were vested in the plaintiff. Furthermore it was not true that by incorporating the plaintiff there was handing over of public funds to be held by private individuals. The plaintiff inherited the business and undertaking of the non-governmental organisation in accordance with the principles agreed upon at the inception of the project. Furthermore no funds of the Ugandan taxpayer were ever invested in the plaintiff's project and the plaintiff required no authorisation from the government for its incorporation. The participation of the government of Uganda as a stakeholder under the amended articles of Association did not make it a beneficiary to a class nor did it make it a member of the plaintiff. The government never paid any consideration for recognition as a stakeholder and company was fully entitled to cease to recognise it as such.

Since there was no trust in favour of the government or any other persons and allegations of breach of trust cannot be sustained. Lastly the defendant has no cause of action in respect of the company or its members.

At the hearing the plaintiff was represented by Ebert Byenkya of Byenkya, Kihika and Company Advocates jointly with Kabiito Karamagi of Ligomarc Advocates while the first defendant was represented by Patricia Mutesi Principal State Attorney. The second defendant was represented by Andrew Kasirye of Kasirye, Byaruhanga and Company Advocates and Counsel Joseph Luswata of Sabalu and Lule Advocates.

At the close of the respective cases for the plaintiff and the defence, counsels filed written submissions.

The following are the agreed issues for resolution by the court namely:

1. Whether the shares held by the plaintiff in the second defendant prior to the transfer to the government of Uganda were held by the plaintiff in trust for the government of Uganda?
2. Whether the plaintiff is entitled to adequate compensation for the shares taken over by the government of Uganda?
3. What remedies are available to the parties?

Counsels for the plaintiff in their written submissions extensively reviewed the documentary evidence.

The facts in support of the plaintiffs case is that a project known as "Pride Africa in Uganda Project" for the establishment of a viable and vibrant Micro finance system in Uganda led to the dispute. The project arose from collaboration of many players which include Pride Africa Inc, a non-governmental organisation which had developed a highly successful Micro finance system for communities. The details of the project, executing agency and the funding of the initial phase of the project are contained in exhibit P1. Pride Africa Inc had been registered as an NGO in Uganda and already commenced operations in Uganda prior to the conception of the collaborative project by establishing a pride Uganda headquarters and regional office in Mbarara. Exhibit P1 annex 1 page 3 notes that the Mbarara office was established with the pre-project funds. The Austrian government initially provided funding for the project as a grant to Pride Africa Inc as expressly noted in article 1 of 1.01 of exhibit P1. The grant was to fund personnel and operating requirements. The third collaborator the government of Uganda agreed to provide support to the project. There was no commitment on the part of the government of Uganda provide the monetary support to the project. The role of the government of Uganda was to provide policy support and an enabling environment for the project. The main purpose of the agreement was the improvement of living standards to lower income groups especially in rural areas.

One of the two other collaborators was the Norwegian government which committed itself to provide US\$1,500,000 for use partly to lend to Pride customers and partly for costs of setting up. The European development fund committed US\$50,000 towards sustainability of the project. The government of Norway executed the project support agreement with the government of Uganda which was admitted as exhibit P3. Under article 1 of exhibit P3 the assistance of the Norwegian government was to implement the Pride Africa in Uganda Project as outlined in the project document prepared by Pride Africa for the Norwegian agency for development (NORAD) and dated 28th of August 1995. The main objective of Norwegian assistance was to support and supplement Uganda's efforts to establish Pride Africa in Uganda as a nationwide network of branch offices within five years.

Annexure 1 of exhibit P3 gives the objective of the agreement as to transform the existing pride Uganda NGO structure into a profit-making entity that was financially sustainable. This answers the question put by the court whether the establishment of a project using donor funds could have been intended to create assets that ended up in the control of a company limited by shares. It was clearly envisaged that the NGO was going to be converted into a limited liability company with a share capital. The ultimate testimony of the successful outcome of the project is the existence of the second defendant which currently operates a nationwide network of Micro finance branches.

Counsel further submitted that under exhibit P3 the main obligations and conditions for the support of NORAD through contributions to Pride Africa Uganda's annual budget included discussing suggested changes in the institutional and legal setup of Pride Africa and transformation of Pride Bank with all concerned donors and partners. Consequently counsel contends that the ultimate goal of NORAD was to turn pride Micro finance network of branches into a fully fledged bank which required changes in the legal structure of the original setup. Pride Africa Inc was given the primary responsibility of driving the transformation process in consultation with donors and partners inclusive of government of Uganda. Furthermore exhibit P3 provided that all equipment purchased under the agreement shall become the property of the government of Uganda or a mutually agreed local institution. According to the evidence on record, the parties agreed on the second option of having it transferred to a mutually agreed local institution. The assets were duly transferred to the plaintiff company.

Exhibit P2 is the implementation agreement between Pride Africa Inc and the Ministry of Labour and Social Welfare. Its salient points are that it was an agreement for the transfer of funds to Pride Africa Inc for the purposes of Pride Uganda Project. Its main purpose was to provide the procedure by which funds would be received, utilised and accounted for. It was not an employment contract, a services contract or a consultancy contract.

Pride Africa was meant to use the funds to implement the Pride financial model according to the agreement. The agreement demonstrates the importance of Pride Africa Inc contribution to the collaborative project. Pride Africa had developed a strategic plan to implement its model throughout Africa. The government of Austria, government of Norway and the government of

Uganda wanted to support the project because it was based on a proven model. The plaintiff's counsel submitted that the contribution of Pride Africa Inc was intellectual property and the most valuable contribution of all to the project.

As far as the funds of the project were concerned exhibit P2 provided the procedure for receipt and utilisation of the funds. There were two categories of funds namely operational funds used to implement expansion of Pride Uganda. It was meant to finance the expansion of Pride operations. Because of the unique model which was being used, Pride Africa had to second members of its company familiar with the Pride model to supervise the successful implementation of the project. Consequently a portion of the money would go to management and indirect costs fees. Exhibit P3 is an implementation agreement for the transfer and utilisation of funds Ltd by the government of Norway for the purposes of Pride project in Uganda. The government officials never bothered to read the project documents and this explains the genesis of the dispute.

Ownership of assets. In the second phase of the project the stake holders dealt with a winding up of the project and handled the ownership of its residual assets. The partners also dealt with the structure appropriate to ensure sustainability of the project. Exhibit P3 made the responsibility of Pride Africa Inc the proposed changes to the institutional and legal setup of Pride Africa Inc to achieve the transformation of the project. Consequently Pride Africa Inc and its associates incorporated a company limited by guarantee in the name of Pride Africa Uganda Ltd in September 1999. In the company Pride Africa Inc was the dominant member. The government of Uganda was not invited to be a member as the intention of the project document was for the local institution to be independent of the government of Uganda. The company was registered as a non-governmental organisation. In May 2001 after discussions between the government of Norway and the government of Uganda it was agreed that all project assets would be transferred to Pride Africa Uganda Limited. The name of Pride Africa Uganda Limited was changed to Promotion of Rural Initiatives Development Enterprises (Uganda) Ltd, which is the current plaintiff. The membership of the company was expanded from 4 members to 9 members. New articles of Association were adopted to provide for supervision powers of the government of Uganda and the government of Norway. Upon attaining financial sustainability and registration of Pride Uganda as a limited liability company the supervisory role of the government of Uganda and the government of Norway was to cease. Accordingly pride Africa Uganda Ltd adopted new articles of Association to incorporate the agreement of the stakeholders and articles were exhibited as exhibit P5. On 18th of March 2002 the government of Uganda and the plaintiff exhibited a formal agreement for the transfer of project assets to the plaintiff. The agreement is exhibit P 15.

The salient points to note from exhibit P 15 was that it concerned an agreement for the transfer of legal ownership of assets between the plaintiff and the government of Uganda. The plaintiff was described as Pride Uganda for purposes of the agreement. Secondly the agreement expressly dealt with the ownership of residual assets from the collaborative projects prior to the agreement.

Thirdly the purpose of exhibit P 15 was the furtherance of the project objective to transform the existing Pride Uganda NGO structure into a profit-making entity that was financially sustainable. Fourthly exhibit P2 which is the implementation agreement was formally terminated under item F of exhibit P 15. Fifthly the agreement noted that Pride Uganda was ready to receive, take over and manage the project assets. Sixthly ownership of the assets was transferred to Pride Uganda. The government of Uganda authorised the general manager of the project to effect transfer of legal ownership of assets to Pride Uganda. The government of Uganda undertook to do all acts and execute all documents necessary to transfer the assets. All assets and liabilities were transferred.

From the above documents the government of Uganda freely and voluntarily waived its right to legal ownership of the project generated assets in favour of the ownership of the plaintiff. Exhibit P5 remains a binding agreement between the parties. There were further negotiations in the transformation process of the project between the plaintiff, government of Norway and government of Uganda.

