REPORT OF THE PUBLIC ACCOUNTS COMMITTEE

ON

GOVERNMENT COMPENSATION PAYMENT TO

BEACHSIDE DEVELOPMENT SERVICES

IN THE FY 2009/2010

MAY 2013
Introduction
1. Rule 148(2) of the Rules of Procedure provides that the Public Accounts Committee shall be assigned the examination of the audited accounts showing the appropriation of sums granted by Parliament to meet public expenditure of the Central Government and the Judiciary. The Auditor General audits the accounts of Government and submits a report of his findings to Parliament.

2. In the report of the Auditor General to Parliament for the year ended 30 June 2010, it was reported that: "Government is incurring a lot in compensation to companies and individuals for loss of business arising from cancellation of contracts they entered into with Government. It was also noted that in a number of cases, trade taxes have not been assessed or collected."

3. The report highlighted examples of some of the compensation claims brought against Government, one of which was Beachside Development Services Ltd (BDS), which was awarded by Court a payment of US $1.9 million on account of its contract with the National Forestry Authority (NFA) to build eco-tourism lodge in Kyewaga Forest Reserve alleged to have been frustrated by NFA.

4. The Committee is now pleased to present its report to the House on its findings and recommendations on the compensation that Government made to BDS.

Terms of Reference
5. The Committee was guided by the following terms of reference:
i. Establish whether the contract in question, if any, was entered into or executed according to the law;

ii. Establish whether the cancellation of the purported contract was done through proper procedures and in public interest;

iii. Establish whether the compensation claim lodged by BDS was evaluated competently, transparently and rationally to arrive at appropriate and justified compensation payment;

iv. Establish whether all taxes associated with the transaction between NFA and BDS were remitted to Uganda Revenue Authority;

v. Establish whether any public officials at the level of contract award, management, cancellation and compensation subverted the public interest;

vi. Propose recommendations to the House on the next course of action.

Methodology

6 In order to obtain the relevant information and evidence, the Committee adopted a multi-pronged approach, which entailed:

i. Interviewing officials from NFA who were involved in handling the matter with BDS;

ii. Interviewing the Solicitor General and officials from the Attorney General’s Chambers in light of their roles as provided for under Article 119(5) of the Constitution;

iii. Interviewing the directors of BDS and directors of other companies whose interests were affected by the claim;

iv. Perusing various contract documents;

v. Perusing court judgements on the case.

The list of the names of the witnesses is attached as Appendix No.1.
DETAILED FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

Introduction
7 The National Forestry Authority (NFA) was due to enter into a contract with Beachside Development Services (BDS) to develop an eco-tourism site at Kyewaga Central Reserve in Entebbe. In the turn of events, the project was abandoned and BDS instituted legal proceedings against NFA seeking compensation. Through mediation, NFA entered into a Consent Judgement to pay BDS US $1.9 million in compensation.

Background
8 On 26th September 2005, one Mr. Charles Twagira applied for a 50-year management contract for tree planting in 209 hectares of Kyewaga Central Forest Reserve. According to his testimony, Mr. Twagira stated that his initial interest was to re-plant the forest which had been seriously degraded. After advice from NFA officials, on 19th January 2006, Mr. Twagira submitted an application instead to carry out eco-tourism development in Kyewaga Central Forest Reserve. Some of the officials who advised Mr Twagira include Mr. Hudson Andrua (Coordinator Natural Forests), Mr. C.D. Langoya (Coordinator Concessions), Mr. Steven Nsiita (Coordinator Plantations), Mr. Jones Ruhombe Kamugisha (Director of Field Operations).
9. On 19th January 2006, the same day he re-applied, NFA responded and gave Mr. Twagira a no-objection to develop eco-tourism business in the forest reserve. In the letter of no objection written by Mr. Langoya, Mr. Twagira was advised to give information about his organization, tourism business profile and business plan.

10. On 30th January 2006, Mr Twagira submitted the company profile of Beachside Development Services Ltd, a site plan and artistic impression of up to 100 chalets proposed to be built at the site. In response, NFA requested Mr. Twagira to conduct an Environmental Impact Assessment (EIA) of the project, a topographic re-survey of the whole forest reserve, and to obtain a certificate of approval of the EIA. Mr. Twagira was informed that NFA would negotiate the licence agreement with him after the EIA.

11. Mr. Twagira fulfilled the above conditions. He submitted the company profile of BDS Ltd with Mr. Ralph Ochan (now Justice of the High Court); himself and Mr. Fox Odoi (then Private Secretary Legal to the President) as directors of the company.

12. NFA used the feasibility study submitted by Mr. Twagira to assess the viability of the project and to develop the company’s minimum expected income upon which a licence fee was computed. On 5th June 2006, NFA gave a draft licence agreement to BDS for eco-tourism development on 5 hectares in Kyewaga Forest Reserve. Thereafter, BDS paid the sum of US $6,000 on 6th June 2006 as the annual licence fee.
13 However, before the licence agreement was finalised, BDS commenced work in the forest reserve at the beginning of 2007 purportedly to take advantage of the CHoGM meeting in Kampala in November 2007. BDS commenced work on the strength of a handwritten note issued by Mr. Reuben Arinaitwe, NFA Range Manager Lakeshore Region, dated 8th June 2006, which read: "M/s Beachside Development Services Ltd, start working at the site, the licence is being prepared".

14 However, the above land was in conflict as it had earlier on been given to a number of private tree planters, one of whom, Mr. Nathan Mushetsya, gave evidence to the Committee. Mr. Mushetsya had been granted a 5-year tree planting licence for 5 hectares in 1998. His licence expired in 2003 and after assessment, was renewed for a further term of 5 years. This was before NFA came into existence in 2004.

15 According to Mr. Mushetsya, he was informed by his workers on 17th June 2006 that there were construction workers on the land, who had cut down trees he had planted. Mr. Mushetsya visited the site and reported the matter at Mpala police station in Entebbe on the same day. Mr. Twagiira appeared at the police station and tried to block police from taking Mr. Mushetsya's statement. By the intervention of CID at Entebbe Central Police Station, Mpala police were directed to take Mr. Mushetsya's statement. Police asked Mr.
Twagira to stop the developments pending investigations but he ignored this and continued putting up the structures.

16 Mr. Mushetsya gave evidence that Mr. Twagira's workers indeed cut down his trees and used them to put up the wooden structures. He reported the matter to NFA and together with 3 other tree farmers namely Mr. Rueben Kashambuzi, late Mr. Katsigazi Bagaba and Mr. A.K. Turyakira, agreed to meet with Mr. Ruhombe, then Acting Executive Director of NFA.

17 While Mr. Mushetsya and his colleagues were waiting at NFA for the meeting with Mr. Ruhombe, Mr. Twagira together with Mr. Fox Odoi went in to meet Mr. Ruhombe separately. Mr. Mushetsya expected that they would be met jointly with Mr. Twagira as had earlier on been arranged. They were therefore not privy to the discussions Mr. Twagira and Mr. Odoi had with Mr. Ruhombe.

18 According to Mr. Mushetsya's testimony, Mr. Ruhombe assured them, however, that NFA would accommodate both their interests and that of Mr. Twagira. Mr. Ruhombe indicated that their crops were not doing well and informed them that NFA wished to change the land use to develop eco-tourism facilities instead since tree planting was no longer the preferred land use by NFA at this location. Mr. Mushetsya recalled that both Mr. Ruhombe and the then Minister of Water and Environment, Hon. Maria Mutagamba, had been unofficially visiting the area with Mr. Twagira at awkward
hours. He did not therefore expect NFA to handle his matter transparently.

19 Mr. Mushetsya and others thereafter reported the matter to the IGG on 23rd June 2006. On 17th July 2006, Mr. Ruhombe, then Director Field Operations wrote on behalf of NFA responding to the IGG's concerns and citing illegal activities promoted by some of the private tree farmers. The letter stated that BDS's eco-tourism project offered an environmentally sound and profitable option for managing the forest reserve. On 27th July 2006, NEMA approved the EIA and validated it for 3 years (from 27th July 2006 to 20th July 2009).

20 The IGG intervened however on 6th August 2006 and wrote to NFA raising alleged lack of transparency in awarding forest development licences at Kyewaga Central Forest Reserve, arising from the complaints raised. The IGG ordered NFA to halt Mr. Twagira's operations within the disputed area until he acquires a licence allowing him to operate.

21 According to BDS however, a tree farming licence performance audit was carried out by NFA on 20th and 21st June 2006 targeting licences on the land proposed for allocation to White Sand Eco-Lodge, the business name for BDS. A team of 7 NFA officers made observations and conclusions as to what actions were to be taken to avail BDS with a licence free of squatters.
22 Meanwhile the tree farmers resisted BDS continuing with the developments, and even filed a case at Police against Mr. Twagira for criminal trespass. An arrest warrant was issued by Court against Mr. Twagira but this has never been executed and the case is still in court. Mr. Twagira abandoned the developments which by this time consisted of three in-complete wooden structures, only one of which was roofed.

23 However, BDS claimed that they had completed restoration of the degraded area, landscaped the project site and constructed 10 chalets, while the administration block and 40 other chalets were under construction.

24 On 9th August 2006, BDS wrote to NFA seeking for protection against the private tree farmers. On 22nd August 2006, Kwezigabo Bamwine and Walubiri Advocates on behalf of BDS wrote to NFA complaining about the delay in issuing the eco-tourism licence and demanded refund of the US $6,000 paid and reimbursement of investment costs and general damages. On 8th September 2006, NFA refunded $6,000 to BDS via Stanbic Bank cheque number 000652. The refund was acknowledged by BDS’s lawyers, Kwezigabo, Bamwine & Walubiri Advocates on 11th September 2006.

25 On 21st March 2007, BDS issued a notice of intention to sue NFA for breach of contract, and demanded over UGX 200,000,000 for loss of business. On 8th January 2009, BDS filed a suit against NFA in the High Court at Nakawa. BDS claimed the following: 
I. Special damages of US $187,500;
II. Refund of EIAd and NEMA fees of Shs. 16,674,800;
III. General damages for loss of prospective business and profits;
IV. Costs of the suit; and
V. Interests at the rate of 25% p.a. from time of filing till payment in full.

26 NFA filed its defence denying that any contractual relationship existed between BDS and itself. NFA further averred that it refunded US $6,000 which BDS had paid as annual licence fee, thereby putting an end to any dealings with BDS in the proposed project.

27 NFA and BDS were summoned by Court to appear for a joint scheduling conference on 25th March 2009. The NFA Legal Counsel did not attend Court on this day and the case was adjourned to 22nd April 2009. The Judge asked each party to submit on whether there was a Cause of Action. NFA Legal Counsel made and filed a written submission of defence.

28 NFA Legal Counsel submitted that there was no Cause of Action for the plaintiff for the following reasons:

I. The Plaintiff (BDS) enjoyed no rights on the Forest Reserve since there was no letter of offer allowing the Plaintiff to utilise the land;
II. Since there was no contract between the Plaintiff and the Defendant (NFA), the Defendant violated no rights and therefore the Defendant was not liable;

III. There was no Contract between the Plaintiff and the Defendant as the Plaintiff wrote to the Defendant demanding US $6,000 which was refunded and therefore there was no consideration offered.

29 The Judge, Justice Murangira, made no ruling on the Cause of Action and adjourned the case to 28th May 2009. When the suit came up for hearing before Justice Murangira on 5th June 2009, Court records indicate that Counsel for the plaintiff, Mr. Barata Enock and Counsel for the defendant, Mrs. Molly Kyepaaka Karuhanga agreed to have the matter settled as follows:

I. The defendant (NFA) to issue a licence in Kyewaga, Central Forest Reserve for the land measuring 2.6 hectares, in accordance with the NFA Eco-Tourism Guidelines, with access to Lake Victoria shoreline within two months;

II. NFA to hand-over vacant possession of the said land to the plaintiff as soon as the licence is issued;

III. **Damages to be awarded to the plaintiff and to be assessed by Court**;

IV. The plaintiff drops its claims of prospective profits and loss of business which was stated at US $8,559,250;

V. Each party to bear its own costs.
30 The above terms were reduced into a “Consent Judgement” which was duly entered into by Justice Joseph Murangira on 12th June 2009 in open court. The troubling issue at this point was whether the Counsel for NFA had instructions to agree with the Counsel for BDS on the terms of the Consent Judgement and whether the Consent was duly entered into.

31 Mrs. Karuhanga had drafted a Consent that had been agreed to by NFA Executive Director, Mr. Damian Akankwasa on 5th June 2009 which was rejected by Counsel for the plaintiff, and there is no evidence of other Consent being agreed to by the parties and filed in Court.

32 In the draft Consent, NFA was offering the following:

I. To issue a licence to the Plaintiff for development of an eco-tourism lodge and tourist camp at Kyewagga Central Forest Reserve measuring 2.6 hectares in accordance with NFA eco-tourism guidelines as soon as the Presidential Directive on allocating land in CFR’s to private tree farmers is lifted;

II. To hand over vacant possession of the said land to the Plaintiff;

III. The Plaintiff to drop its claims for loss of business and prospective profits in the sum of US $8,559,250;

IV. For Court to assess other damages that may accrue to the parties and to assess the quantum thereof (Note: NFA was claiming damages against BDS for the trees cut by the
plaintiff in carrying out unauthorised developments on the land); and,

V. Each party to bear its own costs.

33 When the draft Consent was tendered to the plaintiff's lawyers, they objected to the following:

I. The offer of 2.6 hectares of land as they were demanding for more land with access to the lake shore;

II. The land being availed as soon as the Presidential Directive was lifted; BDS wanted the land allocated to them immediately;

III. Each party meeting its own costs

34 Mrs. Karuhanga, the NFA Legal Counsel denies that she agreed to the Consent, especially with item (III) above, on the assessment of damages. Mrs. Karuhanga gave evidence to the Committee that there was no Consent and that the Consent alluded to by the trial Judge does not exist. Mrs. Karuhanga disagrees with the Court records as not reflecting the submission she had made to Court on 5th June 2009:

i. Mrs. Karuhanga stated to Court clearly that she did not consent but the Judge proceeded to hear the matter, stating that he would enter Judgement on the agreed facts;

ii. Mrs. Karuhanga asked the Judge on the agreed facts, to be edited, agreed and signed by both parties but this was not acceded to;
35 Mrs. Karuhanga further testified that Justice Murangira made the Judgement without a signed Consent; Before the Court commenced, Council for the plaintiff, Mr. Enock Barata presented Mrs. Karuhanga with a draft Judgement dated 12th June 2009, which she brought to the attention of the Judge as being irregular and clearly not agreeable to NFA. Mrs Karuhanga testified to the Committee that the trial Judge got the draft Judgement to be copied and availed to all in Court.

36 The Committee was unable to obtain a signed Consent agreed between the parties that would have formed the basis for the Judgement later made by Justice Murangira on 16th September 2009. In this regard, the Committee is inclined to agree with the testimony of Mrs. Karuhanga. The Committee invited the Judge, Justice Joseph Murangira, to clarify on this matter in accordance with the rules of natural justice but the invitation was turned down.

