

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

**MISCELLANEOUS APPLICATION No. 0530 OF 2023**

5 (Arising from Civil Suit No. 0033 of 2022)

1. CHEN JIANWEN }  
2. CHEN JIANTING } ..... APPLICANTS  
3. CHEN WEIJIAN }

**VERSUS**

10 1. BANG CHENG INVESTMENT CO. LTD }  
2. LI KANGYUAN } ..... RESPONDENTS  
3. LI JIANGUANG }  
4. UGANDA REGISTRATION SERVICES BUREAU }

15 **Before: Hon Justice Stephen Mubiru.**

**RULING**

a. Background.

The 1<sup>st</sup> respondent is a company incorporated in Uganda on 23<sup>rd</sup> January, 2015. By a nominee  
20 shareholding agreement signed on 25<sup>th</sup> April, 2015 the applicants were to be given 71% stake in  
the 1<sup>st</sup> respondent which was to be held on their behalf by their sister, Ms. Chen Jian Fang, who  
at the time was a majority shareholder holding 90% of the shares while the 3<sup>rd</sup> respondent held  
the remaining 10% of the shares. Subsequently on 25<sup>th</sup> September, 2019 the applicants entered  
into an investment agreement with the 3<sup>rd</sup> respondent (on behalf of the company) to invest a total  
25 of ¥ 57,919,927 Yuan in the 1<sup>st</sup> respondent, contributed to in sums of; ¥ 8,612,700 by the 1<sup>st</sup>  
applicant, ¥ 7,464,300 by the 2<sup>nd</sup> applicant, ¥ 4,306,300 by the 3<sup>rd</sup> applicant, and ¥ 8,325,600 by  
the 3<sup>rd</sup> respondent.

The 1<sup>st</sup> respondent undertook business of mining and operation of a stone quarry in the process of  
30 which it acquired land comprised in Bulemezi Block 60 Plot 231, LRV 4546 Folio 5 at  
Nampungwe; Kyadondo Block 121 Plot 2927, LRV WAK 5553 Folio 9 at Nangabo; and  
Kyadondo Block 121 Plot 2928, LRV WAK 5553 Folio 14 at Nangabo. The company also  
acquired over ninety “Sino Truck” Lorries for its operations. The business of the company

thrived to the extent that during the year, 2016 the applicants received a sum of ¥ 4,306,300 as the return on their investment in the 1<sup>st</sup> respondent.

5 Until the year 2020 with the breakout of the Covid19 pandemic and the associated lock-downs, the applicants used to make regular visits to Uganda to appraise the progress of the business, which was at all material time primarily managed by the 3<sup>rd</sup> respondent. The relations between the applicants and the 3<sup>rd</sup> respondent became strained following the lifting of the lock-down when the applicants travelled to Uganda during the month of September, 2021 but were denied access to the 1<sup>st</sup> respondent's business premises upon instructions of the 2<sup>nd</sup> respondent. Upon a  
10 criminal complaint made to the police by the 2<sup>nd</sup> respondent, the applicants were arrested and charged with the offence of criminal trespass. The applicants have since the year 2019 not received any return on their investment in the 1<sup>st</sup> respondent. The applicants contend that the 3<sup>rd</sup> respondent has since 2016 not been physically present in the country and for some time had practically left management of the company to his son, the 2<sup>nd</sup> respondent who is was sole  
15 signatory to all the company's bank accounts. When queried by the applicants concerning suspected forgeries of the 3<sup>rd</sup> respondent's signature, the 2<sup>nd</sup> respondent too fled back to China and currently the management of the company is very unclear.

b. The application.

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The application by Notice of motion is made under the provisions of section 33 of *The Judicature Act*, section 98 of *The Civil Procedure Act* and Order 38 rule 5 (d) of *The Civil procedure Rules*. The applicant seeks an order directing the 4<sup>th</sup> respondent to take over management of the 1<sup>st</sup> respondent company and its assets, until the final determination of the  
25 suit. It is the applicants' case that upon incorporation of the 1<sup>st</sup> respondent on 23<sup>rd</sup> January 2015, the applicants entered into a nominee sharing holding agreement on the 25<sup>th</sup> April, 2015 wherein it was agreed that Chen Jian Fang (sister to the applicants and wife to the 3<sup>rd</sup> respondent) was to hold 71% shares in the 1<sup>st</sup> respondent on behalf of the applicants for which they paid ¥ 28,709,227 (Chinese Yuan, twenty eight million seven hundred and nine thousand, two hundred  
30 twenty seven). On the 25<sup>th</sup> September, 2019 to further concretize their interest in the 1<sup>st</sup> respondent, the applicants entered into another investment agreement with the 3<sup>rd</sup> respondent (on

behalf of the company) to invest an additional amount of ¥ 28,708,900 (Chinese Yuan, twenty eight million seven hundred and eight thousand nine hundred) in the 1<sup>st</sup> respondent Company, bringing the total investment to ¥ 57,919,927 Yuan.

