

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**CIVIL SUIT NO. 211 OF 2016**

**1. NAOME NDUHUKIRE**  
**2. RESERVE PROTECTION SERVICES CO. LTD:::::::::::::PLAINTIFFS**

**VERSUS**

**1. KARINGIRI GODFREY BESIGA**  
**2. NKWATSIBWE ROBERT**  
**3. MUGYENYI GORDON ::::::::::::::::::::::::::::::: DEFENDANTS**  
**4. STANBIC BANK (U) LTD**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

The 1<sup>st</sup> Plaintiff brought this suit against the defendants contending that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants mismanaged the affairs of the 2<sup>nd</sup> Plaintiff Company, caused her financial loss and illegally removed the 1<sup>st</sup> Plaintiff as a signatory to the company's accounts. She also alleged that the 4<sup>th</sup> Defendant was notified of the anomalies in the 2<sup>nd</sup> Plaintiff but ignored them thereby acting fraudulently to the detriment of the Plaintiffs.

The 1<sup>st</sup> plaintiff and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants were shareholders and directors in the said company-2<sup>nd</sup> plaintiff which is a security company. The 1<sup>st</sup> plaintiff alleged that on the various dates the 1<sup>st</sup>-3<sup>rd</sup> defendants withdrew money from the account of the 2<sup>nd</sup> plaintiff without the knowledge and

consent of the 1<sup>st</sup> plaintiff. The plaintiff was allegedly removed from being a signatory to the accounts illegally and also as a director of the company.

The Defendants denied all the allegations of wrongdoing labeled against them. They contended that they withdrew money for the purposes of conducting the 2<sup>nd</sup> plaintiff business and expended it wholly on the 2<sup>nd</sup> plaintiff's business. The said money withdrawn in accordance with the company mandate, the budget was approved and the money was wholly expended on the company business.

The 1<sup>st</sup> plaintiff has never been removed as one of the directors of the company. The removal of the 1<sup>st</sup> plaintiff as signatory to the bank account was done in the best interests of the company as she had refused to attend meetings and to sign cheques to pay the workers.

At the scheduling the parties agreed to have the matter partially settled by auditing the value of the company and the 1<sup>st</sup> plaintiff be paid off her shares in the company.

The parties entered into a partial consent leaving the only issue to be determined by the Court to be the alleged mismanagement of the company by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants during the period in issue before the 1<sup>st</sup> plaintiff ceased being a member of the company.

The following issues were framed by the plaintiff and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in their submissions and were adopted by the Court;

- 1. Whether there was mismanagement of the company affairs by the Defendants.*
- 2. Whether the mismanagement or actions of the defendants caused any loss to the 1<sup>st</sup> Plaintiff.*
- 3. What remedies are available to the parties?*

The 2<sup>nd</sup> Defendant died before adducing his evidence but the case proceeded against the other Defendants. The court refused the 1<sup>st</sup> plaintiff's counsel application to delay trial in order to wait for the family of the 2<sup>nd</sup> defendant to appoint a representative for purposes of this suit. This was to delay the trial further after a protracted pretrial discussion.

The 1<sup>st</sup> plaintiff was represented by *Asiimwe Steven* while *Kaggwa Micheal* represented the 1<sup>st</sup> and 2<sup>nd</sup> defendants, and the *Nasasira Josephine* represented the 3<sup>rd</sup> defendant and the 4<sup>th</sup> defendant was represented by *Omolo Juma Noah*.

### **Determination**

*Whether there was mismanagement of the company affairs by the Defendants.*

The 1<sup>st</sup> Plaintiff contended that the affairs of the 2<sup>nd</sup> Plaintiff were grossly mismanaged by the Defendants to the detriment of the Plaintiffs.

She pleaded that on various dates, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants jointly and severally withdrew money from the 2<sup>nd</sup> plaintiff's account without the knowledge and/or consent of the 1<sup>st</sup> plaintiff as a shareholder and director of the 2<sup>nd</sup> plaintiff. She stated that she had received information that the company had received payments of about UGX 158,529,614/= from NAROSEC for the provision of security services but the same was withdrawn by the three directors without her knowledge and consent.

