

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISC. APPLICATION NO. 904 OF 2021
(ARISING FROM CIVIL SUIT NO. 327 OF 2021)**

- 1. REV. DR. HAMLET KABUSHENGA MBABAZI**
- 2. ESTHER KELLEN MBABAZI:.....APPLICANTS**

VERSUS

GREAT LAKES REGIONAL UNIVERSITY:.....RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This application was brought under Order XVII Rule 7 and 12 Order VI Rule 30 of the Civil Procedure Rules, Section 33 Judicature Act, and 38 Civil Procedure Act. The applicant sought the following orders;

- 1. The plaint in Civil Suit No. 327 of 2021 be struck out for being filed without authority and that it raises no cause of action against the applicants.*
- 2. The authorized representatives of the respondent have unsanctioned the main suit and its continued prosecution amounts to abuse of court process and to perpetuate illegalities of keeping in office persons who have been suspended from office and being occasioned by Natukwasa H Wilkins and Eleanor Nyamishana.*
- 3. An order directing Natukwasa and Nyamishana and those irregularly appointed by them immediately appointed by them to immediately vacate the respondent's offices/premises and hand over all properties/assets of the respondent in their custody and possession.*

4. *An order be made for the striking out of the “Ordinary Resolution” dated 8th April 2021 and Company Form 20 (Notification of Appointment of Directors and Secretary of Company) respectively registered with URSB on 2nd August 2021 from respondent’s records maintained at URSB.*
5. *Costs of this application be paid by Natukwasa and Nyamishana and*
6. *Any further and better relief this honorable court deems appropriate in the circumstances.*

The application was premised on grounds that the main suit raised no cause of action against the applicants and was a disguised attempt to perpetuate the illegality of a coup by the said Natukwasa and Nyamishana and their associates to continue to run and manage the affairs of the respondent despite not having the mandate.

The applicants stated that the respondent’s authorized representatives had resolved to un-sanction the main suit on among other grounds that it had not been authorized and those purporting to commence and prosecute it were strangers to the respondent and without authority.

On the other hand, Natukwasa Honest Wilkins swore an affidavit on behalf of the respondent stating that this application was brought in bad faith and intended to cause a delay in the course of proceedings and prayed that it be dismissed with costs. Natukwasa stated that he and Nyamishana never usurped and that he was lawfully appointed a director of the respondent on the same day when the applicants ceased being directors of the respondents.

The parties filed written submissions and framed the following issues for consideration by the court;

1. *Whether the main suit raises a cause of action?*
2. *Whether the main suit was commenced with authority?*

3. Remedies available to the parties?

The applicants were represented by *Alvarez Patrick Alunga* while the respondent was represented by *Arthur Ayorekire*.

Preliminary Objection

The respondent also raised a preliminary objection that the application seeks to discuss the merits of the main suit which is dilatory in nature and an abuse of court process. That the supporting affidavit of the application discussed issues raised in the plaint and the applicant's written statement of defence and hearing of the application would pre-empt the main suit leaving nothing to be determined therein.

The application sought to challenge the legality of the appointment of Nyamishana and Natukwasa as well as their authority to commence legal proceedings on behalf of the respondent which were both issues of contention in the main suit.

Since the court has already heard the application, it will proceed to determine the issues raised herein without pre-empting the outcome of the main suit.

Whether the main suit raises a cause of action?

The applicants submitted that the respondent/ plaintiff alleged that the applicants illegally dealt in the affairs of the respondent, trespassed and fraudulently dealt with the respondent's property but failed to provide the specifics of the alleged fraud. That without specifics of the alleged fraud, the respondent fell short in its pleadings.

Further that there was uncontroverted evidence that the employees of the respondent (Natukwasa and Nyamishana) were suspended from office and required to immediately hand over office but instead with impunity, they continued to remain in office illegally and were now using the name of the respondent illegally in the proceedings before this court. Counsel submitted that based on the evidence of the affidavit in reply in this case

and in Miscellaneous Applications 777 and 778 of 2021 between the parties, the affidavits are deposed by Natukwasa and Nyamishana. Counsel submitted that they were in every sense the proponents of the current legal action.