37 Following the Court hearing of 5th June 2009, NFA engaged the services of private lawyers, M/s Byarugaba & Co Advocates, in August 2009 prior to the Judgement being written, to lodge an application in Court, Miscellaneous Application Cause No. 297 of 2009 to have the Consent Judgement set aside. However BDS challenged the locus standi of the new NFA lawyers. The lawyer, Mr Byarugaba conceded that he did not have the locus yet he had instructions from NFA. Consequently the application was dismissed by Justice Joseph Murangira with costs.
38 Mrs. Karuhanga had made the application to Court for review of the Judgement and for the judgement to be set aside. She availed herself as a Witness and therefore withdrew from representing NFA in the matter. The matter was taken up by the new NFA Legal Manager, Mr. Peter Muloba together with the appointed law firm Byarugaba & Co. Advocates.

39 Meanwhile, Mr. Byarugaba, who had conceded that he did not have the locus standi to represent NFA in Court, signed together with Counsel for the plaintiff, a Decree dated 27th August 2009, in which Mrs. Karuhanga is mentioned as having consented with the plaintiff before Justice Joseph Murangira on 5th June 2009. Mrs Karuhanga gave evidence to the Committee that this Decree is illegal, had not been brought to her attention yet it mentioned her consent and had purportedly been drawn by the NFA Legal Unit. She denied any knowledge of the Decree.

40 After the purported Consent Judgement had been entered into, what remained for Court was to assess damages to be awarded to BDS as alleged to have been agreed to by the two parties. After pleadings and evidence adduced by both parties (note: NFA Defence Counsel Mr. Peter Muloba opted to close its case without calling any witness, claiming that he did not have instructions from NFA to call witnesses), Justice Murangira awarded assessed damages of US $1,612,171 to be paid to BDS with costs and interest at Court rate from the date of judgement, 16th September 2009, till payment in full.
41 The details of the assessed damages were as follows:
   a. US $40,000 expended on landscaping and design;
   b. US $551,985 expended on construction of the chalets;
   c. US $1,020,186 for loss of user rights for 3 years, from 2007 to 2009.

42 Following the assessment of damages in the sum of US $1,612,171 above, a second Decree was extracted by Counsel for the plaintiff and signed NFA Legal Counsel, Mr. Peter Muloba and endorsed by the Registrar. The Decree was dated and stamped by NFA Legal Counsel on 16th September 2006, as confirmation of the judgement for the award made against NFA.

43 At this point, NFA would be obliged to comply with the terms of the purported Consent Judgement, and in addition, pay BDS US $1,612,171 plus interest at Court rate of 6%, until full payment. After waiting for a week without payment from NFA, BDS applied and obtained on 24th September 2009, a Garnishee Order Nisi to attach the accounts of NFA. Consequently, 7 accounts of NFA at the Bank of Uganda and Stanbic Bank were frozen. The frozen accounts included donor funds.

44 On 21st October 2009, NFA made an application to Court vide Civil Application No. 143 of 2009 for an interim stay of execution and to prevent the Garnishee decree nisi from becoming absolute, i.e.
stopping the money on the frozen accounts from being credited to BDS. The application was granted by Court on the same day.

45 On the same day, 21st October 2009, the Minister of Water and Environment wrote to the President about the freezing of NFA accounts requesting for intervention of Government. Meanwhile NFA lodged Civil Appeal No. 80 of 2009 to the Court of Appeal challenging the award by Justice Murangira in his judgement of 16th September 2009.

46 Furthermore, on 9th December 2009, NFA made another application vide Civil Application No. 142 of 2009, for Court to stay execution, and to un-freeze the accounts. Court granted the application on the same day, but on condition that NFA executes a bank guarantee in the sum of US $1,612,171 before the accounts could be effectively unfrozen (relieved from the garnishee), and gave NFA 45 days to comply. NFA did not have the money.

47 On 7th January 2010, H.E. the President wrote to the Attorney General citing an attempt by BDS to defraud NFA of more than UGX 3 billion. The President directed the Attorney General to do all it takes to ensure that the fraudsters do not succeed in their scheme. The President also expressed optimism that the higher courts ‘cannot accept NFA being condemned to pay more than three billion shillings for no legal breach on its part.’ The President also directed the NFA Board to investigate their officials who dealt with the case.
and unjustifiably allowed the out of court settlement against their employer and in favour of the claimants.

48 The President further directed the Attorney General to refer the matter to the Judicial Service Commission to investigate the two judicial officers who had mishandled the case, one of whom was the Judge, Justice Joseph Murangira.

49 However, nearly 1 year after the President's letter, the Attorney General wrote to the Solicitor General by memo dated 23rd December 2010 seeking to distance himself from a matter that he considered was a "fait accompli". The Hon. Dr. Khiddu Makubuya took the view that the involvement of the Solicitor General in the negotiations should not be viewed as endorsing the manner in which the counsel hired by NFA handled the case. He indicated that the Attorney General's Chambers could not accept responsibility for the prior handling of the case and its consequences.

50 Meanwhile NFA had appealed the Consent Judgement to the Court of Appeal. Contrary to the President's optimism, on 12th October 2010, the Court of Appeal consisting of Justice Twinomujuni, Justice Engwau and Justice Kavuma dismissed the appeal with costs to be borne by the appellant NFA; upheld the award by the High Court of US $1,612,171 to BDS as damages, and substituted the Court rate of interest of 6% with an award of 20% from the time of judgement in the High Court till payment in full. Thus, the award to
BDS was enhanced by the Court of Appeal, which was not in issue in the appeal.

51 The Minister of Water and Environment had invited the directors of BDS for dialogue and negotiations with NFA as donors were concerned that their funds had been frozen and were about to be credited to a private company. However, both the NFA Board and the Attorney General's Chambers did not pursue this matter seriously leading to increase in the award by the Court of Appeal. This is evidenced by the letter from the Minister to the Chairman of NFA Board of Directors dated 24th December 2010. The Chairman of NFA Board subsequently wrote to the Solicitor General (SG) on 12th January 2011 requesting the SG to nominate a second/senior representative from SG's office to strengthen the legal team in the negotiations.

52 Following the Court of Appeal ruling, NFA filed an appeal in the Supreme Court. However, NFA Board later withdrew the appeal at the intervention of the then Minister of Water and Environment, Hon. Maria Mutagamba. NFA thereafter entered into a 2nd Consent Judgement dated 28th January 2011, which increased the settlement from $1,612,171 to $1,900,000 to be paid as follows:

1. $650,000 to be paid immediately on execution of the Consent Judgement;
2. $550,000 to be paid on or before 31st December 2011;
3. $500,000 to be paid on or before 30th September 2012;
4. $200,000 to be offset by the appellant (NFA) from the decretal sum and applied towards the license fees for 2.6 hectares of land at Kyewaga Central Forest Reserve for 25 years.

53 The Minister Hon. Maria Mutagamba forwarded a copy of the Consent Judgement to the Attorney General by letter dated 19th January 2011, prior to its being signed. The Hon. Maria Mutagamba indicated in her letter that she was satisfied with the outcome of the negotiations that had been reduced into the Consent Judgement. The Committee has not seen any response from the Attorney General but NFA has since made payments to BDS in line with the Consent Judgement.

Observations of the Committee

54 NFA did not solicit for an investor to develop an eco-tourism facility at Kyewaga Central Forest Reserve. BDS did not come to NFA through a competitive and transparent process. It would appear that there were unseen hands in NFA who were guiding BDS and putting pressure on the staff to process the licence. This diverted Mr. Twagira’s initial intentions from tree planting to eco-tourism. The NFA officials deliberately flouted procurement regulations and caused the financial loss that resulted into the Consent Judgement.

55 The land that had purportedly been allocated to BDS for eco-tourism had in fact earlier on been allocated to tree planters under the former Forestry Department (FD) prior to the commencement of NFA. NFA had validated these licences issued by the FD. The
purported change in land use was not communicated to the tree
planters neither was any compensation proposed for the trees that
had been planted.

56 The Range Manager, Mr. Rueben Arinaitwe did not have
authority to give BDS the go-ahead to commence construction
before a licence was issued. This was in contravention of the
National Forestry and Tree Planting Act, 2003. It is apparent that Mr.
Arinaitwe was acting under instructions from Mr. Ruhombe, the then
NFA Director of Field Operations.

57 Mr. Twagira and Mr. Fox Odoi engaged in influence peddling
and used senior officials at NFA and in Government to secure the
land and licence irregularly and to put up illegal structures in a
Central Forest Reserve. As a result, BDS was allowed to commence
construction at the site prior to issuance of a licence and EIA report
by NEMA as required under the NEMA Statute.

58 The Attorney General was not involved in handling the said
transaction as provided for under Article 119(5) of the Constitution.
On the other hand, there was no licence issued by NFA to BDS,
although the former accepted payment of the annual licence fee
from the latter. Later BDS demanded refund of the fee it had paid
after NFA had delayed to issue the licence. The fee was refunded
and receipt was acknowledged by BDS. This should have been
taken as the formal termination of any intended legal relationship
between the parties under the proposed licence.
59. Was there any breach of contract? This question was not settled by Court as the Counsel for BDS and NFA purportedly entered into a Consent Judgement and agreed that NFA had breached the contract and had to pay damages. The Board of NFA did not authorise NFA Counsel, Mr. Byarugaba, to enter into a Consent Judgement. Why then did he concede; who was he representing; what motivated his action, why did he sign the Decree dated 27th August 2009?

60. Following the refund of $6,000 that had been paid by BDS and considering that no licence had been issued, it is inconceivable that the NFA Board would have authorised Mrs. Karuhanga to enter into the purported Consent. This position is further buttressed by the initial defence of NFA in January 2009 that there was no valid contract between itself and BDS.

61. The Committee observed that it did not make sense for NFA to consent to punitive damages against itself and still restore the interest of the plaintiff in the land by accepting to grant a licence for 2.6 hectares for 25 years as purported in the Consent Judgement. The consent was onerous on the part of NFA, which in addition to making financial settlement to BDS had to issue the licence.

62. The Committee observes that there is no Consent Judgement signed by all parties as alleged, save for the Judgement by Justice
Murangira which set the terms of the alleged Consent. The above
Judgement clearly shows that the defendant, NFA was not
represented at the hearing. This corroborates the testimony of NFA
Counsel, Mrs. Karuhanga that she did not agree to the alleged
Consent and indeed walked out of Court in protest!

63 Justice Murangira made the award for damages against NFA
without visiting the locus or verifying the claim to establish the
quantum of the damages as claimed by BDS. Neither was the claim
valued by the Chief Government Valuer. BDS did not have a licence
for which they could have been awarded loss of user rights for 3
years amounting to US $1,020,186. One is therefore left wondering
how a plaint detailed below translated into an award of $1,612,171!

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount Claimed</th>
<th>Court Award</th>
</tr>
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<tbody>
<tr>
<td>Charges for feasibility study</td>
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<td>Not indicated</td>
</tr>
<tr>
<td>Fees for EIA</td>
<td>Ush. 15,174,800</td>
<td>Not indicated</td>
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<tr>
<td>Fees for NEMA permit</td>
<td>Ush. 1,500,000</td>
<td>Not indicated</td>
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<tr>
<td>30% deposit paid for construction</td>
<td>US $169,500</td>
<td>US $551,985</td>
</tr>
<tr>
<td>Cost towards forest restoration</td>
<td>US $12,000</td>
<td>US $40,000</td>
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<tr>
<td>General damages for loss of user rights for 3 years</td>
<td>Not specified</td>
<td>US $1,020,186</td>
</tr>
<tr>
<td>Interest</td>
<td>25%</td>
<td>6%</td>
</tr>
<tr>
<td>-----------------</td>
<td>-----------</td>
<td>--------</td>
</tr>
<tr>
<td>Legal costs</td>
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<td>Nil</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>Not specified</td>
<td>US $1,612,171</td>
</tr>
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</table>

64 The Committee notes that the above judgement was not in line with the plaint. The Judgement made both specific performance (i.e. issuance of licence) by NFA to BDS and also monetary recompense to BDS for breach. Indeed in the Judgement, the Judge ruled that the claimant drops its claim of prospective profits and loss of business which had been stated at US $8,559,250 and that each party meets its own costs. One therefore wonders how the same Judge would award US $1,020,186 with costs for this very purpose.

65 The Committee observes that whereas BDS had put up 3 incomplete chalets, the Consent Judgement awarded the amount of $551,985 as compensation for 10 chalets that had allegedly been constructed. The Committee visited the site on 19th August 2012 and found no evidence of construction of the purported 10 chalets. Instead the Committee found 1 fish pond at the site.

66 However, the Committee had earlier on been shown photographs of 3 incomplete chalets. The Directors of BDS gave evidence that they had indeed been paid about US $500,000 that they had used to build the 10 chalets that were destroyed. The Committee did not receive any evidence that BDS had reported or
availed details of the destruction of the 10 chalets to police or to NFA.

67 NFA decided to represent itself in Court and to use private lawyers without seeking legal advice from the Attorney General. The Committee observed that the legal representatives of NFA, M/s Byarugaba & Co together with the in-house Counsel, Mr. Peter Muloba were either incompetent and/or had been compromised.

68 The Committee observed that the Attorney General did not implement the directive of the President to do all it takes to stop NFA from losing money to fraudsters and to refer the responsible judicial officers to JSC for investigation. The Attorney General instead sought to distance himself and his office from a matter he considered was a fait accompli.

69 The Committee noted that the signature of the Chairman on the NFA Board of Directors in the 2nd Consent Judgement differs from his usual signature on other correspondences on this matter.

70 The Committee further noted that whereas the appeal had been filed in the Supreme Court, the 2nd Consent Judgement is titled "Court of Appeal", which Court had already disposed off the matter. This was irregular and suspicious since the Supreme Court may still proceed to dismiss the appeal with further costs to BDS.
The Court of Appeal took it upon itself to revise the interest rate for delayed settlement. The Court increased the rate from 6% to 20%, reasoning that the aborted NFA/BDS transaction was a commercial transaction which should attract interest at 20%. Moreover, there was no prayer to that effect in the appeal, as per the Committee findings.

The Committee notes that since the 2nd Consent Judgement agreed to by the parties, there has been no development of the eco-tourism facility by BDS at the site. This goes against the letter and spirit of the consent, and is possibly to the detriment of NFA which is losing potential revenue from the project.

Recommendations of the Committee

The Committee recommends that:

(i) Mr. Reuben Arinaitwe the Range Manager and Mr. Ruhombe the Field Operations Director be held liable for causing financial loss by authorising Beachside Services to carry out the purported echo tourism within a forest reserve without a licence.

(ii) Mr. Peter Muloba the NFA in-house Legal Counsel be held liable for causing financial loss. He overrode his junior's opinion, bypassed the Board of management, agreed and entered into a non-existent consent judgement on behalf of the NFA.

(iii) Mr. Twagira and Mr. Fox Odoi be held liable for influence peddling, and BDS be asked to refund the US$ 1.8 million unjustifiably paid to it.
(iv) Counsel Byarugaba of Byarugaba and Co. Advocates be held liable and referred to Law Council for disciplinary action for signing on a decree on a matter which he did not have instructions to handle, purporting to be Molly Kyepaka Karuhanga.

