



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

**IN THE MATTER OF A PETITION TO THE REGISTRAR OF COMPANIES**

**PETITION CAUSE NO. 41738 OF 2024**

**IN THE MATTER OF JULIA GUEST HOUSE LIMITED**

**ROBERT ACELLAM:..... PETITIONER**

**VERSUS**

- 1. JULIA OTTI**
- 2. MARGARET OTTI**
- 3. JULIA GUEST HOUSE LIMITED :.....RESPONDENT**

**RULING ON PRELIMINARY OBJECTIONS**

**BEFORE: DANIEL NASASIRA – ASSISTANT REGISTRAR OF COMPANIES**

**A. Background**

1. The petitioner filed this petition claiming that the shareholding of Julia Guest House Limited was modified without the consent of the other shareholders, constituting illegal and oppressive conduct. He further contends that he has been unlawfully excluded from the company's activities and decision-making processes, and that the Respondents are mismanaging the company.
2. When the matter came up for hearing, the respondents through their lawyer raised preliminary objections arguing that the matter was barred by the doctrine of res judicata in so far as it was premised on similar facts and questions of law already

determined by H/W Solomon Muliisa Registrar of Companies vide Company Cause No.5 of 2020; Robert Acellam V Julia Guest House Ltd and 2 Others, who ordered that the petitioner lawfully ceased to be a member of the Company and that the correct shareholders are Margret Otti and Julia Otti. The respondents argued that bringing up the same issues that were determined and a ruling entered by the Registrar of Companies before the same forum is barred by the doctrine of res judicata. The respondents counsel also argued that the petitioner had no locus to bring the petition as Company Cause No.5 of 2020 declared that he was lawfully removed as a member of Julia Guest House Limited and prayed for this instant matter to be struck out with costs.

3. When this matter came up for hearing on 20<sup>th</sup> February 2025, I instructed both counsel for the petitioner and respondents to present written submissions and issued schedules as follows;
  - a) Respondents submissions on the preliminary objections were to be filed and served by 07<sup>th</sup> March 2025
  - b) Petitioners submissions in reply were to be filed and served by 12<sup>th</sup> March 2025
  - c) Any rejoinder was to be filed and served by 12<sup>th</sup> March 2025
4. The respondents filed their written submissions regarding the preliminary points of law raised on 28<sup>th</sup> February 2025, well ahead of the established deadline according to the filing schedules issued to the parties listed above. The petitioners submitted their reply on 04<sup>th</sup> April 2025, significantly outside of the previously established time frame for filings. In light of their application provided in the submissions detailing the rationale for the delayed filing, I exercise my discretion under Regulation 34 of the *Companies (Powers of the Registrar) Regulations SI No 71 of 2016* to acknowledge their reply, which has been taken into consideration in reaching this decision, notwithstanding its late submission. The rejoinder was also filed beyond the established filing deadlines but this was due to the late

submission of the petitioner's reply; so, it is justifiable to acknowledge it as the petitioner's delay in filing a reply caused the late filing of the rejoinder.

## **B. Representation**

5. Counsel Omolloi Ivan from Okello Oryem & Co Advocates represented the petitioner while Counsel Stanley Omony from Stanley Omony & Co Advocates represented the respondents.

## **C. Issues / Preliminary Objections**

6. During the hearing of this petition two preliminary points of law were raised by the respondents which form the issues for determination in this matter;
  - i) Whether Petition Cause No. 41738 of 2024 is res judicata
  - ii) Whether the petitioner has locus to bring this petition

## **D. Determination**

### **Issue 1. Whether Petition Cause No. 41738 of 2024 is res judicata**

7. The doctrine of res judicata, also known as claim preclusion, is a legal principle that states that a matter that has been finally determined by a court of competent jurisdiction cannot be re-litigated by the same parties or their privies in a later suit. Counsel for the respondents relied on section 7 of the Civil Procedure Act Cap 282 which provides that *"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court."*
8. The *Companies (Powers of the Registrar) Regulations SI No.71 of 2016* is not exhaustive on all procedure including providing for the principle of *res judicata* and may therefore be supplemented by other relevant statutes such as the Civil Procedure

Act Cap 282 and rules save for areas where the regulations provide for a specific procedure. Court in *Oil Seeds (U) Ltd V AG CACA No.127/2003* highlighted that where the Civil Procedure Act is inadequate on certain areas of procedure, it may be supplemented by other laws. Similarly JSC Tsekooko in *Beatrice Kobusingye Vs Fiona Nyakana (Civil Appeal 18 of 2001) [2002] UGSC* emphasizes the applicability of the Civil Procedure Act to civil matters despite Section 1 stipulating its applicability only to the High Court and Magistrates Courts. Basing on the above authorities, Section 7 of the Civil Procedure Act Cap 282 is applicable in as far as the Companies (Powers of the Registrar) Regulations SI No.71 of 2016 is not exhaustive on all procedure including the doctrine of res judicata.