5 After the initial investment was done, the 1<sup>st</sup> respondent in 2018 paid out dividends totaling ¥ 5,949,579 to the Applicants. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents periodically communicated and furnished the applicants with information regarding the business of the 1<sup>st</sup> respondent. Due to the subsequent outbreak of the covid-19 pandemic, the applicants were unable to travel to Uganda during the years 2020 but informed the 2<sup>nd</sup> and 3<sup>rd</sup> respondents of their intention to travel to  
10 Uganda and check or inspect the business. Once they communicated that intention, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents cut off ail communication with the applicants. The applicants then decided to physically come to Uganda however upon arrival at the stone quarry and the mine; they were denied entry to the premises on the express instructions of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. It is the applicants' contention that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have been mismanaging the 1<sup>st</sup> respondent  
15 company evidenced by several actions undertaken by them without the consent of their business partners.

Without consent of the applicants the said Chen Jian Fang who was holding shares of the applicants transferred them to the son (the 2<sup>nd</sup> respondent). The applicants contend that the  
20 actions of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents who are shareholders in the 1<sup>st</sup> respondent company have caused the applicants, who are the beneficial owners, heavy financial loss. The actions of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents portray a pattern of incompetent management actions which are wrongful, negligent and arbitrary which will adversely affect the efficient accomplishment of the company's goals. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents have since run away from Uganda leaving the  
25 management of the 1<sup>st</sup> respondent in the hands of unknown people, hence this application.

c. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents' affidavit in reply;

In its affidavit in reply sworn by the 3<sup>rd</sup> respondent as sole director of the 1<sup>st</sup> respondent, the 1<sup>st</sup>,  
30 2<sup>nd</sup> and 3<sup>rd</sup> respondents aver that the applicants are not shareholders in the 1<sup>st</sup> respondent and therefore do not have any locus to bring the instant application. The applicants are not members

of the company and they have no locus to inquire into the management and affairs of the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent denies that the applicants ever invested ¥ 28,708,900 or any other sums of money in the 1<sup>st</sup> respondent. The 1<sup>st</sup> and 2<sup>nd</sup> respondent have never dealt with the applicants and they are not parties to the Partnership Deed signed and enforceable in China  
5 between the applicants and the 3<sup>rd</sup> respondent. A company can be managed by the Directors and its staff as deemed convenient by its directors not the whims of onlookers. This Court has no jurisdiction to entertain this application and it should be dismissed with costs.

d. Submissions of counsel for the applicant;

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M/s Ahamyia Associates & Advocates on behalf of the applicant submitted that the affidavit in reply states that the 2<sup>nd</sup> respondent swore the affidavit at Kampala on 12<sup>th</sup> May, 2023 yet he was not in the country at that time. By the initial Company memorandum of association, Chen Jian Fang held 90 shares on behalf of the Applicants and the 3<sup>rd</sup> respondent 10 shares. The applicants  
15 invested a total of ¥ 57,919,927 in the 1<sup>st</sup> respondent. Upon becoming profitable, the 1<sup>st</sup> respondent Company subsequently paid out dividends to the applicants amounting to ¥ 5,949,579 during the year 2019. The shareholding nominee agreement, pay-out of the dividends and the investment agreement clearly show that the applicants are beneficial owners and have an adequate interest in the 1<sup>st</sup> respondent company. As beneficial owners of the 1<sup>st</sup> respondent  
20 Company, the applicants have a sufficient interest in the subject matter of the suit and the application to found a cause of action.

Although the investment agreement, from which this Application arises was signed and was equally to be enforced in China, the place where the contract was to be performed or where the  
25 performance was to be completed is in Uganda, where the 1<sup>st</sup> respondent company was incorporated and established to realise the intentions of the applicants, and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. This Court therefore has jurisdiction. Reference to “Bang Cheng International Investment company Ltd” in the investment agreement instead of “Bang Cheng Investment Company Limited” is a mere slip or typing error and is superfluous as the intention of the parties  
30 in their dealings is clear. The Uganda Registration Services Bureau can carry out other such activities such as temporarily taking over management of a company to ensure that the

incorporated entity is adhering to company regulations so that parties that may have interests in the company whether legal or equitable are protected.

The various actions of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents that are arbitrary and portray maladministration of the 1<sup>st</sup> respondent Company include; share transfer to the 2<sup>nd</sup> respondent's son by the 3<sup>rd</sup> respondent, making the 2<sup>nd</sup> respondent the majority shareholder in the 1<sup>st</sup> respondent company and sole signatory to the 1<sup>st</sup> respondent bank accounts without the consent of the applicant; authorizing the grant of a loan to the 2<sup>nd</sup> respondent amounting to shs.1,500,000,000/= without the consent and approval of the applicants and with no interest payable on the said amount; authoring the increase of the Company's share capital from shs. 280,000,000 /= without the consent and approval of the applicants; denying the applicants entry to the business premises of the 1<sup>st</sup> respondent Company and instituting criminal charges of trespass and threatening violence against the 2<sup>nd</sup> and 3<sup>rd</sup> applicants which shows that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have effectively excluded the applicants from the business dealings of the company yet they invested their money in the 1<sup>st</sup> respondent Company expecting returns on the same. The internal management of the 1<sup>st</sup> respondent company has violated several regulations in *The Companies Act* that are detrimental to the interests of the applicants who are the beneficial owners of the company. It is imperative that the company's assets be protected and managed by the 4<sup>th</sup> respondent, who is mandated by law to manage and administer companies as a going concern for the benefit of the members, protection of the business assets and revenue to the Ugandan Government, so as to meet the ends of justice.