(v) Justice Mulangira be referred to the Judicial Service Commission for disciplinary action, based on his role in:

a) awarding damages not pleaded in the plaint filed in court,

b) alluding to the consent which was never executed in the awarding of the said damages,

c) not having visited the locus but awarding damages for fifty chalets which were never built,

d) awarding US$ 1,020,186 for loss of user rights yet there was no licence, and,

e) letting his draft judgment find its way with Counsel for the plaintiff and later ordering it to be photocopied for each party to have a copy.

(vi) Police should investigate the validity of the second consent judgement in the Supreme Court withdrawing the appeal, contrary to the directive by H.E the President.

(vii) The NFA Administration and the Executive Director in particular, be held liable for not exercising due diligence when the matter went to court, bearing in mind that the mandate of signing licenses rests with him.

Conclusion:

Finally Rt. Hon. Speaker, and Hon. Members, I beg to report and move that this report be adopted.

I beg to move.
<table>
<thead>
<tr>
<th>S/N</th>
<th>NAME</th>
<th>SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Kassiano E. Wadri – CP</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Akora Maxwell – V/CP</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Achia Terence Naco</td>
<td></td>
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<tr>
<td>4</td>
<td>Alaso Alice Asianut</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Arinaitwe Joy Kariisa</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Asupasa Isiko Wilson Mpong</td>
<td></td>
</tr>
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<td>7</td>
<td>Bako Chistine Abia</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Bakunda Alex Byarugaba</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Besisira Ignatius</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Bihande Bwambale Yokasi</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Boona Emma</td>
<td></td>
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<tr>
<td>12</td>
<td>Cadet Benjamin</td>
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<td>13</td>
<td>Drito Martin Andi</td>
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<tr>
<td>14</td>
<td>Kaabule Everlyn Naome</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Karuhanga Katureeka Gerald</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Kiboijana Margaret N.</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Kwizera Eddie Wa Gahungu</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Kyooma Xavier Akampurira</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Mpabwa Sarah Patience (Lt. Col.)</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Mugabi Muzaale Martin</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Mujuni Vicent</td>
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<td>22</td>
<td>Musasizi Henry Ariganyira</td>
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<tr>
<td>23</td>
<td>Musinguzi Yoona</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Mwiru Paul</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Opolot Jacob Richards</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Ssikikubo Theodre</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Ssewungu Joseph Gonzaga</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Wamanga Wamai Jack</td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Yaguma Wilberforce</td>
<td></td>
</tr>
</tbody>
</table>
The list of the names of the witnesses is attached as Appendix No.1.

1. Ms. Harriet Lwabi
2. Mr. F. Atoke
3. Mr. Bafaki K. Ernest
4. Ms. Robinah Rwakoojo
5. Mr. J.B. Timanywa
6. Ms. M.B. Lutaaya
7. Mr. C. Gashirabake
8. Mr. Charles Twagira
9. Mr. C. Dickson Langoya
10. Mr. Gershom Onyango
11. Mr. John Bosco Obore
12. Ms. Molly Kyepaaka Karuhanga
13. Ms. Susanne Kavuma
14. Mr. Muloba Ngobi Petero
15. Hudson Andrua
16. Mr. Nathan Mushetsya
17. Mr. Barata Enock and Counsel
Monday 26th September 2005

The Executive Director
National Forestry Authority
P. O. Box 70863
Kampala

Dear Sir,

Re: MP26 KYEWAGA P.L. 803

I am writing to apply for a 50-year Management contract of the 209 Hectare, or whatever remains of it that is not lost to encroachers, Kyewaga Forest in Busiro.

I offer the following:

1. To carry out a comprehensive resurvey of the forest reserve based on your forest Department boundary plan No. P. L 803 (70/4, 71/3) of 1998, to establish how much of the forest reserve land has been encroached and hence determine how much is still available to replant/protect and shall report these findings to the Authority to determine whether you will require to carry out recovery proceedings against any encroachers.

2. To finance recovery proceeding should the authority require it.

3. To immediately protect whatever acreage remains unencroached and back fill the extensive sand mines to prepare them into plantable gardens.

4. To replant the whole forest with various unharvestable palm tree species with your advice, in order to preserve the forest's original purpose of providing bird sanctuary and a wind break for Entebbe peninsula.

5. To plant and maintain grass-lawns for the use of the general public for picnicking and camping activities.
I will in turn expect to be allowed:

1. To charge the would be users a fee to finance the said restoration and maintenance and also make a profit that I shall share with the Authorities.

2. To construct walkways, paths, chalets, swimming pools, sports facilities and Restaurant (all underneath the forest canopy) in order to encourage use by the public.

I undertake to keep an account of all investment and maintenance costs and declare annual profits, if any, in order to share them with the Authority at an agreed rate so that these funds can be used to develop other forests.

I hope this proposal/application will find favor and immediate reaction in order that the said forest, which is fast being destroyed by sand miners and encroachers, may be saved.

Solidarity

Charles Twagira

*Signature*

RS7-430 474
Thursday 19th January 2006

The Executive Director
National Forestry Authority
P. O. Box 70863
Kampala

Dear Sir,

Re: MP26 KYEWAGA P.L. 803

Pursuant to my application dated 26th September 2005, I have had various meetings with several of your upper level, middle level management office. We have also had a lengthy site visit with Mr. Andrua and more recently on the 9th January, a meeting with your Mr. C. O. Lowoyo, Mr. Musita Steve and Mr. Hudson J Andrua.

It has become apparent that there is a substantial part of the forest that was currently under contest and that various other plots have been given out to local farmers and that therefore, these areas would not be available to me to replant or manage under contract.

I was advised by the said officers to now reapply, having in mind the said facts and re-state my interest and propose a plan for the Authority to consider.

This letter serves to re-affirm my interest in developing eco-tourism related activities in your Kyewaga forest in conformity with your conservation/use guidelines.

I am still offering:

1. To employ a competent surveyor (here I have in mind Mr. Geo Maps) to carry out for the Authority, a comprehensive resurvey of the forest reserve based on your forest Department plan No. P.L 803 (7013. 71/3) of 1998 or
any other that you may wish for me to rely upon and also develop topography map to re-establish the forest boundaries and determine the current activities (lawful and otherwise) taking place on the forestland, shall bear the cost of this activity, which could later be off set from your licence fees at the time of contracting.

2. To landscape and replant all the areas that may need replanting with various species of ornamental palms that your officers may recommend.

3. To immediately, in conjunction with your forest protection unit take charge of the unencroached areas of the forest and insure no further illegal activities take place.

Once this is agreed and commenced I shall then register a business company under the name of Kyewago Forest Eco-Tourism in which the Authority can take minority shares (if it so wishes) for the purpose of developing the forest for that purpose and will work with your officers to conform to your guidelines in order to insure optimum use of the forest without any adverse change to the eco-system and to the primary forest use which I understand to be a wind break for the Entebbe peninsula and a bird sanctuary.

As already stated in my earlier letter, which I have enclosed for ease of reference, I undertake to keep a detailed and truthful account of all investment and maintenance costs and shall declare any profits so we could share with the authority at an agreed rate.

I hope that this proposal will now find your immediate favor and that we can immediately embark on making it a reality without any further delay.

Sincerely,

Charles Twagira

C.C. Director Corporate Affairs
C.C. Mr. C.D Langoya
C.C. Mr. Musita Steve
C.C. Mr. Hudson J Andrua.
Our ref: 343
Your ref:

Charles Twagira,
P.O.BOX 6432
KAMPALA

RE: Ecotourism in Kyewaga CFR.

This is in response to your letter dated 19th January 2006 on the above subject matter. The letter is in line with NFA interest in promoting recreating and partners by private sector in some of its selected Central Forest Reserves.

Now that you have shown interest, NFA would like more information about your organisation, its tourism business profile as well as what you plan to do at the site. The information will be needed in the development of a licence.

1. A business plan (with a site and infrastructure plan for the project). The business plan should also spell out the following:
   a. total investment put in the business
   b. number of beds/tents/bandas to be used by visitors
   c. room/camping rate

2. Company profile and any related legal documents

Please also note that if in principle NFA is in agreement with you about running the business, then you will be requested to undertake an EIA (Environmental Impact Assessment) of the development.

When those documents are ready, NFA will negotiate the licence agreement with your organisation. Your organisation is therefore urged to work on those documents as soon as possible so as to expedite the formalization of the licence agreement.

Langoya Council Dickson
(Regional Coordinator- Nile Frontier)
For Executive Director
National Forestry Authority

cc: Director Field Operation
cc: Range Manager Lake Shore
cc: NFA EIA Specialist
cc: Sector Manager Lwamunda
Monday 30th January, 2006

The Executive Director
National Forestry Authority
P. O. Box 70863
Kampala

Dear Sir,

RE: MP26 KYEWAGA P.L.803

Further to my letter of the 23rd January, 2006 and in reference to your 3.4.3, dated the 19th January 2006, herewith is our preliminary project plan.

We have enclosed both the site plan and an artistic impression of the proposed chalets; their number and location will be determined in close consultation with your professional staff (but we would like to achieve 100 in number).

We have indicated that it is not possible at the moment to indicate the actual project costs but have shown that our working estimate is about shs. 2 billion.

The number of beds / chalets will be determined in consultations with NFA & NEMA staff but as indicated we would like to achieve 100 chalets, a restaurant, a JETTY and swimming pool.

The room/camping rate is also to be determined later but we are presently thinking of a rate between US$ 20 and US$ 50 per night.
Payment Advise

Accounts Section

06/11/86

Beach Side Development Services Ltd

is authorized to pay

USS $ 6,000 being payment for

Annual Fixed Fee for Establishing

Tourism Site at Kyewega CF

Payment Terms

Full payment

Date

M3

Name of Officer

J. Ndungubu

Signature of Officer
Payment for:

<table>
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<tr>
<th>Description</th>
<th>Amounts (Shs)</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>Annual Fixed Fee</td>
<td>6000</td>
<td></td>
</tr>
<tr>
<td>Establishing Eco-tourism</td>
<td></td>
<td></td>
</tr>
<tr>
<td>at Kyewaja CEE</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

TOTAL: 6000

By: Name: Steven N. S.
Signature: Steven N. S.

NATIONAL FORESTRY AUTHORITY
Plot 10/20 Spring Road, Nakawa, P.O. Box 70963 Kampala, UGANDA
Tel: 256-31-2264035/6 E-mail: info@nfa.org.ug

Receipt No. 31251
DATE: 6-6-06
DN/RANGE: HS

1 from Beach Side Development Scheme Ltd
of Six Hundred Dollars only

CASH/Cheque No.
ELS Kyeneke

Supervisor: Kyeneke

Nls Beach Side

Development Services

Her start working at the site. The licence is being prepared.
Kyewaga Central Forest Reserve
c/o P.O. Box 30624
Kampala

23rd June, 2006

The Inspector General of Government
Kampala.

Dear Sir/Madam,

LACK OF TRANSPARENCY & IMPUNITY

We the undersigned have the honour of bringing to your attention the developments taking place in Kyewaga Central Forest Reserve for your urgent intervention to avert a looming conflict created by National Forest Authority’s lack of transparency in the manner it is handling developers in the reserve.

Background:

We the undersigned and others were allocated plots of land in the reserve to develop woodlots in the above forest reserve by the Forestry Department, most us having started around 1988-99 and we have permits ending in 2007/2008.

On the advice of Forestry Department/National Forest Authority, we have been growing eucalyptus trees. We have, during our tenure, been operating within the confines of our permits.

Conflict:

Recently, strange people started coming to our farms alleging that they have been licensed to take over the forest. Prominent among them is a gentleman by the name of Charles Twagira. The same person has been claiming connection with top government officials as well as National Forest Authority. Indeed the same Twagira has been cited in the forest in the company of Mr. Fox Odoi and they talked to one of us, Mr. Katsigazi Bagaba. That same Twagira has gone ahead to erect structures in the plot belonging to Mr. Mushetsya Nathan and has brought in earth moving machines and started grading the shoreline.

Mr. Mushetsya Nathan was forced to report this matter to Entebbe Police on 17/11/06. Mr. Twagira was requested by police to produce his licence he alleges to have which he failed to produce.

In our view the above circumstances constitute insecurity to us and our property and we sought audience with the National Forest Authority officials and held a meeting on 19.06.2006 with Mr. Ruhombe Jones, Director, Field Operations. The issues raised are contained in a copy of the letter to NFA appended hereto as Annex 1.
Response from Mr. Ruhombe Jones, Director, Field Operations (NFA):

i) That it was wrong for the Forestry Department to have advised us to plant eucalyptus trees since eucalyptus does not do well at Kyewaga which has sandy soils.

ii) That as a result of (i) above the National Forest Authority was reviewing its policy with the view to change Kyewaga Forest Reserve from a woodlot to Eco-tourism. That NFA would then relocate us to other areas after addressing the issues of contractual obligation and compensation.

iii) That indeed Twagira has applied for a licence to do Eco-tourism and negotiations to grant the licence were at an advanced stage.

iv) That currently nobody has a licence and that anybody claiming to have a licence would be telling a lie and should be treated as a trespasser.

v) That initially Mr. Twagira had applied for the area between the woodlot and lakeline which farmers were not authorized to use.

vi) That however, when the licence is issued to Mr. Twagira, he Mr. Ruhombe would call us and show us the new boundaries.

vii) That it would be Mr. Twagira to compensate our developments.

Our prayer for your urgent intervention is based on the following:

i) Considering the time and resources we have spent in this reserve, if National Forest Authority is desirous of effecting change of use, then the current farmers should be alerted so that they can have the first option of the new use.

ii) Mr. Twagira has continued with construction and he is ferrying in more construction materials and National Forest Authority Officials have been seen in our plots taking measurements. While we think it is the right of NFA to manage the forest, we contend that in light of what we had discussed with the Director, Field Operations (NFA) we, at least, should have been alerted to contain our anxiety.

iii) We are strongly against awarding a permit to Mr. Twagira or indeed any other individual developer in a manner that lacks transparency.

iv) If there is a change in policy for use of forest reserve in Kyewaga, let information flow transparently so that people involved get to know what is expected of them.

v) Two of our farmers, Mr. Turyakira A.K. and Dr. Kamugisha had earlier on applied and had been granted permission to develop the space below their woodlot towards the shoreline for Eco-tourism. To deny them the opportunity and grant it to a newcomer would not only be grossly unfair but would raise controversy.

Our prayer therefore is for your timely intervention to stop the impending manifest favoritism to the new developer against sitting permit holders and enforce transparency and stop the culture of impunity.
We trust you will grant us our prayer.

Yours faithfully,

1. Mr. Kashambuzi Reuben
2. Mr. Mushetsya Nathan
3. Mr. Katsigazi Bagaba
4. Mr. Turyakira A.K.

Attached,

1. Copy of the letter to NFA.
2. Permits of respective farmers.
17th July 2006

Inspectorate of Government
P.O. BOX 1682
KAMPALA

RE: Award of Eco-tourism License in Kyewagga Central Forest Reserve

Your letter on IG 58/244/01 of 6th July 2006 on the above subject refers. The Government of Uganda (GoU) established National Forestry Authority (NFA) as a semi-autonomous body mandated to manage and develop 506 Central Forest Reserves (CFRs) in the country in accordance with a performance contract signed between NFA and the GoU. NFA is expected by GoU to make specific deliverables in a given period of time. One of the key deliverables is to manage some of the CFRs in partnerships with local communities, private sector as well as with other government agencies and NGOs in accordance with relevant laws and acceptable principles of sound forest management. Such partnership arrangements are concluded under license, which usually has conditions that must be followed.

