

**THE REPUBLIC OF UGANDA**

**THE COMPANIES ACT, CAP 106**

**IN THE MATTER OF KYADONDO RUGBY FOOTBALL CLUB LIMITED**

**COMPANY COMPLAINT NO. 27635 OF 2023**

**BRIAN TABARUKA & 10 OTHERS:..... APPLICANTS**

**VERSUS**

1. JAMES PETER MIDDLETON

2. JEROLINE AKUBU

3. MICHEAL DOUGLAS KEIGWIN

4. PETER BROWSER

5. ANDREW OWOR :..... RESPONDENTS

**RULING**

*Before Daniel Nasasira, Ass. Registrar of Companies*

***A. Background***

1. This complaint was brought by the applicants under Regulations 3, 8, 20 and 21 of the Companies (Powers of the Registrar) Regulations of 2016. The applicants contend that they are members of Kyadondo Rugby Football Club Limited and claim to be the current Executive Committee of the company. The application was supported by a statutory declaration sworn by Brian Tabaruka on behalf of all the complainants. The applicants who include Brian Tabaruka, Emmanuel Baine, Emmanuel Muhangi, Geoffrey Okello, Micheal Okorach, Emmanuel Otim, Winnie Atyang, Desire Mugumisa, Asha Kalanzi,

Daniel Rweyora and Titus Wambede argue that they are full members and the current members of the executive committee of Kyadondo Rugby Football Club Limited, having been elected at the annual general meeting held on July 15, 2023. The applicants contend that with the exception of James Peter Middleton, the respondents in this company complaint namely Jeroline Akubu, Michael Douglas Kigwin and Andrew Owor are not part of the original membership of the company.

2. The applicants allege that the respondents, fully aware of the election of a new executive committee, unlawfully initiated the process of updating company data, leading to multiple modifications, including their appointment as directors and amendments to the company's original memorandum and articles of association. The following documents were registered as a result without authorization from the company's executive committee.

- a) Company form 20 appointing the respondents as directors filed on 01<sup>st</sup> June 2023
- b) Power of Attorney appointing the 1<sup>st</sup> and 5<sup>th</sup> respondents as the Company's Authorized representatives filed on 11<sup>th</sup> September 2023
- c) Amended memorandum and articles of association of the company filed on 29<sup>th</sup> August 2023

3. The applicants assert that the original company's memorandum and articles of association were modified during a clandestine meeting, for which no notice was provided, and no minutes or attendance records were made available to substantiate the structural changes, indicating a malicious intent to unlawfully seize control of the company.

4. The outcome of the aforementioned filings substantially modified the company's status quo, since a new board was established without adhering to the necessary procedures outlined in the Companies Act and the company's Articles of Association. Additionally,

the amendments led to the removal of the applicants as members from Kyadondo Rugby Football Club Limited, again without adhering to the necessary procedures outlined in the Companies Act and the company's Articles of Association. The applicants request the rectification of the company register to expunge the aforementioned documents.

5. The respondents, on the other hand, filed multiple statutory declarations on 12th July 2024, 24th January 2024, and 19th December 2023 contesting the complaint. Andrew Owor in his declaration testified that none of the complainants / applicants are members of Kyadondo Rugby Football Club Limited, nor are any of them members of the company's executive committee. Andrew Owor states in his declaration that save for Geoffrey Okello, none of the complainant's names appears on the subscription page of the memorandum and articles of association. The copies of the identification cards attached to the statutory declaration of Brian Tabaruka are in no way proof of the complainants' membership in the company.

6. The respondents further argue that no meeting of the Kyadondo Rugby Football Club Limited occurred on 15th July 2023 and the minutes submitted by the applicants are a fabrication. Andrew Owor states that the meeting of 15<sup>th</sup> July 2023 referred to by the complainants was a general meeting of Kyadondo Sports Club Limited and not Kyadondo Rugby Football Club Limited. The minutes, audited accounts and annual report that was submitted at the said meeting was for Kyadondo Sports Club Limited and not Kyadondo Rugby Football Club Limited.

