

3. In 1974, the Applicant was allotted twenty four (24) shares out of the available one hundred and sixty eight (168) shares, representing his interest in the Company. He further maintained that, following an increase in the company's share capital in 2001, his shareholding was adjusted to four hundred and eighty (480) shares.
4. The Applicant filed this matter on the 04th day of July 2025 challenging his irregular removal from the first Respondent Company. Pursuant to Section 243 of the Companies Act Cap 106 and Regulation 8 of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016, the Applicant sought the following orders;
 - a) *A declaration that the act of removing the Applicant as a shareholder of the first Respondent is oppressive.*
 - b) *An order for rectification of the company register to reflect the Petitioner as a shareholder/member of the first Respondent company with 480 shares.*
 - c) *A declaration that the action of the second to the sixth Respondents in amending the Memorandum and Articles of Association and removing the Applicant as a shareholder was illegal.*
 - d) *An order for expungement of the 2008 & 2024 Memorandum and Articles of Association from the register, which do not reflect the Applicant as a shareholder of the company.*
 - e) *An order for expungement of the Annual Returns for the years 2009 to date which do not reflect the Applicant as a shareholder of the company.*
5. While the Applicant submitted this matter as a Petition pursuant to Section 243 of the Companies Act Cap 106, I observe that no issue concerning member oppression was clearly substantiated in the pleadings. In this regard, I will treat this complaint as an Application pursuant to Part V of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016.

C. Applicant's Case

6. The Applicant contended that he became a member of the company upon the allotment of twenty-four shares in 1974. The Petitioner also alleged that his mother, Mrs. Margaret Kiwana, incorporated the Company for the purpose of sharing out the estate of his Late father, Alistaliko Kiwana. He maintained that the allotment was based on his beneficial interest in the estate of his late father, the late Alistaliko Kiwana. He further asserted that, following an increase in the company's share capital, his shareholding was increased to four hundred and eighty shares, as evidenced by the company's annual returns for the year 2001.
7. The Applicant stated that upon conducting a company search in 2025, he discovered that the Second to Sixth Respondents had amended the company's Memorandum and Articles of Association in a manner that resulted in his removal as a shareholder/member. He maintained that his removal was effected without his knowledge or consent.
8. The Applicant contended that he had neither forfeited, surrendered nor transferred his shares in the company and accordingly challenged the legality of the 2008 Memorandum and Articles of Association, as well as all subsequent Memorandums and Articles of Association, annual returns, and resolutions filed after 2008, on the ground that they were unlawful.
9. The Applicant contended that the amendments to the Memorandum and Articles of Association effected by the Second to Sixth Respondents after 2008 were calculated to deprive him of his shareholding/membership and/or beneficial interest in the company. He maintained that the actions of the Second to Sixth Respondents were deliberately aimed at diminishing his interest in the company.

D. Fourth Respondent's Case

10. In her Statutory Declaration in reply, the Fourth Respondent contended that her sisters, Maria Nabasirye Kiwanuka, Janet Nkabiddwa Kiwana and their mother, the late Margaret Ndibalekera Kiwana, were the initial shareholders/members of the company. She further stated that her other siblings were subsequently admitted as shareholders/members at the discretion and goodwill of their mother.
11. She further intimated under paragraph four of her Statutory Declaration that, following the incorporation of the company, four properties were acquired, namely: a four bedroom house situated at Plot 13 Mbuya Road; a five bedroom house situated at Plot 1768 Muyenga; a three bedroom house with a farm at Kisimu near Kawanda Research Station in Kawempe and a three bedroom house located at Plot 33 Malcolm X Avenue, Kololo.
12. She stated under paragraph 5 of her Statutory Declaration that the purchase of the property situated at Malcolm X Avenue was financed through loans advanced by Dr. Keith Collyer, the husband of the Fourth Respondent, and that the loan agreement was witnessed by the Applicant. She further maintained that the house at Muyenga was used as a rental property and that, on 1st June 1998, its management was entrusted to the Applicant's company; Ram Systems Limited, following the termination of the tenancy of the then occupant, the International Committee of the Red Cross (ICRC).
13. The Fourth Respondent contended that, sometime in 2001, the Applicant demanded to receive his share in the company, following which a decision was made to transfer ownership of the Muyenga property from the company to the Applicant, together with the farm in Kisimu near Kawanda Research Station in Kawempe. She further stated that, on 18th April 2001, the Applicant placed the

Muyenga property into a trust, naming his children as the beneficiaries.

