

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

MISCELLANEOUS CAUSE NO. 205 OF 2021

VANTAGE MEZZANINE FUND II PARTNERSHIP APPLICANT

VERSUS

- 1. UGANDA REGISTRATION SERVICES BUREAU**
- 2. SIMBA PROPERTIES INVESTMENT CO. LIMITED**
- 3. SIMBA TELECOM LIMITED**
- 4. LINDA PROPERTIES LIMITED**
- 5. ELGON TERRACE HOTEL LIMITED RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicants brought this application for judicial review under Article 42 of the Constitution, Section 98 of the Civil Procedure Act Section 33 & 36 of the Judicature Act, Cap 14 and Rule 3(1)(a), 2, 4, 6, 7 and 8 of the Judicature (Judicial review) Rules, 2009 as amended, the Companies (Powers of Registrars) Regulations, 2016 and all other enabling laws for the following Orders and judicial reliefs:

1. DECLARATIONS THAT

- (a) The respondent action of refusing to register documents lodged by the Applicant upon confirming that the same conform with registry requirements is irrational, arbitrary, unreasonable, clothed with procedural impropriety, discriminatory, erroneous on the face of the record, lased with bias and malice, ultra vires, unfair, unjust and illegal and unlawful.

- (b) The respondent's action of purporting to halt the registration of documents properly lodged for registration until the completion of an arbitration process is ultra vires the respondent's mandate and the law on registration of documents, irrational, arbitrary, unreasonable, clothed with procedural impropriety, erroneous on the face of the record, laced with bias malice, unfair, unjust and therefore illegal and unlawful.
- (c) The respondent's action of failing to provide a decision on registration within the required timeframes of the law is irrational, ultra vires, arbitrary, unreasonable, clothed with procedural impropriety, erroneous on the face of the record, laced with bias malice, unfair, unjust and therefore illegal and unlawful.
- (d) The respondent's action of purporting to entertain a complaint/request to halt registration of documents lodged by the applicant was illegal, irrational, procedurally improper laced with bias, and thus unlawful.
- (e) The respondent's action of purporting to hear a complaint having failed to comply with the law on registration of documents lodged by the applicant is ultra vires, illegal and unlawful.
- (f) The process that the respondent subjected to the applicant to after the applicant lodged documents for registration on June 18th 2021 was improper, ultra vires the attendant regulations, and to that extent illegal and unlawful

2. ORDERS that

- (a) An Order of Certiorari doth issue quashing the record of proceedings and all attendant decisions relating to the halting or otherwise delaying the registration of documents lodged before the Registrar of Companies on June 18th 2021, the same being unfair, discriminatory, illegal, clothed with procedural impropriety, unreasonable, highhanded, arbitrary and ultra vires the law on registration of documents.

- (b) An Order of Mandamus doth issue compelling the respondent and all its concerned officers to immediately complete the process of registering the documents lodged by the applicant on 18th June 2021 and do so without delay.
- (c) An Order of Prohibition doth issue against the respondent, its officer and any agents or any other person exercising powers in the respondent's name to desist from entertaining any other processes, colluding with or otherwise entertaining the interference of persons ultra-vires the registration process, or acting in any manner that is contrary to the law and process of registering documents, or in any way frustrates or otherwise offends the applicants rights.
- (d) An Order directing the respondent to pay to the applicant special Damages computed as follows;
 - (i) In the sum equivalent to the commercial interest accruing to the applicant on a monthly basis:
 - (ii) The sum equivalent to any dissipation in the value of the shares that may result from the respondent's delay in effecting share transfers, Both sums arising from the Mezzanine Term Facility Agreement whose provisions the respondent continues to frustrate by its actions, computed from June 18th 2021 to the date of completion of the registration of the said documents.
- (e) An Order directing the respondent to pay the applicant general, punitive and Exemplary damages
- (f) An Order directing the respondent to pay the applicant costs of this application.
- (g) Orders that the court may deem necessary to redress the injustice occasioned upon the applicant by the respondent.

