UGANDA REGISTRATION
SERVICES BUREAU

IN THE MATTER OF THE COMPANIES ACT CAP 106

IN THE MATTER OF A PETITION TO THE REGISTRAR OF COMPANIES

PETITION CAUSE NO. 33327 OF 2024

IN THE MATTER OF THE KNOWLEDGE VILLAGE LIMITED

ELMAR HAGMANN:::PETITIONER

VERSUS

THE KNOWLEDGE HUB LTD:::RESPONDENT

BEFORE: DANIEL NASASIRA—ASSISTANT REGISTRAR OF COMPANIES

A. Background and the Petitioners case.

1. This petition was filed on 28th February 2024. The Petitioner, an Australian citizen, is a director and shareholder holding 50 shares in a company called Knowledge Village Ltd incorporated on the1st October 2021. The Respondent Company (Knowledge Hub Ltd) is a holder of 50 shares in Knowledge Village Ltd, and a director.
2. While, the petitioner erroneously brings this petition under regulation 8 of the Companies (Powers of the Registrar) Regulations, 2016, the substance of the petitioner's claims, appear to be alleged acts of oppression by the Respondent.
3. The Petitioner's main claim is that the Respondent has not taken steps to operationalize the business for which the company was established. For clarity, I will refer to that company (Knowledge village Ltd), the "investee company" to

distinguish it from the Respondent company which has a similar name. The Petitioner contends that the Respondent's directors—Andreas Brandner and Susan Obbo invited him to start the investee company. That subsequently, after incorporation of the investee company, the petitioner and the Respondent contributed equally for the capitalization of the company to a tune of 34,000 Euros, with each shareholder contributing 17,000 Euros. That this amount was spent to acquire a 99-year lease of 12.7 acres of land in Gulu city purchased from Atika Edward and Mary Suzan Obbo. This transaction was handled by Mary Susan Obbo—who is a director of the Respondent company. The petitioner accuses the said Susan of refusing to give him a signed copy of the lease agreement, which he considers an act of oppression against him.

4. Upon acquiring the said land, the Respondent and the Petitioner resolved to establish KV lodge to kick start the investee company business. Upon commencement of the construction, the Respondent and its directors neglected the project and did not bring any contribution, leaving it to the Petitioner. That having failed to contribute, the Respondent's Directors now want to claim a share in the Hotel—another act, the Petitioner considers oppressive to him. The petitioner contends that this has brought disagreement between himself and the Respondent, making it difficult for them to continue working together, the reason he wishes either to be bought out, or buy the Respondents out or to have the company liquidated and its assets distributed.
5. The Petitioner contends that he put up the first structure of the said lodge, furnished it, installed solar, installed a water source and a solar irrigation system with the consent and knowledge of the Respondent's directors. That after solely investing in the said lodge, the Petitioner also proposed the acquisition of a tractor for the company, which he says, was opposed and frustrated by the Respondent's directors.

6. The Petitioner contends that the Respondent's directors conduct has frustrated him, and oppressed him and as such making it difficult to continue working together in the company. Efforts to reach a settlement to resolve the disagreements have remained futile. The petitioner has since offered to buy the Respondent's shares, but the respondent made an exorbitant offer of 300,000 Euros. The Petitioner, in the alternative offered to sell his shares, however, the Respondent's directors claimed to have found a buyer who offered an unreasonable amount of 50,000 euros. This was rejected by the Petitioner.
7. The Petitioner contends that these actions have hindered the investee company from complying with key requirements such as filing of annual returns and other relevant filings. He prays that the Registrar declares the Respondent's actions to be oppressive to him, orders for winding up of the company and distribution of its assets according to the level of investment made by each shareholder, or in the alternative, the Registrar orders the Respondent Company to sell its shares to the Petitioner at a fair price.

B. The Respondents case

8. In response to the petition, the Respondent, in a statutory declaration sworn by Andreas Brandner goes at length to give a history of the proposed project, much of which is not relevant to the legal issues and claims made by the Petitioner and as such I will not summarize it here. With regard to their contribution, the Respondent avers that they facilitated feasibility studies, implemented the feasibility studies and facilitated all operations on the ground. The Respondent contends 55,000 Euros was spent to write the feasibility study for the investee company. The Respondent has attached a feasibility study report and other business documents in support of the project. With regard to the KV Lodge, the Respondent claims to have contributed 6,000 Euros to the construction of the Lodge towards payment of the Project Manager's remuneration.

