THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

IN THE MATTER OF THE COMPANIES ACT, 2012

COMPANY CAUSE NO. 11 OF 2019

(APPEAL ARISING FROM THE DECISION OF THE REGISTRAR IN COMPANY CAUSE No. 001 OF 2017)

1. **LUITINGH LAFRAS**
2. **PELSER WILLEM HENDRIK a.k.a BILL PELSER ::::::::::::::::::::::::::::::::APPELLANTS**

VERSUS

SPECIAL SERVICES LTD::RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an appeal from the decision of the Registrar General of Companies; it is brought under Section 173 (3) & 293 of the Companies Act, 2012 & Order 38 Rule 2 & 5 (a) of the Civil Procedure Rules S.I 71-1. The company petition (No. 001 of 2017, hereinafter referred to as the Petition) appealed from had Special Services Limited as the Petitioners on the one hand and Saracen International, Winork Investments and Kasirye, Byaruhanga & Company Advocates as respondents on the other hand..

The appellants are seeking orders that;

1. The Order issued by the Company registrar in Company Cause No. 001 of 2017(Petition): Special Services versus Saracen International, Winork

Investments, and Kasirye, Byaruhanga & Co. Advocates to the following extent:

(a) "The shareholding Saracen Uganda Limited [the Company] is taken back to Saracen International Limited 75% and Special Services Limited 25%"

(b) "The Company shall pay the costs of the Inspector"

2. Costs be awarded to the appellant.

The main grounds for this application are;

a) That the appellants are aggrieved by the decision of the Registrar.

b) The Registrar erred in law when she reversed the shareholding of the company when there was no prayer for such remedy in the Petition.

c) The Registrar erred in law when she exercised powers not conferred upon her by law to reverse the shareholding of the Company.

d) The Registrar erred in law;
   1. When she made orders affecting the rights of the appellants before the report of an Inspector had been made.
   2. When she made considering the totality of the evidence on the record and evaluating the same.
   3. When she made the decision without giving the appellants a right to the heard.

e) The registrar erred in law when she ordered that costs of inspection be met by the Company [rather than the Petitioner].

The background to this appeal is that in 1995 Saracen Uganda Limited (**"SUL"**) was incorporated with Saracen International Limited (**"SIL"**) having 75% shares and Special Services Limited (**"SSL"**) having 25% shares.

SSL filed the Petition alleging mismanagement, oppression and further challenging the manner in which the shareholding changed from the time of incorporation up to the time of filing the petition, specifically the manner in which shares of **SIL** were transferred to the Appellants with each initially taking 50% of the said shares, and latter transferring some of their shares to Winork Investments and John Mugisha. Suffice to note that the Appellants in this matter were the only shareholders of **SIL**. At the time of issuance of the order of the learned Deputy Registrar General, SIL had been struck off the company register in its country of incorporation.

The Deputy Registrar General issued orders that:

a) The shareholding of SUL be taken back to its time of incorporation being; Saracen International Limited holding (75% of the shares) and Special Services Limited having 25%.

b) That an inspector be appointed under sections 174(b)(ii) and (iv) of the Companies Act of 2012 to look into the affairs of the company SUL.

c) ……

d) That the Company pays the costs for the inspector.

The appellants challenged orders a) and d) above hence the appeal, seeking orders that;

a) the decision of the Deputy Registrar General to revert the shareholding of Saracen Uganda limited (**"SUL"**) to Saracen international limited at 75% and special services limited at 25% be set aside.
b) the company (SUL) pays the costs of the inspector be set aside

<u>The grounds upon which this appeal is based are;</u>

1) The Deputy Registrar General erred in law when she made orders affecting the rights of the appellants before the report of an inspector had been made.
2) The Deputy Registrar General erred in law when she made the decision without considering the totality of the evidence on the record and evaluating the same.
3) The Deputy Registrar General erred in law when she made the decision without giving the appellant a right to be heard.
4) The Deputy Registrar General erred in law when she ordered that costs of the inspection be met by the Company (Saracen (U) Ltd).

The following issues will be addressed in supporting the grounds of appeal above.

1. Whether the Deputy Registrar General erred in issuing orders which had not been prayed for.
2. Whether the Deputy Registrar General acted within the scope of her powers/lawfully when she made orders that the shareholding of the company reverts as ordered?
3. Whether the Deputy Registrar General issued orders reversing shareholding without considering the totality of the evidence on the record supporting the share transfers?

