



THE REPUBLIC OF UGANDA
IN THE MATTER OF THE COMPANIES ACT NO.1 OF 2012 AS
AMENDED
AND
IN THE MATTER OF TAIFA PARTNERS LIMITED
PETITION AGAINST FRAUDULENT, ILLEGAL REVOCATION AND
A PPOINTMENT OF POWERS OF ATTORNEY
PETITION CAUSE NO. 21783 OF 2023

ASSA TUMWESIGYE.....PETITIONER
VERSUS

- 1. ASIIMWE EMMANUEL**
- 2. TAIFA PARTNERS LIMITED.....RESPONDENTS**

RULING


BEFORE: MULIISA SOLOMON, REGISTRAR OF COMPANIES.

A. Background

- 1. The petitioner brought a petition on 24/07/2023, claiming that on 20/08/2021, he was duly appointed as the representative of Taifa Partners Limited/ Perry Engineering Services Ltd Association during the bidding process for the contract to design, build, install and supply a grain processing and silo facility at ibuga/Rwimi.
- 2. That upon getting the said Powers of Attorney, he acted diligently during the execution of his duties as an attorney and did everything

reasonably possible with in his means until the bidding process was completed.

3. That Taifa Partners Limited/Perry Engineering Services Limited Association was assessed as the best evaluated bidder and the petitioner acting under the said Powers of Attorney, signed the contract with Uganda Prisons Service on 21/02/2022, on behalf of the Taifa/Perry Association and immediately embarked on making arrangements to start the implementation process of the contract like mobilization of equipment, personnel and others.
4. That in around August 2022, he was denied access to the company head offices and the site in rwimi and was told by the 1st respondent that he was no longer part of the contract because his Powers of Attorney had been revoked.
5. That the petitioner, later went to URSB to confirm if this was true only to find a Company Resolution dated 15/07/2022, stating that the company sat in a meeting and resolved to revoke his Powers of Attorney and this was accompanied by a newly registered Powers of Attorney endorsed by a one Okello Charles and Emmanuel Asiimwe appointing Emmanuel Asiimwe to take over as the new attorney for Taifa Partners Limited/Perry Engineering Services Limited Association and given the entire responsibility of running the contract.
6. That the petitioner decided to contact Okello Charles the donor of the allegedly granted Powers of Attorney to Asiimwe Emmanuel to ask why his originally granted powers of attorney were revoked and to his shock and surprise, Okello Charles denied having ever attended any company meeting or either having signed the said resolution and Powers of Attorney appointing Asiimwe Emmanuel as the new attorney.
7. The petitioner through his lawyers made a formal complaint to the Directorate of Forensic Services to investigate the authenticity of the signatures found on both the resolution and Powers of Attorney.

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8. The handwriting expert report issued on 20th July 2023 established that the signatures on the company resolution and Powers of Attorney, purported to be of Okello Charles were forged.
9. The petitioner made the following prayers;
 - a) That the company resolution dated 15th July 2022 registered on 20/07/2022 revoking powers of attorney previously to him and appointing the 2nd respondent be cancelled and expunged from the register for being an illegal and wrongfully obtained endorsement.
 - b) That the power of attorney registered on 20/07/2022 appointing the 1st Respondent be cancelled with immediate effect and also be expunged from the register for having been procured through forgery, fraud and deceit thereby rendering them an illegal and wrongfully obtained endorsement.
 - c) That the illegally revoked Powers of Attorney dated 20/08/2021 be restored forthwith since they were replaced using an illegal and wrongfully obtained endorsement.
10. I issued summons on 25th July 2023, requiring parties to appear before me for a hearing on 02nd August 2023 and the respondents to file their defence by way of statutory declaration not later than 28th July 2023.
11. The 1st Respondent filed his defence on 28th July 2023, and on 02nd August 2023, the matter came up for hearing.
12. Counsel for the petitioner intimated that the petitioner(s) was unable to proceed on that day because he had just been served with the copy of the 1st respondent's statutory declaration in defence and that he intended to rejoin on the same. The matter was adjourned to 7/08/2023 at 11am.
13. On 7/08/2023, the matter came up for hearing and proceedings started at 12:10 pm because the 1st respondent and his Counsel did not make it on time. The Petitioner was represented by Mark Nowamani and the Petitioner was also present. The 1st respondent was not present but