Over 2,500 permits for private tree planting were inherited by NFA from Forest Department (FD). Many of them had been hurriedly issued during the transition from FD to NFA. In November 2005, all permit holders were invited to convert the permits into licenses (see Annex 1) as the National Forestry and Tree Planting Act/2003 provides for only licensing. The deadline for renewal was 31st December 2005. Thereafter, all permits issued by the FD became null and void, although in the spirit of flexibility and partnership, we have not been strict on this. The following people responded to the adverts:

<table>
<thead>
<tr>
<th>Date of allocation</th>
<th>Date of renewal Application</th>
<th>Name of Applicant</th>
<th>Area</th>
<th>General comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>16/12/97</td>
<td>30/11/05</td>
<td>Turyakira A.K</td>
<td>5 ha</td>
<td>Got problems with disease, return on investment poor, need government support. CFR proposed for eco-tourism, needs further consultation with HQ.</td>
</tr>
<tr>
<td>16/12/97</td>
<td>30/11/05</td>
<td>Dr. A. Kamugisha</td>
<td>5 ha</td>
<td>Planted all area jointly with Turyakira, problem with disease and expense. Craps look bad.</td>
</tr>
<tr>
<td>2/5/99</td>
<td>16/12/05</td>
<td>Bonabana Margaret</td>
<td>5 ha</td>
<td>Much of the plot is a wetland</td>
</tr>
<tr>
<td>5/1/99</td>
<td>20/12/05</td>
<td>Kasanigwa R.</td>
<td>5 ha</td>
<td>Fully planted and properly managed. Recommended for renewal.</td>
</tr>
<tr>
<td>5/3/03</td>
<td>29/12/05</td>
<td>Kasigazi Bagaba</td>
<td>5 ha</td>
<td>The area planted not doing well. Area proposed for eco-tourism.</td>
</tr>
</tbody>
</table>
You will note that Mr. Mushetsya N. did not apply to renew his license for tree planting and, therefore, his permit issued by FD became null and void after 31st December 2005. The same Mr. Mushetsya has been carrying out illegal sand-mining allegedly for repairing State House in Entebbe. He tried to use our then Minister (Hon. Otaihire) and when it did not work, he attempted to use the name of State House and even sent one “security informer” (most likely an impostor) who threatened one of our senior staff at NFA/HQ with arrest.

The management of Kyewaga CFR by private tree farmers has been a great concern to NFA from May 2004. The key concerns have been unlicensed sand mining, brick making and cultivation of crops, in most instances carried out by the permit holders or their agents. These activities contravened the conditions in the Permits a copy of which was signed by each permit holder (see Annex 2). Because of the abuse of the CFR by the permit holders and in line with condition 3 of permit issued to the tree farmers of Kyewaga CFR, a team was assigned to undertake audit of tree farming performance (see Annex 3). The recommendation of the audit report will be used to cancel licenses for those who abused their permits.

Regarding Mr. Twagira’s activities in the CFR, please note the following:

(i) NFA has not given Mr. Twagira a license in the CFR although it is at a very advanced stage of development. Negotiating an eco-tourism license does not take less than 5 months because a number of time-consuming steps have to be taken. One has to carry out the usually very expensive Environment Impact Assessment (EIA), develop a business plan, have a company registered, and a due diligence carried out before even qualifying to negotiate;

(ii) In May 2005, invitation for bids to run tourism business in CFRs were run in the New Vision, Monitor and Procurement News newspaper. Six sites (Kagala CFR, Nile Bank CFR, West Bugwe CFR, Lutoboka CFR, Kampala CFR and Mpanga CFR) were advertised because of the Unique Selling Points (USP). Of the 6 only two sites (Mpanga and Kagala/Nile Bank) attracted investors and the other four had nil return. Of the two, only one has been taken. We have learnt one lesson from this, and that is that eco-tourism depends on interest and financial resources possessed by the interested party. Accordingly, we are licensing it reactively rather than proactively;

(iii) It is important to note that Kyewaga CFR was not among those advertised because of the massive destruction done by sand miners and brick makers (which needed a lot of rehabilitation work for it to sell). Nevertheless, Mr. Twagira showed interest in rehabilitating the CFR and turn it into an attractive site in letters to NFA dated 26th September 2005 and 19th January 2006. Having visited the forest and seen the condition therein, and having a promising opportunity, the Executive Director authorised the handling of the application. In due course, the current status of the CFR was reviewed to determine the best alternative for restoring the integrity of the CFR. Some of the activities included audit report of tree planting license, modelling a license arrangement for eco-tourism, assessing its return compared to tree farming and determining how to handle tree farmers;

(iv) Indeed the calculation of Mr. Twagira was used as alternative for tree growing and it proved more environmentally sound and much more profitable to NFA and hence the initiation of negotiation with him. Opportunities were considered for the people who applied for renewal of their tree-planting license and for eco-tourism development (Dr. Alex Kamugisha and Turyakira A.K) but a question is, how can they run a project which needs more than 900,000,000/= at minimum when they have failed to plant trees in 5 ha of land which would cost on average 10,000,000/=? All the same, we are considering the request and will get back to them once we are ready.
(v) Of course it was not lawful for Mr. Twagira to start construction work on the site that was formally occupied by Mr. Nathan Mushetsya but strictly speaking the latter’s legal interest ceased on 31st December 2005. In any case, the area where Mr. Twagira is operating is within the 200-metre shoreline protection zone whose use requires permission from NEMA and the Water Department; and

(vi) Mr. Twagira is putting up a facility in time for next year’s CHOGAM, or so he says. He is concerned that the cost of restoration will be too high for him unless he starts showing a presence at the site to deter further destruction. He has fulfilled most of the legal requirement and we are indeed in the process of granting him a license. He has already deposited USD6000/= with us as fees and probably after payment, he thought he could proceed, which was an error. I hasten to add, however, that the complainants have nothing to do with Mr. Twagira and I have asked them to deal with us directly in sorting out their issues. All said and done, I suspect someone in NFA and familiar with the complainants may be trying to settle an old score with Mr. Twagira using this deal as we have not yet failed or refused to handle the complainants. I feel they should have exhausted all possibilities with us before rushing to your office. Indeed I met them and assured them of my support for their interest and the next thing I see is their complaint to you!

In conclusion, NFA would like to invite you for a field trip to Kyewaga CFR at your earliest convenience, to make physical assessments and acquaint yourself with the circumstances on the ground. This, I think, will expedite appreciation of the factors considered during the decision making process so far. I reiterate that we are ready and willing to license the complainants for eco-tourism in the same CFR and for tree planting in more suitable CFRs, if only they can deal with us and stop mixing issues.

Sincerely

[Signature]

J. Ruhombe
For: EXECUTIVE DIRECTOR

cc: Mr. Twagira Charles
THE NATIONAL ENVIRONMENT ACT, CAP 153.

*PERMIT TO CARRY OUT A REGULATED ACTIVITY IN A WETLAND/RIVER BANK/LAKE SHORE
Permit No. NEMA/RB/LSWT/103

Name ____________________________

BEACHSIDE DEVELOPMENT SERVICES LIMITED

Address ____________________________
P.O. BOX 6432, KAMPALA, UGANDA

You are hereby granted a permit to carry out the activity(s) in a wetland/river bank/lakeshore of

WHITESANDS ECOLODGE AND ECOTOURISM PROJECT

Location of the wetland/river bank/lakeshore ____________________________

KYEWAGA FOREST RESERVES IN KITINDA

VILLAGE, NKUMBA PARISH, KATABI SUB-COUNTY IN WAKISO

DISTRICT ____________________________

(District, county, sub-county, village where necessary mention more than one)

This permit is granted valid from 27TH JULY 2006 to 27TH JULY 2009 (3 years).

The permit is subject to the following conditions

- PLEASE TURN OVER -

(Date ____________________________

27TH JULY 2006)

Seal and Signature of
The Executive Director
National Environment Management Authority

*Delete whichever is not applicable

ORIgINAL: Developer; DUPLICATE: Lead Agency; TRIPlicate: The Authority
CONDITIONS FOR ISSUING A PERMIT

For the
CONSTRUCTION AND OPERATION OF A PROPOSED WHITESANDS
ECOLODGE AND ECOTOURISM PROJECT

Issued to

BEACHSIDE DEVELOPMENT SERVICES LIMITED

Located in Kyewaga Forest Reserve in Nkumba Parish
(Katabi Sub-county), Wakiso District

Beachside Development Services Limited should note the following:-

(i) This Permit is valid from the date of its issue for a period of three years and is renewable on a regular basis for a maximum period of 20 years unless otherwise extended by the Executive Director;

(ii) This PERMIT does not constitute a process of acquiring a Certificate of Land Title for the said area (Lakeshore) since such areas are held by the Government in Trust for all the people of Uganda.

(iii) The Permit shall be revised from time to time depending on the level of Compliance to the Conditions of issue of this Permit as outlined below; and

(iv) This Permit may be cancelled due to the following:

(a) If there is no compliance with the conditions set out in this Permit;

(b) where there is a substantial modification of the project implementation or operation which may lead to un assessed adverse environmental impacts that were not screened at the time of issuing the Permit; and

[Signature]
(c) where there arise substantive undesirable effects that were not contemplated during the issue of this Permit.

In addition to implementing the mitigation measures identified in the Environmental Impact Statement and Environmental Impact Assessment (EIA) Certificate of Approval No. 001095, the developer shall ensure that:

(i) he/she meets the costs of mitigating or correcting any environmental problems that may occur on or offsite as a result of destabilization of the lakeshore and also restore the currently degraded lakeshore through levelling and planting with the indigenous plant species;

(ii) the beach area is not fenced off at the permitted project area so as to allow continued free public access and use of the lake shore such as getting access to the lake whenever the need arises;

(iii) he/she establishes a green belt on the lakeshore at the permitted project area to act as a buffer to the lakeshore against possible siltation problems from the erosion from the mainland. Furthermore, terraces or related soil and water conservation structures must be constructed and planted with grass, or other suitable measures to avoid soil erosion and silting of the lake;

(iv) no foreign or alien species are introduced in the protection zone and the 100m zone is left for natural regeneration.

(v) no structures shall be erected in the 200m protection zone of Lake Victoria and neighboring wetlands. The following activities have been permitted in the 200m protection zone:

(a) Construction and maintenance of nature trails
(b) Erection of Bird View points
(c) Picnics
(d) Camping chalets
(c) Any other recreation and beach related activities

Signature
(vi) any use of surface or ground water at the facility during the operation of the project is in accordance with the Water Resources Management Regulations 1998 and Waste Discharge Regulations 1998.

(vii) all solid wastes generated by the project is collected, sorted and disposed of properly in a safe area designated by the Local Authorities and in accordance with the National Environment (Waste Management Regulations) 1999.

(viii) noise generated at this intravenous plant does not exceed maximum noise standards as contained in the National Environment (Noise Standards and Control) Regulations 2003.

(ix) in accordance with Regulation 17 of the National Environment (Wetland, Riverbanks and Lakeshores Management) there will be no encroachment into the wetlands in the neighbourhoods beyond the project site boundaries which are subject to this permit;

(x) in accordance with Section 23(4) of the National Environment Act Cap. 153, any further undesirable environmental impacts that may arise during the construction of the road across the wetland, but not contemplated during the issuance of this Permit are mitigated.

Signed at Kampala Thursday, 27 July 2006

[Signature]

[Title and Signature of The Executive Director]
National Environment Management Authority
c.c: The Director,
Directorate of Water Development
Ministry of Water and Environment
KAMPALA

c.c: The Assistant Commissioner
Wetlands Inspection Division (WID)
Ministry of Water and Environment
KAMPALA

c.c: The District Environment officer
Wakiso District
WAKISO

c.c: The Sub-county Chief
Katabi Sub-county
Wakiso District
WAKISO
06 July 2006

The Executive Director
National Forestry Authority
NAKAWA

ALLEGED LACK OF TRANSPARENCY IN AWARDING FOREST RESERVE DEVELOPMENT LICENCES – COMP.56/6/06

We are in receipt of a complaint from permit holders attached to Kyewaga Forest Reserve to the effect that:

- They were allocated plots of land in the reserve by the Forestry Department for purposes of developing woodlots.

- Recently, a one Charles Twagira, started construction in the plot belonging to Mushetsya Nathan without any legal authority (licence) to do so.

- When they lodged a complaint concerning the same with the Director of Operations, NFA, they were informed that Twagira had applied for a licence to do Eco-tourism in the area but that he had not yet been granted that licence. They were further informed that when the licence is eventually issued, they would be shown the new boundaries and Mr. Twagira would compensate their developments.

The farmers have the following concerns:

In case of change of Policy for use of the Forest Reserve; they should be alerted so as to have the first option of the new use.

Mr. Twagira has continued with his construction without having legal authority to do so.
Two farmers, Mr. Turyakira and Dr. Kamugisha had applied for and were allocated a plot for Eco-tourism in 2002. It would therefore be unfair to deny them the opportunity and grant it to a new comer.

In light of the above mentioned issues, you are requested to respond to the concerns raised and to explain the basis on which Mr. Twagira was allowed to construct on the forest reserve plots without having acquired a licence. You should further explain to us the status of the 2 farmers who were granted permits to conduct Eco-tourism within the area and the fate of the other farmers whose permits are still valid.

You are further requested to halt any construction by the said Twagira until the matter is adequately dealt with as will be decided by this office.

By copy of this letter, Mr. Twagira is requested to halt any construction in the disputed area pending investigations by this office.

E. B. Musoke (Ms)
Director/Legal Affairs
For: INSPECTOR GENERAL OF GOVERNMENT

cc Mr. Twagira
CIV/077/2006

The Executive Director
National Forestry Authority
10/20 Spring Road
P. O. Box 70863
KAMPALA

Dear Sir,

RE: CLAIM FOR COMPENSATION TO M/S BEACH SIDE DEVELOPMENT SERVICES LTD

We act for and on behalf of M/S Beach Side Development Services Ltd to address you as follows:

By letter dated 26/9/2005 Mr. Charles Harry Twagira applied for a licence to rehabilitate and develop Kyewaga Forest Reserve as an Ecologe and Ecotourism destination.

In response to his application you required him to obtain, among others: an Environmental Impact Assessment Report, form a private limited liability company for the project and, pay an annual licence fee of US$6,000=. He complied with the above requirements.

On 2/6/2006 NFA authorized our client to begin work at the forest reserve to prevent further damage to the land and forest and it graded the area, backfilled sand pits and other pits created by brick makers. Our client also commenced construction of chalets (the
proposed ecolodge). This authority to start works was provisional pending the issuance of the Licence.

In spite of repeated demands and reminders you have to date neglected, failed and/or refused to issue a Licence to our clients. As a result of your failure to issue a licence, our client has suffered tremendous loss and damage and now considers that your breach has now terminated the contract.

Accordingly, our client demands that you compensate it with immediate refund, by cash, of US$6,000= plus an undertaking to reimburse all clients investment costs up to date and general damages.

