OBJECTION MY LORD!

CORPORATE AND COMMERCIAL TRANSACTIONS:
Expert guidance on company law, contracts, and commercial disputes.

Isaac Christopher Lubogo

Revised and Updated Second Edition

CORPORATE & COMMERCIAL TRANSATIONS

OBJECTION MY LORD: LEGAL PRACTICE DEMYSTIFIED

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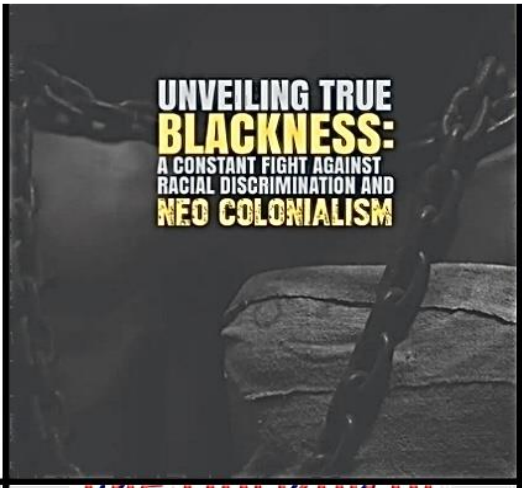
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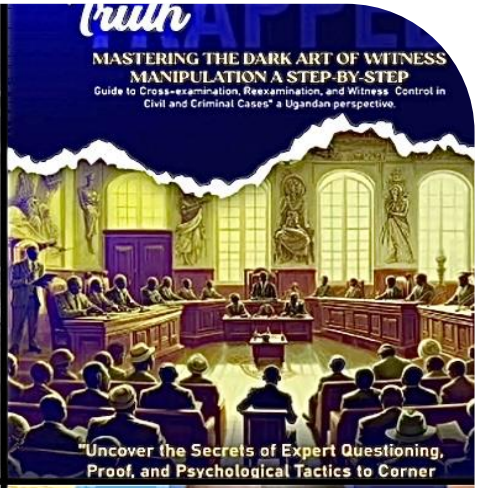
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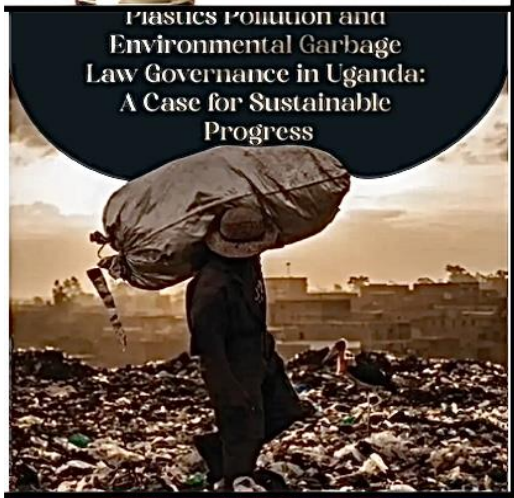
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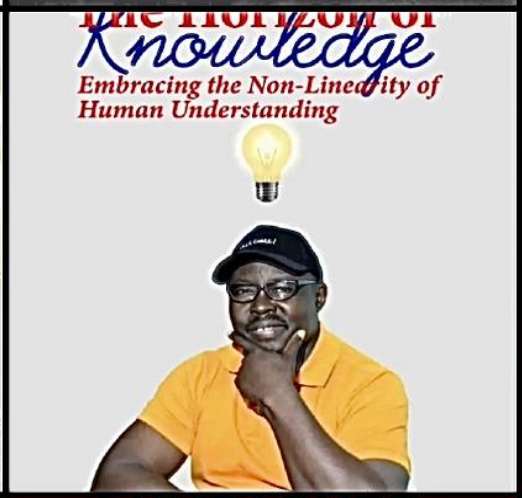
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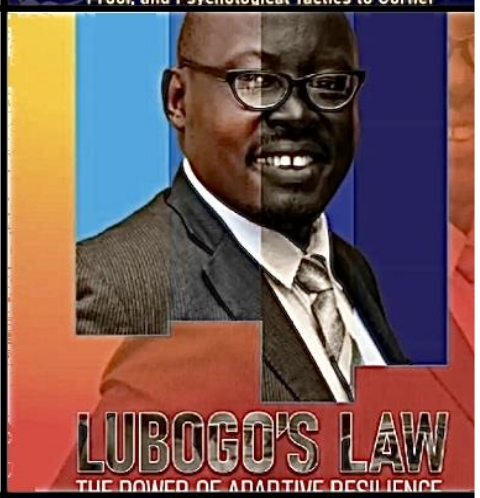
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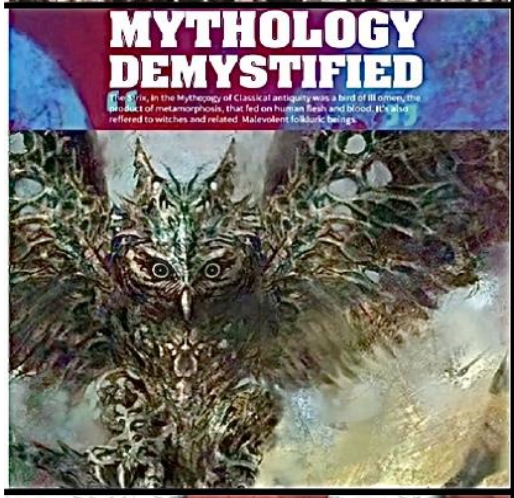
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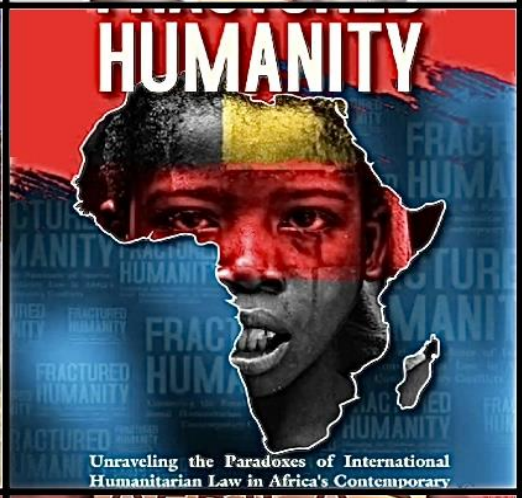
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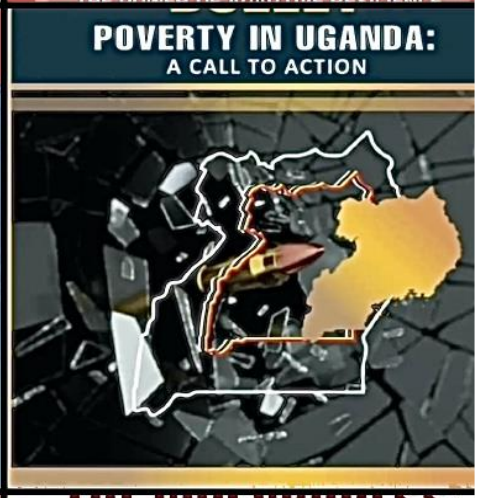
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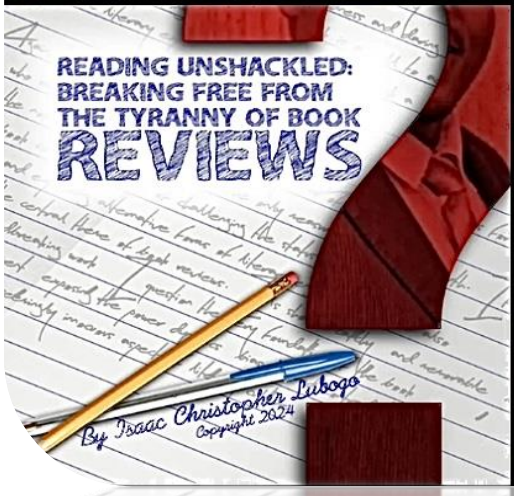
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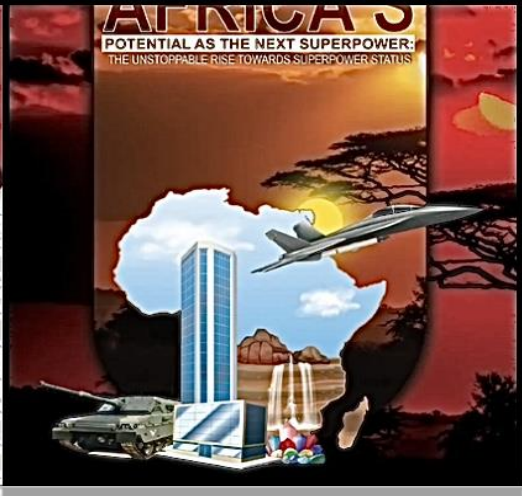
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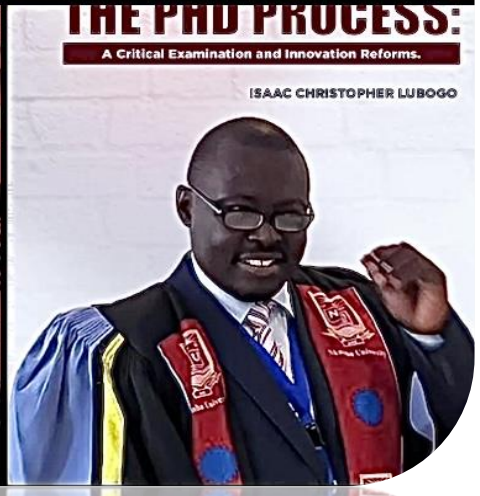
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ISAAC CHRISTOPHER LUBOGO

DEDICATION

To The Lord Who Breathes Life And Spirit On Me …

Be My Guide Oh Lord Of The Entire Universe.

"…. Daniel was preferred above the presidents and princes, because an excellent spirit was in him, and the kingthought to set him over the whole realm" _ Daniel Chapter six verse three

Vox Populi, Vox Dei (Latin, 'the voice of the people is the voice of God')

Salus populi suprema lex esto (Latin: "The health (welfare, good, salvation, felicity) of the people should be the supreme law", "Let the good (or safety) of the people be the supreme (or highest) law", or "The welfare of the people shall be the supreme law") is a maxim or principle found in Cicero's De Legibus (book III, part III, sub. VIII).

ACKNOWLEDGEMENT

Great thanks to learned colleagues, **Mulungi Agatha** and **Ahimbisibwe Innocent Benjamin** whose enormous turpitude and stamina have inspired me to abridge this tome into a formidable book. I offer distinctive recognition and thanks to my team of researchers whose tireless effort in gathering and adding up material has contributed to this great manuscript.

Blessings upon you.

REVIEW

"Objection My Lord" by Isaac Christopher Lubogo (Second Edition)

It is with profound admiration that I pen this review for the second edition of *Objection My Lord*, an extraordinary legal tome by the distinguished scholar Isaac Christopher Lubogo. Having made a resounding impact with its inaugural edition, this magnum opus has not only solidified its place in the annals of legal literature but has now ascended to even greater heights in its revised form. Lubogo has meticulously expanded the boundaries of legal discourse, presenting a work that is not merely an analysis but an intellectual journey through the complex architecture of trial advocacy.

The first edition of *Objection My Lord* already heralded the arrival of a formidable legal mind, one whose treatment of objections and courtroom dynamics was incisive and authoritative. However, this second edition exemplifies what can only be described as a tour de force in legal writing. With refined precision, the author delves into the intricacies of evidentiary objections, the art of courtroom persuasion, and the strategies that define masterful advocacy.

Isaac Christopher Lubogo has, with this edition, set an even higher bar for legal scholarship. His mastery of procedural and substantive law is evident as he navigates through both theoretical frameworks and practical applications with unparalleled fluency. His discourse on the law of evidence is especially noteworthy, as it demonstrates a rare combination of academic rigor and pragmatic insight—qualities that are essential for any advocate seeking to excel in litigation.

The author's treatment of objections in this edition goes beyond mere technicalities; it explores the psychological and rhetorical dimensions of legal practice, elevating the subject from a simple procedural necessity to a formidable weapon in the arsenal of courtroom strategy. Lubogo dissects the art of objecting with clinical precision, revealing the subtleties that differentiate the ordinary advocate from the truly exceptional.

Moreover, this edition benefits from a deepened engagement with comparative jurisprudence. Lubogo draws from not only Ugandan and East African legal systems but also traverses global legal landscapes, enriching the text with international perspectives that offer fresh insights and broaden the scope of applicability for both budding and seasoned practitioners.

The author's style is replete with eloquence, yet never at the expense of clarity. His ability to marry dense legal principles with accessible explanations makes this book an invaluable resource for law students, practitioners, and even judges. The second edition is undeniably a magnum opus—an academic feast of legal wisdom served with eloquence, precision, and a deep understanding of the legal craft.

In sum, *Objection My Lord* in its second edition is an indispensable guide for the astute advocate. Isaac Christopher Lubogo has upped the ante, setting an exemplary standard for future legal scholarship. I wholeheartedly commend this work to every member of the legal fraternity, for it will undoubtedly leave an indelible mark on the study and practice of law.

Editors: **Mulungi Agatha**

(Advocate)

Ahimbisibwe Innocent Benjamin

(Africa Award Winning Lawyer & Author)

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The law applicable

The law applicable to this scope of study includes the following;

The Constitution of the Republic of Uganda

The Judicature Act Cap 16

The Partnership Act 110

The Business Names Registration act Cap 105

The Contract Act Cap 284

The Cooperative Societies Act Cap 107

The Registration of Documents Act Cap 81

The Uganda Citizenship and Immigration Control Act Cap 66

The Stamps Act Cap 339

The Trade (Licensing) Act Cap 101

The Companies Act 106

The Registration of Documents Rule SI 81-2 as amended by SI 55 of 2005.

The Business Names Registration Rules SI 109-1 (as amended by Act 53 of 2005)

The Advocates Act Cap 295

The Advocates (Remuneration and Taxation of Costs) Rules SI 267-4

The Civil Procedure Act Cap 282

The Civil Procedure Rules SI 71-1

Common law and Doctrines of Equity.

The checklist/ Issues arising include:

- Whether the parties can form an organization and if so what type of organization.
- Whether the parties have capacity to form the said organization.
- What other additional information is needed to form the organization.
- What is the forum procedure and documents
- What are the fees payable.

NATURE OF PARTNERSHIP

Partnerships are one of the various forms of business organizations /associations. Other associations inter alia include;

a) Sole proprietorships

b) Companies

c) Cooperative societies

d) Joint ventures

A partnership is defined in section 2(1) of The Partnership Act 110 (hereinafter referred to as the Partnership Act), as two or more persons carrying on a business with a view of obtaining profits.

In the case of BUBARE CO. V MEBLE KENTE (1982) HCB 143, the absence of a written agreement between parties when the partnership was being formed is immaterial since a partnership maybe formed informally or by conduct of parties. This definition is fortified by Festo Sendi Vs Clearers Limited CA 1/1997; where court held that in order to tell whether there is existence of a partnership, there should be actual receipt of profits and not a mere intention to share profits.

The number of members of a partnership ranges from 2-20 as enunciated under section 372 of The Companies Act 106 (hereinafter referred to as the Companies Act) and stated in Akinose vs. AITCO (1961) WNLR 215.

In W v Commissioner of tax , the court held that whether the partners really and truly intended to join together for the purpose of carrying on business and sharing in the profits or losses or both. Their intention is a question of fact.

Elements of a partnership

1. Relationship

No partnership exists with a single person. A partnership is a relationship which if established governs the rights and duties between the parties and their relationship with those transacting with the parties.

A partnership is said to exist when two or more people have agreed either expressly or impliedly to share in the profits and control of a business. The agreement may be I written oral or deduced from the conduct of the parties.

2. Carrying on a business

Sharing profits per person does not create a partnership relationship and neither does joint ownership of property. S.1 (a) of the partnership ACT defines a business to include; trade, occupation or profession. It must have a commercial element to it.

In order to say that persons are carrying on a business, they must have gone beyond the preparatory stages of setting up a venture they have agreed to engage in and reached that khan and others v Miah and others , individuals agreed to go into a partnership to run a restaurant. The under took various activities such as stage where they are actually doing the business.

A partnership is not created by a mere intention to do business together but by an intention which is manifested practically.

In Hanshaw v Roberts1967(1) ALR comm. 5; the plaintiff formed a business syndicate with three partners each paid on amount to a central fund as account of management expenses .There was also an agreement to form a business partnership within a limited time. Partnership was never formed as agreed.

Issue was whether there was a partnership?

It was held that the existence of a partnership depends on carrying on business in partnership and not on the agreement to form a partnership.

The expression carrying on business according to common law also connotes a repetition of acts and includes the case of association formed for doing one particular act which is never to e repeated for example in Smith v Anderson, a group of investors subscribed for the purchase of shares through a trust in various submarine cable companies. The shares were sold to the investors by the trustees of the trust who then issued the subscribers a E100 certificate for each E90 certificate that was subscribed. In determining

whether the trust was a partnership, the court held that single act of the trust did not satisfy the element of carrying on business which connoted a repetition of acts.

S.34 (1) (b) of the partnership Act envisages the existence of a partnership for a single venture. Although it deals with dissolution, it impliedly acknowledges the validity of a partnership of a single venture by providing its dissolution.

3. Carrying on a business in common

The business must be carried on by or behalf of all parties. There is no requirement for all parties to take an active role.

4. View to make profit

The partnership must entered with a view to make profit and this distinguishes it from clubs and societies formed for formation of religious or social, education or recreational activities.

Business that not made any profits can be construed as partnerships as long as they were entered with a view to make profit (khan and others and miah and others).

In Francis sembunya v all port services (u) ltd, the court formed that there was an existence of a partnership between the appellants for purposes of buying the cement, reselling it and distributing the profits amongst themselves.

Rules in determination of existence of a partnership.

These rules are provided for in section 3 of the Partnership Act thus;

1) Where there is a joint tenancy, tenancy in common, joint property, common property or part ownership; this does not necessarily create a partnership in itself as to the so held and owned; whether the tenants do or do not share profits.

2) Sharing of gross returns does not in itself create a partnership though the persons sharing, have or do not have a joint or common right, interest in the property from which returns are derived.

3) Receipt by a person of a share of the profits of a business is prima facie evidence of a partnership; but receipt of such share does not make one a partner in the business.

The above rules help in ascertaining existence of a partnership, when one is countered with a set of facts.

Capacity to be a partner in a firm

A) Minors.

The general rule regarding capacity of a person to be a partner is to the effect that a person of majority age can enter into partnership with another. There have been many inroads into this doctrine; thus a minor can be a partner in a firm. However, without prejudice to the foregoing, he/she can only be liable upon attaining majority age. This principle is conversed in Lovelt vs. Bearchamp (1834) 5 D& Act 1925 where court held that a minor would be liable for debts accruing to a firm upon attaining 18 years but not incurring liability for debts before attaining18 years. This principle has been codified in our statute books in section 12 of the Partnership Act.

B) Companies.

A company can be a partner in a firm. This is premised on the legal principle in section 15 of the Companies Act and in Salmon Vs Salmon (1877) AC 22 which state that a company is a legal entity, separate and distinct from persons who comprise it. This principle was further noted with approval in Stephen vs. Katonagen (1918) AC 229.

C) Persons Of Unsound Mind.

Persons in this category don't have capacity to contract as partners. This is fortified in the Wonge vs. Toymbee (1910) where court held that a person who is mentally incapacitated can not contract. Legal literature has buttressed this principle in Halsbury's Laws of England Vol. 28 Para. 499 that an agreement of partnership with an insane person ought to be avoided for all intents and purposes.

D) Foreigners

Foreigners have capacity to join partnerships subject to legal conditions. First and foremost, a foreigner should be in possession of a valid entry permit and a work permit as provided for under section 54 of the Uganda Citizenship and Immigration Control Act Cap 313 (hereinafter referred to as the Uganda Citizenship and Immigration Control Act) .

E) Employees

In relation to persons in public offices, their ability to form partnerships depends on the Standing orders and whether the proposed undertaking to form a partnership is acceptable to the head of such employee.

FORMATION OF A PARTNERSHIP

This is governed largely by principles of common law and equity. There is no clear cut procedure in the Partnership Act, or regulations to effect it purposes there under.

Common law and equity lay down a principle in Stenos vs. Mandilas that a partnership being contractual in nature should be expressed in a partnership deed. This implies that the onus would be upon the partners to draft a deed.

The basic terms in the deed include:

Name of the firm

Name and addresses of the partners

Date of commencement

Duration of business

Capital contributions of each

Methods of raising finances

Ratios of sharing profits and losses

Interest on partners;' capital

Salaries and commissions if any

Accounting and auditing

Duties, powers and obligations of the partners

Signatories to the bank accounts

Procedure in case of lunacy, death, retirement, bankruptcy or admission of a new partner, interalia.

Dispute resolution

Termination of partnership

Signature of the partners

The test for the existence of a partnership according to Lindley on partnership (1950) 11th edition at page 17 is the carrying o of a business and not an agreement to carry on a business.

A future agreement to carry on business together in future will not amount to partnership (Henshaw v Roberts).

Further, the creation of a partnership is not in the execution of a partnership deed as the agreement is not in the execution of partnership deed as the agreement to carry on business in common might be oral or deduced from conduct. In Dr. Okello N. David v Komakech Stephen, the plaintiff and defendant equally contributed money towards the purchase of an omnibus taxi to operate on the Arua Adjuman route. On the issue of whether there existed a partnership between the parties, justice kania held that the absence of a partnership deed did not negate the existence of a partnership, based on the evidence; there existed a partnership to which both parties had equally contributed money towards the purchase of the taxi.

S.3 of the partnership Act.

RELATIONSHIP BETWEEN PARTNERS

The relationship between the parties is of a fiduciary nature.

In British and west building society v Mathew a fiduciary was defined as someone who has undertaken to act for and on behalf another in a particular matter in circumstances which give rise to a relationship of trust and confidence.

The fiduciary duty imposes the highest standard of care at both equity and law. The fiduciary duties which the partners are to each other one;

1. Duty of outmost good faith. This principal is not outlined in the Partnership Act but it is a recognized principal that all provisions in the PA rotate around it. Under this duty of outmost good faith, partners are expected to be honest and fully disclose to each other matters and issues involving the firm. Each partner is expected to deal with his fellow partners honestly and to disclose any relevant facts fully and must act transparently. This was illustrated in the. Case of V LAW [1905) CH 140 where it was held that every partner- owes a duty of disclosure of information regarding the partnership business. in this cast court held that it is clear law that in . a transaction between two co-partners for the sale by one to the other of a share of the business. In the case court held that information that is within his knowledge about that transaction and where he does not do that, then sale is voidable and may be set aside.

2. Duty to render true accounts, every partner has a duty to render true accounts and give all information about all aspects and matters of the partnership business S.30 of the Partnership Act.

3. Duty not to make secret profits, A partner is under a duty not to make secret profits He must not secretly benefit from the firm‟s property, firm‟s name, or business connections. S.31 of the Partnership Act. He must not use the firm‟s name or his position as a partner or his business connections as a partner to make secret profits. Where he makes such profits, he will be called upon to refund to the firm any benefits or profits that may have been made. In BENTLEY Vs CRADEN [1853], BEFD 75, the plaintiff and defendant were in a business of sugar refining. The defendant was the purchasing officer for the firm: He bought sugar at a low price and kept it and waited for the price to rise and he resold it to the firm at the prevailing market price which was higher than the price at which he bought it Court held that the defendant was accountable to the firm for the profits made Also in the case of PATHIRANA Vs PATHIRANA [1967] 1 ac 233, the two partners dissolved the partnership but one of them continued to use the partnership assets and the other partners share capital and made profits, it was held that that partner was liable to account to the other partner for the profits made out the partnership assets and capital after dissolution and that the plaintiff partner was entitled to a share of the profits.

4. Duty not to compete with the firm; A partner must not set up a business which is similar to that of the firm unless with the consent of the partners. Where he does this he will be accountable to the firm for all the profits he makes out of that business. S.32 of the Partnership Act. He must not in any way compete with the firm. In AAS Vs BENHAM [1891] 2CH 244; a partner in a firm of ship brokers whose business was to charter ships used information which he obtained in the business to set up a ship building company for which he also received remuneration and also became a director. His fellow partners brought an action for an order him to account for the remuneration and salary in this second Company. Court held that this type of activity was outside the scope of the partnership business and was therefore not in competition with it. That the partner was therefore under no duty to account for the remuneration he received as a director.

This principal was also illustrated in the case of; TRIMBLE Vs GOLDBERG [1906] AC 494.

5. Duty with regard the partnership property; every partner has a duty to hold and apply partnership property exclusively / only for the purposes of the partnership business.

6. Since partners have unlimited liability, every partner has a duty to share the debts of the firm.

TYPES OF PARTNERSHIPS

1. General partnerships.

It is a business arrangement by which two or more individuals agree to share in all assets, profits and financial and legal liabilities of a jointly owned business structure.

Section 2(1) of the partnerships act limits the number of such partnerships to not more than 20 persons.

Unlike in limited liability partnerships, there is no requirement for registration of the partnership.

2. Limited liability partnerships (LLP)

S.47 (3), the liability of partners unlike in general partnerships is limited to extent under taken by each partner. However every LLP must have a general partner (s). A general partner is subject to the unlimited personal liability for the debts of the company. (Section 47(2) of The Partnership Act 110).

S.47 (2) provides for limited liability partnerships (LLPs). An LLP is one that consists of not more than twenty partners and has persons called general partners who are liable for all debts and obligations of the partnership it has limited liability partners who contribute their capital but are not liable for any debts and obligations of the partnership beyond the amount of capital contributed.

S.47 (4) bars a limited liability partner from withdrawing part or in while directly or indirectly any of his or her capital contributed to the firm during the continuance of the partnership.

S.48 provides for the mandatory registration of LLPS with the registrar and failure to do so, the partnership shall be considered to be a general partnership.

S.50 on the registration of LLP in is in form of regulations.

3. Professional partnerships

These are partnerships formed for purposes of carrying on a profession. S.2 (2) of P.A puts the CAP of partners for such firs at 50 who must be professional.

S.1 of the PA defines a professional as a person who is a member of a profession regulated by the laws of Uganda.

4. Active partners

An active partner is one who actively participates in the management of the business. By virtue of section 5(1) of the partnership act, they have the power to bind the partnership regarding related business.

5. Dormant partners

Is one who takes no active part in the management of the partnership but nevertheless is liable as a partner

RIGHTS OF PARTNERS.

The rights just like duties of a partner may be varied by agreement and section 26 of PA takes cognicence of the same.

a) Right of a partner to the management of the firm.

According to S.2 (1) partners are expected to carry on business in common, its thus expected that same or all of the partners shall engage in the management of the business .S.26 (e) provides expressly that every partner may take part in the management of the partnership

b) Right to management also entails having a say in who is admitted to the partnership. (s.26 (9)

c) No change to the nature of the partnership can be effected without the nature of the partnership can be affected without the consent of all parties though ordinary business can be by a majority.

In Highly v Walker (1910) 26 TLR, two of three partners agreed to the admission of one their sons to e trained as an apprentice in the firms' workshop. The third partner did not agree and sought an injunction to prevent the admission. Court held that the decision to admit an apprentice in the firm to be trained was an ordinary matter that could be decided by the majority to bind the minority must however exercised with utmost good faith and the majority cannot bind the minority giving them the opportunity for decision.

d) Right to indemnify, remuneration and interest.

According to S.26 (b), unless a contrary intention appears, the firm must indemnify every partner in respect of payment made and personal liabilities narrated by him in the ordinary of proper conduct of business.

PARTNERSHIP PROPERTY.

Partnership property is defined by the Act under S.22 of the Partnership Act as all property and rights or an interest in property originally brought into the partnership stock or acquired whether by purchase or otherwise on account of the firm or for the purposes, and in the course of the partnership business.

Partnership property must be held and applied by the partners exclusively r the purposes of the partnership and in accordance with the partnership agreement.

Some property may be used for the purposes of the firm‟s business and yet may not be part of the partnership property e.g. office furniture or equipment may be used by the firm and yet remain the property of one of the partners. It is always necessary to distinguish between partnership properties from the property belonging to the partners.

S.23 of the Partnership Act provides that property bought with the money belonging to the firm is deemed/will be said to have been bought on behalf of the firm. It follows from this therefore that property bought using the firm‟s money is deemed partnership property.

In case of execution of a decree of court, S. 25 of the Partnership Act provides that execution of a decree shall not issue against any partnership property except on a judgment against the firm. If a partner is a judgment debtor, then a creditor can -apply to court to the share of that partner‟s interest in the partnership property and profits charged with payment of the amount of the judgment debt..

REGISTRATION OF A PARTNERSHIP

There is no laid down procedure for registration of the partnership in the Act. This is fortified by Kafeero vs. Turyagenda (1980) HCB 122 where court held that there is no need for registration of a partnership; but for evidential value, it imperative upon the members to register the partnership deed with the Registrar of Documents.

It must be noted further that the Business name of the firm should be registered with the Registrar of Business names within the meaning of The Business Names Registration act Cap 105 (hereinafter referred to as the Business Names Registration act)

Procedure

A draft of the partnership deed should be made.

- One fills out Form A in the schedule to the Business Names Registration Rules SI 109-1 (as amended by Act 53 of 2005) (hereinafter referred to as the Business Names Registration Rules). The application is made under rule 5 of the rules; SI 109-1 (as amended by Act 53 of 2005). The particulars

include a business name, nature of business, principle place of business, present names and ages, nationality, date of commencement of business, inter alia.

- One makes a statutory declaration before a magistrate or commissioner for oaths.
- The deed is registered with the Registrar of Documents.
- The relevant stamp duty is paid according to the Stamps Act (supra) (as amended).
- In case the partners are desirous of changing the type of business or any particulars, the Registrar is informed by virtue of Rule 7 to the Business Names Registration Rules and by filling out a form in the schedule to the Rules for change in particulars.

Forum

The forum is the Registrar of Documents and Registrar of Business Names as noted in the foregoing discussion.

Relevant Documents (SEE COPIES AFTER THIS SUB TOPIC)

Partnership deed

Registration of Business Names (Form A)

Statutory Declaration

Change in Business (If required)

RELATIONS OF THE PARTNERS/POWERS OF PARTNERS TO BIND EACH OTHER

Every partner is an agent of the firm and his or her other partners for the purpose of the business of the partnership. S.5 of the Partnership Act.

The act of any partner done in the ordinary course of business of the firm binds the firm and the partners unless the partner so acting does not have authority to act for the firm in that particular transaction and the person with whom the partner is dea1in knows that the partner has no authority or does not know or believe him to be a partner.

Thus, a partner has authority to bind other partners. The partner is seen as an agent of the other partners. There are different types of authority that a partner as an agent of the other partners may have.

AUTHORITY OF AN AGENT

Authority of an agent means his capacity to enter into a given contract on behalf of his principal and bind that principal by such contract. The agent can only bind the principal only where he acts with the authority of the principal. In order for the agent to act with authority, he must do that act which the principal gave him powers to do i.e. must act within the scopecfhiaautharityan4not to go outside that scope. if he acts beyond these powers he will be exceeding his authority and those acts where he has exceeded authority will not bind the principal and the agent will be personally liable for them.

Authority of an agent may be divided into the following types/categories.

EXPRESS/ ACTUAL AUTHORITY

This is where the authority of an agent is clearly spelt out orally or in writing. Sometimes the law requires that authority of an agent be put in writing in a particular form for example agency to 147

buy or sell land on behalf of another rust be in form of a special document called a power of attorney.

IMPLIED AUTHORITY / USUAL AUTHORITY

This refers to an agent‟s authority to do all, acts necessary for the performance of those acts where he has given express authority. Therefore, where an agent is given express authority to do a certain act, he will have implied authority to do all other things that are necessary to perform such an act. For example if x appoints y to buy him land. Y will have express authority to buy the land, he will also have implied authority to; look for the land, ascertain the real owner of the land, ascertain its value , sign the sale agreement and pay for that land and transfer into the name of X.

Implied „authority of an agent may also arise from custom. A principal who appoints an agent to act for him in a particular market also gives him implied authority to follow the customs of that market. Thus if there is a custom in that market, lie principal will be bound by it even if he did not know about it.

However, where the custom is inconsistent with the express instructions of the principal, then the principal will not be bound by that custom.

Implied or usual authority may also mean that authority which a particular type of agent usually has. In the case of PANAROMA DEVELOPMENTS LTD! Vs FEDELIS FURNISHINGS (1971)2 QB711 it was held that a company secretary had usual authority to hire cars on behalf of the company and the company would be liable for the hire charges even if she had not been authorized or actually used the car for her own purposes.

This is because a company secretary has usual authority to hire cars on behalf of the company and anyone dealing with her in that capacity would assume she had that authority.

A managing director of a company has usual authority to make commercial arrangements binding the company.

APPARRENT AUTHORITY / OSTENSIBLE AUTHORITY/ AUTHORITY BY ESTOPPEL

This refers to that authority which the agent appears to have but does in fact have.

It arises out of estoppels. Where the principal by his words or conduct has led others to believe that an agent had authority and others have acted on this, then he will not be allowed to turn around and say that the agent did not have authority to act on his behalf.

In the case of RAMA CORPORATION Vs PROVED TIN AND GENERAL INVESTMENTS LTD (1952) ALL ER it was stated that for one to say that an agent has authority by estoppel, the following conditions must be fulfilled

The principal must have made a representation that the agent has authority to act on his behalf 148

A representation may be by word or conduct .e.g. where a principal makes an agent appear like he has authority.

The person to whom the representation was made must have relied on that representation thinking that it was actually true.

And that person must have acted on it to .his or her detriment In the case of; EDMUND SCHULTER & CO (U) LTD Vs PATEL (1969) E A 259, A principal authorized his agent to sell his land to a buyer The principal gave his title to the agent The buyer paid the deposit of the purchase price to the agent and the balance was later paid directly to the principal. The agent however disappeared with the deposit and the principal sought to recover the money from the buyer arguing that the agent was not authorized to receive the money and therefore the buyer should not have given him the deposit. Court held that though the agent had no express authority to receive the money, the fact that the principal had given him the certificate of title to the land presented him as having authority to act on behalf of the principal and therefore the principal was estopped from denying the agents authority.

Apparent authority can only arise from a representation made by the principal and not one made by the agent, in the case of ATTORNEY GENERAL Vs SILVA (1951) AC, a crown agent falsely represented that he had authority to sell steel plates which were crown property, it was held that the crown was not liable since the representation was made by the agent and not the principal (crown).

EXTENT OF PARTNERS AUTHORITY & LIABILITY

The extent to which a partner may bind the firm was described in the case of RE AGRICULTURALIST CATTLE INSURANCE CO [The Baird"s case [1870) LRS or CH or AC.725 where the court observed that as between partners and the outside world each partner is unlimited agent of every other in every matter connected with the partnership business or which he represents as a partnership business and not being in. its nature beyond the scope of the. partnership. Court went on to say that a- poor partner may bind the partnership -for contracts of any amount and may give the partnership -acceptance for any amount and may involve his innocent partners in unlimited amounts for frauds which he has in unlimited amounts for frauds which has craftly concealed.

In the case of HAMLYIN Vs HOUSTON [1903J1 KB 81, H an active partner in a firm consisting of himself and S bribed a clerk of a rival firm to disclose confidential information concerning the contracts and tenders of his employment. It was found that the obtaining of information lay within the firm‟s business and that the means employed were sufficiently related to that end to make the firm liable.

The partners act may thus be willful or negligent tortuous or criminal‟ Collin MR went on say that “it is too well established by the authorities to be now disputed that a principal may be liable for the fraud or other illegal act committed by his agent within the general scope of the authority given to him and even the fact that the act of an agent is criminal does not necessarily take it out of the scope of his authority.”

The act does not have to be for the principal‟s benefit according to the House of Lords judgment in the ease of; LLOYD Vs GRACE SMITH &CO (1912) AC where Lord McNaughton said that “the principal must be liable for fraud of his agent committed in the course of his employment and not beyond the scope of his authority, whether the breach was committed for the principals benefit or not.

Whether an act was committed in the course of business depends on the facts of each case”

However, where the partner pledges the credit of the firm for a purpose apparently not connected with the firms ordinary course of business, the firm is not bound, unless that partner is infact specially authorized by the partners.

Where it has been agreed between or among the partners that the restriction shall be placed .on the power of any one or more of them to bind the firm, an act done in contravention of the agreement is not binding on the firm with respect to persons having notice of that agreement.

Partners have unlimited liability. The liability of each partner is unlimited such that if the firm defaults, creditors will have a personal claim against the partners. This means that in case the firm incurs debts and the partnership- property Es not enough to meet the debts of the firm, then the partners will be personally liable. I.e. the partner‟s personal property can be sold to meet the firm‟s debts.

Although a minor can be a partner in a firm and enjoy benefits of the partnership but he is not personally liable for the debts of the partnership.

In the case of LOVELL Vs BEAUCHAMP [1894] AC 607 court observed data it is clear that there is nothing to prevent an infant from becoming a partner but that infant contract debts by such trading, although the goods may be ordered for the firm, he does not become a debtor in respect of them. Court further observed that however this does not mean that the adult members will not be liable on such contract, court went on to say that if the adult members of a partnership could avoid liability because one of the partners is a minor,, minors would then be found 6 every partnership.

However, the share of that minor in the property of the firm is liable for any obligations of the firm s. 10.

But attaining majority age, the minor, now adult, will be made liable for all the obligations of the partnership from the date of his or her admission unless he or she gives public notice within a reasonable time of his or her repudiation of the partnership. S. 11.

