

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[COMMERCIAL DIVISION]**

**HCT – 00 – CC – CS - 367 OF 2007**

**KAMPALA CITY COUNCIL FOOTBALL CLUB LTD:..... PLAINTIFF**

**VERSUS**

**CAPITAL MARKETS AUTHORITY:..... DEFENDANT**

**BEFORE THE HON. JUSTICE GEOFFREY KIRYABWIRE**

**JUDGMENT**

The plaintiff, Kampala City Council Football Club Ltd (herein after referred to as KCC FC Ltd), a private limited liability company incorporated in Uganda whose majority shares are held by Kampala City Council Local Government and the rest of shares are held in trust for the KCC FC Ltd club fans, members, sympathizers and supporters brought this suit against the defendant, Capital Markets Authority a body corporate created under the Capital Markets Authority Act (Cap 84), for declaratory orders that; The Capital Markets Authority over stepped its jurisdiction when it stopped the plaintiff from offering shares to its members; that the defendant has no jurisdiction under the laws of Uganda to regulate a private placement offering by companies that want to raise capital without listing on the stock exchange; that a private offering can be done without seeking approval from a regulatory body; that a private company can increase its share capital and sell shares without trading in the stock exchange; and that the applicants are entitled to compensation for loss and damages suffered as a result of the defendants actions.

The brief facts of the case are that the plaintiff on the 15<sup>th</sup> of March 2007 by special resolution sought to increase its share capital to Ug.Shs.50,000,000,000/= (Fifty billion Uganda shillings) by

the creation of 50,000,000 (Fifty million) shares of Ug.Shs.1000/= (one thousand Uganda shillings) each. Forty percent 40% of the said shares were to be offered for sale to members and supporters of Kampala City Council Football Club (herein after referred to as KCC FC). On the 2<sup>nd</sup> March 2007 the plaintiff wrote to the Registrar of Companies and the Capital Markets Authority notifying them of the intended offer of shares by KCC FC Ltd to its members and requesting the Registrar to defer registration of the prospectus as the company established the potential number of its members interested in the shares. The plaintiff avers that there was no response from the Registrar to the letter that was sent and that they therefore commenced the process to invite the members, fans, sympathizers and supporters of KCC FC to buy the shares by placing an advertisement in the print media.

It is the plaintiff's case that on 29<sup>th</sup> March 2007, when the share offer process to the members of KCC FC had began, the defendants wrote to the plaintiff urging them to halt the process on the grounds that the exercise of sale of shares was not approved by them. The plaintiff further avers that the defendants also placed in the print media various counter advertisements warning KCC FC Ltd members and the general public not to buy shares being offered by the plaintiff. It is the plaintiff's case that KCC FC Ltd share sale is a private offering that did not fall under the realm of what is regulated by the defendant and that there is no Law in Uganda requiring a company making a private offering to seek the approval of the Capital Markets Authority.

The defendant in their written statement of defence denied every allegation put forth by the plaintiff in their plaint and went ahead to aver that the defendant under the Capital Markets Authority Act CAP 84 has the jurisdiction to over see and regulate the sale of securities and that it acted within that jurisdiction with good faith and that the plaintiff is not entitled to any relief sought.

The parties at the pre trial conference agreed to the following facts:-

1. KCC FC Ltd made an offer of sale of shares.

2. Capital Markets Authority advertised to halt the process
3. Capital Markets Authority issued advertisements informing the public that the offer of shares by the plaintiff had not been approved by the Capital Markets Authority and advising the general public that anyone who purchased the shares would do so at his or her own risk.

The agreed issues were the following:-

1. Whether Capital Markets Authority by its conduct halted the process of share sale by KCC FC Ltd.
2. Whether the offer of shares by KCC FC Ltd was a private placement of public offer and whether it falls within the realm of what is regulated by Capital Markets Authority.
3. Whether Capital Markets Authority over stepped its jurisdiction when it intervened with the process of share offers by KCC FC Ltd.
4. What remedies are available to the parties?