Unless you comply with the above within three days from the date hereof we shall take further legal action at your further cost and expense.

Yours faithfully,

Kwesigabo, Bamwine and Walubiri Advocates.

c.c. Beach Side Development Services Ltd
P. O. Box 6432
Kampala
Pay Kasesigabo Bamwine & Waluhire Advocates or Order.

JS Dollars Six Thousand Only _________
USD = 6,000=

NATIONAL FORESTRY AUTHORITY
024007744201

Cheque Number 00652
Bank Code 0084
Account Number 020711420

Cheque received

11/09/2006

Bernard Idahangi Namwine
ADVOCATE
Commissioner for Oaths
P.O. Box 21161, Kampala
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**Total**

**Cheque Payment Voucher**

**National Forest Authority**
To: M/s Kwesigabo, Bamwine, Walubiri
Advocates
10 Clement Hill Road
P.O Box 21161
Kampala.

RE: NOTICE TO INTENDED DEFENDANT

Contents of your letter dated 21/3/2007, referenced CIV/077/2006 have been seen and noted, and we wish to respond as follows;

NFA received a written proposal from one Twagira Charles in the year 2005, to among other things be granted a license to manage the entire Kyewaga CFR or whatever was left of it and offered to do a number of things therein.

The request was not granted by NFA due to its earlier contractual obligations with tree planting licenses.

Despite such refusal, one Twagira under the names of BEACHSIDE DEVELOPMENT SERVICES LTD, of which he is a shareholder, went ahead and started carrying out activities within the CFR in the names of the said company, without any legal authority to do so.
These activities included among others, grading areas, backfilling sand pits and construction of chalets.

However we wish to clarify that all these activities were illegal as Charles Twagira under the names of Beachside Development co. had no authority to conduct any activity within the CFR without a license granted as per the provisions of the National Forestry and Tree Planting Act No. 8/2003.

We wish also to bring it to your notice that the money $6,000 paid by your client was refunded as per your request, via Stanbic Bank Uganda Cheque No: 000652 dated 8/9/2006, which was received by you on the 11/9/2006.

Hence, we maintain our position that your client's entry and activities within the Kyewaga Central Forest reserve are accordingly illegal since there was no license issued to your client by NFA.

Given the fact that your client has illegally entered upon the said CFR, commenced construction of structures within the said reserve, made
unauthorized alterations to the land within the reserve adding to the degradation of the forest, we are inclined to take legal action against your client for breach of sections 14(1), and (2), 32, 43, 81(f) and 89 of the National Forestry and Tree Planting Act No. 8/2003, seeking orders that your client vacate the Forest reserve and to remove any buildings or structures it has erected thereon.

We are accordingly not liable to your client in any way whatsoever. You are advised to inform your client to vacate the said Forest Reserve and to remove the structures it has erected without farther ado, lest we will proceed to institute legal action against your client.

Yours faithfully

Silverio Mwesigwa
Legal Counsel NFA
NFA/TP/142/06

11th September 2006

M/S Kwesigabo, Bamwine & Walubiri Advocates,
10 Clement Hill Road,
P.O Box 21161,
Kampala

RE: REFUND OF USD.6000 TO M/S BEACH SIDE DEVELOPMENT SERVICES LIMITED


Kindly find hereto attached a Stanbic Bank Uganda Cheque No: 000652 dated 8/09/2006 for a sum of USD 6000 (Six Thousand United States Dollars) being a refund of monies to your client – M/S Beach Side Development Services Limited.

Yours faithfully,

Olav Bjella
Executive Director

KWESIGABO, BAMWINE & WALUBIRI
ADVOCATES

Received 11/9/06

Bernard Mukanzi Bamwine
ADVOCATE
Commissioner for Oaths
P.O. Box 21161, Kampala
KWESIGABO, BAMWINE & WALUBIRI

Date: 7th. 9. 2004

To: National Forest Authority

By: United States Dollars Six Thousand

Payable to MIS Beachside Development

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For Kwesigabo, Bamwine, & Walubir

Stambic Bernac
CIV/077/2006

The Executive Director
National Forestry Authority
10/20 Spring road
P. O. Box 70863
KAMPALA

Dear Sir/Madam,

NOTICE TO INTEND DEFENDANT
[Under S. 2. of the Civil Procedure and Limitation (Miscellaneous Provision) Act, Cap. 72] IN THE MATTER OF AN INTENDED SUIT BETWEEN BEACH SIDE DEVELOPMENT SERVICES LTD } INTENDED PLAINTIFF AND NATIONAL FORESTRY AUTHORITY } INTENDED DEFENDANT

1. TAKE NOTICE that M/S BEACH SIDE DEVELOPMENT SERVICES LTD of P. O Box 6432, Kampala INTENDS to institute a suit against THE NATIONAL FORESTRY AUTHORITY in the High court at Kampala in which it will seek special, general and exemplary damages for breach of contract/failure to issue an agreed licence.

2. The facts constituting the cause of action which arose in June, 2006 are more particularly set out in the letter Ref:CIV/077/2006 of 22/8/2006 addressed to you by Counsel
THE REPUBLIC OF UGANDA
THE HIGH COURT OF UGANDA AT NAKAWA
CIVIL SUIT NO...3...OF 2009
BEACHSIDE DEVELOPMENTS
SERVICES LTD:PLAINTIFF

VERSUS

NATIONAL FORESTRY AUTHORITY:DEFENDANT

PLAINT

1. The Plaintiff is a private limited liability company duly incorporated and carrying on business in Uganda and its address for purpose of this suit is care of Messrs Birungyi, Barata & Associates, 3rd Floor Crusader House Annex, P.O. Box 21086, Kampala.

2. The Defendant is a Statutory Corporation and service of Court process upon it shall be done by or through the Plaintiff Advocates.

3. The Plaintiff claim against the Defendant is for special and general damages for breach of contract and loss of prospective business and profits, interest and costs of the suit. The cause of action arose as hereunder.

4. By letters dated 26th September, 2005 and 19th January, 2006 one Charles Harry Twagira offered to rehabilitate and develop 209 hectares of Kyewewaga Forest reserve in Wakiso District as an ecododge and ecotourism facility.

5. The Defendant accepted the application by Charles Harry Twagira on condition that;

a) The Plaintiff incorporated to carry out the proposed project.

b) The company undertakes an Environment Impact Assessment for the project.

c) The company pays a licence fees.

6. Since the said Charles Harry Twagira together with three (3) other persons had already incorporated the Plaintiff Company, it took over the negotiations with the Defendant, carried out the required Environment
Impact Assessment and obtained a Certificate of approval of the project from the National Environment Management Authority. Copies of the Plaintiffs feasibility study, and NEMA permit for regulated activity the Certificate of Approval of Environmental Impact Assessment are attached hereto and marked annexures “A”, “B” and “C” respectively.

7. The Defendant accepted the Plaintiff’s feasibility study and environment Impact Assessment report, recalculated the Plaintiff income projections and fixed annual licence fees based on the Defendant’s income projections for the envisages licence period of twenty five years and allowed the Plaintiff to take possession of the subject reserve on 8th June, 2006 pending preparation of the license a draft copy whereof was given to the Plaintiff by the Defendant. Copies of the income projections, the receipt for the licence fees, the note authorizing the Plaintiff to take possession and start work are attached hereto and marked annexures “D”, “E”, “F” respectively.

8. The Plaintiff took possession and stated carrying out developments as authorized by the Defendant until 8th June 2006 when a different set of persons claimed licenses over the same area of the forest reserve and commenced criminal prosecution against the officers of the plaintiff.

9. The plaintiff had, at the commencement of the development, entered agreement with M/s BCR Construction Ltd to carry out developments and made part payment thereof. Evidence of the agreement is attached hereto marked “H”.

10. Inspite of repeated demands by the Plaintiff, the Defendant who was always aware that the Plaintiff was putting up the facility in time for the CHOGM meeting and had fulfilled most of the legal requirements for the licence has in breach of contract, refused and or neglected to issue to the Plaintiff the agreed licence.

11. The Defendant said refusal or neglect to issue a licence to the Plaintiff thereby occasioned loss and damage to the Plaintiff of the entire project including all money so far general and special expended on the project and prospectively business and profits and rendered it impossible for the Plaintiff to utilize the conditional licenses provided by NEMA and the Fisheries Department and has caused the Plaintiff prospective financiers to decline funding the project thereby dealing a fatal blow to the Plaintiff.
PARTICULARS OF SPECIAL DAMAGES

(a) Charges for Feasibility Study .. $ 6,000
(b) Fees for EIA .. Ush. 15,174,800
(c) Fees for NEMA Permit .. Ushs. 1,500,000
(d) 30% deposit paid for construction and landscaping .. $ 169,500
(e) Cost Towards Forest Restoration .. $ 12,000

9. Statutory Notice of intention to sue was duly communicated to the defendant who ignored the same.

10. The cause of action arose in Kampala within the jurisdiction of this Honourable Court.

WHEREFORE the Plaintiff prays that judgment be entered in its favor against the Defendant for:

a) Special damages of Shs US $ 187,500 and Ushs 16,674,800 as in paragraph n.
b) General damages for loss prospective business and profits
c) Costs of the suit.
d) Interest on (a) (b) and (c) at the rate of 25% p.a. from time of filing till payment in full.

DATED AT Kampala this .. day of ... 2008

BIRUNGYI, BARATA & ASSOCIATES
[COUNSEL FOR PLAINTIFF]

Drawn By:
M/s Birungyi, Barata & Associates,
Advocates, Legal & Tax Consultants,
3 Portal Avenue, 3rd Floor Crusader House,
P.O. Box 21086,
Kampala-Uganda.
THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT NAKAWA

CIVIL SUIT NO. 603 OF 2009

BEACHSIDE DEVELOPMENT SERVICES LTD ....................... PLAINTIFF

VERSUS

NATIONAL FORESTRY AUTHORITY ............................... DEFENDANT

CONSENT JUDGMENT/DECREE

This matter coming up for final disposal before the Hon. Mr. Justice Joseph Mulangira in the presence of Mr. Enoch Barata Counsel for the Plaintiff and Mrs. Molly Kyepaaka Karuhanga Counsel for the Defendant, by consent of the parties it is hereby ordered that judgment be entered and a decree issue in the following terms:

1. The Defendant issue the Plaintiff with a license for development of an eco-lodge and tourist camp in Kyewagga Central Forest Reserve measuring 2.6 hectares in accordance with NFA eco-tourism guidelines as soon as the presidential directive is lifted.

2. The Defendant shall handover vacant possession of the said land to the Plaintiff.

3. The Plaintiff hereby drops its claim for loss of business and prospective profits in the sum of US $8,599,250.

4. Court shall assess other damages that may accrue to the parties and shall assess the quantum thereof.

5. Each party pays its costs of the suit.

Dated this ... day of June 2009.

BIRUNGAL BARATA & ASSOCIATES
(COUNSEL FOR THE PLAINTIFF)
MOLLY KYEPAKA KARUHANGA
(COUNSEL THE DEFENDANT)

GIVEN under my hand and seal of this Honourable Court this..............day of

........................................... 2009.

-----------------------------------
JUDGE

Jointly Drawn & Filed By:
M/s Birungi, Barata & Associates,
Advocates, Legal & Tax Consultants,
3rd Floor Crusader House, 3 Portal Avenue
P.O. Box 21086,
Kampala-Uganda.

Legal Unit,
National Forestry Authority.
P.O. Box 70863
Spring Road Kampala
THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA

CIVIL SUIT NO. 003 OF 2009

BEACHSIDE DEVELOPMENT SERVICES LTD ............... PLAINTIFF

VS

NATIONAL FORESTRY AUTHORITY ....................... DEFENDANT

JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA

The parties, on 21st April 2009, filed in court joint scheduling memorandum of agreed facts and issues. The agreed facts are:

1. On 26th September, 2005, the plaintiff applied to the defendant through its Director, Mr. Charles Twagiré for a 50 year Management licence of the 209 hectares of Kyewaga Forest Reserve in Entebbe in Wakiso District and to develop the same as an ecology and ecotourism facility under the name white sands Eco-lodge.

2. Various meetings were held between the said plaintiff’s Director and officers of the Department, including among others Mr. Andrua, Mr. Langoya, Mr. Nsita and Mr. Kamugisha.

3. The plaintiff was required to submit a project feasibility study/project plan, to carry out an Environmental impact Assessment study of the proposed project, to carry out a topographic re-survey of the whole forest reserve, and to obtain a certificate of approval of the Environmental impact Assessment.
4. The plaintiff performed all the conditions.

5. The defendant then used the plaintiff's feasibility study to assess the viability of the project and developed its own projection of the plaintiff minimum expected income upon which a licence fee was computed.

6. The defendant then used the said projected income to determine a licence fee which was attached to the proposed licence agreement as schedule to the licence.

7. By the plaintiff's own calculations submitted to the defendant, the plaintiff was projected to make profits of US $ 87,188,093 over 25 years period while defendant on the other hand through their own conservative estimates projected the plaintiff's profits at US $ 8,559,250 over the same 25-year period.

8. The plaintiff thereafter paid the sum of US $ 6,000 as annual licence fee.

9. The plaintiff thereafter commenced work with a view to being ready for trade at the beginning of 2007.

10. A tree farming licence performance audit was carried out by the defendant on 20th and 21st June, 2006 targeting licences in land-
proposed for allocation to white sand Eco-lodge. The said Audit was conducted by seven of the defendant’s officers who were on the visit day accompanied by the defendants Executive Director, Mr. Olar.

11. The defendant’s audit team made findings took photographs (which are in defendant’s possession) and made conclusions as to what actions were to be taken by it to facilitate the plaintiff’s licence free of squatters.

12. At the time of the performance audit, the defendant’s team found that the plaintiff had completed restoration of the degraded area, landscaping of the project site and had completed construction of 10 charlets while the administration building and 40 charlets were still under construction. These developments were evidenced by photographs taken by the defendants’ audit team.

On 5th June 2009, when the suit came up for hearing counsel for the plaintiff Mr. Barata Enock and counsel for the defendant, Ms. Molly Kyepaaka Karuhanga were in agreement and agreed to have the matter settled as here below.

1. The defendant agrees to issue a licence in Kyewagga Central Forest reserved for the land measuring 2.6 hectares, in accordance to
National Forestry Authority eco-tourism guidelines, with access to Lake Victoria Shoreline within two (2) months from today.

2. The defendant to handle over vacant possession of the said land to the plaintiff as soon as the license is issued.

3. The damages be awarded to the plaintiff and be assessed by this court.

4. The plaintiff drops its claims of prospective profits, loss of business which was at US $ 8,559.250.

5. That each party will bear its own costs.

Accordingly, judgment is entered in the terms and orders as agreed upon by the parties' hereinabove mentioned.

Dated at Nakawa this 12th day of June, 2009

[Signature]

MURANGIRA JOSEPH
Judge
12 6 09

Court:

Hearing on the assessment of damages is fixed on 7 7 09 at 9:00 am.

There is on record witness statements. Therefore, the witnesses for each party will be cross-examined on their statements on that day.

MURANGIRA JOSEPH
Judge

12 6 009

Mr. Barata Enoch, for the plaintiff.

The Managing Director of the plaintiff, Mr. Twagira Charles is in court.