e. Submissions of Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

M/s Kampala Tax Advisory Centre-Legal Department on behalf of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents submitted that the applicants have not adduced evidence to show that the 2<sup>nd</sup> respondent was not resident in Uganda and therefore was absent from the country at the time of signing the affidavit in reply. The deponent signed the affidavit in reply and is all the time fully in charge of the 1<sup>st</sup> respondent's operations. The applicants must prove that they are members of the company before they can sue the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents. Only members of a company can sue. The applicants are not subscribers to the articles or memorandum of association of the 1<sup>st</sup> respondent. The applicants have not furnished this Court with evidence that they have share certificates or

receipts of share purchase in the 1<sup>st</sup> respondent. Equally the applicants have not adduced evidence that they are in the process of transmitting shares to themselves from the 1<sup>st</sup> respondent. The applicants cannot falsely claim to be promoters of the company because of a partnership agreement signed between the applicants and the 3<sup>rd</sup> respondent on 25<sup>th</sup> September 2019, which is 4 years after the 1<sup>st</sup> respondent was incorporated and existent. The Company intended to be incorporated is named in the Investment Agreement as “Bangcheng International Investment Company Limited,” which is different from the 1<sup>st</sup> Respondent, “Bangcheng Investment Company Limited.” The agreement was made in 2019 yet the company was incorporated in 2015. The Investment Agreement relied on by the applicants is binding on the parties who signed it and not the respondents. The 1<sup>st</sup> and 2<sup>nd</sup> respondents never executed any pre-incorporation contracts with the applicants.

Uganda Registration Services Bureau cannot be given any role in the management of the company because their roles do not extend to managing companies which are a going concern (solvent companies). There is no report or evidence to prove that the 1<sup>st</sup> respondent’s affairs are being conducted in a prejudicial manner warranting the Registrar of Companies to take remedial action. Management of the company does not require a fixed place of abode for directors for the company to operate. The company has its officers who are competent and professional staff. The management currently is doing an excellent job. The management of the 1<sup>st</sup> respondent is carrying on day to day management of the company. The applicants, not even being creditor to the 1<sup>st</sup> respondent cannot qualify to bring an action against the company by calling upon the office of the Official Receiver to deal with a solvent company as if it the applicants are secured creditors. The 1<sup>st</sup> respondent is not an insolvent company nor is being wound up. Therefore the current application is misconceived, frivolous an abuse of court process.

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f. Counsel for the applicants’ submissions in rejoinder.

The applicants have locus standi to bring the application, by virtue of the nominee shareholding agreement which was signed on 25<sup>th</sup> April, 2015 between the applicants and Chen Jian Fang, the then majority shareholder holding 90%, giving shares to the applicants. Clause 2.4 of the agreement stated that upon payment of their respective contributions, the applicants would enjoy

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the rights of shareholders of the company and decisions regarding the company would be made in accordance with the agreement. Further, by conduct of the 1<sup>st</sup> respondent company in the year 2020 when it paid out dividends amounting to ¥ 5,949,579 to the applicants is estopped from denying that the applicants were not shareholders in the 1<sup>st</sup> respondent company. Since the 3<sup>rd</sup> respondent and Chen Jian Fang were shareholders in the 1<sup>st</sup> respondent Company, it is implied they were contracting on its behalf of thereby binding it to the contract.

g. The decision;

According to Order 15 rule 3 of *The Civil Procedure Rules*, the court may frame issues from all or any of the following materials; - (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the advocates of the parties; (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit; and (c) the contents of documents produced by either party. The court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed (see Order 15 rule 5 of *The Civil Procedure Rules*).

It is on that account that the Court proceeds to address the following issues; (i) whether the applicants have *locus standi* in the subject of dispute; (ii) whether this Court has subject matter jurisdiction over the dispute; (iii) whether the 4<sup>th</sup> respondent has the legal mandate to undertake management of the 1<sup>st</sup> respondent pending ongoing litigation between the parties; (iv) whether the orders sought can be granted by this Court.

(i) Whether the applicants have locus standi in respect of the subject of dispute;

Firstly, the issue of *locus standi* is a pure point of law. In determining such a point, the court is perfectly entitled to look at the pleadings and other relevant matter on record (see *Mukisa Biscuit v. West End Distributors* [1969] EA 696 and *Omondi v. National Bank of Kenya Ltd and others*, [2001] 1 EA 177). The term *locus standi* literally means a place of standing. It means a right to

appear in court, and, conversely, to say that a person has no locus standi means that he has no right to appear or be heard in a specified proceeding (see *Njau and others v. City Council of Nairobi [1976–1985] 1 EA 397 at 407*). To say that a person has no *locus standi* means the person cannot be heard, even on whether or not he has a case worth listening to.