4. Whether Saracen Uganda should pay the costs of the Inspector?
5. What are the remedies available to the parties?

The appellants were represented *Mr. Mbalinda Tom* while the respondent was represented by *Mr. Kashillingi Hussein*

The parties filed written submissions which the court has considered in the determination of this matter.

Whether the Deputy Registrar General erred in issuing orders which had not been prayed for? &

Whether the Deputy Registrar General acted within the scope of her powers/lawfully when she made orders that the shareholding of the company reverts as ordered?

Whether the Deputy Registrar General issued orders reversing shareholding without considering the totality of the evidence on the record supporting the share transfers?

The appellants' submitted that the pleadings of the Petitioner (now Respondent) in the Company Cause did not have any prayer for reversal of shareholding. This prayer was not traversed in the deliberations before the registrar and the order granted is not is not even incidental to the orders sought. Whereas, the Petitioner made mention of the alleged alteration of shareholding without its consent, no prayer to reverse shareholding was made.

In the prayers set out in paragraph 5 of the petition there was even no mention of rectification of the register to this effect or at all. It is therefore a miscarriage of justice for the Registrar General to have made awards against the appellants

without any prayer to this effect and without the appellants being made parties to the Petition or being invited to address the Deputy Registrar General on the same.

Shares are personal property under the provisions of **Section 83 of the Companies Act, 2016**, and are protected under the provisions of **Article 26 the Constitution of the Republic of Uganda, 1995, (as amended)** (**"The Constitution"**)

Suffice to note, the Appellants were never parties to the Company Petition out of which the orders arose. The Petition was against Saracen International, Winork Investments and Kasirye Byaruhanga (company secretaries). To take away such a right without the appellants being made parties to the matter or being given a fair hearing derogates from the non-derogable right of a fair hearing as enshrined in **Article 44 (c)of the Constitution**.

Further even if the Respondents had brought an action for rectification of the register, which they did not, in actions for rectification of the register, the proper parties should be the person who seeks rectification to have his name entered on or removed from the register. The proper respondents where the applicant seeks to have his name entered on the register will be the company and the registered holder of the shares whose registration is in question, if that person is not already the claimant. **Ref: Victor Joffe QC, etal, Minority Shareholders: Law and Practice, Oxford University Press, 2011 at Page 181.** As such, orders reversing shareholding were improperly issued in so far as; they were not prayed for. In the case of **Aisha Nantume Tifu Versus Damulira Kitaata James H.C.C.S No. 77 of 2007 (High Court at Nakawa) at Page 7**, *Justice Joseph Murangira* held that remedies not prayed for in a judgment cannot be granted. He noted that this

offends the principles set out in *Order 6 Rule 7 of the Civil Procedure Rules, S.I 71-1*. He Also cited the supreme court decision of **Gonstan Enterprises Limited Vs. John Kokas Ltd S.C.C.A No. 8 of 2003 where Justice Alfred Karokora** held that:

It is a well settled principle that no decision must be made or granted by any court of law on a ground which was not pleaded"

Without pleading for rectification of the register in this respect or at all, [reversing shareholding positions] the learned Deputy Registrar General erred in issuing the orders.

Further, the appellants were never parties to the Petition, and they were not given an opportunity to respond to the same. Orders affecting non-parties ought not to stand.

On the second issue, the appellant's counsel submitted that the powers of the Registrar under **the Companies (Powers of Registrars) Regulations, 2016 Specifically Regulation 8(2)** (**"Regulations"**) do not grant the registrar powers to issue the orders she issued in the circumstances. **Sub-Regulation 2** should be read with **sub-regulation 1** which relates to rectification of a register to ensure it is accurate. The powers of the registrar in this regard are to make sure that the register is accurate and not to determine who a member or shareholder is. **Sub regulation 2**, relates to instances where the registrar may intervene in cases where the information on the register *does not present an accurate position*. This points towards obvious cases where there are errors, misleading information on the face of it, or illegality (see paragraphs a) – g) of Sub-Regulation 2).

