

UGANDA / JUDGMENT

Speedbird Forex Bureau Limited (Company Cause No. 78 of 2024) [2024] UGCommC 383 (24 September 2024) [2024] UGCommC 383

COURT

Commercial Court of Uganda

BEFORE

Tumusiime Rubagumya, J

CASE / FILE NUMBER

Company Cause No. 78 of 2024

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**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) IN THE MATTER OF THE COMPANIES ACT, 2012 IN THE
MATTER OF SPEEDBIRD FOREX BUREAU LIMITED 10 COMPANY CAUSE NO.78 OF
2024 IN THE MATTER OF AN APPLICATION TO RECTIFY THE COMPANY REGISTER
BY SPEEDBIRD FOREX BUREAU LIMITED**

BEFORE: HON. LADY JUSTICE PATIENCE T. E. RUBAGUMYA

RULING

15 Introduction

This application was brought by way of Chamber Summons under **Section 125(1)(b) of the Companies Act and Order 38 rule 4 of the Civil Procedure Rules SI 71-1**, seeking orders that:

- 1. The Registrar of Companies be compelled to rectify the record of the 20 Applicant Company to reflect the updated register of members of Speedbird Forex Bureau Limited.
- 2. An order doth issue directing the Registrar of Companies to approve the URSB data update application for the Applicant 25 Company under tracking Number G2404270338.
- 3. The Directors be mandated to act as the Board of Directors of the Company for purposes of rectification of all the records at the 30 Companies Registry.

5 Background

The background of this application is contained in the affidavit in support and supplementary affidavit in support of the application both deposed by **Flight Captain George Michael Mukula**, a Director of the Applicant, and is summarized below:

- 10 1. That the deponent is a Director and beneficial owner of Fortune Energy Limited, a Company that bought all the shares of the Applicant from Irio Systems Limited.
- 2. That the Applicant's duly appointed Directors after the purchase of its shares by Fortune Energy Limited are; Flight Captain George 15 Michael Mukula, Daphine Mugambwa and Esther Yapkoreny.
- 3. That upon applying for a data update of the Applicant at Uganda Registration Services Bureau (URSB), the Applicant was queried on grounds that the Applicant Company should furnish the Registrar of Companies with transfer forms and proof of transfer of shares 20 since the date of incorporation of the Company.
- 4. That the Applicant went ahead and conducted a Company search and it was established that at the inception of the Company on 12th July, 1990 the shareholders of the Applicant were; George Michael Mukula Jr, Rodney Mukula Akongel and George Michael Mukula.
- 25 5. That as per the current URSB records, the current shareholders are; George Michael Mukula Jr, Rodney Akongel Mukula, George Michael Mukula, Barti Suresh Popat, Paul Ekochu, Ramesh Chotodbiny Masrani and Suresh Progji Popat yet as of to date; Barti Suresh Popat, Paul Ekochu, Ramesh Chotodbiny and Suresh 30 Progji have since transferred all their shares in the Company to Aegis Finance Company Limited which transferred its shares to Irio
- 5 Systems Limited that was eventually bought by Fortune Energy Limited.
- 6. That as a result of the above changes, the remaining shareholders of the Applicant Company are; George Michael Mukula Jr, Rodney Akongel Mukula and George Michael Mukula.
- 10 7. That the search also established that there were no copies of transfer forms on record transferring the shares of the original shareholders to another person yet it is now impossible for the Applicant to retrieve all the information pertaining the former shareholders and the respective transfer forms or sign fresh 15 transfer forms despite all practical means that have been employed to get this information and the time that has lapsed.
- 8. That due to the failure of URSB to approve the data update application, the Applicant cannot obtain the requisite documents required by Bank of Uganda to renew its operating licence.

