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**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**MISCELLANEOUS APPLICATION No. 0214 OF 2023**  
**(ARISING FROM COMPANY CAUSE No. 3 OF 2021)**

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**STEVEN MAGERO ..... APPLICANT**

**VERSUS**

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- 1. JULIE ODAKA MUNDAWAWARA**  
(Administrator of the Estate of the late Sam Odaka)
- 2. DENNIS OUNA**  
(Administrator of the Estate of the late Gabriel Owino)
- 3. MOHAMMAD WANDERA**  
(Administrator of the Estate of the Late Gabriel Owino)
- 4. JOLLY WERE**  
(Administrator of the Estate of the late Francis Xavier Were)
- 5. HAROLD WEJULI**  
(Administrator of the Estate of the late Alex George Wejuli)
- 6. TEOPISTA AGUTU**  
(Representative and beneficiary of the Estate of the Late Romano Masiga)
- 7. JOHN RICH OSWALA**  
(Representative and Beneficiary of the Estate of the late Romano Masiga)
- 8. SAMACO INTERNATIONAL LIMITED**
- 9. BUMERO ESTATES LIMITED**
- 10. UGANDA REGISTRATION SERVICES BUREAU**
- 11. ATTORNEY GENERAL ..... RESPONDENTS**

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**BEFORE: HON. LADY JUSTICE SUSAN ABINYO**

**RULING**

Introduction

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This application was brought by Notice of Motion under the provisions of section 33 of the Judicature Act, Cap 13, sections 64 (c) & (e) and 98 of the Civil

5 Procedure Act, Cap 71, Order 52 Rules 1 and 2 of the Civil Procedure Rules SI 71-1, where the Applicant is seeking the following orders:

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1. That the resolutions of the 9<sup>th</sup> Respondent passed at the purported meeting of shareholders convened on 21<sup>st</sup> September, 2022 be cancelled.
  - 15 2. That without prejudice to (1) above, part of the resolutions of the 9<sup>th</sup> Respondent passed at the meeting of shareholders convened on 21<sup>st</sup> September, 2022 to the effect that:  
“(2) Effective 22<sup>nd</sup> September, 2022, Mr. Mohammad Wandera be and is hereby appointed Director of the Board, and Chairperson of the Board of Directors, and Mr. Steven Magero remains Director only;  
20 (3) Effective 22<sup>nd</sup> September, 2022, Mr. Bob Nagimesi be and is hereby removed as Company Secretary, and in place thereof, Mr. Enoch Barata be and is hereby appointed Company Secretary”, be cancelled.
  - 25 3. An Injunction do issue restraining the 11<sup>th</sup> Respondent from paying out the balance of monies due to the 9<sup>th</sup> Respondent, in respect of the consent, and or settlement in Supreme Court Civil Appeal No. 13 of 2007, till the shareholding and directorship of the 9<sup>th</sup> Respondent is resolved to the satisfaction of Court and Court makes an order for the release of funds to the 9<sup>th</sup> Respondent.
  - 30 4. An injunction do issue restraining the 9<sup>th</sup> Respondent, its Directors and officers or anyone acting on their behalf or instruction from disbursing any funds received from the 11<sup>th</sup> Respondent, in respect of Supreme Court Civil Appeal No. 13 of 2007, until the dispute over the shareholding and directorship of the 9<sup>th</sup> Respondent is resolved to the satisfaction of Court and Court makes an order for the distribution of funds by the 9<sup>th</sup> Respondent.
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### Facts

This application is supported by an affidavit of Steven Magero the Applicant, deposited in paragraphs 1-8, and summarized as follows: -

5 That the purported shareholders' meeting of the 9<sup>th</sup> Respondent held on 21<sup>st</sup> September, 2022 was organized and attended by several persons who were not registered shareholders contrary to the orders of Court in Company Cause No. 3 of 2021.

10 That the purported shareholders' meeting of the 9<sup>th</sup> Respondent held on 21<sup>st</sup> September, 2022 was attended by Herald Wejuli, contrary to an injunction order by the High Court Family Division of 7<sup>th</sup> November, 2018 in Miscellaneous Application No. 0125 of 2018.

15 That without prejudice to grounds (a) and (b) above, in the ruling delivered in Company Cause No. 3 of 2021 on 9<sup>th</sup> September, 2022, Court ordered the registered shareholders of the 9<sup>th</sup> Respondent "to attend a special meeting not later than 45 days from the date of the order to approve the minutes, and resolutions of the meeting held on 5<sup>th</sup> July, 2017" but in contravention of this order, the meeting held on 21<sup>st</sup> September, 2022 conducted other businesses, and made other resolutions not authorized by the Court order.

20 That the 1<sup>st</sup> to the 9<sup>th</sup> Respondents have with the assistance of the 10<sup>th</sup> and 11<sup>th</sup> Respondents, abused the Court order of 9<sup>th</sup> September, 2022, to change the management of the 9<sup>th</sup> Respondent for the purpose of accessing funds due to the 9<sup>th</sup> Respondent from the 11<sup>th</sup> Respondent under Supreme Court Civil Appeal No. 13 of 2007, and mismanaging the said funds to the detriment of the 9<sup>th</sup> Respondents and lawful shareholders.

