

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBALE
MISC. CAUSE NO.38 OF 2023

MALE H. MABIRIZI K. KIWANUKA ::: APPLICANT

VERSUS

- 1. REGISTRAR GENERAL**
- 2. UGANDA REGISTRATION SERVICES BUREAU ::::::::::::::: RESPONDENTS**

BEFORE HON. JUSTICE LUBEGA FAROUQ

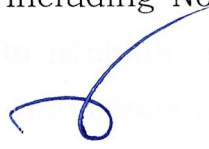
RULING

1. Introduction

2. This application was brought by way of notice of motion under Paragraphs I, XXVI, XXIX(a)&(f) of National Objectives & Directive Principles of State Policy, Articles 8A, 17(1)(i), 20(1), 21(1), 26, 40, 42, 43(2), 139(1) of the Constitution of Uganda, Section 265 of Companies Act, 2012, Sections 33, 36(1), 38(1) & (2) & 39 of the Judicature Act Cap 16, Section 3 of Judicature(Amendment) Act, 2002, Rules 1A(b), 3(a)&(c), 3A & 6 of the Judicial Review Rules,2009, as amended in 2019 for-

a. Declaration that the 30th August 2023 Registrar General, Uganda Registration Services Bureau's striking out of the register 110822 companies including No. 67163 Money Lenders Association of Uganda Limited and No. 67164 Money Lenders Union Limited, without her making any application to court and obtaining a court order to that effect was illegal, procedurally improper, irrational and ultra vires the powers of registrar of companies;

b. Order of certiorari quashing the decision striking out of the register 110822 companies including No. 67163 Money Lenders Association of



- Uganda Limited and No. 67164 Money Lenders Union Limited, without her making any application to court and obtaining a court order to that effect;
- c. Order of prohibition prohibiting Registrar General, Registrar of companies or their subordinates from any further striking out of the register companies without making any application to court and obtaining a court order to that effect;
 - d. Permanent injunction restraining Registrar General, Registrar of companies or their subordinates from any further striking out of the register companies without making any application to court and obtaining a court order to that effect; and
 - e. General, aggravated and exemplary damages to be paid to Applicant for inconveniences caused.

3. **Background**

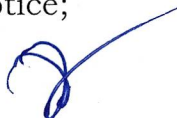
- 4. The Applicant brought this application against the Respondents for striking the above cited companies off the register, including companies where the Applicant claims to be a member and general secretary. The Applicant alleges that the striking off of those companies from the register without first applying for a court order was illegal, procedurally improper and irrational and therefore sought the above cited orders.
- 5. The Respondents raised preliminary objections that- the application does not meet grounds for judicial review and it is therefore vexatious, misconceived and an abuse of the court process and that the Applicant lacks the locus standi to institute the application on behalf of the Money Lenders Association of Uganda Limited.
- 6. This application was supported by the affidavit of the Applicant **MALE H. MABIRIZI K. KIWANUKA** which briefly states that-



- a. On 30th August 2023, the Respondents announced striking out of the register 110822 companies;
 - b. The Respondent subsequently struck out companies including No.67163 Money Lenders Association of Uganda Limited and No.67164 Money Lenders Union Limited, promoted and managed by the Applicant;
 - c. That the 1st Applicant did not make any application to court and did not obtain a court order to that effect which action was illegal, procedurally improper, irrational and ultra vires to the powers of Registrar of Companies;
 - d. That he has sufficient interest in the matter as one of directors of No.67163 Money Lenders Association of Uganda Limited and No.67164 Money Lenders Union Limited which were struck off the list by the Registrar,
 - e. He further averred that he has interest in the matter as a citizen interested in good governance of Uganda and rule of law;
 - f. That he wrote to Respondents to reverse their decision but they did not respond to his letter.
7. This application was opposed by the affidavit of KULE **WALID** the 2nd Respondent's Manager which briefly states that-
- a. The 2nd Respondent is an agency of the government charged with the mandate to administer and give effect to the relevant laws, provide registration services for businesses and intellectual property rights, 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 and collection of revenue;