- 20 9. That the Applicant has been informed by URSB that to obtain the requisite documents, they must first file and register the latest annual returns, the beneficial ownership form and a special resolution for increase of the company's share capital to a minimum of UGX 200,000,000/= which can only be done after the 25 Company register of members has been rectified through a Court Order.
- 10. That this Court has the jurisdiction to compel the Registrar of Companies to endorse George Michael Mukula Jr, Rodney Akongel Mukula and George Michael Mukula as the current true, lawful 30 members and shareholders of the Applicant so that it can update the Company register and records.

5 11. That this Court also has the jurisdiction to compel the Registrar of Companies to rectify the records of the Applicant Company in the Company register and that this application will not prejudice the previous members of the Applicant in any way.

According to the affidavit of service deponed by Ciary Kabatungyi dated 10 11th September, 2024, the application and hearing notice were served on URSB and the same received as per the stamp of acknowledgement however no response was made thereof.

Representation

The Applicant was represented by **Learned Counsel Ezra Mugabi** of M/s

15 Apricus Advocates.

The Applicant was directed to file its written submissions which it did, and the same have been considered by the Court.

Issues for Determination

- 1. Whether the Court has jurisdiction/powers to entertain this 20 application?
- 2. What remedies are available to the Applicant?

Issue No.1: Whether the Court has jurisdiction/powers to entertain this application?

4 25 Counsel for the Applicant relied on **Section 119 of the Companies Act, 2012 (now Section 115 of Cap.106)** which requires a company to keep a register of its members, enter the names and details of all persons who are members, and notify the Registrar of Companies of all changes on the register. That once any person is wrongly entered or not entered on the

- 5 register, or where there is an undue delay in having the person's name entered on the register, such person may petition the Court to rectify the register as provided under **Section 125 of the Companies Act (now Section 121 of Cap. 106)**. Counsel then referred to the case of **Uganda Baati Limited, Company Cause No.23 of 2024**, wherein **Hon. Justice**

- 10 **Ocaya Thomas O. R** held that, it is trite law and a general principle of company law that once a member or an officer of a company disappears and can no longer be traced, it is reasonable for the Court to allow the available members and, or officers to conduct the affairs of the company as they deem fit to further the company's objectives.
- 15 Following the above, Counsel submitted that on 7th January, 2016, Fortune Energy Limited bought all the shares in the Applicant Company from Irio Systems Limited as per the Share Sale and Purchase Agreement marked as annexure "B" attached to the affidavit in support however, that there are no transfer forms on record to prove the said transfer of 20 shares.

Counsel further submitted that in 2024, the Applicant made a data update application to URSB via its online business registration system under tracking/application number G2404270338 however, the said application was queried on grounds that whereas the new shareholders 25 of the Applicant kept on being registered by URSB on several occasions, there is no proof of transfer in form of transfer forms, resolutions or otherwise and therefore, URSB requested the Applicant to conduct a formal company search and thereafter enter the exact information on the official search into the URSB online application for company data 30 update.

- 5 Counsel averred that as was stated by the Applicant's Director, a search was conducted and it was established that; at the time of incorporation of the Applicant Company on 12th July, 1990, the shareholders were George Michael Mukula Jr with one (1) share, Rodney Mukula Akongel with one (1) share and George Michael Mukula with also one (1) share as
- 10 is reflected under annexure "G", a copy of the Applicant Company's Memorandum and Articles of Association, attached to the affidavit in support. That on 17th May, 1991, a return of allotment was filed reflecting that Barti Suresh Popat, Ramesh Chotodbiny Masrani and Suresh Progji Popat were each allotted one (1) share as is reflected in 15 annexure "H" attached to the affidavit in support. Further, that as per annexure "I" attached to the affidavit in support, on 18th November, 1991 another return of allotment was filed reflecting that Bhorthi Popat and Paul Ekochu were allotted 901 and 1 shares respectively making the total number of shares allotted 908 leaving 92 shares as not allotted.
- 20 Counsel further submitted that the returns of allotment filed; in April 1992 marked as annexure "J" reflecting that Suresh Pragi Popat was allotted 891 shares, Bhoti Suresh Popat was allotted with 10 shares and Paul Ekochu was allotted with 1 share; 3rd December, 1999 marked as annexure "K" reflecting that Masrani Ramesh was allotted with 1999 25 shares, Masrani Mrudula was allotted with 1500 shares, Masrani Rupin was allotted with 1500 shares and Ekochu Paul was allotted with 1 share and 5th December, 2003 marked as annexure "M" reflecting that Masrani Ramesh was allotted with 50 shares, Ekochu Paul was allotted with 50 shares and Masrani Mona was allotted with 900 shares and the 30 amended Memorandum and Articles of Association marked as annexure "L" filed on 3rd December, 1999; were filed in error as the allotments exceeded the number of the available shares and the amended