9. The position on the doctrine on Res judicata has been discussed by the Court of Appeal in *Ponsiano Semakula V Susane Magala & Others 1993 KALR 213* cited with approval in *Hon Maj. Gen (RTD) Kahinda Otafiire V The New Vision Printing and Publishing Corporation CS No. 505 of 2019* where court held that, *'the doctrine of Res Judicata embodied in Section 7 of the CPA is a fundamental doctrine of all courts that there must be an end to litigation, the spirit of the doctrine is succinctly expressed in the maxim: nemo debet bis vexari pro una et eada causa (no one should be vexed twice for the same cause). The test of whether or not a suit is bared by res judicata appears to be that the plaintiff in the second suit is trying to bring before the court in another way and in the form of a new cause a transaction which has already been adjudicated upon, if so then the plea of res judicata applied not only to claims upon which the first court was actually required to adjudicate but to every point which properly belongs to the subject of litigation and which the parties exercising reasonable diligence might have brought forward.'*
10. From the reading of the authorities above, the essential elements of the doctrine of res judicata are;
  - a) There was a former suit between the same parties or their privies

- b) The matter was heard and finally determined by the Court on its merits
- c) The matter was heard and determined by a Court of competent jurisdiction
- d) That the fresh suit concerns the same subject as the previous suit.

I will delve into each of the above ingredients below

**a) There was a former suit between the same parties or their privies.**

11. A precise examination of Petition Cause No. 0005 of 2020, filed by Robert Acellam against Julia Guest House Limited, Julia Otti, and Margret Otti as respondents, indicates that the current petition Cause No. 41738 of 2024 involves the same parties as those in Company Cause No. 5 of 2020. Therefore, this matter involves the same parties as parties in Company Cause No.5 of 2020.

**b) The matter was heard and finally determined by the Court on its merits.**

12. The doctrine of res judicata can only be applied subsequent to the issuance of a judgment or ruling that addresses and resolves the real or substantial grounds of action or defense, as opposed to issues related to practice, procedure, jurisdiction, or form.

13. The petitioner asserts in paragraph 20 on page 7 of his submissions that the Registrar in Company Cause No. 5 of 2020 failed to conduct a hearing for the petition and did not resolve the petition based on a hearing, thereby infringing upon the petitioner's right to be heard. He further cites Section 286, arguing that the Registrar cannot forego a hearing of the parties' *viva voce*, even in instances where statutory declarations have been submitted by the parties. Section 286 provides , 'In any proceeding before a registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but in any case in which the registrar thinks it right so to do, he or she may take evidence *viva voce* in lieu of or in addition to evidence by declaration.' The supreme court in *Attorney General V Hon. Michael Kabaziguruka Constitutional Appeal No. 02 of 2021*

while pronouncing itself on the rules of statutory interpretation held that, '*...the words of or phrases are clear and unambiguous, they must be accorded their primary, plain, ordinary or natural meaning, the language used must be construed in its natural and original sense.*'

14. Section 286 of the Companies Act Cap 106 explicitly states that evidence in proceedings before a registrar must be provided by statutory declaration. However, the section does not indicate that the registrar is required to take evidence viva voce; rather, this is at the registrar's discretion and not a mandatory requirement, contrary to the petitioner's assertions in their submissions. Both parties submitted their statutory declarations pursuant to Section 286, and the Registrar did not exercise discretion to allow oral evidence, as it is not mandatory. Furthermore, neither the petitioner nor the respondents sought leave to present any evidence viva voce. I agree with the respondents that the case cited by the petitioner *Luitingh Lafras & Anor V Special Services Ltd Company Cause No.11 of 2019* is quite distinguishable from the facts in this case. The learned Justice Musa Ssekaana in the aforementioned case found that the, '*Registrar did not have any statutory declaration on record as evidence supporting the complaint therefore the registrar could not act without clear evidence under statutory declarations or evidence taken viva voce.*' In the present case, the Petitioner acknowledges in paragraphs 11 on pages 2-3 of his submissions that all parties submitted their respective statutory declarations on record, which the Registrar relied on to make his decision in Company Cause No. 5 of 2020. Consequently, this case is significantly distinct from *Luitingh Lafras & Anor V Special Services Ltd* as in that case the Registrar made a decision without relying on any statutory declarations or oral evidence yet in Company cause No. 5 of 2020, the registrar relied on filed statutory declarations to make his decision.

