TO THE HEAD ANTI CORRUPTION DIVISION

OF

THE HIGH COURT OF UGANDA

PETITION ON REPORTED CORRUPTION SCANDALS

ON

FORMER BANKK OF UGANDA OFFICIALS

KAKURU SAM BRIAN;

PETITIONER

KASEKENDE LOUIS,

JUSTINE BAGYENDA ,

BENEDICT SEKABIRA;

RESPONDENTS

February, 2020

KAMPALA – UGANDA

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1.0 Statutory institutions

Bank Of Uganda

Bank of Uganda (BoU) is the Central Bank of the Republic of Uganda. The primary purpose of the Bank is to foster price stability and a sound financial system. Together with other institutions, it also plays a pivotal role as a centre of excellence in upholding macroeconomic stability.

Parliament Of Uganda (COSASE)

The Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) is mandated to examine the reports and audited accounts of Statutory Authorities, Corporations and Public Enterprises and in the context of their autonomy and efficiency, ascertain whether their operations are being managed in accordance with the required competence and where applicable, in accordance with sound business principles and prudent commercial practices.

to examine the income and expenditure of any public corporation and state enterprise, or other body or organisation established by an Act of Parliament together with the Balance Sheet and Statement of Profit and Loss Accounts which the Auditor General may have been requested to prepare under the Constitution or under the provisions of statutory orders regulating the financing of a particular corporation, enterprise or body and the report of the Auditor-General on them.

Office Of the Auditor General

The Office of the Auditor General (OAG) is an Institution established under the provisions of Article 163 of the Constitution of the Republic of Uganda. Its mandate, functions and powers are enshrined in the National Audit Act, 2008.

The main function of the OAG is to audit and report on the Public Accounts of Uganda and of all public offices or bodies and/or organizations established by an Act of Parliament.

2.0 Criminal Suspects

Louis A. Kasekende

Ugandan economist. He was the Deputy Governor of the Bank of Uganda, the country's central bank. He began his five-year term in this position on 18 January 2010. His second term of office expired in January 2020

Benedict Sekabira

He is an economist by profession, served at BOU for about 30 years as Director Commercial Banking and later as the director Financial Markets Development at Bank of Uganda.

Justine Bagyenda

Mrs Justine Nuwagaba Bagyenda worked at Bank of Uganda for 35.4 years of which 13 years she was an Executive Director in charge of the Directorate of Supervision until she retired from the services of the Bank in July 2018.

3.0 Constitutional supremacy

Constitutional supremacy means that the constitution takes precedence over all Other laws in a particular country, for example, legislation or case law. It is Important to ensure that a constitution has legal supremacy: if a government Passed a law that violated the constitution – was not in accordance with or Conflicted with a constitutional provision – such a law could be challenged in a Court of law and could be overturned on the grounds that it is 'unconstitutional'. The Constitution of Uganda makes provision for constitutional supremacy.

Article 2(1) of Chapter 1 of the Constitution specifically states that: 'This Constitution is the supreme law of Uganda and shall have binding force on all Authorities and

persons throughout Uganda.' Article 2(2) expands on this, stating that if any law or any custom is inconsistent with any of the provisions of the Constitution, 'the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void'.

4.0 Prerogative Power

This is President's constitutionally based authority to declare policy, take action, and make law without parliament support or in the face of inconsistent parliamentary legislation. This authority may be seen as a corollary of the separation of powers under which the President has exclusive executive power that parliament may not invade because parliamentary authority is limited to legislative powers. Executive prerogative may also refer to certain emergency powers under which the President may act contrary to the Constitution, such as spending funds without an appropriation or contrary to an act of parliament that would properly be classified as a legislative act. In the view of some eighteenth-century political theorists, the President could act extra constitutionally or illegally if circumstances required, but he would have to seek subsequent ratification of the act.

5.0 Background;

It's a year now after the parliament through its committee on Committee on Commissions, Statutory Authorities and State Enterprises recommended to hold BoU officials culpable for several corruption scandals they involved in during the closure

of defunct banks, our economy, as well as communities and families across the country, continue to experience lack of public confidence and trust in the banking industry. Millions of Ugandans have lost their jobs, money and the economy is still struggling to rebound. (Annex 1)

Auditor General (AG)'s report had revealed that Bank of Uganda (BoU) did not follow the lawful procedures in the closure of Crane Bank and six other commercial banks (Annex 2). The special audit was solicited by the Parliamentary Committee on Statutory Authorities and State Enterprise (COSASE) to guide a wider investigation the committee intends to carry out on the controversial sale of seven defunct banks.