The 1<sup>st</sup> plaintiff contended that they had factiously forged accountabilities but did not show who and when the purported budget was approved.

Counsel submitted that in scrutiny of the budget, it was found that the 1<sup>st</sup> defendant gifted himself UGX 4,500,000 as managing director, the defendants also gifted themselves UGX 12,000,000 as purported allowance and the 3<sup>rd</sup> defendant was gifted UGX 1,000,000. Further, the defendants purported to have expended UGX 10,700,000 allegedly for the repair of

company vehicles yet no vehicles were indicated to have been repaired, what was repaired, and where they were repaired from. Lastly, none of the remaining items were backed by any proof or any explanation by the defendants in their pleadings or witness testimonies.

The plaintiff's counsel concluded that the defendants had swindled over UGX 160,600,000 quoted in the impugned purported budget thereby mismanaging the company resources and causing loss to the plaintiff.

For the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants, it was contended that there was no precondition for any of the director's consent prior to withdrawing money from the company accounts but rather what was required was an instrument signed by three of the four signatories on the account. Counsel submitted that plaintiff reiterated this position in her cross-examination when she stated that the bank would have paid if three people had signed.

Further, in the spirit of corporate governance and accountability, the party who had not signed the withdrawal instrument would be informed of the withdrawal and the purpose for which the money was expended which in this case was done.

Counsel for the defendants submitted that the allegation that UGX 160,600,000 was swindled by the defendants was out of place and not supported by any evidence. It was pleaded and submitted that there was an approved budget and spending money according to the budget was strong evidence of proper accountability.

Counsel submitted that the items in the budget were admitted to by the 1<sup>st</sup> plaintiff in cross-examination as being ordinary expenditures of the company. It was their submission that the 1<sup>st</sup> plaintiff was therefore estopped from denying the accountability as given by the defendants since her own evidence collaborated with that of the defendants.

## *Analysis*

Generally, the business of a company shall be managed by the board of directors through the board meeting and general meeting. The managing director will then exercise such power in the everyday running of the company. A director that is not a managing director gets involved in running of the company through board meetings and general meetings.

The directors and the managing director are in the eyes of the law, the directing mind and will of the company. Notwithstanding that a company in law is a person distinct from the directors, a director is a person appointed or elected according to law and authorized to direct and manage the affairs of the company. He acts as one of the members of a board with power to bind the company. *See Massey v Wales [2003] NSWCA 212; Olawepo v S.E.C (2011) 16 NWLR pt 1272 p.122; Rev.Dr. Hamlet Kabushenga Mbabazi & Anor v Great Lakes Regional University HCMA 904 of 2021*

Crucial decisions of the company are generally taken at the meeting of its members which constitute the primary organ. The board in its management role took a decision on how to spend the money they received under a budget approved by it. The 1<sup>st</sup> plaintiff seems to be challenging the decision on how to spend the money because she never attended the meeting or that her consent was sought.

There was no requirement of the board to seek her consent on how the money was to be expended and the self-entitlement of the plaintiff to become the directing mind of the company was totally baseless. As stated earlier a company is managed by the Managing Director through board meetings which evidence was adduced that indeed the board meeting was held which approved the budget although the 1<sup>st</sup> plaintiff never attended. The money received by the company could be expended in accordance with the budget and as approved by the board meeting.

The mandate of the company to the bank required any of the three signatories to sign the instrument and the bank would release the monies. The Plaintiff even stated herself during cross-examination that the mandate was for any of the three directors. By that, there was no illegality done by the Defendants when they withdrew monies without the 1<sup>st</sup> Plaintiff's knowledge and consent. The defence witness stated that the 1<sup>st</sup> plaintiff developed cold feet in the management of the company and stopped attending meeting of the company.

On the question of accountability, there is an approved budget on the 2<sup>nd</sup> plaintiffs record as well as the Court's record. The same is supported by the testimonies of the 1<sup>st</sup> and 3<sup>rd</sup> defendants. The items stated in the budget were normal expenses for the 2<sup>nd</sup> plaintiff. The company directors used to earn an allowance as stated by the plaintiff in her cross-examination, the company indeed owned vehicles that required repair and servicing, the security personnel wore uniforms that had to be purchased and there was a sale agreement on the record for the purchase of the house in Mbarara which indeed enhanced the value of the company.