5 Memorandum and Articles of Association did not reflect the original shareholders at incorporation and the returns of allotment dated 17th May, 1991 and 18th November, 1991.

Furthermore, Counsel submitted that as stated by the Applicant's Director, the current shareholders and shareholding of the Applicant 10 Company as per the URSB records is as follows; George Michael Mukula Jr 1, Rodney Akongel Mukula 1, George Michael Mukula 1, Barti Suresh Popat 902, Paul Ekochu 1, Ramesh Chotodbiny Masrani 1 and Suresh Progji Popat 1; yet Barti Suresh Popat, Paul Ekochu, Ramesh Chotodbiny Masrani and Suresh Progji transferred all their shares to Aegis Finance 15 Company Limited as per annexure "N" attached to the affidavit in support. That Aegis Finance Company Limited also transferred its shares to Irio Systems Limited that eventually sold all its shares and ownership to Fortune Energy Limited as per the Share Sale and Purchase Agreement dated 7th January, 2016 marked as annexure "B".

20 Counsel then contended that however, there are no copies of the transfer forms on record, showing the transfer of the shares from the original shareholders to the subsequent persons thus creating a gap in the information/documentation of how the various changes in the shareholding of the Company occurred since its incorporation. That 25 URSB has since requested the Applicant to produce all the missing documents including the transfer of shares forms throughout this period as well as the identification documents of the respective former shareholders; failure of which the Applicant's online data update application would not be approved.

5 Analysis and Determination

Section 115 of the Companies Act, Cap. 106, mandates a Company to keep a register of members, enter the names and details of all persons who are members and notify the Registrar of Companies of all changes on the register.

10 Section 121 of the Companies Act, also stipulates that:

*"(1) Where-

- *(a) the name of a person is without sufficient cause entered in or omitted from the register of members of a company; or*
- *(b) default is made or unnecessary delay takes place in entering* 15 *on the register the fact of any person having ceased to be a member,*

the person aggrieved or any member of the company or the company may apply to the Court for rectification of the register.

(2) Where an application is made under this section, the Court may 20 *either refuse the application or may order rectification of the register and payment by the Company of any damages sustained by any party aggrieved."*

In the Matter of Uganda Baati Limited, (supra) relied upon by Counsel for the Applicant, **Hon. Justice Ocaya Thomas O. R** while 25 considering such an application, stated that:

> **"In the Matter of Ecole Francaise De Kampala Limited Company Cause No.9 of 2002 in an application to have members of a company name entered into the register of the Registrar of Companies, this***

5 *Court cited a decision of an English Court in *Kings Court Trust Limited and Others Vs Lancashire Cleaning Services Limited* (2017) EWHC 1094 (CH), where the Court was asked to intervene by using its statutory powers to order ratification of the register of the members to include the names of the executors. That would allow the* **10** *executors to pass a written resolution to appoint a new Director. The Court, exercising the powers to correct a company register enshrined on it under provisions that are in par material with the requirements of the Companies Act above allowed the application and granted the reliefs sought...* **B***ut the law is fashioned and tailored to suit the* **15** *practicalities of life and legal concepts and in circumstances such as the present, the Court is upon request obligated to step in*." (**Emphasis Mine**)

Furthermore, as per, **"Practice and Procedures of Companies Court"** by Alan Boyle, Q. C & Phillip Marshal foreword by the Hon. Mr. 20 Justice Lightman Lloyd's Commercial Law Library-LLP, London Hong Kong 1997, it was stated that the Court's power to order rectification is not restricted to cases where a person has been entered on the register improperly. It extends to all cases where the entry was without sufficient cause made and that it is sufficient to show that the 25 register of members is incorrect because an entry has been omitted or made in error.

