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

MISCELLANEOUS CAUSE NO.123 OF 2022

1. NKURINGO CONSERVATION AND

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DEVELOPMENT FOUNDATION:.....APPLICANT

VERSUS

1. THE REGISTRAR GENERAL, URSB

2. UGANDA REGISTRATION SERVICES BUREAU:.....RESPONDENTS

BEFORE: HON. LADY JUSTICE ESTA NAMBAYO

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RULING

The Applicant, Nkuringo Conservation and Development Foundation Ltd brought this application under **Articles 28 and 42 of the Constitution, Section 287 of the Companies Act, 2012, Sections 33 and 36 of the Judicature Act and Rules 3, 5, 6, & 8 of the Judicature (Judicial Review) Rules, SI No. 11 of 2009** against the Registrar General, Uganda Registration Services Bureau and the Uganda Registration Services Bureau (hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents respectively), seeking for orders and declarations that: -

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1. The Respondents' actions of expunging the Applicant's resolutions to amend the company's Memorandum and Articles of Association, Form 20 on the Notification of Directors and Secretary, from the company register without according the Applicant a fair hearing in accordance with the law is ultra vires.
2. The Respondents' acts of refusing to register the said documents lodged by the Applicant and filed in accordance with the law is illegal, procedurally improper and irrational.
3. The Respondents' acts of purporting to halt the registration of documents properly lodged and all transactions of the company without affording them a fair hearing is illegal, irregular and offends the rules of natural justice.

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4. All decisions taken by the Respondents purporting to exercise their powers under the Companies Act, 2012 without giving the Applicant a fair hearing are null and void.
  5. An injunction be issued against the Respondents, their agents and servants restraining them from the implementation of their decisions in their letters to the Applicant dated 4<sup>th</sup> November, 2021, 10<sup>th</sup> February, 2022 and 18<sup>th</sup> March, 2022.
  6. An order of Certiorari to issue squashing the directives of Respondents issued in the letters of 4<sup>th</sup> November 2021, 8<sup>th</sup> February 2022, and 18<sup>th</sup> March 2022 for being illegal, procedurally improper and irrational.
  7. An order of Prohibition to issue restraining the Respondent, its officers and any agents from further exercising powers ultra-vires, acting in any manner that is contrary to the law and process of registering documents, or in any way that frustrates or otherwise offends the Applicant's rights.
  8. An order of Mandamus to issue compelling the Respondents to accord a fair hearing to the Applicant and also immediately complete the process of registering the documents lodged by the Applicant.
  9. An order that the Applicant is entitled to damages for the inconvenience suffered and costs of the application be provided by the Respondents jointly and severally.

The grounds of this application are laid down in the affidavit in support of the application by Asigario Turyagyenda, the Applicant's Chairperson, but briefly are that;

1. The Respondents issued a ruling dated the 4<sup>th</sup> November, 2021 addressed to the Management of the Applicant Company directing the Applicant to implement changes in the Company leadership following allegations received by them concerning the Applicant's leadership in a petition not known to the Applicant dated 11<sup>th</sup> February, 2021.
2. The said petition together with the allegations contained in the letter dated 4<sup>th</sup> November, 2021 were a surprise to the Applicant since no prior information regarding the same was availed to them.

- 65 3. The Applicant was denied a hearing before the Respondents issued the said ruling thereby infringing on their non-derogable right to a fair hearing guaranteed under Article 28 of the 1995 Constitution.
- 70 4. Despite the Applicant being denied a hearing, the directives issued by the Respondents in the said ruling were implemented by the Applicant, and a report dated 17<sup>th</sup> December 2021 was prepared and availed to the Respondents by the Applicant.
- 75 5. The said report dated 17<sup>th</sup> December,2021 was ignored by the Respondents who continued harassing the Applicant in another letter dated the 8<sup>th</sup> February, 2022 alleging disobedience of their directives in their letter dated 11<sup>th</sup> November,2021.
- 80 6. The Applicants responded to the said correspondence in a letter drafted by their former lawyers clarifying that they had implemented their directives despite being denied an opportunity to be heard.
- 85 7. The Respondents equally ignored the said letter and on the 18<sup>th</sup> day of March, 2022, halted the registration of the Applicant's documents as well and all transactions involving the Applicant Company pending determination of this matter by courts of law.
8. The Applicant is aggrieved by the illegal, irrational and irregular manner in which the Respondents halted their operations and refused to register their documents without giving them an opportunity to be heard.
9. It is in the interest of justice that this application be wholly allowed.

