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 XCLUSIVE BIOLOGICAL CONTROL LIMITED
COMPANY PETITION NO. 89521 OF 2026
BRN: 80020000489521

1. **KWEKERIJ VAN EIJZEREN BV**
2. **XCLUSIVE HOLDING BV::PETITIONERS**

VERSUS

1. **AYSHFORD THOMAS WATCYN**
2. **ERINNAH SHAMMAH NAKANWAGI:::::::::::::::::::::::::::::::::::::RESPONDENTS**

RULING

Before: Daniel Nasasira - Assistant Registrar of Companies

A. Representation.

1. *Rachel Kabala of Kabala & Co. Advocates represented the Petitioners, while Okwenye Brian of Byenkya Kihika & Co. Advocates represented the Second Respondent. The First Respondent neither entered appearance nor was represented at any stage of the proceedings.*

B. Introduction and Background

2. Xclusive Biological Control is a company limited by shares duly incorporated under the laws of Uganda on the 5th day of October 2017 with 400 ordinary shares. '(Hereinafter referred to as the *'Company'*).'

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3. At the time of incorporation, the Company had four shareholders, each holding 50 ordinary shares, while the remaining 200 ordinary shares were unallotted.
4. The Petitioners filed this Petition on 26th March 2026 alleging that in 2020, the Respondents irregularly and fraudulently transferred 154 of the unallotted shares to Entophage (U) Limited. The Petitioners assert that there was no valid resolution of the Board of Directors to pass the said resolution aiding the contested transaction.
5. The second Respondent denied the allegations of fraud, contending that all actions were carried out lawfully and in accordance with the Company's Articles of Association.
6. The First Respondent did not file a declaration in response to the summons, nor did he appoint a legal representative to enter an appearance or participate in the proceedings on his behalf. The Petitioners' legal representative indicated that efforts had been made to trace the First Respondent and that he was reportedly in critical ill health. Nevertheless, it was stated that the First Respondent had been made aware of the proceedings. In the circumstances, I find that the First Respondent was sufficiently apprised of the proceedings but, notwithstanding such knowledge, elected not to participate or place any evidence before the Registrar in response to the Petition. I have, however, approached the Petitioners' case with the requisite caution and have not treated the First Respondent's failure to participate as an admission of the allegations made against him. Rather, the Petitioners' evidence has been independently evaluated on its merits and against the applicable law.
7. Having undertaken that assessment, I am satisfied that the conclusions reached in this decision are founded on the evidence and the applicable legal principles. The orders and findings made herein are therefore not predicated merely upon the First Respondent's non-participation and, to the extent that they affect him, do not

occasion any prejudice arising solely from his failure to participate in the proceedings.

8. Lastly, whereas the matter was instituted by way of a Petition, no issue of oppression under Section 243 of the Companies Act, Cap. 106, was raised or relied upon by the Petitioners. I shall therefore consider and determine the matter as an Application under Regulation 20 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016.

C. ***Petitioners' Case***

9. The Petitioners' case was supported by the Statutory Declaration of Johannes Marinus Van Eijzeren, a shareholder and director of Kwekerij Van Eiljzeren BV, the first Petitioner in this matter. He deposed under paragraph 4 of his statutory declaration that the Company's shareholding structure before the impugned transaction was;
   a) Thomas Ashyford on behalf of ENTOPHAGE (U) LIMITED - 50 shares
   b) Johannes Marinus Van Eijzeren on behalf of KWEKERIJ VAN EIJZEREN BV - 50 shares
   c) Gerard Arjan Johannes Benders on behalf of XCLUSIVE HOLDING BV - 50 shares

10. Furthermore, he deposed that Sjaak de Bloois, a holder of 50 shares on behalf of SJAAK DE BLOOIS HOLDING BV at the time of the Company's incorporation, had returned his 50 shares to the Company vide Board Resolution dated 17th July 2019, leaving 250 out of 400 ordinary shares unallotted.

11. The Petitioners contend that on the 14th day of July 2020, one director, namely Ayshford Thomas Watcyn, in collusion with the Company Secretary Erinnah Shammah Nakanwagi, fraudulently transferred or caused to be transferred 154 of the Company's unallotted shares to another company, namely Entophage (U) Limited, vide a Board Resolution dated 14th July 2020 and filed on 21st August 2020.

