

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL DIVISION**

**IN THE MATTER OF CHEMICAL DISTRIBUTORS (U) LTD**

**AND**

**IN THE MATTER OF THE COMPANIES ACT, 2012**

**COMPANY CAUSE No. 142 OF 2017**

- 1. CHEMICAL DISTRIBUTORS (U) LTD**
- 2. MARGARET TUMWINE TUMUSHABE ::::::::::: APPLICANTS**
- 3. AYEBALE FAMINA**
- 4. ARTHUR BIRUNGI**

*Versus*

**BYARUHANGA SILVER ::::::::::: RESPONDENT**

**BEFORE: HON. JUSTICE STEPHEN MUSOTA**

**RULING:**

This is an application brought by Notice of Motion under section 291 of the Companies Act 2012 and order 52 rule 1 of the Civil Procedure Rules. The applicants seek the following orders:

- (a) The decision of the Registrar of Companies in Petition No. 08 of 2016 dated 23<sup>rd</sup> February 2017 be reviewed and set aside;*
- (b) A declaration that Silver Byaruhanga, the respondent is no longer a member or director in Chemical Distributors (U) Ltd, the 1<sup>st</sup> Appellant;*

*(c) Costs of the proceedings and proceedings before the Registrar of Companies be given to the Applicants.*

The application is supported by an affidavit of Margaret Tumwine Tumushabe the 2<sup>nd</sup> applicant dated 2<sup>nd</sup> August 2017 setting out the grounds of the application. The grounds are in summary that:

- 1. The Registrar of Companies made an error to hold that the respondent is a member of the Company whereas he retired from the Company when he surrendered his shares in return for UGX.30,000,000/= paid to him by the then Managing Director on behalf of the Company;*
- 2. The Registrar of Companies made an error to hold that the affairs of the Company were conducted in a manner oppressive to the respondent yet the said respondent had ceased to be a member or Director of the Company;*
- 3. The Registrar of Companies made an error to hold that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> appellants expended funds without giving accountability yet the said respondent was neither a shareholder nor a Director of the Company;*
- 4. The Registrar of Companies made an error to hold that the 2<sup>nd</sup> appellant was wrong to apply for an order for a one man meeting to run the affairs of the Company whereas she was justified to do so having been the only remaining Director and member of the Company;*
- 5. The Registrar of Companies erred in law to make a decision that had an effect of setting aside an order (“one man meeting” of the Company) of the High Court Company Cause No. 0029 of 2014 where all issues regarding the status of the Company’s shareholding and directorship had been dealt with before the order was issued;*

Counsel Lawrence Tumwesigye appeared for the applicants and Murangira Arthur appeared for the respondent. The applicants were in court.

Counsel for the respondent relying on paragraph 3 of the affidavit in reply of the respondent raised two preliminary points of law:

1. *That this court has no jurisdiction to entertain this matter or grant the reliefs sought;*
2. *That the application is an abuse of court process.*

**Point 1: That this court has no jurisdiction to entertain this matter or grant the reliefs sought.**

On this point counsel for the respondent submitted that the applicant seeks to review the decision of the Registrar of Companies given on 23/2/2017 in exercise of his quasi judicial function under section 247 (1) & (2) of the Companies Act. That there is no right of review against the decision of the Registrar of Companies under S. 247. That jurisdiction is granted by law only and for this counsel relied on Civil Justice Bench Book page 46. That any award by court without jurisdiction is also a nullity.

Further counsel submitted that Review is only limited to cases falling under section 83 of the Civil Procedure Act and order 46 of the Civil Procedure Rules. That this is no such case. That the High Court only reviews its own cases. That the applicant cites section 291 of the Companies Act as the law under which the application is brought and yet that law is not applicable. That the section only extends to review of cases in the Registrar's jurisdiction to rectify the register. That in the instant case the Registrar of Companies was not exercising power under Section 291.

As such counsel submitted that this court has no jurisdiction to review a decision of a Registrar of Companies. That such proceedings would be a nullity. That therefore this application should struck out with costs.

