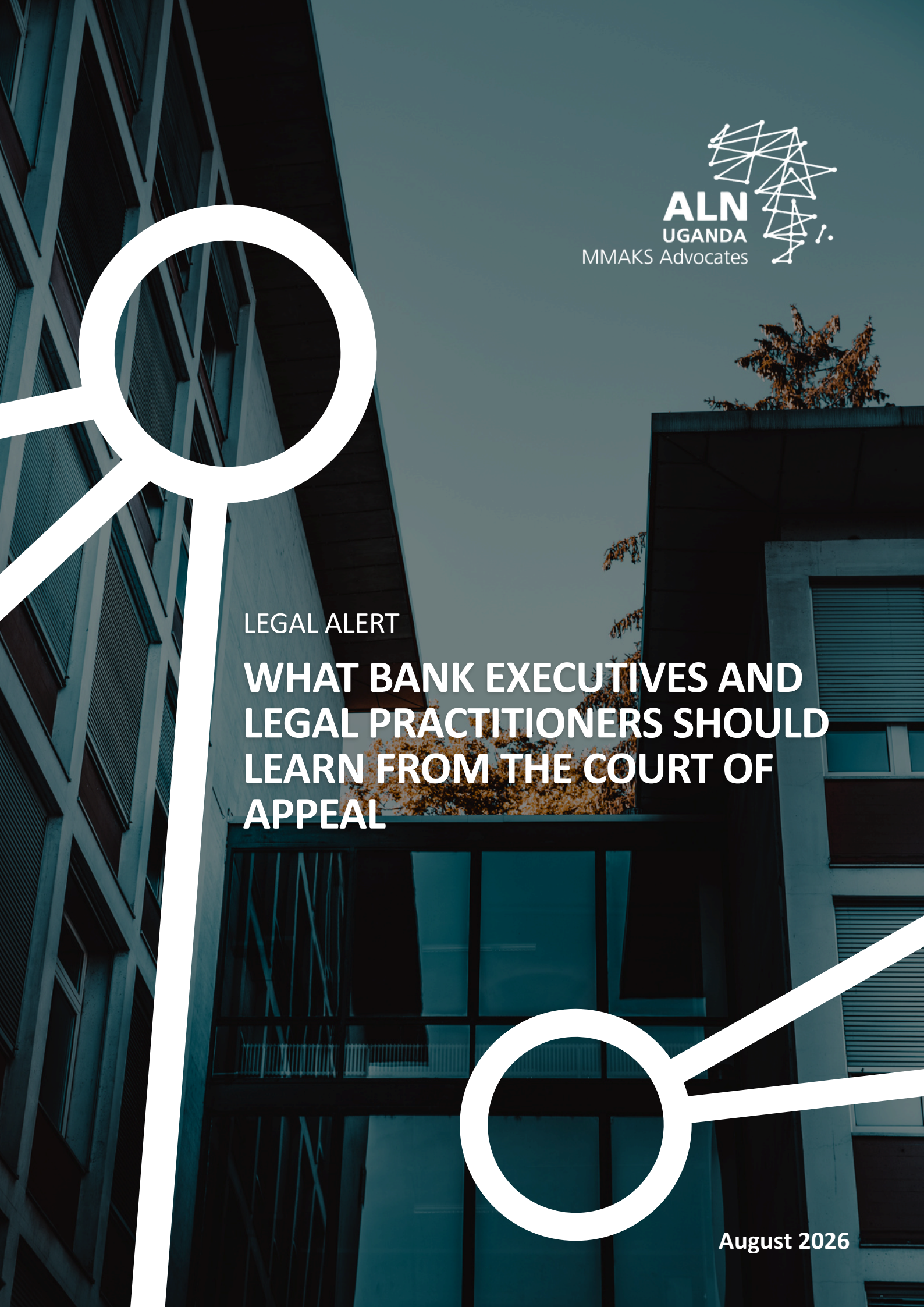

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LEGAL ALERT

WHAT BANK EXECUTIVES AND LEGAL PRACTITIONERS SHOULD LEARN FROM THE COURT OF APPEAL

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FIT AND PROPER IS NOT A ONE-OFF TEST: WHAT BANK EXECUTIVES AND LEGAL PRACTITIONERS SHOULD LEARN FROM THE COURT OF APPEAL