A new partner is not liable for the debts of the firm, which were incurred before he became a partner. For him to be liable for such debts, he must have agreed in writing at the time of joining the firm that he will pay the debts of the firm which were incurred before he became a partner. S.19 of the Partnership Act.

A partner who retires from the firm does not cease to be liable for the liabilities incurred while still a partner S.19 of the Partnership Act. However, he may be discharged from his liabilities by agreement.

Since partners have unlimited liability, where a partner dies, his estate will be liable to meet the debts of the firm. S.19 of the Partnership Act and KENDALL Vs HAMILTON.

Where by a wrongful act or omission of any partner acting in the ordinary course of business of the firm or with the authority of his or her co partners, loss or injury is caused to any person not being a partner, the firm is liable S.12 of the Partnership Act.

S.14 of the Partnership Act provides that where a partner acting within the scope of his or her apparent authority receives the money or property of a third person and misapplies that money or property, the firm is liable. Also where a firm in the course of its business; receives money „or property of a third person and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm, the firm is liable. -

Howeve4 if a partner misapplies trust property held by him as trustee in the business or on account of the firm, the partners are not liable. In the case of EXPARTE HEATON, liability of the partners where a partner employs trust property partnership business was discussed, in this case father and sons who were trustees of a will applied trust money for partnership purposes and on bankruptcy, it was held that the amount so applied could not be proved against the joint estate partners could only be made liable after proof that they were implicated in the breach of the trust.

RELATIONSHIP OF PARTNERS INTERPARTY

This is governed under sections 32-33 of the Partnership Act. The partners have a duty to render true accounts and full information of all things affecting the partnership. These include;

- Duty to render true accounts and full information of all things affecting the partnership.
- Duty to account to the firm for private profits/ benefit derived without consent of other partners under section 32 of the Partnership Act.
- Duty not to compete with the firm under section 33 of the Partnership Act.
- Duty to protect partnership property.
- Duty to keep honesty.

DISSOLUTION OF A PARTNERSHIP

This is covered in sections 35, 36 of the Partnership Act. This is discussed as follows;

Section 35 provides that It can be dissolved by expiration of the fixed term, or termination of the undertaking of the firm, or if it is for an undefined period, by the partner(s) giving notice to other partners of his intention to dissolve the partnership.

Section 36(1) provides that subject to an agreement, a partnership is dissolved by the death or bankruptcy of a member.

Under section 36(2), a partnership can be dissolved at the option of other members; if any of the partners suffers his/ her share to a charge.

A partnership can also be dissolved at the happening of any event which makes it unlawful for the business of the firm to be carried on.

A partnership may also be dissolved on application to court for dissolution; where one or more of the partners is adjudged bankrupt, or of unsound mind; or permanently incapable of performing his or her duties, or if a partner is guilty of conduct prejudicial to carrying on of business, or if it is just and equitable to dissolve the partnership.

The procedure to follow where one seeking to dissolve a partnership by moving court, application can be by Originating summons under O37r4 of the Civil Procedure Rules SI 71-1, or by chamber summons under O30r11 of the Civil Procedure Rules SI 71-1.

Regulation 8

THE REPUBLIC OF UGANDA

THE PARTNERSHIPS ACT, 2010

NOTICE OF DISSOLUTION OF A PARTNERSHIP.

(Under Section 39 of the Partnerships Act, 2010 and Regulation 8 of the Partnerships Regulations,

2016)

This is to notify the general public that the All Solutions Advocates partnership was dissolved on the .....day of .....20.....

Dated this .....day of ..... 20.....

Name of partner Signature of partner

....

Name of partner Signature of partner

....

Name of partner Signature of partner

....

Name of partner Signature of partner

....

DISTINCTION BETWEEN A COMPANY AND A PARTNERSHIP

Formation. Formation of a partnership is easy i.e. a partnership may be formed by agreement, orally or the law may imply its existence from the conduct of business by the parties. It therefore has fewer formalities for purposes of formation where as a company requires formalities such as registration, securing of a company name, filing of documents etc. The company is therefore fairy expensive to form as there are a number of formalities which must be complied with and a number of documents which must be filed with the registrar of companies.

Legal Status. A partnership has no separate legal status that is separate from the partner therefore; it cannot as of right sue or be sued in the partnership flame. However, in practice where somebody wants to sue a partnership he may sue in the firm name. If one wants to sue the firm, he must sue all partners. A company On the other hand has a legal existence which is separate from its members. See the case of Salomon Vs Salomon the consequences of incorporation of the company. Liability: Partners have unlimited liability where as share holders in a company enjoy limited liability. Creditors therefore of a partnership can proceed against the personal property of the partners where the partnership property is not enough to satisfy those debts.

Size: A partnership has a minimum of partners is 2 and the maximum in 50.

Ultra Vires doctrine: This does not apply to a partnership especially where the existence of such partnership is implied from the conduct of the parties and it is difficult to toll the scope of their objects/activities the partnership was set out to do. More so, most partnerships are oral agreements.

Authority to build the enterprise: Shareholders have no authority to build the company but only the directors can. In a partnership, every partner is an agent of the others and the acts of one partner while acting in the course of the partnership business are the acts of the other partners and therefore all the partners are liable.

Management of the Enterprise. The day-to-day management of the company is entrusted with the board of directors of a company by the shareholders of the company where as in a partnership; every member has a right to take part in the management of the firm. The structure of a partnership easily allows for each of the partners to take part in any activity of the firm‟s business according to their mutual understanding. In other words, there are no formalities or demarcation of roles as in a company where you find shareholders on the one hand and the directors and management on the other hand.

Continuity:

A company enjoys perpetual succession. This means that a company can continue to exist even where all the shareholders die or leave the company. The existence of a company can only be brought to an end by a legal process called winding rip. On the other hand, a partnership may be dissolved by death, bankruptcy or insanity of a member.

DEATH OF A PARTNER

The death of a partner in a partnership business comes with a lot of implications most especially in a partnership of two members may caused automatic dissolution of the partnership as well as being subjected to the provision of section 35 of the partnership Act, upon the express provision in the partnership deed respectively.

In the case of Mcleodv Dowling (1927)43 TR 655, it was held that, if a partner dies before the receipt of notice signed by him, the partnership is dissolved by death.

The question of how partners anticipate and ensure continuity of a partnership upon the death of any of the partners is majorly depending on the terms expressly provided for in the partnership deed or any other agreement subject to operation of the partnership.

Therefore, it's a case by case basis. However, in an event the law is impliedly or referred to, subject to the provision of section of the partnership Act, 2010, regulation 5, 10 and 6 respectively documented by form 2, form 8 in second schedule and form 3.

The document to be used in the process of having a new partner upon the death of any partner.

THE REPUBLIC OF UGANDA

PARTNERSHIP ACT, CAP 110

NOTICE OF DEATH OF A PARTNER.

(Under section of the partnership Act, Cap 110 and regulation 5 of the of the partnership regulations, 2016)

TAKE NOTICE that..... (name of partner) who has been a partner..... (name of partnership) died on the 1st of Jan 2021.

Dated this 11th day of Jan 2021.

BUSINESS NAMES REGISTRATION ACT CAP 105

A business name is the name or style under which any business is carried out whether in partnership or otherwise. This is different from a company because whereas a company is a separate legal entity with its own identity in law, a business name is only a name that you are allowed to use to indemnify yourself or your service in trade.

Registering a business name helps the proprietor to carry on business under the registered name thereby distinguishing the owner's business from that of others.

Registering a Business Name

- Conduct a Search(using the business Registration form) and establish if the name you register is available for use;
- Pay the Registration fees;
- You will receive a certificate of registration of a business name.

If any of these particulars change, the proprietor of the business name must file a notice of change in particulars.

S1 defines a business name to mean the name or style under which any business is carried out whether a partnership or otherwise.

A firm is defined to mean an unincorporated body of two or more individuals or one or more individuals and one or more corporations..... who have entered in to partnership with one another with a view of carrying out business for profit.

Section 2 provides for firms to be registered .Every firm having a place of business in Uganda and carrying on business under a business name which does not consist of the true surnames of all the partners who are corporations without any addition other than the Christian names of individual partners or initials of such names shall be registered in the manner directed by the Act.

S4 provides for manner and particulars of registration. These include ;

- The business name
- The general nature of the business
- The principal place of business
- The present Christian name and surname ,nationality, the usual residence and other business occupation.
- Date of commencement of business
- Age of each of the partners

S 7 provides for the registration of changes in the particulars of the firm which should be done within 14 days after the changes.

This is made by a statement in writing whose format is given under Rule 7 of the Business

Names Registration Rules S.I 109-1

Under S8 failure to furnish the registrar with particulars or change in particulars, every partner in the firm commits an offence.

S14 Provides for removal of the firms name from the register where the firm ceases to carry on business. This is the duty of every partner which should be done with in 3 months. Failure of which is an offence.

Rule 8 of the Business Names Registration rules provides for the form of the notice. The format for the application for a business name is provided in the schedule to the rules.

The application for registering a business name attracts 20,000 under the Business Names Registration [Amendment] Rules 2005 S.I 2005 No35. There are other fees to be paid on conducting a search and reserving a business name. According to the form provided by URSB for the reservation of a name, a person pays 25,000. Thereafter a certificate of registration is issued under Rule 10 of the Business Names

Registration Rules S.109-1

ONLINE BUSINESS REGISTRATION

A. How to perform a Name Check

1. Type https://obrs.ursb.go.ug in your browser search address bar

2. Type the Name you would like to check in the "Name to Check" field

3. Click "Check" button at the end of the "Name to Check" field

4. Check the box in the recapture to confirm you are human

5. View list of returned names

6. Type the name to check in the "Name to Check" field above the displayed list to do a further name check

B.

How to Reserve a Name

1. Click "Start" from the left side menu

2. Click "Reserve Name"

3. Select "Entity Type" for entity under consideration for registration (Business Name, Company or Building Society)

4. Select the “Entity Category” if applicable for the selected entity type above

5. Enter preferred Entity Name under consideration for registration

6. Add alternative name options for the entity under consideration for registration

7. Select “Nature of Business”

8. Click “Save and Continue”

9. Preview captured “Entity Type” and “Sub Type”

10. Preview the “Name Options”

11. Click “Generate PRN’ to generate PRN

12. Click “Choose payment method” to select preferred mode of payment

13. Make payment

THE REGISTRATION OF DOCUMENTS ACT Cap 291

S. 2 defines “registrar” to mean the registrar of documents or any assistant registrar of documents appointed.

S. 3 provides for the Register of documents. The registrar shall keep a register of documents and, subject to the exceptions hereafter stated, shall register in it in the manner hereafter provided all documents presented to him or her in the prescribed form on payment of the prescribed fee.

S. 4 provides for Persons to present documents for registration. A document presented for registration must be so presented either by a person executing or claiming an interest under it or the agent of that person, and the registrar may require to be satisfied as to the identity and interest of the person by whom it is brought, or, in the case of an agent, as to his or her authority.

S. 5 provides for how Registration is effected. Registration shall consist in the filing of a copy (to be furnished by the person presenting the document for registration) of the document brought for registration after that copy has been certified by the registrar as a true copy.

S. 6 provides for the Numbering and filing of documents. The registrar shall number every copy so filed consecutively and record on it the date of registration and the name of the person presenting it and shall file copies in the order in which he or she receives the documents.

Documents in foreign language should be translated as provided for under S. 11.

In Rule 2 of the Registration of the Documents Rules Statutory Instrument 81 – 2. It provides that copies of all documents presented to the registrar for filing under Sec 5 of the Act shall be either in manuscript and written in ink, or the original of type writing with a record ribbon on lined full scarp folio paper measuring approximately 13 inches in length and 8 inches in width and shall contain a margin of at least one and one half inches on the left hand side of the paper, the paper to be written on one side only and to be bound or sown together in book form. The fees for registering is Sh.10, 000 under the Registration of Documents (Fees) (Amendment) Rules, 2005.

This is registered at the Uganda Registration Service Bureau (URSB) as provided for in section 4 (2) (a) of the Uganda Registration Service Bureau Act which gives it the mandate to carry out all registration required under the relevant laws.

Fees; in registering documents, there are prescribed fees which is according to the Registration of Documents (Fees) (Amendment) Rules, 2005 S.I No. 55as follows;

1. For registering documents 10,000

2. For a general search (whether in the old or new register or in both).... 2,000

3. For inspection of a particular document (whether in the old or new register) 2,000

PAYMENT OF STAMP DUTY

Stamp duty must be paid on all instruments executed or received in Uganda under the Stamps Act as amended. It is paid on all instruments received in Uganda within 30 days. Stamp duty rates are either fixed or ad valorem rates.

The clients shall pay stamp duty of UGX 10, 000/- (Uganda Shillings 10,000) as provided for in the Stamps Act.

THE REPUBLIC OF UGANDA

APPLICATION FORM FOR RESERVATION OF NAME

(Under Section 36 of the Companies Act No.1 of 2012 & Section 4(b) (1b) of NGO Registration Amendment Act, 2006)

TO: The Registrar of Companies P O Box 6848 KAMPALA

FROM:

Name/s:

Tel. No/s .....

Email/s: .....

Signature/s: .....

Being promoters of an Entity: (please tick and indicate if it is a change of name.)

Company limited by shares

Company limited by

guarantee

Non-Government

Organization

Apply for the reservation of a name (Indicate in order of priority choice)

NAME

CHOICE PROPOSED

NAME

1ST CHOICE

2ND CHOICE

3RD CHOICE

Date

.....

+NB: The Reservation Is Valid for Only 30 days from the date of approval

THE REPUBLIC OF UGANDA

APPLICATION FOR REGISTRATION OF BUSINESS NAME.

THE BUSINESS NAMES REGISTRATION ACT

STATEMENT OF PARTICULARS REQUIRED TO BE GIVEN PURSUANT TO

THE BUSINESS NAME REGISTRATION ACT IN CASE OF A FIRM

1. Business names to be registered:.....

2. General nature of the business: LEGAL PRACTICE

3. Principle place of the business:.....

4. Present Christian name (s) and surname of each of the individuals who are partners:.....

5. Former Christian name (s) and surname (if any) of each of the individuals who are partners:

NON

6. Nationality of each of the individuals who are partners: .....

7. Usual Place of residence of each of the individuals who are partners:.....

8. Other business occupation (if any) of each of the individuals who are partners:

9. Date of commencement of business:.....

10. Corporate names of each corporation which is a partner:.....

11. Registered or principal office of each corporation which is partner:.....

Sign .....

Date.....day of .....20.....

FORM OF APPLICATION TO SEARCH A RECORD

RECORD TO BE SEARCHED

REGISTRATION PARTICULARS

DATE

REGISTRATION NUMBER

PURPOSE OF THE SEARCH

DATE OF APPLICATION

PARTICULARS OF APPLICANT

Name

Email address

Place of work

COMMENTS AND OFFICER

B) SOLE PROPRIETORSHIP

A sole trader owns and runs a business, contributes the capital to start the enterprise, runs it with or without employees, and earns the profit or is fully responsible for the loss of the venture. The business does not have its own legal personality. Any one making a legal contract with a sole trader does so with the trader as an individual.

Advantages of being a sole trader

• No formal procedure required to set up the business.

• A sole trader is independent and accountable only to himself. He does not have to consult anybody about business decisions.

• Personal supervision of the business can ensure its effectiveness and close conduct with customers/clients may enhance commercial flexibility.

• All the profits of the business belong to the sole trader.

Disadvantages

• Unlimited liability means that if the business gets into debt a personal trader‟s personal wealth can be lost.

• Expansion of the business is only possible if the profits are ploughed back into the business.

• Since the business depends on an individual it means long working hours and difficulty if the individual is indisposed or incapacitated.

• The death of the proprietor normally results in the death of the business.

• The individual may lack technical skills to effectively manage the business.

• Disadvantages associated with small size, lack of diversification, absence of economies of scale, problems of raising finance et

C) COMPANY

This is a distinct legal entity from its members and the liability is in respect of nominal value. SALOMON V SALOMON (1896) UKHL 1 is an authority for the above proposition. There must be some capital contribution yet in this case some partners provided intangible capital

D) COPERATIVE SOCIETIES

Section 4(1) of the cooperative societies act, requires a mini-mum of 30 persons for registration. This is any society that has as its object the promotion of the economic interests of its members in accordance with cooperative principles. Cooperative societies are registered with or without limited liability. Upon registration, the cooperative society becomes a corporate body with perpetual succession and a common seal with power to hold movable and immovable property of every description, to enter into contracts, to institute and defend suits and other legal proceedings and to do all thing necessary for the purpose of its constitution

E) UNINCORPORATED ASSOCIATIONS.

They only deal in voluntary or charity works. The parties here require a profit oriented business.

F) JOINT VENTURE

This refers to a business arrangement where parties agree to transact for a stipulated period of time. It is also known as a quasi-partnership.

TRADE LICENSE

Under section 7 of the Trade (Licensing) Act cap 79, no person shall trade in any goods or carry on any business specified in the schedule to this Act unless he or she is in possession of a trading license granted to him or her for the purpose under this Act.

Section 1defines trade or trading to mean the selling of goods in which a license under the act is required in any trading premises whether by retail or wholesale.

S,8 provides for the licensing authority to be the town clerk of the respective council. For Kampala, The licensing authority is the Kampala Capital City Authority

SECTION 7(2); No trading licence shall be required in any event for—

(a) the trade of a planter, farmer, gardener, dairyperson or agriculturist in respect of the sale of his or her own dairy or agricultural produce;

(b) the trade of a person in respect of goods bona fide made by him or her by his or her handicraft in or on any premises where he or she normally resides, or by the handicraft of persons normally residing with him or her or who are his or her employees or members of his or her family;

(c) the trade carried on in any market established under the Markets Act;

(d) the sale of tobacco, cigarettes, newspapers, books, non intoxicating liquor or playing cards by the management of a proprietary or members club to its members in the club premises;

(e) any other trade which the Minister may, by statutory instrument, declare to be a trade for which no trading licence is required under this Act; or

(f) any trade or business in respect of which a separate licence is required by or under any written law.

THE TRADE (LICENSING) ACT, CAP.101

THE TRADE (LICENSING) REGULATIONS, 2011

FORM 2

TRADING LICENCE

No _____

Station_____

Date_____, 20_____

Name All Solutions Advocates of Kampala, Uganda is to carry on trade in legal practice

During the period starting _____ and end ending _____

Fee paid:_____

_____

Licensing officer

_____

For Licensing Authority

THE REPUBLIC OF UGANDA

STATUTORY DECLARATION

I.....of Kampala, Uganda, DO SOLEMNLY AND SINCERELY declare that the particulars contained herein are true and correct AND I make this solemn declaration consciously believing the same to be true and by virtue of the Oaths Act.

DECLARED at .....in the .....

District of .....this.....day of .....2020.

BEFORE

.....

Magistrate/Commissioner for Oaths

FORMALITIES FOR ESTABLISHING A BUSINESS

a) searching and registering a business name

section 2(1)(a) of the business names registration act requires registration of names of firms that carry on business in a place in Uganda while registering section 4(1) of the act also requires that the registration be done within a period of 14 days after commencement of business. Section 12 of the stamp duty act 2014 provides for the payment of duty regarding the registration instrument

Under section 49(1) of the partnership act provides for the reservation of a name pending the registration of a limited liability partnership.

Therefore the suggested trade name ought to be searched at the companies registry.

b) application for a tax identification numbers; section 5(1) and (2) of the tax procedures code act 2014, provides that the commissioner shall issue TIN to each person registered.

c) Application for trade license. Section 7 of the trade licensing act requires possession of a trade licensing for any person dealing in goods or carrying on a business. A trade is defined by section 1 to mean selling of goods in which a license is required in any trading premises whether by rental or whole sale. Section 8 of the act provides that the licensing authority is the town clerk of the respective council.

d) Opening of a bank account

As a matter of practice and prudence, inorder to ensure proper financial practices of the intended business a bank account comes in handy.

e) registration of documents

section 3 of the registration of documents act cap 291, provides for the register of documents. Under section 10 of the act, the registrar may refuse to register any document should it have any seditious, libelous, scandalous, and indecent matter. Section 48 of The Partnership Act 110, provides for the registration of a limited liability partnership and a registered one shall have the words "LLP."

S. 11, the licensing authority grants a license on application made to it in the prescribed manner and on payment of the appropriate fee.

The fee to be paid depends on the nature and size of business as provided for under the Trade

Licensing (Amendment of Schedule) Instrument 2017 S.1. No. 2.

ESTABLISHMENT OF A LAW FIRM FOR LEGAL PRACTICE.

The legal profession in Uganda is governed by The Advocates Act Cap 295 and several regulations made thereunder to enable execution of the mandate given to the Law Council as provided for under S. 3 of the Act.

S. 1 of the Advocates Act defines an advocate as any person whose name is duly entered upon the roll.

S.2 establishes the Law Council whose functions is inter alia under S. 3 to exercise general supervision and control over professional legal education in Uganda, to advise and make recommendations to the Government on matters relating to the profession of advocates; and to exercise, through the medium of the Disciplinary Committee, disciplinary control over advocates and their clerks.

Qualifications.

S.13 of the Advocates Act as amended provides for the "Admission and enrolment of

advocates.

Under Subsection 2 provides that any person eligible to have his or her name entered on the Roll may make application to the Law Council, and the Law Council, if satisfied that the applicant is so eligible and is a fit and proper person to be an advocate, shall, direct the Registrar, on receipt of the prescribed fee, to enter the applicant's name on the Roll unless cause to the contrary is shown to its satisfaction.

Subsection 7; The application under this section shall be made and advertised in such manner as may be prescribed by regulations made by the Law Council

For a person to be eligible for enrollment subsection 8 provides that;

He must be (a) is the holder of a degree in law granted by a university in Uganda;

or

(b) he must be a Uganda citizen and—

(i) is a holder of a degree in law obtained from a university or other institution recognised by the Law Council in a country operating the common law system; or

(ii) has been enrolled as a legal practitioner by whatever name called, in any country operating the common law system and designated by the Law Council by regulations; or

(iii) holds a qualification that would qualify him or her to be enrolled in any country operating the common law system and designated by the Law Council by regulations.

In addition to hold a degree from a university in Uganda or from a country operating the common law system and designated by the Law Council, the person must then attend a bar course at the Law Development Centre after which they should be awarded a diploma in legal practice as provided for in regulation 2 of the Advocates (Enrollment and Certification) Regulations.

SECTION 13(10) OF THE ADVOCATES ACT CAP 295; For a person who has been a legal practitioner in a country operating the common law system for less than five years, that person is not eligible for enrolment under this section unless he or she works under the surveillance of and in chambers approved by the Law Council for that purpose or he or she serves as a State Attorney for at least one year.

SECTION 13(11) OF THE ADVOCATES ACT CAP 295; However where he has practiced for more than five years that person may be enrolled without having to work in chambers approved by the Law Council for that purpose or serving as a State Attorney.

The countries that are designated by the law council are provided for under part II of the First Schedule to the Advocates Enrollment and Certification Regulations. These are Kenya, Tanzania, Zambia and Any other country with reciprocal arrangements in force in favour of Uganda.

Regulation 5 of Advocates (Enrollment and Certification) Regulations S. I 267-1 provides for the mode of applying for a certificate of eligibility and a form of the application is provided in Form 1 of the second Schedule of the same rules. And that the application and affidavit shall each be accompanied.

There after a certificate is issued by the Law Council whose form is provided for in in Form 2 of the 2nd Schedule to the Regulation.

After obtaining the certificate the person may apply to the Chief Justice to have his or her name entered on the roll and the Chief Justice shall unless cause to the contrary is shown to his or her satisfaction, direct the register on receipt of a fee to enter the name on the roll.

Regulation 8 of the Advocates (Enrollment and Certification) Regulations provides that an application for enrollment is made by petition to the Chief Justice accompanied by a certificate of enrollment issued by the Law council.

Practicing certificate

A person who has been enrolled has to apply for a practicing certificate under S.16 of the Advocates Act CAP 295

Regulation 4 of the Advocates Enrollment and Certification Regulations provides for the particulars of the application.

(1) In an application for a certificate under section 8(2) of the Act, there shall be stated—

(a) the name and address of the applicant;

(b) the qualifications of the applicant, being one or more of the qualifications set out in section 8(8) of the Act, and the date of the qualifications; (c) the date and place of birth of the applicant;

(d) if the applicant was not born in Uganda, the aggregate period of continuous residence in Uganda during the twelve months immediately preceding the date of the application or the aggregate period during

which he or she has been in practice as an advocate in any of the countries specified in Part II of the First Schedule to these Regulations;

(e) whether the applicant is at the date of the application subject to any disentitlement or disciplinary proceedings, and whether he or she has been convicted in or is subject to any pending or present criminal proceedings described in section 12(1)(h) of the Act;

(f) whether the applicant is an undischarged bankrupt or the subject of any bankruptcy proceedings in any country.

(2) The application shall conclude with a prayer that the applicant be granted a certificate of eligibility for enrollment as an advocate

Regulation 12 of the Advocates (Enrollment and Certification) Regulations provides that the form of the application is in Form 4 of the Second Schedule to the Advocates (Enrollment and Certification) Regulations.

The practicing certificate is only valid till the 31st day of December next after issue and can be renewed on application being made on such form and on payment of such fee as the Law Council may, by regulations, prescribe; and different fees may be prescribed for different categories. S. 16 (2) OF THE ADVOCATES ACT CAP 295

a person who is not a Ugandan citizen can apply for a special practicing certificate. However he is only entitled to appear or act—

(a) in the case or matter for which that person is admitted;

and

(b) if that person is instructed by, and if when appearing in any Court in the conduct of the case or matter, that person appears together with, an advocate with a valid practising certificate.

S. 16(3) provides that every advocate who has in force a practising certificate may practise as such in the High Court or in any court subordinate to the High Court.

Only persons who are advocates can be allowed to establish a law firm. This is because S. 70 prohibits unqualified persons other than advocates from practicing and S. 71 of the Act prohibits advocates for acting as agents of persons other than advocates.

Only persons who are advocates can be allowed to establish a law firm. This is because S. 64 prohibits unqualified persons other than advocates from practicing and S. 71 of the Act prohibits advocates for acting as agents of persons other than advocates.

THE FIRM NAME.

To establish a law firm, an advocate requires a firm name.

The firm name is registered under the Business Names Registration Act and the rules made thereunder. Procedure similar to that of registering a partnership name.

The partners can use their names or a generic name. The generic name must be acceptable by the Law Council.

Regulation 5(3) of the Advocates (Inspection and Approval of Chambers) Regulations S. I No. 65 of 2005 requires that a law firm with generic name should get the consent of the Law Council in writing prior to registration of that name.

A generic name is defined in Regulation 2 of the Advocates (Use of Generic Names by Law Firms) Regulations S. I No. 7 of 2006 as a name other than the name of a partner of a law firm.

There are restrictions on registering a generic name. Regulation 3 of the Advocates (Use of generic names by Law Firms) Regulations, 2006 provides that a generic name shall include the word 'advocates' at the end.

Regulation 5 of the Advocates (Use of generic names by Law Firms) Regulations, 2006 also provides that a generic name shall not make any reference, actual or derived, to and symbolic, cultic, political, religious, sectarian, discriminatory or specialty classification.

Regulation 6 provides that the name should not be misleading.

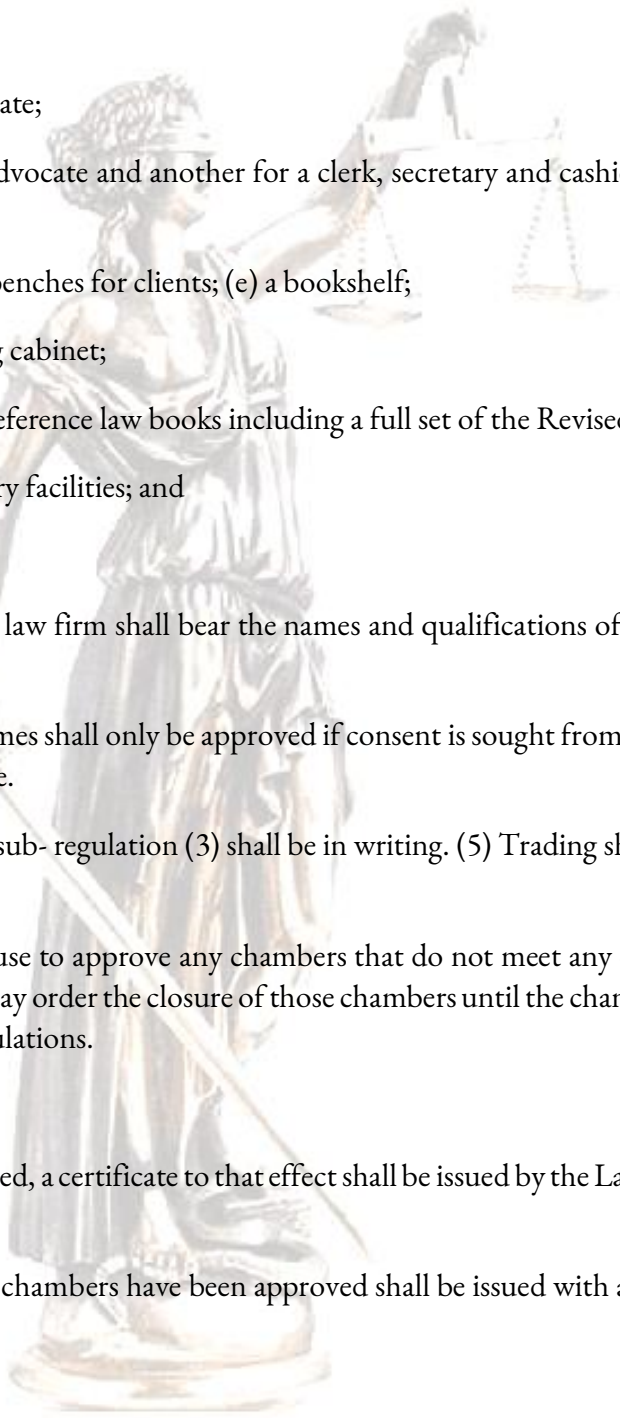
OPENING UP OF AN ACCOUNT

According to Section 46 of the Advocates Act CAP 295, the Law firm is required to have a separate account for the firm and another for the clients.

INSPECTION AND APPROVAL OF THE FIRM PREMISES

Then the premises from which the firm shall conduct its business is to be inspected by the law council. Regulation 3 of the Advocates (inspection and Approval of Chambers) Regulations S. I No. 15 of 2005 makes it mandatory for chambers to be inspected yearly.

Regulation 5 of the same Regulations provides for the requirements to be met before approval (1) An advocate's chambers shall be well maintained with a professional appearance and must have—



(a) a suitable desk for an advocate;

(b) a separate room for each advocate and another for a clerk, secretary and cashier; (c) a secretarial desk and computer or typewriter;

(d) a reception with chairs or benches for clients; (e) a bookshelf;

(f) a chest of drawers or a filing cabinet;

(g) a reasonable collection of reference law books including a full set of the Revised Laws of Uganda.

(h) access to a toilet and sanitary facilities; and

(i) books of accounts.

(2) The headed paper of every law firm shall bear the names and qualifications of each partner, advocate and legal assistant in the firm.

(3) A law firm with generic names shall only be approved if consent is sought from the Law Council prior to the registration of that name.

(4) The consent referred to in sub- regulation (3) shall be in writing. (5) Trading shall not be carried on in any chambers.

(6) The Law Council may refuse to approve any chambers that do not meet any of the requirements set out in these Regulations and may order the closure of those chambers until the chambers meet the required standards set out in these Regulations.

After the inspection is completed, a certificate to that effect shall be issued by the Law Council. Regulation 6 provides that;

(1) A firm of advocates whose chambers have been approved shall be issued with a certificate of approval of chambers.

(2) A certificate of approval of chambers shall remain valid for one year.

The firm shall pay a fee of 62,000/- for the inspection of the premises according to the

Advocates (Council Fees) Regulations 2004.

THE BEST PRACTICES THAT WILL ENABLE THEM ESTABLISH THE INTENDED MODERN PRACTICE.

Compliance with the law; have the name approved, chambers inspected and approved, get license, pay taxes etc.

Proper location of premise and well equipped chambers the partners should consider a location that can be easily accessed by many people so as to get clients and the chambers should be approved by the low council as required by the Advocates(inspection and approval of chambers) regulations under regulation 5

Good relationship between the client and advocate

Record keeping

Proper maintenance of client's files; It should have a proper filing reference system for easy location of files.

Regulation29, every advocate shall account for client's moneys

Regulation 7, Advocate not to disclose or divulge information of the clients unless it is required by law

Regulation 10, advocate to disclose any personal interests to the clients and to maintain the fiduciary relationship

Regulation 11, not to exploit the lack of understanding of his clients

Regulation 12 Advocate to advise his clients diligently

Regulation 8 advocate not to use the client's money for his or her own benefit

Handling clients work diligently like appearing in court in time, proper keeping of the files

Highly qualified staff

Encourage advocates to go for continuing legal education so as to improve on their skills

Qualifications of the partners and other employees, e.g need for specialized advocates with special skill in different areas of law, well connected team in terms of network so as to easily get clients

The proposed best practices were also adopted in the IBA law firm governance initiative best practice guidelines which include the following;

The firm should set out in writing its governance and decision making structure

The firm should have transparent process for selection of leaders and appointment of managers

The capital structure of the firm should be described to partners in a clear way

The firm should establish an appropriate mechanism for partners to communicate with each other and with the firm leaders or management.

The way in which the profits and losses of the firm are to be distributed among the partners should be clearly described to all the partners.

The firm should set out its recruitment policies and processes in writing so that all potential recruits like new partners and associates have access to enough information to allow them to make an informed decision about whether or not they wish to pursue recruitment discussions with the firm

The firm should adopt recruitment and promotion policies and process that are non- discriminatory in nature and that are designed to encourage diversity at all levels of the firm.

The partners should ensure that every person in the firm receives a clear written statement of the performance and behavior expected of them.

The firm should seek to operate according to the highest professional and ethical standards.

It should develop a policy on dealing with conflicts of interests with due regard to rules and requirements of the law.

The firm should state clearly and openly the basis on which people are promoted to higher positions in the firm

The firm should seek to ensure that the partners comply with the applicable laws and regulation. In order to catch up with contemporary practices, a firm should have a website and social media accounts.

There should be regular staff meetings

It should have all the relevant tools of trade; a well stocked library, telephones, emails, faxes, computers, business cards, safe, cabinets, firm seal. Stamp, practicing certificates, professional gowns etc.

It should have good security. nIt should have proper management of finances by opening an office account, client account and a trust account as per S. 46 of the Advocates Act.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE PARTNERSHIP ACT 110

PARTNERSHIP DEED

This partnership deed is made this 3rd day of October 2018 by and among NABENDE NICOLE of.....herein after referred to as the 1st partner

and

MAKUBUL SIMPSON of .....herein after refereed as the 2nd partner

and

NIXON ZINDE of.....herein after referred to as the 3rd partner WHEREAS IT IS AGREED that the partners desire to conduct and carry on business as a partnership upon the terms and conditions herein contained;

IT IS NOW HEREBY AGREED AS FOLLOWS;

1. Name and place of business:

a) The principal registered place of the partnership shall be situated at.....and at such other place within Uganda as may from time to time be agreed upon by the partners.

2. Nature and purpose of business

The partnership shall engage in the business of selling second hand clothes and shall conduct their business in any other firld for better carrying out of the said objective or incidental thereto or any other lawful activity. The partners agree to a limited liability partnership trading under the name FRIENDS UNITED ENTERPRISE LLP.

3. Capital

a) The partners agree to make contributions to the woking (start up) capital of the partnership which shall consist of non-cash (property) and cash be contributed by partners as follows:

i. The first partner

ii. The second partner

iii. The third partner.

b) The partners may open a bank account of the firm in any bank and its accessibility for withdrwals shall be facilitated by the partners whose signature will have been handed over to the bank.

c) The first and second partners are general partners who shall be liable for all debts, obligations and liabilities of this partnership whereas the third partner shall be the sole limited liability partner whose debts,obligations and liability shall be limited to the extent of 4000000

4. Accountability

a) All necessary and proper books of account shall be maintained at the registered address or office of the partnership and shall be conclusive and final between the partners.

b) The books of account shall be audited periodically by any appointed audiotrs or partners of the firm so as to ensure proper accountability of the finances.

5. Duties of the parties

Each partner shall at all time;

a) Do all things that may be incidental to the fulfillment of the objectives of the partnerships

b) Show utmose good faith in handling partnership business

c) Endevour to use his/her basic skills and values to promote business for the company

d) Exercise high levels of ethical standards in handling partnership property

e) Indemnify and keep all the partnership property free from any harm that may arise due to the partners personal debts.

f) Give accountability of all monies earned from running the firm's business.

6. Profits and losses.

The net profits or net losses of the partnership after the deduction of all expenses and outgoings herein shall be distributable and chargeable in equal manner.

7. Management of the partnership

Each of the partners shall take part in the day to day management and supervision of the business.

All decisions of the partnership of any type whatsoever shall be by agreement of the partners.

8. Duration of the partnership

The partnership shall be deemed to have commenced on this .....day of..... 2024 and shall continue until the partners herein agree otherwise.

9. Death, metal disorders or permanent capacity

If any partners shall become incapable or unfit to conduct the affairs of thje partnership by reason of death,mental disorder or permanent physical incapacity, the surviving or remaining partner(s) shall continue carrying on the business, but the interest of such to her partner shall vest in the partnership as trust property for the estate of such other partner.