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For any person to have *locus standi*, such person must have “sufficient interest” in respect of the subject matter of the proceeding, which is constituted by having; an adequate interest, not merely a technical one in the subject matter of the proceeding; the interest must not be too far removed (or remote); the interest must be actual, not abstract or academic; and the interest must be  
10 current, not hypothetical. The requirement of sufficient interest is an important safe-guard to prevent having “busy-bodies” in litigation, with misguided or trivial complaints. If the requirement did not exist, the courts would be flooded and persons harassed by irresponsible suits.

15 The purpose of the standing doctrine is to determine whether a person is the appropriate party to seek relief in respect of the subject matter of the litigation. In order to have standing to maintain legal proceedings in a Court of law, a party must be aggrieved by some action or omission of the adversary. To be aggrieved, a party must have a substantial, immediate and direct interest in the subject matter and outcome of the proceedings. Not only must the party desiring to initiate legal  
20 proceedings have a direct interest in the particular question litigated, but his or her interest must be immediate and pecuniary and not a remote consequence of the judgment. The interest must also be substantial. An interest is “substantial” when it surpasses the common interest of all citizens in procuring obedience to the law. For an interest to be “direct” there must be a causal connection between the matter complained of and the harm alleged. Finally, an interest is  
25 “immediate” where the causal connection is sufficiently close so as not to be remote or speculative.

The subject matter of the dispute between the parties, as gathered from their respective pleadings, is that the applicants, claiming to have made capital contributions of up to ¥  
30 57,919,927 to the 1<sup>st</sup> respondent’s business operations, under a nominee shareholding agreement signed on 25<sup>th</sup> April, 2015 and an investment agreement signed on 25<sup>th</sup> September, 2019, they



seek orders; for inspection of the 1<sup>st</sup> respondent's books of account, an inspection of the 1<sup>st</sup> respondent's operations, cash out their contributions to the 1<sup>st</sup> respondents, business undertakings, recovery of their return on investment, and enforcement of the investment agreement.

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This is essentially a suit for breach of the investment agreement in which specific performance, rescission and an account are sought as remedies, the latter of which typically is one taken to recover unpaid debts or to settle disputes over financial accounts, where there is an existing right to seek rendition of accounts having regard to the relationship between the parties. The right to seek rendition of accounts cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing does not know the exact amount due to him, as that will open the floodgate for converting several types of money claims into suits for accounts, or to avoid payment of Court fees at the time of institution. The claim for an account is recognised in law where a person suing has a right to receive an account from the defendant.

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Such a right can either be (a) created or recognised under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee, or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right, such as in suits for administration of any property, suits by a partner of a firm for dissolution of the partnership firm and accounts, suits by beneficiary against trustee(s), suits by a co-sharer against other co-sharer(s) who has/have received the profits of a common property, suits by principal against an agent, and suits by a minor against a person who has received the funds of the minor.

25 A suit for rendition of accounts lies only in specific cases, when a special relationship, such as principal and agent, bailor and bailee, guardian and ward, partner or trustee or receiver, subsists between the parties. The existence of fiduciary relationship between a plaintiff and defendant and the latter's obligation to render accounts, are *sine qua non* for maintainability of such a suit. Such relief does not arise out of a mere contractual relationship or because accounts may have to be examined in the course of a suit. The component of this suit that seeks rendition of an account is within the context of an attempt to seek specific performance of an investment agreement

between the applicants and the 3<sup>rd</sup> respondent. It is therefore a suit arising from alleged breach of the investment contract dated 25<sup>th</sup> September, 2019 to which the applicants are named as parties.

On the other hand the dispute traverses claims that would befit a derivative suit, such as the  
5 alleged maladministration of the 1<sup>st</sup> respondent Company. A derivative suit is one brought by a  
shareholder or group of shareholders on behalf of and in the name of the corporation against the  
corporation's directors, officers, or other third parties who breach their duties. As a plaintiff in a  
derivative suit, a person is required to: - be the corporation's shareholder or member at the time  
of the act or omission that forms the subject matter of the suit, or become a shareholder or  
10 member by operation of law; keep shareholder status during the entire proceedings; be in a  
position to fairly and adequately represent the interests of the shareholders or members similarly  
situated in enforcing the right of the corporation; and make a demand in writing requiring the  
corporation to take suitable action before the suit is filed (generally, a derivative suit can only be  
filed 90 days after written demand. But it may be initiated ahead of time if a) the corporation  
15 rejects the demand, or b) the corporation will suffer irreparable harm if they wait). Derivative  
suits involve wrongs against the corporation and not individual shareholders; therefore, damages  
do not go to the shareholders personally but to the corporation itself. To maintain that part of the  
suit, the applicants must have the status of shareholder or member of the 1<sup>st</sup> respondent.

20 According to section 47 of *The Companies Act, 2012* membership of a company is gained in two  
ways; (a) by being a subscribers to the memorandum of a company one is taken to have agreed to  
become members of the company, and on its registration it is obligatory to be entered as  
members in its register of members; and (b) a person who agrees to become a member of a  
company, and whose name is entered in its register of members. However, a person may  
25 subscribe to the memorandum of a company or agree to become a member of a company, and his  
or her name is entered in its register of members, for and on behalf of another. In such a case,  
although such a person is officially registered as the holder of shares in a company, he or she is  
only a designated nominee shareholder.

