



THE REPUBLIC OF UGANDA

IN THE MATTER OF THE COMPANIES ACT NO. 1 OF 2012

(AS AMENDED)

AND

IN THE MATTER OF THE COMPANIES (POWERS OF THE  
REGISTRAR) REGULATIONS, 2016.

AND

IN THE MATTER OF AN APPLICATION TO THE REGISTRAR OF  
COMPANIES TO INVESTIGATE THE AFFAIRS OF EK-KEN (U) LTD

COMPANY CAUSE NO. 30052 OF 2023

KHURRAM AHMED:.....APPLICANT

VERSUS

1. DIAMOND TRUST BANK (U) LTD

2. KHAN PAREEN HAMIRANI

3. KATNKAR LTD:.....RESPONDENTS

RULING ON THE PRELIMINARY OBJECTIONS

BEFORE: MULIISA SOLOMON, REGISTRAR OF COMPANIES.

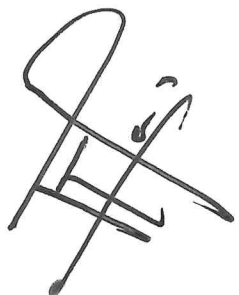
1. This is a ruling in respect of the preliminary objections raised by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents against the Applicant.

**A. Background**

2. On the 16<sup>th</sup> day of November 2023, the Applicant filed Company Cause No. 30052 of 2023, in respect of EX-Ken (U) Limited seeking for the intervention of the Registrar of Companies to:
  - i) Investigate the state of affairs of EX-KEN (U) LTD (“the company” hereinafter).
  - ii) Conduct a comprehensive audit on the company’s assets and liabilities as at 1<sup>st</sup> June 2021, to date.
  - iii) Hold the respondents liable for commission of any illegalities in relation to alienation of the Assets of the company.
  - iv) Take over the conduct of affairs of the company until there has been a proper transmission of shares in accordance with the law.
  - v) Make any such orders and give such directives as the circumstances of the application demands to ensure the ends of justice are met.
  - vi) Grant costs of the application.

**B. Preliminary Objections**

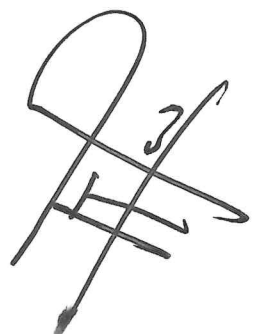
3. When the application came up for hearing, Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents raised a series of preliminary objections contending that; the Application should be expunged from the record for lack of proper procedure, the Applicant does not have the locus standi to bring this Application before the Registrar of Companies, the Applicant is

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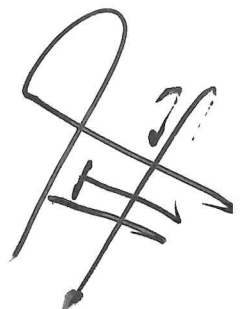
Invoking two jurisdictions of intervention in respect of Ex-Ken(U) Limited, the Application raises matters of succession law that fall within the jurisdiction of the High Court Family Division for which the Registrar of Companies lacks jurisdiction and that the Application is brought by the Applicant as a personal representative of Late Rubina Ahmed well as he has not been declared so as required by law.

**C. Submissions of Counsel for the 1<sup>st</sup> Respondent**

4. Counsel for the 1<sup>st</sup> Respondent Winnie Atwine from M/S Amber Solicitors & Advocates raised two preliminary objections to wit;
  - a) Whether the Application should be expunged from the record for lack of proper procedure?
  - b) Whether the Applicant has locus standi to bring this Application before the Registrar of Companies?
5. While submitting on the 1<sup>st</sup> point of law; Counsel for the 1<sup>st</sup> Respondent argued that the application was fatally defective since it was brought under a wrong procedure. While relying on **Regulation 26(1) of The Companies (Powers of the Registrar) Regulations, 2016**, Counsel submitted that a petition to the Registrar must be verified and commissioned since it can be referred to as evidence during the hearing. Counsel stated that the Applicant's failure to proceed by way of petition, and to verify and commission his supporting evidence renders his application defective and it must be expunged off the record.

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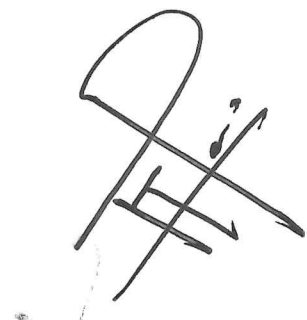
6. Counsel further submitted that the applicant tendered in evidence by attaching annexures which is in contravention of the rules of procedure. Counsel relied on **Section 288(1) of the Companies Act, 2012 (As Amended)** to state that the mode of giving evidence should be by statutory declaration. Counsel made a prayer that the application should be dismissed and expunged off the record.
7. While handling the second point of law; Counsel for the 1<sup>st</sup> Respondent stated that the Applicant brought the Application seeking the intervention of the Registrar of Companies to investigate the state of affairs of EX-KEN (U) LTD, conduct a comprehensive audit on the company's assets and liabilities as at 1<sup>st</sup> June 2021 to date, hold the respondents liable for commission of any illegalities in relation to the alienation of the assets of the company among other prayers.
8. Counsel argued that under **Section 173(1)(a) of the Companies Act, 2012 (As Amended)** an application to investigate the affairs of the Company can only be brought by members holding at least a tenth of shares issued by the company. He stated that the Applicant is neither a shareholder nor a member of the company, but rather just the biological son of the Late Rubina Ahmed and thus doesn't have the locus to file such an application.
9. Counsel further submitted that under **Section 174(a) of the Companies Act, 2012 (As Amended)**, the registrar of companies can appoint an inspector to investigate the affairs of the company if the

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company by special resolution declares that its affairs ought to be investigated by an inspector appointed by the registrar. Counsel opined that there is no evidence of any special resolution passed by the company requesting for an inspector to be appointed by the Registrar to investigate the affairs of the company. Therefore, the Applicant's application seeking the intervention of the Registrar of Companies through the investigation of the company affairs is not tenable at law.