- b. The Respondents shall raise two preliminary objections to the effect that- this application does not meet grounds for judicial review and it is therefore vexatious, misconceived and an abuse of court process; and that the Applicant lacks locus to institute this application on behalf of Money Lenders Association of Uganda Limited and the other companies;
- c. Without prejudice to the foregoing, he is aware that the Respondents reinstated Money Lenders Union Limited onto the register of companies, therefore there is no cause of action against the Respondents in regard to the said company;
- d. That all companies are required to file annual returns with the Registrar of Companies as provided for under sections 132 and 133 of the Companies Act, 2012;
- e. Where a company fails to comply with the requirement to file annual returns, the company and every officer of the company in default is liable to pay a fine and where such default continues for a period of five years, the Registrar of Companies has the mandate to strike the company off the register;
- f. On 20th March 2023, notice to file company annual returns was published in a newspaper of wide circulation requiring companies to file annual returns with the Registrar of Companies;
- g. The said notice required all companies to comply with their legal obligation to file outstanding annual returns by visiting the Respondents' website www.ursb.go.ug and proceed to file their returns;
- h. The said notice directed that companies which fail to file annual returns for a period of five (5) years or more to file a statement of solvency and show cause why they should not be struck off the register within sixty (60) days from the date of the notice;



- i. On 30th August 2023, in accordance with section 134 (6) of the Companies Act, 2012 notice of striking companies off the register for failure to file company annual returns was issued, a total of 110,822 companies were struck off the register and the list of the said companies could be accessed from the Respondents website at www.ursb.go.ug
- j. Money Lenders Association of Uganda Limited was incorporated on the 20th day of November 2017 and a certificate of incorporation was issued by the 2nd Respondent;
- k. Since incorporation, Money Lenders Association of Uganda Limited has not filed any annual returns with the Registrar of Companies as required by law;
- l. Several companies including Money Lenders Association of Uganda Limited did not comply with the notice which was issued on 20th March 2023 requiring all companies to file their annual returns;
- m. In accordance with section 134(6) of the Companies Act, 2012 the Registrar of Companies, issued a public notice dated 30th August 2023 notifying the public that non-compliant companies totaling to 110,822 had been struck off the register including Money Lenders Association of Uganda Limited;
- n. The Respondents have power to strike a company off the register in accordance with the Companies Act, 2012 as amended under section 265A which gives the Registrar powers to strike defunct companies off the register;
- o. The actions of striking off defunct companies was done in compliance with the Respondents' statutory obligations under the law;



- p. He averred that even after striking a company off the register, the company can be reinstated upon complying with the provisions of the Companies Act and Regulations therein;
- q. A company that has been struck off the register may apply for restoration within twelve months from the date it was struck off the register;
- r. The Companies Regulations 2023 give the Registrar of Companies powers to reinstate the company onto the register once the company has applied for reinstatement giving reasonable grounds for the same and has paid the penalties as provided for under the statute;
- s. To-date, several companies that were struck off the register have since been reinstated by the Respondents upon complying with the statutory obligations;
- t. Money Lenders Association of Uganda Limited has not complied with the statutory obligations and neither have they made payment for the prescribed penalties to warrant their reinstatement onto the company register;
- u. The Respondents' actions of requiring the companies to comply with the law and striking non-compliant companies off the register, were procedurally proper, regular and done in compliance with the Companies Act;
- v. This application is without merit as the Respondents did not require a court order in order to comply with their statutory mandate;
- w. The actions of the Respondents were done in execution of their statutory obligations.

8. The Applicant **MALE H. MABIRIZI K. KIWANUKA** in rejoinder avers that-



- a. The alleged objections raised by the Respondent will be baseless since the application has merit and he has locus as one of the promoters and members of Money Lenders Association of Uganda Limited and as a Ugandan citizen with a duty to promote rule of law;
- b. He averred that although companies have obligations to file annual returns, failure to file the same does not lead to striking out the same of the register except with a High Court order and the impugned actions of the Respondents were illegal and procedurally improper;
- c. He averred that it is not true that after incorporation Money Lenders Association of Uganda Limited filed no returns because on 11th January 2018, the Applicant on its behalf filed notification of appointment of directors and secretary, notice of situation of registered office and resolutions for its general assembly;
- d. Further, on 28th June 2018, resolutions for the 2nd national assembly and notification of appointment of directors and secretary was filed and on 8th February 2019;
- e. The High Court issued an order in Misc. Cause No. 356 of 2018 against the 2nd Respondent herein, in respect to Money Lenders Association of Uganda Limited;
- f. He added that since the striking out of the companies contravened the Companies Act, Regulations for re-instatement are equally unlawful for contravening the Principal Act.