This appeal raises fundamental questions of constitutional law of Uganda in which Anti-corruption Division must hold the former BoU staff criminally culpable for the corruption allegations (Auditor General's report, 2018, Katuntu Reports, 2019)

6.0 Fraud, Corruption Cases

- The former Bank of Uganda (BoU) top officials conspired with the mysterious Nile River Acquisition Company as the company bought off secured debts of International Credit Bank (ICB), Greenland Bank and Cooperative Bank at Shs8.89 billion representing a 26 percent discount of the total secured loans. "The loan portfolio sold included secured loans of Shs34.5 billion which had valid, legal or equitable mortgage on the real property and were supported with legal documentation. I noted that the contract price of Shs.8.898 billionn

represented 26% of the total secured loan portfolio and 7 percent of the total loan portfolio implying that the loans were sold at a discount," The Auditor General John Muwanga says in his special audit report of BoU on defunct banks. (Annex 3)

- The Financial Institutions Act (FIA) provides ways in which the Bank of Uganda may take over and resolve the financial institution that is in distress. BOU fraudrently closed Crane Bank ignoring sections 89 (1), (2) (e) and (9) of the FIA Act (Annex 1)

- Corruption implicated former BOU official fraudulently closed Central Bank without conduction of an evaluation of the assets and liabilities of Crane Bank before they were transferred to DFCU Bank. "On April 10, 2018, I requested for P&A agreement, including details of the assets and liabilities transferred after taking into account the requisite valuation. I noted that BOU did not carry out a valuation of the assets and liabilities of CBL. In the absence of the valuation, I could not establish how the terms for the transfer of assets and liabilities in the P&A were determined," Mr Muwanga's Report reads in part (Annex 2).

- BOU was deliberately involved in obstruction of justice to Chairman Ruparelia Group through misappropriation of taxpayers' money to hire MAAKS Advocates that created a scenario of allegedly taking Shs 397 billion

out of the financial institution in alleged fraudulent transactions and land title transfers. MAKKS Advocates had been previously hired as lawyers for Ruparelia Group a case that was crashed in court as a conflict of interest (Annex 3)

- ACD Of The High Court must investigate and prosecute former BOU corruption implicated officials the circumstances that led to the closure of Cooperative Bank after unearthed questions regarding the particular identity of the bank that was closed, after two groups of shareholders came up claiming ownership of the bank, with each sharing the same names. (Annex 1)

- Greenland Bank equity investment in African Export-import Bank (Egypt) worth USD 45,000 had accumulated dividends of USD 22,410 as at 30th November 2015, however, the liquidator (BOU) had not sold off the shares and therefore the funds were embezzled by the corruption implicated former BOU officials (Annex 1)

- Bank of Uganda (BOU) officials fraudulently closed International Credit Bank (ICB) without an inventory detailing the state of affairs of the defunct International Credit Bank that was closed in 1998. This was an additional financial institution for, which the Central Bank failed to produce an inventory, the first being Teefe Trust Bank that was closed in 1993 (Annex 2).

- The petitioner wants Bank of Uganda Governor Emmanuel Tumusiime Mutebile was requested by COSASE to prepare a response to the demand for Shs20b from

the Central Bank by businessman Chris Tushabe Karobwa. Mr Karobwa petitioned Parliament faulting former BoU officials for bringing his business empire down after officials mismanaged properties worth Shs1.42b which he had mortgaged in Cooperative Bank before it was closed and liquidated in 1999. He also claims that Shs3 billion that was on his account in Cooperative Bank at the time of closure was stolen on top of BoU ceasing and grounding his two Mercedes Benz Lorries.

