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THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 236 OF 2017

(CORAM: KAKURU, KIRYABWIRE, MADRAMA, JJA)

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- 1. OLIVE KIGONGO}**
- 2. GODFREY KAKOOZA}**
- 3. EZRA RUBANDA}**
- 4. UGANDA NATIONAL CHAMBER
OF COMMERCE & INDUSTRY}APPELLANTS**

VERSUS

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UGANDA NATIONAL REGISTRATION BUREAU}RESPONDENT

JUDGMENT OF CHIRSTOPHER MADRAMA JA

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This is an appeal lodged with the leave of the High Court, to this court, against the decision of Hon. Lady Justice Margaret C. Oguli - Oumo allowing the respondent to be joined as a Co – Petitioner to a company member’s petition pursuant to the respondent’s application in Miscellaneous Application No 169 of 2017 arising from Company Cause No 08 of 2016 on the following grounds:

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- 1. The learned trial Judge erred in law and in fact in allowing the respondent to be joined as a co – petitioner to a members’ petition under sections 248 and 250 of the Companies Act whereas the respondent is not a member of the fourth appellant.
- 2. The learned trial Judge erred in law and in fact when she relied on section 33 of the Judicature Act to join the respondent as a co – petitioner to the members petition on the basis that it would avoid a multiplicity of suits whereas no multiplicity of suits would arise in the circumstances.
- 3. The learned trial Judge erred in law and in fact when she misapplied section 33 of the Judicature Act to the suit before her and as a consequence allowed the respondent’s application to be joined as a co – petitioner to the members petition.
- 4. The learned trial Judge erred in law and in fact when she disregarded the applicant’s objections as to its right to a fair hearing before an independent and impartial quasi-judicial body.

5 The appellants prayers are that the appeal is allowed and the ruling and order of the High Court dated 29th September, 2017 be set aside. Secondly, to replace the reliefs and orders of the High Court with an order dismissing the respondent's application. Thirdly, for costs of the appeal to be awarded in this court and in the lower court.

10 At the hearing of the application, the appellants were represented by learned counsel Mr Raymond Mwebesa while the respondent was represented by learned counsel Mr Richard Androle, Senior State Attorney.

Both advocates of the parties with the leave of court adopted their written submissions already filed on court record as their submissions for and against the appeal.

Submissions of the appellant's counsel

15 Learned counsel for the appellant summarised the facts. On 24th March, 2016 a petition was brought against the appellants under sections 228 and 250 of the Companies Act in Company Cause No. 8 of 2016. The first, second and third appellants are members of the fourth appellant. On 13 March 2017, the respondent brought an application under Order 1 rule 13 of the Civil Procedure Rules and section 98 of the Civil Procedure Act in
20 Miscellaneous Application No. 169 of 2017 wherein it sought to be joined as a party/petitioner in Company Cause No. 8 of 2016. The learned trial Judge allowed the respondent to be joined as a co-petitioner and ruled that although the respondent was not a member, the presence of the respondent is necessary to enable the court to effectually and completely adjudicate and settle all questions involved in the suit.
25 Secondly, that the respondent and the original petitioners are interested in the reliefs arising out of the present appellants acts or omissions of running the company and if they brought separate suits, a common question of law and fact would arise. Finally, by the respondent been joined as a joint petitioner, would not affect the fourth appellant's constitutionally guaranteed right and is not a reflection of the respondent's abdication of
30 duties as the court decision will have rendered the matter settled effectually and completely under Order 1 rule 10 (2) of the Civil Procedure Rules. On the 6 September 2017, the appellants were granted leave to appeal the decision to the Court of Appeal and accordingly lodged an appeal in this court.

