

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE COMPANIES ACT NO. 1 OF 2012

AS AMENDED

IN THE MATTER OF KOREA EVANGELICAL MISSION TO ALL NATIONS (LIMITED BY GUARANTEE)

80010000227959

COMPANY COMPLAINT NO. 12732 OF 2022

- 1. KWON JOHN OHAG
- 2. MYUNG OK KIM
- 3. PARK BONG CHOOL
- 4. LEE SANG PUK
- 5. KIM IN NAM
- 6. MUWANGA MICHAEL ANGEL
- 7. KADUBIRA GEOFREY
- 8. KWON MIN JU:::::COMPLAINANTS

VERSUS

- 1. CHOO EUN SOOK
- 2. KIM MOO YERL
- 3. SON MI JUNG
- 4. YUN JAE SEUNG
- 5. LEE JONG SUK:::::::RESPONDENTS

RULING.

BEFORE: MULIISA SOLOMON, REGISTRAR OF COMPANIES



A. Introduction

- 1. This application was filed on 23rd December 2022, seeking rectification of the register under Regulation 8 of the Companies (Power of Registrar) Regulations, 2016. The application is supported by a statutory declaration filed on the same date. The applicant contends that the documents listed below were executed and registered illegally, erroneously, are an illegal endorsement and constitute an error continuing on the register within the meaning of Regulation 8 of the Companies (Powers of Registrar) Regulations, 2016. The documents sought to be rectified by striking off from the register include the following;
- A member's resolution dated 13th March 2015 instead of 13th March 2015 registered on 25th March 2015, admitting new members and appointing a new Executive Council.
- ii) A members resolution dated 20th May 2021, and registered on 02nd August 2021 authorizing the name change from Korea Evangelical Mission to all Nations to Korea Evangelical Mission for all Nations (Uganda) Limited.
- iii) A special resolution dated 1st November 2021 and registered on 29th November 2021 re-registering Korea Evangelical Mission to all Nations from unlimited company to a private company limited by guarantee.



- iv) A form 20 (Notification of Appointment of Directors and Secretary) dated 1st November 2021 and registered on 29th November 2021.
- v) A member's resolution dated 20th May 2021 and registered on o2nd August 2021 amending clauses in the articles of Association.
- vi) A member's resolution dated 20th May 2021 and registered on 02nd August 2021 winding up the company and appointing David Mushanga as a receiver.

B. Background

- 2. The applicants contend that Korea Evangelical Mission to all Nations was registered on 9th January 1991, with unlimited liability and the membership of the company as per the Memorandum and Articles of Association was comprised of Rev. Samuel Sung Soo Han, Rev. Caleb Chul Soo Kim and Mrs. Mi Hye Yang Han. The applicants further contend that on 20th May 2021, without their knowledge and participation, the respondent illegally executed and filed the documents listed in para 1 (i)—(vi) contrary to the provisions of the company's articles of association as well as the provisions of the Companies Act, 2012 (as amended).
- 3. For example, the applicants aver that unknown to the company, some individuals namely, Cho Eun Sook, Kim Moo Yerl, Son Mi Jung, Yun Jae Seung and lee Jong Suk constituted themselves as members and passed a member's resolution which was registered on 2nd August 2021 resolving as follows;

- a) That the name of the organization be changed to Korea Evangelical Mission for all Nations (Uganda) Limited.
- b) The organization be re-registered as a company limited by guarantee.
- c) Without notice to the members, on 1st November 2021, the scrupulous individuals passed a special resolution and registered it on 29th November 2021, which re-registered the company from Korea Evangelical Mission to all Nations Unlimited to Korea Evangelical Mission to all Nations Limited by guarantee.
- 4. As a consequence of the above, the Memorandum and Articles of Association were amended first in the name, but also in other respects which were not included in the special resolution mentioned above and neither were they passed at the Annual General Meeting. The changes made were as follows;
 - a) Admission of the membership to consist of members duly registered and duly admitted at an AGM which is duly constituted and all missionaries called to the mission of Jesus Christ.
 - b) Termination of any members through the Executive Council.
 - c) Property management.
 - d) Amendment and alterations.
 - e) Composition and the operations of the executive council.
 - f) The winding up process of the company.
- 5. That the procedure followed by the five individuals to pass the resolution was not in line with Articles 2 and 3 of the Memorandum