14. She further stated that the Applicant did not pay any consideration for the properties, even though the company allegedly lost approximately USD 24,000 annually in rental income after the Applicant assumed management of the Muyenga property. She contended that, as a result, other shareholders/members made payments to Dr. Keith Collyer, while the Applicant did not. She further asserted that the management contract was subsequently terminated, as it had become untenable for the Applicant to continue receiving 10% of the rental income as management fees while having acquired approximately 60% of the company's assets, thereby necessitating the cancellation of the management arrangement.
15. She further contended that in 2008, the Applicant applied for and obtained a guardianship order to facilitate the sale of the Muyenga property. Upon the grant of that order, it was believed that the Applicant sold the property, or his interest in the Company, for Uganda Shillings Six Hundred Million (UGX 600,000,000/=). She further asserted that the Kisimu farm was never fully handed over to the Applicant, as the company continued to meet maintenance expenses to enable their mother to utilise the farm. She added that the Applicant subsequently mortgaged the farm to a moneylender and ultimately lost it due to non-payment.
16. She argued that the members later resolved to regularise the Company's shareholding and duly filed amended Memorandum and Articles of Association to that effect. She maintained that the Applicant ceased involvement in the Company's affairs long before this Application was filed and, since 1971, made no contribution to the Company's share capital, working capital, or loan repayments, his claim being a mere abuse of process.

E. Sixth Respondent's Case

17. The Sixth Respondent filed a Statutory Declaration in Reply in which she stated that the initial shareholders/members of the company were Margaret Ndibalekera Kiwana, Maria Nabasirye Kiwana, and Janet Nkabiddwa Kiwana. She further stated that Margaret Ndibalekera Kiwana is now deceased, following which executors were appointed to administer her estate, including her shareholding in the company. The Sixth Respondent indicated that she would raise a point of law seeking the joinder of the executors of the late Margaret Ndibalekera Kiwana's will as Respondents to the proceedings.
18. She further contended that the company property was encumbered by loans extended to Margaret Ndibalekera Kiwana, Kiwanuka Maria Nabasirye and Collyer Janet Nkabidwa Edith.
19. The Sixth Respondent contended that the company was never an extension of their late father's estate, as the estate had a single beneficiary, namely Mrs. Margaret Ndibalekera Kiwana, and that neither the Applicant nor the Respondents held any beneficial interest in the estate. She further argued that the Applicant had not been involved in the affairs of the company since the 1990s, a period exceeding thirty (30) years. She asserted that it was only following the death of the majority shareholder, the late Mrs. Margaret Ndibalekera Kiwana, that the Applicant instituted the present claim, alleging that the company's property constituted family property.
20. She further intimated that, except Maria Nabasirye Kiwana and Janet Nkabiddwa Kiwana, the other Respondents were admitted into the company at the discretion of their mother, Mrs. Margaret Ndibalekera Kiwana, which, she stated was due to the Applicants inaction during Mrs. Kiwana's lifetime. She argued that the amendments to the Memorandum and Articles of Association were effected in compliance with the law and with the requisite consent. She maintained that there was no need for the Applicant to forfeit his

shares, as none had been fully transferred to him in accordance with the law, as he never paid for the shares allotted to him.

F. Applicant's case in rejoinder.

21. In rejoinder to paragraph three of the Fourth Respondent's Statutory Declaration, the Applicant argued that the said Respondent recognised that he was indeed admitted and became a member in Kiwana Estates Ltd and thus this cemented his contention that he is a member of the First Respondent Company.
22. The Applicant under paragraph four of his rejoinder maintained that he was arbitrarily and unlawfully removed by the Respondents as a member of the First Respondent company through an amendment of the Memorandum and Articles of Association without his involvement and consent.
23. The Applicant argued that in respect to the land comprised in Block 244 Plot 1768 at Muyenga, the same was registered in his names in the 1960's and thus did not form part of the properties owned by the Company.
24. In rejoinder to paragraph eight of the Fourth Respondent's Statutory Declaration, the Applicant argued that Ram systems Limited was offering a service to the First Respondent Company and thus was entitled to payment for the same. According to the Applicant, the arrangement between Ram Systems Limited and the First Respondent Company did not in any way relate to his complaint of arbitral and unlawful removal as a member in Kiwana Estates Limited.
25. The Applicant deposed in his Statutory Declaration in Rejoinder that it was not true that he had forfeited his shares in the Company in return for properties and that this argument was not backed by any material evidence either by way of a resolution of forfeiture of shares or a surrender deed proving that he surrendered his shares in the Company in consideration for any properties.