30 That there is real danger unless restrained by Court, the Respondents will continue to abuse the process of Court for purposes of mismanaging the affairs of the 9<sup>th</sup> Respondent, and its properties including the funds payable to the 9<sup>th</sup> Respondent by the 11<sup>th</sup> Respondent. That in the interest of ensuring that the ends of justice are not defeated, the orders sought herein be granted.

The 3<sup>rd</sup> Respondent filed an affidavit in reply, deponed in paragraphs 1- 23 by Mr. Mohammad Wandera the 3<sup>rd</sup> Respondent, and summarized as follows;

35 That while on 9<sup>th</sup> September, 2022, this honorable Court made its ruling directing several steps to be taken in order to regularize the records, and affairs of the company, that all the orders were duly complied with, and there is no irregularity as claimed by the Applicant or at all, as the steps taken were in compliance with the order.

5 That the meeting of 21<sup>st</sup> September, 2022 was convened, and attended by the  
shareholders of the company as declared, and ordered by this honorable Court  
in both Miscellaneous Application No. 283 of 2017, and Company Cause No. 03  
of 2021, and that the three shareholders were properly on the register of the  
company, and that all resolutions were properly passed in accordance with the  
10 law.

That the meeting of 21<sup>st</sup> September, 2022 satisfied itself that Herald Wejuli (5<sup>th</sup>  
Respondent) was not barred from attending to the affairs of the company by any  
Court order. That the meeting received a Court order in that respect vide HCCS  
63 of 2018, dated 25<sup>th</sup> August, 2022 resolving the matter. That it is not true that he  
15 was at the time of the meeting, restrained from dealing with the estates of the  
late Alex George Wejuli, as seen in the copy of the Court order attached as  
Annexure "CT63".

That the estate of his late father Gabriel Owino has three appointed  
administrators being the Applicant, the 2<sup>nd</sup> Respondent and the deponent; and  
20 that the deponent, and the 2<sup>nd</sup> Respondent attended the meeting of the  
company convened on 21<sup>st</sup> September, 2022.

That there has not been, since 21<sup>st</sup> September, 2022, any abuse of Court orders or  
change in management of the company, as the Board of Directors is the same  
and includes the Applicant. That the only changes were on the appointment of  
25 a Chairperson of the Board, and the new Company Secretary, which was justified  
because the Applicant, and Bob Nagimesi had actively engaged in subverting  
the interests of the company, having particularly refused to register the resolution  
of 5<sup>th</sup> July, 2017 and actively violated the orders of Court.

That the Applicant's allegations of mismanagement of funds, and or affairs are  
30 false and speculative. That all shareholders of the company are duly represented  
in the Board of Directors, and there is not any possibility of prejudice or  
mismanagement against the company or to its detriment.

That it is in the interest of justice, and in the interest of protecting the rights of the  
beneficial owners of the shares of the 9<sup>th</sup> Respondent company, that the  
35 company be allowed to conduct its affairs through its appointed Board of  
Directors and that the present application be dismissed.

5 The 10<sup>th</sup> Respondent filed an affidavit in reply, deponed in paragraphs 1- 22 by Walid Kule the Manager Business Registration at Uganda Registration Services Bureau, and summarized as follows: -

10 That the 9<sup>th</sup> Respondent was incorporated on 29<sup>th</sup> April,1982 with a nominal capital of UGX 1,000,000 divided into 1000 ordinary shares of UGX 1,000 each, and Romano E. Masiga 1 share, Alex Wejuli 1 share, and G. Lawrence Owino 1 share; leaving 997 shares unsubscribed for, and that all the subscribers are now deceased.

15 That vide a consent Court order dated 5<sup>th</sup> May, 2017 arising from Mohammed Wandera, Steven Magero and Others Vs Herald Wejuli H.C.M.A No. 283 of 2017, Lady Justice Lydia Mugambe made directions, as seen in a copy of the Court order attached, and marked Annexure "A".

20 That pursuant to the said consent order of 5<sup>th</sup> May, 2017, the 10<sup>th</sup> Respondent convened an extra ordinary general meeting on 5<sup>th</sup> July, 2017 and unanimously resolved on the allotment of shares, and that the same meeting agreed on the directorship but the company (9<sup>th</sup> Respondent) did not file the attendant form 20, on notification of appointment of Director and Secretary, and form 10, on return of allotment of shares to reflect the changes that had been made.

25 That in the said meeting Mr. Bob Nagimesi was appointed as the Secretary of the company, and subsequently ceased being the Company Secretary in a meeting of 21<sup>st</sup> September 2022, as seen in a copy of the minutes of the said meeting attached to this affidavit as Annexure "A", and a copy of the resolution for removal of the Company Secretary marked Annexure "C".

30 That vide the Court ruling dated 9<sup>th</sup> September, 2022 in the matter of Julie Odaka Mundawawara, Dennis Ouna and Others Vs Bumero Estates Limited and Uganda Registration Services Bureau, High Court Company Cause No.3 of 2021, it was ordered inter alia that in accordance with the Court order of 5<sup>th</sup> May, 2017 that the Administrators of the estate of Romano E. Masiga , Alex Wejuli and G. Lawrence Owino be entered as shareholders of the 9<sup>th</sup> Respondent under Article  
35 31 of the Articles of Association, and that the Company convenes a meeting within 45 days to adopt the minutes of the meeting that was held at the company registry on 5<sup>th</sup> July, 2017, as seen in a copy of the Ruling attached ,and marked Annexure "D".

