

CASE 1

BRANCHES

1<sup>ST</sup> DEFENDANT'S WRITTEN  
STATEMENT

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
[LAND DIVISION]  
CIVIL SUIT NO. 948 OF 2017**



**MEERA INVESTMENTS LTD**

]

**PLAINTIFF**

**-VERSUS-**

**1. DFCU BANK LIMITED**

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**2. THE COMMISSIONER FOR LAND  
REGISTRATION**

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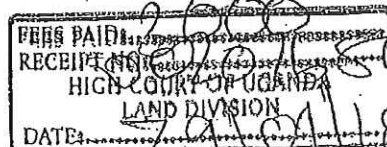
**DEFENDANTS**

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**1<sup>ST</sup> DEFENDANT'S WRITTEN STATEMENT OF DEFENCE**

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1. Save as expressly admitted herein the 1<sup>st</sup> Defendant denies each and every allegation of the fact contained in the Plaint as though the same were set out verbatim and specifically traversed seriatim.
2. Paragraphs 1, 2 and 3 of the Plaint are admitted. The 1<sup>st</sup> Defendant's address of service for the purposes of this suit is C/o Sebalu & Lule Advocates, S&L Chambers, 14 MacKinnon Road, Nakasero, P.O.Box 2255, Kampala.
3. It is denied that the Plaintiff has any claim against the 1<sup>st</sup> Defendant as set out in paragraphs 4, 5 and 6 of the Plaint or at all.
4. In response to paragraphs 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Plaint the 1<sup>st</sup> Defendant shall aver as follows;
  - 4.1 On 20<sup>th</sup> October 2016 the Bank of Uganda ("BoU") took over management of Crane Bank Limited ("CBL") pursuant to Sections 87(3) and 88(1)(a)&(b) of the Financial Institutions Act 2004 (hereinafter referred to as "FIA") on the basis that CBL was a significantly undercapitalized financial institution as defined by law, posed a systematic risk to the stability of the financial system and that the continuation of its activities was detrimental to the interests of its depositors. On 20<sup>th</sup> January 2017 BoU placed CBL under receivership pursuant to Section 94 of the FIA on the basis that it was insolvent at the time of its takeover.



4.2 On 25<sup>th</sup> January 2017 BoU pursuant to its statutory authority specifically Section 95(1)(b) and (c) of the Financial Institutions Act 2004 ("FIA") and in consideration of the 1<sup>st</sup> Defendant assuming the liabilities of CBL, transferred to the 1<sup>st</sup> Defendant the assets of CBL including CBL's branch network comprising *inter alia* the 48 Leasehold Certificates of Title listed in Paragraph 4(i) to (xviii) and Paragraph 7(C)(i) to (xviii) of the Plaint.

*[A copy of a sample embossed transfer in relation to the Leasehold Certificates of Title all transfers having been in identical form is attached as "A".]*

4.3 42 of the 48 Freehold Certificates of Title specifically those listed in Paragraph 7(a) (vi) to (xviii) of the Plaint, which the Plaintiff alleges it owns in fact belong to CBL and were fraudulently transferred to the Plaintiff which is an associated company of CBL through its common directors and majority shareholder.

4.3.1 The ownership of those Freehold Certificates of Title on which this present suit is premised and the fraudulent acquisition thereof by the Plaintiff is the subject of an earlier suit between the Plaintiff and CBL from whom the 1<sup>st</sup> Defendant derives title being **H.C.C.S No. 493 of 2017 Crane Bank Limited (in Receivership) v Meera Investments Limited & Anor** which is still pending determination before this Honorable Court.

4.3.2 The 1<sup>st</sup> Defendant adopts for the purposes of this suit and incorporates by reference as part of this Written Statement of Defence the pleadings of CBL, as its transferor, contained in paragraphs 6.1, 25 to 29, 42 and 43 of the Plaint in the aforementioned **H.C.C.S No. 493 of 2017** (including the particulars of the fraud set out in paragraph 42) and paragraph 16 of CBL's Reply to the Written Statement of Defence (Reply). CBL's pleadings on the matter were responded to by the Plaintiff in paragraphs 122 to 125 of its Written Statement of Defence (WSD) in the said earlier suit.