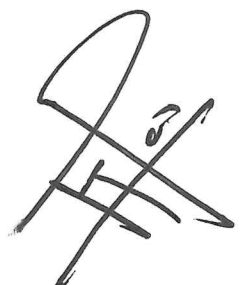
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sent a representative, Daniel Munyaneza. The 2nd respondent was represented by it the corporate director, Davanti Union Limited.

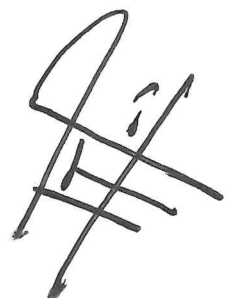
14. Daniel Munyaneza Counsel for the 1st respondent stated that he had just received instructions on this petition and therefore, needed time to address himself with the facts of the matters at hand and prayed for an adjournment.
15. Counsel for the petitioner in response stated that whereas Counsel for the 1st respondent had just received instructions, the petitioner was ready to proceed because the 1st respondent was well aware that the matter was coming up for hearing on that day as he had already engaged a lawyer who was well aware of all the proceedings in the said petition and him choosing to engage new counsel on the day of hearing was intended to delay proceedings.
16. Counsel for the petitioner prayed that he makes his submissions during the hearing and Counsel for the 1st respondent be given time to respond which Counsel for the 1st respondent consented to.
17. I allowed counsel for the petitioner to make his submissions during the hearing and granted Counsel for the 1st respondent up to 10/08/2023 at 10am to have filed his response.

B. Petitioner's Submissions

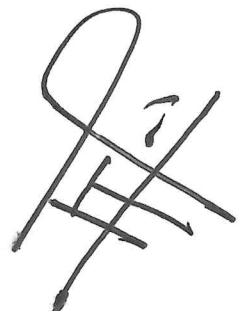
18. Counsel for the petitioner stated that this petition was brought under **Regulation 8 and 9 of the Companies (Powers of the Registrar) Regulations, 2016** by way of declaration and another supporting declaration of a one Kasana Gift Cissy.
19. That it is the contention of the petitioner that his Powers of Attorney for the contract with Uganda Prison Service under Instrument No. G210831-4678 was illegally and irregularly revoked by an illegal endorsement which the Registrar of Companies has powers to rectify and expunge off the record.

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20. That the illegal endorsement the petitioner alleges, is the signature of Okello Charles on the resolution and Powers of Attorney granting the same and the said Okello Charles has also sworn a statutory declaration which is attached to the petition and forms part of the forensic handwriting report which is attached as "Annexure F."
21. That the said report indicates that indeed the contested signature of Okello Charles which was used to procure the revocation of the Powers of Attorney did not belong to Okello Charles, which clearly implies that they were illegally and fraudulently obtained thus becoming an illegal endorsement which the registrar of companies has powers to expunge by virtue of **Regulation 8 and 9 of the Companies (Powers of the Regulations) Regulations, 2016.**
22. Counsel further contended that no other forensic report was provided to rebut "Annexure F" to the Petition and this clearly or impliedly means that any other evidence not hearsay, the registrar is to consider is that report which was backed by the statutory declaration of Okello Charles.
23. That there is no anywhere in the reply that the respondents have specifically rebutted the forensic report apart from being diversionary and shifting the blame.
24. That this stance is further fortified by the statutory declaration of Kasana Gift Cissy, which is attached to the petition and that the said Cissy deponed that she was an office administrator at the 2nd respondent company and on the alleged day when signatures were appended, she was in office and there is no such meeting that was held to cancel the Powers of Attorney and she further deponed that on that day, another agreement not a resolution to change the attorney was signed which she personally witnessed and attached to her statutory declaration.

