

UGANDA / JUDGMENT

Mss Xsabo Power Ltd v Uganda Registration Services Bureau & Registrar General/ Official Receiver (Miscellaneous Cause 4 of 2024) [2025] UGHC 550 (15 July 2025)

[2025] UGHC 550

COURT

High Court of Uganda

BEFORE

Oyuko Anthony Ojok, J

CASE / FILE NUMBER

Miscellaneous Cause 4 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

MISCELLANEOUS CAUSE NO. 04 OF 2024

..... MSS XSABO POWER LTD.....

VERSUS

1. UGANDA REGISTRATION SERVICES BUREAU

2. REGISTRAR GENERAL/OFFICIAL RECEIVER. RESPONDENTS

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK

Ruling

Brief background:

It is the applicant's case that it is a Ugandan Company operating and owning a 20MW pilot solar PV power park in Kabulasoke, Gomba District. It allotted 96 shares of UGX 1,000,000/= each to Great Lakes Energy Company N. V. pursuant to an investment agreement, a shareholder's agreement and a call on shares option agreement. However, Greta Lakes Energy Company N. V. refused to pay for the shares despite a call on them thereby forfeiting these shares.

The Great Lakes Energy Company N. V. challenged the applicant's decision vide Company Petition No. 5 of 2020 filed with the Registrar of Companies. The Registrar of Companies, Solomon Muliisa, heard the matter, received by statutory declarations, cross-examination, re-examination and the parties filed written submissions before him. In a ruling dated the 8th of November, 2024, which was duly delivered to the parties, the Assistant Registrar of Companies dismissed the petition.

On the 13th of November, 2024, in a letter dated the 12th November, 2024, the 25 applicant's lawyers received a communication from the Registrar General communicating her willingness to recall the decision of Solomon Muliisa and that the parties would be notified of a second decision once ready.

On 15th November, 2024, the applicant got an administrative interim order from this Honourable court maintaining the status quo, lasting up to 18th November, 30 2024 and the same was served onto the respondents.

On the same day, the applicant also served onto the respondents, the motion in Miscellaneous Application No. 40 of 2024, praying for an interim injunction.

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On the 18th November, 2024 at 9:00am, the respondents were in court pursuant to an effective service and summarily agreed to a consent injunctive order until the final determination of the main cause.

However, a second ruling written by the 2nd respondent was delivered on the 18th November, 2024 at 9:12am despite there being an injunctive order maintaining $\mathbb{S}$ the status quo.

On the 19th November, 2024, the respondents wrote to the applicant's lawyer that they had enforced the second ruling of 18th November, 2024 at 9:12 am despite the presence of an injunctive order maintaining the status quo.

- It is the respondent's case on the other hand that upon submission of the ruling 10 in Company Petition No. 5 of 2020 by the Assistant Registrar of Companies for clearance, the 2nd respondent advised the Assistant Registrar of Companies to review the awards from the London Court of Arbitration and all documents available on record in order to ensure that the question of payment for shares
- was well evaluated. However, contrary to the directive of the 2nd respondent, the 15 Assistant Registrar went ahead and issued what he had presented as a draft ruling on 8th November, 2024.

That the said action of the Assistant Registrar of Companies prompted the Registrar General/Registrar of Companies to recall the ruling and communicated this decision to the parties in a letter dated 12th November, 2024. Resultantly, the Registrar General/Registrar of Companies took over the matter, relied on the pleadings, evidence and submissions of the parties on record and issued a ruling on 15th November, 2024.

The applicant in this case maintains that the respondents had no power to make the 2nd ruling and that even if they had such powers, the same powers could not be exercised during the lifetime of an injunction. The applicants also maintain that the respondents' letter of 19th November, 2024 that was written after the consent injunctive order maintaining the status quo but allegedly enforcing the second ruling, was equally irrational, illegal and procedurally improper. Hence the instant application. 30

The application:

This application is brought by Notice of Motion under Sections 40 and 42 of the Judicature Act, Rules 3, 6, and 7 of the Judicature (Judicial Review) Rules and Order 52 Rules 1, 2 and 3 of Civil Procedure Rules against the respondents seeking orders that;

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- a. A declaration that on the 08th of November, 2014, the Assistant Registrar of Companies of the 1st Respondent (Muliisa Solomon) delivered a ruling in Company Petition No. 5 of 2020 that is effective and not subject to a recall.
- b. An order of certiorari to quash the decision by the 1st and 2nd Respondents dated 12th November, 2024 to recall the ruling made by the Assistant Registrar of Companies (Muliisa Solomon) on 8th November, 2024 in Company Petition No. 5 of 2020.
- c. An order of prohibition to prohibit the 1st and 2nd respondents from opening the proceedings or making a new decision in Company Petition No. 5 of 2020.
- d. A permanent injunction to restrain the 1st and 2nd respondents from reopening the proceedings or making a new decision in Company Petition No. 5 of 2020.
- e. A declaration that the 2nd ruling written by the 2nd respondent and delivered by email on the 18th November, 2024 at 09:12am during the pendency of this suit, is null, void and ineffective.
- f. An order of certiorari be issued to quash the 2nd ruling written by the 2nd respondent and delivered by email on the 18th November, 2024 at 09:12am during the pendency of this suit.
- g. An order of certiorari be issued to quash the alleged implementation of the orders in the 2nd ruling written by the 2nd respondent and delivered by email on the 18th November, 2024 at 9:12am during the pendency of this suit.

- h. An order of prohibition to bar the respondents from further implementation of the ruling and orders in the 2nd ruling written by the 2nd respondent and delivered by email on the 18th November, 2024, at 09:12am during the pendency of this suit.
- i. A permanent injunction to restrain the respondents from further implementation of the ruling and orders in the 2nd ruling written by the 2nd respondent and delivered by email on 18th November, 2024 at 9:12am during the pendency of this suit.
- j. An order of mandamus to compel the respondents to honour and register documents already submitted by the applicant and those that will be submitted thereafter.
- k. General and punitive damages to the applicant.
- l. Costs of this application.