7. The respondents assert that the Form 20 filed on June 1, 2023, appointing them as directors, the newly amended memorandum and articles of association filed on August 29<sup>th</sup>, 2023, and the data update were filed in compliance with the law.

### ***Representation***

8. Musitwa Terrance from Nabasa & Co. Advocates represented the applicants while Nalukwata Lukia and Perry Muhebwe from Musiime Muhebwe & Co Advocates represented the respondents. 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 submissions that are already on file to arrive at this ruling. I will treat this complaint as an application under Part V of the Companies (Powers of the Registrar) Regulations.

### ***Issues Raised***

- 1) Whether the complainants are members of Kyadondo Rugby Football Club Limited?
- 2) Whether the complainants or respondents are the members of the Executive Committee of Kyadondo Rugby Football Club Limited?
- 3) Whether the respondent's data update of Kyadondo Rugby Football Club Limited was lawful?
- 4) Whether the respondents' amending the original company's Memorandum and Articles of Association was lawful?
- 5) What remedies are available to the parties?

## *Analysis and Determination.*

### *Issue One*

#### *Whether the complainants are members of Kyadondo Rugby Football Club Limited?*

9. Counsel for the Applicant and respondents in their submissions correctly referred to the case of *Olive Kigongo Vs. Mosa Courts Apartment Ltd Company Cause No. 01 of 2015*, where Justice Stephen Musota 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...’ Given that Kyadondo Rugby Football Club Limited is a company limited by guarantee the latter requirement of acquiring shares in the company does not apply.

10. According to *Section 45 of the Companies Act, Cap 106* membership of a company is gained in two ways; (a) by being a subscriber to the memorandum of a company one is taken to have agreed to become a member of the company, and on its registration it is obligatory to be entered as a member in its register of members; and (b) a person who agrees to become a member of a company after its incorporation, and whose name is entered in its register of members.

11. In the present matter, as articulated in paragraph four of their statutory declaration dated 8th July 2024, the complainants assert that they are all full members of Kyadondo Rugby Football Club Limited. However, a review of the original subscription page in the memorandum and articles of association on the Company file reveals that only two members, namely Brian Tabaruka *alias* Brian Tindikahwa and Geoffrey Okello, are listed as members on the subscription page of the company's memorandum and articles of association. Based on Section 45 of the Companies Act Cap 106 and the interpretation by Justice Stephen Musota in *Olive Kigongo Vs. Mosa Courts Apartment Ltd Company*

**Cause No. 01 of 2015**, I find that Brian Tabaruka and Geoffrey Okello are members of the Kyadondo Rugby Football Club Limited, as they are listed as members on the subscription page of the original memorandum and articles of association. The legality of the amended memorandum and articles of association removing these two members will be thoroughly examined in the fourth issue. I take into account that Brian Tabaruka is listed as Brian Tindikahwa on the subscription page; however, this discrepancy was adequately clarified by the applicant in his declaration, which included his national identification card and birth certificate that was tendered as an attachment to Brian's declaration as *Annexure E* and *F* to show that he is one and the same person. The birth certificate shows that Tindikahwa is his father's name.

12. The other members namely Emmanuel Baine, Emmanuel Muhangi, Micheal Okorach, Emmanuel Otim, Winnie Atyang, Desire Mugumisa, Asha Kalanzi, Daniel Rweyora and Titus Wambede sought to rely on their club membership identification cards and minutes to claim their membership in Kyadondo Rugby Football Club Limited. These members do not appear as subscribers on the subscription page of the memorandum and articles of association of the company. Article 6 of the original Company's Articles of Association provides, *'that the Club shall consist of such number of members, as the committee shall from time to time determine. The Committee may keep a waiting list of candidates for election. Only persons who have reached the age of eighteen years shall be eligible for election as full members. Members' children under the age of eighteen years may be allowed on the club premises provided they are in the personal care of a member.'* Article 7 goes ahead to provide for the different classes of members including, *'a benefactor, life member, full playing, full non playing, playing, junior, spouse, temporary, honorary, reciprocating and absent member.'* The definition of each of these members is provided for under Article 8 of the Company's Articles of Association. I would expect that the company / club has a register of members where all members that have been admitted according to Article 6 of the Company's Articles of

