

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS CAUSE NO. 001 OF 2022
IN THE MATTER OF THE COMPANIES ACT AND IN THE MATTER OF
MPANGA GROWERS TEA FACTORY
IN THE MATTER OF AN APPLICATION FOR AN ORDER DIFERRING
THE CONVENING OF THE 27TH ANNUAL GENERAL MEETING OF
MPANGA GROWERS TEA FACTORY FOR THE YEAR ENDED 31ST
DECEMBER 2021

OSIIME KAGABA KAKYALI
(Being a director of Mpanga
Growers Tea Factory)

APPLICANT

BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO

RULING

This is an application by chamber summons brought under Section 33 of the Judicature Act, Sections 138 & 142 of the Companies Act, Section 98 of the Civil Procedure Act and Order 38 rule 6(h) of the Civil Procedure Rules seeking for orders that;

- a. Mpanga Growers Tea Factory Ltd be granted leave to convene the Annual General Meeting for the year ended 31st December 2021 on 8th December 2022
- b. Costs of the application be provided for

The grounds of the application are set out in the affidavit of Mr. Osiime Kagaba Kakyali, the applicant, the substance of which is that;

- a. The applicant is a director and member of Mpanga Growers Tea Factory Ltd (herein referred to as the Company) which is a public

company with 1137 members most of whom are tea farmers in rural Western Uganda.

- b. It is a requirement for the company to hold an Annual General Meeting for every year in accordance with its memorandum and articles of association as well as the Companies Act 2012.
- c. It is impracticable at the moment to hold the Annual General meeting with the requisite quorum of a third of its members since holding such a meeting requires a vote of approximately UGX 91,587,600/= which the company is devoid of.
- d. That the audit report and audited accounts for the year ended 31st December 2021 approval of which is a core business to be conducted at the Annual General Meeting are not ready.
- e. That the company ought to have conducted the meeting for the year ended 31st December 2021 by 11th June 2022 but could not do so due to financial constraints and other reasons aforementioned
- f. That it is impracticable to hold the meeting by electronic means or virtually since majority of the shareholders are bona fide rural tea farmers without access to computer and internet facilities.

The application is not opposed. In the affidavit in reply, Mr. Kusemererwa Saul Balisima, general manager of the company confirms that it is in the best interests of the company that court grants it leave to hold the Annual General Meeting for the year ended 31st December 2021 on 8th December 2022 and that notice of the same has been issued and advertised in the Daily Monitor News Paper of 11th November 2022.

The applicant is represented by Mr. Musinguzi Bernard of M/s Kayonga Musinguzi & Co. Advocates. No submissions were however made by the said counsel.

Consideration by court

This court is empowered by among others **Section 33 of the Judicature Act** to give any remedies to meet the desired ends of justice. It is clear that the company has an obligation to convene and hold an Annual General Meeting in line with **Section 138(1) of the Companies Act** within 15 months from the date of the last one and the required quorum is at least half of the members. It has also been indicated by the applicant that the company has 1137 members and would therefore be require to have at least 569 members at the meeting.

The control of any public company is exercised by members at an annual general meeting as expressed in the case of ***In the matter of BDC Online Ltd HCCC No. 18 of 2005*** and such a meeting should not be omitted to be held.

The circumstances of this case do not permit the grant of leave to the company to hold the meeting virtually as the alternative to the physical one. As stated by the applicant, the company would need a substantial amount of resources to be able to hold the meeting with the requisite quorum which are not available at the time the meeting ought to have been held.

Section 142(1) of the Companies Act empowers this court to grant leave to the company to convene and conduct an annual general meeting at such a time when the circumstances of the company and its members permit. It states;

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 or this Act, the court may of its own motion or on the 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 to be called, held and conducted in the manner the court thinks fit.

(Emphasis added)

An application like the present one and the remedies sought therein are not alien to our jurisprudence. See ***In the matter of Igara Growers Tea Factory Ltd*** HCMC No. 32 of 2020, ***In the matter of Kayonza Growers Tea Factory Ltd*** HCMC No. 33 of 2020. In *Re Kayonza* (supra) for example, court quoted with approval the case of ***Glacier Media Inc (Re) 2020 BCSC 591*** where an application like the present was granted to defer the holding of an annual general meeting on account of logistical challenges. Court went ahead to note that extension of time would be granted owing to the fact that holding the AGM in the current circumstances would disenfranchise many members of the company.

The reasons advanced for this application are that holding the AGM in the company with the requisite quorum requires approximately 91 million shillings to facilitate the same, which resources are not within the company's purview at the moment. Secondly, that the main items for discussion and approval at the AGM, to wit, audited books of account were not ready by the time the company ought to have held the AGM in June. Indeed, denying this application has the likely effect of causing the company undue hardship, disenfranchising some of the members of the company and the meeting would be in vain without the main objects for discussion.

In the premises and for reasons given above, this application would succeed. Mpanga Growers Teas Factory Ltd is hereby granted leave to

convene and conduct their Annual General Meeting for the year ended 31st December 2021 on 8th December 2022. The company shall bear the costs of this application.

It is so ordered

Dated at Fort Portal this 5th day of December 2022. .

A handwritten signature in black ink, appearing to read 'Mugabo', with a stylized flourish at the end.

Vincent Emmy Mugabo

Judge