

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

HCT-00-CC-C1-0018-2005

IN THE MATTER OF THE COMPANIES ACT, CAP 110
IN THE MATTER OF BDC ONLINE LIMITED
AND IN THE OF LYNN KATEGAYA, THE APPLICANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU
BAMWINE

R U L I N G:

This is an application by Chamber Summons (Exparte) brought under 0.34A rr. 6 (h) and 7 of the Civil Procedure Rules and S.135 of the Companies Act. It is for orders that:

- i. An Extra-ordinary General Meeting of the Company be duly convened by the Applicant.
- ii. A quorum of one shareholder be provided as sufficient to conduct an Extra-ordinary General Meeting of the Company.
- iii. Costs of the application be in the cause.

The grounds of the application are set out in the affidavit of Lynn Kategaya, the Applicant. Briefly, they are, that:

- i. the company has never held any Annual General Meeting since its incorporation, to deal with important matters and to comply with the law.
- ii. since its incorporation the Co. has only passed one Resolution to open up an account with Stanbic Bank Ltd, yet management has been taking certain decisions which in law needed resolutions before taking such decisions.
- iii. there are 2 share holders, one Benjamin Buhame who holds 70% of the shares, and the Applicant who holds 30% of the shares.
- iv. Benjamin Buhame resides in the UK and when the Applicant was Managing Director of the company she tried to call General Meetings but he never turned up and as there was always no quorum the meeting could not take place.
- v. the company is still carrying on business in contravention of the company's Articles of Association and the provisions of the Companies Act.
- vi. The Applicant wishes to convene an Extra - ordinary General Meeting of the company to settle some of the company matters.
- vii. It is fit and proper that the orders issue.

Section 135 of the Companies Act provides for the power of the Court to order a meeting. I should observe that the company's regulations normally empower the Directors to manage its business. Even then, the ultimate control of the company lies with the General Meeting.

I have addressed the circumstances herein as averred to by the Applicant. There are 2 shareholders, the Applicant and one Buhamé. The said Buhamé holds 70% of the shares and the Applicant 30%. However, the majority shareholder resides in the UK. As a result of this, the company is carrying on business in contravention of the Company's Articles and the Companies Act. This state of affairs cannot be allowed to continue.

I should perhaps note that a single member cannot generally constitute a meeting, save as may be directed by the Registrar in accordance with S.131 (2) of the Companies Act. Where, however, it is impracticable, as herein, to call a meeting or to conduct it in a manner prescribed by the Act or the Articles, the Court has residual powers, on its own motion or upon application by a Director or a member to order the holding of one directed by it, including the direction that one person may constitute quorum for that purpose. I consider this to be the mischief or the unsatisfactory state of affairs which S.135 was enacted to remedy. Accordingly, I order that the Applicant despite her minority share holding do convene and constitute a meeting of the company in accordance with the said S.135 of the Companies

Act to continue with the Company's Operations until such time when Mr. Buhame's attendance will be procured.

Costs of this application shall be in the cause.

Yorokamu Bamwine
J U D G E

20/6/2005