

B. Background

2. The applicant submitted this application as a petition under Section 169 of the Companies Act Cap 106; however, petitions to the Registrar of Companies may only be filed in accordance with Section 243 of the Companies Act Cap 106. Notwithstanding this, I will proceed to treat this as an application for the purpose of resolving this matter.
3. The company, Wabigalo Community Limited, was incorporated as a company limited by guarantee on 11th June 1996 with ten (10) subscribers; Kayondo Livingstone, G.W Muwayire Nakana, Semei Kyabanakolanga, Gombe John, Ssali Bacon, Kintu Edward, Esau Mulindwa, Silas B Tebandeke, Ssuna Biwooza Samuel and Hussein Katongole.
4. A resolution was filed on 22nd February 2019, wherein Kayondo Livingstone, Ssali Bacon, Ssekitoleko Edris and Kibazo Nasser were appointed as directors and Kibazo Nasser was appointed as company secretary. A form detailing the particulars of directors and secretary (form 20) was filed on the same day confirming these appointments.
5. On 12th March 2019, a special resolution amending the company's memorandum and articles of association was filed altering the original membership of the company from ten (10) subscribers to five (5) members to include; Edris Ssekitoleko, Livingstone Kayondo, Bacon Ssali, Nasser Kibazo and Lutwaama Sulaiman. This resolution was signed by only four individuals; Edris Ssekitoleko, Nasser Kibazo, Livingstone Kayondo and Bacon Ssali. Only two of the four signatories were part of the original ten-member structure that is Livingstone Kayondo and Bacon Ssali who are the respondents in this matter.

6. Upon discovery of these structural changes, the company through its original subscriber's filed a company complaint to the Registrar of Companies by way of a letter dated 01st December 2023 wherein they sought for the original ten membership structure of the company to be reinstated and the amendments made without their knowledge and the requisite quorum to be expunged from the company register.
7. Assistant Registrar of Companies Nalukwago Racheal attended to the complaint and made an administrative decision concerning the complaint that led to the special resolution and amended memorandum and articles of association with the five members to be expunged from the company register.
8. The learned Registrar guided the parties in her finding to ensure that they file amended memorandum and articles of association since they had allotted shares in the original memorandum and articles of association registered on 11th June 1996 yet the company was registered as a company limited by guarantee.
9. Following the guidance of the learned Registrar of Companies, the company passed a resolution dated 28th April 2024 amending its memorandum and articles of association to remove the shares indicated at registration of the company.
10. The amended memorandum and articles of association were signed by the original ten members at the time of incorporation, including G.W. Muwayire Nakana, Esau Mulindwa, and Ssuna Biwooza. The three members indicated above had died prior to the date mentioned in the amended memorandum and articles of association.
11. A case of forgery and uttering false documents was filed at the Central Police Station vide SD Ref: 68/05/07/2024 by the applicants arguing that there is no way the three deceased persons could have signed the amended memorandum and articles of association.

12. When the matter came up for hearing on the 28th day of March 2025, the respondents through their advocate raised preliminary objections arguing that the matter was barred by the doctrine of res judicata as the same had already been heard and determined by the Registrar of Companies and further added that the applicants had no locus to file this application as they are not members/subscribers of Wabigalo Community Limited.
13. I instructed both counsel for the applicants and respondents to present written submissions on the raised preliminary points of law and issued schedules as follows;
- a) The Applicant hadn't filed a rejoinder to the respondents statutory declaration and they were instructed to file and serve by the 10th day of April 2025.
 - b) Respondents Submissions on the preliminary objection was to be filed and served by 17th April 2025.
 - c) Applicants Submissions in reply were to be filed and served by 25th April 2025.
 - d) Any rejoinder by the respondents was to be filed by 02nd May 2025.
14. I take note that these schedules were not adhered to by the parties, nevertheless I will go ahead and resolve two issues that have the effect of disposing off this matter.
- a) Whether the applicants have *locus standi* to bring this application?
 - b) Remedies available to the parties.

C. Determination

a) Whether the applicants have locus standi to bring this application?

15. The original membership of Wabigalo Community Limited at incorporation in 1996 was ten (10) members including; Kayondo Livingstone, G.W Muwayire

Nakana, Semei Kyabanakolanga, Gombe John, Ssali Bacon, Kintu Edward, Esau Mulindwa, Silas B Tebandeke, Ssuna Biwooza Samuel and Hussein Katongole.