Association are indicated as members on such a register which is not the case as no register of members was submitted. The other way to determine membership would be to go to the original subscription page of the Company's Memorandum and Articles of Association. The thirty nine persons who appended their signatures to the original subscription page of the Company's Memorandum and Articles of Association would qualify as members of the company. In this particular matter, no members register or any other credible evidence was adduced by these complainants to prove their membership in Kyadondo Rugby Football Club Limited.

13. The identification cards that were tendered in are not only expired but are also unsigned. Regarding the minutes signed by these members, I observe that *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, and signing minutes does not constitute one of these methods. 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.

14. As a result, I find that although two of the applicants, namely Brian Tabaruka and Geoffrey Okello, are members of Kyadondo Rugby Football Club Limited, the other applicants have failed to provide sufficient evidence that they are members or subscribers of the club. The possession of identification cards and minutes is not sufficient to qualify an individual as a member of a company. To become a member or subscriber, one must either be listed on the register of members or be listed as a subscriber to the memorandum of a company. Consequently I find that, only Brian Tabaruka and Geoffrey Okello are eligible as members of Kyadondo Rugby Football Club Limited from the list of Applicants/Complainants in this matter.

15. Before closing this issue, I must address the issue of an ordinary resolution dated 24th November 2012, which was filed and registered on 14th July 2023 at the Companies Registry which must be the basis of the Respondents arguing that none of the applicants is a member of the Kyadondo Rugby Football Club Limited. This resolution pertains to Article 13 of the Company's Articles of Association and aimed to remove members who had not fulfilled their subscription payment obligations to the club. The resolution indicated that only six members had fulfilled their subscription obligations under paragraph C: Ian Walker, Jim Middleton, David Case, Andy Demetriou, Dave Cliffe, and Sanjiv Patel. Paragraph D of this resolution removed all other members for failing to be fully paid up. Four members were said to have resigned: Ian Walker, Andy Demetriou, Dave Cliffe, and Sanjiv Patel. The resolution admitted twenty two (22) new members and clause three of the resolution enumerated the revised list of members to 24 members. What I find quite interesting about this resolution is that it was notably signed solely by two individuals: James Peter Middleton and Andrew Owor to the exclusion of all other members of the club. Additionally, they execute an ordinary resolution meant to be signed by members of the club in their roles as directors, as indicated by the titles below their signatures appended on the said resolution.

16. Furthermore, Article 13 mandates that members receive a notification to remit their subscription payment at least fourteen days before their removal. No evidence was presented indicating that the original thirty-nine members were reminded to fulfill their subscription payments and they failed to comply within the fourteen days stipulated for under Article 13 of the Company's Articles of Association. The resolution appears to be a decision of a few members whose aim was to alter the membership of the company without following the procedure under Article 13. Consequently, I find that the resolution submitted and registered on 14th July 2023, which modified the company's original membership, was defective and must be expunged from the register.



## *Issue Two*

### *Whether the complainants or respondents are the members of the Executive Committee of Kyadondo Rugby Football Club Limited?*

17. Counsel for the Applicants in the written submissions contends that all the complainants are members of the Executive Committee of Kyadondo Rugby Football Club Limited and this is evidenced by the statutory declaration of Brian Tabaruka dated 08<sup>th</sup> July 2024 under paragraph four which states that all the complainants are part of the current executive committee as per an Annual general meeting that was held on 15<sup>th</sup> July 2023. Furthermore, the Uganda Rugby Union through its President Godwin Kayangwe recognizes the Executive Committee of Kyadondo Rugby Football Club Limited under the Chairmanship of Brian Tabaruka and none of the Respondents is part of this committee.

18. The Applicant argues that basing on the Statutory Declaration of Andrew Owor dated 12<sup>th</sup> July 2024 under paragraph 11 with annexure A, it clearly points out an Annual Excom Report of August 2022 – July 2023 of Kyadondo Rugby Football Club with opening remarks / statement of the applicant Brian Tabaruka as the Chairman of Kyadondo Rugby Football Club.