The duty to prove that the funds were not spent as stated in the budget was on the plaintiff which she failed to do. Mere stating that the budget was forged or that the items were fictitious is not sufficient evidence for this court to buy into it. A board resolution on the company's position on operational matters or day to day decisions may not always be needed nor must a meeting of the board hold. This is because the intention of the officers and agents of the company can be attributed to the company's intention depending on the nature of the matter under consideration, the relative position of the officer or agent and other relative facts and circumstances. *See HL Bolton (Engineering) Co Ltd v TJ Graham & Sons Ltd [1957] 1 QB 159*

The 1<sup>st</sup> plaintiff contended that she was also illegally removed from the 2<sup>nd</sup> plaintiff as director and signatory to the company bank accounts on the 24<sup>th</sup> June 2016. She alleged that this was done without her knowledge and without a fair hearing as required by law. It allegedly appeared to be a vindictive retaliation against the 1<sup>st</sup> plaintiff for complaining against the actions of the defendants but it was also a calculated mission to allow the defendants to successfully thrive in mismanaging the resources and affairs of the company without any limitations from the 1<sup>st</sup> plaintiff.

Counsel submitted that the removal of the 1<sup>st</sup> plaintiff was done without any notice, any meeting, or any valid resolution.

The plaintiff also contended that the 4<sup>th</sup> defendant was culpable in that he concluded with the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants to suppress the 1<sup>st</sup> plaintiff from her signatory role and rights. The plaintiff contended that the resolution that was used to remove the 1<sup>st</sup> plaintiff was in relation to another company which said anomalies were brought to the 4<sup>th</sup> defendant's attention but they failed or neglected to take heed and allowed the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants to withdraw the 2<sup>nd</sup> plaintiff's funds thereby misappropriating them.

The defendants however denied the contention that the plaintiff was removed from her position as director. They submitted that no evidence was brought forward to prove the same. There is no evidence on record to show that the 1<sup>st</sup> plaintiff was ever removed as director as she contended. This in my view could have been the misconception in her mind which led her not to attend any board meetings when invited to attend. The removal should have been shown through a resolution of the company. As a company is an artificial person, its decisions are made by resolutions which must be passed at the general meeting. A company cannot dispense with a requirement for a resolution to be in writing.

The said meeting only removed the 1<sup>st</sup> plaintiff as signatory to the bank account which in my view was lawfully done since she had developed a non-starter attitude towards work, refusing to attend meetings or sign on the cheques which stifled company business. The defendants adduced evidence to show that the 2<sup>nd</sup> plaintiff stood to suffer if the 1<sup>st</sup> plaintiff had remained signatory hence it was not selectively targeting the 1<sup>st</sup> plaintiff but was meant to avert possible catastrophes the company would continue if the two continued to be signatories to the accounts.

I agree with counsel's submission that the decision was authorized under Articles 40 & 41 of the 2<sup>nd</sup> plaintiff's Articles of Association and the right procedure was adopted with two directors' meetings being called which was the requirement to remove or maintain the 1<sup>st</sup> plaintiff and 3<sup>rd</sup> defendant as signatories on the bank accounts. The removal could not be interpreted as mismanagement of the company but rather a manner of streamlining the operations of the company in the best interest of the company and the general public as the consumer of the company services. The director has a duty to exercise the powers and discharge the duties of his/her office in good faith and in the best interest of the company, and shall exercise that degree of care, diligence and skill which a prudent director would exercise in comparable circumstances.

The 4<sup>th</sup> defendant also denied the allegations by the plaintiff stating that it never acted fraudulently and did not derive any illicit benefit from the withdrawals from the accounts of the 2<sup>nd</sup> plaintiff. Further, all the withdrawals made with it complied with each and every procedure including the account signing mandates.

Counsel for the 4<sup>th</sup> defendant submitted that the 4<sup>th</sup> defendant had not acted in bad faith and was also not expected to be aware of what action is or isn't ultra vires the 2<sup>nd</sup> plaintiff. Counsel submitted that the bank had a duty to



honor the cheques authorized by any three signatories and as such its mandate was properly effected. The 4<sup>th</sup> defendant honored all instruments from the 2<sup>nd</sup> plaintiff management that reflected the company's given mandate and was never aware of any alleged misappropriation, loss and damages from the purported conduct of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants.

