THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO.109 OF 2015

IN THE MATTER OF THE JUDICATURE (JUDICIAL REVIEW) RULES S.I NO. 11 OF 2009

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW REMEDIES OF CERTIORARI, PROHIBITION AND MANDAMUS

1. **NAKIVUBO ROAD OLD KAMPALA (KISEKKA) MARKET VENDORS LTD**
2. **KAYITA GEOFFREY :::::::::::::::::::::::::::::::: APPLICANTS**
3. **RWAKIJUMA PETER**
4. **KIBONEKA SAMASON**
5. **SWAIB ZIZINGA**

VERSUS

1. **UGANDA REGISTRATION SERVICES BUREAU**
2. **THE REGISTRAR GENERAL OF COMPANIES :::::::::::::::::: RESPONDENTS**
3. **THE REGISTAR OF DOCUMENTS**

AND

1. **KISEMBO ROBERT KASORO**
2. **HAJJI NSIMBI YUSUF :::::::::::::::::::::::::: INTERESTED PARTIES**

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

1. The Applicant filed for judicial review seeking orders of certiorari quashing the decision of the Respondents dated 21st April 2015 maintaining the control of the first Applicant under the former Board of Directors; quashing the Respondents' decision of 16th June 2015 which rejected/cancelled the registration of resolutions electing the 2nd to 5th Applicants as new Directors of the first Applicant; prohibition of the Respondents from dealing with the former members of the Board of Directors on any official matters that concern the first Applicant; permanent injunction restraining the Respondents and/or their agents from interfering in anyway with the running of the affairs of the first Applicant as a body corporate; mandamus compelling the Respondents to register and effect changes reflecting the resolutions passed on 21st May 2015 by the members of the first Applicant and that costs be provided for.

2. The Applicants are represented by Mr. Steven Senkeezi of M/s. Senkeezi – Ssali Advocates & Legal Consultants; the Respondents are represented by Mr. Katutsi Vincent from the Legal Department of the first Respondent and Mr. Katumba Chrisestom of M/s. Lukwago & Co. Advocates represents the interested parties. Mr. Sentomero also represented the 1st Applicant on the side of the interested parties and their camp of members.

3. The grounds of the application are that upon gross abuse and mismanagement of the affairs of the first Applicant by the old Board of Directors (For ease of reference the interested parties camp will be referred to as the old Board and the Board of the 2nd to 5th Respondents camp will be referred to as the new Board), members/subscribers convened a special general meeting of the first Applicant on 7th February 2015 in which a vote of no confidence was moved against the old Board of Directors and a new one appointed including the 2nd, 3rd, 4th and 5th Applicants as members. The Resolutions of the said special general meeting and company form No.8 were duly filed and registered with the Respondents on 2nd March, 2015.

4. In a letter dated 23rd March 2015 the Respondent wrote to the 2nd and 3rd Applicants stating that a complaint had been lodged by lawyers of the interested parties challenging the election /appointment of the new Board of Directors. Subsequently on 21st April, 2015 the Respondents ruled that the election of the new Board of Directors that was held on 7th February, 2015 was null and void and ordered the old board of Directors to convene within 21 days from receipt of the said ruling an annual general meeting to resolve the outstanding matters in the company and the resolutions of the said meeting if any be filed with the Respondents.

5. The old Board failed to convene the meeting and the members convened an extra ordinary general meeting on 21st May, 2015 where two of the old Board members attended and were re- elected as new Directors on the new Board. The minutes of this meeting were filed and registered with the Respondents as required by the law. However, on 16th June 2015, the 2nd Respondent acting for the 3rd Respondent without according any hearing to the Applicants wrote a letter drawing the attention of the Applicants to the effect that their resolutions filed on 30th May 2015 had been rejected for having been wrongly filed/presented. The Applicants contend that the said actions by the Respondents were high handed and an injustice to the Applicants who were not heard and merit an application for judicial review to check the administrative excesses by the Respondents.

