**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL DIVISION)**

**CIVIL APPEAL NO. 0055 OF ~~2023~~ 2022**

**(ARISING FROM COMPANY APPLICATION NO. 30 OF 2019)**

**1. ROBERT WILLIAM OCORA**

**2. AKELLO IRENE :::::::::::::::::::::::::::::::::: APPELLANTS**

**VERSUS**

**1. GEORGE WILLIAM OCORA**

**2. LATI CHRISTOPHER RICHARD**

**3. DENISE LUCILE ZWAHLENE :::::::::::::::::::: RESPONDENTS**

*(Appeal from the Ruling of the Registrar of Companies Ms. Angela Nyesiga dated 10th November 2022)*

**Before: Hon. Lady Justice Harriet Grace Magala**

**JUDGEMENT**

**Background**

The background to this Appeal as construed from the record of proceedings before the learned Registrar of Companies is that:

On the 4th January 1982, a company called Afro-Inter Ltd (the Company) was incorporated with its initial shareholders and subscribers to the Memorandum of Association and Articles of Association as William T. Ocora with 250 shares,

George Ocora with 100 shares, Robert Ocora with 100 and Cereno K.L Ocora holding 50 shares. All the shareholders were also directors in the company.

On the 6th September 2002 Cereno K.L Okot passed away and on the 20th September 2012 William T. Ocora also passed away.

On the 28th day of July 2016, by a Court Order, the 1st Respondent held a single member meeting through his proxy, Mr. Oluka Henry and passed a resolution appointing Lati Christopher Richard, the 2nd Respondent as a representative of the estate of the Late Cereno K.L Okot. On the 27th November 2018, Ms. Denise Lucile Zwahlene, the 3rd Respondent was admitted to the company as a representative of the estate of the Late William T. Ocora and also appointed as a director.

Following meetings held by the 1st Appellant, a resolution was filed on 17th September 2013 appointing a one Akelo Irene as the Secretary of the company. Another a resolution was filed by the company on the 12th September 2018 appointing a one Benjamin Oryema as a director of the company. Another resolution was filed on 15th September 2018 appointing one Akelo Irene as a director in the company.

Several disagreements later developed in the management of the Company and this led to the 1st Appellant applying to the Registrar of Companies to rectify the Register vide ***Company Application No. 30 of 2019***.

The learned trial Registrar of Companies made a Ruling on 10th November 2022. It is this Ruling that the Appellants appeal against.

**Ruling of the trial Registrar of Companies**

The learned trial registrar held that the lawful shareholders of the company were Zwahlene Denis Lucile as an administrate of the estate of Late William T. Ocora, Geroge Ocora, Robert Ocora and Christopher Lati Christopher Richard as an administrator of the estate of Late Cerono K.L Okot.

Further, the trial registrar struck off the register the resolution filed on 12th September 2018, appointing Mr. Benjamin Oryema as a director of the company, the resolution filed on 15th September 2018 appointing Akelo Irene as a director in the company and the resolution filed on 17th September 2013 appointing Akello Irene as a secretary, for being null and void.

She then struck off all Form 20s on record in respect of the said appointment of the said directors for having been procured irregularly. She further directed the company to file annual returns to reflect the changes and ordered each party to bear its costs.

**The Appeal**

This Appeal is based on the following grounds:

a) That the learned Registrar of Companies erred in law when she failed to properly evaluate the evidence presented to her and in the process failed to apply the requisite provisions of the law.
b) That the learned Registrar of Companies erred in law and fact when she held that the unpaid for 250 shares of the late William Ocora and the 50 shares of the Late Mr. Cereno K.L Okot 50 shares should effectively be transmitted to their legal representatives.
c) That the learned Registrar of Companies erred in law and fact when she relied on Letters of Administration of small estates to be used in

the transmission of unpaid shares of Legal representatives of the Late William Ocora and the late Cereno K.L Okot.

d) The learned Registrar of Companies erred in law when she disregarded the dismissal of George Ocora from the Board of Directors upon failure to attend three consecutive Board meetings as stipulated in the Articles of Association of M/S Afro-Inter Company Ltd.

e) The learned Registrar of Companies erred in law and fact when she ordered for expungement of Benjamin Oryema, Akelo Irene as company directors and officer.

f) The Learned Registrar of Companies erred in law and fact when she declared the shareholding of the company resolution dated 12th September 2018 as null and void.

g) The Learned Registrar of Companies erred in law and fact when she declared all forms 20 filed in the company registry as null and void.

h) The learned Registrar of companies erred in law and fact when she ordered filing of annual returns with illegal orders.

