



THE REPUBLIC OF UGANDA
IN THE MATTER OF THE COMPANIES ACT NO.1 OF 2012 AS
AMENDED
IN THE MATTER OF KYADONDO RUGBY FOOTBALL CLUB LTD
COMPANY COMPLAINT NO. 27635 OF 2023
BRIAN TABARUKA & 10 OTHERS.....APPLICANTS
VERSUS
1. JAMES PETER MIDDLETON
2. JEROLINE AKUBU
3. MICHEAL DOUGLAS KEIGWIN
4. PETER BROWSER
5. ANDREW OWOR.....RESPONDENTS

RULING ON THE PRELIMINARY OBJECTION

BEFORE: MULIISA SOLOMON, REGISTRAR OF COMPANIES.

1. This is a ruling in respect of the preliminary objection raised by the Respondents against the Applicants.

A. Background

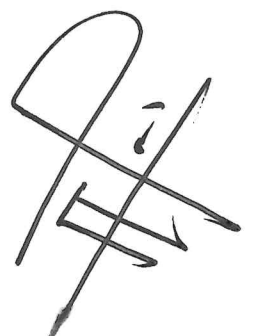
2. On the 16th day of April 2024, this good office delivered a ruling wherein the Applicant's Statutory Declarations made in support of their complaint were struck out for being in contravention with the law. Following the Ruling, Counsel for the Applicants made an oral application for leave to file fresh statutory declarations that comply with the law. The Respondents objected to the Application.

B. Preliminary objection

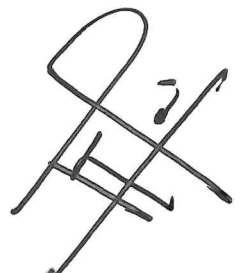
3. Counsel for the Respondents Musiime Muhebwe & Co. Advocates objected to the application for leave to file fresh statutory declarations that comply with the law stating that; There is no law or rule of procedure that permits a party who has presented their evidence by way of a Statutory Declaration to adduce evidence to replace evidence that has been struck out because of an illegality.

C. Submissions for the Respondents

4. Counsel for the Respondents argued that there is no law that allows a party whose evidence has been struck out to tender replacement evidence. Counsel contended that the proceedings before the Registrar are not governed by many laid down rules of procedure; however, **Section 288(1) of the Companies Act, 2012** provides for the taking of evidence by way of statutory declaration. The section gives the Registrar the discretion to take evidence viva voce in lieu of or in addition to evidence by declaration.

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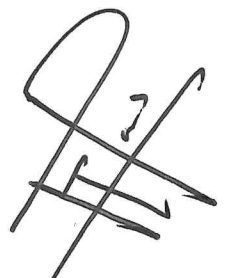
5. Counsel submitted that the import of this provision was considered in the matter of *Bryan Xsabo Strategy Consultants (Uganda) Limited & 2 Ors V. Great Lakes Energy Company N. V. Company Cause No. 13 of 2020* where, Justice Ssekaana Musa, noted that "*A registrar exercises a quasi-judicial function in executing their function and this implies that hearing is inevitable. A quasi-judicial hearing presupposes that the proceeding in any question is somewhat similar to, but not exactly, judicial in nature.*" Counsel argued that in the instant matter, the learned Registrar called for a hearing of the complaint and directed Respondents to file their defense by way of the statutory declaration which was in accordance with Section 288(1) of the Companies Act 2012, As Amended. Counsel further submitted that at this point the parties were all on notice that the complaint would be determined based on evidence presented by way of statutory declaration rather than viva voce since the learned Registrar had not exercised his discretion to proceed otherwise.
6. The respondents reiterated their submission that there is no provision for, nor discretion of the Registrar to entertain or allow the Applicants to cure their lack of evidence before the Tribunal at this stage by filing new statutory declarations as their complaint now stands unsupported by any evidence. Counsel for the Respondents prayed that the Tribunal dismisses the application for leave to file new statutory declarations and subsequently the complaint with costs awarded to the Respondent. In the alternative, the Respondents prayed that the

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Registrar exercises his discretion to refer the issue to the High Court for determination under **Regulation 33(1) of The Companies (Powers of the Registrar) Regulations, 2016.**

