



## **B. Background**

2. This application was filed on 02<sup>nd</sup> October 2024 seeking various orders among which included an order seeking rectification of the register by expunging a number of resolutions and forms that were allegedly registered illegally.
3. The applicants are shareholders and directors of Global Property Consultants Limited, a company registered on 05<sup>th</sup> May 2008 under registration number 80010003157850.
4. The first applicant Ddungu Henry held 99 shares and the second applicant Wasswa Joseph held 1 share before the respondents altered this shareholding structure.
5. In 2024, when the applicants wanted to file Company annual returns, they discovered after conducting a company search that several company structural changes had been made on the company file.
6. The respondents submitted a special resolution on April 1, 2023, which indicated that the applicants had transferred their shares, thereby altering the company's original shareholding structure to reflect the following: Muwonge Andrew 48 shares, Golooba Stephen Mabaati 23.5 shares, Kalyowa Moses Kibowa 23.5 shares, and Bukenya Kenneth 5 shares.
7. The respondents went ahead and executed a form changing the directorship and secretary of the company on 12<sup>th</sup> May 2023. The said form appointed Muwonge Andrew and Kalyowa Moses Kibowa as directors.
8. The respondents proceeded and filed a notice of the registered address of the company without the applicant's knowledge.
9. The respondents further filed amended memorandum and articles of association on 12<sup>th</sup> May 2023 to include the new shareholding structure.

10. The applicants filed all necessary pleadings including an application for rectification of the register under the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016, a statutory declaration in support and submissions. Summons were issued under Regulation 28 (1) of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016. Despite efforts to trace the respondents at their known physical addresses, telephone contacts and known legal representatives, the applicants were not able to physically serve the respondents. Affidavits of service were filed to this effect. Leave was granted to the respondents to serve by way of substituted service in a newspaper of wide circulation first on the 11<sup>th</sup> day of October 2024 and later on the 30<sup>th</sup> day of January 2025 but still the respondents did not adhere to the summons and chose not file a statutory declaration in reply or appear for the proceedings. The applicants were thus granted an order to proceed *ex parte* on the 01<sup>st</sup> of April 2025 under Regulation 32 (1) of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016.
11. I instructed the applicants' counsel to submit written submissions by April 14, 2025, and I informed them that a decision would be issued on notice. The submissions were received on May 15, 2025, and this decision follows consequently.

### **C. Issues**

12. There are two issues for determination in this matter;
- a) Whether or not the company documents altering the company ownership, directorship and address were legal endorsements?*
  - b) What remedies are available to the parties?*

#### **D. Submissions**

13. The applicants counsel submitted that the applicants, who are the initial shareholders of Global Property Consultants Limited, with each holding 99 and 1 shares respectively, incorporated the said company on the 5<sup>th</sup> day of May 2008.
14. Counsel submitted that the applicants have never met or done business with the respondents. The respondents were and are total strangers who illegally altered the company structure by executing a special resolution and transfer forms wherein they removed the applicants as members/directors in the company and admitted themselves as shareholders/directors.
15. The applicants did not participate in any board or members meeting where resolutions were passed, nor were they notified of any meeting that resulted in the unlawful alteration of the company's memorandum and articles of association.
16. It is the submission of the applicants that the special resolution transferring the applicants shares, shares transfer forms, form 20 changing the directors and secretary of the company, form 18 changing the address of the company and amended memorandum and articles of association are all null and void as they were not executed by the applicants.
17. It is the prayer of the applicants that the aforementioned documents be expunged from the company register for being misleading, inaccurate, contain illegal endorsements and are wrongfully obtained and registered in the company register.

#### **E. Determination**

18. I carefully read the submissions of counsel for the applicant and will proceed to determine the issues.

*Whether or not the company documents altering the company ownership, directorship and address were legal endorsements?*

19. The first applicant in paragraph five of his statutory declaration indicates that he is aggrieved by the actions of the respondents, who without their knowledge or consent, orchestrated a series of documents illegally and irregularly. The applicants contend that they did not execute the special resolution wherein Muwonge Andrew, Golooba Stephen Mabaati, Kalyowa Moses Kibowa and Bukenya Kenneth were admitted as shareholders and all the subsequent company structural changes that were made after this including change of the company directors/secretary and company address. I will go ahead and analyze the submissions made by counsel invoking the powers of the Registrar of Companies to rectify the register of Global Property Consultants Limited in respect to the filed special resolution transferring shares and amending the company's memorandum and articles of association, the company form 20 bringing on board the new directors/secretary, the company address form changing the address of the company and the share transfer forms transferring the shares of the original members of the company.

*a) Share transfer forms, Special resolution transferring shares and Amendment of the company's memorandum and articles of association.*

20. The original Articles of association of Global Property Consultants Limited under the article providing for transfer and transmission of shares stipulate that, '*any party to this agreement proposing to transfer any shares shall give notice in writing to the other parties. The transfer notice shall specify the number of shares the transfer proposes to transfer. The initial parties to this agreement shall have priority over any other party to purchase such shares.*' No notice was availed from the applicants indicating that they intended to transfer their shares as required by this provision in the company's articles of association.