**Hearing and Representation**

At the hearing of this Appeal, the Appellants were represented by Mr. Mungoma Stephen while the 1st Respondent was represented by M/s Heritage Associated Advocates and the 2nd and 3rd Respondents jointly represented by M/s Kityo & Co. Advocates and Ojambo & Co. Advocates.

The parties upon being given directions by this court filed their respective submissions. This court has duly considered the same.

**Appellants' submissions**

The Appellants' counsel began his submissions by attacking the conduct of the Uganda Registration Services Bureau in not availing a certified copy of the record of proceedings. Counsel stated that this amounted to contempt of court by the lower tribunal. In his opinion, the impugned ruling on record ought to be expunged together with the proceedings and orders of the Uganda Registration Services Bureau.

The learned counsel then argued grounds 1 to 5 concurrently.

It was counsel's argument that none of the original subscribers was allotted shares they applied for at the time of incorporation of the company and there was no resolution, share certificate or evidence on the Register indicating any allotment of the shares. That it was not tenable under the law to transfer shares which are nonexistent. Hence the orders of the Registrar of companies to transfer nonexistent shares was illegal and unlawful.

Further, counsel submitted that this court should find that the expunging of Benjamin Oryema and Akelo Irene from the Register to be unlawful and so was the order of finding all form 20s to be null and void; and the order to file annual returns.

Learned Counsel prayed for costs and general damages to be paid jointly by URSB, the Respondents, Richard Santo Apire, Kinyera George Apuke, Atim Marylin, Doris Alal and Gilbert Kityo.

Counsel further prayed for special damages that the company has suffered as unpaid remittances from Simon Nsubuga to the tune USD $17,100 and Shs. 17,800,000, Ugx. 8,000,000/= from Alex Batanda, USD $ 3500 from Haresh P. Mangukiya and delayed construction works on the property to the tune of USD $145,500 per annum.

**Respondents' submissions**

The Respondents raised an objection that the 2nd Appellant had no *locus standi* to institute this Appeal since she was never a party to the initial decision of the Registrar of Companies under Company Application No. 30 of 2019. Learned Counsel cited and relied on the case of ***Dima Domnic Poro Versus Inyani & Another Civil Appeal No. 0017 of 2016*** and ***Mohammed Allibai Versus Bukenya Mukasa and another SCCA No. 56 of 1996***. Counsel further submitted that the 2nd Appellant appeared in the proceedings of Company Application No. 30 of 2019 as a lawful attorney of the 1st Appellant but opted not to be added as a complainant. Therefore, the Appellant as a holder of a power of attorney does not cloth her with locus to challenge the decision of the Registrar of Companies.

Counsel for the Respondents argued grounds 1,2 and 3 concurrently.

It was submitted for the Respondents that the learned Registrar of Companies rightly addressed herself to the law applicable and evidence before arriving at the right conclusions given the circumstances before her.

While relying on the definition of subscriber in the case of **Mathew *Rukikaire V Incafex Ltd SCCA No. 15 of 2015***, counsel submitted that a person becomes a member by virtue of being a subscriber to the memorandum and articles of association and thus payment of shares is irrelevant. Counsel referred to the case of **Olive *Kigongo Versus Mosa Courts Apartments Ltd Company Cause 1 of 2015*.** Therefore, the shares of the company were duly allotted as per the return of allotment and the 1st Appellant got his anticipated 100 shares.

That notwithstanding, the shares belonging to the late William T. Ocora and the late Cereno K.L Okot were legally transmitted to the respective legal representative of the concerned estate in accordance with **section 85 (1) of the**

**Companies Act 2012.** That the admission of the respective legal representatives in the Company was handled with requisite quorum and the 3rd Respondent was admitted by the Board of Directors.

