

IN THE HIGH COURT OF UGANDA AT KAMPALA

COMPANY CAUSE NO. 24 OF 2016

FORMERLY FORT PORTAL COMPANY CAUSE NO. 1 OF 2016

IN THE MATTER OF THE COMPANIES ACT 1 OF 2012

AND

IN THE MATTER OF MPANGA GROWERS TEA FACTORY LIMITED

- 1. ERISA KAKYOMA**
- 2. KAITA KAKIIZA**
- 3. KATO KAKKIZA**
- 4. MUGUME ROBERT**
- 5. MONDAY R JOSEPH**
- 6. FRED KALINDA**
- 7. MUGABO CHARLES**
- 8. KIRASO EDISON**
- 9. BWANGO SMART**
- 10. OLIVE NKوبا.....APPLICANTS**

V

- 1. SAMSON AGASA**
- 2. AKORA BENARD KIIZA**
- 3. RWEREKANA FRED**
- 4. SOLOMON BAGONZA**
- 5. KAGABA KAKYARI OSIIME**
- 6. MPANGA GROWERS TEA FACTORY.....RESPONDENTS**

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

The applicants through their advocates Ngaruye, Ruhindi, Spencer & Co. Advocates by a motion brought under order 38 r 5 of the CPR, the Companies Act, Sections 33 and 38 of the Judicature Act and 98 of the CPA sought ten orders against the respondents.

The application was supported by four affidavits of Mugume Robert, Fred Kalinda ; Kiraso Edison, and Clive Nkoba .

The respondents were represented by Tumusiime, Kabega & Co. Advocates and filed an affidavit in reply of Akora Benard Kizza and Samson Agasa.

Counsel for the respondents filed written submissions that I have carefully considered.

Background to this case

On 18.2.2016, Hon. Lady Justice Mugambe authorized an extra ordinary meeting for Mpanga Growers Tea factory ltd hereinafter referred to as Mpanga ltd. This was after six applicants in that cause sued Mpanga ltd and five others in **Kampala Company Cause No. 1 of 2016**. The six who sued are: Nyakairu Tea Estate Ltd, Rwerekana Fred, Francis Karubata, Kakkiza Solomon, Akora Benard Kiiza, Said Kirokimu, Joan Mary Ruhume, and Kabagambe Kellen. They sued as individual shareholders in Mpanga ltd.

The respondents who were sued in that cause are: Bwango Robert, Robert Mugume, Clive Nkoba, Willy Bisanga , Pinda Jill Birungu and Mpanga ltd. Some of the respondents were directors in Mpanga Ltd.

In her ruling, Lady Justice Mugambe found that the applicants were complaining of mismanagement of company affairs and were dissatisfied that at the Annual General meeting held on 28th October 2015, this issue had not been tabled for resolution. It was on this ground that an extra ordinary meeting was ordered to be held within two weeks from 18.2.2016 and the conveners authorized to pass resolutions and act in the best interests of the company.

The meeting was held on 2.3.2016 as ordered by court.

After the meeting, the current applicants filed this Company Cause at Fort Portal seeking, among other orders , the following:

1. A declaration that the meeting held on 2.3.2016 as illegal, null and void as it was held contrary to orders of court
2. That resolutions were passed contrary to the articles of association of the 6th respondent and sections 144 and 152 of the Companies Act and that the removal of directors and appointment of new auditors was illegally done.
3. That the old board be reinstated.

In the meantime, on 24.3.2016, the deputy registrar at Fort Portal issued an interim order in MA 22 of 2016 restraining the respondents from doing any act on behalf of the company until disposal of the main application for a temporary injunction that was fixed for 6.4.2016.

On 5.5.2016, Hon. Justice Batema was of the opinion that the meeting of 2.3.2016 was prematurely called and new directors irregularly appointed. He therefore transferred the company cause to Kampala for consolidation with company cause in which Hon. Lady Justice Mugambe had ordered an extra ordinary meeting.

Justice Batema further extended the interim order issued by the deputy registrar until the trial judge in Kampala accepts them and ordered the old board to continue holding office until directed otherwise by the trial judge. This is the gist of the ruling of Justice Batema although the order extracted by the deputy registrar gives an impression that his lordship finally determined the substantive issue before him whereas not.

On 12. 10.2016 when parties appeared before me , counsel Busingye for the applicant submitted that the company cause had been concluded by Justice Batema, I agreed with him on the basis of the order signed by the deputy registrar . Moreover at the time, I did not have before the original record from which the order was extracted.

On 26.10.2016 , I reviewed my order of 12.10.2016 after a closer scrutiny of the order signed by the deputy registrar and found that the orders given were in the interim. Subsequently, the handwritten order of Justice Batema was made available and I was vindicated because his lordship gave interim orders and not final orders.

Mr. Busingye and Mr. Kahwa for the respondents appeared before me on 3.11.2016 in another application for an interim order stopping the holding of another meeting called for the company and they wanted me to step down on the grounds that my impartiality was in doubt because I had revisited my order of 12.10.2016.