The grounds in support of the application were set out in the application and the affidavit in support by Moses Muziki which briefly states that;

1. On 18th June 2021, the applicant lodged documents relating to the transfer of shares in Simba Properties Investment Company Limited, Simba Properties Limited; Linda Properties Limited: and Elgon Terrace Hotel Limited;
2. At Lodgment, the applicant's lawyers met with officers of the respondent who verified each of the documents lodged and confirmed that the documents conformed to the registration requirements.
3. Rather than register them immediately as required by law, the respondent officers undertook to do so at the earliest opportunity but in any event without delay, giving the applicant a legitimate expectation that the documents would be registered in accordance with the law.
4. The respondent did not comply with the law and did not provide the applicant with a satisfactory reason for not doing so until the applicant's lawyers were made aware that the respondent was entertaining a request to halt the process from third parties.
5. The respondent acted outside the law in various respects when it entertained a complaint/request to halt the registration process, purported to conduct a hearing before registering the process and ultimately refused or otherwise failed to complete the registration process, and continues to act outside the law.
6. Rather than complete the registration of documents or refuse the same as provided for under the law, the respondent purported to halt the registration process until completion of an arbitration process, which procedure is not provided for under in law.
7. The respondent's actions have resulted in into great financial and other losses to the applicant, which losses it ought to atone for.

The 1st respondent responded to the application by filing an affidavit through Patricia Opoka Akello who is the Manager Document Registration and Licensing at Uganda Registration Services Bureau contending that;

1. That on 18th June 2021 she received documents from the applicant to register resolutions and share transfer from for Simba Properties Investments Co. Ltd, Simba Properties Ltd, Linda Properties Ltd and Elgon Terrance Hotel Ltd.
2. That on 22nd June 2021 received documents from Muwema & Co Advocates & Solicitors claiming to act for Simba Companies and filed an application to the Registrar General objecting to the registration of the said resolutions and transfers and notifying the respondent of the existence of an order of the High Court of Uganda vide M.A 201 of 2020 referring the matter in dispute to arbitration.
3. That the 1st Respondent paused the registration of the said documents to enable its official verify the Court Order, and to peruse the Court record with a view of understanding the nature and effect of the said court order.
4. That it was confirmed that there was indeed a matter before Justice Wamala in which he delivered a ruling confirming that there existed a dispute between the applicant and the Simba Companies regarding the Mezzanine Term Facility Agreement (MFTA) and referred the same to Arbitration.
5. That subsequently, the 1st respondent invited the advocates of the applicants together with those of the Simba Companies to a meeting held via zoom on 28th June 2021 were both parties were heard.
6. That the 1st respondent heard the arguments of both sides and was convinced that the documents submitted to it are part of the dispute referred to in arbitration. In the letter dated 1st July 2021, the respondent communicated its decision to, and advised the parties to expedite the resolution of the dispute through arbitration as ordered by court.

7. That the respondent acted reasonably and within the law, when it exercised its powers under the Companies (Powers of Registrar) Regulation, 2016 to decline registration.

The 2nd to 5th respondent made an application to be joined on the court proceedings which application was allowed and they became respondents in this matter and they filed an affidavit in reply through Charles Nsubuga-an Advocate with Muwema & Co Advocates and Solicitors.

The respondents denied most of what was alleged in the affidavit in support of the application and wholly supported the reason advanced by the 1st respondent for refusal to register documents contending that the resolutions were undated and the transfer of shares were blank. They contended that application to transfer the shares by the applicant was fraudulent, misleading and erroneous since it was not authorized by the respondents' valid board resolutions.

The following issues were raised;

1. *Whether the Applicant has locus to bring these judicial review proceedings?*
2. *Whether the Applicant sets out proper case for judicial review?*
3. *Whether the Application raises any grounds for judicial review?*
4. *Whether the Applicant is entitled to reliefs sought?*

The applicant was represented by **Mr. Robert Kirunda** while the **Mr. Birungi Dennis** represented the 1st respondent and **Mr. Fredrick Muwema** and **Mr. Charles Nsubuga** represented the 2nd-5th respondents.

Whether the Applicant has locus to bring these judicial review proceedings?

Counsel for the Applicant submitted that the Applicant is a duly and validly existing partnership based in South Africa. This fact is neither disputed nor contested. The Applicant partnership exists by virtue of a partnership agreement that is recognized as the basis of establishment of a partnership in South African law. This fact is established

both by the Applicant's evidence and by the conduct of the parties, under the South African High Court Rules, the partnership has capacity to sue and be sued in its name.

