

**DECISION OF THE COURT OF APPEAL ON SALE BY MORTGAGEES, AND VALIDITY OF MORTGAGES -  
C.A.C.A NO. 071 OF 2009 BELEX TOURS AND TRAVEL LIMITED VS CRANE BANK LIMITED AND FANG  
MIN**

The Court of Appeal of Uganda delivered a judgment regarding among others, execution of mortgages, the sale of mortgaged property and moveable assets by a mortgagee/chargee, financing of a purchase of mortgaged property by mortgagee and what amounts to fraud and illegality in property sales.

**1.0 Background**

- 1.1 Between 1997 and 1999, Crane Bank Limited (“Crane”) lent money to Belex Tours and Travel Limited (“Belex”) against a mortgage over Plot 9 Sezibwa Road, which was at the time a hotel (the “Property”) and a debenture over the assets of Belex.
  - 1.2 Belex defaulted on its loan repayments, which by May 1999 had amounted to USD 704,829. Following several demands from July 1998, a memorandum of understanding was signed between Crane and Belex. Crane gave Belex up to 11<sup>th</sup> May 1999 to repay the loan failing which Crane would enforce against the security.
  - 1.4 On Saturday 15<sup>th</sup> May 1999 Belex asked Crane for another extension to 19<sup>th</sup> May 1999 to allow Barclays Bank to take over the loan. Crane’s lawyers responded to Belex the following day Sunday 16<sup>th</sup> May 1999, refusing the extension and demanding that the Property be vacated the same day.
  - 1.5 Crane sold the Property and the moveable assets of Belex to Ms. Fang Min for USD 745,000 under a sale agreement dated 21<sup>st</sup> May 1999. This purchase was financed by Crane up to USD 600,000, security for the financing being the Property this time granted by Fang Min.
  - 1.6 Belex sued Crane to recover the balance between the debt and the purchase price being USD 5,800 and to recover its moveable assets for a value of approximately USD 194,000 that it claimed had not been paid for by Fang Min.
  - 1.7 The High Court found that the moveable assets had in fact been paid for under the sale agreement, which mentioned both the moveable assets and the Property even if no split was provided for the cost of each of these items, and the transfer deed captured the full purchase price. The Court also found that the USD 5,800 was not payable by Crane since it had a counterclaim against Belex for about the same sum. Belex appealed to the Court of Appeal.
- 2.0 The following findings were made by the Court of Appeal;

## 2.1 Procedure for sale of moveable assets

The power to sell the Property and of the moveable assets could only be exercised separately under the Mortgage Act and the Companies Act respectively. As such, there had been no sale of the moveable assets.

## 2.2 Sale by mortgagee

In order for a sale by a mortgagee to validly take place, the mortgage deed must still be registered on the title of the Property at the time that the transfer is registered. The Court was of the opinion that the Crane mortgage had been released at the time of the transfer to Fang Min.

## 2.3 Financing of purchase of property under sale by mortgagee

The sale of the Property by Crane to Ms. Fang Min was tainted with fraud since Fang Min did not have the money to pay for the Property but was going to obtain a loan from Crane, using the Property as security.

## 2.4 Consideration for sale

It was fraudulent on the part of Fang Min to state on the transfer forms that consideration had been paid when she did not have the money to pay for the Property and was obtaining/had obtained a loan for that purpose.

## 2.5 Execution of a mortgage deed

The mortgage and the transfer deeds were not executed by the parties in Latin character, in contravention of section 148 of the Registration of Titles Act, and were therefore invalid.

## 2.6 Stamping of documents

The sale agreement had not been stamped and was therefore inadmissible as evidence in Court.

## 3.0 **Lessons to be learnt**

The Court went well beyond the issues placed before it for consideration. While permitted in some circumstances, in this case, it took the parties by surprise. Belex did not give any evidence on damages sustained with the result that the Court went to quite some extreme lengths to fashion a remedy. Crane on the other hand did not have an opportunity to explain its sale process and document execution. The Court did not have before it the relevant documents such as the title deed and mortgage deed to establish sequence of events of sale and execution.

- 3.1 Mortgagees should handle the sale of land and of moveable assets separately, with a receiver being appointed for the sale of any assets under a debenture.
- 3.2 A transfer by a mortgagee bank must be executed by a mortgagee as mortgagee on realization.
- 3.3 It may be necessary to modify the wording in the transfer deeds being signed in situations where the transaction is being financed so that the statement that consideration **has been paid** and the acknowledgement of **receipt** of consideration are removed. The Registration of Titles Act while prescribing the language in a transfer deed permits modification. This is a matter between the transferor and transferee.
- 3.4 Mortgage deeds and other documents under the Registration of Titles Act should be properly executed and witnessed/attested in Latin character.
- 3.5 All documents requiring stamping under the Stamps Act should be stamped to ensure their admissibility in Court.