According to Learned Counsel for the Respondents, there was no evidence adduced by the Appellants to disentitle the Respondents from claiming the entitlement to their respective shares. Reference was made to the case of **Emmaus *Foundation Investments (U) Ltd Versus Emmaus Foundation Ltd and 3 others HCMA No. 074 of 2020***.

Counsel argued grounds 4,5 and 6 concurrently.

He submitted that **Article 99 of Table A of the Companies Act**, **2012** provides that the quorum necessary for the transaction of business of the directors may be fixed by the directors and unless so fixed shall be two. Counsel submitted that a resolution passed in a meeting that lacked quorum or signed by a single director was null and void. That the requirement of directors' quorum was mandatory. Counsel cited and relied on the case of ***Hood Sallmakers Versus Aford & Bainbridge (1996) 4 ALL ER 830, Needle Industries India Ltd Versus Needle Newey (India) Holding Ltd (1981) 50 Comp. case 743 and Fang Min Versus Uganda Hui Neng Mining Ltd and 5 others HCCS No. 318 of 2016***.

That **Article 21 (b) of the Articles of Association of M/s Afro Inter Ltd** did not give the 1st Appellant any express power to override the need for appropriate quorum in total contravention of the law and company regulations. On the other hand, company meetings commenced by the 1st Respondent following a one-man meeting by a court order are valid as per ***Emmaus Foundation Investments (U) ltd Versus Emmaus Foundation Ltd and others (supra).***

Therefore, the findings by the Registrar of Companies that the Appellants actions of dismissing the 1st Respondent and appointment of the 2nd Appellant and Benjamin Oryema were null and void and that the appointments initially commenced by the 1st Respondent were valid.

On grounds 7 and 8 of the Appeal, counsel submitted that they were abandoned since no submissions were made on the same.

**Submissions in rejoinder**

Counsel for the Appellants submitted that the record of proceedings adduced by the Respondents was edited, not complete and therefore not a true reflection of what transpired during the proceedings.

On the issue of the 2nd Appellant's capacity to institute this Appeal, counsel submitted that in the Mengo court, the Respondents sued the 2nd Appellant and recognized her as part of the company, and secondly, she is aggrieved with the decision of the Registrar of Companies.

Counsel then proceeded to argue grounds 1,2 and 3 of the Appeal.

He argued that none of the original shareholders neither had allotted shares nor paid for the shares; and therefore none was capable of being transmitted in law. He relied on **Section 85 (1) of the Companies Act 2012** that prohibits registration of a transfer of shares or debenture of the company without a proper instrument of transfer delivered to the company. That no such instrument has ever been delivered to the company. Hence the Registrar of companies misdirected herself in holding that the transfer of shares to the legal representatives of Okurut and Ocora was made.

That the 1st Respondent had resigned/vacated from his office as a director in 2012 under Clause 21 (b) and he failed to contest this position.

Further submission was made that the impugned court order that the 1st Respondent obtained in 2015 does not resolve his resignation/vacation of office and does not appoint him as a director in the company. He prayed this court invalidates this court order. In counsel's opinion, it was irregular for the 1st Respondent who was not a director to sign forms transferring shares to the 2nd and 3rd Respondents.

Counsel for the Appellants further prayed that the letters of administration granted to the 2nd and 3rd Respondents ought to be cancelled for having been fraudulently obtained.

On grounds 4,5, and 6 of this Appeal, counsel for the Appellants submitted that the 1st Appellant did not dismiss the 1st Respondent as a director but rather he ceased to be a director under the Articles of the Company. That the 1st Respondent was last seen in the company in 2013. He therefore ceased to be a director which left the 1st Appellant as the sole director of the company.

On grounds 7 and 8 of the Appeal, counsel for the Appellant argued that the learned trial Registrar of companies cannot validate the allotment but cancel the form 20s. That none of the documents presented by the Respondents exist on the register of the company. That they have not signed the memorandum of association and articles of association and the company has not transferred to shares to them. Therefore, it is impossible for them to be members.