26. In rejoinder to paragraph 13 of the Fourth Respondent's Statutory Declaration, the Applicant asserted that the property located in Block 244 Plot 1768 was voluntarily transferred to Alistair Mugambwa Kiwana, Marc Ntulume Kiwana, and Gweru Zabali Namuddu Kiwana, who are separate individuals from the Applicant. Furthermore, the Applicant contended that the claim suggesting the property was transferred to them in exchange for his shareholding in the company is entirely unfounded and lacks supporting evidence.
27. The Applicant maintained that the Fourth and Sixth Respondent's claims are hearsay and lack supporting material evidence to substantiate any agreement between him and the Company regarding the receipt of properties in exchange for his cessation of membership in the Company.
28. In rejoinder to paragraphs 16 and 17 of the Fourth Respondent's Statutory Declaration, the Applicant argued that the termination of the contract between Ram Systems Limited and Kiwana Estates Limited did not in any way relate to the alleged transfer of properties to him.
29. In addressing both Respondents' argument that the Applicant had not contributed any funds to the Company as share capital, working capital, loan repayments, or purchases for sundries, the Applicant contended that this claim served as a pretext to obscure the reality of his arbitrary and unlawful removal from membership in Kiwana Estates Limited.

G. Schedules

30. Considering that the parties had submitted their pleadings, including the Statutory Declarations pursuant to Section 286 of the Companies Act Cap 106, I instructed both sides to submit written submissions and provided the schedules as outlined below;

- a) *Written submissions from the Applicant were to be filed and served by the 21st day of November, 2025.*
- b) *Written submissions from the Respondents were to be filed and served by the 28th day of November, 2025.*
- c) *Any submissions in rejoinder were to be filed and served by the 5th day of December 2025.*

31. I informed the parties that the ruling would be issued on notice.

H. Issues

32. The parties framed three issues which I find sufficient to determine this matter conclusively;

- a) *Whether the Applicant is a member/shareholder of the first Respondent Company?*
- b) *Whether the Applicant was unlawfully and illegally removed as a shareholder in the first Respondent Company?*
- c) *What remedies are available to the parties?*

I. Determination

- a) ***Whether the Applicant is a member/shareholder of the first Respondent Company?***

33. The Applicant contended under paragraph 4 (b) of the Application that upon the transfer of lands constituting the estate to the company, he was subsequently allotted 24 shares out of the total 168 shares of the company, being his beneficial interest in the estate of the late Alistaliko Kiwana.

34. The Applicant contended further under paragraph 4 (f) that he had never forfeited or transferred his shares in the company to any person. He argued that the 2008 Memorandum and Articles of Association, the annual returns, and the resolutions on the company register were illegal.

35. The sixth Respondent, under paragraph 11 of her Statutory Declaration in reply,

stated that except for Maria Nabasirye Kiwana and Janet Nkabiddwa, the rest of the Company members were admitted as shareholders on the grace of their mother Mrs. Margaret Ndibalekera Kiwana, which explained the Applicant's inaction until her death.

Submissions

36. Counsel for the Applicant submitted that the Applicant became a member of the company upon allotment of shares in 1974. Counsel contended that the Applicant's membership in the company arose immediately upon such allotment. Counsel further submitted that the inclusion of the Applicant's name in the company's annual returns substantiated the Applicant's status as a member. Counsel relied on various authorities, all of which I have taken into consideration.
37. Counsel for the Respondents challenged the manner in which the Applicant was allotted the shares and disputed the Applicant's contention that allotment alone confers membership in the company. Counsel relied on *Mohammed Alibhai v Bugerere Properties Limited*, in which it was discussed that for a person to become a member, there must be an issuance of shares by the directors, followed by approval of payment for the shares, and the subsequent entry of the person's name in the register.
38. Respondents' Counsel contended that, although the admission of the Applicant and the third, fifth, and sixth Respondents as shareholders was undertaken in good faith by their mother in her capacity as matriarch, the process was nonetheless unlawful as the parties could only be shareholders upon a valid transfer of shares confined within the Articles of Association. Counsel further asserted that the original subscribers violated the principle of pre-emption rights because none of them could assign shares without first claiming priority to purchase the shares. Counsel argued that on this basis, the Applicant had not legally acquired the status of member in the Company.