In the instant case, the Applicant seeks an order compelling the Registrar of Companies to rectify the Company register so that the Company members whose membership ceased are omitted and a data 30 update is approved. As provided under **Section 121 of the Companies Act**, this Court has the power to entertain an application for rectification

5 of the register. This jurisdiction was also exercised *In the matter of Club D'Affaires De Kampala Limited Company Cause No.34 of 2023* and *In the Matter of Uganda Baati Limited, (supra*).

In the premises, this Court is empowered with the jurisdiction to grant the orders such as the ones sought in this application.

10 Issue No. 1 is therefore, answered in the affirmative.

Issue No. 2: What remedies are available to the Applicant?

Applicant's submissions

Counsel for the Applicant submitted that URSB does not dispute the fact that the Applicant's current Directors are; Flight Capt. George Michael 15 Mukula, Daphine Mugambwa and Esther Yapkoreny; that however, it has queried that; there is no proof of transfer of the shares for those shareholders that appear in the system after the incorporation of the Applicant Company, the resolution for increase of the share capital in the system is tainted with errors and that therefore

cannot effect the 20 intended increase and as a result, nothing can be done unless the Applicant obtains a Court Order authorizing URSB to proceed in the circumstances.

Counsel for the Applicant further submitted that according to the available information currently showing on the URSB system, only the 25 subscribers at the time of its incorporation, that is; Flight. Capt. George Michael Mukula, Rodney Mukula Akongel and George Michael Mukula (Jr), each with 1 share respectively, are the only legally registered members of the Applicant. That the Applicant has made several attempts

5 to trace all the former shareholders to retrieve the required information but in vain.

Counsel further submitted that after the purchase of all the shares from its predecessor Irio Systems Limited through their entity Fortune Energy Limited in 2016, the three subscribers have been fully operating the 10 Applicant's business of forex bureau and money remittance without any hindrances from any of the former shareholders. To that, Counsel prayed to Court to direct the Registrar of Companies to approve the Applicant's data update application and rectify the register by removing Barti Suresh Popat, Paul Ekochu, Ramesh Chotodbiny Masrani, Suresh Proggi Popat, 15 Aegi Finance Company Limited, and Irio Systems Limited who are unavailable to provide their required personal details. Counsel also prayed to Court to direct the Registrar of Companies to rectify the register of the Applicant Company by reflecting the names of; George Michael Mukula Jr with 1 share, Rodney Akogel Mukula with 1 share 20 and George Michael Mukula also with 1 share.

Analysis and Determination

In determination of whether to grant an order for rectification, the Court must consider all the relevant circumstances and should have regard to the justice of the case. (See: **In the Matter of Club D'Affaires De**

25 **Kampala Limited (supra)** and **Kasiita Estates Ltd [1982] HCB 107**).