6. The Respondents opposed this application through the affidavit in reply deponed by Ms. Anago Jacqueline a Registration officer at the First Respondent. She averred that the decision which the Applicants seek to quash was a decision made pursuant to the statutory roles and duties under the Companies Act and there are procedures of challenging the same under the said laws. Further that this is not a proper case for judicial review as there are alternative remedies available to the Applicants. She also averred in paragraph 14 of her affidavit that the 1st and 2nd Respondents properly reached the decision to cancel the resolutions electing the 2nd to 5th Applicants, the same was done in exercise of their mandate under the Companies Act and no amount of high handedness was ever exercised whatsoever by the 1st and 2nd Respondents.

7. Each of the interested parties also opposed the application through individual affidavits in reply to the application. Mr. Kisembo Kasolo averred that the application is incompetent as it is against the Respondents who have nothing to do with the activities of the 1st Applicant and seeks restraint orders against him yet he is not a party to the proceedings. Further that the company had not given instructions to any of the lawyers to file this application. He also averred in paragraph 7 of his affidavit that the 2nd, 4th and 5th Applicants are not and have never been directors of the first Applicant neither have they been General Secretary and Treasurer of the first Applicant as alleged. The first Applicant has no position of General Secretary and the first Applicant's secretary is Hajji Yusuf Nsimbi and the treasurer is Winnie Nabbale.

8. Hajji Nsimbi generally concurred with Mr. Kisembo Kasolo in most of his averments in reply. In paragraph 11 he averred that the first and second Respondents properly reached the decision to cancel the resolutions electing the 2nd and 5th Applicants as directors of the first applicant after according them a hearing.

a) Law

9. Judicial Review is the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior Courts, tribunals and other bodies or persons who carry out quasi-judicial functions, or who are engaged in the performance of public acts and duties. Those functions/duties/acts may affect the rights or liberties of the citizens. Judicial review is a matter within the ambit of Administrative Law. It is different from the ordinary review of the Court of its own decisions, revision or appeal in the sense that in the case of ordinary review, revision or appeal, the Court's concerns are whether the decisions are right or wrong based on the laws and facts whereas the remedy of judicial review, as provided in the orders of mandamus, certiorari and prohibition, the Court is not hearing an appeal from the decision itself but a review of the manner in which the decision was made. See **Kuluo Joseph Andrew &Ors v. Attorney General &Ors Misc Cause No. 106 of 2010.**

10. In **Owor Arthur and 8 Others v. Gulu University, High Court Misc. Cause No. 18 of 2007,** Court emphasized that;

> "…The overriding purpose of judicial review is to ensure that the individual concerned receives fair treatment. If that lawful authority is not abused by unfair treatment, it is not for the Court to take over the authority and the person entrusted to that authority by subsisting its own decision on the merits of what has to be decided….Implicit in the concept of fair treatment are the two cardinal rules that constitute natural justice; no one shall be a judge in one's own cause and that no one shall be condemned unheard….".

11. The remedy of judicial review is discretionary in nature and can only be granted on three grounds namely:- illegality, irrationality and procedural impropriety with guiding principles like:-

- Common sense and justice
- Whether the application is meritorious
- Whether there is reasonableness
- Vigilance and not any waiver of rights by the Applicant. See: **Aggrey Bwire v. Judicial Service Commission & A.G, C.A.C.A No. 9 of 2009; John Jet Tumwebaze v. Makerere University Council &Ors H.C Civil Application No. 353 of 2005**.

12. Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or *ultra vires* or contrary to the provisions of the law or its principles are instances of illegality. In the *locus clascus* case of **Council of Civil Service Unions v. Minister for the Civil Service (1985) AC 375** (cited with approval in **Mugabi Edward v. Kampala District Land Board & Wilson Kashaya, Misc. Cause No. 18 of 2012), Lord Diplock** had this to say on illegality: "Illegality as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulated his decision-making power and must give effect to it. Whether he has or not is par excellence a justifiable question to be decided in the event of dispute by those persons the judge, by whom the judicial power of the state is exercised…"

13. Micheal Allen, Braun Thompson and Bernadette Walsh in their book, **Cases and Materials on Constitutional and Administrative Law**, also explain that irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision, such a decision is usually in defiance of logic and acceptable moral standards.