Nobody from the defendant.

Ms Nabasirye Rebecca the clerk in court.

Court: Judgment in respect to the agreed facts is delivered in open court.

Hearing on the issue of damages is fixed for 7 7 09 at 9:00am

MURANGIRA JOSEPH
Judge
12 6 009
July 29, 2008

Hon. Maria Mutagamba
Minister
Ministry of Water & Environment
KAMPALA

MISMANAGEMENT OF FORESTS BY THE NATIONAL FORESTRY AUTHORITY (NFA)

I have been reliably informed that NFA is selling/leasing forests to individuals, who have, ultimately, abused them by cutting down all the trees and mining sand from them.

I would like to cite an example of the forests along Mityana Road, which, I understand, have been sold to individuals like Senior Police officers and Public Servants. The culprit who is selling this land is one George Gasana of NFA. This Gasana has been selling these forests very cheaply as stipulated in the attached copy of the receipt. These are all criminals and they must be punished. Who in the first place, decided on the policy of privatizing or leasing forests? I do not remember Cabinet deciding on this.

I, therefore, direct that you put out announcements halting the selling/leasing of the forests to individuals by NFA in the entire country. This takes immediate effect.

I need a progress report on what action you have taken in this matter.

By copy of this letter, RDCs are advised to report any case of individuals claiming or destroying forests.

Yoweri K. Museveni
PRESIDENT

End...

cc. Rt. Hon. Prime Minister
cc. Hon. Minister in-charge of the Presidency
cc. Hon. Minister of State for Environment
cc. Permanent Secretary, Ministry of Water & Environment
cc. Hon. Minister of Internal Affairs
cc. Executive Director, NFA
cc. All Resident District Commissioners
GUIDELINES ON LICENSING AND MANAGEMENT OF ECOTOURISM SITES BY THE PRIVATE SECTOR IN CENTRAL FOREST RESERVES

Introduction

The National Forestry Authority places considerable emphasis on revenue generation for self sustainability and public image building. Forest based Tourism is one of the key elements in revenue generation as well as enhancing the partnerships between NFA and the private sector, Non - Governmental Organizations, and local communities.

It should be noted that there are a number of Central Forest Reserves that undoubtedly have features and attractions that are of real interest to domestic and international tourists. Such pristine sites can be developed by NFA on a sustainable basis in partnership with the private sector and local communities.

Guidelines

1. An Ecotourism site is identified either by NFA, the private sector or local community
2. The site is advertised for public competitive bidding in line with the Public Procurement and Disposal of Public Assets Act (2008).
3. Bids are received and opened by NFA.
4. Bids are evaluated by an evaluation committee.
5. The evaluation results are approved by the NFA Contracts committee.
6. The best bidder is invited for negotiations.
7. If negotiations are successful, the best bidder is awarded a license to operate and manage an Ecotourism site.
8. If negotiations with the best bidder fail, the next best bidder is invited for negotiations.
9. Negotiations normally include but are not limited to capacity to manage Tourism business, human resource plans, financial capacity, environmental considerations, community involvement plans, and fees payable to NFA etc.

Prepared by:

Mweru H. Isaac
Ecotourism Specialist

This is the annex marked B referred to in the annexed Affidavit sworn / affirmed before me at Kyotera.

[Signature]

Commissioner PFA of FRA.
THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT NAKAWA
Misc. Appl. No. ........................ of 2009
(Arising from HCCS No. 803 of 2009)

NATIONAL FORESTRY AUTHORITY .................... DEFENDANT/APPLICANT

VERSUS

BEACH SIDE DEVELOPMENT SERVICES LTD ........ PLAINIF/RESPONDENT

AFFIDAVIT IN SUPPORT OF APPLICATION

I DAMIAN B. AKANKWASA of C/0 M/s Byarugaba & Co. Advocates solemnly and truly take oath and state as follows:-

1. THAT I am an adult of sound mind and the Executive Director of the Applicant whose behalf I make this affidavit.

2. THAT the Applicant appointed Ms. Molly Karuhanga Kyepaaka an advocate handle Civil Suit No. 003 of 2009 on behalf of the Defendant/Applicant.

3. THAT with the emergence of negotiations to have an amicable settlement of the matter the said Ms. Karuhanga consulted me and I observed that the Authority was not objecting to grant the Plaintiff/Respondent a Licence to set up an Eco-tourism site in Kyewagga Central Forest Reserve, though the Plaintiff had not sought for it in the Plaint and indicated that the Applicant had before not refused or failed to grant the licence but the process/requirements therefor were still in progress, and it was later on interrupted by the issuance of a President Directive barring the Applicant from privatizing any activity in Forestry Reserves.
4. THAT I however advised our legal counsel that the proposal for that would be on conditions viz:

i) that the licence would be granted to the Applicant to cover only 2 hectares.

ii) that the licence would be granted provided the Presidential Directive no standing and barring such in Forestry reserves was lifted or would be lifted (i.e. the grant of the licence would be conditional on the lifting of the Presidential Directive attached hereto as "A")

iii) that the licence would be granted in view and after fulfillment of the National Forestry Authority Eco-tourism Guidelines (i.e. that the Respondent would have to fulfill what is stipulated therein, including the bidding process in conformity with the Public Procurement and Disposal of Assets Act. The guidelines are annexed as "B").

5. THAT on issue of damages I advised learned Counsel to have them dropped as on issue of costs I advised that each party should meet its own costs and the matter rested to pave the way to the Applicant and Respondent embarking on the course of fulfillment of their undertakings/obligations.

6. THAT on 5.6.09 the said Ms. Karuhanga briefed me on the submission to cc of the above and that she would be giving me further briefs on the matter.

7. THAT I have learnt from Ms. Karuhanga that the Judgment/Decree pertaining to the above was delivered on 12.6.09 in her absence which fact she learnt of 16.6.09 when she was summoned to court for hearing and the issue of what was to be heard came up with the learned Counsel contending that court was determine whether the Plaintiff/Applicant was entitled to damages when Counsel for the Plaintiff/Respondent argued that what was to be determined
the assessment/quantum of damages as the issue of the award of damages had been settled in the consent judgment on record. The Plaintiff/Respondent is claiming US $ 551,985 (United States dollars, five hundred fifty one nine hundred and eighty five).

8. THAT I am further informed by her that upon reading of The Judgement she discovered that the same did not succinctly put across all that had been previously agreed and sought to get a record of proceedings.

9. THAT it is my information from Ms. Karuhanga that:-

a) She enumerated to this Honourable Court the three (3) provisos (conditions) aforesaid attached to the issuance of the Licence to the Plaintiff/Respondent.

   However, whereas the conditions of the conformity with the NFA Ecotourism guidelines, and the hectareage were recorded by court, the on concerning the Presidential Directive was not.

10. THAT I am further informed by her that there was a discourse between th' Counsel, Court and one Charles Twagira the Managing Director of th' Plaintiff/Respondent about the clog created by the presence of the Presidential directive to which Mr. Twagira informed court that he/they would ensure that the would work upon its lifting.

11. THAT I am further informed by her that as per the proceedings and judgement the results of the said discourse were (inadvertently) omitted to be recorded & court recorded that the Licence would be issued in only two months from whi she contends she never agreed to nor put on record, she informs me the appears to have occurred a slip on that.
12. THAT for the grant of the Licence to the Plaintiff/Respondent, it is time up as set in the judgment/decree yet the NFA Eco-Tourism guidelines have not been complied with by the Plaintiff/Respondent and Defendant/Applicant yet the Plaintiff/Applicant through its Managing Director Mr. Charles Twagira is nagging me and threatening me of Legal consequences in enforcing the Judgement/Decree if I fail to comply.

13. THAT I am barred/tied by the Presidential Directive, The President of The Republic of Uganda from issuing the Licence on behalf of the Applicant. The Applicant is a Statutory Body with a corporate status of a legal person. We cannot act in defiance of the Directive. The Directive came out before the judgement. The Judgement, I had instructed, was to be recorded bearing that in mind. Consequently, the Respondent is too barred from taking up the licence. It was aware of its existence at the time of entry of the judgement. I never instructed its entry in the form it was so entered. It was entered upon non consideration or awareness of material facts surrounding it.

14. THAT therefore, on the aforesated, the 1st head/term of the judgement/decree is incapable of being enforced or performed and even if it was to be, which is not, the requirement for its fulfillment are not yet in place. There are two orders at variance and all coming from two lawful institutions – Court and The Presidency(i.e 2 (two) Lawful arms of the Government Judiciary & Executive) and one cannot be performed outside contempt of another which may bring an impasse in the country, and following the Consent Decree to disobey the Authority of the President would be against Public interest/policy.

15. THAT Ms. Karuhanga informed me that she lucidly put the fact of the Presidential Directive forward and upon it there ensued a discourse. That notwithstanding, the fact of its existence bars the parties from acting as put across by their counsel and endorsed by court. The order was not originated by court but by Counsel for the parties and asking court to endorse the concession. The act by the learned Counsel when both were fully aware of the existence of the order
was in effect making the parties enter what would not be performed/enforced and the purport of it (Decree/Judgement) would be making the parties rebel agains Presidential Authority that undermines the Integrity of the President which is no in public interest and therefore against public policy and which this court would, believe, not have appropriately endorsed.

16. THAT on the basis of the aforesaid, I reasonably believe that it is just equitable that the judgement be set aside or reviewed and varied, and provisio to the Presidential Directive included.

17. THAT what is herein stated is true to the best of my knowledge save the conten of parag.7, 8, 9, 10, 11, 15, based on information from Ms. Karuhanga Parag. entailed on belief upon the grounds therein canvassed.

SWORN at Kampala by the said DAMIAN B. AKANKWASA this 24th day of 2009

DEPONENT

BEFORE ME

COMMISSIONER FOR OATHS

Drawn & Filed by:
M/s Byarugaba & Co. Advocates
Plot 47/49 Nkumah Road
UCA Building
P. O. Box 16614 Wandegeya
Kampala
THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT NAKAWA

CIVIL SUIT NO. 003 OF 2009

BEACHSIDE DEVELOPMENT SERVICES LTD ....... PLAINTIFF

VERSUS

NATIONAL FORESTRY AUTHORITY ....... DEFENDANT

JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA

Beachside Development Services Ltd, hereinafter called the plaintiff, filed this Civil Suit against National Forestry Authority, hereinafter called the defendant, seeking the following reliefs:

(a) Special damages of US $ 187, 500 and Uganda Shillings 16, 674, 800/=.

(b) General damages for loss of prospective business and profits.

(c) Costs of the suit.

(d) Interests on (a), (b) and (c) above at a rate of 25% p.a from time of filing the suit till payment in full.

The facts of the suit as can be gathered from the plaint are:-

The plaintiff's claim against the defendant is for general damages for breach of contract and loss of prospective
business and profits, interest and costs of the suit. That by letters dated 26th September, 2005 and 19th January, 2006, Charles Twagira offered to rehabilitate and develop 209 hectares of Kyewagga Forest reserve in Entebbe, Wakiso District as an ecology and tourism facility. That the defendant accepted the application by Charles Twagira on condition that:

(a) The plaintiff is incorporated to carry out the proposed project.

(b) The company undertakes an Environment Impact Assessment for the project.

(c) The company pays licence fees.

That the plaintiff thereafter took over the negotiations with the defendant, carried out the required Environment Impact Assessment (EIA) and obtained a certificated of approval of the project from the National Environment Management Authority (NEMA). That the defendant accepted the plaintiff’s feasibility study and Environment Impact Assessment report, recalculated the plaintiff’s income projections and fixed annual licence fees based on the defendant’s income projections for the envisaged licence period of 25 years and allowed the plaintiff to take possession of the subject reserve on 8th June 2006 pending preparation of the licence a draft copy whereof was given to the plaintiff by the defendant.
That plaintiff took possession and started carrying developments as authorized by the defendant until 8th June, 2006 when a different set of persons claimed licenses over the same area of the forest reserve and commenced criminal prosecution against the officers of the plaintiff.

That the plaintiff had at the commencement of the development entered an agreement with M/s BCR Construction Ltd to carry out developments and made payment thereof.

That in spite of repeated demands by the plaintiff, the defendant who was always aware that the plaintiff was putting up the facility in time for the CHOGM meeting and had fulfilled most of the legal requirements for the licence has in breach of contract refused and/or neglected to issue to the plaintiff the agreed licence.

That the defendant’s said refusal or neglect to issue the licence to the plaintiff thereby occasioned loss and damage to the plaintiff of the entire project including all money for general and special expended on the project and prospective business and profits and reduced it impossible for the plaintiff to utilize the conditional licences provided by NEMA and the Fisheries Department and has caused the plaintiff prospective financiers to decline finding the project thereby dealing a fatal blow to
the plaintiff. The defendant filed a Written Statement of Defence in time. And the plaintiff filed in court a reply to the Written Statement of Defence and a rejoinder to the plaintiff.

After the closure of the pleadings in the suit, the court set down the suit for scheduling conference. On 21st April 2009, the parties filed in court a joint scheduling memorandum of the agree facts and issues. On 5th June 2009 when the suit came up for hearing, Counsel for the plaintiff, Mr. Barata Enock, and that of the defendant Ms Molly Kyepaaka Karuhanga entered a consent settlement and on 12th June, 2009, this court pronounced the judgment in open court as agreed by both parties. Most of the plaintiff's concerns in the plaint were settled by the consent judgment, a part from the issue of damages.

The plaintiff and the defendant consented that the damages be awarded to the plaintiff and be assessed by this court. It is clear that in the consent judgment the damages were awarded to the plaintiff. What was in contention at the time was the quantum of the damages, which needed assessment by court to ascertain in real terms and figures the damages that were being claimed by the plaintiff. Wherefore, the defendant's counsel's submissions in reply to the submissions by counsel for the plaintiff to dismiss the claim of damages is to say the least out of the context. The defendant's claims at this moment in time is to say the least an afterthought, intended
to defeat justice against the plaintiff. Parties consented to the award of damages to the plaintiff and the defendant is therefore precluded from making around turn on the issue of damages: The defendant should own up its commitments in the consent judgment of 12th June, 2009.

The assessment of damages was to be done based on the pleadings and evidence adduced by both parties. On pleadings, the defendant in a consent judgment agreed to the plaintiff’s claims as pleaded in total. Counsel for the defendant, in that regard in his submissions, submitted that by the consent judgment, clause 4 thereof, the plaintiff dropped the claim for (general) damages for loss of prospective business and profits. What was dropped by the plaintiff in the said clause 4 is very clear, clause 4 of the consent judgment reads:

"Clause 4: The plaintiff drops its claims of prospective profits, loss of business which was at US $ 8,559, 250.

This figure arises from the agreed facts in item 7 in the consent judgment, which reads:

"Item 7: By the plaintiff’s own calculations submitted to the defendant, the plaintiff was projected to make profits of US$ 87, 188, 093 over 25 years period. The defendant on the other hand through their own conservative estimates projected
the plaintiff's profits at US $8,559,250 over the same 25 year period."

