



IN THE MATTER OF THE COMPANIES ACT CAP 106

IN THE MATTER OF AN APPLICATION TO THE REGISTRAR OF COMPANIES

APPLICATION CAUSE NO. 38004 OF 2024

IN THE MATTER OF ALL SAINTS PRIMARY SCHOOL LWEZA LIMITED

BYANSO CHARLES:..... APPLICANT

VERSUS

NALONGO MARY NAMUWAWU

BABIRYE ANNET BALLYAMA

ZALWANGO EVA:.....RESPONDENT

BEFORE: DANIEL NASASIRA — ASSISTANT REGISTRAR OF COMPANIES

A. Background and the Petitioners case.

1. This application was filed on 31st January 2024. The Applicant, Byanso Charles is a shareholder and was a director in the company until when he was removed by a resolution registered on 30th May 2024. The applicant contends that he was illegally removed as a director by the respondents.
2. The applicant is a son to the first respondent who at incorporation had forty (40) shares and the first respondent had fifty (50) shares. The applicant was also a director/secretary of All Saints Primary School Lweza in charge of the day to day running of the school.

3. The relationship between the applicant and the first respondent got sour after the first respondent brought the second and third respondents on board as shareholders and directors.
4. On the 13th day of October 2022, the first respondent called for an extra ordinary meeting that was due on the 14th day of December 2022 wherein she intended to transfer some of her shares to the second and third respondents who are the applicant's younger siblings.
5. The applicant asserts that no resolution was reached during the meeting, as the applicant opposed the proposal to transfer shares to the second and third respondents, citing the first respondent's failure to consider the children of their deceased brother.
6. The applicant was later shocked when he discovered that a resolution was registered with his signature, wherein the first respondent had chosen to relinquish forty of her fifty shares to the second and third respondents making them shareholders in the company with twenty shares each.
7. The applicant contends that his signature was forged on this resolution purporting to allot the company shares registered on 21st March 2023. The effect of this allotment changed the structure of the company as follows; Byanso Charles 40 shares, Zalwango Eva 20 shares, Namuwawu Mary Nalongo 10 shares and Babirye Annet Balyama 20 shares.
8. The applicant argues that the respondents in a surreptitious manner proceeded to pass various resolutions changing bank account signatories, mismanaged company funds and even proceeded to remove him as a director/secretary from the company.
9. The applicant proceeded to Kajjansi Police Station and filed a case of forgery against the Respondents vide SD REF 70/15/12/2023.

10. The applicant later obtained a forensic analysis report from Police confirming his signature was forged on the resolution wherein the first respondent allotted forty of her shares to the second and third respondents.
11. The applicant further argues that the respondents have denied him access to the company bank accounts and the Online Business Registration System business (OBRS) account in total violation of his rights as a director and shareholder.
12. The applicant argues that the respondents have on various occasions misused company funds despite his various warnings to them to desist from doing so.

B. The Respondents case

13. In response to the application, the Respondents, in a statutory declaration sworn by Nalongo Mary Namuwawu goes at length to give a history that led to the current state of affairs in the company.
14. The first respondent, argues that she worked tirelessly under difficult circumstances saving up every penny and making countless sacrifices to provide for all her children including the applicant in this matter. Through her sheer determination and relentless effort, she was able to establish the school and employed the applicant as her eldest son.
15. The first respondent contends that despite her struggle and perseverance, she has now found herself and her other children being exploited by the complainant/applicant, who continues to drain her financially and profit from her years of toil and sacrifice.
16. The first respondent argues that as a selfless mother, she entrusted the applicant, her biological son, with the incorporation process of the school in 2011, believing that, as her child, he would act in good faith and with the family's best interests at heart.
17. That the first respondent discovered that her son, the applicant in this matter, had unilaterally issued forty (40) shares to himself, without her clearance. Despite this,

the first respondent accepted to work with him as a shareholder without protest and worked with him until when his siblings had attained majority age.

18. Upon attaining majority age, the first respondent says the company resolved to bring on board the second and third respondents as shareholders but the applicant was adamant in having them on board.
19. The first respondent argues that the applicant has abused his position as director of the company on several occasions, has flagrantly mismanaged the company's funds, demonstrating a blatant disregard for his fiduciary duties and responsibilities. She claims that his actions have resulted in a gross misappropriation of company resources, causing significant financial harm and reputational damage to the company.
20. In fact, the first respondent claims that the applicant has consistently failed to fulfill his parental responsibilities by neglecting to pay school fees and provide necessities for his children. In stark contrast, the first respondent has shouldered the burden of covering these expenses, ensuring her grandchildren's educational and basic needs are met.
21. The first respondent further avers that the applicant in his capacity as sole signatory and director was misappropriating company funds without providing accountability to the company. Further, he made it difficult to access the account and blocked any resolution to add the first respondent as a signatory to the company accounts.
22. The first respondent claims that the applicant constantly absented himself from company meetings concerning the progress of the company without reason or apology even after being notified of the same.
23. The first respondent depones that the applicant's mismanagement is what prompted the company shareholders to remove him as director and signatory to the company accounts to save the company from winding up.