10. Partner's powers and limitations

a) No partner may without the consent of the other borrow money in partnership or assign, transfer or pledge partnership property.

b) Each partner shall be just and faithful to the other partner in all transactions relating to projects.

c) No any other partner shall be introduced as a partner in the project without the express consent of all existing partners.

d) All property or money brought into the partnership by the partners shall remain property of the individual partner bringing in such property and shall revert to him upon determination or dissolution of the partnership or such other times as maybe determined by the partners.

11. Application of The Partnership Act 110.

The provisions contained in the partnership laws of Uganda and any other statutory modification thereof for the time being in force shall apply to the partnership in so far as they are applicable to partnership subject to the modifications, variations or special provisions herein reproduced in this deed.

12. Dispute resolution and arbitration.

In case of any dispute or disagreement arising or in connection with this deed shall be resolved amicably my mutual agreement of the parties failure of which entitles either party to submit the dispute to arbitration for resolution.

13. Prohibited dealings.

Unless with written consent of all other partners, a partner shall not;

a) Engage directly or indirectly in business that maybe in competition with the partnership business.

b) Engage directly or indirectly in business that maybe in competiton with the partnership business

c) Use any partnership funds or any other property for his/her personal benefits

d) Give any guarantee on behalf of the partnership.

14. Admission of new partners.

No new partner shall join the partnership without the consent of both parties.

15. Dissolution of the partnership.

This partnership shall be dissolved upon the agreement and consent of the partners or where a partner breaches the terms of the partnership.

16. Miscellaneous.

a) The parties hereby covenant that they will perform any acts which are or may become necessary to realize or carry on the partnership created by this deed.

b) This deed shall not be amended except by mutual agreement signed by all parties.

c) The partnership shall be dissolved by mutual consent of all aprtnes

d) Any notice relating to the conduct of the partnership business shall be in writing.

IN WITNESS WHEREOF the parties whose names appear hereunto are desirous of being formed into a partnership and we respectively agree to assign against our respective names.

SIGNED BY;

NABENDE NICOLE of.....herein after referred to as the 1st partner

and

MAKUBUL SIMPSON of .....herein after refereed as the 2nd partner

and

a) NIXON ZINDE TEL: .....

b) MAKUBUL SIMPSON TEL:.....

c) NIXON ZINDE TEL:.....

ALL THE ABOVE IN THE PRESENCE OF ;

.....

ADVOCATE

Drawn and filed by;

Luwendo and co advocates

p.o box 3255

kampala

REQUIREMENTS NEEDED FOR ONE TO QUALIFY TO JOIN LAW DEVELOPMENT CENTRE.

This Committee under Section 6(c) of the Advocates may prescribe the professional requirements for admission to the post-graduate Bar Course and qualifications necessary for eligibility for enrolment as an advocate. This led to enactment of the Advocates (Professional Requirements for Admission to the Post-Graduate Bar Course) Notice, 2007 which lays out the legal requirements that enable one to qualify for legal training at Law Development Centre.

Section 4 of the universities and other tertiary institutions act 262, provides for the role of NCHE in the regulation of all universities in uganda. This is also evident in the case of PIUS NUWAGABA V THE LAW DEVELOPMENT CENTRE CIVIL APPLICATION NO.589 OF 2005. It follows therefore that all intending partners that are gradutaes from Nkumba ,Cavendish and uganda Pentecostal university are eligible to join LDC since all three universities are accredited by the NCHE and law council to offer the undergraduate law degrees.

The Post Graduate Bar Course is defined under Section 2 of Advocates (Professional Requirements for Admission to the Post-Graduate Bar Course) Notice, 2007 as a course of study leading to a diploma in legal practice awarded by the Law Development Centre or such other institution as the Law Council may appoint.

For one to be eligible for an admission, Section 3 of Advocates (Professional Requirements for Admission to the Post-Graduate Bar Course) Notice, 2007 requires the applicant to be a holder of degree in Law granted by a university in Uganda or one being a citizen of Uganda holding a degree in law obtained from a university or institution in a country operating the common law system and recognized by Law Council.

Holder of a degree in Law from a University recognised by NCHE in Uganda

Section 4 of Advocates (Professional Requirements for Admission to the Post-Graduate Bar Course) Notice, 2007 provides that an applicant must have obtained a degree from a university or institution of higher education duly licensed or chartered under the Laws of Uganda. Additionally, the institution is required under

Section 4(b) of Advocates (Professional Requirements for Admission to the Post-Graduate Bar Course) Notice, 2007 to comply with the standards and requirements for establishment of a university as

prescribed by the National Council for Higher Education. Herein National Council for higher Education will consider the nature of physical infrastructure necessary for establishing and operating a university, the quality and quantum of academic staff and the level of contact between staff, the entry requirements for students to pursue the degree, the education facilities including library, training text books, computer facilities and other instruction materials, the duration of the course of study leading to the award of the degree, the scheme of examination and the system of grading awards of the degree. Herein it is mandatory that the institution offered the prescribed courses of study as provided for in Schedule 1 of the Notice and that is. Legal Methods, Constitutional Law, Contact Law, Criminal law, Torts, Evidence. Civil procedure and Criminal procedure.

Holder of Degree obtained from other institutions Outside Uganda

Section 5 of Advocates (Professional Requirements for Admission to the Post-Graduate Bar Course) Notice, 2007 provides that the applicant who obtained a degree from outside Uganda must have obtained those qualifications from an institution which complies with the standards and requirements equivalent to those National Council for Higher Education considers.

Additionally, Section 5(2) states that the Law Council may from time to time designate a country operating the common law system for the purposes of a citizen who obtains a degree form an institution operating the common law system and recognized by the Law Council

It is pertinent to note that Section 10 of Advocates (Professional Requirements for Admission to the Post-Graduate Bar Course) Notice, 2007 states that a Post-graduate law school or institution conducting the post-graduate bar course shall only admit a person whose degree meets the qualifications stipulated in the Advocates(Professional Requirements For Admission to Postgraduate Bar Course) Notice,2007 whose degree is obtained from an approved university or institution as provided under the Advocates act, the universities and other tertiary institutions act, 2001 and any other applicable law.

FORMATION OF A LAW FIRM

ELIGIBILITY TO PRACTICE LAW IN UGANDA

Section 13(8) of the Advocates Act cap 295 provides for Persons Eligible to practice law in Uganda, and below are the legal requirements.

- one should be a holder of a degree in Law granted by a recognized University in Uganda

- one should have a diploma in Legal practice from Law Development Centre.

- Apply to Law Council for a certificate of eligibility and to the Chief Justice to have his or her name put on the roll (the person must be a fit and proper person).

- Payment of the subscriptions to Uganda Law Society and East Africa Law Society.

ADMISSION TO BAR COURSE.

Paragraph 2 of the advocates (professional requirements for admission to post graduate bar course) notice 2007, defines post graduate bar course to mean a course study leading to a diploma in legal practice awarded by the law development centre or such other institution as the law council may approve.

Requirements to join.

1. Para 3(a) for one to be eligible, he or she should hold a degree in law

2. He or she should be a citizen and should hold a degree in law obtained from a university or institution in a country operating the common law system and is recognized by law council.

3. Paragraph 5(1) for the degree in paragraph 3(b) obtained from university operating in common law system, it must have been obtained from university that complies with requirements and standards in paragraph 4 (b)

4. Paragraph 6, person who hasnot successfully completed the course prescribed in schedule 1 may be required to undertake study In that course at a university or at institution in Uganda approved by committee before admission to post graduate bar course

5. Paragraph 2 of the advocates (professional requirements for admission to post graduate bar course(amendment) notice 2010, a person is eligible to be admitted to post graduate bar course if;

a) He or she has passed an examination whether oral or written approved by and conducted under the supervision of the law council

6. Paragraph 3 of the amendment inserted paragraph 11, the entry examination shall be conducted and concluded within 30 days before commencement of the post graduate bar course programme and be based on the knowledge obtained from approved law degree programme, aptitude and the values applicant attaches to the legal profession.

REQUIREMENTS FOR FORMATION OF A LAW FIRM.

- The lawyer should have a practicing certificate.

- The lawyer(s) desirous of forming the firm should pick a name and register it with the Registrar of business names.

- They then draft and register a partnership deed.

- An application is then made to the Uganda Law Society to inspect the proposed venue of the premises.

- One applies to be a VAT payer and clears any taxes with URA and NSSF. The lawyer(s) should get the receipts from Uganda Law Society and East Africa Law Society.

- It must be noted that the laws of partnership govern the members, in this regard, the members should not be more than 20.

KEEPING OF DIFFERENT ACCOUNTS

A law firm is enjoined to keep particular types of accounts. Examples are hereunder;

Client's account

This is a current or deposit account at a bank in the names of the Advocate in the title of which the word Client appears. The monies deposited herein include; money for payment to or for the client, money payable towards a debt due to the advocate, money drawn on a client's authority.

Trust Bank Account.

This contains the money received by an advocate or held in trust by him as a trustee.

ADVOCATES ACT CAP 267

S.12 provides that the registrar should keep a roll of advocates.

S.13(2) any person eligible to have his or her name entered on the roll may make an application to the law council and the law council if satisfied that the applicant is so eligible and is fit and proper person to be an advocate should issue to him or her a certificate to that effect.

S.16 any person who has obtained a certificate under (2) may apply to the chief Justice to have his or her name entered on the roll and the chief Justice shall unless cause to the contrary is shown to his or her satisfaction direct the registrar on receipt of a fee of_____to enter the applicants name on the roll.

S.13(7), Every application made under the section should be advertised in a manner as prescribed by the regulations made by the Law Council.

S. 13(8) provides that the section applies to a person who is

i) a Ugandan citizen or who normally resides in Uganda.

ii) the holder of a degree in law granted by a university in Uganda or a degree in law or other legal qualification granted by or obtained from such other university or institution outside Uganda as may be recognized by the Law council by regulations made for that purpose or the person has been in practice as a legal practitioner for an aggregate period of not less than 5 years in any country designated by the law council by regulations for the purposes of this section.

S.13(6) .The fee mentioned can be altered by the Attorney General by statutory instrument.

a person to whom this section applies (other than the holder of a degree in law granted by a Ugandan university in Uganda) may be required to undergo courses of study in such subjects relevant to the law prior in force in Uganda as may be specified and to satisfy examiners in those subjects and any of those requirements shall be in addition to those mentioned in that subsection.

S.16(1).The registrar shall issue a PC to every advocate whose name is on the roll and who applies for such a certificate on such form and on payment of such fee as the Law council may be regulations prescribed and different fees may be prescribed for different categories of advocates.

S.16(2) A practicing certificate is valid until the 31st December next after its issue and it shall be renewable on application being made on such form and on payment of such fee as the law council may by regulations prescribe and different fees may be prescribed for different categories of advocates.

S.(16)(3) Every advocate who has in force a PC may practice as such in the High court or in any court subordinate to high court.

The law Council may be regulations prescribe that for a specified period of time after enrollment an advocate shall have a right of audience only before such courts as may be designated as per S.16 (4) and also make regulations with regard to the granting of a special rank(however styled) to advocates of long standing skill and experience the regulations of their practice and restricting such practice to certain courts .(S.77(1) (f) .

S.16(5) creates an offence if any advocate contravened or fails to comply with any of the provisions of regulations made under S.16 (4)

THE ADVOCATES ENROLLEMENT AND CERTIFICATION) REGULATIONS S.1.267

Reg. 2 requirements to the acquisition of professional skill and experience shall be

a) attendance of a post graduate bar course conducted by the Law Development center and award of a diploma in legal practice by the law development center on successful completion of the course .

b) in case of a person who has been .....on the roll as a legal practitioner work under surveillance and in the chambers of an advocate enrolled under the act in the service of the government as a state attorney at the commencement of his or her practice in Uganda for a period of not less than six months and who satisfies any regulations which may be made under section(7) of the Act.

Reg.4 application for certificate of eligibility.

In an application for a certificate under S.8(2) of the Act, the applicant shall state;

a) the name and address of the applicant

b) the qualifications of the applicant being one or more of the qualifications set out in c) the date and place of birth of the applicant

d) if the applicant was not born in Uganda the aggregate period of continuous residence in Uganda during the twelve months immediate preceding the date of the application or the aggregate period during which he or she has been in practice as an advocate in any of the countries specified in Part II of the First schedule to these regulations (Kenya, TZ,Zambia any other country in reciprocal arrangements in force in favour of Uganda.

e) Whether the applicant is at the date of the applications subject to any disentitlement or disciplinary proceedings and whether he or she has been convicted in or is subject to any pending or present convinal proceedings.

f) whether the applicant is an undischarged bankrupt or the subject of any bankruptcy proceedings in any country.

-The applications shall conclude with a prayer that the applicant be granted a certificate of eligibility for enrollment as an advocate.

-The application shall be supported by an affidavit by the applicant verifying the facts set forth in the application.

Mode of application Reg.5

An application for a certificate of eligibility for enrollment shall be made by delivering or sending to the secretary of the law council

a) the application

b) the affidavit supporting the application

c) the certificate or other document which the applicant submits as evidence of his or her qualifications professional skills and testimonials from two advocates whose names have been on the roll for at least three years ,certifying that the applicant is a fit and proper person to be enrolled as an advocate.

Reg 6. advertisement of application for a certificate of eligibility for enrollment in one of the issue of the Gazette in the prescribed form.

Form 1 in the second schedule of the Regulations.

Reg 8 an application for enrollment shall be by petition of the chief Justice paying that the name of the petitioner be entered on the roll of advocates.

The petition is accompanied by ; a) certificate of eligibility for enrollment issued by the law council (b) a certified copy of the statement referred to in regulations. 4(1) i.e the application for the certificate ;c) certificate or other document which the petitioner submits as evidence of his or her qualifications ,professional skill and experience; d) the fee shall be returned if the application is refused, e)testimonials from the advocates whose names have been on the roll for at least three years ,certifying that the applicant is a fit and proper person to be enrolled as an advocate.

Reg 9. advertisement of an application for enrollment shall be made by publication of the advertisement in one of the issue of the Gazette and shall be in form 3 of the second schedule to these Regulations.

Reg 10 if the chief Justice has given directions for that purpose the applicant shall appear before the chief Justice at such time and plan as may be notified by the registration. The registrar shall notify the applicant for enrollment of the decision of the chief Justice in respect of the application.

Reg.11 Whenever the name of the person is entered on the roll to practice as an advocate under the Act, the Chief Justice shall cause to be issued to the advocate by a certificate of enrollment.

Reg.12. Application for practicing certificate

- it is by application in the form provided for in the second schedule to the regulations (form 4)

It should be accompanied by a statutory declaration though that the applicant is not a person to whom S.12 (b) of the Act applies and the fee specified in the third schedule to the regulations.

Reg. 13.Right of audience. A person who normally resides in Uganda or is a Ugandan citizen and who just entered on the roll of advocates shall for a period of not less than 9 months after the entry have a right of audience only in the magistrates court and the Pc as issued to him or her shall be endorsed accordingly.

Reg.14 application for renewal of a PC shall be in form 5 of the second schedule of these regulations and there shall be paid the fee prescribed in the third schedule.

Reg 15-the Form of application of renewal of a PC shall be accompanied by: a statutory declaration on oath that the applicant is not a person to whom S.12(1) of the Act applies and a receipt or any other

document that satisfies that he/she paid subscription for a current year as a member of Uganda Law Society and a fee specified in the third schedule to these regulations.

Reg 16. Special practicing certificate under S.13 of the Act.

Third Schedule to the Regulations

Fees

1. For the issue of a P.C = 20,000/=
2. For the renewal of a PC = 20,000/=
3. for the issue of a PC

a) in the case of a person entitled to practice as an advocate from the = 200,000/=

countries designated in part II of the first schedule to these Reg.(Kenya,TZ

Zambia and any other country with reciprocal arrangements in force in favour of Uganda)

b) in case of any other person= 400,000/=

THE ADVOCATES INSPECTION AND APPROVAL OF CHAMBERS) REGULATIONS 2005 No.65

Reg 2-"chambers" means premises used by a practicing advocate as approved by the law council.

Generic names means any name other than the names of partners of a law firm.

Reg 3. Inspection of chambers is carried out by the law council, its representation or agent once a year.

Reg 4. application for inspection. The application for inspection of chamber is addressed to the secretary of the law council and it is submitted at least two months before the expiry of the certificate of approval of chambers for the previous year of the applicant.

Reg 5.requirements to be met before approval;

1. An advocates chambers should be well maintained with a professional appearance and must have;

a) a suitable desk for an advocate

b) a separate room for each advocate and another for a clerk secretary and cashier.

c) a secretarial desk and computer or type writer

d) a reception with chairs or benches for clients.

e) a book shelf

f) a chest of drawers or a filing cabinet

g) a reasonable collection of reference law books including a full set of the Revised laws of Uganda 2000.

h) access to a toilet and sanitary facilities and

i) books of accounts

2. The headed paper of every law firm should bear the names and qualifications of each partner ,advocate and legal assistant in the firm.

3. A law firm with generic names shall only be approved if consent is sought from the law council prior to the registration of that name

4. The consent must be in writing

5. Trading should not be carried out in any chambers

6. The law council may refuse to approve any chambers that do not meet any of the requirements and order the closure of these chambers until the chambers meet the required standards set out in the Regulations.

Reg 6.- a firm whose chambers have been approved shall be issued with a certificate of approval of chambers which shall remain valid for one year.

Reg.7 -the certificate of approval of chambers may be revoked for the following reasons.

a. change of premises

b. change of firm name

c. change in partnership of the firm

d. striking the name of the partner of the firm off the roll of Advocates in case of a sole practitioner.

e. carrying on practice under a name consisting solely or partly of the name of a partner who has ceased to practice as an advocate subject to the Act and other regulations made under it or

f. where the law council deems it necessary

Reg .8 application of inspection of chambers shall be accompanied by the fees prescribed in the Advocates (fees) Regulations 2004 .

Reg.9 penalty for late submission of application (after 31st Dec)prescribed in the Advocates (fee) Regulations 2004.

THE ADVOCATES (USE OF GENERIC NAMES BY LAW FIRMS)REG 2006.NO.16

Reg 2 of the Advocates (use of Generic names by law firms) Regulations S.1 No.7 06, defines a generic name to mean a name other than the name of partners.

Reg 3(1)-a generic name should include the word "advocates" at the end of the name of a law firm.

Reg 3(2); A law firm that uses a generic name shall have the partners names and qualifications appearing on the letter head of the law firm.

The law firm shall also have a list of names of all the partners conspicuously stated by side with the name plate of the partnership (Reg3.(3)

Regulation 3 (4); Where the name and qualifications of the partner do not fit on the letterhead of the firm, a reference to the information and where it is to be found shall be included in the letter head.

Regulation 3 (5); A generic name shall not make any reference actual or derived to any symbolic ,cultic, political ,religious ,secretarian ,discriminatory or spatiality classification

Regulation 3(6); Associated with or suggest any connection with any government, parasternal or a non government organization, misleading.

Regulation 4- where a firm changes its name of a from the name of a partner to a generic name, its former name shall be included on the letterhead and the nameplate for at least three years.

Regulation 5- a generic name shall not be used or registered with the Registrar General or any other authority until clearance is obtained from the Law Council.

The law council may reject an application to use a generic name for sufficient cause.

APPLICATION FOR THE USE OF A GENERIC NAME

H7 Law Chambers

8th January 2021

THE SECRETARY LAW

COUNCIL, P.O BOX 7183,

KAMPALA

Dear Sir/Madam,

RE: APPLICATION FOR THE USE OF GENERIC NAME.

The above subject matter refers and on which I wish to address you as follows;

1. That I am a practicing advocate enrolled under the laws of Uganda.

2. That I intend to open up a law firm operating in Uganda under the name ..... Advocates.

3. That I do hereby seek your approval to use the name ..... Advocates prior to the name reservation of my law firm. Hoping my application will be put under your utmost consideration.

Yours faithfully

..... (For and on behalf of ..... & Partners)

THE ADVOCATES (REMUNERATION AND TAXATION OF COSTS)REG

S.1 267-4

Reg 3. definition of folio means one hundred words and in the calculation of a folio a single figure or a group of figures up to five or an item in accounts shall be counted as one word.

Reg.14 scale of changes in non contentious matters fifth schedule scale of fees in respect of business the remuneration for which is not otherwise prescribed.

i. Instructions for drawing and perusing deeds, deed rolls, affidavit and other documents 10,000/= (in ordinary cases per folia)

ii. Attendances in person or by telephone ,per 15mins -10,000/=

4. Journeys from home.

a) for everyday of not less than 6hrs employed on business or in travelling-300,000/=

5.Time engaged where change is so based in lieu of charges per from hour, or part of an HR-50,000/=

6.Correspondence

a) letter or per folio-20,000 and 4,000/= respectively.

b) receiving and praising a letter 5000/= per folio 1,000/=

7.Opinion formed written opinion ,charge such fee as may be reasonable in the circumstances having regard to the same considerations as set out above for the assessment of instruction but not less than 65000/=

Appendix A- Documents for Partnership law

THE REPUBLIC OF UGANDA

THE PARTNERSHIP ACT cap 110

THE PARTNERSHIP DEED

THIS DEED is made the ..... day of ..... BETWEEN OGWANG BOB of P.O. Box 122 Kampala of the one part and ODONG LOUIS of P.O. Box 221 Kampala the Second part.

WHEREAS the said OGWANG BOB and ODONG LOUIS (hereinafter collectively referred to as "The Partners") are desirous of forming a Partnership amongst themselves.

NOW THIS DEED WITNESSETH as follows:-

1. Partnership:

The partners hereby form a partnership which save as it is expressly set down below shall be governed by the Partnership Act (Cap114) or such other Laws for the time being governing partnerships.

2. Name:

The name of the Partnership shall be KOOL RESTAURANT(hereinafter referred to as "the firm")

3. Objectives of the Business:

The business of the firm shall be the establishment and operation of the services of Bar and Restaurant and any other business or activity which is normally carried out in connection with the said nature of business/service.

4. Place of Business:

The principal place of business of the firm shall be situated in Uganda along LDC Tent way on Makerere Hill Road or any other such place as the partners shall agree.

5. Commencement of Business:

The Business /services of the firm shall be deemed to have commenced on the 17th day of January 2006.

6. Capital:

The capital of the firm shall be U Shs. 7,000,000/= (Uganda shillings seven million only) to which each partner shall contribute as follows:

1. OGWANG PASCAL 60%
2. PATRICK KAIJA 40%

7. Bankers:

The Bankers of the firm shall be Nile Bank Ltd or any such other Bank as partners shall from time to time determine.

8. Management:

The partners do hereby appoint the said ODONG LOUIS to be the Managing partner of the firm who shall be responsible for the overall day to day co-ordination of all the departments and the general administration of the firm and/or business although the partners may from time to time as they deem fit appoint any other manager.

9. Retiring / Demised:

In case of death of a partner or any retirement thereof, such dead/retired partner or his estate shall be entitled to a portion which corresponds to the capital contribution which shall be valued by the surviving partner and the determined value shall be paid in full and final settlement of the deceased/retired partner's claim.

10. Profit and Loss:

The net profit and the losses of the business shall be divided in the proportional capital contribution of each partner.

11. Finance of the Firm:

All finances of the firm not required for current expenses shall immediately upon receipt be paid into the Bank account of the firm and all the cheques on the said account shall be signed by both partners or as may be determined by the partners from time to time.

12. Accounts:

1) The Partners shall cause Books and Accounts of the firm to be kept and each partner shall have liberty to inspect the said books of accounts as and when he likes.

2) The Partners shall ensure that the books of accounts of the firm are audited at least every financial year.

13. Assets:

On every 31st day of December of each year an account shall be taken of the assets and liabilities of the firm and balance sheet and the profits and losses account, making due allowance of depreciation and any lost capital and showing what is due to each Partner in respect of capital and share of profits shall be prepared and shall be signed by each partner who shall be bound thereby unless some manifest error be found therein within three (3) months in which case such error shall be rectified.

14. New Partners:

No new partner shall join the partnership without the consent of both parties

15. Resignation:

In the event of resignation of a partner, his shares shall be sold off to the continuing partner.

IN WITNESS WHEREOF THE PARTIES hereto have affixed their respective signatures this ..... day of ....., 2004.

SIGNED and DELIVERED

By the said 1. OGWANG PASCAL

_____

2. PATRICK KAIJA

ALL in the presence of _____

1. _____

1st Witness

2. ________________________________

2nd Witness

DRAWN BY:

SUI GENERIS

KAMPALA.

THE REPUBLIC OF UGANDA

Statement of Particulars required to be given pursuant to the Business Name Registration Act IN CASE OF A FIRM

This form must be signed either (a) by all the individuals who are partners (or if one or more of the partners is a corporation, by a director or secretary thereof) or (b) by one individlli11 who is a partner in the firm, or (c) by A director or secretary in case of or a corporation which is a partner In the firm; but in cases (b) and (c), a statutory declaration as to the truth of the particulars contained in the form must be made as per reverse. (Vide sec. 6 of the Act).

1 ,-Business name to be registered.

....

....

2. Where a business is carried on under two or more business names, each or these business names must be slated. .. . .

3. Principal Place of Business

Plot. Street and Postal Address ....

4. Present Christian names (or names) And of the individuals who are partners. if any of the individuals who are partners are of non European origin. such individual or individuals (as the case may be) must also slate 'the Christian name (or names) and surname or his, her or their fathers, respectively ....

5.-Former Christian name(or names) and surname (if any) of each of the individuals who are partners ....

6.-Nationality of each of the individuals who are partners. ....

7.-Usual place of residence of each of the individuals who are partners. Plot. Street and Postal Address, ...

8.Other business occupation (if any) of each of the individuals who are partners ....

9.Date of commencement of business. The dale need only be staled where the business was commenced after the 151h day October 1918. ....

10.-Corporate name of each corporation which is a partner. ....

11.-Registered or principal office of each corporation which is a partner. ....

Dated this day of .... 20 .....

Signed ....

....

....

.. . .

STATUTORY DECLARATION

I, ..of ..... Uganda

DO SOLEMNLY AND SINCERELY declare that the particulars contained hereon are true and correct AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act.

DECLARED at ..... District of ..... at ..... the ..... Day of ..... 20 .....

BEFORE ME.

.....

Magistrate/Commissioner for Oaths.

THE REPUBLIC OF UGANDA

THE TRADE (LICENSING) ACT. CAP 101

THE TRADE (LICENSING) REGULATIONS 2011

FORM 1

APPLICATION FOR A TRADING LICENSE

1. a) full name of applicant : KELEMSIA ,

a) Address of applicant: SHOP D2, NABUKERA PLAZA ,KAMPALA UGA.

2. a) Nature of the business for which the license is required: A retail shop dealing in second hand clothes.

3. a) Name of firm/company : KELEMENSIA, MEGANI AND OPIO TRADERS.

b)date of registration: 30th September 2022

4. names of partners and their nationalities:

i) KELEMENSIA MERINDA, UGANDAN

ii) GABRIELI MEGANI, UGANDAN.

iii) OPIO ZAPPA, UGANDAN.

5.(a) Amount of partnership property:

6.the proprietors of the partnership have never been committed of any criminal offence

7. No previous trading license issued to any of the partners has been cancelled.

8. a)The partners shall keep proper books of accounts to e inspected and balanced at the end of every calendar year (31st December) of every year.

b) The books shall be kept in English.

I declare that the particulars given above are to the best of any knowledge and believe them to be true.

Dated this 1st Day of October,2022.

MERINDA KELEMSIA. (On behalf of all partners)

PARTNER.

P.O BOX 7117,

KAMPALA UGANDA

Date: 1st October 2022.

THE SECRETARY LAW

COUNCIL.

P.O BOX 7183

KAMPALA.

Dear sir/madam

RE: APPLICATION FOR USE OF GENERIC NAME.

I address you in regard to the above reference as follows:

1. That I am a practicing advocate enrolled under the laws of Uganda.

2. That my colleagues and I intend to open up a law firm operating in Uganda under the name..... Advocates.

3. That we do hereby seek your approval pursuant to Regulation, 2006 to use the name .....advocates prior to reserving the name with the registrar general.

Hoping our application will be put under your utmost consideration.

Yours faithfully

(For and on behalf of .....)

P.O BOX 7117,

KAMPALA, UGANDA

DATE :2/OCT/2022

TO THE REGISTRAR

GENERAL,

P.O BOX 6848,

KAMPALA, UGANDA.

Dear Sir,

RE: RESERVATION OF BUSINESS NAME

I address you in regard to the above reference as follows:

1. That my colleagues and I are desirous of setting up a legal practice in Uganda.

2. That we have applied to the law council for approval to use the name ..... advocates and the same has been granted pursuant to the Advocates (use of Generic Names by law firms) Regulation, 2006. Attached a copy of the letter of approval for use of the name from the secretary law council.

3. That in light of the above we seek to reserve the name .....advocates having conducted a search and there is no other business operating under the same or similar name. Attached are the result of the search conducted.

Hoping for your kind consideration on this matter

Yours faithfully.

(For and on behalf of other partners)

Tel:

Email:

THE REPUBLIC OF UGANDA

THE BUSINESS NAMES REGISTRATION ACT.

NOTICE OF CESSATION OF BUSINESS

To: the registrar.

Whereas I the undersigned registered under the number .....in the index of registaration have ceased to carry on business as.....

Now I give notice that I have ceased to carry on business as..... As from the 30th day of September, 2022, except for purposes of winding up the business.

Dated this 2nd day of October 2022.

(Signature).

P.O BOX 7117,

KAMPALA, UGANDA

DATE: 2ND OCTOBER 2022

TO: THE SECRETARY

LAW COUNCIL.

P.O BOX 7183,

KAMPALA.

Dear sir/madam

RE: APPLICATION FOR THE INSPECTION AND APPROVAL OF CHAMBERS.

As the above matter refers, we hereby do apply for the inspection and approval of chambers in the name style of.....

All the necessary requirements have been complied with as provided for under Regulation 5 of the Advocates (inspection and approval of chambers) Regulations, 2005

We look forward to your positive consideration.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE CONTRACTS ACT 2010

PROFIT AND LOSS SHARING AGREEMENT.

This agreement is entered on this 2nd day of October 2022.

Between.

Trading as..... (Hereinafter referred to as the "partners" which expression shall unless where the context so otherwise requires include their nominees, agents, assigns and successors in title). Their address for purposes of this agreement shall be.....P.O BOX 7117, KAMPALA UGANDA.

AND

Edward Mukuutana of Kakika Village, Gomba Parish, Gomba Sub County, Wakiso district, P.O BOX 12, KAMPALA (herein after referred to as the "associate" which expression shall unless where the context so otherwise requires include his nominees, agents, assigns and successors in title.

WHERE AS

1. The associate is the lawful owner of

2. The partners are desirous of taking on the same building aforementioned above as business premises for purposes of carrying on their business.

IT IS THEREFORE AGREED AS FOLLOWS:

1. DURATION OF THE AGREEMENT.

This agreement shall last from the date of execution until terminated by six months written notice by either party.

2. OCCUPATION OF

The partners shall occupy the building for purposes of carrying on the business of a law firm and shall continue to do so from the date of signing of this agreement to its termination

3. PROFIT SHARING

In consideration for the purposes occupy ....., the Associate shall be entitled to 10% of the profits earned by the partners from the business

4. STATUS OF THE ASSOCIATE

The associate shall at no time be deemed to be partner of the business and thus shall not bind the firm.

5. CONFIDENTIALITY.

The associate shall not in any fashion, form or manner, either directly or indirectly

a) Disclose any information above the firm to any party

b) Use any confidential information he has received through his association with the firm for his benefit.

6. EFFECT OF TERMINATION.

Upon termination according to clause 1 of this agreement, the following shall occur:

a) The partners shall be allowed 6 months in which to vacate the premises

b) The associate will be entitled to his share of the profits during that period.

7. DISPUTE RESOLUTION.

All disputes arising under Agreement shall:

a) First be resolved through a mediation facilitator by a mediator appointed and agreed upon by both parties.

b) Where the mediation fails to yield results after 5 working days, the matter shall be referred to court of competency jurisdiction for adjudication in Uganda.

8. LAW APPLICABLE.

This agreement shall be governed by the relevant laws of Uganda.

WITNESSED BY:

PARTNERS: EDWARD MUKUUTA

1. NAME

SIGNATURE

2. NAME

SIGNATURE.

In the presence of:

1. NAME

SIGNATURE

DESIGNATION

Drawn by:

SUI GENERIS

P.O BOX 7117.

KAMPALA.

FORM 1.(S.1-267-1) Reg 6.

Advertisement

Application for certificate of Eligibility for Enrollment

The advocates Act

It is notified that an application has been presented to the law council by Babirye Nakiyaga.Denise who is stated to be _____(qualifications) for the issue of a certificate of eligibility for entry of his or her name on the roll of advocates for Uganda.

Form 2 Reg 7(3)

Law council

Certificate of Eligibility for Enrollment

Advocates Act

This is to certify that_____(name and qualifications of applicant) has complied with the requirements as to acquisition of professional skills and experience and is eligible ,fit and a proper person to be an advocate.

_____

Chairperson Law council

FEE NOTE/DEBIT NOTE

D3 & CO.ADVOCATES

D3/CV/2014/200 VAT NO:19318-D Date:10.10.2014

P.O Box 7117 Phones

Kampala Fax

TO.

ITEM PARTICULARS PROFESSIONAL FEES DISBURSEMENTS TOTAL AMOUNT

1 Interpretation of the wills of both the applicant and his son

VAT 18% of total 1500,000/= 1,500,000

270,000

1,770,000

Please note:

1.that the above amount is now due and payable and we expect your remittance by return mail with endorsed copy of fee metal/Debit note.

2.that under Rule 6 of the Advocates(Remuneration and Taxation of casts) Rules, interest of 67% P.a becomes payable on the above amount exactly 1 month from today.

S.1 267-1)

Form 3 Reg 9.

Application for Enrollment of Advocate

The Advocates Act.

It is notified that a petition has been presented to the chief Justice by Babirye Nakiyaga L.Denise who is stated to be _____(qualifications) for the entry of his or her name on the roll of advocates for Uganda

_____

Registrar High court of Uganda

Form 4 Reg 1

Application for Practicing Certificate

The Advocate Act

To: The Registrar

The High Court of Uganda

Kampala

I_____(name and address of applicant)where name was entered in the roll of advocates for Uganda on_____(date) apply for the issue of a practicing certificate.

2.Attached to this application is proof of any having paid my subscription for the current year as a member of the Uganda Law society.

3.I send with this application the sum of 20,000 shillings for payment of the prescribed fee.

_____

signed

Date_____20_____

FORM 5 Reg 14,15

Application for Renewal of practicing Certificate

The Advocates Act

I_____(name and address of applicant) to whom a practicing certificate was issued on_____(date) and was last renewed on_____(date) apply for a further renewal of that certificate.

2.Attached to this application is proof of my having paid subscription for the current year as a member of the Uganda law society.

3.I send with this application of the sum of 20,000 shillings for payment of the prescribed fee.

_____

signed

Date_____20_____

TOPIC TWO

FORMATION OF COMPANIES

Law Applicable

The law applicable to this area of study includes the following:

The Companies Act 106

The Companies (General) regulations SI 110-1

The Companies (Fees) Rules SI110-3 as amended by SI 57/2005

The Companies (High Court) (fees) Rules SI110-4

Investment Code Act Cap92

The Stamps Act Cap 342 as amended by Act12/2005

Advocates (Remuneration and Taxation of Costs) Regulations SI 267-4

Uganda Registration Services Bureau Act Cap 210

Civil Procedure Act Cap 71 (if court action is envisaged)

Civil Procedure Rules SI 71-1 (if court action is envisaged)

The basic issues/checklist on formation and management of a company

- Whether the parties have capacity to form a company
- What type of company can the parties form?
- What additional information needed in incorporation of the company

- Whether the proposed company can enter into agreements before incorporation

- What is the forum, procedure and documents. (for incorporation of a company and for a company going public)

- Fess payable

The Basic Documents include

Application for Reservation of company Name

Articles of Association

Memorandum of Association

Statement of Nominal Capital (Form A1)

Declaration of Compliance (Form A2)

Prospectus

CASE LAW

NGAREMTONI ESTATES LTD v COMMISSIONER OF INCOME TAX (1969),ALR COMM.186

Platt J; The argument for the appellant was that it had incurred liability on taking over the contract so that the sale of the coffee produced an income on which it was liable to tax, then it must follow that it had also taken over the liability for the expenses which had been incurred in connection with its business but before its business commenced. The Commissioner General argued that this could not be so because the company had no corporate existence at the time when the expenses were incurred. It was said that those expenses were a matter between the original purchases and the vendors.

The judge said that a promoter has no right of indemnity against the company which he promotes in respect of any obligation undertaken on its behalf before its incorporation and he cannot sue it upon a contract made by him with an agent or trustee on its behalf before its incorporation even where the articles of association provide that the company shall defray the preliminary expenses.

The Company cannot ratify an agreement purporting to be made on its behalf before its incorporation. The promoter or other person involved can only sue upon a new contract and whether there is a fresh contract between the company and the promoters and their parties after incorporation is a question of fact.

KELNER v BAXTER (1866) L.R .2.CP 174

The plaintiff was a wine merchant and the proprietor of the Assembly Rooms at Gravesend .In August 1865, it was proposed that a company should be formed for establishing a joint clock hotel company to be

called The Gravescend Royal Alexandra Hotel Co. Ltd .The plaintiff was to be the manager of the proposed company. One part of the scheme was that the company should purchase the premises of the plaintiff and the defendant was the nominal purchaser on behalf of the company.

