

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
COMPANY CAUSE NO. 0019 OF 2024
IN THE MATTER OF ABERDEEN REAL ESTATE LIMITED
AND
IN THE MATTER OF AN APPLICATION BY ALSHAFI INVESTMENTS GROUP LLC

(Before: Hon. Lady Justice Patricia Mutesi)

RULING

Background

This application was first filed as Company Cause No. 0012 of 2023 in the High Court (Civil Division). During the hearing of the application, it came to the fore that there was a dispute over the legitimacy of the Applicant's shareholding in Aberdeen Real Estate Ltd ("the company") which was pending determination in this Court vide Civil Suit No. 0732 of 2022. This prompted the Civil Division to transfer the application to this Court for further management. The application was then filed in this Court vide Company Cause No. 0019 of 2024.

The Applicant brought the application by notice of motion under **Section 142 of the Companies Act, 2012, Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act 71** and **Order 52 rule 1 of the Civil Procedure Rules S.I. 71-1** seeking leave to call and conduct a meeting of the company without the requisite quorum and to pass a resolution appointing Directors and a Secretary. Briefly, the grounds of this application are:

1. Ahmed Darwish Dagher Al Marar owned 99 shares in the company at the time of its incorporation in October 2011.
2. In March 2022, the Applicant, a decree holder against Ahmed Darwish in HCCS No. 695 of 2017, was granted a court order to bid for and purchase Ahmed Darwish's 99 shares in the company.

3. The Applicant emerged as the successful bidder and the 99 shares were transferred into its name in June 2022.
4. Owing to the manner in which the shares were acquired by the Applicant, the existing officers and the other shareholder in the company are hostile towards the Applicant and will not cooperate in the appointment of new directors, in spite of the fact that the Applicant is the majority shareholder with 99 shares.
5. It is impracticable for the Applicant to call a meeting of the company in the manner prescribed by the Articles of Association.
6. It is just and equitable for this Court to exercise its inherent powers to grant the orders sought in this application.

The application is supported by an affidavit sworn by Nsubuga E. Ssempebwa, the Applicant's lawful Attorney. He averred that the company was incorporated in October 2011. At the time, Ahmed Darwish owned 99 shares while Muhammed Khalil Darwish owned 1 share in the company. The Applicant sued Ahmed Darwish vide Civil Suit No. 695 of 2017 to recover a debt. The Applicant was successful in that suit. In execution of the subsequent decree, this Court attached Ahmed Darwish's 99 shares in the company and later allowed the Applicant to bid for them and to purchase them. The Applicant emerged as the successful bidder and the shares were formally transferred into its name.

Mr. Nsubuga further averred that there is still animosity in the company over the above-said developments. That the company's officers and other shareholder remain hostile towards the Applicant and refuse to cooperate with it to this day, yet the Applicant is the majority shareholder with 99 shares out of 100 shares. That it remains impracticable for the Applicant to call a meeting of the company in the manner prescribed in the company's Memorandum and Articles of Association in order to appoint new directors and a secretary. He contended that this application should be allowed so that that meeting is held for better management of the company.

When the application was served on the company's Secretary (Mwesiga Apollo), the lawful Attorney of Muhammed Khalil Darwish (a shareholder and director in

the company), obtained leave of Court to file an affidavit in reply opposing the application. Therein, Mr. Mwesiga averred that, by the time the Applicant secured the transfer of Ahmed Darwish's 99 shares in the company in June 2022, the said Ahmed Darwish had already sold those shares to Hamder Jaber Rashid Alhameli on 14th October 2013. This transfer of shares was later formalized by the company and is yet to be set aside.

Mr. Mwesiga further notified the Court that, in any case, the debt which led to the transfer of the 99 shares into the Applicant's name has since been overturned by the highest court in Abu Dhabi where the debt was said to have been incurred. He also stated that the Applicant has ever filed this application in the Civil Division which dismissed it as being premature pending the disposal of Civil Suit No. 0732 of 2022 concerning the legitimacy of the Applicant's shareholding.

Nsubuga E. Ssempebwa swore and filed an affidavit in rejoinder on behalf of the Applicant. He insisted that the Applicant is the lawful owner and transferee of 99 shares in the company. He reminded the Court that all issues relating to the said debt were finally settled by this Court in Civil Suit No. 695 of 2017. He also stated that the decision of the Civil Division dismissing the Applicant's application for leave to call and hold a meeting of the company is not binding on this Court since the merits of that application were not considered.

Issue arising

1. Whether this application should be allowed.

Representation and hearing

At the hearing of this application, the Applicant was jointly represented by M/S Katende Ssempebwa & Co. Advocates and M/S Kabayiza Kavuma Mugerwa & Ali Advocates. On the other hand, Muhammed Khalil Darwish was represented by M/S CR Amanya Advocates and Solicitors.