35 Mr. Mwebesa abandoned ground 4 of the appeal and argued only grounds 1, 2 and 3. On the first ground of appeal; learned counsel submitted that the gist of the appeal is whether the learned trial Judge was right in allowing the respondent to be added as a party to a petition filed under sections 248 and 250 of the Companies Act of Uganda and this is the

5 gist of this appeal. He submitted that the learned trial Judge held that the respondent was
not a member of the fourth respondent but was interested in the legal affairs of the fourth
respondent which had failed to comply with the requirements of the Companies Act.
Moreover, the petitioners in Company Cause No. 8 of 2016 averred that the respondents'
behaviour was unfair and prejudicial to the interests of the petitioners which include *inter*
10 *alia* the denying them copies of the minutes book of the company, asset register and its
report, members slip Registrar and resolutions on corporate governance which all
contravene the provisions of the Companies Act, 2012. Therefore, though the respondent
was not a member, the presence of the respondent was necessary to enable the court
effectually and completely adjudicate and settle all questions involved in the suit.

15 The appellant's counsel submitted that the addition of the respondent as a party was
made contrary to section 248 of the Companies Act. This, he contended, is because the
learned trial Judge was aware that the respondent was not a member of the fourth
appellant but went ahead to add it as a party. He contended that it is only members of a
company who have locus to institute a petition against the company under section 248
20 of the Companies Act. Such a petitioner is required to meet all the prerequisites
mentioned in section 248 of the Companies Act. Section 248 deals with the protection of
members against prejudicial conduct.

The appellant's counsel further submitted that, in order to prosecute a petition under
section 248 of the Companies Act, the petitioner must either be a member or a transferee
25 or transmittee of shares by operation of law. Any other person who does not qualify to
be either of the above has no right to commence a suit or to be joined as a party to the
suit and section 248 of the Companies Act. Learned counsel further referred to the
definition of a member under section 47 of the Companies Act. The original petitioners
were aware of the requirements of section 248 of the Companies Act and pleaded it
30 specifically in the petition by stating that they were members of the fourth appellant.

Furthermore, it is not in dispute that the respondent is not a member of the fourth
appellant which fact was recognised by the learned trial Judge. The appellants counsel
submitted that allowing the respondent to be added under the provisions of Order 1 rule
13 of the Civil Procedure Rules was without direction as to the provisions of section 248
35 of the Companies Act. This was therefore contrary to the rule of harmonious construction
in statutory interpretation which requires statutes that appear to be in conflict be read
together for purposes of harmonising them. He referred to the ruling on harmonious

5 construction in **Commercial Tax Officer, Rajasthan v Benani Cement Limited Supreme Court Reports (2014) 3 SCR 22 – 23.**

Furthermore, the appellants counsel submitted that section 248 of the Companies Act is mandatory. He relied on the holding of the Supreme Court in **Sitenda Sebalu v Sam Njuba & Another Supreme Court Election Petition Appeal No. 26 of 2011** as to
10 whether the provision was mandatory or directory. He submitted that it was the intention of Parliament that only members of the company have a standing to file an action by way of the petition under that section.

The appellants counsel argued grounds No. 2 and 3 of the appeal together.

He submitted that the gist of the two grounds is the fact that there was no basis for the
15 learned trial Judge to invoke and apply the provisions of section 33 of the Judicature Act. He submitted that section 33 of the Judicature Act is not applicable to petitions filed under section 248 of the Companies Act. This is because the section would have applied if the respondent was already party to the petition. Because the respondent was not a party, it was only seeking to be added. Further, he submitted that section 33 of the Judicature Act
20 is applied by courts for purposes of avoiding multiplicity of legal proceedings. He contended that there would never be any multiplicity of legal proceedings in petition is presented under section 248 of the Companies Act. Further, there was no controversy between the respondent and the fourth appellant as required by section 33 of the Judicature Act. Any controversy under section 248 (1) of the Companies Act is restricted
25 to allegation that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial *inter alia* to the interests of its members generally or of some part of its members. Such prejudice is extended to transferees of shares by operation of law. The controversy regards the affairs conducted to the prejudice of the interests of the members and the keyword is "members". It is therefore the clear wording of section 248
30 of the Companies Act which leads to the ground that the respondent is not a member and therefore has no standing be added as a party to the company petition. He prayed that ground two and three of the appeal are also allowed.

Reply of the respondent's counsel

Having set out the relevant facts which are also contained in the summary of facts
35 submitted by the appellants counsel, the respondents counsel addressed the court on the grounds of appeal.