He further states that under Ugandan law, a partnership can sue or be sued in its names. **Citing Civil Procedure Practice in Uganda at p.32 by M. Ssekaana and S.N. Ssekaana** "*partnerships may sue or be sued in the firm's name or alternatively in the names of the partners. The Rules of Court provide that any action by or against partners may be taken in either the firm name or in the personal names of the partners.*" The above position is a postulation of **Order 30 Rules 1 and 10 of the Civil Procedure Rules** which, read together, specifically provide that a partnership may sue or be sued in the firm's name. (see. **Odoki J (as he then was) in Reliable African Insurance Agencies v. National Insurance Corporation HCB 1979 at p.58**)

The above Rules do not impose a requirement for foreign partnerships be registered in Uganda in order for them to have legal capacity to sue or be sued. Justice Wamala in **Krone Uganda Limited v. Kerilee Investments Uganda Limited MA. 306 of 2019 at pp.16 to 21** recently dealt at length with position of the legal capacity of foreign companies to sue or be sued in Uganda. He found that legal capacity is not diminished by boundaries and that once a company is incorporated else where it has the right to do business in Uganda and by extension to enforce its contractual rights.

Counsel submitted that the reasoning in that decision applies to registered partnerships as well. We are fortified in this view by the fact that Order 30 does not specifically impose any restrictions on foreign partnerships in order for them to have the capacity to sue or be sued in Uganda.

Counsel for the 1st Respondent submitted that the Applicant is a non-existent legal entity and hence incapable of instituting these proceedings because there is no entity in the names of the Applicant. The Respondent avers that no such entity exists in the territorial jurisdiction of the Republic of Uganda and therefore this application cannot be instituted by a non-existent entity.

Furthermore, the Applicant cited **Order 14 of the South African Rules** stating that a partnership may sue in its names the same way our Civil Procedure Rules provide, however, nowhere do they show that the Applicant is a valid partnership. The Applicant attaches the High Court Rules of Procedure of the Republic of South Africa as proof of existence of a partnership, but those Rules do not apply in Uganda a sovereign state with its own Rules. Even when the Applicant submitted a Partnership deed purportedly signed on 27th February 2013 by one party, yet it is trite law that the minimum number of persons to commence a partnership relationship is two, but also does not indicate

the country or place where it was signed, does not contain provisions establishing a partnership relationship, a copy is not registered in accordance with the Registration of Documents Act, it is not notarized by the Notary Public of South Africa as per **Section 84 of the Evidence Act**, hence a deed signed by one party is not sufficient to create a partnership relationship.

Analysis

I have taken the liberty to address my mind to the meaning of a “Partnership” as per Section of the Partnership Act and also some decided case law. In consideration of the meaning which is very clear and also the requirements listed, as per the facts, its existence in South Africa is not basis to be disregarded as a partnership.

Justice Wilson Masalu Musene (as he then was) in ***Asingwire Alex Willy & Biryabarema Deo v. Rwakojo Grace HCT – 01 – CV – CS NO. 001 OF 2014***, stated that:

“a partnership may be governed by a partnership contract, a written agreement, agreed positions between partners either from their express or implied conduct or overriding prohibitions entrenched within the Act unless if expressly negated by the written partnership agreement.”

The applicant may indeed be a partnership in South Africa but it is not clear to this court whether it was registered or not in the same country or the same laws applicable in that country are in *pari materia* with the legal position in Uganda. Therefore this court will interrogate this fact to come to its finding and determination.

In South Africa, **a partnership is not regarded as a legal entity**. Unlike trusts, companies and close corporations, which are considered 'legal or juristic persons', a partnership is not, and there are no formalities required in order to set up a partnership.

Introduction to the South African law of Partnership

A partnership is a legal relationship that derives from a contract. The salient features of the contract are:

- it is concluded between two or more persons (but normally not more than 20 persons)
- each partner must undertake to contribute to an enterprise,
- the partnership must be carried on in common
- and the object must be the making and sharing of profits.

A partnership is not a corporate entity" It does not have a separate legal persona and this has several important legal consequences: in the relationship between the parties all rights and duties only exist between the partners Inter se, the rights and duties of the partnership are the rights and duties of the partners and the continued existence of the

partnership depends on the continued participation of partners in the partnership hence it has no perpetual succession.

Establishing a Partnership under South African law

Partnerships are created by contract. Thus for a partnership to be validly formed all the general requirements as regards to contractual validity must be met, Furthermore for an agreement to be one of partnership consensus must have been reached on all the essential terms of partnership or rather as was described herein above as its salient features.