9. The Respondent does not refute the Petitioner's claims and averments on attempts to either purchase their shares or offer his shares to them. They contend that the Petitioner acted unreasonably by refusing to negotiate with the buyer they had found. The deponent, Andreas avers that himself, he offered 40,000 USD to buy out the petitioner but the Petitioner refused to respond to the offer. He attaches a copy of the email to support this averment. The Respondent also accuses the Petitioner of frustrating efforts to have a mediator facilitate a resolution of the disagreements relating to the fair amount to purchase the petitioner's shares. The Respondent further states at paragraph 37 of the statutory declaration that they have found another investor willing to pay 45,000 Euros for the petitioner's shares, however, they do not state whether they have informed the Petitioner of this, and whether he is agreeable to the offer or not. The Respondent also alleges that the construction of the KV Lodge was a unilateral action of the Petitioner that was done without approval of the board. They further accuse the Petitioner of over ambition, and unreasonably wanting to move ahead of the company plans, without the consent of the Board.
10. The Respondent prays that the Registrar of Companies declares that their actions are not oppressive to the Petitioner, that the Registrar orders the Respondent to continue running the company, that the Registrar orders the Petitioner to find a buyer for his shares. They also pray for costs for the application.
11. In a rejoinder filed on 5th July 2024, the Petitioner refutes the Respondent's claim for contribution to the construction of the KV Lodge and challenges them to adduce receipts. However, he admits to the contribution towards payment of the consultant at a fee of 600 euros per month, but says payment was made only for 6 months and not for the whole duration of the contract.

C. Determination

12. During the hearing of this petition on 13/6/2024, Counsel Isaac Jonathan Otim represented the Petitioner, while Counsel Patricia Kaheru represented the Respondent.

13. 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.

14. In my view, there are two critical issues for determination. The first is whether the petition raises a cause of action for minority oppression of the petitioner and the second, is what remedies are available in the circumstances. I will proceed to address these two below;

Issue 1; Whether the petition raises a cause of action for minority oppression of the petitioner.

15. Claims of oppression are provided for under section 243 of the Companies Act, Cap 106. Which 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.

16. 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. The oppression of minorities must be differentiated from prejudicial conduct, which the Respondent's Counsel conflates in her arguments by referencing the case of **Olive Kigongo v Musa Courts Apartments Ltd Company Cause No. 1 of 2015**, wherein the court delineates instances that constitute prejudicial conduct, which the Respondent's Counsel contends are lacking in this case. For avoidance of doubt, the Registrar has no jurisdiction to entertain an application for prejudicial conduct. Such jurisdiction lies with the High Court as clearly provided 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 Mathew 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."

Although section 243 does not explicitly mention that the petitioner should be a minority shareholder, the aforementioned Supreme Court ruling clarifies that oppression is understood in the context of a minority shareholder. Literally, a minority shareholder is one who owns less than 50 shares in a company. In the instant case, the situation is rather interesting because the petitioner owns 50 shares, and the Respondent also owns 50 shares. Such a structure raises complexity and can cause a dreadlock since, if both shareholders were to vote by poll, there would be a draw; 50; 50 votes. That means the business of the company would be paralyzed. Section 243, neither provides for what should be done in case of 50/50 shareholding and nor does it state that a minority is one who owns less than 50 shares. Does the holder of half shares in a company qualify as a minority? While the petitioner is a natural shareholder, the Respondent is a corporate shareholder, controlled by more than one shareholder and directors, who, in the event of a breakdown in relations between the petitioner and the respondent as it is now, can collectively influence its decisions in different ways further creating dysfunction and paralysis in decision making of the investee company. In my view, in such a situation, the petitioner, although holding 50 percent, qualifies as a shareholder that can be oppressed.

17. This takes me to the alleged conduct of oppression. The Petitioner has invested personal money to construct KV Lodge, something not disputed by the Respondent. The Respondent's only claim is that they did not approve this, and that the petitioner is moving ahead of the investee company plans. First, I do not agree with this argument. The Respondent admits on oath to have contributed 6,000 euros for the remuneration of the consultant towards the construction of the lodge. The petitioner does not dispute this, although he disputes the amount, when he contends that what was paid was a monthly fee of 600 euros for 6 months. That would bring the total to 3,600 euros. The question is, how did the Respondent contribute to a project they did not agree with? Second, how did they allow the Petitioner to build the Lodge on the company land? I find it also surprising at page 2 last paragraph of the Respondent's submissions, when the Respondent seems to not understand the nature and purpose of a company limited by shares. That paragraph states; ***"the Respondent further maintains that the Company's primary purpose is research, creation of knowledge, and the promotion of knowledge, particularly in the Acholi region, of Uganda and not the construction of commercial structures for profit."*** I have quoted this verbatim, and indeed that is the reasoning prevalent all through the Respondent's defense. If the Respondents had wanted to establish a non-profit entity, they should have incorporated a company limited by guarantee and not limited by shares. A company limited by shares is an investment vehicle for profit making. A person, who invests his money in a company limited by shares, expects the company to be involved in the business for purposes of profit and hence expects a return on investment. For private companies, investors are sought for through private placement or private offers, where they bring in money, which then translates into an equity stake in the company. In this case, it is not mentioned whether the Petitioner's unilateral financial investment in KV Lodge —was ever translated into equity increasing the

