

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

IN THE MATTER OF THE COMPANIES ACT, 2012

AND

IN THE MATTER OF AN APPLICATION BY CLUB D’AFFAIRES DE KAMPALA LIMITED
TO RECTIFY ITS RECORDS IN THE REGISTRY OF COMPANIES

COMPANIES CAUSE NO. 0034 OF 2023

(Before: Hon. Lady Justice Patricia Mutesi)

RULING

Background

This is an ex parte application brought by chamber summons under **Section 125(1)(b) of the Companies Act, 2012** and **Order 38 rule 4 of the Civil Procedure Rules S.I. 71-1**. The application seeks an order directing the Registrar of Companies to rectify the applicant’s records to reflect the register of the members as per annexure A to the application and an order permitting the persons named in annexure B to the application to act as the applicant’s Board of Directors for the purpose of ratifying all the applicant’s records at the Company registry. Briefly, the application is based upon the grounds that:

1. The applicant has defaulted in updating documents related to its registration since its incorporation in 2017.
2. It is not possible to trace some of the applicant’s original members since some of them left the country and others closed business in Uganda during the COVID-19 pandemic.
3. The applicant is a non-profit company limited by guarantee and it brings together businesses in Uganda wishing to develop their relations with France. Unfortunately, its operations are at a standstill because it is unable to register any documents with the company registry.

4. It is in the interest of justice that this Honourable Court grants the orders sought herein for the continuity of the operations of the company.

The application is supported by two affidavits. The first affidavit was sworn by Mr. Thomas Pelletier, the Managing Director of CFAO Motors (U) Ltd, a member of the applicant. He explained the process of the applicant's inception and incorporation. He clarified that although the subscribers to the applicant's memorandum and articles of association were individuals, the true intended subscribers and members were the companies/entities which those people represented. He added that since the applicant's incorporation, there have been various changes in its directorship and membership which were not communicated to the Registrar of Companies because they required endorsement from the applicant's founding members who are currently untraceable. Finally, he stated that this impasse has hindered the applicant from fulfilling its compliance obligations.

The second affidavit was sworn by Ms. Lukia Otema, the legal representative of KLM Royal Dutch Airlines (AF/KLM), also a member of the applicant. She reiterated that all the signatories to applicant's memorandum and articles of association, including her, did so on behalf of the companies/entities they represented and not in their personal capacities.

Issue arising

1. Whether this application should be allowed.

Representation and hearing

At the hearing of the application, the applicant was represented by Ms. Banduru Diana from M/S Bluebell Legal Advocates. Although this was an ex parte application, the Registrar of Companies was duly served with the application and she entered appearance at the hearing through her Ms. Cynthia Mpoza, a Senior Legal Officer at Uganda Registration Services Bureau.

Determination of the issue

Section 119 of the Companies Act, 2012 requires a company to keep an accurate register of its members and to notify the Registrar of Companies about any and all

changes in that register. Additionally, Section 125(1)(b) of the Companies Act, 2012 empowers this Court to rectify a company's register of members where default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company.

Counsel for the applicant acknowledged that at the applicant's incorporation, an error was made in the memorandum of articles of association and individuals were referred to as the subscribers instead of the legal entities they represented. She explained that several changes have occurred in the applicant's membership and directorship but that the applicant is unable to track down all its subscribers to formally sanction these changes. She further argued that since the applicant is a non-profit organization offering no personal gain to its members, this application is not driven by any self-serving or profit-seeking motives. Ms. Cynthia Mpoza who represented the Registrar of Companies at the hearing confirmed that the Registrar of Companies has no objection to the orders sought in this application.


I have carefully considered this matter and I am satisfied with the contents of the affidavits filed and the representations of counsel at the hearing. There is an apparent error in the applicant's memorandum and articles of association whereby individuals were referred to as the "subscribers" thereto, yet it appears that the true intended subscribers and members were the legal entities which those individuals represented at the time. Additionally, I am satisfied with the evidence that some of the applicant's individual founders can no longer be traced. It is a general principle of company law that once a member or officer of a company disappears and can no longer be traced, it is reasonable for the Court to allow the available members and, or, officers to conduct the affairs of the company as they deem fit in order to further the company's objectives (see the decision in **Re NICO Ltd, High Court Miscellaneous Application No. 33 of 1995**).

Furthermore, since the Registrar of Companies has given a "no objection" to the orders sought in the application and applicant is a non-profit organization which is primarily focused on bringing together companies and businessmen in Uganda to develop stronger relationships with France, I am convinced that allowing this application will not prejudice any of the applicant's stakeholders. Consequently,

the Court finds that it is just and reasonable to allow this application in the interest of the proper running of the applicant's affairs. This application is, therefore, allowed with the following orders:

- i. An order doth issue directing the Registrar of Companies to rectify the records of the applicant to reflect the register of members which was attached to the affidavit in support of the application as annexure A.
- ii. An order doth issue permitting the 6 (six) persons whose names appear in annexure B to the affidavit in support of the application to act as the Board of Directors of the applicant for the purpose of rectifying all the applicant's records at the Companies registry.
- iii. An order doth issue directing the Board of Directors sanctioned in (ii) above to hold a general meeting of the applicant at any time, not exceeding 6 (six) months from the date of this decision, for the regularization of their appointment by the members and for the tabling of any other necessary business before the members.
- iv. The applicant shall bear its own costs.

Dated this 27th day of November 2023


.....

Hon. Justice Patricia Mutesi

JUDGE