15. The submission of the petitioner that the Registrar cannot dispense with a hearing of the parties *viva voce* even where they have filed statutory declarations is misconceived and a misinterpretation of Section 286 Companies Act Cap 106. On 03<sup>rd</sup> March 2023, H/W Solomon Muliisa issued a ruling in Petition Cause No.5 of 2020, determining that the petitioner had submitted the petition under an incorrect legal provision, specifically Section 247 of the Companies Act. The learned Registrar of Companies went ahead and addressed the issue of the petitioner's removal from the company, which the petitioner is again raising in this petition. The matter of membership was resolved in Petition Cause 0005 of 2020, and the law stipulates the suitable remedy. The learned registrar by addressing the question of membership heard the case on its merits. If the petitioner is dissatisfied with the Registrar's decision, they have the right to appeal to the High Court, as established by Section 290 of the Companies Act Cap 106.

16. The principle of *res judicata* aims to prevent the same forum from adjudicating a matter it has previously resolved in a different manner. The doctrine aims to prevent litigants from reintroducing previously resolved disputes, as the petitioner is attempting in the current case.

**c) The matter was heard and determined by a Court of competent jurisdiction.**

17. It is trite that jurisdiction is a creature of statute and no Court or tribunal can confer upon itself jurisdiction and where a court that has no jurisdiction entertains a matter any proceedings arising therefrom are a nullity. (*See Baku Raphael & Anor V AG SCCA No.1 of 2005 cited with approval in National Medical Stores V Penguins Ltd HCCS No. 29 of 2010*)

18. Section 243 of the Companies Act Cap 106 confers on the Registrar of Companies jurisdiction to entertain complaints of members of a company that claim that the affairs of the company are being conducted in a manner oppressive to them. H/W Muliisa Solomon in adjudicating over Company Cause No.5 of 2020 was vested

with jurisdiction to entertain the petitioner's claim of alleged oppression against him by the respondents and thus the ingredient of jurisdiction is satisfied. The learned Justice Musa Ssekaana in Company Cause No.13 of 2020 **Bryan Xsabo Strategy Consultants (Uganda) Limited & 2 Ors V Great Lakes Energy Company N.V** found that, *'the exercise of power by the Registrar contemplates the adjudication of rival claims of the persons by an act of the mind or judgement upon proposed cause of official action as to an object of the corporate power vested under the Companies Act. They decide both questions of fact as well as of law and determine a variety of applications, claims, controversies and disputes.'* It follows from this authority that the doctrine of Res judicata is a question of law which is well within the Jurisdiction of the Registrar of Companies to determine.

19. I wish to respond to the petitioner's assertion that the Registrar of Companies is not a court of law and, therefore, lacked jurisdiction to preside over Company Cause No. 05 of 2020 and thus the decision cannot be barred by the doctrine of res judicata. First of all, I find such an argument quite intriguing as Company Cause No. 05 of 2020 was filed by the petitioner and one wonders how one can petition a forum which they know does not possess the requisite jurisdiction to hear the matter. Nevertheless, the Black's Law Dictionary defines a quasi-judicial body as *an entity outside the conventional judiciary that possesses the authority to render decisions with legal implications, analogous to a court of law.* The Registrar of Companies, when exercising the quasi-judicial powers granted under the Companies Act Cap 106 and the Companies (Powers of the Registrar) Regulations SI No 71 of 2016, operates in a capacity akin to that of a judicial body. Unless the Registrar provides remedies beyond their authority or addresses issues typically reserved for the High Court, such as actions constituting prejudicial conduct under Section 244 of the Companies Act Cap 106, their decisions/rulings will consistently be deemed within the scope of their quasi judicial mandate under the Companies Act Cap 106



and the Companies (Powers of the Registrar) Regulations SI No 71 of 2016. Consequently, decisions made by the Registrar of Companies may only be contested through an appeal to the High Court under Section 290 of the Companies Act or subjected to review by the High Court under Section 289. The practice of presenting identical issues concerning the same parties to a forum that has previously rendered a decision on the matter is precisely what is prohibited by the doctrine of res judicata. It is evident that the petitioner, by submitting this application, is attempting to engage in such a proceeding.