5 That the orders in the ruling of 9<sup>th</sup> September, 2022 were orders in rem, that the Registrar of Companies must enforce, which clearly settles the issue regarding the directorship and shareholding of the company.

10 That the removal, and appointment of Directors are within the rights of the company members as per the Articles of Association therefore, the members of the 9<sup>th</sup> Respondent validly exercised their powers to remove the Applicant, and appoint Mr. Mohammed Wandera as Director and Managing Director of the 9<sup>th</sup> Respondent. That the Directors validly exercised their duties to cease Mr. Bob Nagimesi and appoint Mr. Enoch Barata in accordance to the 9<sup>th</sup> Respondent's Articles of Association.

15 That the resolution registered on 22<sup>nd</sup> September, 2022, adopting the minutes of the meeting held on 5<sup>th</sup> July, 2017 at the Registrar of Companies' office, only requires a minimum of 2 signatories, that is the Director, and Secretary or a Director, and another Director, which the 9<sup>th</sup> Respondent conformed to.

20 That the Registrar of Companies is neither a member, nor a Director of the 9<sup>th</sup> Respondent, and therefore, was not present in the special meeting that the Court ordered in the ruling of 9<sup>th</sup> September, 2022, which order directed the 9<sup>th</sup> Respondent to convene a meeting within 45 days to approve the minutes of the meeting held at the 10<sup>th</sup> Respondent's premises.

25 That this application is wrongly brought against Uganda Registration Services Bureau, the 10<sup>th</sup> Respondent, and that the Registrar of Companies was compelled by the Court order, and therefore, was in no position to invite the parties for a hearing prior to the registration of the resolution dated 21<sup>st</sup> September, 2022, and that the Court had therefore presided over the matter, and the 10<sup>th</sup> Respondent could not act beyond its statutory scope.

30 That the Registrar of Companies was not furnished with a stay of execution to halt registration of the resolution dated 21<sup>st</sup> September 2022, to confirm the shareholders of the 9<sup>th</sup> Respondent, as part of the directions in the Court ruling of 9<sup>th</sup> September, 2022.

35 That the resolutions dated 21<sup>st</sup> September, 2022 effecting the Court order and the appointment, and removal of the Applicant, and Mr. Bob Nagimesi was validly registered.

That it is just, and equitable that the Applicant's application be dismissed with costs to the Respondent.

5 The 11<sup>th</sup> Respondent filed an affidavit in reply, deponed in paragraphs 1-12 by Ebila Hillary Nathan, and summarized as below;

That the application is misconceived, without merit, an abuse of the Court process, and should be dismissed with costs to the 11<sup>th</sup> Respondent. That the Government is not a party to the internal disputes of the 9<sup>th</sup> Respondent, since the  
10 Consent variation agreement that had been executed was set aside by the Supreme Court, and therefore, the Applicant has no cause of action against the 11<sup>th</sup> Respondent.

That this application does not disclose any prima facie case with a probability of success against the 11<sup>th</sup> Respondent, and that the Applicant will not suffer  
15 irreparable injury, which cannot be atoned by the award of damages, in case the application is not granted.

That the 11<sup>th</sup> Respondent will be inconvenienced incase this application is granted, as it is not a party to the company dispute giving rise to this application, and it is in the interest of justice, good conscience, equity and good governance  
20 and accountability, that the orders sought herein against the 11<sup>th</sup> Respondent should not issue.

The Applicant filed an affidavit in rejoinder reiterating his averments in the affidavit in support and further stated as follows: -

That once the consent variation agreement was set aside on 3<sup>rd</sup> December, 2019,  
25 the 11<sup>th</sup> Respondent had already made some payments, and even then the Deputy Attorney General further instructed the Permanent Secretary, and or Secretary to the Treasury, Ministry of Finance, Planning and Economic Development, to resume the payment of the outstanding compensation due to the 9<sup>th</sup> Respondent, as seen in a copy of the said letter dated 12<sup>th</sup> January, 2023,  
30 attached and marked Annexure "A".

That the application discloses a prima facie case against the 11<sup>th</sup> Respondent because M/S Birungyi, Barata & Associates, the Advocates of the 1<sup>st</sup> - 9<sup>th</sup> Respondents, have been in constant pursuit of the said compensation since 2021 even with several matters before Court, as seen from the letter dated 16<sup>th</sup>  
35 September, 2021, attached and marked Annexure "B".

That the Applicant will suffer irreparable injury, if compensation is given before this application is granted.

5 Representation

The Applicant was represented by Mr. Peter Walubiri jointly with Ms. Viola Amanya of M/S KBW Advocates while the 1<sup>st</sup> - 9<sup>th</sup> Respondents were represented by Mr. Enock Barata of M/S Birungyi, Barata & Associates, the 10<sup>th</sup> Respondent was represented by Mr. Moses Mugisha of the Legal Department, Uganda Registration Services Bureau and the 11<sup>th</sup> Respondent was represented by Ms. Cynthia Mpoza of the Attorney General's Chambers.

Counsel for the parties herein, filed written submissions as directed by this Court.

