

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
COMPANY CAUSE NO. 243 OF 2023
IN THE MATTER OF THE COMPANIES ACT 2012
AND
IN THE MATTER OF ABUNDANT LIFE FAITH CHURCH OF UGANDA
AND
IN THE MATTER OF AN APPLICATION BY MUSISI GRIVAS

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] This Cause was brought by Notice of Motion under Order 38 rule 5(d) of the CPR, Sections 139, 140 and 142 of the Companies Act and Section 98 of the CPA seeking orders that;

- a) An extra-ordinary General Meeting of the company be duly convened by Abundant Life Faith Church of Uganda (the Company).
- b) An Annual General Meeting of the Company be duly convened by Abundant Life Faith Church of Uganda.
- c) A quorum of two members be provided as sufficient to conduct meetings in (a) and (b) above.
- d) A shorter notice of five days be allowed as sufficient time within which to call the said meetings of the Company.
- e) The Company be allowed to convene and conduct the said meetings virtually.
- f) The costs of the application be provided for.

[2] The grounds upon which the application is based are summarized in the Notice of Motion and also set out in the affidavit in support of the application sworn by **Musisi Grivas**, the Applicant. Briefly, the grounds are that the

Applicant is a member and subscriber to the Articles and Memorandum of Association of Abundant Life Faith Church of Uganda (the Company). The company articles and memorandum of association initially proposed six members but only four members accepted to sign and subscribe, namely; Deo Balyabyekkubo (now late), Handel Archibald Leslie (also late), Thomas Collier (currently living in Sierra Leone) and the Applicant. The two that did not subscribe were Milliam Lightburn and Methlyn Leslie. There are currently two surviving subscribers and members of the company and the Applicant is the only member/subscriber residing in Uganda. Thomas Collier is a Sierra Leonee citizen who left Uganda after the incorporation, is believed to be in Sierra Leone and his current Ugandan address is M/s OSH Solicitors and Legal Consultants.

[3] The Applicant further averred that the Company is at risk of carrying out business in contravention of its articles and memorandum of association, the Companies Act and Regulations. The Applicant wishes to convene an Extra Ordinary General Meeting and an Annual General Meeting of the company to settle some of the company matters including amending the Articles and Memorandum of Association. The memorandum and articles of association of the company provide for a physical meeting which will be costly and inconveniencing to Thomas Collier travelling from Sierra Leone and it is currently practically difficult to convene a physical meeting. The Applicant concluded that it is appropriate for the Applicant to be granted leave of court to hold a virtual General Meeting at a shorter notice of five days with the two members present constituting quorum.

[4] Although the other interested party was represented during the hearing, there was no reply filed to the application by way of affidavit or otherwise. The application therefore stands unopposed.

Representation and Hearing

[5] At the hearing, the Applicant was represented by **Mr. Akugizibwe Adolf** of M/s Baingana & Co. Advocates while the other interested party, Thomas Collier, was represented by **Mr. Godfrey Himbaza** of M/s OSH Advocates. The hearing proceeded by way of written submissions. However, only Counsel for the Applicant made and filed their written submissions.

Issue for Determination by the Court

[6] The issue for determination by the Court is; *Whether the application raises sufficient grounds for grant of an order to conduct an Extra Ordinary General Meeting and Annual General Meeting of the Company?*

Submissions

[7] Counsel cited the provision of Section 142 of the Companies Act to the effect that the court may order for a meeting of a company to be held where for any reason it is impractical to call a meeting of the company in any manner in which meetings of the company may be called or conducted in the manner provided for under the company's memorandum and articles of association. Counsel submitted that the company was incorporated with four subscribers, two of whom have since died, with the other living in Sierra Leone; which makes it practically impossible to call for a physical meeting and to meet the required quorum for the meetings. Counsel submitted that it is essential to convene a meeting of the company as soon as possible in order to comply with the law and the company's memorandum and articles of association.

Determination by the Court

[8] The provision under Section 142 of the Companies Act 2012 empowers the court to grant an order to a company to conduct a meeting in a manner deemed fit by the court where it is satisfied that it is impracticable to convene

the meeting in the manner prescribed by the company articles or by the law. For avoidance of doubt, Section 142 provides thus;

“Where for any reason it is impracticable to call a meeting of a company in any manner in which meetings of the company may be called or conduct the meeting of the company in a manner prescribed by the articles or this Act, the court may on its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting order for a meeting of the company to be called, held and conducted in a manner the court thinks fit.”

[9] On the case before me, it is contended by the Applicant that there are two surviving subscribers to the articles and memorandum of association with only the Applicant living in Uganda and the other member living in Sierra Leone. The Applicant stated that the company is currently at risk of operating contrary to its articles and the Companies Act. In the course of hearing this matter, the Court was informed that there are two other pending suits related to this matter; one being Civil Suit No. 197 of 2022 in which Thomas Collier and others sued the present Applicant, among others; and Miscellaneous Cause No. 376 of 2023 where the present Applicant was challenging the registration of the Company as a Non-Governmental Organization (NGO) and the appointment of its board of trustees/ executive committee members.

[10] Miscellaneous Cause No. 376 of 2023 was disposed of by this Court in a ruling delivered on 28th June 2024; the gist of which is that the company had lawfully been registered as an NGO and its executive committee was lawfully in place. Civil Suit No. 197 of 2022 is still pending before this Court. The suit involves questions over lawfulness of actions undertaken by the present Applicant amongst other defendants regarding the operations of the company. The suit raises issue as to who has proper authority to bind the company. On the other hand, the present application seeks to conduct meetings with one of

the objectives being to effect alteration in the articles and memorandum of association of the company. It is clear to me that, while the dispute subject of the above said civil suit is pending, it is practically difficult for the two surviving members to sit in a company meeting and undertake any meaningful deliberations and resolutions. It is only imperative that the dispute vide Civil Suit No. 197 of 2022 is first put out of the way. Indeed, it appears reasonable to me that the matters sought to be resolved by the meetings subject of this application be made part of the dispute in the said pending suit.

[11] In the circumstances, the orders sought in this application are not meaningfully available. This application is accordingly dismissed with no order as to costs.

It is so ordered.

Dated, signed and delivered by email this 1st day of July, 2024.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long horizontal flourish extending to the right.

Boniface Wamala

JUDGE