Therefore, from the above set of facts what was dropped by the plaintiff was the damages in relation to the loss and profits arising out of the prospective business that was put at US $8,559,250. But not the damages that were consented to by both parties in the consent judgment. The consent judgment is very clear about the contested issue of damages. Counsel for the defendant in his submissions misinterpreted the consent judgment in that regard. Therefore, his submissions in that regard do not hold any water. The defendant's submissions are intended to mislead this court. Counsel for the defendant was fresh in the case, and as a result he did not comprehend the entire case for the defendant. His arguments are not guided and not based on any evidence in support of the defendant's case.

On the other hand, I agreed with counsel for the defendant that special damages must be pleaded, particularized and strictly proved. There are wealthy of authorities on this principle to support my finding. But it should be understood that in this case special damages are not in issue as counsel for the defendant is trying to portray to the court. The defendant's counsel argues that the loss of profits would be adequately be claimed as special damages, that the plaintiff chose to claim
them as general damages. He submitted further that nothing in the evidence of PW1 toutsches on the claim for US$ 6,000 or the US $ 12,000 and no documentary proof or other proof to that is provided. That in the particulars of special damages of Uganda Shillings 1,500,000/= as fees for NEMA permit and Uganda Shillings 15,174,800/= as fees for Environmental Impact Assessment, no evidence was led touting on those portions of the claim. That they are not at all mentioned in PW1's evidence and not even attempted to be proved by any document or other proof to that effect. That the version presented by counsel for the defendant in his submissions does not support the defendant's case. The defendant is bound by the consent judgment between it and the plaintiff.

However, with due respect to counsel for the defendant, the claim of the plaintiff as agreed by the parties is the assessment of damages and not special damages which were spent by the plaintiff to secure a licence and location of the said ecology business. The complaint on special damages by counsel for the defendant is covered in clause 1 of the consent judgment, which reads:-

"The defendant agrees to issue a licence in Kyewagga Central Forest Reserve for the land measuring 2.6 hectares, in accordance to the National Forestry Authority eco-tourism guidelines, with access."
to Lake Victoria shoreline within two (2) months from today."

Therefore, the issue of special damages alluded to by counsel for the defendant had long been settled in the consent judgment and thus his argument is out of context. I have read the submissions by counsel for the defendant, and the way he argues, he does not respect the consent judgment that was entered into by the parties.

I wish to note that it is not a surprise, in that, the defendant at a later stage in the month of August, 2009, in the proceedings but after the closure of the plaintiff's case, engaged the services of private lawyers, to wit, M/s Byarugaba & Co. Advocates, Plot 47/49 Nkrumah Road, UCA Building. The said Lawyers lodged in court an application, Miscellaneous Application Cause No. 297 of 2009 to have the consent Judgment set aside. Counsel for the plaintiff M/s Akampumuza & Co. Advocates and M/s Birungi, Barata & Associates successfully challenged the locus standi of the Defendant’s new lawyers in the case. The Defendant’s said application was dismissed with costs. However, the said lawyer remained in the background of the case, as even on the day the defendant closed its case, Mr. Byarugaba Protase was in attendance in court and was seen giving advice to the new lawyers in the case.
It should be noted that the new lawyer who eventually conducted the defence case opted to close the defence case without calling evidence. Lawyers for the Defendant concentrated attacks on the consent judgment, without even giving it a proper interpretation. The defendant's lawyers ought to respect the consent judgment the defendant voluntarily entered into with the plaintiff. In this endeavour, I agree with the submissions of counsel for the plaintiff, which is to the effect that once a consent agreement has been reached and judgment of court entered on such agreement, the agreement overrides all matters of pleadings and evidence prior to the agreement as we" as procedural issues. This proposition is supported by the case of Peter Mulira vs Mitchell Cotts (1997 - 2001) UCLR 118 at 138, whereby the court of Appeal of Uganda, in the judgment of Okello, JA, held :-

"...... that agreement superseded the pleadings and whatever evidence had been tendered in court in this suit. Even the procedural issues regarding the manner the suit had been instituted were also suspended by the agreement. Therefore, the whole suit was settled by the agreement save for the costs. This court cannot interfere with such a consent judgment. It has no powers to do so. That is the principle enunciated in Hasanali vs City Motor Accessories Ltd and others (1992) EA 423"
In this instant suit, the whole suit was settled by the consent judgment save for damages, costs, and interests, on the same. The defendant is therefore estopped from making submissions that are intended to interfere with such consent judgment. The defendant's counsel's submissions in regard to what was or was not in the plaint was overtaken by the said consent judgment. The agreed facts in the joint memorandum and the consent judgment superseded the pleadings and whatever evidence had been tendered in court prior to the agreement except that was adopted in the consent judgment like the agreed facts, issues and therefore formed part of the agreement and the consent judgment. The whole suit was settled by the agreement save as to the quantum of damages which was left to court to determine after the parties had adduced evidence in support by the plaintiff and against the assessment of the damages by the defendant.

The plaintiff in compliance with the consent judgment called one witness, Mr. Charles Twagira, it’s Managing Director, as PW1. PW1’s testimony was based on the facts which were restated in the joint scheduling memorandum and the consent judgment and in summary the plaintiff’s evidence in examination—in-chief are:

(a) By it’s letter dated 13th February 2006 (defendant’s documents marked B2) the defendant asserted that
when the EIA is approved by NEMA the NFA would complete the negations of the licence agreement with the plaintiff.

(b) NEMA issued its Certificate of Approval No. 061095 on the 15th May 2006 which was presented to the defendant.

(c) The plaintiff was supposed to start trade beginning the year 2007. This is admitted in paragraph of the admitted facts in the joint scheduling memorandum. The plaintiff has therefore lost income for Y1, Y2 and Y3. This is agreed. That, what is not agreed is the quantum of the loss.

(d) The plaintiff projected net earnings of US$ 96, 408 for the first year, US $ 308, 392 for the second year, and US $ 615, 386 for the third year, making a total US $ 1,020,186 (see page 16 of the plaintiff's filed documents).

(e) The defendant was at all times aware of these projected earnings (see page 111 of the plaintiff's filed documents at "iv")
(f) This honourable court's judgment recognizes that the parties agreed that the plaintiff had finished construction of 10 chalets and administrative/public building were under construction (see item 12 of the agreed facts): The plaintiff lost the cost of this development which was paid to the contractor in the sum of US $ 551, 985 (see exhibit BCR1 and Exhibit BCR2).

(g) The plaintiff further lost the cost of land scaping in the sum of US $ 40, 000.

PW1 was cross-examined at length on the aforesaid testimony. PW1 did contradict himself in any way. In any case, the cross examination enhanced the strength of his evidence in support of the plaintiff's claim of damages. PW1 was steady, and confident when giving his testimony in examination – in –chief as well in cross-examination. His (PW1) testimony remained unchallenged by the defendant in cross-examination or in any other way at all. The defendant, who did not call any witness at all, has no moral authority to challenge such overwhelming evidence in submissions.

It is amazing to note that despite the strong evidence adduced by the plaintiff in proof of damages, the defendant opted not to call any single witness. In his submissions, Mr. Muloba Peter.
Legal Manager for the Defendant, who with due to respect participated in this case at the submission stage, on 2nd September 2009, stated that his instructions were that they do not call witnesses. The defence case was accordingly closed. By not calling any witness, the plaintiff's loss and damage stood un-contraverted by the defendant. Even at this stage for the fact that the defendant did not call any witness, the defendant conceded to the evidence that was adduced by the plaintiff. The defendant in it's wisdom to that regard had no better evidence to offer other than leaving it's case to fate.

The defendant, however, may be, hoped that it could challenge the plaintiff's case through submissions. The submissions by the defendant's counsel was an attempt to give evidence from the bar in the hope of contradicting the plaintiff's both oral and documentary evidence. These attempts defeat the rules of evidence which require that in order to prove or disprove a fact the party that asserts must do so by adducing evidence in support of such a pleading. This was not done by the defendant. Therefore, the submissions by the defendant seeking to challenge the plaintiff's oral and documentary evidence is misconceived and bad in law. It is my considered view, that the defendant's failure to call any of it's officials to come to court to give evidence in support of it's pleadings was a misdirection on the part of the defendant. The defendant's failure to call witnesses, is a clear indication that
after the defendant had, listened to PW1’s testimony, it had nothing useful to offer in terms of adducing evidence. The defendant in that regard is taken to have conceded the damages that had been assessed are those contemplated by the defendant when the offer at a settlement stage of "The damages be awarded the plaintiff and be assessed by this court." It is, therefore, inconceivable that at the stage of submissions the defendant is attempting to deny the plaintiff’s entitlement to damages. The plaintiff’s evidence which is not challenged by the defendant can not be challenged by the “evidence” or submissions from the bar.

It is very clear, PW1 testified that the chalets were left in the hands of and care of the defendant. This was not denied. It is also in evidence that Kyewagga Central Forest Reserve is guarded by Forestry Rangers, employees of the defendant on 24 hour basis. To this end, any damage to the chalets, the defendant is automatically liable. The defendant had a duty to explain by way of evidence in contraversion of the said testimony that was given by PW1. The defendant, failed in its duty to discharge it’s burden of proving it’s case in opposition on the balance of probabilities.

Therefore, I hold that the plaintiff proved that the chalets and other structures stood and that they were left in the hands of the defendant and that they no longer exist in the same place.
The loss and damage took place can only be attributed to the defendant. The defendant has to compensate the plaintiff for the damages lost and suffered.

All in all considering the evidence of PW1, the authorities cited and the submission by both parties, I hold that the plaintiff discharged its duty to prove the issue of damages at US $1,612,171 against the defendant as shown herebelow:-

a) US $48,000 expended on landscaping and design.

b) US $551,985 expended on construction of the chalets.

c) US $1,020,186 for loss of user for three years, that is, 2007, 2008 and 2009.

Accordingly judgment is entered on the assessed damages of US $1,612,171 in favour of the plaintiff with costs, and interest at court rate from the date of this judgment, till payment in full.

Dated at Kampala this ..........day of September, 2009

JOSÉPH MURANGIRA
JUDGE
THE REPUBLIC OFUGANDA
IN THE HIGH COURT OFUGANDA AT NAKAWA

MISC. APPLICATION NO. 646 OF 2009
(Arising out of ICCS 003 OF 2009)

BEACHSIDE DEVELOPMENT SERVICES LTD...........................................APPLICANT/
JUDGMENT CREDITOR

VERSUS

NATIONAL FORESTRY AUTHORITY..................................................RESPONDENT/
JUDGMENT DEBTOR

AND

1. STANBIC BANK (U) LIMITED, CO-RESPONDENT/CARNISHEE
2. BANK OF UGANDA, CO-RESPONDENT/CARNISHEE

GARNISHEE ORDER NISI
(Under Order 23 rule 1(5) of the Civil Procedure Rules)

UPON reading the Affidavit of Charles Harry Twagira, filed the 15th day of
September 2009, IT IS ORDERED by the Hon. Justice K. Wamala, that all monies on the bank
accounts of the abovenamed Judgment Debtor held with the abovenamed Garnishees including Bank
Account Numbers 014000774202, 014000774201, 0207744201 and SBI No 08245A00170 all at
Stanbic Bank (U) Ltd Corporate Branch Kampala, and Account Numbers 7472120611, 210211093-1 and
747-203034-1 at Bank of Uganda and several other bank accounts in the judgment debtor's be attached to
answer a Decree issued against the Judgment Debtor by the abovenamed Decree Holder in the High Court
of Uganda at Kampala on the 16th day of September 2009 for the sum of USD 1,612,300 (United States
Dollars One million six hundred twelve thousand only) together with interest at 8% per annum from the date of judgment remains due and unpaid.

AND IT IS FURTHER ORDERED that the Garnishees appear at the High Court of Uganda at Kampala on the ........................................ day of October 2009 at ............................................. o'clock in the forenoon, on an application by the Decree Holder that the Garnishees, Stanbic Bank (U) Limited and Bank of Uganda pay the attached monies or so much of it as may be sufficient to satisfy the decree, together with the costs of these Garnishee Proceedings.

Dated this ........................................ day of October 2009.

1. Stanbic Bank (U) Limited the abovenamed Garnishee and the above named judgment debtor.
2. Bank of Uganda the abovenamed Garnishee and the above named judgment debtor.
# NATIONAL FORESTRY AUTHORITY
## BANK BALANCES FOR HQ ACCOUNTS

### BANK OF UGANDA ACCOUNTS

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**Total**  
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4,492,932,651
THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT NAKAWA
MISC. APP. NO.646 OF 2009
(Arising from civil suit no. 003 of 2009)

BEACHSIDE DEVELOPMENT SERVICES LTD: APPLICANT/JUDGMENT CREDITOR

VERSUS

NATIONAL FORESTRY AUTHORITY: RESPONDENT/ JUDGEMENT DEBTOR

AND

STANBIC BANK (U) LTD
BANK OF UGANDA: CO-RESPONDENTS

AFFIDAVIT IN OPPOSITION AND REPLY TO APPLICATION TO ATTACH MONEY HELD ON ACCOUNTS.

I, DAMIAN AKANKWASA, solemnly and truly take oath and state as follows:

1. THAT I am a male adult of sound mind and the Executive Director of the respondent/judgment debtor on whose behalf I make this affidavit.

2. THAT the applicant/judgment creditor sued the respondent in the High Court Central Circuit, Nakawa vide HCCS no. 003 of 2009.

3. THAT the case was presided over by Justice Joseph Murangira who in the course of hearing was transferred to the High Court Land Division, Kampala, before it was concluded.

4. THAT with emergence of conflict upon the proceedings and particularly an earlier entered consent judgment, the case was handed over to Justice Murangira to hear the grievances since it was a part heard case, it was thus taken to the Judge now sitting at High Court Land Division, Kampala for him to preside over, but was never transferred from Nakawa Court registry to the Land Division Registry since the subject matter of the suit was not land, as I am reliably informed by the legal unit of the respondent, which information I verily believe to be true.

5. THAT however, upon the above reasons, the Deputy Registrar, Land Division took up administrative and not judicial duties concerning the case file like, issuing hearing notices, receiving further documents thereupon
filed in the registry at Nakawa and taken to the file's record and such other duties designated for a Deputy Registrar.

6. THAT His Lordship Justice Joseph Murangira finally determined the matter on 16.9.09 and by his judgment awarded US$ 1,612.171 (One Million Six Hundred Twelve Thousand One Hundred Seventy One Dollars), interest and costs to the applicant, the respondent got dissatisfied with it and lodged a Notice of Appeal against it on 21.9.09 as per annex ‘A’.

7. THAT the Decree in respect of the judgment was extracted and then sealed on 24.9.09 at 3:00 p.m. in the presence of the respondent’s Counsel. (See on Annexes “B” & “C”).

8. THAT shortly thereafter the applicant, through its lawyers presented to the Deputy Registrar, Land Division “M.A NO. 646 arising from HCCS No. 003 at Nakawa” originating Garnishee proceedings against the applicant and duped him to preside over it judicially indicating that they had duly and properly filed (at Nakawa Court) whereas not and the applicant immediately, within hours after the sealing of the Decree secured an order Nisi attaching the Respondent’s monies on accounts held by the co-respondents. (See annex.”D”)

9. THAT M.A No. 646 of 2009 at Nakawa arising from HCCS No. 003 of 2009 at Nakawa purportedly filed on 24.9.09 does not exist in the register and records at the Nakawa Court Registry. The application was never filed. On 25.9.09 the respondent, by close of office at Nakawa filed M.A No.323 of 2009 for stay of execution (as per annex.” E” hereto). The series of filed actions by that day was as per the respondent’s application but the applicants application bears a number thereafter yet it was purportedly filed before. (i.e. on 24.9.09), as I am verily informed by the Legal Unit of the respondent.

