

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

HCT - 00 - CC - CS - 0361 - 2010

HON. JUSTICE PROF. DR. G. W. KANYEIHAMBA
& 320 OTHERS ::
PLAINTIFFS

VERSUS

AMOS NZEYI & 3 OTHERS ::
DEFENDANTS

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

This suit is filed by Justice Prof. Dr. George Wilson Kanyeihamba & 320 others hereinafter called the Plaintiffs. It is filed against Amos Nzeyi, (1st Defendant), Amama Mbabazi (2nd Defendant), Ruhakana Rugunda (3rd Defendant), the Attorney General (4th Defendant) and National Bank of Commerce (in liquidation) as the 5th Defendant.

The Plaintiff's claim against the Defendants was that they conspired with one another and fraudulently constituted National Bank of Commerce to which they transferred the business and assets of Kigezi Bank of Commerce.

The Plaintiffs further claim that the change of the bank's name from Kigezi Bank of Commerce to National Bank of Commerce was fraudulent, dishonest and illegal, calculated to benefit the 1st, 2nd and 3rd Defendants.

The Plaintiffs therefore sought judgment against the Defendants for the grant of the following declarations and remedies namely;

- That the activities of the Defendants being in total disregard of the Memorandum & Articles of Association of Kigezi Bank of Commerce were unlawful, fraudulent and detrimental to Kigezi Bank of Commerce and to the economic interest of Kigezi Bank of Commerce and the Plaintiffs.
- A declaration that the purported transformation of Kigezi Bank of Commerce into National Bank of Commerce was fraudulent, unlawful, ineffectual and a nullity.
- That the sale and distribution of shares after the creation of the National Bank of Commerce were done in disregard of the Memorandum & Articles of Association and were therefore fraudulent, illegal and void.
- The Plaintiffs also sought the Court to direct the Registrar of Companies to revert National Bank of Commerce to the true position of Kigezi Bank of Commerce in its original functional state.
- To direct the Defendants jointly and severally to render a true account of the profits of Kigezi Bank of Commerce and its assets since 12th April 1997.

- The Plaintiffs also sought damages for loss incurred as a result of the Defendants unlawful acts.
- That the Court should declare National Bank of Commerce as not legally in place.
- That the Court finds the 1st, 2nd and 3rd Defendants liable for loss suffered by Kigezi Bank of Commerce and refund any and all profits made since the creation of National Bank of Commerce.

The background to these proceedings which emerged from the pleadings is that the 1st Plaintiff and the 3rd Defendants begun and formed the Bank called Kigezi Bank of Commerce.

The 1st, 2nd, and 3rd Defendants were all directors and shareholders in the company. The 1st Plaintiff and others he did not name were also shareholders in the bank which was incorporated on 23rd December 1991.

In the course of running the bank, conflicts arose between the 1st Plaintiff and the 1st, 2nd, and 3rd Defendants namely because the Defendants were doing unauthorized acts, had conspired and changed the bank's name from Kigezi Bank of Commerce to National Bank of Commerce transferring all the businesses to Kigezi Bank of Commerce to the newly formed bank.

Contending that the assignment of Kigezi Bank of Commerce's goodwill together with its physical and intellectual property rights to another bank that had been unlawfully established and in total breach to the aims and objectives of Kigezi Bank of Commerce and its shareholders

was dishonest and unlawful, the Plaintiff brought this action seeking declarations and reliefs earlier mentioned in this judgment.

The Defendants denied liability and contended that the Plaintiffs were not entitled to any of the reliefs sought. In particular the 4th Defendant contended that the Plaintiff's suit did not disclose any Cause of Action against him.

The 5th Defendant denied any knowledge or involvement in the transactions alleged by the Plaintiff.

The 1st, 2nd and 3rd Defendants denied ever committing fraud promoting illegality or acting dishonestly and specifically denied ever causing loss or damage to the 1st Plaintiff or anyone else in the company or the company itself. In respect of the alteration of the Memorandum & Articles of Association, the 1st, 2nd and 3rd Defendants contended that they were amended by a resolution passed at an extra ordinary general meeting of the company held on 12th April 1997 and that it is at this meeting that the resolution to change the company's name from Kigezi Bank of Commerce to National Bank of Commerce (U) Ltd was arrived at.

During the scheduling conference, both the parties agreed to the following issues:

The first issue was two pronged namely;

- a) Who were the other 320 Plaintiffs that the 1st Plaintiff represented?

b) Whether the 1st Plaintiff or any of the other Plaintiffs he represented had locus standi?

These comprised issue 1 and 2.

The third issue was whether the allegations against the Defendants concerning change of name of Kigezi Bank of Commerce Ltd, alterations of its Memorandum & Articles of Association or transferring business to National Bank of Commerce Ltd are true and if so if such alterations/changes were done lawfully.

The fourth issue was whether the company meetings of Kigezi Bank of Commerce Ltd were lawfully convened?

The fifth issue was whether National Bank of Commerce Ltd exists in law?

The sixth was if so, whether they have caused any loss or damage to the Plaintiff.

The seventh issue was in relation to reliefs, if any.

The first issue is as to who were the other 320 Plaintiffs that the 1st Plaintiff represented and whether the 1st Plaintiff or any of the other Plaintiffs he represented had locus standi.

During the hearing, the Defendants submitted that the 1st Plaintiff had purported to represent people who were not a party because the list of names of the people he was purportedly representing were never presented in Court.

The 1st Plaintiff in reply submitted that the issue on representation had been cleared when parties were called and asked if he was their representative. That he had led evidence and documents from the bank were exhibited and were even marked.

“Nobody challenged what the Honourable Court said that I should represent these 320 shareholders,” he said. He further submitted that he had left the matter for the Court to decide.

In a representative action, two steps are essential.

The first is an application under Order 1 Rule 8 and 22 by summons in chambers.

In this application, the Applicant must attach a list of the people he is representing as Plaintiffs.

The second step must be the notification of the people who he represents of the cause of action and the fact that leave has been granted by the Court. The step enables the people he represents to apply to the Court to be made party to the suit if they so wish.

I represent the Rule here in full.

“ 8. One person may sue or defend on behalf of all in same interest.

(1) where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give notice of the institution of the suit to all such persons either by personal service, or, from the number of persons or any other cause such service is not

reasonably practicable, by public advertisement as the Court in each case may direct.

2. *Any persons on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) of this rule may apply to the Court to be made a party to that suit. “*

It is well settled that a Court does not go behind a Court order in representative actions to inquire on how it was obtained **Nsereko & Others V Bank of Uganda Civil Appeal No. 01 of 2002.**

That notwithstanding, a representative who has not fulfilled the mandatory requirements of Order 1 Rule 8 cannot be left to benefit from that wrong especially when there are many would-be Plaintiffs who might be bound by a decision of a Court proceeding in which they were never given a chance to participate.

The Order for representative action was obtained on 2nd September 2010 before the Registrar. In the application, Miscellaneous Cause No. 27 of 2010, the Plaintiff sought leave of Court to institute a representative suit on behalf of himself and other 320 persons against the Respondents. the other persons were never named, neither was a list showing the 320 other aggrieved members of Kigezi Bank of Commerce annexed to the application.

From the proceedings, the learned Registrar wrote:

“This is a clear scenario for a representative act envisaged under Order 1 Rule 8 of the Civil Procedure Rule hence the application is granted allowing Hon. Retired Justice G. W.

Kanyeihamba to file a representative suit against the Defendants as prayed.”

Having obtained the order, the parties who were affected by that order in this case the 320 represented, should have been given notice of the institution of the suit either by personal service or where from the number of persons it was difficult to do so, by public advertisement. It was therefore a prerequisite for a list to exist. The purpose of this notification is to enable those who want to apply under Order 1 Rule 8(2), to be made party to the suit to do so because they would have understood what their suit is all about.

In **Ibrahim Buwemba, Emmanuel Sserungoji & Zubail Mwanika for and on behalf of 800 Others V UTODA Ltd HCCS 664/2003** where a similar circumstance under Order 1 Rule 8(2) was in question, the learned Judge held:

“It would appear to me that the wording of Order 1 Rule 8(2) with regard to notice either by personal service or by public advertisement as the Court may in each case direct is mandatory. Furthermore, the requirement to give a proper notice cannot be regarded as a mere technicality or direction that can be dispensed with, the notice by public advertisement must disclose the nature of the suit as well as the reliefs claimed. So that the interested parties can go on record in the suit either to support the claim or to defend against it.”

Justice Ntabgoba in **Tarlogan Singh V Jaspal Phaguda & Others (1997 - 2001) UCLR 408 at page 410** dealing with a similar issue observed;

“in my opinion the taking of the steps necessary to enable the Plaintiff institute a suit in a representative capacity is taking the procedure under Order 1 Rule 8 of the Civil Procedure Rule and Order 7 Rule 4 which is rendered in mandatory terms. With respect therefore, the non compliance with Order 1 Rule 8 and Order 7 Rule 4 cannot be said to be a mere matter of misjoinder or non-joinder. It is a matter that must be complied with and failure to do so comply renders the suit incurably defective.

It is therefore my view, that notice be given to all the parties who will be bound by the resultant decree. This being a mandatory requirement, any party who is not notified shall not be bound by the results.”

When the 1st Plaintiff in the current suit was asked who he represented, he did not seem to know even the number of people. On the list, he said, *“I also presented a list of 69 people but I do not know if it was given an exhibit number. All I know is that we presented the documents to Court and were given numbers.”*

DW1, Antelli Twahira was a shareholder in National Bank of Commerce Ltd who said he was never contacted before the suit was brought but after the suit was filed; he and others were invited by the 1st Plaintiff to Ciphaz Inn who asked them for their support in the case. DW1 and others told the 1st Plaintiff that since he had not contacted them before

filing the case, they would not support it. They told the 1st Plaintiff that since he was a shareholder like them, he should come back and discuss where the bank went wrong and resolve the issue amicably but the 1st Plaintiff refused.

When DW1 was asked how many of them were present, he said he did not remember the number but they were more than 20.

This evidence remained on record undisturbed by cross-examination.

In my view, a witness who said that they could have been more than 20 must have attended a meeting of less than 50 and in any case, not more than 100 people.

This is supported by the fact that the 1st Plaintiff himself said he had presented a list of 69 people. If he presented a list of 69 people, who were the others? The 69 themselves are not even named. He could not remember the list, whether it had been exhibited and so the list, if it ever existed, was of no relevance to this case. Firstly, because it left out a big number from the 320 and secondly because the people who were on that list were not known.

What makes the situation worse is that the few people who attended the meeting that the Plaintiff called rejected the idea of the suit.

DW1 in evidence stated thus:

“I remember Prof. Kanyeihamba invited us to one of our hotels in Kabale. He was requesting us to support him in the suit that he sued the bank that they changed the name of the bank without contacting members. We said we are not

supporting you because you should have contacted us before going to Court.

In fact those who were there, we tried to advise him that since we are shareholders, why can't you come back and we sit as shareholders to first discuss and see where the bank went wrong then we solve it ourselves. But he refused and continued with Court."

DW2, Kazooba Enock, a representative of his sub-county which was a shareholder told Court that in the meeting that was called a list was circulated of those supporting the suit, he and others refused to sign it. That those who signed it, on learning that the purpose of the meeting was to support the suit, demanded that they withdraw their signatures but the 1st Plaintiff refused. In his testimony, DW2 said;

"Yes. It was circulated and some signed but some of us did not. After arguing with him, people requested him to withdraw their signatures but for him he took it. People ran after him that he should bring back the attendance list so that they resign their signatures from that paper but he refused with it and he took it with him."

He further added that even a vote was never taken. This piece of evidence was left standing undisturbed after cross-examination.

The evidence on record therefore shows that very few of the shareholders were notified of the existence of the suit and even those who were notified rejected the idea of being Plaintiffs. Those who were not notified, and these formed the majority could not be said to have requested for representation, did not know what was going on and

therefore were deprived of the chance to apply to join as parties to participate in the proceedings.

This requirement under Order 1 Rule 8(2) is mandatory; since those who attended the meeting rejected and since the majority were not notified, this Court cannot allow that they be bound by the decisions in this case. They are accordingly struck off the pleadings.

Turning to the third issue as to whether the allegations against the Defendants concerning change of name of Kigezi Bank of Commerce Ltd, alterations of its Memorandum & Articles of Association or transferring business to National Bank of Commerce Ltd are true and if so, if such alterations/changes were done lawfully;

a) Change of name:

Before I go into whether the change of name of the bank in question from Kigezi Bank of Commerce Ltd to National Bank of Commerce Ltd was lawful, it is essential to find out under what circumstances a company can change its name and the procedures required.

In 1997, the operative law was the Companies Act Cap 85. Section 20 of the Act provided for change of name of companies. I reproduce the whole section here. The relevant sections for the purpose of this suit are S. 20(1)(2)(3) which I reproduce here:

20(1) A company may by special resolution and with the approval of the Registrar signified in writing change its name.

- (2) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which in the opinion of the Registrar, is too like the name by which a company in existence is previously registered, the first mentioned company may change its name with the sanction of the Registrar, and, if he so directs within 6 months of its being registered by that name, shall change it within a period of 6 weeks from the date of the direction or such longer period as the Registrar may think fit to allow.

If a company makes default in complying with a direction under this subsection, it shall be liable to a fine not exceeding one hundred shillings for every day during which the default continues.

- (3) Where a company changes its name under this section, it shall within 14 days give to the Registrar notice thereof and the Registrar shall enter the new name on the register in place of the former name, and shall issue to the company a certificate of change of name, and shall notify such change of name in the Gazette.

The affairs of a company are run by the shareholders through the board and management. This calls for various meetings from time to time in the form of board meetings, annual general meetings, extraordinary and ordinary meetings. These meetings produce minutes from which resolutions that have been arrived at are extracted. To show that the change of name of the bank was done with the support

of shareholders, the Defendant sought to rely on the minutes in this case Exhibit P.3, P.4, P.5, P.6 and P.7.

During the hearing, the Plaintiff objected to the minutes saying some of them were not signed and therefore their accuracy was in question. The question that must be resolved is **‘how were these minutes introduced as exhibits?’**

Before the commencement of the hearing, the parties filed a Joint Scheduling Conference Memorandum on 21st March 2012. The memorandum indicated that the Plaintiff was represented by Mr. G. S. Lule, the 1st, 2nd and 3rd Defendants represented by Dr. Joseph Byamugisha and the 4th Defendant represented by Mr. Martin Mwambutsya were all parties.

The memorandum provided documents that were not in dispute. The documents that the Plaintiff sought to rely on were the following;

1. Memorandum & Articles of Association of Kigezi Bank of Commerce Ltd.
2. Memorandum & Articles of Association of National Bank of Commerce Ltd.
3. Minutes of board meetings of the company.
4. Minutes of general meetings of the company.
5. Company's annual audited accounts since 1997.
6. Company's register as at 31st December 1996.
7. Company's register thereafter
8. Company's resolution which led to preferential shareholding in Kigezi Bank of Commerce Ltd and attended privileges.

In the answer to the question 'Have these documents been agreed to by the other party to the case, and if so, indicate which?; all the parties, including the Plaintiff answered in the affirmative.

In fact, the minutes that now the Plaintiff tried to discard were introduced in evidence by the Plaintiff and it must have been because he believed them to be accurate and they were consented to by the other party on the understanding that there were no objections or inaccuracies detected by the Plaintiff or themselves.

During cross-examination when Mr. Muwema asked him if he could identify Exhibit P.7, the Plaintiff replied that he knew them and that these were the minutes of the board meeting of Kigezi Bank of Commerce held at Little Ritz in Africa, Lugogo, Kampala.

The Plaintiff can therefore not turn round and claim that the minutes should not be relied upon because they were not signed. In the first place, at the time of hearing the matter, the Defendants were not in control of the bank and would have been terribly disadvantaged if the minutes that were never disputed at the time of scheduling were now declared inadmissible.

The rejection of minutes by the Plaintiff at this stage can only be construed as an after thought which cannot be upheld. These minutes therefore remain relevant as evidence and for the resolution of the suit.

On the issue of change of name, the Plaintiff contended that it was wrong for Kigezi Bank of Commerce to change to National Bank of Commerce Ltd because the management of the company did not have the right to do so. He contended that they could not amend the Memorandum & Articles of Association. He said the bringing in of

investors especially foreigners was a move frowned upon by their Memorandum & Articles of Association in as much as this was a bank for the people of Kigezi and not foreigners and was wrongly done. In reply to this, the Defendants contended that for them to meet the requirements of Bank of Uganda, it was necessary to capitalize it and to do so they had to do attract investors who would widen their capital base but this could only be done by removing the restrictive name of 'Kigezi' and replacing it with something nationalistic.

Further it was necessary to open the boundaries of the bank beyond the original Kigezi and turn it into a Uganda bank. That the original objective of having a 'Kigezi-people bank' was too restrictive and would not enable the bank to meet the demands of the Central Bank. The bank, according to the Defendants, had to open up to the whole of Uganda. To open up to the whole of Ugandan, they contended, the bank had to open up a branch in Kampala.

After going through the evidence, it is not in dispute that there was a change of name from Kigezi Bank of Commerce Ltd to National Bank of Commerce Ltd. To change the name of a company was within the shareholder's powers and could be done by passing a special resolution which if it was approved of by the Registrar would complete the change of name.

In the present case, the genesis of change of name and capitalization was discussed in the Annual General Meeting held on 2nd November 1996 - Exhibit P.4. In that meeting, the shareholders discussed the probable closure of the bank in December 1996 if they did not sell shares to giant investors to rescue the same. Bank of Uganda had

raised the minimum capital to Shs. 500,000,000/= (five hundred million shillings only) and the general meeting realized the need to increase the share capital so as increase room for interested investors to buy shares from the company. It is in that meeting which resolved that the share capital be increased from Shs. 500,000,000/= to Shs. 2,000,000,000/= (two billion shillings only). The Board of Directors were authorized to issue shares to interested giant investors for purchase.

The Board of Directors were also to continue with negotiations with all interested investors who were determined to inject due capital into the bank to enable it meet the statutory requirement of raising the minimum capital of Shs. 500,000,000/= whose deadline was December 1996.

More importantly, the Board of Directors were also authorized to conclude all pertinent matters pertaining to attracting giant investors to the bank and changing of the name Kigezi Bank of Commerce to any other suitable name so as to trap more deposits from Kampala and the adjacent communities. The Plaintiff attended this meeting.

The board, empowered by the Annual General Meeting of 2nd November 1996 must have swung into action because on the 17th February in a board meeting which the Plaintiff also attended, the results of the board's activities concerning the change of name and capitalization of the bank were reported.

In this meeting, the chairperson, DW3 reported that the bank's name had changed to National Bank of Commerce (U) Ltd and a branch was

to be opened in Kampala along Parliament Avenue. The Plaintiff who was in attendance commended *“the team work spirit of the directors in rescuing the bank after the pertinent fraud.*

He thanked the chairman for his diligence and special interest in sustaining the bank and bank management for having detected fraud and not having been involved in the same.”

Elsewhere in the minutes, Min 8/97, the Plaintiff after the members of board had agreed that the name of the bank remains National Bank of Commerce Ltd reiterated, *that, “directors of Kigezi Bank of Commerce Ltd have been unique in their tenure of office in that they had been cooperative and served without any remuneration. He thus called upon the new directors to emulate such an example until the bank becomes a profit making institution.”*

In fact, in that meeting he suggested that PW2 because of his good reputation be the chairman of the new board. That this resolution was reached is not in doubt because the Registrar of Companies in the certificate of change of name referred to it and with approval changed the name of Kigezi Bank of Commerce Ltd to National Bank of Commerce (U) Ltd on the 7th March 1997, Exhibit P.10. As seen in Exhibit P.11, on the 7th March 1997, the Registrar appended a notice for publication of the change of name in the Gazette. The Plaintiff contended that the procedure adopted by the Registrar was illegal because the notice for publication in the Uganda Gazette carries the same date as the certificate of change of name. The procedure that the Registrar adopts when notified of the resolution to change a company name is provided in Section 20(3) of the Company Act Cap 85.”

“Where a company changes its name under this section, it shall within 14 days give to the Registrar notice thereof and the Registrar shall enter the new name on the register in place of the former name and shall issue to the company a certificate of change of name and shall notify such change of name in the Gazette.”

The 14 days that are given is between the period the resolution is made and the time the company changing name notifies the Registrar. Section (3) does not give limitation of time within which the Registrar who has received and approved the change of name should issue a certificate of change of name and notify such change of name in the Gazette.

There is therefore no illegality in the certificate of change of name and the notice to the Gazette bearing the same date.

On the contrary, it only indicates that the Registrar who handled this matter was diligent.

Furthermore, for a bank to change its name, and continue operating it can only do so with the approval of Bank of Uganda. No illegality has been pointed out by the supervising bank neither has the Plaintiff in this case convincingly shown Court that the change of name was unlawful. The change of name was sanctioned by the Annual General Meeting of 2nd November 1996 - Exhibit P.4, approved by the board on 17th February 1997 which met at Little Ritz in Africa - Exhibit P.7 and the resultant resolution passed on 17th February 1997 was filed with the Registrar of Companies who on the 7th March 1997 issued a certificate of change of name under Section 20(3) of the Companies

Act – Exhibit P.10 and duly notified the public by appending thereof a notice for publication in the Uganda Gazette – Exhibit P.11.

All the legal requirements having been fulfilled, I find that the change of name from Kigezi Bank of Commerce Ltd to National Bank of Commerce was lawfully done.

b) Alterations of its Memorandum & Articles of Association

The alterations worthy of mention were in respect of the objects for which the company was established.

Article 3(a) of the Memorandum and Articles of Association of Kigezi Bank of Commerce provided:

“To carry on the business of banking in all its branches in particular to assist in the economic development of Kigezi and the name Kigezi for purposes of this object shall be interpreted to include Kabala, Rukungiri and Kisoro Districts.

Article 3(a) of the Amended Memorandum and Articles of Association of National Bank of Commerce (U) Ltd provided:

“To carry on the business of banking in all its branches and in particular to assist in the economic development of Uganda.”

This meant that while in Kigezi Bank of Commerce the area of operation was restricted to only the original Kigezi of Kabale, Kisoro and Rukungiri, National Bank of Commerce (U) Ltd would encompass

the whole country giving it a national face. To do this would require capitalization from whatever source was available and dictated that the bank goes public. In my view, it is this requirement which caused the change of the bank from a private company limited by shares to a public company limited by shares. To do this, Memorandum & Articles of Association had to be amended. It is this amendment and its legality that the Plaintiff questioned. The answer to this question again lies in Exhibit P.4 – the Annual General Meeting minutes of Kigezi Bank of Commerce held on 2nd November 1996 which amongst other things authorized the Bank of Uganda to issue shares to interested giant investors for purchase.

Furthermore, authorizing them to continue with negotiations with all interested investors willing to inject capital in the bank so as to reach the statutory requirement of Sh. 500,000,000/= by December 1996.

Lastly, the same Annual General Meeting gave them wide powers which

“authorized them to conclude all pertinent matters pertaining to attract giant investors to our bank and changing of the name Kigezi Bank of Commerce to any other suitable name so as to trap more deposits from Kampala and adjacent communities.”

In my view asking the board to coin out ways of getting money from investors in Kampala and adjacent communities must have contributed to going public and the only relevant way of doing it was to amend the Memorandum & Articles of Association to accommodate a public company.

For a company to amend its Memorandum & Articles of Association it is required to pass a resolution in a general meeting.

Exhibit P.7 saw the report in Min. 4/97 of what the board had done which amongst others included the opening up of a branch in Kampala.

Exhibit P.9 was a resolution resulting from the board meeting which informed the discussion, the agreeing and unanimous resolution that the company formally be changed from a private limited liability company to a public limited liability company.

The resolution to have effect had to be filed with the Registrar of Companies and indeed it was filed with the Registrar of Companies in Kampala as the stamp on the exhibit shows.

The other requirement after amending the Memorandum & Articles of Association was that both copies, the amended and amending document, were to be filed with the Registrar of Companies. The stamps on both Exhibit P.1 and P.2 clearly indicate that both documents were registered with the Registrar of Companies.

The requirements of amending the Memorandum & Articles of Association having been fulfilled, it is my finding that the amendment of the Memorandum & Articles of Association was lawfully executed.

c) Transferring business to National Bank of Commerce (U) Ltd

The last leg of this issue was whether the Defendants transferred business from Kigezi Bank of Commerce to National Bank of Commerce Ltd. A change of a company name is merely a change of name. It might be to attract investors; it might be necessary to fit in the new

social and economic environment; it could be out of the whims of the shareholders of the bank; its legal obligations whatever the reason for change of name, remain. This position is well illustrated in Section 20(4) of the Companies Act which provides:

“A change of name by a company under this Section shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name ...”

So change of name did not remove anything from the shareholders. It still held their money for them. Since the change of name in a company does not create a new entity or affect the company's existing property, rights or obligations, nor render defective any legal proceedings by or against the company, there was no transfer of business. The business remained where it was, save that it was now being run under a different name.

The fourth issue is whether company meetings of Kigezi Bank of Commerce Ltd were lawfully convened. On this issue, PW1 testified that meetings are governed by the Memorandum & Articles of Association and if in conflict with the Companies Act then the Companies Act prevails. Further that meetings held did not comply with either the Memorandum & Articles of Association of Kigezi Bank of Commerce Ltd or the Companies Act. He gave an example of one particular meeting:

“My Lord under our Memorandum & Articles of Association under the Company Law, you just do not call an Annual General Meeting on the same day you hold it. That is part of the mismanagement. The meeting was called on a Friday and held on the same day, that is contrary to the provisions of our Memorandum & Articles of Association ...”

Under the Memorandum & Articles of Association of Kigezi Bank of Commerce, general meetings were to be held every year and not more than 15 months were to elapse.

They were to be held at such time and place as directors would appoint. The Memorandum & Articles of Association also empowered them to convene extra ordinary meetings on requisitions by share holders. All general meetings were to be called by 21 days notice in writing and the notice was to be exclusive of the day on which it was served.

There were exceptions however to this, that it would be called by shorter notice than the ones specified in these regulations and would be deemed to have been duly called if it was agreed in the case of a meeting called as the annual meeting of all members entitled to meet and vote. But in the case of any other meeting, a majority in number of the members having the right to attend and vote at the meeting being members holding not less than 95% of the nominal value of the shares, would not invalidate the meeting.

Article 51 validated meetings where accidental omissions to give notices of meetings to a member or failure of a member to received notice of a meeting.

Looking at the circumstances that prevailed at the time, I wonder if this was an Annual General Meeting. From the evidence of PW1, this was a meeting that was organized in a hurry to get answers to what the Court required them to do. According to PW1, the Court gave them notice of 2 days to capitalize the bank.

He stated;

"... The Bank of Uganda, Central Bank, wrote to everybody that the bank was in serious problems. It was under capitalized under the Financial Institutes Act; we should do something about it ... Eventually we came here and this Court under the presidency of Hon. Justice Geoffrey Kiryabwire after listening to all of us and after I had disclosed that the 3 members of the bank had a lot of money to capitalize the bank but they had banked the money in foreign banks. The Judge ruled that the bank must be capitalized within two days. We appeared before him on a Wednesday and that the bank must be capitalized by Friday of that week ..."

This explains why the Board of Directors acted the way it did. Under the circumstances they do not seem to have acted in bad faith. Having been given only 2 days to capitalize the bank, the only way they would convene a meeting was by press. But this pressure exerted on by the Court ruling would not in my view exempt them from the provisions of Article 50 of the Memorandum & Articles of Association which required notice of every meeting to be in writing. While one would say the method of convening the meeting was in breach of the Memorandum & Articles of Association, the action was inevitable in response to a Court directive to capitalize the bank within 2 days.

As for the other meetings, PW2 said some of the meetings were being called over the radio. He did not however specify which of these meetings were called by radio.

In my view, the Plaintiff, a renowned lawyer would certainly have refused to attend meetings which were inappropriately convened. The meeting of the 2nd November 1996 – Exhibit P.4 was attended by 60 members and none of them complained that the meeting had been badly convened. The Plaintiff attended and was No. 14 on the list of members.

He participated and contributed with recommendations and to the resolutions that authorized the Board of Directors to capitalize, to negotiate with Bank of Uganda and to attract giant investors and to change the name of the company to another suitable name so as to trap more deposits from Kampala and adjacent communities .

He raised no question as to the illegality of the meeting. I suppose his attendance and participation in the meeting was because it had been convened in accordance with the provisions governing notices of general meetings as provided in Article 50 of the Memorandum & Articles of Association – Exhibit P.7 which dealt with the report of the activities of the board as authorized in Exhibit P.4 was particularly a very productive meeting in which the change of the name of the bank was reported.

The Plaintiff is said to have commended the team work spirit of the directors in rescuing the bank after the fraud that hit it; thanking the Chairman for his diligence and special interest in sustaining the bank, together with the bank management for having detected fraud and not being involved in the same.”

The Plaintiff must have attended this meeting and participated in it because it was convened within the Articles governing meetings of the bank since there is no other complaint anywhere in the proceedings that the manner of convening the meetings had been contrary to that provided in the Memorandum & Articles of Association.

It is therefore my finding that the meeting that was called 2 days after the Judge had directed capitalization of the bank was in breach of Article 50 of the Memorandum & Articles of Association. I however also find that there is no evidence to show that these other meetings were unlawfully convened.

Turning to the issue of whether National Bank of Commerce Ltd exists in law, a resolution to change the name of Kigezi Bank of Commerce to National Bank of Commerce (U) Ltd was reached on 17th February 1997 and a certificate of change of name from Kigezi Bank of Commerce to National Bank of Commerce (U) Ltd was issued by the Registrar on 7th March 1997 – Exhibit P.10 and the necessary notice for publication in the Uganda Gazette issued – Exhibit P.11 as required under Section 20 of the then Companies Act Cap 85.

When PW2 himself a renown banker who had worked with Bank of Uganda for 4½ years and Uganda Commercial Bank for a similar period was asked whether National Bank of Commerce had been approved by the Central Bank he replied, *“it would have to be otherwise they could not trade under that name without the approval of the Central Bank.”*

The fact that the bank went through the procedure of changing its name, fulfilling all the legal requirements and also working under the

supervision of the Central Bank, it can only be said that National Bank of Commerce (U) Ltd was lawfully in place and was lawful in existence. It must be in recognition of this that when the Plaintiff amended his plaint, he made National Bank of Commerce the 5th Defendant.

In Paragraph 3 of the amended plaint, he described it in the following words:

“The 5th Defendant is a body corporate and is currently under liquidation.”

The Plaintiff recognized its incorporation. In view of the above, I find that National Bank of Commerce (U) Ltd exists in law.

As to whether this caused any loss or damage to the Plaintiff which comprised Issue 6, the change of the name of a company does not change the rights of the shareholder and therefore the mere change could not occasion loss or damage of the shareholders. The change of name did not therefore cause a transfer of assets or shares to another company where the Plaintiff had no access because its only the name that changed. In this I am fortified by Section 20(4) of the Companies Act Cap 85.

The Plaintiff himself did not give any evidence on what was lost. He did not specify how much in special damages nor show that he would have been in a better position than he was if the change of name for the sale of shares for purposes of capitalization had not occurred.

General damages are awarded for purposes of putting a Plaintiff in the same or almost same position he would have been had the wrong complained of not been occasioned by the Defendant.

In this case, attempts to pay dividends to the Plaintiff were made but rejected by him - Exhibit D.1. There being no proof that the Plaintiff incurred loss because of the activities of the Defendants, it is my finding that no loss or damage was occasioned to the Plaintiff.

In his pleadings, the Plaintiff claimed that the 1st, 2nd and 3rd Defendants had behaved in a dishonest and fraudulent manner in the assignment of Kigezi Bank of Commerce's goodwill together with its physical intellectual property rights to a non incorporated body called National Bank of Commerce. Further that without a general notice to the members of Kigezi Bank of Commerce but with notice to only a few selected ones, falsely and fraudulently represented to the Registrar of Companies that Kigezi Bank of Commerce had changed from its former self to a new entity called National Bank of Commerce. That the constitution of a fictitious company called National Bank of Commerce was fraudulent. Issues of fraud must not only be specifically pleaded but must also be specifically proved. The change of the company name and the subsequent sale of shares was done following resolutions obtained from meetings which the Plaintiff himself attended, participated, contributed, appreciated and in certain instances thanked members of the Board of Directors for the manner in which they were running the company and averting fraud. On the issue of National Bank of Commerce not being incorporated, the Plaintiff himself in Paragraph 3 of his amended plaint referred to 5th Defendant as a body corporate.

He cannot therefore turn around and call it a fictitious company.

On the issue of whether there was a new entity that had changed from its former self, it is my finding as seen earlier in this judgment that the change of name did not change the operations of the company.

As for its change from a private company limited by shares to a public company limited by shares, the change was formally done after a resolution as evidenced by Exhibit P.9.

In none of the foregoing was fraud proved against the 1st, 2nd and 3rd Defendants. Everything that was done was done in full support of the general meetings and authority that the shareholders gave to the Board of Directors.

In view of the foregoing, I find that the 1st, 2nd and 3rd Defendants did not act fraudulently. As for the Registrar of Companies, his part of registering the change of name and change of company from private company limited by shares to a public company limited by shares together with the amended Memorandum & Articles of Association was done because the board presented resolutions and amended Memorandum & Articles of Association which had been duly sanctioned by the shareholders in the general meeting and the board.

Fraud, having not been proved by the Plaintiff against any of the Defendants, I find none of the Defendant's actions fraudulent.

It is therefore my finding that save for one meeting which was as earlier seen in this judgment called with undue regard to the Memorandum & Articles of Association of Kigezi Bank of Commerce the Defendants did not otherwise disregard the Memorandum & Articles of Association. It is also my finding that the change of name of Kigezi Bank of Commerce to National Bank of Commerce (U) Ltd has not been proved to be fraudulent or unlawful.

It is further my finding that the distribution of shares after the change of name was consequent upon the sanctioning of increasing the shares of

the company for purposes of capitalization and it was those extra shares which were open to purchase by investors.

The Plaintiff also prayed that Kigezi Bank of Commerce repossesses all its property that was disposed of as a result of the purported creation of National Bank of Commerce, it is my holding based on what I have already said above, that the change of name was only in the name and that the bank has never disposed of any property and that whatever profit was made by National Bank of Commerce remained the bank's property albeit under a different name.

Lastly, on the Plaintiff's prayer that the 1st, 2nd and 3rd Defendants be held personally liable for loss suffered by Kigezi Bank of Commerce since the creation of National Bank of Commerce, I hold that since the change of name did not change the company there could be no loss by one company to the other and therefore none of the Defendant's is found liable to make good any loss.

In the sum total, the Plaintiff having failed to prove liability of the Defendants, this matter is accordingly dismissed with costs.

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David K. Wangutusi
JUDGE

Date:

10/09/14

9:15am

- Mr. Byamugisha together with Mr. Muwema for the Defendants
- Mr. Orono for the Plaintiffs present
- Mr. F. Twineyo for the Defendant No. 4. h/b for Mr. Earnest Ssembatya
- Juliet Kamuntu – Court Clerk

Court: Judgment delivered on request by Hon. Justice David Wangutusi

Orono: We have instructions to appeal.

Court: File be placed before the trial Judge on an appropriate date for such leave.

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Opesen Thadeus
ASST. REGISTRAR

Date: 10/09/2014