

UGANDA / JUDGMENT

IN RE Uganda Clays Limited (COMPANY CAUSE NO. 16 OF 2020) [2020] UGHCCD 187 (17 August 2020) [2020] UGHCCD 187

COURT

HC: Civil Division (Uganda)

BEFORE

Musa Ssekaana, J

CASE / FILE NUMBER

COMPANY CAUSE NO. 16 OF 2020

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

COMPANY CAUSE NO. 16 OF 2020

IN THE MATTER OF THE COMPANIES ACT 2012 AND

IN THE MATTER OF UGANDA CLAYS LIMITED

AND

IN THE MATTER OF AN APPLICATION BY MARION ADENGO MUYOBO

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application is brought under sections 142 of the Companies Act and Order 38 r 6(h) of the Civil Procedure Rules.

The applicant was represented by *Counsel Mathias Nalyanya and Kenneth Engoru.*

The applicant is seeking orders that;

- 1. *The Uganda Clays Limited* is granted leave to convene and conduct the Annual General Meeting for the year ended 31st December 2019 by electronic means subject to obtaining a prior no-objection from Uganda Securities Exchange and complying with all applicable notices issued under the Companies Act, the Uganda Securities Exchange Listing Rules 2003 and any other applicable law.
- 2. The costs of this application be provided for.

The main grounds for this application are;

- 1. Uganda Clays Limited is a public company listed on the Main Investment Segment of the Uganda Securities Exchange. The Company has approximately 2,800 members, both local and foreign.
- 2. The company was incorporated with liability on the 10th July 1950 and was listed on Uganda Securities Exchange on the 18th day of January, 2000.
- 3. The applicant is a member of the company with shareholder number 0001292 holding 453,800 ordinary shares.
- 4. It is a requirement for the company to convene an Annual General Meeting in respect of every concluded financial year in accordance with the Company's Articles of Association, Companies Act 2012, the Uganda Securities Exchange Listing Rules 2003 and Capital Markets Corporate Governance Guidelines 2003.
- 5. The Company's Articles of Association require that any Annual General Meeting of the Company must be physically convened with a quorum being members holding at least 45% of the issued shares of the Company present in person or by proxy.
- 6. It is currently impractical to convene a Meeting of the company in the usual manner owing to the various restrictive measures imposed by the Government of Uganda under the Public Health Act, Cap. 281, to combat the spread of the novel corona virus disease [Covid-19] in Uganda. Covid-19 was declared a pandemic by the World Health Organisation on 11th March 2020 and a notifiable health emergency in Uganda by the Minister of Health on 17th March 2020.
- 7. The measures imposed by the Government of Uganda to control the spread of Corona virus include a ban on public meetings, and the effect of this measure is that members of the company cannot convene in person at a designated venue to attend the business ordinarily conducted at the Company's Annual General Meetings.
- 8. It is essential that the company convenes the Annual General Meeting for the year ended 31st December 2019 soon so as to comply with the statutory requirement for the company to hold an annual general meeting of members. It is also essential for the Annual General Meeting to take place soon so that members of the company can consider and approve resolutions that are reserved for the shareholders in a general meeting.

- 9. It is appropriate for the Company to be granted leave of Court to convene and hold the Annual General Meeting by electronic means by which all eligible members shall attend by electronic means (such as tele/video conferencing) or virtual platforms provided by the Company.
- 10. To ensure that the interests of all the members of the Company are fully protected, the Company should submit a hybrid Annual General Meeting plan to the Uganda Securities Exchange and obtain a noobjection in accordance with guidelines issued by the Uganda Securities Exchange

This court entertained the matter and allowed the written submissions of counsel for the applicant. The applicant's counsel written submissions are based on the application and the supporting affidavit by *Mrs Marion Adengo Muyobo* and this Court has considered them in arriving at this decision.

This court under section 33 of the Judicature Act is empowered to give any remedies sought in a matter if properly brought before the court. It provides;

The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to the cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters are avoided.

The applicant's problem or dilemma in this matter is in simple terms; it is currently impractical to convene a meeting of the company in the usual manner owing to the various restrictive measures imposed by the government of Uganda under the Public Health Act, Cap 281, to combat the spread of Corona virus [(Covid-19)].

The measures imposed by the Government of Uganda to control the spread of the corona virus include a ban on public meetings, and the effect of this measure is that the members of the company cannot convene in-person at a designated venue to attend to business ordinarily conducted in the Company's Annual General Meetings.