This application is supported by the affidavits sworn by Bernard Okello, the General Manager of the applicant and an additional affidavit sworn by Samuel Odongo Oling whose grounds briefly are that;

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- a. The applicant is a Ugandan Company which owns and operates 20 MW pilot Solar PV Power park in Kabulasoke, Gomba District.
- b. The applicant allotted 96 shares of UGX 1,000,000/ \$=\$ each to Great Lakes Energy Company N. V. pursuant to an investment agreement, a shareholders' agreement, and a call on shares option agreement.
- c. Great lakes Company N. V. failed to pay for the value of the shares allotted to it.
- d. The applicant made a call on shares which Great Lakes Energy Company N. V. did not comply with.
- e. The applicant forfeited the 96 shares and re-allotted them.
- f. Great Lakes Energy Company N. V challenged the Applicant's decision vide Company Petition No. 5 of 2020 before the Registrar of Companies.
- g. The Assistant Registrar of Companies of the 1st respondent (Muliisa Solomon) heard the matter wherein, evidence was adduced by statutory declarations, cross-examination and re-examination of the parties' witnesses, and legal counsel for the parties made submissions.
- h. In a ruling dated 8th November, 2024, which was duly delivered to the parties, the Assistant Registrar of Companies dismissed Great Lakes Energy Company N. V.'S Petition.

- i. In a letter dated 12th November, 2024, the 2nd respondent communicated her decision to recall the Assistant Registrar's decision and informed the parties that they would be notified of a final decision (another decision) once it was ready.
- j. The impugned decision dated 12th November, 2024 is marred by illegality, procedural impropriety and irrationality.
- k. On the 15th November, 2024 the applicant got an administrative interim order from this honourable court maintaining the status quo, lasting up to the end of 18th November, 2024 and was served onto the respondents.
- l. On the same 15th of November, 2024, the applicant also served onto the respondents, the motion in H. C. M. A No. 40 of 2024 that prayed for an interim injunction.
- m. The respondents pursuant to the effective service, fully attended court on the 18th November, 2024 at 9:00 am when they summarily agreed to a consent injunctive order until the final determination of Miscellaneous Cause No. 04 of 2024 pending hearing in this court.
- n. During the lifetime of an injunctive order by this court that maintained the status quo, on the 18th November, 2024 at 9:12am, the respondents in their signature impunity, delivered the 2nd ruling written by the 2nd respondent.

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- o. On the 19th of November, 2024, the respondents physically wrote to the applicant's lawyer that they had enforced the 2nd ruling they had delivered on the 18th of November, 2024 at 9:12am in the glaring presence of an injunction maintaining the status quo.
- p. In breach of their public duty, the respondents have intentionally refused to register documents filed by the applicant.
- q. This matter is amenable to judicial review.

The application is opposed by the respondents through an affidavit in reply and a supplementary affidavit sworn by Mustapher Ntale, the 1st respondent's Director Business Registration and Elly Abaho, a senior Systems Administrator at Uganda Registration Services Bureau respectively. In summary the grounds there in are;

- a. That Company Petition No. 05 of 2020 was filed by Great Lakes Energy Company N. V. before the Registrar of Companies against MSS Xsabo Power limited.
- b. That the applicant sought rectification of the register by expunging resolutions allegedly executed and filed illegally to revoke or forfeit the applicant's 96 shares in MSS Xsabo Power Limited.

- c. The application was heard by the Assistant Registrar of companies Solomon Muliisa on behalf of the Registrar General/Registrar of Companies.
- d. That upon submission of the draft ruling by the Assistant Registrar of clearance, he was advised by the Registrar for Companies General/Registrar of Companies to review the awards from the London Court of Arbitration and all documents available on record in order to ensure that the question of payment for shares is well evaluated.
- e. That however, contrary to the advice of the Registrar General, the Assistant Registrar went ahead and issued what he had presented to the Registrar General as a draft ruling on the 8th November, 2024.
- f. That the 2nd respondent recalled the ruling since it was issued without authority and communicated to the parties in a letter dated 12th November, 2024. The letter was sent to the parties by Mustapher Ntale in an email dated 13th November, 2024 at 7:23am.
- g. The 2nd respondent took over the matter, relied on the pleadings, evidence and submissions of the parties on record and issued a ruling on the 15th November, 2024 which was served upon the parties via email on the same date at 11:07am.
- h. That the respondents were served with the exparte administrative interim order via email dated Friday 15th November, 2024 at 8:00pm. The said email was accessed by the 1st Applicant's Public relations team on Monday

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18th November, 2024 at 1:37pm after the 2nd respondent had already issued her ruling on the 15th November, 2024.

- i. That on the 18th November, 2024, this honourable court issued a consent interim order against the applicants vide Miscellaneous Application No. 04 of 2024 directing the applicants to maintain the status quo and halt the implementation of the decision to recall the ruling made by the Assistant Registrar of Companies on 8th November, 2024 in Company Petition No. 5 of 2020 until the hearing and determination of the Judicial Review Application vide Miscellaneous Cause No. 04 of 2024.
- j. That the said consent interim order was issued after the 2nd respondent had issued her ruling on the 15th November, 2024 and served it onto the parties. And Stella Muheki who appeared for the respondents in the said consent had no instructions.
- k. That the respondents' Officers have no authority to enter into consent judgments/rulings on behalf of Uganda Registration Services Bureau. Consent judgments/rulings are signed by the Chief Executive Officer/Registrar General or someone to whom the Registrar General has delegated that responsibility.