In reply counsel for the applicants opposed the preliminary objection. He submitted that the respondent is confusing the review under the Civil Procedure Rules with the one under section 291 of the Companies Act, 2012. That under section 291 the court has power to review a decision of the Registrar of Companies concerning the register. That in this case the register is the register of members. That this court had earlier on granted an order for a one man meeting as per annexure "F" to the affidavit in support of the application. That the meeting was held and resolutions passed to exclude the respondent from the register of members and new members were admitted. That the respondent instead of coming to this court to challenge the decision under section 125 of the Companies Act 2012 they chose to move the Registrar under section 247 of the Companies Act 2012. That the Registrar of Companies decided that the respondent is still a member of the Company. That this decision had the effect of rectifying the register of the company and setting aside the High Court Order of Justice Nyanzi which ordered a one man meeting. That the respondent should not have challenged the decision of the Judge. That the decision of the Registrar of Companies is reviewable under section 291 of the Companies Act. That the decision of the Registrar of Companies cannot be conclusive and final. That this High Court has unlimited jurisdiction. That it is only the High Court which has jurisdiction to entertain matters relating to rectification of the register.

That in this case the Registrar of Companies usurped the powers of the High Court. That section 291 was put in the Act as a safe guard to check the Registrar's powers. That this is the reason why this application is before this court. That it is not under the Civil Procedure Act. That under section 14 (2) (c) of the Judicature Act where no express law exists in regard to a certain matter the decision is made in equity and good conscience on the matter. That court cannot tell people to go away without a remedy. Counsel then prayed that the preliminary objection be overruled.

In rejoinder counsel for the respondent submitted that counsel for the applicants overstretched the powers of the Registrar of Companies vis a vis powers of the High Court to entertain matters challenging orders of the Registrar. Counsel then reiterated his earlier submissions and added that this court should refer to Annexure “E” to the affidavit in support of the application which is the ruling of the Registrar of Companies. That in that ruling it is clear that the order sought was delivery of accurate state of affairs and assets of the Company to determine the equity that the respondent is entitled to. That the respondent also as petitioner before the Registrar sought to be compensated fairly. That these were not matters to do with the rectification of the register.

That as for the decision of the court for a one man meeting, it is being challenged under MA No. 623 of 2015 arising out of 29 of 2014 Byaruhanga Silver & Anor Vs the 2 applicants herein. That the 2<sup>nd</sup> respondent indicated that she was the only shareholder in the Company but this was a lie because the respondent who is also a shareholder is still alive. That the court in that decision only ordered holding a one man meeting but did not order alteration of the register. That there is also enough written law on this matter so the Judicature Act section cited by the applicants is not helpful. That a Judicial Review would be helpful but is already out of time. That therefore this court has no jurisdiction and should dismiss this application with costs.

I have considered the application, affidavits and submissions of counsel. I find that the applicant relies on **Section 291 of the Companies Act 2012**. The section states as follows:-

***“291. Court’s power to review registrar’s decision.***

***The court, in dealing with any question of the rectification of the register shall have power to review any decision of the registrar relating to the entry in question or the correction sought to be made.”***

My interpretation of Section 291 of the Companies Act 2012, is that the review envisaged therein is a review of a decision on any question of the rectification of the register. The register I suppose here is the register of Companies. But then the section does not define what the register is. Yet under this section it is specifically enacted that the record kept by the Registrar is “the register of companies”. But under section 291 the word the register is used. Section 3 states as follows:-

**“3. Register of companies.**

***There shall be kept by the registrar a record called “the Register of Companies” where all the matters prescribed by this Act shall be entered”***

In this case it appears the issue raised before the Registrar was not a matter that required a decision on rectification of the register directly. But the decision of the Registrar in this case had the effect of reinstating the respondent onto the register of members. That being so I think the choice of Section 291 of the Companies Act was not appropriate as an enabling law and on that basis alone I would strike out the application.

I am in agreement with the holding in the case of **Saggu Vs Road Master Cycles (U) Ltd [2002 ] EA 258** that where an applicant omits to cite any law at all or cites the wrong law but the jurisdiction to grant the order exists, the irregularity or omission can be ignored and the correct law inserted. In the instant case, if this magnanimity is extended to the petitioner, it would cure the defect in the application.