7.0 Conclusion and Recommendations

That the legal principle of constitutional supremacy requires that the executive must comply with the enacted will of parliament that recommended criminal investigation and prosecution on BOU staff officials who were criminally implicated in the fraudulent schemes that caused financial losses on Ugandan taxpayers' money (Katuntu Report February 2019)

The legal principle of constitutional supremacy is engaged by the decisions of executive chaired by the HE president Of Uganda to exercise a prerogative of power to investigate and commence investigation and prosecution on the corrupt former BOU officials

It is well established that the relevant constitutional supremacy of HE the President of Uganda will not itself exclude judicial review of the state of affairs in the

mismanagement of the BOU tax payers' money during and after closure of defunct banks

The relevant question in assessing justiciability in relation to the exercise of constitutional supremacy is whether there are legal principles and standards which can be applied by the Anti-Corruption Division of the High Court on the former BOU corruption implicated officials

The constitutional powers of the Anti-Corruption Court Division must not be excluded here because the decision under challenge is of political mandate and sensitivity to all law a bidding citizens of Uganda

In the present context there are legal principles and standards. The legal principle of parliamentary severity and the constitutional law principles concerning abuse of power after parliament of Uganda has exercised its will on issues of national importance on mismanagement of public funds by Bank Of Uganda by its corruption implicated officials

The petitioner respectively and diligently submits that the Anti-Corruption Court Division of the High Court of the republic of Uganda rationally recognizes and applies the legal principles to litigate over alleged mismanagement of tax payers' money and corruption scandals in the Bank of Uganda

8.0 Limitations

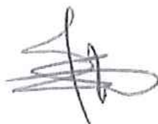
The petitioner respectively emphasizes what the proceedings will not be about. That the court is not being asked to express any views about the wisdom of the Executive chaired by H.E the President of the republic of Uganda after parliament had pronounced itself on the defunct banks (kantuntu report 2019) but to expedite a judicial review.

The petitioner hereby interests the Anti-Corruption Court Division of the High Court of Uganda to read the further statements of the submission in the available petitioners accompanying documents

The petitioner asserts that the above mentioned three suspects were responsible for the corruption scandals, mismanagement of public funds at BOU during and after closure of defunct banks (Katuntu; 2019)

9.0 Way forward

Recommendations can also be made by ACD Of the High Court of Kampala to the Director Of Pubic Prosecution to investigate and conduct private prosecution with the support of police CID



Compiled by;

KAKURU SAM BRIAN (PETITIONER)

WITNESSED BY;

BITWIRE ROBERT

EXTRACT OF THE DAILY HANSARD
(UNEDITED COPY)

Thursday, 21 February 2019

Parliament met at 1.27 p.m. in Parliament House, Kampala.

PRAYERS

(The Speaker, Ms Rebecca Kadaga, in the Chair.)

MOTION FOR ADOPTION OF THE REPORT OF THE COMMITTEE ON COMMISSIONS, STATUTORY AUTHORITIES AND STATE ENTERPRISES ON THE SPECIAL AUDIT REPORT ON THE CLOSURE OF COMMERCIAL BANKS IN UGANDA

5.41

THE CHAIRPERSON, COMMITTEE ON COMMISSIONS, STATUTORY AUTHORITIES AND STATE ENTERPRISES (Mr Abdu Katuntu): Thank you, Madam Speaker. It is my honour to present the report of the Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) on the special audit report of the Auditor-General on the defunct banks.

Madam Speaker, I also beg to lay on the Table the minutes of the proceedings duly signed by the chairperson and the Clerk plus the soft copy of the entire proceedings. I beg to lay.

I also beg to lay on the Table the original copy of the signed report of the committee.

This is the report of the Committee on COSASE on defunct banks.

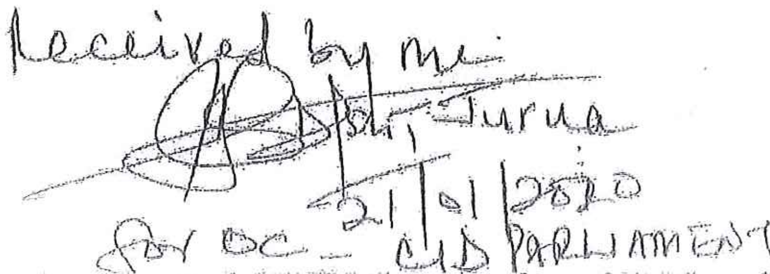
Introduction

Having received numerous complaints about the closure of commercial banks by the Bank of Uganda vide letter Ref: AB:70/288/01 dated 28 November 2017, the Committee on Commissions, State Authorities and State Enterprises requested the Auditor-General to undertake a special audit on the closure of commercial banks by Bank of Uganda.