Mr. Joseph Kasozi appeared for the plaintiff while Ms. Patricia Mutesi (Senior State Attorney) appeared for the defendant. The plaintiff called one (1) witness namely Mr. Richard Omongole PW1 the General Secretary of KCC FC Ltd. For the defendant, Mr. Alan Rwakakooko DW1 the Legal and Compliance Manager of Capital Markets Authority testified.

**Issue No. 1:                    Whether Capital Markets Authority by its conduct halted the process of share sale by KCC FC Ltd.**

It was the submission of counsel for the plaintiff that the Capital Markets Authority (herein after referred to as CMA) stopped and halted the process of sale of shares by KCC FC Ltd. Mr. Omongole PW1 referred to several incidents and documents to demonstrate to court that the whole process was halted as a result of what he claimed to be CMA's over zealous actions. Mr. Omongole referred to a letter to him dated 27th March 2007 (marked exhibit P.15) from CMA whose last paragraph stated that;

*“...This is to inform you that the proposed sale of shares by your client does not meet the requirements of the Companies Act and does not have the requisite approval from CMA. It should therefore not be undertaken unless and until approval is given...”*

Counsel for the Plaintiff submitted that this letter set in motion the tone and direction of the action by CMA which culminated into the final act of halting the process of share sale. He also referred to a letter dated 29<sup>th</sup> March 2007 (marked exhibit P.9) which was in response to the first advert that was run in the Monitor Newspaper of 28<sup>th</sup> March 2007 inviting members of KCC FC and others to buy shares. The letter stated that Capital Markets Authority was mandated to protect investors and ensure that securities are traded in a fair and orderly manner and its purpose was to halt the proposed sale of shares until approval by Capital Markets Authority.

Mr. Omongole further testified that when Capital Markets Authority ran counter adverts to those ran by KCC FC Ltd they were forced to stop their offer because their members got scared. He cited a one Mr. Fred Ogene who did not invest his five million shillings (Shs. 5,000,000/=) because he feared to risk his money. He referred to the advert in the Monitor Newspaper of 30<sup>th</sup> March 2007 Exhibit P.11 which informed members of the public that the offer of shares for sale by KCC FC Ltd was not approved by the CMA and until this had been done, any one who purchased the shares did so at their own risk. The intention of this advert and the above mentioned letter was to discourage any participation in the said offer.

Counsel for the Plaintiff also in his submissions also referred to the adverts of 2<sup>nd</sup> and 3<sup>rd</sup> April 2007 (marked exhibits P.11 (b) and (c) respectively) in the Monitor and New Vision newspapers which also warned the members of the public not to buy shares and anyone that did so, did it at their own risk. It was his submission that the assertion in these adverts that KCC FC Ltd had not increased its share capital were misleading as there was a resolution passed on the 15<sup>th</sup> March 2007 by the share holders that the share capital be increased to Ug.Shs.50,000,000,000/=(Fifty billion Uganda shillings). He also referred to a notice that appeared in the New Vision of 3<sup>rd</sup> April 2007 [marked P.11(c)] which stated that appropriate action would be taken against KCC FC Ltd and all the persons involved in the offer.

Counsel submitted that this was the final blow to KCC FC Ltd's private placement that alienated the supporters from the process of raising capital.

The defendant's counsel in response submitted that the action of Capital Markets Authority issuing advertisements did not amount to stopping the process. The adverts did not instruct the general public not to buy the said shares but instead only warned that if they did so, it was at their own risk. The defendant's counsel further submits that the adverts did not have the capacity under the law to stop the plaintiff from selling and the public from buying the said share and that the plaintiff was at liberty to take any action to counter the effect of the adverts of the CMA. Counsel for the Defendant's submitted that If the information contained in the adverts was wrong, then Mr. Omongole was free to correct it so as to remove the doubts of the investors and then proceed with the offer.

