

THE REPUBLIC OF UGANDA

THE REGISTRAR OF COMPANIES AT KAMPALA

IN THE MATTER OF REGULATION 20(F), 8, 9 & 37 OF THE COMPANIES

(POWERS OF THE REGISTRAR) REGULATIONS S.I No.71 OF 2016

COMPANY APPLICATION NO. 39785 OF 2024

KASAJJA BRIAN:.....APPLICANT

VERSUS

1. HRP SERVICES LTD:..... RESPONDENT

2. HEMAL PARESH PATEL:..... RESPONDENT

3. RONIT PARESH PATEL:..... RESPONDENT

4. PREM PRESH PATEL:..... RESPONDENT

5. AKANKUNDA LAURA:..... RESPONDENT

6. OCEN STEPHEN LAPYEM:..... RESPONDENT

RULING

Before Daniel Nasasira Ass. Registrar of Companies

A. Introduction

1. The Applicant brought this Application under Sections 20(f), 8, 9 & 37 of the Companies (Powers of the Registrar) Regulations, S.I No. 71 of 2016 for declarations and orders that;

1. The ordinary resolution arising from a shareholders meeting held on the 13th day of November 2023, be expunged.

2. All the subsequent resolutions and documents submitted by the Respondents and registered by the Registrar of Companies effective 14th November 2023 be expunged.
3. The continued operation of the two directors who are the 5th and 6th Respondents in this application amounts to an offence.
4. All the amended Memorandums and Articles of Association of the 1st Respondent for the years 2020, 2021 and 2022 be struck off the register.
5. The first memorandum of association of the 1st Respondent Company made at the time incorporation be struck off.

B. Representation

2. Counsel Kasajja Brian represented himself while Counsel Kemba Nicholas Alfred from Kibukamusoke & Tendo Advocates and Legal Consultants 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 and submissions that are already on file to arrive at this ruling.

C. Grounds for the Application

3. The grounds for this application were specifically set out in the statutory declaration of the Applicant Kasajja Brian, which briefly states that;

1. The Applicant is a donee of Powers of Attorney litigating against the 1st Respondent at the Nakawa Chief Magistrates Court under MC. No. 0289 of 2024 in which he is seeking various reliefs from the 1st Respondent Company.
2. The Applicant is an interested party in the affairs of the 1st Respondent Company in as far as its compliance with the Company's Act Cap 106, especially as regards the appointment of the 5th and 6th Respondents as directors.

3. The 1st Respondent Company was incorporated on 27th March 2019 with the 2nd, 3rd and 4th Respondents as shareholders.
 4. On the 13th day of November 2023, the shareholders (2nd, 3rd and 4th Respondents) passed a resolution appointing the 5th and 6th Respondents as directors in the 1st Respondent Company without making an amendment to Article 34 of the 1st Respondents Memorandum and Articles of Association which limits the number of directors to just one director.
 5. The meeting that led to appointing the 5th and 6th Respondents as directors was a shareholders' meeting and not a general meeting as stipulated in the memorandum and articles of association.
 6. Upon the appointment of the 5th and 6th Respondents as directors, they were required to obtain a share qualification in the 1st Respondent Company, however this was never done.
 7. The amended Memorandum and Articles of Association for the years 2020, 2021 and 2022 were never witnessed and further had no mandatory postal address of the witness.
 8. At the time of incorporation the memorandum and articles of association of the 1st Respondent Company were devoid of a mandatory occupation and postal address of the subscribers and must be expunged from the company register.
4. In opposition to this Application the Respondents through the 4th Respondent - shareholder with authority to depone on behalf 1st, 2nd, 3rd, 5th and 6th Respondents filed a statutory declaration in reply wherein they vehemently opposed the grant of the orders being sought.
1. The Respondents denied the accusations of securing registration of all the relevant company documents by means of false pretenses or presenting false documents and averred that;
 2. The appointment of the 5th and 6th Respondents as directors was made in compliance with the provisions of the companies Act and the omission to

amend the company's Memorandum and Articles of Association prior to their appointment was an inadvertent oversight on the part of the company.

