

UGANDA / JUDGMENT

In the matter of M/s Equator Growers (Company Cause 5 of 1992)

[1992] UGHC 33 (25 September 1992)

[1992] UGHC 33

COURT
High Court of Uganda

BEFORE
Kireju, J

CASE / FILE NUMBER
Company Cause 5 of 1992

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

. Interior and of va

The Hon Mr. Justice Egonda - Ntende
Och fran Pegister. THE REPUBLIC OF
UGANDA
Lech from Pfer. THE REPUBLIC OF UGANDA
Company Register. THE
REPUBLIC OF UGANDA AT EMILFALA
Company IN THE MATTER OF THE COMPANIES ACT
(CAP 85)

AKD

IN THE MATTER OF M/S EQUATOR GROWERS

AND

IN THE MATTER OF AN APPLIC I ON BY RRANCIS X KAYEMBA LOKE: The Honorable Mrs.
Justice M. Kirely

RVLING.

This is an epplication brought by the applicant Francis X. Kayemba under S.118 of the Companies Act, Order \$-114\$ 34 A r.4, Or. 48 rr.1 2 and 3 of Civil Procedure Rules and S. 101 of Civil Procedure Act. The application is by 1923 s ain il Notice of Motion and seek an order of this court that and as do a MERA the company Register in respect of M/S Equator Growers, a work ma boat a mores Uganda Limited be rectified by re-instating the name of the With gainers VIDO applicant as a shareholder of 25 ordinary, shares of the are the at bottomed \$\tau \rightarrow f(\tau)\$ company. And that notice of such rectification be given of to to the Registrar of Companies, ordering him to effect the

said rectification in the companies Registry. The grounds of the application are set out in the its prifit 101100 affidavit of Francis X. Kayemba dated 19/5/1992. distant mod At the hearing of this application the applicant was SALL OF BASINGS represented by Mr. Lameck Mukasa, learned counsel and the respondent was represented by Mr. E. K. Ssekandi learned counsel. ACTIVE D SOM 20 Counsel for the applicant submitted that the main grounds of application were stated in the affidavit, in par graph 2 it of 05.23 00 was deponed that the applicant was a shareholder in the saiding company and was a holder of 15 paid up ordinary shares which were allocated to him and paid for in full on 10/5/1985.

$\mathcal{L}_{\bullet\bullet\bullet\bullet}$

\$..../2\$

He also deponed to have inherited 10 paid up ordinary shares on the death of his late father. That by a lett r dated 21/12/1987, the secretary of the Board of Directors or the company informed the applicant that the Board meeting had been convened on 10/12/87 and resolved to terminate his mulbership in the company. The letter is annexed to the affidavit and marked 'A'. By his letter dated 2/1/1988, annex. 'B' to the affidevit, the applicant objected to the alleged transmission as being unlawful.

The applicant, averred that although he was director he was not invited to attend the meeting held on \$10/12/87\$. and since that meeting he has never been invited to ablend any of the shareholders meetings. All his efforts to have his shares reinstated on the company's shareholders register have since failed, he referred to a letter marked Annex. 'C' written by his lawyers to the company seeking his shares to be reinstated. The applicant further deponed in para 10 $\mathcal{F} \cap \mathcal{B} \subseteq \mathbb{C} \cup \mathbb{C}$ of the affidavit that the company has not filed any annual return showing the list of shareholders with the Registrar of Companies. Counsel submitted that if the r gister is not rectified the applicant's interests will continue to be prejudice applicants membership could not just be terminated, that he could have forefeited his shares if he was not paid up. he referred to paragraphs 28,29/30 of the Articles of Association. Counsel submitted that as the applicant was a fully paid up shareholder the said par graphs did not apply to him Counsel furth-r contended that failure to give the applicant notice of the meeting invalidated the meeting as it was done wilfully, he referred court to the case of Younger Vs. Ladies Imperial Club /1920/2KB 523 in support of his contention

\$....5\$

Counsel submitted that there was enough avid no in the letter of the secretary to the Board addressed to who applicant to prove that the applicant was a shareholder in the company and his membership had been terminated. Counsel or γ d that the orders proyed for be ranted to the applicant.