The principles of creation of partnership in South Africa would appear similar to the Ugandan law since they also have a bearing to the common law principles and they guide in this area of the law. It is not clear whether the applicant partnership is duly registered in South Africa and it would appear it is not a requirement to register the same in that country although a business name should be registered as such. The document attached to the supplementary Affidavit in rejoinder is titled **SECOND AMENDED AND RESTATED EN COMMANDITE PARTNERSHIP AGREEMENT OF THE VANTAGE MEZZANINE FUND II PARTNERSHIP** entered into between **VANTAGE MEZZANINE FUND II (PROPRIETARY) LIMITED, in its capacity as general partner of the VANTAGE MEZZANINE FUND II GP PARTNERSHIP** and **THOSE PERSONS SIGNING DEEDS OF ADHERENCE IN THE FORM OF SCHEDULE 1** is part of the alleged partnership agreement that created the applicant.

This document is a foreign document that was not notarized for authenticity and verification of the content as genuine and replica of the original partnership agreement. Such a document ought to have been notarized in accordance with section 84 of the Evidence Act which provides;

“84. Presumption as to private documents executed outside Uganda

The court shall presume that private documents purporting to be executed out of Uganda were so executed and were duly authenticated if—

(c) in the case of such a document executed in any country of the Commonwealth in Africa, it purports to be authenticated by the signature and seal of office of any notary public, resident magistrate, permanent head of a government department, or resident commissioner or assistant commissioner in or of any such country; and, in addition, in the case of a document executed in Kenya, it purports to be authenticated under the hand of any magistrate or head of a government department;”

The same is not registered and was not signed by all the parties/partners or the pages of the signatures were not attached. It is contended that the same document/partnership

agreement is confidential and it is produced in bits and is incomplete which makes it difficult for this court to determine whether it is a partnership. The country of origin of the partnership deed is not indicated apart from a clause within indicating that the governing law shall be laws prevailing in RSA. This document cannot be relied upon in determining the existence of a partnership for purposes of establishing legal capacity to sue or be sued in Uganda.

The Ugandan law under the Partnership Act makes it is a mandatory requirement for certain partnerships to register and the failure to register may have serious consequences to the existence of the partnership entity.

Mandatory registration

- (1) A [firm](#) carrying on [business](#) in Uganda under a [business](#) name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners which are corporations without any addition other than the true first names of individual partners or initials of the first names; and the corporate names of all partners which are corporations, shall register its name under the Business Names Registration Act.
- (2) Where any persons operate a [business](#) as a [partnership](#) in contravention of subsection(1), every party to the [business](#) commits an offence and is liable on conviction, to a fine not exceeding twenty currency points and to an additional fine not exceeding five currency points for each day for which the offence continues after the expiration of fourteen days.

The law in Uganda is prohibitive of such a partnership to operate without registration and penalizes the offending party continuously for offending the provision for registration under the partnership Act. In the present case the applicant contends that it is a partnership, which means that it must comply with the law which requires registration in order to have capacity to sue or not to sue in Uganda. The applicant's status as a recognized entity in South Africa has not be proved to the satisfaction of this court since there is no single registered document that has been produced before this court apart from a few pages of the unregistered partnership agreement.

The applicant's counsel cited the case of ***Krone Uganda Limited v Kerilee Investments Uganda Limited HCMA No. 306 of 2019*** in support of his argument that there was no need for it to be registered in Uganda having been recognized and there is requirement for registration of partnerships in South Africa, therefore like in other jurisdictions it has the right to sue and be sued as an existent legal entity worldwide. Once a partnership is properly or registered in its country of origin then it can sue or be sued. Justice Wamala

in that case found that legal capacity is not diminished by boundaries and that once a company is incorporated elsewhere it has the right to do business in Uganda and by extension to enforce its contractual rights. *At page 17 learned judge held thus:*

*“Under the law, once a company is incorporated, it obtains legal personality as against the whole world. **The legal personality is not diminished by legal boundaries.** Like natural citizenship, it is only restricted to what it can do outside its geographical boundaries. **It is therefore the true position that a company incorporated in the United Kingdom can transact business in Uganda without having to go through any form of registration.** Counsel for the Applicant appeared to agree with this position. **If such a company can transact business in Uganda without first having to register, then it follows that it has capacity to enforce its rights if they are affected in the course of doing business. Bringing and maintaining a court action is one major way of enforcing such rights. It is therefore not true that a company incorporated in the United Kingdom is a non-existent entity that cannot bring and maintain an action in Uganda.**”*

The above decision is quite distinguishable from the present case since it was a company matter and the law never required mandatory registration of such a company unlike in the present case where the nature of partnership requires a mandatory registration whether by a Ugandan partnership or a foreign partnership. It should be appreciated that a partnership operates in a fluid manner and thus the need to ensure proper monitoring through registration especially where the partners are not using their true surnames or corporate names of all partners which are corporations like in the present case where it appears to be a partnership of companies whose particulars and place of registration or incorporation is not known.