Counsel submitted that Natukwasa, therefore, had no authority to act for and on behalf of the respondent. Further, for an action to be commenced in the company name, it must fall within the parameters espoused in *Foss v Harbottle* which was not the case in the present action.

Counsel for the applicants submitted that the Articles of Association of the respondent vested the powers to manage the respondent in the board of trustees to which Natukwasa and Nyamishana never belonged and therefore had no authority prior to instituting this suit.

In response to the applicants' arguments, counsel for the respondent submitted that there was a cause of action against the applicants for illegal and unlawful dealings in the affairs of the plaintiff, trespass and fraudulently dealing in the affairs of the plaintiff, trespass and fraudulently dealing with the affairs property of the plaintiff. That the same was pleaded, and the facts giving rise to the cause of action particularized.

Counsel submitted that the applicants' counsel admitted that the plaintiff had pleaded fraud and that fraud was a serious and grave matter. That with this admission the applicants should not block the trial to resolve the issues of controversy existing between the applicants and the respondent in the main suit.

Counsel argued that the applicants' submission that Nyamishana and Natukwasa illegally appointed themselves as directors was baseless. This was because Nyamishana Eleanor was lawfully and legally a director of the respondent by virtue of her being a subscriber to the respondent's Memorandum and Articles while Natukwasa was legally appointed a director of the respondent on 20th June 2020 as shown by the resolution of

the Board of Directors of the respondent dated 10th June 2020 and signed by the 1st applicant who was then the chairperson of the Board of Directors of the respondent.

Counsel for the applicant rejoined submitting that the respondent's alleged particularization of fraud and illegalities was misplaced owing to the following; the applicants did not convene an extraordinary general meeting, but the members of the respondent did so and were within their power to do so. Further, the suspensions were carried out by the Board of Trustees of the respondent and not the applicants. Counsel submitted that the applicants never admitted to fraud but rather that the respondent's complaint failed to demonstrate the fraud perpetrated by the applicants and instead the actions claimed to constitute fraud were actions of the respondents and not the applicants.

With regard to Natukwasa and Nyamishana's appointment as directors, counsel rejoined that they could not have appointed themselves to directorship and as such their appointment was irregular and illegal.

Analysis

Order 6 rule 30 states that the court may upon application order any pleading to be struck out on the ground that it discloses no reasonable cause of action and in any such case may order the suit to be stayed or dismissed or judgment to be entered accordingly as may be just.

The applicants, in this case, sought an order to strike out the plaint in Civil Suit No. 327 of 2021 on grounds that it did not disclose a cause of action against the applicants. It was the applicants' contention that there were no specifics of the alleged fraud particularized in the plaint. However, this is a misinformed contention since the respondent clearly stated the particulars of fraud under paragraph 7 of the plaint. The particulars of the fraud were attributed to the actions of the applicants.

The court will not pronounce itself on the issue of the appointment of Natukwasa and Nyamishana as directors of the respondent. This is so

because the issue was already raised by the applicants in their Written Statement of Defence where they challenge the appointments as well as their authority to commence legal proceedings on behalf of the respondent. The court will therefore avoid pre-empting the issues raised in Civil Suit No. 327 of 2021 or which may be raised in future disputes.

Whether the main suit was commenced with authority?

Counsel for the applicants submitted that the main suit was commenced without authority and based his submission on two grounds. First that the respondent's board of trustees un-sanctioned the suit on 16th November 2021 and required their attorney to take such lawful steps to ensure that it was struck out.

Secondly, Natukwasa and Nyamishana lacked the locus to commence the said suit in the name of the respondent in a representative capacity on behalf of themselves and other directors. That the duo had no grievances against the applicants nor were they claiming that the applicants as the majority shareholders were conducting themselves in a manner prejudicial to their interests in the respondent.