I have reviewed the evidence and the submissions of both counsels on this issue. The defendant does not deny the fact that they placed counter adverts and notices in the news papers. The notice and adverts placed in the news papers were clearly warnings given to the public about the offers of shares that were being put on the market by the plaintiff company. Mr. Alan Rwakakooko for the Defendant testified that with regards to the letters marked exhibits D.2 and P.9, CMA only advised the plaintiff to follow the procedure laid down by law and not to offer shares until they had been approved as their offer contravened the law.

In considering the evidence before me and the submissions by both counsel I am convinced that as much as the adverts did not expressly prohibit members of the public from buying the said shares, they by necessary implication did so as they put a stern warning that whoever did so, bought them at their own risk. Any ordinary person that read an advert with the said caution or warning would think twice about the offer of shares in question and the doubt that the notice and advert created in them would prevent them from buying the shares. The plaintiff gave an example of Mr. Fred Ogene as one such person who got scared about buying the shares. Unfortunately, Mr. Ogene did not testify before court for me to find or ascertain that the said adverts caused him to abandon the purchase of the shares.

It is my finding therefore that CMA by its conduct halted the process of sale of shares by KCC FC Ltd by the doubt that was created in the minds of potential investors by the notices and advertisements placed in the news papers.

However, answering this issue as framed by the parties in the affirmative without more, does not in reality do it true justice. Such an answer in the affirmative may leave the impression that what the Defendant authority did was wrong. However, Section 5 (1) (c) of The Capital Markets Authority Act (Cap 84) provides that one of the functions of the Defendant authority is

*“...the protection of investor interests...”*

In carrying out its functions, Section 5 (2) (K) further provides the said authority may

*“...do anything which is likely to facilitate the discharge of its functions, or is incidental or conducive to their discharges, under the Act...”*

I find that that in placing the adverts in the newspapers as it did, the Defendant authority in its wisdom was also carry out its statutory function of protecting the interests of potential investors in KCC Ltd within the meaning of Section 5 (1) (c) and 5 (2) (k). This function in my view, by virtue of the wording of the section is both of wide and general application to give effect to the expert role of the CMA in the area of offering of shares and securities. I shall expound on this while answering the next issue framed by the parties.

**Issue No. 2:            Whether the offer of shares by KCC FC Ltd was a private placement of public offer and whether it falls within the realm of what is regulated by Capital Markets Authority.**

It was the submission for counsel of the plaintiff that KCC FC Ltd, was inviting an identifiable group who are supporters of the club to take up shares in the company and it was therefore a private arrangement within the company’s inner circles, but not inviting the public generally. This therefore

constituted a private/placement offering does not fall within the realm of the capital markets authority.

Counsel referred me to an author **Momkus Mc Cluskey** (sourced on the internet but the URL was not provided) who defines a private placement as

*“...The sale of stock to private investors without the use of public market exchanges. Although the end result of a private placement offering is the same as a public sale of stock through exchange markets (i.e. sale of stock to the private investors), unlike a public offering, a private placement offering does involve securities that are registered with the Securities and Exchange Commission (SEC)”*

Counsel for the Plaintiff further submitted that a private offering unlike a public offering is an offer of shares to a known defined part of the public and not the public generally. He goes further to submit that the law in Uganda does not require a company implementing a private offering to the approval of the Capital Markets Authority.

It was the testimony of Mr. Omongole that under a private placement offer, a specific group or individuals that are either known or where you know the classes under which they belong are targeted. And for this case, it was specifically targeting fans and members of Kampala City Council Football Club. He further states that the company had a register of the members however they did not know where to get all of them individually. Therefore announcements and advertisements were put out in the press to mobilize the members of KCC FC.

He further testified that the shares being offered were restricted to the KCC FC family and that therefore were not open to other members of the public who were being invited. He also testified that the reference to sympathizers and all well wishers, referred to those who wished well for KCC FC Ltd which, was still a restricted invitation to persons within the KCC FC family. Mr. Omongole testified that Capital Markets Authority had erroneously understood the offer to be an Initial Public Offer (IPO) or something closer to that; whereas it was not.

