

**IN THE MATTER OF THE COMPANIES ACT CAP 106**

**AND IN THE MATTER OF THE COMPANIES (POWERS OF THE REGISTRAR)**

**REGULATIONS SI NO. 71 OF 2016**

**AND**

**IN THE MATTER OF ELIM PENTECOSTAL CHURCH LTD**

**COMPANY PETITION CAUSE NO. 44562 OF 2024**

NAKABUGO BEATRICE ..... PETITIONER

## VERSUS

1. SSEMWOGERERE GODFREY
2. SSEMYALO DAVID
3. SSEKAYIZI KEFA .....RESPONDENTS

## RULING

BEFORE: DANIEL NASASIRA—ASSISTANT REGISTRAR OF COMPANIES

### A. Representation

1. Counsel Bukiya Gilbert and Muliisa Esther from Volens Advocates represented the petitioner. Counsel Ocida Hope appeared for the respondents.

## B. Background and the petitioners case

2. This Petition was filed on the 20<sup>th</sup> day of December 2024 and was brought under Section 248 of the Companies Act Cap 106 and Regulations 3 and 32 of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016. I take note that the petition

was brought under a wrong law but the petitioner clarified this position in the written submissions where they cited the correct provision to commence a petition before the Registrar of Companies as Section 243 of the Companies Act Cap 106.

3. Elim Pentecostal Church is a company limited by guarantee, incorporated on the 16<sup>th</sup> day of May 1986 with the main objectives of proclaiming the Gospel of Jesus Christ, planting churches, conducting religious services and fulfilling Christ's great commission.
4. At incorporation of the company, the subscribers and founding members who also doubled as the first directors were Daniel Katabalwa, Beatrice Nakabugo, Maritha Kabura, Dorakasi Wangui and Godfrey Ssemwogerere and of these, only Beatrice Nakabugo and Godfrey Ssemwogerere are currently alive.
5. The Petitioners case against the Respondents is that since 2013, they have through the passing of various resolutions, orchestrated illegal and irregular changes within the structure of Elim Pentecostal Church that are grossly against the objectives of the company and the interests of its members.
6. That contrary to the company memorandum and articles of association, the Petitioner through a board resolution was on the 28<sup>th</sup> day of January, 2013 removed from the Board of Directors and the second and third Respondents were appointed to the Board and this was done in a bid to include the second and third Respondents in the management of the church owing to the fact that they are sons of the late Daniel Katabalwa the lead Pastor of Elim Pentecostal Church at the time.
7. That on the 10<sup>th</sup> day of May, 2014, another irregular Board resolution was passed appointing Edith Katabalwa as a Board Director and in the same resolution Jamine Luke Muwayi was removed from the Board of Directors.
8. The Petitioner argues that these resolutions are in conflict with Article 39 of the company memorandum and articles of association that provides for determination of Board members to be made by the members of the company with a simple majority

at the annual general meeting. Additionally, the Petitioners argue that Article 43 of the articles of association provide for the various ways through which a director can be legally removed and none of these was followed.

9. The Petitioner contends that the Respondents have resorted to using their position as directors of the company to act detrimentally to the company objectives and interests.
10. Furthermore, on the 09<sup>th</sup> day of November, 2022 the Respondents passed an irregular special resolution wherein they resolved to sell land belonging to the company comprised in LRV 3010 Folio 3, Plot No. 5 Sebei Lane Nakawa. The land was consequently sold to Arinaitwe Nicholas and the respondents now desire to evict the church from the premises.
11. The Petitioner argues that this resolution was passed contrary to the company objectives, in conflict with the memorandum and articles of association and without the knowledge of the members of the company.
12. In light of the above developments, the Petitioner avers that the company business cannot be properly conducted since there are irregularities in passed resolutions that need to be expunged from the company register.