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12. In addition, that the said transfer was effected through a Transfer of Share Stock filed with the Uganda Registration Services Bureau on 21st August 2020.
13. The Petitioners contend that the remaining directors did not authorize the contested transfer, nor did they authorize any person to act on behalf of the Company in relation to the transfer transaction.
14. They asserted that the actions were done fraudulently, illegally and in breach of the Companies Act, Cap. 106 and the Articles of Association of the Company, and that as a result, the directors and the company have been wrongfully deprived of the said shares and the benefits therefrom.
15. The Petitioners prayed for;
    a) *An order directing the Registrar to conduct an enquiry into the conduct of the Company Secretary and the first Respondent.*
    b) *A declaration that the impugned transfer of the shares lodged by the first Respondent was unlawful, unauthorized and void ab initio.*
    c) *An order cancelling and expunging the impugned transfer and all related filings from the records of URSB.*
    d) *An order restoring the original shareholding structure as it existed prior to the unlawful filing.*
    e) *An order to rectify fraudulent entries and enforce compliance with the company law.*
    f) *Any other reliefs the Registrar General may deem fit.*

D. *<u>Second Respondent's Case</u>*

16. The second Respondent, who identified herself as **ERINNAH SHAMMAH NAKANWAGI**, denied each and every statement/allegation in the Petition.
17. Under paragraph 2 of her Answer to the Petition, she raised a preliminary objection to the effect that the Registrar of Companies lacks jurisdiction to

investigate, determine and grant remedies in respect of alleged fraud, fraudulent transfer of shares, fraudulent misrepresentation of documents, and collusion.

18. The second Respondent prayed that the Registrar of Companies uphold the Preliminary objection and dismiss the Petition.

19. In addition, the second Respondent noted that the Petition was filed on 26th March 2026 in respect of events alleged to have occurred on or about the 14th July 2020 and 21st August 2020, approximately five and a half years prior to the filing of this Petition. The second Respondent therefore argued that she reserved the right to rely on the Petitioners' inordinate delay and the prejudice occasioned thereby as a further ground for the dismissal of the Petition.

20. Without prejudice to the preliminary objection raised, the second Respondent responded to the substantive allegations asserting under paragraph 4 of her Statutory Declaration supporting the Answer to the Petition that on or about the 14th day of July 2020, the Board of Directors of the Company passed a resolution approving the transfer of 154 shares to Entophage (U) Limited. That the said resolution was duly passed, recorded in the minutes of the Company and executed by the authorised signatories.

21. The second Respondent deposed under paragraph 5 that in her capacity as Company Secretary, she acted pursuant to the said Board Resolution and carried out her duties in accordance with the Companies Act and the Company's Memorandum and Articles of Association.

22. She further stated that all documents lodged with the Uganda Registration Services Bureau in relation to the said share transfer were genuine, accurate and reflected the resolutions and instructions duly issued by the Board of Directors of the Company.

E. Rejoinder

23. In rejoinder to the preliminary objection raised by the second Respondent regarding the jurisdiction of the Registrar of Companies, the Petitioners through a declaration sworn by of Johannes Marinus Van Eijzeren stated that the substance of the Petition is rectification of the Register and that they did not seek a determination of fraud as an independent cause of action but rather, that any reference to or allegation of fraudulent transfer merely forms part of the factual background explaining the Respondents' conduct, the concealment of material facts and the manner in which the Petitioners became aware of the Respondents' actions.

24. Furthermore, the Petitioners averred that the Registrar of Companies is tasked with the mandate of keeping an accurate and lawful register of the shareholders of the Company and maintaining such transfer undermines the integrity of the register which is meant to be a public record.

25. Regarding the second Respondent's plea of delay, the Petitioners contended that the same was untenable on grounds that any delay in instituting these proceedings was occasioned by the Respondents' conduct that prevented the Petitioners and other shareholders from discovering the true state of affairs earlier, and that further still, upon discovering the material facts giving rise to this Petition, the same was lodged with reasonable promptitude and without any delay therefore asserting that the *doctrine of laches* could not be invoked to prevent The Petitioners right to seek relief before the Registrar.

26. The Petitioners therefore prayed that the above objections be dismissed in their entirety.

27. The Petitioners reiterated their position that the contested Board resolution and Share Transfer Form did not reflect the true resolutions or decisions of the

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shareholders and Board members, and were irregular, invalid and of no consequence.

28. It was further averred that any purported transfer of shares or corporate actions founded upon those documents should not be relied upon.

29. The Petitioners stated that the second Respondent had relied on and made reference to meeting minutes and a board resolution in support of her position, but the said annexures were not attached or made available as part of the record before the Registrar; they therefore argued they were unable to verify the contents, authenticity or relevancy, and further, they were, as a result, prejudiced in responding to allegations founded upon documents that were not before the Registrar.