It was therefore counsel's submission that ASB Advocates were not properly acting for and on behalf of the respondent since Natukwasa could not be construed to be a Board of Trustees member.

Counsel concluded that the plaint filed on 4th November 2021 was therefore irregular since Natukwasa and Nyamishana acted ultra vires owing to their lack of authority to sue in the name of the company after having been suspended.

In response counsel for the respondent submitted that there was no such requirement in the Companies Act 2012 to the effect that companies ought to pass a resolution authorizing it to institute legal proceedings since by virtue of incorporation and registration, such a right is inherent and resides

in the company. Thus, the requirement of a resolution is merely an administrative measure.

Counsel also submitted that ASB advocates had the authority to commence legal proceedings for the respondent by virtue of the engagement letter executed between the respondent and the law firm where the firm was appointed to act as the legal advisor of the respondent.

On the un-sanctioning of the suit, counsel for the respondent submitted that the resolution signed by the applicants and the new appointees to the board un-sanctioning the institution of the suit was illegal, a nullity, and did not take effect since it was passed by persons without authority and without following due process.

In rejoinder, counsel for the applicants reiterated their earlier submissions and concluded that continued prosecution of the main suit in light of the respondent's resolution would be an abuse of the court process and that the court would be without jurisdiction to continue to entertain the main suit and any subsequent matters arising therefrom.

Analysis

This suit was brought in the name of the company and yet the grievances are personal in respect of appointment or removal of directors. Persons acting on behalf of the company must have full and uncontested authority to commit and bind the company. A party whose membership is challenged should not freely without a resolution commit the company in any litigation without being joined as a party.

The applicants challenged the appointment of two employees (Natukwasa H Wilkins and Nyamishana Eleanor) as directors after they were suspended and they also challenge the resolutions that purported to have appointed them directors. The affairs of the respondent must be guided by Board of Trustees and Directorship upon proper resolutions.

It is clear that there is a serious dispute in the management and administration of the company and this must be resolved through proper channels between the warring parties in their personal capacity instead of using the company. The applicant alleged that the former employees have staged a 'management coup' and taken over the management or to run the affairs of the company illegally.

Once a company is incorporated under the relevant laws, it becomes a separate person from the individuals who are its members. It has capacity to enjoy legal rights and is subjected to legal duties which do not coincide with that of its members. Companies speak through resolutions, which must be validly passed. No member(s) has/have any right to commit the company on any matter without its consent and approval. Filing court matters in the name of the company is a serious matter which ought to be sanctioned by the resolution of the company to avoid abusing the company legal personality for personal issues.

The directors and the Managing director are in the eyes of the law, the directing mind and will of the company. Notwithstanding that a company in law is a person distinct from directors, a director is a person appointed or elected according to law and authorized to direct and manage the affairs of the company through joint authority by resolution in order to bind the company. Generally, the business of a company shall be managed by the Board of directors through Board meeting and General meeting. The managing director will then exercise such power in the everyday running of the company. Therefore, a director that is not a managing director gets involved in the running of the company through Board meetings and General meetings. Directors should not unilaterally take decisions to bind the company without approval or authorisations through resolutions. *See Massey v Wales [2003] NSWCA 212; Olawepo v S.E.C (2011) 16 NWLR pt 1272 p.122*

Some of the resolutions are really questionable and this matter should be addressed through the Registrar of Companies instead of filing a suit in the

name of the company. There is need to establish the proper organs of the company. The two corporate organs of a company are the shareholders in general meeting and board of directors. The acts of these bodies within the scope of their powers constitute the acts of the company within the rules of attribution.

The main suit was filed without authority and it is only fair that the company is not committed into endless suits without the proper directing mind of the company approving the same by way of resolution.

This application succeeds on this point of lack of authority to institute the present suit.

The main suit is accordingly dismissed. I make no order as to costs.

It is so ordered.

SSEKAANA MUSA

JUDGE

31st October 2022