In that process the Minister of finance, planning and economic development in exhibit PE 18 wrote to the Norwegian ambassador in a letter dated 1st of December 2003 proposing that Pride Uganda is transformed into a regulated Micro finance deposit taking institution. The proposed that a new public company by the name of Pride Micro Finance Ltd is incorporated as a company limited by shares in which pride Uganda and associates would own 49% shares. Secondly the social and commercial investors would have 51% shares. A formal response of the government of Norway was exhibited as exhibit P9 and is dated 29th of January 2004. The government of Norway noted the proposed shareholder structure and agreed that all parties should finalise implementation of it within a period not exceeding one year. Secondly the importance of moving quickly and proceed to identify a suitable investor group. There was no indication in the correspondence that the government of Uganda would retain ownership of the proposed company.

Counsel further submitted that the transformation process proceeded as agreed to the next stage. This was with the incorporation of the second defendant on 12 May 2004. The incorporation of the second defendant had been proposed by the plaintiff and had been agreed upon by the government of Uganda and government of Norway in exhibit PE 18 and P 19. On 1 June 2004 there was sale of the business of the plaintiff to the second defendant as an ongoing concern. This sale was based on an agreement between the plaintiff and the second defendant. The government of Uganda was represented in the board of the plaintiff and the board of the second defendant when the sale took place and was fully aware of the transaction. The written agreement was exhibited as exhibit P 26.

Counsel pointed out the salient provisions of exhibit P 26 to be that: the plaintiff referred to therein as Pride Uganda sold its entire business and undertaking to the second defendant for a mixed consideration of cash, shares and debenture. The total consideration was

10,344,521,383/=. This amount represented the net asset value of the business of the plaintiff at the time as valued by MBEA brokerage services Uganda limited. Under clause 2.0 of exhibit P 26 there was supposed to be a cash payment of Uganda shillings 344,521,383/= payable on the completion date. Uganda shillings 700,000,000/= for the plaintiff's subscription shares amounting to 1,400,000 ordinary shares in the second defendant. Uganda shillings 4,197,959,000/= worth of shares were to be allotted to the plaintiff as part of the purchase price. Uganda shillings 1,102,041,000/= was to be paid by allotment of shares to it trustee and the share ownership plan to be settled by the plaintiff for its employees. Uganda shillings 4,000,000,000/= was to be treated as a loan to PW2 and secured by a debenture in favour of the plaintiff. It was an important clause in the agreement that all subscription shares and allotments made to the plaintiff and its employees, management etc were to be treated as fully paid up.

The agreement was ratified by the second defendant's board in exhibit P8 which are the minutes of the board of Pride Micro Finance Ltd. The salient points of exhibit PE 8 was the minute that the business of pride Uganda had been transferred successfully to the second defendant on 10 September 2004. Secondly the board thanks the contribution of the government of Uganda and NORAD to the transformation process. Thirdly it was noted that the second defendant was ready to apply for an MDI licence. Fourthly the board ratified the transfer of business, assets and liabilities from the plaintiff to the second defendant in accordance with exhibit P 26. Minute 13.2 recorded the cash payment to the plaintiff, the allocation of Uganda shillings 700,000,000/= plus the payment of the purchase price set aside under exhibit P2 D6 for the plaintiffs subscription shares and the issue of the debenture of Uganda shillings 4,000,000,000/= to the plaintiff were approved. And a minute 14.0 there is a resolution to allot 8,305,980 worth Uganda shillings 4,197,959,000/= to the plaintiff as fully paid-up shares. It also approved allotment of the total of 337,060 shares to 11 members and directors of the plaintiff, 1,575,782 shares worth Uganda shillings 787,891,000/= to 239 members of the plaintiff's staff, and allotment of 55,272 shares worth Uganda shillings 2,763,600/= plus some of the plaintiffs clients. All shares were to be treated as fully paid-up. Lastly minute 14.2 approved the formation of the trustees share ownership scheme to hold shares on the behalf of the plaintiff's staff outside of senior management.

Counsel contended that the transformation process was transparent and agreed upon by all stakeholders such as government of Uganda which was an active participant. Exhibit P8 demonstrates that the shareholding was eventually supposed to be distributed amongst 313 different shareholders of whom the plaintiff was only one although the biggest shareholder. The incorporation of the second defendant as a public company was a specific proposal endorsed by the government of Uganda and the government of Norway in the letters exhibits PE 18 and P 19. Most of the new shareholders where individual Ugandan citizens who contributed in one way or another in their capacity as management, staff or clients to the success of the Pride Uganda Project. The project objectives were to be finally achieved by the grant of an MDI licence to the second defendant.

The following year the government of Uganda made an abrupt turnaround and demanded transfer of the plaintiff shares in the second defendant to the government by which act effectively conducting a compulsory acquisition of the second defendant. The seeds of the dispute were sown in 2005 when the government of Uganda took over the plaintiff shares in the second defendant. The chronology of events was given by the plaintiff's witnesses namely PW1 Mr Jonathan Campaigne, PW2 Mr Moses Kimuli, and PW3 Mr Grace Lwanga Musoke. It is an agreed fact that under directive of the government of Uganda 9,785,918 ordinary shares in Pride Micro Finance were transferred by the plaintiff to the government of Uganda by 12 August 2005. The directive of the government was not in writing. There were no prior negotiations or discussions about the matter before there was a decision to take over the shares in the second defendant. The plaintiff was informed of the decision and a copy of the decision is reflected in exhibit P 20 where the bank of Uganda strongly advises that they share should be transferred without delay. At the time of the directive to transfer the shares, the statutory deadline for granting an MDI licence to existing Micro finance companies was fast running out. The transfer to the government of Uganda was conditional to the second defendant obtaining a licence. Either the plaintiff had to comply or the second defendant would go out of business.

Counsel further submitted that the plaintiff allowed the government of Uganda to take over the second defendant in the belief that compensation would be paid. PW3 directed PW2 to insert in the transfer document the words "consideration to be determined". The words were notice to the government of Uganda that the plaintiff expected to be compensated for its shares taken over by the government of Uganda. The government obtained various due diligence reports by experts. These include exhibit P 17 which advise that the government of Uganda did not own the project assets or the plaintiff. DW1 and DW3 dismissed the opinion as non-binding on the government of Uganda.

The defence did not lead any evidence regarding the events and circumstances leading to the takeover of the plaintiff's shares in the second defendant. The evidence of PW3 lady justice Monica Mugenyi focused on the terms of the share transfer document and her evidence was that the words "consideration to be determined" was inserted after execution of the transfer documents by the government officials. Counsel submitted that the case of the plaintiff rests on compulsory or wrongful takeover of the plaintiff's shares in the second defendant and not on payment of any agreed consideration. It is an agreed position that no specific consideration was agreed for the shares. What the plaintiff asserts is its constitutional right to compensation. Moreover the plaintiff is not one of the various companies listed for divestiture under the PERD statute.

Counsel further submitted that there were no consultative meetings between the plaintiff and the government of Uganda before the takeover of the shares. DW1 testified that there were consultative meetings but failed to produce any documentation or minutes. DW1 signed exhibit P 28 which was a letter of resignation of the directors of the plaintiff's board. Part of the letter notes that the plaintiff's board was excluded from consultations concerning Pride Uganda/Pride

Micro Finance Ltd. That the meetings resulted in the decision to nationalise Pride Micro Finance Ltd. DW3 acknowledged signing the document but distanced himself from its contents.

Finally the plaintiff's counsels submitted on the first issue of **whether the shares held by the plaintiff in the second defendant prior to transfer to the government of Uganda were held by the plaintiff in trust for the government of Uganda.**

Counsel submitted that a comprehensive review of the transactional documents demonstrated that the plaintiff received ownership of the project assets by virtue of exhibits D15 in its own right as part of an agreed transformation process. The property in question are shares in the second defendant, a company limited by shares. The second defendant was incorporated on 12 May 2004. The plaintiff subscribed to 1,400,000 shares in the second defendant. Subscribers to a company shares become its first members under section 27 of the Companies Act. Secondly the correspondence between the Minister of Finance and Economic Development and Norwegian Ambassador in exhibits PE 18 and P 19 demonstrate that the intention of the stakeholders was for the plaintiff to become the lawful owner of at least 49% of the shares in the second defendant upon incorporation.