Analysis

39. Membership of a company is provided for under Section 45 of the Companies Act, Cap. 106 (formerly Section 47 of the Companies Act 2012, and Section 27 of the Companies Act Cap 110), which stipulates as follows;

(1) *The subscribers to the memorandum, if any, of a company shall be taken to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.*

(2) *A person who agrees to become a member of a company, and whose name is entered in its register of members shall be a member of the company*

40. Justice Steven Musota in the case of *Olive Kigongo v Mosa Courts Apartments, High Court Company Cause No. 01 of 2015*, while interpreting the aforementioned provision, opined '*....that there are two ways of becoming a member of a company and these are;*

i. By being a subscriber to the Memorandum of Association of a company at the time of incorporation of that company or

ii. By acquiring shares in the company after incorporation.

41. In the present case, although the Applicant was not a subscriber to the company's Memorandum of Association at the time of incorporation, he contended that he was allotted twenty four (24) shares out of the one hundred and sixty eight (168) available shares of the company in 1974. This position is reflected in a return of allotment form filed on 9th April 1987 on the company file, which indicates that the Applicant, together with Ndibarekera Margaret Kiwana, Nabasirye Maria Rhoda Nanozi Kiwana, Nkabiddwa Janet Edith Kiwana, Nabwami Ester Kiwana, Babirye Nakasi Veronica Kiwana, and Nakato Mberera Sarah Kiwana, were each allotted shares in the company in 1974.

42. A further perusal of the company file at the registry further showed that the Applicant appeared on a return of allotment filed on 2nd June 1993, in which he

was recorded as holding four hundred and fifty six (456) shares in the company.

43. A return of allotment is a recognized basis upon which an allottee may be regarded as a member of a company. This position was affirmed in *Matthew Rukikaire v Incafex Limited, Supreme Court Civil Appeal No. 03 of 2015*, where the appellant's membership was recognized based on a return of allotment form.
44. It is also noteworthy that the Applicant, together with Ndibarekera Margaret Kiwana, Nabasirye Nanozi Kiwana, Nkabiddwa Kiwana, Nabwami Kiwana, Babirye Nakasi Kiwana, and Nakato Mbekeka Kiwana, appeared on the company's annual returns as shareholders for the period between 1976 and 2007, after which the Applicant's name ceased to appear on the returns.
45. Although the annual returns are not definitive evidence of membership, they indicate that the member was included in the company register as a member, as they are a reflection of the company's status as it is stated in the register. The inclusion of an individual's name in the annual returns, therefore, substantiates an individual's membership claim. This position was emphasized in the case of *Lutaaya vs. Gandesha [1986] HCB 46* where the Court held inter alia that: "*Although the Company's Act makes provision for membership of a Company under Section 28, for maintenance of members register in Section 112, for the inspection of the register by even a non-member in Section 115 and for the fact that the register is a prima facie evidence for membership in Section 120, there was not one exclusive or exhaustive mode of proving membership of a Company. Even the occurrence of ones name on the register of members was only prima facie evidence and other evidence could be adduced to rebut that. Therefore, other modes could be used to prove membership of the company. Some of the ways of proving membership was possession of a share certificate and to some extent the appearance of one's name on the annual return.*"
46. I am not persuaded by the submission of Counsel for the Respondents that the Applicant, together with Nakato Sarah Mbekeka, Kiwana Esther Nabwami, and

Babirye Nakasi Kiwana, could only attain shareholder status through a valid transfer of shares effected strictly in accordance with the company's Articles of Association.

47. There is a difference between allotment and transfer of shares in company law. In *Matthew Rukikaire v Incafex Limited*, Supreme Court Civil Appeal No. 03 of 2015, Justice Lillian Tibatemwa-Ekirikubinza quoted Chitty J in *Re Florence Land and Public Works Company (1885) L.R.29 Ch. D 421* when he stated as follows;

What is termed allotment is generally neither more nor less than the acceptance by the company of the offer to take shares.... The offer is to take a certain number of shares, or such a less number of shares as may be allotted.

48. The authors Gower and Davies, in *Principles of Modern Company Law*, 8th edition at page 845 defined the term 'allotment' as the process by which the Company finds someone who is willing to become a shareholder of the company. Gower and Davies further explained that the process of becoming a shareholder is a two-step one, involving first a contract of allotment and then registration of the member.

49. In retrospect, a transfer of shares is a situation where a shareholder (transferor) agrees to transfer shares to another party (transferee). Section 81 of the Companies Act Cap 106 stipulates that shares in a company are classified as movable property and may be transferred according to the procedure outlined in the Company's Articles. According to Regulation 23 of Table A of the Companies Act Cap 106, any member is permitted to transfer all or part of their shares through a written instrument, utilizing a standard or commonly accepted format, or any alternative format that receives approval from the directors.