Preliminary objection raised by Counsel for the Applicant

15 Counsel for the Applicant raised an objection that the evidence on record are affidavits in reply from the 3<sup>rd</sup>, 10<sup>th</sup>, and 11<sup>th</sup> Respondents and that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents have not submitted any affidavits in reply to the application, which means that they do not object to the evidence adduced by the Applicant in the application.

20 That the affidavit of the 3<sup>rd</sup> Respondent was not deponed on their behalf as they had not authorized him to swear an affidavit on their behalf. Counsel relied on the provision of Order 3 Rule 2(a) of the Civil Procedure Rules, and the cases of *Bishop Patrick Baligasiima Versus Kiiza Daniel and 16 Others Miscellaneous Application No. 1495 of 2016* and *Binaisa Nakalema & 3 Others Vs Mucunguzi Myers; MA No. 460 of 2013*, to submit that a person swearing an affidavit on behalf of others, ought to have their authority in writing, which must be attached as evidence, and filed on the Court record.

30 Counsel further relied on the Supreme Court decision in *H.G Gandesha and Another Vs G.J Lutaya, Civil Application No. 14 of 1989*, on the proposition of the law that if the Applicant supports his application by affidavit or other evidence and the Respondent does not reply by affidavit or otherwise, and the supporting evidence is credible in itself, then the facts stand as unchallenged.

In reply to this objection, Counsel for the 1-9<sup>th</sup> Respondents submitted that first of all, the Applicant has not proved to this Honorable Court that he served the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents.

35 Counsel further submitted, without prejudice to the above argument, that the 3<sup>rd</sup> Respondent deponed in paragraphs 1 & 2 of the affidavit in reply, in which he made reference to himself as a Director, and Chairperson of the Board of Bumero



5 Estates Limited since 22<sup>nd</sup> October, 2022, and that the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup>  
Respondents are also Directors to the 9<sup>th</sup> Respondent Company, based on Order  
19 Rule 3(1) of the Civil Procedure Rules, which provides that, affidavits shall be  
confined to such facts as the deponent is able of his or her own knowledge to  
prove, except on interlocutory applications, on which statements of his or her  
10 belief may be admitted, provided that the grounds thereof are stated.

That in this case, the 3<sup>rd</sup> Respondent deponed an affidavit in reply, as an  
Administrator of the estate of the late Owino(Shareholder), and Director of the 9<sup>th</sup>  
Respondent; giving evidence on matters within his own knowledge in respect of  
the affairs of the company, the holding of any company meetings, and passing  
15 of the resolutions.

Counsel argued that the other Respondents were not sued in their individual  
capacity but rather as shareholders, Directors and the company itself. Thus the  
Respondents pray that this honorable Court finds that the 3<sup>rd</sup> Respondent's  
affidavit in reply is sufficient to respond to allegations raised by the Applicant.

20 Counsel further argued that the case of *H.G Gandesha and Another Vs G.J  
Lutaya(supra)*, relied on by Counsel for the Applicant is distinguishable from the  
present case on the question as to whether the Applicant's evidence is credible  
against the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents in this interlocutory  
application arising out of a Company Cause, and submitted that in the  
25 Gandesha case, it requires that the supporting evidence ought to be credible in  
itself in order for the facts to stand unchallenged, and that the Applicant's  
affidavit is not sufficient to show that the Applicant's case, and evidence are  
credible.

#### Determination of the preliminary objection.

30 The Court record shows that the affidavits in reply to the application were  
deponed by the 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents.

I have looked at the 3<sup>rd</sup> Respondent's affidavit in reply, in particular paragraph 1  
thereof, in which he averred that he is both an Administrator, and beneficiary to  
the estate of the Late G. Lawrence Owino, and that he is also a Director, and  
35 Chairperson of the Board of Bumero Estates Limited since 22<sup>nd</sup> October, 2022.

Order 3 Rule 2(a) of the Civil Procedure Rules, SI 71-1, provides for recognized  
agents of parties by whom such appearances, applications and acts may be  
made or done, to be by persons holding powers of attorney, authorized by them.

5 In this case, the 3<sup>rd</sup> Respondent did not have any authority by way of a power of attorney, to act on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Respondents therefore, the 3<sup>rd</sup> Respondent was not authorised by the said Respondents.

The submission of Counsel for the 1<sup>st</sup> -9<sup>th</sup> Respondents that the 3<sup>rd</sup> Respondent deposed an affidavit on behalf of 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Respondents as  
10 Directors, is untenable.

It is notable that the 8<sup>th</sup> Respondent is a shareholder, and not a Director to the 9<sup>th</sup> Respondent company.

I have taken into further consideration that the 3<sup>rd</sup> Respondent deposed an affidavit in reply on behalf of the company as the Chairperson of the Board, and  
15 that he was appointed the Chairperson Board of Directors, in an extra ordinary meeting that was held by the Directors on 21<sup>st</sup> September, 2022, in which the Applicant was given notice in Annexure BMI"" attached to the 3<sup>rd</sup> Respondent's affidavit in reply.

The Companies Act, 2012(hereinafter referred to as "the Act"), under section  
20 141(d), provides for the election of any member by the members present at a meeting, to be the chairperson of the meeting.