Upon incorporation of the second defendant, it made a formal allocation of shares, allotting a total number of 9,785,918 ordinary shares to the plaintiff according to exhibit PE 8. Exhibit PE 8 makes reference to the terms of exhibit P 26 which is the argument of the sale of the plaintiff's business and undertaking to the second defendant as a going concern as the basis of the allotment. The plaintiff sold its business as a going concern to the second defendant for approximately 10,000,000,000/= Uganda shillings. This was the consideration for the allotment. Counsel submitted that the plaintiff's shares were allotted to it for valuable consideration which it had supplied to the plaintiff and were allotted as fully paid-up shares. Exhibit P 26 makes no reference to the government of Uganda as an interested party in the business or undertaking of the plaintiff. It could not in any case have interest because incorporation of the second defendant was discussed by the various stakeholders. Documentary evidence establishes that the plaintiff was the owner of the shares in the second defendant. On the other hand the first defendant has not substantiated its claims to the shares. The original grant of funds to implement the Pride Africa in Uganda Project, whether to Pride Africa incorporated or to the government of Uganda is not relevant to the matter in dispute. This is because when the project was completed, the parties agreed on the ownership of project assets according to exhibit P 15. The dispute now is about the ownership of the second defendant following its incorporation and the subsequent allotment of shares. Counsel contended that the defendants have adduced no evidence to rebut the plaintiff's claim for ownership.

As far as the law is concerned, counsel submitted that the burden of proof to establish the existence of the trust lay upon the person alleging it. He relied on the essential elements of a trust as defined in **Black's Law Dictionary 7th edition** which provides that trust is the right enforceable solely in equity to the beneficial interest of property to which another person has the

legal title. A proprietary interest held by one person, the trustee, at the request of another (the settlor) for the benefit of a third party, the beneficiary. For a class to be valid, it must involve specific property, reflect the settler's intent and be created for a lawful purpose. Counsel contended that the question of the trust is a tripartite process in that first of all there must be a settler, what is the original owner of the property settlement the property to a second party, the trustee and for the benefit of a known beneficiary. The property in the suit are shares owned by the plaintiff acquired by virtue of being a promoter of the second defendant. Though shares cannot be said to have been settled to the plaintiff by the second defendant which did not exist prior to incorporation. There was no original owner of subscription shares in the second defendant outside its promoters. The government of Uganda did not subscribe to the second defendant's shares. Secondly the second batch of shares namely the allotment shares were allotted specifically in consideration of a sum of Uganda shillings 4,197,959,000/= being part consideration for purchase of the plaintiff's business undertaking. It cannot be said that they were settled on the plaintiff because the shares were expressly paid for with the supply of the plaintiff's own property.

Counsel further submitted that the second defendant cannot own shares in itself and relied on a textbook "Equity and the Law of Trusts by Phillip H Petit fourth edition at page 34 on the capacity of the settlor. Capacity to create a trust is in general the same as capacity to hold or dispose of any legal or equitable estate or interest in property. The second defendant had no legal capacity on its own to own shares and therefore could not settle the property in trust. Thirdly the second defendant's articles of Association particularly article 5 thereof expressly forbid the creation of a trust in respect of its shares. Article 5 is a production of Table A of the Companies Act. Consequently counsel contended that the plaintiff was allotted shares in its own right and not as a trustee for the government of Uganda.

Furthermore the plaintiff's counsels submit that as a limited liability company, the plaintiff company can only conduct business authorised by its objects clause in the memorandum of Association. None of the objectives in the memorandum of association authorise the plaintiff to act as a trustee. Again counsel relied on Black's Law Dictionary which defines a corporate trustee as a Corporation that is empowered by its charter to act as a trustee, such as a bank or trust company. Additionally counsel relied on Gower in the book "Principles of Modern Company Law fourth edition at page 25 for the proposition that a company holds property on trust for its members qua members is not arguable and attempts to rely on trusts rather than agency as a ground for piercing the corporate veil have been less successful. A company if so authorised by its memorandum of Association may act as a trustee. Counsel concluded from the evidence on record that the plaintiff did not hold shares in the second defendant as trustees for the government of Uganda but in its own right. Consequently the only justification for the government of Uganda compulsorily acquiring the plaintiff shares in the second defendant under a claim of ownership should fail.

In reply the defendants filed joint written submissions.

The case of the defendants is that in 1994 the government of Uganda invited Pride Africa Inc, a United States registered company directed by Jonathan Campaigne to implement a project set up by the Pride Microfinance model in Uganda. In 1994, pride Africa incorporated/registered a non-governmental organisation to conduct the business of creating a financial and information network for small-scale enterprises to increase income, employment and stimulation of business growth according to exhibit P 14. The project was funded by grants to the government of Uganda from Austria and Norway through their respective development agencies ARB and the Norwegian Agency for Development Cooperation (NORAD). Exhibit P1 is the Austrian agreement while exhibit P3 is the Norwegian agreement. Article 5 of the bilateral agreements provided that all equipment etc purchased under the agreement shall become the property of the government of Uganda or a mutually agreed local institution. The government through the Ministry of Labour and Social Development executed an implementation agreement admitted as exhibit P2 article 6 of which provided that the project shall be under the management of Pride Africa Inc and its board of directors. Pride Africa incorporated started managing the project for reward in 1996 and June 2000 when the implementation agreement exhibit P2 was terminated by exhibit D13. In 1999, Pride Africa Inc together with Jonathan Campaigne, John Mpyisi and Rashid Malima incorporated the plaintiff company as a company limited by guarantee with exhibit P4 being the memorandum and articles of Association 1999. The principal objective in exhibit P4 which is the memorandum and articles of Association is clause 3 (a) which was to acquire and take over the whole or any part of the undertaking, business activities of the non-governmental organisation known as Pride Africa. At that stage the only business of the plaintiff was to implement the project. Subsequently without consulting the government of Uganda, NORAD or the Austrian government the plaintiff company assumed the business of the project as reflected in exhibit D2 which is the audited accounts of the years 2000 and 2001. Upon learning this development, the government of Uganda and NORAD directed the plaintiff company to restructure and grant to the government of Uganda and NORAD controlling authority (stakeholder status) in the company. The plaintiff complied by amending its articles of Association which is exhibit P4 and giving birth to exhibit P5 which are the substituted articles dated 15th of May 2001.

Following the substituted articles the government of Uganda and NORAD gave effect to clause 6 of exhibit P2 which is the Norwegian agreement, conditionally and without consideration transferring the legal ownership of the project assets to the plaintiff company by executing exhibit P 15 which is the agreement for the transfer of assets. This was followed by the restructuring of the board of the plaintiff in which the government of Uganda appointed the chairman of the board PW3 and 2 government representatives namely DW 2.

In 2003 the Microfinance Deposit Taking Institutions Act was passed which required all companies involved in Microfinance business to incorporate as companies limited by shares. The plaintiff immediately and with government of Uganda and NORAD consultation, began the transformation process, leading to the formation of Pride Microfinance Ltd (MDI), the second

defendant in 2004. The plaintiff company transferred its business to the second defendant in return for 8.7 million shares in the second defendant and the debenture for Uganda shillings 4,000,000,000/= over the assets of the second defendant. The business sale agreement exhibit P 16 provided for cash payment to the plaintiff. In 2005 the government of Uganda in consultation with NORAD directed that all shares in the second defendant held by the plaintiff and its associates be transferred to government of Uganda. The plaintiff executed the transfer forms exhibit P11 (a) & (b).

The plaintiff company claims that its shares to the second defendant were transferred to the government of Uganda on the understanding/basis that the consideration thereof was to be determined and the first defendant has declined to determine that consideration. The defendants counsels submitted that at the trial it emerged that there was no understanding as claimed, rather the plaintiff had decided to insert the words "to be determined" in the consideration area of exhibit P 11. The defendant's case is that the words "to be determined" were fraudulently inserted after execution of the transfer forms by the government of Uganda. Following the transfer of the shares held by the plaintiff in the second defendant, all directors of the plaintiff and or members resigned except Jonathan campaign, Pride Africa Inc and Rashid Malima. This is contained in exhibit D3 which is the notice of resignation of directors, exhibit D4 which the notice of resignation of members and exhibit D5 the letter to the Registrar of Companies. In September 2005, the plaintiff company purported to convene an extraordinary general meeting at which its memorandum and articles of Association was amended. The resolutions filed pursuant to the meeting exhibit P7 abandons exhibit P5 which is the substituted articles of Association and adopts exhibit P6 the substituted articles of October 2005. In the year 2006 the plaintiff instituted civil suit number 373 of 2006 namely Pride Uganda versus Pride Microfinance Ltd and another seeking to enforce the debenture created over the assets of the second defendant. Relying on article 1 of exhibit P 5 which is the substituted articles, the government of Uganda and NORAD issued exhibited D8, a letter from the government of Uganda dated 22nd of June 2006 to the plaintiff and exhibit D9 which is a letter from the Norwegian Embassy dated 22nd of June 2006 directing that the plaintiff withdraws the suit. The plaintiff company declined to implement the directive. When the suit was filed in 2007, the first defendant with the support of the second defendant filed a counterclaim in which it sought declarations to the effect that the actions of the plaintiff described above were illegal and the plaintiff was bound by the directives given.

The first issue is whether the shares held by the plaintiff in the second defendant prior to the transfer to the government of Uganda were held by the plaintiff in trust for the government of Uganda.

