



THE REPUBLIC OF UGANDA
IN THE MATTER OF THE COMPANIES ACT CAP. 106
AND
IN THE MATTER OF THE COMPANIES (POWERS OF THE REGISTRAR)
REGULATIONS SI NO. 71 OF 2016
AND
IN THE MATTER OF NOB VIEW HOTEL LIMITED
BRN: 80010000266234
AND
IN THE MATTER OF NALIBYARU INVESTMENTS LIMITED
BRN: 80020002780538
COMPANY APPLICATION NO. 36375 OF 2024

1. **BYARUGABA MUGAGGA DEO**
2. **BLESSING DOROTHY**
3. **MEEK ANALEAH**
4. **PEARL ANGELA GABRIELLA**
5. **THERESA MERCY BYARUGABA**
6. **MICHAEL KAKUUTO BYARUGABA:.....APPLICANTS**

VERSUS

1. **O VIA BYARUGABA KASHEEGU**
2. **CAROLINE TUSINGWIRE EGESA**
3. **LILLIAN BYARUGABA BUSINGYE:.....RESPONDENTS**

RULING

Before: Daniel Nasasira - Assistant Registrar of Companies

A. Representation.

1. *Counsel Rubaihayo Samson of Murangira, Kasande & Co. Advocates represented the Applicants, whereas Counsel Arthur Murangira from A.M & Co. Advocates (formerly A. Murangira Advocates) represented the Respondents.*

B. Introduction and Background.

2. Nob View Hotel Limited is a limited liability company duly incorporated under the laws of Uganda on 16th June 1993 (hereinafter referred to as “the Company”). The Applicants and the Respondents are all registered shareholders of the Company.
3. At all material times since incorporation, the Company had two directors, namely Nalis Byarugaba (now deceased) and the first Respondent, Ovia Byarugaba Kasheegu.
4. The Applicants filed this Application on 09th May 2024, challenging a Board Resolution of the Company dated 13th July 2022 and registered on 14th July 2022, by which the first Respondent purported to appoint the second Respondent as a director of the Company pursuant to Article 100 of Table A to the Companies Act.
5. The Applicants contend that the purported Board meeting at which the resolution was allegedly passed did not take place and that the first Respondent acted illegally in appointing the second Respondent as a director. The Respondents, on the other hand, maintain that the appointment was made in accordance with the Company’s Articles of Association and was therefore valid.
6. The Applicants also brought this Application in respect of Nalibyaru Investments Ltd, a private company limited by shares duly incorporated under the laws of Uganda on 11th November 2020. The Applicants and the Respondents are all registered shareholders of the Company, with the second Respondent also serving as the Company Secretary.
7. The Applicants contend that, upon attempting to obtain further particulars regarding the Company, they discovered that it had been struck off the Companies Register. They faulted the second Respondent for failing to notify or inform the shareholders of this development.

8. The Applicants alleged that there was fraudulent conduct of the Respondents pertaining to the management, dealings, and affairs of Nob View Hotel Limited and Nalibyaru Investments Limited.

C. Applicants' Case.

9. The Applicants stated that they identified fraudulent dealings in regard to the running of the company affairs of Nob View Hotel Limited, which was earmarked by a fraudulent and impersonating letter by the third Respondent, Lillian Byarugaba, wherein she fraudulently identified herself as a Director of Nob View Hotel Limited.

10. The Applicants, under paragraph 9 of the Statutory Declarations of the first, second and fourth Applicants, each stated that upon conducting a search at the Uganda Registration Services Bureau, it was discovered that the first Respondent had illegally filed a resolution of the Board of Directors appointing the second Respondent as a director of Nob View Hotel Limited purportedly without the knowledge of the other shareholders and participation of the then Managing Director, the late Nalis Byarugaba.

11. The Applicants asserted in paragraph 10 that they were stunned by the contents of the aforesaid resolution of the Board of Directors particularly because as shareholders they had never been informed of such a resolution and additionally, that the said resolution alleged that the Late Nalis Byarugaba was incapacitated and could not execute documents yet he was claimed to have participated in reaching the resolution appointing the second Respondent on the 13th of July 2022. The Applicants contended that the said resolution was illegal.

12. In paragraph 14 of the Statutory Declarations of the first, second, and fourth Applicants, they stated that upon an attempt to get better particulars on Nalibyaru Investments Limited, they unfortunately found that the said company had been struck off the register.

13. Further, in paragraph 15, they found it suspicious that the company secretary of Nalibyaru Investments Limited, Caroline T. Egesa, the second Respondent herein, had not informed the shareholders/members of Nalibyaru Investments Limited of the striking off of the Company from the Companies Register.
14. The Applicants averred that the Company has been operating under illicit directorship and prayed that;
- a) *The Registrar General strikes off the register the illicit resolution by the director Ovia Byarugaba Kasheegu, the first respondent herein, appointing the second Respondent Caroline T. Egesa, as a director in Nob View Hotel Limited.*
 - b) *The Registrar General of URSB restores Nalibyaru Investments Limited to the Companies Register.*
 - c) *The Registrar General orders the call for the annual general meeting of Nob View Hotel Limited to nominate and vote on newly appointed directors and the company secretary.*
 - d) *The Registrar General orders the call for the annual general meeting of Nalibyaru Investments Limited to nominate and vote on newly appointed directors and the company secretary.*
 - e) *The Registrar General of URSB appoints Inspectors to investigate the fraudulent dealings since the passing of the then managing director, the late Nalis Byarugaba.*
 - f) *The Registrar General of URSB initiates criminal proceedings against the fraudulent respondents and their agents.*
 - g) *The Registrar General of URSB orders the respondents to refund to Nob View Hotel Limited and to the shareholders, all monies they have so far swindled from the said company.*
 - h) *The Registrar General of URSB appoints Inspector(s) to inspect the two Companies and provide interim and final reports.*
 - i) *The Registrar General of URSB rectify the Register by removing the illegal appointment of Caroline T. Egesa as director, removing Ovia Byarugaba*

Kasheegu from being both director and secretary, and removing Lillian Busingye Byarugaba from being a director of Nob View Hotel Limited.

j) The Registrar General of URSB grant an order for costs against the Respondents in favour of the Applicants.

k) The Registrar General of URSB to grant any further reliefs she deems fit and necessary to the Applicants.

D. Second Respondent's Case.

15. The second Respondent stated under paragraph 6 of her Statutory Declaration in Reply to the Application that the Application was misguided and brought in bad faith to circumvent the court process due to a separate pending matter in court, Administration Cause No. 1635 of 2022.

16. She acknowledged under paragraph 10 of her Statutory Declaration in Reply to the Application that all parties to the Application (both the Applicants and Respondents) were shareholders/members of Nob View Hotel Limited.

17. The second Respondent stated in paragraph 11 that due to the illness of the Late Nalis Byarugaba, the first Respondent's co-director at the time, she was temporarily appointed a director in the Company to maintain business operations without interruptions. She asserted that this was done due to the incapacity of the Late Nalis Byarugaba at that time.

18. The second Respondent intimated in paragraph 13 of her Statutory Declaration in Reply to the Application that there was no formal appointment of Lillian Byarugaba, the third Respondent, as a director of Nob View Hotel Limited and that it was probable that she used the terms as a job title unknowingly of its legal implications.