I have taken into account the above provision to find that the appointment of the 3<sup>rd</sup> Respondent, who was elected by members present to be the chairperson of the meeting held on 21<sup>st</sup> September, 2022 was proper, and the subsequent  
25 appointment of the 3<sup>rd</sup> Respondent, as the Chairperson Board of Directors to replace the Applicant, was not irregular, since the Applicant has not given any justifiable cause for his absence in the said meeting.

Accordingly, this Court finds that the 3<sup>rd</sup> Respondent's affidavit is competent in respect of Bumero Estates Limited the 9<sup>th</sup> Respondent Company.

30 For reasons stated above, I find that the Applicant's evidence was undisputed by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Respondents.

#### Preliminary objection raised by Counsel for the 1<sup>st</sup> – 9<sup>th</sup> Respondents

Counsel for the 1<sup>st</sup> – 9<sup>th</sup> Respondents raised a preliminary objection that the Applicant does not have locus standi to institute this matter, because the 9<sup>th</sup>  
35 Respondent Company if aggrieved is the right Plaintiff to sue for the wrongs if any, done to it. That the Applicant is seeking orders that affect the 9<sup>th</sup> Respondent, which orders ought to be sought for by the 9<sup>th</sup> Respondent itself if it deems fit.

5 Counsel relied on the case of *Foss Vs Harbottle (1843)2 Hare 461*, on the principle that a company is the only proper Plaintiff to sue for wrongs done to it, and that the Courts will not ordinarily intervene in a matter, in which the company can settle through its internal mechanism, in support of his submissions.

10 Counsel argued that as an exception to the above principle, the Applicant is not a member, and or shareholder of the 9<sup>th</sup> Respondent Company, and does not enjoy any minority rights to bring a derivative action against the Respondents.

Determination of the preliminary objection.

15 In the instant case, the Applicant brought this application seeking to challenge part of the resolutions of the 9<sup>th</sup> Respondent passed in a meeting of shareholders convened on the 21<sup>st</sup> day of September, 2022, in which inter alia Mr. Mohammad Wandera was appointed a Director, and Chairperson of the Board of Directors, to replace Mr. Steven Magero (Applicant herein), who was the Chairperson of the Board of Directors, and now remained as a Director.

20 Section 248 of the Act provides that:

**“Protection of members against prejudicial conduct**

25 (1) A member of a company may apply to the court by petition for an order under this Part on the ground 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 including at least himself or herself 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. [ Emphasis is mine]

30 (2) The provisions of this part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as those provisions apply to a member of the company and references to a member or members are to be construed accordingly.”

35 The Company Form 10, attached to the affidavit of the 3<sup>rd</sup> Respondent, which is a return on allotment of shares filed with Uganda Registration Services Bureau (10<sup>th</sup> Respondent herein), shows that the Estate of the late Gabriel Owino is one of the estates that was allotted shares of Bumero Estates Limited (9<sup>th</sup> Respondent herein).

5 In addition, on the basis of Form 20, it is clear that the Applicant, was duly registered as a shareholder of the 9<sup>th</sup> Respondent Company, subsequent to the allotment of shares to the Estate of the late Gabriel Owino on Form 10, which are fully paid for, and the Applicant is a beneficiary, and one of the administrators thereof.

10 Section 47 of the Act, provides that: -

**“Definition of member**

(1) The subscribers to the memorandum of a company shall be taken to have agreed to become members of the company, and on its registration shall be entered as members in its register of members. [Emphasis is mine]

15

(2) A person who agrees to become a member of a company, and whose name is entered in its register of members shall be a member of the company.”

In the instant case, I find that the Applicant is a Director to the 9<sup>th</sup> Respondent Company, having been appointed a director in a meeting that was held on 5<sup>th</sup> July, 2017, by the Registrar of Companies as directed by the Court, and is registered on the particulars of Directors in Form 20 as such, which was filed with the 10<sup>th</sup> Respondent as directed by this Court. **( See Re Kahawa Sukari Ltd [2004] 2 EA 93, cited with approval in Emmaus Foundation Investments (U) Ltd Vs Emmaus Foundation Ltd & 2 others, HCMC No. 74 of 2020,** relied on by Counsel for the Applicant, on the proposition that a personal representative of a deceased member cannot, ipso facto, be registered as a member of the company; he or she must first get his or her name in the register.

From the reading of sections 47(1), and 248(1) above, this Court finds that the Applicant qualifies to be a member of the 9<sup>th</sup> Respondent Company, since the shares to estate of the late Gabriel Owino was transferred to the Applicant, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents as administrators thereof, from which the Applicant's name was registered in the register, and the notice of rectification of the register subsequently filed with the 10<sup>th</sup> Respondent in accordance with section 119 of the Act, as directed by this Court.

The Applicant therefore, brought this application as a member, to seek protection of his interests in the said company, against the alleged prejudicial conduct of the Respondents. **(See Oliver Kigongo & 3 Others Vs Uganda National Registration**

5 **Bureau, CACA No. 236 of 2017**), on the rights of a member, cited by Counsel for the Applicant.

Accordingly, I find that this preliminary objection raised by Counsel for the 1<sup>st</sup> – 9<sup>th</sup> Respondents lacks merit, and is dismissed.