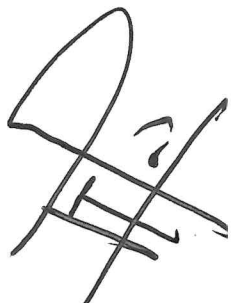
D. Submissions for the Applicants

7. Counsel for the Applicants reiterated their plea for resubmission of the statutory declarations in support of the Applicants' case because they are pivotal in providing the tribunal with necessary guidance for a well-informed decision concerning the complaint in the interest of justice. Counsel relied on the case of **Bryan Xsabo Strategy Consultants (U) limited and others vs. Great Lakes Energy Company N.V HCCC NO. 13 OF 2020** which cited **Luitingh Lafras & Anor vs. Special Services Ltd HCCC No. 11 of 2019** to argue that the Registrar is bound to follow norms of natural justice at some stage of their decisional process. Counsel argued that it is the intention of the respondents that no evidence is taken in the matter in support of the application which is contrary to the principles established in **Article 126 of the Constitution of The Republic of Uganda** and **Section 98 of the Civil Procedure Act Cap 71.**
8. Counsel submitted that by receiving the fresh Statutory Declarations, the Registrar will be adhering to acceptable minimum standards in the procedure for determining the matter before the Tribunal as the Statutory Declarations will serve as the basis for the evidence in the claim. Counsel argued that the High Court in **Bryan Xsabo Strategy**

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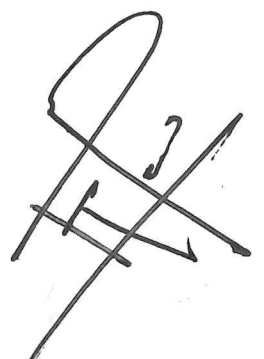
Consultants (U) limited and others v Great Lakes Energy Company (supra) noted that the powers of the registrar under the Companies Act are quasi- judicial since it involves taking decisions as provided under the Act. Counsel further submitted that when a statutory authority is empowered by statute to 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 or the subject and the statutory authority is required to act judicially under the statute, the decision of the statutory authority is quasi-judicial.

9. Counsel further contended that 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. Counsel further stated that a quasi-judicial hearing presupposes that the proceedings in question are somewhat similar to, but not exactly, judicial in nature. Counsel argued that any person or body having legal authority to determine questions affecting rights of subjects and having the duty to act judicially; acts in a quasi-judicial manner.
10. Counsel submitted that in the case of **Luitingh Lafras & Anor vs Special Services Ltd High Court Company Cause No. 11 of 2019**, the court emphasized that the registrar must pose and address the

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appropriate questions to determine jurisdiction and ascertain sufficient facts or evidence to resolve disputes between parties. While the registrar is obligated to adhere to principles of natural justice to some extent, such adherence does not require elaborate procedures like sworn testimony or strict rules of evidence. Counsel further argued that, the courts of Uganda, including the Supreme Court have taken liberal approaches in dealing with written witness statements as they are key in ensuring Precision and Clarity of the witness statements, serve as permanent written records of witness testimony, providing a reliable and verifiable source of information for reference during legal proceedings. (See **Saggu vs Roadmaster Cycles (U) Ltd (2002) 1 EA 258, Hon. Theodore Ssekikubo & 3 Others vs The Attorney General & 4 Ors Constitutional Application No. 6/2013, In Yona Kanyomozi v Motor Mart (U) Ltd (supra) Mulenga JSC,**)

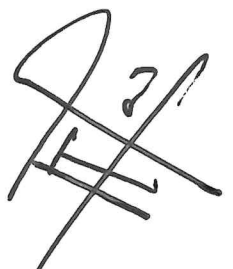
11. Counsel contended that rules of procedure should be used as handmaiden to justice but not to defeat it as was held in **Sam Aniagyei Obeng & Anor v MTL Real Properties Ltd & Anor, Miscellaneous Application No.198 of 2011 (arising out of Civil Suit No. 53 of 2010)**, Counsel prayed that this office adopts a liberal approach while resolving this matter by allowing the applicants to adduce fresh statutory declaration in order to resolve the main complaint.