The court must be satisfied by the capacity of the applicant to bring such an application, then the obligation of the company to hold such a meeting and the impracticability of holding a meeting.

The **Companies Act** envisages such situations and is ably provided for under section 142 which provides as follows;

(1) Where for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or conduct the meeting of the company in the manner prescribed by the articles of this Act, the court may of its own motion or on application of any director of the company or of any member of the company who would be entitled to vote at the meeting order a meeting of the company be called, held and conducted in the manner the court thinks fit.

The purpose of the above provision is to enable the court to give directions to overcome practical difficulties so that the company's affairs can be conducted where they might otherwise be stymied. See *Ghalib Hussain & Abdul Sattar v Wycombe Islamic Mission and Mosque Trust Limited & Tasawar Iqbal [2011] EWHC 971(Ch)*

The corporate law should allow the directors or shareholders to meet in any manner in which all members can communicate with one another rather than physically meet to 'hear each other'. Therefore the word communicate at meetings should always be flexible to allow online meetings of a corporation.

The applicant as a shareholder and director has set out the reasons and grounds why the company is unable to hold a meeting in the manner provided under the Articles of Association and the justification for such a meeting; to enable the company operate smoothly and convene the necessary company meetings and this court is satisfied with the said reasons and grounds.

In addition, the Acting Managing Director a one-Jacqueline Kiwanuka has deposed an affidavit confirming to this court that the company does not oppose or object to this application to convene a meeting electronically.

Under the current circumstances and legal regime, the company cannot convene a physical meeting due to its large membership of about 2,800. **The Public Health (Control of COVID-19) Rules 2020** banned public gatherings and meetings.

In addition, there is a prohibition of entry into Uganda under the **Public Health (Prohibition of Entry into Uganda) Order, 2020** and it provides; *The entry into Uganda by any person and the introduction into Uganda any animal, article or thing at or through any of the border posts of Uganda is with effect from Monday 23rd March 2020, prohibited.* The members who may be out of the country cannot come into Uganda.

The outbreak of corona disease (Covid -19) has crippled free movement and meetings. The government has issued guidelines, directives or Statutory Instruments to stop any gatherings and the best public health practice is to avoid unnecessary physical meetings of companies.

Virtual general meetings are gaining wider acceptance in Uganda and the World at large in light of the Covid-19 pandemic where listed companies and some private companies have sought order to conduct virtual meetings. In this case, it is impracticable to convene a meeting in the manner provided and it is equally impracticable to conduct the meeting in a manner required by law and articles of Association.

In the circumstances, *Uganda Clays Limited* is granted leave to convene and conduct the Annual General Meeting for the year ended 31st December 2019 by electronic means subject to obtaining a prior no-objection from Uganda Securities Exchange and complying with all applicable notices issued under the Companies Act, the Uganda Securities Exchange Listing Rules 2003 and any other applicable law.

The costs of this application are to be met by the company.

It is so ordered.

Obiter dictum

Virtual general meetings are gaining wider acceptance in Uganda and the World at large in light of the Covid-19 pandemic where listed companies and some private companies have sought order to conduct virtual meetings.

The Companies' Articles of Association should be amended to allow the flexibility of conducting Virtual meetings. There ought to be an express permissive provision for such alternative mode of convening and conducting meeting.

The law should allow the holding of a general meeting or board meetings through the use of modern electronic communications, providing that nothing is to be taken as precluding the holding of meetings "in such a way that persons who are not present together at the same place may by electronic means attend and speak and vote at it".

The law should allow contemporaneous participation in meetings (via Telephone or Video Conferencing) rather than sequential communication (e.g service of emails).

Companies should consider contingency measures and whether a hybrid Annual General Meeting, being a combination of a physical meeting (with limited attendees) and Virtual meeting, is possible as an alternative to complete Virtual Annual General Meeting.

No one knows how long the pandemic will last, it's after effects and social distancing guidelines will last hindering physical general meetings. It is therefore imperative for Ugandan Listed Companies and private companies to look into and embrace a fully virtual general meeting or a hybrid in these difficult times in order to avoid potential delay in their business transactions and operations.

The Government of Uganda should make necessary amendments to the law to allow virtual meetings or a hybrid of Virtual and physical meeting in order to stop the companies from making applications to court which is costly and time consuming.

Dated, signed and delivered by email and WhatsApp at Kampala this 17th day of August 2020

SSEKAANA MUSA JUDGE

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