I will now turn to consider the merits of this application as below:

10 **Ground 1:** That the shareholders' meeting of the 9<sup>th</sup> Respondent held on 21<sup>st</sup> September 2022, was organized and attended by several persons, who were not registered shareholders contrary to the orders of the Court in Company Cause No.3 of 2021.

15 Counsel for the Applicant submitted that the purported shareholders' meeting of the 9<sup>th</sup> Respondent, held on 21<sup>st</sup> September, 2022, was organized and attended by several persons, who were not registered shareholders contrary to the orders of the Court in Company Cause No.3 of 2021.

20 Counsel relied on section 47 of the Act, to submit further that it is only after registration that a person becomes a member of a company, and that, the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Respondents held a meeting on 21<sup>st</sup> September, 2022, when they had not been registered by the company.

25 Counsel contended that there was a subsisting Court order that was granted by Hon. Lady Justice Susan Abinyo, dated 9<sup>th</sup> September, 2022, which required the 6<sup>th</sup> and 7<sup>th</sup> Respondents (then Applicants) to furnish proof of grant of probate, and that the Administrators should have presented the grants of probate to the Company Secretary, who then should have entered their names in the register of members, and the members should have conducted the meeting.

30 Counsel argued that the meeting of 21<sup>st</sup> September 2022 was attended by persons namely the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Respondents who were not yet registered as members or shareholders of the 9<sup>th</sup> Respondent thus making the meeting a nullity.

35 In reply, Counsel for the 1<sup>st</sup> -9<sup>th</sup> Respondents submitted that according to Annexure "BM1" the Notice of the meeting and Annexure "PRX1", where Jude Wejuli, Nasirumbi Rose Wejuli Allen, Brenda Wejuli administrators of the Estate of Alex George Wejuli, appointed Herold Wejuli as a proxy to attend and vote on their behalf in the meetings to be held in 2022, 2023 and 2024.

5 Counsel relied on section 143 (1) of the Act to further submit that in Annexure "PRX 2(a)", Bwire Patrick and Tom Sanya, administrators of the estate of Romano Emmanuel Masiga, appointed Teopista Agutu and John Rich Oswala as proxies to attend, and vote on their behalf in meetings to be held in 2022, 2023 and 2024.

10 Counsel further made reference to Annexure "MN22" on the attendance list for Bumero shareholders meeting held on 21<sup>st</sup> September, 2022, where the shareholders who attended are listed as John Rich Oswala, Harold Wejuli, Wandera Muhammad, Ouna Dennis and Teopista Agutu, and that once the respective shareholders were entered on the register by the order of Court, the right to appoint proxies accrued to them.

15 Decision

I have looked at Annexure "MN22" attached to the 3<sup>rd</sup> Respondent's affidavit in reply, which is an attendance list of Bumero Shareholders meeting held on 21<sup>st</sup> September, 2022, and the attendees were John Rich Oswala, Herold Wejuli, Wandera Mohammad, Ouna Dennis, and Teopista Agutu.

20 In addition, Annexure "PRX1" attached to the 3<sup>rd</sup> Respondent's affidavit in reply indicates that Jude Wejuli, Nasirumbi Rose Wejuli Allen, Brenda Wejuli administrators of the Estate of Alex George Wejuli appointed Herold Wejuli, as proxy to attend and vote on their behalf in the meetings to be held in 2022, 2023 and 2024, and in Annexure "PRX 2(a)", Bwire Patrick and Tom Sanya, administrators of the estate of Romano Emmanuel Masiga, appointed Teopista Agutu and John Rich Oswala, as proxies to attend and vote on their behalf in meetings to be held in 2022, 2023, and 2024.

30 It is my understanding that the above attendees of the said meeting are administrators of the different estates, and would only be shareholders upon registration as ordered by this Court. The attendance of the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Respondents, in a meeting which was convened for shareholders of Bumero Estates Limited, when they were not yet registered as shareholders was irregular however, this is not prejudicial to the Applicant, who together with the said Respondents, were registered as shareholders, consequent to the meeting of 21<sup>st</sup> September, 2022.

In this case, the Applicant who seeks justice must do justice, and also he who comes to equity must come with clean hands.

For the foregoing reasons, this ground is answered in the negative.

5 **Ground 2:** That the purported shareholders' meeting of the 9<sup>th</sup> Respondent held on 21<sup>st</sup> September 2022, was attended by Herold Wejuli contrary to an injunction order by the High Court Family Division on 7<sup>th</sup> November 2018 in Miscellaneous Application No. 0125 of 2018

10 Counsel for the Applicant submitted that the meeting held on 21<sup>st</sup> September 2022 was illegal and in direct violation of the Court order granted on 9<sup>th</sup> September, 2022, and that granted by Justice Matovu on 7<sup>th</sup> November, 2018 in Family Division, where the 5<sup>th</sup> Respondent Harold Wejuli was restrained by a Court order from dealing with the estate of the late George Alex Wejuli.

15 Counsel argued that the actions of Harold Wejuli by attending the purported shareholders' meeting on behalf of the estate of the late George Alex Wejuli, is a direct violation of the subsisting Court orders, which amounts to contempt of Court, therefore the purported meeting, and all the resolutions passed were null and void.

