

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
COMPANIES CAUSE NO. 5/95

IN THE MATTER OF SUMMERFRUIT (U) LIMITED IN RECEIVERSHIP

— versus —

IN THE MATTER OF AN APPLICATION BY CHRIS SSERUNKUMA AND  
CHRISTINE OKOT CHONO

BEFORE: - HON. MR. JUETIGE J.H. NTABGOBA PRINCIPAL JUDGE

RULING

Christine Okot — Chon and Chris Sserunkuma were appointed by M/S Development Finance Company of Uganda Limited as receivers to manage the affairs of a debtor Company, M/S, Summerfruit (U) Ltd upon the latter Company's failure to pay money secured by a debenture dated 31.10.00. Upon their appointments, the receivers discovered that the debenture agreement had not been registered on time. Whereas S.96(1) of the Companies Act provides that such a debenture and its particulars must be registered with the Registrar of Companies within 42 days of the date of its making, this Particular debenture made on 31.10.90 was not registered until 9.4.91. If the debenture is not registered within the period of 42 days it becomes void as against the liquidator (in this case, the receivers) and any creditor of the company under the receivership.

S. 102 of the Companies Act, however, provides a saving as follows:—

“The court, on being satisfied that the omission to register a charge (e.g. a debenture) within the time required by this Act or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to an inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on application of the company or any person interested, and on such terms and conditions as seem to the court just and

expedient, order that time for registration shall be extended, and, as the case may be, that the omission or mis — statement shall be rectified.”

The two receivers have applied under S.352 of the Companies Act, and 3.102 of the Civil Procedure Act, as well as order 34A Rule 6(f) and (r) of the Civil Procedure Rules, for directions or orders that:—

1. Certificate No.664 issued by the Registrar of Companies on 9.4.91 is conclusive evidence that the requirements of Part IV of the Companies Act as to registration were complied with in spite of inaccuracies in respect of any particulars which may be discovered.
2. The late registration of the debenture (as a charge) does not make the same void ab initio.
3. Late or non—registration of the charge does not prejudice any contract or obligation for the repayment of the money thereby secured.
4. The date of delivery of the debenture (as a charge) to the Registrar of Companies for registration or the date when the same was received by the Registrar of Companies for registration is not the date of registration of the debenture.
5. The inadvertent omission to deliver the charge or debenture for registration within 42 days after its creation should be rectified by subsequent registration and that the issuance of the certificate of registration by the Registrar be made valid notwithstanding the late registration.
6. The applicants, as receivers of SUMMERFRUIT(U)LTD are entitled to seek relief from this court to get the necessary directions or declarations on matters arising in connection with the performance of their duties and functions or to bring the same or to ensure that they are in line with the law.
7. Costs of this application be provided for.

After reading the chamber application, the affidavit of Christine Okot—Chono in support thereof, the debenture agreement, and upon hearing Mr. Christopher Bwanika, learned counsel

for the applicant, it is clear that what is being sought in this application is an order rectifying the late registration and the Registrar's Certificate of registration issued there for.

The High Court may grant rectification on being satisfied that the omission to register within the time prescribed was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that, on the grounds, it is just and equitable to grant reliefs' The wording of S102 of the companies Act, however, is not wide to cover the deletion of the whole entry from the Register (Re: C,L Nye Ltd (1971) ch. 422 at 474. and 476). Nor will the section apply if the charge has actually been registered out of time by virtue of a mistake as to the date of creation.

The court may extend the time for registration on such terms and conditions as seem to the Judge just and expedient. The Court is not precluded from exercising this power by the fact that the validity of the charge is being challenged in other proceedings. (Re: Heatherstar Properties, Ltd (No.2) 96671.W.L.R.99). The words "accidental or due to inadvertence" have a very wide meaning (Re: Jackson and Company (1899) 1 Ch.48). In exercising this discretionary power to extend or rectify, on terms, it has become the practice to insert in the order the following words: - "This order to be without prejudice to the rights of parties acquired prior to the time when such debenture shall be actually registered. (See Re: Joplin Brewery, Co. [1927] 1 Ch. 79; Re: Spiral Globe, Co. [1902] 1 Ch. 396 e.t.c.).

In the instant case, there is the period between the date of expiry of the 42 days provided in S.96 (1) of the Companies Act, and the registration and issuance of the certificate of the Registrar, on 9.4.91. During that period some rights may have been acquired against M/S. Summerfruit (U) Ltd's property by other parties, The proviso, as the United Kingdom Court of Appeal explained in Re: Ehrmam Bros. Ltd [1906] 2 Ch.697, is merely designed to protect rights acquired against the property of the Company in the interval between the expiration of the twenty one days (i.e. 42 days for Uganda) for registering and the extended time allowed by the order—

I am satisfied that the duty to register the debenture and its particulars within 42 days of its creation fell upon the company that has appointed the applicants as receivers. They are therefore performing their functions and duties as agents of the company. Any omission or error therefore

could be visited on the company which is the charge. However, I am satisfied that the error in registering the debenture late was not deliberate, more especially, in view the affidavit of Christine Okot— Ochono which seems to suggest that the debenture was presented on time to the Registrar but the Registrar registered it late.

This idea is conveyed in paragraph 5 of her affidavit in which she, in subparagraph (iii) she deponed that:—

“the date of delivery of the charge to the Registrar for registration or the date when the same was received by the Registrar for registration is not the date of registration of the debenture or charge

There is justification in this averment in view of the decision in the Charnley case [1924] I.K.B. 431. In that case, though the Registrar had the means available to him to ascertain by careful inspection of the document of charge that the particulars submitted by the chargee were incorrect in omitting reference to the movable chattels, there can be no doubt that the omission from the registration and certificate of the Registrar were directly attributable to the careless error of the chargee. But that made no difference to the outcome, or to the effective conclusive validity of Certificate. In re D.L Nye [1971] I Ch. 442, at p.475, Russell, L.J. said:—

“In my judgment, the certificate of the Registrar demonstrates that in law the Bank has a valid security against the liquidator”

In other words, in re: C.L. Nye is a good authority for the legal proposition that the Registrar’s certificate under S.96 of the Companies Act in the instant case was a rectification of the omission to register the debenture within the time prescribed by the law, namely, 42 days after the creation of the debenture.

In any event, I am satisfied that the error in registering the debenture was not deliberate. Since also I am satisfied that it will not be in the interests of creditors to validate the late registration but that such validation will do justice to all concerned and will not fetter the acts of the receivers in the execution of their functions, as such receivers I do validate the registration and declare also that the certificate of the registrar shall be construed as if it was issued within the period of

42 days from 51,10.90 and that the registration of the debenture shall be deemed to have been made within the same period. This order, however, will be without prejudice to the rights of the parties which may have been acquired against Summerfruit (U) Ltd, during the period of omission to register i.e. from 1st November 1990 to 8th April 1991.

In the result, the orders sought in this application and enumerated in this ruling above are made. The costs of this application shall be a charge on the property of the company under receivership.

Order accordingly.

J.H. NTAGOBA  
PRINCIPLE JUDGE

4/10/95

Mr. Mubiru Kalenge for the applicant

Applicant Okot-Chono present

Mr. Odongo court clerk present

Ruling read in open court

4/10/95