F. <u>Directions to submit written submissions</u>

30. Having heard the matter and received evidence from both parties by way of Statutory Declaration pursuant to Section 286 of the Companies Act Cap 106, I directed both Counsel to file written submissions and issued schedules as outlined below;

    a) *Written submissions from the Petitioners legal representative were to be filed and served by 17th August 2026.*

    b) *Written submissions from the Respondents legal representative were to be filed and served by the 19th day of August 2026.*

    c) *Any submissions in rejoinder were to be filed and served by the 21st day of August 2026.*

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

G. <u>Issues</u>

32. Considering submissions of both parties, I find the following issues are sufficient to determine this dispute.

a) *Whether the preliminary objections raised by the Second Respondent are meritorious and sufficient in law to render the Petition incompetent or otherwise oust or limit the jurisdiction of the Registrar to entertain and determine the matter?*

b) *Whether the contested documents were validly filed?*

c) *What remedies are available to the parties?*

H. Determination

a. ***Whether the preliminary objections raised by the Second Respondent are meritorious and sufficient in law to render the Petition incompetent or otherwise oust or limit the jurisdiction of the Registrar to entertain and determine the matter?***

33. The Second Respondent, in essence, raised two preliminary objections. First, that the Registrar of Companies lacks jurisdiction to investigate, determine and grant remedies in respect of allegations of fraud, fraudulent transfer of shares, fraudulent misrepresentation of documents and collusion. Second, that the Petition is barred by the *doctrine of laches* on account of the Petitioners' inordinate delay in instituting the Petition, the events complained of having allegedly occurred approximately five and a half years prior to the filing of the Petition.

Second Respondent's Submissions:

34. Counsel for the Second Respondent submitted that the Registrar of Companies is a statutory quasi-judicial officer whose powers and jurisdiction are derived from and limited by the Companies Act, Cap. 106 and the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016. Counsel submitted that the Registrar's mandate is administrative and regulatory in nature and does not extend to the adjudication of allegations of fraud, fraudulent misrepresentation or other matters requiring a determination of civil or criminal liability.

35. Counsel further submitted that allegations of fraud and fraudulent misrepresentation fall within the jurisdiction of the Courts of Law, which are

vested with the authority to determine such disputes. It was therefore Counsel's argument that any findings or orders by the Registrar founded upon such allegations would be null and void for want of jurisdiction.

36. Counsel also argued that the Petition relates to events which allegedly occurred in 2020, whereas the Petition was filed in 2026, approximately five and a half years after the events complained of. It was therefore submitted that, by reason of The Petitioners inordinate delay and the prejudice occasioned thereby, the Petition was liable to be dismissed on account of the *doctrine of laches*.

Petitioners' Submissions:

37. Counsel for the Petitioners submitted that the substance of the Petition is for rectification of the Companies Register. Counsel submitted that the Petitioners do not seek a determination of fraud as an independent cause of action; rather, the allegations of fraudulent transfer merely form part of the factual background explaining the Respondents' conduct, the alleged concealment of material facts, the circumstances in which the Petitioners became aware of the Respondents' actions, and the basis upon which the Petitioners contend that the entries in the Register are unlawful or inaccurate.

38. Counsel submitted that the Registrar's jurisdiction to entertain this Petition arises primarily under Regulation 8 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016, which empowers the Registrar to rectify the Companies Register by expunging information or documents that are misleading, inaccurate, issued or entered in error, contain an illegal endorsement, or have been illegally or wrongfully obtained. Counsel further submitted that the impugned transfer was unlawful for want of compliance with Section 83 of the Companies Act, Cap. 106, thereby falling under the circumstances contemplated under Regulation 8.

39. In relation to the *doctrine of laches*, Counsel submitted that the plea was untenable on the ground that any delay in instituting the proceedings was occasioned by the Respondents' conduct, which prevented the Petitioners and other shareholders from discovering the true state of affairs at an earlier time. Counsel further submitted that, upon discovering the material facts giving rise to the Petition, the Petitioners lodged the same with reasonable promptitude and without undue delay. It was therefore Counsel's submission that the *doctrine of laches* could not be invoked to prevent the Petitioners from seeking relief before the Registrar.

Analysis

40. I have carefully considered the preliminary objections raised by the Second Respondent, the respective submissions of Counsel and the material placed before me. I shall consider the two objections separately.

