

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
HCT-00-CC-CI-0011-2005
IN THE MATTER OF LUKULI COFFEE FACTORY LTD
AND
IN THE MATTER OF THE COMPANIES ACT

BEFORE THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. This is an application seeking an order from this court convening a general meeting of Lukuli Coffee Factory Ltd for purposes of electing a Board of Directors and discussing all matters related thereto or connected therewith and consequential orders in regard to the notice to be provided to the other members of the company. This application is made under Section 135 of the Companies Act, and Order 34A Rules 6(h) and 7 of the Civil Procedure Rules. It is supported by two affidavits sworn by Ms Ssemukutu, a director of Ssemukutu and Company Ltd.
2. When this application first came up for hearing on the 6th April 2005 the court was notified that the applicant was Ms Ssemukutu. Mr. Paul Rutisya, learned counsel who appeared for the applicant, then applied for an adjournment to be able to file some additional papers. This was after I pointed out that Ms Ssemukutu was not a member or director of Lukuli Coffee Factory Ltd to qualify to apply to court for an order convening a general meeting of Lukuli Coffee Factory Ltd under Section 135 of the Companies Act.
3. When the application came up for hearing on 20th April 2005 Counsel appearing for the applicant informed court that the applicant was Ssemukutu and Company Ltd. And he proceeded to argue the application. Prior to the hearing, a supplementary affidavit had been filed on 19th April 2005 sworn by Ms Ssemukutu.
4. Paragraph 2 of the supplementary affidavit reads,

“That I am a director and Share holder of the company known as Ssemukutu and Company Ltd which is one of the principal shareholders of Lukuli Coffee Factory Ltd and I now swear this affidavit on behalf of the Company (Ssemukutu and Company) in that capacity. A copy of the last filed Annual returns is annexed hereto and marked “A”.”

5. Apart from this paragraph the supplementary affidavit is exactly the same as the first affidavit of Ms Ssemukutu filed with the chamber summons. The chamber summons indicated that in addition to the affidavit of Ms Ssemukutu, there was an affidavit by Godfrey Kakeeto annexed to the affidavit. I have been unable to see a copy of this affidavit.

6. Section 135 of the Companies Act states,

“(1) If for any reason it is impracticable to call a meeting of a company in any manner in which the meetings of that company may be called, or to conduct the meeting of the company in the manner prescribed by the articles or this Act, the court may, either of its own motion, or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient; and it is declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.” (Emphasis is mine)

7. From the affidavits of Ms Ssemukutu it is clear that the only two directors of Lukuli Coffee Factory Ltd are now dead. The company has no directors and has not had directors for sometime now. Under the Articles 46, 47 and 48 of the Articles of Association of the company, a general meeting can only be called by the Board of Directors, or in its absence, at least one director or any two members of the company. Article 48 reads,

“The Board may, whenever it thinks fit, convene an extra-ordinary general meeting, and extra-ordinary general meetings shall also be convened on such requisition or in default, may be convened by such requisitionists, as provided by Section 132 of the Ordinance. If at any time there are not within Uganda Protectorate sufficient directors capable of acting to form a quorum, any Director or **any two members of the Company may convene an extra-ordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Board.**” (Emphasis is mine.)

8. It is only where it is impracticable to call a meeting in the manner provided for by the constitution and rules of the company that a member or a director of the company in respect of which a meeting is to be held can apply to court for the court to order that such a meeting be held. For the courts authority to be invoked in this regard there must be proof that it is impracticable to call the general meeting in the ordinary way provided.

And if so, then only the court on its own motion, or a director or member of the company may apply to court for the court to order a general meeting to be called.

