



IN THE MATTER OF THE COMPANIES ACT CAP 106
IN THE MATTER OF PETITION AGAINST OPPRESSION
PETITION CAUSE NO. 38945 OF 2024

IN THE MATTER OF BAKUGU AGRICULTURAL TECHNOLOGIES LTD

- 1. KIBERU RONALD**
- 2. MAGUNDA PAUL**
- 3. NSAMBA EMMANUEL**
- 4. BAKUGU AGRICULTURAL TECHNOLOGIES LTD:.....PETITIONERS**

VERUS

SSEKITTO REMMY:.....RESPONDENT

BEFORE DANIEL NASASIRA – ASSISTANT REGISTRAR OF COMPANIES

A. Background

1. This is a petition for minority oppression, filed on 17th May 2024 brought under section 247 (now section 243) of the Companies Act Cap 106. The Petitioners allege a series of breaches and wrongful actions allegedly perpetrated by the Respondent. As a matter of background, the 4th Respondent Company was incorporated on 10th January 2021 with a share capital of one million, divided into 100 shares of 10,000 per share. Each of the 3 petitioners are shareholders holding 25 shares, and collectively holding a total of 75 shares. The Respondent is also a shareholder, holding 25 shares. The Respondent and all the three petitioners are also directors of the 4th petitioner's Company.

A handwritten signature in dark ink, appearing to read 'Daniel Nasasira', is located in the bottom right corner of the page.

B. The petitioners' case.

2. The petitioners contend that the affairs of the company are being conducted in a manner oppressive to them and have highlighted a number of breaches, purportedly committed by the Respondent. The first accusation against the Respondent is that he illegally and fraudulently transferred 30 percent of shares to a one Amany Deogratiou without the consent of the Petitioners. Further, the Petitioners accuse the Respondent of opening a bank account without their authorization and consent. The said bank account was opened by a resolution dated 16th August 2022. It names the Respondent and Deogratiou as signatories to the account. The resolution is signed by all the directors, who include the Respondent, and all the petitioners, plus the said Amany Deogratiou. The petitioners also allege that the Respondent entered secret contracts with a former employee, representing her to be a staff of the company and failed to remit the revenues from the said contract. The Petitioners further allege that the Respondent is running a competing business in Mubende, where he redirects the company customers. That this has caused the company loss of business and a bad image as the customers complain of poor services. The Petitioners aver that these actions are illegal and fraudulent. They highlight the following particulars of fraud and illegality; failure to account for dividends, conducting business in competition with the company, illegal transfer of shares, failure to account for funds from the sale of shares to Deogratiou, opening a bank account without consent, entering contracts without consent of the petitioners and failure to account for funds and dividends.

The petitioners pray for the following remedies;

- (a) A declaration that the petitioners are oppressed by the actions of the Respondent;

- (b) A declaration that the Respondent illegally added Amanyang Deogratious as a shareholder contrary to rights of the shareholders;
- (c) A declaration that the Respondent has failed to provide accountability of funds;
- (d) A declaration that the affairs of the company have been conducted in a manner that is oppressive and prejudicial to their interests;
- (e) A declaration that the Respondent has breached statutory duties of a director;
- (f) An order compelling the Respondent to make full disclosure.
- (g) An order that the Respondent transfers his shares to the 3 petitioners and be removed as a member and be disqualified as a director;

C. The Respondent's case.

3. In his statutory declaration in reply, the Respondent denies the allegations and responded as follows; with regard to the alleged transfer of shares to Amanyang Deogratious, the Respondent contends that this was agreed upon in an extraordinary meeting held on 16th August 2022, where Magunda Paul transferred 8 shares, the Respondent transferred 7, Kiberu Ronald transferred 8 and Emmanuel Nsubuga transferred 7, giving the said Amanyang Deogratious 30 shares. The Respondent relied on a resolution filed with the Registrar of Companies on 05th September 2022. The said resolution is signed by all the existing shareholders. The Respondent adds that after transferring shares to the said Amanyang, he was subsequently appointed a director. The resolution filed on 5th September 2022, admitted in evidence, also appointed Amanyang as Director and this is supported by company form 20 filed on the same date. Similarly, regarding the disputed account opened with Stanbic bank, the Respondent avers that it was a decision of the board and relies on board resolution dated 16th August 2022, filed with the Registrar of Companies on 5th September 2022. That resolution is signed by the

respondent and all the petitioners except petitioner number four and Mr. Amany Deogratious. The Respondent denies the rest of the allegations.

4. At the hearing of this petition on 26th September 2024 and 11th October 2024, Counsel Edward Eriaku represented the petitioners, while Counsel Mwesigwa Silverio represented the Respondent. The parties filed a joint scheduling memorandum on 18th September 2024 and written submissions. They raised the following issues for determination;

- i. *Whether the affairs of the company are being conducted in a manner oppressive to the petitioners or the respondent.*
- ii. *Whether the Respondent breached his duty as a director*
- iii. *Whether the Respondent engaged in illegal and fraudulent actions to the detriment of the petitioners*
- iv. *What Remedies are available to the parties*

D. Determination

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.

Issue 1: Whether the affairs of the company are being conducted in a manner oppressive to the petitioners or the respondent.

5. Claims of oppression are provided for under section 243 of the Companies Act, Cap 106 (formerly section 247). It provides as follows;

“Alternative remedy to winding up in cases of oppression

(1) A member of a company who complains that the affairs of the company are being conducted in a manner oppressive to a part of the members including himself or herself or in a case falling within section 174(5), may make a complaint to the Registrar by petition for an order under this section.