The Respondents filed affidavits in reply opposing this application.

#### **Brief background to the application.**

90 Briefly, the background to this application is that on the 4<sup>th</sup> day of November, 2021, the 1<sup>st</sup> Respondent wrote to the Applicant's management informing them that the 2<sup>nd</sup> Respondent had received several allegations regarding the Applicant's Chairman and Board Members' over stay in office and that 996 members of the Applicant had

petitioned the 2<sup>nd</sup> Respondent over the same matter and copied the petition to the Minister of Justice and Constitutional Affairs.

It is the Respondents' claim that after several engagements between them and the Applicant, the Applicant was directed to convene a General Assembly to discuss and settle their issues and to file a report with the 2<sup>nd</sup> Respondent in 30 days after the meeting. On the 18<sup>th</sup> March, 2022, the 1<sup>st</sup> Respondent wrote to the Applicant notifying it that their dispute had been referred to Court for failure to comply with the law, its Articles of Association and directives of the 2<sup>nd</sup> Respondent and that in the meantime, the Respondents would halt all transactions on the Applicant's file pending determination of the matter by Court. It would appear that this is why the Respondents expunged the Applicant's resolutions from its register and the Applicant filed this application.

### **Representation**

Learned Counsel Mwesiga Philip appeared for the Applicant, while Dennis Birungi was for the Respondents. Counsel for both parties filed their written submissions as directed by Court.

Issues for determination by this Court are as follows: -

1. **Whether the impugned decisions issued against the Applicant are amenable to judicial review?**
2. **Whether the process leading to the impugned decisions and the decision itself of expunging the Applicant's documents from the register and halting their operations are illegal, irrational and procedurally improper?**
3. **Whether the Applicant is entitled to the reliefs prayed for?**

In his submissions, Counsel for the Respondents raised an issue, to be addressed as a preliminary objection; whether the Registrar is immune from suits for decisions made in exercise of his quasi-judicial powers. He submitted that Mr. Kule Walid heard and determined the dispute concerning illegal alteration of the Applicant's company register in exercise of the Registrar's quasi-judicial functions under the Companies Act, 2012 and the Companies (Power of the Registrar) Regulations, 2016, and that as such, the Applicant cannot sue the Respondents for decisions made in exercise of their quasi-judicial function

under the Companies Act, 2012. Counsel relied on the cases of *Bryan Xsabo Strategy Consultants (U) Ltd and 2 others -v- Great Lakes Energy N.V; Company Cause No. 13 of 2020, Money Lenders Association of Uganda and MK Financiers -v- Uganda Registration Services Bureau; Company Cause no 11 of 2019 and Kintu Samuel -v- The Registrar of Companies and others; Misc. Cause No 58 of 2021* and contended that while this Court has the power to review decisions of the Registrar under section 291 of the Companies Act, the review must be between the disputing parties and not between the parties and the Registrar. That under sections 292 and 293 of the Companies Act, a Registrar cannot be added as a party to the review or appeal against his/her decision. He referred this Court to the case of *MK. Financiers Ltd, (supra)*, where court noted that: -

*"...an appeal cannot be commenced against a presiding officer of a quasi-judicial body..."*

Counsel explained that in this case, the matter had been referred to High Court for determination under section 293 of the Companies Act. He also clarified that a decision made in exercise of the Registrar's power under S. 293 of the Company's Act, cannot be challenged as sought by the Applicant in this application. That it is the Registrar's prerogative to determine whether to refer a dispute to Court or not and a party having any grievances over the process can address his grievances to the High Court. He relied on the case of *Pullman -v- Allen, 466 U.S. 522, Supreme Court of the United States, 1984*, cited with approval in *Attorney General -v- Gladys Nakibuule Kisekka, Constitutional Appeal No 02 of 2016*. Counsel prayed that this application be dismissed for having wrongfully sued the Respondents, with costs.