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E. Submissions for the respondents in rejoinder

12. In rejoinder, the respondents reiterated their earlier submission that there is no law under which a party whose evidence has been struck out can be permitted to tender replacement evidence. Counsel for the respondents submitted that permitting the applicants to tender "replacement" evidence for the struck-out evidence is an illegality which cannot be disregarded under the guise of recourse to Article 126 of the Constitution of the Republic of Uganda and Section 98 of the Civil Procedure Act Cap 71. Counsel relied on the case of **Mulindwa vs. Kasubika, Civil Appeal No. 12 of 2014**, where the Supreme Court observed that: *"This contention is erroneous and unsupported by pronouncements of the Supreme Court in several cases involving application of Article 126 of the Constitution by the courts. According to these authorities, the settled position is that Article 126(2) (e) has not done away with the requirement that litigants must comply with the Rules of procedures in litigation. The Article merely gives Constitutional force to the well settled common law principle that rules of procedure act as the handmaidens of justice. The framers of the Constitution were alive to this fact. That is why they provided that the principles of Article 126 including administering substantive justice without undue regard to technicalities must be applied "SUBJECT TO THE LAW". Such laws include the Rules of procedure."*

13. Counsel for the respondents argued that, the Learned Registrar in these very proceedings had opted to follow the laid down procedure

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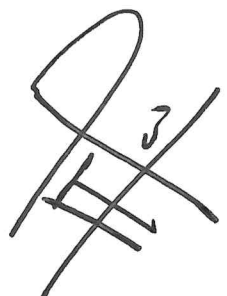
of taking evidence by way of Statutory Declarations and foregone his discretion to take evidence viva voce. Counsel submitted that it is the applicants' fault that they filed Statutory Declarations that convened the law resulting in them having to be struck-out. The respondents submitted that this was not a mere technicality that can be washed away just as it was the case in **Mulindwa, supra**.

14. The respondents reiterated their submission that subsequent to the striking out of all the applicants' evidence for being in contravention with the law, there is no provision for, nor discretion of the registrar to entertain or allow the applicants to cure their lack of evidence at this state by filing new statutory declarations or even testifying viva voce as this would amount to an injustice to the respondents.

15. The respondents prayed that this office dismisses the application for leave to file new statutory declarations and subsequently the complaint (being unsupported by evidence) with costs awarded to the respondents.

F. Determination by the Registrar

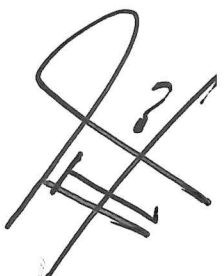
16. A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit (see *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd* [1969] EA 696). In the case of **Semuyaba, Iga & co. Advocates and Anor Vs. Attorney General of the Republic of South Sudan and 2 Others**,

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Miscellaneous Application No. 0004 OF 2022, Hon Justice Stephen Mubiru held that *“a preliminary objection raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It is thus based on a commonly accepted set of facts as pleaded by both parties. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. Preliminary objections relate to points of law, raised at the outset of a case by the defence without going into the merits of the case. In any preliminary objection therefore, there is no room for ascertainment of facts through affidavit or oral evidence.”*

Objection: There is no law or rule of procedure that permits a party who has presented their evidence by way of a Statutory Declaration to adduce evidence to replace evidence that has been struck out because of an illegality.

17. Counsel for the Respondents submitted that there is no law under which a party whose evidence has been struck out can be permitted to tender replacement evidence. Counsel further relied on the case of **Mulindwa V Kasubika, Civil Appeal No. 12 of 2014**, where the Supreme Court observed that: *“...the settled position is that Article 126(2) (e) has not done away with the requirement that litigants must comply with the Rules of procedures in litigation. The Article merely gives Constitutional force to the well-settled common law principle that rules of procedure act as the handmaidens of justice. The framers of the Constitution were alive to this fact. That is why they provided that the principles of Article 126 including*

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administering substantive justice without undue regard to technicalities must be applied "SUBJECT TO THE LAW". Such laws include the Rules of procedure."

