THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

IN THE MATTER OF NOBLE BUILDERS (U) LTD

AND

IN THE MATTER OF THE COMPANIES ACT

COMPANIES CAUSE NO.16 OF 2000)

JASPAL S. SANDHU ……..……PETITIONER

VERSUS

I. NOBLE BUILDERS (U) LTD

2. RAGHBIR SINGH SANDHU ……RESPONDENTS

BEFORE: THE HON MR. JUSTICE R.O. OKUMU WENGI

JUDGMENT

This Petition Was brought as a Company Cause by the Petitioner who claims that he and the second respondent are the only members of the first Respondent. He seeks orders of this Court that the first Respondent (NOBLE) be wound up; a declaration that the 2nd respondent is a delinquent director and that he should be ordered to account, repay, and restore monies and assets he has misapplied misappropriated retained or become liable to account for in breach of trust. He has also prayed for any other orders and costs of the petition.

The petitioner has also stated in his petition that since incorporation he was involved in the affairs of the Company, which won lucrative contracts and collected handsome rewards some of which was banked in the Company's account to which he was a co-signatory with the Second respondent. He further stated that another award materialised after 1990 when the petitioner left Uganda to take up permanent residence in Canada leaving his namesake at the helm of the company in Uganda. His case is that he has not been given any accounts, benefits or information on the affairs of the company which has been appropriated by the second respondent whose management is inconsistent with the petitioners and the companies interest hence the petition.

In Opposition the second respondent has asserted that the petition contains falsehoods and misrepresentations as the petitioner voluntarily ceased to be a member or director in the company in 1984 and is not entitled to bring this action. In consequence the respondent contends that the petitioner has no interest to bring this action which is incompeteiit

Four issues were framed and canvassed in epistolary submissions by both counsels The first issue which is considered pivotal is whether the petitioner has capacity and or locus standi to petition for the winding up of the first respondent In this regard, it is contended by the Petitioner that he is entitled to bring this petition under section 224 of the Companies Act by virtue of his having subscribed to the memorandum and articles of Association of NOBLE. By so doing the petitioner became a member and a contributory even if no shares may have been allotted to him. The case of **The London and Provincial Consolidated Cost Company** 1877 **Ch Vol. v. 52** was cited to support this (vide statement of Maims VC at p. 529).

The petitioner then contested the effect of a company form 8, namely, Notification of Change of Directors or Secretary or in the particulars, which was filed with the Registrar on 12/1/1984. According to the form the Petitioner ceased to be a member/director of Noble with effect from that date and Mars Kaur (petitioner's wife) replaced him. To the petitioner, this was merely a notification of change and of particulars thereof and did not operate to forfeit or transfer the shares held by him in Noble. For the Respondent it was strongly contended that by this document and date the petitioner relinquished all his interest in the Company and as such could not present this petition. It was submitted that the document was voluntary and was a clear and unequivocal representation to the public and to the company and as such he is estopped from asserting the contrary. It was contended further that pursuant to this an allotment was made in July 1993. The case of Henry **Kawalya vs Dan Semakadde,** Company Cause 8 of 1990 was cited to say that where a petitioner had signed a document stating that "he relinquishes any claims in regard to equity participation in the business of Uganda Commodities Exports Ltd in future business" he had ceased his membership. As such the decision in that case must follow since the facts were on all fours with the present one. The case of **Noordin Bandali vs Lombank Tanganyika Ltd (1963) EA 304** was cited to urge court to come to the same conclusion as that in the Kawalya case on the issue of estoppel and petitioners cessation of membership in Noble. Counsel for the Respondent was of the strong view that no linkage or appendage should be perceived in the

replacement of the petitioner by his wife Mrs. Kaur and further that since all shares had since been allotted none were available for reallotment a result brought about by the reliance the **respondent** placed on petitioner's action to withdraw from the company in January 1984. It was also strongly contended that all annual returns, 15 members' registers, share certificates etc had excluded the possibility that the petitioner was a member of Noble having himself withdrawn. As this was the case it was concluded that no person would consider the petitioner a member or a contributory as his names had been excluded following his own withdrawal. Further that the remedy being pursued by the petitioner was not available to him having got out of the purview of

the company altogether. The respondent then suggested alternative remedies such as rectification of the register but not the presentation of a petition for winding up.