In Dec a prospectus was settled on 9th Jan 1866,an MOU was executed by the plaintiff and the defendants and others on 27th Jan 1866 an agreement was entered into for the transfer of this additional stock to the company. The company having collapsed the present action was brought against the defendants upon the agreement of the 27th of January.

The defendant argued that the agreement was not entered into by the defendants personally but only as agents for the hotel company and they thereby incurred no personal obligation to the plaintiff who was himself a promoter.

Held: 1. If the company had been on existing company at this time, the persons who signed the agreement would have signed as agents of the company. But as there was no company in existence at the time the agreement would be wholly incorporative unless it were held to be binding on the defendants personally.

2.Where a contract is signed by one who professes to be signing as agent but who has no principal existing at the time and the contract would be altogether inoperative unless binding upon the person who signed it, he is bound thereby and a stranger cannot by a subsequent ratification relieves him from that responsibility .When the company came afterwards into existence it was a totally new advocate having rights and obligations from that time but no rights and or obligations by reason of anything which might have been done before.

PRICE v KELSALL (1957)E.A 752

The mere adoption and confirmation by directors of a contract made before the formation of a company by persons purporting to act on behalf of the company creates no contractual relation whatever between the company and the other party to the contract.

SALOMON v SALOMON (1897) A.C 22

Mr. Salomon now a pauper was a wealthy man who was a boot and shoe manufacturer trading on his own sole account under the firm of "A Salomon & Co. " He turned his business into a limited company. He wanted to make provision for his family .All the formalities were gone through and all the requirements were duly observed.

The capital was fixed at £40,000 in 40,000 shares of £1 each. The subscribers to the memorandum were Mr Salomon ,his wife and five children. The appellant obtained an allatment of 20,000 shares and he held 20,000 shares and six shares by his wife and family. The company fell upon evil days. Mr Salomon and his wife lent the company money and then he got his debentures cancelled and reissued to a Mr Broderip who

advanced him £5000 which he handed over to the company on loan.Mr Broderip's interest was not paid when it became due.He took proceedings at once and got a receiver appointed .Then came liquidation and a forced sale of the co's assets. They realized enough money to pay Mr. Broderip but not enough to pay the debentures in full and the unsecured creditors were left out in the cold.

Act requires that a memorandum of association should be signed by seven persons who are each to take one share at least. There is nothing in the Act requiring that the subscribers should be independent or unconnected or that they or any one of them should take a substantial interest in the undertaking or that they should have a mind and will of their own or that there should be anything like a balance of power in the constitution of the company.

2.When a memorandum of association is duly signed and registered , though there be only seven shares taken, the subscribers are a body corporate capable forthwith to use the words of the enactment of exercising all the functions of an incoporated company.

3.The company is at law a different person altogether from the subscribers to the memorandum and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands receive the profits the company is not in law with agent of the subscribers or trustee for them.

SMITH v Croft (NO.2) (1987)3 ALLIER 909

Grounds for bringing a derivative claim are laid down by Knox J and it provides that such a claim may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence ,default ,breach of duty to exercise reasonable care skill and diligence by a director of the company.

The criteria or prerequisites before instituting derivative claims/suits.

i) Prima facie case

ii) The company is the defendant and plaintiff

iii)Wrong done to the company

iv) Wrong committed by people in control either as

Majority or de facto control through manipulation of No internal remedy (has exhausted internal remedies)

vi) Support of majority of independent shareholders.

FOSS v HARBOTTLE (1843) 2 HARE 461

The complainants were two shareholders in the Victoria park Company. They brought an action against an action against the company's five directors and promoters, alleging that the defendants had misappropriated assets belonging to the company and has improperly managed its property. The

complainants sought an order to compel the defendants to make good the losses suffered by the company .They also applied for the appointment of a receiver.

Held: That the action must be fined .The harm in question was suffered by the whole company not just by two shareholders. It was open to the majority in general meeting to approve the defendants conduct. To allow the majority to bring an action in these circumstances would risk frustrating the wishes of the majority.

-The Rule is that where a wrong has been committed against the company, the proper complainant in respect of that wrong is the company itself.

-Rationale .It prevents a multiplicity of legal proceedings being brought in respect of the same issuer.

-It upholds the principle of majority rule, if the majority of shareholders do not wish to purse an action than the minority is bound by that decision.

LYANGOMBE R (1959) E.A 678

Court held that where a private company exceeds the statutory limit of 50 members (now 100) it ceases to enjoy the privileges and exemptions attached to it.

In The Matter Of Allied Food Products Ltd (1978) H.Eb.294

The Company was a private company owned by Uganda Asians. The petitioner was removed from being the director of the company. There was no evidence that there was a general meeting since 1975 or that there had been notification of the petitioner to attend it and his removal was done without calling a meeting.

Held. The definition of a member of a company as defined in the companies Act covers two categories of person thus those who have subscribed to the memorandum of a company and those who subsequently agree to become members of the company and whose names are entered on the company's register of members.

The Government has a discretion to make any order it sees fit among others the company's affairs are being conducted including the petitioner and oppressive means burdensome, harsh and wrongful.

The section only covers members in their character as members of the company and not as servants of the company/employers .It is only members in their capacity who can invoke the application of

S.211.Therefore the fact that the petitioner was deprived of his pay as sales manager poses as director and that he was removed from the post of director did not amount to oppression.

4.The facts that the petitioner was not notified of any meeting and that the directors were removed by from office without any general meeting did amount to conducting the affairs of the company.

JOSEPH LUNGUJU KAKOOZA V ETHIOPIAN AIRLINES LTD (1982) HCB III

The Plaintiff brought an action for damages for breach of contract against the defendant airlines for failing to carry him on a business trip to china on its flight ET 782 on 13th November 1977.

Held: A member is not entitled to claim damages personally for loss suffered by company .The plaintiff failed to prove that he personally as distinct from his company had suffered any loss.

IN THE MATTER OF AIR-REP INTERNATIONAL LTD (1984) HCB 63

This was an application for an order that one of the two shareholders in Air Rep international Ltd be permitted to call and hold a meeting of the company and pass resolutions on behalf of the company.

Held: S.135 of the companies Act (cap 85) gives power to the court to order for a meeting of a company where it is not practicable to call for a meeting in anyway and this case fell within the section.(EI Sombrero Ltd (1953) ALL ER I Followed)

SHEIKH ALI SSENYONGA & ORS v SHEIKH HUSSEIN RAJAB KAKOOZA & GORS.(1992-1993) HCB 93.

Btn 1980 to 1987 the adherents of the Muslim religion in Uganda were divided. The leaders of the two factions agreed to settle their differences at Makkho and the terms of the settlement included that the parties would unite in the overall body called Uganda.

A general assembly was convened and after the election of the chairman, it was adjourned to 2:30 pm on the following day .Owing to some confusion in the Assembly ,the first respondent purported to adjourn the assembly sin die by sending notice on radio Uganda and hand written chits to the individual delegates. The majority decided to continue business and the appellant were elected officials of UMSC. The respondents refused to hand over all the requirements for the management and administration f the UMSC hence the suit.

Held: The UMSC had been constituted as a legal entity in the form of an unlimited company without share capital. As it had Memorandum and Articles of Association which was the constitution ,it was subject to company law. The membership of UMSC was exclusively confined to those eligible by religion criteria and not by the purchase of shares offered to the public thus it was a private not a public company.

2. The power to adjourn or continue a meeting /an assembly lay in the membership .As there was quorum when the decision was taken the decision to continue was valid.

IN THE MATTER OF NAKIVUBO CHEMISTS (1977) HCB 344

Held: For a petitioner to succeed under S.211 of the companies Act he must show not only that there has been oppression of the minority shareholders of a company but also that it has been the affairs of the company which have been conducted in an oppressive manner. The oppression must be to a person in his capacity as a shareholder and not in any other capacity.

2. The petitioners salary and allowances were withheld in good faith in order to offer his debits with the company but it was not fair for the petitioner not to be finished with a statement of account at all. However this could not amount to oppression as it affected him in his capacity as directors only.

The courts will make a winding up order on account of oppression only if a very strong case is made out where such order would be contrary to the wishes of the majority shareholders. The real test is whether the business of the company cannot go on due to the deadlock among the shareholders. Where a company is in effect a partnership between the directors the same principles should be applied in the case of a dissolution of partnership.

STEINBERG V SCALA (LEEDS) LTD (1923) 2.Ch 452

P(minor) applied for shares in a company paid amount due on allotment and first call made on shares,18 months after still a minor he repudiated the contract and sought to recover the paid money.

Held: He is not entitled to the money. Even though no dividends declared the company had done all that it had bargained to do and P could have gotten some value by selling the shares.

FREDRICK SENTAMU v UCD R ANOR (1983) HC 59.

It was held that a limited liability company is a separate legal entity from its directors, shareholders and other members ,individual members of the company are not liable for its debts.

BUSINESS ENTITIES

PARTNERSHIPS

These are governed by the Partnerships Act 110,S.2(1) defines a partnership as the relationship which subsists between or among persons not exceeding twenty in number who carry on a business in common with a view of making profit.(professionals < 50 persons S.2)

S.2(3) provides that registered companies under the companies Act or any other Act relating to the registration of joint stock companies are not partnerships.

S.47 provides for limited liability partnerships; consist of not more than 20persons and have one or more persons called general partners who are liable for all debts and obligations of the firm(S.47(2)

Partnerships have unlimited liabilities for each partner; no perpetual succession ,no legal status and limited borrowing powers.

2.SOLE PROPRIETORSHIP

This is a business entity carried by one individual who is in direct control of all elements. The sole individual has full exposure and liability for the debts and other business liabilities.

The objective is profit for the proprietor and it does not have separate legal existence. It can also exercise perpetual succession.

GOIL Ltd is a separate legal entity and has several stakeholders who are all liable therefore a sole proprietorship is not the appropriate legal entity.

3. ASSOCIATIONS

A group of individuals /companies pursuing common objectives. They must have a constitution and normally liability extends to amount guaranteed.

Associations also lack perpetual successions and usually the main objective is not profit driven .These business organizations are not often used as investment vehicles in Uganda therefore these are not the best business organizations to be used by the foreign company that seeks to do business in Uganda GOIL Ltd should therefore not form an association.

4. COPERATIVE SOCIETIES

These are created and governed by The Cooperative Societies Act Cap 107 ,S.4(1) a) provides for a minimum of 30 members. The liability is established by statute. It can exercise perpetual succession and has corporate status. The main objective is community development.

This is not appropriate for GOIL Ltd because the information in Appendix I is not about community development.

5.PARASTALS

These are public corporations and are government owned. They are created by specific legislation and liability established by statute. These are not subject to the requirements of the companies Act The main objective is to further some national interest. Have a corporate status and characterized by perpetual succession.

6.JOINT VENTURES

These are profit oriented companies and they do not exist in perpetuity. They are purely contractual and are governed by the contracts Act except if one chooses to register them as a company, then company law will be applicable.

The parties must have agreed on a common task to execute. It is a business agreement in which the parties agree to develop for a finite time a new entity and new assets by contributing equity(shares)

C. CHARITABLE ORANISATIONS

COMPANIES LIMITED BY GUARANTEE

S.3(6) (b) of the companies Act CAP 106 .The liability of its members is limited by the memorandum to the amount that members undertake in the memorandum to contribute to the assets of the company of its being wound up. This association has to be incorporated.

TRUSTS/BOARD OF TRUSTEES.

A trust is created by a settler who settles money or property which is held by a trustee on behalf of the beneficiaries.

S.2 of the Trustees incorporation Act Cap 271 provides that trustees may be appointed by anybody or association of persons established for any religious educational ,literacy ,scientific ,social or charitable purpose and such trustee may apply in the manner mentioned hereafter to the Minister for a certificate of registration of the trustees or trustee of such body or association of persons as a corporate body.

The Trustees incorporation Rules S.1 165-1 in Rule 2 prescribes the form of applications (Form 1 of the schedule)

Rule 4 states that the application shall be made in duplicate on stout foolscap folio and one side of the paper written on.

S.4 of the Trustee Incorporation Act, Cap 271 provides in subsection (1) that every certificate shall be in writing signed by the persons(s) making it and it shall contain the several particulars specified in schedule to the Act or as may be prescribed or such of them as may be applicable prescribed to the case,

Rule 2 of the Rules provides that the application should be submitted to the commissioner land registration in Form 1 in the 1st schedule to these Rules

documents

Application in form 1

fees

Rule 6 of the Trustees Incorporation Rules

The fees set out in the second schedule to these Rules shall be payable in respect of the matters specified in that schedule.

Upon submission of an application for a certificate of registration as a corporate body-20,000/= Upon issue of a certificate of incorporation -10,000/=

Forum

Mister for lands.

NON GOVERNMENTAL ORGANISATIONS

Section 27 (1) NGO act cap 109, person or group of persons incorporated shall register with the national bureau of NGOs

Section 27(2) NGO act cap 109 and Regulation 3(2) NGO Regulations 2017, provide for the application which shall take form A.

SECTION 27(2)(A)-(D) of the act and Regulation 4 of the regulations provide for the requirements to accompany the application and they include the following;

A) Certified copy of certificate of incorporation.

B) Copy of the organisations constitution or governing documents

C) A chart showing the governance structure of the organization

D) Proof of payment of prescribed fee

E) Source of funding of the activities

F) Copies of valid ID document for atleast 2 founder members.

G) Minutes and resolutions of members authorizing to register with the bureau

H) Statement as to the organizational structure.

I) Recommendation from district NGO monitoring committee.

J) Recommendation from the responsible ministry government department or agency

Regulation 4(3), the application shall be signed by atleast two founder members.

Section 27(3), upon compliance the bureau shall register the organization.

Regulation 5, issuance of certificate of registration under form B

Regulation 7(1), upon registration the organization shall apply to the bureau for a permit

Regulation 7 (2), application for a permit shall be in Form D

Section 29(1) an organization shall not operate in uganda without a valid permit

Section 29(2) applies to organisations under the companies act, trustees incorporation act and organization.

Regulation 7(3), the application for a permit shall specify;

a) Operations of the organization

b) Scope of operations

c) Staffing of the organization

d) Geographical area of coverage

e) Location of head quarters

f) Date of expiry of the previous permit

g) Evidence of payment of prescribed fee

h) Intended period of operation not exceeding 5 years.

Section 29(3), issuance of permit by the bureau within 45 days

Regulation 7(4), permit issued to operate within the time specified in the permit but not exceeding 5 years.

Regulation 7(5), permit shall be in Form E

Regulation 9, provides for the review of a permit incase of change in any of the conditions.

Regulation 19, bureau to establish and maintain an up to date register of organisations.

CONDITIONS FOR A PERMIT (REGULATION 8 NGO)

A) Permit to be used for the intended purpose

B) Permit shall not be transferrable to another person

C) Permit shall be specific to a geographical area of operation

D) The bureau to be notified within 14 days after change in area of operation

E) Any other as specified by the bureau in the permit.

DOCUMENTS

FORM A

regulation 3 (2)

THE REPUBLIC OF UGANDA

THE NON-GOVERNMENTAL ORGANISATIONS ACT, CAP 109

APPLICATION FOR REGISTRATION.

To the Executive Director

National Bureau for Non-Governmental

Organisations

We the undersigned members hereby apply for registration of an organisation

under the Non- Governmental Organisations Act, 2016.

(a) Name of the incorporated organisation.....

.....

.....

.....

.....

(b) Nationality of the members .....

.....

.....

.....

(c) Physical address of the organisation .....

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(d) Telephone contacts of the organisation.....

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.....

(e) Name of each organisation or group established outside or inside

Uganda, if any, to which the organisation is affiliated or connected to.....

.....

(f) Objectives of the organisation .....

.....

.....

(g) Class or classes of persons to whom membership of the organisation is open.....

.....

.....

.....

(g) Present number of members.....

.....

(h) Names and positions of officers of the organisation.....

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.....

.....

(i) Names, occupation and addresses of the officers of the organization.....

.....

.....

(j) Sources of funding .....

.....

.....

.....

(k) Property (if any) owned by the organisation.....

.....

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.....

.....

(l) Manner in which that property is held, acquired or vested.....

.....

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.....

(m) Bankers of the organisation.....

.....

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(n) Any privileges, immunities and exemptions requested by the

organisation from the Government

... ...

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.....

Names, signatures and passport size photographs of at least two

members:

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.....

.....

.....

Date.....

FORM B

regulation 5 (2)

THE REPUBLIC OF UGANDA

THE NON-GOVERNMENTAL ORGANISATIONS ACT,CAP 109

CERTIFICATE OF REGISTRATION

Registration Number:

I CERTIFY that .....

.....

.....has been registered

with National Bureau for Non-Governmental Organisations.

Dated at Kampala, this.....day of .....20.....

.....

Executive Director,

National Bureau for Non-Governmental Organisations

FORM D

regulation 7 (2)

THE REPUBLIC OF UGANDA

THE NON-GOVERNMENTAL ORGANISATIONS ACT, 2016

APPLICATION FOR A PERMIT

To the Executive Director

National Bureau for Non-Governmental Organisations

We the undersigned members hereby apply for a permit for an organisation registered under the Non- Governmental Organisations Act, 109 or the Companies Act, 2012 or the Trustees Incorporation Act.

(a) Name of the registered organisation.....

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(b) The registration number of the organisation .....

(c) Physical address of the organisation.....

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(d) List of operations/ objectives of the organisation .....

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(e) The staffing structure of the organisation.....

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(f) The geographical area or districts of coverage of the organisation

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(g) The location of the organisation's headquarters .....

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(h) Period of time requested for a permit not exceeding five years .....

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.....

Names, signatures and passport size photographs of at least two members of the organisation:

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.....

.....

Date.....

FORM E

regulation 7 (5)

THE REPUBLIC OF UGANDA

THE NON-GOVERNMENTAL ORGANISATIONS ACT, CAP 109

PERMIT TO OPERATE AN ORGANISATION

Permit Number:

I HEREBY CERTIFY that.....

.....(state full name and

address of the organisation) has this .....day of .....20... been

issued with a permit to operate in Uganda under the Non-Governmental

Organisations Act.

This permit is subject to the following conditions-

.....

.....

.....

.....

.....

This permit shall be valid for ..... (insert the

number of months) from the date of issue.

.....

Executive Director,

National Bureau for Non-Governmental Organisations.

Formation and management of companies, NGOs and Trustees Incorporation

The definition given by the Companies Act is not helpful, as it does not sufficiently define what a company is but authors have developed a definition of a Company. Professor David Bakibinga in his book Company law in Uganda at page 2 defines a Company as an artificial legal entity separate and distinct from its members or shareholders

Characteristics of a company.

1. A separate legal personality

In the case of SOLOMON V SOLOMON (1897) AC 22. Lord Macnaghten held that the company is at law at different person all together from the subscribers to the memorandum. By virtue of being in possession of legal personality, a company is capable pf enjoying rights and being subject to duties separate from its members.

By virtue of being in possession of legal personality, a company is capable of enjoying rights and being subject to duties separate from its members. IN JOHN LUBEGA MATOVU V MUKWANO INVESTMENTS LIMITED MISC.APP NO.156 OF 2012, the applicant had sued the respondent company for recovery of UGX 139,343,041 upon which a consent judgement was entered. He later realized that directors had abandoned, altered or changed the name of the respondent company. He brought the suit for an order to lift the corporate veil. Hellen Obura J, held that the concept of corporate personality is what distinguishes a company from other forms of business associations. It means that a company has a separate legal personality from its members and is capable of enjoying rights and being subject to duties separate from its members.

Employment by the company.

Under the principle of separate legal personality, a shareholder can be an employee of the company as was in the case of LEE V LEE'S AIR FARMING LTD (1960) UKPC 33, where lee was the controlling shareholder and director of the respondent company. Lee was jailed while piloting a company aircraft in the course of aerial top dressing. His wife claimed compensation under the workers compensation act. The issue whether the deceased was a worker within the meaning of the workers compensation act. Lord Morris held that the deceased was in contractual relationship was based on consensus between the deceased, one legal person and the company is the other legal entity. The deceased was a worker of the company and was entitled to the compensation , the mere fact someone is a director of a company does not preclude or prevent him from entering into a contract of service with the company.

IN FREDRICK SENTAMU V UCB AND ANOR. (1983) HCB 61. The plaintiff negotiated a loan on the company's behalf from the 2nd defendant's branch. The company defaulted and the plaintiff

was arrested. It was held that a limited liability company is a separate legal entity from its directors, shareholders and other members. Individual members cannot be sued by the company's creditors.

2. Perpetual succession

This means that a company continues to exist despite a change in membership and can only be terminated through the legal process of winding up.

Death, insolvency or insanity of the member's does not affect the company's legal existence. IN MICHEAL OSCAR KAYEMBA V JAMES MULWANA AND 3 ORS (1999), the sole owner of the shares in the company died. Bossa j on the authority of SOLOMON V SOLOMON, where a company had only one paid up shareholder it still remains in law a corporation with independent existence. The company continues to exist despite the death of its shareholder.

In RE NOEL TEDMAN HOLDING PTY LTD (1967) Q. B 561, husband and wife were the only shareholders and directors in the company and they both passed on in an accident. The company continued and court allowed the personal reps to appoint directors to effect the transfer of shares to their surviving child

3. Separate property

Upon incorporation, a company can own property in its own name. A member of a company cannot own company property and has no interest in the company property. IN MACURA V NORTHERN ASSURANCE CO. . The appellant, a shareholder in the company, took out fire insurance for timber that belonged to the company. The timber was destroyed by a fire, he asked the insurance company to indemnify him for the loss. Baxter J held, he could not be indemnified because the assets did belong to him, but the company. No share holder has any right to any item or property owned by the company because he has no legal or equitable interest therein. In INTERNATIONAL LIMITED V MOHAMMED HALID EL. FAITH. ODOKI jsc, held that the respondent could not claim the company's property by an action in his own name.

4. Suits by or against the company

A company is a legal person and can sue or be sued in its own name. Suits against the company must be brought in the company's registered name. a suit by or against an in correct company name is a nullity. In QYUICK CARGO HANDLING SERVICES LIMITED V IRON STEEL WAVES AND 2 ORZ, CIVIL SUIT NO. 328 OF 2002. The plaintiff sued "property management services ltd" instead of properties management limited." Kibuuka Musoke J, held that in company law, upon incorporation, a company is known only by its name on the register of companies. The suit against a non-existing party was improper before court.

The person representing the company must be authorized by a resolution or powers of attorney otherwise his actions may not bind the company. However lack of the board resolution does not invalidate the proceedings. In CONSTRUCTION ENGINEERS ABD BUILDING LIMITED V NEW VISION AND 3 ORS H.C.CS NO 67 OF 1991, the defendants raised a P.O. that, the suit was improper as the plaintiff had no board resolution authorizing the institution of the suit. Held that, a board resolution is merely evidence that the company has authority to institute a suit but lack of a board resolution does not necessarily mean that the company directors have no authority to institute the suit.

5. Common seal

Every company must have a company seal that is an embossment with the company name and postal address. Every document used the company must have the company seal and be signed by at least two directors. Documents requiring authentication by a company signed by the director or secretary donot need to be sealed.

In KINTU V KYOTERA GOWERS (1976) HCB 336. Court held that the power to possess, use and change a seal is incidental to a corporation. In the absence of any special and legally binding regulations to the contrary, the seal affixed to the corporation deed bears a special emblem to indicate that it's the corporate seal.

6. Racial attributes.

A company has attributes similar to a human being but it can't have racial attributes. It has no soul or feelings.

In KATATE V NYAKATURA (1956) 7 ULR 47, the respondent sued the petitioner for misappropriation of money which belonged to Anole African society in which they were all shareholders. The complaint was made to the native court. The issue was whether the company whose shareholders were all Africans can be said to be an African within the meaning of the native ordinance. The court held that a company is a distinct legal entity that is abstract in nature and incapable of having racial attributes. The suit was in a wrong court, a company can't be sued in the native court simply because it has native members.

Citizenship of a company.

The current legal frame divides companies into citizen and non-citizen companies. The classification comes with certain limitations for example under Art.237 (2) (c) of the constitution and S.40 (4) of the Land Act cap 227, a non-citizen company cannot acquire or hold mailo or freehold land.

S.40 (7) of the land act, defines a non-citizen company as:

b) In the case of a corporate body, a corporate body in which the controlling interest lies with non-citizens.

c) In the case of companies where share are not applicable, where the body's decision making lies with non-citizens

d) A company in which shares are held in trust for non-citizens.

e) A company incorporated in Uganda whose articles of association do not contain provision restricting transfer or issue of shares to non-citizens.

S.40 (8) of the land act defines controlling interest to mean:

a. In case of companies limited by shares, the majority shares are held by persons who are non-citizens.

b. In the case of companies without shares, a company in which decisions are arrived at by the majority who are not citizens.

FORMATION OF COMPANIES

Types of companies

These include the following

. 1. Registered companies

A registered company is a company that is registered with the registry of companies. The Companies Act provides for the registration of a company. Therefore, for one to have a company that is legally recognized under the Companies Act, that person must register that company with the registry of companies, this process is called registration or incorporation /floatation of a company.

2. Statutory companies

These are formed by Acts of Parliament and do not go through the process of incorporation laid out under the Companies Act. They are formed by an Act of Parliament, Examples include NWSCO under the National Water and Sewerage Corporation Act , New Vision formed under the New Vision Printing and Publishing Corporation others include NWSCO, URA, UWLA, UNRA etc.

3. Chartered companies

This relates to companies granted a Royal Charter in England by the Crown under the Royal Prerogative or special powers. The charter normally confers corporate personality. Examples of these are Colleges of Oxford and Cambridge.

All the types of corporate bodies described above are classified as corporations aggregate. This distinguishes them from some offices (such as those of traditional rulers) „which exist separately from the individual who for the time being holds the office. This latter category is called a corporation sole since only one person fills the office at one time e.g. the office of the Kabaka of Buganda, the Omukama of Toro, the Kyabazinga of Busoga, and the Archbishop Etc.

4. Corporate sole

It is one, which consists of one human member at a time, being the holder of an office. They are mostly created by Acts of Parliament but may also be created by the Constitution or common law. Examples

include the office of the Bishop (Common Law), the President or the Kabaka (Constitution) and the Administrator Registrar General (Acts of Parliament)

REGISTERED COMPANIES

Under the Companies Act, provision is made for two major types of registered Companies, which can be lawfully formed in Uganda. Principally these are;

1. Private companies.

2. Public companies.

Private companies

S.4 of the Companies Act CAP 106 defines a private company as a Company, which by its articles

□□Restricts the rights to transfer shares of the company.

□□Limits the number of its members to 50, not including past, present employees of the company.

□□Prohibits any invitations to the public to subscribe for any shares or debentures of the company (investments in the company).

Under s. 4(1), the required minimum number of members is 1 person. This position was laid down in the case of LUTAYA Vs GANDESHA (1987) HCB 49; in which a man and his wife formed a private company and of the 1500 shares of the company, the wife held only 2 shares. This position was also stated in the case of SALOMON Vs SALOMON & CO (1897) AC 22. The second person needed may not be an independent person. He could be the nominee of the first person.

Where a private company does not comply with these requirements, it loses exemptions and privileges conferred on a private company. This failure can only be remedied upon showing Court that it was caused by accident or inadvertence or some other sufficient cause as per S.30 of the Companies Act.

Public companies

Under S.5, the required minimum number for public companies is 7 and it goes up to infinity. In other words, there is no limit as to the maximum number of members a public company can have. A public company should be a limited liability company. Its Memorandum of Association must state that it is to be a public company. Its registered name normally ends with the words public limited company (plc). A company, which has obtained registration as a public company, its original certificate of incorporation or subsequent certificate of registration issued by the registrar must state that it is a public company. 11

Liability of members where the number of members is below legal minimum

Under S.33 of the Companies Act, if a company carries on business for more than 6 months after its membership has fallen below the statutory minimum, (2 for private companies and 7 for public companies), every member during the time the business is carried on after the 6 months and who knows that the company is carrying on business with less than the required minimum membership is individually liable for the company‟s debts incurred during that time. In such a case, therefore the corporate veil is lifted in order to hold those members personally liable for the company‟s debts incurred during that time.

Distinction between Private and Public Companies A public Company

A private Company

1. Minimum of 7 members. For such a company to do business there must be a minimum of at least 7 members. Where the company continues to do business when the number of members has fallen below the legal minimum, then this is a ground for the winding up of the company. (Winding up is the process of putting the company‟s existence to an end.) s5 of the Companies Act

2. No maximum limit of members.

3. There must be directors.

4. Cannot commerce business until and unless it obtains a certificate of trading /certificate of commencement of business, in addition to a certificate of incorporation.

5. Must hold a statutory meeting between 1 & 3 months from the date of commencement of business. Directors are required under the law to send a statutory report to every member within 14 days to the date of the

1. Minimum of two members for such company to do business there must be a minimum of at least 2 members. Where the company continues to do business when the number of members has fallen below the legal minimum, then this is a ground for the winding up of the company. S.4 (1) of the Companies Act

2. The maximum number of members is 100. S.4 of the Companies Act

3. Only one director can suffice. S 4 of the Companies Act

4. Can commence business as soon as it acquires a certificate of incorporation s.22.

5. No statutory meeting is required of such companies .

Under the Companies Act, registered Companies may be limited liability companies or unlimited liability companies: as provided under S.4 of the Companies Act. Limited liability companies may be:-

□□Liability limited by shares

□□Liability limited by guarantee

(a) A company limited by shares

This is a company where the members enjoy limited liability. This means that in case of winding up of the company if the company"s assets are unable to meet the company"s debts, then the members will only be liable to contribute to the debts of the company only such amounts as a member may not have paid for the shares they bought. i.e., a member will only be required to pay the balance that he did not pay on the shares he bought. Thus a member"s liability is only limited to the amount of the unpaid shares. S.2, S.3(6) (a) of the Companies Act.

NOTE: Liabi1ity may arise in case of winding up. When a company is unable to go on with its business or for some other reasons it is forced to stop operating business such a company may go through a process called winding up. Winding up is the process of ending a company, in this process, all its assets are sold, and the company pays off its debts using the proceeds of its assets i.e. the money it has got from the sale of its assets. In case that money is not enough to clear all its liabilities, then the members who have not completed payment for their shares will be called upon to pay and that money will also be used to clear its debts.

NOTE: A share is a unit of capital in a company. For example, if the company wants to start business, it can decide to start up with an initial capital of 10,000, 000/=. This capital will then be divided into a number of units, let us say 10 units. It means that each unit will be equal to 1,000, 0000/. Therefore, since a share is a unit of capital in a company, each share of that company will be worth 1,000, 000/=. So (a shareholder buys let us say 40 shares in that company, he will pay 40 times 1,000,000(40,000,000).

(b) A Company limited by guarantee

This is one where the liability of its members is limited to such amount, as the members may have undertaken to contribute to the company"s assets in the event of its winding up. This guarantee must be expressed in the memorandum of association. i.e. there must be an express statement/undertaking by the subscribers / members that the members guarantee that they will pay a specified amount of money in the

event of winding up of the company, if the company"s assets are not sufficient to meet its debts S 2), S.3(6) (b) of the Companies Act.

For example, the articles may have a clause saying that in case of winding up of the company, each member shall be liable to contribute only 500,0000/= in case the assets of the company are 14

not enough to meet its liabilities. It means that the members liability will be limited to only that 5000, 000/= and no more.

(c) An unlimited company

This is a company in which there is no limit to the liability of the members. This means that in the event of winding up, the members, are liable to contribute money sufficient to cover all the company's debts without any limitations, if the company for example the company has debts of millions and millions of shillings, the members have to be responsible to pay all the debts and the member's personal estate/property can be encroached upon to discharge the liabilities of the company. S.3 (6) (C) of the Companies Ac CAP 106.

SINGLE MEMBER COMPANY

Section 3(1), is to the effect that any one or more persons may form a company with or without liability.

Regulation 3 of the companies (single member regulations 2016, single member company" means a company incorporated under

the Act with one person; whether natural or corporate.

During incorporation of a single member company, a single member shall nominate two individuals one of whom shall nominate two individuals one of whom shall become a "nominee director" in case of death of the single member and the other shall become "alternate director" to work as nominee director in case of none availability of the nominee director .

Section 182 of the companies act cap 106,The nominee director shall—(a)manage the affairs of the company in case of death of the single member until the transfer of shares to legal heirs of the single member;

(b)inform the registrar of the death of the single member, provide particulars of the legal heirs and in case of any impediment report the circumstances seeking directions within fifteen days after the death of the single member

(c)transfer the shares to the legal heirs of the single member; and

(d)call the general meeting of the members to elect directors.

Single member company (SMC) allows all the benefits of a private or public company like limited liability separate legal personality, perpetuity among others.

INCORPORATION OF A SINGLE MEMBER COMPANY

1. Company name

2. Conduct a search in the register to the registrar of companies

3. Reservation of the name. section 34 of the companies act provides that the registrar may on written application reserve a name pending registration of a company and such reservation shall remain in force for 30 days or for such longer period not exceeding 60 days as the registrar may for special reasons allow and during such period, no other company is entitled to be registered with that name. subsection (2), no name shall be registered which in the registrar's opinion is undesirable.

Regulation 9 (1) of the single member company regulations;

(1) every single member company shall add the initials "SMC LTD" or the words "Single Member Company Limited" at the end of its name.

4. fill in the form for registration; regulation 4 (1)Any person who wishes to form a single member company shall submit to the registrar a duly filled form for registration of a company specified in the Second Schedule to the Act.

Regulation 4(2); The registration form may be submitted in hard copy or electronic form

Regulation 4(3);Where the registration form is submitted in electronic form, the promoter shall, in addition, print out the duly filled form and submit it to the registrar.

Regulation 4(4) every form for the registration of a single member company shall be accompanied with the prescribed fees.

4. Prepare the Memarts.

Regulation 5(1) SMC Regulations; The form of the memorandum of association of a single member company, if any, shall, with necessary modifications, be in accordance with the form set out in Table B of the Second Schedule to the Act.

Regulation 5(2) ;A single member company may adopt or modify the articles of association contained in the First Schedule to these Regulations.

Regulation 7, The memorandum, if any, and articles of association of a company, shall be submitted to the registrar at the time of submitting the form for the registration of the company.

5. File to registrar, particulars of the nominee and alternate nominee director as per regulation 6

6. Issuance of certificate of incorporation provided under regulation 8 of the SMC REGNS.

CONVERTING SMC TO A PRIVATE COMPANY

1. Regulation 10(1) of the SMC Regulations; subject to section 22(7) of the companies act cap 106, A private company not being a single member company which has two or more members on the commencement of this Act shall not become a single member company.

Section 85(1) of the companies act cap 106, A single member company may transfer or allot shares on the death of the single member or by operation of law or by a single member company converting into a private company not being a single member company.

Section 85(2)(a) In case of a transfer of shares or further allotment of shares the company shall—pass a special resolution for change of status from single member company to private company and alter its articles accordingly within thirty days of transfer of shares or further allotment of shares; and

(b)appoint and elect one or more additional directors within fifteen days of date of passing of the special resolution and notify the appointment to the registrar.

Section 85(6) Where a single member company converts into a private company pursuant to subsection (1), it shall file a notice in writing, with the registrar within sixty days from the date of passing of special resolution

PROCESS OF PURCHASING AND TRANSFER OF SHARES IN SMC.

A) Conduct a search at the company registry to ascertain existence of company, the liabilities if any, ownership and its general status as far as liquidation is concerned. Have a look at company's documents that is the Memarts, look at company form 20 (notification of appointment of director and secretary of company. Look at previously filed return of allotment, look at previously filed annual returns.

B) Proceed to negotiate the number of shares you want to buy from the shareholder. In the event you agree on the terms, proceed to reduce those terms and conditions in writing by drafting a share sell agreement .

C) Shareholder must sign transfer of shares form transferring the agreed number of shares to the purchaser who will accept by appending his or her signature.

The purchaser or transferee then submits a fully executed transfer form together with the share sell agreement to the company for purposes of making new changes accordingly.

D) Company shall proceed to transfer the shares to the purchaser as per transfer form. The company shall pass a special resolution for change of status from single member to private member company and alter its articles accordingly within 30 days of transfer of shares as per section 85(2)(a).

E) The company shall then appoint or elect one or more directors within 15 days from date of passing of the special resolution and the company shall then notify the registrar of companies about the appointment of the additional directors.

Regulation 10(1)Subject to section 22 (7) of the Act, a single member company may convert into a private company not being a single member company, in accordance with section 85 of the Act.

Regulation 10(2) (a) Where a single member company converts into a private company, it shall appoint and notify the registrar of the appointment of directors in accordance with the Act and the Companies (General) Regulations, 2016 within fifteen days from the date of the appointment.

F) Company shall then file with the registrar, a notice of conversion from SMC to private within 60 days from date of passing of special resolution as stipulated in section 85(6) of the companies act. Regulation 10(2)(b) SMC REGNS, the notice shall be in form 4 as set out in schedule 2

G) Purchaser then checks with company to pick certificate of shares respect of the purchased shares. Section 89 (1) of the companies act cap 106, A company shall, within sixty days after the allotment of any of its shares, debentures or debenture stock and within two months after the date on which a transfer of the shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

H) The special resolution, the transfer form, the amended articles of association and memo among others are then taken to the registrar of companies for purposes of assessment and payment of stamp duty and filing fees.

DEATH OF SINGLE MEMEBR.

