



VANTAGE CAPITAL

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PUBLIC STATEMENT ON VANTAGE CAPITAL'S DISPUTE WITH THE SIMBA COMPANIES AND THEIR PROMOTERS

In December 2014 Vantage Capital made an investment in Uganda that has recently become the centre of media misinformation and disinformation. We find it pertinent to set the record straight.

Vantage Capital is an Africa-focused fund manager with offices in Johannesburg, South Africa. Vantage was founded in 2001 and has to date raised funds of over US\$1.4 billion. Vantage's Mezzanine Division has made 33 investments into 11 African countries, making it the largest and most experienced independent mezzanine funder on the continent.

Investors in Vantage's Mezzanine Fund include major international investors of repute, including several European development finance institutions, African pension funds as well as development banks. The Mezzanine Fund's manager is a licensed and registered financial services provider, regulated by South Africa's regulator.

Summary of Events:

Simba Properties Investment Company Limited (SPIC) (as borrower) and Mr Patrick Bitature (as guarantor and promoter) borrowed US\$10,000,000 (Loan) from Vantage to refinance a portion of the Simba Group's existing debt and to fund the completion of Simba's Skyz Hotel. Mr Bitature and the Simba Group granted security for the Loan in the form of charges over their shares and legal mortgages were registered over certain properties owned by them (Security).

The Loan matured and fell due for repayment in December 2019. Instead of making efforts to repay the Loan, the Simba Group and Mr Bitature resorted to litigation, claiming that Vantage's Loan was invalid and signed under duress and therefore Simba, having used the money, did not have to repay it. Unfortunately, such tactics have been employed by Mr Bitature before, both against Vantage and against other Simba Group lenders, including a South African bank. **All of the above took place well before the rise of the Covid-19 pandemic.**

Recently, the URSB blocked Vantage's attempt to exercise its security rights over Simba Group's shares. Vantage approached the High Court of Uganda to compel the URSB to give effect to its legitimate share charges. The court dismissed Vantage's application based on a technicality, that the Vantage Partnership in question was not registered in Uganda and therefore lacked the standing to sue or be sued in Uganda. The court did however find that if Vantage was registered, it would have ruled in favour of Vantage against the URSB. **The court made no findings as to the validity of the underlying legal agreements.**

Technicalities aside, the underlying Loan and Security agreements remain valid. **To date, the Simba Group and Mr Bitature have not paid a single cent of their indebtedness under the Loan.** The result of not servicing any interest, compounding over 7 years, is that the indebtedness has ballooned to over US\$34,000,000.

Vantage will not be deterred by the Simba Group's and Mr Bitature's continued abuse of court processes and public institutions, nor by their recent "PR Campaign", in their ongoing efforts to avoid their creditors and lawful obligations. Vantage will persist in the recovery of its long-overdue Loan, exercising its rights against the Security if need be.

We note that the behaviour of the Simba Group and Mr Bitature in borrowing money from international lenders and then denying its obligations does not reflect well on Uganda's international image as an investment destination, nor does the ease at which the Simba Group has been able to abuse the legal system and its institutions to frustrate its lawful creditors. However, we remain faithful and confident that justice will ultimately prevail.

For those interested, the below sets out the events summarised above in greater detail.

1. On 11 December 2014 Vantage concluded a Mezzanine Term Facility Agreement (Loan Agreement) with SPIC, represented by Mr. Bitature (who also gave a personal guarantee). Pursuant to the Loan Agreement SPIC received a loan of US\$10,000,000 from Vantage's second mezzanine fund (structured as a limited partnership in South Africa, the most common structure for private equity and private credit funds). Three other Simba group companies: Linda Properties Limited, Elgon Terrace Limited, and Simba Telecom Limited (the Simba Companies) also signed the Loan Agreement and guaranteed the loan and provided securities for the loan.

2. Among other securities, the Simba Companies provided Vantage with charges on shares in the Simba Companies as well as legal mortgages on certain properties owned by both the Simba Companies, Mr. Bitature, and his wife Carol Bitature. Mr Bitature provided a personal guarantee.