Jurisdiction to entertain the Petition

41. The first objection is founded on the contention that the Petition raises allegations of fraud and fraudulent misrepresentation and that the Registrar of Companies has no jurisdiction to adjudicate matters of fraud, which are properly within the jurisdiction of the Courts of Law. The Petitioners, on the other hand, contend that fraud is not the cause of action before the Registrar, but rather part of the factual circumstances giving rise to their claim for rectification of the Companies Register.

42. I agree with the Second Respondent to the extent that the Registrar of Companies cannot purport to adjudicate upon a claim of fraud as an independent cause of action or make determinations of civil or criminal liability arising therefrom. Such matters fall within the jurisdiction of the High Court as provided for by law.

43. That, however, does not mean that the mere use of the words "fraud", "fraudulent" or "fraudulently obtained" in a Petition automatically ousts the jurisdiction of the Registrar. The substance and nature of the relief sought must be considered.

44. In the present matter, The Petitioners complaint is principally directed at entries and documents contained in the Companies Register which they allege were irregularly, unlawfully or wrongfully obtained. The allegations of fraudulent conduct are relied upon as part of the factual circumstances in which the impugned entries were allegedly made. The relief sought is consequently not a determination of fraud and the imposition of liability on the Respondents on account of fraud, but the rectification of the Companies Register.

45. Regulation 8 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016, empowers the Registrar to rectify the Companies Register by expunging information or documents which, among other things, are misleading or inaccurate, are issued or entered in error, contain an illegal endorsement, or have been illegally or wrongfully obtained. The Registrar is therefore vested with statutory powers to inquire into the circumstances surrounding an entry or document for the limited purpose of determining whether it falls within the grounds upon which rectification may properly be undertaken.

46. Accordingly, there is an important distinction between adjudicating fraud and considering allegations of fraudulent conduct in determining whether an entry or document in the Companies Register was illegally or wrongfully obtained. The former is outside the jurisdiction of the Registrar where it requires a determination of civil or criminal liability; the latter falls within the Registrar's statutory mandate where it is necessary for the exercise of the powers of rectification under Regulation 8.

47. In the circumstances of the present Petition, the allegations of fraud do not, in my view, transform the Petition into a claim for the adjudication of fraud. They are allegations relied upon by the Petitioners to challenge the validity and manner in which the impugned entries were made in the Companies Register. The ultimate question before the Registrar is whether the impugned entries and documents

were properly made and lodged and whether, having regard to the circumstances in which they were obtained, they fall within the statutory grounds for rectification.

48. I therefore find that the allegations of fraud contained in the Petition do not, in themselves, oust the jurisdiction of the Registrar. The Petition is properly before the Registrar to the extent that it seeks rectification of the Companies Register pursuant to Regulation 8 of the Companies (Powers of the Registrar) Regulations SI No. 71 of 2016.

Petition barred by the doctrine of laches

49. The second preliminary objection is that the Petitioners waited approximately five and a half years from the occurrence of the events complained of before instituting the present proceedings and that the delay renders the Petition barred by the *doctrine of laches*.

50. The Petitioners, on the other hand, contend that the delay was occasioned by the Respondents' conduct, which allegedly concealed the true state of affairs from them, and that they acted with reasonable promptitude upon discovering the facts giving rise to the Petition.

51. I have considered this objection in light of the nature of the proceedings before the Registrar. The law does not expressly prescribe any limitation period or specific time within which a matter may be brought before the Registrar for rectification of the Companies Register.

52. The delay, therefore, does not necessarily extinguish the Registrar's statutory jurisdiction; however, the length and explanation of the delay may be relevant when assessing the reliability of the evidence, prejudice to the Respondents, and whether the Petitioners have established sufficient grounds for rectification.

53. The present Petition is not merely a claim for a personal remedy arising from a contested transaction; it concerns the accuracy and integrity of the Companies

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Register, which is a public record upon which shareholders, creditors, investors, financial institutions, government agencies and members of the public may rely.

54. The power of rectification under Regulation 8 is directed at ensuring that the Companies Register does not retain information or documents that are misleading, inaccurate, erroneous, illegally endorsed or illegally or wrongfully obtained. The mere passage of time, therefore, does not, without more, validate an entry which is otherwise shown to fall within the statutory grounds for rectification under Regulation 8.

55. As such, the objection cannot, merely by reason of the passage of time, deprive the Registrar of a statutory jurisdiction conferred by law to examine and, where appropriate, rectify the Companies Register. Whether the impugned entries were in fact illegally or wrongfully obtained, and whether the Petitioners have established the circumstances necessary to warrant rectification, are matters to be determined on the merits of the Petition.