SECTION 85(3), In case of death of single member, the company may either be wound up or be converted into a private company not being a single member company for which—

(a)the nominee director shall transfer the shares in the name of the legal heirs of the single member within thirty days;

(b)the company shall pass a special resolution for change of status from single member company to private company not being a single member company and alter its articles accordingly within thirty days of transfer of shares; and

(c)the members shall appoint or elect one or more additional directors in accordance with this Act and within fifteen days of date of passing of the special resolution and notify the appointment to the registrar.

Section 85(6), file a notice with registrar within 60 days from date of passing of special resolution.

Regulation 11(1) SMC regulations, A single member company shall nominate two individuals, one of whom shall become nominee director in ease of the death of the single member and the other who shall become alternate nominee director to work as nominee director in ease of the non-availability of the nominee director.

REGN 11(2); The nominee director shall —

(a) manage the affairs of the company in ease of death of the single member until the transfer of shares to the personal representative of the single member;

(b) notify the registrar of the death of the single member, provide particulars of the personal representative and in ease of any impediment, report the circumstances to the registrar for a directive in Form 5 in the Second Schedule within fifteen days of the death of the single member;

REGUALTION 11(3); In ease of any impediment to the transfer of shares or election of directors or any other matter, the registrar shall —

(a) call or direct the calling of the meeting of the personal representative of the single member;

(b) give such directives with regard to election of directors and making of alterations in the articles; and

(c) give such ancillary and consequential directions as the registrar thinks expedient in relation to calling, holding and conducting of the meeting.

CONVERSION BY OPERATION OF LAW

Section 85(4) of the companies act; In case of operation of the law the company shall—

(a)transfer the shares, within seven days, in the name of relevant persons to give effect to the order of the court or any other authority;

(b)pass a special resolution for change of status from single member company to private company and alter its articles accordingly within thirty days of transfer of shares; and

(c)appoint additional director or directors in accordance with this Act within fifteen days of date of passing of the special resolution and notify the appointment in the prescribed form within fourteen days of date after the appointment.

Section 85(6); Where a single member company converts into a private company pursuant to subsection (1), it shall file a notice in writing, with the registrar within sixty days from the date of passing of special resolution.

NOTE; Regulation 10 (3); conversion shall not take effect until the registrar has issued a certificate conforming the conversion

Regulation 10(4), where SMC has converted the appointment of nominee director and alternate nominee director under section 184 of the act shall cease to be effectual.

PROMOTERS

Promotion

A business cannot come into existence unless someone thinks of the idea and attempts to translate it into business. The process of conceiving and translating the business opportunity is what is called promotion.

Promoters Defined

Before a company is registered or formed, a person or persons must carry out the preliminary work. This work includes signing contracts, arrangement for capital and credit facilities, securing premises where the company is to be located, machinery and equipment, preparing the necessary documents, etc. All this work is done by persons called promoters.

A promoter has been defined judicially by Cockburn C J in the English case of; TWYCROSS VS GRANT (1877) as-

"One who undertakes to form a company with reference to a given project and to set it going, and who takes the necessary steps to accomplish that purpose".

A person is prima facie a promoter of the company, if he has taken part in setting a company formed with reference to a given object."

A company may have, many promoters and in the case of; RE LEADS & HANLEY THEATRES [1902] 2 CH 809, it was held that one existing company may promote another new company.

An employee of a promoter is not a promoter for example a lawyer or advocate or solicitor who merely does the legal work necessary to the formation of a company is not as such a promoter. RE GREAT WHEAL POLGOOTH LTD (1883) CR 42

A promoter may do anyone or more of the following activities: -

• Solicit capital

• Prepare a prospectus

. Solicit directors for the company

• Arrange the preparation of the Memorandum and Articles of Association

• Obtain premises

• Obtain whatever equipment is necessary for the running of the business 16

• Negotiate contracts.

Duties of a Promoter:

A promoter is not an agent of the company which he is forming because a company cannot have an agent before it comes into existence (KELNER Vs BAXTER (1866) and is not usually treated as a trustee for the future company (OMINIUM ELECTRIC PALACES LTD Vs BAINES [1914] 1 CH 332). However, from the moment he acts for the company in mind, he owes duties to the company and they include the following;

1. Duty of good faith. A promoter stands in a fiduciary relationship (a relationship of utmost good faith/trust) to the company and consequently owes it certain fiduciary duties i.e. duties of disclosure and accounting and this implies that they must not make any secret profits out of the promotion without disclosing it to the company. A promoter must disclose a profit which he is making out of the promotion to either an independent board of directors or the existing and intending shareholders for example by disclosure in the prospectus.

This was illustrated in the case of; ERLANGER Vs NEW SOMBERERO Co LTD (1978) 3AC 1218. Members in a syndicate bought the lease of an island containing a phosphate mine at £55,000. The members of the syndicate then promoted a company and appointed themselves its directors. They sold the lease to the company for £110,000. This was unfortunately not revealed in the prospectus inviting the public to subscribe for its shares but was subsequently discovered. The company instituted an action to recover profits from the promoters who in turn argued that they had made a disclosure of their profits to a board of directors. Nevertheless, the BOD was:

i. Appointed by the promoters themselves.

ii. The first director could not attend meetings because of his state in life (ill health).

iii. The second director was not present when the profits of the promoters were approved.

iv. The third director was one of the promoters themselves.

v. The fourth and fifth directors were ignorant of the subject matter.

The issue was whether there was a disclosure. It was held that the disclosure to only one director who had appointed the promoters was not a proper disclosure and that the company was entitled to rescind the contract. That the promoters must repay the purchase price and the company in turn must re-convey the lease to the promoters so as to restore the status quo (original position). Thus, a disclosure must be made to the company either by making it to an entirely independent board or to the existing and potential members as a whole. A partial or incomplete disclosure will not do, the disclosure must be full or explicit. CHARLESWORTH IN HIS BOOK; CHARLESWORTH"S COMPANY LAW 18TH EDITION

2010 has criticized this requirement of disclosure before an independent board because in most cases this requirement is one that 17

cannot be complied with, as all the promoters or some of them are usually the first directors of the company. In the formation of private companies, the promoter usually sells his business to a company, of which he is the managing director and in which he is the largest shareholder.

2. Duty of skill and care: In the process of promotion, a promoter must carry out his work with great care and skill and due diligence expected of a reasonable man. He should take care not to make false representation/ misstatements for example in the prospectus.

3. Duty to act in the best interests of the company. He should not let his personal interest conflict with those of the company for example he should not sell his own properties to the company at an overpriced value. He should also take care not to under negotiate contracts for example buying properties from third parties at overpriced values.

Remedied for Breach of duty

1. A promoter can be compelled to account for any secret profit made. In GLUECKSTEIN Vs BARNES (1900) A.C 240; promoters of a company operating under a syndicate bought property intending to sell it to a company and sold it to the company at a higher price and made a profit on it but did not disclose this profit to the company in the prospectus, it was held that they were liable to account for the above profits to the company.

Where promoters sell their own property to the company, the company cannot affirm the contract and at the same time ask for an account of the profits or for damages, as this would amount to asking Court to vary the contract of sale and order the defendant promoters to sell their assets at a lower price.

2 Rescission: where the promoter has for example sold his own properties to the company at an overpriced value, the company may rescind the contract and recover the purchase price paid. (ERLANGER Vs NEW SOMBERERO).

The right to rescission may be lost in a number of ways. For example; -

□□It will be lost if the parties cannot be restored to their original positions, as where the property has been worked so that its character has been altered. LAGUNAS NITRATE CO Vs LAGUNAS SYNDICATE [1899] 2 CH 392. However, even if restitution is not strictly possible, the right to rescind will be allowed if restitution is substantially possible.

□□It will also be lost if third parties have acquired rights for value by mortgage or otherwise under a contract. RE LEADS & HANLEY THEATRES [1902] 2 CH 809; where the mortgagee of the property had sold it.

3. Damages for misrepresentation where the promoter has made an actual misrepresentation and cannot prove that he had reasonable ground to believe and did believe up to the time the contract was made the facts represented were true. 18

4. Damages for failure to disclose.

5. Damages for negligence in allowing the company to purchase property at an excessive price since they are to act with skill and care.

Remuneration of a Promoter

Promoters do not possess an automatic right to receive remuneration from the company for their services from the company unless there is a valid contract enabling him to do so between him and the company. Without such a contract, he is not even entitled to recover his preliminary expenses. This is so because until a company is formed, it cannot enter into a valid contract and the promoter has to expend the money without any guarantee that he will be repaid.

However, in practice, the company‟s articles may allow directors to pay preliminary expenses from the company‟s funds.

However, if the promoter is a professional, he will not be content merely to recover his expenses; he will expect to be handsomely remunerated. In the case of TOUCHE Vs METROPOLITAN RAILWAY WAREHOUSING COMPANY (1871) LR 6 CH.APP 671 Lord Hatherly said: “the services of a promoter are very peculiar, great skill, energy and ingenuity may be employed in constructing a plan and in bringing it out to the best advantages.” Hence, it is perfectly proper for the promoter to be rewarded provided he fully discloses to the company the rewards, which he obtains. The remuneration must be fully disclosed not only by the promoter to the company but also by the company in the prospectus.

Section 52 (1) of the companies act, a contract purporting to be made on behalf of a company before its formed has the effect as one made with a person purporting to act for the company.

Section 52(2), a company may adopt a pre-incorporation contract without a need for novation.

Section 52(3) of the company’s act, upon the adoption of a pre-incorporation contract, the liability of the promoter of the company ceases.

In the case OF KELMER V BAXTER (1866-67) L R 2 CP 174, a contract entered into on behalf of this company before its incorporation could not be enforced by or against the company because it was not yet in existence, and therefore a stranger to the contract.

A promoter is not an agents of a company which he/she is forming because a company cannot have an agent before it comes into existence.

If a pre-incorporation contract cannot be enforced against the company, can the company enforce such a contract?

A company cannot after incorporation enforce a contract made in its name before incorporation or sue for damages for breach of such contract. The rationale is that the company was not a party to that contract in the first place and secondly because it had no capacity to contract. Thus in NATAL LAND AND COLONIZATION CO. Vs PAULINE AND DEVELOPMENT SYNDICATE (1940) A.C. 120; N Co Ltd agreed with a person acting on behalf of a future company P Co Ltd that N Co Ltd would grant a mining lease to P Co Ltd. Coal was discovered in the land and N Co Ltd refused to grant P Co Ltd the lease. P Co Ltd sued for breach of contract asking for specific performance. It was held that P Co Ltd could not compel N Co Ltd to grant the lease and that that P Ltd‟s claim must fail as it could not adopt or ratify a contract made before it existed.

NOVATION

In order a company to be bound by a pre-incorporation contact, a fresh contract on the same terms as the pre-incorporation contract must be entered into. This process of entering into a new contract by the company on similar terms as those of the pre-incorporation contract is referred to as novation.

Usually, an agreement is entered into by the promoter, which provides that the personal liability of the promoter will cease when the company in the process of formation is incorporated and enters into an agreement in similar terms with the contractor.

However, there must be sufficient evidence that the company has entered into a new contract; Mere recognition of the pre-incorporation contract by performing it or accepting benefits under it is not enough. In RE NORTHUMBERLAND AVENUE HOTEL CO. LTD 1886, there was a pre incorporation contract for the grant to the company of a building lease. After incorporation, the company took possession of the land and began to build on it but there was no new contract entered into between the company and the owners of the land because the company believed the pre-incorporation contract was binding on it. It was held that there was no contract between the landowners and the company as the pre-incorporation contract could not be retrospectively ratified by the company and the company‟s adoption of it did not amount to the making of a new contract.

REGISTRATION OF COMPANIES.

A company is defined as an association of persons sharing resource to pursue a common purpose.

Companies are registered to pursue the functions of;

-For purposes other than making profits for owners or members eg NGOs, Charitable organizations

-Companies registered to personify the business between a small body of persons.

-Companies registered to involve a large body of shares in investment though not necessarily involved in the management of the company.

S.3(5) of the Companies Act CAP 106, provides for a company limited by shares ,a company limited by guarantee, unlimited company, a private or a public company.

The difference between a company limited by shares and that limited by guarantee is the assumption that a company limited by shares ,operations or working capital is supported by the share capital contribution of members and all creditors.

Companies limited by guarantee ,members undertake to pay in case of the business failure to indemnify creditors. Usually charitable organizations.

Private company.s.4(1) defines a private company and it is limited to 100 members and restricts the right to transfer it shares and other securities .Private companies also prohibit any invitation to the public to subscribe for any shares or debentures of the company.

Public company; defined under S.5 of the companies Act as one which is not a private company under S.4.

As a public company has more procedural requirements at incorporation during its existence and at its dissolution which includes inter alia.

Preparation of prospectus

Obtaining a certificate of commencement.

Shares can be sold at stock exchange and invites the public to subscribe for shares through a prospectus. There is no confidentiality in view of the prospectus being a public document.

It is prudent to form a private company (a private limited company) as the liability of members would be restricted only up to unpaid up shares. It also has minimal interference from the public.

A private company is easy to form as it can be formed by one or two persons. It is a flexible as one is required to perform lesser legal formalities as compared to a public company .it enjoys special exemptions and privileges under company laid.

Quick decision making for members and they can easily be consulted and make prompt decisions.

Who is a subscriber of a company; individuals whose names appear on the memorandum and articles before the registration of a company

ULTRA VIRES DOCTRINE.

Section 48(1) of the companies act, a company may make a contract, by execution under its common seal or on behalf of the company, by a person acting under its authority, express or implied.

Section 51 of the companies act; A party to a transaction with a company is not bound to enquire whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorize others to do so.

Section 50(1) of the companies act; The power of the board of directors to bind the company or authorise others to do so in favour of a person dealing with the company in good faith shall not be limited by the company's memorandum.

(2)For the purposes of subsection (1)—(a)a person "deals with" a company if he or she is a party to any transaction or other act to which the company is a party; and(b)a person shall be presumed to have acted in good faith unless the contrary is proved.

(3)The references in this section to limitations on the directors' power under the company's memorandum include limitations deriving from—(a)a resolution of the company in a general meeting or a meeting of any class of shareholders; or(b)any agreement between the members of the company or of any class of shareholders.

Section 50(5) C.A Subsection (1) does not affect any liability incurred by the directors or any other person, by reason of the directors' exceeding their powers.

Section 48(2) C.A Contracts on behalf of a company may be made as follows—(a)a contract which if made between private persons would by law be required to be in writing, signed by the parties to be charged with, may be made on behalf of the company in writing executed by any person acting under its authority, express or implied; or

(b)a contract which if made between private persons would by law be valid although made orally and not reduced into writing may be made orally on behalf of the company by any person acting under its authority, express or implied.

Section 48(3) C.A A contract made according to this section shall be effectual in law and shall bind the company and its successors and all other parties to it.

SECTION 48(4) OF THE C.A A contract made according to this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

POWERS OF A REGISTRAR OF COMPANIES.

a) Section 34(1) of the companies act The registrar may, on written application, reserve a name pending registration of company or a change of name by an existing company, any such reservation shall remain in force for thirty days or such longer period, not exceeding sixty days as the registrar may, for special reasons, allow and during that period no other company is entitled to be registered with that name.

b) Section 34 (2); No name shall be reserved and no company shall be registered by a name, which in the opinion of the registrar is undesirable.

c) Section 35(1) of the companies act; the director may direct change of names where; the name is misleading as to the nature of activities and likely to cause harm to the public.

d) Section 35(5) of the companies act; the registrar shall enter into the register the new name where a company changes its name and shall issue an altered certificate of incorporation.

e) Section 38 (2) of the companies act, a registrar may direct a company after registration to change its name if the same is too similar to an already existing company name. the powers by the registrar shall be exercised within 6 months from registration and the change shall be within 6 weeks after the direction

Decisions of the registrar of companies can be challenged

a) The first appeals are made to the registrar general of companies

b) Where the parties are still aggrieved, the same decision is challenged in the high court of Uganda

c) Section 35(3) of the companies act. After 21 days a company may apply to court challenging the direction of the registrar through a notice of motion supported by an affidavit.

Remedies in the high court of Uganda

a) Declaration of unlawful and erroneous registration

b) Cancellation of the entry on the registrar

Permanent injunction from or against the use of the same name

Registration of a company.

1. Search for availability of business name.

This can be done by writing a formal letter to the registrar to ascertain the existence of a name and suitability.

2. Reservation of nature.

S.34 (1) of C.A grants the registrar of company's power to reserve a name of a company. Under S.34 (2), registrar is prohibited from reserving and registration of names considered to be undesirable.

The reservation is for a period of 30 days and must not exceed 60 days.

Under S.39, a charitable organization which promotes art, science charity etc. may apply to dispense with limited.

Reg fees: 1. Less than 5M-50K

2. 1% of capital if in excess of 5M

Stamp duty:

On articles: UGX 10,000

Capital; 0.5%

3. Preparation of the necessary documents.

The documents to be prepared are include:

a) The memorandum of association.

The Memorandum of Association of a company, which is required to be registered for purposes of incorporation, is regarded as the company‟s most important document in the sense that it determines the powers of the company. Consequently, a company may only engage in activities and exercise powers, which have been conferred upon it expressly by the memorandum or by implication there from.

Contents of the Memorandum (S.6 of the Companies Act)

The memorandum of Association of a company limited by shares must state the fol1owing: -

1. The name of the company with “Limited” as the last word in case the company is a limited liability company.

2 The registered office of the company is situated in Uganda

3. The objects of the company.

4 A statement as to the liability of the members.

5. A statement to the nature of the company (Whether private or public).

6 The amount of share capital and division thereof into shares of a fixed amount. In addition, the memorandum must state the names, address and descriptions of the subscribers thereof who must be at least two for a private company and seven for a public company and their shareholding.

1. The name section 6(1)(a)

The name of the company should be indicated and if it is a limited company, it should have the word limited at the end e.g. Amurey International Uganda Ltd.

2. Registered office section 6(1)(b)

The memorandum must state that the registered office is situated in Uganda. However, the actual address must be communicated to the Registrar of Companies within 14 days of the date of incorporation or from the date it commences business by registration of a company form called Notice of situation of registered office of the company, this form will indicate the exact location of the company e.g. plot 45 Nakasero Road, Kampala.

3 The objects clause section 6(1) (c)

This sets the principle activities the company has been incorporated to pursue. For example, trading in general merchandise, carrying on business of wholesalers and retail traders of all airtime cards, mobile phones and all phone accessories, carrying on the business of mobile money agents etc. The objects must be lawful and should include all the activities, which the company is likely to pursue. The objects or powers of the company as laid down in the memorandum or implied there from determine what the company can do.

Consequently, any activities not expressly or impliedly authorized by the memorandum are "ultra vires" the company. The ultra vires doctrine restricts an incorporated company under the Companies Act to pursue only the objects outlined in its registered Memorandum of Association.

The doctrine of ultra vires is illustrated in the case of; ASHBURY RAILWAY CARRIAGE CO. LTD Vs RICHIE (1875). A company which was not authorized by its memorandum of association to lend money or finance any activity made an agreement with the defendant to provide him with finance for the construction of a railway in Belgium. Later on, the company repudiated this agreement and did not actually provide the finances, the defendant sued the company for breach of contract, the company in its defense argued that financing railway construction was not one of the activities it was authorized to do, it was held that indeed such an act was beyond the powers of the company and such an ultra vires contract was void and un enforceable.

To evade this restrictive interpretation of the objects clause, draftsmen inserted words as "and to do all such other acts and things as the company deems incidental or conducive to the attainment of these objects or any of them. In BELL HOUSES LTD Vs CITY WALL PROPERIES LTD (1962) 2 Q.B 656; in that case, both companies to the dispute carried on business as property developers, the plaintiff company agreed to introduce the defendant company to a financier who could provide a loan and the defendants promised to pay a fee to the plaintiff. When the defendants were sued for that fee, they pleaded that a mortgage broking transaction such as that was ultra vires by the plaintiffs and that it was not expressly covered in the plaintiff"s company memorandum of association. The plaintiffs on the other hand argued that the transaction was not ultra vires; they relied on a provision in their memorandum, which provided that the company was authorized; 28

"to carry on any other trade or business whatsoever which can, in the opinion of the board of directors be advantageously carried on by the company in connection with or ancillary to the general business of the company"

Salmon J of the Court of appeal held that that provision gave the company the necessary power. In his remark, which has been criticized as destroying the whole doctrine of ultra vires he stated thus;

"an object of the company is to carry on any other business which the directors believe can be advantageously carried out in connection with or ancillary to the general business of the company. It may be that directors take the wrong view and in fact, the business in question cannot be carried on as directors believe. But it matters not how mistaken the directors may be provided they form their view honestly and the business is within the company"s objects and powers."

The Memorandum of Association spells out the main objectives and powers of the company. However, certain powers may be implied in the Memorandum of Association. For example, in the case of FERGUSON Vs WILSON (1866) 2CH.A 277, a power to appoint agents and engage employees was implied in the Memorandum of Association. This is only sensible because a company as a fictitious person can only work through agents and employees, and therefore if such a power was not implied, then the company could not function at all.

Similarly, in GENERAL AUCTION ESTATES & MONETARY CO Vs SMITH (1891) 3CH 432, the court implied powers of borrowing money and giving security for loans.

Subsequent cases have also adopted this position. In NEWSTEAD (INSPECTJON OF TAXES) Vs FROST (1978) 1 WLR 441 at page 449, the Court implied powers of entering into partnership or joint venture agreements for carrying on the kind of business it may itself carry on i.e. intra vires.

In PRESUMPTION PRICES PATENT CANDLE CO (1976), the Court implied a power of paying gratuities to employees. A power to institute, defend and to compromise proceedings will also be implied in the Memorandum of Association if it is not provided expressly. Courts at times imply powers because the particular nature of the company"s undertaking demands it.

However, though the Court may imply these powers in the Memorandum of Association, it is better practice to expressly state them. This is only sensible because: -

• The company often needs powers, which the Courts have not ruled that they can only be implied and therefore the company can only obtain them by express provisions in the Memorandum of Association, (e.g. the power to buy a share from another company though recognized under the Act has not yet been implied). 29

• To avoid uncertainties or expenses of litigation, it is safer to insert them expressly in the memorandum of association.

4. The liability of members section 6(2)

The memorandum of a company limited by shares or by guarantee should indicate that the liability of members is limited. With respect to a company limited by shares, the liability of a member is the amount, if any, unpaid on his shares. With regard to the liability of a member of a company limited by guarantee, this is limited to the amount he undertook to contribute to the assets of the company in the vent of winding up. A company may also be registered with un-limited liability, in such a situation, the members liability is unlimited and in case the company does not have sufficient credit to pay its creditors, then the shareholders personal property may be encroached on to pay the company‟s debts.

5. Share capital (clause) section 6(4)

The memorandum requires that a company having a share capital must state the amount of share capital with which the company is to be registered and that such capital is divisible into shares of a fixed amount. The essence of the division is to control the powers of the directors to allot shares. The law does not prescribe the value but they are usually small amounts to encourage people to hold as many shares as possible. The amount of capital with which a company is to be registered and the amount into which it is to be decided upon by the promoters will be determined by the needs of the company and finance available. For example, if a company has its initial share capital/startup capital of 5,000,000 it can divide this into 100 shares of 50,000 each. So if a member subscribes for 50 shares, he will contribute 2,500,000/=.

Alteration of the objects section 9

A company may by special resolution alter the provision in its memorandum (Sec.6 of the Companies Act) with respect to the objects of the company to enable it:

• To carry on its business more economically or more efficiently

To enlarge or change the local area of its operations.

• To attain any of its objects by new or improved means.

• To carry on some business, which under existing circumstances may conveniently or advantageously be combined with the business of the company.

• To restrict or abandon any of the objects specified in the memorandum.

• To sell or dispose off the whole or any part of the undertaking of the company.

• To amalgamate with any other companies or body of persons as long as the objects of the other company arc intra vires the objects of the company

ARTICLES OF ASSOCIATION (S 11-21of the Companies Act)

Articles of Association contain regulations for managing the internal affairs of the company i.e. the business of the company. They are applied and interpreted subject to the memorandum of association in that they cannot confer wider powers on the company than those stipulated in the memorandum. Thus, where there is a conflict or divergence between the memorandum and articles, the provisions of the memorandum must prevail.

Management, who will be the directors of the company, who will be, appointment of the board of directors, qualifications of directors, the classes and rights of shareholders, transfer of shares, auditing of books are all contained in the Articles of Association.

Contents of the Articles Table A

• The board of directors (management) and how they will be, appointment, their qualifications, how they can resign or be removed from office.

• The chairman of the board.

• The managing director and how he will be appointed.

• Secretary and his appointment.

• Meetings (how meetings of the company should be called and conducted and the required quorum / number of members that must be present to conduct a valid meeting of the company) and the different types of meeting that the company may hold from time to time, voting rights of the members, the right to receive notice and to attend and vote etc.

• Powers of directors.

• The different classes of shares and rights attached to different classes of shares.

• Borrowing powers of the company.

• It‟s properties, control of the company finance, its bankers, dividends/profits and how they should be distributed

• Appointment of auditors

• the company seal and how it should be used etc.

The Articles must be printed in the English language, divided into paragraphs, numbered consecutively, signed by each subscriber to the memorandum in the presence of at least one witness who must attest the signature.

The Companies Act contains a standard form of articles (Table A of the Companies Act) which applies to companies limited by shares (S 12 of the Companies Act). These regulate the company unless it has its own special articles, which totally or partially exclude table A. The advantages of statutory model articles are:

• That legal drafting of special articles is reduced to a minimum since even special articles usually incorporate much of the text of the model.

• There is flexibility since any company can adopt the model selectively or with modifications and include in its articles special articles adapted to its needs.

Alteration of the Articles S.16 of the Companies Act

It is provided that subject to the provisions of the Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles. A special resolution is one, which, is passed by a majority of not less than 75% of such members, as being entitled to a vote in person or where proxies are allowed, by proxy at a general meeting of which not less than twenty-One days" notice specifying that the intention to propose the resolution as a special one has been given.

The alteration will generally be valid unless if:

• It is illegal.

• It conflicts with provisions of the Companies Act.

• It extends or modifies the Memorandum.

• It deprives members of rights conferred on them by the Company 2t or by court.

• It requires a shareholder to take or subscribe for more shares or increases his liability to contribute to the company,

• It amounts to fraud on the minority.

INTERPRETATION OF ARTICLES AND MEMORANDUM OF ASSOCIATION

1. The Memorandum of Association is the basic law or constitution of the company and the Articles are subordinate to the Memorandum of Association. It follows therefore that if there is a conflict, the Memorandum of Association prevails. In other words, if there is a contradiction between the provisions of the memorandum and the provisions of the articles of association, then the provisions of the memorandum will be followed and those provisions in the articles which are contradicting the memorandum will be void and of no effect.

2. If there is no conflict, the Memorandum of Association and articles must be read together and any ambiguity or uncertainty in either can be removed by the other e.g. in RE SOUTH DURHAM BREWERY CO. LTD (T885) 31 CD 261, the Memorandum of Association was silent as to whether the

company‟s shares were to be all one class or might be of different classes. It was held that the power given by articles to issue shares of different classes resolved

the uncertainty and enabled the company to issue shares of different classes though the memorandum did not expressly state so. Also, in the case of RAINFORD Vs JAMES KETT & BLACKMAN CO. LTD (1905) 2 CII 147, the memorandum of Association of the trading company allowed it to do things incidental to its objects. It was held that the provisions in the articles empowering the company to lend money merely exemplified the general words of the Memorandum of Association and the company was therefore entitled to lend money to its employees, a trading company has a profit making motive, and therefore the company lending money to employees at a profit was incidental or connected to the company‟s objects/activities of profit making. In REPYLE WORKS (1891) 1 CH 173, the Memorandum of Association empowered the company to borrow on security of its assets or credit while the articles provided that it might borrow using the security of uncalled capital. It was held that the articles merely made specific the general words of the Memorandum of Association and so the company did have the power to borrow using the security of its uncalled capital since the uncalled capital is also part of the company‟s assets/credit. (Uncalled capital is that amount of money that shareholders have not yet paid for their shares. If a shareholder is allocated shares of 10 million shillings and out of this he pays only 6 million, the four million that remains is called uncalled capital so, the company may call upon that shareholder at any moment requiring him to pay that money.)

3. Though the Memorandum of Association and articles can only be read together to remove ambiguity or uncertainty, the articles will not be resorted to, to assist in the interpretation of the Memorandum of Association or the clause that is required in law to be in the Memorandum of Association or the clause that is required in law to be in the memorandum of Association.

THE CONTRACTUAL EFFECT OF THE MEMORANDUM AND ARTICLES OF ASSOCIATION

S. 19 of the Companies Act provides that the memorandum and articles of association shall when registered, bind the company and the members as if they had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions. Thus they have a contractual effect. The memorandum and articles form three contracts and these are:

1. The memorandum and articles of association constitute a contract between the company and a non-member. A member is any person who has signed the memorandum and articles of association for purposes of formation of the company even if he or she later does not pay for any shares in that company. A member therefore has a right to enforce the provisions in the articles and memorandum against the company since memorandum and articles of association constitute a contract between the members and the company. So if the company is acting contrary to what the memorandum and articles provide, then that member can sue the company for breach of those provisions and likewise. 33

The articles of association however do not constitute a contract between the company and a non-member. Therefore, a nonmember cannot enforce such contract. This was illustrated in the English ease of WOOD Vs ODDESA WATER WORKS (1889) 42 CH.D 636, the articles of association of that defendant company empowered the directors to declare dividends/profits to be paid to the shareholders, the company passed a resolution not to pay dividends, Wood a shareholder was aggrieved by this resolution which was contrary to what the articles provided, as a member and shareholder he applied to Court for an injunction to stop the company from acting on that resolution, Stirling J held that the articles of association constitute a contract between the company and its shareholders and the company was in breach of that contract by not following what the articles provided.

2. The contract created by the articles binds the company and its members only in their capacity as members ("qua member") and not in any other capacity.

Therefore, if a shareholder is to sue the company relying on the provisions of the articles, he should be suing in his/her capacity as a member and not as a creditor or director or any other capacity.

Note. That for a member to sue in their capacity as members, their claim should be based on violation of members" rights provided for by the articles.

In the case of HICKMAN Vs KENT (1915) 1 CH 881, Kent the defendant company had a provision in its articles that any dispute between the association and its members should be referred to an arbitrator. Hickman brought a claim against the company before an arbitrator relying on this provision because the company had refused to register his sheep in its published flock -book and threatened to expel him from membership. Court stayed his suit against the company holding that Hickman was not suing in his capacity as a member of the company and therefore he could not rely on the articles since the company had not breached a provision in its articles. The articles did not provide for rights of members to have their sheep registered with the company"s published flock book.

In this case, Asbury stressed the following;

a) That the articles of association cannot constitute a contract between the company and a non-member / third party.

b) That a member who is given a right by the articles in any other capacity other than that of a member cannot enforce such right against the company for example if a member is given a right by the articles as a lawyer / solicitor, promoter or director and not in his capacity as a member he cannot enforce such right against the company relying on the articles.

c) That the articles regulate the rights and obligations of members generally and therefore create rights and obligations amongst; the members themselves and the members and the company.

Also in the case of BEATTIE V.E & BEATTIE LTD (1938) CH 708, a director of a company was sued in Court in his capacity as a director. The articles of the company provided that any dispute between the company and its members should be referred to an arbitrator. The director who was sued in Court sought to rely on this provision in the articles to have his matter referred to an arbitrator. Court refused to grant his application and held that he could not rely on this provision since it only applied to members and he

was not being sued in his capacity as a member but in his capacity as a director. Court added that provisions in the articles constitute a contract between the company and its members in their capacity as members and not in any other capacity.

3. The memorandum and articles also constitute a contract amongst the members themselves (between the members "interse"). Thus, each member has a duty to observe the provisions of the memorandum and articles of association and if they do not, any member can sue them. In HICKMAN Vs KENT (1915) 1 CH 881, Ashbury J held that the articles regulate the rights and obligations of members generally and therefore create rights and obligations amongst the members themselves.

Also in the case of OBIKOYA Vs EZEWA & ORS, EZEWA and two others were all permanent directors in a company, the company"s articles had a provision that permanent director shall not vote for the removal of another permanent director from office. Ezewa and the other directors disregarded this provision, purported to alter the articles by resolution to enable them remove Ezewa from office, and there after they stopped him from acting as director. He sued them in their capacity as members for damages for breach of the provisions of the articles and asked Court for an injunction to stop them from preventing him from acting as director. It was held that the articles were a contract between the three members not to vote each other out of office and that the actions of the other of keeping Obikoya out of office was in breach of the provisions of the articles.

Membership :(the process of becoming a member)

Sec.47-49 of the Companies Act defines a member as a person who has signed the Memorandum and Articles of Association with the purpose of floating a company. Any person who applies and his name is entered on the register of members also becomes a member. In MAWOGOLA COFFEE FACTORY Vs KAYANJA, it was held that to be a member of a company, there must have been a valid allotment of shares to the person and his name entered on the register. It was further observed that a certificate of allotment of shares is the best evidence but in its absence, the register of members shall suffice. A minor can become a shareholder but he incurs no liability until he obtains the majority age and fails to repudiate the contract within a reasonable time. 35

CONSEQUENCES OF INCORPORATION

The fundamental attribute of corporate personality from which all other consequences flow is that "the corporation is a legal entity distinct from its members". -

Hence, it"s capable of enjoying rights and being subject to duties which are not the same as those enjoyed or borne by its members. In other words, it has a legal personality and it is often described as an artificial person in contrast with a human being a natural person. (SALOMON Vs SALOMON & CO)

Since the Salomon case, the complete separation of the company and its members has never been doubted. It is from this fundamental attribute of separate personality that most of the particular advantages of incorporation spring and these are:

LIABILITY per section 47

The company being a, distinct legal "persona" is liable for its debts and obligations and the members or directors cannot, be held personally responsible for the company"s debts. It follows that the company"s creditors can only sue the company and not the shareholders. In the case of Salomon V Salomon (1897), creditors of the company sought to have Solomon a managing director of the company personally liable for the debts of the company but court held that the company and Solomon were two different persons and that the company as a legal person is liable for its own debts and Solomon a managing director could not be held personally responsible for tie debts of the company. In the Ugandan case of SENTAMU Vs UCB (1923) HCB 59, it was held that individual members of the company are not liable for the company"s debts.

The liability of the members or shareholders of the company is limited to the amount remaining unpaid on the shares. For instance, where a shareholder has been allotted 50 shares at Shs. 100,000 each, in total he shou1d pay Sh.5,000,000 for all the fifty shares, if he pays only Shs. 4,000,000 to the company, it means that he still owes the company Sh.1,000,000. This is what is called uncalled capital. The company may call on him to pay it any time. If that does not happen, then at the time of winding up the company he will be required to pay the Shs.1, 000,000.

In the case of a company limited by guarantee, each member is liable to contribute a specific amount to the assets of the company and their liability is limited to the amount they have guaranteed to contribute.

If the company has unlimited liability, the members" liability to contribute is unlimited and their personal property can be looked at to discharge the company creditors but that is only after utilizing the company"s money and it is not enough to pay all the debts. 36

PROPERTY

An incorporated company is able to own property separately from its members, thus, the members cannot claim an interest or interfere with the company property for their personal gain/benefit. Thus, one of the advantages of incorporation (corporate personality) is that it enables the Property of the company to be clearly, distinguished from that of the members. In the case of MACAURA Vs NORTH ASSURANCE CO. (1925) AC Lord Buckmaster of the House of Lords held that no shareholder has a right to an item of the property of the company, even if he holds all the shares in the company.

In the case of HINDU DISPENSARY ZANZIBAR Vs N.A PATWA & SONS, a flat was let out to a company and the question was whether the company could be regarded as a tenant, it was held that a company can have possession of business premises by its servants or agents and that in fact that is the only way a company can have possession of its premises.

LEGAL PROCEEDINGS see sections 282-296.

As a legal person, a company can take action to enforce its legal rights or be sued for breach of its duties in the Courts of law. If it is the company being sued, then it should be sued in its registered name, if a wrong or incorrect name is used, the case will be dismissed from Court for example in the case of DENIS

NJEMANZE Vs SHELL B.P PORT HARCOURT, the plaintiff sued a company called Shell B.P Port Harcourt which was now a non-existing company, counsel for the defendant company objected that there was no such company and the suit should be dismissed, counsel for the plaintiff sought Court‟s leave to amend and put the right part but Court refused to grant the leave and dismissed the case.

In the case of WANI Vs UGANDA TIMBER (1972) HCB, the plaintiff applied for a warrant of arrest against a managing director of a company instead of suing the company, chief justice Kiwanuka held that a managing director of a company is not the company and cannot be sued personally, that if there is a case against the company then the company is the right party to be sued not its managing director.

PERPETUAL SUCCESSION

S.3 of the companies Act provides that a company is a legal entity with perpetual succession.

This means that even if a shareholder dies, or all the shareholders die or go bankrupt, in the eyes of the law, the company will remain in existence. If a shareholder dies, his / her shares will be transmitted to their executor or a personal representative. Also in case a shareholder no longer wants to be a shareholder in a company, he will simply transfer his shares to someone else and the company will continue to exist. The only way a company can come to an end is by winding up, striking it off the register of companies or through amalgamation and reconstruction as provided by the Companies Act. This was illustrated in the case of; RE NOEL EDMAN HOLDING PROPERTY all the members were killed in a motor accident but the Court held that the company would survive. Thus, this perpetual succession gives the certainty required in the commercial world that even when ownership of shares changes, there is no effect on the performance of the company and no disruption in the company business.

