

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
COMPANY CAUSE NO. 20 OF 2022
IN THE MATTER OF THE COMPANIES ACT 2012
AND
IN THE MATTER OF EMIRATES AFRICA LINK REAL ESTATES LIMITED
AND
IN THE MATTER OF AN APPLICATION BY AL SHAFFI INVESTMENTS GROUP LLC

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application is brought under sections 142 of the Companies Act Section 33 of the Judicature Act and Section 98 of the Civil Procedure Act and Order 38 r 6(h) of the Civil Procedure Rules.

The applicant was represented by *Counsel Siraj Ali & Edward Nsubuga Ssempebwa*.

The applicant is seeking orders that;

1. **AL SHAFI INVESTMENTS GROUP LLC** be granted leave to call, hold and conduct a meeting of the company without the requisite quorum and pass a resolution appointing directors and secretary.

2. The costs of this application be provided for.

The main grounds for this application are;

1. Emirates Africa Real Estates Limited was incorporated in October 2011 wherein Ahmed Darwish Daghar Darwish Al Marar owns 99 shares.
2. On the 29th day of March 2022, the applicant Decree holder against Ahmed Darwish Daghar Darwish Al Marar, in HCCS No. 695 of 2017, was granted an order by the High Court to bid and purchase the Decree holder's 99 shares in the company vide Miscellaneous Application No. 1768 of 2021.
3. On 30th June 2022 and having emerged as the successful bidder, the said 99 shares belonging to Ahmed Darwish Daghar Darwish Al Marar, were transferred into the names of the applicant by the Registrar of companies making the applicant, a majority shareholder with 99 shares and a one, Mohamed Khalil Darwish holding one share and he is a brother to the former original majority shareholder- Ahmed Darwish Daghar Darwish Al Marar
4. Owing to the manner in which the shares were acquired by the applicant, the existing officers of the company and the other shareholder are hostile towards the applicant and will not cooperate in the appointment of new directors, inspite of the fact that the applicant is the majority shareholder with 99 shares.
5. It is impracticable for the applicant to call a meeting of the company in the manner prescribed by the Articles of Association without the cooperation of the other shareholder.

This court entertained the matter and allowed the written submissions of counsel for the applicant. The applicant's counsel written submissions are 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; it is currently impractical to convene a meeting of the company with the minority shareholder since he is a brother to the former majority shareholder- Ahmed Darwish Daghar Darwish Al Marar whose shares have been attached under a court order.

The acrimony is evident and the applicant may not be in position to take charge under the normal procedure of a meeting convened to enable a smooth change in company composition to conduct business ordinarily in the Company's Annual General Meetings.

The court must be satisfied by the capacity of the applicant to bring such an application, then the obligation of the company to hold such a meeting and the impracticability of holding a meeting.

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 purpose of the above provision is to enable the court to give directions to overcome practical difficulties so that the company's affairs can be conducted where they might otherwise be stymied. See ***Ghalib Hussain & Abdul Sattar v Wycombe Islamic Mission and Mosque Trust Limited & Tasawar Iqbal [2011] EWHC 971(Ch)***

The applicant as a shareholder and director 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.

In the circumstances, ***AL SHAFI INVESTMENTS GROUP LLC*** be granted leave to call, hold and conduct a meeting of the company without the requisite quorum and pass a resolution appointing directors and secretary.

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

It is so ordered.

SSEKAANA MUSA

JUDGE

30th November 2022