The defendants counsels submitted that this suit discloses a typical case of a resulting trust arising where property is transferred to another person in circumstances in which the provider does not intend to benefit the recipient. Where a transfer is not intended to benefit the recipient, a resulting trust is created. It was held by the House of Lords case of Vandervell versus Internal Revenue Commission (1967) 1 All ER at page 1 that where it appears to have been the intention

of the donor that the donee should not acquire a beneficial interest, there will be a resulting trust in favour of the donor. The circumstance of the transfer of legal ownership was that it was a voluntary transfer of assets by the first defendant to the plaintiff. The plaintiff provided no consideration whatsoever for the assets. The residual reversionary interest in the assets was preserved and vested in the first defendant. The evidence of PW1 and PW2 confirms the above. Secondly the evidence of DW 1 and DW 4 established that the first defendant did not intend to confer a beneficial interest upon the recipient. The evidence of DW 4 gives the intention of the grant from the Norwegian government. The grants were given as a support to the national Microfinance outreach programme for the benefit of the people of Uganda and not a select group of people or a private company. The intention of the parties is also clear in exhibit D 14. Consequently a resulting trust was created and the plaintiffs held the shares in trust for the Government of Uganda and issue number 1 should be decided accordingly.

For emphasis the defendant's case is that the shares in issue had been acquired or paid for using assets which were held by the plaintiff in trust for the first defendant. According to Halsbury's Laws of England volume 38 paragraph 1451 third edition, the resulting trust arises where property is purchased in the name or placed in the possession of a person without any intimation that he is to hold it in trust, but the retention of the beneficial interest by the purchaser of the depositor is presumed to have been intended. Counsel further relied on the case of *Air Jamaica versus Charlton* [1999] 1 WLR at page 1399 for the holding that a resulting trust arises by operation of law and it gives effect to intention. The plaintiff adduced no evidence to contradict the presumption of a resulting trust. The burden is on the plaintiff to rebut the presumption of the creation of a resulting trust.

On the question of whether the project was a Pride Africa Inc project or a Government of Uganda project, this is put to rest by the agreement for transfer of assets exhibit P 16 executed in 2002 and the preamble thereof, which provided that it is a government of Uganda funded project. Exhibit P5 and the substituted article 1 (b) refers to the government of Uganda donor funded project known as Pride Africa Uganda. The events before the transfer of the project assets to the plaintiff and after the transfer support the inference that a resulting trust was created. The conclusion is that the grants that financed the business of the plaintiff were actually grants to the government of Uganda. The bilateral agreements for the funds were executed between the donors and the government of Uganda. Defendants counsel further contended that if the grants were given to Pride Africa Inc, why were the bilateral agreements signed by the Government of Uganda? Exhibit P3 merely provides that the grant is assistance to Uganda to set up the Pride Africa model in Uganda. If the plaintiffs submissions were to be accepted, exhibit P3 should have provided that the assistance was to Pride Africa Inc.

Counsel further referred to the bilateral agreements and contended that several articles he quoted showed that the grants were to the government of Uganda. Furthermore the implementation agreement was a management/consultancy agreement with Pride Africa Inc and Pride Africa Inc was paid management fees. One can only receive management fees for a job done on behalf of

the person paying. The request for disbursement of funds was or is made through the Ministry of finance according to the disbursement request fund notes exhibit D1.

Last but not least the defendants counsel submitted that the process of transfer of project assets to the plaintiff was a long process that culminated into the amendment of the articles of Association of the plaintiff and the adoption of exhibit P5 (the substituted articles) dated 16th of may 2001. Exhibit P5 replaced exhibit P4 and the changes support the argument of the resulting trust because exhibit P5 demonstrates/ reintroduces the interests of the government of Uganda and NORAD as stakeholders. Initially the government of Uganda and NORAD were not stakeholders under exhibit P4 but under exhibit P5 they became stakeholders under article 2 (b). In exhibit P4 Pride Africa Inc was a dominant member under its article 1 but under exhibit P5 it was no longer a dominant member. Thirdly in exhibit P4 the government of Uganda was not entitled to be represented on the board according to articles 31, 34 and 36 etc but under exhibit P5 the government became entitled to be represented. Fourthly in exhibit PE for the appointment of directors was by the dominant members under article 31, 34, 41 and up to 44 but under exhibit P5 the government of Uganda had a more direct role in appointment and determination of who resigns. Lastly under exhibit P4 the board was the supreme body while under exhibit P5 the board was now subject to control by the government of Uganda and NORAD. The changes were effected prior to the transfer of the project assets from the government of Uganda to the plaintiff. Subsequent to the transfer, the organs of the plaintiff company had government of Uganda representatives and control of the affairs of the plaintiff was retained by the government of Uganda and NORAD.

Lastly as far as the transfer of shares is concerned, the transfer form and insertion of the words "to be determined" was unilateral. The shares were acquired using trust assets. The trust was in favour of the government of Uganda and there was no logic to compensate a trustee. The plaintiff was not intended to take the benefit of the assets according to the evidence of DW 5 and DW 4. There was no agreement for compensation of the plaintiff. There were no minutes of any discussions or correspondence. The resignation of the members of the board as well as members of the company does not suggest any expectation of compensation. Their words "consideration to be determined" were inserted with an improper motive by PW2, while still employed as the company secretary of the second defendant, his law firm filed this case against the first defendant.

Resolution of issue number one

I have duly considered the written submissions of both counsels which are summarised above. The first question is **whether the shares held by the plaintiff in the second defendant prior to the transfer to the government of Uganda were held by the plaintiff in trust for the government of Uganda.**

The issue begs the question as to when to start tracing the alleged trusts and relationship of trust if any. The facts are sufficiently summarised by the counsels in their submissions and I do not need to repeat the undisputed facts. There are few areas of factual controversy and because the most important documents have been admitted in evidence, I would primarily review the documentary evidence.

It is the plaintiff's assertion that it acquired the shares for consideration from the second defendant and therefore a trust cannot be inferred. Secondly the second defendant cannot be a settlor because it did not have capacity in its objects clause to be a trustee of shares. Thirdly that the essential three ingredients for there to be a trustee/beneficiary relationship was absent and a trust cannot be inferred. Fourthly the thrust of the plaintiff's argument against the trustee ship arrangement was the assertion that it acquired the shares in its own right. On the other hand the case of the defendants is that there was a resulting trust or an implied trust.

It must be emphasised that there was no express trust deed and for the assertion that there was a trust arrangement or not as far as the shares are concerned, the court cannot be restricted to examining the transaction at the point when the second defendant was incorporated as a limited liability company having a share capital. This is because a company has to be capitalised through the subscription of its members. It can also raise capital through other authorised methods contained in its articles of association. However the question of whether the subscription value used to determine the shares or the payment for the shares whatever the case may be came out of money or assets contributed by donors or arising from the project requires a historical analysis of the question. The question becomes more complex when you consider the question of ownership vis-a-vis the question of management of a revolving fund to run a program. The way the parties treated the revolving fund is a complex question that requires expert analysis. The court is not an expert in tracing and distinguishing monies paid for management of the program and contributions by the donor community to a revolving fund for the Microfinance project. We shall however look at the transformation process of the project as far as its institutional framework and asset base is concerned in due course to come to some general conclusions about the issue as far as is possible from the available evidence.

I have carefully reviewed the documents. Exhibit P1 is an agreement between the Federal Minister for foreign affairs of the Republic of Austria and the government of the Republic of Uganda represented by the Minister of Finance on the financing of the credit program for micro-enterprises in the informal sector in the South Western region of Uganda. The agreement has got two parties. Clause 1.02 provides that the project shall be implemented by Pride. It provides that the Austrian government shall provide to Pride Africa Uganda and organisation for the promotion of rural initiatives and development enterprises, a grant in the maximum amount of 7 million Austrian Schilling. Under clause 2.01 the grant was supposed to be available for the project upon fulfilment of certain conditions.

According to annex 1 the target group or direct beneficiaries consists of those engaged in small-scale for profit activities. Clients of the program are those individuals who are self employed and/or operate micro or small-scale enterprises. The services provided will not be bound to collateral and landless people are expected to be the major target group. Exhibit P1 demonstrates very clearly that the beneficiaries of the project are the poor people of Uganda. The executing agency of the program was Promotion of Rural Initiative and Development Enterprises Pride Africa Uganda referred to as Pride. In other words the predecessor of the plaintiff referred to as Pride was a vehicle for the implementation of the project.