REGISTRATION OF FOREIGN COMPANIES

It must be noted from the onset that foreign companies are not incorporated but registered. The rational for this is because; the companies are already incorporated and simply extending operations. Therefore, it serves to note that registration is for foreign companies. The procedure for registration of foreign companies is evident in section 370 of the Companies Act and it is as follows:

Foreign companies which establish a place of business in Uganda should within 30 days from the date of establishment deliver to the Registrar the following for registration:

- A certified copy of the Charter, or Articles of Association and Memorandum of Association or Constitution of the Company

- A list of directors and secretaries containing their names, nationality, postal address, business occupations and in case of a corporation, a corporate name, its registered principle place of business and postal address.

- Statements of all subsisting charges created by the company and not charges comprising solely property outside Uganda.

- Names and postal addresses of persons authorised to accept on behalf of the company service of the court process and any other notices due to be served on the company.

- The full address of the registered or principle office of the company.

ESTABLISHMENT OF A FOREIGN COMPANY

Application for a investment licence S.9 of the investment code Act Cap 92 defines a foreign investor as a person who is not a citizen of Uganda.In case of a company ,it means a company other than that in S.9(2) in which more than 50% of the shares are held by a person who is not a citizen of Uganda (S.9(1) (b)

According to S.10 no investor shall operate a business enterprise without an investment license.

S.11(1) an application for a license shall be made in writing to the executive director and must contain the following information name and address of proposed business ,its legal firm, its bankers ,name and address of each director name, address ,nationality and shareholding of any shareholder who is not a citizen of Uganda.

-nature of proposed business activity and proposed location of the business.

-proposed capital structure amount of investments and projected growth over 5 years or more

-estimated employees

qualifications expenses, nationality and other relevant particulars of project management and staff .

-incentives which the applicant expects to qualify and details of such qualifications.

-any other information relating to the viability of the project.

Under S.14 of the investment code Act provides that the authority within 30 days after the receipt of the application, prepared a detailed report in respect of the application and accordingly within 14days after 30days consider the application and the report of an application is in accordance with the provisions of the code and the business to be undertaken is not unlawful on contrary to the interests in Uganda.

S.14(4) the authority within 7 days informs the applicant of its decisions.

S.15 provides that when the applicant for an investment licence and the authority have agreed on the terms and conditions of the investment licence and incentives if any authorize the holder of it to make all arrangements necessary for establishing the business enterprises ,contain the terms and conditions and the licence shall have 5years from the date of issue contain any other information or details as may be prescribed.

Reserve a business name. This is done by application to the registrar by ordinary letter. The registrar has to endorse on the letters that the name has been accepted.

Registration of the foreign company.S.252 of the companies Act, No 1 of 2012,A foreign company which establishes a place of business in Uganda shall with 30days after the establishment of the business deliver to the registrar for registration a certified copy of the charter ,statutes or memorandum and articles of association or other instrument ,constituting or defining company's constitution and where the instrument is not in English a certified translation of instrument (S.252)1) (a)

i) a list of the director and secretary of the company containing the particulars in S.5(2) (form A.19)

ii) Incase of an individual ,his or her present first name and surname any former first name or surname his or her usual postal address ,his or her nationality and his or her business occupation.

iii) In the case of the corporation, its corporate name and registered principle office and its postal address.(S.252(2)

c) A statement of all subsisting charges created by the company being the kinds set out in S.105(2) and not being charges comprising solely property situated outside Uganda.(Form A20)

d) Name and postal addresses of one or more persons resident in Uganda authorized to accept on behalf of the company service of process and notices required to be served on the company.(form A.21)

e) Full address of registered or principal office of the company (Form A.22)

On registration of the above document the registrar shall issue a certificate of incorporation signed by him or her that the company has complied with S..252 and shall be conducive that the company has registered or is registered as a foreign company.(S.253(i)

S.253(2) provides that upon registration of a foreign company the provisions of this Act shall apply to the foreign company as they apply to an incorporated company under the Act.

Application for an investment licence is done after the registration of the company which is issued by the Uganda Investment Authority.

Upon obtaining a certificate of registration GOIL Ltd will be eligible to open bank account in Uganda enter agreement and generally do business.

The CEO of GOIL Ltd should also apply for an entry permit S.54(i) citizenship Immigration control Act, cap provides that no person shall enter or remain in Uganda unless that person is in possession of a valid entry permit ,certificate of permanent residence or pass.

S.6(i) (d) of the citizenship immigration control Act provides also that no foreigner shall engage in private business in Uganda without an entry permit.

FORUM

URSB

Document (before registration)

A certified copy of incorporation translated)

A registered and certified copy of resolution passed to that effect authorizing the registration Feeshead of the second schedule companies (fees) rules 2005 item ,for registering a certified copy of the charter and statutes or memo and articles or other instrument constituting or defining the constitution of the company-25000 us

For registering any other documents required to be delivered to the registrar under part A of the Act Us & 55.00 Each co-form USD 10.

MANAGEMENT OF COMPANY - DIRECTORS – SHAREHOLDERS AND OTHER OFFICERS.

Management of a company is in the hands of Directors who are involved in the day to day running of the business. Shareholders on the other hand manage a company through meetings and formulation of policies.

Directors. A director is a person who directs the affairs of the company. Case of Stanbic bank Ug Ltd V Ducat Lubricants U) Ltd 83 ors- it was held that directors and managers are/represent the directing mind of the company.

Number of directors

SECTION 181 OF THE COMPANIES ACT CAP 106, States that every company other than a private company, shall at least have registered of one director

A public company has at least two directors.

TYPES OF DIRECTORS

Executive directors: Executive directors are full time officers of the company and they have administrative or managerial roles in the company's business and operations.

They include managing director or chief executive officer (C.E.O).

Under Article 107 of table A, the managing director is appointed by the directors from among themselves.

They may entrust and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they think fit.

Part III of the capital markets corporate governance guidelines 2003 prescribes best practices relating to the position of chairperson and chief executive.

Non-executive directors

Non-executive director is not involved in the administrative or managerial operations of the company.

Defector director

He is not formally appointed as a director but nevertheless acts as a director i.e. undertakes a directorial roe in the conduct of the company's affairs.

Shadow director

He has not been formally appointed as a director but is a person in accordance with whose directions or instructions the actual directors are accustomed to act.

Section 2 of the company's act defines a shadow director Includes any person occupying the position of director by whatever name called and shall include a shadow director

In RE UNISOFT GROUP (1993) BCLC 532, court held that a shadow director is the puppet master controlling the actions of the board. A shadow director must have been giving the majority of director's instructions as a regular practice over a period of time

Nominee directors for a single member company.

These are appointed by the actual director of the single company. Nominee are only effective when the SMC dies and alternate only acts when the nominee director is non-available. Nominee director

- Regulation 3 of the companies act (single member) regulations 2016, defines a nominee director as an individual nominated by a single member company to act as director incase of death of the single member.

- Section 182 (1) of The Companies Act 106, a single member shall nominate two individuals , one of whom shall become nominee director incase of death of a single member and the other shall become alternate nominee director to work as nominee director incase of non availability of the nominee director.

The role of nominee director

- Section 182(2) of The Companies Act 106 and regulation 11(2) companies act (single member) regulations 2016, the role of the nominee director shall include;

a) Manage the affairs of the company in case of death of a single member until the transfer of shares to legal heirs of the single member.

b) Inform the registrar of the death,provides particulars of the legal heirs.

c) Transfer the shares to the legal heirs of the single member

Call for the general meeting of the members to elect directors

alternate nominee director

- Regulation 3 of the companies act (single member) regulations 2016, defines an alternate nominee director as an individual nominated by a single member company to act as a nominee irector incase of non-availability of the nominee director.

- Alternate nominee director performs the same role as the nominee director after assuming the role of nominee director. As per section 182(2) of The Companies Act 106 and regulation 11 of the 2016 regulations.

APPOINTMENT OF DIRECTORS

First directors

Article 75 the names of the first directors are determined in writing by the subscribers to the memorandum of association as a majority of them. In practice, this is done by filing the particulars of directors and secretary at the time of registration of the company.

If the subscribers do not determine the first directors as above, then the signatories to the memorandum of association are deemed to be first directors.

An application to register a public company must be accompanied by written consent (company form 19) of the persons who have agreed to be directors of the company S.190(1) (a) CA.

Appoint of subsequent directors

Article 89 of table A, states that at the first annual general meeting of the company, all the directors should retire from office. The company in that annual general meeting (or an extra-ordinary general meeting if convened) must appoint new directors.

But they are eligible for re-election Article 91 Table A.

Procedure for appointment of directors

A) Appointed by ordinary resolution-a separate resolution must be passed by each director. An omnibus (i.e. appoint two or more directors) cannot be passed unless the members have unanimously agreed to make such a resolution-call extra-ordinary meeting A.49 with a notice, ordinary resolution is passed appointing the director.

B) Form 20 for S.224(5) company shall send appointment of directors/seventy to the registrar in the prescribed form used to notify the register. Form 7 – a return containing the particulars of a notification of any change among its directors or its secretary. Fees 20,000 finance Act.

C SECTION 190 OF THE COMPANIES ACT CAP 106 (applies to public companies)

At a general meeting of a company other than a private company, a motion for the appointment of a two or more persons as directors of the company by a single resolution, shall not be made unless the resolution has first been agreed to by the meeting without any vote being against it.

Appointment of temporary directors by the existing directors

Article 95 of table A, the directors have power to temporarily appoint any person to be a director either to fill a casual vacancy or as an addition to the existing directors, such a director holds office until the next annual meeting.

POWERS OF DIRECTORS.

a) Management of the company

Table A, article 80, the business of the company shall be managed by directors. GRAMOPHONE AND TYPEWRITER LTD V STANLEY (1908) 2 KB 89, directors are persons who are entrusted with the control of the business.

b) Appoint and remove the managing director.

c) Institute an action in the company's name. table A article 80. In the case of SOON PRODUCTION LTD V SOON YEON HONG AND KIM DONG YUN h.c.m.a no190/2008, it is settled law that it doesnot require a board of directors or even a general meeting of members to sit and resolve to instruct counsel to file proceedings. Any director who is authorized has powers of the board to act on behalf of the company to institute the suit.

d) Bind the company as agents. Section 50 of The Companies Act 106, powers of directors to bind the company. Section 53 of the companies act, documents executed by a director. In EMCO PLASTICA INTERNATIONAL LTD V FREEBERNE (1971) 1 E.A 432, court held that the contract was binding on the company made within the scope of ostensible authority of the managing director.

e) Power to appoint agents. Table A Article 81, appointing by power of attorney. Section 55 of The Companies Act 106, a company may by writing authorize a person to execute a deed outside UG. In B.O.U V BANCO ARABE ESPANOL (2002) 2 EA 333, the effect of a power of attorney which is duly signed and sealed binds the corporation.

f) Borrowing powers. Table A, Article 79(1). In the case of PHOTO FOCUS LTD V MULENGA JOSEPH (1996) 4 KALR 102, a director has powers to borrow money in the name of the Co. where the A.O.A donot prohibit the transcation. The loan acquired by the director binds the company and the company was liable to repay it.

g) Power to authenticate documents. Section 56 of the companies act

h) Power to call company meetings. Table A Article.98 provides for summoning a board meeting Table A Article 49, convening an extra-ordinary general meeting.

i) Power to use the official seal. Table A Article 82, diectors use of the official seal for use abroad. Table Article 82, directors use of the official seal. Section 56 of the C.A, power for a company to have official seal for use abroad.

QUALIFICATION OF DIRECTORS

A director must have the required qualification as stipulated in the companies Act,, articles of the company and any other relevant laws/rules/regulations.

S.187 of Companies Act CAP 106, states that the acts of a director or manager remains valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. Some salient conditions, qualifications and disqualifications include the following:

a) Minimum age is eighteen under SECTION 192

b) Minimum age if prescribed by the articles or other applicable law/rule/regulation.

Disqualification of directors

A person shall be disqualified from acting as a director for a period of three years if he or she; (Section 195 of the companies act cap 106)

a) Fails to keep proper accounting records

b) Fails to prepare and file accounts

c) Fails to send returns to the registrar

d) Fails to file tax returns and pay tax

e) Allows a company to trade while insolvent

f) Declared bankrupt (section 196 of the companies act 106)

Return of directors

Within fourteen days from the appointment of the first director, a return must be sent to the registrar whenever a change occurs in the director's view particularly a return must be made to the registrar within 14 days (SECTION 224(5) OF THE COMPANIES ACT CAP 106.

The appointment of a director or secretary is notified to the Registrar using company form 20.

Register of directors

S.224(2) OF THE COMPANIES ACT CAP 106 requires the company to keep a register of its directors and secretaries.

Duties and responsibilities of directors

This power has large been seen as deriving its force from Article 80 Table A which provides that;

"the business of the company shall be managed by the directors who may pay all expenses incurred in promoting and registering the company, any exercise all such powers of the company as are not by the Act or by these regulations required to be exercised by the company in general meeting, subject nevertheless, to any of these regulations, to the provisions of the act and to such regulations, being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have seen valid if that regulation had not been made".

As a general rule, directors' duties are owed to the company and not to individual members of the company.

The sovereignty of the directors within the powers conferred onto them by the articles was stated by GREER L) IN JOHN SHAW & SONS (SALFORD) LTD Vs SHAW (1935)2 KB 113 THUS;

"a company is an entity distinct alike from its shareholders and its directors. Some of its powers may according to its articles be exercised by directors; certain other powers may be reserved for the shareholders in a general meeting. If powers of management are vested in the directors, they and they alone can exercise these powers. The only way in which the general body of the shareholders can control the exercise of the powers vested by the articles in the directors is by altering the articles, or if the opportunity arises under the articles by refusing to re-elect the directors of whose actions they disapprove. They cannot themselves usurp the powers which by this articles are vested in the directors any more than the directors can usurp the powers vested by the articles in the general body of shareholders.

Section 194 OF THE COMPANIES ACT CAP 106 provides that the duties of directors include the following:

a) To act in a manner that promotes the success of the business of the company.

b) To exercise a degree of skill and care as a reasonable person would do looking after their own business.

c) To act in good faith in the interests of the company as a whole and this includes

(i) Treating all shareholders equally

(ii) Avoiding conflicts of interest.

(iii) Declaring any conflicts of interest The rule in the case of; ABERDEEN RAIL CO Vs BLAIKE BROS (L843) ALL ER 249 ; is that since a director is in a fiduciary relationship, he is not allowed to enter into any transaction in which he has a personal interest if to do so will result into a conflict with the interest of the company.

(iv) Not making personal profits at the company's expense;

(v) Not accepting benefits from third parties that will compromise him and,

d) Ensuring compliance with the companies Act and any other law.

OTHER OFFICERS

A) SECRETARY

S.1 of the Companies Act defines a company"s officer as including the company"s secretary, In Uganda, there are no specific qualifications required. Under S.183 of the Companies Act, where anything is required to e done by or to a director or a secretary, or an act is legally done by or to the same person acting as a director and as a secretary, it shall not be satisfied by its being done by or to the same person acting both as director and as or in place of the secretary. For example in signing the company returns, the secretary cannot sign them in both capacities as a secretary and a director. If it is not possible to find another director, the secretary re-delegates such powers to anybody in accordance with the articles.

Furthermore, according to S.186 of the Companies Act, a person is disqualified from becoming a secretary for a period not exceeding 5 years if he has ever been convicted of any offence relating to the company"s affairs from the date he is convicted.

Duties and authority of a company secretary

There is no clear-cur exhaustive definition for the secretary"s duties but these wilt depend on the company in question. In" practice, his duties include calling meetings, taking custody of sensitive documents, keeping the company seal and issuing share certificates. This notwithstanding, a company"s secretary is a very important person or officer of the company who can legally bind the company in its transactions.

It is settled that a company secretary in modern company law has the usual authority to bind the company in matters concerned with administration. In PANORAMA DEVELOPMENT (GUILDFORD LTD) Vs FIDELIS FURNISHINGS FABRICS LTD (1971) 3WLR 12, the company"s secretary ordered self

drive cars using a different companies letterheads and when the cars arrived, he diverted them to his personal use. When the defendant company was sued for the price of the cars, it raised a defence that it was not bound because the secretary who made the order was an insignificant person in a company (depending on earlier conception of the secretary). The Court of Appeal rejected the defence and pointed out that the secretary is an important company officer with in exhaustive powers, duties and responsibilities who can make representations on behalf of the company and can enter into contracts in the day-to-day running, of the company"s business. Consequently, because of his position in the company the secretary can be held liable not only to his company but also to the shareholders in civil suits

APPOINTMENT OF COMPANY SECRETARY

S.186 is to the effect that a company shall have a secretary.

A.110, Table A provides that the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit and any secretary so appointed may be removed by them.

S.186 qualification of company secretaries

A.11 Table A prohibited persons as secretary S.188 prohibition of certain persons being sole director or secretary.

REPRESENTATIVES OF CORPORATIONS

A.74 Table A -a corporation which is a member of the company may be resolution of its directors and other governing body authorize a person it thinks fit to act as its representatives at any meeting of the company.(special resolution)

S.144 A corporation whether a company may if it is a member of another corporation being a company by resolution of its directors authorize the persons to act as its representative at any meeting of the company.

This person so authorized is entitled to exercise the same powers on behalf of the corporation which he or she presents as the corporation could exercise it were an individual shareholder.

DUTIES OF THE COMPANY SECRETARY

K.A KRISTINA V INDO UNION ASSURANCE CO.LTD (1994) 14 COMP CAS 10(MAD), held that the secretary as a servant of the company is bound to carry out the duties assigned to him. Has the authority to bind the company in matters concerned with administration.

PANAROMA DEVELOPMENT (GUILDFORD) LTD V FIDELIS FURNISHING FABRICS (1971) 2 GB 711,the secretary purportedly on behalf of the company fraudulently hired cars ostensibly for the purpose of meeting customers and used the cars for his own private purpose .Held that the secretary had ostensible authority to enter into contracts for the hire of cars for the company and the company was liable to pay the hire charge.

Lord Denning in the Panaroma case stated that "times have changed a company secretary is a much more important person these days. He is an officer of the company with extensive duties and responsibilities. This appears not only in the modern companies Act but also by the role he plays in the day to day running of the company .He regularly makes representations on behalf of the company and enters into contracts on its behalf.

The duties of a company secretary include;

a) Prepare minute S.148 OF THE COMPNIES ACT CAP 106 of the proceedings of meetings of a com of directors

CAIRNEY v Back (1906) 2 KB 746 it is usually the duty of the secretary to prepare the minutes of the proceedings of the general as well as directors.

b) Writes letters for the company

JOHNSON V LYTTLES ISON AGENCY (1877) 5 CH D 687 (CA as a general principle when the secretary writes letters on behalf of the company ,it is to be assumed in the absence of evidence that he is authorized by the company to write them.

c) Certifying transfers SECTION 88 (3) (b) OF THE COMPANIES ACT CAP 106,

Re Fredrick slobart and Co (1902) Ch 507 the duty of the secretary includes certifying transfers and receiving and registering notices on behalf of the company.

d) Custodian of the company seal

A.113,Table A to which the seal is applied shall be signed by the director and counter signed by the secretary. A-113 (3) every instrument.

e) Receives court summons and represents the company in legal matters.

Q.26 R.2 the summons may be served on the secretary or on any director or other principal officer of the corporation where the suit is against a corporation.

f) Authentication of document.

SECTION 57 OF THE COMPANIES ACT CAP 106, a document requiring authentication may be signed by a company secretary.

g) File company resolution and returns.

S.132 OF THE COMPANIES ACT CAP 106 time for completion of annual return is 42 days and the company shall within that period forward to the registrar a copy signed by both a director and secretary.

6. Refer to the previous note on debentures, charges collateral security and mortgages.

MEETINGS, RESOLUTIONS AND RETURNS

Article 80 of Table A of the Companies Act and case law generally empower the directors - to manage the affairs of the company save for those matters which the Act and the Articles of Association of that company may reserve for the shareholders in the general meeting. This notwithstanding, the ultimate control of the affairs of the company lies with the general meeting.

A) EXTRA ORDINARY GENERAL MEETINGS

SECTION 135 Provides that the directors of a company shall on the registration of the members holding not less than one tenth of the paid up capital convene an extra ordinary general meeting of the company.

According to S.135(2) the requisition must state the objects of the meeting and must be signed by the requisionist and deposited at the registered office of the company.

S.137(A) provides that notice of the meeting shall be served on every member of the company.

A 50 (1) Table A provides that every general meeting shall be called by at 21 days notice in writing.

A.51 Table A provides that the accidental omission to give notice of a meeting to any member entitled to receive notice shall not invalidate the proceedings at the meeting.

A.52 all business that is transacted at an extra ordinary meeting shall be taken to be special.

Quorum,S.137(c) provides that 2 members of a private company personally present shall form a quorum.A.53 (1) provides that business shall not be transacted at a general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

Minutes .A 86(c) provides that the directors shall cause minutes to be made in books for all resolutions and proceedings at all meetings of the company.

S.148 provides that every company shall cause minutes of all proceedings of general meetings and all meetings of directors to be entered in books kept for that purpose.

Where minutes have been made in accordance with the proceedings the meeting shall be taken to have been duly held.(S.148 3)

Table A.A .48 provides that all general meetings other than the Annual General meetings shall be called extra ordinary general meetings.

A.49 the directors may convene an extra ordinary general meeting and extra ordinary general meetings shall be convened on such requisition or in default as provided for under S.137.

Re state of Wyoining Syndicate (1901J 2 ch 431,the company secretary or other executive has no power to convene /call a general meeting unless the board ratifies his act of doing so.

INDIAN CORRIDOR V GOLDEN PLUS (2008) 3 MLJ 653, court held that the directors must convene an extraordinary general meeting when requisitioned by members.

B) BOARD MEETING

A.98 of the Table A provides that director may meet together for the dispatch of business adjourn and otherwise regulate their meeting as they think for questions arising shall be decided by a majority of votes.

UK Safety Group Ltd v Heane (1998)2 clc 208 court held that it may not be necessary for a board to meet formally in order to transact business .it may be possible for all the directors informally to transact business.

IN HAYES V BRISTOL PLANT HIRE LTD (1957) 1 ALL ER 685, a duly appointed director cannot be excluded from a meeting by other directors.

In industrial coffee growers (u) ltd v Tamale HCCS 215/63, it is settled law that a meeting of directors is not duly convened unless due notice has been given to all directors and that any business conducted at a meeting not duly convened is invalid.

A.98 (4) provides that a director may and the secretary on the requisition of a director shall at any time summon a meeting of the directors.

A.99 sets out the quorum and this may be fixed by the directors and if not fixed the quorum is two.

Table A Article 101, directors to elect a chair person at their meetings and will determine the tenure of office.

According to A.104 (2) questions arising at the meeting shall be determined by a majority of votes of the members present and where there is an equality of votes the chairperson shall have a second or casting vote.

Under A.86 (c) the directors shall cause minutes to be made in books provided for the purpose of all resolutions and proceedings at all meetings of the company and the names of every directors present at the meeting. Every director shall sign his / her name in that book.

The general rule is that all directors should act collectively.

The resolution passed in such a meeting is the board resolution.

Therefore the directors can convene the board meeting in order for them to agree on borrowing ,.However the sanctioning of the borrowing is agreed upon in the extra ordinary general meeting.

Procedure of having an extra ordinary General meeting.

The directors issue out notice of the meeting. It is issued by the company secretary inviting members to come and attend a meeting on the date specified and place. Section 136(1) of The Companies Act 106; The notice should be issued by the company secretary 21 days prior to the date of meeting. The notice should be in writing (S.136 (2) and A.50 (1)

1. Tressen v Henderson (1899) I Ch.861 court said that the notice issued for purposes of rolling members of the

2. Upon lapse of 21 days the meeting shall be held at the place indicated therein in the Notice.

3. The chairperson of the Board of Directors shall preside at every general meeting.

4. The director welcomes the members to the meeting and will read the agenda of the meeting. Opening prayer shall be given by one of the members

5. Quorum

6. If there is quorum then the chairperson shall inform the members of the sole reason of the meeting which is vote for the directors and secretary borrowing money from the Bank

7. Members are invited to vote.

Northwest transportation Co.Ltd v Beatty (1857) 12 589 court held that a shareholder has a right to vote as he/she wishes.

Special resolution notice has to be made for 28 days before the meeting.

C) ANNUAL GENERAL MEETINGS (AGM)

Every company is required under Section 134 (1) of the Companies Act in each year (and not more than 15 months from the date of the last annual general meeting) to hold an annual general meeting specifying it as such in the relevant notices calling it. The AGM is usually called by the directors.

Table A, Article 47, AGM by a company. A private company may hold an AGM at the requisition of a member. The usual business at an annual general meeting includes:

a) Receiving profit and loss account

b) Receive and consider the directors report

c) Declare a final dividend

d) To appoint directors

e) To appoint auditors and fix their remunerations as per section 163 (1) of the company's act CAP 106

f) To consider any other resolution (special business) in respect of which special notice ought to be given.

g) It is commenced by a board resolution calling for the AGM.

However if the directors do not call one then the Registrar may under Section 134 (4) of the Companies Act on the application of a member direct the convening of such meeting and he may also give directions as to its conduct including a directive that one person may form a sufficient quorum or make any necessary modifications relating to its calling, holding or conducting. (See RE EL SOMBRERO (1958) CH. 900).

The AGM usually considers such business as declaration of dividends, appointment of auditors, appointment of new directors etc.

Defaulting in holding the AGM is an offence which attract criminal sanctions under Section 134(8) of the Companies Act.

IN THE MATTER OF AN APPLICATION FOR AN ORDER DEFERRING THE COVENING THE ANNUAL GENERAL MEETING OF IGARA GROWERS TEA FACTORY LIMITED (MISC CAUSE NO.82 OF 2024)[2024] UGHCCD, the high court held that lack of funds to conduct an annual general meeting amounts to sufficient cause to defer the same.

D) COURT ORDERED MEETINGS.

Section 138 of the companies act CAP 106. This is upon application by any director or member. In RE-EL-SOMBRERO LTD (1958) 3 ALL ER 1, since practically a meeting couldnot be held under the articles, the court had jurisdiction to order for one.

GENERAL MATTERS RELATING TO MEETINGS.

A) NOTICE OF MEETINGS.

Section 136 (1) of the companies act, a notice of a meeting to be for 21 days except if the articles state otherwise. Section 136 (2) of The Companies Act 106, the notice ought to be in writing. Table A Art.50, notice of a general meeting to be in writng and for 21 days.

Section 136 (4) of The Companies Act 106, a shorter notice calling for a meeting if agreed by members at AGM. Table A Article 134, persons entitled to notice. Section 137(c), unless provided for by the articles, the quorm for a private company shall be 2.

Chairperson

Section 137(d), appointment of the chairperson. Article 55 of Table A. Table A, ARTICLE 60, Chairperson to have casting vote.

Duties of a chairperson.

a. To preserve order

b. To ensure that the proceedings are properly conducted.

c. To ensure that all shades of opinion are given a fair hearing

d. To ensure that the essence of the meeting is accurately ascertained and recorded.

B) VOTING

Except as the articles may otherwise provide, in a company having a share capital, every shareholder is entitled to one vote for each share held by them (See Section 137 (e), Article 62 „Table A of the Companies Act) and proxies are not entitled to vote except by way of poll S.(139(c) of the Companies Act.

However, a poll maybe demanded before or on the declaration of a show of hands (Article 58 Table A of the Companies Act)

C) PROXIES

Section 141 of The Companies Act 106, voting at meetings through proxies is authorized. Under Section 139(1) of the Companies Act, any member of the company entitled to attend and vote, at a meeting of the company is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him and a proxy appointed by a member of a private company shall have the same right as the member appointing him to speak at the meeting except that unless the articles otherwise provide:

(a) the subsection shall not apply to a company not having a share capital;

(b) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion and

c) a proxy shall not be entitled to vote except on a poll

D) MINUTES

a) Article 86(c), directors shall cause minutes to be made in books for all resolutions and proceedings at all meetings of the company. Section 152(1) every company shall cause minutes of all proceedings of general meetings and all meetings of directors to be entered in books kept for that purpose. Article 48 of table A, all general meetings shall be called extra-ordinary general meeting.

In the case of RE STATE OF WYOMING SYNDICATE (1901) C CH 143, the company secretary or other executive has no power to convene or call a general meeting unless the board a ratifies his act of doing so.

RESOLUTIONS

TYPES OF RESOLUTION

Even majority shareholders cannot act without a company resolution.

SWIMMING POOL AND UNDERWATER REPAIR LTD (PTY) AND OVS RUSHWAY AND ANOR S.32-12 (ZIMBABWE) it was stated that for a majority shareholder to succeed in an action to evict a minority shareholder, it is necessary to allege and prove that this company resolved to evict the minority shareholders and that the majority shareholder has locus standi to initiate legal proceedings to enforce the company's resolution it is not enough for the majority shareholder to simply say that as the majority shareholder it wants to exclude and evict from the administration of the company the minority shareholder without a company resolution to that effect.

a) ORDINARY RESOLUTION

This is not defined by the Act and does not have any notice or majority requirements .It can be passed by a bare or simple majority of votes at a meeting that is above 50%.

Whenever the approval of the members is required and ordinary resolution is enough unless some other resolution is specified.

The specific period of notice is required unless it is an ordinary resolution after a special notice. It depends upon the meeting at which the resolution is to be passed i.e AGM ,EGM . a resolution passed on a poll taken at a meeting is passed by a simple majority. Anything that can be done by ordinary resolution can be done by special resolution. An ordinary resolution suffices where the company act or the articles provide that a particular decision has to be made by members and there is no provision for any other type of resolution. No specific period of notice is required unless its an ordinary resolution after special notice as seen under Section 145 of The Companies Act 106.

An ordinary resolution can be amended after notice.

b) SPECIAL RESOLUTION

S.144 of the companies act Act cap 106, provides that a resolution shall be a special resolution when it has been passed by a majority of not less than 3/4 of members at a general meeting of which notice specifying the intention to propose the resolution as a special; resolution has been duly given.

At any meeting at which a special resolution is submitted to be passed a declaration of the chairperson that the resolution is carried shall unless a poll is demanded be conclusive evidence of the fact without proof of the number of rates recorded in favour of or against the resolution.

Registration of a special resolution shall within 30 days after the passing or making of the resolution be delivered to the registrar for registration .Where a company fails to comply who is in default is liable to a default fine of 5 currency points (100000) (Section.148)

Filing a special resolution out of time SECTION 273 OF THE COMPANIES ACT CAP 106, where any document is required to be filed, delivered to the registrar within a specified period ,the duty to do so shall not cease on the expiration of that period but shall be a continuing duty.

The registrar shall on payment of such additional fee as may be prescribed register any document delivered to him out of time.

Special resolution should conform to the notice given.

Amendment of a special resolution is permitted if it is to correct a typographical error or if the substantive object of the special resolution is unchanged.

b) EXTRA ORDINARY RESOLUTION.

A resolution is an extra ordinary resolution when it has been passed by a majority of not less than 3/4 of such members as being entitled to vote at a general meeting of which notice specifying the intention to propose the resolution as an extra ordinary has been duly given.

where on the coming into force of this Act the articles of any company carrying on business in Uganda may require any matter or thing to be done by the passing of an extra ordinary resolution that matter or thing shall be taken to have been lawfully and sufficiently done by the passing of special resolution.

Registration of resolutions S.150 finance Act 2013 for any resolution filed under the companies Act 3 copies 20,000/=

c) BOARD RESOLUTIONS

Board room meetings . made by directors as per regulation 98 to 106 of TABLE A.

Passing of a resolution

a) Request for a company meeting

b) Company secretary calls for meetings through notices sent to members

c) During attendance, the company secretary reads out the agenda

d) Issues are raised at the meeting and a way forward is proposed.

e) Members are required to pass a resolution on the issues raised by way of voting

f) Company secretary takes minutes.

g) The resolution should be reduced in writing

h) The secretary is supposed to extract copies of the resolution from the minister have it signed.

i) Copies of the resolution to be filed with URSB.

SHAREHOLDING ,MEMBERSHIP AND RIGHTS OF MEMBERS IN COMPANIES

A share is defined in the ICSA Study Text, Paper 12 of Corporate Law; as a unit contribution by a member of the company/ promoter towards a company's capital. Capital connotes the value of the assets contributed by those who subscribed for shares. In the case of BRADBURY V ENGLISH SEWQING COTTON COMPANY LTD (1923) AC 744, a share is the fractional part of the share capital. shares are individual property whereas share capital belongs to the company. In relation to capacity to become a shareholder; the companies Act has no clear cut provision. In practice a minor, personal representative, trustees in bankruptcy, a company and an individual inter alia, can be a shareholder. Article 2 of Table A of the Companies Act gives the company the right to issue shares of any type with any rights or Liabilities it may wish.

Shareholders.

In the case of MATTHEW RUKIKAIRE V INCAFEX, the court defined a shareholder as a person either individual or corporate who is issued with shares subsequent to the formation of the company through the process of allotment.

The shareholder has the right to ownership in the share and the right to information.

There are many types of shares; thus

A) Ordinary Shares

Also known as equity shares. These have no special rights and have the highest risks.

B) Preferential shares

Holders of such shares have preference and priority over the rest of the shareholders. The shares are cumulative. The disadvantage or advantage with this type of share is that they payment does not go beyond the fixed dividend. They are usually held by promoters and directors. They have preference over other shares. Their issuance is authorized by MOA or AOA. Holders are entitled to dividends voting rights, they are not paid dividends out of assets in liquidation and maynot be used for payment of capita when winding up.

C) Redeemable shares

These shares are bought by the company after issue of shares. However, a company cannot have the entire share capital made up of entirely redeemable shares. A company cannot convert shares into redeemable if the shares in question have not been issued as redeemable shares and secondly, a company cannot redeem redeemable shares which are not fully paid up.

Section 66(2)(a) of the companies act, shares shall not be redeemed except out of profits of the company or from proceeds of fresh issued shares made for the purposes of the redemption.

Section 66(2)(b), the shares shallnot be redeemed unless fully paid up

Section 66(2)(c), premium paid on redeemed must have been provided for out of profits or out of the share premium account before shares are redeemed.

Section 66(2)(d), the proceeds shall be transferred to a reserve fund called "the capital redemption reserve fund."

D) Redeemable preference shares.

They take preference over all shares and are bought back or redeemed by the company.

E) Deferred shares

They are for founders of the company

The rights of holders of deferred shares depends on the AOA.

F) Employee shares.

Section 61(2)(b), financial assistance is allowed for an employee under an employee share scheme.

G) Non-voting shares

They donot give the holder any voting right in the company. They are usually issued to employees or to family members of the main shareholders. They are entitled to vote in cases of; amending articles, adoption of by-laws and sale, lease, exchange or other disposition.

IN THE CASE OF SSENTEZA AND ANOTHER V DONNIE COMPANY LTD AND ANOTHER (HCT-00-CV-CI-0005-2016), It was held that before a minority shareholder seeks redress from court over complaint relating to operation and prejudicial conduct, he or she should first seek redress from the registrar of companies.

MEMBERSHIP

COMPANY MEMBERSHIP.

Who is a member?

A member is defined under S.45 of the COMPANIES ACT CAP 106. S.45(1) states that the subscribers to the memo of a company are taken to have agreed to become members of the company and on its registration they must be entered as members in its register of members.

In MATTHEW RUKIKAIRE V INCAFEX LTD, a subscriber was defined as the first member(s) of a private limited co who add their name to the memo of association during co. formation.

In S.45 (2) states that a person who agrees to become a member of a company and whose name is entered in its register of members shall be a member.

Proof of membership.

In the case of MAWOGOLA FARMERS AND GROWERS LTD V KAYANJA (1971) E.A 272, cited with approval by the Supreme Court in MATTHEW RUKIKAIRE V INCAFEX LIMITED, C.A NO.03 OF 2015, the court laid down the principle that presence of an individual's name on the register is not the only way in which shareholding can be proved.

In LUTAAYA V GANDESHA (1985) HCB 46, the court stated there was not one exclusive or exhaustive mode of proving membership of a company. The occurrence of ones name on the register of members was only prima facie evidence and other evidence could be adduced to rebut that. Court further noted that some of the ways of proving membership was possession of a share certificate and to some extent the appearance of ones name on the annual report.

Duty to maintain the register of members.

S.117 OF THE COMPANIES ACT CAP 106, mandates the company to maintain the register of its members. The company thus according to the court in MATTHEW RUKIKAIRE V INCAFEX, has the obligation to enter each member on the register. In the context, the company's duty lies with its company secretary whose duty is to ensure that the company complies with relevant legislation. Thus failure of a company to enter a members name cannot be vested on him/her and will be allowed to adduce other evidence to prove membership.

Members.

These essentially enjoy three broad rights:

1. Right to information and this entails the right to obtain copies of the company document, right to inspect the members register or the minute book, a right to notices of the meetings

2. right to participation

This includes the right to vote during company meetings, a right to demand a vote by poll during meetings and generally a right to attend company meetings.

3. right to ownership.

This includes the right to transfer shares, right to a share certificate, right to be entered on the register of members and the right to receive dividends.

RECTIFICATION OF A MEMBERS REGISTER.

Rectification of a members register only arises when there is a need to add a name of a member to the register or to exclude a member added irregularly.

There are 2 kinds of members register:

1. A member's register kept by the company at its premises. This can be rectified by an order of the register of companies pursuant to Reg 8 of the companies (powers of the register) regulations, 2016. You proceed either by letter or petition or by statutory declarations. Favored by the register general. The answer to the petition is by reply to the petition which is like a WSD accompanied by an SD.