5 **On ground one**, learned counsel submitted that he understood that by the trial court allowing the respondent to be joined as a party to the company cause, the appellant is maintaining that it was contrary to section 248 of the Companies Act. He submitted that the petitioners in Company Cause No. 08 of 2016 who are members of the fourth appellant brought a petition under sections 248 and 250 of the Companies Act. They
10 sought *inter alia* for an order to issue directing the appellant to compile or make available the register of the membership of the fourth appellant. Similarly, the respondent received a complaint from members of the fourth appellant seeking redress under section 172 of the Companies Act 2012 and summoned the fourth appellant to appear before the Registrar of the respondent on 11th October, 2016, which the fourth appellant attended
15 but argued that the matters before the Registrar are *sub judice*. The respondent had on numerous occasions invited the fourth appellant to avail an updated member register but to no avail. Consequently, a decision was taken that the respondent applies to be joined to the petition filed in the High Court by members of the fourth respondent *inter alia* on the grounds that the respondent is interested in the legal affairs of the fourth respondent
20 in ensuring compliance with the provisions of the Companies Act 2012 and that the petition pending before the court raised similar questions of law or fact.

Counsel further submitted that it is without doubt a fact that, the respondent entity is a creature of statute created under the Uganda Registration Services Bureau Act Cap 210. He further made reference to the long title of the Act as well as the provisions of section
25 4 of the Act which sets out the objects and functions of the respondent.

He submitted that it was evident from the objects referred to that the respondent is an administrator who carries out an oversight function over the fourth appellant and gives effect to the relevant laws including the Companies Act 2012. On the other hand, the Companies Act 2012 is: *an Act to amend, replace and reform the law relating to the
30 incorporation, regulation and Administration of companies and make provisions for related matters*, which in a nutshell is the law on the administration of companies and other related matters. He submitted that the law cited above made it clear that the respondents sought to join the petition by members of the fourth appellant pursuant to its oversight function stipulated above. In the premises, he submitted that the provisions
35 of section 248 of the Companies Act 2012 which restricts the petition to only members and shareholders is not applicable to the respondent and does not bar the respondent from being joined as a party to the company cause provided the respondent meets the criteria set out under Order 1 rule 1 and Order 10 rule 2 of the Civil Procedure Rules. In

5 the premises, he contended that the appellants cannot by any stretch of imagination
contend that the addition of the respondent as party to the company cause is prejudicial
to the appellants because the petition in the trial court is by members of the fourth
appellant and the administrator of the Companies Act. On that basis, the authorities cited
by the appellants counsel are inapplicable and distinguishable from the facts and counsel
10 invited the court to disregard them. He further invited the court to reject the interpretation
of the appellant based on section 248 of the Companies Act 2012 and uphold the ruling
of the learned trial Judge in adding the respondent as a party to Company Cause No. 08
of 2016.

Grounds 2 and 3

15 In reply to the appellant's submissions on grounds 2 and 3, the respondents counsel
submitted that on this ground the appellant had submitted that the learned trial Judge
erred in law in applying and relying on the provisions of section 33 of the Judicature Act
which he set out. He submitted that the respondent's case is that the submission that the
provision of section 248 of the Companies Act does not apply to the respondent by virtue
20 of the obligations and functions vested in the respondent by the Uganda Registration
Services Bureau Act Cap 210.

The respondent's counsel further submitted that the learned trial Judge rightly applied
the provisions of section 33 of the Judicature Act which provides that the court has powers
to make such orders and grant such remedies absolutely or on such terms as it thinks fit
25 in the case so as to avoid a multiplicity of proceedings. The respondent's counsel
contended that it can be discerned from the above that the learned trial Judge in a bid to
avoid a multiplicity of proceedings as envisaged by section 33 of the Judicature Act
allowed the application by the respondent having been satisfied that the provisions of
Order 1 rules 1 and 10 (2) of the Civil Procedure Rules was properly applied. Furthermore,
30 the contention by the appellants that there was no matter in controversy between the
appellants and the respondent as required by section 3 of the Judicature Act is misplaced
and ought to be rejected. He invited the court to uphold the ruling of the High Court
which added the respondent as a party to the company cause and dismiss the appeal with
costs.