- 1. That the respondent's decisions and actions of recalling the Assistant Registrar's ruling, taking over the matter and issuing a new ruling, were procedurally proper, regular and legal.

An additional affidavit was filed for the applicant sworn by Egesa Ronal Leonard, an expert software engineer, cybersecurity and forensic expert, techpreneur, and consultant who was hired by the applicant to analyze the email communication allegedly sent by Ntale Mustapher to the email address of the applicant's lawyers at Makada & Partners Advocates and Solicitors on the 15th November, 2024. He stated that according to his report there was no email sent by Ntale Mustapher on the 15th November 2024 to amumpenje@yahoo.com and if it was allegedly sent, then it was never received. That the only email with an attachment of a ruling was the one sent on the 18th November, 2024.

Representation:

Counsel Mumpenje Andrew appeared for the applicant while the respondents are represented by the Attorney General's Chambers. Both parties filed their written submissions.

Issues for determination: 35

The applicant framed two issues for determination however, the respondents raised a preliminary objection which was framed into an issue hence raising

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three issues for this court's determination which I will adopt for the ends of justice to be met and these are as follows;

- 1. Whether the application is amenable for judicial review?
- 2. Whether this application raises grounds for judicial review?
- 3. What remedies are available to the parties?

Resolution of issues:

The law:

Article 42 of the Constitution of the Republic of Uganda, 1995 provides that; any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have the right to apply to a court of law in respect of any administrative decision taken against him or her.

Rule 3 of the Judicature (Judicial Review) (Amendment) Rules, 2019 defines **Judicial Review** as;

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"... the process by which the High Court exercises its supervisory jurisdiction over proceedings and decisions of subordinate courts, tribunals and other persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties."

According to Black's Law Dictionary, 11th Edition, Thomson Reuters, 2019, page 1013, Judicial review is defined as; a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional.

Section 36 (1) of the Judicature Act, provides for the power of the High Court to issue orders under judicial review. It provides as follows;

"(1) The High Court may make an order, as the case may be, of-

- (a) Mandamus, requiring any act to be done;
- (b) Prohibition, prohibiting any proceedings or matter; or
- (c) Certiorari, removing any proceedings or matter to the High Court."

Rule 3 (1) and (2) of the Judicature (Judicial Review) Rules 2009, provides that; a party may apply for an order of prohibition, certiorari, declaration and injunction by way of judicial review in appropriate case.

Rule 3A of the Judicature (Judicial Review) (Amendment) Rules, 2019 provides that;

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"Any person who has a direct or sufficient interest in a matter may apply for judicial review."

In the case of *The Managing Director National Social Security Fund and Others v. Uganda Telecom Limited*, Court of Appeal Civil Appeal No. 076 of 2018, it was stated that; judicial review is concerned with the manner of making the decision and not the correctness of the decision, which should be challenged in an appeal or a similar mechanism.

And, in the case of *Pastoli vs. Kabale District Local Government Council and Others* [2008] 2 E. A 300, it was held that;

"In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...

Illegality is when the decision-making authority commits an error of law in the process of taking or making the act...

Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority addressing itself to the facts and the law before it, would have made such a decision....

Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision."

Issue 1: Whether the application is amenable for judicial review?

Counsel for the respondents quoted Rule 7A (1) of the Judicature (Judicial Review) (Amendment) Rules, 2019, which enjoins Courts while considering applications for judicial review to satisfy themselves that;

- (a) The application is amenable for judicial review; 30
- (b) The aggrieved person has exhausted the existing remedies available within the public body or under the law and;
- (c) The matter involves an administrative public body or official among others.

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Counsel went on to submit that the instant application offends the provisions of the above law and that the applicant under Section 291 of the Companies Act and Regulation 33(2) of the Companies (Powers of the Registrar) Regulations, 2016 which provide for the right of a party to a company cause to appeal the decision of the Registrar to Court. That the applicant in this case neglected this $\$ \backslash \mathrm{mathsf{S}} \}$ right and opted for Judicial review yet the parties were afforded a hearing, filed their pleadings and evidence and made submissions before the Assistant Registrar. These were relied on by the 2nd respondent to make her ruling on the 15th November, 2024. Counsel relied on the case of Mukimbiri Ronald v. Commissioner Land Registration & 4 others, H. C. M. S No. 06 of 2023 which cited 10 with approval the case of Leads Insurance Limited v. Insurance Regulatory Authority & Another, C. A. C. A No. 237 of 2015 to support his submission and concluded that this application is not amenable for judicial review because the option of Judicial review in this case is not available to the applicant.

Counsel for the applicant on the other hand submitted that there was no 15 alternative remedy at the time this application was filed on the 15th November, 2024. That the original application was challenging the letter dated 12th November, 2024 that communicated to the parties about the 2nd respondent's decision to recall the Assistant Registrar of Companies' ruling. There was therefore no need for an appeal since the decision had been made in favour of 20

the applicant.

Counsel added that this court has the discretion to allow the application for judicial review even if there is an alternative option. And that they could not appeal the second decision since there was already an application for Judicial Review before this court.

Further, that the applicant relied on the doctrine of Ultra vires since the 2nd respondent had no powers in law to recall the first ruling. And that the respondents acted in ill will by refusing to register the applicant's documents after the ruling was delivered. Thus, in situations where one can prove ill will, the court can allow an application for judicial review even when there are alternative remedies.

Furthermore, that there was fraud and dishonesty on the part of the respondents who lied that they had delivered the second ruling before the injunctive order had been issued which was not true.