Exhibit P2 is an agreement between Pride Africa and the Minister of Labour and Social Welfare being the implementing agency of government and the title shows that it is an agreement to implement Pride/Uganda June 1996. The agreement provides that it is subject to the bilateral agreement between the government of Uganda and the government of Norway regarding financial support to Pride Uganda. It provides that Pride Africa is responsible for the implementation of the Pride financial intermediation model. Pride Africa will expand Pride Uganda as part of its strategic plan to implement the Pride Model on regional basis in Africa. It provides that operational funds will be transferred from Pride Uganda to one or more bank accounts of Pride Africa. Pride Africa was obliged to submit to the Ministry of Labour and social welfare progress reports on the performance of Pride Uganda for the first year of operation. It is further provided that pride Uganda will submit to the Minister of Labour and social welfare and NORAD in tranche requests along with the reports. Disbursements would be in accordance with article VI of the bilateral agreement. The agreement included a performance agreement for the first year and the 2nd – 5th year targets. The targets are very revealing about the objects of the implementation agreement. The performance was supposed to be 90% or greater in that a total of five branches were to be opened and a total of 2500 loans disbursed as fully paid or active. This was in the first year target. For the second up to the fifth year, performance criteria would be set with the approval of the management of Pride Africa and the Ministry of Labour and social welfare. Again the target beneficiaries are the same as in exhibit P1 which is the mother bilateral agreement and source of funds.

Exhibit P3 is an agreement between the government of the Republic of Uganda and the government of the Kingdom of Norway. The agreement title shows that it was assistance to the Promotion of Rural Initiative and Development Enterprises in Uganda (Pride/Africa in Uganda Project). Article 1 show that it is assistance to Uganda for the implementation of the first three years of the Pride/Africa in Uganda Project as outlined in annexure 1 of the agreement. It provides that the project is further outlined in the project document prepared by Pride/Africa for the Norwegian Agency for Development Cooperation (NORAD) and dated 28 August 1995. Most revealing is that the agreement provides as follows:

"The main objective ... Is to support and supplement Uganda's efforts to establish PRIDE/AFRICA in Uganda as a nationwide network of branch offices within five years.

The planned period of the project is 36 months from the date of signature of this agreement."

The agreement was signed on 19 June 1996 between the Government of Uganda and the Government of the Kingdom of Norway. Annexure 1 gives the project title as Pride Africa Uganda Promotion of Rural Initiative and Development Enterprises in Uganda. Secondly it provides that the implementing institution is Pride Africa (Uganda) Ltd. The goal was to create a sustainable financial and information services network for small scale entrepreneurs to increase income, employment and stimulate business growth. The objective was to transform the existing Pride Uganda NGOs Structure into a for-profit entity and become financially sustainable. The output provided that no further external grants are required to cover operational costs beyond the fourth year. Secondly Pride Africa (Uganda) Ltd was to achieve full operational sustainability by October 2000. By the end of August 2000 there was supposed to be a total of 29,800 micro borrowers (clients) and a total of 74,680 micro loans disbursed. They were supposed to be accumulated micro loans portfolio at Uganda shillings 18.3 billion and a loan insurance fund portfolio at Uganda shillings 3.1 billion. The agreement further provided in the annexure that Pride Africa Uganda shall present and discuss suggested changes in the institutional and legal setup of Pride Africa and the transformation of PRIDE bank with all concerned donors and partners. A further addendum to the agreement was executed in May 1998. It was for the provision of additional assistance. In addendum 2 the government of the kingdom of Norway again provided assistance to the promotion of rural initiative and development enterprises in Uganda "pride/Africa in Uganda Project". Other addendum are also agreements for providing further funding. The structure of the funding is the same as the moneys were supposed to contribute to the budget of the project implementing agency.

The three exhibits demonstrate that the bilateral agreements with the government of Uganda were for the provision of financial assistance to a project to promote the Microfinance project in Uganda. Consequently there was a donor who with the government of Uganda agreed upon a vehicle for the implementation of the project. The ultimate beneficiaries were the final recipients of the loans and also the purpose or objectives of the programme. It was to increase the volume of business through Microfinance lending.

Exhibit P4 is the memorandum and articles of Association of Pride Africa (Uganda) Ltd. Object clause 3 (a) of the company is "to acquire and take over the whole or any part of the undertaking, business and activities of the non-governmental organisation known as PRIDE AFRICA whose principal office is now situated..." Secondly to provide Microfinance related services to needy Ugandans to advance Microfinance programs in Uganda and generally operate as a Microfinance institution. The profits of the company if any and any other income howsoever acquired was to be applied solely towards the promotion of the objects of the company as set out in the memorandum of association and the payment of dividends to members of the company is prohibited. The members of the company limited by guarantee were Pride Africa Inc of Washington DC. Secondly there was Jonathan Campaigne, Rashid Malima and John Mpyisi. The

articles of Association particularly article 1 thereof on interpretation provided that the dominant member meant Pride Africa Inc a non profit entity incorporated under the law of the District of Columbia, United States of America. Subsequently the articles of Association of the company were substituted and this document is admitted in evidence as exhibit P5. Article 1 gives the background to the substitution of the articles in the following words:

“These articles of Association (hereinafter referred to as "the articles") are adopted in place of the original articles of Association in response to a request to do so by the government of the Republic of Uganda (GOU) and the Norwegian agency for development cooperation (NORAD) as a condition for :-

- (a) GOU and NORAD’s intended financial support for the plans, activities, programs and business of the company; and
- (b) the intended transfer of the undertaking, business and activities together with the property, assets and liabilities thereof, of the GOU donor funded project constituted and known as PRIDE AFRICA, UGANDA."

Apparently the incorporation of the company was part of the transformation process agreed upon in the bilateral agreement exhibit P3. Nonetheless exhibit P5 is evidence that there was an intended transfer of the undertaking, business and activities together with the property, assets and liabilities thereof of the government and donor funded project known as Pride Africa Uganda. It can also be concluded that the undertaking, business and activities together with the property assets (and liabilities) were donor funded.

The plaintiff relied on exhibits P18 and P 19 to give the background for the transfer. Exhibit P18 is a letter to the Ambassador of the Royal Norwegian Embassy dated 1st of December 2003 written by Gerald M. Senduala, the Hon. Minister of Finance Planning and Economic Development. In the letter the Minister makes reference to earlier correspondence from the Norwegian Embassy expressing concern about delays in the transformation of Pride Uganda into a regulated Micro Finance Deposit Taking Institution. Paragraph 2 thereof provides that following consultations with the board of directors of Pride Uganda, the government wishes to endorse the proposal that Pride Uganda should proceed to transform into a regulated MDI as provided for under the MDI Act, and in accordance with the proposals made by Pride Uganda's Board. Paragraph 3 of the letter reveals what the proposal was. It was that a new public company by the name of Pride Microfinance Ltd (PML) is incorporated as a company limited by shares as indicated. The proposal was that Pride Uganda and its associates would own 49% of the proposed company and secondly the social and commercial investors will own 51%. The Minister proposed evaluation of Pride Uganda's assets to form the basis for transferring the assets into the new registered company. Secondly Pride Uganda would apply for a licence as required under the MDI Act while the process for identification and "dilution" of shares to the social and commercial investors proceeds. Paragraph 5 of the letter reads as follows:

"Furthermore, I would like to propose that the already approved and granted resources by NORAD and the government to support the transformation process of the new company be disbursed, subject to a written undertaking that the shareholding proposed in paragraph 3 above to be implemented within a period not exceeding one year."

Exhibit P 19 is the response of the Ambassador to the honourable Minister's letter exhibit PE 18. The Ambassador agrees that the process of finalising the agreed shareholder structure should be completed within a period not exceeding one year. Secondly the timelines required expedient work to establish and finalise agreements with a suitable investor group. Finally he notes that the annual general meeting of Pride Uganda was meant to take place on 11 March 2004 and the meeting would be an important venue to discuss the details of Pride Uganda's transformation.

The controversy revolves around the transfer of shares to the government of Uganda which shares were held by the plaintiff in the second defendant company. However, before analysing any further the facts on the transfer of shares, it is necessary to appreciate how the second defendant came to be incorporated. There are two main policy considerations from the above exhibits which give the rationale for the incorporation of the second defendant company and the transfer of assets and liabilities to it from the plaintiff company. The controversy therefore revolves around how the transformation from the plaintiff to the second defendant took place and with the need to resolve the narrower controversy about the transfer of the shares to the government of Uganda which is the subject of the suit.

Exhibit P3 which the bilateral agreement and annexure thereto give the objective of the government of Uganda and NORAD to transform the Pride Uganda Project into a profit-making organisation. The transformation process might have its basis better understood with the description of the Pride Uganda Project. The Pride Uganda Project must first of all be conceived as a program or project funded by donor money under the government of Uganda policy and support. The interchanging names of the various entities during the inception and duration of the project could lead to some confusion. However, in order to trace the origin of the assets and liabilities, one must look at the programme and the implementation of the programme irrespective of the various names of the implementing agency. As we noted from exhibit P1 and P3, there are two bilateral agreements with one being between the government of Uganda and the government of Austria and the second with the government of the Kingdom of Norway.