and Articles of Association especially regarding physical annual general meeting which is a requirement before passing the resolution and that the members who passed the resolution were not vested with the mandate to sign and pass the said resolution (they have never been appointed as members and directors of the company). That on 2nd March 2022, Cho Eun Sook, Kim Moo Yerl, Son Mi Jung, Yun Jae Seung and Lee Jung Suk were expelled from the company vide a minute of the Executive Council members meeting. Counsel for the applicant contended that such a meetings did not actually take place and that the decisions purportedly arising from them are illegal. The applicants also deny participating in the alleged meetings and contend that the documents were illegally executed in a series of actions orchestrated to introduce the respondents to the company and pray that the reregistration be canceled and the company's status be reinstated as was on the 9th of January 1991, as the same was done based on a misrepresentation of information from individual's unknown to the company.

6. In a response filed on 04th May 2023, the respondents contend that the documents were executed legally with the participation of the complainants since the company has had several transitions in its membership over the years, it is in the subsequent transitions that Choo Eun Sook Kim Moo Yeri, Son Mi Jung, Yun Jae Seung and Lee Jong Suk became members of the organization. This was by way of a

Special Resolution dated 13th March 2015 and it therefore, follows that the aforementioned persons are known to the company as members. The respondents do not make any averments as to whether notice requirements were complied with nor do they admit evidence of signed minutes that were taken at the said meeting of 13th March 2015. The re-registration of the organization from an unlimited company without a share capital to company limited by guarantee was done following the proper procedure and the respondents were admitted at the Annual General Meeting, as members of the organization.

- 7. That following their admission, they passed a special resolution under Section 31(1) and complied with Section 31(4) and (5) of the Companies Act 2012. One of the Directors Mr. Yung Jae Sung thereafter filed Company Form 5; an application for re-registration of the organization from an unlimited company to a private limited company, and also signed a statement of compliance.
- 8. The Memorandum and Articles of Association were amended on 20th May 2021, at an Annual General Meeting of the members and not after the resolution filed in November 2021, to re-register the organization from unlimited to limited by guarantee without a share capital. It therefore follows that the amendments were done by a Special Resolution as per Section 9 and 10 (1) and (2) of the Companies Act 2012. That the Memorandum and Articles of Association were filed in compliance with Section 31(4) and (5) of the Companies Act, were in

the same form the last amendment of May 2021. The members who signed the resolution for re-registration were vested with the mandate to sign and pass the resolution, as they are members/directors of the organization and this is premised on Form 20, which was filed on 1st November 2021 reflecting Joe-Seung Yun, Eun Sook Cho, Moo Yerl Kim, Jong Suik Lee as the current directors of the organization and the company Form 20, which was filed on 28th May 2021, by Dr. Rev. Kwon John Ohag cannot stand for want of minutes and a resolution appointing the said persons as Directors of the organization.

- 9. That Choo Eun Sook, Kim Moo Yerl, Son Mi Jung, Yun Jae Seung and Lee Jong Suk have never been expelled from the company and there is no duly registered resolution to reflect the same. On the contrary, the Executive Council of K.E.M.A.N N.G.O vide a communication dated 7th May 2015, resolved to expel Kwon John Ohag, Kwan Kim Myoung Ok, Ha Pil Soo, Hwang Hye Suk from the membership of the organization and hence ceased to be members of the organization in 2015, and any subsequent resolutions passed by them between 2015 and 2023 should be expunged from the register as per provisions of Regulations 8 of the companies (Powers of the Registrar) Regulations, 2016.
- 10.That Regulation 9(2) of the Companies (Powers of the Registrar)
 Regulations, 2016 is to the effect that except for purposes of Regulation
 8, the registrar shall not remove from the Register any document

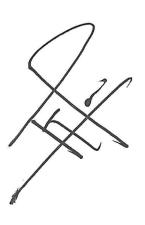


relating to the formation, registration, re-registration, change of name, change of status, reduction or increase in share capital, change of registered office, registration of a charge or dissolution of a company. The complainants prayed that re-registration of the organization be cancelled but they have not met the test laid down by **Regulation 9(1)**(a) and (b) of the Companies (Powers of the Registrar) Regulations, 2016.

