

UGANDA / JUDGMENT

Andani v Anandani (Company Complaint 27154 of 2023) [2023] UGRSB 1 (30 November 2023)

[2023] UGRSB 1

COURT

Uganda Registration Services Bureau

BEFORE

Muliisa Solomon - Senior Registration Officer

CASE / FILE NUMBER

Company Complaint 27154 of 2023

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IN THE MATTER OF THE COMPANIES ACT 2012 AS

AMENDED

AND

IN THE MATTER OF KINGSTAR GENERAL HARDWARE LIMITED

AND

**IN THE MATTER OF APPLICATION FOR RECTIFICATION OF THE REGISTER OF
KINGSTAR GENERAL HARDWARE LIMITED COMPANY COMPLAINT NO. 27154 OF
2023**

ANDANI SOHIL KUMAR A:.....

VERSUS

ANADANI AMYAN A:.....

RULING

BEFORE: MULIISA SOLOMON, REGISTRAR OF COMPANIES

1. This application was filed on 2nd October 2023, 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;

- i. \$ two share transfer forms transferring a total of 20 shares to MS. ANADANI SHEETAL AMYAN BHAI;
- a resolution filed 13th November 2019, but dated on 13th ii. December 2019 approving allotment of shares and appointing Ms. Sheetal as director;
- a return of allotment (form 10) filed on 23rd December 2019 iii. allotting the said Sheetal 20 shares, 10 shares each transferred to her from the applicant and the respondent;
- iv. a form 20 (Notification of Appointment of Directors and Secretary) filed on 13th November 2023 introducing the said Sheetal as director and an annual return for the year 2020 showing the said Sheetal as a holder of 20 shares and a director in the company.
- 2. The applicant contends that he and the respondent are the original shareholders and directors of the company, with each holding 50 shares as at the time of incorporation. The original memorandum and

articles filed on 22nd June 2012 and a form 20 filed on 20th June 2012 confirms this. The applicant contends that in 2019, without his knowledge and participation, the Respondent illegally executed and filed the documents listed in para 1 (i)–(iv) 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 applicant avers that a resolution dated 13th December 2019 filed on 13th November 2019, titled "special resolution" that allotted the 20 shares, and approved the appointment of Ms. Sheetal as director was never passed as there was no meeting on the 13th November 2019, that he was never served a notice calling the meeting held at Hoima on the said date as mentioned in the opening paragraph of that resolution. The applicant also contends that there is no evidence of recorded minutes to prove that such a meeting actually took place. In absence of minutes, Counsel for the applicant contended that such a meeting did not actually take place and that the decisions purportedly arising from it are illegal. The applicant also denies signing the impugned

documents and contends that the documents were illegally executed in a series of actions orchestrated to introduce Ms. Sheetal to the company, who it is contended, and not denied by the respondent, that she is the respondent's wife.

- 4. In a statutory declaration filed on 19th October 2023, the Respondent contends that the documents were executed legally with the participation of the respondent; that Ms. Sheetal rightly acquired the 20 shares and was properly and legally appointed as director. The respondent does not make any averments as to whether notice requirements were complied with nor does he admit evidence of minutes that were taken at the said meeting of 13th November 2019.
- 5. At the hearing, the applicant was represented by Issa Ssematimba and the respondent was represented by Isaac Kugonza.
- 6. During scheduling held on the 25th October 2023, the following issues were framed for determination.
- *lawfully transferred* \$(I)\$ shares *Whether the Respondent* to MS. ANADANI SHEETAL AMYAN BHAI
- \$(II)\$ *Whether* MS. ANADANI SHEETAL *AMYAN* \$BHAI's\$ *appointment as a director was lawful*
- \$(III)\$ *What remedies are available to the parties*

Resolution of issues

Whether the Respondent lawfully transferred shares \$1:\$ Issue to MS. ANADANI SHAATAL AMYAN BHAI

- 7. 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 an 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.