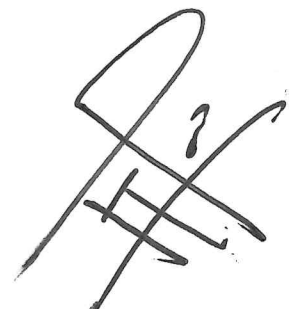
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25. Further that on 15/07/2022, Okello Charles did not appear in office and as such, there is no way he could have executed the resolution and contested Powers of Attorney.
26. Counsel for the petitioner further submitted that the Registrar of Companies has mandate and is empowered by **Regulation 8 and 9** to rectify the record where there's an endorsement that has been illegally obtained, and that the Registrar of Companies should not withhold taking action on matters of illegality which have been brought to his or her notice and if the registrar doesn't take action, then he would have ratified an illegality as per the case of **Makula International Vs His Eminence Cardinal Wamala Nsubuga and Another**.
27. That it is on that background that the petitioner prays that the registrar corrects the record of Taifa Partners Limited by expunging the resolution revoking the Powers of Attorney in favor of Assa Tumwesigye and expunging the resultant Powers of Attorney in favor of Emmanuel Asimwe in regards to a contract with Uganda Prison Services.
28. That it is also the petitioner's prayer that consequently, the registrar reinstates the powers of Attorney to Assa Tumwesigye for having been revoked through an illegal and fraudulent endorsement.
29. Counsel for the Petitioner also contended that costs must always follow the cause otherwise people will continue to perpetrate forgery and go unchecked. That costs in a civil matter also serve as a deterrent measure to parties who perpetrate fraud and the same has been brought to the attention of the registrar of companies.
30. That the main executor of this forgery is the 1st respondent because he was the main beneficiary of all the illegal actions and therefore pray that the Registrar awards costs to the petitioner amounting to 50 Million Shillings as against the 1st respondent.

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C. 1st Respondent's Submissions

31. The respondents raised a preliminary point of law to the effect that the instant petition was not heard according to the standard set out in the Companies Act and the case of Luitingh Lafras & Anor Vs Special Services Ltd and as such it should be struck out with costs.
32. That the preliminary point of law is premised on the case of Makula International Vs His Eminence Cardinal Nsubuga Wamala [1982] HCB where Court of appeal held that a court of law cannot sanction what is illegal and an illegality once brought to the attention of court overrides all questions of pleadings, including any admissions made thereon.
33. That **Section 288 of the Companies Act 2012** provides that in proceedings before the registrar, the evidence shall be given by statutory declaration in the absence of the directions to the contrary and that the same Section provides for instances where the registrar may take evidence viva voce.
34. That in the instant case, the pleadings that ought to have been filed include a petition, answer to the petition and a rejoinder if any and upon filing of the pleadings, the parties were obliged to have adduced evidence which is subject to evaluation as provided for under Section 288 of the companies Act.
35. That upon the 1st respondent's perusal of the said petition, there is no statutory declaration by the petitioner and the one that appears on the petition is that of Okello Charles, which is introduced in paragraph 9 of the petition as an annexure which makes it a mere document since it forms part of the petition.
36. That in the case of **Bryan Xsabo Strategy Consultants (Uganda) Limited, Molar Solar Systems (Uganda) Limited, Mssxabo Power Limited Vs Great Lakes Energy Company N.V Company Cause No. 13 of 2020 (Appeal arising from the decision of the registrar in company cause no. 005 of 2020)** the High Court set aside a decision of



the registrar where there was no statutory declaration on record as the evidence supporting the complaint (petition or answer to the petition) noting that the same was a procedural irregularity which is contrary to Section 288 of the Companies Act.

37. That the learned Judge further held that the registrar could not act without clear evidence under a statutory declaration or evidence taken viva voce. That the registrar should have directed the parties to file their evidence and then proceed to determine the matter with some evidence on record and that as a quasi judicial body, the registrar had a duty to act judiciously and evaluate the evidence against the complaint made in accordance with the companies act.