19. In respect of Nalibyaruru Investments Limited, the second Respondent contended that the company had no operations at the time and existed on paper only. She pointed out that its main role was to hold all the deceased's properties once the same had been transferred in its name, and further that the decision to

transfer the titles into the names of Nalibyaru Investments Limited was pending disposal of the main suit in court.

20. In addition, the second Respondent noted that Nalibyaru Investments Limited was struck off the register not as a result of her negligence as a company secretary but for failure to make filings on the OBRS system, of which she averred that it was difficult in the circumstances to update anything given the ongoing hostilities between the parties. She therefore prayed;

a) *That the status quo of the companies be maintained pending the outcome of Administration Cause No. 1635 of 2022.*

b) *That the Respondents may have such other relief(s) in the premises as the Registrar General may deem fit.*

c) *The Application be dismissed with costs.*

E. First and Third Respondents' Case.

21. The first and third Respondents deposed under paragraphs 4 and 5 of their respective Statutory Declarations in support of the reply to the Application that the Application in its entirety was fatally defective for being improperly brought before the Registrar of Companies. That it lacked merit and ought to be dismissed.

22. The first and third Respondents, under paragraphs 7 and 8 of their respective Statutory Declarations in reply to the Application, contended that it was not proper to join both Nob View Hotel Limited and Nalibyaru Investments Limited in the same application, as this would cause confusion in discerning which of the two companies was being referred to.

23. The two further averred that the Applicants' alleged shareholding in Nob View Hotel Limited, in particular, was acquired illegally and/or irregularly and therefore null and void *ab initio*.

24. They asserted that the first and second Respondents were duly appointed directors of the Company and that there was nothing illicit about their directorships.

25. The first and third Respondents pointed out that the letter referred to by the Applicants, wherein the third Respondent, Lillian Byarugaba, is indicated as a director, was a one-time mere misnomer with no intention to either deceive or prejudice anybody, and that indeed no such deceit or prejudice had resulted.
26. The first and third Respondents argued that the Applicants were not entitled to bring this application, nor to any of the remedies they sought therein, on the grounds that the Applicants' alleged shareholding in Nob View Hotel Limited was acquired illegally and therefore null and void *ab initio*.
27. On this basis, the first Respondent filed a cross-application against the Applicants (Cross-Respondents), inclusive of an additional Respondent not part of the Applicants in the initial Application.

F. Rejoinder.

28. The first Applicant averred in paragraph 4 of his Statutory Declaration in rejoinder that the evidence given by the declarant, "Lilliane Byarugaba Mwandha," who described herself as the third Respondent, was questionable and ought to be disregarded on the ground that it was allegedly made through personation of the actual third Respondent, "Lillian Byarugaba Busingye."
29. He further contended in paragraphs 2 and 3 that, whereas the name of the third Respondent in the application, "Lillian Byarugaba Busingye", seemed phonetically similar to that of the declarant, "Lilliane Byarugaba Mwandha", the declarant was not a party to this application, and therefore her stated facts regarding Nob View Hotel Limited were irrelevant.
30. He argued that the declarant could not provide any credible evidence regarding the affairs of Nob View Hotel Limited on the grounds that she was not a member/shareholder.
31. The second Applicant reiterated that he and the other Applicants were legal shareholders of Nob View Hotel Limited.

32. Furthermore, he averred that the declarant, Lilliane Byarugaba Mwandha, ought to be prosecuted for giving false evidence by way of a Statutory Declaration, as well as her lawyers for aiding and abetting.

G. Third Respondent's Sur-rejoinder.

33. The third Respondent in paragraphs 3 and 4 of her sur-rejoinder clarified that "Lillian Byarugaba Busingye", described in the Application and "Lilliane Byarugaba Mwandha", the declarant in the Statutory Declarations, are one and the same person. She stated that the name "Lilliane Byarugaba Busingye" was her name from birth until her marriage to Timothy Mwandha, wherein, in keeping with the tradition, she abandoned the use of her surname "Busingye" in favour of her husband's surname "Mwandha". She attached her marriage certificate in support of this claim.

34. The third Respondent intimated that the name "Lilian Busingye" as it appears in the Memorandum and Articles of Nob View Hotel as a holder of 10 shares truly referred to her and that this fact was well known to all the parties.

35. The third Respondent deposed in paragraph 6 that she was a shareholder in Nob View Hotel Limited and therefore conversant with the matters of fact pertaining to the application and cross-application. As such, she argued that all the evidence she had given was good and credible.

36. She further asserted that she had not given any false evidence warranting any criminal prosecution as alleged by the first Applicant. She reiterated that all the evidence she had so far given in this matter was factually correct and verifiable by other independent means.

CROSS-APPLICATION:

H. Cross-Applicant's case.

37. The first Respondent filed a cross-application against the Applicants, contending that the Applicants/Cross-Respondents unlawfully and irregularly acquired their purported shareholding in Nob View Hotel Limited. She averred that the acquisition of those shares was tainted by procedural impropriety,

illegality, and non-compliance with the requirements of the Companies Act and the Company's internal governance procedures. In particular, she challenged the validity of the share transfer instruments, resolutions, and allotment forms through which the Applicants/Cross-Respondents claimed entitlement to shares in the Company, asserting that the said documents were improperly procured and did not reflect lawful corporate action.

38. On that basis, she sought orders for rectification of the company register by the Registrar of Companies, specifically praying that the impugned share transfer documents, board and shareholder resolutions, and allotment forms be expunged from the Company's records. She maintained that the continued retention of those entries on the register perpetuated an illegality and distorted the true ownership structure of Nob View Hotel Limited, thereby necessitating regulatory intervention to restore the register to its lawful and accurate position.
39. The Cross-Applicant (first Respondent) contended under paragraph 3 of her cross-application that Nob View Hotel was incorporated with the subscribers to the memorandum being Nalis Byarugaba with 30 shares, Ovia Byarugaba (Cross-Applicant) with 20 shares, Lilian Busingye with 10 shares, Caroline Tusingwire with 10 shares, and Suzan Tumusiime with 10 shares, leaving 20 shares unallotted. She further stated that the late Nalis Byarugaba and the Cross-Applicant were listed as the Directors of the Company, with the Cross-Applicant also maintaining the role of the company secretary, both positions which she still holds to date.
40. She deposed under paragraph 5 of her Statutory Declaration in support of the cross-application that sometime in September 2014, the late Nalis Byarugaba, without the knowledge, consent, or involvement of the other shareholders and herself as a co-director of the company, caused the preparation and registration of a Board resolution of the company under which it was falsely stated *inter alia*;

- a) That at a purported meeting of the Directors of the Company held on 30th December 2012, it was resolved to allot 20 ordinary shares in the company to the first, second, third, and fourth cross-respondents in equal proportions of 5 shares each, whereas the said Board meeting allegedly did not in fact take place.
- b) In addition, the resolution provided that it was purportedly resolved that the transfer of 10 ordinary shares by Suzan Tumusiime to the fifth and sixth cross-respondents, in equal proportions of 5 shares each, be approved, whereas the said Board meeting allegedly did not in fact take place, nor did Suzan Tumusiime ever forfeit her shares as stated.
- c) The resolution further purportedly resolved that the transfer of 5 ordinary shares from the Cross-Applicant in favour of the seventh Cross-Respondent be approved, whereas she claims she had never knowingly and/or willingly transferred her said shares to the 7th Cross-Respondent.