**Determination of the Preliminary objections**

The Respondents raised an objection that the 2nd Appellant lacked the locus to initiate this Appeal on the basis that she was never party to the proceedings or case before the trial Registrar of Companies.

There is no inherent, inferred or assumed right of appeal (**see *Mohamed Kalisa v. Gladys Nyangire Karumu and two others, S. C. Civil Reference No. 139 of 2013*).** The right of appeal is a creature of statute and must be given expressly by statute (**see *Hamam Singh Bhogal T/a Hamam Singh &* 10 *Co. v. Jadva Karsan (1953) 20 EACA 17*; *Baku Raphael v. Attorney General S.C Civil Appeal No. 1 of 2005* and *Attorney General v. Shah (No. 4) [1971] EA 50*).**

A party, not being party to the original proceedings leading to the current Appeal, cannot be termed as an aggrieved party unless if there are material facts at the time which could make him or her be considered an aggrieved party. See ***Mohammed Allibhai Versus E. Bukenya Mukasa and another SCCA NO. 56 of 1996***.

It was observed by His Lordship Justice Stephen Mubiru in the case of ***Simba Properties Investment Co. Ltd and five others versus Vantage Mezzanine Fund II Partnership and six others High Court Civil Appeal No. 0002 of 2023*** that:

> "*To file an appeal therefore requires an aggrieved party, and anyone who is not adversely affected in any way by the matter which he seeks to challenge, whether a party or not, is not a "person affected" thereby and has no standing to obtain a judicial resolution of his challenge to the award, as the court held in* ***Lisa H v. State Board of Education 67 Pa. Commonwealth 350(1982),*** *quoting* ***William Penn Parking Garage v. City of Pittsburgh, 464 Pa 168 (1975).*** *The core concept of standing is that a person who is not adversely affected in any way by the matter he*

*seeks to challenge is not aggrieved thereby and has no standing to obtain a judicial resolution of his challenge. For standing to exist, the underlying controversy must be real and concrete, such that the party initiating the legal action has, in fact, been affected and aggrieved. To establish "aggrieved" status for purposes of standing, a party must have a substantial, direct and immediate in the claim sought to be litigated. An aggrieved person means a person who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully affected his title to something".*

According to the Record, the 2nd Appellant was never a party to ***Company Application No. 30 of 2019*** but she was affected by the Ruling in that Application. The Ruling nullified her appointment as director and secretary in M/s Afro Inter Ltd. This means that she no longer holds her two positions in the company, and this affects her dealings with the company. I therefore find that she is an aggrieved party and has the *locus standi* to appeal the Ruling of the trial Registrar of Companies.

The Appellants' counsel raised an objection that the Ruling on Record was not authentic and it was edited by the Respondents. I have noted that the Appellants have not attached a certified record of proceedings and the certified Ruling of the Registrar of Companies, from which this Appeal arises.

However, the Respondents have attached a copy of certified copy of the Record of Proceedings before the Registrar of Companies, under ***Company Application No. 30 of 2019***. The record of proceedings bears a stamp of *'certified true copy'* and a stamp of the Registrar of Companies dated 15th May 2023.

Further, this Court, on its own volition obtained the Ruling of the trial Registrar of Companies and on comparison and verification, there were no edits were made to the Ruling.

The Appellants' counsel alluded to connivance and fraud between the Respondents and the Uganda Registration Services Bureau to sell the property of Afro Inter Ltd. Fraud is a grave allegation which requires the party alleging it to prove it by adducing evidence. This evidence was not adduced.

Whereas the Appellants' counsel prayed that the record of proceedings and the ruling of the Registrar of companies be struck off record, the court finds the record of proceedings and the Ruling on record are authentic, and court shall proceed to determine the Appeal.