56. I therefore find that the Second Respondent has not demonstrated that the delay complained of is sufficient to render the Petition incompetent or to oust the Registrar's jurisdiction to entertain it.

57. In the result, I find that both preliminary objections raised by the Second Respondent are without merit. The objections are accordingly overruled, and the Petition shall proceed to determination on its merits.

b. <u>Whether the contested documents were validly filed?</u>

58. The Petitioners challenged filings made on the Companies Register purporting to transfer 154 of the Company's unallotted shares to Entophage (U) Limited. The Petitioners contended that the purported transfer was irregular and fraudulent on the ground that there was no valid resolution of the Board of Directors authorising or otherwise supporting the transaction. The Petitioners specifically challenged the following two documents:

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a) *A Board Resolution dated 14th July 2020 and filed on 21st August 2020 purporting to sell and transfer 154 shares to Entophage (U) Limited.*

b) *A Transfer of Share Stock document filed on 21st August 2020 indicating the aforementioned transfer.*

59. The Second Respondent denied the allegations of fraud and maintained that the impugned actions were lawfully undertaken and in accordance with the Companies Act and the Company's Articles of Association.

Petitioners Submissions

60. Counsel submitted that shares are transferable property and referred to Section 83 of the Companies Act, Cap. 106, stating that;

"*...a company cannot lawfully register a transfer of shares unless a proper instrument of transfer has been delivered to the company.*"

61. Counsel argued that there was no proper instrument of transfer in respect of the contested transaction as the Company had not validly authorised the same.

62. Counsel submitted that whereas the documents filed with the Registrar of Companies presented the transfer as having been validly authorised and executed, the statutory requirements had not been met. Counsel argued that the Board Resolution was never passed at a properly constituted meeting of the Board.

63. Counsel further argued that the Companies Act contains requirements concerning the conduct of company meetings and the keeping of corporate records. Counsel submitted that Ugandan case law has treated the absence of records such as meeting notices and minutes as evidence that purported resolutions were not validly passed.

64. Counsel therefore contended that the absence of such records in the instant matter was an indication that the contested resolution was wrongfully obtained.

Second Respondent's Submissions

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65. Counsel submitted that the burden of proof lay with the Petitioners, who had failed to discharge it and were instead seeking to shift the burden to the Respondents. Counsel argued that the Petitioners were the moving party seeking the expungement of a document that had been duly registered.

66. Counsel submitted that a registered document carries a presumption of regularity which the Petitioners were required to displace with evidence, and that the Second Respondent could not be required to prove afresh, on demand and five years later, the validity of a document that had already been registered.

67. Counsel submitted that the Board Resolution dated 14th July 2020 was passed unanimously at a meeting of the Board held at the Company's registered office. Counsel submitted that the resolution was signed by the Director representing Entophage (U) Limited and by the Company Secretary of Xclusive Biological Control Limited, the Second Respondent herein, and was received by the Registrar of Companies in accordance with Regulation 15 of the Companies (Powers of the Registrar) Regulations S.I. No. 71 of 2016, which requires the Registrar to verify that documents meet the statutory requirements before registering them.

68. Counsel further submitted that The Petitioners submissions described the transfer as having been effected by one director to the exclusion of the other directors, whereas the resolution itself recorded a unanimous decision of the Board and not an act of one director acting alone. Counsel further argued that the allegation that the Second Respondent colluded with the First Respondent required proof of an agreement, a shared intention to deceive and acts taken pursuant to that agreement.

69. It was Counsel's submission that the Board Resolution and Share Transfer Form were regular on their face, had been validly filed and remained unchallenged by any forensic, documentary or witness evidence sufficient to invoke the Registrar's

powers under Regulation 8 of the Companies (Powers of the Registrar) Regulations S.I. No. 71 of 2016.

Analysis

70. The central issue for determination is whether the Board Resolution dated 14th July 2020 and the Transfer of Share Stock filed on 21st August 2020 were validly made and executed so as to lawfully effect the transfer of 154 of the Company's unallotted shares to Entophage (U) Limited. The determination of this issue turns principally on whether the Board validly authorised the transaction and, in particular, whether the resolution relied upon by the Respondents was passed at a duly constituted meeting of the Board.

71. Firstly, before determining the validity of the impugned transaction, it is necessary to clarify its legal character. The documents describe the transaction as a transfer of 154 shares; however, the evidence indicates that the shares formed part of the Company's unallotted share capital. A transfer ordinarily concerns an existing shareholding, whereas an allotment concerns the allocation of shares forming part of the Company's unallotted share capital. The distinction is material because the legal requirements governing an allotment may differ from those governing a transfer.