41. The Cross-Applicant asserted under paragraph 7 of her Statutory Declaration that the late Nalis Byarugaba also caused the drawing, execution, and filing of multiple transfer forms, purportedly representing the shares illegally and/or irregularly acquired by the fifth, sixth, and seventh Cross-Respondents as per the aforesaid Board Resolution. She argued that the respondents purportedly became shareholders in the company pursuant to the registration of the said resolution and transfer forms.

42. She contended that she knew for a fact that the Board meeting of 30th December, 2012, which is referred to in the aforesaid Board resolution, never took place, and further that the resolution was just drawn up by M/s Forethought (U) Ltd on the instructions of the late Nalis Byarugaba and merely presented to the Cross-Applicant to append her signature as an unwitting and unsuspecting participant.

43. The Cross-Applicant averred in paragraph 10 that, considering she was married to the late Nalis Byarugaba at the time, and not wanting to antagonize their marriage, she usually simply went along with signing any company documents which he presented to her for that purpose, usually without affording her an opportunity to peruse and fully comprehend the contents thereof or the implications of her signing them. She stated that this was how she ended up being hoodwinked into signing the Board resolution and share transfer forms in favour of the seventh Cross-Respondent, purportedly transferring 5 of her ordinary shares to him unknowingly and unwillingly.
44. The Cross-Applicant deposed in paragraph 11 of her Statutory Declaration that the entire process by which the Respondents purportedly acquired shares in Nob View Hotel Limited was tainted with illegalities and/or irregularities and in contravention of the law and the Company's Articles of Association, particularly because;
- a) There was no meeting or resolution of the shareholders in a general meeting to co-opt the Respondents as members of the company and to allot and transfer shares to them.
 - b) There was no offer made to the existing shareholders for the allotment and purchase of the 20 shares purportedly allotted to the first, second, third, and fourth Respondents.
 - c) There was no valuation undertaken to determine the true value of the 20 shares purportedly allotted to the said Respondents.
 - d) The said Respondents had never paid any consideration for the shares purportedly allotted to them.
45. The Cross-Applicant claimed in paragraphs 13 and 14 that Suzan Tumusiime had never transferred her 10 shares or notified any of the original shareholders to transfer or sell her 10 shares. In addition, she stated that she had never notified the other shareholders nor offered them the first priority to purchase her 5 shares, which were purportedly transferred to the seventh Cross-

Respondent. The Cross-Applicant contended that she signed the transfer form in respect of the seventh Respondent under duress and undue influence from the late Nalis Byarugaba, who handled the entire process. She further claimed that she signed blank forms, not knowing exactly what they were to be used for, and that all other information appearing therein was inserted by the late Nalis Byarugaba or persons acting under his directions.

46. The Cross-Applicant deposed under paragraphs 17, 18, and 19 that none of the cross-Respondents had ever paid any consideration to either her, the company, or Suzan Tumusiime, whether in cash or in kind, in return for the shares purportedly acquired by them, and that neither of them had been issued with a share certificate in recognition of their purported shareholding. She argued that there was no consideration supporting the transactions under which they purportedly acquired shares in the company and sought the following reliefs;

- a) *A declaration that the first to seventh Cross Respondents were not shareholders in Nob View Hotel Limited.*
- b) *An order for the cancellation and expungement of the Board Resolution filed on 23rd December 2014, introducing the Cross Respondents as members in the Company.*
- c) *An order for the cancellation and expungement of the share transfer forms through which the first to seventh Cross Respondents purportedly acquired shares in Nob View Hotel Limited.*
- d) *Costs of the Application.*

47. The third Respondent in the initial Application, Lilliane Byarugaba Mwandha, though not a party to the cross-application, swore a Statutory Declaration in support of the same, wherein she concurred with and re-stated all that the Cross-Applicant had stated in her Declaration.

I. Cross-Respondents' Case.

48. The Cross-Respondents, in their Statutory Declarations in reply, contended that the Statutory Declaration of the Cross-Applicant in support of the cross-

application contained falsehoods that rendered it defective. They claimed that the cross-application was a desperate ploy by the Cross-Applicant to escape *prima facie* fraud by her and the illegally appointed director of the Company.

49. The Cross-Respondents intimated that the Statutory Declaration of the Cross-Applicant was pushing a fictitious narrative to contradict the written documents that were executed by her.
50. The Cross-Respondents deposed that the Cross-Applicant's grievances were suspect, as she was aware of the membership of Nob View Hotel Limited for over 31 years, considering her position as the Company secretary.
51. They further argued that the share transfer documents executed by the Cross-Applicant were legal under the law, having been executed by the Cross-Applicant and the late Nalis Byarugaba as directors of the company, in accordance with the Company's Articles of Association. In addition, they averred that the Cross-Applicant, being the secretary of the Company, authored the annual returns of Nob View Hotel Limited, whose contents therein indicate the Cross-Respondents as shareholders in the Company. The Cross-Respondents asserted that they acquired their shareholding legally and that the Cross-Applicant had, to date, refused to fulfill her statutory duty of issuing share certificates to the Cross-Respondents.
52. They asserted that the cross-application was brought in bad faith and ought to be dismissed with costs to the Cross-Respondents.

J. Rejoinder.

53. The Cross-Applicant, in her rejoinder under paragraphs 6 and 7, restated that the cross-application was proper in law and that all her grievances therein raised matters of law and were therefore justifiable. That the questions raised in the cross-application were mainly matters of law, which were of a most fundamental nature, and the same could be raised at any time because an illegality once discovered unravels everything.

54. Regarding the annual returns in question that indicate the Cross-Respondents as shareholders, the Cross-Applicant deposed that the same were all prepared and filed by the late Nalis Byarugaba or persons acting under his singular direction. In justifying her appended signature on the said annual returns, the Cross-Applicant stated that the same were always presented to her for signing before all other information had been entered. That they would then be filled out by persons under the direction of the late Nalis Byarugaba and filed. She maintained that her role in signing the said annual returns was merely perfunctory.
55. The Cross-Applicant re-emphasized that the Cross-Respondents' alleged shareholding in Nob View Hotel Limited was acquired illegally and was therefore void *ab initio*. In addition, that the mere existence of the transfer forms or Annual returns in question did not, in and of itself, legitimize the Cross-Respondents' irregularly and/or illegally acquired shareholding in Nob View Hotel Limited.
56. Furthermore, she averred that she had never refused to issue share certificates to any of the Cross-Respondents, noting that none of them had ever made a demand for such certificates and, in any event, they were not legally entitled to them under the law.

K. Schedules.

57. At the closure of the hearing of this matter and considering that both parties had filed their Statutory Declarations pursuant to Section 286 of the Companies Act Cap 106, both counsel were instructed to present written submissions, and schedules were issued as follows;
- a) *Written submissions from the Applicants were to be filed and served by the 10th day of April 2026.*
 - b) *Written submissions from the Respondents were to be filed and served by the 24th day of April 2026.*
 - c) *Any submissions in rejoinder were to be filed and served by the 4th day of*

May 2026.