14. In **Twinomuhangi v. Kabale District & Others (2006) HCB Vol. 1 page 130**, Justice Kasule (as he then was) explained at page 131 that:

> "Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in the non- observance of the rules of natural justice or to act with procedural unfairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision".

15. In the case of **John Jet Tumwebaze v. Makerere University Council and ors (Civil Application No. 78 of 2005)**, Ag. Justice Remmy Kasule (as he then was) gave the definition of *Certiorari* as a prerogative writ issued to quash a decision which is *ultra vires* or vitiated by an error on the face of the record. *Certiorari* is a prerogative order designed to control inferior Courts, tribunals, administrative and statutory authorities.

16. In **Stream Aviation Ltd v. The Civil Aviation Authority Misc. Application No. 377 of 2008 (Arising from Misc. Cause No. 175 of 2008)** Justice V. F. Musoke Kibuuka held that the prerogative order of *certiorari* is designed to prevent the access of or the outright abuse of power by public authorities. The primary object of this prerogative order is to make the machinery of Government operate properly, according to law and in the public interest.

17. In **Semwo Construction Company v. Rukungiri District Local Government HC MC 30 of 2010** Justice Bamwine (as he then was) stated as follows:-

> **"…**mandamus is a prerogative writ to some person or body to compel the performance of a public duty. From the authorities, before the remedy can be given, the applicant must

show a clear legal right to have the thing sought by it done, and done in the manner and by a person sought to be coerced. The duty whose performance is sought to be coerced by mandamus must be actually due and incumbent upon that person or body at the time of seeking the relief. That duty must be purely statutory in nature, plainly incumbent upon the person or body by operation of law or by virtue of that person or body's office, and concerning which he/she possesses no discretionary powers. Moreover, there must be a demand and refusal to perform the act which it is sought to coerce by judicial review".

c) Analysis

18. I have read all the pleadings and submissions of the parties on record. In particular, I have given special attention to the submissions of the interested parties even though given the nature of the judicial review application before me I did not have to. This was in the interest of justice.

19. I also wish to point out that I heard all the parties extensively during the oral hearing of the application in open court. The Respondents and third parties raise two preliminary points. One that the application is not properly brought by the first Applicant since there is no authorization or resolution to that effect from the first Applicant. They also submit that the 2nd to 5th Applicants who are minority shareholders could not bring an action on behalf of the first Applicant. Two that this is not a proper case for judicial review since the Applicants had other remedies which they did not exercise before coming for judicial review.

20. For clarity, the 2nd to 5th Applicants on the one side and the interested parties on the other have brought out a lot that demonstrates the rift between their two camps in the Applicant. I will however concentrate on only what is material for the determination of the judicial review application before me as filed against the Respondents.

21. It is not in dispute that the first Applicant is a company. It is a separate legality from its individual members, shareholders and/or directors. In **Madzire and others v. Zvarivadza and others (93/05) (2006) _ ZWSC 10, Cheda JA** noted that "a company being a separate legal person from its directors cannot be represented in a legal suit by a person who has not been authorized to do so…" In **Bugerere Coffee Growers Ltd v. Sebaduka& Anor (1970)**

1EA 147 it was held that "when companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or board of directors meeting and recorded in the minutes…" The Applicants attached minutes and a resolution authorizing the action in court to their submissions in rejoinder. Based on this the application as filed by the first Applicant is proper. But if you believe the challenges to the said resolutions then you may be forgiven for saying that there was no authorization from the 1st Applicant to file the application on its behalf. However given the dispute between the two camps in the 1st Applicant I do not want to dwell on the filing by the 1st Applicant which may be viewed to favor one side and not the other and deepen the divisions that are already clear. Such further divisions between the two camps are not necessary.

22. However, as a judicial review procedure, the second to fifth Applicants as persons aggrieved by the Respondents' decisions in issue had it within their rights to bring this action in their individual capacity. So, the application as brought by the second to fifth Respondents is properly filed. The first preliminary objection is therefore dismissed.