21. Section 83 of the Companies Act Cap 106 provides that, '*notwithstanding anything in the articles of a company, it is not lawful for the company to register a transfer of*

*shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company.'* This provision emphasizes that the instrument for transferring shares, specifically the transfer forms, must be properly executed for the transfer to be considered legally valid. The transfer forms for the applicants' ninety-nine (99) and one (1) share, respectively, were not executed/signed by the applicants, and thus cannot be considered properly executed instruments of share transfer. In *Kababure v Besigye & 2 Others (Application 29939 of 2023) [2025] UGRSB 8 (16 April 2025))* transfer forms not executed by the transferor were deemed to constitute an illegal endorsement in the meaning of Regulation 8 of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016. The submission by the applicant's counsel convincingly demonstrates that the applicants did not receive any notice inviting them to discuss the proposed share transfers. How could they then proceed to sign transfer forms and a resolution if they did not have knowledge of the same in the first place? Furthermore, the absence of minutes to substantiate any discussion regarding the transfer of their shares supports the finding that the transfer forms were not executed by the applicant's.

22. 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.'* The applicants never participated in any members meeting where the special resolution dated 01<sup>st</sup> April, 2023 transferring the applicants shares, changing company directorship/secretary and amending the company's memorandum and articles of association was passed, nor were they given any notice of a meeting that led to the alteration of the memorandum and articles of association. There was no general or extra

ordinary general meeting called to pass the said amendments. The applicants were never served the required statutory notice for the purported meeting that passed the amendments.

23. Section 148 of the Companies Act Cap 106 stipulates that, *'every company shall cause minutes of all proceedings of general meetings and of all proceedings at meetings of its directors, to be entered in books kept for that purpose.'* Subsection 2 continues to provide that, *'any minute referred to in subsection (1) purporting to be signed by the chairperson of the meeting at which the proceeding were held or by the chairperson of the next following general meeting or meeting of directors as the case may be shall be evidence of the proceedings.'* In this case, there are no company minutes as mandated by Section 148 of the Companies Act Cap 106 to support the alleged meeting held on April 1, 2023, which resulted in various structural modifications within the company and was purportedly conducted at the registered office as stated in the resolution. Additionally, there is no attendance record to confirm the occurrence of the meeting.

24. Section 9 of the Companies Act Cap 106 provides that, *'a company may not alter the conditions contained in its memorandum, if any, except in the cases in the mode and to the extent for which express provision is made in the act.'* One of the requirements for an amendment of the memorandum to be deemed valid is under Section 10 (2) (a), which provides that a resolution to amend a memorandum may be passed, *'by the holders of not less in aggregate than fifteen percent in nominal value of the company's issued share capital or any class of them, if the company is not limited by shares, not less than fifteen percent of the company's members.'* In this case, the applicants as the initial subscribers of this company holding not only fifteen percent but a hundred percent of the shares in this company, did not authorize this amendment as they did not execute the instrument that sanctioned the amendment. The amendment of the memorandum thus constitutes an illegal endorsement.

25. Section 16 of the Companies Act Cap 106 provides that, *‘subject to the provisions of the act and the conditions contained in the memorandum, if any, a company may by special resolution alter its articles.’* There was no special resolution passed by the rightful and lawful members of the company in order for the amendment of the articles of association to have any effect in law pursuant to the aforementioned section.

***b) Change of the Company’s directors/ Secretary***

26. The Special resolution dated 01<sup>st</sup> April 2023 under clause three provided that, *‘Ddungu Henry and Wasswa Joseph cease to be directors of the company and Muwonge Andrew and Kalyowa Moses Kibowa be and are hereby appointed as directors in the Company.’* It further provided under clause 4 that, *‘Kayanja Geofrey ceases to be secretary of the company and Kalyowa Moses Kibowa be and is hereby appointed as Secretary for the company.’* Consequently, a form changing particulars of directors and secretary (form 20) was registered on 12<sup>th</sup> May 2023 to reflect the above changes. Having found that this special resolution was both irregularly obtained and illegally executed, I find that the company form 20 (particulars of directors/secretary) which was filed on 12<sup>th</sup> May 2023 was illegally obtained and thus ought to be expunged from the company register.

***c) Change of the Company Address***

27. The notice of change of registered office and postal address registered on the 12<sup>th</sup> day of May 2023 constitutes an illegal endorsement as the same was not a product of a resolution agreed by the rightful members of the company.

***d) Resolution requesting for special certificates of title in respect to registered Company land.***

28. The Board resolution registered on the 15<sup>th</sup> day of June, 2023 appointing Kalyowa Moses Kibowa as a representative of Global Property Consultants Limited for purposes of acquiring a special certificate of title from the Commissioner Land



Registration was signed by illegally appointed directors/secretary and therefore constitutes an illegal endorsement.

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

29. 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*

30. **Regulation 8 (1) of the Companies (Powers of the Registrar) Regulations 2016** cited above provides that the registrar may rectify and update the register to ensure that the register is accurate. In light of the findings and resolutions 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 special resolution dated 01<sup>st</sup> April, 2023 and registered on the 12<sup>th</sup> day of May, 2023 providing for the transfer of shares, change in directorship/secretary and amending the company's memorandum and articles of association of the company be expunged from the register.

2. The five share transfer forms registered on the 12<sup>th</sup> day of May, 2023 altering the ownership of the company from the Applicants to the Respondents be expunged from the register.
3. Company form 20 and form 18 registered on the 12<sup>th</sup> day of May, 2023 altering the directorship/secretary and address of the company be expunged from the register.
4. Board resolution dated 14<sup>th</sup> day of June, 2023 and registered on the 15<sup>th</sup> day of June, 2024 purporting to empower the Respondents to acquire special certificates of tiles to company land be expunged from the register.
5. The Amended memorandum and articles of association of the company dated 01<sup>st</sup> April 2023 and registered on the 12<sup>th</sup> day of May, 2023 be expunged from the register.
6. I make no order as to costs.

*I so order.*

*Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_ 2025.*

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*DANIEL NASASIRA*

*Ass. Registrar of Companies*