58. The parties were informed that the ruling would be issued on notice.

L. Issues.

59. The parties raised the following issues for the determination of the concerns raised in this matter.

- a) *Whether commencing a matter in respect to two different companies, vide Nob View Hotel Limited and Nalibyaru Investments Limited, is misconceived, incompetent, or barred in law?*
- b) *Whether the Applicants have a cause of action against the Respondents?*
- c) *Whether the cross-application/counter-claim by the first Respondent/Cross-Applicant is misconceived, incompetent, and barred in law?*
- d) *Whether the contested documents were validly obtained and filed?*
- e) *What remedies, if any, are available to the parties?*

M. Determination.

- a. **Whether commencing a matter in respect to two different companies, vide Nob View Hotel Limited and Nalibyaru Investments Limited, is misconceived, incompetent, or barred in law.**

60. The Applicants instituted this Application jointly in respect of two distinct companies, namely Nob View Hotel Limited and Nalibyaru Investments Limited, in which all parties to the Application are registered as shareholders/members.

61. In relation to Nob View Hotel Limited, the Applicants challenged a Board Resolution by which the first Respondent appointed the second Respondent as a director, contending that no valid Board meeting was held and that the appointment was unlawful. They accordingly sought expungement of the impugned resolution and the corresponding Form 20 from the Companies register.

62. Conversely, in respect of Nalibyaru Investments Limited, the Applicants contend that the Company was struck off the Companies Register without their

knowledge and fault the second Respondent, who is the company secretary, for failing to notify them as shareholders. The remedy sought in this regard is the restoration of the Company to the Companies register.

63. Counsel for the Applicants submitted that the causes of action were substantially similar and arose from the same set of facts and transactions, thereby justifying the joinder of the two companies in one action. It was argued that the dispute centered on the same allegations of irregular corporate conduct affecting both entities. Counsel maintained that separating the matters would result in unnecessary duplication of proceedings. In their view, the claims were sufficiently connected as the parties were the same and relief sought to warrant determination within a single proceeding in the interest of procedural economy and substantive justice.

64. This position was strongly refuted by Counsel for the Respondents, who submitted that the joinder was fundamentally misconceived because the two companies were distinct legal entities with separate corporate personalities, separate registers, and different factual and legal issues requiring independent consideration. Counsel argued that the remedies sought in relation to each company were materially different and could not properly be collapsed into one action. It was contended that combining the claims created procedural confusion and risked prejudicing the Respondents by blurring distinct causes of action that ought to be separately pleaded and proved. Counsel therefore maintained that the joinder in the present form was improper and unsupported by law.

Analysis

65. From the foregoing, it is evident that the primary causes of action in respect of each company are distinct, arising from different factual circumstances and giving rise to different issues and remedies. The claim relating to Nob View Hotel Limited concerns the validity of a Board resolution and the propriety of a director's appointment, whereas the claim relating to Nalibyar Investments

Limited concerns the administrative act of striking off and the restoration of a company to the Companies register. Even if the same parties are involved, these are separate and independent causes of action that do not arise from the same transaction or series of transactions. The remedies sought in respect of the two matters are materially different. In relation to Nob View Hotel Limited, the Petitioner seeks rectification of the register through the expungement of the impugned board resolution that purported to appoint the Second Respondent as a director. By contrast, in respect of Nalibyaru Investments Limited, the relief sought is restoration of the company to the register.

66. The law on joinder of causes of action and parties is well settled. Ugandan courts have emphasized that improper joinder renders proceedings incompetent. In *Centre for Law and Peace Uganda and Peace Uganda and 3 Others v Bank of Uganda and Another (Civil Suit 370 of 2017) [2022] UGCommC 157 (16 May 2022)*, the Court reiterated that joinder is only appropriate where there exists a common question of law or fact arising from the same transaction or series of transactions. Justice Stephen Mubiru, at page 17 of the ruling in the aforementioned case, stated that in cases of a joinder, *“The right to relief must have arisen in respect of the same act or transaction or series of acts or transactions and a common question of law or fact so as to avoid multiplicity of proceedings.”* Therefore, where causes of action are distinct and unrelated, their joinder is improper and may render the proceedings defective. (See also *Yowana Kahere & Others v Lunyo Estates Ltd [1959] 1 EA 319*)
67. Counsel for the Applicants in his written submissions argued that the Applicants’ cause of action against the Respondents in both companies was similar in nature and necessitated the joint determination of the grievances, to which I disagree.
68. In my view, having considered the facts of this Application and applying the aforestated principles, the claims relating to Nob View Hotel Limited and

Nalibyaru Investments Limited neither arise from the same transaction or series of transactions, nor do they raise sufficiently common questions of law or fact to justify their joinder, notwithstanding that the parties in both matters are the same.

69. Furthermore, the remedy sought in respect of Nalibyaru Investments Limited relating to the restoration of the Company to the Companies Register is administrative in nature and does not, in the ordinary course, necessitate the filing of a formal application under the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016 supported by pleadings. Upon compliance with the prescribed statutory requirements, the Registrar is empowered to take the necessary administrative steps to restore the Company to the register.
70. Accordingly, I find that the Application, as framed in respect of both companies, is misconceived and incompetent for misjoinder of causes of action. The Applicants ought to have instituted a separate and distinct Application in respect of Nob View Hotel Limited, while pursuing the appropriate administrative process in relation to Nalibyaru Investments Limited. Such an approach would have enabled the proper and orderly determination of the distinct issues arising in respect of each company.
71. As such, this decision shall primarily address the issues relating to Nob View Hotel Limited, which emerges as the central subject of the dispute and the company in respect of which the parties substantially directed their pleadings, evidence, and submissions. A review of the Application, the supporting statutory declarations, and written submissions filed demonstrates that the allegations of impropriety, disputes concerning shareholding, management, and the exercise of corporate control were overwhelmingly framed around the affairs of Nob View Hotel Limited.
72. Although Nalibyaru Investments Limited was also mentioned in the Application and submissions, such reference was only incidental and was not supported by detailed pleadings, specific factual allegations, or substantive

evidence requiring independent quasi-judicial determination. No distinct issues of corporate governance, shareholding disputes, or oppressive conduct were sufficiently particularized in relation to Nalibyaru Investments Limited so as to warrant separate and comprehensive adjudication within this decision.

73. It is a settled principle that a decision-making body must confine itself to issues that have been properly pleaded and sufficiently canvassed by the parties, as parties are bound by their pleadings and relief cannot ordinarily be granted on matters not distinctly raised or proved. To venture into extensive findings regarding Nalibyaru Investments Limited in the absence of adequate pleadings and evidentiary foundation would risk determining matters that were neither fully presented nor properly contested before the Registrar.

74. Accordingly, for purposes of clarity and procedural fairness this decision shall focus primarily on Nob View Hotel Limited, while references to Nalibyaru Investments Limited shall only be made to the extent that they are incidental or necessary to provide context to the broader dispute between the parties.

b. Whether the Applicants have a cause of action against the Respondents.

75. The first and third Respondents Counsel argued that the Application, in its entirety, was fatally defective for having been improperly brought before the Registrar of Companies. They contended that the Applicants were not entitled to bring this Application or to any of the remedies sought therein, on the grounds that the Applicants' alleged shareholding in Nob View Hotel Limited was acquired illegally and was therefore null and void *ab initio*. They further asserted that the Application lacked merit and ought to be dismissed. The Applicants Counsel refuted this claim and maintained that the Applicants had a cause of action against the Respondents.

Analysis.