24. After his removal as director, the applicant through his lawyers Katende Sempebwa and Co Advocates, served the respondents with a letter requesting to exercise the right of preemption as he wished to dispose of his shareholding in the company which the respondents responded to and invited the applicant for a meeting
25. The applicant did not attend the meeting and instead engaged other lawyers to file this application and drag his family to the Registrar of Companies. Before this, the applicant had filed a criminal case at Police vide REF 70/15/2023 and intimidated all the company employees that were dealing with the respondents. The first respondent argues that given that the applicant is her biological son, she wanted to settle the matter amicably as a family matter but all efforts to settle the matter have failed.

C. Representation

26. Counsel Lawrence Kabuye from Lukwago & Co Advocates represented the applicant while Counsel Racheal Kembabazi and Counsel Jimmy Kacha from Signum Advocates represented the Respondents.
27. Ass. Registrar Solomon Muliisa heard the parties and is currently indisposed. From the evidence and submissions on record, I do not find it necessary to require the parties to appear before me again. I have therefore read the pleadings thoroughly and perused the company file extensively. I have also relied on the pleadings, evidence, record of proceedings and written submissions that are already on file to arrive at this ruling.

D. Issues

28. The parties raised three issues which I will base on to arrive at a decision;
- a) Whether any rights of the applicant as a shareholder have been violated?
 - b) Whether the removal of the Applicant as a Director was lawful?
 - c) What remedies are available to the parties?

E. Determination

Issue one; Whether any rights of the applicant as a shareholder have been violated?

29. The applicant contends in paragraph three of his statutory declaration in support of the application that at the time of incorporation of All Saints Primary School Lweza Ltd, he was a director and also a shareholder with 40 percent shares. While this shareholding was not tempered with by the first respondent who allotted her own share of the 50 shares in the company to the second and third respondents, the applicant argues that the respondents forged his signature on a special resolution dated 20th March 2023 and registered on 21st March 2023. This resolution had the effect of bringing on board the second and third respondents as shareholders. Thereafter, the respondents generated quorum and jointly proceeded to pass various resolutions illegally making themselves directors, removing the Applicant as a director, blocked the Applicant from accessing the company bank and online URSB accounts. The Applicant contends that these actions constitute a violation of his rights as a shareholder in the company.
30. The applicant presented a police forensic analysis report as evidence to demonstrate that his signature on the resolution dated 20th March 2023 was forged, asserting that he did not sign the resolution. The Registrar of Companies is tasked with the responsibility of maintaining a register free from illegal endorsements resulting from forged or altered documents. Upon establishing that a resolution has been illegally registered, the appropriate remedy is found in *Regulation 8 of the Companies (Powers of the Registrar) Regulations SI No 71 of 2016*, which entails rectifying the register by expunging the document bearing the forged or altered signature.
31. Regulation 8 (1) of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016 gives powers to the Registrar of Companies to rectify and update the

register to ensure that it is accurate. Regulation 8 (2) goes further to state that the registrar may expunge from the register, any information or document included in the register which;

- a) Is misleading
- b) Is inaccurate
- c) Is issued in error
- d) Contains an entry or endorsement made in error
- e) Contains an illegal endorsement
- f) Is illegally or wrongfully obtained; or
- g) Which a court has ordered the registrar to expunge from the register

32. The forensic analysis report revealed significant discrepancies in the applicant's signature, including variations in skill, execution style, legibility, terminal stroke, stroke connectivity, and overall construction of the applicant's signature. The report presented compelling evidence suggesting that the individual who authored the sample signature could not have been the applicant. The respondents failed to provide evidence to challenge this report and instead opted to present only a narrative arguing against its consideration by the Registrar of Companies. In the absence of compelling evidence to dispute the police forensic analysis report indicating that the applicant's signature was forged, I find that the resolution dated 20th March 2023, which contains the applicant's forged signature, along with all subsequent resolutions filed after this date, were submitted fraudulently and unlawfully. The illicit introduction of new shareholders in the company using forged signatures indicated a strategic move to enable the passing of resolutions aimed at removing the applicant from the position of director, appointment of new directors and change of bank signatories. Although the applicant may have violated his fiduciary duties as claimed/alleged by the respondents, the action of fabricating his signature was not the right course of action to have this resolved

and cannot be justified by the Registrar of Companies, whose responsibility is to uphold the integrity of the register. The issue regarding the alleged breach of his fiduciary duties as a director will be resolved subsequently in issue two.

33. Additionally, I wish to point out the confusion in the respondent's declaration concerning a transfer of shares. There was no transfer of shares effected in this case as the resolution dated 20th March 2023 allotted forty of the first respondents shares to the second and third respondents. The first respondent had the right to allot her shares to the second and third respondents; however, the act of forging the applicant's signature to facilitate this transaction constitutes a significant error that the Registrar of Companies cannot endorse. Furthermore, the respondents did not adduce any evidence to show that the applicant had waived his pre-emption rights as to entitle the first respondent to proceed with the resolution unilaterally.