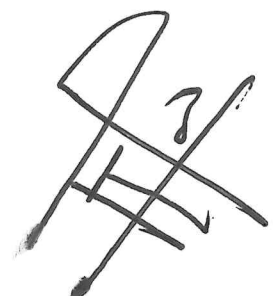
38. That in light of the above, it is the 1st respondent's contention that the hearing of 7th August 2023 was procedurally irregular and illegal since it contravened Section 288 of the companies Act and as pointed out by the High Court in Bryan Xsabo Strategy Consultants (Uganda) Limited. That it is very wrong for the registrar to rely on pleadings alone to determine a petition, a registrar ought to comply with the law as stated in Section 288 of the Companies Act.

39. That it is the 1st respondent's prayer that;

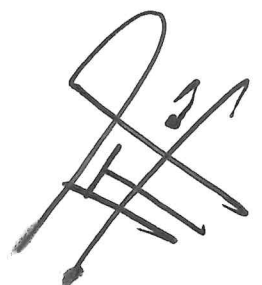
- a) The registrar of companies reviews his decision to hear the instant petition;
- b) The proceedings of the 7th day of August 2023 be set aside;
- c) An order is made directing parties to file their respective statutory declarations and the matter be heard in compliance with Section 288 of the Companies Act.

I will address the preliminary objection in my final ruling.

40. On revocation of the Powers of Attorney, Counsel for the 1st respondent contended that the petitioners' Powers of Attorney were lawfully revoked and that the powers of attorney under Instrument No. G220720-6077 in favor of the 1st respondent is authentic.



41. That bearing in mind that the principle set out in **Luitingh Lafras & Anor Vs Special Services Ltd, High Court Company Cause No. 11 of 2019** that “ the registrar of companies is bound to follow norms of natural justice at some stage of their decisional process. But this is in a minimal manner and may not observe a detailed and elaborate procedure like taking testimony under oath or following strict rules of evidence.” That the petitioner had a burden of proof to show that the signatures were forged and who forged them.
42. That Okello Charles in his Statutory Declaration i.e. Annexure E claims that his signatures were forged and in effort to prove the forgery, a handwriting expert report was attached to the petition as “Annexure E”; but unfortunately the author of the forensic report did not adduce any evidence to verify his findings.
43. Counsel for the 1st respondent further stated that Section 43 of the Evidence Act provides for expert evidence; that a perusal of the findings of the forensic report indicates that the expert did not state that the signatures on the exhibits were forged nor who might have forged the same. That such kind of finding is not conclusive and leaves a lot to be desired and as such the report is only an opinion / academic and not binding to these proceedings.
44. Counsel relied on the case of **Uganda Vs Mugerwa James Criminal Appeal No. 124 of 2022** where the learned Judge while rejecting the handwriting expert report held that...” *it is clear that the expert should give no more than evidence and his opinions are not binding on the judge. Expert evidence has to be considered alongside all other evidence and the judge can reject the expert’s opinion if it is not soundly based...the expert opinion of the handwriting expert was inconclusive as the expert could not tell the court whether there were forgeries regarding the signatures...*”
45. In conclusion, Counsel for the 1st respondent further stated that the petitioner failed to discharge his burden of proof; i.e. proving that there were forgeries on the resolution and the Powers of Attorney and

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in the absence of such evidence, this petition lacks merit and it is the 1st respondent's prayer that the same be dismissed with costs in line with **Section 289 of the Companies Act**.