76. The case of *Attorney General v Major General David Tinyefunza SCCA No. 1 of 1997*, defined a cause of action as a fact or bundle of facts plainly appearing on the face of the plaint/petition, or in this case, the Application, which, if

proved, would entitle the complainant to judgment against the defendant. (*See also Tororo Cement Co. Ltd v Frokina International Ltd. S.C.C.A NO.2 of 2001*). The *locus classicus* case of *Auto Garage v Motokov 1971 EA 514* laid down the ingredients necessary to sustain a cause of action as follows;

- a. *The complainant must have enjoyed a right.*
- b. *That right must have been violated, and*
- c. *The defendant must be liable for that violation.*

77. In *Kapeka Coffee Works Ltd. v NPART CACA No. 3/2000*, the Court of Appeal established that in determining whether a plaint discloses a cause of action, the court must look at the pleading itself and the annexures thereto. Accordingly, it is incumbent upon the Registrar of Companies to determine whether the Application, together with its annexures, discloses all the essential ingredients of a cause of action.

78. The first ingredient is whether the Applicants enjoyed a right. The Applicants argued that, as shareholders/members of the Company, they were not consulted or involved in the appointment of the second Respondent as a director of Nob View Hotel Limited. It is trite law that, unless otherwise provided in a company's Memorandum and Articles of Association, members/shareholders possess the power to appoint directors. This right arises from their status as members of the Company.

79. Regulation 20 of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016 provides that, '*an application to the registrar may be made by, a promoter, member, personal representative of a deceased member, person authorized to act on behalf of a member, director, secretary, a regulatory body or agency of government, advocate acting on behalf of a party or any other interested party may make an application before a Registrar.*' A perusal of the company file at the Companies Registry reveals that the Applicants are indicated as members of Nob View Hotel Limited and therefore they enjoy the right to commence an application seeking rectification of the register under

Regulation 8 of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016. Whereas their entry on file as members is contested in the cross application, their existence on the company file *prima facie* accords them a right to commence an application under Regulation 20 of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016. The contestation as to the validity of their membership shall be addressed in the fourth issue.

80. The second ingredient is whether that right was violated. The Applicants averred that they were not involved in the appointment of the second Respondent and, on that basis, claim that their right was infringed. This fact was not disputed by the Respondents, who conceded that the Applicants were not involved in the decision-making process, although they denied that any rights of the Applicants were thereby violated.

81. The final ingredient is whether the Respondents are liable for the alleged violation. It is not in dispute that the first Respondent, in her capacity as a director, passed the impugned resolution appointing the second Respondent as a director. The decision is therefore attributable to the Respondents.

82. On the face of the Application and the annexures thereto, all the essential ingredients of a cause of action are disclosed.

83. 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 is the power to rectify a company's register and expunge documents that constitute an error, are misleading, inaccurate, issued in error, contain entries or endorsements made in error, contain an illegal endorsement, are illegally or wrongfully obtained, all pursuant to Regulation 8 of the Companies (Powers of the Registrar) Regulations SI No 71 of 2016. In the present case, the Applicants seek rectification of the register by expunging the impugned resolution and the corresponding Form 20 (indicating particulars of

directors/secretary), a remedy that falls within the powers of the Registrar of Companies.

84. Accordingly, I find that the Applicants have disclosed a cause of action against the Respondents in respect of Nob View Hotel Limited.

c. Whether the cross-application/counter-claim by the first Respondent/Cross-Applicant is misconceived, incompetent, and barred in law.

85. The first and third Respondents Counsel contended that the Applicants were not entitled to bring this Application, nor to any of the remedies sought, on the basis that the Applicants' alleged shareholding in Nob View Hotel Limited was acquired illegally and is therefore null and void *ab initio*. On this basis, the first Respondent filed a cross-application against the Applicants (Cross-Respondents) seeking orders for the cancellation and expungement of the resolutions and transfer forms through which the Applicants were introduced as members of the Company. In response, the Cross-Respondents Counsel argued that the cross-application was a desperate attempt by the Cross-Applicant to evade scrutiny of alleged irregularities surrounding the appointment of the second Respondent as a director in Nob View Hotel Limited.

Analysis

86. It is trite law that a defendant/respondent in an action may set up by way of counterclaim against the claims of the plaintiff, any right or claim, and the counterclaim shall have the same effect as a cross-action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross-claim. A cross-application is permissible where it arises from the same transaction or subject matter as the main application and raises common questions of law or fact, to facilitate the efficient and comprehensive determination of disputes and avoid multiplicity of proceedings. However,

where such a claim introduces a distinct and unrelated cause of action requiring separate inquiry and determination, it may be deemed improper.

87. In the present case, the cross-application challenges the very foundation of the Applicants' claim by disputing their membership in the Company, and consequently their locus to institute the Application. The Cross-Applicant alleges that the documents through which the Applicants (Cross-Respondents) acquired their membership were tainted with illegality and/or procedural irregularities.
88. Regulation 8(2), read together with Regulation 20(b) of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016, empowers a member of a company to move the Registrar for rectification of the register by seeking the removal of any entry, document, or endorsement that is shown to be misleading, inaccurate, made in error, or otherwise illegally or wrongfully procured. The purpose of these provisions is to ensure the integrity of the companies register by enabling correction of entries that do not reflect the true legal or factual position.
89. In this regard, the Cross-Applicant, being both a registered member and an initial subscriber of the Company, is entitled in principle to invoke these provisions where she contends that entries on the register were improperly made and adversely affected her proprietary interests as a shareholder. Her standing is grounded in her status as a member whose rights and interests are directly reflected and recorded in the company register as an initial subscriber of Nob View Hotel Limited.
90. The Cross-Applicant's complaint is that the reduction of her shareholding, allegedly undertaken to facilitate the allotment of shares to the Seventh Cross-Respondent, resulted in an unlawful dilution of her equity interest in the Company. She contends that this alteration was effected through resolutions and share transfer instruments that were irregular and ought not to have been registered. In essence, she challenges both the validity and propriety of the

impugned entries on the register. Accordingly, she seeks rectification of the register through the expungement of the contested resolutions and share transfer instruments, on the basis that these documents unlawfully effected a transfer of her shares and thereby distorted the true composition of the Company's shareholding structure.

91. Accordingly, the Cross-Application emanates from the same factual chain as the main Application, in that both challenge the propriety, validity, and legal effect of the impugned corporate actions and resultant entries on the company register. The issues raised are therefore not collateral or independent, but are closely interwoven with the central question for determination, namely whether the contested resolutions and attendant documents were lawfully made and properly registered that shall be dealt with in the fourth issue.
92. In that regard, the Cross-Application raises interconnected and overlapping questions of fact and law concerning the legality of the disputed resolutions on file, the process through which they were procured, and their consequent effect on the shareholding structure of the Company. These issues fall squarely within the scope of the Registrar's mandate under the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016, particularly in relation to rectification of the register and correction of entries alleged to have been improperly made.
93. I therefore find that the Cross-Application/Counterclaim is properly instituted before the Registrar and is neither misconceived, incompetent, nor barred by law. It is procedurally and substantively anchored in the same dispute and is a legitimate mode through which the Cross-Applicant seeks relief arising from the same set of impugned transactions. The legality of the said contested share transfer forms and resolutions shall be addressed subsequently in the next issue.

d. Whether the contested documents were validly obtained and filed?

94. There are two sets of documents challenged herein: first, those introducing the second Respondent as a director of the Company; and second, those introducing the Applicants/Cross-Respondents as members of the Company. I will address each separately.

Board Resolution Appointing Caroline T. Egesa as a Director.

