

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 228 OF 2020
IN THE MATTER OF THE COMPANIES ACT 2012
AND
IN THE MATTER OF UGANDA BAATI LIMITED
AND
IN THE MATTER OF AN APPLICATION BY DR. ALAN SHONUBI

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application is brought under sections 142 of the Companies Act and Order 38 r 6(h) of the Civil Procedure Rules.

The applicant was represented by *Ms Nakaliika Joan*.

The applicant is seeking orders that;

1. ***Uganda Baati Limited*** is granted leave to convene and conduct the Annual General Meeting for the year ended 31st December 2019 by electronic means.

2. The costs of this application be provided for.

The main grounds for this application are set out in the affidavit of Dr. Alan Shonubi;

1. The applicant is the Chairman of the Board of Directors, Uganda Baati Limited and is registered as Member No. 44 of the Company's register of members and the company is a private company with 46 members both local and foreign.
2. It is a requirement of the company to convene an annual General meeting in respect every concluded financial year in accordance with the Company's Articles of Association registered on 10th August 1964 & the Companies Act-2012. The Company's Articles of Association require that any Annual General Meeting of the Company must be physically convened with a quorum of at least two (2) members entitled to attend the meeting physically in person but the practice is that all the forty six (46) members attend the same and are interested in attending the meeting.
3. It is currently impractical to convene a Meeting of the company in the usual manner owing to the various restrictive measures implemented by the Government of Uganda to combat the spread of the novel corona virus disease [Covid-19] in Uganda. Covid-19 was declared a pandemic by the World Health Organisation on 11th March 2020 and a modified health emergency in Uganda by the Minister of Health on 17th March 2020.
4. The public health control measures implemented by the Government of Uganda include Blanket ban on public meetings, and the effect of this measure is that members of the company cannot convene in-person at a designated venue to attend the business ordinarily conducted at the Company's Annual General Meetings.
5. It is essential that the company convenes the Annual General Meeting for the year ended 31st December 2019 soon so as to comply with the statutory requirement for the company to hold an annual general meeting of members. It is therefore crucial for the Annual General

Meeting to take place on or before 29th September 2020 to comply with this requirement and also ensure that members of the company consider and pass resolutions reserved for their mandate, that are important for the governance, management and operations of the company as set out in the Company's Articles of Association and the Companies Act 2012.

6. It is appropriate for the Company to be granted leave of Court to convene and hold the Annual General Meeting by electronic means (for example, via a combined online/web broadcast and mobile phone platform) or other virtual platforms provided by the company by which all eligible members will attend by which all eligible members shall attend, participate and vote electronically.
7. To ensure that the interests of all the members of the Company are fully protected, the Company shall submit an electronic Annual General Meeting Plan to the Uganda Securities Exchange and obtain a no-objection in accordance with guidelines issued by the Uganda Securities Exchange

This court entertained the matter and allowed the brief written submissions of counsel for the applicant. The applicant's counsel written submissions are based on the application and the supporting affidavit by *Dr. Alan Shonubi* and this Court has considered them in arriving at this decision.

This court under section 33 of the Judicature Act is empowered to give any remedies sought in a matter if properly brought before the court. It provides;

The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to the cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined

and all multiplicities of legal proceedings concerning any of those matters are avoided.

The applicant's problem or dilemma in this matter is in simple terms; it is currently impractical to convene a meeting of the company in the usual manner owing to the various restrictive measures imposed by the government of Uganda under the Public Health Act, Cap 281, to combat the spread of Corona virus [(Covid-19)].

The measures imposed by the Government of Uganda to control the spread of the corona virus include a ban on public meetings, and the effect of this measure is that the members of the company cannot convene in-person at a designated venue to attend to business ordinarily conducted in the Company's Annual General Meetings.

The court must be satisfied by the capacity of the applicant to bring such an application, then the obligation of the company to hold such a meeting and the impracticability of holding a meeting.

The **Companies Act** envisages such situations and is ably provided for under section 142 which provides as follows;

(1) 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 of this Act, the court may of its own motion or on application of any director of the company or of any member of the company who would be entitled to vote at the meeting order a meeting of the company be called, held and conducted in the manner the court thinks fit.

The purpose of the above provision is to enable the court to give directions to overcome practical difficulties so that the company's affairs can be conducted where they might otherwise be stymied. See ***Ghalib Hussain & Abdul Sattar v Wycombe Islamic Mission and Mosque Trust Limited & Tasawar Iqbal [2011] EWHC 971(Ch)***

The corporate law should allow the directors or shareholders to meet in any manner in which all members can communicate with one another rather than physically meet to 'hear each other'. Therefore the word communicate at meetings should always be flexible to allow online meetings of a corporation.

The applicant as a shareholder and Chairman of the Board of Directors has set out the reasons and grounds why the company is unable to hold a meeting in the manner provided under the Articles of Association and the justification for such a meeting; to enable the company operate smoothly and convene the necessary company meetings and this court is satisfied with the said reasons and grounds.

Under the current circumstances and legal regime, the company cannot convene a physical meeting due to its large membership of about 2,800. **The Public Health (Control of COVID-19) Rules 2020** banned public gatherings and meetings.

In addition, there is a prohibition of entry into Uganda under the **Public Health (Prohibition of Entry into Uganda) Order, 2020** and it provides; *The entry into Uganda by any person and the introduction into Uganda any animal, article or thing at or through any of the border posts of Uganda is with effect from Monday 23rd March 2020, prohibited.* The members who may be out of the country cannot come into Uganda.

The outbreak of corona disease (Covid-19) has crippled free movement and meetings. The government has issued guidelines, directives or Statutory Instruments to stop any gatherings and the best public health practice is to avoid unnecessary physical meetings of companies.

It is therefore clear that Covid-19 social distancing measures have fast tracked the evolution of the virtual Annual general Meeting. The traditional social interaction of member meetings have been limited and physical meetings are no more.

Virtual general meetings are gaining wider acceptance in Uganda and the World at large in light of the Covid-19 pandemic where listed companies and some private companies have sought order to conduct virtual meetings. In this case, it is impracticable to convene a meeting in the manner provided and it is equally

impracticable to conduct the meeting in a manner required by law and articles of Association.

Therefore, the company should be able to execute most of the company obligations in relation to meetings via electronic means including Electronic delivery of notice of meetings and associated documentation, electronic lodgement of proxies, electronic voting and stakeholder engagement at online meetings.

In the circumstances, ***Uganda Baati Limited*** is granted leave to convene and conduct the Annual General Meeting for the year ended 31st December 2019 by electronic means.

The costs of this application are to be met by the company.

It is so ordered.

Dated, signed and delivered be email and whatsApp at Kampala this 31st day of August 2020

SSEKAANA MUSA
JUDGE