3. The provision in the Articles of Association requiring shareholding as a condition for a director is not mandatory.
 4. The resolution appointing the 5th and 6th Respondents as directors, although mislabeled as an ordinary resolution was in substance a valid shareholders resolution.
 5. The Respondents denied engaging in any intentional acts aimed at misleading or deceiving the Registrar of Companies and the public.
5. The Applicant in his statutory declaration in rejoinder deponed that;
1. The 2nd and 3rd Respondents are aliens because they didn't attach copies of their passports or nationality documents.
 2. The 2nd and 3rd Respondents never applied for work permits while in their country of origin but rather in Uganda which is illegal.
 3. The documents were secured by presenting false documents under false pretence as the Respondents knew the documents were invalid.
 4. There is no inadvertent oversight on the part of the Respondents but an intentional and deliberate act to mislead and misguide the Registrar of Companies.
 5. The illegal incorporation documents and documents tainted by the Respondents cannot be cured or corrected by any want or form but rather should be expunged.
 6. The provisions of the Memorandum and Articles of Association of the 1st Respondent company requiring shareholding qualification as a requirement for the appointment of directors is mandatory in nature.
 7. The resolution appointing the 5th and 6th Respondents as Directors created a gross illegality for being against and offending the company's amended memorandum and articles of association.

8. The Respondents have never bothered notifying the registrar of Companies of the said illegalities by their own volition and therefore they engaged in these acts deliberately to mislead the Registrar of Companies and the Public thus all incorporation documents must be expunged.

D. Issues Raised

1. Whether the Registrar of Companies has jurisdiction
 2. Whether the Respondent's Statutory Declaration is proper and admissible in legal proceedings before the Registrar of Companies.
 3. Whether the Applicant has locus to bring an application under the Companies (Powers of the Registrar), Regulations, 2016.
 4. Whether the 5th and 6th Respondents were appointed in accordance with the law and requisite legal formalities.
 5. Whether 1st Respondent was incorporated in accordance with the law.
 6. Whether the Respondents actions were done in good faith
 7. Whether the actions and omissions of the Respondents amount to an offence
 8. Whether the Applicant is entitled to the remedies sought.
6. While resolving this matter I will start with resolving Issue 3 as it has the effect of disposing off this entire matter;

Whether the Applicant has the locus to bring an application under The Companies (Powers of the Registrar), Regulations, No.71 of 2016.

Determination

Whether the Applicant has locus to bring an application under The Companies (Powers of the Registrar), Regulations, No.71 of 2016.

7. The term *locus standi* literally means a position of standing. It signifies the entitlement to appear in a court; conversely, stating that an individual lacks locus

standi indicates that they have no right to participate or be heard in a particular case. (see *Njau and others v. City Council of Nairobi [1976–1985] 1 EA 397 at 407*).

8. The Applicant relied on Regulation 20 (f) of the Companies (Powers of the Registrar) Regulations, S.I No.71 of 2016, which provides for any interested party among the persons who may bring an application before the Registrar of Companies to argue that he has the locus to bring this Application before the Registrar of Companies.

9. In reply, Counsel for the Respondents relied on the case of *Chen JianWen and Others v Bang Cheng Investment Company Limited and 3 Others Miscellaneous Application 530 of 2023* to argue that for any person to have locus standi, such person must have "sufficient interest" in respect of the subject matter of the proceeding.

10. The Applicant in rejoinder argued that Regulation 20 (f) of the Companies (Powers of the Registrar) regulations No. 71 of 2016 does not mention the words valid and legitimate interest as a prerequisite for an interested party to bring an application.