95. As stated earlier in this decision, the Applicants challenge a Board Resolution of Nob View Hotel Limited dated 13th July 2022 and registered on 14th July 2022, by which the first Respondent, in her capacity as a director, purported to appoint the second Respondent, Caroline T. Egesa, as a director of the Company. The Applicants contend that the purported Board meeting at which the resolution was allegedly passed did not take place and that the first Respondent acted illegally in making the appointment.

96. In response, the Respondents assert that, due to the illness of the late Nalis Byarugaba, who was the first Respondent's co-director at the time, the second Respondent was appointed as a director pursuant to Regulation 100 of Table A to the Companies Act No.1 of 2012, in order to maintain business continuity. They contend that the appointment was made in accordance with the Company's Articles of Association and was therefore valid. The resolution read verbatim;

'Following the sickness of Mr. Nalis Byarugaba, who is a shareholder and director in the company and his incapacity to execute documents for and on behalf of the company, in view of the mandate under Article 100 of Table A of the Companies Act No.1 of 2012, in the meeting of the Board of Directors convened on this 13th day of July 2022, it is resolved as follows;

a) That Ms. Caroline T. Egesa be appointed as director in the company to support Mrs. Ovia Byarugaba in carrying out day to day activities of the company pending full recovery of Mr. Nalis Byarugaba.

b) That the two directors shall ensure continuity in the company.

c) *That the Registrar of Companies be notified accordingly.'*

97. The said resolution was signed by Ovia Byarugaba as the duly authorised substantive and acting director.

Analysis

98. The appointment of directors is primarily governed by a company's Articles of Association. Directors in a private company are ordinarily appointed by the company in a general meeting, that is, by the members/shareholders. Accordingly, where a director is appointed otherwise than by the members, the authority to do so must be clearly grounded in the Articles of Association of a Company, or Table A of the Companies Act where a private company opted to adopt the regulations therein. Nob View Hotel Limited adopted Table A implying that the regulations therein can be applied to the Company.

99. Regulation 95 (1) of Table A provides for one of the exceptions where directors may, at any time, temporarily appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors. Regulation 100 of Table A provides the other exception, where a continuing director may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or under the regulations of the company as the necessary quorum of directors, **the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.**

100. Regulation 100 of Table A recognizes that where the number of directors falls below the required quorum, the acting/substantive director may act for the purpose of:

- a. *Increasing the number of directors to the required quorum, or*
- b. *Summoning a general meeting of the company so that the shareholders can address the deficiency.*

101. Article 42 of the Company's Articles of Association provides that ***"The number of Directors shall not be less than two and not more than seven..."***

This indicates the requirement of at least two directors to form quorum necessary to transact the business of the Company.

102. In the present case, at all material times since incorporation, the Company had two directors, namely Nalis Byarugaba (now deceased) and the first Respondent, Ovia Byarugaba Kasheegu. At the time of the contested resolution, the Respondents argued that Nalis Byarugaba was ill and incapable of participating in the management of the Company's affairs, thereby causing a casual vacancy and leaving the first Respondent as the only serving active director.

103. The assertion of his illness was not refuted by the Applicants. Additionally, the second Respondent deposed under paragraph 11 of her Statutory Declaration in Reply verbatim *"That due to the other director's illness at the time, I was appointed a director to temporarily step in and maintain business operations without interruptions. This was done due to the director's absence or incapacity."* This assertion is corroborated by the fact that the said director passed away on 27th July 2022, 14 days after the resolution of 13th July 2022 appointing the second Respondent.

104. In light of Section 286 of the Companies Act Cap. 106, which is to the effect that evidence in proceedings before the Registrar of Companies is by way of Statutory Declaration, the second Respondent's assertion under paragraph 11 of her declaration, coupled with the time of death of the late Nalis Byarugaba, lends credence to the Respondent's claim that he was unable to act at the material time that the contested Resolution was passed. The Applicant's did not adduce credible evidence to rebut this narrative and in the circumstances, I am constrained to take the second Respondent's assertion as stated under paragraph 11 of her statutory declaration.

105. Consequently, following the illness of Nalis Byarugaba, the Company fell below the required quorum stipulated under Article 42 of the Company's

Articles, with only one substantive active director, Ovia Byarugaba Kasheegu, the first Respondent.

106. In these circumstances, Regulation 100 of Table A became applicable. The first Respondent, as the continuing director, was therefore empowered to act for the limited purpose of restoring the quorum by appointing an additional director. It is evident that the first Respondent invoked Regulation 100 of Table A to increase the number of directors to the required quorum, a power statutorily provided to her by the said regulation.
107. With regard to the jurisdictional scope of the Registrar of Companies to expunge documents from the company register, it is important to underscore that the power of rectification under Regulation 8 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016 is not unfettered. It is a limited and circumscribed statutory authority exercisable only in defined circumstances. In particular, the Registrar may only order the rectification or expungement of an entry or document where it is established that such document is erroneous, misleading, inaccurate, issued in error, contains an entry or endorsement made in error, bears an illegal endorsement, or was obtained illegally or wrongfully.
108. These grounds require proof, as the jurisdiction here must be exercised judiciously and based on cogent evidence and not mere conjecture, without impeding the company's internal processes and autonomy to exercise powers conferred under the Articles of Association and attendant Table A. Justice Musa Sekaana in *Luitingh Lafras & Anor Vs. Special Services Ltd Company Cause No. 11 of 2019* held that, '*The powers of the registrar are quasi-judicial since it involves taking decisions as provided under the Act...The decision must be taken on cogence of evidence and not on assumptions and conjecture of the registrar.*' It follows therefore that a party seeking expungement bears the evidential burden of demonstrating, through cogent material—typically including sworn statutory declarations or other admissible evidence as

provided under Section 286 of the Companies Act Cap 106—that the impugned document squarely falls within one or more of the prescribed statutory grounds.

109. For the resolution to have been considered as misleading, the Applicants ought to have demonstrated through cogent evidence that the resolution presented created a false impression, for instance, if material facts were omitted or distorted.
110. To establish inaccuracy, it was incumbent on the Applicants to lead evidence showing the existence of factual or clerical errors, such as misspellings or incorrect information.
111. To establish that the resolution was issued in error or contained an erroneous entry or endorsement, the Applicants ought to have shown that perhaps it had been signed in the wrong capacity, such as by a member instead of a director or by a director who was not reflected at the material time on file as a director. In this particular case, the Applicants did not contest the fact that Ovia Byarugaba was a duly appointed director and indeed, she appears on file as a founding director who had authority to endorse the contested resolution.
112. To qualify for expungement on grounds of containing an illegal endorsement, the Applicants needed to have adduced evidence to show that the resolution contravened express provisions of the Companies Act, the Company's Articles of Association, or any applicable statute, for example, the resolution being executed by an unauthorized person or the appointment made in violation of mandatory legal requirements.
113. Further, to establish that the resolution was illegally or wrongfully obtained, the Applicants must have pointed out issues such as fabrication of signatures, impersonation, lack of proper authorization, or failure to follow prescribed procedural requirements. Ovia's signature was not contested and in fact she confirmed in her statutory declaration that she signed the contested

resolution appointing the second Respondent as director to constitute quorum following the illness of the late Nalis Byarugaba.