Counsel to support his submissions quoted the case of Housing Finance Company 35 of Uganda Ltd v. The Commissioner General Uganda Revenue Authority, HCT- \$00 - CC - MA - 0722\$ of 2005, where court held that;

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"I must hasten to add that there are exceptions to the "rule" at hand. If a matter in question or decision in issue is questioned on the basis of the same being ultra vires or procured by fraud, ill will, bias, or some other circumstances that makes it imperative that judicial review be embarked upon, leave may be granted regardless of the existence of an alternative remedy."

Counsel concluded that the preliminary objection is weak and does not have merit so court should allow the application for judicial review.

In rejoinder, it was submitted for the respondents that the applicant ought to have exhausted the available remedies under the law before applying for judicial review which is applied for when there are no other options available.

I have carefully considered the submissions for both parties, the law and authorities cited there in regard to this issue/preliminary objection. I agree that Judicial review as a remedy is not available to an aggrieved party if there exists an alternative remedy. However, in the case of Housing Finance Company of

- 15 Uganda Ltd v. The Commissioner General Uganda Revenue Authority, (supra), the court laid down some exceptions to this rule citing instances when an application for judicial review can be instituted/allowed even when there are available remedies that have not been exhausted by the applicant.

- In the instant case as submitted for the applicant, the option of an appeal was not available at the time the application for judicial review was filed because the applicant was challenging the decision to recall the first ruling made by the respondent without any enabling law.

The contention by the applicant is that the respondent had no powers to recall the first decision and as such the second ruling was issued illegally, 25 irrationally and with procedural impropriety. Additionally, it was reached through acts of dishonesty and fraud on the part of the respondents who disregarded the injunctive court order.

The applicant in my opinion was initially challenging the decision of the respondent recalling the first ruling of the assistant registrar of companies which she had no powers to do. The applicant per se is not challenging the second decision of the respondent but rather the process that was undertaken for the same to be reached.

Whereas, the authority cited by the respondents is good law, it is inapplicable in this case because the set of facts are totally different and distinguishable. If the applicant was challenging the content of the second ruling then the provisions of Section 291 of the Companies Act and Regulation 33(2) of the Companies

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(Powers of the Registrar) Regulations, 2016 would apply whereby the applicant would be expected to lodge an appeal in court as opposed to filing an application for judicial review. However, that is not the issue at hand in this case and the law as relied on by the respondents is not applicable in the circumstances.

Judicial review in itself is not concerned with the disputed decision but rather with the process through which the decision was made. The orders granted therein are therefore discretionary in nature and court is at liberty to grant them depending on the circumstances of the case if it finds that there has been violation of the principles of natural Justice. This is to ensure that the aggrieved individual is given fair treatment by the authority to which he/she has been subjected to. (See: John Jet Tumwebaze v. Makerere University Council & 2 Others Miscellaneous Cause No. 353 of 2005, DOTT Services Ltd v. Attorney General Miscellaneous Cause No.125 of 2009, Balondemu David v. The Law Development Centre Miscellaneous Cause No.61 of 2016).

The applicant in this case rightly instituted the application for judicial review in a bid to challenge the decision of the respondent in recalling the ruling of the assistant Registrar in Company Petition No. 5 of 2020. And, even if the applicant had not exhausted the available remedies, counsel has proved to this court that there are elements in this case that fall within the exceptional circumstances under which one can file for an application for review even when there are alternative remedies available to them such as fraud, ill will, dishonesty and bias.

I therefore find that the application before this court is amenable to judicial review and this issue/ preliminary objection is hereby resolved in the negative.

Issue 2: Whether this application raises grounds for judicial review? 25

Counsel for the applicant in his submissions contended that the 1st respondent is a quasi-judicial tribunal charged with the performance of public acts and duties. And the same is amenable to judicial review as it is a public body established under the law. That the decision of the 1st respondent and the Registrar General, deprived the applicant of its victory in the first ruling delivered by Solomon Muliisa and so it has a direct and sufficient interest in the matter to apply for judicial review.

The applicant contends that the respondents did not follow due process in authoring and enforcing the second ruling and that there was an unfair and unjust treatment visited on it. That the decision making process leading to the delivery and enforcement of the second ruling was marred with illegality,

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irrationality and procedural impropriety hence the need for an application for judicial review.

Counsel went on to submit that whereas they were notified by letter that the first decision was recalled because it was issued contrary to the established processes

and procedures of the Uganda Registration Services Bureau, no record of such S procedures was ever furnished to this court.

Secondly, that the process leading to the delivery of the second ruling offended the *functus officio* rule. That it is a general rule that when a judgment is made by a court or tribunal, it becomes *functus officio* and it ceases to have control over the case, and cannot review, override, alter or interfere with it. (See: Major

- 10 Rowland Kakooza Mutale v. Balisigara Stephen, Court of Appeal consolidated Civil Application No. 121 and 277 of 2020). As such, the 2nd respondent had no powers in law to recall the first decision or to issue the second decision, doing so was both illegal and irrational.
- Additionally, no exceptions were adduced in evidence justifying the recalling of the first decision such as an error while drafting or a mathematical or grammatical error which is allowed under the slip rule.

Further, it was submitted for the applicant that while the respondents relied on Section 258 (4) of the Companies Act, this section does not give the Registrar power to overrule the decision of an assistant registrar but rather it allows an 20 assistant registrar to do work meant to be done by the Registrar General upon being directed/assigned/designated/delegated/asked to do it. Thus, the section means that an assistant registrar cannot usurp the work meant for the registrar general until they are assigned to do so. Therefore, the Registrar General cannot

revoke what the assistant registrar has done. Thus, the assistant registrar enjoys 25 independence from all people. (See: John Imaniraguha v. Uganda Revenue Authority, HCMA No. 2770 of 2023).

Counsel concluded that the functus officio rule cannot allow the second decision to stand and the same was illegal and irrational.

