

UGANDA / JUDGMENT

In the matter of an application by Raymond K. Otika (a member and director of ODU Group Limited) (Company Cause No. 6 of 2025) [2025] UGHCCD 87 (30 June 2025)

[2025] UGHCCD 87

COURT

HC: Civil Division (Uganda)

BEFORE

Simon Peter M. Kinobe, J

CASE / FILE NUMBER

Company Cause No. 6 of 2025

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THE REPUBLIC OF UGANDA

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

COMPANY CAUSE NO. 0006 OF 2025

IN THE MATTER OF ODU GROUP LIMITED

AND

IN THE MATTER OF AN APPLICATION BY RAYMOND K. OTIKA (A MEMBER AND DIRECTOR OF ODU GROUP LTD)

BEFORE: HON. JUSTICE SIMON PETER M. KINOBE

RULING

BACKGROUND:

The Applicant brought this application under Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act Cap. 282, Order 38 Rule 6 of the Civil Procedure Rules S. I 71-1, for orders that;

- 1. Raymond K. Otika be granted leave to call, hold and conduct an Extra Ordinary General Meeting of the company without the requisite quorum and to pass a resolution appointing directors and secretary of ODU GROUP LTD.
- 2. The costs of the application be provided for.

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The grounds of the application are specifically set out in the affidavit of the applicant but briefly are that;

- a) The applicant is a director and member of M/s Odu Group Ltd which was incorporated on 13th February 1987, in accordance with the laws of Uganda.
- b) The company is constituted by three members to wit; the applicant who holds 340 shares, Denis Musisi who holds 340 shares and Ingwersen Ult also holding 340 shares.
- c) The three shareholders are also members of "the Holy Spirit Association for the unification of the World Christianity Church" Community.
- d) Denis Musisi and Ingwersen Ult have since passed on and to date there are no administrators that have been appointed for their respective estates.
- e) He sought the assistance of the only son of the late Musisi, Edward Musisi who is on mobile number 0705202352, to secure the deceased's death certificate and also asked him to process letters of administration for the deceased's estate but he failed.
- f) He confirms that Denis Musisi died and he personally assisted in transporting him to Nsambya hospital before his death and that he transported his body to Mulago hospital where his post mortem was conducted and finally to Ishaka for his burial.
- g) He believes that the only son of the late Denis Musisi did not cooperate because he did not see a personal benefit for himself.
- h) Odu Group Ltd was incorporated with the intention of assisting the church in carrying out economic activities for the benefit of the church community as a whole.

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- i) Pursuant to the memorandum and articles of association of the company, the quorum is fixed at two members for purposes of transacting any business in a General Meeting of the company.
- j) It is impractical to hold a General Meeting as a sole member of the company, in accordance with the articles of association of the company.
- k) No General Meetings of the company have been held since the passing of the other two members, hence crippling the running of affairs of the company.

- 1) It is just and fair that this honorable court be pleased to grant him leave to hold a one member's Extra Ordinary General meeting of the company, so as to appoint new directors, secure the interests of the deceased member's respective estates and resolve other related matters.

REPRESENTATION

The applicant was represented by M/s Kagsa Advocates.

ISSUE FOR DETERMINATION

Whether, in the circumstances of this case, the Applicant is entitled to the grant of an order granting leave to call, hold, and conduct a members' meeting and pass resolutions.

DETERMINATION

I have had the benefit of reading the submissions for the applicant. I also had the opportunity of interacting with the applicant for purposes of identification and clarity on the facts leading to this application. I also take note of the fact that two out of three of the shareholders have passed on leaving the applicant as a sole shareholder. I also take cognizance of the fact that a company makes decision through its resolutions and the

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company may not function properly in the absence of the other shareholders. In this particular application the death of Denis Musisi and Ingwersen Ult, who are two out of the three shareholders has made it impossible to call a shareholder's meeting in the manner in which such meetings of the company may be called or to conduct a meeting in the manner prescribed by the company's constitution. I am also cognizant of Article 10 of the Company's Articles of Association which provides that the quorum for general meetings shall be two members. I am also cognizant of the assertion that the proposed meeting aims to appoint new directors, secure the interests of the deceased member's respective estates and resolve other related matters, which are critical actions for the company's growth and stability. For these reasons my decision is as herein below.

Section 138(1) of the Companies Act cap 106 provides that;

"*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 or this Act, the court may, of its own motion or on the 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 to be called, held and conducted in the manner the court thinks fit."*

Further, subsection 2 and 3 provide that;

"Where an order is made under this section the court may give such ancillary or consequential directions as it thinks expedient and it is declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be taken to constitute a meeting.

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(3)a meeting called, held and conducted in accordance with an order under subsection (1) shall for all purposes be taken to be a meeting of the company duly called, held and concluded

This provision gives court jurisdiction to make orders or directions to overcome difficulties faced by a company, so that its affairs can be conducted where they might otherwise be stymied. *(See Graceland Gardens Limited Company Cause No. 0016 of 2023)*.

In the present case, the company has three shareholders, namely Denis Musisi, Ingwersen Ult and the applicant each holding 340 shares in the company. Denis Musisi and Ingwersen Ult have both since passed away. The death certificate of Ingwersen Ult indicates that he was a German citizen and that he passed on February 4th 1994 at Bern Hospital. The applicant states that he has encouraged the son of the late Denis Musisi to obtain a death certificate and to apply for letters of administration to no avail. This he states maintaining that he was the one who assisted in transporting him to hospital before his death, transporting his body to the mortuary and eventually to his final resting place in Ishaka. St. Francis Hospital Nsambya wrote to this court upon orders of court confirming that Denis Musisi passed away on 21st April 1990. The death of Denis Musisi and Ingwersen Ult, has rendered it impracticable for the applicant as a sole shareholder, to convene a one member's Extra Ordinary General Meeting of the company in accordance with the company's constitution.

This in my opinion creates a situation warranting the issuance of an order pursuant to *Section 138 of the Companies Act, Cap 106.* In the circumstances it would also be in the interests of justice and equitable to issue the said order (See, Section 98 of the Civil

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Procedure Act Cap 282, and Section 37 of the Judicature Act Cap 16 on the inherent power of this court).

Once shareholders of a company pass away, it is reasonable for the Court to allow the surviving member and, or officer to conduct the affairs of the company as they deem fit to further the company's objectives. (*See: In the Matter of Kasita Estate Ltd (1982) HCB 107 as cited In the Matter of Uganda Baati Limited and In the Matter of an Application to Rectify the Company Register by Uganda Baati Limited (Company Cause 023 of 2024)*

In *Emmaus Foundation Investment Uganda Limited v Giuseppe Giammona Company Cause No.2 of 2018, Emmaus Foundation Limited & Others V Emmaus foundation & Others (Miscellaneous Cause No. 74 of 2020) 2021 UGHCCD 23 (30 April 2021) and In the Matter of an Application by Patrick Batenze and In the Matter of Liberation Finance Community Limited Company Cause No. 1 of 2025)*. Court granted the applicant, who was the only member left in the company, leave to conduct a general meeting of the company in the absence of the second member of the company.

I therefore grant the orders and prayers sought in this application with no orders as to costs.

I so order

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SIMON PETER M. KINOBE JUDGE

DATE: 30th June 2025

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