### **C. Respondents Case**

13. The Respondents through an answer to the petition under paragraph two highlighted that they intended to raise preliminary objections arguing that this petition is barred by the doctrine of res judicata, is pending before the High Court and is thus wrongly before the Registrar of Companies and the same ought to be dismissed with costs.
14. The first Respondent, Godfrey Ssemwogerere, in a statutory declaration sworn on 07<sup>th</sup> March 2025 depones that upon registration of the company, the Board of Directors was duly constituted and the petitioner appointed as a Treasurer, Daniel Katabalwa as chairperson/founder, Ssemwogerere Godfrey as secretary and Maritah Oduori as Vice Chairperson.

15. The first Respondent avers that the petitioner started misconducting herself by abusing her office of treasurer and mismanaging the company account, a discussion which was on several occasions conducted in the company's meetings some of which the Petitioner herself attended.
16. The first Respondent further argues that the Petitioner subsequently joined a group of rebellious church members, including Jamine Muwayi Luke, Kakaire Hannington, Njoroge David Kiragu, Wanambwa Robert, Malisa Ronald, Semyalo Joseph, and Wabwire Juliet. These members were engaging in misconduct, including usurping the powers of the overseer and founder of the company/church, Daniel Katabalwa, and denying him and his son Kizito Jimmy, who was a pastor in the church, access to the church premises, demolishing his property adjacent to the church premises, and forcibly assuming control of the church premises.
17. That together with the Petitioner, the said Muwayi Luke, Kakaire Hannington, Njoroge David Kiragu, Wanambwa Robert, Malisa Ronald, Semyalo Joseph and Wabwire Juliet who formerly subscribed to Elim Pentecostal Church constituted themselves into Nakawa Pentecostal Church which was never registered and in defiance of the company's interests started conducting business on the company premises in total disregard for the company's objectives.
18. That by virtue of the Petitioner's conduct who was holding a key position of treasurer in the company, the company was crippled and she bore allegiance to a group of people that were antagonistic towards the company namely; Jamine Muwayi Luke, Kakaire Hannington, Njoroge David Kiragu, Wanambwa Robert, Malisa Ronald, Semyalo Joseph and Wabwire Juliet who were also informally operating as Nakawa Pentecostal Church. Due to this conduct, it was resolved by two thirds of the board members that the Petitioner be removed from the Board of Directors of the company through a resolution dated 28<sup>th</sup> January 2013 and new board members were duly

appointed to run the company's business to wit; Sekayizi Kefa, Jimmy Kizito and Semyalo David.

19. The first Respondent contends that the Petitioner continued paying allegiance to the said Nakawa Pentecostal Church for several years while absconding her duties as a company member and as a result, her membership was terminated in a resolution.
20. In the year 2015, the company filed Civil suit No. 235 of 2015, now Civil suit No. 350 of 2021 against the said Muwayi Luke, Kakaire Hannington, Njoroge David Kiragu, Wanambwa Robert, Malisa Ronald, Semyalo Joseph and Wabwire Juliet for trespass, malicious damage to property and eviction from the company premises having forcefully taken over the company premises and its management and the said case was decided in favour of the company and the defendants were ordered by court to vacate the company premises and hand back the management of the company to its members.
21. That furthermore, in the same judgment of court in civil suit No. 350 of 2021, formerly civil suit No. 235 of 2015, it was also decreed that the removal of the petitioner from the company's membership was done rightly within the mandate of the Board of directors. As such all issues relating to the petitioners membership were heard and determined in Civil suit No. 350 of 2021 formerly civil suit No. 235 of 2015 to the effect that she was no longer a member of the company.
22. That notwithstanding, the first Respondent contends that upon court directing the rebellious defendants in civil suit No. 350 of 2021, Jamine Muwayi Luke, Kakaire Hannington, Njoroge David Kiragu, Wanambwa Robert, Malisa Ronald, Semyalo Joseph and Wabwire Juliet to vacate the company/church premises, the Petitioner in contempt of the decree of court wrote a letter purporting to tender in her resignation alluding to incapacitation from her performing her duties due to old age and in the same letter purported to appoint Jamine Muwayi Luke and Wabwire Juliet to take up her position as member of the company well knowing that issues regarding her

membership in the company had just been determined by Court in Civil suit No. 350 of 2021.