11. The respondents prayed that the complaint be dismissed and the reregistration of Korea Evangelical Mission To all Nations Limited unlimited without a share capital to Korea Evangelical Mission To all Nations Limited by Guarantee be maintained and upheld.

C. Representation

- 12.At the hearing conducted on 18th August 2023, the applicants were represented by Rita Nabukalu and the respondents were represented by Kiganda Chrispus.
- 13.Parties were instructed to file written submissions. The applicants filed their submissions whereas the respondents did not file on the scheduled date of 1st September 2023. The applicants in their written submissions only reiterated contents and prayers of the complaint.



D. Issues

- a) Whether the appointment of Choo Eun Sook, Kim Moo Yerl, Son Mi Jung, Yun Seung and Lee Jong Suk as new members of the Company was lawful.
- b) Whether the company was lawfully re-registered.
- c) What are the remedies available to the parties.

E. Resolution of issues

- 14.Regulation 8 of the Companies (Powers of the Registrar)
 Regulations, 2016 mandates the Registrar to rectify the register to ensure the Register is accurate. Regulation 8 (2) provides for the authority of the registrar to expunge documents and any information from the register which
 - (a) is misleading;
 - (b) Is inaccurate;
 - (c) Is issued in error;
 - (d) Contains and entry or endorsement made in error.
 - (e) Contains an illegal endorsement;
 - (f) Is illegally or wrongly obtained;
 - (g) Which a court has ordered the registrar to expunge from the register.
- 15. The applicant avers that the document listed in para 1 are misleading, inaccurate, issued in error, contain an endorsement made in error,

contain an illegal endorsement and are illegally or wrongly obtained within the meaning of Regulation 8 (2). The applicant's reasons for alleging so are that first, the documents are irregular in as far as the right organs of the company did not pass them. Second, the respondent did not comply with articles of association and the Companies Act, 2012, particularly provisions relating to the notice requirements for calling meetings as well as requirements to take and keep a record of minutes to evidence proceedings of the company meetings. These allegations particularly pertain to the resolution filed on 02nd August 2021, which is alleged to have taken place at the organisation's office, registered on the 02nd August 2021. It is that resolution that changed the organisation from Korea Evangelical Mission to all Nations Unlimited to Korea Evangelical Mission to all Nations Limited by Guarantee. Based on that resolution, a certificate of re-registration was issued on 29th November 2021, on the basis of the changes introduced by the said resolution. A special resolution dated 1st November 2021, registered on 29th November 2021 authorising the re-registration of the company as a private company limited by guarantee without a share capital, amending the Memorandum and Articles of association, Form 20 and 18 purported to have been passed by majority of the members where quorum was present.

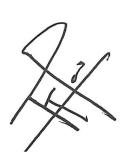


- 16.I will therefore examine the circumstances of, and the legality of the resolution dated "13st March 2015" instead of 13th March 2015, and registered on 25th March 2015, the outcome of which will inform the legality of the subsequent documents that were filed.
- 17. The nature of the resolution is stated as "Members Resolution" referred to as a Special Resolution in the respondent's response, which was purportedly passed on the 13th March 2015. The opening paragraph reads as follows: "at an extra-ordinary meeting of the members of the above NGO". First, the meeting purports to be extraordinary leading the passing of a Special Resolution, yet it is attended by board members and not members or subscribers! For clarity, ordinary and extra-ordinary meetings meetings are members/shareholders and not directors or members of the board. Directors only call them administratively but participation and voting is by members (*see section 139 of the Companies Act*). Such meetings are called by issuing notice of not less than 21 says. In fact, Section 140 of the Companies Act, 2012 makes it inconsequential for the Articles of Association to provide for lesser notice than 21 days. Secondly, member's resolutions emerge from either ordinary or extra-ordinary meeting of members holding not less than 75 percent shares.
- 18. Section 145 of the Companies Act expressly provides for this. It states; "A resolution shall be a special resolution when it has been passed by



a majority of <u>not less than three fourths of such members as</u>, being entitled so to do, vote in person or, where proxies are allowed, by proxy, <u>at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given."</u>