23. In the second preliminary objection, the Respondents and interested parties insist that the application should have been brought as a Company cause and not a judicial review application. The Applicants may have had the general option to file a company cause or a civil suit challenging the actions of the Respondents. However these options are not statutory or mandatory remedies available to the Applicants. They are not even stipulated in the 1st Applicant Memorandum and Articles of Association. They simply were options they may have had. A court seized of an application for judicial review at present does not have to look behind its back or peruse through statutes or other laws to ascertain the existence or otherwise of an alternative remedy before issuing appropriate orders. Instead, the courts determine whether or not to issue judicial review orders as may be applied for by a party based on the matters raised in the application, the evidence adduced and the position of the law on the issues under consideration. Further that accordingly, although it is a relevant factor to consider in deciding whether or not to grant relief, the existence of an alternative remedy is not itself a bar to judicial review.[1]

[1]Peter Kaluma "Judicial Review Law Procedure and Practice"2nd Edition, p. 285.

24. In the circumstances of this case, I see no illegality or irregularity in the Applicants choice to bring a judicial review action as opposed to bringing a generic company cause or other civil suit. There was an administrative decision taken by the Respondents, the Applicants were aggrieved by it and they sought to challenge it through judicial review. This is a proper case for judicial review. The second preliminary objection is therefore dismissed.

25. In the substantive application, the Applicants seek to quash the Respondents' decisions of 21st April 2015 and16th June 2015 on the basis that they were made without being given an opportunity to be heard or exercise their right to be heard. Articles 28 and 44 of the Constitution make the right to be heard non-derogatory as discussed above. The right to be heard imposes a peremptory duty to every person, body or tribunal vested with power to resolve a dispute to fairly hear both parties and consider both sides of the case before making a decision on the matter; no man should be condemned unheard. The body or tribunal should not base its decision only on hearing one side; it must hear both sides and not hear one side in the absence of the other. In so doing, it should grant equal opportunity to both parties to present their cases or divergent view points and should hold the scales fairly and evenly between them.[2] An allegation of breach of the right to be heard will relate to all or one of these matters or a similar matter; prior notice, adjournment, cross examination, legal representation, disclosure of information, giving reasons and opportunity to be heard.[3] In this case the relevant issues for determining the right to be heard in contention as I discern them are prior notice and adjournment.

Notice

26. Notice is a condition precedent to a fair hearing. Any hearing undertaken without due notice to the affected party violates the requirement of natural justice, is null and void and lends

[2] Ibid at page 177.
[3] ibid.

itself to being quashed.[4] The requirement of notice is a fundamental right of universal application which cannot be taken away on ulterior considerations, including those relating to the character of the affected person. The notice to be valid should be served upon the party who stands to be affected by the proceedings or decision in question. It must give sufficient time to the individual to prepare his case. In principle, the requirement of notice will be logically baseless if it is not aimed at enabling the affected party to prepare for the case facing him. Thus in the English case of R v.Thames Magistrates' Court, *ex parte* Polemis (1974) 2 All ER 1219, a criminal conviction was quashed for breach of the rules of natural justice for the reason that the Defendant, although notified, had not been given sufficient time to prepare his defence. This was notwithstanding the apprehension that the Defendant could have left jurisdiction.[5]

27. Notice whose intent or purport is simply to satisfy the requirement that a party be notified; but, whose actual import is to have an individual tried by ambush does not meet the test of due notice and must be regarded as no notice in law.[6]

Adjournment

28. Opportunity to adequately prepare and duly defend oneself may at times make it inevitable that the proceedings be adjourned in certain situations. Denial of adjournment will result in denial of the right to be heard if the Applicant is as a result disabled in the proper preparation and the presentation of his defence. In R v. South West London Supplementary Benefit Appeal Tribunal *ex parte* Bullen (1976) 120 sol Jo. 437, the Applicant was given forty - eight hours notice to attend a hearing. He promptly informed the tribunal that the time scheduled for the hearing coincided with an interview for employment he had to attend and applied that the proceedings of the tribunal be adjourned. The denial of the adjournment herein was held to be unlawful.[7]

[4] Ibid at page 178.
[5] Ibid at pages 178 – 179.
[6] Ibid at page 179.
[7] Ibid at pages 184- 185.