Unlike partnerships— which do not have a separate existence from their owners since partners are individually liable for partnership obligations, companies have a separate legal existence from their shareholders (*Salomon v A Salomon and Co Ltd [1897] AC 22*) and are recognized internationally. A partnership is not under the law a juristic person as it is only compendious name for the collection of individuals or companies who are members of the firm. The existence of a partnership is a matter of law. *See Sirma v Kiprono [2005] KLR 197*

At page 16 of the ruling in *Krone*, His Lordship Justice Boniface Wamala stated: “*Let me point out that there is a difference between incorporation of a company and registration of a company for purposes of foreign presence. Under the law, once a company is incorporated, it obtains legal personality against the whole world*”. Partnerships have no

corporate personality, which is why the language used under the Partnerships Act, 2010 and the Business Names Registration Act is *registration* and not *incorporation*. Partnerships therefore do not have legal personality against the whole world, the reason they have to register in every national jurisdiction and their legal recognition may vary in different jurisdictions depending on the laws in that country.

The importance of registration of the partnership which does not operate under its surnames should be underscored since it is intended to protect the public dealing with such a persons who have come up to operate under a partnership. The Business Names Registration Act requires a registration which will automatically include providing particulars of the partners which provide the true identity of such a partnership. This Honorable Court has stated in the case of ***Asingwire Alex Willy vs Rwakojo Alex HCT – 01 – CV – CS No. 001 of 2014*** “*Under the Business names Registration Act, Cap. 109 Laws of Uganda, Business Names are to be registered whether partnership or otherwise. Registration is therefore compulsory. In this case, the Plaintiffs, from the evidence on record, did not comply with Sections 4, 5 and 6 of the Business Names Act. That meant that there was no partnership in place. Even if Section 2 (1) of the Partnership Act defines a partnership as the relation which subsists between persons carrying on business in common with a view point of profit, as submitted by Counsel for the Plaintiffs, such partnership, presumed or real has to be registered under the Business Names Registration Act.*”

In the same vein, this Court rejects the submission of counsel for the applicant, that foreign partnerships are free to operate in Uganda outside the regulatory registration requirements contained in the Partnerships Act, 2010 and the Business Names Registration Act (Cap 109). Order 30 of the Civil Procedure Rules provides suing and being sued once the partnership has satisfied the mandatory requirements of the law. Therefore, the international partnerships or foreign partnerships just like the Ugandan partnership cannot be recognized once they are not registered since their identities are unknown and it may open the door wide for fraud in their transactions and dealings.

The locus standi or standing to sue (capacity) in a partnership name should be by mandatory registration under the Partnership Act and Business Names Registration Act which sets out the regulatory framework for partnerships in Uganda.

For the reasons hereinabove stated, the applicant has no legal presence and locus (capacity) to commence this application. The application is dismissed.

However, for completeness I will determine the application on merit in case they had had locus (capacity).

Whether the Applicant sets out proper case for judicial review? & Whether the Application raises any grounds for judicial review?

Counsel for the Applicant submitted that the application presents a proper case for judicial review in so far as it challenges the actions and decisions of the 1st Respondent, a public body. The 1st Respondent is enjoined to ensure that all its actions comply with the public laws of this country. The current application shows that all the actions and decisions challenged herein fail dismally against this standard. The objectives of Judicial Review are provided for under Regulation 1A and 7A of the Judicature (Judicial Review) Rules, 2009 as amended (***See. Mohammed Alibhai & 2 others v. Attorney General Misc Cause 70, 117 & 119 of 2020 at pp. 8-12. Rutayisire Alphonso & Another v. Uganda Revenue Authority (The Commissioner Customs) Misc. Cause 236 of 2020 at pp.7-10 and Marvin Baryaruha v. Attorney General.***)

Counsel cited the following grounds as the basis of the judicial review application that;