50. Court in *Barry Mpeirwe V Alsaco International Ltd HCCS No. 440 of 2014* held that, 'a shareholder has property rights and the right to sell and transfer those property rights to another person. Further that in a private limited liability company there are some

restrictions on those rights, among other things, the requirement for a written instrument of transfer.'

51. Section 83 (1) of the Companies Act Cap 106 provides that for a company to lawfully register a transfer of shares, a proper instrument of transfer must be delivered to the company. Regulation 22 Table A of the Companies Act Cap 106 further requires that, *'an instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be taken to remain a holder of the share until the name of the transferee is entered in the register of members in respect of the share.'*

52. In light of the foregoing, the Applicant, together with Nakato Sarah Mbekeka, Kiwana Esther Nabwami, and Babirye Nakasi Kiwana, became shareholders by way of an allotment of shares, and not by a transfer of shares. The argument presented by Respondent Counsel, asserting that a transfer of shares was necessary for the Applicant to be recognized as a shareholder, is fundamentally flawed. The Applicant attained shareholder status through the allotment form dated 1974 and filed in 1987 at the Companies registry. The Applicant, together with the other shareholders of the company were allotted shares in 1974, as evidenced by the return of allotment form filed at the registry. The Applicant became a member of the first Respondent Company as a result of his entry in this return of allotment.

53. Consequently, the Applicant's subsequent omission from the shareholding page in the Amended Memorandum and Articles of Association filed in 2008, cannot be attributed to him, as the duty to maintain and update the register lies with the company, as it was emphasized in *Matthew Rukikaire versus Incafex Limited* at page 14 that, *"... My conclusion is that it is "the company" which has the obligation to enter each member on the members register. In this context the company's duty lies with the company secretary, whose duty it is to."* It was further held at page 15, *'that such failure*

cannot be visited on the shareholder..."

54. In respect to the first issue, I therefore find that the Applicant is a member/shareholder of the company, having been allotted 456 shares in the company.

b) Whether the Applicant was unlawfully and illegally removed as a shareholder in the first Respondent Company?

55. The Applicant averred in paragraphs 4 (d) and (e) of his Statutory Declaration that he had at all material times been a member and shareholder of the company. He further declared that in 2025, he conducted a search at the company registry, which revealed that the second to sixth Respondents had amended the company's Memorandum and Articles of Association so as to remove him as a shareholder without his knowledge or consent.

56. In paragraphs 4 (f) and (g) of his Statutory Declaration, the Applicant stated that he had never forfeited or transferred his shares in the company to any person. He further contended that the 2008 Amendment to the Memorandum and Articles of Association, together with all subsequent amendments, was unlawful. He asserted that the 2008 amendment, effected by the second to sixth Respondents was a calculated attempt to deprive him of his shareholding and proprietary interest in the company.

57. Whereas the fourth Respondent Collyer Janet Nkabidwa Edith did not directly address the procedure adopted for the Applicant's removal as a shareholder in her Statutory Declaration, she contended under paragraph 20 that it was believed that upon the sale of the Muyenga Tank Hill House property worth Ugx 600,000,000/= (Six hundred Million shillings) by the Applicant and his wife Florence Kiwana, the Applicant had relinquished his shares in the company.

58. The fourth Respondent suggested in paragraphs 20 and 23 of her Statutory Declaration that the Applicant relinquished his shareholding in the company upon selling the Muyenga Tank Hill house property, which he had received in consideration for his shareholding in the company, and the Kisumu Farm, which he lost to a money lender upon failing to fulfill the mortgage terms.
59. The fourth Respondent contended under paragraph 24 of her Statutory Declaration in reply that, following the Applicant's receipt of the said properties, that is the Muyenga Tank hill property and the Kisumu farm, the shareholders resolved to regularize the company's shareholding structure by amending the Companies Memorandum and Articles of Association to remove the Applicant. Consequently, amended Memorandum and Articles of Association were filed in 2009 to reflect that position. She further stated that, from that time to date, the Applicant has not been reflected as a shareholder. It was also her stated position that the Applicant, by disposing of the property at Muyenga Tank Hill and the Kisumu farm, had thereby relinquished his shares in the first Respondent Company.
60. The Sixth Respondent, D'arbela Babirye Nakasi Veronica Kiwana, stated under paragraphs 12 and 13 of her Statutory Declaration in reply that the amendment to the Memorandum and Articles of Association was effected with the requisite consent and in compliance with the law. She further stated that the Applicant had no shares to forfeit or transfer, as none had been fully transferred to him in accordance with the law. It was her stated position that the Applicant was neither deprived of any interest nor had any interest diminished, as he had never paid for any shares and therefore, there was neither gain nor loss on his part.