Mr. Omongole further testified that KCC FC Ltd had prepared a booklet to explain all of this and that the correspondence they had written filed would have shown that KCC FC Ltd was in the process of completing the increase of share capital.

Mr. Omongole also relied on **section 57** of the **Companies Act Cap 110** to show that KCC FC was conducting a private placement and was issuing shares to its members. It was also his testimony that **section 57(2) of the Companies Act** is to the effect that subsection (1) shall not stop any offer from being made to the public, if it can be seen in all circumstances that the only persons targeted to purchase the shares, were a specific section of the public with a common interest. In this offer only the persons, who profess and are associated with KCC as a football club, were being invited to acquire shares for the progress of the club. **Section 57(2) The Companies Act** according to counsel for the plaintiff does not refer to non members but makes reference to “*persons other than those receiving the offer or invitation*” which in the plaintiffs case the offer and invitation was made to KCC FC members, fans and sympathizers only.

The defendants counsel on the other hand defined a private placement as a restricted offering of securities made directly to a small number of persons who have knowledge of the information that would be disclosed in prospectus and are capable of making an informed investment decision in the absence of a prospectus.

Counsel for the defendant also referred me to **section 57(1)** of the **Companies Act** in defining a public offer to include, an offering made to any section of the public whether selected as members of the company concerned or in any other manner. Counsel further avers that the term public was defined in the case of

**Booth v New Afrikander Gold Mining Company Ltd 1 CH [1903] 295**

to mean a limited class of people or a section of the public who are likely to take shares in a company and may include shareholders in an existing company.



Counsel for the Defendant also referred me to **section 29** of the **Companies Act** that provides that a private company is limited to having fifty members and is prohibited from inviting the public to subscribe for shares and further submitted that since KCC FC Ltd as a private company was offering shares to more than ten thousand (10,000) persons it amounted to a public offer that necessitated KCC FC Ltd to first convert into a public company which it did not. She further submitted that under **section 57(2)** of the **Companies Act** a private company may invite its members to subscribe for shares and this will not be regarded as an invitation to the public as long as the invitation is not calculated, to result in the shares becoming available for subscription to non members which was not the case for KCC FC Ltd which was not offering its shares only to its members, but also to sympathizers, fans and other persons interested in KCC Football Club.

Counsel for the Defendant further referred me to the case of

**United States Securities and Exchange Commission v Ralston Purina company 346 US.119,73 S.Ct.981 (1953)**

that cited four factors relevant in establishing whether an offer is a private offering which include;

- “1. ***The number of offerees and their relationship to each other and to the issuer.*** Where the offering is made to a diverse and unrelated group of people such as lawyers, grocers, plumbers etc then the offering would have the appearance of being public. The more the offerees, the more likelihood that the offering is public.
2. ***The number of units (shares).*** The smaller the number of units and size of the offering the greater the likelihood the offer will be considered private.
3. ***The size of offering.***
4. ***Manner of the offering.*** A private offering is more likely to arise when the offer is made directly to offerees and public advertising is incompatible with the claim of private offering”

In addressing this issue I wish to break it down into two parts.

- a) Whether the offer of shares by KCC FC Ltd was a private placement or a public offer and
- b) Whether the said offer falls within the realm of what is regulated by Capital Markets Authority.

**Whether the offer of shares by KCC FC Ltd was a private placement or a public offer**

**Tolley's company law hand book 2003-2004 at page 664 paragraph 42.4** defines A private placement as the marketing of securities already in issue but not listed or not yet in issue to specified persons or clients of the sponsor which does not involve an offer to the public or to existing holders of the issuer's securities generally.

Counsel for both the plaintiff and the defendant took time to define a private placement which all centered on the fact that they were offers made to a selected group of persons and did not involve offers of the shares to the general public.