Determination of the issue

I have carefully examined the record and found that an application similar to the present one was earlier filed in the Civil Division vide Misc. Application No. 0019

of 2022. After considering that application, the Civil Division decided that the same was premature because at the time, there was a pending challenge to the Applicant's shareholding in the company before this Court *vide* **Civil Suit No. 0732 of 2022**. For that reason, that application was dismissed.

It should be noted that, at the time of this ruling, this Court has already disposed of Civil Suit No. 0732 of 2022 to the extent that it affected the Applicant. This disposal came through the Court's ruling in **Misc. Application 1337 of 2022** in which it was found that the Applicant had legitimately purchased Ahmed Darwish's 99 shares in the company following a long and thorough court process that is yet to be contested in accordance with any law. The Court, therefore, found that Civil Suit No. 0732 of 2022 could not be maintained against the Applicant.

Since shareholding in the company is no longer in issue, the Applicant remains the lawful owner of 99 shares in the company. Accordingly, the Applicant is entitled to enjoy all rights connected with that shareholding under the law. The Applicant is also bound by all the duties that flow with that shareholding under the law. The right and duty of shareholders to attend meetings in which the company's affairs are discussed and determined form the cornerstone of the company model of resource mobilization and collective investment.

The gist of this application, as I have gathered from the materials on the Court record, is that the business of the company is at a standstill since the Board of Directors is not fully constituted. Additionally, from the time the Applicant bought the 99 shares in the company following a protracted execution process, all the officers and the other shareholder of the company have shunned the Applicant. The Applicant has now sought this Court's intervention, through the issuance of an order allowing it to call a meeting for the appointment of directors and a secretary, in order to salvage the business and assets of the company.

Section 142 of the Companies Act, 2012 provides that where, for any reason, it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in the

manner prescribed by the articles or the Act, the Court may, of its own motion or on the application of any director or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in the manner the Court thinks fit. For the Court's authority to be invoked, there must be proof that it is actually impracticable to call the general meeting in the ordinary way prescribed. See **In Re Lukuli Coffee Factory Ltd, HC Company Cause No. 11 of 2005**.

As earlier observed, it appears to me that the Applicant has been locked out of the company's affairs completely. Despite being the majority shareholder in the company, the Applicant remains in the dark about the true state of the company's affairs and operations. It is abundantly clear that Ahmed Darwish no longer owns any shares in the company. Following this Court's ruling in Misc. Application No. 1337 of 2023 to the effect that there was no genuine contract of sale of the 99 shares between Ahmed Darwish and Hamder Jaber in October 2013 as alleged, Hamder Jaber also has no shares in the company.

Annexure D to the affidavit in support of the motion is a search report issued by the Registrar of Companies. It shows that, as of 8th August 2022, the 2 directors of the company remain Ahmed Darwish and Muhammed Khalil Darwish. This report proves that Ahmed Darwish who no longer has any shares in the company continues to have a hold over its day-to-day management. That state of affairs contravenes **Sections 192 and 193 of the Companies Act, 2012** whose collective import, in the context of this case, is that a director in a company limited by shares should also be a shareholder in that company. In this case, Ahmed Darwish lost all his shares in the company after failing to pay a judgment debt but he continues to wield controlling power and authority over the affairs of the company and to direct its operations. This is not acceptable.

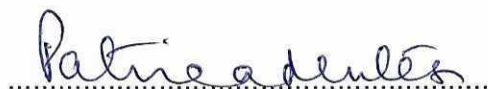
What makes the impasse worse is that the Applicant became a shareholder in the company following a protracted court process. It is this Court which allowed the Applicant to bid for and to purchase the said 99 shares in order to realise its judgment debt. In denying the Applicant audience in the company, Muhammed Khalil Darwish, the other officers and agents of the company and the company

itself are frustrating the fruits of the court orders through which the Applicant came to own shares in the company. If this Court does not intervene to ensure that the Applicant is accommodated within the company, its orders leading up to the Applicant's purchase of the 99 shares would have been issued in vain.

It is obvious that the prevailing situation in the company is not only frustrating the lawful operations of the company but it is also an affront to this Court's orders. I am satisfied that it is just and reasonable to allow this application in the interest of the proper running of the company's affairs and in order to give full effect to this Court's orders through which the Applicant became the company's majority shareholder. Consequently, this application is allowed with the following orders:

- i. The Applicant shall call, hold and conduct a general meeting of the shareholders of Aberdeen Real Estate Ltd within 3 (three) months from the date of this ruling to decide upon the constitution of the Company's Board of Directors and to regularize the affairs of the company.
- ii. The company shall fully accommodate the Applicant and accord it all of its rights as a shareholder under the law.
- iii. Each party shall bear its own costs.

Dated this 12th day of April 2024

A handwritten signature in dark ink, appearing to read 'Patricia Mutesi', is written over a horizontal dotted line.

Patricia Mutesi

JUDGE