29. In my discernment the real decision of the Respondents that the Applicants seek to quash is the one of 21st April 2015. In this decision the Respondents had the following conclusions; (1) the extra ordinary meeting held by Kayita Geoffrey, Rwakijuma Simon Peter and others was null and void; (2) the Resolutions and forms signed by Kayita Geoffrey, Rwakijuma Simon Peter appointing themselves and other as new directors did not satisfy the legal requirements and as such be disregarded; (3) that the status quo of the company before the said illegal resolutions be maintained; (4) that Kayita Geoffrey, Hajati Saka, Rwakijuma Simon Peter, Kibirige Paul, Mutebi Ronald, Kassim Mulumba, Isma Baguma, Kobwemi Gerald, Kato Mathias, Nabaale Janet and Haji Asaduare are not directors in this company; (5) that he current directors of the company are; Kisembo R. Kasoro, Nalubwama Hadija, Haji Nsimbi Yusuf, Nabbale Winnie, Kalungi- Mubaraka, Magala Joseph, Wangi Yusuf, Ssewanonda Charles, Kiwanuka Godfrey, Hajjati Magadanzi Faridah, Lubwama Simon Peter, Nakawesa Solome, Ssebuyira Sylivia, Hajat Hasifah Namusisi Mugerwa, ubwama Walusimbi Isaac, Tufa Galabuzi, Batenda John, Batte Fred, Mwesigye Rogers, Karuhanga Joyce, Kabuye Richard, Dr. Nkwasibwe Ezra, Haji Mubiru Muhammad, KizzaTereza, Ssebilan Moses, Jooga Ssebukulu, Mungereza Flugence, Nakitto Rosemary, Sengozi Dorah, Kibalama Johnson, Mukiibi Benedita, Museruka Zubeidah, Byarugaba Ovia and Rubahamakazzora Charles and the company secretary is Haji Nsimbi Yusuf; (5) the company register has a list of subscribers/members totaling to approximately 2000(Two Thousand); (6) it is hereby ordered that an Annual General Meeting (AGM) be held with the aim to resolve the outstanding matters in the company within 21 days from receipt of this decision and the resolutions of the of AGM (if any) be filed with the Registrar of Companies.

30. Following through the Respondents made another decision on 16th June 2015 cancelling any registration of documents in the company file by the new Board. The grand effect of these two decisions/letters was that the Applicants resolution that had been filed with new directors of the first Applicant was de – registered and they were removed as directors of the first Applicant. Clearly these decisions affected the Applicants.

31. It is not disputed that the first Applicant is a divided house with two camps, the Applicants belong to one camp and were represented by M/s. Namara, Twenda & Co. Advocates and

the old directorship of Mr. Kisembo Kasolo and Hajji Nsimbi belonged to the other camp which was represented by M/s. Lukwago & Co. Advocates at the time of the events before the Respondents. Prior to the first decision of 21st April 2015, the Respondents through annexure F to the amended Notice of Motion invited the lawyers of the two camps for a meeting at 9:00am on 21st April 2015 for a final hearing under sections 172 and 287 of the Companies Act, 2012. This invitation is dated 16th April 2015.

32. It is not clear when the two sets of lawyers received this invitation as there is no receipt acknowledgement stamp from them or other evidence to determine this. What is clear through annexure G to the amended notice of motion is that the Applicants lawyers wrote to the Respondents in respect of the invitation on 20th April 2015. In paragraphs two and three of their reply, the lawyers explained that they had only received the invitation for the meeting that same day and Mr. Twenda Elvis in personal conduct of the matter would be attending court in Kabale the next day on 21st April 2015, the date fixed for the meeting. They then requested that the said meeting either be adjourned to Thursday 23rd April at 3:00pm or Friday 24th April at 9:00am. This letter from the Applicants' lawyers has a stamp acknowledging its receipt by the Respondents the same day 20th April 2015 and prior to 21st April 2015 the date of the meeting. Nonetheless the Respondents went ahead to hold the meeting without Mr. Twenda counsel in personal conduct of the Applicants.