On this issue, considering the circumstances of this case, it is my view that the form of Notification that is the bone of contention was self- explanatory. By its nature, it is a notification to the Registrar of a decision of the company or officers and the particulars in therein. In this case there was no evidence of an earlier or concurrent decision which was being notified. As such this Court is not in a position to put its fingers on the particular resolution or resolve except to give the document its plain meaning. And that meaning is this that in January 1984 the petitioner retired from the Board of Noble and his wife replaced him. He ceased to be a director or a member of the Board of Noble and that is it. I have not seen an earlier form giving the particulars of directors or secretaries but this in my view is also of little consequence He could not retire, resign or vacate a position unless he was in such a position previously. But as to membership of the company the petitioner could only surrender his shares in the company by transferring them or forfeiting them or otherwise But he could not be divested of his shares by this Notice without any further evidence of such divestiture that truly can create estoppel in fact or in law. The case of **Henry Kawalya vs Dan Semakadde** (supra) was without doubt properly decided since there was a clear document of a witnessed resignation from the company by the petitioner in that case. That case did not involve a prescribed form of Notification I respectfully agree with the conclusion of Justice Byamugisha C.K., who also set out clearly the meaning of a contributory when deciding if a party had locus standi to bring a winding up petition. 5 However in absence of evidence of a clear surrender of membership (meaning shareholding) in a

document for that purpose or any record of company's transactions prior to the contested form of Notice there is no way that I can say that the petitioner in this case became divested of his shares as Stipulated in the companies memorandum and articles of Association. The form of Notice relates to directors and secretaries and changes thereto or in their particulars pursuant to section 201 (4) of the Companies Act. It was not stated who presented the form, this column being left blank. It is not even stated who was notifying the Registrar of the changes this particular not being filled out. The form could therefore with all these defects not invade the sacred prencinct of shareholding but only hold the petitioner as having ceased to be a director being replaced on the board by his wife. It cannot pass as evidence of divestiture of shareholding. Interestingly by 20th July 1993 the petitioner had ceased to be a director of the company as seen from a company form No. 7 wherein it is indicated that Rajbir Sandhu, Kaur Sandu and one Leo Kiwanuka were directors of the company as of that date. This form being preceded by the Notification of change was anomalous in itself It should have been filed first and then any changes in it would have been notified subsequently. The whole thing sounds like someone doing all the wrong things when seized with a severe bout of dishonesty and spite. The signature on the form seemed like magic that could wish away the unwanted petitioner from Noble.

I have come to the conclusion that while the petitioner ceased to be a director he has all along retained membership of the company despite a 1993 allotment as we shall see. And the question of estoppel even if it could have arisen, which is not the case became sufficiently overruled by evidence given on oath by the second respondent in more recent Court proceedings as will become clear. According to records in Supreme Court Civil Appeal No. 31 of 1995 arising out of High Court case No. 174 of 1990 Sietco *vs* Noble Builders Ltd the second petitioner gave evidence on 20/9/1 994 and stated "it was written by my brother Sandhu, he was a director of the company then. He is now in Canada." The letter in question was then exhibited and marked as exhibit P.2. The next exhibit, a building contract with Sietco marked exh. P.3 was also received by the trial court when the Respondent testified that "Jasper Sandhu signed on behalf of Noble Builders. This is the director who left for Canada" The second petitioner testified further "we were also buying materials. Either Jasper Sandhu or myself would buy the materials." The defence witness in those proceedings Bai Rukun DWI then testified: "1 met the directors of Noble Builders. They were Jasper and Raghbir." This meeting according to the witness was in

1987. He went on. “I do not know what happened between Raghbir and Jasper after April 1 988.Jasperwas not very easily seen. The company is just for Raghbir.” Then “In the beginning we paid to Noble Builders US $ 120,000.00 as an advance. This was 10% of the contract. It is normal. US $ 67,000 were transferred into Jasper and Raghbir’s London Account.” And “Jasper prepared a list of materials and we submitted it to the Consultants for review. All the materials were paid for by us. Raghbir & Jasper were borrowing from us even small, small money. They borrowed US $ 150 from us.”