16. On March 12, 2019, a special resolution modified this membership. This special resolution modified the company's memorandum and articles of association, reducing the original membership from ten (10) subscribers to five (5) members: Edris Ssekitoaleko, Livingstone Kayondo, Bacon Ssali, Nasser Kibazo, and Lutwaama Sulaiman. The resolution was signed by four individuals: Edris Ssekitoaleko, Nasser Kibazo, Livingstone Kayondo, and Bacon Ssali. Only two of these members were part of the original ten: Livingstone Kayondo and Bacon Ssali. These individuals, who are the respondents in this matter, strongly oppose the contents of the resolution, as noted in paragraph six of the statutory declaration, where the first respondent states verbatim:

'That on the 12th March, 2019, the applicants, alongside the said Kibazo Nasser hoodwinked the second respondent and I to sign against a special resolution to amend the company's memorandum and articles of association and a copy of an amended articles and memorandum of association admitting both applicants and the said Nasser Kibazo as subscribers to the company.'

17. Following the change in company membership from ten to five members, the company, through its original subscribers, submitted a complaint to the Registrar of Companies via a letter dated 1st December 2023. In this correspondence, they requested the reinstatement of the original ten-member structure of the company and sought the expungement of the amendments made without their consent and requisite quorum.
18. Assistant Registrar of Companies Nalukwago Racheal attended to the complaint and made an administrative decision concerning the complaint that led to the special resolution and amended memorandum and articles of association with the

five members to be expunged from the company register. The applicants in this matter, Edris Ssekitoleko and Lutwaama Sulaiman, ceased to be members of the company as a result of the expungement of the special resolution and amended memorandum and articles of association that were registered on March 12th, 2019.

19. The Registrar's findings indicated that the resolution amending the memorandum and Articles of Association did not specify the rationale for the amendment, and most importantly, there was an absence of the necessary quorum to approve the alteration in membership of the company. The learned Registrar found that, '*the change in membership did not follow due process since there is no proof of any resolution reducing the members from ten (10) to five (5).*' The Registrar found that the documents effecting the said changes were irregular and advised that the said documents were to be expunged from the company register. Specifically, the documents that were expunged are;

(i) A special resolution registered on 12th March, 2019.

(ii) Amended memorandum and articles of association registered on 12th March, 2019.

20. The question therefore to resolve in this matter is whether the applicants have *locus standi* to subsequently file an application before the Registrar of Companies as members of the company considering that the learned Registrars decision expunged the resolution and memorandum and articles of association that made them members of the company.

21. The term *locus standi* literally means a position of standing. It signifies the entitlement to appear in a court/tribunal; 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*).

22. The Registrar's finding resulted in the expungement of the amended memorandum and articles of association registered on 12th March 2019, thereby restoring the company's membership to its original ten members. Consequently, individuals not listed among the ten (10) members who include, Kayondo Livingstone, G.W Muwayire Nakana, Semei Kyabanakolanga, Gombe John, Ssali Bacon, Kintu Edward, Esau Mulindwa, Silas B Tebandeke, Ssuna Biwooza Samuel, and Hussein Katongole, are not considered as members of Wabigalo Community Limited. The two applicants in this case are not included in the original ten-member structure. The resolution and amended memorandum and articles of association that conferred membership upon the applicants were expunged by the learned Registrar Nalukwago Racheal.
23. The Companies Act expressly provides that a company's member who is oppressed is the only person with locus to petition the Registrar of Companies for reliefs. Section 243 (1) of the Companies Act Cap 106 provides that, '*a member of a company who complains that the affairs of the company are being conducted in a manner oppressive to...the members, may make a complaint to the Registrar by petition for an order under this section.*' (See ***Tumuhimbise V Turyamwijuka & 4 Others 2024 UGRSB 14***) Edris Ssekitoleko and Lutwaama Sulaiman brought this application as a petition and whereas I exercised discretion to treat it as an application, it must be noted that a petition to the Registrar of Companies can only be commenced by members and the two are currently not members of Wabigalo Community Limited and therefore cannot be said to have *locus standi* to bring this application.
24. The applicants would still not have locus under Part V of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016 as they did not demonstrate that they have sufficient interest in the company. To be able to succeed as interested parties, they need to prove that they have sufficient interest in the affairs of the

Wabigalo Community Limited (See *Kasajja v HRP Services Limited & 5 Others (Company Application 39785 of 2024)[2025]*). The applicants are strangers to the company until a decision is made to set aside or review the learned Registrar's decision.

25. Additionally, I find that filing a petition/application to invoke the quasi-judicial powers of the Registrar of Companies in respect of a matter in which an administrative decision was made by the same forum is irregular. The decision of the learned Registrar was an administrative remedy and the applicants should pursue further administrative remedies in case they do not agree with the procedure adopted by the Registrar to arrive at the decision.

b) Remedies

26. 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 applicants have *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, SI No. 71 of 2016**, I make the following orders;

1. The applicants do not have *locus standi* to commence this application.
2. Application is therefore dismissed.
3. I make no order as to costs.

I so order.

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

DANIEL NASASIRA

Ass. Registrar of Companies