Submissions

61. Counsel for the Applicant submitted that the second to sixth Respondents amended the company's Memorandum and Articles of Association, thereby

removing the Applicant as a shareholder without his consent. Counsel emphasized that the Respondents failed to comply with the statutory procedure governing such amendments, in particular Section 16 (1) of the Companies Act, Cap. 106, which requires the passing of a special resolution to authorize any alteration of a company's Articles of Association.

62. Applicant's counsel further submitted that no cogent evidence was adduced to substantiate the Respondents' assertion that the Applicant received the said properties in consideration of his ceasing to be a shareholder in the company, thereby rendering those averments hearsay. It was also contended that the Respondents redistributed the Applicant's shares amongst themselves without his knowledge or participation. Counsel maintained that such conduct amounted to oppression of the Applicant in his capacity as a member of the company.
63. Counsel for the Respondents argued that the Applicant was never lawfully or validly admitted as a member of the company, as the proper procedures were not followed, statutory requirements were disregarded, and the inclusion of the Applicant on the allotment form was contrary to the company's Articles of Association. Counsel further submitted that the subsequent amendment in 2008 and the resolutions passed were intended to regularize the company's shareholding and bring its affairs into conformity with the law.
64. Counsel for the Respondents further submitted that the Applicant's exclusion from the register of shareholders was based on fair grounds and good faith. It was argued that the Applicant's receipt of sixty percent of the company's assets placed him beyond the scope of any claim of oppression. Counsel relied on *Matthew Rukikaire (supra)* and *Elder v Elder & Watson Ltd [1952] SC 49* to illustrate the legal concept of oppression and to contend that it did not apply to the Applicant. Counsel emphasized that the Applicant treated the company as an extension of his father's estate and, unlike the Respondents, had not invested any funds into the

business.

Analysis

65. Having established that the Applicant was a shareholder and member of the company by virtue of the 1974 return of allotment form that was filed with the Companies Registry, I will proceed to discuss whether the Applicant was unlawfully and illegally removed as a shareholder in the first Respondent Company.

66. A shareholder may cease to hold shares in a company by various means. These modes include;

a) Upon a transfer of shares

67. Section 81 of the Companies Act Cap 106 provides that shares are classified as movable property and may be transferred according to the procedure outlined in the company's Articles of Association.

68. Section 83 of the Companies Act Cap 106 emphasizes that the transfer of shares shall be by execution of a transfer instrument delivered to the company. The delivery of the instrument to the company is emphasized under Regulation 22 of Table A of the Companies Act Cap 106, which provides that for a company to lawfully register a transfer of shares, a proper instrument of transfer must be delivered to the company.

69. Justice Christopher Madrama in *Barry Mpeirwe V Alsaco International Ltd* HCCS No. 440 of 2014 cited with approval, the words of Lord Greene MR in *Greenhalgh V Mallard and Others* [1943] 2 ALLER 234 on transfer of shares as follows, '*In the cases of a private company, the Articles of Association contain restrictions on transfer and transmission of shares. With the restriction of transfer of shares, it is right for the court to remember that a share, being personal property, is prima facie transferable, although the conditions of the transfer are to be found in the terms laid down in the Articles. If the right of transfer, which is inherent in property of this kind, is to be taken away or cut down, it*

seems to me that it should be done by language of sufficient clarity to make it apparent that that was the intention.'

70. The transfer of shares is usually subject to the right of preemption to the existing shareholders. This is where existing shareholders are given an opportunity of to acquire the shares before they are sold to an outside party. Article 16 of Articles of Association of the first Respondent Company provided for the right of preemption.

b) Transmission of shares

78. This entails the mode with which shares pass to representatives of a shareholder upon death or bankruptcy. Section 83 (2) of the Companies Act Cap 106 preserves a company's power to register as a shareholder any person to whom the right to shares has been transmitted by operation of law. Furthermore, Section 84 provides that a transfer by a personal representative of a deceased shareholder is as valid as if the representative had been a member at the time of execution.