30 A nominee shareholder is the registered owner of shares held for the benefit of another person  
(the beneficial owner or the nominator) i.e. a person or company holding shares on someone

else's behalf. The main form of a nominee is a trustee holding shares on trust for beneficiaries or a company. The purpose of the nominee shareholder is basically to maintain confidentiality by ring fencing the identity of the beneficial/actual owner of shares from being publicly associated with that particular company. It is perfectly legal for a nominee to hold shares on behalf of actual  
5 shareholders. Under section 1 (a) of *The Companies Act, 2012* as amended by Act 16 of 2022 and Regulation 2 of *The Companies (Beneficial Owners) Regulations, 2023* define a "beneficial owner" as a natural person who ultimately owns or controls a company or a natural person on whose behalf a transaction is conducted in a company, and includes a natural person who exercises ultimate control over a company. While there is no obligated threshold for determining  
10 effective control, 25% in ownership of shares is commonly considered an acceptable and practical threshold to determine effective control. It is now a legal requirement for all companies to submit their beneficial holders of shares information at the Uganda Registration Services Bureau, with effect from 11<sup>th</sup> January, 2023.

15 The definition of a nominee covers anyone who votes or collects dividends on behalf of the beneficial owner. It also includes any natural person that has voting rights, invested initial capital investment or provided funding, has a right to annual profits or has the right to the assets of the legal person can be registered as a beneficial owner. In addition, any natural person who is entitled to appoint, replace, or terminate members of the board of directors / commissioners, or  
20 who is authorised or entitled to influence or control the legal person without any prior authorisation from any party, also qualifies as a beneficial owner, independently of their direct or indirect ownership of shares, voting rights, or capital.

Nominee shareholders should not be confused with proxy shareholders. A proxy shareholder  
25 stands in for a shareholder in their absence and has all the voting powers of the actual shareholder. As we shall see, that is not the case with nominee shareholders. The primary function of nominee shareholder is to maintain the anonymity of the real owner by taking their place in all public records relating to the company, in order to avoid possible reputational damage or to keep personal details such as month and year of birth and address off the public  
30 register. An overseas investor may also choose to use a nominee for simplicity and to reduce costs.

Normally, in a nominee shareholder arrangement, a legal confidential document (a declaration of trust) is drafted and signed by the nominee and held by the beneficial/actual owner. Nominee shareholders are not the owner of the shares and are appointed by the actual shareholder to represent him on his behalf. This document therefore would state that, the shares in the name of the nominee are only held by such nominee for and on behalf of the beneficial/actual owner, and that only the latter is entitled to all the rights and benefits arising from those shares and has the exclusive right to dispose them. The legal effect of such an agreement is that the nominee holds the shares on behalf of the shareholder in a “bare trust.”

Although share certificates are issued in the nominee’s name, since only they are registered as a member, a nominee shareholder is a shareholder only in name. They are the registered owner of shares in that their name appears on the public register of members. But they do not stand to benefit from it. Only the real shareholder can dispose of the shares, draw dividends on them, exercise voting rights and gain any other benefits associated with their ownership. The declaration of trust usually limits what the nominee can do with the shares to practically nothing. It obliges the nominee to exercise voting rights attached to the shares in accordance with the beneficial owner’s instructions. In addition to these safety measures, the beneficial owner is usually able to transfer the shares into their own name whenever they wish.

In the instant case, Ms. Chen Jian Fang is one of the subscribers to the memorandum and articles of association of the 1<sup>st</sup> respondent, registered on 23<sup>rd</sup> January, 2015. The applicants executed a nominee shareholding agreement on 25<sup>th</sup> April, 2015. By that agreement, Ms. Chen Jian Fang was constituted a nominee shareholder in the 1<sup>st</sup> respondent, holding shares therein on behalf of the applicants. In their capacity as signatories to the investment agreement of 25<sup>th</sup> September, 2015 the applicants have the *locus standi* to maintain a suit for breach of contract and for specific performance, in the course of which they may seek relief of rendition of an account, while in their capacity as the beneficial owners of shares held by Ms. Chen Jian Fang in the 1<sup>st</sup> respondent or her nominators under a nominee shareholding agreement signed on 25<sup>th</sup> April, 2015, they would have had the capacity to commence a derivative suit. This issue is accordingly answered in the affirmative; the applicants have *locus standi* in respect of the subject of dispute.

(ii) Whether this Court has subject matter jurisdiction over the dispute;

Whether a trial court has subject matter jurisdiction is a question of law. Subject matter jurisdiction is never presumed and cannot be waived or conferred by agreement. And the absence  
5 of subject matter jurisdiction can generally be raised at any time and can be raised by a court *sua sponte*. For a court to have jurisdiction to hear a particular case, it must have subject matter jurisdiction over the issue or issues that it is being asked to decide on. Subject matter jurisdiction concerns the court's power to hear a case based on the nature of the controversy at issue.