35 Consideration of appeal

I have carefully considered the grounds of appeal, the submissions of counsel for the
appellant and the respondent respectively and the law. As a first appellate court our duty

5 in an appeal emanating from a High Court decision made in the exercise of its original
jurisdiction is to reappraise the evidence on record and to come to our own conclusions
on matters of fact and law. When resolving controversies of fact, our duty ordinarily is to
subject the evidence on record to fresh scrutiny and to come to our own conclusions on
the controversy or controversies. In this case material facts are not in controversy. The
10 matters in issue in this appeal are points of law argued against the decision of the High
Court to add the respondent as a party/petitioner to High Court Company Cause No 08
of 2017.

The brief background is that the first, second and third appellants are members of the
fourth appellant and all were respondents in Company Cause No 08 of 2016 brought by
15 three petitioners namely Jurua Peter Fenhas t/a Savoury Classic Quality Meat Products,
Makweta Patrick and Good African Coffee Ltd as petitioners. The petition was lodged
under section 248 and 250 of the Companies Act and *inter alia* alleged that the conduct
of the company's affairs amounted to unfair and prejudicial conduct or mismanagement
of the company. The petitioners sought *inter alia* a declaration that the Memorandum and
20 Articles of Association of the fourth appellant were illegally amended and the amended
version is null and void. Secondly, they sought a declaration that the original version of
the Memorandum and Articles of Association are the Memorandum and Articles of
Association of the company. Thirdly, a declaration that the first, second and third
appellants have jointly or severally conducted the business of the fourth appellant in a
25 manner that is unfair and oppressive to the petitioners. Fourthly, that all the meetings
convened under the amended Memorandum and Articles of Association are illegal. Fifthly,
for an order to issue directing the appellants to compile or make available a register of
the membership of the fourth appellant. Sixthly, they sought an order for the election of
the executive members of the fourth appellant in accordance with the Pre-2009
30 Memorandum and Articles of Association. Seventhly, the petitioners sought an order
directing meetings of the fourth appellant to be held in accordance with the Pre-2009
Memorandum and Articles of Association. Eighthly, the petitioners sought an order that
the appellants jointly and or severally pay general damages to the petitioners and finally
they prayed for an order that the appellants pay the costs of the petition to the petitioners.
35 The petition was lodged in the High Court on 31st March, 2016.

The record further shows that on 21st of March 2017 a notice of motion was lodged in the
High Court and fixed for hearing on 24th April, 2017 in which an order was sought for the
addition of the Uganda Registration Services Bureau (the respondent to this appeal) as a

5 party/petitioner to Company Cause No. 08 of 2016. The notice of motion is in
Miscellaneous Application No 169 of 2017 arising from Company Cause No. 08 of 2016
and was filed by Uganda Registration Services Bureau (the respondent to this appeal). The
notice of motion for addition of parties was brought under Order 1 rule 13 of the Civil
10 Procedure Rules, and rules 1 & 3 of the Civil Procedure Rules as well as section 98 of the
Civil Procedure Act. On 29th May, 2017 Honourable Lady Justice Margaret C. Oguli – Oumo
made an order adding the Uganda Registration Services Bureau as a party/petitioner in
Company Cause No 08 of 2016 and for costs of the application to be awarded to the
applicant therein.

15 The appellants were aggrieved by the order of addition of Uganda Registration Services
Bureau (the respondent) and lodged this appeal with leave of the High Court on the
grounds set out at the beginning of this judgment.

Ground 1

20 **The learned trial Judge erred in law and in fact in allowing the respondent to be
joined as a co - petitioner to the members' petition under sections 248 and 250 of
the Companies Act whereas the respondent is not a member of the fourth appellant.**

I have carefully considered the submissions of counsel. The arguments of counsel on this
issue flow from two separate provisions of laws namely, section 248 of the Companies Act
2012 which is a primary legislation enacted by Parliament and secondly, the Order 1 rule
10 (2) of the Civil Procedure Rules which is a Statutory Instrument issued under the Civil
25 Procedure Act. The two separate provisions have to each be considered in their context
before a valid conclusion can be made on ground 1 of the appeal.