23. In the year 2022, the company resolved to sell its property/church premises comprised in LRV 3010 Folio 3 Plot No. 5 Sebei Lane, Nakawa, Kampala District and relocate to a more populated place in so far as the residents of Nakawa quarters who were the main congregants had since been displaced.
24. The first Respondent avers that indeed the company sold its land to Arinaitwe Nicholas and shifted the church to Wakiso. However, despite several letters from the company's lawyers reminding the said Jamine Muwayi Luke, Kakaire Hannington, Njoroge David Kiragu, Wanambwa Robert, Malisa Ronald, Semyalo Joseph and Wabwire Juliet to vacate the company premises to allow the said Arinaitwe Nicholas take possession of the land, they have in contempt of the court order in Civil Suit No. 350 of 2021 continued to occupy the company premises well knowing it is not the company in occupation of the premises but a different church, Nakawa Pentecostal Church.
25. The first Respondent states that the petitioner filed Civil Suit No.107 of 2024 through her attorney Jamine Luke Muwayi, who was among the defendants asked to vacate the company premises seeking among others a declaration that the respondents fraudulently sold land to Arinaitwe Nicholas, a permanent injunction restraining the respondents from dealing with the suit land, LRV 3010 Folio 3 Plot No. 5 Sebei Lane, Nakawa, Kampala District.
26. That by virtue of the said civil suit No. 107 of 2024, the petitioner obtained a temporary injunction to maintain the status quo of the land until the determination of the suit, all a calculated move to keep Jamine Muwayi Luke, Kakaire Hannington, Njoroge David Kiragu, Wanambwa Robert, Malisa Ronald, Semyalo Joseph and Wabwire Juliet on the land in contempt of the court order in Civil Suit No. 350 of 2021.

27. The first Respondent depones that the petitioner has filed this petition under the guise of protecting the interests of the company well knowing that she has no stake in the company but is only trying to protect her own interest and that of Jamine Muwayi Luke, Kakaire Hannington, Njoroge David Kiragu, Wanambwa Robert, Malisa Robert, Semyalo Joseph and Wabwire Juliet.
28. The first Respondent further asserts that the petitioner, now of advanced age, exceeding 90 years, is being exploited by Jamine Muwayi Luke, Kakaire Hannington, Njoroge David Kiragu, Wanambwa Robert, Malisa Ronald, Semyalo Joseph, and Wabwire Juliet as a mere pawn in their personal conflicts, rather than for the benefit of the company.
29. The first Respondent maintains that the company resolution to sell the land and to terminate the petitioner's membership and directorship were executed in full compliance with the relevant laws and the provisions outlined in the company's memorandum and articles of association.
30. The first Respondent affirms in his declaration that the modifications to the company structure were executed in accordance with applicable laws and in line with the company's objectives and articles of association.
31. The first Respondent further depones that all the contested resolutions were lawfully passed by two thirds majority of the members of the Board who are mandated to run the company business, the averments that the company was not aware are false and only calculated to cast the Respondents in bad light.
32. The first Respondent contends that the petition lacks merit, is intended to frustrate the Respondents and it is in the interests of justice that it is dismissed with costs.
33. When this matter came up for hearing, I instructed both counsel to present written submissions and issued schedules as below;

- a) A statutory declaration in response to the petition had not been submitted. I issued a directive for it to be filed and served by the 18th day of March 2025, along with the affidavit of service.
  - b) Any rejoinder was to be filed and served by the 21<sup>st</sup> day of March 2025.
  - c) A joint scheduling memorandum was to be filed and served by the 25<sup>th</sup> day of March 2025.
  - d) Petitioners written submissions were to be filed and served by 04<sup>th</sup> April 2025.
  - e) Respondents written submissions were to be filed and served by the 17<sup>th</sup> day of April 2025.
  - f) Any submissions in rejoinder were to be filed and served by the 21<sup>st</sup> day of April 2025. I informed the parties that a ruling would be issued on notice.
34. The Respondents filed an answer to the petition and statutory declaration in support of the answer to the petition on 07<sup>th</sup> March 2025. A rejoinder was filed on 21<sup>st</sup> March 2025. The parties did not file a joint scheduling memorandum. The Petitioners counsel filed written submissions on 04<sup>th</sup> April 2025 well within the issued deadline. The Respondents did not submit written submissions concerning the preliminary objections they raised, nor did they provide submissions related to the substantive matter as directed. However, since their pleadings are on file, I will rely on that to proceed and make a decision in this matter.