According to section 15 (c) of *The Civil Procedure Act*, a suit should be instituted in a court  
10 within the local limits of whose jurisdiction the cause of action, wholly or in part, arose. In suits arising out of contract, the cause of action arises at; (a) the place where the contract was made; (b) the place where the contract was to be performed or its performance completed; (c) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.

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Although both the nominee shareholding agreement of 25<sup>th</sup> April, 2015 and the investment agreement of 25<sup>th</sup> September, 2019 were made in China, they were to be performed in Uganda and that is where both contracts were to be performed. All the wrongs complained of by the applicants occurred in Uganda. This being essentially a suit for breach of the investment  
20 agreement in which the remedies of specific performance, rescission and an account are sought, the cause of action arose in Uganda, By virtue of article 139 (1) of *The Constitution of the Republic of Uganda, 1995* and section 14 (1) of *The Judicature Act*, this Court, subject to the provisions of the Constitution, has unlimited original jurisdiction in all matters. This issue is accordingly answered in the affirmative; this Court has subject matter jurisdiction over the  
25 dispute.

(iii) Whether the 4<sup>th</sup> respondent has the legal mandate to undertake management of the 1<sup>st</sup> respondent, pending the ongoing litigation between the parties;

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The relief sought involves the 4<sup>th</sup> respondents as a statutory body, taking over the management of the 1<sup>st</sup> respondent for the duration of the suit, due to alleged maladministration. It is universally accepted that the functions and powers of statutory bodies are limited by the statute that creates them. A statutory corporation can only do those things that its establishing Act contemplates that it does. All things a statutory corporation does must be for its statutory purposes and objects and consistent with its functions. It is a general principle that “a corporation, owing its existence to the will of the sovereign, and deriving its powers by grant from that source, can function only in accord with the law creating it” (see *Bonanza Creek Gold Mining Co. v. R.*, (1915) 50 SCR 534; [1916] 1 A.C. 566 at 589; *Jones v. Shreveport Lodge*, 221 La. 968, 60 So. 2d 889, 891 (1952) and *Ashbury Railway Carriage and Iron Co v Riche* (1875) LR 7 App Cas 653). It must, therefore, be now considered as a well settled doctrine that a Company incorporated by Act of Parliament for a special purpose, cannot devote any part of its funds to objects unauthorised by the terms of its incorporation, however desirable such an application may appear (see *Eastern Counties Ry Co v Hawkes* (1855) 5 HLC 331).

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The 4<sup>th</sup> respondent is a body corporate created by Parliament with defined powers and functions. Section 4 of *The Uganda Registration Services Bureau Act* provides as follows;

4. Objects and functions of the bureau.

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(1) The objects of the bureau are—

(a) to administer and give effect to the relevant laws and to provide registration services and collect and account for all revenue provided for under those laws; and

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(b) to advise the Government on matters relating to registration services under the relevant laws and to assist the Government in the formulation of policy relating to the collection of revenue.

(2) Without prejudice to the general application of subsection (1), the bureau shall, for the purpose of achieving its objects, have the following functions

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(a) to carry out all registrations required under the relevant laws;

(b) to maintain registers, data and records on registrations affected by the bureau and to act as a clearing house for information and data on those registrations;

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(c) to evaluate from time to time the practicability and efficacy of the relevant laws and advise the Government accordingly;

- (d) to carry on research and also disseminate research findings in the fields covered by the relevant laws through seminars, workshops, publications or other means and to recommend to the Government any improvements in the relevant laws appearing to the bureau to be required as a result;
- (e) to charge fees for any services performed by the bureau;
- (f) to perform any other function or to carry out such other activity as may be conducive or incidental to the efficient discharge of its objects or as the Minister may, by statutory instrument, direct.

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From the above provisions, the functions and powers of the 4<sup>th</sup> respondent are primarily; to provide registration services so as to give effect to the relevant laws that require such registration, to collect and account for all revenue provided for under those laws, advise the Government on matters relating to registration services under the relevant laws and to assist the Government in the formulation of policy relating to the collection of revenue under those laws. It is counsel for the applicants' submissions that the 4<sup>th</sup> respondent is mandated by law to manage and administer companies as going concerns for the benefit of the members, protection of the business assets and revenue to the Ugandan Government, so as to meet the ends of justice.

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In the same vein, under *The Companies Act, 2012* the Registrar of Companies or an Assistant Registrar or other officer performing the duty of registration of companies under the Act has the duty and powers to; register companies and assign the registration numbers (section 18 (2)); keep the Register of Companies (section 3); receiving and registering notifications of specified instruments, resolutions, returns and charges by registered companies; issuance of certificates; making specified discretionary orders which are appealable to the Court; on the application of any member of a company that is in default of convening its annual general meeting, calling or directing the calling of a general meeting of the company and giving such ancillary or consequential directions (section 138 (4)); powers of investigation upon reasonable belief that the provisions of this Act are not being complied with or where a document submitted for registration does not disclose a full and fair statement of the matters to which it purports to relate (section 172 (1)); upon application of the specified number of members of a company, appointment of one or more competent inspectors to investigate and report on the affairs of a

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company (section 173 (1); appointment and powers of inspectors to investigate ownership of a company (section 181) and so on.