$\overline{3}$

Mr. Ssekandi, counsel for the respondent submitted that the application should be dismissed for lack of evidence. The application was against an incorporated company in Uganda and all documents affecting the company should have been brought before court namely the memorandum and article of Association rather than just assuming that the company exists. Counsel submitted that the applicant has not adduced evidence of his shares, namely the share certificate, counted referred court to sections 75,76,82,83 & 84 of the companies Act in . . regard. Counsel submitted that no receipts were produced for which he paid for his shares of grant of probate in respect of Stance dec shares allegedly inherited from his father. If not spill on

Counsel further submitted that the applicant was director of the company but he is accusing the company of not doing its obligations under the Companies Act, counsel contended that the applicant had come to court with unclean, hands as he was also flouting the law. The applicant did not obtain any evidence from the registrar of companies to support his allegations against the company. Counsel submitted that it was not clear under which part of S.118 of the companies Act the application is brought, that/application was vague. Counsel concluded by submitting that the application should be dismissed with costs to the respondent. Discussed to the respondent.

After listening to submissions by both counsel and after perusing the Notice of Motion together with and supporting affidavit my task is to decide whether according

\$...14\$

to the evidence before court, an order should be made re-instating the name of the applicant as a shareholder of 25 ordinary shares in the company. Although the application did not specify under what subsection of section 118 of the Companies' act it was brought I am of the opinion that it was brought under λ 118(i)(a) which states as follows;to advantage on "asifying and

"\$ 1 If (a) the name of any person is, without sufficient cause entered in or omitted from the loan in 1995 register of members of a company's or, the matter with

(b) $\frac{1}{2}$ and $\frac{1}{2}$ and $\frac{1}{2}$ and $\frac{1}{2}$ and $\frac{1}{2}$ and $\frac{1}{2}$ the person aggrieved or any member of the company, or the company may apply to court for the second $\frac{1}{2}$ rectification of the register" the at hoadw to a mage call to

However, before the court can consider the merits of usda the application it has to first satisfy itself that the odredan (topšta): Li apparent is a shareholder in the said company and he has to state how many shares he has and whether they are paid. σ . him enormal up shares or not. The applicant in this case should have produced a share certificate in respect of his shares which would have revealed to court that the applicant 327439 was at the date of issue of certificate the holder of α certain number of shares and secondly the extent to which they were paid up. The Memorandum and Articles of Association were also not attached to the application. Annex 'A' to the that concerns affidavit which was referred to by counsel for the applicant and Itim Posoidbl as proof of the applicant shareholding in the company, is general and does not tell this court whether the . 1537.5 Me. . In., is worded add aming an

$\mathcal{M} \cong \mathcal{M} \oplus \mathcal{M} \oplus \mathcal{M}$

$\$^{**}\$, 5$

applicant had paid up shares or not and the number of shares is not stated.

The applicant did not produce any evidence from the Registrar of companies to show the position in the company register. I have therefore found that before I can go into the merits of this application I have to first be satisfied that the applicant is a shareholder in the company I have to be satisfied as to what type of shares he holds and how many. The burden of providing this evidence to court is on the applicant and he has not discharged this responsibility.

I have therefore refused to grant this application due to lack of sufficient evidence. However the applicant is not barred from bringing fresh application[®]

the application is accordingly dismissed with costs to the respondent.

J ^U ^D ^G E. 25/9/1992. M. KIREJU /

26⁹⁹²

Mr. L. Mukasa - for the applicant Mr. K. Ssekandi - for the Respondent Mr. Oburu Court Clerk.
Ruling delivered before the above.

44. KIREJU ' JUDGE.

25/9/1992

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/1992/33/eng@1992-09-25>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/in-the-v-matter-of-unknown-topic-unknown-court-1992--6a3ea4d83b1caa91297e528c>

Prepared on 11 October 2026 · Esheria