114. Allegations seeking expungement of registered company documents cannot be sustained on mere assertion or suspicion. They must be supported by probative material capable of demonstrating that the impugned entry is legally defective within the meaning of Regulation 8, without unduly interfering with the company's internal governance structures or substituting the Registrar's view for that of the company's duly constituted decision-making process. The Applicants did not adduce any cogent evidence by way of Statutory Declaration to substantiate any of the grounds under Regulation 8 (2). On the contrary, the resolution was properly executed under Article 100 of Table A and signed by the duly authorized active and substantive director at the time, who confirmed the authenticity of her signature. Additionally, the second Respondent sufficiently attested, under paragraph 11 of her Statutory Declaration, to the illness and absence of the other serving director at the material time, thereby justifying the invocation of Article 100.

115. In the premises, I find that Regulation 100 of Table A authorized the continuing director, Ovia Byarugaba Kasheegu, to appoint the second Respondent as a director in order to constitute quorum. The resolution was duly executed and signed by an authorized officer, and there is no evidence of fabrication or procedural irregularity that would warrant expungement under Regulation 8 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016.

116. Accordingly, I find that the Board Resolution dated 13th July 2022 and the accompanying Form 20 were validly passed and filed.

Resolutions and Transfer forms bringing the Applicants/Cross Respondents on board as members in Nob View Hotel Limited.

117. The first Respondent/Cross-Applicant filed a cross-application contending that the Applicants/Cross-Respondents were neither entitled to

bring the Application in respect of Nob View Hotel Limited, nor were they entitled to any of the remedies sought, on the basis that their alleged shareholding was acquired illegally and was therefore null and void *ab initio*.

118. She alleged that in September 2014, the late Nalis Byarugaba, without the knowledge or consent of the other shareholders or herself, caused the preparation and registration of a Board resolution falsely purporting that a meeting had been held on 30th December 2012. This resolution approved the allotment and transfer of shares to the Cross-Respondents, resulting in the Cross-Respondents being improperly registered as shareholders.

119. The Cross-Applicant argued that, owing to her marital relationship with the late Nalis Byarugaba, she was misled into signing the documents without being afforded an opportunity to peruse and fully comprehend their contents or implications. She maintained that the entire process was tainted with illegality and irregularity, as there was no shareholders' meeting, no valid resolution, no offer of shares to existing members, no valuation of the shares, and no consideration paid by the purported allottees and/or transferees. She accordingly sought the cancellation and expungement of the impugned resolutions and transfer forms.

120. In reply, the Cross-Respondents averred that the cross-application was a desperate attempt by the Cross-Applicant to evade scrutiny of alleged irregularities and fraud. That the Cross-Applicant's grievances were suspect, as she was aware of the membership of Nob View Hotel Limited for over 31 years, considering her position as the Company secretary for that entire period.

121. They further argued that the share transfer documents were lawfully executed by the Cross-Applicant and the late Nalis Byarugaba as directors of the Company, in accordance with the Company's Articles of Association. Additionally, they asserted that the Cross-Applicant, as Company Secretary, authored annual returns reflecting the Cross-Respondents as shareholders in

Nob View Hotel for ten years from the year 2012 to 2021, thereby confirming their lawful membership.

Analysis

122. A review of the file of Nob View Hotel Limited with the Companies Registry reveals resolutions and transfer forms under which the Applicants/Cross-Respondents were allotted and/or transferred shares and introduced as members of Nob View Hotel Limited. The said resolutions are duly signed by the Cross-Applicant and her co-director at the time, the late Nalis Byarugaba.
123. On the face of the record, the impugned resolutions and transfer forms appear to have been executed by persons with the requisite authority, including the Cross-Applicant herself. While the Cross-Applicant admits to signing the documents, she contends that she was misled into doing so. However, the documents themselves disclose no apparent defects, irregularities, or illegality that would warrant expungement under Regulation 8 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016. As already elaborated in the preceding finding regarding the board resolution that appointed the second Respondent as a director in the company, Regulation 8 provides clear grounds that have to be sufficiently satisfied before contested documents can be expunged. Where the documents were signed and properly filed by persons authorized in law, the Registrar would be curtailing company autonomy by expunging such resolutions.
124. In the present case, the Cross-Applicant's allegations give rise to disputed questions of fact, including assertions of duress, undue influence, lack of consideration, and absence of proper corporate authorization. Such claims are evidentiary in nature and require cogent proof to be established. However, the Cross-Applicant has not adduced sufficient or credible evidence to substantiate these assertions.

125. Moreover, the Cross-Applicants contentions regarding the absence of meeting minutes and notice are significantly undermined by her own position at the material time as Company Secretary. In that capacity, she would ordinarily have been responsible for the preparation, maintenance, and custody of the company's statutory records, including the company minutes and issuing notices for company meetings. It is, therefore, inconsistent for her to allege the non-existence or irregularity of such records without providing a satisfactory explanation, which further weakens the probative value of her claims in the cross-application.
126. The Cross-Applicant does not dispute having signed the resolutions and transfer forms, which were executed over fourteen years ago. The inadvertence and prolonged failure on the part of the Cross Applicant to challenge these documents, coupled with her continued role as Company Secretary and acknowledgment of the Cross-Respondents as shareholders in official filings, undermines her present assertions. Raising such claims only after the filing of the present Application is inconsistent with the allegation that the documents were executed under duress.
127. Furthermore, the second Respondent, who was appointed by the Cross-Applicant as a director and currently serves as her co-director in the Company, acknowledged under paragraph 10 of her Statutory Declaration in Reply to the Application that all parties (both the Applicants and Respondents) are shareholders/members of Nob View Hotel Limited. This admission lends credence to the position that the Applicants are indeed valid members of the Company.
128. Before I take leave of this issue, I wish to address a pertinent issue that came up during the hearing regarding Counsel for the Applicants' prayer to cross-examine the Respondents. Whereas cross-examination is a right, it is not absolute, and thus there are circumstances where it can and will be limited/denied.

129. In the case of *Ssemakadde v Uganda (Private Prosecution by Byamazima Joshua and Tonny Tumukunde) (Criminal Miscellaneous Application 30 of 2025) [2025] UGHCCRD 17 (11 April 2025)* Justice Gadenya Paul Wolimbwa observed that;

“The right to cross-examine...is a fundamental aspect of a fair trial... However, under Section 1 of the Evidence Act, Cross-examination of an affidavit...is at the discretion of the Court. Section 1 of the Evidence Act provides that;

“This Act shall apply to all judicial proceedings in or before the Supreme Court, the Court of Appeal, the High Court and all courts established under the Magistrates Courts Act, but not to affidavits presented to any court or officer nor proceedings before an arbitrator.”

“The Evidence Act is intended to govern the proceedings...while explicitly excluding certain legal documents (affidavits) and alternative dispute resolution processes (arbitration). By virtue of this, the Court may exercise its discretion to allow cross-examination depending on particular factors of each case. Some of the things the court can consider before exercising discretion include the following:

- 1. Nature of the case.*
- 2. Whether cross-examination will unduly delay the trial or facilitate expeditious disposal?*
- 3. Where the deponent’s affidavit contains facts that are in issue or conflicting in evidence?*
- 4. If cross-examination will assist in resolving the issue before the court?*

130. While Section 1 of the Evidence Act Cap. 6 excludes affidavits from the strict application of the Act, that exclusion does not render such evidence immune from scrutiny. Rather, it places the reception and testing of such written statements within the discretion of the Court or decision-maker, to be exercised in accordance with the demands of fairness and justice. In this regard, a statutory declaration made under the Statutory Declarations Act Cap. 24

serves a function substantially similar to that of an affidavit, in that it constitutes a formal written statement of facts declared to be true and intended to be relied upon in determining rights or obligations. The distinction between the two is therefore one of form rather than substance.