The powers conferred by statute are taken to include, by implication, a right to take any steps  
5 which are reasonably necessary to achieve the statutory purpose: “whatever may fairly be regarded as incidental to, or consequential upon, those things which the Legislature has authorised, ought not (unless expressly prohibited) to be held, by judicial construction, to be *ultra vires*” (see *Attorney General and Another v. Great Eastern Railway Company (1880) 5 AC 473*; *(1880) 5 App Cas 473*; *Colman v. Eastern Counties Ry Co (1847) 16 LJ Ch 73* and *Ashbury*  
10 *Railway Carriage and Iron Co v. Riche (1875) LR 7 HL*). Implied authority refers to the jurisdiction to perform acts that are reasonably necessary to accomplish the purpose of the statute. Implied authority is not express or written into the statute, but it is authority the statutory body is assumed to have in order to achieve the statutory purpose. Implied authority is incidental to express authority since not every single detail of the statutory body's authority can be spelled  
15 out in the statute. Anything not authorised, expressly or implicitly, is *ultra vires* the corporate body and void, and cannot be ratified or made effective.

Whenever the interpretation of an Act of Parliament becomes an issue in a case, the courts will commonly resort to the rules of statutory interpretation to determine the proper application of the  
20 statutory language to the facts at hand. In applying those rules, the courts have routinely held that the “cardinal” principle of statutory interpretation is that the court must choose that interpretation that most nearly effectuates the purpose of the Legislature. In the instant case, the legislative intent as expressed in the long title is “to establish an agency for miscellaneous registrations and collection and accounting for revenues under various relevant laws and for the enforcement and  
25 administration of those laws and to provide for other related matters.” That intent is limited to the implementation of certain legislation and has nothing to do with the management and administration of companies, as going concerns, for the benefit of the members, or the protection of the business assets. Although it has a duty to collect revenue on behalf of the Ugandan Government, the 4<sup>th</sup> respondent can only do so in relation to revenue provided for under the  
30 specific laws that require registration undertaken by it.



Similarly, the powers conferred upon the Registrar of Companies where it appears to him or her that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members or that any actual or proposed act or omission of the company including an act or omission on its behalf is or would be so prejudicial are limited to petitioning for the winding up of the company (section 249 of the Act). In the same vein, although in matters of personal insolvency the Registrar General is deemed to be the Official receiver (see section 36 (2) of *The Uganda Registration Services Bureau Act*), that does not confer mandate on the 4<sup>th</sup> respondent to undertake the management and administration of companies which do not appear to be at risk of closing due to insolvency, as going concerns for the benefit of the members, or for the protection of the business assets (see section 199 of *The Insolvency Act, 2011*). In conclusion therefore, this issue is answered in the negative; the 4<sup>th</sup> respondent does not have the legal mandate to undertake management of the 1<sup>st</sup> respondent, pending the ongoing litigation between the parties.

(iv) Whether the orders sought can be granted by this Court.

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It is counsel for the applicant's submission that despite the absence of statutory provisions enabling the applicants to present this type of application, the Court can resort to its inherent jurisdiction to ensure that the ends of justice meet. The "inherent power" or "inherent jurisdiction" of the court was defined in *Grobbelaar v News Group Newspapers Ltd. [2002] 1 WLR 3024* at 3037B, as follows:

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The inherent jurisdiction of the court may be defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them." (Jacob, *The Inherent Jurisdiction of the Court*, ((1970) 23 Current Legal Problems, 23).

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Parties to litigation expect courts to operate both predictably and fairly. A core part of this expectation is the presence of codified rules of procedure, which ensure fairness while constraining, and making more predictable, the ebb and flow of litigation. A court cannot exercise its inherent jurisdiction in contravention of legislation or rules of court. The situations in

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which it is necessary to rely on the inherent power therefore are likely to be rare but most commonly are situations where there is little or no precedent, statutory or common law, yet it is necessary so as to do justice between the parties, and therefore justified through the invocation of the Court's inherent jurisdiction. These cases present themselves whenever there are procedural  
5 gaps and omissions that arise when the Constitution, statutes, court rules, or cases fail to address the legal issues that have arisen. In such situations, if courts had no reliance on inherent authority, they would have no alternative but to either (a) leave procedural problems unresolved, or (b) offer strained interpretations of existing rules to address those problems in light of codified rules. There are circumstances in which considerations of fairness are imperfectly addressed by  
10 written rules, and allowing flexibility through the exercise of inherent power is an important safety valve.

Written rules provide notice to parties about how a court's authority is going to be exercised, articulate relevant standards that govern the exercise of authority for all to see (and to criticise or  
15 seek to change, should the need arise), and provide guidance for appellate courts in determining whether a trial court's exercise of discretion in a particular case was appropriate or not. While the unconstrained exercise of inherent power is ever-less acceptable in a legal system that is increasingly moving toward written rules, the absence of such authority would have its own perverse effects. With written procedure, parties are aware of the most likely procedural choices  
20 and the considerations that factor into making those choices.