In this case there is no such jurisdiction because the decision of the Registrar was not a decision on rectification of the register of Companies.

For the reasons I have given I sustain the 1<sup>st</sup> objection of the respondents.

**Point 2: That the application is an abuse of Court Process:**

On this point counsel for the respondent submitted that this is the second time the applicants are coming here. That they came under Civil Appeal No. 23 of 2017 seeking to challenge the same and the appeal was struck out on a preliminary objection focusing on lack of right of appeal. That it was dismissed with costs. That they simply interchanged the word appeal for review but the contents are similar. That such is an abuse of Court Process. That litigation must come to an end. That time of court is precious to be wasted on busy bodies and flimsy actions. Further that this court should sound itself strongly to prevent future abuse. He then prayed that this court finds that this application is an abuse of Court Process and it be struck out with costs.

Counsel for the applicants did not effectively respond to this preliminary objection.

I do not find that this is an abuse of Court Process. If the applicants came by way of appeal and now they come under a different law, it is for this court to determine whether the application has merit or not. A review is not the same as an appeal in the ordinary sense. Although in some legislation review may be synonymous with appeal. In this case the applicants have come under a totally different law which makes the cause of action different.

In *Conform Uganda Limited Vs Megha Industries (U) Ltd (Miscellaneous Application No. 1000 of 2014)*. It was held that the term “*abuse of court process*” was defined in the case of *Uganda Land Commission Vs James Mark Kamoga & Anor Supreme Court Civil Application No 08 of 2004*, where Justice Mulenga, (as he then was), said that it “*involves the use of the process for an improper purpose.*” In this case I do not see what the improper purpose is in this application.

In *Karuhanga & Anor Vs Attorney General & 2 Ors (Misc. Cause NO. 060 OF 2015)* this court held that the concept of abuse of court process is not very precise but the Nigerian case of R-

**Benkey Nigeria Ltd Vs Cadbury Nigerian PLC SC 29 of 2006** outlines circumstances which give rise to abuse of court process and these include:

- a) *Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of actions on the same matter between the same parties where there exists a right to begin the action;*
- b) *Instituting different actions between the same parties simultaneously in different courts even though on different grounds;*
- c) *Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and the respondents' notice;*
- d) *Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by a lower court;*
- e) *Where there is no law supporting a court process or where it is premised on frivolity and recklessness.*
- f) *Where a party has adopted the system of forum shopping in the enforcement of a conceived right.*
- g) *Where two actions are commenced, the second asking for a relief which may have been obtained in the first. In that case the second action is prima facie, vexatious and an abuse of court process.*

In a nutshell, the common feature of an abuse is in the improper use of the judicial process by a party in litigation.



In this case the applicant did not misuse the court process. They filed an application for review after an attempt to appeal was unsuccessful. I therefore find no merit in this objection. And accordingly overrule the same.

For the reasons in this ruling the 1<sup>st</sup> preliminary point of law raised by the respondent is upheld and the second one is overruled. Consequently, this application is struck out. Each party shall bear their own costs of this application.

I so order.

But before I take leave of this matter, I recommend that the Act be amended so as to provide for checks of the powers of the Registrar of Companies. It is an absurdity in the Company Law that the Act does not provide for right of appeal or review of the decision of the Registrar under Section 247 of the Companies Act, 2012 yet when a similar matter comes to the High Court, there is an option of a right of appeal to the court of appeal guaranteed under the Constitution and the rules of procedure.

**Stephen Musota**

**J U D G E**

**20.12.2017**

**20.12.2017:-**

Mr. Arthur Murangira for the respondents in court.

Mr. Lawrence Tumwesigye for the applicants is not in Court.

2<sup>nd</sup> and 4<sup>th</sup> Applicants are in court.

Jolly Court Clerk in Court.

**Court:-**

Ruling delivered in open Court in the presence of:

Mr. Arthur Murangira.

2<sup>nd</sup> and 4<sup>th</sup> Applicants.

Jolly Court Clerk in Court.

Right of Appeal explained.

**Joy Bahinguza Kabagye**  
**ASSISTANT REGISTRAR**

**20.12.2017**

RULING