

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)**

MISCELLANEOUS APPLICATION NO. 674 OF 2021

(ARISING FROM COMPANY CAUSE NO. 35 OF 2020)

IN THE MATTER OF THE COMPANIES ACT 2012

AND

IN THE MATTER OF DOUBLE JOY INTERNATIONAL LIMITED

**BRUNO TUMWESIGYE.....:APPLICANT
(SHAREHOLDER /DIRECTOR OF DOUBLE JOY INTERNATIONAL LTD)**

VERSUS

**BRENDA ASIIMWE.....:RESPONDENT
(DIRECTOR OF DOUBLE JOY INTERNATIONAL LTD)**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application is brought under sections 98 & 82 of the Civil Procedure Act and Order 52 r 1, 2 & 3 of the Civil Procedure Rules for court to vary its order to wit; *“The Meeting should appoint one of the administrators of the estate of the late Twesigye Victor as a Director in order to protect the interests of the Estate”* and in lieu thereof allow the applicant to hold a one Member meeting and remove the respondent as a Director and appoint Matsiko Alexander as the Company Secretary for a period of one year pending the effective transmission of shares to the representative of the Estate of the late Twesigye Victor.

The application is supported by the affidavit of the Bruno Tumwesigye contending that;

1. The applicant filed an application to hold a one member meeting after one of the shareholders and director passed on in July 2020 and the court granted the applicant leave.
2. The applicant held a one member meeting of the company in accordance with the Order and appointed Brenda Asiimwe as one of the legal representatives of the estate of the late Victor Twesigye as Director.
3. The respondent has failed and refused to cooperate with the applicant or carry out any of the duties of a Director in the best interests of the Company.
4. The refusal by the respondent Brenda Asiimwe to submit her bio data to Interpol as a new director and the company documents and passwords in her possession and books of accounts, as required by the Ministry of Gender, Labour and Social development has frustrated the Company process of renewing its licence and normal company operations.
5. The company business is at a standstill and in so doing, the business interests of the applicant as a shareholder and those of the estate of the late Twesigye Victor are all being jeopardised as the applicant cannot effectively run the affairs of the company without the respondent but she has frustrated the process by refusing to cooperate.

The respondent opposed the application and filed an affidavit in reply contending that;

1. The applicant has never contacted her or her mother and contended that it is the applicant who is elusive and has continued to act in bad faith towards Double Joy International Ltd.
2. That the applicant raided Double Joy Bank Account in UBA, Main Branch at Jinja Road and unilaterally and arbitrarily withdrew USD 18,000 and spent it on personal issues.

3. That the money on that account was for purposes of securing workers for export and he refused to refund the money hence frustrating efforts of working together.
4. That all efforts to get him refund the money were futile and he has since remained elusive, therefore it evident that we cannot work together given his dishonest behaviour.
5. That the applicant should buy us out, and we work an arrangement and he does so on top of refunding the money her late father paid as a bank guarantee of 50,000,000/=

The applicant is rejoinder stated that he withdrew money in accordance with company banking mandate and withdrew USD 12,000 in order to pay for the company liabilities, such as rent and tax obligations which are still accruing because the company is at standstill.

The applicant has on several occasions through phone calls and text messages requested the respondent to hand over EEMIS and Musaned passwords as well as her bio data to the Ministry of Gender, Labour and Social Development for purposes of renewing the recruitment of migrant workers licence and she neglected or refused to do so.

That the applicant has never taken any money directed towards securing workers for export. The respondent refused to take on her role as co-director and director in the company. The respondent should use these proceeding to cede the shares of her late father to the company but the shares must first be transmitted to her and then she deals with them as such.

The applicant was represented by *Augustine Idooti* and *Patience Akampurila* from Kampala Associated Advocates while the respondent was represented by *Munanura-Mugabi & Co Advocates* who filed an affidavit in reply although they never appeared in court when the matter was called for hearing.

The parties were directed to file written submissions in the interest of time which I have considered in this ruling.

Whether there is sufficient reason to review/vary a court order?