The Court of Appeal's judgment in ***John Kizito v Bank of Uganda, Civil Appeal No. 78 of 2017*** (delivered on 6th July 2026) provides important guidance on the fit and proper test for senior management positions in regulated financial institutions. It also reinforces the breadth of the Central Bank's supervisory mandate, including its ability to rely on internal supervisory functions such as an institution's internal audit process when assessing regulatory compliance and the suitability of key officers.

Background

John Kizito, the former Executive Director of FINCA Uganda Limited (a Tier III Microfinance Deposit-Taking Institution), was removed from office following a directive by the Bank of Uganda, as regulator, that he had ceased to be a fit and proper person to hold the position. The directive arose from an onsite inspection and internal audit findings relating to preferential interest rates received by the Appellant on fixed deposit accounts. The Appellant challenged the decision by judicial review, arguing that he had been denied a fair hearing, that the audit report relied upon was only a draft, and that the decision was irrational.

The Court's Decision

The Court of Appeal (Kiryabwire, Gashirabake and Kihika, JJA) dismissed the appeal and upheld the High Court's decision. It found that the Appellant had been afforded a fair hearing, having been confronted with the allegations, given an opportunity to respond in writing and appeared before FINCA's audit committee, with his responses forming part of the material considered by the Bank of Uganda. The Court therefore found that a fair hearing had been accorded, even though the hearing was not conducted orally before Bank of Uganda itself.

On irrationality, the Court applied the **"Wednesbury unreasonableness"** test relied on by the Respondent, derived from **Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223.** Under the test, a decision may only be overturned where it is *"so unreasonable that no reasonable authority could ever have come to it."* This sets a high threshold and prevents a court from substituting its own view for that of the decision-maker.

Key Lessons for Regulated Financial Institutions

The judgment is significant for banks, microfinance deposit-taking institutions and other regulated financial institutions because it confirms that the fit and proper assessment is not a one-off approval exercise. Senior managers and directors remain subject to continuing regulatory scrutiny throughout their tenure. Internal control functions, particularly internal audit, are therefore not merely internal governance mechanisms; where the law gives them a supervisory role and the regulator has approved or relied on them, their findings and records may become important in regulatory decision-making.

Fair Hearing: Written Representations May Be Enough

A key lesson from the judgment is that natural justice does not always require oral hearing. What matters is whether the affected person knew the case against them and had a meaningful opportunity to respond. The Court accepted that the Appellant's written representations and appearance before the audit committee, together with the incorporation of his responses into the audit material later considered by Bank of Uganda, were sufficient to amount to a fair hearing. This underscores the practical importance of maintaining clear audit trails, correspondence, responses and minutes when regulatory concerns arise.

Lessons for Practitioners: Judicial Review and Irrationality

For practitioners, the judgment is a reminder that judicial review is concerned with the lawfulness and fairness of the decision-making process, not with a rehearing of the merits. The irrationality ground remains difficult to establish. Applying the Wednesbury standard, a court will only intervene where the decision is so unreasonable, absurd or outrageous in its defiance of logic that no reasonable decision-maker, properly directing itself to the law and relevant facts, could have reached it. It is therefore not enough to show that another decision was possible, or even preferable. Practitioners challenging regulatory decisions should carefully distinguish between disagreement with the merits and a true public law error such as illegality, procedural impropriety or irrationality at the high Wednesbury threshold.

MMAKS Advocates represented Bank of Uganda in the High Court and Court of Appeal.

Should you have any questions regarding the information in this legal alert, please do not hesitate to contact:

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