**d) That the fresh suit concerns the same subject as the previous suit**

20. In *Bank of Uganda and Anor V Kaweesi Sulaiman & 26 Others* M.A No. 1047 of 2022 Justice Steven Mubiru held inter alia that, *'the implication of directly and substantially in issue is that the issues presented for determination in both sets of proceedings should be identical or substantially identical. Res Judicata is not confined to issues which Court is actually asked to decide but also covers issues of fact which are so clearly part of the subject of litigation and so clearly could have been raised that it would be an abuse to the process of the Court to allow new proceedings to be started in respect of them. It therefore includes matters which might and ought to have been made on ground in the previous suit that are now being raised more or less as an afterthought, this in law is constructive res judicata.'* Further, court in *Ponsiano Semakula V Susane Magala & Others* 1993 KALR 213 cited with approval in *Hon. Maj. Gen Kahinda Otafiire V The New Vision Printing and Publishing Corporation* CS No. 505 of 2019 held that, *'the plea of res judicata applied not only to points upon which the first Court was actually required to adjudicate but to every point which properly belongs to the subject of litigation and which the parties exercising reasonable diligence, might have brought forward.'* The issues regarding fraudulent restructuring of shares and other alleged illegalities properly belong to the subject of litigation in Company Cause no.05 of

2020, which was the removal of the petitioner as a member and thus similar to the same issues raised in this matter.

21. The Petitioner presented concerns regarding the structural alterations in the company's membership and asserted that they were unlawfully excluded from all company activities. The issues presented are analogous to those in issue two of Company Cause No. 0005 of 2020, which addressed the legitimacy of the alteration of shareholding and the lawful cessation of the Petitioner's membership in the Company. The Registrar of Companies addressed the same issues and concluded on page 14 of the ruling that the Petitioner was properly removed as a member of the company, with Margret Otti and Julia Otti identified as the rightful shareholders.
22. The four ingredients of the doctrine of res judicata having been fully satisfied as discussed above, I find that the petitioner's remedy in the circumstances in case he is dissatisfied with the decision of the Registrar is to appeal against the decision of the Registrar of Companies which is a right accorded to him under Section 290 of the Companies Act Cap 106.

## **Issue 2. Whether the petitioner has locus to bring this petition**

23. The Registrar of Companies issued an order on page 14 of the ruling that was issued in response to Petition cause No. 0005 of 2020, stating that the petitioner was legitimately removed from the company. The learned Registrar stated, I quote verbatim, *'the petitioner was rightly removed as a member of the company and he is no longer a member of the same company.'* I agree with the respondent that this *ipso facto* means that he is no longer a member of the company and thus has no locus to bring this petition.
24. The petition in question is filed in accordance with Section 243 of the Companies Act Cap 106; which section limits the right to file a petition to only those

individuals who are members of the company. In light of the fact that the petitioner in question is not a member of Julia Guest House Limited, I find that he does not have locus to submit this petition because there has been no appeal lodged against the decision made by the Registrar in accordance with Company Cause No. 0005 of 2020.

### **Remedies**

25. In light of the above analysis, I find that the absence of *locus standi* and the matter being barred by the doctrine of *res judicata* are preliminary points of law which if argued successfully have the effect of disposing of the whole matter. (See. *Mukisa Biscuit Manufacturing Co. Ltd versus West End Distributors Ltd [1969] EA 696*). The preliminary issues concerning whether the petition is barred by the doctrine of *res judicata* and whether the petitioner has *locus standi* having succeeded, I do not find it necessary to go into the merits of the matter. Pursuant to regulation 32 of the *Companies (Powers of the Registrar) Regulations, 2016*, I make the following orders;

1. The matter is barred by the doctrine of *res judicata* for having been previously handled and concluded in Company cause No. 0005 of 2020
2. The petitioner has no locus to bring this matter as he is not a member of the third respondent company.
3. Application is dismissed.
4. 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*

Ruling delivered on 22<sup>nd</sup> April 2025

Right of Appeal explained