#### **D. Issues**

35. Issues for determination in this matter;

- a) *Whether the various company resolutions were passed lawfully?*
- b) *Whether the affairs of Elim Pentecostal Church are being conducted in a manner oppressive to the Petitioner?*
- c) *What remedies are available to the parties?*

#### **E. Determination**

- a) *Whether the various company resolutions were passed lawfully?*



36. There are three resolutions that are contested. One is a board resolution dated 28<sup>th</sup> January 2013 appointing Kefa Ssekayizzi, Jimmy Kizito and David Ssemyalo as directors to the Board and removing Nakabugo Beatrice, *the petitioner*, from the Board of directors. The second is a board resolution dated 10<sup>th</sup> May 2014 appointing Edith Katabalwa to the board and removing Jamine Muwayi Luke from the Board of directors. And the third is a special resolution dated 09<sup>th</sup> November 2022 that resolved to sell off the company land comprised in LRV 3010 Folio 3, Plot No. 5, Sebei Lane, Nakawa at Kampala District. It is the petitioner's submission that all the three contested resolutions were passed unlawfully and illegally. I shall proceed to evaluate the legality of these resolutions below looking at the nature of resolutions that were passed.

*Nature of resolutions passed to remove the company directors.*

37. Section 191 (1) of the Companies Act Cap 106 provides that, '*a company may, by ordinary resolution, remove a director before the expiration of his or her period of office, notwithstanding anything in its articles or in any agreement between the company and the director, but this subsection shall not, in the case of a private company, authorise the removal of a director holding office for life at the commencement of this Act, whether or not subject to retirement under an age limited by virtue of the articles or otherwise.*'

38. The removal of directors from the reading of Section 191 of the Companies Act Cap 106 is supposed to be effected by way of an ordinary resolution. The resolutions that removed the petitioner and Jamine Muwayi Luke were board resolutions signed by company directors. These same resolutions appointed Edith Katabalwa, Kefa Ssekayizzi, Jimmy Kizito and David Ssemyalo as directors. Article 39 of the Company's Articles of Association provides that, '*the members of the Board and the names of the chairman of the Board shall be determined by the members of the company on a simple majority of them in the Annual General Meeting.*' The appointment of members to the board according to this article was supposed to be

effected by members not the board and therefore the resolution appointing the said members as directors should have been a member's resolution not a board resolution.

39. Justice David Wangutusi in *Fang Min Vs Uganda Hui Neng Mining Limited and 5 Others HCCS No. 318 of 2016* held that, '*resolutions passed by people devoid of authority to do so...are null and void. Since those meetings are null and void, they render the outcome worthless.*' The resolutions that led to the removal of the petitioner and Jamine Muwayi Luke were passed by the Board. However, the power to remove or appoint directors is designated to members and is required to be carried out through a members' resolution as seen under Article 39 of the Company's Articles of Association. As Justice David Wangutusi concluded in *Fang Min Vs Uganda Hui Neng Mining Limited and 5 Others*, the resolutions in question are deemed null and void due to being enacted by individuals lacking the requisite authority, as they executed the resolutions in their roles as directors rather than as members of the company.
40. Having found that the resolution that appointed Kefa Ssekayizi and Ssemyalo David as directors is null and void, I consequently find that all resolutions signed by the aforementioned individuals including the Special resolution dated 09<sup>th</sup> November 2022 and registered on 14<sup>th</sup> November 2022 disposing off company land comprised in LRV 3010 Folio 3, Plot No. 5, Sebei Lane, Nakawa in Kampala District is null and void.
41. Furthermore, a special resolution is a member's resolution that should be passed and signed by not less than three fourths of members not directors. The Special resolution disposing off company land registered on 14<sup>th</sup> November 2022 was signed by Kefa Ssekayizi, Ssemyalo David and Godfrey Ssemwogerere. Only one of these signatories was a company member that is Godfrey Ssemwogerere, which falls way below the quorum needed for a resolution to qualify as a special resolution. Section 144 of the Companies Act Cap 106 provides that, '*a resolution shall be a special resolution when it has been passed by a majority of not less than three fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which*