It was the submission of counsel for the plaintiff that KCC FC Ltd had only 4 members who were Kampala City Council and Mr. Omongole and two other persons. That the share offer by KCC FC Ltd, was being made only to members and fans of KCC FC.

Mr. Omongole in his testimony defined a member of KCC FC to include;

*“A sympathizer, a fan of the club and every one else and that there were Over 10,000 members.”*

To illustrate this, the adverts in the Monitor newspaper of the 28<sup>th</sup> March 2007 invited members and others to buy shares at the stipulated dates. The adverts of 29<sup>th</sup>, 30<sup>th</sup>, 31<sup>st</sup> March and 2<sup>nd</sup> April 2007 however only invited the members of KCC FC to buy shares.

**The Oxford Advanced learner's dictionary 6<sup>th</sup> edition at page 826** Provides that the word “*other*” is used to refer to people or things that are additional or different to people or things that have been mentioned or are known about. Looking at the definition of others, an ordinary person reading the advert of 28<sup>th</sup> March 2007 would understand it to mean any person interested in buying the shares and not necessarily a member of KCC FC as being invited to do so. Therefore in my finding, this was an invitation to the whole world to buy shares from KCC FC Ltd.

Both counsel also referred me to section 57 of the **Companies Act** to show what a private placement was.

**Section 57 of the** provides that;

*“(1) Any reference in this Act to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner; and references in this Act or in a company’s articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.*

*(2) Subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and, in particular—*

*a provision in a company’s articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the*

*making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and*

*The provisions of this Act relating to private companies shall be construed accordingly.”*

According to **L.C.B Gower in his book, Principles of Modern Company Law, 4<sup>th</sup> edition at page 351**, he states that, (with reference to section 55(2) of the UK companies Act 1948 which has a similar provision with section 57(2) of the companies Act cap 110)

*“An invitation by or on behalf of a private company to a few of the promoter’s friends and relation will not be deemed to be an offer to the public. Nor, generally, will an offer which can be accepted by the shareholders of a particular company.”*

This according to Gower is regarded as a “domestic concern” within the meaning of section 57(2) of the Companies Act.

Gower further states that;

*“If a purely private placing, without renounceable allotment letters, is nevertheless coupled with a stock exchange advertisement, the latter is obviously calculated to lead to purchases by persons other than those with whom the securities are originally placed. Hence the totality of the documents constituting the invitation will collectively be deemed to be a prospectus, which is defined to include any notice, circular, advertisement or other invitation.”*

**Gower further at page 398**, states that in the case of a private placement, the offer is not advertised to the general public. Therefore there is no need for a newspaper advertisement or road show in such a case.

KCC FC Ltd is a private limited company and under **Section 29 The Companies Act** a private limited company is one limited to having fifty (50) members and prohibited from inviting the public to subscribe for its shares. KCC FC Ltd has four members that hold 40% of the shares as trustees however KCC FC Ltd was offering shares to more than 10,000 people yet their articles of association did not provide for this.

It was the testimony of Mr. Omongole that When the KCC FC was being turned into a public company and the executive were holding the shares on behalf of the membership in a temporary capacity.

The law lays down guidelines and procedures as to how certain transactions or alterations, as the case may be, are to be conducted.

According to **section 63(1) of the Companies Act** a company is authorized to increase its share capital by new shares of such amount as it thinks expedient and under **Section 65(1)** a company that has passed a resolution to increase share capital is required to give the Registrar a notice of the increase within 30 days.

There are two resolutions by the plaintiff company one for the increase in share capital (of the December 2006 marked exhibit P3) which was signed but not filed and the other resolution (marked exhibit P4) dated 15<sup>th</sup> March 2007 which was neither signed nor filed.

The effect of having these resolutions that are either not signed or filed is irregular and contrary to Section 63 of The Companies Act and may even attract a default fine under Section 64 (2) and 65 (3) of the same Act.