- 19.Clearly, the express provisions of Section 145 of the Act treat special resolution with utmost importance. First, at least three-fourths majority must pass it. Second, the notice calling for the general meeting where the special resolution is required to be passed must clearly state the intention to propose a special resolution at the meeting. Third, at all company meetings, be they by directors or members, it is a mandatory requirement imposed by Section 152 of the Companies Act to record minutes and the nature of resolutions passed at such meetings. Section 152 provides;
 - "152. Minutes of proceedings of meetings of <u>company</u> and of directors
 - (1) Every company shall cause minutes of all proceedings of general meetings and of all proceedings at meetings of its directors, to be entered in books kept for that purpose.
 - (2) Any minute referred to in subsection (1) purporting to be signed by the chairperson of the meeting at which the proceedings were held or



by the chairperson of the next following general meeting or meeting of directors as the case may be shall be evidence of the proceedings.

- (3) Where minutes have been made in accordance with the proceedings at any general meeting of the <u>company</u> or meeting of directors then, until the contrary is proved, the meeting shall be taken to have been duly held and convened and all proceedings had to have been duly had and all appointments of directors or liquidators shall be taken to be valid.
- (4) Where a <u>company</u> fails to comply with subsection (1), the <u>company</u> and every <u>officer</u> of the <u>company</u> who is in default is liable to a default fine of twenty five currency points."
- 20.Section 152 (1) uses the words "every company shall cause minutes of all company proceedings..." The use of the words "shall" imply that the obligation is mandatory as opposed to "may" which when used in an enactment imply that the obligation is optional (See Finishing Touches v Attorney General Civil Suit No 144 of 2010).
- 21.In the respondents' response to the complaint, instead of adducing evidence to prove that minutes were taken and duly signed by the members who attended, that statutory notices relating to meetings were duly issued, the respondent just made general statements that



the respondents became members through a Special resolution dated "13st March 2015" instead of 13th March 2015 and it therefore follows that the aforementioned persons are known to the company as members. If the purported meeting of 13th March 2015 leading to the impugned special resolution actually took place, minutes ought to have been taken, signed and kept as required by Section 152 and evidence of the same to have been adduced to refute the applicant's allegations. It is not only a legal requirement to take and keep minutes of meetings, its common sense and usual practice even for village meetings. The respondents only attached unsigned minutes which I find unreasonable.

22.In addition, if no meeting took place as alleged, it does not matter whether directors signed the resolutions or not. The resolutions purportedly arising from a non-existent meeting would automatically be illegal and irregular. The Companies Act requires extra-ordinary meetings to be called by giving members notice. The Respondent ought to have adduced evidence of the notice issued for the meeting of 13th March 2021, purportedly held at the organisations premises. Instead of adducing evidence of compliance with these mandatory legal requirements, the respondents makes general averments that they were lawfully admitted as members. In proceedings of this nature, evidence must be adduced to support averments. That is the

essence of Section 288 of the Companies Act, 2012. In absence of signed minutes and notices, I am unable to find that the meeting of 13th March 2015 took place. Signed minutes perform an important function. They keep the historical record of the company and act as evidence not only for the decisions taken by the company but also the reasons for those decisions. That is why the Companies Act makes it a mandatory obligation to keep signed minutes.

23.Besides the "special resolution" in question that admitted Kim Moo Yerl, Son Mi Jung, Yun Jae Seung, Cho Eun Sook, Park Seog Chul, Hong Sun Mee, Jung Jun Hee, Kim Hye Sun, Kim Jung Dae, Song Haeng Mi, Lee Jong Suk, Lee Sang Duk, Kwon Min Ju, Lee Du Sim as members, I note that under Article 2(1) and 2(3) of the company's original articles of association, state that; the original members of the company shall consist of the subscribers to the Memorandum and Aricles of association and all persons who regard themselves as qualified to become members of the mission shall apply to the secretary in writing and such application shall be signed by the applicant. The secretary shall present all the applications so received at the next meeting of the Executive Council who shall consider all the applications on merit and shall have full and unrestricted powers to reject any application without giving any reason to anybody for such rejection. It is the Executive Council that has the mandate to authorize



the admission of such members and hence upon the execution of the Special Resolution, the Executive Committee ought to have considered the applications of the new members. The Special Resolution, which I have already held was passed erroneously, had it been valid in any circumstances, the power to admit new members is vested with the Executive Council.