**Determination of the Appeal**

**Duty of the first Appellate Court**

It is settled law that a first Appellate Court is under the duty to subject the entire evidence on the record to an exhaustive scrutiny and to re-evaluate and make its own conclusion while bearing in mind the fact that the Court never observed the witnesses under cross-examination. See. ***Kifamunte Henry Vs Uganda SCCA No. 10 of 1997***

***Ground one: The learned Registrar of Companies erred in law when she failed to properly evaluate the evidence presented to her and in the process failed to apply the requisite provisions of the law.***

This ground is too general and does not specify the blunder or mistake that the learned trial Registrar of Companies made, either in law or fact. Such a ground

ought to be rejected on the basis that it does not specify in what way and in which specific areas the trial Registrar of Companies failed to evaluate the evidence. See. ***Ronchobhai Shivabhai Patel Ltd Versus Henry Wambuga and another SCCA No. 6 of 2017*** *where the* ground of appeal was worded as "*the learned Justices of the Court of Appeal erred in law and in fact when they failed to evaluate evidence on record and they arrived at a wrong conclusion".* Mugamba JSC held that "this ground is too general and does not specify in what way and in which specific areas the learned Justices of Appeal failed to evaluate the evidence. It does not set out the particular wrong decision arrived at by the learned Justices of Appeal." The Court thus struck out the ground as being offensive to the rule 82(1) of the Judicature (Supreme Court) Rules which is in *pari materia* with rule 1(2) of Order 43 of the CPR. See also the case of **Stellah *Moments Decorations Versus Muwanga Jackson T/A Kitavujja General Agencies HCCA No. 08 of 2019.***

Ground one of this Appeal is therefore struck out.

***Ground two: The learned Registrar of Companies erred in law and fact when she held that the unpaid for shares of the late William Ocora (250 shares) and the Late Mr. Cereno K.L Okot (50 shares) should effectively be transmitted to their legal representatives.***

The Appellants faulted the Registrar of Companies for having ordered the shares of the late William Ocora and Late Cereon Okot K.L be transferred to the legal representatives of the deceased. The learned trial Registrar of Companies based her decision on the fact that the late William Ocora and Late Cereno K.L Okot were the first members and directors of Afro Inter Ltd and thus their shares were properly transmitted to their legal representatives upon their death. According to **Farrar's Company Law, fourth edition at page 238**, the

subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration must be entered as such in its register. Then, other persons who agree to become a member of a company, and whose name is entered in its register of members, is a member of the company. Therefore, by being subscribers to the memorandum of association of the company, a person becomes a member (**See *Mathew Rukikaire Versus Incafex Ltd SCCA No. 03 of 2015)***.

It was not disputed at the trial that Late Cereno K.L Okot, Late William Ocora, George Ocora and Robert Ocora were the original subscribers to the memorandum of association of M/s Afro Inter Ltd. What is contested however, is that the Late Cereno Okot and Late William Ocora never paid up for their shares. The Memorandum of Association on record undoubtedly indicates Late Cereno K.L Okot, Late William Ocora, George Ocora and Robert Ocora to be the first subscribers of Afro Inter Ltd. Therefore, the finding of the finding of the learned Registrar of Companies that Late Cereno K.L Okot, Late William Ocora, George Ocora and Robert Ocora were the initial members of the company was correct.

The question however, in my opinion is, whether the shares of Late William Ocora and Late Cereno K.L Okot were paid for? If not, can the unpaid shares be transmitted to the legal representatives of the deceased members and how?

A company ought to file an allotment of shares form sixty days after making that allotment. **Section 61 of the Companies Act, 2012** gives details as to what information should be contained in the Return as to allotment. That is, the number and nominal amount of the shares, names, addresses and description of the allottee and the amount if any, paid or due and payable on each share. The section goes on further to state what should be done when the shares

allotted as fully or partly paid otherwise than in cash. Lastly, Section 61(3) of the Act prescribes a penalty that shall be paid by every officer of the company if the section has not been complied with.

Allotment has been defined in the case of ***Mathew Rukikaire Versus Incafex (supra)***, as the acceptance by the company of the offer to take shares. In that case, the **Supreme Court** referred to **Gower and Davies Principles of Modern Company Law 8th Edition at page 845** where allotment is defined as the process by which the company finds someone who is willing to become a shareholder of the company.