#### **Applicant's submission.**

In reply to the preliminary objection, counsel for the Applicant submitted that the immunity that the Respondents want to wear now can only be enjoyed by the Registrar, if he/she has acted within his/her mandate and exercised powers in accordance with the law. That the Respondents in paragraph 14 of their submissions, seem to suggest that the supreme court case of *Attorney General -v- Gladys Nakibuule Kisekka, Constitutional Appeal No.02 of 2016* is being applied out of context which is not true

150 because Lillian Tibatemwa Ekirikubinza, JSC at pages 9-11, discusses the immunity of persons exercising quasi-judicial functions and states, among others, that judicial independence and immunity are not intended to be a shield from public scrutiny and that it is inconceivable for any person whether an individual or an authority . exercising judicial powers not to be answerable for their exercise. That it is the Applicant's position and submission, that a judicial officer enjoying judicial immunity has to ensure that they 155 act in a judicial manner and once this is not done then it is irrational and illegal for them to use judicial immunity to shield themselves from court proceedings. Counsel emphasized that the Respondents actions were ultra vires and that they are culpable to being dragged to court for their misdeeds as parties in this case.

160 **Analysis.**

This application was brought under Sections 33 and 36 of the Judicature Act and Rules 3, 5, 6 & 8 of the Judicature, (Judicial Review) Rules, for Judicial Review. It is not an appeal or review. In *Kuluo Joseph Andrew & 2 Others –v- Attorney General & 6 Others MC No. 106 of 2010*, Bamwine, J, (as he then was), stated that: -

165 *“It is trite that Judicial Review is not concerned with the decision in issue perse but with the decision making process. Essentially judicial review involves the assessment of the manner in which the decision is made; it is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such, but to ensure that public powers are exercised in accordance with basic standards of legality, fairness and rationality.”*

170 Under Section 36 (1) of the Judicature Act, Cap 13, the High Court has power to grant prerogative orders. Prerogative orders are remedies for the control of the exercise of powers by those in public offices, and the remedy is available to give relief where a person challenges the conduct of a public authority or public body, or anyone acting in the exercise of a public duty (**See Atuzarirwe –v- The Registration Services Bureau & 3 Ors, MC No. 249 of 2013**).

In this case, the Applicant seeks to challenge the Respondent’s decision making process on grounds that the Respondent, made decisions against the Applicant without giving it

180 a chance to be heard and that as a result, the Applicant is aggrieved by the illegal, irrational and irregular manner in which the Respondents halted their operations and refused to register their documents. I find that the Respondents can be sued under Judicial Review. Therefore, I no merit in this preliminary objection raised by Counsel for the Respondents and it is hereby overruled.

I will now address the application on its merits.

185 **Issue 1: Whether the impugned decisions issued against the Applicant are amenable to judicial review**

**Applicant's submission.**

190 Counsel submitted that the Respondents' directions to the Applicant to implement changes in their constitution, halting the operations of the Applicant and expunging their documents from the register are amenable to judicial review. That the said decisions need to be quashed and appropriate remedies granted to the Applicant. He relied on Rules 7A (1) and 7(2) of the Judicature (Judicial Review) Rules, 2019 and the case of ***MC No. 133 of 2018 International Development Consultants Limited -v- Jimmy Muyanja and 2 Others*** where court noted that: -

195 *"The purpose of judicial review is to ensure that public bodies do not exceed their jurisdiction and carry out their duties in a manner that is not detrimental to the public at large..."*

Counsel prayed that this court finds that it has jurisdiction under judicial review to entertain this application.