2. A member's register kept by the registrar of companies. This can be rectified by court order pursuant to S.123 of the company act. When proceeding pursuant to S.125, you proceed to court under O.38 r 4 of CPR which provides for either a notice of motion or chamber summons.

REGISTER OF COMPANIES

Regulation 3 companies (powers of the registrar) regulations provides for he extensive powers of the registrar of companies.

Regulation 8 (1), the registrar has powers to rectify or update the registers so as to ensure that the register is accurate. Regulation 8(2), the registrar has powers to expunge any information from the register on the grounds that the info is:

a) Misleading

b) Inaccurate

c) Is issued in error

d) Contains an entry endorsement made in error

e) Contains an illegal endorsement

f) Is illegally or wrongfully obtained.

Regulation 33 (1) reference to court by the registrar for determination of any matter. In RE MILTON OBOTE FOUNDATION CO CAUSE NO.1/1997, court held that the high court affirmed its jurisdiction to hear an application for rectification of the registrar of companies kept by the registrar of companies.

Possible defences for the company

1. Forfeiture of shares

2. Lack of locus standi.

Reply to the defences

1. The call on shares was unlawfully made

2. A subscriber the memorandum of associations has locus and can petition court.

Powers of a registrar upon presentation of the petition

a) Section 258 of The Companies Act 106, establishment of registrars

b) Section 170 of The Companies Act 106, provides for the inspection of company's affairs on application of members.

c) Regulation 28 of companies (power of registrar) regulations 2016, upon receipt of an application or petition, he or she summons all the persons named therein to appear before him or her on a date and venue stated in the summons.

d) Regulation 30, service of summons on ay one whose attendance is required.

e) Regulation 31, keep a record of proceedings containing a serial number of the matter and other particulars.

Circumstances a petition can be made to the high court

Section 33 of The Judicature Act Cap 16. The high court has powers to grant any such remedies in any matter equitable or legal in nature.

a) Rectification of members register.

Section 121(1) of the compnies act, powers of the high court to rectify the register.

b) Oppression of a member.

Section 245 of the companies act(alternative remedy to winding up in cases of oppression)

Olive kigongo v mosa courts apartments ltd h.c company cause no.1/2015, the court held that section 247 is not a section under which court can make orders except if the register has referred the petition to court under section 293.

c) Unfair prejudice.

Section 246(1) of The Companies Act 106 (protection of members against predicial conduct)

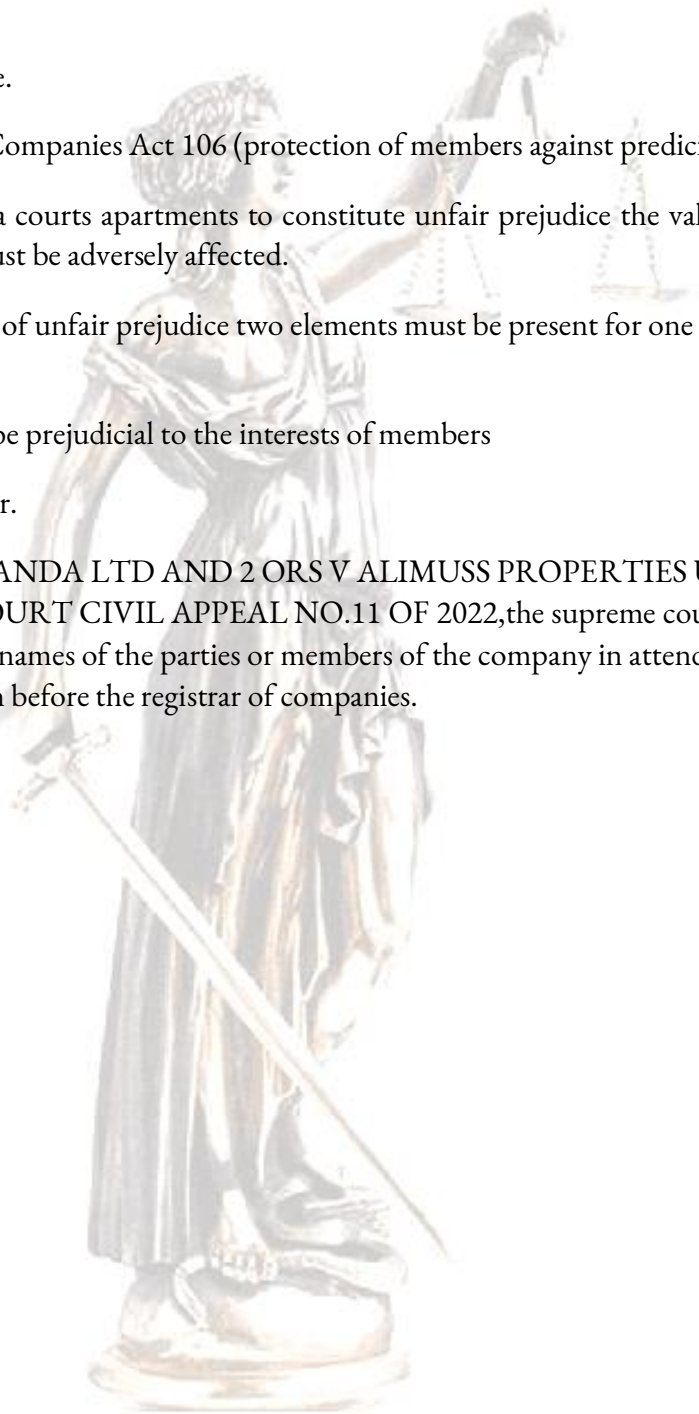
In olive kigongo v mosa courts apartments to constitute unfair prejudice the value of or quality of the shareholders interest must be adversely affected.

To invoke the principle of unfair prejudice two elements must be present for one to succeed in a petition under section 246;

a) Conduct must be prejudicial to the interests of members

b) It must be unfair.

In the case of CIM UGANDA LTD AND 2 ORS V ALIMUSS PROPERTIES UGANDA LTD AND 3 ORS, SUPREME COURT CIVIL APPEAL NO.11 OF 2022,the supreme court of Uganda held that it is vital to indicate the names of the parties or members of the company in attendance in the resolutions prepared for registration before the registrar of companies.



RAISING AND MAINTENACE OF SHARE CAPITAL.

Share capital is the authorized capital of the company i.e the amount which it can raise by way of issuing shares and this is stated in the memo.

All companies limited by shares are incorporated with a nominal or authorized capital which must be stated in the Articles and Memorandum of Association.

They are many types of share capital thus;

A) Nominal capital

This is the startup capital. Is the amount of share capital which the company is authorized to issue. Section 6 (4)(a) of the companies act CAP 106, the M.O.A must state the share capital it proposes to be registered and the division of that share capital.

B) Issued capital or allotted capital

This refers to shares issued to members. it's part of the company's nominal share capital which has been issued to the shareholders.

C) Paid up capital

This refers to issued capital which is paid up. Section 67(a) of the companies' act CAP 106, power of a company to arrange different amounts being paid on shares. Article 15 of Table A, call for payment.

D) Reserve capital

Part of the uncalled capital which a limited company has by special resolution determined shallnot be called up except for the purposes of winding up. Section 68 of The Companies Act 106, reserve liability of a limited liability company.

E) Sweat equity

Skills contribution or intangible contribution. It must be valued based on the negotiation of the parties involved. Section 59(1) (b) of the C.A CAP 106, return of allotment form for contribution other than cash.

There are various ways of raising share capital and these include;

A) INTERNAL SOURCES

i. EQUITY FINANCING

a) Selling shares at a premium.

Pursuant to S.64 of CA, which provides for sell of shares at a premium, a company may sell its shares at a premium in order to raise share capital.

Where the company sells shares at a premium, it must open a premium account because the premium is treated as part of its paid up capital.

Procedure: a board of directors meeting is convened and a board resolution to issue the shares at a premium is passed.

b) Issuing redeemable preference shares.

Redeem means buying back and preference refers to those shares which have priority over ordinary shares usually fixed at a percentage per value.

Pursuant to S.66(1) of the company act, a company limited by shares may if authorized by its articles ,issue preference shares which are at the option of the company are liable to be redeemed by the company.

A company can only issue redeemable preference shares where it is authorized by the articles of association to do so.

Under Art.3 of table A, redeemable preference shares are issued with the sanction of an ordinary resolution of the company on such terms as stipulated.

A board resolution issuing the shares is passed pursuant to the ordinary resolution sanctioning the issue of redeemable preference shares.

Procedure for redeeming redeemable preference shares.

The redemption of redeemable preference shares is an exception to the rule in TREVOR V WHITWORTH (1887) 12 AC 409, that a company has no power to acquire its own shares. The rationale being the maintenance of capital which prohibits a transaction between a company and shareholder where money is retained by the company to the shareholder unless there is a court order.

When redeeming redeemable preference shares, the company must pay due regard to S.66 (2) which requires that:

a) The redeemable shares only be redeemed out of profits of the company which would otherwise be available for distribution as dividends out of the proceeds of a fresh issue of shares made for the purpose of redemption.

b) The redeemable shares can only be redeemed when fully paid up.

c) The premium if any, payable on redemption, must have been provided for out of company's share premium accounts before the shares are redeemed.

d) Where the shares are redeemed other than out of the proceeds of a fresh issue, there shall be out of the profits which would otherwise have been available for dividend be transferred to a reserve fund to be called " the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed and shall be treated as paid up share capital of the company subject to the restrictions on reduction of share capital.

- The company essentially must have twice the amount required to finance the redemption

- The half of that will be transferred to the capital redemption reserve and this will replace the capital redeemed.

The redemption is by board resolution and a notice issued to the shareholder of the redeemable preference shares as per the terms of issues.

Rights of a holder of redeemable preference shares.

a) Payment of dividends.

He or she has priority over ordinary shareholders in respect of payment of dividends. A dividend is only paid out of profits as per Article 116, Table A of The Companies Act 106.

b) Temporary membership; this comes with voting rights especially in class meetings.

c) Right to redeem

d) Right to cumulative payment especially where the company defaults

e) Right of precedence over ordinary shares.

f) Right to convert to other classes of shares.

c) Allotment of shares subject to pre-emption rights.

The very essence of a private company is that these is restricted transfer of shares to the public. S.4 (1) (a) defines a private company as a company which restricts the right to transfer its shares and other securities.

The pre-emption rights are contained in the articles of association.

Procedure of allotment.

Convene the requisite meetings as per articles. However often it is:

a) A board meeting which passes a board resolution calling for an EOGM

b) Notices are issued to the members convening the EOGM

c) EOGM having the requisite numbers passes a resolution allowing the board to allot the shares all members having exercised their preemption rights/members take up shares

d) Board convenes a meeting and passes a resolution allotting the shares to a prospective shareholder in the public or issuing them to an existing shareholder who exercised their pre-emption rights.

Documents.

- Notices calling for meetings
- Ordinary resolution
- Board resolutions
- Return of allotment.

d) Allotment in excess of share capital.

Where the company needs to allot shares in excess if its share capital, it must pass a special resolution increasing its share capital clause in the memo pursuant to S.69 (1)(a) of C.A and a notice of increase of share capital under S.73(1) of C.A within 30 days from day of passing the resolution.

On top of other documents, a notice of increase of share capital in the form in form 12 of CO. (Gen) Regs 2016.

Reg.20 (2) requires that the special resolution altering capital be attached.

Certain restrictions may be imposed on the allotment of certain shares by the registrar pursuant to S.181 (2) (b) and (c) of C.A.

e) Shareholders loan agreement.

The company in a purely loan agreement between it and one of its shareholders receives funds from its shareholder as a loan. The arrangement does not confer onto the shareholder any rights other than those of a creditor of the company.

Procedure.

- The board of directors convene for a board meeting and pass a board resolution to the effect the company should borrow money from the name shareholder, payable in the given time and other terms.

f) Call on shares.

Refer to notes on call on shares.

g) Issue of shares at a discount.

This is pursuant to S.65 (1) of the C.A. the issue of shares at a discount must pursuant to S.65 (2) be sanctioned by a resolution of the company at a general meeting and sanctioned by court.

Raising capital from forfeited shares.

a) Board resolution. The board of directors is required to pass a resolution of the board for re-issung these shares.

b) Re-issue or sale

• Article 36, Table A, forfeited shares maybe re-issued or sold as the directors may deem fit at a premium, per value or discount but the amount of discount on the re-issue of forfeited shares cannot exceed the amount forfeited on these shares.

• The purchaser acquires good title to the share

• They are not an allotment of old shares and therefore no requirement to filea return of allotment with the registrar.

RAISING CAPITAL FROM UNISSUED SHARES.

Premium is the difference between the nominal value of the shares and the amount at which they have been issued.

a) Issuing shares at a premium and the circumstances

• Unissued shares are shares that have not been allotted or put up for sale.

• Issuance of shares above the initial nominal value or per value of the company

• Section 64(1) of the companies act; the value of the premium or proceeds shall be transferred to a "share premium account."

• Section 64 (2) of The Companies Act 106 provides for the purpose of the share premium account

□ Paying up unissued shares

□ Writing off preliminary expenses

□ Paying premiums on redemption of debenture or redeemable preference shares.

□ Writing off expenses incurred, commisiion paid or discount allowed on the issue of any securities or debentures.

- Buying back shares or securities.

Premium is determined through valuation by a certified public accountant (CPA) and a valuation report must be provided.

In the case of HILDER V DEXTER (1902) ac 474, a company may without special power in its articles issue shares at a premium i.e for consideration in cash or in kind.

Allotment of shares to another person (non-member) in a company without affecting the voting rights of existing members.

Allotment is a process by which the company finds someone who is willing to become a shareholder in accompany as adopted in MATTHEW RUKIKAIRE V INCAFEX (U) LTD S.C.C.A NO.3 /2015

It's the obligation of the company to enter each member on the member's register and mere registration of allotment is not evidence that the allotee has accepted the shares and paid for them. In MATTHEW RUKIKAIRE V INCAFEX (U) LTD, court found that a party can still be a member even if they don't pay as long as the name still appears on the allotment of returns forms and the same appears on the register of members. Title of the allottee becomes complete either by the holders of the shares receiving some certificate or being placed on the register of shareholdres.

In order not to distort the voting powers of the existing members, it is prudent to create a class of shares that envisage voting rights in the company.

External sources/ways of raising capital.

1. Debt financing

The company takes out money directly from a lender in form of a loan often secured by a debenture. The lender may be a bank, money lender etc.

2. Lease financing.

The lender (lessor) acquires an asset needed by the company and allows the company to use the asset as it makes periodic payments for a specified time. Upon lapse of the specified time and the company has fulfilled its obligations, the ownership of the asset then passes to the company. The periodic payment is known as the lease rental.

3. Tradeoffs.

A company approaches a lender (3rd party) and asks them to buy off their existing debts obligation with another lender on the agreement that the new lender offers better repayment terms in terms of say interest payable on the debt and the duration of repayment.

4. Trade financing.

This involves things such as letters of credit and other short term loan arrangement geared at facilitating the company to acquire trade items.

5. Bail outs.

These are offered by government to financially distressed companies so as to help them solve their solvency issues.

6. Warehouse receipting.

This occurs where a ware housing company is given the mandate to ware house the goods of the company by another entity extending a credit facility to the company. The condition is that the warehoused goods proceeds are applied to the servicing of the credit facilitate. The company is thus allowed to access the products at the warehouse as long as it continues to service its credit facility.

7. Hire purchase.

The company acquires an asset and pays a down sum as agreed and takes possession of the asset. The company then continues to pay a specified sum for a given period before ownership can pass to the company. Default in payment means the purchaser can reposes the asset.

8. Disposal of assets.

A company can sell off its assets and raise money from the sell.

9. Tax credits.

Share holder loans and how they can be issued.

Shareholder loan is a form of financing where shareholders of a company advance funds to the company on loan terms reduced down to a shareholder loan agreement.

Section 48(1) of the company's act permit a company to execute any contract in its corporate name. article 79(1) of Table A, powers of the directors to borrow. Shareholder loans are always preferred to bank loans because of their friendly terms.

How are they issued:

a) Board resolution authorizing borrowing

b) Executing a shareholder laon agreement between the company as a legal entity and the shareholder as a natural person.

ALTERATION OF SHARE CAPITAL

Alteration of share capital is governed by section 69 of the Companies Act cap 106. A company limited by shares or guarantee and having share capital, if so authorized by it articles may alter the conditions of the Memorandum by; reducing or increasing the share capital, consolidating or converting, sub dividing or canceling the shares.

It must be noted that the power to alter a company's share capital must be authorized at a general meeting. This is fortified by Article 44 of Table A to the first schedule to the Companies Act. Alteration of share capital is by Ordinary resolution.

Procedure for Alteration of Share Capital

a) For Reduction of share capital

Passing of Ordinary resolution to reduce the share capital (section 63 and regulation 44 of Table A)

Passing of resolution to alter the Memorandum of association to reflect the new changes. (See copy of resolution in the Appendix)

Petitioning court under Order 38 r 3(e) for an order in reduction in the Capital. In this petition, all creditors should be named. The petition is gazetted. If there is no contest, then court grants the order.

Giving notice to the Registrar of the changes, within thirty days from the date of passing resolution to do so. This is reflected in sections 64 (for consolidation, conversion, sub division, redemption, cancellation or any thing to do with reduction of share capital)

Payment of the prescribed fees upon assessment within the meaning of the Companies (Fees) Rules SI110-3 as amended by SI 57/2005 and paying the advocate's fees (if one has engaged one).

After payment, the Notices and the Resolutions are lodged with the Registrar for registration onto the Company Register.

Requisite Documents

Resolution for alteration of share capital.

Resolution for alteration of Memorandum of Association.

Notice to Registrar of alteration of share capital

Petition for an order of confirmation of the reduction in share capital

B) For increase in share capital

Passing of Ordinary resolution to alter the share capital by reducing or increasing the share capital, consolidating or converting, sub dividing or canceling the shares. (section 63 and regulation 44 of Table A)

Passing of resolution to alter the Memorandum of association to reflect the new changes. (See copy of resolution in the Appendix)

Giving notice to the Registrar of the changes, within thirty days from the date of passing resolution to do so. This is reflected in section 71 (for notice on increase in share capital).

The notice for increase in share capital is given to the Registrar by filing out Form 3 in the schedule to the Companies (General) Regulations SI 110-1. The statutory forms are accompanied by the resolutions.

Payment of the prescribed fees upon assessment within the meaning of the Companies (Fees) Rules SI10-3 as amended by SI 57/2005 and paying the advocate's fees (if one has engaged one).

After payment, the Notices and the Resolutions are lodged with the Registrar for registration onto the Company Register.

Requisite Documents

a) Resolution for alteration of share capital.

b) Resolution for alteration of Memorandum of Association.

c) Notice to Registrar of alteration of share capital

Call on shares.

A call on shares refers to a demand made by the company on its shareholders.

Article 15(1) of table A, provides that the directors may from time to time make calls upon the members.

MATTHEW RUKIKAIRE V INCAFEX (U) LTD SCCA NO.3 OF 2015, Justice prof.Tibatemwa noted that "the obligation of a member of a company limited by shares to pay for the shares arises either when the company calls upon the shareholders to make payment for the unpaid shares during its operation or when the company is being wound up.

Article 15(2) of Table A, maximum call to be made is one fourth of the nominal value of the shares.

Under Reg.80 (1) of Table A, the business of the company is managed by the directors and they can exercise any powers under the regulations.

Under section 19 (2) of CA, all money payable by any member to the company under the memorandum or articles shall be a debt due from him/her to the company.

Pursuant to Reg.15 (1) of Table A, the directors may from time to time make calls on the shares that are unpaid.

The call on any shares is made by board resolution.

▫ A company, pursuant to Reg 15(2), a company cannot make a call exceeding ¼ of the nominal value of the share. Further the company cannot make a call requiring the shareholder to pay for the unpaid shares less than one month from the date fixed for the payment of the last preceding call.

Procedure

1. A board meeting is convened and a resolution calling on the shareholder to pay up a sum of not more than ¼ of the nominal value of the shares that are unpaid is passed. Necessary quorum unless stipulated (fixed) is 2 directors (Reg.99), majority vote is required to pass the resolution. (Reg 98(2).

2. A demand notice shall be issued to the shareholder requiring him/her or it to pay the named sum, where the payment is to be made and the time in which to pay which must be at least 14 days from the day of issuing the notice. Reg.15 (3)).

3. Where there is non-compliance with demand notice, a notice of payment is issued.

Documents.

1. Board resolution

2. Demand notice

3. Notice for payment where the shareholder fails to heed to the demand notice. (Reg. 33 of Table A)

Notice must name a further date than that specified in the demand notice. (Reg.34 of Table A).

Process of forfeiture of shares

1. Article 33 of Table A, failure to pay any call or instalment of a call, the directors may serve a notice requiring payment together with interest.

2. Article 34 Table A, the notice of 14 days shall be served and if not met, then the shares shall be forforfeited. In the case of TREVOR V WHITWORTH (1887) 12 APP.COZ 409, court held that the amount paid on the shares remain with the company when the shareholder unable to pay a call is relieved of liability for future calls and the shares revert to the company,bear no divided and must either be reissued or cancelled.

b) Notice of 14 days.

c) Board resolution

- Article 35 of Table A, is to the effect that where a requirement in the regulation above is not complied with,the shares in respect of which the notice was given are to be forfeited by a resolution of directors.

- Article 36 ,Table A , forfeited shares maybe sold at anytime and on such terms that the directors deem fit and the forfeiture may be cancelled on such terms as they deem fit.

- Article 37, Table A, after forfeiture, a person ceases to be a member but liable for all outstanding liabilities.

- Article 11, Table A, company has lien over shares.

PROCESS FLOW TO ACCESS EXTERNAL FUNDING FROM THE BANK. (Process of borrowing)

a) Articles of association have to authorize the borrowing

b) Where a company wants to borrow money beyond the nominal capital then, it will convene an extra ordinary meeting general meeting and pass an ordinary resolution.

c) The loan agreement or facility agreement should contain, the type of facility, amount of the facility interest rate and how it is computed, collateral /security required ,penalties ,conditions present, representation and warranties, methods and procedure of realization of security, undertakings, purpose of the facility, conditions subsequent and other terms.

1. Board meeting.

Article 98(1) of table A, directors may meet together for dispatch of business. Article 86 Table A, directors shall cause minutes to be made in books meant for that purpose.

2. Board resolution

Obtained from the minutes taken from the board meeting held under Article 98 Table A of The Companies Act 106.

3. Notice of extra ordinary general meeting.

When a company intends to borrow a loan that exceeds the nominal share capital, it shall issue out a notice to hold an extra ordinary general meeting as required under Article 50 Table A and approve the same under an ordinary meeting.

4. Extra ordinary general meeting.

It must be in conformity with Article 52 , Table A which governs proceedings at general meetings.

5. Ordinary resolution

Article 79 of Table A, approval of loans exceeding the nominal share capital through ordinary resolutions passed at extra ordinary general meeting

6. Filing of the above resolutions with the registrar of companies.

7. The resolutions must highlight the signatories for obtaining the financing

8. Certified copies of the resolutions are obtained and taken to the bank

9. The bank carries out due diligence, checks the company's bank statement and books of account, securities under its name in order to see the credit worthiness of the company.

10. The company and the bank execute a loan or facility agreement on such terms as the parties may agree

11. The company then issues a debenture which is then registered.

In Bristol Airport P/C V pow drill (1990) ch 744, court held that security is created where a person to whom an obligation is owed by another by statute or contract in additiom to the personal promise of the debtor to discharge the obligation, obtains rights exercisable against some property in which the debtor has an interest in order to enforce the discharge of the debtors obligation to the creditor.

SECURITIES.

1. DEBENTURES.

Section 1 of The Companies Act 106, defines debentures to include debenture stock, bonds and other securities of a company whether constituting a charge on the assets of the company or not.

In LEVY V ABERCORRIS STATE AND SLAB CO.(1887) 37 Ch.D 264,Court held that a debenture is a document issued by a registered company to acknowledge or evidence an indebtedness primarily.

TYPES OF DEBENTURES

a) Debentures issued singly or in series.

They include a bank loan that might be got from a bank in a day while debentures issued in series include the obtaining of two facilities at the same time that is a bank loan and an overdraft.

b) Secured debentures

They are secured by a charge on the company assets and its usually stated in the deed. IN ROTHER IRON WORKS LTD V COUNTERBURY PRECISION ENGINEERS LTD (1973) ALL ER 394, court held that a negative pledge or restrictive clause in a secured debenture is an equitable restriction on the company's power to create later charges having priority to the first.

c) Unsecured debentures.

Its not more than an unsecured promise by the company to repay the loan.

d) Registered debentures.

These are recorded in the register of debenture holders. Section 95(3) of The Companies Act 106, every registered holder of debentures may acquire a copy of the register of the holders of debentures is transferrable.

e) Redeemable debentures.

The company may redeem at a fixed future date but usually has an option to redeem on or after a given earlier date and this allows the company to choose the most convenient time for redemption. Section 105 of The Companies Act 106, provides for the powers to re-issue redeemed debentures in certain cases.

f) Bearer debentures.

They are negotiable instruments and transferable free from equities by mere delivery and it is not necessary to give the company notice of transfer.

g) Irredeemable debentures

A debenture is issued with no fixed date of redemption is known as an irredeemable debenture though such are redeemed on winding up.

Article 79 of Table A, directors may exercise all the powers of the company to issue debentures, debenture stock and other securities.

Section 88 and 89 of the companies act cap 106, provide for the certificate of debentures by the company.

Section 83 of The Companies Act 106, it is not lawful for the company to register a transfer of debentures of the company unless a proper instrument of transfer has been delivered to the company.

2. CHARGES.

a) Fixed or specific charge.

Such usually take the form of a legal mortgage over specified assets of the company e.g its land, buildings and fixed plant. The mortgage is usually created by a charge by deed expressed to be by way of legal mortgage.

b) Floating charge.

It's a charge on a class of assets of a company present and future. The class during the ordinary course of business changes from time to time. Until those who are interested in the charge take steps, the company will continue in its usual course of business.

A charge is deemed to have crystalized, if a receiver is appointed by the court or any charge, when winding up commences and when the company ceases to carry on its business as a going concern. Upon crystallization, a floating charge becomes a fixed charge.

In ILLINGWORTH V HOULDSWORTH (1904) AC 355 HL 358, A specific charge fastens on ascertained or definite property or property capable of being ascertained and defined. Whereas a floating

charge is ambulatory and shifting in nature, hovering over and floating with the property until some event causes it to settle and fasten.

3. GUARANTEE.

Section 67 of the contracts act cap 284, a contract of guarantee means a contract to perform a promise or to discharge the liability of a 3rd party incase of default of that 3rd party which maybe oral or written.

4. PLEDGE.

Occurs when a debtor delivers a chattel or its documents of title to a creditor as security for the discharge of an obligation. There has to be a deed of pledge. The creditor has the right to sell the asset in case the debtor fails to pay. A pledge of chattles is registrable under the chattles securities act no.7 of 2014.

Process of perfecting securities.

Perfection relates the additional steps required to be taken in relation to a security interest in order to make it effective against 3rd parties or to retain its effectiveness in the event of default by the guarantor.

CHARGES.

Charges crested used to be registered with the registrar of companies. They have also to be registered in the company's own register of charges and with the land registry.

Restrictions on powers of the board to borrow.

Article 79 (1) of table A of The Companies Act 106,powers of directors to borrow

Article 80 (1) of table A, the business of a company shall be managed by the directors. In the case of GRAMOPHONE AND TYPERWRITER LTD V STANLEY (1908) 2 KB 89, the court found that the directors are the persons who are entrusted with control of the business. A board resolution is essential and required so as the company borrows money.

Section 194(a) of The Companies Act 106, the duty of directors to act in a manner that promotes the company's success.

In the case of PHOTO FOCUS LTD V MULENGA JOSEPH (1996) 4 KALR 102, the court held that directors have powers to borrow money in the name of the company where the articles of association

donot prohibit such a transaction. The loan so required binds the company and the company is liable to repay such loan.

Restrictions

- Article 79(1) of The Companies Act 106; Not higher than nominal share capital of the company.
- Subject to the restrictions laid out in the articles of association.

Rationale.

a) To keep the company solvent since the liabilities will be lower than its asstes.

Remedies to the restriction.

a) Ordinary resolution of members in a general meeting

b) Increasing the share capital.

ALLOTMENT OF SHARES.

Farwell J in BORLANDS TRUSTEE V STEEL BOROS AND CO LTD (1901) 1 CH 239, defined a share as an interest of shareholder in the company measured by sum of money, for the purpose of liability in the first place and on interest in the second but also consisting of a series of mutual covenants entered into by all the shareholders. A share is not a sum of money but is an interest measured by a sum of money and made up of various rights contained in the contract.

What is allotment of shares.

Allotment was denied in the case of MATTHEW RUKIKAIRE V INCAFEX as the process by which the company finds someone who is willing to become a shareholder of the company.

Lord Temple man in NATIONAL WESTMINISTER BANLPLC V IRC (1995) ACE 3, held that allotment does not make a person a member of the company. Allotment only confers onto the person the right to be registered as a member.

In AMBROSE LAKE TIN AND COPPER CO (1878) 8 CH.D 635 AT 638 cited with approval in MATTHEW RUKIKAIRE V INCAFEX, upon allotment of shares, the allotee only acquires perfect title upon issuance of the shares allotted issuance of shares is distinct from allotment as it means some subsequent act after allotment whereby the title of the allotee becomes complete either by the holders of the shares receiving some certificate or being placed on the register of shareholders or by some other step by which the title derived from the allotment may be made entire or complete.

The process of allotment to issuance of shares makes the person a shareholder in the company but not a member. He/she only becomes a member pursuant to S.45 (2) of CA. Upon entry into the register of members.

Rights of subscribers, shareholders and members in a company.

Subscribers

Section 3(1) and 6(1) of The Companies Act 106, provides for subscribers to the memorandum of associations.

In MATTHEW RUKIKAIRE V INCAFEX (U) LTD CIVIL APPEAL NO.3/2015, a subscriber means the first members of a private limited company who add their names to the memorandum of associations during the company formation process.

Pursuant to S.45 (1) of CA, upon registration, the subscribers to a memo of a company are deemed to have agreed to become members and should be registered in the register of members.

S.45(1) does not create any pre conditions for example paying up on shares or any sums unless the company articles stipulate some pre-conditions to registration in the register of members or to membership , the subscribers have a right to be registered as members in the company register and to all other members accruing to be members.

In MATTHEW RUKIKAIRE V INCAFEX, the court stated that the obligation of a member of a company limited by shares, to pay for the shares arises either when the company calls upon the shareholder to make payment for the unpaid shares during its operations or when the company is being wound up.

Nonpayment for the share subscribed does not affect the subscriber's membership in the company.

Where the company has pursuant to S.13 adopted Table A then upon making the call for the shares, Under Article 65, the members right to vote at a general meeting shall be suspended pending payment on the call.

Right of subscriber whose name hasnot been entered into the register of members.

a) Right to be entered in the register of members.

Section 116(1)(a) of the companies act, a company shall keep a register of its members and enter in the register of names,postal address, share capital,statement of shares and the amount paid on the shares.

b) Rectification of the register of members.

Section 121(1) of the C.A cap 106, rectifying register of members through court. This is by way of petition to the high court of Uganda.

TRANSFER AND TRANSMISSION OF SHARES

Transfer of shares takes place where one shareholder passes over his shares to another person for consideration. It must be noted that if the shareholder is for a company of limited liability, there is usually a clause on restriction of transfer of shares. (cf characteristics of a private limited company discussed above). Consent is required from the other members before the transfer takes place.

Transmission of shares refers to the process of passing on of shares to a deceased shareholder's estate. Upon his death, the legal representative writes to the directors requesting a change in the company's memorandum to reflect his or her name. Where the directors fail to do so, one can apply vide O37 r5 CPR 71-1 by chamber summons to court for an order of rectification ordering the directors to rectify the register.

Article 30 of Table A gives the procedure for transmission. This is fortified by RE KASIITA ESTATES LTD [1982] HCB 107 where court held that an administrator of the Estate of a deceased shareholder is entitled to have his name entered on the Company register

PROCESS OF TRANSMISSION OF SHARES IN A PRIVATE LIMITED LIABILITY COMPANY

Rights encompassed in the holding of shares vests in another by operation of law that is death or bankruptcy of a member,

a) Evidence of entitlement or legal representative. Section 92 of The Companies Act 106, evidence of grant of probate or letters of administration. Table A Article 29(1), the personal representatives entitled to the shares of the deceased member.

b) Election to become a member

Table A Article 31, the recipient may elect to become a member through sending a notice in writing signed by him or her stating the fact of election.

c) Entry in the register of members.

Section 45(2) of The Companies Act 106, upon acceptance of the personal representative as a member by the directors, the name shall be entered in the register of members.

d) Issuance of a share certificate.

Section 88 of The Companies Act 106, issuance of a certificate within 2 months. Article 8 Table A, entitlement to share certificate. Entitlement to dividend doesnot grant an automatic right to attend a members meeting until the registration has been formalized.

What constitutes the estate of a deceased member in a private limited liability company.

a) Paid up shares as per Table A Article 32

b) Dividends.

Section 89(2) and (3) and Table A , Article 116, dividends to be paid out of profit. In MATTHEW RUKIKAIRE V INCAFEX(U) LTD CIVIL APP NO.3/2015, only those members who are on the register when the dividend is declared are entitled

c) Liabilities

Section 3 (6)(b) of The Companies Act 106, liability of members to the extent of the amount undertaken.

EFFECT OF DEATH OF A MEMBER ON A PENDING SHARE TRANSFER FROM THE DECEASED TO THE TRANSFEREE AFTER EXECUTION OF A TRANSFER INSTRUMENT.

1. It goes without saying that upon death of a member or shareholder the shares held are transmitted.

2. Personal representative has to elect between having the shares transferred to their own name or having them transferred to another. As per section 84 of The Companies Act 106, Article 31 and 32 of Table A and regulation 30 of the company (general) regulations 2016.

3. The company is expected to hold a meeting to either approve or decline the decision of the holder of letters of probate and must thereafter notify the registrar of the changes under section 117(1) of The Companies Act 106.

Process of transfer of shares in a private limited liability company.

a) Completion of transfer form or document.

Section 83 of The Companies Act 106, transfer not to be registered except on production of transfer instrument. In the case of RE SEKIUMBA ESTATE LTD (1978) KCB 285, there must be a proper instrument of transfer delivered to the company and it should be certified by the company.

b) Transfer signs the transfer form or document, Table A Article 22, execution of the instrument of transfer

c) The transferor gives the transfer form or document and relevant share certificate to the transferee.

d) Transferee signs the transfer form usually in the presence of a witness. Table A Article 22, execution of the instrument of transfer.

e) Transferee affixes the appropriate stamp duty to the transfer form or document and lodges it with the share certificate with the company for registration

f) The transfer is considered and approved by the board of directors. Table A Article 24, directors may decline registration. Table A Article 25, directors may decline to accept instrument of transfer.

g) Transfer form and board resolution are registered with the registrar of companies. The Stamps Act , 1st Schedule; item 63, 1% of the total value of the shares transferred.

h) The company secretary makes out a new share certificate in the name of the transferee and affixes the company's seal thereon after it is signed by one of the directors and countersigned by the secretary or another director.

i) The transferee's name is entered on the company's register of members in the place of the transferor's name. Section 45 of the companies act, register of members.

j) The new share certificate is delivered to the transferee as per section 88 of The Companies Act 106, and Table A Article 8

k) The annual return filed showing the new shareholding position as per section 130 of the companies act. Section 85 provides for the transfer of shares in a single member company.

RESTRICTIONS ON TRANSFER AND TRANSMISSION

1. Pre-emption clause

AOA usually contain a pre-emption clause that is priority to members of the company who can purchase the shares. In the case of TETT V PHOENIX AND INVESTMENT COMPANY (1986) BCLC 149, Court held that the implied term into the articles requiring a transferor to take reasonable steps to give the other members a reasonable opportunity to offer to purchase the shares at a fair value.

2. Refusal by a director

The AOA usually contains a provision that the directors may refuse to register any transfer of any share. Table A Article 3, directors may decline to register. Section 87 of The Companies Act 106 and table A. Article 26, notice of refusal to register the transfer.

3. Restriction by private agreements.

A private agreement contrary to the AOA is not binding on the shareholders or the company.

Documents for transfer and transmission of shares

a) Letters of administration

b) Board resolution

c) Transfer instrument

The role of the nominee and alternate nominee director in transmission of shares in a single member company upon the death of a single member.

- Regulation 6 (1) of the companies act (single member) regulations 2016, a person registering a single member company is required to file with the registrar the particulars of a nominee and alternate nominee director.

Process of passing interests of a deceased member to his or her legal representative while maintaining the company as a single member company.

- Section 92 of The Companies Act 106, evidence of probate or letters of administration for legal representatives

- Section 84 of the companies act, validity of a transfer of shares made by a personal representative.

- regulation 10(1) companies act (single member) regulations 2016, nomination of nominee director and alternate nominee director

- regulation 11(2)(a) companies act (single member) regulations 2016, the role of the nominee director is to manage the affairs of the company until the transfer of shares to the personal represenatative of the single member.

a) Notifying the registrar of the death of a single member.regulation 11(2)(b) of the companies act (single member) regulations 2016, notification to be done in 15 days as per form 5

b) Transfer shares to representative. Regulation 11(2)(c)

c) Calling a general meeting to elect directors. Regulation 11(2)(d) companies act (single member) regulations 2016

- Regulation 11(3)(a), incase of an impediment, the registrar can call or direct the calling of the meeting of the personal representative

- Regulation 11(3)(b), incase of an impediment, the registrar may give such directives with regard to election of directors or making of alterations in the articles.