*[Copies of CBL's Plaint, the Plaintiff's WSD and CBL's Reply which shall be relied upon in this suit and portions of which are incorporated by reference herein as aforementioned are annexed hereto marked "B(i)", "B(ii)" and B(iii)"]*

4.3.3 In relation to those 42 Freehold Certificates of Title, the matter in issue in this suit, as to whether the Plaintiff is indeed the owner of those freehold properties and therefore the Lessor of the 1<sup>st</sup> Defendant, is directly and substantially in issue in the aforementioned

earlier suit and the 1<sup>st</sup> Defendant shall at or prior to the commencement of the hearing of this matter apply pursuant to Section 6 of the Civil Procedure Act Cap 71 for this suit to be stayed until that question of ownership of the said 42 Freehold Certificates of Title has been determined in the prior suit.

- 4.4 The transfer and handing over of possession of the 48 Leasehold Certificates of Title was effected by BoU under regulatory and intervention powers granted to it by statute specifically Sections 95(1)(b) & (c) of the FIA and accordingly not having been a transfer by CBL, the contractual covenants in the lease agreements relating to transfer of the leases or parting with possession of the leased land did not apply.
- 4.5 Further and in any event there is no provision in any one of the 48 leases which contractually entitled the Plaintiff to consent to the transfer of or the parting with possession by CBL of the leased land. The 48 leases were entered into on different dates and each related to an entirely distinct piece of land. In each and every one of the 48 leases the clause on which the Plaintiff seeks to rely stated as follows;

*"The lessee herein covenants with the lessor as follows;*

.....

.....

*(f) not to part with possession of the land leased without the written consent shall not be unreasonably withheld and no fine premium or sum or money shall be payable for and in respect of such consent....."*

The above clause, which as a matter of law is construed against the Plaintiff as grantor, does not deal with the transfer of the lease at all and in relation to parting with possession does not vest in the Plaintiff any contractual right to consent thereto as if that was intended the clause would indicate whose written consent was required.

- 4.6 The 1<sup>st</sup> Defendant is the registered proprietor of each of the 48 leasehold Certificates of Title and is a bonafide purchaser thereof for value and its title and proprietorship is protected as such in the absence of any fraud on its part in relation to its registration. The consideration for which the 1<sup>st</sup> Defendant acquired the CBL assets including the 48 Leasehold Certificates of Title was its assumption of the CBL liabilities.
- 4.7 With regard to the particulars of fraud in paragraph 10 of the Plaintiff pleaded against the 1<sup>st</sup> Defendant specifically item (c) thereof the 1<sup>st</sup> Defendant shall aver that it paid stamp duty on each and every one of the 48 transfers of Leasehold Certificates of Title executed in its favour on the basis of the

Chief Government Valuer's valuation of each property and the total stamp duty paid was UGX 627,037,500 based on a total valuation of UGX 41,802,500,000.

*[A schedule of the values assessed for each of the 48 Leasehold Certificates of Title as well as the Uganda Revenue Authority stamp duty receipts for each are attached as "C"]*

- 4.8 With regard to the particulars of fraud in paragraph 10 of the Plaintiff pleaded against the 1<sup>st</sup> Defendant specifically items (a) & (b) thereof the 1<sup>st</sup> Defendant shall aver that no consent was required for its transfer or taking of possession of the 48 leasehold certificates of title for the reasons given in paragraphs 4.5 and 4.6 above and in any event none of the matters raised in items (a) or (b) can be said to amount to fraud.
- 4.9 Save as expressly admitted above, Paragraphs 8, 9, 10, 11, 12, 13, 14 and 15 of the Plaintiff are denied.
5. Paragraph 16 of the Plaintiff is denied.
6. The 1<sup>st</sup> Defendant admits the Jurisdiction of this honorable Court.

WHEREFORE the 1<sup>st</sup> Defendant prays that the suit as against it be dismissed with costs.

DATED AT Kampala this 29<sup>th</sup> day of January, 2018

  
SEBALU & LULE ADVOCATES  
COUNSEL FOR THE 1<sup>st</sup> DEFENDANT

Lodged in the registry of this Honourable Court this 30<sup>th</sup> day of Jan  
2018

  
REGISTRAR

**DRAWN & FILED BY:**  
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