Section 248 (1) of the Companies Act deals with the right of a member of a company to
apply to the court by petition for an order stipulated in that section. Section 248 (1)
provides that:

30 248. Protection of members against prejudicial conduct.

(1) A member of the company may apply to the court by petition for an order under this Part on
the ground that the company's affairs are being or have been conducted in a manner which is
unfairly prejudicial to the interests of its members generally or of some part of its members
including at least himself or herself or that any actual or proposed act or omission of the company
35 including an act or omission on its behalf is or would be so prejudicial.

5 (2) The provisions of this part apply to a person who is not a member of the company but to whom shares in the company have been transferred or transmitted by operation of law as those provisions apply to a member of the company and references to a member or members are to be construed accordingly.

10 Following the express provisions of section 248, some members of the company applied to the court in Company Cause No. 8 of 2017 against the appellants who named as respondents to the company cause. The respondent to this appeal applied to be added as a party and particularly as a co – petitioner in the petition against the appellants.

15 I agree with the appellant’s counsel that section 248 applies to a petition by members to the court and does not apply to the respondent which is a regulatory authority. A member of a company has an option to either apply to the court under section 248 (1) or to apply to the respondent under section 249 (1) of the Companies Act. This gives the respondent as the Registrar of Companies, a quasi - judicial role in which it can handle applications by members of a company who also have a right of appeal from any decision made by the respondent pursuant to the respondent’s decision in such matters. Section 249 (1)
20 provides as follows:

249 Order on application of the Registrar.

(1) Where in the case of the company –

(a) the Registrar has received the report under section 177; and

25 (b) it appears to him or her that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members or that any actual or proposed act or omission of the company including an act or omission on its behalf is or would be so prejudicial,

the Registrar may personally in addition to or instead of presenting the petition for the winding up of the company, apply to the court by petition for an order under this Part.

30 To further read the above section in context, section 177 of the Companies Act provides for the inspector’s report. An inspector of a company is appointed by the Registrar and reports to the Registrar. Preceding section 177 are several provisions which give powers to the respondent to receive complaints from members of a company and to institute inquiries and investigations into the affairs of a company. Under section 172 of the
35 Companies Act, the Registrar may upon reasonable belief that the Companies Act has not been complied with by written order call on a company concerned to produce all or any of the books of the company or furnish in writing such information or explanation as the

5 Registrar may specify in the order. Under section 173 of the Companies Act 2012, the Registrar may appoint one or more competent inspectors to investigate the affairs of the company and report in such manner as the Registrar directs. An application for investigation may be made by members of the company as prescribed by section 173. A person aggrieved by any decision of the Registrar made under section 173 (3) may appeal
10 to the court. Sections 174 – 176 of the Companies Act deal with the powers of investigation of the Registrar and inspectors appointed as well as the kind of orders that may be made in the investigation. A person aggrieved by decision of the Registrar made under section 176 of the Companies Act may appeal to the court. Finally, section 177 as mentioned earlier deals with the inspector's report. Under section 178 pursuant to the
15 inspector's report, the Registrar may forward the report to the Director of Public Prosecutions where a crime is disclosed for further action. Further, where they are grounds for winding up, the Attorney General may apply for winding up in the public interest.

I have further considered the submissions of the respondent's counsel that a complaint had indeed been lodged with the respondent who has issued certain orders.