- Furthermore, that the second decision was procedurally improper since it 30 offended the principles of fair hearing under Article 28, 42, and 44 of the Constitution. That in this case the 2nd defendant did not hear the evidence, watch the cross-examination, re-examination or see the demeanor of the parties before writing the decision in this matter. That the applicant was also denied the
- opportunity to challenge the 2^{na} respondent's impartiality since she only came in 35 at the tail end of the litigation.

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Counsel also added that the second decision was delivered in the presence of an injunction maintaining status quo. That the second decision was issued on the 18th November, 2024 and not on the 15th November, 2024 as alleged by Mustapher because if it were the case then Stella Muheki who appeared for the respondents on the 18th November, 2024 did not mention the same while in court but rather agreed to the consent injunctive order. To support this submission counsel made reference to Annexure "V" to the supplementary affidavit of Benard Okello and annexure "E" of the affidavit in reply by Mustapher Ntale dated 3rd December, 2024 which indicate forgery on the part of the respondents where the former has an attached ruling while the latter has no attached ruling.

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Counsel concluded that since the second ruling was made on the 18th November, 2024 at 9:12am after the consent injunctive order which was issued at 9:00am, the same would be illegal and irrational and procedurally improper. That acts of an agent do bind the principals therefore the acts of Stella Muheki were binding on the respondents. And that even if the consent injunctive order had not been ordered; the administrative order was still running until the end of 18th November, 2024.

Counsel for the respondents or the other hand submitted that the decision to recall the ruling of the Assistant Registrar of Companies was well founded in the 20 law and within the ambit of the Registrar General's statutory authority. That in the instant case the Assistant Registrar under the

established procedure of the 1st respondent for dispute resolution submits the draft ruling to supervisors for clearance. That in the instant case the Assistant Registrar had been expressly directed to withhold issuance of the ruling pending review but he proceeded and issued the same without the authority of the 2nd respondent. Counsel relied on the provisions of Section 258(4) of the Companies Act as the law that allows the 2nd respondent to recall the decision of the Assistant Registrar and the case of *Water & Environment Media Network (U) Ltd and Others v. National Environment Management Authority and Another*, Consolidated Miscellaneous 30 Cause No.s 239 and 255 of 2020, where it was held that;

"The legislations give the decision-maker wide infinite power, or at least the power to choose from a wide range of alternatives, free of judicial interference and allow the exercise of discretion in taking decisions on matters specifically provided under the enactments... The initial everyday interpretation of legislation is by the public bodies rather than the courts. Where the exercise of power is broad, the courts should accord public powers leeway in applying these concepts to particular instances and circumstances and will not routinely substitute judicial judgment for that

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of the public body. Where there is a dispute as to the interpretation of any legislation, it always ultimately for the court to determine the correct legal meaning of the legislation. There must be respect for the agencies Parliament has vested with the task of administering legislation and intervention should only be when their actions are not conformable with the rule of law and the interpretation is not made in whatever manner they wished."

Consideration of court:

I have carefully considered the Notice of Motion, the affidavits in support and against it together with the submissions for both parties, the law and authorities cited therein to resolve this application.

The applicant in the instant case is challenging the decision of the 2nd respondent recalling the ruling of the Assistant Registrar in Company Petition No. 5 of 2020, an act he says was ultra vires. He is also challenging the process that was undertaken before the ruling by the 2nd respondent was allegedly made on the 15th November 2024. Counsel contends that the said decision was issued in contravention of the *functus officio* doctrine, the principles of fair hearing and that it was made while there existed an order maintaining status quo issued by this court on the 15th November, 2024.

While the respondents averred that the said ruling was issued after the 2nd respondent had recalled the first decision by letter dated 12th November, 2024 which was communicated to the parties. That the recall was due to the fact that the Assistant Registrar issued the ruling dated 8th November, 2024 in contravention of the known and established procedures of the 1st respondent.

Secondly, that the 2nd respondent had the power to recall the first decision under 25 the provisions of Section 258(4) of the Companies Act. There was therefore no illegality, or irrationally, or procedural impropriety in the process leading to the making of the second decision since the 2nd respondent, looked at the evidence, submissions and statutory declarations of the parties.

The respondents also challenged the consent injunctive order claiming that Stella 30 Muheki who appeared for the respondents on the 18th November, 2024 had no instructions to sign it on their behalf.

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Illegality:

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Recall of the ruling date 8th November, 2024:

The respondents in this case relied on the provisions of Section 258(4) of the Companies Act to affirm that the 2nd respondent had the power to recall the Assistant Registrar's decision which Section provides that;

> "Every assistant registrar may, subject to the directions of the registrar, perform any act or discharge any duty which the registrar may lawfully do or is required by this Act to do and for that purpose shall have all the powers, privileges and authority of the registrar".

- My understanding of the above provision is that the Assistant Registrar may 10 discharge any duty on behalf of the Registrar as assigned to them by the Registrar as long as it is lawful and they may have the powers, privileges and authority of the registrar in executing those duties. Nowhere in the above section is it indicated that the Registrar has the power to recall a decision issued by an assistant registrar. The assistant registrar if anything while executing their duties 15 under the above section does so independently without any interference from anybody and these duties are executed as if they were the Registrar. The law in essence recognizes the Registrar as the one executing these duties, hence, the Registrar has no powers to recall such decisions.
- Counsel for the respondents also submitted that the decision of the 2nd 20 respondent was done in exercise of her powers under the Uganda Registration of Services Bureau Act, Section 13(2) which provides one of their functions as; supervision and control of Officers of the Bureau and the Companies Act. The respondents added that the applicant did not adduce any evidence to the contrary to prove that indeed the Assistant Registrar did not issue the ruling in defiance of 25

- the Registrar General's directive.