From the above evidence given on oath in legal proceedings between Noble and Sietco, by the second respondent, which evidence was corroborated by a defence witness, it was clear that the petitioner was a member of the Company and its director who left for Canada. The issue of estoppel arising from the 1984 notification of change of directorship in the company cannot arise and was effectively reversed. On the other hand it would be clearer that the second respondent is effectively estopped from denying that the petitioner is a member and or contributory in Noble. It would appear that the second respondent would like to concede the fact when it suits him. He does this in Court and elsewhere, I but would not wish to do so in these present proceedings. This would permit oppoI1unisi and callousness common among certain types of investors in Uganda to corrupt the truth and the Court process. This cannot be accepted to prevail and instead the respondent must be held by his testimony on oath to say that if Noble were to be wound tip the public could as of 1995 and even there after consider the petitioner liable in case of winding up of Noble. The affidavits and the annextures filed by the respondent in the present proceedings are sufficiently undermined by the evidence in the Sietco case if not destroyed altogether. It follows that any dealings in the shares of the company as they are inconsistent with the petitioner’s original and legal interests in Noble have had no effect on these interests and I would readily grant a declaration to this effect. In short, it is my holding that, as a consequence the petitioner has capacity and locus standi to bring this petition. An order of rectification of the register would equally be given to give effect to this position and to nullify all the documents filed with the Registrar to defeat the petitioner’s title. All these acts by the 1 Respondent and others as are disclosed in the affidavits (including his own affidavits) are only consistent with character of a delinquent director I would declare Mr. Raghbir such a delinquent director.

Following from the above and the abundant evidence of systematic and sometimes selective exclusion of the petitioner from the membership of the company and its organs much of the evidence being pleaded in opposition to this petition by the respondents, it is clear that the petitioner has been oppressed, unfairly treated and prejudiced. Besides his nominee (Mrs. Kaur) being removed from the Board effectively leaving the second respondent sole director, the second respondent has substituted the petitioner with his own appointees purportedly increased share capital, allotted all the shares, shut out the petitioner from all company meetings made annual returns to this effect, and virtually ran the company in 10 particular disregard to the petitioner the Company Constitution and to the Law. The situation is akin to the circumstances of the company's namesake in **RA Noble & Sons (Clothing) Ltd (1983) BCLC** 273; See also **Lock vs John Blackwood** (1924) AC 783. I would think that the conditions discussed in KAWALYA'S case for presenting a petition such as this petition are present in this case. Further the affairs of the First Respondent have been c1ear1 run by the second respondent in a natively oppressive manner that is unfair and prejudicial to the petitioner. The evidence on the record besides evincing this state of affairs also shows that the two members of the company arising from the illegal acts of the 2nd respondent in the mismanagement of statutory compliance (in particular in carrying out meetings, increase of shares manufacturing and filing returns that do not bear legitimacy) are unable to Continue as the only Company shareholders in Noble and *its* enterprises. Their initial understanding has been inversely destroyed making the Memorandum and Articles of Association untenable and internal cohesion and participation in the management by the petitioner impossible. See Re (1975)1 WLR 579. This is the situation at the present time and has been continuing for some time. For this reason, it is my Judgement that the company Noble must be wound up as it is only fitting, just and equitable to do so. The second respondent must also and is ordered to account and to restore all Company assets as this petition allowed with costs to the petitioner.

R.O. Okumu Wengi

Judge

7/6/2001