

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISCELLANEOUS APPLICATION NO. 0082 OF 2018

(Arising from Civil Suit No. 045 of 2018)

5

ASIIMWE SAUSI SWIZIN.....APPLICANT

VERSUS

KILEMBE INVESTMENTS LIMITED.....RESPONDENT

10 **BEFORE: HIS LORDSHIP HON. MR WILSON MASALU MUSENE**

Ruling

This was an application by Asiiimwe Sausi Swizin, the Applicant and the Respondent is Kilembe Investments Limited. The Application was by Chamber Summons under **Section 98** of the Civil Procedure Act and **Order 41 Rules 1 & 3** of the Civil Procedure Rules.

15 It was seeking for orders that;

- a. The company's annual general meeting (AGM) scheduled for 6th December 2018 be halted by this Honourable Court until the determination of the main suit.
- b. Alternatively that the annual general meeting proceeds save that the Respondent should not discuss agenda item No. 8 relating to the voting of the directors until the
- 20 determination of the main suit.
- c. Costs of the application be provided for.

The grounds in support are summarised as:

1. There is a main suit vide Civil Suit No. ... of 2018 pending determination by this Honourable Court.
- 25 2. There is a prima facie case with the high likelihood of success.

3. That one of the agenda items scheduled for the 6th December is to conduct an election for a new director which is intended to enclose out the Applicant.
4. The Applicant will suffer irreparable damages.
5. It is in the interest of justice that this application be granted.

5 The Respondent opposed the Application in an affidavit in reply sworn by Thembo Gideon Mujungu, the Chief Executive Officer of the Respondent; the following paragraphs are pertinent;

4. That the contents of the application are false and the Applicant is telling lies on oath to which I am advised by my lawyer that this Honourable Court has powers to dismiss this
10 application with costs.

5. That the contents in paragraph 2 are partially correct to the extent that in accordance with the Companies Act 2012 and the Memorandum and Articles of Association of Kilembe Investments Ltd, the Applicant was issued with a letter by the Company Secretary of rotation as a Director of the Respondent having served his full term and an additional term on re-
15 election as a director.

7. In further reply to paragraph 3, that it is unfair and unjust for the Applicant who has served on the Board of directors of the Respondent which is a public Company with over 3,500 share holders for a period of 15 years and is now sticking onto the Board in total disregard of the law.

20 8. The contents in paragraph 4 are not true as rotation in the Company is governed by the Companies Act, 2012 and the MAA of the Company.

11. In reply to paragraph 7, the contents are partially admitted to the extent that the Respondent called for an annual General Meeting (AGM) and the meeting convened on 6th December 2018 at Virina Gardens – Kasese Municipal Council and, among others, elected
25 two Directors who replaced the Applicant and Hon. Loice Biira Bwambale respectively. (Photos of Members present at the AGM hereto attached and marked “AGM 1”).

12. In reply to paragraphs 9 and 10, it is true the invitations were made, the Respondent conducted the AGM and the Application has been over taken by events. (Copy of the draft Minutes of the 18th Annual General Meeting is herein attached and marked “AGM 2”).

13. That the Applicant also reached the meeting venue around mid day signed the attendance register and confirmed that elections had actually been conducted and him and Hon. Loice had been duly replaced. (Copy of attendance list hereto attached and marked “AGM 3”).

14. That in reply to paragraph 10, the balance of convenience lies in the Respondents favour
5 since the meeting (AGM) has been held.

The Applicant was represented by M/s Kittwa Harriet while Mr. Mooli Albert represented the Respondent. Both sides filed written submissions.

I have studied the written submissions on both sides and other pleadings on record. Needless
10 to emphasise, the granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve matters in status quo until the question to be investigated in the suit can finally be disposed.

The conditions for grant of interlocutory injunction as stated in **Kiyimba Kaggwa versus Haji A.N. Katende (1985) HCB 43** are first that, the Applicant must show a prima facie case
15 with a probability of success.

Secondly, such injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.

Thirdly if the Court is in doubt, it will decide on application on the balance of probability.

20 As far as the present Application is concerned, the attention of this Court has been drawn to paragraph 13 of the affidavit in reply whereby it is stated that the Applicant reached the meeting venue around mid-day and signed the attendance Register and confirmed that elections had been conducted.

That the Applicant and Hon. Loice had been replaced. Although Counsel for the Applicant
25 submitted that the Respondent dodged to receive the interim order, if he meeting had already taken place as per copy of the draft minutes attached to the affidavit in reply, then I agree with Counsel for the Respondent’s submission **that the status quo had changed**. That means that any order to halt the meeting has been overtaken by events.

However, that does not mean that the issue will not be addressed in the main suit No. 045 of 2018.

In fact, I wish to emphasise that most of the matters raised by the Advocates on both sides will be considered in the main suit.

- 5 As of now, since the meeting complained of has been held and status quo changed, then it follows that the balance of convenience is in favour of the Respondent.

The Applicant is in the circumstances advised to follow up the main suit which will resolve all the matters raised once and for all.

In the premises, I do hereby decline to grant the application for temporary injunction.

- 10 Since the main suit is pending, costs to be in the cause.

.....

WILSON MASALU MUSENE

JUDGE

- 15 **20/12/2018**