10. THAT the respondent on 25.9.09 was served upon a photocopy of the application together with a scanned copy of the Order Nisi and from the photocopy of the application the following anomalies are discernible, and the following facts come out clearly:–

i. The document bears no Court stamp of the Court Registry that received it. However, a close scrutiny of the same shows that clear rectangular marks/linings of an embossment do appear surrounding the clear indicated date “24th Sept. 2009” above what is a small signature of somebody who “received it”.
ii. Close scrutiny clearly shows that the embossment was deliberately obliterated to conceal it but nevertheless the marks kept peeping through.

iii. That on 24.9.09 M.A No. 646 arising from civil suit No.003 of 2009 at Nakawa Court was never filed as it does not appear in the register.

iv. That the applicant through its lawyers duped the Learned Registrar, Land Division showing that they had properly filed the application for a Garnishee Order whereas not and by their conduct, duped him into exercising judicial power over it whereupon he issued an Order Nisi freezing the Respondent’s money. (Annex: “D” is attached).

11. THAT the Applicant acted dubiously and its Lawyers/ Advocates unprofessionally and in breach of their ethics in a bid to hastily and improperly attach/freeze the respondent’s accounts. 

12. THAT I am informed by the respondent’s Lawyers in its legal Department that the proceedings are illegal and the application seeking to have the money paid to the Plaintiff/Applicant (Garnishee Order) is illegal and not tenable in law and that the Order Nisi thereupon secured is illegal and ineffective.

13. THAT I swear this affidavit in opposition to the Applicant’s bid, through a Garnishee application to attach the respondent’s monies held by the co-respondents and what is herein stated is true to the best of my knowledge save paragraphs 4, 9 and 11 based on information from the respondent’s Lawyers which I believe to be true and correct.

SWORN at Kampala by the said DAMIAN B. AKANKWASA this 28th day of . . . . . . . . . . . . 2009.

[Signature]

DEPONENT

Before Me

[Signature]

COMMISSIONER FOR OATHS.
THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 143 OF 2009

NATIONAL FORESTRY AUTHORITY.................................. APPLICANT

VERSUS

BEACHSIDE DEVELOPMENT SERVICES LTD.......... RESPONDENT

ORDER
THIS APPLICATION coming up for final disposal this 21st day of October, 2009 before His Worship Ruhinda A. Ntenygo upon hearing the submissions of Mr. N. Nerima, counsel for the applicant, and Dr. J. Akampumuza together with Mr. E. Barata, counsel for the respondent, it is hereby ordered that an interim order doth issue to maintain the status quo as it is at the time of this ruling i.e. the garnishee order nisi shall remain in operation and no garnishee order absolute shall issue until the determination of the main application or orders to the contrary by a competent court. The interim order is made on the following conditions:

1. The applicant shall file conferencing notes in the main application and the appeal and serve the respondent by 28th October, 2009.

2. The respondent shall file and serve conferencing notes by 4th November, 2009.

3. The applicant shall file a reply (if necessary) by 6th November, 2009.

4. The joint conferencing shall be on 9th November, 2009.

5. For avoidance of doubt, the interim order shall lapse on 16th November, 2009 unless competently renewed.

The costs of this application shall abide the outcome of the main application.

GIVEN under my hand and the seal of this honorable court this 21st day of October, 2009.

[Signature]

REGISTRAR

Extracted by:
Nambale, Nerima & Co. Advocates & Legal Consultants,
2nd Floor Conrad Plaza, Plot 22 Entebbe Road,
P.O Box 7217, Kampala.
THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 142 OF 2009

NATIONAL FORESTRY AUTHORITY......................................... APPLICANT

VERSUS

BEACHSIDE DEVELOPMENT SERVICES LTD........................... RESPONDENT

In court;
Before: Hon. Mr. Justice S.G. Engwau, JA; Hon. Lady Justice C.K. Byamugisha, JA
and Hon. Mr. Justice S.B. Kavuma, JA

ORDER

THIS APPLICATION coming up for final disposal this 9th day of December, 2009,
upon hearing the submissions of Mr. Nelson Nerima, counsel for the applicant, and Dr.
James Akampumuza together with Mr. Enock Barata, counsel for the respondent; it is
hereby ordered as follows:

1. This application for stay of execution pending the disposal of the appeal against
the judgment and orders in Nakawa High Court Civil Suit No. 3 of 2009 is hereby
granted.

2. The garnishee order nisi granted by the High Court is hereby lifted on condition
that the applicant deposits with the Registrar of this court a bank guarantee in the
sum of U.S. $1,612,171 within forty five days from the date of this order.

GIVEN under my hand and the seal of this honorable court this 9th day of December,
2009.

[Signature]

REGISTRAR

Extracted by:
Namate, Nerima & Co. Advocates & Legal Consultants,
2nd Floor Conrad Plaza, Plot 22 Entebbe Road,
P.O Box 7217, Kampala.
7th January, 2010

The Hon. Attorney General
Minister of Justice and Constitutional Affairs
KAMPALA

RE: ATTEMPT TO DEFRAUD NFA BY BEACHSIDE DEVELOPMENT LIMITED

I refer to the letter from the Minister of Water and Environment dated the 21st October, 2009 addressed to me and copied to your Deputy concerning the above subject. The Minister also wrote to you the same day expressing the same concerns as she had in the letter to me and requesting you to intervene and stop the fraud succeeding.

From the Minister's briefs, it is clear that the National Forest Authority could not incur any legal obligations in the absence of any binding agreement/contract between it and the company in question. Moreover, even the judge before whom the claim was filed did on 23rd April, 2009 find that the suit disclosed no cause of action against the NFA and advised the parties to the suit so. It is then astonishing that this clear position notwithstanding, some senior NFA officials concerned in the case compiled and purportedly imposed a consent judgment against the Forest Authority in the name of Mr. Apoite Huuga and Fox Odoi the two owners of the said company, more than 30,000,000,000/= (Three billion shillings).

I accordingly direct you to do all that it legally takes and ensure that the consent judgment is set aside. Please, do not delay in your immediate compliance to the above request. This matter must be

[Signature]
be reported to the Judicial Service Commission for investigations possible appropriated action and or advice in respect of the judicial officers who mishandled the case.

By copy hereof, I also direct the NFA Board Chairman together with the line Minister to investigate their officials who dealt with the case especially those who unjustifiably allowed out of court settlements the case against their Employer and in favor of the claimants.

Yoweri K. Museveni
PRESIDENT

Copy to: The Hon. Minister In-charge of the Presidency
The Hon. Minister of Water and Environment
The Board Chairman, National Forest Authority
THE REPUBLIC OF UGANDA
ATTORNEY GENERAL’S CHAMBERS – MINISTRY OF JUSTICE AND
CONSTITUTIONAL AFFAIRS

INTERNAL MEMO

Ref: MJ/AG/39
Date: 23 December 2010
To: Ag. SG-MOJCA
From: AG-MOJCA

Subject: NATIONAL FOREST AUTHORITY (NFA) VS BEACHSIDE DEVELOPMENT SERVICES CIVIL APPEAL NO. 80 OF 2009

1. I acknowledge receipt of a Loose Minute dated 5/11/2010 and signed by Kasibayo Kosia (SA) on the above subject.

2. The Attorney General’s Chambers did not handle this litigation. NFA had their own lawyers who handled the case.

   Your office was called in to handle a fait accompli. Your positive response to attend a meeting should not be viewed as endorsing the manner in which counsel hired by NFA handled the case.

3. The crux of the matter is to minimize negative financial consequences to Government. Your office seems to have considered that Government will lose but lose less through a negotiated settlement. Attorney General’s Chambers cannot accept responsibility for the prior handling of the case and its consequences.

   I urge you to participate substantively in negotiating the settlement and push for optimum reduction of loss to Government on account of this case. I hope that this aspiration is fully accepted by the line Ministry.

Hon. (Dr.) E. Khiddu Makubuya, M.P.
ATTORNEY GENERAL – MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS

cc. Hon. Fredrick Ruhindi, M.P., DAG/MOS/MOJCA

cc. Ag. Director
DCL-MOJCA
24th December 2010

The Chairman
Board of Directors
National Forestry Authority
KAMPALA – UGANDA

COURT OF APPEAL JUDGMENT VIDE NATIONAL FORESTRY AUTHORITY VS. BEACHSIDE DEVELOPMENT SERVICE LTD

I refer to the meeting of 19th December 2010 on the above matter

As you will recall, it was agreed that a report be produced on the matter not later than 21st October 2010. However, none has been availed to date.

You recall that earlier in the year on 23rd February 2010, I wrote to H.E The President on the matter with copies to the Attorney General, the IGG and the Chairman of the Board at National Forestry Authority, among others. I have finally received formal guidance from the Solicitor General’s office on the matter since the said judgment. Their opinion concurs with that of the Sub-committee rendered before the appeal.

As you may recall, I had accepted the recommendation of the said subcommittee, on which the Solicitor General was represented and had, by internal memo of 28th December 2009, instructed the Permanent Secretary to convene a meeting with the parties in the suit with a view to reaching an amicable conclusion of the case. I was made to understand that the efforts of the Permanent Secretary were resisted by the management at NFA. The result of the appeal has been to increase the liability of NFA by US$ 322,000 which continues to grow.

It is my conviction based on the advise referred to above that an appeal to the supreme court would most likely be unsuccessful. Taking the average time for disposal of the matter before the Supreme Court as two years, the liability of NFA could increase by a further US$ 644,000.

In the meantime seven (7) bank accounts of the Authority holding amounts well in excess of Ushs. 4 billion including a substantial amount of NORAD unds remain frozen.
10/20 Spring Road
PO Box 70863
Kampala, Uganda
www.nfa.org.ug

NFA/E/01/10.

12th January 2011

The Solicitor General
Ministry of Justice and Constitutional Affairs
KAMPALA

Attn: Mr. Atoke

RE: NEGOTIATION COMMITTEE IN THE NATIONAL FORESTRY AUTHORITY VS BEACHSIDE DEVELOPMENT SERVICES LTD CASE

I am writing to inform you that NFA has commenced negotiations with Beachside Development Services Ltd in an effort to reach a negotiated settlement of the case.

A committee was formed to which you nominated Mrs. Susan Odong to represent you. Given the importance of this court case, I wish to request you to further nominate Mr. Mwaka Phillip as a second representative to strengthen the negotiation committee. This case requires expert legal advice, which will ably be provided by these 2 senior staff from your institution.

Looking forward to your favorable consideration

Prof. Buyinza Mukadasi
Chairperson, NFA Board of Directors

CC: Hon. Minister for Water and Environment
CC: Hon. Minister of State for Water
CC: Hon. Minister of State for Environment
CC: Permanent Secretary, MWE
CC: Committee Members
CC: Executive Director, NFA
THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 80 OF 2009
BETWEEN
NATIONAL FORESTRY AUTHORITY } ——— APPELLANT

AND
BEACHSIDE DEVELOPMENT SERVICES LTD } ——— RESPONDENT

[APPEAL FROM THE JUDGEMENT OF THE HIGH COURT OF
UGANDA AT KAMPALA (J.MURANGIRA )DATED 16TH SEPTEMBER,
2009 IN CIVIL SUIT NO. 3 OF 2009]

CONSENT JUDGEMENT/SETTLEMENT

IT IS HEREBY AGREED BY CONSENT OF THE PARTIES to settle the
above Appeal, High Court Central Circuit Civil Suit No. 03 of 2009 and High
Court Commercial Division Civil Suit No. 371 of 2009 as follows:-

1. The Appellant shall pay the Respondent the sum of USD 1,900,000 (United
   States Dollars One Million Nine Hundred Thousand Only) as follows;
   (a) US$ 650,000 (United States Dollars Six Hundred Fifty Thousand Only)
   shall be paid immediately upon execution of this Consent Judgement;
   (b) US$ 550,000 (United States Dollars Five Hundred Fifty Thousand Only)
   shall be paid on or before 31st December, 2011;
   (c) US$ 500,000 (United States Dollars Five Hundred Thousand Only) shall be
   paid on or before 30th September, 2012;
   (d) US$ 200,000 (United States Dollars Two Hundred Thousand Only) shall be
   offset by the Appellant from the decretal sum and applied towards the
7. Each party shall bear its own costs in all cases settled in this Consent Judgment.

DATED at Kampala this ........ day of ........ January ........ 2011.

........................................
CHAIRMAN, BOARD OF DIRECTORS
NATIONAL FORESTRY AUTHORITY

........................................
AG. EXECUTIVE DIRECTOR
NATIONAL FORESTRY AUTHORITY

........................................
COUNSEL FOR THE APPELLANT

........................................
MANAGING DIRECTOR
SETTLEMENT
JUDGEMENT

This

is hereby entered in the above terms this 28th day of

January 2011.

_________________________________________________________________

REGISTRAR

JOINTLY DRAWN \& FILED BY:

OKELLO ORYEM & CO. ADVOCATES

Plot 1515 Kira Road

P. O. Box 16557

KAMPALA

BIRUNGI, BARATA \& CO. ADVOCATES

Legal \& Tax Consultants

Plot 3 Portal Avenue

Crusader House

P. O. Box 21086

KAMPALA

AKAMPUMUZA \& CO. ADVOCATES

Property Services Building

Kitante Yusuf Lule Road

KAMPALA

_________________________________________________________________

24 JAN 2011

AKAMPUMUZA \& CO ADVOCATES

P. O. BOX 35572 KAMPALA
19th January 2011

The Attorney General
Minister of Justice and Constitutional Affairs
P.O. Box 7183
KAMPALA.

OUTCOME OF NEGOTIATIONS IN RESPECT OF COURT OF APPEAL JUDGEMENT VIDE NATIONAL FORESTRY AUTHORITY VS. BEACHSIDE DEVELOPMENT SERVICES

I refer to my letter Ref: DEA/156/54/02 dated 17th January 2011 regarding the negotiated settlement of the Court of Appeal Judgement vide National Forestry Authority (NFA) and Beachside Development Services Ltd (BDLS). The government negotiation committee composed of NFA Board and management and the Solicitor General successfully conducted the negotiations.

The outcome of the negotiations is a Consent judgement which NFA Board of Directors has approved and I am generally satisfied with it. I am informed that the Consent judgement will be translated into a High Court Ruling that will finally conclude the NFA Vs BDSL case.

A copy of the Consent judgement is forwarded to you for study and scrutiny. I am looking forward to your advice to enable me to guide the NFA Board and management in smooth implementation of the Consent Judgement.

I thank you.

Hon Maria Mutagamba
MINISTER OF WATER AND ENVIRONMENT

CC: Minister of State for Environment
CC: Minister of State for Water
CC: Permanent Secretary, Ministry of Water and Environment
CC: Chairperson, NFA Board of Directors
CC: Solicitor General, Ministry of Justice & Constitutional Affairs
CC: Ag Executive Director, NFA
CC: Director, Environment Affairs /MWE