Section 13 (3) of the National Audit Act, 2008 empowers Parliament or the minister to request the Auditor-General to conduct a special audit and to make a special audit report. In this respect, it should be noted that under section 18 of the Act, the Auditor-General is empowered to inquire into, examine, investigate and report as he considers necessary, on the expenditure of public monies disbursed, advanced or guaranteed to a private organisation or body in which Government has no controlling interest.

This report covers a total of seven defunct banks that were closed during the period 1993 to 2016. These banks include:

1. Teefe Trust Bank
2. International Credit Bank
3. Cooperative Bank
4. Greenland Bank
5. Global Trust Bank Uganda
6. National Bank of Commerce
7. Crane Bank Limited



Chief Executive and ultimately the decision maker was only briefed for his information of a decision already taken by subordinate officers. The letter ends thus: "... the above brief is submitted for your information."

8. The committee observes that by the time a delegation of JN Kirkland together with Mr Ssekabira travelled to the USA to meet the prospective purchaser, M/S Octavian Advisors Plc had already made a deposit of US $5 million on an escrow account with Citi Bank, New York. It is therefore mind boggling that only US $200,000 would later be paid added to constitute the full purchase price of US $5.2 million as the full consideration for a portfolio whose original offer was US $10 million. The exclusivity that had already been granted meant that M/S Octavian Advisors Plc had no impetus to up or meet their earlier offer.

9. The committee further notes that in all the business transactions involved in this transaction, the purchaser and her agent have not paid the requisite taxes.

10. The loan portfolio sold to M/S Nile River Acquisition Company is now being managed on their behalf by a local company called M/S SIL Investments Ltd. M/S SIL Investment has been charging an interest rate varying between 27 and 25 per cent on the loan portfolio and recovering monies from different debtors; ordinary people who had mortgaged their property.

11. While appearing before the committee, BoU and M/S SIL Investments Ltd, when tasked, failed to produce evidence on the legal existence of M/S Nile River Acquisition Company (NRAC) at the time of making this report. This notwithstanding, the committee did a quick internet search, which revealed the following:

That M/S NRAC No. 007463 was incorporated on 26 September, 2007 (over 11 years ago). Company type is limited by shares, jurisdiction; Mauritius, status; 'defunct'. The source of this information is the Mauritius Ministry of Finance and Economic Development, companies division and the site is given in the report.

12. M/S Nile River Acquisition Company agent, SIL Investments Ltd is not VAT registered and accordingly has never remitted tax derived from the income earned on their commission.

Committee recommendations

1. The committee concludes that the transaction between BoU and M/S Octavian Advisors Plc and her agents lacked transparency and the officers involved should be held responsible for the commissions and omissions, which resulted in not marshalling the greatest amount from the assets of the distressed financial institutions.

2. The committee further recommends that the officers involved should be held responsible for conflict of interest.

3. The fraudulent business activities being conducted by M/S SIL Investments, on behalf of a non-existent or defunct M/S Nile River Acquisition Company, should immediately cease and –

   (a) the Inspector General of Police is required to immediately, on adoption of this report, go and seize all the land titles still in the possession of Mr Kakembo Katende of M/S JN Kirkland and Associates and M/S SIL Investments arising

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT)

MISC. APPLICATION NO. 1063 OF 2017

(ARISING FROM CIVIL SUIT NO. 493 OF 2017)

SUDHIR RUPARELIA ::APPLICANT

VERSUS

1. MMAKS ADVOCATES

2. AF MPANGA ADVOCATES (BOWMANS UGANDA)

3. CRANE BANK LIMITED (IN RECEIVERSHIP)

4. BANK OF UGANDA ::RESPONDENTS

BEFORE: HON JUSTICE DAVID K WANGUTUSI

RULING

In the application Sudhir Ruparelia, referred to as the Applicant seeks declarations against MMAKS Advocates, AF Mpanga Advocates – Bowman's Uganda, Crane Bank Limited (in Receivership) and Bank of Uganda, referred to in these proceedings as the 1st, 2nd, 3rd and 4th Respondents.

