

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 107 OF 2020
IN THE MATTER OF THE COMPANIES ACT 2012
AND
IN THE MATTER OF BRITISH AMERICAN TOBACCO (UGANDA) LIMITED
AND
IN THE MATTER OF AN APPLICATION BY FRED TUMWESIGYE BISAMUNYU

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application is brought under sections 142 of the Companies Act and Order 38 r 6(h) of the Civil Procedure Rules.

The applicant was represented by Paul Mbuga.

The applicant is seeking orders that;

1. ***British American Tobacco Uganda Limited*** is granted leave to convene and conduct the Annual General Meeting for the year ended 31st December 2019 by electronic means, subject to obtaining a prior no-objection from Uganda Securities Exchange and complying with all applicable notices issued under the Uganda Securities Exchange Listing Rules 2003 and the law.

2. The costs of this application be provided for.

The main grounds for this application are;

- a) That the applicant is a director and member of British American Tobacco Uganda Limited and is registered as a Member Number 298 of the Company Register of Members.
- b) The Company is a public company that is listed on the Main Investment Market Segment of the Uganda Securities Exchange. The Company has approximately 1,230 members both local and foreign.
- c) It is a requirement for the company to convene an Annual General Meeting in respect of every concluded financial year in accordance with the Company's Articles of Association registered on 4th March 2016, the Companies Act 2012, the Uganda Securities Exchange Listing Rules 2003 and the Capital Markets Corporate Governance Guidelines 2003. The company's Articles of Association require that any Annual General Meeting of the Company must be physically convened with a quorum of at least 7 members entitled to attend the meeting present physically in person.
- d) It is currently impractical to convene a meeting of the company in a usual manner and in accordance with the manner prescribed in the Articles of Association, owing to the various restrictive measures implemented by the Government of Uganda to combat the spread of the novel corona virus disease [Corvid-19]. Corvid-19 was declared a pandemic by the World Health Organisation on 11th March 2020 and a notified health emergency in Uganda by the Minister of Health on 17th March 2020.
- e) The public health measures implemented by the Government of Uganda include a blanket ban on public meetings, and the effect of this measure is that members of the company cannot convene in-person at a designated venue to attend the business ordinarily conducted at the Company's Annual General Meetings.

- f) It is essential that the company convenes the Annual General Meeting for the year ended 31st December 2019 soon to comply with the statutory requirement for a public company to hold an annual meeting of the members within 15 months of the last such meeting. It is therefore crucial for the Company's Annual General Meeting to take place on or before 22nd August 2020 to comply with this requirement and also ensure that members of the Company consider and approve resolutions reserved for their mandate, that are important for the governance, management and operations of the Company as set out in the Company's Articles of Association and Companies Act.

- g) It is appropriate for the Company to be granted leave of court to convene and hold the Annual General Meeting by Electronic means (for example via a combined online/web broadcast and mobile platform) or other virtual platforms provided by the Company, by which all eligible members will attend, participate and vote electronically.

- h) Further to ensure that the interests of all members of the company are protected, the Company shall submit an electronic Annual General Meeting plan to USE and obtain a no-objection in accordance with USE's Guidelines.

This court entertained the matter and heard the submissions of counsel for the applicant. The applicant's counsel oral submissions based on the application and the supporting affidavit, and this Court has considered them in arriving at this decision.

This court under section 33 of the Judicature Act is empowered to give any remedies sought in a matter if properly brought before the court. It provides;

The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to the cause or matter is entitled to in respect of any legal or equitable claim

properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters are avoided.

The applicant's problem or dilemma in this matter is in simple terms, she cannot hold a meeting to direct the affairs of the company since the government banned all public meetings in order to combat the spread of Corona virus [(Corvid-19)].

The **Companies Act** envisages such situations and is ably provided for under section 142 which provides as follows;

(1) 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 conduct the meeting of the company in the manner prescribed by the articles of this Act, the court may of its own motion or on application of any director of the company or of any member of the company who would be entitled to vote at the meeting order a meeting of the company be called, held and conducted in the manner the court thinks fit.

The applicant has set out the reasons and grounds why the company is unable to hold a meeting in the manner provided under the Articles of Association and the justification for such a meeting; to enable the company operate smoothly and convene the necessary company meetings and this court is satisfied with the said reasons and grounds.

Under the current circumstances and legal regime, the company cannot convene a physical meeting due to its large membership of about 1230. The Public Health (Control of COVID-19) Rules 2020 banned public gatherings and meetings.

In the circumstances, **British American Tobacco Uganda Limited** is granted leave to convene and conduct the Annual General Meeting for the year ended 31st December 2019 by electronic means, subject to obtaining a prior no-objection from Uganda Securities Exchange and complying with all applicable notices issued under the Uganda Securities Exchange Listing Rules 2003 and the law.

The costs of this application are to be met by the company.

It is so ordered.

SSEKAANA MUSA

JUDGE

11th/06/2020