Allowing inherent power to be exercised without constraint threatens to surprise litigants by subjecting them to unknown and unclear standards and limits the ability of appellate courts to properly assess the exercise of that authority by the court below. Because inherent power is  
25 exercised only in circumstances in which courts believe that existing law does not adequately address the problem at hand, the process of exercise of their inherent power requires; (i) an evaluation of existing rules of written procedure to assess whether the use of inherent power is necessary at all, and (ii) a clear statement about the standards that the court is using to determine precisely how its inherent power should be exercised in a particular circumstance. The court  
30 should therefore take care to search all relevant written authority for guidance regarding either (a) the exercise of power without resort to inherent authority, or (b) the exercise of inherent

authority, albeit in a manner constrained by articulated written rules. If the court concludes that written procedures actually do provide all necessary guidance in resolving the legal problem presented, the court need not press forward with the use of inherent power.

5 The situations in which it is necessary to rely on the inherent power are likely to be rare. A court resorts to inherent power in circumstances in which there are no particular options to choose between; there is simply a perceived need to act. That court is left to call upon its inherent power in deciding whether to exercise that power, the scope of options available to it in doing so, and which of the available options it has to choose. Through inherent jurisdiction, a court possesses  
10 all of the common law equity tools to process litigation to a just and equitable conclusion. Exercise of the power is bound up with the very nature of courts and judicial decision-making. To that end, the exercise of inherent power is also properly thought of in a functional way: a necessary means to ensuring that courts are able to manage interactions between parties, counsel, third parties, and the courts themselves. Inherent power though should be exercised with caution,  
15 used only when absolutely necessary to accomplish the underlying needs of the court and always with sensitivity to the purposes underlying relevant written rules, even the marginally relevant written rules.

The inherent jurisdiction of the Court is more fundamental than, and goes beyond, mere  
20 procedure. At the root of the decisions in *Boyd, Gilmour and Co. v. Glasgow and South Western Railway Co. (1888) 16 R 104* and *Hutchison v Galloway Engineering Co. 1922 SC 497* must be the inherent jurisdiction of the Court. The Court has to retain the flexibility needed to deal with unusual situations unless it had clearly deprived itself of the power to do so. A Rule of Court is not to be interpreted as altering a settled rule of law unless that is expressly stated or followed by  
25 necessary implication. Otherwise the inherent jurisdiction of the Court would be emasculated. Construction of the Rules of Court in such a way as to have that effect would not serve the interests of justice. The Court cannot regard itself as constrained, simply because there is no Rule of Court.

30 Although inherent jurisdiction gives the court the ability to craft solutions to particular problems on the basis of a broad principles, as a power born out of the realisation that no one can codify all

solutions to human problems in advance of their occurrence, the rules of court acknowledging its existence do not give the Court unlimited powers; because it carries with it the risk of arbitrariness, it is constrained by explicit and contrary statutory provisions as well as “necessity,” as the touchstone for the exercise of inherent jurisdiction, i.e. whatever needs to be done to secure justice between the parties and avoid abuses of the court’s processes, for the purpose of promoting a fair and satisfactory trial. Inherent power is necessary to protect fair trial rights and the administration of justice. The Court should not exercise its inherent jurisdiction merely because to do so would not cause prejudice to the other party. Necessity, contrasted with a party’s interest or desire, is an essential criterion to invoke the inherent jurisdiction.

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It is this Court’s view that if a substantive power for a statutory body to take over the management of a private limited liability company as a going concern not under the risk of insolvency is to be given, such power may not be inferred; it must come expressly from the legislature after full consultation and proper consideration of the sensitive issues involved. This is a case of inventing a legal doctrine, since there are no existing baseline principles and analogies which could be made to guide the exercise of the inherent jurisdiction sought. Courts must be extremely cautious when asked to extend the scope of inherent jurisdiction to novel circumstances. Advances in the common law must begin from a baseline of accepted principle and proceed by conventional methods of legal reasoning. Judges have no authority to invent legal doctrine that distorts or does not extend or modify accepted legal principles. There is a preference for major innovations to be introduced by legislation or (if procedural) by rules of court. Counsel for the applicant has not cited any rules of practice, or any produced by long-standing judicial authority, that permit the kind of orders that are sought. This Court has not found any existing rule of practice, extendable or modifiable in the manner proposed. The Court would be inclined to make such orders if based on existing and accepted legal principle.

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Moreover the circumstances of this case do not require the Court to fashion a remedy such as would be required of it within the context of a statutory vacuum. The issues in controversy between the parties rotate around the core principles of cooperate governance, of; responsibility, accountability, awareness, impartiality and transparency. Both *The Companies Act, 2012* and common law have elaborate processes for dealing with such issues when they arise. Considering

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for example, the availability of recourse to section 249 of *The Companies Act, 2012* this is not a case where necessity requires the exercise of this Court's inherent jurisdiction. The Court cannot exercise its inherent jurisdiction in such a manner that would undermine the statutory provisions and established common law practice for enforcement of the fundamental principles of corporate governance and the settlement of disputes between shareholders and directors, because the Court is bound by those principles; they are the limits. The application fails and is accordingly dismissed with costs in the cause.

Delivered electronically this 9<sup>th</sup> day of August, 2023.....**Stephen Mubiru**.....  
10 Stephen Mubiru  
Judge,  
9<sup>th</sup> August, 2023.