c) Forfeiture of shares

79. Forfeiture of shares occurs when a company removes a shareholder, typically for failing to pay up for the shares after providing appropriate notice through a call. This results in the shareholder losing all of the shares and benefits such as dividends and voting rights associated with those shares, which the company can then reissue. This procedure entails a series of particular legal measures, such as a board resolution and a written notification to the defaulter otherwise known as a call, and ultimately leads to the cancellation of the shareholder's membership. This was provided for in Articles 13-21 of the first Respondent's Company Articles of Association.

d) Surrender of shares

80. This mode entails a situation where a shareholder voluntarily surrenders their shares to the company. This is enshrined in Regulation 32 (3) of the Companies

Regulations SI No. 74 of 2023, which provides that, '*a shareholder may surrender shares held in a company to a company by signing a surrender agreement or by notice of surrender of shares to the registrar where the shareholders fail to agree on the signing of the surrender agreement.*' Where a company accepts the surrender and cancels the shares, the shareholder ceases to be one.

81. None of the aforementioned established modes was adopted by the Respondents in effecting the removal of the Applicant as a shareholder of the company. Instead, the parties filed amended Memorandum and Articles of Association in which the Applicant was omitted as a shareholder of the company, which is not a recognized mode of removing a shareholder from the company.

82. The Applicant's purported removal was effected by way of an amendment to the Company's Memorandum and Articles of Association, consequent upon the filing of a Special Resolution passed on 12th December 2008 and filed on 3rd February 2009 which provided verbatim as follows;

- a. *That the share capital of Kiwana Estate (U) Limited be and is hereby increased to Ug. Shs 4,000,000/=(four million shillings) only divided into 1000 ordinary shares of Ug. Shs 1000.*
- b. *That the following ordinary shares be and are hereby transferred to the persons herein below listed; Margaret.N.Kiwana 1,250 shares, Janet Edith Nkabiddwa 660 shares, Maria Rhoda Nabasirye 660 shares, Esther Nabwami 660 shares, Babirye Veronica 660 shares and Nakato Sarah Mbekeka 660 shares.*
- c. *That the Memorandum and Articles of Association be and are hereby amended to reflect the changes as executed by the new shareholders.*

83. A plain reading of the Special Resolution demonstrates that its purpose was to increase the Company's share capital and to provide for the issuance of shares to the named shareholders, together with a consequent amendment to the

Company's Memorandum and Articles of Association, and did not encompass or authorize the removal of the Applicant.

84. In the absence of any documentary evidence, including but not limited to any agreement, memorandum of understanding, shareholders' agreement or correspondence, the Respondents have failed to adduce proof that the Applicant legally relinquished his shares in the Company in exchange for property. The Respondents have further failed to demonstrate that the Applicant either expressly or impliedly signified any intention to transfer his shares in the Company upon receipt of property. I am alive to the reasoning of Hon. Justice Stephen Mubiru in *Olanya James v Ociti Tom & 3 others Civil Appeal No.0064 of 2017* wherein he opined that "*...It's the law of evidence that the party who bears the burden must produce evidence to satisfy it, or his or her case is lost. The probabilities must be high enough to warrant a definite inference that the allegations are true. In a civil suit, when the evidence establishes conflicting versions of equal degrees of probability, where the probabilities are equal so that the choice between them is mere matter of conjecture, the burden of proof is not discharged... The facts proved must form a reasonable basis for a definite conclusion affirmatively drawn of the truth of which the trier of fact may reasonably be satisfied... The law does not authorize Court to choose between guesses, where the possibilities are not unlimited, on the ground that one guess seems more likely than another or others.*"

85. In light of the foregoing, and the Respondents having failed to adduce any evidence to substantiate that the Applicant's removal as a shareholder was premised upon his receipt of property, and further in the absence of any proof that the Applicant was lawfully removed as a shareholder of the Company by way of a valid transfer, transmission, surrender, or forfeiture of shares, it cannot be concluded that the Applicant was legally absolved of his status as a shareholder/member of the Company. I therefore find that the Applicant was

wrongly removed as a shareholder/member from the first Respondent Company.