10. Counsel for the 1<sup>st</sup> Respondent also submitted that the Applicant brought the Application under **Regulation 20(c) of the Companies (Powers of Registrar) Regulations 2016** which is to the effect that a personal representative of a deceased member of the company may make an application to the Registrar. Counsel relied on **Section 2(r) of the Succession Act Cap 162 (As Amended)** to define a personal representative as a person appointed by law to administer the estate or any part of the estate of a deceased person. Counsel stated that the Applicant has not adduced any evidence to show that he was appointed by law as a personal representative of the Estate of the late Rubina Ahmed Ashraf.
11. Furthermore, Counsel argued that there has been no transfer of shares to the Applicant which disqualifies him from filing an application seeking the intervention of the Registrar to investigate the affairs of the company. Counsel stated that the Applicant is not a member of the

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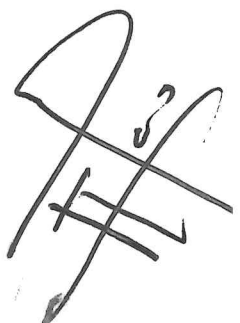
company and thus does not have the locus to file an application seeking the intervention of the Registrar of Companies to investigate the affairs of the company.

12. Counsel made a prayer that Company Cause No.30052 of 2023 be dismissed with costs because it was incurably defective and the Applicant did not have the locus standi to file the Application.

**D. Submissions of Counsel for the Applicant in reply to 1<sup>st</sup> Respondent's submissions**

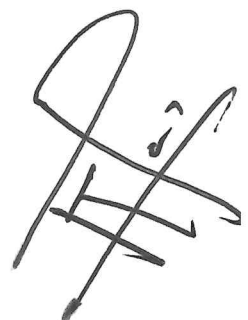
13. Counsel for the Applicant Mukasa Ssali from M/s KM Advocates & Associates emphasized that the application was brought under **Section 262(3) of the Companies Act, 2012 (As Amended) and Regulation 3(d),(j) and (n) and 20(c) of the Companies (Powers of Registrar) Regulations 2016.**

14. While responding to the 1<sup>st</sup> preliminary objection; Counsel for the Applicant argued that the Application was brought under **Regulation 21 of the Companies (Powers of Registrar) Regulations, 2016** which states that "*every Application to the registrar shall be in writing*". Counsel further submitted that **Regulation 26(1) of the Companies (Powers of Registrar) Regulations 2016** relied on by Counsel for the Respondent only applies to petitions brought under **Section 247 of the Companies Act, 2012 (As Amended)** which relates to members of a company claiming under oppression. Counsel stated that the Applicants did not in any way rely on the provisions of Section 247 of the Act nor plead

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that the Applicant was a member of the Company and therefore, there was no requirement for verification or commissioning.

15. Counsel for the Applicant further submitted that the provisions of **Section 288 of the Companies Act, 2012 (As Amended)** confer powers to the registrar to make such directions including the power to take evidence viva voce and therefore, it would be misleading to maintain the argument that the Registrar of Companies is restricted to only evidence adduced by way of statutory declaration. Counsel prayed that the above objection be overruled.
16. While handling the 2<sup>nd</sup> preliminary objection; Counsel for the Applicant submitted that upon the death of both shareholders of the company, the Applicant intended to inform the Registrar of the affairs of the company. Counsel while relying on **Section 83 of the Companies Act, 2012 (As Amended)** stated that shares are movable property transferable in the manner provided in the Articles of Association.
17. Counsel further argued that the Applicant being a biological son of the Late Rubina Ahmed who was a shareholder of 50% shares in the company, he is a beneficiary to the Estate of the Late Rubina Ahmed with the power to sue in his own name without first obtaining letters of administration as it was decided in the case of **Israel Kabwa vs. Martin Babona SCCA No. 52 of 1995**. Counsel prayed that the Registrar rule that the Applicant has the locus to lodge the present

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Application and thus qualify him as a personal representative as stipulated under **Regulation 20(c) of The Companies (Powers of the Registrar) Regulations, 2016.**

18. Counsel also argued that on several occasions, the 1<sup>st</sup> Respondent referred to the Applicant as an administrator of the estate of the late Rubina Ahmed and therefore, is estopped from questioning the position of the Applicant as far as the estate of the late Rubina Ahmed is concerned.

19. In conclusion, counsel prayed that the Registrar overrules the preliminary objections raised by the 1<sup>st</sup> respondent and further finds that the Applicant has the prerequisite locus to present the application.

**E. Preliminary Objections for the 2<sup>nd</sup> Respondent**

20. Counsel for the 2<sup>nd</sup> Respondent Enoth Mugabi from M/s Enoth Mugabi Advocates & Solicitors on the onset highlighted the fact that Company Cause No. 30052 of 2023 raises aspects falling within the jurisdiction and adjudication of the Family division of the High Court.

21. Counsel for the 2<sup>nd</sup> Respondent went on to raise three preliminary objections to the effect that;

- a) The Applicant is invoking two jurisdictions of intervention in respect of Ex-Ken (U) Limited.
- b) The Application raises Succession matters to which the Registrar of Companies lacks jurisdiction.