20 It follows that as a quasi-judicial body, the respondent is not an appropriate party to a member's petition because an appeal lies to the court from a decision of the respondent made by the Registrar in other instances where an application is made to the respondent. Moreover, the role of the respondent through its officers who are Registrars is that of a decision maker. We shall come to this issue in the second and third grounds of appeal on
25 the question of whether there could be a controversy between the respondent and members of the fourth appellant. The point to be made at this stage is that the Registrar does not only play the role of a decision maker but also plays the role of an investigator into the affairs of the company with a potential to have such information gathered from the inspector's report to be used in a judicial proceeding in a court of law. Therefor as a
30 quasi-judicial body, it is our considered holding that the respondent is supposed to be impartial and is mandated to investigate the affairs of the company including carrying out such investigations on allegations of members that the affairs of the company are being conducted in a manner oppressive to some part of the members including an applicant. Such minorities have an option of whether to apply to the Registrar or the court. The word
35 "Registrar" under section 2 of the Companies Act, 2012 means:

the Registrar of companies or an assistant Registrar or other officer performing the duty of registration of companies under this Act;

5 The Registrar of Companies or Assistant Registrar of Companies or other officers performing duties in the registration of companies and other roles under the Companies Act are the principal officers working under the Uganda National Registration Services Bureau. Uganda National Registration Services Bureau is merely the corporate name which the Registrar represents in carrying out its functions under the Companies Act 2012.

10 Coming to the provisions of the Civil Procedure Rules and particularly Order 1 rule 1 it is provided that:

15 All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if those persons brought separate suits, any common question of law or fact would arise.

Order 1 rule 1 of the Civil Procedure Rules expressly and clearly provides for joining of parties as plaintiffs who have a right to relief arising out of the same act or transaction or series of acts or transactions is alleged to exist. Did the respondent have a right to relief against the appellants in High Court Company Cause No 08 of 2017? We shall consider this in resolving the 2nd and 3rd grounds of appeal. The learned trial Judge did not particularly refer to Order 1 rule 1 of the Civil Procedure Rules though the applicant's counsel had referred to it but considered the application on the basis of Order 1 rule 10 (2) of the Civil Procedure Rules which provides that:

25 (2) The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in this work, be added.

30 The learned trial Judge held that the respondent is interested in the legal affairs of the fourth appellant which had failed to comply with the requirements of the Companies Act to avail update register of members and send notice to the Registrar of companies where the register is kept. She noted that the petitioner's averred that the respondents behaviour (the fourth appellant now) is unfair and prejudicial to the interests of the petitioners inclusive of refusing to produce copies of the minute book of the company, assets register and its report, members slip register and resolutions on corporate governance contrary to the Companies Act 2012. She held that:

5 In view of the above, although not a member, the presence of the applicant is necessary in order to enable the court effectually and completely adjudicate and settle all questions involved in the suit.

The learned trial Judge was therefore very much cognisant of the fact that the respondent is not a member of the fourth appellant and she took into account submissions made under the provisions of sections 47 and 248 of the Companies Act by the time she reached her decision. She relied on the Order 1 rule 10 (2) to hold that the presence of the applicant is necessary. The learned trial Judge further addressed the issue of whether the respondent abandoned its statutory role by applying to be joined as a petitioner and held that the addition would not prejudice the rights of the appellant and it was not an abdication of the statutory duties but was merely to have the matter settled effectually and completely.

I have carefully considered the basis of the addition of the respondent and the sole question is whether the respondent was a necessary party. This is borne out by one of the grounds for addition of a party under Order 1 rule 10 (2) of the Civil Procedure Rules. This rule was interpreted by the Supreme Court of Uganda in **Departed Asians Property Custodian Board v Jaffer Brothers Ltd [1999] 1 EA 40**. Justice Kanyeihamba JSC at page 63 held that:

a clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in this suit.

Mulenga JSC held at pages 67 – 68 that:

For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions involved in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies, (on application of the defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set up a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.

I have carefully considered Order 1 rule 10 (2) of the Civil Procedure Rules as well as the above authority of the Supreme Court which reviews a number of other authorities on the issue. For the presence of a person to be necessary, it must lead to the settlement of all questions involved in the suit or that the orders to be made would be legally affect the interest of that person. The situation of the respondent is quite different in that the

5 respondent has a statutory duty to adjudicate on the matter. Secondly, a decision of court
granting any statutory remedy in relation the alleged prejudice to members cannot affect
the respondent which is statutorily bound to implement court orders affecting the
register. Moreover, there are some statutory roles available to the respondent under the
Companies Act 2012. This can be discerned from sections 172 and 173 of the Companies
10 Act 2012.