Exhibit P1 identifies a credit program for Microfinance enterprises in the informal sector in the south-western region of Uganda. We noted that the objective was to support a credit program for Micro Enterprises in the informal sector in south-western Uganda. The grant was made to "Pride Africa Uganda" which was noted as an organisation for the promotion of rural initiatives and development Enterprises going under the name "PRIDE". The project was to be implemented by Pride. Exhibit P3 is much more comprehensive about the program. It is a bilateral agreement regarding assistance to the Promotion of Rural Initiatives and Development Enterprises in Uganda known as the "Pride/Africa in Uganda Project." Again the implementing agency is the

same organisation or project. Particularly addendum to the agreement show that what was being funded was the budget of Pride Africa in Uganda Project. Pride Africa in Uganda Ltd was incorporated as an NGO in exhibit P4. Its object was to acquire and take over the undertaking and business activities of the non-governmental organisation known as Pride Africa. In other words it inherited the program of Pride Africa. The subsequent changes made to the company in terms of its structure and ownership does not take away its primary purpose which was to continue implementing the project funded by the donors and to achieve the objectives of the project.

The various names of the project as far as its corporate structure for purposes of implementation is concerned, has led to the stakeholders giving it several names while describing the same project. The change in the corporate entity implementing the project was speeded up or enhanced by the enactment of the Microfinance Deposit Taking Institutions Act 2003. The Act gives the various stakeholders the grounds or the reasons for changing the corporate structure for implementation of the project to that of a limited liability company with a share capital. Secondly, it brought about urgency in making the transformation from a non-governmental organisation to a limited liability company. The incorporation of a limited liability company was also part of the long-term project goal of the stakeholders. The urgency to transform the project into a profit-making limited liability company corporate structure was catalysed by section 4 of the Microfinance Deposit Taking Institutions Act which provided that no Microfinance business shall be transacted in Uganda except by a company, which is in possession of a valid licence granted by the central bank authorising the conduct of Microfinance business in Uganda. It is an offence to contravene section 4 (1) of the said Act. A Microfinance deposit taking institution is defined by the Act as a company licensed to carry on, conduct, engage in or transact in Microfinance business in Uganda. Finally under section 2, the word "Company" means a company limited by shares and having a share capital. In other words section 4 (1) of the Microfinance Deposit Taking Institutions Act provides that no Microfinance business shall be transacted in Uganda except by a company. And the word 'company' means a limited liability company with a share capital. Subsequent to the enactment of the law cited above, it was necessary for continuation of the project for there to be an incorporation of limited liability company with a share capital. It is apparent from the correspondence that there was urgency in transforming the project vehicle into a limited liability company with a share capital in order to obtain an MDI licence to run Microfinance business in Uganda. In other words a non-governmental organisation could not run or operate in Microfinance business in Uganda under the new legislation.

Before examining the transformation process of the project in terms of the vehicle used for implementation thereof, it is necessary to clearly define that project. Thereafter we shall deal with the question of shares and the question would be what the shares embody in terms of the project.

We have already examined exhibits P1 and P3 which demonstrate clearly that the bilateral agreement between the governments of Uganda on the one hand and that of Austria and the government of the kingdom of Norway on the other hand was clearly support a program which would have a significant impact on the local economy and on businesses and households which do not have access to institutional credit and savings. It was supposed to increase the volume of business by giving credit without collateral. It was to provide employment for marginalised groups in society. There were other objectives of the programme but the programme may generally be summarised as the financing of the credit program for Micro Enterprises in the informal sector which hitherto were unable to access credit. Pride Uganda or Pride Africa in Uganda was implementing a model project developed by Pride Africa for rural development. Pride Africa had a model for developing such a project. In fact Pride Africa in Uganda Project developed a consultancy document for the running of the project for NORAD. The project document was admitted in evidence as exhibit P 22 and is dated February 28, 1995. The project document was prepared for NORAD by Pride Africa. The project document has loosely been termed the Pride Africa in Uganda Project. The project outlines the need for such a project which was the inadequacy of the employment opportunities. It also provides for increasing number of entrance into the Labour force. The project document notes that the government policy statement for the promotion of small-scale industries in Uganda identifies several problems faced by that sector. This includes insufficient access to credit. It was proposed in the project document that Pride Uganda would be ideally placed to serve as an intermediary agency in the government program for poverty eradication known as "Entandikwa scheme" or a "kickstart" scheme for injecting credit. The project proposed the Pride Model to fulfil the objectives of the government. This document was important apparently in the implementation and conception of the bilateral agreements exhibits P1 and P3. The pride in Uganda Project is therefore in a way a proposal on how to fulfil the objectives of giving credit to the informal sector among other things. The vehicle to run the project was the vehicle that was funded by the donor money.

The money had clear objectives. One was to disburse funds to the target group on favourable credit terms and the other was to run the program which includes setting up the institutional framework/management to run the program. Lastly the program was time bound and was meant to transform into a profit-making entity beyond four years of the programme. The passing of the new legislation acted as a spur speeding up the process of transformation of the institutional framework to run the project in compliance with the new legislation referred to above (The MDI Act).

Whatever the implications in terms of the revolving fund for the disbursements of loans, a limited liability company without a share capital and limited by guarantee was incorporated. Starting with exhibit P4 we have in evidence the memorandum and articles of Association of Pride Africa (Uganda) Ltd. The company was incorporated and had as its main objective to take over the whole or any part of the undertaking, business activities of the non-governmental organisation known as Pride Africa. Secondly it was clear from its object clause as a company

limited by guarantee without a share capital that it could not distribute dividends to its members. The members of the company were Pride Africa Inc which is described as a Charitable Organisation, Jonathan Campaigne who is described as a business executive, Rashid Malima who is described as a financial controller and John Mpyisi who is described as the business executive/consultant. In other words upon taking over the whole or any part of the undertaking, business and activities of Pride Africa in Uganda, they would continue running the program which is the subject of the bilateral agreements exhibits P1 and P3. In doing so, any profit that they would make or any income that they received by whatever method that was authorised would be applied towards promotion of the objects of the company which clearly included implementing the government program for micro financing the informal sector among other things.

The evidence established that the management structure in exhibit P4 referred to above was not acceptable to the stakeholders namely the government of Uganda and the government of the kingdom of Norway. These are the stakeholders referred to in exhibit P3 which is a bilateral agreement. The articles of Association of Pride Africa (Uganda) Ltd defined Pride Africa Inc as the dominant member. Subsequently, the articles of Association were substituted and admitted in evidence as exhibit P5. Article 1 of the substituted articles exhibit P5 of Pride Africa (Uganda) Ltd provides that the articles were substituted in the place of the original articles in response to a request to do so by the government of the Republic of Uganda and the Norwegian agency for development Corporation (NORAD) as a condition for intended financial support of the plans, activities, programs and business of the company by the Government of Uganda and NORAD. Secondly as a precondition for the transfer of the intended undertaking, business and activities together with the property, assets and liabilities thereof of the Government of Uganda donor funded project constituted and known as Pride Africa, Uganda. In the substituted articles of Association exhibit P5 Pride Africa Inc was entitled to one director, the government of Uganda was entitled to 3 directors while three individuals including one woman would be selected from the private sector nominated by members of the company. The Chief Executive Officer would be an extra officio and non-voting member of the board. All directors were at par.

I was addressed on the need of the government of Uganda and NORAD or the government of the kingdom of Norway to have a say in the affairs of the company referred to above in exhibit P5. In fact there was some contention as to whether the affairs of the company were conducted in a manner authorised by its articles of association. But that issue is not necessary to be determined on the question of whether there was a trust whether express, implied or resulting as far as the shares are concerned. The company remains the company as an entity irrespective of its internal management as far as its transactions are concerned. For that reason, I will restrict myself to tracing the assets and liabilities of Pride Uganda limited.

The name of the company was changed to Promotion of Rural Initiatives and Development Enterprises (Uganda) Ltd (Pride Uganda). Clause 3 (a) of the amended memorandum of association is the same as that of the previous company. It is to acquire and take over the whole

or any part of the undertaking, business and activities of the non-governmental organisation known as Pride Africa. Secondly it is a non profit-making entity. The income of the company wheresoever and howsoever acquired shall be applied solely towards the promotion of the objects of the company as set out in the amended memorandum of association.

Before considering the question of transfer of shares, it should be noted that Pride Micro Finance Ltd (MDI) was incorporated on 12 May 2004 in compliance with the requirements of the Micro Finance Deposit Taking Institutions Act, 2003. Object number 3 (a) provides that the company was incorporated to purchase and carry on the Micro finance business now carried on by Promotion of Rural Initiatives and Development Enterprises (Uganda) Ltd (Pride Uganda). By tracing all the objects clauses, one can trace in the objective of the three companies referred to the taking over of the business of Microfinance carried out previously by Pride Africa Uganda Limited. The object of the second defendant exhibit P7 quoted above however introduces a subtle change and provides that it is to purchase and carry out the Micro finance business carried out by the plaintiff. By introducing the word "purchase", a subtle change was introduced. That subtle change obviously was generated by the fact that Pride Micro Finance Ltd (MDI) is a limited liability company with a share capital. Its members are supposed to share dividends from the profits. I will make further comments on the sharing of profits after critically examining the transformation process before concluding the issue of trusts.