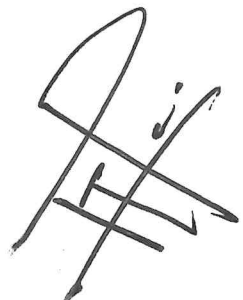
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c) The Applicant brought the Application as a personal representative of Late Rubina Ahmed well as he has not been declared so as required by law.

22. While submitting on the 1<sup>st</sup> preliminary objection; Counsel for the 2<sup>nd</sup> Respondent referred to **Regulations 4(1) and 4(2) (b) of The Companies (Powers of the Registrar) Regulations, 2016** and argued that the Registrar of Companies lacks the jurisdiction to entertain the matter since there is a pending application in the High Court. Counsel invited the court to *Citation No. 1547 of 2023* which raises the same prayer as Company Cause No. 30052 of 2023 and already had a hearing date scheduled on the 12<sup>th</sup> day of February 2024 at 9:00 am. Counsel submitted that in the given circumstances, the Registrar lacks the jurisdiction to handle the matter.

23. While handling the 2<sup>nd</sup> preliminary objection, Counsel for the 2<sup>nd</sup> Respondent submitted that Company Cause No. 30052 of 2023 raises matters of succession law over which the Registrar of Companies lacks jurisdiction. Counsel further stated that the Registrar of Companies lacks the jurisdiction to determine and distinguish the Estate of the Late Nizar Ali Hamirani for which the 2<sup>nd</sup> Respondent holds a Probate and the Estate of the Late Rubina Ahmed for which the Applicant alleges to be a personal representative.

24. While handling the 3<sup>rd</sup> preliminary objection, counsel for the 2<sup>nd</sup> Respondent argued that a representative of a deceased can only be one



bestowed by the court and a holder of either probate or a letter of administration as stipulated under **the Succession Act, Cap 162 (As Amended)**. Counsel submitted that the Applicant has not furnished proof of a probate or letter of administration to substantiate that he is indeed a personal representative of the deceased in the terms of **Regulation 20(c) of the Companies (Power of the Registrar) Regulations 2016**.

25. Counsel further submitted that a party shall always be bound by their pleadings. Counsel highlighted the case of **Interfreight Forwarders (U) Ltd. Vs. East African Development Bank, SCCA No. 33 of 1992** to re-emphasize the fact that “.....a party will not be allowed to succeed on a case not set up by him and will not be allowed at the trial to change his case....” Counsel argued that all the annexures that were attached by the Applicant were neither probate nor letters of administration.

26. Counsel prayed that the application made under Company Cause No.30052 of 2023 be dismissed with costs.

**F. Submissions for the Applicant in reply to the 2<sup>nd</sup> Respondent’s preliminary objections**

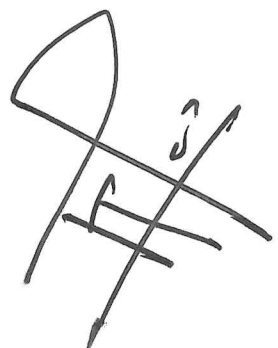
27. Counsel for the Applicant emphasized the fact that the application was brought under the provisions of **Section 262(3) of the Companies Act, Regulation 3 (d), (j), and (n) and 20(c) of the Companies (Powers of the Registrar) Regulations, 2016**). Counsel while relying on the case of **Mumtaz Kassam & 2 others v. Ebrahim Kasam Civil Appeal No.**

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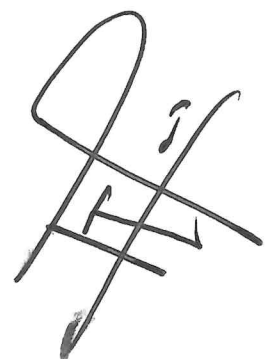
10 of 2006 made a prayer that the evidence adduced by the 2<sup>nd</sup> Respondent, by attaching annexures onto the submissions should be rejected because it amounts to adducing evidence from the bar.

28. While responding to the 1<sup>st</sup> preliminary objection raised by the 2<sup>nd</sup> Respondent; Counsel for the Applicant argued that the application for citation solely relates to the return of the probate and revocation of the same having been procured illegally by the 2<sup>nd</sup> Respondent who has used the grant to cause impasse at the Company. Counsel submitted that the Registrar of Companies has the jurisdiction to hear and determine applications of this nature by virtue of **Section 262(3) of the Companies Act, Regulation 3(d), (j), and (n) and 20(c) of the Companies (Powers of the Registrar) Regulations, 2016**.

29. Counsel contended that the nature of remedies sought in the instant application falls squarely within the realm of the Registrar of Companies in the ordinary dispensation of his/her duties. He relied on the case of **Bryan Xsabo Strategy Consultants (Uganda) Limited & 2 Others Versus Great Lakes Energy Company N.V Company Cause No. 13 of 2020** to support his argument and further prayed that the Registrar finds that he has the Jurisdiction to entertain the matter as regards the state of affairs of the Company despite the existence of distinct suits relating to the succession of former members of the company between the Applicant and the 2<sup>nd</sup> Respondent.