9. In the instant case before me it is true there are no directors to call the general meeting. However, there are 8 other members of the company, presumably still living, of whom; any two are eligible to call a general meeting. The last annual return annexed to the affidavit of Ms Ssemukutu shows that there are ten members of the company, namely, Lule Festus of PO Box 3307 Kampala, Ssemukutu and Company Ltd of PO Box 5198 Kampala, Bukenya Harrison Kagugube of PO Box 81 Kampala, Mukasa Aloysius Wampamba Kiddu of PO Box 2962 Kampala, Kalanzi Geoge William of PO Box 15019 Kampala, Mulindwa Isaac Kasuze of PO Box 4873 Kampala, Wasswa Fenekansi B Difasi of PO Box Ngogwe, Kamuka Asumani Mbiringi of PO Box Lake Katwe, Ssemukutu Henry Buwule of PO Box 5198 Kampala and Y.K.Lubega of Lukuli.
10. The affidavits before me do not touch on whether any attempts have been made to contact the other members of the company and the results of those efforts. An order made on 6th April 2005 that the rest of the members of the company be notified of this application, and its hearing date was ignored by the applicant or applicants.
11. I find therefore that it has not been shown by the applicants that it is impracticable to call a meeting in the manner authorised by the constitution and rules of the company. For that reason the applicants can not avail themselves of the authority of this court under Section 135 of the Companies Act. Coming to court is a measure of last resort. This application accordingly fails and is dismissed.
12. Before I take leave of this matter there are two matters I wish to refer to. Firstly even if two members will be able to call meeting, the meeting would run into problems of quorum as the required quorum for a general meeting is 10 members according to the Article 52 of the Articles of Association of the company. Now the company had only ten members by the time of the last annual return filed in 1986, two of whom were also its directors and have since died. An order from this court would be essential to the issue of quorum but I cannot issue such an order without it being sought in the ordinary way and or in the absence of an order for a general meeting.
13. The other matter I wish to refer to is the applicant or applicants in this application. Papers filed in respect of this application do not declare the names of the applicant as such.

Initially it was Ms Ssemukutu, according to a statement from the bar of Mr. Paul Rutisya on 6th April 2005, when he introduced himself and the applicant. She then swore and filed on 19th April 2005, a supplementary affidavit as a director and a shareholder of Ssemukutu and Company Ltd and on behalf of the company. And then on 20th April 2005, during the hearing of this application, Mr. Andrew Kasirye, learned counsel for the applicant, started referring to Ssemukutu and Company Ltd as the applicants. If the initial applicant was Ms Ssemukutu, she was not a member or a director of Lukuli Coffee Factory Ltd, and could not therefore present this application under Section 135 of the Companies Act, since that section only authorises a member or a director to bring such an application before the court.

14. Ssemukutu and Company Ltd could bring this kind of application as it is clearly a member of Lukuli Coffee Factory Ltd. However, there was nothing to show that between the 6th April 2005 and 20th April 2005 when this application came up for hearing again that Ssemukutu and Company Ltd had joined into this application and had authorised Ms Ssemukutu to enjoin it to this application, substituting Ms Ssemukutu, as the applicant or becoming a co-applicant with Ms Ssemukutu. The nearest thing to authority is the statement of Ms Ssemukutu in paragraph 2 of the supplementary affidavit that she swore this affidavit on behalf of Ssemukutu and Company Ltd, being a director and a shareholder of Ssemukutu and Company Ltd.
15. Directors and shareholders or members of the company have different duties and roles in the affairs of the company as determined by the Constitution and rules of the company. There are different organs to which directors and members belong which have authority to take particular decisions. It is not shown that any organ of Ssemukutu and Company Ltd, that is either its board of directors or a general meeting authorised bringing this matter to court or resolved to call for a general meeting of Lukuli Coffee Factory Ltd, aided by a decision of the High Court of Uganda in the matter. At the moment the only logical conclusion is that currently before this court, there is no evidence that Ssemukutu and Company Ltd had authorised the bringing of this application or joining the same as co-applicants with Ms Ssemukutu. This alone would have been fatal this application.

Dated at Kampala this 4th day of May 2005

FMS Egonda-Ntende
Judge