- a) Contrary to Regulation 15 of the Companies (Powers of Registrar) Regulations, 2016, Refusing to register documents immediately upon verifying that the said documents conform with requirements for registration
- b) “halting” and “declining” to register documents which conformed to registration requirements contrary to Regulation 15 cited above
- c) Refusing to register documents on grounds not provided for in Regulation 17 of the Companies (Powers of the Registrar) Regulations, 2016 which provide for specific grounds for declining to register documents
- d) Failing to provide detailed reasons for declining to register documents within the mandatory time stipulated in Regulation 17

- e) Entertaining a “complaint” cum “application” to halt registration of documents which application or complaint is not specifically envisioned or provided for in law
- f) Purporting to hold a “hearing” not provided for in law
- g) Purporting to grant injunctive reliefs whereas not being whereas not being clothed with powers to do so
- h) Acting with bias in the making of administrative decisions affecting the Applicant’s contractual rights

In support of the grounds counsel further submitted that before filing the instant application, the Applicant exhausted every effort to seek internal mechanisms within the Applicant to correct its illegal, unfair and unjust course of action. The Applicant even issued a final notice of intention to sue which was roundly and wantonly ignored. As per the apparent facts;

Counsel for the Applicant submitted that upon having received the Applicant’s documents, the 1st Respondent was bound and required to follow Regulation 15 of the Companies (Powers of Registrar) Regulations, 2016. Where the 1st Respondent is to decline registration of any document, it must do so within the precincts of Regulation 17 of the said Regulations, any application to oppose registration of documents must be based on at least one of the five grounds listed.

The Respondent did not register the documents immediately, neither did it decline registration with detailed reason within five working days, as required by the law. The 1st Respondent treated the Applicant with disdain in refusing to take calls, colluded with 2nd to 5th respondents to fabricate and purported to hear a complaint that is not provided for in law, ignoring protests as to its illegal conduct. All these actions, and the process through which they were reached violated due process, were unfair and unjust.

The 1st Respondent misdirected itself on the law, (**Regulation 15 and 17 of the Companies (Powers of Registration) Regulations 2016 and Section 6 of the Arbitration and Conciliation Act Cap 4**) when it appropriated powers to grant injunctive reliefs that it does not have, exceeded its jurisdiction in every way, used its powers for improper purposes, failed to take into account the fact that the court vacated its own interim orders and did not issue further injunctions, did not take into account that a reference to arbitration is not in itself an injunction, acted in bad faith by frustrating transfers that are intended to mitigate loss and further doing business, and acted unlawfully and in breach of its statutory duties

Counsel for the 1st Respondent's argued the two issues concurrently since they are related.

Counsel for the 1st Respondent submitted that its administrative decisions are amenable to judicial review and that the application is without merit as it does not raise any grounds for judicial review. The 1st Respondent at all material times acted within the law, rationally and fairly to all parties when it declined to register the documents submitted by the applicant's lawyers

The Applicant's lawyers submitted resolutions, charges and share transfer forms intending to transfer shares in 2nd to the 5th Respondents. Upon pursuing the ruling in M.A 201, 2020, the Respondent established that the documents submitted constitute a significant part of the dispute contained in the Mezzanine Agreement between the Applicant 2nd to 5th Respondents. The 1st Respondent is not privy to that contract and in rejecting the documents, it was purely interested in ensuring that due process is followed as per Article 42 of the Constitution.

Counsel further submitted that the 1st Respondent has a legal duty to cooperate with Courts of law. **Regulation 5 of the Companies (Power of Registrar) Regulations, 2016**, the Respondent is required to cooperate with other ministries, departments and

agencies of government and most importantly courts of Judicature. Hence the Respondent could not proceed to register documents when court order vide 201 of 2020 had been brought to its attention referring the matter to arbitration.

The 1st Respondent has different verification levels and even if one officer is unable to point out the illegalities and irregularities in documents submitted, other officials and structures can do so and did so. The verbal assurances of mentioned officials did not constitute the official position of the 1st Respondent. The 1st Respondent communicates its official position formally on its headed paper as it did when the decision to decline.

Counsel also submitted that on the company register, the applicant and their lawyers are neither directors nor secretary of the 2nd to 5th Respondents, they have no express authority to file documents on behalf of the said companies. The 1st Respondent only recognizes Directors and Secretary appearing on form 20 as persons with legal mandate. The Applicants are strangers on the record of the five companies and URSB as the custodian of the register could not allow them to alter the register without the concurrence of the directors and shareholders of those companies.