3. Vantage provided the above funding to SPIC to refinance its existing debt, to fund completion of its Skyz Hotel and to provide working capital, in line with Vantage's strategy to support mid-market family-owned businesses that are seeking to raise growth capital without having to dilute their shareholding. At the time the transaction was concluded and publicly announced (December 2014), Mr. Bitature stated in the press (seemingly pleased with the deal struck) that:

"Vantage brings an important and exciting new model of financing to the East African region. Simba Group is pleased to have found a strong mezzanine financing partner who provides medium-term growth capital but does not want to take our hard earned equity," - Patrick Bitature, the Founder and Chairman of Simba Group"

<https://venturesafrica.com/vantage-capital-delivers-10m-funding-to-simba-groups-investment-subsidiary/>

<https://www.africaoutlookmag.com/industry-insights/article/627-vantages-fund-ii-commits-10-million-to-simba-properties-uganda>

4. In December 2017 the Simba Group defaulted under the Loan Agreement, having taken out significant 3rd party debt without Vantage's consent, and having failed to service interest under the Loan (which was supposed to be serviced quarterly). SPIC and Mr Bitature launched legal action (Misc. Cause 12 of 2017) and obtained interim injunctions against Vantage to avoid/delay the consequences of that default.

5. Instead of pulling the rug out from Mr Bitature and the Simba Group by proceeding to enforce, we engaged with them to restructure the loan and agree a plan for the Group to find its feet, improve performance and eventually settle our loan in December 2019. Agreement was reached, and SPIC and Mr Bitature abandoned their legal action.

6. In December 2019 we experienced Déjà vu – as the Loan fell due SPIC and Mr Bitature (once again) resorted to court action to avoid their debts and prevent/delay Vantage from exercising its rights. We are now aware (as are some other creditors of the Simba group) that this is the Simba Group's, and Mr Bitature's, preferred modus operandi. And so, SPIC and Mr Bitature commenced HCCS 988 of 2019 at the Commercial Court in Uganda, claiming that the Loan was illegal, or in the alternative, had been signed under undue influence. They once again obtained Interim Orders temporarily restraining Vantage from further actions.

7. **Importantly, all of the above occurred well before the existence of the Covid-19 pandemic.** The cold truth is that Simba Group's (and Mr. Bitature's) current financial woes originated long before the Covid-19 pandemic, which further damaged the business. Having not received a single cent to date in respect of our Loan granted in Dec 2014, we can hardly be criticised for our legal enforcement, which began well before Covid-19.

8. In response to HCCS 988 of 2019 we filed Misc. Application 201 of 2020, which resulted in Simba's baseless suit and related interim orders being dismissed and vacated. In determining that Application in favour of Vantage, the trial judge stated:

"I find this claim by the Respondents [SPIC and Mr Bitature] escapist and unserious. This is more so because this court is in position to take judicial notice of the fact that the persons behind the Respondents, particularly the third Plaintiff in the amended plaint [Mr Bitature], are some of the most polished and astute business personalities there are in Uganda. The Respondents were well and independently advised by senior and prominent legal professionals in Uganda. Faced with such facts, my view is that a feeble claim of duress and/or undue influence of the nature as this one amounts to an insult of own intelligence on the part of the Respondents and their advocates."

9. Mr. Bitature was the third plaintiff to whom the court referred in the above statement. The above court finding puts to rest any contentions as to the fairness of the bargain between the parties.

10. All interim orders having been vacated, we were free to enforce and recover what is owed.

11. Following the above decision, we moved to perfect our securities over the Simba shares that had been provided as collateral. We met all the conditions for registration of the said documents, including the payment of stamp duty in the sum of Ug. Shs 854,023,850.

12. The Uganda Registration Services Bureau (URSB), after intervention by SPIC and Mr Bitature, declined to register the said documents.