30. While responding to the 2<sup>nd</sup> preliminary objection, Counsel for the Applicant emphasized that the nature of remedies sought in the present application relates to the administration of the company. Counsel further submitted that Citation No. 1547/2023 relates to the return of probate illegally procured by the 2<sup>nd</sup> Respondent. Counsel prayed that the second objection be overruled.
31. While responding to the 3<sup>rd</sup> preliminary objection; Counsel submitted that by virtue of **Section 83 of the Companies Act 2012 (As Amended)** shares are movable property transferable in the manner provided in the Articles, therefore the Applicant being a biological son to the Late Rubina Ahmed, who was a holder of 50% shares in the Company, he is a beneficiary to her Estate and this gives him the power to sue in his own name without having to first obtain letters of administration. Counsel relied on the case of **Israel Kabwa vs. Martin Babona SSCA No. 52 of 1995** to support this argument.
32. Counsel further submitted that the case of **Interfreight Forwarders (U) Ltd. Vs. East African Development Bank, SCCA No. 33 of 1992** relied on by Counsel for the 2<sup>nd</sup> Respondent does not apply to the instant facts since there has been no deviation from the Applicant's pleadings.
33. Counsel also submitted that the 2<sup>nd</sup> Respondent through her lawyer has on several occasions addressed the Applicant as a representative of the late Rubina Ahmed and is therefore estopped from denying

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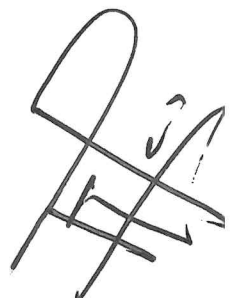
knowing the position of the Applicant as far as his relation with the Late Rubina Ahmed is concerned.

34. Counsel for the applicant prayed that this objection be overruled and the Registrar of Companies finds that he is clothed with the jurisdiction to hear the present Application on its merits in accordance with **Regulation 3 of the Companies (Powers of the Registrar) Regulations, 2016**. Conversely, in the alternative, Counsel prayed that the matter be referred to the High Court by virtue of **Regulation 33(1) of The Companies (Powers of the Registrar) Regulations 2016**.

**G. Submissions of Counsel for the 2<sup>nd</sup> Respondent in rejoinder**

35. Counsel for the 2<sup>nd</sup> Respondent in rejoinder highlighted two issues in his submissions. Counsel submitted that under **Regulation 16 of the Advocates (Professional Conduct) Regulations, Statutory Instrument 267-2**, an advocate is under obligation to inform the court of his or her client's false evidence and further that **Regulation 17 of the Advocates (Professional Conduct) Regulations, Statutory Instrument 267-2**, stipulates that an Advocate is under a duty to advise the court on matters within his or her knowledge.

36. Counsel for the 2<sup>nd</sup> respondent went on to submit that Counsel for the Applicant in various ways concealed information that was in his knowledge and this amounted to abuse of court process. During the course of the proceedings, Counsel for the Applicant did not disclose to the Registrar of Companies the fact that by *Citation No. 1547 of*

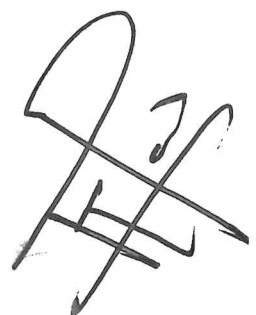
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2023, the Applicant invoked the indulgence of court regarding Ex-Ken (U) Limited, Counsel for the Applicant further concealed having made final submissions under Citation No.1547 of 2023 on the 12th day of February, 2024 among other concealments. Relying on the case of **Mukiibi v Elitek Technologies International Ltd & 4 Ors (Civil Suit No. 227 of 2010)**, Counsel for the 2<sup>nd</sup> Respondent submitted that the Applicant's conduct amounted to hiding and suppressing material facts in order to obtain an illegitimate advantage through a court process which amounts to abuse of Court process.

37.Counsel further submitted that by virtue of **Regulation 4(1) of the Companies (Powers of the Registrar) Regulations 2016**, he has a duty to inform the registrar of companies of the existence of any matter pending before court either formally or informally. Counsel also stated that Counsel for the Applicant owes Counsel for the 2<sup>nd</sup> Respondent and the Registrar of Companies an apology for the use of uncourteous decorum.

38.Counsel also stated that the Applicant failed to address effectively the non-application of **Regulation 4(1) of the Companies (Powers of the Registrar) Regulations 2016** debarring the registrar from hearing any matter or application pending before the High court.

39.Counsel in rejoinder also submitted that **Section 262(3) of the Companies Act, 2012 (As Amended)** and the **Regulations 3(d) (j) and 20(c) of the Companies (Powers of the Registrar) Regulations 2016**,

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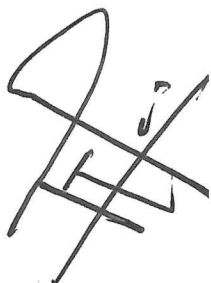
cannot come to the aid of the Applicant following the disclosure of *Citation No. 1547 of 2023* before the family court already under adjudication and had been concealed from the registrar of Companies.

40. Counsel further submitted that a reference to the High Court would only arise in regard to a matter properly before the Registrar. He stated that a reference only arises in respect of any matter arising in the exercise of his or her power to the High Court for determination and decision as provided for under **Regulation 33 Companies (Powers of the Registrar) Regulations 2016**. Counsel submitted that the Registrar lacks Jurisdiction to hear the application and therefore, would in the same vein lack the power of reference of the instant matter to the High Court.

41. Counsel prayed that the application under Company Cause No. 30052 of 2023 be dismissed with costs.

#### **H. Determination of by the Registrar**

42. The aim of a preliminary objection is to save the time of the Court and the parties by not delving into the merits of a suit because there is a point of law that will resolve the matter summarily. In the case of **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd [1969] EA 696**, court held that “*A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit*”. Therefore, a preliminary objection raises a pure point of law which is

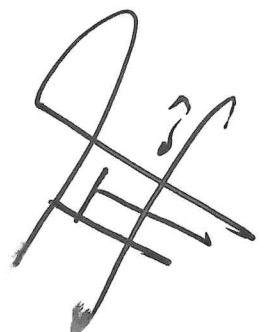


usually on the assumption that all the facts pleaded by the other side are correct. It is based on a commonly accepted set of facts as pleaded by both parties. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.