It is my considered view that, while the respondents stated that the Assistant Registrar contravened the known and established procedures of the 1st respondent in delivering the ruling dated the 8th of November, 2024; no evidence was adduced in this regard. The respondents merely allege that the assistant went ahead and delivered a draft decision in contravention of the 2nd respondent's advice to review the awards from the London Court of Arbitration and all documents available on record in order to ensure that the question of payment for shares is well evaluated. However, this court cannot act in speculation if there is no supporting evidence of these averments. The respondents ought to have 35 availed this court with preferably a manual or guidelines that are based on for their internal day to day running of the business or activities of the institution of

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the 1st respondent to prove to court that these procedures had indeed been breached by the Assistant Registrar Muliisa Solomon. The respondents are the ones in this case who claimed that the decision of the Assistant Registrar was recalled due to his disobedience of the 1st respondent's directive and failure to follow the known and accepted procedures of the 1st respondent. Thus, they had the burden to prove these allegations and it is not the duty of the applicants to prove the contrary to this court. (See: 101 of the Evidence Act)

In the case of Water & Environment Media Network (U) Ltd and Others v. National Environment Management Authority and Another, (Supra), it was stated that:

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"The applicants are challenging the decision for illegality by interpreting certain provisions of the legislation and contending that the 1st respondent acted contrary to the said legislations. It is the duty of this court to analyse and evaluate whether the interpretation the Executive Director had in the issuing the Certificate of approval was in accordance with the law or within the 'four corners'"

In line with the above authority and my literal interpretation of the law, I find that Section 258 (4) of the Companies Act does not bestow any powers on the 2nd respondent to recall decisions issued by Assistant Registrars.

In the case of R v Lord President of the Privy Council, ex parte Page [1993] AC 682, Lord Browne-Wilkinson noted;

> "The fundamental principle(of judicial review) is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases...this intervention....is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that the powers are to be 7 exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury sense, reasonably. If the decision maker exercises his powers outside the jurisdiction conferred, in a

manner which is procedurally irregular or is wednesbury unreasonable, he is acting ultravires his powers and therefore unlawful".

Thus, the first decision dated 8th November was illegally recalled since there is no law that gives the respondent the powers to do so.

Functus Officio:

In this regard it was submitted for the respondents that this doctrine does not apply in this case because the quasi-judicial power is bestowed on the Registrar

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General by law and is exercised by the Assistant Registrar at the direction of the Registrar General. Thus, the Registrar General becomes functus officio only if a ruling he/she has approved is delivered. Counsel for the respondents added that administrative bodies that exercise quasi-judicial functions are not bound by the strict procedures employed in civil and criminal trials as per the case of Maruk Joshua v. Attorney General, Consolidated Civil Appeal No. 148 and 149 of 2015.

In the case of A. K. P. M Lutaaya v. The Attorney General, Civil Reference No.1 of 2007, Court cited in approval the definition of functus officio according to Black's Law Dictionary, 5th Edition, page 606 as;

"i. A task performed;

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ii. Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority..."

And, in the case of John Imaniraguha v. Uganda Revenue Authority, (Supra), it was stated that:

"As a general rule, once a court has rendered a final decision, it is barred from reopening, varying or retracting its decision. The doctrine of functus officio (that is, having performed his office) holds that once the Court renders a decision regarding the issues submitted, it lacks any power to re-examine that decision. It is trite that once a Judge pronounces a decision in a matter, he/she becomes functus officio and cannot nullify it by a subsequent decision in a review or in any application (see: Bedwell v. Wood (1877) 2 QBD 626; Kamundi v. Republic [1973] EA 540; Laemthong Rice Co Ltd v. Principal Secretary Ministry of Finance [2002] 1 EA 119; East African Plans Ltd v. Roger Allan Bickford Smith [1974] HCB 97; Lule Esawu v. Yozamu Mugwanya [1978] 98; Akoko Dototia v. 25 Sepererino Olanya [1978] HCB 115 and Oliver Namyeka and two others v. Parliamentary Commission, C. A. Civil Appeal No. 59 of 2013). Once a judgment or order is passed and entered or otherwise perfected according to the practice of the court, the court is

functus officio and cannot set aside, vary or alter its order however wrong it may appear to be. (see: 30 Unnanse v. Unnanse [1950] AC 561).

The same court laid out the exceptions to the functus officio rule and stated thus;

"The doctrine is not without exception. It allows courts to revisit issues in three circumstances:

- (1) To correct errors in drafting,
- (2) To correct errors in manifesting the express intention of the court, or

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- (3) where allowed by statute on such matters as the court is given specific legislative authority to act... A court may also, on a motion, vary or set aside an order procured by fraud or on the basis of facts arising or discovered after the order was pronounced (see; Takhar v. Gracefield Developments Limited and others [2019] 2 WLR 984 and DJL v. The Central Authority (2000) 201 CLR 226 at para 35).

In the instant case the respondents, did not cite any law that allows the 2nd respondent to recall the decision that had already been issued by the Assistant Registrar or cite any exceptions as to the functus officio rule. Thus, once the decision was delivered by the Assistant Registrar, however, wrong it appeared the remedy was for the aggrieved party if any to seek legal redress from the courts of law. The 2nd respondent therefore acted illegally in issuing a second ruling while the 1st respondent was functus officio following the ruling dated 8th November, 2024. Contrary to the submissions for the respondents, the decisions made by the respondents are subject to the doctrine of functus officio, otherwise that would mean decisions of such bodies would be recalled as and when one pleases without any order. And, this would cause endless confusion, unfairness and uncertainty to the parties involved without finality of disputes that appear for their determination. Thus, when an administrative official has made a decision which bears directly upon another's interests, it is said that the decision-maker

has discharged his office or is functus officio.