18. Counsel for the Applicants on the other hand submitted that by the Registrar receiving the fresh Statutory Declarations, he will be adhering to acceptable minimum standards in the procedure for determining the matter before this office as the Statutory Declarations will serve as the basis for the evidence in the claim. Counsel argued that it is the intention of the Respondents that no evidence is taken in the matter as support of the application which is contrary to the established principles in **Article 126 of the Constitution of The Republic of Uganda and Section 98 of the Civil Procedure Act Cap 71.**

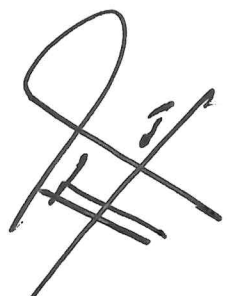
19. **Article 126(2)(e) of the Constitution** stipulates that;

"In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles

(e) Substantive justice shall be administered with undue regard to technicalities"

In Utex Industries Ltd vs. Attorney General Supreme Court Civil Application No. 52 of 1995, the court held that;

"...we are not persuaded that the Constituent Assembly Delegates intended to wipe out the rules of procedure of courts by enacting Articles 126 (2) (e). Paragraph (e) contains a caution against undue regard to technicalities. We

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think that the article appears to be a reflection of the saying that rules of procedure are handmaidens to justice – meaning that they should be applied with due regard to the circumstances of each case...”

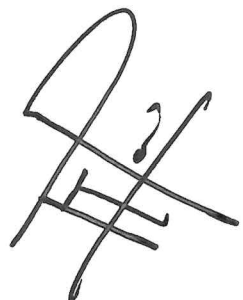
The Court thus emphasized that Article 126(2) (e) was not intended to wipe out the rules of procedure. Furthermore, that the Article reflects the saying that rules of procedure are handmaids to justice and should be applied with due regard to the circumstances of each case.

20. Section 288 of the Companies Act provides;

Mode of giving evidence in proceedings before the registrar

(1) In any proceeding under this Act before the registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which the registrar thinks it right so to do, he or she may take evidence viva voce in lieu of or in addition to evidence by declaration. Any such statutory declaration may in case of appeal be used for the court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

My interpretation of the above provision is that there are two modes of giving evidence before the Registrar of Companies that is; by way of statutory declaration or viva voce (orally) and the discretion is with the Registrar to choose which particular mode to use during the proceedings. By the Registrar issuing directives to parties to file their evidence by way of statutory declarations does not mean that he or

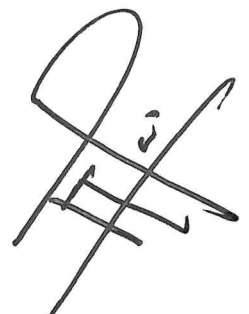
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she cannot take evidence in any other way as provided for under the Companies Act and neither is he or she estopped from exercising the discretion of choosing to take evidence in any other mode. A complaint does not become incompetent before the Registrar of Companies merely because it is not supported by any evidence upon filing, because it is the Registrar of Companies to guide on which mode the evidence shall be presented during the hearing and the law does not dictate that once a particular mode is chosen another cannot be used. The discretion lies entirely with Registrar of Companies. (Emphasis mine)

21. In the instant complaint, the status quo is to the effect that it is currently not supported by any evidence because the statutory declarations that were presented by the Applicants were struck out.

In **Attorney General vs. Major General David Tinyefuza Constitution Petition No.1 of 1996**, the Constitutional Court overruled the preliminary objections and **Manyindo DCJ held that;**

"...In my opinion it would be highly improper to deny him a hearing on technical or procedural grounds. I would even go further and say that even where the respondent objects to the petition, as in this case, the matter should proceed to trial on merit unless it does not disclose the cause of action. This court should readily apply the provisions of Article 126(e) of the constitution

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in a case like this one and administer justice without regard to technicalities..."

Furthermore, In case of **Col. Besigye Kiiza vs. Museveni Yoweri and Electoral Commission Election Petition No. 1 of 2001**, Odoki CJ held that "...Rules of procedure should be used as handmaidens of justice but not to defeat it."

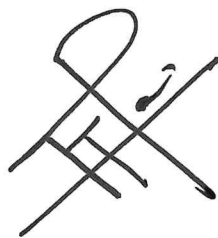
The question I must now answer is: In the circumstances of the present case would granting the Applicants leave to file fresh statutory declarations serve the ends of justice?

22. In view of the application by the learned counsel for the Applicants for leave to file fresh statutory declarations that would comply with the law, I find that it is in the interest of justice, that I grant the Applicants, leave to file fresh statutory declarations that comply with the law.

23. Therefore, the applicants should file their statutory declarations by 8/07/2024 and the matter is set down for hearing on 12/07/2024 at 10am.

24. No order made as to costs.

I so order.

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Muliisa Solomon

Registrar

4/7/2024