34. I also find it quite interesting that the first respondent contends that the applicant was notified of the meeting to pass the resolution admitting the second and third respondents. In this meeting, the applicant contends that he vehemently protested the resolution to add the second and third respondents. If this is the case, how does he ultimately sign a resolution resulting from a meeting in which he expressed discontent in having the second and third respondents on board as shareholders? This fact further corroborates the forensic analysis report that the applicant's signature was forged.

35. Considering the above discussion, I am convinced that the signature of the applicant on the resolution dated 20th March 2023 was forged and thus contains an illegal endorsement. This implies that all subsequent resolutions signed by the second and third respondents are null and void and together with the resolution dated 20th March 2023, must be expunged from the register in accordance with Regulation 8 of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016.

Issue two; Whether the removal of the Applicant as a Director was lawful?

36. Having found in issue one above that the special resolution filed introducing the second and third respondents as shareholders void for having the applicants forged signature, I find that all resolutions that were filed subsequent to this resolution and signed by the second and third respondents are void and subject to be expunged from the company register for being illegal endorsements. According to Regulation 8 of the *Companies (Powers of the Registrar) Regulations SI No. 71 of 2016*, a resolution that removes a director and is signed by persons or members who were admitted as a result of a resolution that contained a forged signature is an illegal endorsement and must be expunged.
37. I advise the respondents in this matter that, rather than fabricating the applicant's signature, the first respondent, as a company member, has the option to pursue appropriate legal action and seek remedies for the alleged breaches committed by the applicant in his capacity as director in the appropriate forum. Allegations of mismanagement of funds, breaches of statutory duties by directors, and exclusion from management constitute prejudicial conduct. The suitable forum for addressing these claims is through a petition to the High Court pursuant to Section 244 of the Companies Act Cap 106.
38. Court in *Olive Kigongo Vs. Mosa Courts Apartments Ltd, High Court Company Cause No. 01 of 2015* labored to highlight the principle relating to suits brought under Section 247 of the Act now Section 244. The learned Justice Stephen Musota opined that what amounts to unfair prejudice is incapable of an exhaustive definition as the concept is flexible but went ahead to list instances that amount to unfair prejudice which I will reiterate here;
- a) Exclusion from management in circumstances where there is (legitimate) expectations of participation

- b) The awarding of the majority shareholder to himself of excessive financial benefits.
- c) Abuses of power and breaches of Articles of Association for example the passing of a special resolution to alter the company's Articles that may be prejudicial conduct if such alterations would affect the petitioner's legitimate expectation that he would participate in the management of the company.
- d) Delaying accounts and depriving the members of their right to know the state of the company's affairs.

39. The learned Justice Stephen Musota in the aforementioned case goes ahead to distinguish claims of minority oppression for which the jurisdiction lies with the Registrar of Companies and claims of prejudicial conduct for which jurisdiction lies with the High Court. The Court noted;

"This issue has to be approached as a question of fact and therefore court has to examine the circumstances of this case. Under Section 248 of Companies Act 2012 there is an option of petitioning court for remedies on ground that the Companies affairs are being conducted in a manner which is unfairly prejudicial to the interest of its members generally or some part of its member including at least the petitioner himself or herself or that any actual or proposed act or omission of the company including an act or omission on its behalf is or would be so prejudicial. Section 247 of the Companies Act 2012 is not a section under which this court can make orders except if the Registrar of Companies has referred the petition to court under Section 293 of the Companies Act. It should be noted that matters relating to oppression are supposed to be dealt with by the Registrar of Companies under Section 247 of the Companies Act. I will therefore restrict myself to matters that fall under Section 248 relating to unfair prejudice which affects interests of members."

40. Rather than fabricating the applicant's signature, the first respondent as a member of the company can seek appropriate legal recourse for the alleged prejudicial conduct/breaches committed by the applicant in the appropriate forum. This

case presents a definitive instance where the applicant has adequately demonstrated that his signature was forged, thereby resulting in an illegal endorsement. Consequently, the Registrar of Companies has a duty to rectify the register by expunging the resolution and all subsequent resolutions that were filed as a result of this illegality.

Issue 3; What are the available remedies.

41. Having found as above, pursuant to Regulation 8 and 32 of the Companies (Powers of the Registrar) Regulations SI No 71 of 2016, in light of the circumstances of this case, I make the following orders;

1. That the resolution registered on 21st March 2023 be expunged for bearing the applicant's forged signature.
2. That the return of allotment registered on 21st March 2023 be expunged as it a result of an illegal endorsement effected in the aforementioned resolution.
3. The resolution and form 20 registered on 30th May 2024 removing the applicant as a director be expunged for being a product of the illegally registered resolution bearing the applicants fabricated signature.
4. That all subsequent resolutions filed after the 21st day of March 2023 bearing the signatures of the second and third respondents vide resolution dated 30th May 2024 and 12th February 2024 changing bank signatories be expunged as they are a result of an illegal endorsement effected in the resolution registered on 21st March 2023.
5. Each party bears its own costs.

I so Order

Given under my hand this _____ day of _____ 2025

Daniel Nasasira
Assistant Registrar of Companies