19. The respondents however contest the applicant's membership on the executive committee of Kyadondo Rugby Football Club Limited. The Respondents counsel argues that the minutes, annual report at page 4 and audited accounts indicate that it was actually the minutes of Kyadondo Sports Club Limited and not Kyadondo Rugby Football Club Limited. The respondents reiterate that they are the current members of the executive committee of Kyadondo Rugby Football Club Limited having been validly elected and the required documentation presented to URSB confirming their appointment.

20. For purposes of contextualizing what the parties mean by executive committee, I refer to **Article 17** of the Company's original Articles of Association which stipulates that management of the club shall be vested in a committee of nine full members. The executive committee therefore are the directors responsible for the day to day running of the club. This company did not file a form appointing its directors and secretary at incorporation. The form 20 with the appointed directors and secretary is filed during the data update process. The question is whether this appointment followed the due process stipulated for under Article 17 of the Company's Articles of Association. Court in ***Noble Builders (Uganda) Limited v Balwinder Kaur Sandhu Civil appeal no.70 of 2009 pg. 19*** relied on Kato JA to stress that importance of the Company's Articles of Association. The learned Justice in ***Civil Appeal No.41 of 2001: Noble Builders (U) Ltd and Raghbir Singh Sandhu Vs Jaspal.S. Sanhhu***, asserts that '*That section in fact requires an act to be done in accordance with the Articles of Association of the company.*' This means that the process of appointing this executive committee had to be done in accordance with the provisions of Article 17 of the Company's Articles of Association. Supreme Court's ruling in ***V.B. Rangaraj v. V.B. Gopalakrishnan AIR 1992 SC 453*** fundamentally underscored the supremacy of a Company's Articles of Association.

21. Article 17 of the Articles of Association provided that, '*the committee shall be elected, by the full members, at the Biennial General meeting.*' The question to resolve therefore is whether the company organized the said biennial general meeting where the thirty nine members listed on its subscription page voted an executive committee. A perusal of the Company file shows a copy of minutes of a meeting that took place on 18<sup>th</sup> May 2021 to appoint a board of directors and a management committee. These minutes were registered on 10<sup>th</sup> August 2023. These are the minutes that appoint the respondents in this matter as directors. A form 20 was consequently filed with the respondents as directors

of Kyadondo Rugby Football Club Limited. These same minutes appointed Brian Tabaruka and Jeff Okello as sports club nominees.

22. These minutes are signed by two members; Jim Middleton as director / Secretary and Jeroline Akubu as director. While *Section 148 (2) of the Companies Act Cap 106* only requires minutes to be signed by the chairperson of the meeting at which the proceedings were held, it is quite interesting that a number of the members said to be in attendance of the meeting in these minutes do not appear as members in the initial thirty nine members on the original subscription page. Furthermore, no evidence was tendered in, in regards to how this meeting was called. Were the thirty nine members given adequate notice to attend this meeting? Did the biennial general meeting referred to in Article 17 of the Company's Articles of Association even take place? These are questions that are important to resolving whether Kyadondo Rugby Football Club Limited has a legitimate executive committee in place.

23. I turn to the minutes submitted by the applicants dated 15<sup>th</sup> July 2023, still these minutes do not satisfy the requirement under Article 17 of the company's Articles of Association. The thirty nine members who appended their signatures in the initial original memorandum and articles of association do not appear in the attendance list which is filled by individuals not part of the thirty nine members. The emails attached by the first applicant where the Uganda Rugby Union recognizes him as a chairperson of Kyadondo Rugby Football Club Limited and observers from the media as stated in his declaration are irrelevant and do not satisfy the requirement under Article 17 which is clear on how the committee is to be established.