24. Secondly, even where the directors are the same as members, the category of meetings being held and their nature and purpose must be clearly spelt out in the minutes and the resolutions. When sitting as directors executing functions imposed on directors, the conveners of the meeting must clearly state so. When sitting as members in general meetings, the resolutions and minutes must state so. For clarity, members' meetings include general and extra-ordinary general meetings. At these meetings, members pass either ordinary resolutions or special resolutions or resolutions requiring special notice as spelt out in the Act. The impugned Special Resolution was signed by Oh Chang Heui, Hwang Chil Soo, Jin Boo Saeng and Seo Sung Hwan as members of the Board of Korea Evangelical Mission to All Nations yet at the time, the directors of the company were Rev. Kwon John Ohag, Hwang Chil Soo, Kim Kee Hong and Kim Young Bok. The members of the Executive Council were Kwon John Ohag, Kim Myung Ok, Ha Pil Soo and Hwang Hye Suk.

- 25. In defence of this application, Counsel for the respondents has made a number of legal arguments, based on misconstruction of the Companies Act and indeed a misapplication of legal principles. I will deal with each one of them. First Counsel has stated that the Executive Council of Korea Evangelical Mission to all Nations vide a communication dated 7th May 2015 resolved to expel Kwon John Ohag, Kwan Kim Myoung Ok, Ha Pil Soo and Hwang Hye Suk from the membership of the organisation and it follows that they ceased to be members of the organisation in 2015 and all resolutions passed by them between 2015 and 2023 should be expunged from the register.
- 26. The special resolution dated 13th March 2015, admitted Kim Moo Yerl, Son Mi Jung, Yun Jae Seung, Cho Eun Sook, Park Seog Chul, Hong Sun Mee, Jung Jun Hee, Kim Hye Sun, Kim Jung Dar, Song Haeng Mi, Lee Jong Suk, Lee Sang Duk, Kwon Min Ju and Lee Du Sim as new members. The new members as per the Articles of Association were supposed to be accepted by the Executive Council as per Article 2(1) and 2(3) of the Articles of Association, which at the time was composed of Kwon John Ohag, Kim Myung Ok, Ha Pil Soo and Hwanga Hye Suk. This was not done and Counsel for the respondents in his response to the complaint only makes assertions that the Executive Council of Korea Evangelical Mission to All Nations NGO vide a

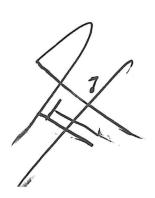
communication dated 7th May 2015 resolved to expel Kwon John Ohag, Kwan Kim Myoung Ok, Ha Pil Soo, Hwang Hye Suk from the membership of the organisation yet the Executive Council of the organisation at the time was composed of the same members! Could it be that the same members sat and resolved to expel themselves from the Executive Council? Counsel for the respondents attached unsigned minutes as proof that the Executive Council sat and resolved to expel members of the Executive Committee as members of the organisation. The minutes show that Oh Chang Heui, Kim Young Bok, Hwang Chil Soo, Jin Bu Saeng, Kim Ki Hong and Kwak Ho Young sat as members of the Executive Council yet at the time, they were not part of the Executive Committee and no wonder the minutes were not signed by the said members of the Council.

27.I should hasten to add that good governance in internal management of a company is critical for the success of the company and the protection of the members. That is why the Companies Act, 2012 and the Articles of Association prescribe minimum standards in the governance of companies. The Directors of the company, who are regarded as the controlling mind of the company have an obligation to ensure the company is governed according to the Provisions of the Companies Act, 2012, the Articles of Association as well as the principles of corporate governance.

28.Secondly, Counsel for the respondents in his response to the complaint states that Regulation 9(2) of the Companies (Powers of the Registrar) Regulations, 2016 is to the effect that; Except for purposes of Regulation 8, the registrar shall not remove from the register any document relating to the formation, registration, re-registration, change of name, change of status, reduction or increase of share capital, change of registered office, registration of a charge or dissolution of a company. I find this regulation not applicable in the circumstances because the orchestrators of the said re-registration were not supposed to be part of the company and the resolution that ushered them in as members of the company was rendered illegal and irregular hence nullifying all the subsequent transactions by the said members which include the re-registration itself.