D. The issues for determination are;

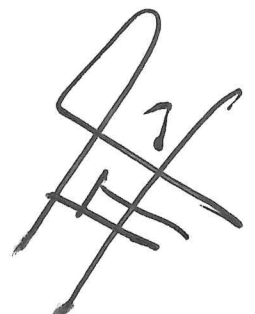
- ii) Whether the Powers of attorney registered on 31st August 2023 under Instrument No. G210831-4678 in favor of the petitioner were illegally revoked.*
- ii) What are the available remedies?*

E. DETERMINATION OF BOTH THE PRELIMINARY OBJECTION AND THE MERITS OF THE PETITION BY THE REGISTRAR.

Preliminary Objection

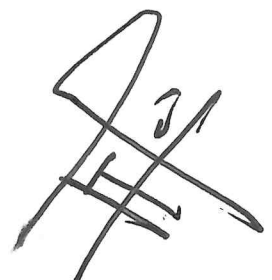
46. Firstly, counsel for the 1st respondent raised a preliminary objection that the petitioner did not file a statutory declaration as evidence in support of his petition as per **Section 288 of the Companies Act 2012** and the case of **Bryan Xsabo Strategy Consultants (Uganda) Limited, Molar Solar Systems (Uganda) Limited, Mssxabo Power Limited Vs Great Lakes Energy Company N.V Company Cause No. 13 of 2020 (Appeal arising from the decision of the registrar in company cause no. 005 of 2020)** and therefore the registrar reviews his decision to hear the instant petition, proceedings of the hearing conducted on 7th August 2023 be set aside, and parties be directed to file their respective statutory declarations and the matter be heard in compliance with **Section 288 of the Companies Act**.

47. In the instant case, the Petitioner brought a petition on 24th July 2023, for rectification of the register under **Regulations 3(f & i), 8(e & f) & 9 of the Companies (Powers of the Registrar) Regulations, 2016**. The petition was verified by the petitioner and made under oath since the same was commissioned by the commissioner for oaths and therefore,



the same contains all evidence the Petitioner intends to rely on as evidenced by the all the attachments.

48. For Counsel for the petitioner to claim that every petition is accompanied by a statutory declaration is a misdirection because this applies in circumstances where a petition or complaint is not made under oath for example complaints made by way of ordinary letter or a petition not verified and not made under oaths or a Petition filed without any attached evidence though verified and made under oath or an answer to a petition filed without any evidence attached though made under oaths. It's in such scenarios that a petitioner or complainant or a respondent to a petition will be required to file his or her evidence either by way of a statutory declaration or orally during the proceedings as the registrar may direct to support the Petition or answer to the Petition as per **Section 288 of the Companies Act**.
49. The matter at hand is in all angles distinguishable from the facts in **Bryan Xsabo (Supra)**. This is because in the instant case, the petition was made on oath with all the accompanying evidence clearly attached on the petition and the same was accompanied by the statutory declarations of Okello Charles, Kasana Gift Cissy and the petitioners' statutory declaration in rejoinder to the 1st respondent's statutory declaration. In the case of **Bryan Xsabo Strategy Consultants (Uganda) Limited, Molar Solar Systems (Uganda) Limited, Mssxabo Power Limited Vs Great Lakes Energy Company N.V Company Cause No. 13 of 2020 (Appeal arising from the decision of the registrar in company cause no. 005 of 2020)**, the registrar of companies did not have any (*emphasis*) Statutory Declaration on record as evidence supporting the complaint (Petition or Answer to the Petition) but only had a petition, an answer to the petition and a rejoinder to the answer to the petition which were not accompanied by any evidence and therefore, the registrar was compelled to comply with **Section 288**



of the Companies Act and ask parties to file their evidence by way of statutory declarations before making a ruling on the Petition.

50. The petition at hand was in form of a statutory declaration because it was made oath and all the accompanying evidence clearly attached, and in the summons dated 25th July 2023, the respondents were required to file their defence by way of statutory declaration and not just an answer to the petition because the petition was already made on oath therefore, requiring no further evidence to support it from the petitioner himself and only the respondents required to adduce their evidence against that of the petitioner. However, the same petition was accompanied by the statutory declarations of Kasana Gift Cissy and Okello Charles as further evidence to support the petition and hence justifying the fact that there was evidence on record to support the Petition.