Analysis

11. The Applicant argued that *Regulation 20 (f) of the Companies (Powers of the Registrar) regulations No. 71 of 2016* does not mention the words valid and legitimate interest as a prerequisite for an interested party to bring an application. I find such an interpretation very dangerous as it implies that an individual may initiate legal action or assert a claim against a company regarding its internal affairs without possessing a legitimate interest in those affairs. This interpretation jeopardizes the integrity of the trial process, as it would permit any individual to make an application to the Registrar of Companies, even with frivolous and vexatious claims intended solely to harass / annoy the respondents or disrupt the operations of companies.

12. The position of the law is that if any doubt arises from the words used in the statute, where the literal meaning yields more than one interpretation, the purposive

approach may be used. (See *Justice Choudry in The Case of Uganda Revenue Authority vs. Speke Hotel (1996) Ltd (C.A No. 12 Of 2008)*).

13. The purposive approach has been used in several cases. In the case of the *Sussex Peerage (1844) 8 ER 1034 at 1057*, it was held that;

“If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declare the intention of the law giver but if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention to call in aid the grounds and cause of enacting the statute and to have recourse to the preamble which according to Dire CJ is ‘a key to open the minds of the makers of the Act and the mischiefs they intend to redress.’”

14. Furthermore, Lord Griffiths in the case of *Pepper vs. Hart [1993] 1 All ER 42 at pg 50*, also held that

“The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt a literal meaning of the language. The court must adopt a purposive approach which seeks to give effect to the true purpose of the legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted.”

15. The true purpose of the meaning of the phrase, 'any interested party,' under *Regulation 20 (f) of The Companies (Powers of the Registrar) Regulations, S.I 71, 2016* does not encompass any individual seeking to institute legal proceedings against a private company without a valid claim of harm they have experienced. In my opinion, the phrase any interested party should be reserved for those individuals or entities that have experienced or are at risk of experiencing harm due to the actions of the company. Such persons though not members of the company may institute an application to the Registrar of Companies where that party has a sufficient and direct interest in the affairs of the Company.

16. Having found that any interested party has to fulfil the prerequisite of sufficient interest and direct interest in the affairs of a company, I am going to go ahead and determine whether the Applicant has sufficient interest in the affairs of the 1st Respondent Company.

17. In the case of *Bank of Uganda & Greenland Bank Limited (In Liquidation) v. Kaweesi Sulaiman and 26 Others Miscellaneous Application No. 1047 Of 2022*; **Hon Justice Stephen Mubiru stated that**; *“To have a locus standi, a claimant must have sufficient interest in the matter to which the claim relates. What constitutes “sufficient interest” will essentially depend on the co-relation between the matter brought before the Court and the person who is bringing it.”*

18. The Applicant in this matter claims to have an interest in the affairs of the 1st Respondent Company because he is litigating against the Company in court and as such he is concerned about the appointment of the 5th and 6th as directors in the 1st Respondent Company and various incorporation documents. In Paragraph 2 of the Applicant’s Statutory Declaration he states;

“I am litigating against the 1st Respondent at Nakawa Chief Magistrates Court as a donee of Powers of Attorney in which he is seeking various reliefs arising from the Respondent’s failure to pay compensation due arising from injuries sustained in due course of employment. The Applicant is as such an interested party in the affairs of the 1st Respondent in as far as its compliance with the company’s Act, 2012 (as Amended), especially the circumstances regarding appointment of the 5th and 6th Respondents as directors by the 2nd, 3rd, & 4th Respondents is concerned and incorporation documents of the 1st Respondent, hence competent to bring and swear this Statutory Declaration in support of this application as an interested party.”

19. In the case of *Chen JianWen and Others v Bang Cheng Investment Company Limited and 3 Others Miscellaneous Application 530 of 2023* relied on by Counsel for the Respondents, Court went ahead to explain that;

*“For any person to have locus standi, such person must have “sufficient interest” in respect of the subject matter of the proceeding, which is constituted by having; an adequate interest, not merely a technical one in the subject matter of the proceeding; the interest must not be too far removed (or remote); the interest must be actual, not abstract or academic; and the interest must be current, not hypothetical. **The requirement of sufficient interest is an important safe-guard to prevent having “busy-bodies” in litigation, with misguided or trivial complaints. If the requirement did not exist, the courts would be flooded and persons harassed by irresponsible suits.**”*

20. The three questions that need to be resolved are; whether the Applicant seeking relief has an adequate and actual interest in the affairs of the company, whether the Applicant is directly affected by the act or omission in question and whether the party has a real stake in the validity of such act or omission.