petitioner's shares in a manner commensurate to his capital injection. To allow him such huge capital injection and then turn around and argue that he proceeded without consent, is to say the least, a bad culture that discourages investment but also, would constitute unjust enrichment were he would have to leave without recouping the fruits of his investment.

18. There is a failure to adhere to sound principles of corporate governance in this company. Neither party has adduced evidence of any board meetings or annual general meetings where issues raised in this matter have been deliberated. Even then, given the 50-50 shareholding structure of the investee company, it is unlikely that consensus can be reached. Then there is an issue of transparency, which is a critical issue in good governance. The Petitioner alleges that the Respondent refused to avail him a copy of the lease agreement for the company land he contributed 50 percent for. The petitioner is not an ordinary small shareholder. In addition to being a 50 percent shareholder, he is also a director. He should be allowed to access important company documents as any other director. From the above, I therefore find as follows;

    (i) There is a breakdown of relationship between the shareholders and a sheer failure of effective corporate governance.

    (ii) The Petitioner's contribution in construction of KV Lodge if not converted into equity, would constitute oppressive conduct within the meaning of Section 243 of the Companies Act.

D. Remedies

19. Having found as above, I now discuss the appropriate remedies. Both the petitioner and the Respondent made several prayers. The petitioner among others seeks for an order of winding up and distribution. He also prays, in the alternative, for an order to sell his shares at a fairly assessed and valued rate. The Respondent prays that the petitioner be ordered to find a buyer for his shares.

20. First, I will not grant an order for winding up as doing so will oppress the Respondent (*see Mathew Rukikaire supra*). This takes me to the prayer ordering the sell of shares at a valued fair rate. In my view, given the breakdown in the relationship, this is the practical relief to grant. From the pleadings and submissions, it is clear that the parties had resorted to this as the most practical approach. Both the Respondent and the Petitioner had each made an offer. The contention was on the fair amount to pay. The Respondents insisted on future projections of the whole company, based on feasibility studies as the basis for the amount that should be paid. Yet when it came to the amount to pay the Petitioner, they omit such considerations and under look the actual financial investment already made by the petitioner. Future projections, themselves moreover based on just feasibility studies cannot be a basis for determination of what should be paid now. With regard to how much, the petitioner should be paid, in my view the correct approach is to have a qualified independent valuer to value the petitioner's contribution using internationally accepted principles of valuation, and determine a fair amount. Similarly, if the parties had agreed the Petitioner buy them out, the correct approach was to value their shares, their contribution and arrive at a fair amount. Both parties did not take this approach. I am therefore inclined to order a valuation of both the petitioner's and the Respondent's shares and their respective contribution so that the investee company can buy the petitioner out. This was indeed the approach taken by the Supreme Court in the Mathew Rukikaire cited above, and am bound to follow the same. Section 243, grants wide discretion to the Registrar. I quote the relevant paragraph. "***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"

21. Pursuant to Section 243 of the Companies Act Cap 106 and Regulation 32 of the Companies (Powers of the Registrar) Regulations, 2016, in light of the circumstances of this case and with a view to bringing the dysfunction and matters complained of to an end, I make the following orders;

    (i) The company shall appoint an independent valuer agreed upon by the parties, who shall value the company, determining each parties' contribution. The auditor shall among others, take into consideration, each party's direct financial and indirect investment in the company.

    (ii) After the valuation, the Respondent shall, within 4 months, after the valuation, have the first opportunity to buy out the Petitioner's shares at a valued rate, after which the Petitioner shall exit the company. The Respondent is however free to get another buyer should they find one who can pay the same amount and within the same time.

    (iii) Where 4 months expire before the Respondent exercises the right to buy, the Petitioner shall also have 4 months to exercise the option to buy out the Respondent, at a rate determined by the independent valuation.

    (iv) The costs of the audit shall be borne by both the petitioner and the Respondent equally.

    (v) As to the costs of this petition, each party shall bear its costs.

I so Order

Given under my hand this 28th day of 02 2025

Daniel Nasasira
Assistant Registrar of Companies