It is it a common position of the parties that the NGO structure was supposed to be changed to that of a limited liability company with a share capital. We have established that exhibit P3 which was the bilateral agreement between the government of the Republic of Uganda and the government of the kingdom of Norway envisaged a transformation of the project vehicle into a limited liability company which was profit-making. The MDI Act made it imperative that the Microfinance project vehicle had to be a limited liability company with a share capital. I have already reviewed exhibit PE 18 and 19 which is a correspondence between the Minister of finance and economic development and the ambassador of the Government of the kingdom of Norway on the subject of the transformation of the company.

The proposal of the Hon. Minister of Finance Planning and Economic Development dated 1st of December 2003 exhibit PE 18 proposed a share structure for the formation of a new company with the name Pride Micro Finance Ltd (PML). Pride Uganda and associates were to own 49% of the shares while the social and commercial investors would acquire 51%. There was supposed to be valuation of the Pride Uganda as assets to be taken as a basis for making a transfer of the assets into the new registered company. In exhibit P 19 the Norwegian Embassy agreed with the proposal. The first conclusion from the correspondence is that the correspondence was dealing with the consummation of the bilateral agreement between the government of Uganda and the government of the kingdom of Norway. The evidence of the plaintiff was that it acted under compulsion to transfer the shares in the new company to the government of Uganda. Apparently the plaintiff was compelled by the need to obtain an MDI licence in order to continue operating. Part of the evidence is exhibit P 20 which was written to the permanent secretary/secretary to the

Treasury Ministry of finance, planning and economic development dated 16th of June 2005 in which the Central Bank Governor wrote that the central bank had no power to extend the period stipulated by section 91 of the Act 5 of 2003 to extended time for compliance within two years commencing first of July 2005. Section 91 provides that any person who immediately before the commencement of the Act was carrying on Microfinance business in Uganda shall immediately upon the coming into force of the Act, apply for a licence under the Act within 24 months from its commencement or wind up its business within six months.

In other words any person carrying on Microfinance business had no option but to apply for a licence. It was only a company limited by shares which could apply for a licence under section 4 of the Act. The letter exhibit P 20 was written by the Governor of the Bank of Uganda in response to a letter dated 11 April 2005 from the permanent secretary/secretary to the Treasury seeking extension of time. This was on the ground that the process of filing and regularising the transfer of assets from Pride Uganda limited to Pride Micro Finance Ltd, would take about six months to complete.

Exhibit PE 8 is relied upon by the plaintiff to show the transformation process. It was a meeting held on 22nd of September 2004. It showed that business was being conducted as Pride Micro Finance Ltd (PML) following the physical transfer of the business, assets, property, liabilities etc of Pride Uganda to PML on 10 September 2004. Secondly the meeting was intended to take stock and submit an application for a licence to conduct Microfinance business. It showed that the board ratified the transfer of the business, assets and liabilities etc of Pride Uganda to PML on 10 September 2004. Pride Uganda was supposed to be paid Uganda shillings 344,521,383/= for the purchase by PML of Pride Uganda's business, assets, properties etc. Secondly the application of Uganda shillings 700,000,000/= as part payment of the consideration to pay for 1,400,000 shares of Uganda shillings 500 each subscribed by pride Uganda in PML. The execution of the debenture in favour of pride Uganda to secure payment of approximately 4,000,000,000/= as part of the consideration due to pride Uganda.

Going backwards to examine the transfer documents of the sale of the business as a going concern, the parties addressed court on exhibit P 15. Exhibit P 15 traces the assets and liabilities and business which became the subject matter of future transactions. It is an agreement dated 18th of March 2002 between the government of the Republic of Uganda and the plaintiff. We have already examined that the plaintiffs object was to take over the business and undertaking of Pride Uganda Limited. The parties had agreed to transfer legal ownership. Pride Uganda was to become the legal owner of the assets and property acquired under the bilateral agreements. Pride Uganda was a non-profit making agency and held the property in trust for its objects. Of course the objects included implementation of the government policy funded by the donors. Subsequently despite the changes in names exhibit PE 8 demonstrates how the company chose to allot shares to Pride Uganda, pride members, directors and staff and clients and related matters. Minute 14.1 shows that clause 2.1 (c) and (d) of the sale agreement resolved to allot ordinary shares of Uganda shillings 500 each in PML to be credited as fully paid to Pride Uganda, Pride

Uganda's members, directors, senior managers, staff and clients as part payment for the said consideration due from PML to Pride Uganda for the sale and transfer of Pride Uganda's business, assets, property etc to PML. In the minutes 11 directors were allotted 337,060 ordinary shares giving a total of Uganda shillings 268,431,000/=. Pride Uganda was allotted 8,395,918 shares amounting to Uganda shillings 4,197,000 959,000/=. Six senior managers were allotted a total of 235,939 shares totalling Uganda shillings 117,969,500/=. 239 Pride Uganda's other staff were allotted a total of 1,575,782 ordinary shares totalling Uganda shillings 787,891,000/=. Pride Uganda clients (56 of them) were allotted a total of 55,272 ordinary shares totalling Uganda shillings 27,636,000/=. The shares held by pride Uganda stuff other than the senior managers may be heard by trustees under Employee Share Ownership Plan.

The big question was how the shares were to be credited as fully paid? The effect of the resolution of the board to make the allotment of shares to the various people and credit it as fully paid up confers shareholding rights in the incorporated company for consideration that needs to be explored. Apparently the justification was the contribution of the various people allotted shares to the success of the Microfinance program. The conversion of the business and undertaking of pride Uganda into shares is questionable and appears to be arbitrary. In other words the revolving funds held by the company and inherited from the project could not be converted into shares held by individuals without being in breach of the undertaking to implement the Microfinance program of government supported by the various stakeholders such as NORAD.

In technical terms, it would be necessary to value that contribution if any and sever it from the revolving fund meant for the disbursement of loans, while at the same time being able to account for physical assets acquired over time. The question of what the shares actually meant cannot be answered without technical evaluation which the court cannot do.

It is apparent that all did not go well with the allotment of shares. In exhibit P9 the executive director supervision of the bank of Uganda wrote to the managing director of Pride Micro Finance Ltd requesting for evidence of regularisation of the transfer of the shares to the government of Uganda. Apparently the plaintiffs transferred the shares in Pride Micro Finance Ltd to the government of Uganda in exhibit P11 which is the form for the transfer of shares or stock. The date of the transfer is 12th of August 2005.

This suit has been narrowed down to the question of transfer of shares to the government of Uganda and the payment of consideration. Therefore the controversy is on whether the plaintiff should be paid for the shares. The plaintiff had been directed to transfer the shares to the government of Uganda. According to exhibit D4 at an extraordinary general meeting of the plaintiff several directors including representatives of the government resigned due to the decision of the government of Uganda to nationalise the company. The decision was said to have been taken in meetings/consultations to which the board was not invited or represented. In exhibit D5 which is a letter dated second of November 2005 it was noted that the former

directors of Pride Uganda resigned their position with effect from 1 July 2005 leaving only three directors of the company namely Jonathan Campaigne, Pride Africa Inc and Rashid Malima. Exhibit D7 is a declaration by the company secretary of Pride Micro Finance Ltd to the effect that the company had allotted shares in a meeting held on the 2 September 2004 to the plaintiff, Pride Uganda's members, directors, staff and clients in accordance with clause 12 and 13 of the agreement of sale of a business as a going concern between Pride Uganda and the company. Following the allotment of shares the stakeholders of the company namely the Royal Norwegian Embassy in Uganda and the government of Uganda expressed concerns about some aspects of the transformation process and he was directed by the board of the company to halt the preparation and issuance of share certificates to the persons allotted shares. In paragraph 8 he notes that the allotment reflected 100% shareholding in the company. These were 1,403,500 ordinary shares. On 28 June 2005 he facilitated the transfer of 1,403,500 shares to the government of Uganda. The 100% shareholding is not necessarily the entire shareholding in the new company/second defendant but the shareholding held by the plaintiff.

The question of legal ownership and beneficial ownership is crucial to resolving the first issue. Exhibit P 15 deals with the transfer of legal ownership. However the legal ownership is qualified by the memorandum and articles of Association of the various companies which have inherited the assets and liabilities. Starting with the memorandum and articles of Association of Pride Africa (Uganda) Ltd the objects clause clearly indicated that it was to take over the whole or any part of the undertaking, business activities of the non-governmental organisation known as Pride Africa. Secondly it was a non-profit making organisation. Secondly exhibit P6 which is the plaintiff's memorandum and articles of Association also acquires and takes over the whole or any part of the undertaking, business and activities of the non-governmental organisation known as Pride Africa. Thirdly the memorandum and articles of Association of Pride Micro finance Ltd (MDI) was to purchase and carry on the business of the plaintiff.