In the case of Retail Motor Industry Organization v. Minister of Water and Environmental Affairs, 2014 3 SA 251 (SCA), it was held that;

"Certainty and fairness have to be balanced against the equally important practical consideration that requires the re-assessment of decisions from time to time... The functus officio principle is also intended to foster certainty and fairness in the administrative process".

I therefore, find that the doctrine of functus officio in this case was contravened when the 2nd respondent decided to issue a second ruling while the assistant registrar had already issued one dated 8th November, 2024 in Company Petition No. 5 of 2020.

Presence of an order maintaining status quo:

It was submitted for the applicant that the second ruling was delivered when there was an order maintaining status quo issued by this court. The respondents on the other hand averred that by the time the second ruling was delivered there was no injunctive order issued by court. That the second ruling was therefore delivered on the 15th November, 2024 before the injunctive order was issued and

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before any order of injunction was served upon the respondents. And that a one Stella Muheki lacked knowledge of material facts concerning company Petition No. 05 of 2020 when she appeared in court on the 18th November, 2024.

I have carefully analyzed the sequence of events leading up to the second ruling and the injunctive order. A ruling was issued by the Assistant Registrar of $\$S$ Companies Solomon Muliisa in Company Petition No. 005 of 2020 dated 8th November, 2024. The 2nd respondent wrote to the parties by letter dated 12th November, 2024 recalling the said ruling and indicated that the parties would be promptly notified once the decision would be ready for delivery. This letter was served onto the applicant on the 13th November, 2024. The applicant then applied to court on the 15th November, vide Miscellaneous Cause No. 04 of 2024 for judicial review of the decision of the respondents to recall the decision made by Muliisa Solomon. On the same day under Miscellaneous Application No. 40 of 2024 an administrative interim order ex parte was issued maintaining the status quo restraining the respondents from implementing the decision to recall the 15 ruling made by the Assistant Registrar of Companies on the 8th November, 2024

in Company Petition No. 5 of 2020, reopening the proceedings or making a new decision in Company Petition No. 5 of 2020 until the hearing of the interim application scheduled for 18th November, 2024 at 9:00am.

- The applicant made an effort to serve the administrative interim order onto the 20 respondents through their office in Mpigi, however was directed to do so at their offices in Kampala. The applicant having failed to serve physically did so through WhatsApp and email.
- It also quite correctly appears to me that the service was effective since counsel Stella Muheki did appear in court on the 18th November, 2024 on behalf of the 25 applicants. Counsel Muheki by way of Consent agreed to the issuing of an injunctive order until the final determination of the main cause for judicial review.

I have no doubt that counsel Stella's appearance in court on the 18th of November 2024 clearly indicated that she had been sent by the applicants. From what I gathered in the affidavit of service dated 16th November, 2024, service of the administrative interim order issued by this court on the 15th of November, 2024 was served through the official 1st applicant's email ursb@ursb.go.ug and through the personal WhatsApp number of the 2nd applicant 0772555878 in the name of Mercy Kyomugasho Kainebwiso. It is upon such service that counsel

35 Muheki appeared before this court on the 18th November, 2024 on behalf of the applicants.

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The respondents contended that Stella Muheki had no instructions to sign the consent the injunctive order basing on their manual.

Be as it may, even if this court agreed that indeed Stella had no instruction to sign the injunctive order, the administrative interim order was still running up to the end of the 18th November, 2024 as such the respondent ought to have maintained the status quo

Additionally, the second ruling was never delivered on the 15th November, 2024 as claimed by the respondents. This was evidenced by annexure "V" on the affidavit in support of the application which has an indication of an attached file as opposed to annexure "E" to the respondent's affidavit in reply. While annexure "V" shows that emails were sent to the applicant and were received on the 18th November, 2024; Annexure "E" which the respondents rely on to state that the second ruling was sent on the 15th November, 2024 at 11:007am and 11:54am has no sign of an attached file sent to the applicant's counsel. This clearly indicates that the second ruling was delivered on the 18th of November, 2024 and not on the 25th November, as the respondents want to make this court believe.

I accordingly, find that the act of the 2nd respondent of issuing the second ruling was illegal in the circumstances since there was still a running Administrative interim order up to the end of 18th November, 2024.

Irrationality:

Counsel for the respondents submitted that the Assistant Registrar issued the first ruling contrary to the established procedure within the institution and the established administrative practice which ruling he had no authority to issue having disregarded the 2nd respondent's directive. Thus, the registrar general in

25 recalling the decision was reasonably enforcing the law and in exercise of her statutory powers.

It is my considered view that respondents in this case did not furnish this court with sufficient proof in regard to the alleged disobedience by the assistant registrar. However, they were able to attach a manual to prove to this court that 30 indeed Stella Muheki had no instructions to sign the consent injunctive order. In my opinion this is a sign of double standards because they were able to furnish a manual to support their argument as to how Stella had no instructions, so her actions were not binding on them but none could be adduced in evidence in regard to the alleged disobedience of the assistant registrar. Additionally, this also

35 points to untruthfulness on their part. If indeed there is an internal procedure

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followed by the 1st respondent, then this court should have been availed with sufficient evidence in that regard.

I therefore find that the decision of the 2nd respondent of recalling the first ruling of the Assistant Registrar in Company Petition No. 5 of 2020 was irrational in the circumstances.

Procedural Impropriety:

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It was submitted for the respondents that both parties had filed statutory declarations according to Section 286 (1) of the Companies Act which were on file and the Registrar General considered all additional evidence available on file. That proceedings before the Registrar of before reaching her decision. Companies are governed by the Companies Act, the Companies (Powers of the Registrar) Regulations, 2016 and the internal procedures. Accordingly, there was compliance with the Companies Act with regard to the mode of giving evidence in the proceedings before the Registrar and the applicant's right to a fair hearing was not violated. Thus, the rules on natural justice were observed by the 2nd respondent in reaching her decision.