51. Therefore the 1st respondent's claim that the petition was not accompanied by any evidence fails and this preliminary objection is hereby overruled and the petition is to be determined on its merits.

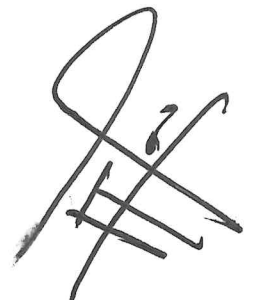
Merits of the Petition

The issue for determination is;

Whether the Powers of attorney registered on 31st August 2023 under Instrument No. G210831-4678 in favor of the petitioner were illegally or unlawfully revoked.

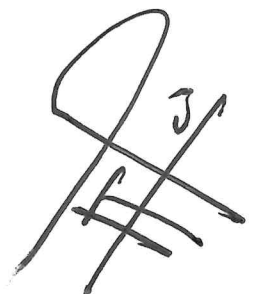
52. The petitioner claims that on 20/08/2021, he was granted Powers of Attorney by Taifa Partners Limited to act as the duly appointed representative of Taifa Partners/ Perry Engineering Services Limited Association during the bidding process for the contract to design, build, Install and supply a grain processing and silo at Ibuga/Rwimi.

53. That the said Powers of Attorney were illegally revoked by the 1st respondent through a resolution dated 15th July 2022 and registered on 20th July 2022 and a Powers of Attorney registered on the same date



and the said resolution and Powers of Attorney were allegedly signed by a one Okello Charles and the 1st respondent.

54. In the instant case, the Petitioner was on 20/08/2021 granted Powers of Attorney to act as the duly appointed representative of Taifa Partners Limited/ Perry Engineering Services Limited Association which were allegedly revoked by the 1st respondent through a Special Resolution dated 15th July 2022 allegedly signed by the 1st respondent and Okello Charles together with another Powers of Attorney executed in favor of the 1st respondent.
55. Okello Charles in Paragraph 5 of his statutory declaration, stated that 1st respondent without any authorization from the company decided to unilaterally revoke the petitioner's powers of attorney by forging his signature as the company secretary and this was backed by a forensic report from the directorate of forensic services confirming that indeed Okello Charles did not sign the Special Resolution in question.
56. Counsel for the 1st respondent in his submissions failed to prove that there was a meeting duly convened by the company or board of directors where the directors or shareholders resolved to legally revoke the petitioners' Powers of Attorney. He did not adduce the notice calling the meeting and proof of its circulation to the various board members or shareholders, minutes of the alleged Board Meeting or Special Meeting convened on 15/07/2022 duly signed by all directors or shareholders who attended the meeting.
57. The absence of all that this only leads me to one conclusion that the alleged meeting of 15/07/2022, was never convened by the Board of Directors or Shareholders of Taifa Partners Limited and that the Petitioner's Powers of Attorney were unlawfully revoked because there was no company meeting held on that day to sanction the same.
58. That notwithstanding, the resolution revoking the powers of attorney is titled as a special resolution and the 1st paragraph states "*At the board*

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meeting of Taifa Partners Limited, held on the 15/07/2022 at the company offices, it was discussed and resolved as follows."

59. Section 148 of the Companies Act states;

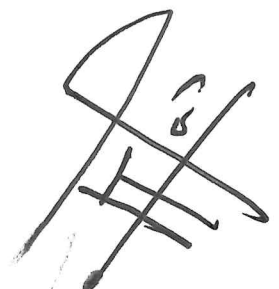
"(1) A resolution shall be a special resolution when it has been passed by a majority of not less than three fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given."

60. Therefore, the Special Resolution dated 15/07/2022 is prima facie defective because the same was not a proper Special Resolution as envisaged under the Companies Act. A special resolution is passed by only the shareholders and its quorum is 75 percent of the shareholders attending that particular meeting and the one dated 15/07/2022 is not one within the meaning of a Special Resolution.