The 1st Respondent also acted within its powers under regulation 17 of the Companies (Power of Registrar Regulations), 2016, which empowers the registrar of companies to refuse documents. If the respondent had gone ahead to effect registration of documents, it would thereafter be required to invoke its powers under Regulation 8, to rectify the register by cancelling of the same.

Counsel for the Respondent also submitted that upon studying the documents carefully, discovered gross illegalities that ought to be brought to the attention of Court. The illegality relates to failure to register charges as required under **Section 105 of the Companies Act, 2012**. After failing to register charges as required by Section 105 of the Companies Act, the applicant sought to enforce irregular charges in form of pre-signed resolutions transfer forms and charges by circumventing the Section but failed.

The arrangements of pre-signed resolutions and transfer forms are also against the public policy generally. If the applicant wished to perfect its security over the respondent companies, it would have registered a charge in accordance with the provisions of the Companies Act. At this stage, the applicant seeks to enforce unperfected and irregular securities, which they should have registered in 2014. Section 105 provides that unregistered charges are void. Even if the applicant intends to perfect these securities, it had to first apply to the Registrar under **Section 111 of the Companies Act, 2012** to seek leave to file out of time, proofing justifiable reasons why they did not do so for such a long period of 8 years since their creation.

The allegations of collusion and bias labeled against the 1st Respondent are unfounded. The Respondent invited both counsel to the parties to the dispute and accorded them a fair hearing before making its decision. The allegation that the 1st Respondent alerted the 2nd to 5th respondents is without evidence but a mere speculation. The 1st Respondent avers that fairness entails hearing both sides as it did, ascertaining the various parties that may be affected by the decision and taking into account the impact of the decision on all parties.

Counsel further submitted that the claims by the applicant had a legitimate expectation to have its documents registered and that such a principle does not apply in these circumstances for a number of reasons. First there was no promise to the applicant to register its documents, since the 1st Respondent makes official representations by way of letter addressed to the concerned party on its letter head. One of the requirements for legitimate expectation to be effective is that the promise, the representation that gave rise to the expectation should be clear, unambiguous and unqualified. **(See Dr. Peter Okello v. Kyambogo University and another Misc. Cause No. 23 of 2017)**. This meant that there was no expectation that could be made by an official, where implementation of the promise is contrary to law or public policy.

Analysis

The 1st respondent contended that the main reason for refusal to continue to consider the registration of the documents was that there was a dispute which in their view was referred to arbitration by Justice Wamala in his ruling when he noted thus; “ ***Impugned arbitration agreement exists, is valid, operative and capable of being performed, and that there is an arbitrable dispute between the parties herein, it is ordered that this matter be and is accordingly referred to arbitration in accordance with section 5 of the Arbitration and Conciliation Act***”

I respectively disagree with the respondents’ argument that the above ruling meant that the Registrar General should not do what the law directs her to do. The court merely acknowledged that there was a dispute between the parties and the same would be best resolved by arbitration as envisaged by the parties in their agreement. Therefore, the 1st respondent misdirected itself to stop the registration process by taking into account extraneous matters related to arbitration process. This court faced with a similar challenge of exercise of power of the Registrar of Companies held in the case of ***Brian Xsabo Strategy Consultants (Uganda) Ltd & 2 others v Great Lakes Energy Co. NV Company Cause No. 13 of 2020*** as follows;

“The proper office to determine the legality of documents already presented to it is the Registrar of Companies. This power is vested in a specific office under the available legal regime.....

The orders sought clearly fall within the ambit of regulation 8 of The Companies (Powers of The Registrar) Regulations S.I No. 71 of 2016. Under regulation 3(i) it is provided that; “In the exercise of the functions under the Act or any Regulations made under the Act, the registrar—; (i) may correct or amend the register;

And Regulation 8 provides as follows:

“8. Rectification of register.

(1) The registrar may rectify and update the register to ensure that the register is accurate.

(2) For the purposes of this regulation, the registrar may expunge from the register, any information or document included in the register, which—

(a) is misleading;

(b) is inaccurate;

(c) is issued in error;

(d) contains an entry or endorsement made in error;

(e) contains an illegal endorsement;

(f) is illegally or wrongfully obtained; or

(g) which a court has ordered the registrar to expunge from the register.”