20 In reply, Counsel for the 1<sup>st</sup> – 9<sup>th</sup> Respondents submitted that while an injunction was issued against the 5<sup>th</sup> Respondent, the same was issued pending the determination of the main suit No. 063 of 2018 in the Family Division, and that the Applicant is deliberately misleading Court in maintaining an interlocutory position when in fact the main suit concluded.

25 Counsel relied on the Court order attached as Annexure "CT63" to the affidavit of the 3<sup>rd</sup> Respondent, to contend that the meeting received a Court Order vide HCCS 63 of 2018, dated 25<sup>th</sup> August, 2022 resolving the matter, and that it is not true that he was at the time of the meeting, restrained from dealing with the estates of the late Alex George Wejuli.

30 Counsel made further reference to Annexure "PRX", which is a proxy form signed on the 16<sup>th</sup> day of September, 2022 by the administrators of the estate of the late Alex George Wejuli namely; Jude Wejuli, Nasirumbi Rose Wejuli, Wejuli Allen, and Brenda Wejuli, appointing Harold Wejuli as proxy to vote on their behalf at the annual, and or extraordinary general meetings of the company to be held in 2022, 2023 and 2024, to submit that the meeting of 21<sup>st</sup> September, 2022 satisfied  
35 itself that Herald Wejuli (5<sup>th</sup> Respondent) was not barred from attending to the affairs of the company by any Court order.

5 Counsel for the 11<sup>th</sup> Respondent submitted that the Applicant is not clear on the type of injunction sought for, and that the 11<sup>th</sup> Respondent is not a party to Company cause No.3 of 2021.

### Decision

10 I have looked at Annexure “CT63”, which is a consent order by the parties in respect of Civil Suit No. 63 of 2018, dated 25<sup>th</sup> August, 2022, and under paragraph 2 thereof, the parties agreed that Jude Wejuli, Nasirumbi Rose Wejuli, Wejuli Allen, Brenda Wejuli, join Harold Wejuli as joint administrators to the estate of the late Alex George Wejuli since Fidelis Wejuli has since passed on. [Emphasis added]

15 I am cognisant of the fact that Harold Wejuli was appointed proxy by the Administrators of the estate of the late Alex George Wejuli, to vote on their behalf at the annual, and or extraordinary general meetings of the company to be held in 2022, 2023 and 2024, which was proper in accordance with section 143(1) of the Act.

20 For the foregoing reason, I find that the attendance by Harold Wejuli of the purported shareholders’ meeting on behalf of the estate of the late George Alex Wejuli was proper, since he was acting legally as an Administrator of the said estate of the late George Alex Wejuli.

It is my considered view that the issue of contempt of court therefore does not arise.

25 This ground fails.

**Ground 3:** The ruling delivered in Company Cause No. 3 of 2021 on 9<sup>th</sup> September 2022, where the Court ordered the registered shareholders of the 9<sup>th</sup> Respondent to attend a special meeting not later than 45 days from the date of the Order to approve the minutes, and resolutions of the meeting held on 5<sup>th</sup> July,2017 but in contravention of this Order, the meeting held on 21<sup>st</sup> September 2022 conducted other businesses, and made other resolutions not authorized by the Order of Court.

30

Counsel for the Applicant contended that the purported shareholders’ meeting held on 21<sup>st</sup> September, 2022 was not only illegal, and a violation of the Court order but also conducted other businesses, and made resolutions not authorized by the Order.

35



5 Counsel argued that the Court Order granted on 9<sup>th</sup> September, 2022, gave specific orders, and directions to the registered shareholders, and that the actions of the Respondents are in contempt of Court, and that the meeting, and all resolutions should be declared null and void.

10 In reply, Counsel for the 1<sup>st</sup> -9<sup>th</sup> Respondents submitted that the Orders of this Honorable Court of 9<sup>th</sup> September 2022, determined who were the shareholders of the Company as at the date of the Court Order, and that the said shareholders had all the rights and obligations of shareholders in accordance with the law.

15 Counsel argued that when the Court ordered that a meeting be held to approve the minutes, and resolutions of the meeting held on 5<sup>th</sup> May, 2017, the Court did not divest the shareholders of their rights and obligations, and that the basis of Company Cause No.3 of 2021, was that the Applicant had refused to comply with the Orders of Court made in 2017, hence the shareholders meeting on 21<sup>st</sup>, September, 2022, did not alter the resolutions of the Company made on 5<sup>th</sup> May, 2017 but were approved in compliance with the Orders of Court.

20 Counsel further argued that it was the company's legal right to make any further resolutions which they did, and that the resolutions added were to take effect from 22<sup>nd</sup> September, 2022. That these resolutions only affected the office of the Company Secretary and the position of the Chairperson of the Board of Directors of the Company.

25 Counsel contended that these are officers of the company that work under the direction of the Board of Directors, and report to the shareholders, and that their appointment, and disappointment is a company function that need not be authorized by the Court.