13. We took exception to URSB's unlawful decision and commenced Misc. Application 205 of 2021 to compel the URSB to effect the share transfers. This Application was determined on 9th May 2022. The Trial Judge dismissed this Application on the grounds that:

(a) Based on the evidence he had before him, he was not satisfied that the Vantage Partnership, from which the borrowers had received the loan, exists in South Africa;

(b) Since the Vantage Partnership was not registered in Uganda, it did not have the capacity to sue or be sued in Uganda.

14. The Trial judge also held, however, that had he found that the Vantage Partnership had locus (legal capacity) to sue or be sued in Uganda, he would have issued writs of Certiorari quashing URSB's decision, and Mandamus, compelling URSB to register the said documents - in effect, confirming that the actions of the URSB in declining to register the share transfers were unlawful.

15. While we reserve the right to challenge the decision through appropriate forums, we note the current position of the court and we are working with our lawyers to take the necessary and appropriate actions in this regard.

16. We note, however, that several statements and publications have been issued to the public following the 9 May 2022 judgment that misrepresent (we believe

deliberately) the outcome of Misc. Application 205 of 2021. We find it pertinent to clarify as follows:

(a) The Court did not determine the long-standing dispute between the parties. It simply stated that an unregistered foreign partnership cannot sue or be sued in Uganda.

(b) The court did not make any finding as to the legality of the contracts between the parties, neither did it stipulate that the Borrowers in this instance should not pay their debt. In the absence of any such finding, the funding agreements remain valid, and the debt remains.

(c) The Commercial Division of the High Court in Misc Application 201 of 2020 has already ruled that the High Court of Uganda has no jurisdiction to determine the validity of the said agreements (any such dispute on that issue being subject to an ICC arbitration clause).

(d) It is patently false to suggest that the court held that the Vantage Partnership does not exist at all or that it is a "ghost" that needs to be exorcised. The court made no such determination. The court only settled the question on non-registration in Uganda.

(e) **Throughout all the litigation between the parties, the Simba Companies have never contested the existence of our partnership or denied having taken the loan from our fund.**

17. In summary, despite recent (and false) claims to the contrary, we remain entitled under our Loan Agreement and related documents to the recovery of our long-overdue debts against SPIC and Mr Bitature. Working with our duly instructed lawyers, we will persist with the enforcement of our rights as we are duty-bound to our investors to do.

18. Notably, despite having borrowed the US\$10,000,000 from us more than seven years ago in December 2014, to date, neither SPIC nor Mr Bitature have managed to repay even a single cent of what is owed. An ordinary man in Mr Bitature's position would no doubt be embarrassed, perhaps ashamed, by this fact. But Mr Bitature appears to be unburdened by such sentiments.

19. We remain faithful and confident in the Ugandan judiciary and that justice will ultimately prevail. However, we note that the circumstances of our relationship with the Simba Group and Mr. Bitature does not augur well for Uganda's international image as an investment destination.

20. Investors world over are concerned that borrowers who enter serious business undertakings can so easily abuse state institutions in a country with the kind of stable and able leadership that Uganda has, to avoid their creditors and debt obligations ad nauseum. We trust that sooner rather than later, the concerned authorities will address this issue and arrest a looming crisis of confidence in Uganda's credentials as an investment destination.

21. We derive no pleasure from publishing this statement and do not believe it to be proper behaviour to air out one's private disputes or business affairs in the press. We in fact deliberately refrained from such "PR tactics". In response to the recent media attention and Mr Bitature's "PR Campaign" however, we are duty bound to set the record straight.

22. We trust that this places the recent controversy in proper focus and provides the full context. We remain committed to engaging with all concerned stakeholders to ensure that this matter is resolved without further unnecessary histrionics.

FOR: VANTAGE MEZZANINE FUND II PROPRIETARY LIMITED, ultimate general partner of the VANTAGE MEZZANINE FUND II PARTNERSHIP

and

VANTAGE CAPITAL FUND MANAGERS PROPRIETARY LIMITED