43. Furthermore, in the case of **M/S Semuyaba, Iga &co. Advocates and Anor Vs. Attorney General of the Republic of South Sudan and 2 Others, Miscellaneous Application No. 0004 OF 2022, Hon Justice Stephen Mubiru** held that; *“Preliminary objections relate to points of law, raised at the outset of a case by the defence without going into the merits of the case. In any preliminary objection, therefore, there is no room for ascertainment of facts through affidavit or oral evidence.”*

44. The Respondents in their submissions jointly raised five preliminary objections to wit;

- a) The Application should be expunged from the record for lack of proper procedure.
- b) The Applicant does not have locus standi to bring this Application before the Registrar of Companies.
- c) The Applicant is Invoking two jurisdictions of intervention in respect of Ex-Ken(U) Limited
- d) The Application raises Succession matters to which the Registrar of Companies lacks jurisdiction.

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e) The Applicant brought the Application as a personal representative of Late Rubina Ahmed well as he has not been declared so as required by law.

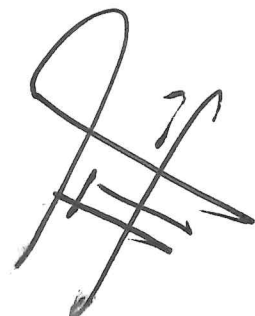
45. While resolving the preliminary objections raised, I will start with the 1<sup>st</sup> objection, then I will handle the 2<sup>nd</sup> and 5<sup>th</sup> objections concurrently, and conclude with the 3<sup>rd</sup> and 4<sup>th</sup> Objections.

#### Preliminary Objections

Objection 1: Whether the Application should be expunged from the record for lack of proper procedure?

46. Counsel for the 1<sup>st</sup> Respondent argued that the Application was fatally defective since it was brought under the wrong procedure. Counsel stated that under **Regulation 26(1) of The Companies (Powers of the Registrar) Regulations, 2016**, a petition to the Registrar must be verified and commissioned since it can be referred to as evidence during the hearing. Counsel stated that the Applicant's failure to proceed by way of petition, and to verify and commission his supporting evidence renders his application defective and it must be expunged off the record.

47. Counsel for the Applicant on the other hand argued that the Application was brought under **Regulation 21 of the Companies (Powers of Registrar) Regulations 2016** which provides that every application to the registrar shall be in writing and there is no requirement for verification or commissioning.

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**Regulation 26 of the Companies (Powers of Registrar) Regulations 2016** in verbatim states that;

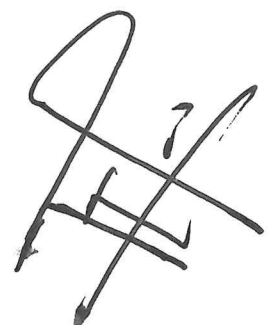
***26. Form of petition to the registrar***

- 1) *A petition to the registrar under section 247 of the Act shall be in Form 2 set out in the Schedule and shall be accompanied by evidence supporting the petition.*
- 2) *The registrar shall maintain a record of all petitions received by registrar under this regulation.*

48. It is clear that **Regulation 26(1) of the Companies (Powers of Registrar) Regulations 2016** relied on by Counsel for the Respondent only relates to petitions brought under **Section 247 of the Companies Act, 2012 (As Amended)** which relates to oppression of a member of a company. Company Cause No. 30052 of 2023 before this court is an application to the registrar of companies to investigate the affairs of EK-KEN (U) LTD the Company herein and is not a petition by a member of the Company claiming that affairs of the company are being conducted in an oppressive manner as envisaged under **Section 247 of the Companies Act, 2012 (As Amended)**.

**Regulation 21 of the Companies (Powers of Registrar) Regulations 2016** in verbatim states;

***21. Form of applications to registrar.***

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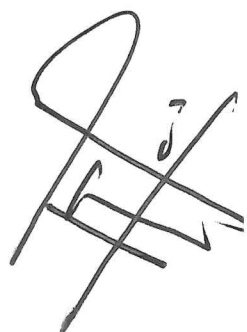
*Unless otherwise specified, every application to the registrar shall be in writing.*

49. I agree with the arguments fronted by Counsel for the Applicants to the effect that the Application was instituted under **Regulation 21 of the Companies (Powers of Registrar) Regulations, 2016** owing to the fact that the Applicant did not in any way rely on the provisions of **Section 247 of the Act, 2012 (As Amended)** and nor plead that the Applicant was a member of the Company and therefore, there was no need for verification or commissioning.

50. Counsel for the 1<sup>st</sup> Respondent further submitted that the Applicant tendered in evidence by attaching annexures which is in contravention of the rules of procedure. Counsel relied on **Section 288(1) of the Companies Act, 2012 (As Amended)** to state that the mode of giving evidence should be by statutory declaration and made a prayer that the Application should be dismissed and expunged off the record.

51. Counsel for the Applicant in reply submitted that the provisions of **Section 288 of the Companies Act, 2012 (As Amended)** confer powers to the registrar to make such directions including the power to take evidence viva voce and therefore, it would be misleading to maintain the argument that the Registrar of Companies is restricted to only evidence adduced by way of statutory declaration.

