

UGANDA / JUDGMENT

Nakatudde v Kwagalakwe (Petition 36070 of 2024) [2024] UGRSB 18 (15 October 2024)

[2024] UGRSB 18

COURT

Uganda Registration Services Bureau

BEFORE

Muliisa Solomon - Senior Registration Officer

CASE / FILE NUMBER

Petition 36070 of 2024

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THE REPUBLIC OF UGANDA

IN THE MATTER OF THE COMPANIES ACT, CAP 106

IN THE MATTER OF DAYS FOR GIRLS UGANDA LTD

COMPANY PETITION NUMBER 36070 OF 2024

DIANAH NAKATUDDE KABAALE

(Suing through William Osal, her lawful attorney)

<pre>..... VERSUS

KWAGALAKWE DORCUS:::.....

RULING

BEFORE: MULIISA SOLOMON—ASSISTANT REGISTRAR OF COMPANIES

a) Background

- 1. Days for Girls Uganda ltd, is a company limited by guarantee, incorporated on 18th September 2014 with the main objective to support and empower women and girls including provision of charitable services in education and health for the benefit of women and girls. According to article 4 of the Memorandum and Articles of Association, the liability of the members is limited, however the limit amount is not stated, which I presume was an

error on the part of drafters. This was later rectified by a resolution registered on 22nd August 2023 which stated the limit on liability as Ugx, 100,000. The company is also registered as a non-government organization with the NGO Bureau.

- 2. At its incorporation, the first subscribers and guarantors were Ms. Dianah Nakatudde Kabaale and Ms. Diana Nampeera. The two were also the original directors. The petitioner is currently a resident in the United States while the second subscriber and director, Ms. Diana Nampeera died in April 2022.
- 3. The Respondent had been appointed a director and a secretary in the company at some point. She also served as Finance Director but her services were terminated on 22nd July 2022. In terms of membership, the demise of the late Nampeera, left

the company with one subscriber, below the required statutory minimum of two subscribers.

b) The Petitioner's case

- 4. The petitioner, a founding subscriber, through her petition filed on 21st June 2024, challenges the legality of the changes made to the company file through filing of amended Memorandum and Articles of association, which introduced the Respondent as a subscriber and guarantor. The said amended memorandum and articles of association maintains the deceased, the later Diana Nampeera as subscriber and replaces the Petitioner with the Respondent as another subscriber and guarantor. The Respondent proceeded to update the company onto the new OBRS system on the basis of these changes and retains the control of the company account.

c) Hearing

At the hearing, the Petitioner was represented by Ronald Ewalu whereas the Respondent was represented by Kikomeko Swaibu.

d) Determination

- 5. When the parties appeared for hearing on 16th July 2024, I directed them to file their written submissions, the petitioners filed their submissions on 13th August 2024 whereas the respondent did not file her submissions. The main issue for determination in this petition is whether the Respondent was legally appointed as a subscriber, and whether the amendments to the memorandum and articles of association were legally effected.
- 6. The petitioner contend that these changes were illegally and fraudulently effected by the Respondent and seek a number of remedies, most of which are outside the jurisdiction of the Registrar and others are not practical in the circumstances. For instance, the petitioner prays that the Registrar conducts an investigation of how the changes were made and how

the deceased's Identity Card was used to update the company. I don't see why this would be relevant in the circumstances. She also prays that since she is no longer a director, the Registrar should order the Respondent to relinquish her role in the company. The petitioner also seek to be granted control of the company account and seek guidance on how to address the challenges.

- 7. First, I will address the question of the illegal changes to the company structure. On 22nd August 2023, a special resolution dated 16th August 2023 signed by the

Respondent and the late Diana Nampeera, was filed with the Registrar of companies. The body of the resolution clearly states that the amendment was to correct the error highlighted in the background of this ruling by stating the limit of liability as 100,000 Uganda shilling. It is this same resolution that was the basis of the changes made to the memorandum and articles of association, including the inclusion of the Respondent replacing the petitioner. The accompanying amended memorandum and articles of association, signed on the same date, 16th August 2023, reflect the deceased (Nampeera) and the Respondent as the subscribers. Both the deceased and the Respondent sign against their names. Ms. Diana Nampeera is said to have died in April 2022, a fact which has not been disputed by the Respondent, yet she signs documents on 16th August 2023. In her response to the petition, the Respondent does not explain how this is possible, but maintains that she was appointed by the Petitioner, which fact the petitioner disputes. It is also surprising, how the petitioner, who after the death of Nampeera, was the only surviving subscriber appointed the Respondent, without signing any resolution. Even the illegal resolution purported to have effected these changes does not mention change of subscribers, yet the amended memorandum and articles of association, in addition to clarifying the limit on liability, goes ahead to replace the petitioner with the Respondent. This was gross fraud and irregularity by the Respondent.

- 8. The changes to the company memorandum and articles of association are made by way of a special resolution, passed at a general or extra-ordinary meeting of members and signed by existing members. The Respondent was not a subscriber for her to sign the special resolution and any case, such a meeting could not legally take place, because after the demise of Ms. Nampera in April 2022, the company membership fell below the statutory minimum, with the Petitioner as the only surviving member. That means the company could no longer hold meetings. When such a situation arises, the remedy is to seek the authority of court for a oneperson meeting to proceed to regularize the company. This remedy is provided under section 138 of the Companies Act Cap 106, and for the guidance of the Petitioner, I reproduce the same below;

"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 titled to vote at the meeting, order a meeting of the *company to be called, held and conducted in the manner the court thinks fit.*

- (2) 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.*

\$(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 conducted.

9. The highlighted parts of the section are critical. The court has the authority to direct a director or any person entitled to vote, to hold a one-person meeting where a situation arises that makes it impossible to conduct meetings normally. Upon the death of Ms. Nampeera, such a situation arose, and hence no other members' meeting could take place, without the authority of court. According to section 138, only persons entitled to vote, are eligible to get the permission of court to conduct such meetings and to make decisions for the regularization of the company. In the circumstances of this case, only the petitioner has the locus to apply and obtain permission of court to pass resolutions for the regularization of the company. The regularization includes appointing other subscribers to replace the deceased subscriber and make the number meet the requirements of the statutory minimum and to pass other resolutions for the effective governance of the company.

e) Remedies

- 10. The substance of this petition merits the application of the powers of the Registrar to rectify the illegal filings under the **Companies (Powers of Registrar) Regulations, 2016**. Therefore, pursuant to **regulation 32** of that regulation, I make the following orders;
- (a) The illegally passed resolution and amended memorandum and articles of association dated 16th August 2023 and registered by the Registrar on 22nd August 2023 are hereby expunged off the record. The status of the company is restored to the position it was before the said illegal changes.
- (b) The control of the company account shall be transferred to the names of the Petitioner who is the only surviving member of the company.
- (c) The Petitioner is advised to apply to the High Court under section 138 of the Companies Act, to seek the authority of court to hold a one-member meeting

to pass necessary resolution for the regularization of the company, to among others, replace the deceased subscriber with another one who is able and willing to work towards the vision of the company.

- (d) The company should also take steps to review its memorandum and articles and articles of association to address gaps and other irregularities. For instance, article 7, states that the quorum during meetings is 25 persons, yet the membership of the company was just two people!
- (e) Each party shall bear its own costs.

I so order.

Dated this 15th Day of October 2024. Muliisa Solomon Assistant Registrar of Companies

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Prepared on 13 October 2026 · Esheria