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Legal Alert!



BANKING AND FINANCE

THE RISKS OF DEFECTIVE EXECUTION OF LOAN AND MORTGAGE INSTRUMENTS

Supreme Court of Uganda

Civil Appeal No. 11 of 2021

Delivered 22 September 2026

Global Capital Save (2004) Ltd & Ben Kavuya v Alice Okiror & Another

On 22 September 2026, the Supreme Court of Uganda, by a majority of four to one, dismissed the appeal of Global Capital Save (2004) Ltd and its Managing Director. The Court upheld the concurrent findings of the High Court and the Court of Appeal that a registered legal mortgage was void for improper execution, lack of attestation and the absence of spousal consent. This alert sets out the implications of the decision for financial, credit and microfinance institutions in Uganda.

AT A GLANCE

4 : 1Majority decision of the
Supreme Court**144% → 20%**Annual interest rate reduced
as unconscionable**UGX 53m**Loan declared fully repaid
and title returned

WHY IT MATTERS

The judgment clarifies that the Registration of Titles Act governs the execution of instruments over registered land, notwithstanding the general execution provisions of the Companies Act. It places on the lender the burden of producing attesting witnesses where execution is challenged, and confirms that courts will reduce interest rates found to be harsh and unconscionable.

Facts of the Case

Global Capital Save (2004) Ltd advanced loans to Alice Okiror and her late husband, secured by a legal mortgage dated 26 February 2008 over their matrimonial property. The borrowers maintained that the principal advanced was UGX 53,000,000; the lender claimed to have advanced UGX 350,000,000, of which only UGX 120,000,000 had been repaid.

The High Court found the mortgage invalid: it had not been duly executed by the company in accordance with the Registration of Titles Act, had not been attested and lacked written spousal consent. It found the loan was UGX 53,000,000 at 12% per month (144% per annum), held that rate illegal, harsh and unconscionable, reduced it to 25% per annum, declared the loan fully repaid and ordered the return of the certificate of title and payment of damages. The Court of Appeal upheld these findings, reducing the interest rate to 20% per annum, and the Supreme Court affirmed the decisions of both courts.

KEY PRINCIPLES FOR LENDERS

- a) A company must affix its common seal when executing a mortgage deed.
- b) Without the common seal, the signing officer must hold a registered Power of Attorney authorising them to sign on behalf of the company.
- c) Written spousal consent is required to mortgage a matrimonial home; its absence rendered the mortgage deed void.
- d) An attesting witness must be present at execution. Where attestation is disputed, failure to call an available witness without explanation may lead the court to find the deed was not properly attested.
- e) A deed that is not properly attested may still create an equitable mortgage, for example where the proprietor deposits the certificate of title with the lender.

WHAT LENDERS SHOULD DO

Ensure loan agreements and mortgage deeds are properly executed, signing officers hold the requisite authority and attesting witnesses are present at signing. Obtain written spousal consent before taking a mortgage over family land, and retain evidence of both consent and proper execution.

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