The 2<sup>nd</sup> plaintiff's Articles of Association under Articles 40 and 41 grant the directors powers to conduct company business as long the quorum of two is met. The resolution or any decision made in the presence of two directors is as effective as if all the directors were present for the same. There is a valid resolution on the company record that removed the 1<sup>st</sup> plaintiff as a signatory to the company's accounts. The plaintiff and 3<sup>rd</sup> defendant were noted as absent without any apology for the directors' meeting that resolved to remove them as signatories. The reason for the removal was that they had refused to sign on the company cheques. The 1<sup>st</sup> defendant testified that the Plaintiff had developed a non-starter attitude that was stifling company business.

Her removal as a signatory was therefore not malicious or a vindictive retaliation as she alleged. It was justified and necessary for the smooth running of the 2<sup>nd</sup> plaintiff's operations.

The 4<sup>th</sup> defendant was also not at fault when they honored the company's instruments as expected.

Further, there is evidence on the record showing that the 1<sup>st</sup> plaintiff was dismissed as the Director of Operations for the company however there is no evidence that she was removed as a director of the company. With no evidence to prove the same, the court cannot conclude that she was removed from the company's directorship.

I find that the 1<sup>st</sup> plaintiff was legally removed as a signatory to the 2<sup>nd</sup> plaintiff's accounts.

The Plaintiff also raised the following as elements of mismanagement; failure to call for and hold meetings as required by law, abuse and breach of Articles of Association, and excluding the 1<sup>st</sup> Plaintiff from the management and affairs of the company. The defendants asked the Court to disregard them submitting that the same was never pleaded by the Plaintiff and could therefore not be raised in submissions.

I concur with the defendants' counsel; parties are bound by their pleadings. Evidence of facts not pleaded should not be admitted. Similarly, courts are bound by the pleadings before them and should confine themselves to the case presented by parties. They are not allowed to go on a wild goose chase.

Where evidence presented is outside the issues raised in the pleadings such evidence goes to no issue because it would be at variance with pleadings and should be discountenanced. The plaintiff's evidence on failure to call meetings or abuse of the articles of association is not supported by any pleadings and is thus hanging in the air.

In *Interfreight Forwarders (U) Ltd v. East African Development Bank, SCCA No. 33 of 1992*, it was stated that; *"A party is expected and is bound to prove the case as alleged by him. He will not be allowed to succeed on a case not so set up by him and be allowed at the trial to change his case or set up a case at the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by way of amendment of the pleadings."*

Lastly, the 1<sup>st</sup> plaintiff made a great effort to make 'mountain out of a mold' when she tried to capitalize of the typographic errors of the resolution in the names by contending that it was a resolution of a different company. I note that it was a proper resolution of the company with only a mere error in names and this could not found any cause of action to allege fraud on the part of the defendants.

On that premise, I find that there was no mismanagement of the 2<sup>nd</sup> plaintiff's affairs by the defendants.

*Whether the mismanagement or actions of the defendants caused any loss to the 1<sup>st</sup> plaintiff.*

As resolved above, there was no mismanagement by the defendants, and therefore no loss that was occasioned to the plaintiffs. The money was spent according to the budget to facilitate the running of the company and also to acquire some capital assets in form of land to the company.

The defendant's as directors were equally entitled to some remuneration and the 1<sup>st</sup> plaintiff seems to have hard issues with some payments made to the directors as mismanagement.

For optimum effectiveness, proper board composition is pivotal to corporate governance. Directors responsibilities must be matched with realistic emoluments which should be fully disclosed on individual basis, with details of earnings, share options and all other benefits. Performance related elements of remuneration constitute a substantial portion of the total remuneration package of executives in order to align their interests with those of the shareowners. The directors of the company were entitled to some remuneration from the company which accrues from day to day while the appointment lasts and this was not an act of mismanagement and it never occasioned any to the company.

This suit is therefore dismissed. Each party shall bear its own costs.

I so order.

**SSEKAANA MUSA**

**JUDGE**

**29<sup>th</sup> September 2023**