On the first ground, the Registrar has powers to investigate a company and to seek the
production of books within such time as he or she specifies by order. Any person who
refuses to comply with an order to produce books or to furnish information or explanation
commits an offence and is liable on conviction to imprisonment or to a fine. Similarly, the
15 Registrar has powers to appoint inspectors to investigate a company and the report of
the inspector may be used in the prosecution of the person by the Director of Public
Prosecutions. After the production of such information by a company ordered to do so
by the Registrar, and the Registrar establishes that there is an unsatisfactory state of affairs
disclosed, the Registrar shall report the circumstances of the case in writing to the court.
20 In such cases the Registrar does not need to be a party and is therefore not a necessary
party for effectual and complete adjudication of any matter relating to the accounts,
affairs or production of books of the company. Section 172 of the Companies Act is
reproduced for ease of reference:

172. Investigation by the Registrar.

25 (1) Where the Registrar has reasonable cause to believe that the provisions of this Act are not being
complied with or where, on perusal of any document which a company is required to submit to the
Registrar under this Act, the Registrar is of opinion that the document does not disclose a full and
fair statement of the matters to which it purports to relate, the Registrar may, by a written order,
call on the company concerned to produce all or any of the books of the company or to furnish in
30 writing such information or explanation as the Registrar may specify in the order.

(2) Books required to be produced under subsection (1) shall be produced and the information or
explanation required under that subsection shall be furnished within such time as may be specified
in the order.

35 (3) On receipt of an order under subsection (1), it shall be the duty of all persons who are or have
been officers of the company to produce the books or to furnish the information or explanation so
far as lies within their power.

(4) Where any person referred to in subsection (2) refuses or neglects to produce the books or to
furnish the information or explanation he or she commits an offence and is liable on conviction to

5 imprisonment of one year or a fine not exceeding one hundred currency points in respect of each offence.

(5) Where after examination of the books or consideration of the information or explanation the Registrar is of the opinion that an unsatisfactory state of affairs is disclosed or that a full and fair statement has not been disclosed the Registrar shall report the circumstances of the case in writing
10 to the court.

The Registrar may also investigate a company upon the application of a member of the company and section 173 of the Companies Act which provides that:

173. Investigation to company's affairs on application of members.

(1) The Registrar may appoint one or more competent inspectors to investigate the affairs of a
15 company and to report in such manner as the Registrar directs—

(a) in the case of a company having a share capital on the application either of not less than two hundred members or of members holding not less than one-tenth of the shares issued; or

(b) in the case of a company not having a share capital, on the application of not less than one-fifth in No. of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Registrar may require for the purpose
20 of showing that the applicants have good reason for requiring the investigation and the Registrar may, before appointing an inspector, require the applicants to give security, of an amount not exceeding one thousand currency points, for payment of the cost of the investigation.

(3) A person aggrieved by a decision of the Registrar under this section may appeal to court

25 I have already considered the law relating to reports of inspection carried out by the inspectors appointed by the Registrar which may be used in the prosecution of officers of the company. The Registrar may order an applicant to give security in an amount not exceeding one thousand currency points for payment of costs of the investigation. A person aggrieved by a decision of the Registrar may appeal to the court. Because there is
30 a right of appeal against any decision of the Registrar made pursuant to the powers of the Registrar under *inter alia* sections 172, 173 and 176 of the Companies Act by members of the company, the Registrar ought not to be a party in proceedings especially where it had already been moved by a member of a company as in this case though a particular Registrar may be a witness or may produce documents in the court. For that reason, the
35 Registrar represented by the respondent in this appeal is not a necessary party. Because the Registrar was not a necessary party, it was unnecessary to join the respondent as a party. Moreover, the respondent was joined as a petitioner and not as a third party.