72. It must be observed that under company law, a company cannot "transfer" shares that have never been allotted. Shares that have not been allotted do not yet constitute an existing shareholding capable of being transferred; they remain part of the company's unissued share capital, vested in the company itself. It follows that the resolution purporting to transfer unallotted shares was legally erroneous on its face, and its registration cannot cure that underlying defect.

73. The distinction between allotment and transfer is fundamental and well settled. A transfer of shares presupposes an existing shareholding: a registered shareholder,

holding shares already issued and recorded in the company's register of members, disposes of that interest to a transferee, who then steps into the transferor's position. Allotment, by contrast, is the process by which a company creates a new shareholding interest out of its unissued capital and confers it on a person, who thereby becomes a shareholder for the first time in respect of those shares. The two transactions are governed by different procedures, different statutory forms, and different documentary requirements. Critically, allotment does not require, and cannot properly be effected by, a transfer of share stock form, since there is no existing share interest capable of being "transferred" from one party to another — the shares are being brought into issue for the first time. A resolution and instrument purporting to "transfer" unallotted shares is accordingly a contradiction in terms and was misconceived from the outset; its filing at the Registry did not remedy that fundamental error but simply carried the error onto the register.

74. I have taken note of the submission by Counsel for the Second Respondent that the Registrar of Companies received, verified, and registered the contested resolution and transfer of share stock form, purportedly pursuant to Regulation 15 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016. While I accept that this is what occurred procedurally, I do not accept that this registration is dispositive of, or forecloses inquiry into, the validity of the underlying document. Registration under Regulation 15 is essentially an administrative act; it does not immunize a defective or misconceived document from subsequent correction. Regulation 8 of the same Regulations expressly empowers the Registrar to expunge a document from the register where it is later shown to have been filed in error, or to be misleading, inaccurate, or to constitute an endorsement made in error. That power exists precisely to address situations

such as this one, where a document has been accepted onto the register notwithstanding an inherent legal defect.

75. Applying that framework to the present case, I find that the resolution in question was erroneously registered. A company does not — and, as a matter of law, cannot — "transfer" its unallotted shares. It allots them, and does so through the appropriate mechanism: a resolution of allotment accompanied by a return of allotment (rather than a transfer of share stock form). The use of a transfer instrument to purportedly deal with unallotted shares was therefore a nullity from inception, and its registration falls squarely within the category of documents liable to be expunged under Regulation 8.

76. Secondly, I have also considered the submissions of both parties, the documents on the record and the relevant provisions of the Company's Articles of Association. Article 12 of the Company's Articles provides:

"Save as determined by the Company in a General Meeting, the shares shall be at the disposal of the Board, and it may allot, grant option over, or otherwise deal with or dispose of them to such persons at such times and generally on such terms and conditions as it thinks proper…"

77. It is therefore clear from Article 12 that, subject to the power of the Company in General Meeting, the Board of Directors is vested with the authority to allot, deal with or dispose of the Company's shares. The validity of the contested transaction therefore depends, in the first instance, on whether the Board exercised that authority in accordance with the Company's Articles and the applicable provisions of the Companies Act.

78. The Petitioners case is that they, as directors of the Company, were neither notified of nor participated in the purported Board meeting at which the contested resolution was allegedly passed. They further contend that, apart from the contested resolution and the Transfer of Share Stock, there is no evidence of the

meeting having been properly convened or held, such as notices of the meeting, meeting minutes or an attendance record.

79. The Second Respondent, on the other hand, maintains that the resolution was duly passed by the Board and points to the wording of the resolution itself, which records a unanimous decision of the Board. Counsel further submitted that the resolution was signed and subsequently filed with the Registrar, and that it should therefore be presumed to have been regularly made and filed.

80. The question, therefore, is not merely whether there exists a document described as a Board Resolution. The more fundamental question is whether the resolution was in fact passed by the Board at a properly constituted meeting and whether the Board thereby validly exercised the power conferred upon it by Article 12. The Petitioners have specifically denied receiving notice of or participating in the alleged meeting.

81. Once the validity of the resolution was specifically challenged on this basis, it became necessary to consider the evidence demonstrating that the meeting was duly convened and held. The Respondents, who rely upon the resolution as the basis for the validity of the subsequent transfer, were best placed to produce the Company's records demonstrating the circumstances in which the resolution was passed.