61. I will not dwell so much on Forensic Report from the handwriting expert because the author was not examined on it before me and his opinion is not binding on me, but the same further confirms that indeed Okello Charles' signature on the impugned Special Resolution does not belong to him. In the case of **Uganda Vs Mugerwa Jams Criminal Appeal No. 124 of 2022**, court while rejecting the handwriting expert report held that;

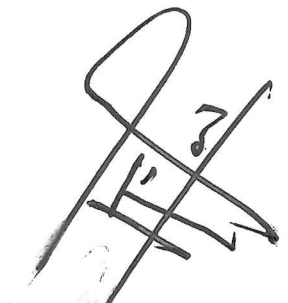
"....it is clear that the expert should give no more than evidence and his opinions are not binding on the judge. Expert evidence has to be considered alongside all other evidence and the judge can reject the expert's opinion if it is not soundly based...the expert opinion of the handwriting expert was inconclusive as the expert could not tell the court whether there were forgeries regarding the signatures..."

62. Okello Charles in his own statutory declaration from Paragraphs 3-8 confirms that he did not personally sign the Special resolution and Powers of Attorney in question and this coupled with the statutory declaration of Kasana Gift Cissy a former office administrator of Taifa



Partners Limited who also further confirms that no company meeting was ever held on 15/07/2022, at the company premises as stated in Paragraph 1 of the impugned Special Resolution to revoke the petitioner's Powers of Attorney and the 1st respondent throughout his defence and submissions has failed to place Okello Charles at the scene of the said meeting.

63. The 1st respondent under paragraphs 5 and 6 of his statutory declaration in reply to the Petition claims that the petitioner had never been granted Powers of Attorney to act on behalf of the 2nd respondent. But under paragraph 7, he confirms that the same exist but were forged and relied on the statutory declaration of Rachel Akatuha which evidence is insufficient to prove a case of forgery in the circumstances.
64. If Assa Tumwesigye never legally received Powers of Attorney to act on behalf of Taifa Partners Limited/Perry Engineering Services Limited Association, then there would be no contract between the two entities and Uganda Prisons Service because the said contract was signed by the Petitioner on behalf of both entities on 21/02/2022, approximately five months after he was granted the said Powers of Attorney and the 1st respondent before revoking the said Powers of Attorney had never notified the contractor that indeed the Petitioners' Powers of Attorney were procured by forgery.
65. For the 1st respondent to claim that the Petitioners' Powers of Attorney were forged is an afterthought after this petition was lodged against him, because I have never received any complaint from the 1st respondent claiming that the petitioners' Powers of Attorney were procured by forgery and neither was any complaint lodged at any police station alluding to such facts because no such evidence was presented before me by the 1st respondent.
66. The 1st respondent instead of illegally revoking the alleged forged Powers of Attorney in favor of the petitioner, he should have lodged a complaint for rectification of the register under **Regulation 8 and 9** of



the Companies (Powers of the Registrar) Regulations, 2016 backed by evidence of the alleged illegal endorsement for cancellation.

67. This contract has been in force from 21/02/2022 to date and the 1st respondent was a beneficiary to it under an illegality as he alleges for more than 5 months before he unlawfully revoked it.

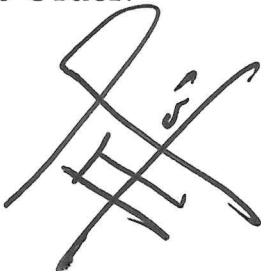
68. Therefore, the Special Resolution dated 15/07/2022 and registered on 20/07/2022, together with a Powers of Attorney registered on 20/07/2022 registered under Instrument No. G220720-6077 are hereby expunged from the register and rendered to be of no legal effect.

69. The Powers of Attorney registered on 31st August 2021 under Instrument No. G210831-4681 in favor of the Petitioner be reinstated for having been unlawfully revoked.

70. Each party to bear its' owns costs.

Right of appeal explained.

I so Order.

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Muliisa Solomon

Registrar

11/08/2023