In the case of illegality there would have to be a finding of a court of law to the effect that there is illegality. But in a case like the instant one where there are some documents on the company record, showing that shares were transferred from **SIL** to the appellants but the petitioner challenges the process preceding the documentation, such matters cannot be handled by the registrar under the said regulations. On the record are: Annual Returns & Return of Allotment **(See Appendix B)**, Notice of increase of share capital **(Appendix C)**, Resolutions **(Appendix D)**, Share transfer forms **(Appendix E)** of the record before court.

To determine whether, despite these documents being on record, there were fraudulent/impugned transactions and the said documents do not represent what is on the ground, there is need for court to make an inquiry by way of calling witnesses. This is not something the registrar could do under the provisions of the for court to determine under the Regulations. This is the reason why **Section 125 of the Companies Act, 2012** provides for rectification of the Register by court. It is our humble submission that the legislators cannot have intended to give concurrent jurisdiction to court (under Section 125 of the Companies Acts, 2012) and the registrar (Under Regulation 8 of the Companies (Powers of Registrars) Regulations, 2016) to deal with similar matters and to the same extent.

While considering similar provisions, learned authors **Victor Joffe QC, etal *(supra)*** *at page 181 observed as follows;*

> *"An application under Companies Act 2006, s 125 must be made by the issue of a claim form and the use of the procedure set out in CPR Part 8.201, the court has long recognized that the summary procedure under what is now s. 125 was inappropriate in the*

circumstances of some, particularly complex, cases. In such cases the court would not exercise its discretion to order rectification, but would require the claimant to bring an action. There may be reasons other than complexity which render inappropriate CPR. Part 8 procedure applicable to applications under CA 2006, s 125. For example, in Re R W Peak (Kings Lynn) Ltd,203 Lindsay J described the statutory procedure as 'manifestly unsuitable if the rectification sought would, if effected, prejudice persons who had not had the opportunity to be before the court and who might wish to oppose any change that is sought'.

If court could find that use of summary proceedings for matters of this nature before a court are inappropriate, how much more for matters before a registrar? It is not possible for a Registrar of Companies to inquire into who should be a shareholder where rights are challenged in the manner they were in the Petition.

The respondent's counsel submitted that, the Petition Cause No. 1 of 2017 was brought under Section 247 of the Companies Act, 2012 which provides for petitions by members of a company who have cause to believe that the affairs of the company are being conducted in an oppressive manner.

Under Section 247(2), where the registrar is of the opinion that matters of the company are being conducted in an oppressive manner to some part of the members of the company, the registrar may make orders;

"with a view to bringing to an end the matters complained of, make such order as he or she thinks fit whether for regulating the conduct of the company affairs in the future or for the purchase of the shares of any members of the company by other members of the company or by the company and in the case of purchase by the company, for

the reduction accordingly of the company or by the company's capital or ***otherwise" (Underlining and emphasis supplied)***

In counsel's view, the reading of the powers of the Registrar under section 247 of the Companies Act 2012 authorizes the Registrar to make decisions relating to conduct of the company affairs and relating to purchase of shares, reduction of shares or otherwise. The Registrar of Companies has a statutory power to rectify the register should he or she form the opinion that the same would bring an end to the matters complained off. In the matter before your Lordship, the Learned DRG had the power and discretion to rectify the share register regardless of whether the Respondent (then Petitioner) sought the same or not as long as in her opinion, the same would bring the matter complained off to an end.

The Appellant also suggests that the Respondent did not seek the order of rectification or plead the same and as such the DRG erred in rectifying the register. We disagree. In paragraph 3.2 of Petition Cause No. 1 of 2017 at page 62 of the ROA, it is pleaded:

" The Company shareholding structure which at the time of incorporation had two shareholders namely, SARACEN INTERNATIONAL and SPECIAL SERVICES; holding 75% and 25% shares respectively was altered without the express consent of the Petitioner to wit:

(i) The annual return for filed on 27th May 2010 indicated that;

(a) Saracen International held 175 ordinary shares,

(b) Special Services held 62. 5 ordinary shares,

(c) Winork Investments held 15 ordinary shares and

(d) John Mugisha held 12.5 ordinary shares.

(ii) The annual return for the year 2010 filed on 20th September 2011 indicated that;

(a) Saracen International held 87.5 ordinary shares,

(b) Pelser Willen Hendrik held 87.5 ordinary shares,

(c) Special Services held 62. 5 ordinary shares,

(d) Winork Investments held 15 ordinary shares and

(e) John Mugisha held 12.5 ordinary shares.