33. Mr. Kasoro on behalf of the interested parties stated in paragraph 11 (f) of his affidavit in reply filed on 28th September 2015 that at the hearing of 21st April 2015, the second Applicant was present together with Hajji Saka who, together with the rest of the Applicants were represented by Ms. Catherine Namara Masiko from the Applicants' lawyer's firm who was holding brief for Mr. Elvis Twenda. However in circumstances where Mr. Kasoro belongs to a camp warring with the Applicant, the absence of the minutes of the said meeting and the presentation in the letter from the lawyers that Mr. Twenda was the one in personal conduct of the matter, it is not easily discernable in what capacity Ms. Namara may have attended the meeting if she did. It cannot be safely said in these circumstances that Ms. Namara's presence was to sufficiently represent the applicants in exercise of their right to be heard. Moreover even if I believed Mr. Kasoro that Ms. Namara was on brief, the practice is

that a lawyer on brief does not defend the client but watches what goes on and reports back to the lawyer whose brief he had. Such lawyer on brief does not necessarily exercise the client's right to be heard unless demonstrated otherwise.

34. It is glaringly suspect that the Respondents do not explain the circumstances of Ms. Namara's attendance at the meeting or avail minutes of the meeting they held. They would have been more believable as they are not warring parties. Besides they called the meeting and minutes from the meeting signed by all parties present would have assisted the court best in determining if the Applicants right to be heard was exercised satisfactorily.

35. It is also not clear why the Respondents did not consider the Applicants lawyer's request for an adjournment of the meeting from 21st April 2015 toThursday 23rd April at 3:00pm or Friday 24th April at 9:00am. No explanation is given by the Respondents for this failure. Mr. Twenda's explanation that he had a case prior fixed in Kabaale court on the day of the meeting was reasonable and considering that the invitation of the meeting was received only a day prior to the meeting, it necessitated the Respondent to adjourn the meeting. In the circumstances of this case the Respondent should have found it fitting to adjourn the meeting to enable Mr. Twenda's attendance or given worthy reasons for the failure, for the effective exercise of the Applicants right to be heard.

36. The Respondents in paragraph 8 of their amended affidavit in reply insist that the Applicants were heard because they appeared before them and furnished additional documents. This allegation is not supported by evidence or in any way demonstrated to my satisfaction. It would have been easy to verify if such alleged appearance and documentary evidence, if any, created a medium to say that the Applicants right to be heard was exercised if minutes of the meetings where the said documentary evidence or other documents from the Applicants were adduced for my consideration. Without these, the claim that they were heard on this basis remains hanging in the balance. I am also left wondering why if the Applicants had been heard, their documentary evidence considered and the Respondents were satisfied, the Respondents were calling their lawyers for a meeting. It can only be that they needed to verify somethings as part of the process or in some way hear from the parties' lawyers before

the final determination. Yet what they did is hear from only the interested parties' lawyers and not the Applicants lawyers. This was irregular in circumstances where the notice received a day before the meeting was not sufficient and the Respondents failed and/or ignored the Applicants lawyers request for a short adjournment to be present for the meeting.

37. In earnest, the first Applicant is, unfortunately, a divided house with two warring camps. The two decisions of the Respondents in issue were, in the circumstances of this case taken by the Respondent in favour of one camp and to the prejudice of the Applicants' camp without giving a proper opportunity for the Applicants to exercise their right to be heard. Because the decisions were reached without allowing the adjournment to enable sufficient legal representation of the Applicants at the meeting, they were reached in violation of the Applicants' right to be heard. This was irregular, unfair, and unlawful and the two decisions are null and void for this.

38. I will now turn to the analysis for certiorari and mandamus. It is easy to infer in the circumstances of this case, that the Respondents through their officers and /or agents were hell bent and did everything through their office to ensure that the new Board was kicked out of office and resolutions from its Special General meeting annulled and de-registered. This Board was an interim Board and its appointment and resolutions were a result of the meeting of members and shareholders of the 1st Respondent as demonstrated by the minutes of the meeting which appointed them. These minutes demonstrate that the will of the members is what brought the new Board into office therefore they acted legally. In circumstances where the old Board had failed to convene the meeting directed by the Respondents, it was incumbent on the members to follow through and hold the meeting. Effectively, the Respondents needed to consider this holding of the meeting in a constructive manner since they'd directed the same meeting to be held within 21 days. The Respondents needed to be alive to the failure of the old Board to call the meeting they directed in the 21 days and the need for such meeting to manage the affairs of the company.