The process of allotment is borne on the company. I have not found on record, an allotment form filed by the company before the disputed changes in the company were made. What is on record is an allotment form filed before the Registrar of Companies on 21st February 2017 indicating allotment and fully paid up 600 shares of the company. An analysis of the trial record shows that there was no evidence presented to the Registrar of companies that any of the members of the company paid up for their shares. In the case of ***Mathew Rukikaire V Incafex (supra),*** the Court observed that:

> *"....the obligation of a member of a company limited by shares, to pay for the shares arises either when the company calls upon the shareholder to make payment for the unpaid shares during its operation or when the company is being wound up.."*

My understanding from the above observation is that during the operation of a company, unless a call is made by the company on the shares and the shareholder/member fails to pay for the shares, a member or shareholder cannot lose their position based on the fact that the shares were not paid up.

The duty to allot the shares or make a call on shares is borne by the company, not the members.

On record before the Registrar of companies, there is a document marked as **Annexture S**. This is a resolution that was filed on 27th March 2017 before the Registrar of Companies and it indicates that the 100 shares of the 1st Appellant were accepted as unpaid, and a call was made on the 400 unpaid shares. But this resolution is defective for two reasons:

Firstly, the resolution was passed by directors, whose appointment is contested and in my opinion null and void, as I shall discuss later; and

Secondly, as the Registrar of Companies rightly ruled, the call was not complete since there is no proof of receipt of the call/notice to the shareholders.

In the absence of an effective call on the shares, I find that no allotment was made by the Company. I therefore find that Late William Ocora and Late Cereno K.L Okot still hold the shares assigned to them at the time of incorporating the Company and in my opinion be transferred or transmitted in accordance with the law.

Regarding the transmission of the shares to the estate of the late Cereon Okot and the estate of late William Ocora, in the case of ***Emmaus Foundation Investments (U) Ltd Versus Emmaus Foundation Ltd Consolidated Applications no. 74 of 2020 and 740 of 2020***, the court observed that the legal representative of a deceased member of a company does not *ipso facto* or automatically become a member of the company. But an application must be made to the company and the legal representative entered onto the company register as a shareholder.

On record before the Registrar of companies there was a Court Order dated 16th July 2015 authorizing the 1st Respondent to hold a single member meeting to admit the legal representative of late Cereono Okot as a member of the company. Whereas, the Appellants contest the validity of the Court Order, this Order was certified by the Registrar of the High Court as authentic. The allegations of fraud are unsubstantiated and without merit. Therefore, the appointment of the legal representative of the late Cereno Okot was lawful.

However, I note that the Court Order was very specific. It only allowed the single member meeting to be held to consider the application of the estate of late Cereno Okot's legal representative to become a member not the estate of the late William Ocora. Therefore, the actions of 1st Respondent in admitting the legal representative of the estate of the late William Ocora was outside the ambit of the Order; and therefore null and void.

Ground two partially succeeds.

**Ground three:** ***The learned Registrar of Companies erred in law and fact when she relied on Letters of Administration of small estates to be used in the transmission of unpaid shares of Legal representatives of the Late William Ocora and the late Cereno K.L Okot.***

None of the Parties directly made submissions in respect of this ground.

According to the Record from them the Registrar of Companies, there are two letters of administration that were presented. The first Letters of Administration were in respect to the Estate of the Late Ocora William Tarcissio granted by **Hon. Justice Kazaarwe Olive Mukwaya** to Zwahlen Denise Lucile on 21st May 2018. The Letters of Administration were granted by the High Court of Uganda sitting at Kampala.

It was argued for the Appellants the Letters of Administration to the Estate of the Late William Ocora were in respect of small estates. The Appellants did not adduce any evidence to this effect to back up their claim. The value of the deceased's shares alone according to the information on the Court record is Ugx. 250,000/= and therefore the law on the administration of small estates is not applicable. **The Administration of Estates (Small Estates) (Special Provisions) Act cap. 156** is clear on the jurisdiction of Magistrates Courts. **Section 1(a) on Interpretation** defines a small estate as:

> *" **small estate**" means any estate the value of which is specified in section 2(1)"*