5 In the premises ground one of the appeal has merit and is allowed.

Grounds 2 and 3 of the appeal

Grounds 2 and 3 of the appeal deals with the issue of whether section 33 of the Judicature Act was properly invoked. The learned trial Judge at page 10 of her ruling having held that the respondent was a necessary party under Order 1 rule 10 (2) of the Civil Procedure
10 Rules further stated in one paragraph the application of section 33 of the Judicature Act in the following words:

Besides that, this court under section 33 of the Judicature Act has powers to make such orders and grant the remedy is absolutely or on such terms as it thinks fit in the case so as to avoid a multiplicity of proceedings.

15 I first need to observe that having held that the applicant who is presently the respondent to this appeal was a necessary party under the provisions of Order 1 rule 10 (2) of the Civil Procedure Rules, it was unnecessary to invoke section 33 of the Judicature Act. This is because Order 1 rule 10 (2) of the Civil Procedure Rules has as one of its objectives the avoidance of multiplicity of actions through joinder of parties.

20 I however agree with the appellant's counsel that section 33 of the Judicature Act deals with the parties who are before the court. A literal reading of the provision first of all comes under the general heading of remedies and should be taken as dealing with the remedies and not with the joining of parties. Section 33 provides as follows:

33. General provisions as to remedies.

25 The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to the cause or matter is entitled to in respect of any legal or equitable claim properly brought
30 before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.

It is quite clear that the above section deals with the remedies to which any of the parties before the court is entitled to in respect of any legal or equitable claim properly before the court. We agree that there was no legal or equitable claim of the respondent as
35 against the appellants to this appeal and Order 1 rule 1 of the Civil Procedure Rules was inapplicable. There was no matter in controversy between the parties because the

5 respondent is a regulatory authority with powers to direct the respondent particularly the fourth appellant under its authority conferred by the Companies Act which we referred to in consideration of the first ground of appeal.

10 The appellants had a right of appeal against a decision of the Registrar in relation to the allegations of the petitioners pursuant to any decision of the Registrar. The respondent was not a necessary party and therefore there was no claim of the respondent against the appellants or a claim of the appellants against the respondent.

15 Last but not least I agree with the appellant's counsel that remedies ought to be granted to any of the parties lawfully before the court after their addition and not in considering whether to add them as parties. If addition of a party is a remedy, it is at the instance of parties before court. Otherwise remedies ought to be in relation to a legal or equitable claim.

For the above reasons, grounds two and three of the appeal are allowed. In the premises, the appellants appeal has merit and I would allow the appeal with costs in this court and in the court below.

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Dated at Kampaia the 14th day of Jan 2020



Christopher Madrama

Justice of Appeal

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 236 OF 2017

- 1. OLIVE KIGONGO**
- 2. GODFREY KAKOOZA**
- 3. EZRA RUBANDA**
- 4. UGANDA NATIONAL CHAMBER OF
COMMERCE & INDUSTRY APPELLANTS**

VERSUS

UGANDA NATIONAL REGISTRATION BUREAU RESPONDENT

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA
Hon. Mr. Justice Geoffrey Kiryabwire, JA
Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the Judgment of my noble and learned brother The Hon. Mr. Justice Christopher Madrama, JA.

I agree with him that this appeal ought to succeed for the reasons he has set out in his Judgment. I also agree with the orders he has proposed.

As Hon. Mr. Justice Geoffrey Kiryabwire, JA also agrees, it is so ordered.

Dated at Kampala this 14th day of Jan 2020.


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Kenneth Kakuru
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 236 OF 2017
(CORAM: KAKURU, KIRYABWIRE, MADRAMA, JJA)

1. OLIVE KIGONGO ===== APPELLANTS
2. GODFREY KAKOOZA
3. EZRA RUBANDA
4. UGANDA NATIONAL CHAMBER
OF COMMERCE AND INDUSTRY

VERSUS

UGANDA NATIONAL REGISTRATION BUREAU=====RESPONDENT

JUDGMENT OF MR. JUSTICE GEOFFREY KIRYABWIRE, JA

JUDGMENT

I have had the opportunity of reading the draft Judgment of the Hon. Mr. Justice Christopher Madrama, JA.

I agree with his Judgment and I have nothing more useful to add.

Dated at Kampala this.....^{14th} day of ^{Jan}.....2020.


.....
HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL