



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

COMPANY CAUSE NO. 011 OF 2019

IN THE MATTER OF MONEYLENDERS ASSOCIATION OF UGANDA LIMITED

and

IN THE MATTER OF THE COMPANIES ACT No. 01 OF 2012

1. MONEYLENDERS ASSOCIATION OF UGANDA LIMITED

2. MK FINANCIERS LIMITED:.....:APPLICANTS

VERSUS

UGANDA REGISTRATION SERVICES BUREAU:.....: RESPONDENT

BEFORE: HON. MR. JUSTICE RICHARD WEJULI WABWIRE

RULING

The Applicants brought Company Cause **no. 011 of 2019** by Notice of Motion under Article 28(1), 4, 42,139(1) of the Constitution of the Republic of Uganda, Sections 291 and 292 of the Companies Act No. 1 of 2012, S.33 of the Judicature Act and O.38 r. 5(d) of the Civil Procedure Rules (CPR) seeking for orders that;

- a. The Ruling of the Respondent dated 27th February 2019 by Birungi Denis, a Registrar of Companies (except the decision that the membership of the 2nd Applicant in the 1st Applicant was not terminated) be set aside.
- 25 b. The 1st Applicant's Resolutions and notification of directors and secretary dated and filed on 28th June 2018 be reinstated on the Company Register.
- c. The costs of this Application be paid by the Respondent to the Applicants.
- 30 The Application is supported by the Affidavit of Male H. Mbirizi K. Kiwanuka, the 1st Applicant's General Secretary and the 2nd Applicant's Managing Director, dated 28th February 2019. The Respondent (URSB) opposed the Application and filed an Affidavit in Reply dated 30th August 2019 sworn by Birungi Denis, a Registrar of
- 35 Companies at the Respondent.

At the hearing of this Application, the Applicant was represented by Male H. Mbirizi K. Kiwanuka, the 1st Applicant's General Secretary and 2nd Applicant's Managing Director while the Respondent was represented by the Respondent's legal department.

40 The following issues were agreed upon by the parties;

1. Whether the Respondent's Affidavit in Reply is properly before court?

- 45 2. Whether there was any valid Application/Complaint and whether the purported complaint could be entertained by the Respondent?
3. Without prejudice to the above, whether the Respondent acted within the law and proper analysis of the facts in finding that the 2nd Applicant's Managing Director was properly terminated from the position of the 1st Applicant's General Secretary?
- 50 4. What remedies are available to the parties?

Both parties addressed court in written submissions. In their written submissions, the Respondent raised two preliminary objections.

I will now proceed to resolve the issues framed starting with the preliminary objections raised by the Respondent regarding;

- 55 1. unauthorized institution of the suit by the Applicant
2. that the appeal is instituted against a wrong party

Preliminary Objection 1

Unauthorized institution of the suit by the Applicants.

60 The Respondents contended that initiation of the suit was not duly authorised. They submitted that the Applicants are both legal entities, separate from their members and cannot, as is the case here, be represented in a suit without express authority to do so.

Counsel further submitted that the Company record bears neither Minutes nor Resolution authorizing Mabirizi to represent the
65 Applicants, which renders his acts null and void and the Application

incompetent. He also pointed out that whereas the 2nd Applicant is a member of the 1st Applicant, the 1st Applicant had terminated the services of Mabirizi who is also the Managing Director of the 2nd Applicant, MK Financiers, and as such the 1st Applicant cannot have
70 ratified his actions.

In reply Mr Mabirizi, appearing as the Applicants' representative, stated that the Application was filed by the Applicants and Mabirizi is their Agent. That according to the law it is the Company directors who transact business and carry out activities of the Company on
75 behalf of the Company. That when a Company desires to file an action in court, it can do so in person through its directors or appoint an advocate appointed by its directors. That in this case the Applicants chose to appear in person through its Agent the General Secretary of the 1st Applicant and Managing Director for the 2nd Applicant. He
80 prayed that the objection be disallowed with costs.

I have considered the parties' submissions and authorities relied on. It should be noted that in the case of **Construction Engineers and Builders Ltd V. The New Vision Newspaper & 3 others, Civil Suit No. 67 of 1991** Okello. J, as he then was, distinguished the case of
85 **Bugerere Coffee Growers Ltd vs. Ssebaduka and Another (1970) 1 EA 147** which required companies to authorize the commencement of legal proceedings by passing a Resolution to that effect. The learned Judge, as he then was, stated that a Resolution of the Company or Board of Directors is not required to give authority to file
90 a suit in the name of a Company. This case is consistent with **0.29**

R.1 of the CPR which allows a secretary/director/other principal of the Company to sign on a pleading on behalf of the Company.

I have taken cognizance of the Applicants' Representative's submission that when the Rules Committee intended filing a Resolution as a condition precedent, they expressly provided for such as in R.23 (2) of the Court of Appeal Rules which provides that a corporation may appear either by advocate/director/manager or secretary of a Company appointed by Resolution under the seal of the corporation which should be lodged with the Registrar.

On the other hand, the Respondent's Counsel cited the case of **Nakivubo Road Old Kampala Kisekka Market Vendors Ltd and others VS URSB and others, Miscellaneous Cause No. 109 of 2015** where court relied on the case of **Bugerere Coffee Growers Ltd vs. Ssebaduka and Another (1970) 1 EA 147** to find that a Company has to give authorization to commence legal proceedings by passing a Company Resolution.

At the time when the case of **Nakivubo Road Old Kampala Kisekka Market Vendors Ltd & others vs. URSB & others, Miscellaneous Cause No. 109 of 2015** was decided, the position in the case of **Bugerere Coffee Growers Ltd vs. Ssebaduka and Another (1970) 1 EA 147** had already been overturned by Justice Okello in **Construction Engineers and Builders Ltd vs. The New Vision Newspaper & 3 others, Civil Suit No. 67 of 1991**. For that matter, it would appear that in deciding the case of Nakivubo Road (supra), Her Ladyship Justice Lydia Mugambe did not address her mind to

the case of Construction Engineers and Builders Ltd (supra) which had already overturned the position in Bugerere Coffee Growers Ltd (supra) in which Justice Okello, as he then was, had relied on the decisions of Chief Justice Wambuzi and Justice Lubogo, as they then
120 were, in **United Assurance Co. Ltd V AG, CA 1 of 1986.**

Whereas I find no reason to deviate from the High Court decision in **Construction Engineers and Builders Ltd** (supra), I am also alive to the fact that the earlier decision in **United Assurance Co. Ltd V AG, CA 1 of 1986** which was relied upon in **Construction Engineers
125 and Builders Ltd** (supra) is a binding authority on this Court.

The position that a Resolution by the board of directors is not a mandatory prerequisite for a suit to be instituted on behalf of the Company is therefore a foregone position settled by the learned CJ Emeritus Sam Wambuzi in **United Assurance Co. Ltd V AG, CA 1
130 of 1986** and cited by Okello J, as he then was, in **Construction Engineers and Builders Ltd V. The New Vision Newspaper & 3 others, Civil Suit No. 67 of 1991.**

Whereas however a Board Resolution was not necessary for the Applicants to file their suit, my mind is however drawn to the
135 provisions of O.3 Rules 1 and 2(a) of the CPR which provide that;

“Appearances, etc. may be in person, by recognized Agent or advocate.”

Any Application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court

140 may, except where otherwise expressly provided by any law for
the time being in force, **be made or done by the party in
person, or by his or her recognized Agent, or by an
advocate duly appointed to act on his or her behalf;** except
that any such appearance shall, if the court so directs, be made
145 by the party in person.

Rule 2. Recognized Agents.

The recognized Agents of parties by whom such appearances,
Applications and acts may be made or done are—

(a) **Persons holding powers of attorney authorizing them to
150 make such appearances and Applications and do such acts on
behalf of parties;**

This means that whereas a Board Resolution is ordinarily not a
prerequisite for a suit or application to be instituted on behalf of the
Applicants, this provision deals with the aspect of representation as
155 an Agent or advocate.

The provision requires that an Agent, in this case Mr Mbirizi, should
be **holding powers of attorney authorizing him to appear or file
suits on behalf of the Applicants.** In the alternative he could only
do so as **an Advocate duly appointed to act on their behalf.**

160 It is indeed a settled position of the law in this jurisdiction, that
Resolution to commence a suit is not a necessary pre-requisite,
however, a lawyer or Agent who goes out to commence action on
behalf of a company must, in the case of a lawyer be duly appointed,
and if he is an Agent, as Mbirizi says he is, then he should be

165 mandated by a Power of Attorney issued by the Principal bringing the
action and on whose behalf he acts.

Mabirizi did not present or claim to have a Power of Attorney to that
effect and is therefore an Agent without the requisite mandate as
required by the law. On the other hand, save for the averment that
170 he is a lawyer, there is evidence to indicate that he is a duly appointed
Advocate with valid instructions to appear as such, on behalf of the
Applicants.

In a persuasive decision in the case of **Allied Irish bank Plc. V Aqua
Fresh Fish Ltd [2018] IESC 49** and relied upon by this court in **MK
175 Financiers Ltd V N. Shah & Co. Ltd Taxation Appeal 01 of 2018,**
in which the question of the entitlement of a Company to be
represented in proceedings in court by a person who is not a lawyer
with a right of audience was considered, court upheld the principle
that a director indeed has a separate legal personality from the
180 Company and unless duly qualified and mandated cannot appear
and have audience in court on behalf of the Company. He cannot
represent the Company in legal proceedings.

Applied to the instant case, Male Mabirizi who contends that he is an
Agent of the Applicants by virtue of his position as General Secretary
185 and Managing Director of the 1st and 2nd Applicants respectively,
cannot in law, unless he is duly mandated, appear and have audience
in Court on their behalf.

Additionally, Mabirizi has stated in his Affidavit in support of the
Application that he is a lawyer. However, the prerequisite for
190 representation of a party in court is that one is an Advocate licensed

to practice in the Courts of Judicature in Uganda. His credentials for appearance are that he is a lawyer and Agent of the Applicants, quite distinct from an Advocate, a status he neither claims nor seems to be in this matter.

195 These aforementioned key prerequisites have not been met and consequently, Mr Mabirizi has no mandate to institute this suit and appear and have audience in Court on behalf of the Applicants.

This position is a long established and well anchored practice and principle of the law which I am in agreement with and do uphold.

200 Interestingly, the decision which the Applicants seek to challenge was the 1st Applicant's termination of Mabirizi's services as its General Secretary. Male Mabirizi is the Managing Director of the 2nd Applicant, which is a member of the 1st Applicant. He seeks to set aside the Respondent's decision which upheld his dismissal by the
205 1st Applicant from the position of General Secretary in the 1st Applicant and yet he contends that he brought this action on behalf of the 1st Applicant.

It is inconceivable that the 1st Applicant would commence a suit to challenge a Ruling which upheld its decision to terminate Mr.
210 Mabirizi. This would potentially lead to an absurdity in justice if the suit were allowed to proceed. One cannot represent a party by whom he is aggrieved, in the same matter.

I therefore find merit in and indeed uphold the 1st preliminary objection.

215 **Preliminary Objection 2**

That the Applicants are appealing against a wrong party

In their second preliminary objection, the Respondent contended that Complaint No. 1/2019 which was being appealed against, was between the 1st Applicant, Mibirizi and the 2nd Applicant and not the Respondent who is a quasi-judicial body. They submitted that the right Respondent is the 1st Applicant.

On the other hand the Applicants' representative submitted that the Respondent is not a judicial body who could enjoy immunity from its decision. That as a quasi-judicial body, the Respondent is bound by its decision and liable to be challenged.

This Application is brought under **S.291 and 292 of the Companies Act 2012** which give court power to review any decision of the Registrar relating to rectification of the register. S.292 gives Court the same discretionary powers as a Registrar. In exercising their discretion, the Registrar or anybody exercising the discretion enjoys a level of immunity less of which would affect decision making.

Be that as it is, an appeal cannot be commenced against a presiding officer of a quasi-judicial body unless it relates to personal conduct or judicial review of the quasi-judicial body. However, the facts of this case show that the appeal was in respect of whether the conclusion reached by the Respondent was right or wrong and therefore sought to set it aside. As this does not relate to the legality of the decision or

the personal conduct of the Respondent, it does not therefore amount to judicial review.

240 The choice of party, actions and submissions made for the Applicants are therefore misconceived.

I am in agreement with Counsel for the Respondents that the right Respondent in this case ought to have been the 1st Applicant who was the successful party in Complaint No.1/2019.

245 The second preliminary objection is in turn upheld.

In the event, I find no justifiable motive to proceed to address the issues agreed upon as the professed Agent instituting the suit and appearing on behalf of the Applicants has no locus standi to do so and the Respondent against whom the Applicants purport to proceed
250 is a wrong party.

Company Cause No. 11 of 2019 is accordingly dismissed and costs are awarded to the Respondent.

Delivered at Kampala this 10th day of July 2020.

255 Richard Wejuli Wabwire

JUDGE

Present in Court:

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260 3.

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