*notice specifying the intention to propose the resolution as a special resolution has been duly given.'*

42. In ***Seremba Mark Vs Isanga Emmanuel & 3 Others (In the matter of Greenvine College Ltd Companies Cause No 27 of 2004)*** the learned Justice Geoffrey Kiryabwire nullified a resolution because a quorum had not been realized, the learned judge found in these words; *'In conclusion, I find that the meeting of the 15<sup>th</sup> August 2002 was improperly convened and therefore was illegal. All resolutions passed at the meeting therefore are null and void. It therefore follows that Mr. William Muwaya (2<sup>nd</sup> Respondent) and Steven Isabirye (the 3<sup>rd</sup> Respondent) did not become members, shareholders and or office bearers of the company as a result of that meeting.'* Similarly, Justice David Wangutusi in ***Fang Min Vs Uganda Hui Neng Mining Limited and 5 Others HCCS No. 318 of 2016*** nullified an exploration license which was done based on a resolution that was a result of a meeting without quorum.

***b) Whether the affairs of Elim Pentecostal Church are being conducted in a manner oppressive to the Petitioner?***

43. It is the Petitioner's case that the affairs of Elim Pentecostal Church are being conducted in a manner oppressive to her. I acknowledge that the petition was initiated under an incorrect provision of the Companies Act. Nevertheless, the petitioner rectified this in the written submissions by referencing the appropriate provision for filing a petition before the Registrar of Companies, specifically Section 243 of the Companies Act Cap 106. In ***Abundant Life Faith Church of Uganda and Grivas Musisi Vs. Ochieng Peter & 6 Ors Misc Application No. 0376 of 2023***, Justice Boniface Wamala highlighted that, *'it is an established principle of the law that citing a wrong law or not citing any law at all is not fatal to an application provided the jurisdiction to grant the relief exists. The irregularity or omission can be ignored and the correct law inserted.'* Consequently, despite the failure to cite the appropriate law for initiating a petition

before the Registrar of Companies, I will proceed to resolve whether there was oppression occasioned to the petitioner in this case.

44. The Companies Act Cap 106 expressly provides that a company's member who is oppressed may petition the Registrar of Companies for reliefs under Section 243. Section 243 (1) of the Companies Act Cap 106 provides that, '*a member of a company who complains that the affairs of the company are being conducted in a manner oppressive to...the members, may make a complaint to the Registrar by petition for an order under this section.*' It follows from this provision that only a company member can petition the Registrar of Companies for reliefs under Section 243 of the Companies Act Cap 106.

45. The Respondents claim that the petitioner is no longer a member of the company. Under paragraph 6 (g) of the first respondent's statutory declaration, he states that, '*the petitioner continued paying allegiance to the said Nakawa Pentecostal Church for several years while absconding her duties as a company member and as a result whereof her membership was later terminated in a resolution.*' However, the deponent did not attach proof of this resolution removing the petitioner as a member of the company and indeed none exists on the Company register maintained by the Registrar of Companies.