### Decision

30 In the ruling of this Court in Company Cause No. 3 of 2021, dated 9<sup>th</sup> September, 2022, the following Orders were made inter alia: -

35 *"(1) In accordance with the Court Order dated 5<sup>th</sup> May 2017, the Administrators of the estates of the original shareholders of Bumero Estates Ltd, namely: Romano E. Masiga, Alex Wejuli, and G. Lawrence Owino be entered as shareholders in the Company Register as required under Article 31 of the Articles of Association of the Company,*

5 (2) The 6<sup>th</sup> and 7<sup>th</sup> Applicants should furnish proof of grant of probate as executors of the estate of the late Romano Emmanuel Masiga, prior to their registration as shareholders in the 1<sup>st</sup> Respondent's register,

(3) The registered shareholders should attend a special meeting not later than 45 days from the date of this Order to approve the minutes and resolutions of the meeting held on 5<sup>th</sup> July, 2017,

(4) A notification of the allotted shares to the nominated shareholders should be made to the Registrar of Companies within 7 days after the holding of the special meeting,

(5) A notice of the rectification of the register should be given to the Registrar of Companies,

(6) The 1<sup>st</sup> Respondent Company should ensure compliance with Section 119 of the Companies Act, 2012."

I have taken into further consideration the Court order dated 5<sup>th</sup> July, 2017, at the High Court Civil Division, to find that the said order, and the above order of this Court was meant to settle the issue of directorship and shareholding of the company.

The well-established proposition on principles of corporate governance is that management of the affairs of the company is run by the Directors, who are accountable not only to shareholders but also other stakeholders such as employees, customers, creditors, the community, suppliers, and even the future generation. **(See Company Law: A guide to the Companies Act of Uganda, by Winifred Tarinyeba Kiryabwire, 2015 pg. 171)**

In practical terms, the position of a managing Director has no specific powers or duties recognised by law; the powers are derived from the company itself in the provisions of the Articles of Association. **(See Company Law in Uganda by Bakibinga, 2001, pg.120)**

For the foregoing reasons, this Court finds that the removal and appointment of Directors is within the rights of the company members, as per the Articles of Association, therefore, the members of the 9<sup>th</sup> Respondent, who attended the said meeting validly exercised their powers to remove the Applicant and appoint Mr. Mohammed Wandera as Director and Managing Director of the 9<sup>th</sup> Respondent Company.

5 This ground therefore fails.

**Ground 4:** That the 1<sup>st</sup> - 9<sup>th</sup> Respondents have with the assistance of the 10<sup>th</sup> and 11<sup>th</sup> Respondents abused the Court order of 9<sup>th</sup> September 2022, to change the management of the 9<sup>th</sup> Respondent for the purpose of accessing the funds due to the 9<sup>th</sup> Respondent from the 11<sup>th</sup> Respondent, under Supreme Court Civil Appeal No. 13 of 2007, and mismanaging the said funds to the detriment of the 9<sup>th</sup> Respondents and lawful shareholders.

The phrase “abuse of Court process” involves the use of the process for an improper purpose or a purpose for which the process was not established. **(See Attorney General & Anor Vs James Mark Kamoga & Anor SCCA No. 8 of 2004)**

15 In the instant case, I find that the Applicant has not discharged the burden of proof to the required standard that the said Respondents are in abuse of the process of Court, and that there is change in management of the company, since the Board of Directors includes the Applicant; the only change is on the appointment of a Chairperson of the Board, and the Company Secretary, which  
20 was justified by the 3<sup>rd</sup>, and 9<sup>th</sup> Respondents on grounds that the Applicant and Bob Nagimesi did not comply with the Court order of 2017.

Accordingly, I find the approach adopted by members of the said meeting in appointing Mr. Muhammad Wandera the 3<sup>rd</sup> Respondent, as Chairperson of the Board of Directors to replace Mr. Steven Magero the Applicant; and that Mr.  
25 Steven Magero would remain as a Director only; the appointment of Mr. Enoch Barata as a Company Secretary, and removal of Mr. Bob Nagimesi as a Company Secretary, was a step in the right direction, in order to further the interests of the company.

In the result, I find that there is no change in the management of the company, which lies with the Directors, from which the Applicant is a director, and a member  
30 of the Board of Directors; the question of mismanagement is not backed by any evidence, and is speculative.

This ground also fails.

**GROUND 5:** There is a real danger that unless restrained by the Court, the Respondents will continue to abuse the process of the Court for purposes of mismanaging the affairs of the 9<sup>th</sup> Respondent and its properties including the funds payable to the 9<sup>th</sup> Respondent by the 11<sup>th</sup> Respondent.

5 This Court having found above, that the issue of contempt of Court does not arise, and that there is no abuse of the process of Court by the Respondents, further finds that this issue is redundant.

This ground fails.

10 Consequently, this Court finds that the 10<sup>th</sup> Respondent was wrongly sued by the Applicant, since it is neither a member nor a Director of the 9<sup>th</sup> Respondent Company, and was not required to be present in the special meeting that the Court ordered in the ruling of 9<sup>th</sup> September 2022.

In the final result, I find that this application lacks merit.

15 This Court therefore invokes its inherent powers under section 98 of the Civil Procedure Act, Cap 71, to make such orders as may be necessary for the ends of justice for the parties herein, that the application is dismissed with costs to the 10<sup>th</sup>, and 11<sup>th</sup> Respondents, and with no orders as to costs against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> Respondents.

Delivered electronically this 20<sup>th</sup> day of October, 2023.

20



SUSAN ABINYO

**JUDGE**

**20/10/2023**

25