131. Accordingly, the rationale for permitting the cross-examination of a deponent to an affidavit applies with equal force to the maker of a statutory declaration. Where the contents of such a declaration are material and contested, or where there exists conflicting accounts on matters central to the determination, the decision-maker retains the discretion to permit cross-examination where it would assist in resolving the issues and ensuring a fair hearing. In exercising that discretion, regard may be had to the nature of the proceedings, the necessity of testing the credibility of the evidence, and the need to avoid undue delay or prejudice. This approach is in line with the principles of natural justice and the right to a fair hearing under Article 28 of the 1995 Constitution of the Republic of Uganda.

132. The right to cross-examine is provided for under Section 136(2) of the Evidence Act Cap 6. However, as earlier noted in Justice Gadenya's decision, Section 1 of the same Act expressly excludes its application to affidavit evidence proceedings. Proceedings before the Registrar of Companies are akin to affidavit evidenced based proceedings, being largely conducted on the basis of written statements. Accordingly, the right to cross-examination in such proceedings is not absolute but remains subject to the discretion of the presiding officer, to be exercised judiciously and in accordance with the requirements of fairness.

133. In the present matter, all parties duly filed their respective statutory declarations. Upon inquiry as to whether any party wished to adduce additional evidence, both Counsel confirmed that they had placed all material evidence required before the Registrar. In the circumstances, I found no justification for subjecting the parties to cross-examination, particularly as it

was not necessary for resolving the issues before the Registrar of Companies and in addition, cross-examination remains a matter of discretion depending on the circumstances of the case. Furthermore, counsel for the Applicants was afforded the opportunity to highlight any inconsistencies or misstatements within the statutory declarations through written submissions. These concerns have been duly considered and addressed in this ruling.

134. Accordingly, regarding the share transfer form and resolutions that introduced the Applicants as members of Nob View Hotel Limited, Considering the analysis above, I find that the same were validly filed. They do not disclose any defects on the face of the record and therefore do not warrant expungement under Regulation 8 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016.

e. What remedies, if any, are available to the parties?

135. As stated earlier in this decision, the Registrar of Companies is empowered to rectify and update the Companies register pursuant to Regulation 8(1) of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016. Regulation 8(2) further provides that the Registrar may expunge from the register any information or document that is misleading, inaccurate, issued in error, contains an erroneous or illegal endorsement, or is illegally or wrongfully obtained.

136. However, having found that the contested documents were properly executed and filed, and that they do not disclose any defects apparent on the face of the record, there is no basis upon which the Registrar may invoke the powers under Regulation 8 to expunge the said documents.

137. As earlier observed, this Application was brought in respect of two companies, namely Nob View Hotel Limited and Nalibyaru Investments Limited. With regard to Nalibyaru Investments Limited, it is noted that companies are ordinarily struck off the register for failure to comply with statutory filing requirements. The second Respondent explained that the

Company was struck off due to failure to make filings on the Online Business Registration System (OBRS), attributing this to the prevailing disputes between the parties. In the circumstances, the parties are encouraged to resolve their differences amicably to restore a degree of coordination in the affairs of the Company, and thereafter pursue the appropriate administrative process for restoration of Nalibyaru Investments Limited to the register.

138. It is also noted that the parties raised several additional allegations relating to both companies, including fraud, forgery, personation, intermeddling with estate property, financial impropriety, and sought orders relating to criminal investigations and initiation of criminal proceedings before the Director of Public Prosecutions. These matters fall outside the statutory mandate of the Registrar of Companies. Jurisdiction to hear and determine such claims lies with the High Court of Uganda, and where appropriate, the criminal justice system. The parties are therefore advised to pursue these remedies before the competent fora and to distinguish between civil and criminal processes.

139. The Applicants further prayed that the Registrar order the convening of Annual General Meetings for both Nob View Hotel Limited and Nalibyaru Investments Limited for the purposes of appointing directors and a company secretary. These prayers arise from allegations that the respective company secretaries failed to convene such meetings. Section 134(2) of the Companies Act, Cap. 106 provides that "A private company may at the requisition of a member, hold an annual general meeting." Accordingly, the Applicants, as members of the companies, are at liberty pursuant to Section 134(2) to requisition for a General Meeting.

140. In the event that the company fails to honour such a requisition, the Applicants may apply to the High Court under Section 138 of the Companies Act, Cap. 106, titled "Power of court to order meeting," which provides that: "Where for any reason it is impracticable to call a meeting of a company in

any manner in which meetings of that company may be called or conduct the meeting of the company in the manner prescribed by the articles or this Act, the court may, of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in the manner the court thinks fit." This provision empowers the High Court to order the convening, holding, and conduct of a company meeting in such manner as it deems appropriate, and such an order is binding on the company.

141. The Applicants also sought orders for the removal of the second Respondent as a director, the removal of the first Respondent as both director and company secretary, and the removal of Lillian Busingye Byarugaba as a director of Nob View Hotel Limited. Section 191 of the Companies Act, Cap. 106 provides that a company may, by ordinary resolution of its members, remove a director from office. Accordingly, removal of a director in a private company is the preserve of the members. The Registrar of Companies would be overstepping their mandate and jurisdiction if they exercised a power otherwise reserved for company members/shareholders.

142. With specific regard to the allegation that Lillian Busingye Byarugaba was unlawfully holding herself out as a director of Nob View Hotel Limited, the evidence indicates that this arose from a single instance in which she was described as a director in correspondence. The Respondents clarified that this was an inadvertent misdescription and that no formal appointment had been made. Upon evaluation of the evidence before me, I find that this was indeed a one-off misnomer rather than a deliberate misrepresentation. Nonetheless, parties are cautioned to exercise diligence and accuracy in representing their official capacities to avoid confusion or potential prejudice.

143. As I conclude this matter, I wish to state that the parties are strongly encouraged to pursue an amicable settlement of their disputes so as to preserve harmony and facilitate the orderly administration and continuity of the estate

of the late Nalis Byarugaba, of which Nob View Hotel Limited and Nalibyaru Investments form part. Protracted disputes among beneficiaries and interested parties risk undermining the stability, value, and effective management of the companies in question, while also occasioning unnecessary delay, expense, and deterioration of relationships among family members and stakeholders. An amicable resolution would not only safeguard the interests of all parties concerned, but would also ensure that the estate is administered in a manner consistent with the intentions of the deceased, the principles of fairness and equity, and the broader interests of preserving the legacy and continuity of the estate for present and future beneficiaries.

144. The parties are strongly discouraged from engaging in persistent accusations and counter-accusations that only serve to escalate hostility and frustrate efforts aimed at achieving harmonious coexistence and constructive engagement among the affected parties. Such adversarial conduct risks deepening divisions, undermining mutual trust, and impeding meaningful resolution of the underlying disputes. It is in the best interests of all concerned that the parties exercise restraint, act in good faith, and pursue dialogue and cooperation in a manner that promotes stability, preserves relationships, and facilitates the effective management of the matters in dispute.

145. In the premises, and pursuant to Regulation 32 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016, this Application and the Cross-Application are hereby dismissed, with no order as to costs.

I so Order.

Given under my hand this 08th day of May 2026

Daniel Nasasira
Assistant Registrar of Companies