When the invitation to buy shares was placed in the Monitor news paper which is a news paper of wide circulation it automatically in my finding failed the test of a private placement under the authorities of the **Ralston Purina Case** (supra) and **Gower** (supra P. 351) both of which I accept as being applicable to the Company Act of Uganda. Furthermore the invitation calling for persons to buy the shares again in my finding was so broad that it included well wishers and other persons which is incompatible with the definition of a private placement. The title of the advert read, "KCC

*opens shares to the Football Fans.” KCC FC Ltd in my view should not have used a public media to make this private offer. The advertisement in the Dairy Monitor of Wednesday, March 28<sup>th</sup> 2007 which stated that;*

*“KCC FC has allotted 20,000,000 shares at the cost of Ug Shs. 1,000 each to the club’s members, **fans, sympathizers and all who wish to see the company prosper** with large scale investments as it prepares to go public”.*

Clearly on the authorities cited before, amounted to and is deemed to be a prospectus.

The Registrar General on the 2<sup>nd</sup> of April 2007 correctly wrote to the plaintiffs counsel notifying them that the plaintiff company was a private company and was not to issue shares to the public and that the failure of its officers to file a notice to the Registrar made them liable for prosecution.

**Whether the said offer falls within the realm of what is regulated by Capital Markets Authority**

Counsel for the plaintiff submitted that CMA does not have absolute control over the formation and trade of shares of all public companies. He submitted that its scope is limited by law to capital markets controlled through the stock exchange. He referred me to **section 42(4) of the Companies Act Cap 110** which provides that;

*“The registrar may for the purpose of reaching an opinion on whether a prospectus*

- a) Does not comply with the provisions of this act*
- b) Contains an untrue statement*
- c) Omits to state any material fact*
- d) Is otherwise incomplete or misleading,*

*Refer the prospectus to the capital markets authority established by the capital markets authority act, for its opinion and the authority shall give its opinion accordingly within a period of twenty one days in relation to the prospectus.”*

Counsel for the Plaintiff submitted that section 42(4) of The Company Act reserves the authority over the activities of public companies in certain situations to the Registrar of Companies and that the CMA is therefore only mandated to give its opinion on the prospectus if forwarded to it in such cases.

The counsel for the defendant on the other hand submitted that under section 5(1) (b) and (c) of the Capital Markets Authority Act, CMA is mandated to create, maintain and regulate a market in which securities are issued traded in an orderly, fair and efficient manner and to protect investors' interests. Counsel further submits that under Section 42(4) of The Companies Act the CMA has specific jurisdiction to approve prospectuses referred to them by the Company Registrar. **Mr. Allan Rwakakooko** DW1 testified that it is practice in Uganda that in order to offer shares to the public, one must first issue a prospectus and which prospectus must first be approved by the CMA before it is registered. That since the plaintiffs offer was made to the public they should have first issued a prospectus.

Counsel for the Defendant further submitted that even if the offer had been a private placement the wide scope of **Section 5** of the Capital Market Authority Act allows the CMA to over see and regulate their conduct.

The CMA in my finding, is clothed with more than just the regulation of Capital Markets in Uganda. As earlier indicated in this judgment the CMA also has the function of protecting investor interests under Section 5(1) (c) of The Capital Markets Authority Act. This to my mind is wider than just the capital markets. This function I find would also included matters like investor awareness as to their rights and options. It also covers such opinions that it would give the Registrar of Companies under **section 42 of the Companies Act**. This is an important tool given to the CMA to help educate our otherwise not very sophisticated people in questions of investment. To that extent, the CMA can intervene on the side of protecting investors where it sees a private placement/offer is going wrong.

The offer in question was perceived by the Plaintiffs to be a private placement made to members of KCC FC Ltd. If that was correct then under Section 57(2) of the Company Act such an offer would

not have been regarded as an offer to the public. Indeed what KCC FC Ltd was trying to do was commendable in trying to raise money from its members to finance its activities which I can see from the newspaper adverts included building a stadium, apartments and a hotel. A private placement/offer properly made, would not be treated as an invitation to the public under Section 57 of the Companies Act. Such a private placement would not strictly speaking be regulated by the CMA.