39. Alive to these factors and all other circumstances demonstrated in this application as well as the minutes and resolutions from the meeting, I am satisfied that the will of the members

which is paramount was expressed at the special meeting that brought the new Board into office and it is unfair and irregular for the Respondents to use technicalities to throw the new Board out through de-registration and non-recognition. Such use of technicalities defeats the substantive justice envisaged under Article 126 of the Constitution. It also goes against the cardinal principle that affairs of the company are determined by its members. Even in circumstances like those before me where the company is a divided house, only the will of its members is supposed to be paramount in the management of its affairs, not the influence of the Respondents by virtue of their office.

40. I am satisfied that the officers of the Respondents who de-registered the new Board and the resolutions of the special general meeting it held acted with a level of bias which clouded their ability to assist the two camps resolve their differences and instead favored one camp over the other. As part of this grand scheme the Respondent office which is supposed to be a neutral office, fanned the brutal fire between the two camps to the detriment of the Applicants who were members of the new Board.

41. The Respondent offices through their decisions did not assist matters when they made decisions without sufficiently hearing the Applicants out in their alleged processes of investigation.I am disinclined to consider that the Respondents acted neutrally and without prejudice in their decisions in issue. Based on all the above, I therefore allow the application, quash the two decisions, prohibit the recognition of the old Board. In my discretion I consider the Resolutions of 1st June 2015, annexure L which were a result of the 1st Applicant Extra ordinary meeting of 21st May 2015 whose minutes are annexure M as validly obtained and filed with the Respondents in the circumstances of this case and a mandamus order for the Respondents to recognize and register them as filed is issued.

42. Accordingly, the judicial review application is allowed with the following orders:

i) the interim Board of Directors appointed therein of Kayita Geoffrey, Nakigudde Zulayika, Rwakijuma Simon peter, Hajji Swaibu Zizinga, Kalungi Mubarak, Kasimu Mulumba, Kato Mathias, Mulunda Denis, Nabale Jannet, Nayiga Resty, Luwaga

Daniel, Nalongo Nakimbugwe, Kavuma Annet, Kawooya Ben, Balinda Sam, Kiboneka Samson, Ochieng Peter, Bisaso Patrick, Kakande Yusuf, Ssewagudde Geofrey and Ssemakula Yasin is the valid Board of the 1st Applicant but only in interim capacity.

ii) The interim order by which I vested management powers in the old Board hereby lapses and/or is set aside.

iii) This interim Board shall hold a special general meeting by order of this court within 30 days from today to address management and leadership concerns of the 1st Applicant.

iv) I am aware that when I directed a meeting of the company at the early stages of this hearing, there were claims that some members in the Applicants camp were denied entry to the venue and voting by members in the interested parties' camp. By order of this court, all members from the original list of members in the Respondents' registry and who have not sold their shares should be allowed to attend and vote or otherwise take part in the meeting. Membership should not be based on allegiance to or belonging to a particular camp or some technical creature that is defeatist.

v) The Respondents shall attend the said meeting to ensure no disruptions and that law and order is maintained.

vi) Minutes of this meeting shall be properly recorded and a copy filed in court and with the Respondent offices.

vii) For the avoidance of doubt, this Court is aware of the construction of a modern market that is ongoing at the premises of the 1st Applicant. Nothing in this ruling should be read to fetter the continued and uninterrupted construction of the market or legal ownership of stalls and shops in this market by those who have paid for them.

viii) The camps of the Applicants and the interested parties which are all of members of the 1st Applicant should find a way of working together and resolving their disputes for the good of their company.

ix) The first Respondent shall pay costs of this application to the Applicants.

I so order.

LYDIA MUGAMBE
JUDGE.
18th August 2017.

Addendum

In the interest of justice, considering the written ruling has become available to the parties on 12th September 2017, then the 30 days directed for the extraordinary general meeting and any other timelines shall run from today.

LYDIA MUGAMBE
JUDGE.
12th SEPTEMBER 2017.