**Section 288 of the Companies Act, 2012 (As Amended)** in verbatim provides;

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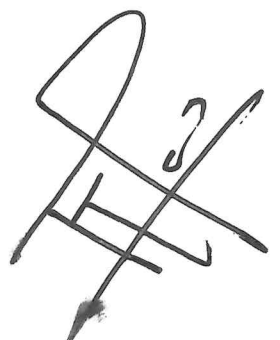
**288. Mode of giving evidence in proceedings before the registrar**

- 1) *In any proceeding under this Act before the registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which the registrar thinks it right so to do, he or she may take evidence viva voce in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.*
- 2) *In case any part of the evidence is taken viva voce, the registrar shall, in respect of requiring the attendance of witnesses and taking evidence on oath, be in the same position in all respects as a magistrate*

52. I agree with Counsel for the Applicant that indeed the provisions of **Section 288 of the Companies Act, 2012 (As Amended)** do not restrict the Registrar of Companies to only evidence adduced by way of statutory declaration. By virtue of **Section 288(1) of the Companies Act, 2012 (As Amended)** the registrar has the power to make such directions as to how evidence should be given which includes the power to take evidence either viva voce or by the statutory declaration.

53. This objection is therefore overruled.

Objection 2; Whether the Applicant has the locus standi to bring this Application before the Registrar of Companies.

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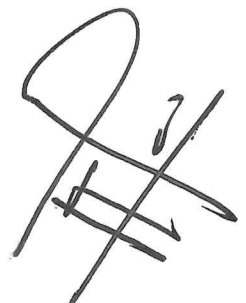


Objection 5; The Applicant brought the Application as a personal representative of Late Rubina Ahmed well as he has not been declared so as required by law.

54. Counsel for the 1<sup>st</sup> Respondent stated that the Applicant has not adduced any evidence to show that he was appointed by law as a personal representative of the Estate of the late Rubina Ahmed Ashraf which disqualifies him from filing an application seeking the intervention of the Registrar to investigate the affairs of the company since he is not a member of the company.

55. The term *locus standi* literally means a place of standing. It means a right to appear in court, and, conversely, to say that a person has no *locus standi* means that he has no right to appear or be heard in a specified proceeding (see **Njau and others v. City Council of Nairobi [1976–1985] 1 EA 397 at 407**). In the case of **Bank of Uganda & Greenland Bank Limited (In Liquidation) v. Kaweesi Sulaiman and 26 Others Miscellaneous Application No. 1047 Of 2022; Hon Justice Stephen Mubiru stated that; “To have a locus standi, a claimant must have sufficient interest in the matter to which the claim relates. What constitutes “sufficient interest” will essentially depend on the co-relation between the matter brought before the Court and the person who is bringing it.”**

56. Counsel for the Applicant argued that the Applicant being a biological son of the Late Rubina Ahmed who was a shareholder of 50% shares in the company, is a beneficiary to the Estate of the Late Rubina

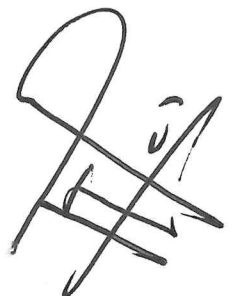
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Ahmed with the power to sue in his own name without first obtaining letters of administration as it was decided in the case of **Israel Kabwa vs. Martin Babona SCCA No. 52 of 1995.**

57. In the case of **Dima Domnic Poro Vs. Inyani Godfrey & Apiku Martin Civil Appeal No. 0017 OF 2016**, Justice Stephen Mubiru opined that;

*"As a matter of principle, a beneficiary has standing to sue in his or her own right provided the interests which such beneficiary seeks to protect are germane to the estate and the claim nor the relief sought requires individual participation of the rest of the beneficiaries. Absence of a prior grant would not debar the maintenance of a suit whose purpose is to claim, preserve and protect the estate of the deceased, wherever it may be lying. It appears to me that there is no such impediment on the rights of beneficiaries."*

58. With reference to the **Succession Act Cap 162 (As Amended)**, whereas **Section 180 of The Succession Act Cap 162 (As Amended)** stipulates that an administrator of a deceased person is his or her legal representative for all purposes, suggesting therefore, that a legal representative is a person to whom a grant of letters of administration has been made under *The Succession Act Cap 162 (As Amended)*, **Section 2 (k) of The Civil Procedure Act Cap 71**, on the other hand, defines a "Legal Representative" as a person who in law represents the estate of a deceased person. The latter definition is inclusive in nature and its scope is wide. It is not confined to administrators but includes persons

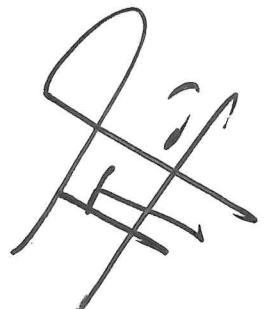
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who may or may not be the administrator of the estate, representing the estate of the deceased person. It includes persons who would be entitled to succeed to the personal or real estate of the deceased.

59. The expression therefore, is not limited to administrators but includes persons, who without title as administrator, are *de facto* possessors of the estate of the deceased or otherwise, depending on the context, in law regarded as representing the estate of a deceased. Therefore, the fact that the Applicant is a biological son of the late Rubina Ahmed who was a shareholder of 50% shares in the company, he has the locus to sue as a representative of the estate of the deceased on all matters regarding the affairs of the company.