Indeed everything in the Plaintiff's proposed private placement/offer went wrong. First KCC FC Ltd was a new company incorporated on the 13<sup>th</sup> December 2006 only three months before the private offer had been advertised in the newspapers. The said adverts immediately raised concerns within the City Council of Kampala itself. The Acting Town Clerk Mrs. Ruth Kijjambu on seeing the newspaper advertisements on the 3<sup>rd</sup> April 2007, wrote a letter to the City Advocate (Exhibit D.7) with a copy to the Defendants (CMA) saying

*"...To my knowledge, Kampala City Council football (sic) is not a company but is an institutional club, and there are procedures to follow when going public. I therefore urgently request you to advise me on the issue before it gets out of hand..."* (emphasis mine)

In other words, the City Council of Kampala a primary stakeholder in the private placement/offer was not aware of it.

On the 29<sup>th</sup> March 2007 a day after one of the first adverts were published in the press, M/s Stanbic Bank wrote to the Plaintiffs a letter (Exhibit D.3) in which they complained.

*"...the insinuation in that advert that we have accepted to act as a receiving banker for your company's public offer is unacceptable.*

*...Be also advised that you are not authorized to use the Stanbic Bank Uganda Limited logo under any circumstances.*

*We will hold you liable for any damage that the bank may incur as a result of that advert...*

(emphasis mine)



It is clear from the above that the adverts as placed in the press by the Plaintiff company were misleading as to the role of Stanbic Bank and indeed the Plaintiff's on the 30<sup>th</sup> March 2007 (Exhibit D.4) put another advert in the newspapers clarifying that M/s Stanbic Bank were not the receiving bank for the share sale.

On the 2<sup>nd</sup> April 2007, the Registrar General wrote to the Plaintiffs with copies to the Defendants and the City Council of Kampala (Exhibit D.6) advising them

*“...In case you proceed, we shall have no choice but to immediately commence criminal prosecutions against the company and all its officers.*

*...This is therefore to advise you to halt the process you have started and comply with the law, in case you want raise money from the public...” (Emphasis mine)*

From the above, it is clear that the Defendants were correct to intervene on the side of protecting the potential investors under **Section 5(1) (c) of The Capital Markets Act**. This offer was clearly generating concerns and attracting “fire” from all corners.

The Plaintiffs in my view would have been well advised to take up the request of Defendants in their letter dated 24<sup>th</sup> April 2007 (Exhibit D.5) to explore ways of amicably resolving the matter so that a good idea wrongly executed could be salvaged. Unfortunately this was not seriously taken up and consequently I find that the Plaintiff Company was on the wrong side of the law regarding this offer.

**Issue No. 3: Whether Capital Markets Authority over stepped its jurisdiction when it intervened with the process of share offers by KCC FC Ltd.**

In light of my finding before which I need not repeat here, I find that the Capital Markets Authority did not over step its jurisdiction when it intervened with the process of share offers by KCC FC Ltd.

**Issue No. 4: What remedies are available to the parties?**

This suit was filed by the Plaintiff for Court to make several declarations. In light of my findings above, I find one declaration is sufficient to dispose of this suit. That is, it is hereby declared that the Capital Markets Authority did not over step its jurisdiction when it stopped the plaintiff from offering shares to its members.

That being the case, this suit is dismissed with costs to the Defendant.

.....  
**Geoffrey Kiryabwire**

**JUDGE**

**Date:** .....

21/09/09

10:48am

**Judgment read and signed in open court in the presence of:**

- P. Mutesi (Senior State Attorney) for the Defendant
- Rose Emeru – Court Clerk

.....  
**Geoffrey Kiryabwire**

**JUDGE**

**Date:** 21/09/2009