The declarations he seeks are:

1) That the 1st and 2nd Respondents are conflicting in acting for the 3rd and 4th Respondents and therefore in violation of the advocate client relationship and the Advocates (Professional Conduct) Regulations.

Sixthly that the 3rd and 4th Respondents are at fault for appointing the 1st and 2nd Respondents, knowing very well that the latter had all along acted for the Applicant. That such appointment was in bad faith, whose intention was to enable the 3rd and 4th Respondent get an advantage to the prejudice of the Applicant.

On these grounds the Applicant sought an injunction against the 1st and 2nd Respondent's appearance in the suit against the Applicant.

The 1st and 2nd Respondent in reply contend that they acted for the 3rd Respondent and not the Applicant. That in that case they could not have come across any facts which are prejudicial to the Applicant.

Deposing specifically on behalf of the 2nd Respondent, William Kasozi its Managing Partner in paragraph 4 of the 2nd Respondent's Affidavit in Reply states;

4. *"That prior and without prejudice to my more detailed depositions below, I wish to state the following fundamental and immutable facts:*

(a) At no time since its founding in 2003 has AF Mpanga, Advocates acted for the Applicant. None of our Partners and Associates have ever been engaged or in any way executed any instructions for the Applicant.

(b) It follows from the fact that I have stated in (a) above, that we AF Mpanga , Advocates are not aware of any facts which may be prejudicial to the Applicant in conduct of his defence of HCCS No.493 of 2017 by virtue of his having been our client.

(c) All of the facts that we know about this case are as a result of being Advocate for the 3rd Respondent upon the instructions of the 4th Respondent who is the former's Receiver and

Talking about the claim namely the five (5) monetary and one (1) property claims by Crane Bank against SR, Ernest Sembatya deposed in paragraph 6;

> *"These facts had been fraudulently concealed by SR and his associates/co-conspirators prior to the issuance of PWC's Forensic Audit Report. It cannot therefore be said and neither does SR aver in his Affidavit that he disclosed to the 1st Respondent any matters pertaining to this fraud. Accordingly the contention that the 1st Respondent is privy to prejudicial facts relevant to the extraction claims the subject of this suit and obtained other than from PWC Forensic Audit Report is untrue."*

From the foregoing excerpts, the 1st and 2nd Respondent freely concede that they worked and represented the 3rd Respondent. They also concede that all the time they have represented the 3rd Respondent, the Applicant has been a shareholder and director. Their contention however is that while they represented the 3rd Respondent which is a corporate person on its own, they did not represent the Applicant.

The issue here now is to find out whether in the course of representing the 3rd Respondent, they also handled matters with the Applicant, which are going to arise in HCCS No. 493 of 2017.

Part of the answer to the question lies in the pleadings. Paragraph 8 of the Plaint reads;

> *"The 1st Defendant founded the Plaintiff in 1995 and has been a Director and Vice Chairman of the Board of the Directors since its foundation."*

The Plaint then goes on in paragraphs 8.1, 8.2, 8.3, 8.4 and 8.6 to allege how the Applicant fully controlled the 3rd Respondent through other bodies, concluding in paragraph 8.6 as follows;

power to determine the appointment of the majority of the directors of that financial institution." In addition, **"the power to appoint or remove without concurrence of any other person, all or the majority of such directors."**

The 1st and 2nd Respondents also seem to allege when they refer to section 24 of the Financial Institutions Act, that the Applicant through his powers and authority could **"prevent any person from being appointed a director without his consent."**

In the Plaint they allege that the Applicant owned 100% shares. In my view, they suggest that the 3rd Respondent was the Applicant and vice versa.

As it stands, one can safely say that without the Applicant's say, the 1st and 2nd Respondents could never be retained and where they were retained, the Applicant could sack them without seeking any ones approval. The picture painted of the Applicant is that the instructions to the Advocate came from him more than the 3rd Respondent. Under such an arrangement, a fiduciary relationship would be created more between the 1st and 2nd Respondents and the Applicant than with the 3rd Respondent.

Furthermore, in a situation such as that one confidential material prejudicial to the Applicant are more likely to emerge.