The parties could not agree to suspend the powers of the Registrar of Companies in respect of their register for which they are the sole custodians or agree through an arbitration process to breach the law or process governing transfer of shares or illegally change ownership or management of the company in disregard of clear provisions of the law. The registrar of companies still retains the jurisdiction to correct and amend the register in case of any document or information that falls within regulation 8. The arbitration Clause or process cannot be used suspend the powers of registrar to do what the law mandates the office to do. The notification about arbitration process cannot be used to suspend or stop the Registrar from executing their duties under the law.

The respondent have submitted that the rectification of the register was not one of the disputes referred to arbitration and secondly, that by the time the matter was referred to arbitration they had already made an application for rectification of the register. This court is in agreement with this submission and the appellant’s have not shown how the issue of rectification of the register is pending before the London Court of International Arbitration. The prayers sought by the appellant are clearly set out in request for arbitration (annex O) dated 12 February 2020.

In addition, the arbitration clause that the appellant is trying to use in taking away the jurisdiction of Registrar of Companies was made in a different agreement (Investment Agreement) and in my view it relates solely to disputes arising out of the same agreement and not disputes in alleged illegal change of company management and ownership. When the appellants made the necessary changes to the company register in respect of the shareholding and admitted the respondent it became a new legal order and the same could not change whimsically to the detriment of the parties or without

due process. It is trite that the registrar while adjudicating upon a lis is obliged to pose and answer a right question as to enable it arrive at right conclusion as to whether it has jurisdiction.

The duty of the registrar of companies to rectify a Company Register is akin to that of a registrar of titles in Land Office, they cannot surrender that statutory obligation to a third party once they have established errors or mistakes in the register. The registrar could not refer a matter to the London Court of International Arbitration.”

The above decision is very instructive on the powers of the Registrar General and the same cannot be curtailed by court proceedings or Arbitration proceedings unless there is a specific court order stopping such exercise of power. Arbitration proceedings are not injunctive reliefs against execution of the mandate of Registrar of Companies. Any person likely to be aggrieved by such exercise of power is at liberty to apply for temporary relief pending the determination of the arbitration or court proceedings.

The task of court in determining whether the decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or the power upon the decision maker. The main question to determine whether the decision has been reached lawfully or not is whether the decision was taken in the within the powers granted and if it was, was the manner in which it was reached lawful? In the present case, the Registrar of Companies exercised her discretion by making a choice between making alternative courses of action of proceeding to determine whether to register or not to register. She indeed decided not register because in her view there were arbitration proceedings. This exercise of discretion is fettered and court must be satisfied that the exercise of power took into account factors which were legally relevant. The reason advanced by the Registrar of Companies was not one of the grounds the Registrar of Companies should consider whether to register documents or not?

Therefore, the decision of the 1st respondent refusing to consider registration of documents because the matter was referred for arbitration was illegal and contrary to the law in absence of an order of court granting injunctive reliefs.

The applicant challenged the 1st respondent for allowing the 2nd to 5th respondent to take part in the proceedings or entertaining their complaint challenging the registration of the documents. The Registrar of Companies has wider powers in registering powers and this may include verification of the documents, which may indeed involve consulting with the company officials in order to ensure the register is free of illegal documents or wrongly obtained or executed documents.

The 1st respondent was right to entertain the complaint of the 2nd to 5th respondent and according them a hearing along with the applicant. The quasi-judicial powers conferred on the Registrar of companies must be exercised in fairness to limit challenges to the final decision premised on failure to be heard all the parties who may be affected by the decision. The 2nd to 5th respondents would be directly affected by the outcome or registration.

The 1st respondent was justified and right to hear the affected parties and cannot be faulted for this exercise of power to hear the parties. There is a presumption that procedural fairness is required whenever the exercise of power adversely affects an individual's rights protected by the constitution. Whenever a public function is being performed like that of the Registrar of Companies, there is an inference, in absence of an express requirement to the contrary, that the function is required to be performed fairly. Although, fair hearing will not be applicable in all situations of perceived or actual detriment. See *Save Britain's Heritage v Number One Poultry Ltd [1991] 1 WLR 153*

Whether the applicant is entitled to the reliefs sought?

1. This court would have issued an order of certiorari quashing the decision of the 1st respondent not to consider the applicant's documents for registration because there are arbitration proceedings.
2. This court would have issued an order of mandamus compelling the applicant's request to consider the registration of their documents on merit or advance reasons for denial or refusal to register the same in accordance with the law.
3. The rest of the orders sought would not have been granted.
4. Each party shall bear its costs

I so order

Ssekaana Musa
JUDGE
9th May 2022