

UGANDA / JUDGMENT

Bemuga Forwarders Limited (Companies Cause 33 of 2024) [2025] UGCommC 15 (25 February 2025) [2025] UGCommC 15

COURT

Commercial Court of Uganda

BEFORE

Kahigi Asiimwe, J

CASE / FILE NUMBER

Companies Cause 33 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (COMMERCIAL DIVISION)

COMPANIES CAUSE NO. 0033 OF 2024

**IN THE MATTER OF BEMUGA FORWARDERS LIMITED (FORMERLY KASO
INTERNATIONAL LIMITED)**

AND

IN THE MATTER OF THE COMPANIES ACT CAP 106

Before Hon. Lady Justice Patricia Kahigi Asiimwe

Ruling

Introduction

- This Application was brought by Notice of Motion under section \$1.\$ 286 of the Companies Act Cap 106, section 98 of the Civil Procedure Act Cap 282, Section 33 of the Judicature Act Cap 16. and Order 38 Rule 5(d) of the Civil Procedure Rules.
- \$2.\$ The Applicant seeks declarations and orders that:
- a) The shareholder Ronald Kanyerezi cannot be found:

- b) The shares of Ronald Kanyerezi Mark Oliver be reverted to Dr. Ben Mugasha, the majority shareholder in the Company; and
- The costs of the application be provided for. $\mathbf{c}$
- The Application was supported by two affidavits deposed by Dr. Ben Mugasha, a subscriber, director and majority shareholder in the Applicant Company. He stated that:
 - a) The Applicant was incorporated on the 11th day of registration number 1995 under December 80010000353064.
 - b) On the 4th day of October 2016, the company passed a Board Resolution allowing Dr. Ben Mugasha the majority shareholder to transfer 20% (3,600 Ordinary Shares) of his shares to Mr. Ronald Kanyerezi in consideration of his technical input and business growth, subject to quarterly business review as to actual technical and revenue growth of the business between the transferor and the transferee.
 - c) Mr. Ronald Kanyerezi's technical input and business growth were not realized and he left the company without notice. He disappeared for greener pastures and unfortunately cannot be found to transfer the shares back to the company.
 - d) The company tried to reach him through his telephone number 0702029651 but were not successful. In further search for him, the company reached out to his family in Mbarara and his father confirmed that his son had gone abroad for greener pastures.
 - e) Mr. Kanyerezi who is reported to be missing had some criminal cases against him at CID Headquarters Kampala Metropolitan East Referenced KMP/E/CID/06/254/2024 regarding loss of \$1,600,000,000\$.
 - The company discovered that he had been involved in f causing the loss of \$UGX\$. 2,022,312,313 between December 2021 and June 2022. However, when he was told to account for that money, he decided to abandon his

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duties by switching off his phone. He is on the run and the Police is looking for him to answer the said allegations.

- g) When the company got to know that Mr. Kanyerezi Ronald was involved in all these unlawful transactions. The company decided to remove him from the position of Chief Executive Officer.
- h) Business has been hindered since Kanyerezi went missing. The company cannot do any transaction if this issue is not rectified and the only way of rectifying it is to get a Court Order reverting the shares to Dr. Ben Mugasha.

Representation

The Applicant was represented by Katumba & Co. Advocates 4. /Legal Consultants.

Resolution

- The issue for resolution is whether the shares of Ronald \$5.\$ Kanyerezi Mark Oliver should revert to Dr. Ben Mugasha, the majority shareholder in the Company. The Applicant filed written submissions which I have taken into account in resolving this matter.
- 6. Under section 119 of the Companies Act, Cap. 106, a company shall keep a register of its members. Under Section 125 of the Companies Act, any member of the company or the company may apply to court to rectify the register on specific grounds. It provides as follows:

Power of court to rectify register

\$(1)\$ Where—

- (a) the name of a person is without sufficient cause entered in or omitted from the register of members of a company; or

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Page 3 of 6

- (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member, the person aggrieved or any member of the company or the company may apply to the court for rectification of the register.
- (2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.
- 7. According to Halsbury's Laws of England 4th Edition at pages 301-302, the jurisdiction of the court under a provision in the UK's Companies Act that is similar to section 125 of the Companies Act is not limited to cases where a name has been entered improperly but extends to cases where a name stands on the register without sufficient cause.
- 8. Dr. Ben Mugasha in his affidavit in support of the application stated that Ronald Kanyerezi is untraceable. He stated that he failed to reach him through his known phone numbers and went a step further to engage his family members who confirmed to him that he left Uganda for "greener pastures". The deponent also attached a letter from the Criminal Investigations Department of the Uganda Police dated 21st October 2024 stating that investigations are ongoing against Mr. Kanyerezi and that he is still at large.

- The Companies Act is silent on how to deal with shareholders 9. who are untraceable. In the Tanzanian High Court case of Nyanza Mines (Tanganyika) Limited versus The Registrar of Companies and Bridge of Balgie Limited (Miscellaneous Civil Application No. 684 of 2019), it was held that "...silence of the law on the remedy to cure inconveniences created by absence of untraceable shareholders is not an immunity of their inaction.

The Courts of law as fountain of justice have to step in and give a proper solution while protecting interests of all shareholders and wellbeing of the Company itself."

- 10. In the case of **Uganda Baati Limited Company Cause No. 0023 of 2024**, Ocaya J addressed a similar situation the learned Judge held that it is trite law and a general principle of company law that once a member or an officer of a company disappears and can no longer be traced, it is reasonable for the Court to allow available members and, or officers to conduct the affairs of the company as they deem fit to further the company's objectives.
- 11. Dr. Ben Mugasha in his affidavits in support of this application stated that the operations of the company have been hindered. I noted that in the case of **Uganda Baati Limited** (supra), it was stated that the Courts allow rectification of the register to allow the company to keep carrying on its business and its smooth running that would otherwise be hindered by the absence of shareholders.
- 12. Shares being property, it is important to also protect the interests of the shareholders. The Courts have to balance the interests of the untraceable shareholder and the interests of the other shareholders and the company. I find that in order to allow continuity of the affairs of the company Mr. Kanyerezi should be removed from the list of shareholders.
- 13. However, while the Applicant prayed that the shares of Mr. Kanyerezi revert to Dr. Mugasha, the Court has a responsibility to protect Mr. Kanyerezi's interests. Therefore, the said shares shall revert to the company and be held in trust for him until such time as he claims them. If after 3 years, they have not been claimed, the shares may be sold to an interested person. How-

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ever, the sale shall be after the valuation of the shares by a qualified person and publication of a notice of sale in a newspaper of wide circulation.

- 14. In conclusion, it is ordered as follows:
- a) The Registrar of Companies is directed to rectify the register to remove Ronald Kanyerezi Mark Oliver from the Register.
- b) Ronald Kanyerezi's 3,6000 shares revert to the company and be held in trust for him until they are claimed. Any dividends declared during that period shall also be held in trust for him.

- c) In the event that the shares remain unclaimed for 3 years, the company will be at liberty to sell them to an interested buyer. The sale shall be after the valuation of the shares by a qualified person and publication of a notice of sale in a newspaper of wide circulation.

Dated this 25th day of February 2025

Patricia Kahigi Asiimwe Judge Delivered on ECCMIS

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