(iii) The petitioner reasonably believes that the increase of the share capital of the Company was done to further benefit the selfish interests of the officers of the Company to wit; JOHN MUGISHA and WINORK INVESTMENTS (owned by members of the Company secretary); and to dilute its membership and shareholding in the Company."

It is clear that the matter of irregular transfer of shares was brought to the attention of the Learned DRG before she rendered her decision.

A meeting was held between the parties on the 27th day of March 2019. By her letter of the same date, the Learned DRG provided a summary of documents on the registry file of the company as requested by the parties. A copy of the letter and summary are at pages 44-57 of the ROA.

The summary of documents is set out in columns and rows indicating the document, date registered, effect and findings. The sum effect of the presentation of the summary indicates an in-depth analysis of the documents and their effect.

Additionally, in the reply to Petition Cause No. 1 of 2017, the Appellants provided documentation in support of their registration as shareholders.

The Appellant suggests that the DRG did not have power to rectify the register. However the **Companies (Powers of the Registrars) Regulations, 2016** are very clear on the power of the registrar.

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 in respect of regulation 8, we submit that the Appellant did not make a proper reading of the regulation. In its fullness, the regulation reads:

"*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 berth given to the registrar is wide. The powers to rectify the Register are clear as spelt out in regulation 8(2) (a) to (g).

And indeed while the Appellant would want this Court to believe that the framers of the legislation did not intend concurrent jurisdiction between Court and the Registrar, Section 125 of the Act gives Court the power to rectify the register where a name is entered or omitted from the register without sufficient cause or there is default or unnecessary delay in entering the name of a person on the register while the berth granted to Registrar under regulation 8(2) is wide and includes in regulation 8(2)(g)where the registrar is ordered by Court.

The respondent's counsel submit that the DRG had the powers to rectify the register and any aggrieved party would have a clear right of appeal to the High

Court. And we are fortified in this view by the learned author **H.W.R Wade** on "Administrative Law" 4th Edition at page 257 which explains the point on jurisdiction better;

> *" an authority or tribunal which keeps within its jurisdiction may determine questions both of fact and law without any fear of interference by the court, except where an appeal is provided by statute. Into this area, therefore the Court's inherent powers of control cannot reach. In other words, the law may be misinterpreted or the facts found erroneously with impunity. For it is inherent in a power of conclusive decision that it includes the power to make mistakes. To say that the decision is conclusive is the same as saying that it is legal and binding no matter whether right or wrong. "Right" and "wrong" here cease to be significant terms, just as they do in relation to decisions , and of the House of Lords. As Lord Goddard C.J once said; If Parliament has chosen to make the lower tribunal or body the absolute judges of the matter before it, and to give no appeal, this court cannot interfere in a matter regarding which the lower court has been clothed with jurisdiction by Parliament"*

Where a court or administrative tribunal and in this case the DRG has jurisdiction to hear a matter as did the DRG in Petition Cause No. 1 of 2017, then that administrative tribunal has the power to determine the matter and to make mistakes or err. The aggrieved person's recourse is an appeal.

The Appellant also suggests that Section 152 of the Act supports the proposition that there are minutes to support the resolutions of the company and that the absence of resolutions were mere filing gaps. However, the Appellant does not provide the said minutes and other documents to fill the filing gaps, neither is this material available on the company file at the URSB.

At no point did the Appellants provide the said minutes during the hearing of the petition in spite of several adjournments given.

On the basis of the above arguments we contend that the Learned DRG had the jurisdiction to rectify the register and duly considered the documents before her. As such grounds 1 and 2 of the appeal ought to fail.

Determination.

The learned Deputy Registrar General gave orders not earlier sought in the petition and this was done in a summary manner. The orders must emanate from the nature of the complaint presented for investigation or inquiry. The reported and lodged a complaint premised on the oppressive manner of majority shareholder. It was never about the irregular change of shareholding in SIL.

The effect of the decision of the Deputy registrar General is deprivation of property (shares), this required a comprehensive investigation and there is need to have the evidence by affidavit or viva voce. The registrar should have conducted an enquiry or waited for an Inspectors report and made an informed decision or referred a matter for full suit to determine the rights of the parties.

