

UGANDA / JUDGMENT

IN RE Uganda Institute of Banking and Financial Services (MISCELLANEOUS CAUSE NO. 120 OF 2020) [2020] UGHCCD 224 (22 June 2020) [2020] UGHCCD 224

COURT

HC: Civil Division (Uganda)

BEFORE

Musa Ssekaana, J

CASE / FILE NUMBER

MISCELLANEOUS CAUSE NO. 120 OF 2020

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 120 OF 2020

IN THE MATTER OF THE COMPANIES ACT 2012 AND

IN THE MATTER OF UGANDA INSTITUTE OF BANKING AND FINANCIAL SERVICES

AND

IN THE MATTER OF AN APPLICATION BY MATHIAS KATAMBA

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

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

The applicant was represented by JAMES ZEERE.

The applicant is seeking orders that;

- 1. *The Uganda Institute of Banking and Financial Services* is granted leave to convene and conduct the Annual General Meeting for the year ended 31st December 2019 by electronic means.
- 2. The costs of this application be provided for.

The main grounds for this application are;

- 1. That the applicant is a director of the Uganda Institute of Banking and Financial Services and the current Chair of the company's Board of Directors.
- 2. The Company is a company limited by guarantee and has approximately 870 members both corporate and individual.
- 3. 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 registered on 11th July 2013. The Company's Articles of Association require that any Annual General Meeting of the company shall be held at a place, time and date to be determined by the Board with a quorum of not less than 40% of the paid-up members present. The company's Articles of Association do not authorize the holding of an Annual General Meeting by electronic means.
- 4. It is currently impractical to convene a physical Meeting of the company in the usual manner and in accordance with the manner prescribed in the Articles of Association, owing to the various restrictive measures implemented by the Government of Uganda to combat the spread of the novel corona virus disease [Covid-19]. 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.
- 5. The public health measures implemented by the Government of Uganda include a blanket ban on public meetings. 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.
- 6. It is essential that the company convenes the Annual General Meeting for the year ended 31st December 2019 to ensure that the members of

the company can consider and approve resolutions that are important for the governance, management and operations of the Company asset out in the Company's Articles of Association and the Companies Act 2012.

- 7. It is appropriate for the Company to be granted leave of court to convene and hold the Annual General Meeting by Electronic means (for example via a combined online/web broadcast and mobile phone platform) or other virtual platforms provided by the Company, by which all eligible members will attend, participate and vote electronically.

This court entertained the matter and heard the submissions of counsel for the applicant. The applicant's counsel oral submissions based on the application and the supporting affidavit by Mathias Katamba 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; she cannot hold a meeting to direct the affairs of the company since the government banned all public meetings in order to combat the spread of Corona virus [(Covid-19)].

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 applicant as a 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 company Secretary through a one-Alice Nalwoga has deposed an affidavit confirming to this court that the company does not oppose or object to this application to convene a meeting electronically. The Company's Board of Directors convened and passed a resolution that the Annual general Meeting should be held on or before 20th July 2020 by electronic means.

Under the current circumstances and legal regime, the company cannot convene a physical meeting due to its large membership of about 5000. **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 foreign members who may be out of the country cannot come into Uganda.

In the circumstances, **The Uganda Institute of Banking and Financial Services** is granted leave to convene and conduct the Annual General Meeting for the year ended 31st December 2019 by electronic means on or before 20th July 2020.

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

It is so ordered.

Dated, signed and delivered by email and whatsapp at Kampala this 22nd day of June 2020

SSEKAANA MUSA JUDGE

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