The rationale for the grant of an order such as the one sought in this application was laid out by **Hon. Justice Ocaya Thomas O. R.**, **In the Matter of Uganda Baati Limited, (supra)** that:

"This, the Court does, to allow the Company to keep carrying on its* 30 *business and its smooth running that would otherwise be hindered

5 **by the absence of other members who are authoritatively integral or whose active presence is required by statute. As a principle of law, the Court will not interfere in the activities or decisions of a Company, save in a few limited circumstances. See: Musa Misango Vs Eria Musingure and Others [1966] EA 390* and *Samuel Gutu* 10 *Macharia and 4 Others Vs Patrick G. Mwangi and 7 Others [2017] EKLK*."*

In the instant case, the Applicant Company was incorporated on 12th July, 1990 and the shareholders were George Michael Mukula Jr, Rodney Mukula Akongel and George Michael Mukula each holding one 15 share as per annexure "G". Further allotment of shares was made

on; 17th May, 1991 as per annexure "H", 18th November, 1991 as per annexure "I", in April, 1992 as per annexure "J", 3rd December, 1999 as per annexure "K" and on 5th December, 2003 as per annexure "M". However, the Applicant avers that the returns of allotment that were filed 20 in April, 1992 (annexure "G") and on 3rd December, 1999 (annexure "K") were filed in error as the shares allotted exceeded the number of the available shares. Also, that the return of allotment that was filed on 5th December, 2003 (annexure "M") was also filed in error since it originated from the return of allotment filed on 3rd December, 1999 which had been 25 filed in error. The Applicant further averred that the amended Memorandum and Articles of Association marked as annexure "L" that were filed on 3rd December 1999, were also filed in error as they did not reflect the original shareholders.

The Applicant also averred that according to the current Company 30 records at URSB, the Applicant Company's shareholders and shareholding is as follows; George Michael Mukula Jr 1, Rodney Akongel

- 5 Mukula 1, George Michael Mukula 1, Barti Suresh Popat 902, Paul Ekochu 1, Ramesh Chotodbiny Masrani 1 and Suresh Progji Popat 1. That however, Barti Suresh Popat, Paul Ekochu, Ramesh Chotodbiny Masrani, and Suresh Progji transferred all their shares to Aegis Finance Company Limited as per annexure "N", the transfer forms, attached to 10 the affidavit in support. That Aegis Finance Company Limited also transferred its shares to Irio Systems Limited that eventually sold all its shares and ownership to Fortune Energy Limited as per the Share Sale
- and Purchase Agreement dated 7th January, 2016 marked as annexure "B". Furthermore, the Applicant explained that on 2nd May, 2017, a 15 Board resolution (annexure "E") was filed showing the new Directors of the Applicant Company as; Flight Capt. George Michael Mukula, Ms. Esther Yapkoreny and Ms. Daphine Mugambwa whose particulars are detailed in annexure "F", a notification of appointment of Directors and Secretary of the Company.
- 20 As submitted by Counsel for the Applicant, due to the above information and documentation gap, the Applicant has been barred from obtaining the requisite documents required by Bank of Uganda to renew its operating licence and that the Applicant was advised by URSB to file the latest annual returns, the beneficial ownership form and a special 25 resolution for increase of the Company's share capital to a minimum of UGX 200,000,000/= which can only be done after the Company register of members has been rectified through a Court Order.

In light of the rationale for grant of an order of rectification of the Company register as was stated

In the Matter of Uganda Baati

30 *Limited, (supra*) and considering the fact that there was no objection from URSB as well as the fact that the current Directors have been

5 managing the Applicant Company with no disputes or objections from the previous shareholders, I find it just that the register is rectified to enable the Applicant resume and run its affairs as it should be. This application is therefore granted.

Accordingly, it is hereby ordered that:

- 10 1. The Registrar of Companies rectifies the record of the Applicant Company to reflect the updated register of members which was attached to the affidavit in support of this application as **annexure "G"**.
- 2. The Registrar of Companies approves the URSB data update 15 application for the Applicant under tracking Number G2404270338.
- 3. The Applicant's Directors are hereby mandated to act as the Board of Directors of the Applicant for purposes of rectifying all the Applicant's records at the Companies Registry.
- 20 4. The Applicant shall bear its own costs of this application.

I so order.

Dated, signed and delivered electronically via ECCMIS this **24th** day of **September, 2024**.

Patience T. E. Rubagumya **JUDGE** 24/09/2024

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