The powers of the registrar under the companies Act are quasi judicial since it involves taking decisions as provided under the Act. Where a statutory authority is empowered under a statute to do any act, which would prejudicially affect the subject, although there is *lis* or contending parties and the contest is between the authority and the subject and the subject and the statutory authority is required to act judicially under the statute, the decision of the statutory authority is quasi-judicial.

The exercise of power by the registrar contemplates the adjudication of rival claims of the persons by an act of the mind or judgment upon the proposed cause of official action as to an object of the corporate power vested under the Companies Act. They decide both questions of fact as well as of law, and determine a variety of applications, claims, controversies and disputes.

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 in the matter or not and also whether it has sufficient facts or evidence to determine the dispute between the parties. There is concurrent jurisdiction between the registrar and High court under the Companies Act on some of the issues surrounding determination of certain disputes.

The registrar is bound to follow norms of natural justice at some stage of their decisional process. But this is in a minimal manner and may not observe a detailed and elaborate procedure like taking testimony under oath or following strict rules of evidence. The nature of the order given by the registrar is one which ought to have invited detailed examination of evidence and consequences of the decision since it involved deprivation of shares which is violation of the right to property.

In addition, the consequences of the decision made in a summary manner without sufficient facts and evidence, had to be cautiously taken even though the registrar is vested with the power to take such a decision. The decision must be taken on cogence of evidence and not on assumptions and conjecture of the registrar. It may be true that the applicants had not filed necessary and relevant documents, which would not invalidate the transactions on the transfer of shares. The registrar had to interrogate the same upon evidence or testimony of the appellants but not to rely on her record alone in taking a decision. ***Mathew Rukikaire v Incafex S.C.C.A 03/2015***

The record of the Company registry is not conclusive proof of the affairs of the company and the Companies Act does not state so. The Company could have sufficient information to address any queries between the shareholders and the company from the minutes of the company or minute books. See ***Section 152 & 153 of the Companies Act.***

This is the justification of carrying out an investigation before any such radical decision is taken by the registrar and be armed with adequate information before taking a final decision that affects the rights of the members. See ***sections 172, 173, 174, 175 of the Companies Act.***

Under the Companies Act, an investigation refers to an exploration into the affairs of a company. The aim of such investigation is to obtain any evidence or facts regarding any malpractice in the course of business. This investigation can be of tremendous importance to shareholders/members wishing to bring an action involving mismanagement.

This investigation is fact finding and guides future operations of the company after the whole exercise. As pointed out by the European Court of Human Rights case of ***Fayed v United Kingdom (1994) 18 EHHR 393 ECtHR*** that the fundamental justification for investigation procedure is that the investigation is carried out in the public interest to ensure the proper conduct of affairs of the public companies.

It must be emphasized that an investigation is an extra-ordinary remedy which is, generally speaking, applicable only in limited circumstances. Before the court orders an investigation, the intended investigation must be shown to be prima facie in the interest of the company or the members. Merely to show a difference of opinion as to how the affairs of the company are to be managed is not enough; it is only where there is evidence of serious mismanagement or bad faith that an investigation may be ordered. See ***Re Baker and Paddock Inn Peterborough Ltd [1977] 2 BLR 101 Ont HC; Re Sabex Internationale Ltee [1979] 65 Que SC***

The Companies Act does not specify the standard of proof which the person must satisfy to obtain an order for investigation. However; in ***Re First Investors Corporation [1988] 4 WWR 22***, it was stated that an applicant for an order is not required to prove beyond reasonable doubt or on a balance of probabilities the conduct complained of. The only proof which is necessary is that there are 'sufficient grounds' to warrant an investigation.

Section ***180 of the Companies Act*** provides;

A copy of any report by any inspector appointed under sections 173 and 174, authenticated by the seal of the company affairs who he or she has investigated shall be admissible in any legal proceedings as evidence of opinion of the inspector in relation to any matter contained in the report.

In absence of any such report, the decision of the registrar would be hollow and deficient of adequate information and evidence upon which such an important decision would have been taken.

Specifically, the order given by the registrar was directly touching on the ownership or membership of company.