The applicant's counsel submitted that the court directed the applicant at one members' meeting to appoint a representative or administrators of the estate of late Twesigye as director in order to protect the interest of the estate of the late Twesigye. The applicant went ahead and appointed the respondent who had failed and or refused to cooperate with the applicant which has halted the activities of the Company and it is on that ground the applicant seeks to partially vary this court order.

Counsel submitted that the court has power to review its orders under section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure rules premised on any other sufficient reason. He further relied on section 98 of the Civil Procedure Act which bestows inherent powers on court make such orders that are necessary for the ends of justice or prevent an abuse of the process of court.

The respondent has been uncooperative in the running of the company. She has refused to avail bio data to Interpol for vetting by the Joint Intelligence Committee to enable the renewal process of the company's licence at Ministry of Gender, Labour and Social Development. She has further refused to surrender company documents in her possession, books of accounts for the year 2019-2020 and EEMIS and Musaned passwords. This has affected the normal operations of the business thereby frustrating the business interests and that of the shareholders.

Analysis

This court notes that the respondent has not in any material way controverted or denied the truthfulness of the applicant's averments in the application and the presumption is that such averments are admitted as true. In the case of *Samwiri Mussa vs Rose Achen* cited with approval in the case of ***Energo Projekt Niskograndnja Joint Stock Company v Brigadier Kasirye Ggwanga & Another HCMA 558 of 2009***, Ntabgoba Ag. J (RIP); held that;

Where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are admitted.”

The applicant has categorically asserted in the affidavit that the respondent has refused to cooperate in the collective running the affairs of the company especially in ensuring that the licence is renewed. The respondent has not rebutted these facts or averments. This therefore means the application is uncontroverted.

The law on review is set out in Section 82 of the Civil Procedure Act and Order 46 rule of the Civil Procedure Rules. The applicant has premised his application on “***any other sufficient reason***”

Review means re-consideration of order or decree by a court which passed the order or decree.

If there is an error due to human failing, it cannot be permitted to perpetuate and to defeat justice. Such Mistakes or errors must be corrected to prevent miscarriage of justice. The rectification of a judgment stems from the fundamental principle that justice is above all. It is exercised to remove an error and not to disturb finality.

Reviewing a judgment/ruling based on mistake or error apparent on the face of the record can only be done if it is self-evident and does not require an examination or argument to establish it.

The applicant is supposed to prove sufficient reason as to why such a court order should be varied. In the case of ***Lazarus Kirech Kisorio v Arap Barno [2018]eKLR*** it was noted *that variation of a court Order is a discretion of the court. For the court to exercise this discretion, it must be satisfied that there is no inordinate delay which is unreasonable.* The applicant in this matter has brought the application promptly without any unreasonable delay.

The application for review of the court order may equally arise where there is any other sufficient reason which may pursued the court to exercised its discretion by

varying the orders due change of material circumstances prevailing at the moment.

In the case of *Tibbles v SIG PLC (Trading as Asphalt Roofing Supplies) [2012] EWHCA* court observed that; *“for the High court to revisit one of its orders, the applicant must either show material change of circumstances or that the judge who made the earlier order was misled in some way, whether innocently or otherwise, as to the correct factual position before him...”*

It is clear from the affidavit of the applicant which was not controverted that the series of events that have happened from the time this court gave the order to add the respondent as a representative of the late Twesigye have resulted in the unintended consequences. This material change in the circumstances has made it impossible for the company to continue with its operations as a business as had been envisaged by the court.

The court had assumed that the representative of the late Twesigye would cooperate in the daily operations of the company and this has not been possible, there is total lack of cooperation, no participation and a total breakdown of communication which has halted the running of the company. This is a good reason to vary the earlier order granted by court to save the company from collapsing which will be detrimental to both parties and other members of the company.

Therefore, there is sufficient reason to review or vary the order of court earlier given on 17th February, 2021- *“The meeting should appoint one of the administrators of the estate of the late Twesigye Victor as a Director in order to protect the interest of the estate.”*

In the circumstances, **the applicant is directed to hold a one member meeting for the purposes of removing the respondent as a director and appoint Matsiko Alexander as the Company Secretary for a period of one year pending the effective transmission of shares to the representative of the estate of the late Twesigye Victor.**

It is so ordered.

SSEKAANA MUSA
JUDGE
29th April 2022