60. One of the strong contentions of Counsel for the Respondents is the fact that the Applicant instituted the application as a personal representative of the deceased without any proof of grant of letters of administration/probate that he has been appointed by law to administer the Estate of the late Rubina Ahmed. Counsel for the 1<sup>st</sup> Respondent argued that **Section 2(r) of the Succession Act Cap 162 (As Amended)** defines “*personal representative*” as the person appointed by law to administer the estate or any part of the estate of a deceased person.

61. To resolve this contention, I will refer to the Supreme Court decision in the case of *Israel Kabwa v. Martin Banoba Musiga*, S. C. Civil Appeal No. 52 of 1995 relied on by Counsel for the Applicant where

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the court upheld the view that “*the respondent’s locus standi was founded only on his being the heir and son of his late father, it must be understood to have recognised that the respondent being entitled as beneficiary to more than three quarters of the estate of his late father, created an interest in the estate that conferred upon him locus standi to sue as a way of defending his interest, even without a prior grant of letters of administration.*”

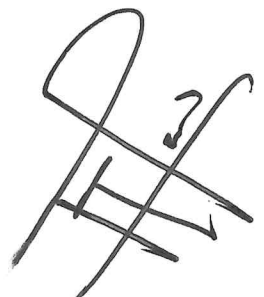
62. Therefore, in the instant case, the evidence on record shows that the Applicant is a biological son of the late Rubina Ahmed who held 50% shares in the Company. The binding authority above, clearly stipulates that even without a prior grant of letters of administration, the Applicant who is the beneficiary of an estate has sufficient interest in the Company to confer upon him *locus standi* to protect his claimed interest.

63. In the circumstances, I find that the Applicant has *locus standi* to file this application before the Registrar of Companies. This objection is consequently overruled.

Objection 3; The Applicant is Invoking two jurisdictions of intervention in respect of Ex-Ken(U) Limited

Objection 4; The Application raises Succession matters to which the Registrar of Companies lacks jurisdiction.

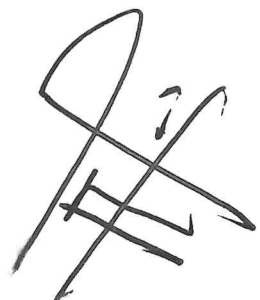
64. Jurisdiction is the power of court to hear and entertain an action or proceedings. In the case of **Mukasa Vs. Muwanga, HCMA No. 31 of 1994**; the court held that “*Jurisdiction is the extent of the authority of court*

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*to administer justice not only with reference to the subject matter of the suit but also the local or pecuniary limits of its jurisdiction". A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. A court ought to exercise its powers strictly within the jurisdictional limits prescribed by the law. In the case of **Pastoli v Kabale District Local Government Council and others** [2008] 2 E.A 300 it was held that "Acting without jurisdiction or ultra vires or contrary to the provisions of a law or its principles amounts to an illegality." Where Jurisdiction is conferred by Rules or a statute, it is limited to the extent prescribed under the Statute of Rules. However, where jurisdiction is conferred to entertain certain matters, then all powers to make that jurisdiction effective must be implied to the authority unless expressly prohibited.*

65. The jurisdiction of the Registrar of Companies flows from the **Companies Act, 2012 (As Amended)** and **The Companies (Powers of the Registrar) Regulations, 2016**. The Application in question was brought under **Section 262(3) of the Companies Act, 2012 (As Amended)**, **Regulation 3(d), (j) and (n) and 20(c) of the Companies (Powers of the Registrar) Regulations, 2016**.

**Section 262(3) of the Companies Act, 2012 (As Amended)** stipulates that; "Subject to this Act, the Minister may make regulations for the

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purpose of regulating the discharge of the functions of the Registrar General under this Act.”

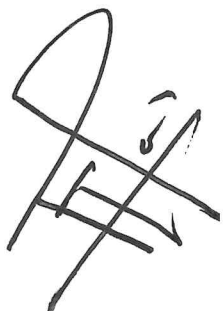
**66.Regulation 3(d) of the Companies (Powers of the Registrar) Regulations, 2016** stipulates; in the exercise of the functions under the Act or any Regulations made under the Act, the registrar shall, in exercise of the quasi-judicial powers of the registrar under the Act, issue summons in respect of any matter before the registrar or over which the registrar has jurisdiction under the Act.

**67.Regulation 3(j) of the Companies (Powers of the Registrar) Regulations, 2016** stipulates; in the exercise of the functions under the Act or any Regulations made under the Act, the registrar may appoint inspectors to conduct inspections and investigations into company affairs in accordance with the Act.

**68.Regulation 3 (n) of the Companies (Powers of the Registrar) Regulations, 2016** stipulates that; in the exercise of the functions under the Act or any Regulations made under the Act, the registrar shall exercise such other powers under the Act.

**69.Regulation 20(c) of the Companies (Powers of the Registrar) Regulations, 2016** stipulates that; an application to the registrar may be made by a personal representative of a deceased member of the company.

**70.Counsel for the 2<sup>nd</sup> Respondent** argued that the Registrar of Companies lacks the jurisdiction to entertain the application since it is

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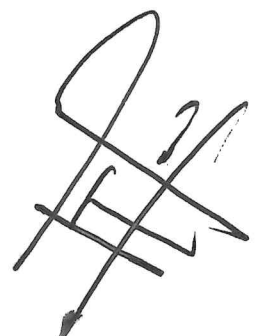
pending in the High Court. Counsel further invited the court to *Citation No. 1547 of 2023* which already had a hearing date scheduled in the High Court Family Division on the 12<sup>th</sup> day of February, 2024 at 9:00 am. Counsel for the 2<sup>nd</sup> Respondent argued that by virtue of **Regulation 4 Companies (Powers of the Registrar) Regulations, 2016** the registrar lacks the jurisdiction to hear this matter since there is a pending matter in the High Court.