**Section 2** of the same Act on **Jurisdiction to grant probate, etc. of small estates states that:**

> *"(1) Notwithstanding any provision of the Succession Act or the Administrator General's Act to the contrary, jurisdiction to grant probate or letters of administration in respect of small estates of deceased persons shall be exercised by—*
>
> *(a) a magistrate grade II, where the total value of the estate does not exceed ten thousand shillings;*
>
> *(b) a magistrate grades I, where the total value of the estate exceeds ten thousand shillings but does not exceed fifty thousand shillings;*
>
> *(c) a chief magistrate, where the total value of the estate exceeds fifty thousand shillings but does not exceed one hundred thousand shillings.*

I therefore find that the Letters of Administration to the Estate of the Late William Ocora were issued by a court with competent jurisdiction.

In respect of the Letters of Administration to the Estate of the Late Cereno K. L Okot, the same were granted by **Her Worship Nyipir Fortunate**, Magistrate Grade One, to Lati Christopher Richard on the 1st July 2016.

Whereas I note that the Letters of Administration in this respect are under small estates, there is no valuation report of the company shares on record of the proceedings before the Registrar of Companies, to establish that the value of the company shares exceeds the jurisdiction of Magistrate Grade One court.

I shall be guided by the nominal share capital of the company as at 21st July 2017 which was Ugx 600,000/- (Uganda Shillings Six Hundred Thousand only) with 600 shares each share being UGX 1000/- (Uganda Shillings One Thousand only). This therefore implies that the value of the fifty (50) shares was Ugx. 50,000/= (Fifty Thousand Shillings Only). This is within the pecuniary jurisdiction of the Court (**see section 2(1)(b) of The Administration of Estates (Small Estates) (Special Provisions) Act cap. 156**).

In the premises, I therefore find that the learned Registrar of Companies did not err in law or in fact by relying on the Letters of Administration for the Estate of the Late William Ocora and the Late Cereno Okot.

Ground three fails.

***Ground four: That the Learned Registrar of Companies erred in law when she disregarded the dismissal of George Ocora from the Board of Directors upon his failure to attend three (3) consecutive Board meeting as stipulated in the Articles of Association of M/s Afro Inter Company Ltd.***

For the Appellants, it was submitted that the 1st Respondent ceased to be a director as a result of non-attendance of meetings in accordance with **Article 21 (b) of the Articles of Association** and **Section 128 (i) (b) of the Act.** That he was never dismissed by the 1st Appellant. For the Respondents, it was submitted that the 1st Appellant dismissed the 1st Respondent without proper authority and quorum. That the resolution dismissing the 1st respondent was therefore void.

The learned Registrar of Companies found that the 1st Appellant lacked the pre requisite quorum in passing the resolution dated 17th June 2013 and she found that the said resolution was null and void under **Section 141 (c) of the Companies Act 2012** and **Regulation 27 of the Articles of Association of Afro Inter Ltd**.

Under **Regulation 21 (b) of the Articles of Association of Afro Inter Ltd**, the office of the director would be vacated if a person absents himself/herself from three consecutive meetings of directors for a continuous period of three months without leave of absence from the Board of Directors.

From the record, there was no substantial evidence presented before the Registrar of Companies for her to make a finding that the office of the director had been vacated. The Applicant/1st Appellant ought to have adduced material evidence to prove his claims that the 1st Respondent had been given notice of the said meetings and chose not to attend without leave of absence from the

Board or what the reason could have been. There was no evidence that the notices calling for the meetings had been received, the record of attendance of meetings in those meetings and the minutes.

Therefore, I do not find that the Registrar of Companies erred in law or fact in finding that the 1st Respondent had never vacated his office as a Director and that the 1st Appellant did not have the requisite quorum to convene the meeting.

This ground fails.

**Grounds 5, 6, 7 and 8**

I will concurrently address grounds five, six, seven and eight of this Appeal. This would resolve the issues relating to the striking out of the resolutions passed by the 1st Appellant.