21. The evidence on record indicates that the Applicant derives his interest in the affairs of the Company owing to the fact that he is litigating against the Company in a company cause before the Chief Magistrates Court in Nakawa and further argues that a wrong was done to the Company as regards the appointment of the 5th and 6th Respondents as directors in the 1st Respondent Company.

22. There are various ways through which a party may bring an application or petition the Registrar of Companies. It is a well-established principle that when a wrongdoing is claimed against a company, the appropriate plaintiff is, *prima facie*, the company itself through a derivative action. (*Refer to Foss v. Habottle (1843) 2 Hare 461, 67 ER 189.*) A derivative action fundamentally represents the initiative of the minority shareholders. It is a principle that provides remedies for minorities against the oppression of the majority under extraordinary circumstances. A member may also submit a petition pursuant to Section 243 of the Companies Act Cap 106. Part V of the Companies (Powers of the Registrar) Regulations of 2016 stipulates that a promoter, member, personal representative of a deceased member, authorized

representative of a member, director, secretary, regulatory body or government agency, advocate representing a party, or *any other interested party* may file an application with the Registrar. In my opinion, employing the purposive interpretation of the statute previously discussed, the term, "*any interested party*" should not serve as an avenue for any individual to initiate a claim against a company; instead, it ought to be reserved for those who possess a legitimate legal right against the company. The applicant did not show how any of his legitimate rights in the ongoing lawsuit in the Chief Magistrates Court Nakawa will be affected by the respondent company's acts, nor can he impede the respondent company's operations, as it possesses the right to nominate directors and conduct its business as it sees appropriate.

23. In the event that, the company did not follow the requisite procedure to appoint directors or amend its memorandum and articles of association, then the right person to commence the suit should be a member or estate of a deceased member of the company as they would directly be affected by such a flawed procedure. According to **Section 45 of the Companies Act, Cap 106** membership of a company is gained in two ways; (a) by being a subscribers to the memorandum of a company one is taken to have agreed to become members of the company, and on its registration it is obligatory to be entered as members in its register of members; and (b) a person who agrees to become a member of a company, and whose name is entered in its register of members. The applicant is neither a subscriber nor is he on the register of members of this company. His relief, if any, clearly lies elsewhere and not in an application under Part V of the Companies (Powers of the Registrar) Regulations.

24. In the premises, I find that the Applicant does not have the *locus standi* to bring this application. Secondly, it is important to recognize that the Registrar of Companies will typically refrain from intervening in matters that a private company can resolve through its internal processes, particularly in instances of an irregularity that can be ratified or condoned internally.

Orders

25. In light of the above analysis, I find that the absence of *locus standi* is a preliminary point of law which if argued successfully disposes of the whole matter. (See. *Mukisa Biscuit Manufacturing Co. Ltd versus West End Distributors Ltd [1969] EA 696*). The preliminary issue concerning whether the applicant has *locus standi* having succeeded, I do not find it necessary to go into the merits of matter to resolve the other issues. Pursuant to regulation 32 of the **Companies (Powers of the Registrar) Regulations, 2016**, I make the following orders;

1. The applicant has failed to demonstrate that he possesses *locus standi* to commence this application
2. Application is therefore dismissed.
3. Each party to bear its own costs.

I so order.

Given under my hand, this _____ day of _____ 2025.

DANIEL NASASIRA

Ass. Registrar of Companies

Ruling delivered on 06/01/2025

In the presence of Kasajja Brian for the Applicant

Derrick Kwesaagira for the Respondents