It is my considered view in this regard that the 2nd respondent having recalled the decision of the Assistant Registrar, ought to have given the parties an opportunity to appear before her and given them a fair treatment. The parties ought to have been notified of the new ruling and not just having it sent to their 20 emails. The letter dated 12th November, 2024 indicated that the 2nd respondent would promptly communicate to the parties once the second ruling was ready, this was never done, what happened was that the applicant was merely sent the second ruling by email with no notification whatsoever.

In the case of Mondo Kagonyera v. Attorney General & Another HCT-00-CC-25 MC-010-2010 it was held that;

> "The law and rules relating to natural justice are well settled principles are well settled. The authors, DE SMITH, WOOLF AND JOWELL, JUDICIAL REVIEW OF ADMINSTRATIVE ACTION' pg 377-378; note that the expression 'natural justice' has become identified with two constituents of a fair hearing. That the parties should be given a proper opportunity to be heard and to this end should be given notice of the hearing and that a person adjudicating should be disinterested and unbiased. DE SMITH, WOOLF AND JOWELL at page 437 further note that a fair hearing does not necessarily mean that there must be an opportunity to be heard orally. In some situations, it is sufficient if written representations are considered. At the heart of the principles relating to a

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fair hearing is a constitutional right to just and fair treatment and Art 42 of the Constitution of the Republic of Uganda 1995 provides that;

Right to just and fair treatment in administrative decisions. Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her'

I therefore find that the 2nd respondent acted with procedural impropriety in issuing her second ruling in total disregard of the principles of natural justice.

I accordingly find that this application raises grounds for judicial review. This issue is hereby resolved in the affirmative.

Issue 3: remedies available to the parties:

Counsel for the applicant prayed that judicial review be granted since the 2nd respondent had no power to issue a second ruling. And that if she had the power then she should have heard the matter afresh. As such, her decision was irrational, illegal and procedurally improper.

Counsel for the respondents on the other hand submitted that the instant application does not satisfy the grounds for the grant of an application for judicial review. As such, the applicant is not entitled to the orders and declarations sought therein and it should be dismissed with costs to the respondents. 20

Counsel added that from the construction of Section 27(1) of the Civil Procedure Act, when it comes to costs the Civil Procedure Act is subject to the provisions of any other written law for the time being in force. And quoted Section 288 of the Companies Act which provides that;

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"In all proceedings before the court under this Act, the costs of the Registrar shall be in the discretion of the court, but the Registrar shall not be ordered to pay the costs of any other of the parties."

It was further submitted for the respondents that the 1st respondent is not liable to pay costs. That the 2nd respondent was bonafide in the performance of her action. That she did not act mala fide or outside her powers and duties when she issued the second ruling neither was the same done without having such power under the law nor was the ruling issued when there was an injunctive order. That if she had done so she would have been liable to civil action.

In reply it was submitted for the applicant that under Section 288 of the Companies Act, the Registrar General is not supposed to pay costs for the

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proceedings brought under the Companies Act. That in this case the matter is brought under the Judicature Act and the Judicature (Judicial Review) Rules where court can order for costs.

The applicant in the instant case has proved to this court all the grounds required before an application for judicial review can be granted.

The grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then the court should issue any remedies available. The court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any particular case. (See: R v. Aston University Senate ex p Roffey [1969] 2 QB 558, R v. Secretary of State for Health ex p Furneaux

[1994] 2 All ER 652).

In regard to costs, while I am mindful of the provisions of the law cited for the respondents, I would like to note that the proceedings before this court are not 15 company matters that would exempt the Registrar from costs. This court under the provisions of Section 288 of the Companies Act will exercise its discretion in regard to costs and as implored by counsel for the respondents.

The applicant having satisfied all the grounds for the grant of an application for judicial review as discussed above, this application is hereby allowed in the following terms;

- a. A declaration that on the 08th of November, 2014, the Assistant Registrar of Companies of the 1st Respondent (Muliisa Solomon) delivered a ruling in Company Petition No. 5 of 2020 that was effective and not subject to a recall.
- b. An order of certiorari to quash the decision by the 1st and 2nd Respondents dated 12th November, 2024 to recalling the ruling made by the Assistant Registrar of Companies (Muliisa Solomon) on 8th November, 2024 in Company Petition No. 5 of 2020 is hereby issued.

- c. A declaration that the 2nd ruling written by the 2nd respondent and delivered by email on the 18th November, 2024 at 09:12am during the pendency of this suit, is null, void and ineffective.
- d. An order of certiorari is hereby issued quashing the 2nd ruling written by the 2nd respondent and delivered by email on the 18th November, 2024 at 09:12am during the pendency of this suit.
- e. An order of certiorari is hereby issued quashing the alleged implementation of the orders in the 2nd ruling written by the 2nd

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respondent and delivered by email on the 18th November, 2024 at 9:12am during the pendency of this suit.

- f. An order of prohibition is hereby issued barring the respondents from further implementation of the ruling and orders in the 2nd ruling written by the 2nd respondent and delivered by email on the 18th November, 2024, at 09:12am during the pendency of this suit.
- g. A permanent injunction doth issue restraining the respondents from further implementation of the ruling and orders in the 2nd ruling written by the 2nd respondent and delivered by email on 18th November, 2024 at 9:12am during the pendency of this suit.
- h. An order of mandamus is hereby issued compelling the respondents to honour and register documents already submitted by the applicant and those that will be submitted thereafter.
- i. Costs of this application to be paid by the respondents
- I so order. 15

Right of appeal if any explained.

OYUKO ANTHONY OJOK

JUDGE 20

15/07/2025

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