82. I have considered the submission by Counsel for the Second Respondent that the burden of proof rested entirely upon the Petitioners as the parties seeking expungement of a registered document. Ordinarily, a party who asserts that a registered document is invalid bears the burden of establishing the facts upon which that assertion is founded. However, the evidential burden may shift where the party relying upon the validity of a corporate resolution is called upon to produce the corporate records that would ordinarily demonstrate that the resolution was duly made.

83. In the present case, The Petitioners position is that they did not attend or participate in the alleged meeting. They cannot reasonably be expected to produce records of a meeting which they maintain they did not attend or did not happen. The Respondents, on the other hand, rely on the assertion that the meeting took place and that the resolution was unanimously passed by the Board. It follows that the Respondents were in a position to produce evidence such as the notice convening the meeting, the minutes of the meeting, the attendance record or other contemporaneous corporate records demonstrating that the meeting was duly convened and attended by the directors.

84. The legal burden remained upon the Petitioners throughout, but once they had specifically challenged the existence and regularity of the Board meeting, and the Respondents relied upon the alleged meeting and resolution as the foundation of the transaction, the evidential burden shifted to the party asserting that the meeting occurred to produce the corporate records ordinarily expected to demonstrate that fact. Such corporate records ought to have included, in particular, the minutes of the meeting, the attendance register, and any other contemporaneous records evidencing the convening and conduct of the meeting at which the impugned resolution was allegedly passed. This was especially necessary because the resolution in question was not a written or circular resolution, but was purportedly adopted at a duly convened meeting of the Company. In such circumstances, the minutes and attendance records constitute important primary evidence of whether the meeting was actually convened, who was present, whether the requisite quorum was attained, the matters placed before the meeting, and whether the resolution was in fact proposed and duly passed.

85. The production and verification of these records would therefore have me to ascertain whether the alleged resolution was supported by the underlying corporate proceedings and was not merely a document subsequently generated

and lodged at the Registry. In the absence of such contemporaneous records, the evidentiary basis for accepting the purported resolution as a genuine act of the Company is materially weakened, particularly where its validity or authenticity is specifically challenged.

86. This is particularly significant in light of Section 148 of the Companies Act, Cap. 106, which provides:

    1) *Every company shall cause minutes of all proceedings of general meetings and of all proceedings at meetings of its directors to be entered in books kept for that purpose.*
    2) *Any minute referred to in subsection (1)....shall be evidence of the proceedings*
    3) *Where minutes have been made in accordance with the proceedings at any general meeting of the company or meeting of directors then, until the contrary is proved, the meeting shall be taken to have been duly held and convened…*

87. The above provision requires companies to maintain accurate minutes of all proceedings at general meetings and directors' meetings, which constitute the official record of decisions and deliberations. When properly kept, such minutes serve as *prima facie* evidence of the proceedings and create a legal presumption that the meetings were duly convened and held. This presumption safeguards the validity of the company's decisions and places the burden on any party challenging a resolution to produce credible evidence to rebut it.

88. In the present matter, however, no minutes of the alleged Board meeting of 14th July 2020 were produced. Nor was there evidence of a notice convening the meeting, an attendance register or any other contemporaneous corporate record demonstrating that the meeting was duly convened and attended by the directors. The evidence relied upon by the Second Respondent in support of the transaction was principally the contested Board Resolution itself and the subsequent Transfer of Share Stock.

89. The fact that the resolution was signed and subsequently filed with the Registrar does not, in itself, establish that the meeting at which it was purportedly passed was duly convened or that the directors whose participation is disputed were present. Registration of the document is not conclusive proof of the validity of the underlying corporate act, particularly where the validity of that act has been specifically challenged.
90. While the absence of minutes does not necessarily prove that no meeting took place; rather, in circumstances where the existence and validity of the meeting have specifically been challenged, it deprives the Respondents of an important piece of contemporaneous evidence ordinarily expected to corroborate their assertion that the meeting was duly convened and attended.
91. I have also considered the Second Respondent's submission that the resolution was unanimously passed by the Board. However, the assertion of unanimity contained in the resolution cannot, without supporting evidence, conclusively establish that all the directors were notified of the meeting, attended it and participated in the decision. In circumstances where the Petitioners expressly deny having been notified of or having participated in the meeting, some independent corporate record would reasonably be expected to corroborate the assertion of unanimity.
92. I therefore find that the evidence placed before me is insufficient to establish that the Board meeting of 14th July 2020 was duly convened and constituted or that the Petitioners, as directors of the Company, were notified of and participated in the meeting at which the contested resolution was allegedly passed.
93. Consequently, the Board Resolution dated 14th July 2020 cannot, on the evidence before me, be relied upon as a valid authorisation by the Board for the transfer of the 154 unallotted shares to Entophage (U) Limited. The subsequent Transfer of

Share Stock filed on 21st August 2020, being founded upon the impugned resolution, is likewise unsupported by a valid Board authorisation.