86. Prior to concluding this matter, I would like to address the issue concerning the current Board of Directors of the first Respondent Company. Article 37 of the original Articles of Association stipulates that Directors are to be appointed at the Annual General Meeting of the members, with the exception of the life Directors as outlined in Article 33 of the Company's Articles of Association. The life Directors were identified as Mrs. Margaret Ndibalekera Kiwana, Miss Maria Rhoda Nabasirye Nanozi Kiwana, and Miss Janet Edith Nkabidwa Kiwana. The decision by the members to establish a new Board of Directors without the involvement of the Applicant was incorrect, as the Applicant as a member of the Company had the right to participate in the appointment process of the Board. As a result, the resolutions and documents appointing directors without the Applicant's involvement were passed and registered in violation of the Company's Articles of Association and should be expunged from the register.
87. Similarly, 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 09th 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 Kiwana Estates Limited's data on the new system. This data, however, reflects fundamental changes, which includes data reflecting the current members of the company who got shares irregularly as discussed in this decision above. The data also reflects a Board of Directors that was irregularly constituted.
88. The existing data on the online business registration portal in regards to Kiwana Estates Limited is therefore incorrect and misleading and ought to change to reflect the true position as to the ownership, directorship and secretary of the

company. Counsel in this case can make a formal administrative application to have access to the Company OBRS account to correct this data.

c. What remedies are available to the parties?

89. The Registrar of Companies' statutory jurisdiction relates to the exercise of two distinct powers, firstly is the power to hear and determine complaints by an oppressed member under Section 243 of the Companies Act Cap 106, and secondly, the power to rectify and update the company's register pursuant to Regulation 8 (1) of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016.

90. 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*

91. Based on the foregoing findings, I find that the Applicant is a duly recognized shareholder and member of Kiwana Estates Limited pursuant to Section 45 of the Companies Act, Cap. 106.

92. Accordingly, and pursuant to Regulations 8 and 32 of the Companies (Powers of the Registrar) Regulations SI No 71 of 2016, I hereby make the following orders;

- 1) That the amended Memorandum and Articles of Association dated 12th December 2008 and registered on 3rd February 2009, purporting to exclude the Applicant as a shareholder be expunged from the register for having been wrongfully filed.*

- 2) *That the amended Memorandum and Articles of Association dated 15th February 2024 and registered on 29th February 2024 be expunged from the register for having been wrongfully filed.*
- 3) *That the amended Memorandum and Articles of Association dated 10th June 2024 and registered on 28th June 2024 be expunged from the register for having been wrongfully filed.*
- 4) *The previous shareholding structure, as established before the filing of the amended memorandum and articles of association on 3rd February 2009, shall be restored as the official shareholding structure of the Company, consistent with the shareholders detailed in the return of allotment dated 2nd June 1994.*
- 5) *The legitimate shareholders of the Company are therefore the following, Mrs. Kiwana Margaret Ndibalekera with 1,121 shares, Nabasirye Maria Rhoda with 456 shares, Nkabiddwa Janet Edith with 456 shares, Lugoloobi Sira with 456 shares, Nabwami Esther with 437 shares, Nakasi Babirye Veronica with 437 shares and Mbekeka Nakato Sarah with 437 shares.*
- 6) *That the company has a share capital of 4,000,000 Ug shs divided into 4,000 ordinary shares of 1,000 Ug shs each, with 3,800 shares duly allotted to the aforementioned individuals and 200 shares unallotted.*
- 7) *That the Company form 8 dated 08th December 2009 appointing Esther Nabwami, Babirye Veronica and Nakato Sarah Mbekeka as directors be expunged for having been wrongfully filed.*
- 8) *That the Company form 8 dated 22nd January 2010 appointing Esther Nabwami, Babirye Veronica and Nakato Sarah Mbekeka as directors be expunged for having been wrongfully filed.*
- 9) *That the company form 20 filed on 30th April 2025 appointing the 2nd, 4th, 5th and 6th Respondents as directors and Namugga Faith Ritah as secretary be expunged from the register for having been wrongfully filed.*

- 10) *That the ordinary resolution passed on 27th March 2025 and filed on 30th April 2025 appointing the 2nd, 4th, 5th and 6th Respondents as directors and Namugga Faith Ritah as secretary be expunged for having been wrongfully filed.*
- 11) *The board resolution passed on 10th June 2024 and filed on 28th June 2024, issuing shares to the Respondents be expunged for having been wrongfully filed.*
- 12) *The special resolution passed on 15th February 2024 and filed on 29th February 2024, issuing shares to the Respondents, be expunged for having been wrongfully filed.*
- 13) *That the special resolution dated 12th December 2008 and filed on 3rd February 2009, issuing shares to the Respondents, be expunged for having been wrongfully filed.*
- 14) *Each party shall bear its own costs.*

I so Order.

Given under my hand this 26th day of February 2026

Daniel Nasasira
Assistant Registrar of Companies