Had the consideration been paid to the plaintiff for the transfer of shares, it cannot be distributed as profits to the members. It was obliged to apply the money for the sale of shares towards the promotion of its objects as a company limited by guarantee. However a critical analysis of the background to the assets shows that it held the property in the trust for the objects. This is a simplistic analysis. The object of the plaintiff was to take over the Microfinance project contained in the bilateral agreement between the government of Uganda and the government of Norway among other stakeholders. The plaintiff could not continue carrying out that objective as an NGO. Consequently the undertaking was sold to the second defendant. The objective of the government and of the stakeholders was supposed to be achieved by the second defendant company under the MDI Act 2003. In other words, the plaintiff had no capacity in law to carry out the objectives of the stakeholders. Secondly it was the objective of the stakeholders to transfer the program to a profit-making entity. The question therefore becomes what happens to the revolving fund for disbursement of loans? The revolving fund which was originally funded

by the donor community was inherited by the second defendant. From the above analysis, some conclusions can be made.

- Firstly, it was a fulfilment of the bilateral agreement between the governments of Uganda and the government of the kingdom of Norway to incorporate a limited liability company with a share capital.
- Secondly, shares were supposed to be purchased in the new entity without prejudice to any revolving funds which could be the subject of terms between the government of Norway, NORAD the government of Uganda and the entity which was supposed to carry out the undertaking hitherto given to the plaintiff to implement.
- Any assets transferred to the second defendant needed to be professionally valued so as to distinguish between project funds meant for disbursement of loans under the programme, any physical assets which provide part of the capital to carry out any Microfinance business, and liabilities.
- The value of the shares acquired by individuals in the second defendant was supposed to be properly ascertained and paid for.
- Investors were supposed to be invited to invest in the company which is a public limited liability company subject to company law.
- The shares as reflected in the transfer of shares to the government of Uganda represented 9,785,918 ordinary shares owned by the plaintiff.
- The total number of shares subscribed in Pride Micro Finance Ltd (MDI) is 1,403,500. 3500 shares are held by individuals. This position was as by 12 May 2004. Subsequently the plaintiff transferred 8,395,918 ordinary shares exhibit P11 A on 2 August 2005 and 1,400,000 shares exhibit P11 B on 27th June 2005.
- Subsequently there was an allotment of shares to directors, members and staff which apparently did not take effect. However the court cannot conclude that it did not take effect without hearing evidence and obtaining expert opinion about the current status of the company.

It was therefore technically impossible for the plaintiff to keep on implementing the undertaking of the former pride Uganda limited under the MDI Act. That role had been taken over in the new company namely Pride Micro Finance Ltd (MDI). In other words the program has been transformed into a profit-making organisation. The government programmes and that of the stakeholders are to be managed by Pride Micro Finance Ltd (MDI) and not the plaintiff. However because it is a limited liability company with a share capital, the question of who owns the shares becomes relevant. The resolution of the question depends on how the shares were capitalised. How were the shares valued? Does it reflect part of the donor money? If it does, it cannot be owned beneficially by the plaintiff as it is part of the project sustainability capital. Most importantly a revolving fund must be established from the previous programme so as to distinguish between contributions by members of the plaintiff for which they may be compensated etc. The program was therefore being wound up and transformed into a self-

sustaining profit-making business enterprise which would require no donor contribution. It would require the capital to sustain itself. Definitely upon conversion of assets into stock/s shares, somebody has to own the shares. Should the shares be beneficially owned by the plaintiff or the government? A freshly incorporated company cannot capitalise itself except through contribution/subscription of members.

It is therefore my conclusion that the shares in so far as arising from the previous business, undertaking, assets less the liabilities of the project vehicle under the bilateral agreement between the government of Uganda and the government of Austria exhibit P1, the agreement between the government of Uganda and the government of the Royal kingdom of Norway exhibit P3, were held in trust by the plaintiff for the implementation of the Microfinance programme of the government and the stakeholders. The actual worth or value of that aspect of the shares needs to be determined. Secondly, in so far as members of the plaintiff made personal contributions to the programme (assuming that they were not paid management fees or salary or allowances for carrying out their duties), the contribution needs to be valued and may be ascribed in shares or in money. Thirdly the implementation of the programme through an NGO came to an end with the enactment of the MDI Act. As far as the NGO is concerned, the programme was supposed to be wound up and transferred to a limited liability company with a share capital. This fulfils the objectives of the plaintiff company and the stakeholders including the government of Uganda and NORAD.

Further comments may be made about the role of the Privatisation Unit. The privatisation unit was engaged in the process of transformation of the programme of Pride Uganda into a limited liability company. Obviously, as a government Department, its role was not under the Public Enterprise Reform and Divestiture Statute which statute deals with privatisation of public enterprises. The enterprise namely Pride Uganda was governed by its memorandum and articles of Association and needed to be wound up so that if a new entity was formed, members of the public would have subscribed shares in it. To the extent I have held above, the shares of the plaintiff were held in trust for the government programme which was consummated in terms of the institution to carry it out as a limited liability company, the second defendant. As to who should be the shareholder for purposes of the assets, undertaking and business of the previous company transferred to the second defendant, there should be more consultation between the plaintiff, the government and the donors about who represents the interests of the stakeholders in the Microfinance business now managed by the second defendant. That question cannot be answered in this suit which deals with whether the shares were held in trust and whether the plaintiff should be compensated or paid for transfer of shares to the government of Uganda.

The first issue is therefore not resolved in favour of any of the parties because the property was held in trust for a program and was to benefit the final beneficiaries of the Microfinance programme. It was not meant to benefit the government of the Republic of Uganda or the plaintiff except that it fulfilled the objectives of the government. If the government of Uganda is to hold the shares, it would also not do so as a beneficiary but as a trustee. Under the National

Objectives and Directive Principles of State Policy, principles 25 and 26 of the Constitution of the Republic of Uganda, the shares would be held by the Minister or the Permanent Secretary in trust for the people of Uganda. The capacity of the funds to grow would be greater than if it was held by individuals for profit. In any case there is a window for individuals to buy shares in the Public Limited Liability Company.

There is a need to comment about the rights of the shareholder. The shareholder is obliged to pay taxes on any profits/dividends declared. Secondly, the person who owns the shares would be obliged to use the profits for a public purpose. As far as legal title is concerned, the shares were lawfully held by the plaintiff but not as a beneficiary. Because the plaintiff was not a beneficiary, it could not transfer any beneficial interest in the property. Both the plaintiff and the government of Uganda were running a program for the benefit of the people for whom the Microfinance programme was funded by the donors. The program is generally part of the government programme for poverty alleviation. Lastly I believe the testimony of the defendant's witnesses namely Mr Chris Kasaami, the Secretary to the Treasury that when the shares were transferred, there was no agreement on any consideration. This does not mean that consideration was not supposed to be paid. The transfer was an imperfect transfer because the board of the plaintiff company resigned apparently in protest at what they thought was the nationalisation of the second defendant. Obviously nationalisation would go against the objectives of the stakeholders which was to involve outside investors to buy shares in the company. It is therefore my conclusion that the property in the shares to a measure which is to be determined, reflects the property of the Microfinance programme of the government together with support from the donor community. As to how the shares should be held should be the subject of further negotiations between the plaintiff, the government of Uganda, the government of Austria and the government of the kingdom of Norway.

Whether the plaintiff is entitled to adequate compensation for the shares taken over by the government of Uganda?

The second issue has been answered in the first issue. The way the shares should be held should first of all follow a professional evaluation of the transformation process following the guidelines laid out above. Secondly the question of whether members of the plaintiff company contributed to the programme should be established. The value of the shares to be held in trust for the programme has to be established. In other words, the plaintiff's suit succeeds in part to the extent that a proper professional evaluation of the transformation process needs to be carried out and the shares could not be acquired without regard to the contribution of the plaintiff. The government of Uganda will employ a professional to value the shares the subject matter of the suit taking into account the contribution made to the business and undertaking previously implemented by the Pride in Uganda Project. The contribution of other investors who came in afterwards can then be properly juxtaposed against the contribution of the donor aided programme so as to finally agree on the proper vessel or institution or Department of government

to hold the shares. The above sufficiently resolves this suit and the counterclaim of the first defendant.

In the premises the plaintiff's suit is a public interest suit and there shall be no order as to costs.

Judgment read in open court this 28th day of June 2013

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Counsel Andrew Kasirye appearing with Joseph Luswata for the second defendant

Kabito Karamagi appears for the plaintiff.

Harriet Sentomero Legal Manager of the second defendant present in court.

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

28th of June 2013