9. Legal representation

10. Counsel Moses Ssempijja represented the Respondents while the Applicant represented himself in this matter.



11. **Submissions**

12. The parties filed their written submissions and are on court record. They have been considered in the determination of this application.

13. Before I analyze this application, I would like to note that both parties raised preliminary objections however, as a norm of procedure, I will consider them first.

14. It should also further be noted that although counsel referred to the old laws in their submissions, since the 7th revised editions of the laws of Uganda became effective on 1st July, 2024, I will use the same in my analysis.

15. **Applicant's preliminary objection**

16. At the commencement of hearing this application the applicant raised a preliminary objection on grounds that counsel filed a supplementary affidavit without leave of court as required by the law.

17. Counsel for the Respondents in reply submitted that, although it is true that they brought the said supplementary affidavit in reply out of time, the Applicant did not demonstrate how he would be prejudiced by the same since its gist is to inform court that the Applicant is not a general secretary in one of the said companies. Counsel added that the said supplementary affidavit in reply was effectively served onto the Applicant on 9th April 2024. He finalized by requesting court to use its discretion to admit their supplementary affidavit in reply.

18. In rejoinder, the Applicant while relying on Rule 7 of the Judicature (Judicial Review) Rules, 2009, submitted that these are special proceedings under those rules and applications of this nature must be filed with leave of court and notice must be given to the opposite party.

19. **Determination of the Applicant's preliminary objection by court**

20. Rule 7(3) of the Judicature (Judicial Review) Rules, 2009 provides that-

“Any respondent who intends to use any affidavit at the hearing shall file it with the Registrar of the High Court as soon as practicable and in any event, unless the Court otherwise directs, within fifty-six days after service upon the respondent of the documents required to be served by subrule (1).”

21. From the Applicant’s averments, he admitted having responded to the Respondent’s averments in the supplementary affidavit which in my view is the intention of the above cited provision of the law.

22. Therefore, although the proper procedure of filing the supplementary affidavit was not followed, but the mere fact that the Applicant had an opportunity to respond to the contents therein, in the interest of justice, I will allow the said affidavit as part of evidence on the court record.

23. The preliminary objection is accordingly overruled.

24. **Respondents’ preliminary objections**

25. The Respondents raised two preliminary objections in paragraph 4 of the affidavit in reply as follows-

(a) *This application does not meet grounds for judicial review and it is therefore vexatious, misconceived and an abuse of court process, and;*

(b) *That the Applicant lacks locus to institute this application on behalf of Money Lenders Association of Uganda Limited and other companies.*

26. **Preliminary objection 1:** *That this application does not meet grounds for judicial review and it is therefore vexatious, misconceived and an abuse of court process.*



27. Rule 7A of the Judicature (Judicial Review) (Amendment) Rules, 2019 provides for factors to consider in handling applications for judicial review as follows-

- (a) *That the application is amenable for judicial review;*
- (b) *That the aggrieved person has exhausted the existing remedies available within the public body or under the law; and*
- (c) *That the matter involves an administrative public body or official.*

28. **That this application is amenable for judicial review**

29. In order to determine whether the application is amenable for judicial review, court is meant to satisfy its self on whether the case at hand falls under those grounds applicable to this procedure, whether the same is brought within the required time and whether the applicant has a direct or sufficient interest in the matter at hand.

30. Rule 3 of the Judicature (Judicial Review) Rules (supra) provides for cases appropriate for judicial review as-

“(1) An application for-

- (a) an order of mandamus, prohibition or certiorari; or*
- (b) an injunction under section 38 (2) of the Judicature Act restraining a person from acting in any office in which the person is not entitled to act, shall be made by way of an application for judicial review in accordance with these Rules.*

(2) An application for a declaration or an injunction (not being an injunction mentioned in subrule (1)

(b) may be made by way of application for judicial review, and on such an application, the High Court may grant the declaration or injunction claimed if it considers that, having regard to-

- (a) the nature of the matter in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari;*



*(b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and
(c) all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.*”

31. In the instant case, the Applicant sought for orders of declaration that the actions of the Respondent striking out of the register 110,822 companies without obtaining a court order was to him illegal. He also prayed for an order of certiorari quashing the decision striking out the said companies, order of prohibition and permanent injunction restraining the Respondents or their subordinates from any further action striking out the said companies, which in my view falls under the cases applicable for judicial review.