The 1st and 2nd Respondents have stated that at no time did the Applicant ever reveal his or the 3rd Respondent's secrets. The legal position however is that the Applicant now no longer needs to prove that he revealed any secrets because they are presumed to flow from the Applicant to the Respondents during their interaction even where the Applicant did not intend to reveal them.

The presumption is that there is a possibility of disclosure and although some authorities state that the Applicant should plead the secret information he

The sum total is that in the several years that the Applicant and the 1st and 2nd Respondents have interacted, ***chat this*** and ***chat that*** about the 3rd Respondent and the Applicant certainly took place.

In my view, a lot of information must have flowed from one to the other. A fiduciary relationship having existed as I have stated above, it would be unwise to allow the 1st and 2nd Respondent to represent any party against the Applicant in this case HCCS No. 493 of 2017.

Conflict of interest may not exist between an Advocate and a party at the onset of the suit, but an amendment of the pleadings or filing of a Written Statement of Defence, or a Counterclaim or addition of a Third Party may create a conflict of interest that was not previously expected.

This realignment of the parties seems to have arisen in the instant case when the Applicant filed a Counterclaim.

Mr. Mpanga negotiated and drafted the implementation agreement that detailed a settlement of issues between the Applicant and the Plaintiff. The implementation agreement was to operationalise and ensure the smooth flow of the Confidential Settlement and Release Agreement (CSRA). The CSRA contained clauses intended to sort out the differences between the Applicant and the Plaintiffs.

The CSRA however soon developed problems and the parties seem to have abandoned it. In his Defence and Counterclaim the Applicant alleged that the Respondents had breached the Implementation Agreement and he had as a result suffered damage. In the list of witnesses he included David Mpanga.

The moment Mr. David Mpanga participated in the negotiations and even went as far as drafting the implementation agreement, he ought to have known that should the documents' implementation and implications come into issue, he and his associates in making it would opt out of the realm of counsel into that

must be struck out. The remedy is anodyne - simply cease to appear and impliedly, offer other evidence if necessary. The fundamental principle in Regulation 8 is that a way should be sought of presenting the case or application without overlapping roles of Counsel."

In the counter claim, the Applicant alleges breach of contract in which he contends that Clause 12 which required a return of US $ 8 million on account of breach of contract by the Respondents has not been fulfilled. He also contends that he is entitled to release of securities namely: LFR 130 Folio 18 Plot M418 Nakawa Industrial Area and LRV 1239 Folio 2 Plot 7 Parliament Avenue Kampala as provided for in Clause 4.1 of the Confidential Settlement and Release Agreement (CSRA) and Clause 2 of the Assignment and Assumption Deed.

Evidence is abundant that Mr. Mpanga and his firm negotiated and drafted the resultant agreement. Where provisions of the Agreement come into question, it is good thinking that the author and subsequently those who undertook to implement it would be or are likely witnesses.

Mr. Kanyerezi of the 1st Respondent submitted that the 1st and 2nd Respondents' lawyers cannot be called as witnesses. While that is normally the position, there are exceptions. The exception lies in section 125(b) wherein the advocate would disclose any fact observed by any advocate in the course of his or her employment as such, showing that any crime or fraud has been committed since the commencement of his or her employment.

In this suit, a big portion of it talks of nothing but fraud and illegal extraction of money and transfer of property.nIn my view, these allegations place the matter in the arena of exceptions.

21/12/2017:

PRESENT:

- Peter Kabatsi }
- Joseph Matsiko }
- Elly Karuhanga }
- John Jet Tumwebaze } for the Applicants
- Moses Adriko }
- Bwogi Kalibala } for 1st espondent
- Timothy Lugayizi }
- Mercy Odu } for 2nd Respondent

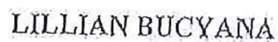
In Court
- Dr. Sudhir Ruparellia representing both Applicants
- Titus Mulindwa }
- Ms Lorna Gariyo } representing Bank of Uganda
- Rose Emeru Court Clerk

Kabatsi: Your Worship this is for ruling.

Court: Ruling delivered in open court.

Adriko: Your Worship we have instructions to appeal the ruling and request that court expedites the extraction and certification of records.

Court: The certified record shall be prepared and parties notified accordingly.



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LILLIAN BUCYANA

A/REGISTRAR

21/12/2017