(2) Where on any petition under subsection (1) the Registrar is of the opinion

(a) that the company's affairs are being conducted as referred to in subsection (1); and

(b) that to wind up the company would unfairly prejudice that part of the members but otherwise the facts would justify the petitioning for a winding up order on the ground that it was just and equitable that the company should be wound up, the Registrar may, with a view to bringing to an end the matters complained of, make such order as he or she thinks fit whether for regulating the conduct of the company's affairs in future or for the purchase of the shares of any members of the company by other members of the company or by the company and in the case of a purchase by the company, for the reduction accordingly of the company or by the company's capital, or otherwise."

6. The Supreme Court of Uganda, in the case of **Mathew Rukikaire v. Incafex (U) Ltd (Civil Appeal No. 03 of 2015)**, elaborated on what constitutes oppressive conduct. The Court held that for conduct to be deemed oppressive, it must affect the shareholder in their capacity as a member of the company, not in any other role. For instance, the Court found that the removal of a petitioner from the position of Executive Director did not amount to oppression within the meaning of the Companies Act. However, actions such as wrongfully excluding a shareholder from company meetings or unlawfully taking away their shares were considered oppressive. Oppression of minorities should be distinguished from prejudicial conduct where jurisdiction clearly lies with the High Court. In *Olive Kigongo v Musa Courts Apartments Ltd (Company Cause No. 1 of 2015)*, the High

Court highlighted instances that qualify for prejudicial conduct when it stated; *“To invoke the principle of ‘unfair prejudice’ two elements must be present for one to succeed in a petition under Section 248.*

(a) The conduct must be prejudicial in the sense of causing prejudice or to the relevant interest of members or some part of the members of the company i.e shareholders; and

(b) It must also be unfair.” The Court went further to state that for actions based on minority oppression, the jurisdiction lies with the Registrar of Companies and not Court. This position is clearly stipulated for under Section 244 of the Companies Act Cap 106. The position as to what amounts to and constitutes oppressive conduct, is what was stated by the Supreme Court in the Matthew Rukikaire case cited above. In that case, the Learned Justices of the Supreme Court, cited with approval, an old high Court decision in the Case of Re Nakivubo Chemists (U) Ltd [1977] HCB 311 where court laid the principle as follows;

“For the petitioner to succeed under section 211 of the Companies Act, he must show not only that there has been oppression of the minority shareholders of a company but also that it has been the affairs of the company which have been conducted in an oppressive manner. The oppression must be to a person in his personal capacity as a shareholder and not in any other capacity.”

7. The question is whether the Petitioners are minority shareholders, and secondly, whether the affairs of the company are conducted in a manner oppressive to them as members. It is after the first question is answered in the affirmative, that the Registrar of Companies can proceed to the next question. The question as to who a minority is, is not answered by the Companies Act and while the body of section 243 does not refer to the person petitioning being a minority shareholder, the decision of the Supreme Court cited above refers to a minority.
8. Literally speaking, a minority shareholder is one who owns less than 50 shares of the company. The online Cambridge dictionary defines the word “minority” as

"a smaller number or part", "less than half of a total number or amount; the smaller part of something:" Therefore to belong to a minority, means the other side has a greater or bigger part, or simply a majority. Minorities are often given special legal protection to protect them against what is often termed as "a tyranny of the majority". In the context of company law, and in particular a company limited by shares, the minority or minorities are the shareholders holding less shares compared to the rest of the shareholders. Hence, in a company of ten members, where one holds 75 shares and the rest hold the balance, the nine qualify as minorities. In a company that has no share capital such as a company limited by guarantee without a share capital, the basis of determining the minority is by reference to numbers.

9. The instant petition fails on the first test. It is a petition alleging minority oppression yet the petitioners are the majority in the 4th Petitioner Company. While at incorporation, they collectively held 75 shares, with the Respondent having 25, and their alleged introduction of Amanya Deogrations who took 30 shares, eroded that majority, I note that in paragraph xi of their petition, this was reversed to the original shareholding by a resolution dated 13th March 2024 and filed with the Registrar of Companies on 12th April 2024. As such, at the time of filing this petition on 17th July 2024, the Petitioners had regained their supermajority and did not have locus as minorities. That resolution shows each of the first to third petitioners owning 25 shares giving them a total of 75 shares, and the Respondent owning 25 shares. Clearly, they are not minorities and they do not have locus to file a petition for minority oppression. Majority cannot seek protection accorded to minorities because the Companies Act gives them the mandate to make decisions and address any issues concerning the company. For example, the Petitioners, currently holding 75 shares have the power to call an extra-ordinary meeting and to pass resolutions for the governance of the company. One wonders, why with

such a huge mandate, the petitioners have to resort to filing legal actions. Besides being supermajority shareholders, the petitioners are also majority directors in the company with overwhelming powers to determine the day to day affairs of the company.

10. It is important for me to highlight that most of the allegations in this matter are not minority oppression but could qualify as prejudicial conduct for which the jurisdiction lies with the High Court as already discussed. Secondly, the claims of abuse of directors' statutory duties are issues that are outside the jurisdiction of the Registrar of Companies. Third, while the Petitioners bring claims of illegal transfer of shares and covert opening of an account, they neither deny signing the respective resolutions, nor do they specifically bring an application for rectification of the Register, which is brought under the Companies (Powers of the Registrar) Regulations, SI No. 71 of 2016. Fourth, the nature of the remedies sought before the Registrar must be those that the law allows the Registrar of Companies to grant. Lastly, adding the fourth applicant Company is illogical. The fourth applicant is not a minority shareholder in itself and as such, it cannot claim to be oppressed.

11. Pursuant to regulation 32 of the Companies (Powers of the Registrar) Regulations, SI No. 71 of 2016, this petition is accordingly dismissed with no order as to costs.

I so Order

Given under my hand this 01 day of 03 2025



Daniel Nasasira
Assistant Registrar of Companies