Section 181-**Appointment and powers of inspectors to investigate ownership of a company.**

Where it appears to the registrar that there is good reason to do so, the registrar, may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure real or apparent of the company or able to control or materially to influence the policy of the company.

The registrar had a duty to appoint inspectors to carry out any investigation into the affairs of the company and establish the true ownership or shareholding of the company rather than take the decision in a summary manner without any cogent evidence.

The respondent's counsel argues that the regulations give the registrar wide powers to give such orders like the one she gave to correct the register. The powers given under Regulation 3 & 8 of the Companies (Powers of Registrars) Regulations, 2016 appear wide but the same are exercisable upon proper investigation as provided by the Companies Act. They cannot be exercised without sufficient or adequate evidence at lease obtained after due inquiry or investigation.

The discretion to take such a decision must be done with caution and with circumspection and not whimsically. Such powers are exercisable in accordance with the Companies Act which enjoins the registrar to appoint inspectors to carry out investigations and make a report before a decision is taken.

The registrar must exercise his or her discretion judicially and not mechanically without weighing the circumstances of the case and the evidence available. She should have exercised her discretion in accordance with well recognized principles. If a decision maker exercises the discretion mechanically without weighing the circumstances of the case or sufficient evidence to act by way of an Inspector's report, which would be no exercise of discretion at all.

The decision by the learned Deputy Registrar General to transfer shares back to Saracen International even when it is clear at the time that the company Saracen International had been struck off the register at the time of the order is strange. Before being struck off the register in its country of registration, **SIL** had transferred its shares to Bill Pelser and Lafras Luitingh (the only shareholders of **SIL**). Although there are some filing gaps on the record, a share transfer form in favour of Lafras Luitingh is on record. The order to revert shareholding to a company which had *at the time of the order*, been struck off the register is an attempt by the respondent to grab the shares of the appellants and the court should not condone it. The registrar should have factored had all the above in her mind instead of giving an irrational decision.

The decision of the registrar taking back the Shareholding of Saracen Uganda Limited 75% and Special Service Limited 25% is set aside.

Whether Saracen Uganda should pay the costs of the Inspector?

The order for Saracen Uganda to pay the costs of the inspector ought to be set aside. It is the appellant's counsel contention that if Special Services wishes to have the affairs of the company investigate, it should do so at its cost. **Section 135 of the Companies Act, 2012,** covers the instances where a company member is entitled to information at the cost of the company, the section also mentions the kind of information. i.e. annual returns, and audited accounts. The information sought by the respondent is not covered. Why should the company pay costs for an investigation not authored by it? This is an onerous obligation which cannot be imposed as and when a member feels a need to audit a company. If the audit reveals culpability on the part of the company officials, then a refund of the costs incurred by the respondent can be ordered. But until such a finding is made, the cost of the audit or inspection should be borne by the party requesting for it.

The respondent's counsel contended that the appellant contested the order for the Company to pay the costs for the inspector. Firstly, the Company has not objected to this order. Secondly and even more importantly, the DRG is invested with statutory power to make such an order. Under Regulation 32 of **Companies (Powers of the Registrars) Regulations, 2016** it is provided that;

> *"(1) The registrar may make any orders in respect of matters before the registrar or arising from an inspection or investigation report as he or she considers appropriate, taking into account the evidence and gravity of the matter."*

It was further his submission that this provision is clear and grants a very wide berth to the Registrar. The Appellants do not demonstrate the fault of the DRG in requiring the company to pay the cost of the inspector.

Determination

Section 179 of the Companies Act provides;

(1) The expenses of and incidental to an investigation by an inspector appointed by the registrar under section 173 shall be paid by the person who applied for the investigation who may recover the expenses from the company.

It is clear that there is no inspectors report in this matter and this would have guided whether to allow the respondent recover costs from the company or not. The exercise of the alleged wide discretionary power must be exercised in accordance with the law.

There was no justification by the registrar to condemn the company to pay costs of the inspector. The costs must first be met by the person complaining or who applied for investigation and thereafter such a person may recover from the company of course depending on the circumstances of the case or Inspectors report..

This ground of Appeal also succeeds. The order that the Company shall pay the costs of the Inspector is set aside.

The application is allowed with no order as to costs.

It is so ordered.

Dated, signed and delivered be email and whatsApp at Kampala this 29th day of May 2020

SSEKAANA MUSA
JUDGE