32. **Sufficient Interest**

33. Rule 3A of the Judicature (Judicial Review) Rules (supra) provides that-
“Any person who has a direct or sufficient interest in a matter may apply for judicial review.”

34. The Supreme Court of the United Kingdom in **AXA General Insurance Ltd v. Lord Advocate [2011] UKSC 46**, held that-

“A requirement that the applicant demonstrate an interest in the matter complained of will not however operate satisfactorily if it is applied in the same way in all contexts. In some contexts, it is appropriate to require an applicant for judicial review to demonstrate that he has a particular interest in the matter complained of: the type of interest which is relevant, and therefore required in order to have standing, will depend upon the particular context. There must be considerations which lead the court to treat the applicant as having an interest which is sufficient to justify his bringing the application before the court. What is to be regarded as sufficient interest to justify

a particular applicant's bringing a particular application before the court, and thus as conferring standing, depends therefore upon the context, and in particular upon what will best serve the purposes of judicial review in that context."

35. The Applicant avers at paragraph 3 of the affidavit in support that among the companies that were struck out included No.67163 Money Lenders Association of Uganda Limited which is promoted and managed by him.
36. Counsel for the Respondent submitted that the Applicant possesses no such interest in respect of Money Lenders Association of Uganda Limited and the other companies, since he is neither a member nor director of the said companies.
37. The Applicant attached copies of returns he filed with the Respondents in respect of Money Lenders Association of Uganda Limited, collectively marked as **annexure A** to his affidavit in rejoinder.
38. On further perusal of the said returns, it is clear from the notification of appointment of directors and secretaries filed with the Respondents that on 28th June 2018, the Applicant herein is indicated as the secretary and director for Money Lenders Association of Uganda Limited.
39. However, according to annexure D1 to the supplementary affidavit dated 7th of August, 2018 which is the Money Lenders Association of Uganda Limited (the Company) Board Resolution, the Applicant ceased to be a secretary of the company on 12th June, 2018 but retained the position of the director as per company form 20. Hence, he has sufficient interest in Money Lenders Association Uganda Limited.
40. **That the aggrieved person has exhausted the existing remedies available within the public body or under the law.**
41. Counsel for the Respondents submitted that, in respect of Money Lenders Association of Uganda Limited, the Applicant has not exhausted the other existing remedies provided for under section 263 (1) of the Companies Act

and the Regulation thereunder. The applicant however, considered this submission as redundant.

42. Regulation 42 (1) of the Companies Regulation, 2023 provides that-
“A company struck off the Register may apply for restoration within twelve months from the date it was struck off the register.”

43. Regulation 42 (6) of the same Regulations provides that-
“The registrar may restore a company onto the register where the registrar is satisfied that the company-

(a) shows readiness to comply with provisions of the Act;

(b) was carrying on business at the time it was struck off the register and there is a proper reason for it to continue in existence; or

(c) directors or shareholders were under a disability.”

44. In light of the above, the company which has been struck off the register may apply to the Registrar for restoration under the Regulations upon fulfilment of certain conditions therein.

45. In **Viaguard Accu-metrics Laboratory V. Standards Council of Canada, the Federal Court of Appeal (Fed CA,2023)** recently confirmed that *parties unsatisfied with an administrative decision must exhaust all adequate administrative processes available before applying for judicial review.* It was further emphasized that Judicial review remains a remedy of last resort.

46. Under paragraph 21 of the Respondents affidavit in reply, it was stated that *“after companies which were struck off the register, several of them since then have been re-instated by the Respondent upon complying with the statutory obligations”.*

47. The applicant is therefore advised to do the same since he is still within time up to 29th of August, 2024 to make the application for restoration.

48. It is therefore my conclusion that the Applicant did not exhaust the available remedies under the regulations to have his company restored on the register but opted to file this application.

49. I have however, observed as court that under section 262 of the Companies Act Cap106, companies were obliged to comply with certain statutory obligations among which include, filing annual returns. Section 263 of the same Act gives the registrar more independent powers to struck off defunct companies without resorting to court in his or her own accord.
50. The regulations made by the Minister under the Companies Act were to provide for an elaborate procedure to be followed in striking out defunct companies and the procedure of restoration of the same.
51. In the foregoing, I will not delve into the merits of the main application.
52. This Application is accordingly dismissed with costs to the Respondents.

I so order



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LUBEGA FAROUQ
JUDGE

Ruling is delivered via emails of the parties on the **3rd** day of **July**, 2024