24. Article 17 reads verbatim, *'The management of the club shall be vested in a committee of nine full members; Chairman, Vice Chairman, Secretary, Treasurer, Club Captain, and other full members as necessary who shall have voting powers and, with the exception of the club captain,*

*shall be elected, by the full members, at the Biennial General Meeting. The Club Captain shall be elected annually by the Full Playing Members.'*

25. I find that Article 17 of the company's articles of association was not complied with in regards to having the members at a biennial general meeting vote the committee. The members referred to here are the thirty nine members listed in the original memorandum and articles of association. I will list all the thirty nine members for purposes of clarity, Ian Walker, Mark Graves, Jim Middleton, Glyn Cartmell, David Case, Reuben Ambicha, Charles Mawa, Paul Volrath, Robert Gira, James Howell, Talbot Onyango, Shaun Mann, Brian Tindikahwa, Clifton Koen, Matt Nutter, Humphrey Owino, David Matsuku, Ronald Edmund, Elisha Onyango, Lucas Ochieng, Andy Demetriou, Allan Tindikawa, Kenneth Opio, John Bosco, Tito Okuku, Patrick Lule, Joseph Otte, Brian Kaddu, Robert Seguya, Geoffrey Okello, Jason Reynard, Chris Kasamba, Dave Cliffe, Sanjiv Patel, Paul Okello Alier, Timothy Kamazi, Neil McCrae, Roger Sebina and Nail Human. A properly constituted biennial general meeting of a majority of the members listed above needed to be called and it is at that meeting that the company would properly be said to have appointed its executive committee.

26. I acknowledge that several of the aforementioned members may have resigned or may no longer be affiliated with the club. If this is the case, then the appropriate procedure for their departure should be adhered to. If a member has resigned or intends to voluntarily depart from a company, they must provide a signed resignation letter or endorse a company resolution indicating their resignation. This generates evidence on the company file that may be beneficial when an individual is substituted or removed from the members register. If a member has defaulted on their subscription payment as stipulated in Article 13 of the Company's Articles of Association, the company is obligated to adhere to the procedure outlined in Article 13 by providing the individual with a mandatory fourteen-day notice for payment as is stipulated for under the cited article. Should the

member neglect to comply, the company may subsequently initiate a resolution for their removal, attaching the notice as evidence of the member's notification and failure to respond to the reminder to pay up for their subscription. In this instance, I find that the original thirty-nine club membership was covertly modified, resulting in the justified discontent of some of the original members. Consequently, the executive committee was improperly appointed, as the original membership of the company did not partake in this process, but rather only a select few individuals did. This applies to both meetings held by the applicants and the respondents to appoint an executive committee.

27. There having been no properly constituted meeting to appoint the executive committee of Kyadondo Rugby Football Club Limited as provided for under Article 17 of the Company's Articles of Association, I find that this company does not have a legitimate executive committee in place yet.

28. I take note of the submissions regarding the membership of the applicants on the Kyadondo Sports Club Limited executive team and how this is different from Kyadondo Rugby Football Club limited. This includes the claim and forensic analysis report submitted in evidence in regards to the validity of Brian Tabaruka's signature. I find that these are irrelevant to deciding this complaint. I will refrain from resolving issues related to Kyadondo Sports Club Limited as this is a different entity from Kyadondo Rugby Football Club Limited.

29. I also find that the Power of Attorney and resolution appointing the 1st and 5th respondents as authorized representatives in respect to land comprised in LRV KCCA67 Plots 9 -15 at Coronation Avenue Kampala Central, registered on 11th September 2023, should be expunged from the register due to being signed by improperly elected directors for the reasons stated in my dicta above.

### *Issue Three*

#### *Whether the respondents' data update of Kyadondo Rugby Football Club Limited was lawful?*

30. Following the roll out of a new online digital system called the online business registration system (OBRS), the Uganda Registration Services Bureau embarked on the process of updating information of all entities registered before 09<sup>th</sup> December 2022. All owners of companies registered before this date were duly informed of this development and requested to update their company data. The respondents consequently proceeded and updated Kyadondo Rugby Football Club Limited's data that resulted into fundamental changes which included alteration of the initial membership of the company. It is crucial for me to emphasize that the process for updating Company data was designed solely for the purpose of migrating data to the new Online Business Registration System, reflecting the structure as it existed in the previous system, rather than facilitating any structural changes in the Company.