**Respondents' submissions.**

200 In reply, counsel for the Respondents admitted that an aggrieved party can challenge the actions of the Respondents emanating from its exercise of administrative functions by way of Judicial Review. That besides the administrative functions, the 2<sup>nd</sup> Respondent exercises quasi-judicial powers/functions under section 247 of the Companies Act, 2012 and the Companies (Power of Registrar) Regulations, 2016, where the Registrar of  
205 companies hear and determine company petitions and other applications brought before it by aggrieved company stakeholders, to resolve company disputes by making such

orders as are deemed necessary to meet the ends of justice, including rectification of the register, which the Respondents exercised and struck out the Applicant's documents off the record.

210 **Analysis.**

**Rule 7A of the Judicature (Judicial Review) (Amendment) Rules, 2019**, requires that *the Court in considering an application for judicial review must satisfy itself that: -*

*1(a) the application is amenable for judicial review.*

215 **Under Rule 5 (1) of the Judicature (Judicial Review) Rules, 2009**, it is provided that; *an application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made.*

The above legal position has been held in several cases including the case of **Adinan Kawooya -v- Junja Munipal Council MC No.56 of 2011**, where court in upholding the provision of **Rule 5 (1)**, cited with approval the case of **James Basiime -v- Kabale District Local Government MA No.20 of 2011**, where **Justice Kwesiga** noted that: -

225 *"in my view, the statutory provision requires that for the application for Judicial Review to be valid, it must be filed not later than three months from the date when the matter or grounds complained of, or the cause of action arose."*

In this case, the Applicant states in paragraphs 1, 2 and 3 of its grounds of the application that it was denied a hearing by the Respondents before issuing a ruling on the 4<sup>th</sup> day of November, 2021. That none the less, the Applicant went ahead to implement the directives of the Respondents and it made a report and filed it in the 2<sup>nd</sup> Respondent's register on the 21<sup>st</sup>/12/2021 as required by the Respondents. From the above information, this court notes that the action complained of occurred on the 4<sup>th</sup> November, 2021. The Applicant filed this case in court on the 15<sup>th</sup>/06/2022, more than 6 months after the conduct complained of, which is outside the statutory period of three months within which the Applicant should have filed its application for Judicial Review.



235 Under the provisions of Rule 5(1) of the Judicature (Judicial Review) Rules, 2009 the  
Applicant is required to seek for leave of court before filing an application for Judicial  
Review out of the stipulated three months. There is no evidence that the Applicant  
obtained leave of court before filing this application. Without leave of court to file this  
application out of time, I would find that this application is not properly before this court  
240 and as such, I would dismiss this application for being filed out of the stipulated period  
of three months from the date when the matter or grounds complained of, or the cause  
of action arose, without leave of court.

Be that as it may, according to paragraph 3 of *annexure "H"* to the affidavit in support  
of the application, the 1<sup>st</sup> Respondent referred the parties to court under S. 293 of the  
245 companies Act, 2012, which provides that;

*"where under any of the provisions of this Act a person has an option to make an  
application to the court or to the registrar and the application is made to the registrar,  
the registrar may, at any stage of the proceedings, refer the application to the court, or  
he or she may, after hearing the parties, determine the question between them, subject  
250 to appeal to the court."*

The Applicant should have now filed its grievances before court instead of seeking for  
prerogative orders. In my view, this application is overtaken by events, the 1<sup>st</sup> Respondent  
having already referred parties to court. Therefore, I find no merit in this application  
which I do hereby dismiss from court with orders that the Applicant pays costs of this  
255 application to the Respondents.

I so order.

**Dated, signed and delivered by mail at Kampala this 15<sup>th</sup> day of March, 2023.**

260 **Esta Nambayo**  
**JUDGE**  
**15<sup>th</sup> /3/2023.**