Earlier , in a letter to the Hon. Principal Judge dated 26.10.2016, they had called for me to recuse my self on grounds of bias because I reviewed my order of 12. 10.2016.

I declined recuse myself because my interest was in ensuring justice is done, at which point , they walked out of the proceedings.

At the time of writing this ruling, counsel for the applicants had not filed their written submissions as ordered and I only had submissions of counsel for the respondents on record.

The issues as I understand them are as follows:

1. Whether the extra ordinary meeting held on 2.3.2016 was illegal, null, void and held contrary to the orders of court.
2. Whether the new directors elected at that meeting were irregularly elected.
3. Whether this court has powers to vary the orders of Hon. Justice Batema.

Whether the extra ordinary meeting held on 2.3.2016 was illegal, null, void and held contrary to the law.

On this issue, as narrated earlier, the extra ordinary meeting was ordered by court after several shareholders in the exercise of their right to litigate as individual shareholders were permitted by court to call the meeting if the company secretary or its directors were unwilling to act.

According to the affidavit in support of Kiraso Edson two days prior to the expiry of the period ordered by court, Magezi, Ibale and co. advocates issued a notice in Orumuri newspaper calling for the meeting on 2.3.2016.

There are also receipts some of which show that Mpanga growers ltd paid for announcements on several local radio stations and some show Magezi, Ibale and Co advocates as payer. Magezi, Ibale & Co. advocates was counsel for the applicants in Kampala company cause 1 of 2016 who were authorized to call the meeting if the company secretary failed to do so. Ms Magezi, Ibale and co was simply an authorized agent of the applicants and therefore, no illegality was committed when he signed off the notice in the print media.

To the extent that the notice of the meeting was publicized in print and audio media two days in advance, and to the extent that it was authorized by court, it was not an illegal meeting.

Whether the new directors elected at that meeting were irregularly elected.

In the affidavit in support of Fred Kalinda, the applicants allege that voting was by show of hands instead of by secret ballot and by shares ; while Mugume Robert in his affidavit avers that three directors present including himself, were not given a chance to chair the meeting nor where they given an opportunity to be heard.

The self explanatory minutes of the meeting, though unsigned, show that due process was observed. Furthermore, the rule in **Foss v Harbottle** supports what transpired at that meeting. The rule emphasizes the right of the majority to make decisions for the company at meetings and those decisions prevail and will not be interfered with by the court except if they are fraudulent or illegal. Article 80 (2) of Table A of the Companies Act authorizes the General meeting to invalidate any prior decisions of directors thereby giving the general meeting ultimate control of the company.

In HCCS. No. 12 of 2012 Mohammed Kizito and three others v Spidiqa Umma Foundation, where a breakaway group of members changed the name of the company, Hon. Justice Bamwine observed that although the affairs of a company are run by a board of directors, the ultimate power is with the Annual General Meeting or extra –

ordinary meeting where members express their wishes or vote for or against resolutions. At these meetings, the decisions of the majority prevail.

The court in *Foss v Harbottle* further held that where the company is aggrieved, it's the company to sue and not the shareholders.

In the instant case, the company has been sued by some shareholders / old directors. While dissatisfied shareholders reserve the right to litigate when their individual rights are violated as held in **Edwards v Halliwell**, in the instant case, their dissatisfaction is with their removal as directors.

The power to appoint directors lies with the majority shareholders in a meeting called for that purpose. The old directors had advance notice that there would be election or re-election of directors and so they cannot be heard to complain. That the election was by show of hands and not by shares is not an irregularity of a fundamental nature. Besides, an extra ordinary meeting holds the ultimate authority in a company and therefore, the meeting can decide on the procedure for voting.

The minutes show that Samson Agasa received 529 votes, Akora Kiiza -420 votes, Bagonza Stephen-338 votes, Rwerekana Fred-438 votes and Osiime Kagaba-270 votes. These shareholders were therefore properly and lawfully elected as directors by majority of members present, thereby replacing the old directors.

Whether this court has powers to vary orders of Hon. Justice Batema

As explained earlier, these orders were in the interim. They were not final orders otherwise the learned judge would not have transferred the company cause to Kampala for consolidation and for the trial judge in Kampala to confirm or reject the new board. Furthermore, the interim order of the registrar dated 24.3.2016 could not by any stretch of imagination automatically translate into a final order of the court without confirmation or variation by a court with competent jurisdiction.

In the final analysis, I dismiss this application and make the following orders.

1. The extra ordinary meeting held on 2.3.2016 was authorized by court
2. The proceedings were conducted within the ambits of the companies Act.
3. Resolutions passed at that meeting are lawful
4. The new directors elected on 2.3.2016 were lawfully elected and should therefore assume control and management of the 6th respondent with immediate effect.
5. The interim of order of the deputy registrar dated 24.3.2016 is hereby vacated.
6. The interim order issued by this court on 3.11.2016 is hereby vacated.

In the interests of bringing this litigation to an end, each party will bear its own costs.

DATED AT KAMPALA THIS 16TH NOVEMBER 2016.

HON. LADY JUSTICE H. WOLAYO