31. The respondents properly referred to the case of *Emmaus Foundation Investments (U) Limited Vs. Emmaus Foundation Ltd & 3 Others Miscellaneous Casue No. 74 of 2020 UGHCCD* where Justice Boniface Wamala stated that, '*under the principles of company law, directors are the mind, ears, eyes and hands of the company. The management and control of the company are under the charge of directors...*' Directors from this dicta clearly have the authority to complete or authorize a party to update the company data. However, it is important to highlight that, having clarified the rationale behind the necessity for Companies to conduct a data update, the designation of the individual responsible for executing this update is inconsequential. The relevance of who captured the data diminishes as long as the information in the system accurately mirrors the company's current status as documented in the company file.

32. In this case, the information present in the original company file documents was not accurately reflected by the respondents during the data update process. The thirty-nine members identified in the initial memorandum and articles of association were not entered in the system. This indicates that the information provided during the data update process was inconsistent with the data present in the company's original memorandum and articles of association especially in regards to the membership. The data update therefore led to significant structural changes, particularly concerning the company's membership.

33. Having established in Issue two above that there is no legitimate executive committee in place yet, I find that the data on the Online Business Registration System currently has information regarding directors, a secretary and members that were not legally appointed. The registered documents giving rise to this data must therefore be expunged.

#### *Issue Four*

#### *Whether the Respondents amending the original Company's memorandum and Articles of Association was lawful?*

34. **Section 10** of the *Companies Act Cap 106* stipulates that the Company's memorandum may be altered by a special resolution. **Section 16 (1)** of the *Companies Act Cap 106* provides that alteration to the articles of association is by 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.*'

35. Clearly there was no general meeting called that had at least three fourths of the thirty nine members in attendance, neither notice specifying the intention to propose the resolution as a special resolution duly given nor is there a valid special resolution signed by at least three fourths of thirty nine original members on file. I disagree with the respondents that you can have a special resolution incorporated in the Amended memorandum and articles of association and in any case this is signed by only two people James Owor and James P Middleton that falls below the required quorum for a special resolution which in this case should have been at least twenty nine (29) of the original thirty nine members on file.

36. I therefore find that the amendment of the Company's memorandum and Articles of Association was unlawful and should be expunged from the URSB register.

#### *Issue Five*

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

37. *Regulation 8 (1) of the Companies (Powers of the Registrar) Regulations 2016* provide that the registrar may rectify and update the register to ensure that the register is accurate. In light of the above findings and resolution, pursuant to *Regulation 32 of the Companies (Powers of the Registrar) Regulations, 2016*, I make the following orders;

- 1) The ordinary resolution filed and registered on 14<sup>th</sup> July 2023 altering the company's original membership was defective and is hereby expunged from the register.
- 2) The resolution and form 20 appointing the respondents as directors registered on 01<sup>st</sup> June 2023 be expunged from the register
- 3) The minutes registered on 10<sup>th</sup> August 2023 appointing the respondents as directors be expunged from the register



- 4) The amended memorandum and articles of association registered on 29<sup>th</sup> August 2023 be expunged from the register.
- 5) That the company original subscribers listed in the original subscription list in the memorandum and articles of association organize a general meeting and appoint an executive committee in accordance with Article 17 of the Company's Articles of Association within sixty (60) days from the date of delivery of this ruling.
- 6) The Power of Attorney and Resolution appointing the 1<sup>st</sup> and 5<sup>th</sup> respondents as authorized representatives in respect to land comprised in LRV KCCA 67 Plots 9 - 15 at Coronation Avenue Kampala Central registered on 11<sup>th</sup> September 2023 is also hereby expunged from the register
- 7) Each party to bear its 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> January 2025

Pedun Isabella holding brief for Nabasa Pheona Wall from Nabasa and Co Advocates for the Applicants

Nalukwata Lukia holding brief for Perry Muhebwe for the Respondents. All Respondents absent