The Registrar found that the 1st Appellant had no required quorum to hold meetings that led to the appointment of Benjamin Oryem and Akello Irene as officers of the Company. She found that the resolution appointing them were null and void. Hence her finding that the form 20s on the company file indicating that Benjamin Oryem and Akello Irene had been appointed as directors /secretary were null and void. The findings of the learned Registrar of Companies were informed by the fact that the decision of the 1st Appellant to appoint Mr. Oryema and Ms. Okello to the position of director / secretary was illegal. The 1st Appellant held a single member's meeting and therefore lacked the quorum. **Regulation 16 of the Company's Articles of Association** mandates that at least two members shall be present at a general meeting for any business to be conducted by the company. **Section 141(c) of the Companies Act 2012**, where

no provision is made by Articles of the company, the quorum for meetings of a private company shall be two of the members personally present.

It is admitted by the Appellants' counsel that the 1st Appellant remained the only director of the company after the alleged vacation of the office of a director by the 1st Respondent. The 1st Appellant then appointed Ronald Kasirye as a director and advisor. At this point, the 1st Appellant ought to have made an Application to the Court under **Section 142 of the Companies Act, 2012**, since a single director could not form quorum for the meeting and thus could not pass any binding resolutions from those purported meetings.

The implication is that all the alleged meetings and resolutions made by the 1st Appellant are null and void and so where the appointments arising out of these impugned meetings and resolutions. This position was emphasized in the case of ***M/s Fang Min Versus Uganda Hui Neng Mining Ltd and others HCCS No. 318 of 2016*** where the court observed that a meeting without quorum and where the only other director is not notified is null and void and any decisions taken as a result of such a meeting are rendered worthless.

Since Oryema Benjamin and the 2nd Appellant were appointed as company director and secretary, respectively, at meetings that were irregularly and illegally convened by the 1st Appellant, their appointments were void *ab initio*. Therefore, the learned Registrar of Companies was right to expunge their names off the company register. It therefore follows that the Registrar of Companies was justified in declaring the resolution passed on the 17th September 2013 and the 12th September 2018 as void for lack of quorum.

The Registrar of Companies the expunged all Form 20s on record for having been irregularly procured; on the basis that the company record did not reflect

appointment of directors after incorporation during the lifetime of the shareholders. I observed that under **Regulation 18 of the Company's Articles of Association**, the signatories to the Memorandum of Association shall be the first directors of the Company. **Regulation 26 of the Companies (General) Regulations, 2016**, establishes that the Company should notify the Registrar of Companies of the appointment of the director. This was however not done. The Company should have gone a step further by notifying the Registrar of the directors by way of a resolution, filling out and filing the relevant company form. I therefore uphold the finding that the initial subscribers to the memorandum and articles of association were not properly appointed as directors of the company after its incorporation and during the life time of its members to whom shares had been assigned.

Having found that the 1st Appellant's meetings and appointment of directors and a secretary was null and *void ab inito* as well as the appointment of a director by the 1st Respondent outside the ambit of the Court Order, I am therefore in agreement with the trial Registrar of Companies that the Form 20s on record were improperly procured and ought to be expunged.

On ground eight, the filing of the annual returns, a company is required to make a return with the Registrar of Companies at least once every year (**See section 132 of the Companies Act, 2012)**. The trial Registrar of companies was therefore justified in making the order for the filing annual returns.

Although the orders are contested by the Appellants, save for the order that the 250 shares owned by Late William Ocora should be transmitted to the legal representatives of his Estate, all the other orders made by the learned trial Registrar of Companies were made in accordance with the law and I uphold them.

The Appeal is dismissed in the following terms and orders:

a) The transmission of the 250 shares of the Late William Ocora was null and void;
b) The company should call for a meeting to consider transmission of the 250 shares of the Late William Ocora upon an application being made by the legal representative of his estate;
c) The Company should call a meeting to formerly allot the shares of the company;
d) The company should call for a meeting to appoint or maintain its directors and appoint a company secretary; and file Form 20 with the Registrar of companies;
e) The company should file annual returns to reflect all the changes that shall arise out of these meetings and resolutions made; and
f) Each party should bear its own costs for this court and below.

Dated at Kampala this **3rd day of May 2024.**

**Harriet Grace MAGALA**

**Judge**

**Delivered online (ECCMIS) this 7th day of May 2024.**

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