46. Section 45 of the Companies Act Cap 106 defines a member of a company as follows; '*the subscribers to the memorandum, if any, of a company shall be taken to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.*' Subsection two provides that, '*a person who agrees to become a member of a company, and whose name is entered in its register of members shall be a member of the company.*' Justice Stephen Musota in *Olive Kigongo Vs. Mosa Courts Apartment Ltd Company Cause No. 01 of 2015*, opined that, '*...there are two ways of becoming a member of a company and these are; a) by being a subscriber to the memorandum and articles of association of a company at the time of incorporation of that company; or b) by acquiring shares in the company after incorporation...*'

47. Section 45 of the Companies Act Cap 106 and Justice Stephen Musota's dicta in *Olive Kigongo Vs. Mosa Courts Apartment Ltd Company Cause No. 01 of 2015* unequivocally delineate the two methods by which an individual may attain membership in a company. The two methods are, either you are a subscriber to the memorandum of a company or you agree to enter a company after its incorporation and you are entered on its register of members. The Petitioner, by signing the subscription page of Elim Pentecostal Church Limited, became a member, and this status was never altered through a company resolution nor was the subscription page ever amended, thereby indicating that she remains a member of Elim Pentecostal Church Limited. The Petitioner, as a member of Elim Pentecostal Church Limited, is entitled to file a petition for member oppression pursuant to Section 243 of the Companies Act Cap 106.
48. Article 9 of the company's Articles of Association provides for termination of membership and it states verbatim that, '*the board may on a 2/3 majority vote of the members present in the meeting and voting by ballot terminate the membership of any member who for any reason ceases to maintain close working relationship with the company or who ceases for any reason to satisfy the requirements of membership or who in any way brings discredit upon the company or who endangers its welfare and progress. No such action shall be taken by the Board without first going to the members concerned, issuing reasonable notice and offering the opportunity for a personal hearing before the Board if the member shall so desire.*' While there is a board resolution dated 28<sup>th</sup> January 2013, which as already discussed in issue one was defective, appointing Kefa Ssekayizzi, Jimmy Kizito and David Ssemyalo as directors to the Board and removing Nakabugo Beatrice from the Board of Directors, there is no resolution removing the Petitioner, Nakabugo Beatrice, as a member from the company.
49. Having established that the petitioner is indeed still a member of Elim Pentecostal Church, it is important for me to discuss whether there is oppressive conduct against

her. 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 a member in their capacity as a member of the company, not in any other role. In this case, I find that the omission to invite the petitioner to meetings, the disposal of company assets, including land without her involvement, collectively constitute oppressive conduct.

*d) What remedies are available to the parties?*

59. *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*

60. The board resolutions dated 28<sup>th</sup> January 2013 and 10<sup>th</sup> May 2014, along with the special resolution dated 09<sup>th</sup> November 2022, were passed irregularly and thus are misleading, contain illegal endorsements and were wrongfully obtained. In light of the findings in this case, discussed above, pursuant to *Regulation 32 of the Companies (Powers of the Registrar) Regulations, 2016*, I make the following orders;

1. The board resolution dated 28<sup>th</sup> January 2013 appointing Kefa Ssekayizzi, Jimmy Kizito and David Ssemyalo as directors to the Board and removing Nakabugo Beatrice from the Board of directors be expunged.
2. The board resolution dated 10<sup>th</sup> May 2014 appointing Edith Katabalwa to the board and removing Jamine Muwayi Luke from the Board of directors be expunged.
3. The special resolution dated 09<sup>th</sup> November 2022 that resolved to sell off the company land comprised in LRV 3010 Folio 3, Plot No. 5, Sebei Lane, Nakawa at Kampala District be expunged.
4. The status quo in terms of membership and directorship that existed prior to the passage of the aforementioned resolutions be maintained.
5. The two existing members including the petitioner, Nakabugo Beatrice and the first respondent Godfrey Ssemwogerere, who are the legitimate existing members of the company, can pass further resolutions for purposes of regulating the future conduct of affairs in this company.
6. I make no order as to costs

*I so order.*

*Given under my hand, this 09<sup>th</sup> day of July 2025.*

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DANIEL NASASIRA

*Ass. Registrar of Companies*

*Ruling delivered in the presence of Counsel Bukiya Gilbert and Muliisa Esther from Volens Advocates and the first Respondent Godfrey Ssemwogerere. Right of Appeal Explained.*