- 8. 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 13th November 2019, which is alleged to have taken place in Hoima, registered on the 13th November 2019 but which is indicated as dated 13th December 2019. It is that resolution that allotted the 20 shares and appointed Ms. Sheetal as director of the company. Based on that resolution, form 10 and form 20 were subsequently filed, and indeed an annual return of 2020 was filed on the basis of the changes introduced by the said resolution.

- 9. I will therefore examine the circumstances of, and the legality of the resolution registered on 13th November 2019, the outcome of which will inform the legality of the subsequent documents that were filed.
- 10. The nature of the resolution is stated as "special resolution" which was purportedly passed on the 13th November 2019. The opening paragraph reads as follows: "*at an extra-ordinary meeting of the board*" of directors held at Hoima". First, the meeting purports to be extra-

ordinary leading the passing of a special resolution, yet it is attended by directors and not shareholders! For clarity, ordinary and extraordinary meetings are meetings of members/ shareholders and not directors. 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 days. 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, special resolutions emerge from either ordinary or extraordinary meeting of members holding not less than 75 percent shares. **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 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.*"

11. 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 *company* 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 *company* 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 company fails* comply \$to\$ \$with\$ *subsection* \$(1)\$. the *company* and every *officer* of the *company* who is in default is liable to a default fine of twenty five currency points."

- 12. 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*).
- 13. In his statutory declaration and the written submissions, instead of adducing evidence to prove that minutes were taken and that statutory notices relating to meetings were duly issued, the respondent just made general statements that the transfers, resolutions and other documents filed were properly and legally executed, and signed by the applicant. If the purported meeting of \$13th\$ November 2019 leading to the impugned special resolution actually took place, minutes ought to have been taken 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.
- 14. 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 November 2019, purportedly held in Hoima. Instead of adducing evidence of compliance with these mandatory legal requirements, the Respondent makes general averments that documents were executed legally. 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 minutes, I am unable to find that the meeting of 13th November 2019 took place. 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 minutes.

- 15. Besides the special resolution in question that approved the allotment of shares, I note that under article 10 and 16 (b) of the company's articles of association, it is the board that has the mandate to authorize the transfer of such shares and hence upon the execution of the two

share transfers, the board ought to have passed a board resolution , authorizing those shares. Such powers are a preserve of the board not only under the memorandum and articles of this company but also under **Table A of the Companies Act**. Similarly, allotment of shares is also a function of the board performed by passing a board resolution. The respondent has not adduced evidence of a board resolution approving such transfers nor allotting shares. The special resolution, which I have already held was passed erroneously, is not the correct resolution to allot shares, as the members have no such powers.

- 16. Secondly, even where the directors are the same as shareholders, 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. On the other hand directors pass board resolutions arising from directors meetings or passed as circular resolutions agreed upon by the majority directors. Directors cannot pass ordinary or special resolutions as those arise from meetings of members.
- 17. In defense of this application, Counsel for the Respondent 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 submitted on the authority of Section 55 that all the documents were signed by the directors and hence are legitimate. **Section 55** provides as follows;

"A document executed by a director and the secretary of a company or α by two directors of a company and expressed to be executed by the company has the same effect as if executed under the common seal of *the company.*"

18. Based on the above, Counsel contends that such signing legitimizes the disputed documents. I do not agree. That section is not applicable to internal company documents such as resolutions as these are provided for in separate provisions as to how they arise and how they may be proved. One of these provisions is Section 152 that requires minutes of all companies meetings to be record and kept in a minute book. Indeed resolutions are deemed as extracts of company minutes. I have had the benefit of examining the impugned resolution that purportedly allotted shares and appointed Ms. Sheetal as a director. At the last page, last paragraph it states; "We confirm that the above resolutions are true extracts from the minutes of the aforesaid meeting

of directors and parties thereto". By this statement, it actually purports to be an extract from minutes but the respondent has not adduced evidence of such minutes. Secondly, it has irregularities as to the dates. It purports to have been passed at a meeting of 13th November 2019 in Hoima. It was registered on the same day, of 13th November 2019. Most shocking at the end, it is dated on the 13th day of December 2019, implying it was dated ahead of time before it was registered! It purports have been passed at an extra ordinary meeting yet it was attended by directors. These irregularities raise suspicions that the said resolution could have been forged. Only minutes, which have not been adduced in evidence, could explain whether such glaring irregularities were accidental errors or not.