Whether they are any remedies

29. The Companies (Power of Registrar) Regulations, 2016 mandate the Registrar to rectify the Register. Under **Regulation 3(i)** it is provided that; "In the exercise of the functions under the Act or any Regulations made under the Act, the registrar—; (i) may correct or amend the register; And **Regulation 8** provides as follows:



- "8. Rectification of register. (1) The registrar may rectify and update the register to ensure that the register is accurate.
- (2) For the purposes of this regulation, the registrar may expunge from the register, any information or document included in the register, which—
- (a) is misleading; (b) is inaccurate; (c) is issued in error; (d) contains an entry or endorsement made in error; (e) contains an illegal endorsement; (f) is illegally or wrongfully obtained; or (g) which a court has ordered the registrar to expunge from the register."
- 30.I have already determined that the Special Resolution purportedly arising from a meeting of 13th March 2015 appearing as "13st March 2015", which did not take place, and all the resultant and further documents filed in reliance on that resolution, including Amended Memorandum and Articles, resolutions, forms, annual returns was issued in error, contain and illegal endorsement, were illegally and wrongfully executed within the meaning of **Regulation 8 (2) of the Companies (Power of the Registrar) Regulations, 2016**. The remedy available in these circumstances is to rectify the register by expunging the illegally executed documents.
- 31. Therefore, pursuant to Regulation 32 of the Companies (Powers of Registrar) Regulations, 2016, I make the following orders;

- a) A special resolution dated 13st March 2015 instead of 13th March 2015, and registered on 25th March 2015 is misleading, inaccurate, issued in error, containing an illegal endorsement and is wrongfully obtained within the meaning of regulation 8 of the Companies (Powers of the Registrar) Regulations, 2016 and is hereby expunged from the register;
- b) A members resolution dated 20th May 2021 and registered on 02nd August 2021, winding up the company and appointing David Mushanga as a receiver is misleading, inaccurate, issued in error, containing an illegal endorsement and is wrongfully obtained within the meaning of regulation 8 of the Companies (Power of the Registrar) Regulations, 2016 and is hereby by expunged;
- c) A members resolution dated 20th May 2021 and registered on 2nd August 2021, amending clauses in the Memorandum and Articles of Association is misleading, inaccurate, issued in error, containing an illegal endorsement and is wrongfully obtained within the meaning of regulation 8 of the Companies (Powers of the Registrar) Regulations, 2016 and are hereby expunged;
- d) A form 20 (Notification of appointment of Directors and Secretary) dated 1st November 2021 and registered on 29th November 2021, is

- misleading, inaccurate, issued in error, containing an illegal endorsement and is wrongfully obtained within the meaning of regulation 8 of the Companies (Powers of the Registrar) Regulations, 2016 and is hereby expunged;
- e) A form 20 registered on 13th November 2019, is misleading, inaccurate, issued in error, containing an illegal endorsement and is wrongfully obtained within the meaning of regulation 8 of the Companies (Powers of the Registrar) Regulations, 2016 and is hereby expunged;
- f) A special resolution dated 1st November 2021 registered on 29th November 2021, re-registering the company as a company limited by guarantee without a share capital and amending Form 20 and 18 is misleading, inaccurate, issued in error, containing an illegal endorsement and is wrongfully obtained within the meaning of regulation 8 of the Companies (Powers of the Registrar) Regulations, 2016 and is hereby expunged;
- g) Form 5 dated 18th November 2021, registered on 29th November 2021 is wrongfully obtained within the meaning of regulation 8 of the Companies (Powers of the Registrar) Regulations, 2016 and is hereby expunged;
- h) The amended Memorandum and Articles of Association registered on 02nd August 2021 and 29th November 2021, is wrongfully obtained within the meaning of regulation 8 of the Companies (Powers of the Registrar) Regulations, 2016 and is hereby expunged

- i) The Lawful directors of the company are;
 - 1. Kwon John Ohag
 - 2. Park Bong Chool
 - 3. Lee Sang Puk
 - 4. Myung Ok Kim
 - 5. Kim In Nam
 - 6. Muwanga Michael Angel
 - 7. Kadubira Geofrey
 - 8. Kwon Min Ju
- 32. The company's status is restored to an unlimited company.
- 33. Each party to bear its own costs.

I so order.

Right of appeal explained

Muliisa Solomon

Registrar

13/12/2023