71. While replying to the 2<sup>nd</sup> Respondent's preliminary objections, Counsel for the Applicant argued that the Registrar of Companies has the jurisdiction to hear the matter because the nature of the remedies sought in the application fall within the realm of the Registrar of the Companies. Counsel further emphasized that the nature of remedies sought in the present application relate to the administration of the company whereas *Citation No. 1547/2023* relates to the return of probate.

72. While resolving the objections as to jurisdiction it is very important to analyse the provisions of **Regulation 4 of The Companies (Powers of the Registrar) Regulations, 2016** as highlighted by counsel for the 2<sup>nd</sup> Respondent.

**Regulation 4 of The Companies (Powers of the Registrar) Regulations, 2016** in verbatim states that;

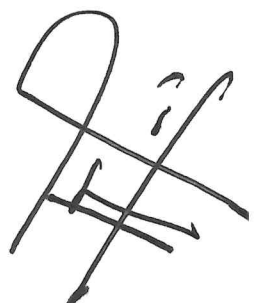
d) Registrar not to hear matters before court.

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- 1) *The registrar shall not hear any matter or application pending before court which has been brought to his or her notice.*
- 2) *For the purposes of this regulation, in determining whether a matter is pending before court, the following shall apply;*
  - a) *Criminal proceedings shall be deemed to be before court when a charge has been made or summons have been issued by a court;*
  - b) *Civil proceedings shall be deemed to be before court when arrangements for hearing, such as setting down matters for hearing have been made, until the proceedings are ended by judgment, settlement or withdrawal;*
  - c) *Appellate proceedings, whether criminal or civil shall be deemed to be before court from the time when they are commenced by applications for leave to appeal or by notice of appeal until the proceedings are ended by judgement or are withdrawn.*

73. The position of the law is that if any doubt arises from the words used in the statute, where the literal meaning yields more than one interpretation, the purposive approach may be used, to determine the intention of the lawmaker in enacting the statute. (*See Justice Choudry in The Case of Uganda Revenue Authority vs. Speke Hotel (1996) Ltd (C.A No. 12 Of 2008)*). The purposive approach has been used in several cases. In the case of the **Sussex Peerage (1844) 8 ER 1034 at 1057**, it was held that;

*“If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and*





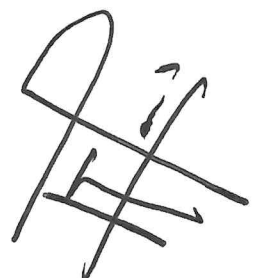
*ordinary sense. The words themselves alone do in such case best declare the intention of the law giver but if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention to call in aid the grounds and cause of enacting the statute and to have recourse to the preamble which according to Dire CJ is 'a key to open the minds of the makers of the Act and the mischiefs they intend to redress.'*

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

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

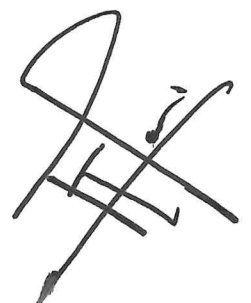
75. While reading **Regulation 4 of The Companies (Powers of the Registrar) Regulations, 2016** it is important to implore the purposive rule of statutory interpretation which leads to the interpretation that the legislature intended to ensure that there are no concurrent proceedings in the High Court and before the Registrar of Companies concerning a similar subject matter and where the same Applicant is seeking the same remedies.

76. In the instant facts, the suit instituted by the Applicant in the High Court Family Division seeks the revocation of a grant of probate. In

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contrast, in the present Application, the Applicant herein seeks the powers of the registrar to investigate the affairs of the company for which the registrar has jurisdiction. The existence of proceedings in the High Court doesn't automatically eradicate where it is established that the remedies and subject matter of the proceedings are distinguishable. The evidence adduced on record shows that *Citation No.1547 of 2023* is for the revocation of a grant of probate issued to the Respondent as evidenced by annexure "A" attached to the respondent's written submissions. This clearly shows that the matter before the High Court is for the revocation of the grant of letters of probate whereas the Application before the registrar is for an investigation into the affairs of the company.

77. With reference to the evidence on record the present issue for determination is an application for investigation of the affairs of the company. The proper office to commence the investigation of the affairs of the company is the Registrar of Companies. This power is vested in this office under the available legal regime. The orders sought in this application clearly fall within the ambit of **Regulation 3 of The Companies (Powers of The Registrar) Regulations S.I No. 71 of 2016.** *Regulation 3(j) of the Companies (Powers of the Registrar) Regulations, 2016 stipulates that;*

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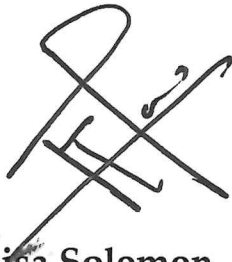
*in the exercise of the functions under the Act or any Regulations made under the Act, the registrar may appoint inspectors to conduct inspections and investigations into company affairs in accordance with the Act*

78. On the onset, the above provision dictates that the Registrar of Companies has the jurisdiction to investigate the affairs of the company and is not barred by the suit on the revocation of a grant proceeding at the High Court Family Division from ensuring that the affairs of a company are being conducted in compliance with the provisions of the Companies Act, 2012 (As Amended).

79. In the premises, all the preliminary objections raised by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are hereby overruled with no order made as to costs.

80. The Application shall be heard on its merits.

I so order.

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**Muliisa Solomon**

**Registrar**

**17/04/2024**