19. Counsel has also submitted arguments based on Section 53 of the **Companies Act** which states that:

"A party to a transaction with a company is not bound to enquire whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorize others to do so."

20. Together with that section, Counsel has in addition advanced arguments based on the indoor management rule based on the case of *Royal British Bank V Turquand* (1856) 6 E&B 327 for the proposition

that third parties are not bound to inquire into the legitimacy of documents and transactions entered by the company. In this case Counsel contending that at the time of executing the documents, Ms. Sheetal was a third party within the meaning of that rule, argued that she was not bound to inquire into whether the company's processes for share transfer and approval as well as her appointments were legally arrived at and therefore her interests in the company should not be affected because of the protection accorded by that rule.

21. I do not agree with Counsel's application of Section 53 and the indoor management rule. Both the section and the indoor management rule are misapplied and do not apply to circumstances of this case. The Indoor management rule, along with Section 53 of the Companies Act which codifies it, apply to, and can only be raised by third parties who have dealt with the company in its external transactions such as contracts. In this case, it is being relied on by the shareholder and director as a defense for his failure to comply with the Companies Act as well as the Articles of association of the company. If this was permitted, it means directors can blatantly breach the Companies Act and the Articles of Association under the guise of the indoor management rule. This would create an absurd situation. I accordingly reject Counsel's arguments on this front.
- 22. 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 shareholders. 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.
- 23. The statutory fiduciary duties imposed on directors are spelt out under **Section 192 of the Companies Act. It states;**

"The duties of the directors shall include the following—(a) act in a manner that promotes the success of the business of the \$company\$; (b) exercise a degree of skill and care as a reasonable person would do looking after their own business; (c) act in good faith in the interests of the *company* as a whole, and this shall include—(i) treating all shareholders equally;(ii) avoiding conflicts of interest;(iii) declaring any conflicts of interest; (iv) not making personal profits at the *company's* expense; (v) not accepting benefits that \$will\$ compromise him or her from third parties; and (d) ensure compliance with this \$Act\$ and any other law."

24. Of particular importance to this case are two duties; the duty to ensure compliance with the Act and any other law and (2) the duty to avoid conflicts of interest or declare such interests as and when they arise. I have already determined that the respondent did not comply with the Act when he failed to call meetings properly and when he failed to record minutes of the meeting. It was averred and not denied by the respondent that Ms. Sheetal, who was irregularly and illegally introduced to the company as a director, is the wife to the Respondent. Since the respondent did not deny this allegation, I accept it as true and hold that the actions of introducing his wife to the company irregularly constitute a conflict of interest and is a breach of his duties under Section 192 of the Companies Act.

Whether there are any remedies

25. 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."

26. I have already determined that the special resolution purportedly arising from a meeting of 13th November 2019, which did not take place, and all the resultant and further documents filed in reliance on that resolution, including amended memorandum and articles, return of allotment, 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.

27. Therefore, pursuant to Regulation 32 of the Companies (Powers of **Registrar**) **Regulations, 2016, I make the following orders;**

- a. A special resolution dated 18th December 2019, and 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 from the register;
- b. A return of allotment filed on 23rd December 2019 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. Two share transfers registered on 13th November 2019 are 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. Annual return of 2020 registered on 1st October 2020 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. An amended memorandum and articles registered on 23rd December 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;
 - g. The directorship and shareholding of the company be restored to the state it was at incorporation.
 - h. Each party to bear its own costs.
28. I so order.
29. Delivered in the presence of Andani Sohil Kumar A the applicant, Issa Ssematimba Counsel for the applicant, Anadani Amyan A the respondent, Anadani Sheetal Amyanbhai and Isaac Kugonza Counsel for the respondent.

30. Right of appeal explained.

Muliisa Solomon

Registrar

30/11/2023

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