94. Additionally, the purported transfer of unallotted shares was fundamentally misconceived and constituted a procedure that was not sanctioned by company law. A transfer presupposes the existence of shares that have already been allotted and are held by an identifiable shareholder capable of transferring his or her existing interest to another person. Unallotted shares, by contrast, remain within the company's unissued share capital and are not yet vested in any shareholder as transferable shares. They can therefore only be brought into a member's shareholding through the process of allotment, subject to the requirements of the Companies Act and the company's constitutional documents.

95. Accordingly, an instrument purporting to transfer unallotted shares could not, merely by being executed or lodged with the Registry, confer a valid shareholding interest upon the purported transferee. The transaction was therefore not simply irregular in form or procedure; it was legally misconceived at its foundation, since it sought to employ a transfer mechanism in circumstances where the legally appropriate corporate act was an allotment. Any registration founded upon such a transaction was consequently liable to correction or expungement where the statutory requirements for doing so were satisfied.

96. I accordingly find that the contested documents were wrongfully obtained and filed, and they fall within the circumstances contemplated under Regulation 8 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016, warranting their expungement from the Companies Register.

c. ***<u>What remedies are available to the parties?</u>***

97. The Registrar of Companies has the statutory power to rectify the Companies Register pursuant to Regulation 8(1) of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016. The integrity of the Register of Companies depend

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fundamentally upon its accuracy, reliability, and credibility as an authoritative record of the legal status and affairs of companies. As the statutory custodian of the Register, the Registrar of Companies bears a corresponding responsibility to ensure that information entered therein is lawful, accurate, and capable of being relied upon by companies, shareholders, creditors, regulators, and other members of the public. Consequently, where an entry or document is established to fall within any of the statutory grounds prescribed under Regulation 8, the Registrar may exercise the statutory power of rectification, including expungement, in order to preserve the accuracy and integrity of the Companies Register.

98. The Registrar is under a duty to take appropriate corrective measures, including expunging or rectifying the offending entry, where the law so permits. Such intervention is necessary not merely to correct an individual irregularity, but also to preserve the sanctity, reliability, and public confidence in the Register. Allowing an unlawful entry to remain would effectively confer legitimacy upon an act that was not legally valid and would undermine the Register's function as a dependable record of corporate information.

99. Regulation 8(2) provides 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*

100. Having found under the preceding issue that the Board Resolution dated 14th July 2020 was not shown to have been validly passed by the Board and that the subsequent Transfer of Share Stock Form was founded upon that impugned

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resolution, I find that both documents were wrongfully obtained. The documents therefore fall within the grounds contemplated under Regulation 8(2), particularly as documents which are misleading, inaccurate and wrongfully obtained.

101. The appropriate remedy is therefore to expunge the contested documents, and any other documents predicated upon them, from the Companies Register and to restore the Register to the position it was in before the invalid transaction.

102. Accordingly, pursuant to Regulations 8 and 32 of the Companies (Powers of the Registrar) Regulations, S.I. No. 71 of 2016, I make the following orders:

1) *The Board Resolution dated 14th July 2020 and filed on 21se August 2020 purporting to sell and transfer 154 of the Company's unallotted shares to Entophage (U) Limited is to be expunged for being misleading and having been wrongfully obtained.*
2) *The Certificate of Transfer of Share Stock dated 14th July 2020 certifying the above transaction be expunged for being misleading, inaccurate and having been wrongfully obtained.*
3) *The Transfer of Share Stock Form filed on 21st August 2020 indicating the aforementioned transfer be expunged for being misleading, inaccurate and having been wrongfully obtained.*
4) *The Companies Register is hereby rectified to reflect the shareholding structure immediately prior to the impugned transaction, namely: Thomas Ashyford on behalf of ENTOPHAGE (U) LIMITED holding 50 shares, Johannes Marinus Van Eijzeren on behalf of KWEKERIJ VAN EIJZEREN BV holding 50 shares, and Gerard Arjan Johannes Benders on behalf of XCLUSIVE HOLDING BV holding 50 shares.*
5) *I make no order as to costs*

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I so Order.

Given under my hand this 01st day of September 2026

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Daniel Nasasira

Assistant Registrar of Companies