Requisite steps to convert a single member compny into a private company.

1. Transfer of shares

Section 85(1) of the companies act, shares in a single member company can be transferred by converting into a private company. Regulation 10 (1) of the companies (single member) regulations 2016, provides for conversion of an SMC.

Regulation 10 (2) of the companies (single member) regulations 2016, provides for conversion of an smc

Section 87 (3)(a) of the companies act, incase of death a company maybe converted into a private company.

2. Passing of special resolution.

Section 85(3)(b) of The Companies Act 106, requires the SMC to pass a special resolution for change of status from SMC to private company and alter its articles within 30 days of the transfer of shares.

3. Appointment of directors.

Section 85(3)(c) of The Companies Act 106, members to appoint or elect one or more additional directors within 15 days of passing the resolution for conversion of the SMC.

Regulation 10(2)(a) of the regulations, where an SMC converts into a private company, the company is under obligation to appoint directors.

4. Filing of notices.

Section 85(3)(c) of The Companies Act 106, members are required to notify the registrar of the appointment of directors as per regulation 10 (2))(a) of the regulations 2016. Under form 4 its within 60 days of resolution.

Regulation 10(2)(b), provides for notice of conversion of SMC into a private company

Regulation 9(2), where a single member company converts into a private company, the company shall deliver to the registrar the certificate previously issued and the registrar shall issue a new certificate.

5. Issuance of certificate

Regulation 10(3). Registration of private company that has converted from a SMC shall not take effect until the registrar has issued a certificate confirming the registration.

CAPITAL MARKETS, SECURITIES, CHARGES

REGISTRATION OF CHARGES

A charge is defined in as a security for payment of a debt. A charge can be either a specific charge (per ILLINGWORTH VS. HOUDSWORTH (1904) AC 355, or a fixed charge, or a floating charge (per Re Yorkshire Woolcombers Association Limited (1903)

The procedure for registration of a charge is provided for in section 101 of the Companies Act, thus; it has to be registered within a period of 42 days from the date of creation. The format for registration is by filling out Form 4 in the schedule to the Companies (General) Regulations. Failure to register the charge makes it void as against the Liquidator.

Eric Kenneth Lokolong in The Legal and Practical Aspects of Capital Markets defines capital as accumulated wealth that is available to create further wealth. It is wealth engaged in a reproductive process.

Capital Markets are therefore meeting places where those who in need of surplus capital seek from others who wish to invest their excess.

Capital markets mainly consist of;

Debt Markets;-

This is where Government and corporations can raise funds from capital markets through the issuance of debt securities such as bonds.

Equity Markets

Corporations raise funds through issuance of equity securities or shares.

The key players in the capital markets include the Capital Markets Authority and the Stock Exchange.

Procedure for a company going public thus; Any company intending to sell shares to the public must ensure that:

a) The resolutions of the shareholders converting the company to a public company are filed with the registrar of companies.

b) The Board resolutions authorizing the sale of shares to the public are duly made and filed.

c) A prospectus or information memorandum has been complied with in accordance with the provisions of the Companies Act in Sections 38-48, the Capital Markets Authority act and the regulations there under namely The Capital Markets (Prospectus Requirements) Regulations.

d) The prospectus or information memorandum has been approved by the Capital Markets Authority .

It must be noted that the prospectus discloses;

e) The purpose of the issue of shares.

f) The legal status and affairs of the issuer.

g) The rights of the holders, directors and employees of the company.

h) The financial statement of the company for the preceding 5 years

Upon approval of the prospectus, an application for approval to list on the securities exchange is then submitted to Uganda Stock Exchange. Once the approval is obtained, the company is then allowed to officially print out documents which trade it to the public for shares.

PERFECTION OF SECURITIES IN THE EVEN OF CORPORATE BORROWING

Perfection refers to the additional steps required to be taken inorder to retain its effectiveness in the even of default.

Section 104(1) of The Companies Act 106, once the security interest is created, there is an obligation to register the same within 42 days after its creation.

A charge is perfected upon registration. The rationale for requirement for the registration of charges is to alert the company's creditors that the company's assets are encumbered to the extent set out in the registered particulars of the charge.

a) Submission of documents to the registrar for registration

Section 102(1) of The Companies Act 106, the duty of a company to register charges created by the company.

Section 101(1) CA 2012, provides that particulars of the charge, together with the instrument by which the charge is created or evidenced are delivered to the registrar within 42days after the date of its creation.

Section 101(4) of the C.A, provides for a charge created outside Uganda, the delivery to the registrar of a verified copy of the instrument shall suffice.

Section 101(8), where a charge is created by series of debentures, it shall be sufficient if they delivered to the registrar within 42 days.

Section 102(4), provides that for a mortgage the 42 days shall run from the time of filing the instrument with the registrar of titles and for a debenture, from the date of execution of the debenture.

b) Payment of fees.

Under the finance act, section 5 and 1st schedule, registering a charge or series of debentures is provided for

For registering under part 4 of the act, any charge required to be registerd by a company and for registering particulars of series of debentures shall cot 50k

c) Issuance of a certificate of registration of a charge.

Section 104 of The Companies Act 106, the registrar shall issue a certificate of the registration of the charge registered stating the amount secured by the charge. In LEICESTER V THE COMPANY (1908) 1 CH 152, the court held that the certificate is conclusive evidence that all requirements of registration of debentures have been complied with. The court will not go behind such a certificate and inquire for example whether debenture holders do infact rank in pari passu.

EFFECT OF NOT PERFECTING SECURITIES.

Section 105(1) of The Companies Act 106, registration of every charge to be within 42 days after the date of its creation. In the case of KASOZI V M/S MALE CONSTRUCTIONS CO LTD (1981) HCB 26, court held that the debenture wasnot registered within 42 days and void against a liquidator and any creditor of the company and couldnot be enforced against the judgement creditor.

Section 106(3) of The Companies Act 106, upon failure to register the charge, the company and every officer or person who is party to the default is liable to a default fine of 50 currency points.

Section 105(3),provides that failure to register charges existing in property acquired attracts a default fine of 25 currency points on every officer of the company.

Difference between a fixed charge and a floating charge.

In ILLINGWORTH V HOULDSWORTH (1904) AC 355 HC 358, a fixed or specific charge is taken over identified assets of the company not used in the day to day business of the company whereas a floating charge may cover company assets used in the ordinary course of business.

A specific charge fastens on ascertained and definite property or property capable of being ascertained and defined. A floating charge is ambulatory and shifting in nature, hovering over and floating with the property until some event causes it to settle and fasten.

FINDINGS OF THE SUPREME COURT.

IN THE CASE OF MATTHEW RUKIKAIRE V INCAFEX (U) LTD S.C.C.A NO.3/2015

1. A person may become a member of a company in two ways;

a) By subscribing to the MOA

b) By agreement to be a member subsequent to the formation of a company.

2. Allotment is the process by which a company finds someone who is willing to become a shareholder. The process of becoming a shareholder is a two step one; involving first a contract of allotment and then registration of the member.

3. Issue of shares in a subsequent act whereby the title of the allotee becomes complete.

4. A person becomes a shareholder or member of a company if allotment is followed by registration.

5. It is the company's obligation to enter each member on the member's register.

6. The appellant was a member of the company to whom 450 shares were allotted, since the appearance of one's name on the company's annual return may be evidence of membership.

7. The obligation of a member to pay for the shares arises either when the company calls upon the shareholder to make payment for the unpaid shares during its operation or when the company is being wound up.

8. The fact that the appellant invested in a company vehicle (land rover) and land, the company contributed to clearing off the mortgage together with the appellant. This can be considered as further evidence that indeed he was a member and shareholder.

NON GOVERNMENTAL ORGANISATIONS

In this part of the study, the law applicable includes;

The NGO Registration Act Cap 109

The NGO Registration Regulations SI 113-1

The Companies Act

The Trustees Incorporation Act Cap 271

The Trustees Incorporation Rules SI 165- 1

Advocates (Remuneration and Taxation of Costs) Regulations SI 267-4

Case law

Common law and Doctrines of Equity

The checklist or main issues arising include;

i) Whether the organization can register an NGO?

j) If so which type of NGO is this (that is Local or foreign)?

k) What appropriate steps should be taken to ascertain the registration

l) What are the requisite fees.

The major documents include the following;

m) The memorandum and Articles of Association(in case of a company limited by guarantee) or a Constitution of the association (in case of registration under the Trustees Incorporation Act).

n) Application to NGO Board.

o) Written work plan approved by the Ministry for Planning and Economic Development.

p) Recommendation by 2 sureties (for instance local leaders).

q) Recommendation from the Line Ministry.

r) Recommendation of Chairman LC 1, endorsed by LC2, LC3, RDC and DISO of the area where the organization intends to operate.

s) Recommendation by a diplomatic mission in Uganda (in case of a foreign rganization).

THE PROCEDURE FOR REGISTRATION OF A NON GOVERNMENTAL ORGANISATION

a) One can either incorporate a company limited by guarantee or register trustees of a body established for religious, charitable works inter alia with the meaning of the Companies Act (Supra) or the Trustees Incorporation Act under section 1.

b) The second step involves application to NGO Board in the form provided for in the schedule. This application is accompanied by a written work plan approved by the Ministry for Planning and Economic Development, recommendations by 2 sureties (for instance local leaders), recommendation from the Line Ministry, recommendation of Chairman LC 1, endorsed by LC2, LC3, RDC and DISO of the area where the organization intends to operate. The application is further supported by a recommendation by a diplomatic mission in Uganda (in case of a foreign Non-Governmental Organisation).

c) The application is signed by at least 2 promoters in case the organization a local NGO. In case of a foreign company, the constitution supporting the application must be authenticated by a diplomatic mission in Uganda.

d) Upon payment of the requisite fee, a certificate of registration will then be granted which will be valid for a period of 12 months. In case of a first renewal, the certificate will be valid for a period of 36 months and for subsequent renewals, the certificate will be valid for a period of sixty months. Registration is in the Land Registry.

Section 27(1) of the N.G.O ACT cap 109, Any person or group of persons incorporated as an organisation shall register with the Bureau.

Section 27(2) of the N.G.O ACT cap 109 AND REGULATION 4 OF THE REGULATIONS Provide for the requirements to accompany the application and they include the following;

a) certified copy of a certificate of incorporation;

(b)A copy of the organisation's constitution or governing documents;

(c) a chart showing the governance structure of the organisation;

(d) proof of payment of the prescribed fee;

(e) source of funding of the activities of the organisation;

(f) a copies of valid identification document for at least two founder members;

(g)minutes and resolutions of the members authorizing the organisation to register with the Bureau;

h) Statement as to the organizational structure

j) Recommendation from district NGO monitoring committee.

k) Recommendation from the responsible ministry, government department or agency

Regulation 4(3), the application shall be signed by at least two founder members.

Section 29(3), upon compliance, the bureau shall register the organization.

Regulation 5, issuance of certificate of registration under FORM B

Regulation 7(1), upon registration the organization shall apply to the bureau for a permit.

Regulation 7(2), application for a permit shall be in FORM D

Section 29(1), an organization shall not operate in uganda without a valid permit.

Section 29(2), sub-section (1) applies to organizations under The Companies Act 106, trustees incorporation act and organisations under section 3

Regulation 7 (3), the application for a permit shall specify

a) the operations or objectives of the organisation;

(b) staffing of the organisation;

(c) geographical area of coverage of the organisation;

(d) location of the organisation's headquarters;

(e) evidence of payment of the prescribed fees; and

(f) intended period of operation not exceeding five years.

Section 29(3), issuance of permit issued to operate within the time specified in the permit but not exceeding 5 years.

Regulation 7(4), permit issued to operate within the time specified in the permit but not exceeding five years.

Regulation 7(5), permit shall be in form E

Regulation 9, provides for the review of a permit in case of change in any of the conditions.

Regulation 19, bureau to establish and maintain an update register of organisations.

Conditions for a permit (regulation 8 NGO 2017)

a) the permit shall not be used for a purpose or objective other than that for which it is issued and an organization shall not engage in any form of activity relating to sector other than the sector specified in the permit;

b) The permit shall not be transferable to any other organisation or person;

(c) The permit shall be specific to the geographical area of operation specified in the permit;

(d) the organization shall, within fourteen days after making any change in the area of operation, headquarters of the organisation or activities, notify the Bureau of the change;

(e) any other condition that may be specified in the permit by the Bureau.

JOINT VENTURES

A joint venture is defined as a contribution between two or more persons of tangible and or intangible assets towards a mutual conduct of activity in which the parties share in the management of profits and losses of an activity. It can also be referred to as an association of persons jointly undertaking a commercial enterprise.

In relation to capacity to form one, in a scenario where the parties are legal entities such as companies, the cardinal principle in Salomon Vs Salomon (supra) is followed; thus since it is a legal entity separate and distinct from the persons who comprise it, this means that it includes capability to enjoy rights and duties granted to it by law.

It must be noted further that by virtue of section 34 of the companies act, a company is empowered to make contracts in writing or parole. This is fortified by Kintu Vs Kyotera Coffee Growers (U) Limited [1976] HCB 306

Where one of the companies proposing to enter the agreement is foreign; it has to adhere to all the relevant requirements of the law relating to Immigration and foreign investments. In this regard, section 1 of the investment code act cap 74, defines an investor to include a foreign investor and a domestic investor.

In addition section 54 of the Uganda Citizenship and Immigration Control Act Cap 66 provides that no person not being a Uganda shall enter or remain in Uganda without a valid entry permit, certificate of permanent residence or pass issued under the Act. Section 60 provides further that no foreigner shall engage in private business in Uganda without a valid entry permit or certificate of permanent residence.

In the same vein, by virtue of section 19 of the Investment Code Act, a foreign investor shall not establish a business in Uganda unless he has gotten an investment licence, in the form of the provisions

There are basically two types of ventures; it can either be a contractual joint venture where two parties merge to form a new company distinct from the contracting parties; or it can be a joint venture where the companies merge and restructure to form a new company, through change of shareholding, capital and directors.

The additional information one would need to obtain from the parties before embarking on this venture is evident in section 4(1) and Table A to the schedule of the Companies Act. This information is then put in the subsequent documents, the information includes:

t) The name of the company.

u) The objects of the company.

v) Share capital and the share structure

w) Intended bankers and signatories to the company accounts

x) Location of head office

y) Occupational and postal addresses of the shareholders and directors.

z) Nature of liability of the members

aa) Criteria for appointment of directors and their removal

bb) Transfer and transmission of shares.

cc) Voting rights of members.

dd) Meetings and procedures

ee) Dispute resolution

ff) Appointment of auditors, inter alia.

The procedure is enunciated as follows (compare this with procedure for incorporation of a company).

gg) Reservation of company name.

hh) Draft of Joint venture agreement.

ii) Draft the Articles and memorandum of association

jj) Make a declaration of statutory compliance.

kk) Lodge documents with registrar, who assesses the stamp duty.

ll) Issuance of a certificate of incorporation upon payment of stamp duty.

CONTRACTS OF GUARANTEE

S. 67 of the contracts act cap 284 defines a contract of guarantee to mean a Contract to perform a promise or to discharge the liability of a 3rd party in case of default of that 3rd party it may be oral or written.

Paragraph 3 of the Bank of Uganda final consumer protection guidelines defines a guarantee to mean any document, notice or other written statement containing an undertaking however described given by a guarantor promising to fulfill the obligation or discharge the liability of a 3rd party if that 3rd party fails to do so.

S. 69 of the contracts Act cap 284 anything done or any promise made for the benefit of a principal debtor may be sufficient consideration to a guarantor to give a guarantee.

BARCLAYS BANK OF UGANDA VS. JUNG HANG AND ANOR, HEES NO. 39/2009, of relying on Paget's law of Banking 11thedition, chapter 35, Page 617, defined a guarantee as a promise 26 liable to a debt on failure to perform some legal obligation of another.

Solvent features of the CONTRACT

- Should be in writing S. 9 (6) Contracts Act

- Offer by guarantor and acceptance by the bank.
- Consensus all item
- Consideration S. 69 Contract Act

DUTIES OF A GUARANTOR

The primary duty of a guarantor is to ensure that the principal debtor pays off the debt.

Mashd Vs – Lep Air services , stated that a contract of guarantee gives to the guarantor an obligation to the customer that the debtor performs his obligation to the creditor.

Liability of a Guarantor

According to S. 70 Contracts Act, 284, the liability of a guarantor shall be the extent to the principal debtor is liable unless otherwise provided by a contract with liability of a guarantor takes effect upon default by the principal debtor S. 70.

Halsbury's Laws of England 4th edition, Vol. 20 para 123, the liability of a guarantor arises only upon the default of the principal debtor in his/her obligations.

In Bank of Uganda vs – BancoArab Espanol CA 23/2000 – once a principal debtor defaults, the guarantor has a duty to repay to loan.

In MoshuvsLepAor Services ltd (1973) Ac it was held that an default of the principal debtor, expert from some special stipulation to the contrary, the surety guarantor is immediately liable to the full extent of the obligation without being entitled to inquire about either a notice or a default or previous recourse against co-sureties. It is a guaranteed obligation on the guarantor to pay the debt in the event of default by the principal debtor.

UCB corporated services Ltd vs Clyde and Co. (2002) 2 ALLER 457; it was held that so long as there was a duty executed guarantee, the guarantee is bound by its undertaking.

Rights of a Guarantor

S. 80 Contracts Act 284, provides that where a guaranteed debt becomes due to guarantor is upon payment of performance of all that the guarantor is liable for, invested the all of rights of the creditor had against the principal debtor.

S. 51(1) provides that a guarantor is entitled to the benefit of every security to a creditor has against a principal debtor of the time a contract of guarantor-ship is entered into whether the guarantor knows of the existence of the security or not.

S. 84 provides for the right of indemnification.

S. 84(1) stipulates that in every contract of guarantee, there is an implied promise by a principal debtor to indemnity a guarantor.

S. 84 (2) provides a guarantor is entitled to revoke from a principal debtor any sum with guarantor rightfully, paid under the guarantee on the contract.

Shell Uganda Ltd vs Captain Maxeem Chaudry ; court stated at the guarantor's right of indemnity against the liability of they had undertaken to answer for is entitled to be indemnified by the principal debtor, the said right arise on an actual payment by him.

S, 73 rights to consent to variance in terms of the contract.

Discharge of a guarantor

S. 73 of the contracts Act, 284, any variance made between the terms of a CONTRACT between a principal debtor and a creditor court without consent of a guarantor discharges the guarantor from any transaction with is subsequent to the variance.

BoU vs Banco Arabe Espanol , Okello J, stated that any alteration however bonafide by the creator and principal debtor court consent of the surety at the terms of the original agreement so far as they relate to the subject matter in respect to the surety discharges him/her unless it is self-evident that the alteration is unsubstantial or one which cannot be prejudicial to the surety or unless it is provided for in the guarantee.

S. 75 – discharge of guarantor when creditor compromises which gives time to or agrees not to sue the principal debtor.

S. 79 – discharge of guarantor where the eventual remedy of the guarantor against a principal debtor is impaired because a creditor does any act or omits to do any act which is inconsistent with the right of the guarantor.

S. 81(2) Discharge of Guarantor where the creditor loses or puts with the security without the consent of the guarantor.

S. 76 Guarantor not discharged where a contract to give time to a principal debtor is made by a creditor with a 3rd person and not with the principal debtor.

S. 77 Mere forbearance on the part of a creditor to sue a principal debtor or to enforce any other remedy against the principal debtor or to enforce any other remedy against the principal debtor does not in the absence of any provision in the guarantee to the contrary discharge the guarantor.

Vitiating factors

1. Misrepresentation

S. 82 of the Contracts Act 284, a guarantee which is obtained by misrepresentation made bya credito5r or with which knowledge and assent of a creditor concerning a material part of the transaction is void.

Guidelines 6 paragraph 6(5) of the B.o.U Guidelines Prior to a person acting as a guarantor a financial services provider shall in writing advice the person of the question of the quantum and nature of the potential liabilities and to seek independent legal advice before activity as a guarantor,

According to Royal Bank of Canada (1934) Ac 468 – a contract of guarantee like any other contract is liable to be avoided if induced by material representation of existing facts.

2. Mistake of fact

S. 13(1) of the Contacts Act 284, where both parties to an agreement are under a mistake of fact which is essential to the agreement, consent is obtained by mistake of fact and the agreement is void.

S. 16 (2) – a contract is a void where one of the parties to it operates under a mistake as to a mistake of fact essential to market.

3. Undue influence

S. 13(1) of the contracts Act 284, a Contract is initiated by undue influence as it helps one partly to gain unfair advantage over the other. S. 15(1) contracts Act, where consent to an agreement is obtained by coercion undue influence fraud or misrepresentation, with party where consent was obtained by coercions undue influence, fraud or misrepresentation S. 15 (fraud). Is there an obligation to explain to the Guarantor the indebtedness of the principal debtor by the Bank.

A contract of guarantee is not uberima fide thereof the creditor has a duty to disclose to the surety before the exist is concluded all material circumstances known to the creditor.

Yet a creditor does have a limited duty of disclosure, the scope of the depends upon the particular type of guarantee in question.

The Banker is not bound to volunteer to a propulsive guarantor information as to the customers financial position or business habits.

Hamilton Vs – Watson Lord Campbell held that disclosure would otherwise be a duty only where what had taken place between the bank and the principal debtor was not naturally to be expected.

Leve H vs Barclays Bank PLC (1995) 1 WLR 1260, the sureties agreed to allow their short dated treasury stock to be used as security in order to assist the principal debtors to borrow money short term from the bank, provided that the security went not encased and was returned before its maturity date the bank did not disclose to the sureties that the terms of the facility letter governing the advance made it certain with the advance, which was to be repaid on the date that the stock matured would be repaid without recourse to the automatically realized on maturity. It was found as the sureties would have acted differently had they known the position and accordingly the executives of the securities provincial marine insurance co.

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REMEDIES TO THE PARTIES

1. The guarantors are discharged and therefore are not liable to pay.

Coutles and Co. vs, Braune – lackey and Ors (1947) KB 104, it laid down the principle of the liabilities of a guarantor is a matter of contract and that if the contracts on the basis that be is liable only it with principles debts is liable there is no ground of imposing a different liability.

Perry lavese Ltd vs- Innecer Ag ; Scott is stated that in the construction of the guarantee Contract the intention of the parties is guaranteed so as to ascertain the form of guarantee Contract they intended to contract to be for example, seetership or demand guarantee.

Difference between guarantorship and surety ship

Pagers Law of Banking 12th edition pg. 730 paragraph 34.2 it stated that:

The essential difference between a guarantee in that instance, a contract of surerships and a demand guarantee is that the liability of a sweaty is secondary. Whereas the liability of the issuer of a demand guarantee is primary. A surety ship liable is co – extensive in that of the principle debts and it defaults by the principal debtor is disputed by the party. It must be proved by the creditor. Neither proposition applies to a demand guarantee. The principle with underlies demand guarantee the principle the underlines demand guarantees is that each contract is autonomous. In particular the obligations of the guarantor are not affected by dispute under the under right between the beneficiaries and the principal if the beneficiary makes an honor demand. The principal must reimburse the guarantor (or counter-guaranteed) and dispute between the principal that the discoursing was a breach of the contract between them, must be resolved in separate proceedings to the bank will not be a party.

Edward Owen Engineering vs Barclays bank international Ltd (1978) 198 159; the learned judge held that the insister must pay according to its guarantee on demand if so stipulated without proof of condition, the only exception being fraud. Such guarantees are naturally promising notes that are payable on demand. It was held that a performance guarantee must honor the guarantee according to its terms. It is not concerned in the least with the relation between the supplier and contractual obligation or not nor with the question whether the supplier is in default.

The bank must pay according to its guarantee on demand. It so stipulated without proof or condition only exception is where there is fraud of which the bank has notice.

Lion Assurance Co. Ltd vs National Hsg and Construction Co. Ltd ; Madrama J held that demand guarantees are autonomous from the underlying, Contract with when a demand is made. It should be settled properly especially if the wording is such as to make it clear that the guarantor undertook to make good upon demand court proof of conditions, the settled exception being fraud. The relevant date for knowledge of fraud is a date prior to payment.

The exception or destruction on demand guarantees however does not apply where a mortgage was executed.

In Maria Odudovs Barclays Bank of Uganda Ltd HCMA 45/2008, if default by a principal debtor is disputed by the guarantor, it must be proved by the creditor before the guarantee is made enforceable notwithstanding with understanding that it is an on demand guarantee. The same was reiterated in William Sebuliba Kayondo and Berkeley Education Ent. Ltd. Vs Barclays Bank of Uganda ltd

In George Sembulevs Barclays Bank where a mortgage was created, the extent of the guarantor's obligation is constrained by the obligation under the mortgage.

CORPORATE SOCIAL RESPONSIBILITY

It refers to the moral and ethical obligations of the company regarding their employees, environment, competitiors , the economy

Considerations for CSRS

a) It must be in line with the objectives, vision and mission. In the case of HUTTON V WEST CARK RAILWAY CO. (1883) 23 chd 654, the directors can only spend for purposes which are incidental to the company

b) Company should make no profits from it.

c) Understanding the benefits and limitations of CSR

d) CSR programs ought to be embraced and supported by top management.

e) Adherence to legal and regulatory frameworks,

f) CSR should envisage cultures in the society

g) It should aim at alleriating poor conditions

h) Avoidance of corruption

i) Environmental effects.

j) Humanitarian considerations.

CORPORATE CITIZENSHIP

a) Responsibilities towards society

b) The goal is to produce higher stnadards of living for the communities that surround them and still maintain profitability for stakeholders

c) It helps bring in consumers/customers, establish a brand and company loyalty.

AGENCIES.

An agency is a relationship between an agent and a principal in which the agent acts on behalf of the principal.

S.118 of the contracts act defines:

a) An agent as person employed by a principal to do any act for that principal in dealing with a 3rd person.

b) a principal is a person who employs an agent to do any act for him or her or to represent him or her in dealing with 3rd person

c) sub-agent is a person employed by and acting under the control of an agent in the business of the agency.

REQUIREMENTS FOR AN AGENCY CONTRACT.

1. Capacity

This relates to both the capacity of the principal and the agent.

S.119 states a principal has the capacity to enter into an agency contract if

a) They are 18 years or more

b) They are of sound mind

c) They are not disqualified from entering an agency contract under any law.

S.120 states that a person is clothed with capacity to act as an agent if:

a) They are 18 years or more

b) They are of sound mind

c) They are not disqualified from entering an agency contract under any law.

2. Consideration.

S.121 of the contracts act states that consideration is not necessary to create own agency.

CREATION OF AN AGENCY.

1. By express appointment by the principal.

S.122 (2) provides that the authority of an agent may be express where it is given by spoken or written word.

2. by implied appointment by the principal.

S.122 (2) provides that the authority of an agent may be implied where it is inferred from the circumstances of the case.

Depending on the circumstances of each case, sub section 3 states that any words, spoken or written in the ordinary course of a dealing maybe taken into account.

3. by necessity.

An agency is created where an agent goes beyond their authority by intervening on behalf of the principal in times of emergency.

S.124 of the contracts act empowers an agent to do any act for the purpose of protecting a principal from loss as would be done by a person of ordinary prudence, under similar circumstances.

An agency of necessity may be created if the following 3 conditions are met.

1. It is impossible for the agent to communicate to the principal. The Australia (1859) 13 MOO P.C.C 132. In light of modern communications, this may be very unlikely to arise. In SPRINGOR V GREAT WESTERN RAILWAY CO. (1921) 1 KB 257, a consignment of fruit was found by the carrier to be going bad. The carrier sold the consignment locally instead of delivering it. Court held that the carrier was not an agent of necessity because he could have obtained new instructions from the owner of the first.

2. Agent acted in good faith for the benefit of the principal. TRONSON V DENT (1853), 8 MOO. P.C.C 419

4. Agency by estoppel

S.169 of CA

In POLE V LEASK (1863), 8 LT.645, court stated that a person can in the absence of prior agreement as to authority or subsequent ratification of unauthorized acts become a principal by placing another in a situation in which according to the ordinary usage of mankind that other is understood to represent and act for the person who placed him so.

The requirement for an agency by estoppel were summed up by Slade j in RAMA CORPORATION LTD V PROVED TIN AND GENERAL INVESTMENTS LTD, (1952) 1 ALL ER 554, as

1. As representation which must be some statement or conduct on the part of the principal

2. Reliance on the representation which means that it must be made either to the particular individual who transacts business with the agent or to the public at large in circumstances in which it is to be expected that the general public would be likely to transact with the agent.

3. An alteration of a party's position resulting from the reliance.

5. Ratification

S.130 (1) of the contracts act

This arises in situations where an agent does something outside their authority however the principal on whose behalf the agent did the thing accepts and adopts it, just as if there had been a prior authorization by the principal to do exactly what the agent has done.

The effect of ratification as stated by Tindal CJ in WILSON V TURIMAN (1843) 6 MAN AND G 236, is that the principal is bound by the act, whether it be for his detriment or his advantage and whether it be founded on a tort or a contract, to the same effect as by and with all the consequences which follow from the same act done by the previous authority.

The requirements for ratification were laid down by were laid down by Wright J in FIRTH V STAINES (1897)2 Q.B 10 and they are:

1. The agent whose act is sought to be ratified must have purported to act for the principal who later ratifies.

In RE TIEDEMANN AND HEDERMANN FRERES (1899)2 Q.B 66, an agent acted in X's name as principal, though intending the sale to be for his own benefit and to his own account. The 3rd party later wanted to avoid the contract when he found out the truth on the ground of the false pretense about the party with whom he was contacting. X purported to ratify the sale. It was held that he could do so and thus deprive the 3rd party of his right to turn a voidable contract into a nullity. The possibility of ratification does not depend upon what the agents' state of mind actually was but upon the way his statements and conduct were reasonably understood by the 3rd party.

2. At the time the act was done the agent must have had a competent principal. The principal must be in existence at the time the act was done by the agent. No one can purport to act as an agent for a person who will come into existence at some future date even if the agent can reasonably expect that his acts will be adopted.

In NEWBORNE V SENSOLOD (GREAT BRITAIN) LTD, (1953)1 ALL ER708, a contract of sale was signed by L.Newsborne on behalf of a projected company,lepold news borne ltd,which was not registered at the relevant time. The company was accordingly not in existence when the contract was made. Therefore the contract was a nullity and could not be ratified so as to entitle the company to sue upon it when the defendants refused to take delivery of the goods contracted to be sold.

3. The act done by the agent must be legal

4. Time when ratification takes place. Not only must the principal have capacity to ratify him or she must enjoy such capacity at the time of the purported ratification.

IN KEIGHLEY MARSTTOD AND CO V DURRANT (1901) AC 240, court held that if an agent by words or conduct indicates an intention to act not as agent at all but as principal, there is no body who can ratify as principal, the latter cannot ratify any transaction made by the agent.

DIFFERENT KINDS OF AGENTS.

1. General and specific agents.

A general agent is one who has authority to do some act in the ordinary course of his trade, business or profession, as agent on behalf of his principal or to act for his principal in all matters or in all matters of a particular trade or business or of a particular nature.

A special agent is one whose authority is limited to doing some particular act or to representing his principal in some particular act or to representing his principal in some particular transaction, not being in the ordinary course of trade, profession or business as an agent.

2. Brokers.

They are mercantile agents. In FOWLER V HOLLINS (1872) L.R.T Q.B 616, a broker was defined as an agent employed to make bargains and contracts between persons in matters of trade, commerce and navigation. Properly speaking a broker is were negotiators between other parties.

3. Del credre agents.

These are also mercantile agents. These are agents who in return for an extra commission called a Del credere commission, promise that they will indemnify the principal if the 3rd with whom they contract in respect of goods fail to pay what is due under the contract.

4. Auctioneers.

These are agents whose ordinary course of business is to sell by public auction that is by open sale, goods or other property.

5. Commission agents

These resemble independent parties. A commission agent seems to be a seller of goods for commission.

Rights and duties of an agent and principal duties of an agent/rights of the principal.

1. Performance.

Where the agency is contractual, the agent must perform what he has undertaken to perform. The agent has a duty to carry out the contract which the agent has made with the principal. In TURPIN V BILTON (1843) 5 MAN AND G H55, the agent was appointed under a contract to insure the principals ship. He failed to do so, the ship was lost and the principal was therefore uninsured at the time. It was held that the agent had been guilty of a breach of contract for which he was liable.

However there is no duty to perform an illegal undertaking. IN COHEN V KITTELL (1889) 22 Q.B.D 650, the principal employed a tuff commission agent to place certain bets, which the agent failed to do. The principal sued and agent, claiming the loss of the money he would have won had the bets been made. It was held that the agent was not liable. S.10 of the contracts act provides for lawful consideration

2. Obedience

The agent, in the performance of the undertaking must act in accordance with the authority which has been given to them. He/she must obey instructions contained in the express authority. S.145 of the contracts act.

3. Core and skill

Agent must perform their duties with due care and skill. S.146 (1) of C.A

4. Non –delegation

The general rule is that the agent must perform his/her undertaking personally. This is because of the relationship between a principal and agent is a confidential one. The principal imposes trust in the agent of his choice hence the duty of the agent is to act personally in conformity with the maximum delegatus non potest delegare.

In ALLAN AND CO LTD V EUROPA POSTER SERVICES LTD . The relation of an agent to his principal is normally at least one which is of a confidential character and the application of the maxim delegatus non potest delegare to such relationship is founded on the confidential nature of the relationship.

S.125 (1) of contracts act duty to act personally where agent undertook to act personally.

S.125 (2) where the ordinary custom of a trade allows it a sub agent maybe employed to perform an act which the agent expressly or impliedly undertaken to perform personally.

S.125 (3) if the agency permits, then agent may employ a sub-agent.

S.126 (1) where a sub-agent is duly appointed, he/she binds the principal.

S.126 (2) an agent is responsible for the acts of the sub agent to the principal

S.127, where sub-agent is not duly appointed then principal isn't bound.

Where the principal reposes no personal confidence in the agent the maxim has no application, but where the principal does place confidence in the agent that in respect of which the principal does so must be done by the agent personally unless expressly or inferentially he is authorized to employ a sub agent or to delegate the function to another. If the agent personally performs all that part of his functions which involves any confidence conferred on him or reposed in him by the principal it is immaterial that he employs another person to carry out some purely ministerial act won his behalf in completing the transaction

Where there is an express permission to delegate the court in MACKERSY V RAMSAYS BONARS AND CO. (1843) 9 CI & FIN 818, stated that the agent will be liable to the principal for breaches of duty on the part of the sub-agent

5. Respect of principals title.

The agent cannot deny the title of the principal to goods, money or land possessed by the agent on behalf of the principal. The possession of the agent is the possession of the principal for all purposes.

6. Duty to account.

The agent must pay over to his principal all money received to the use of his principal. The duty requires that the agent should be in a position to know what he must pay the principal and that the principal should be able to see whether the agent has fulfilled his/her duty.

7. Duty not to make secret profits.

An agent may not make a secret profit out of the performance of his duties as an agent. It is the duty of agent to relay all benefits to the principal. SHAH V ATTORNEY GENERAL.

S.150 of the C.A states that principal has right to benefit from gain made by agent dealing on own account in business of agency.

8. Duty of fidelity.

Where an agent is in a position in which his own interest may affect the performance of his duty to the principal, the agent is obliged to make a full disclosure of all material circumstances so that the principal with such full knowledge, can choose whether to consent to the agent acting. If this is not done and the principal does not ratify ,then he may set aside the transaction and claim from the agent any profit the agent may have obtained from such transaction.

IN MCPHERSON V WATT (1877), the agent of two ladies who wanted to sell their house bought it in the name of his brother, so as to conceal that he was really buying it for himself. Specific performance of the contract of sale was therefore refused.

RIGHTS OF THE AGENT/DUTIES OF THE PRINCIPAL

1. Remuneration S.153 of C.A

This is the most important duty of the principal. The duty exists where expressly or impliedly provided for. The duty even if stated only arises where the agent has earned it. The agent must show not only that he has achieved what he was employed to bring about but also that his acts were not merely incidental to that result, but were essential to its happening. Like all cases of causation it is ultimately a question of fact. In WILKINSON V MARTIN (1837) SC and P 1, Tindal Cj stated that the question to be answered was did the sale really and substantially proceed from agents' acts.

In TOULMIN V MILLAR an agent found a tenant for an estate, as he was employed to do. Later the tenant purchased the estate, without the intervention of the agent. It was held that the agent was not entitled to commission on the sale.

In TAPLIN V BARRETT the principal employed an agent to sell a house. The agent found a prospective purchase, whose terms were not accepted by the principal, who therefore put the house up for auction. At the auction, x, was the successful bidder who bought the house. It was held that the agent was not entitled to commission.

In GREEN V BARTLETT , the agent was employed to sell a house at an auction, failed to get a purchaser at the auction. X who had been present at the auction asked the agent who was the owner of the house. The agent told him and X then proceeded to enter into a contract directly with the owner, the agents' principal. Court held that the agent was entitled to his commission. The court stated that if the relation of buyer and seller is really brought about by the act of the agent he is entitled to commission although sale has not been effected to him.

In BURCHELL V GOWRIE COLLIERIES (1910) AC 614, the principal sold to X behind the agents back but after the agent had discovered x in the course of fulfilling the task of finding a purchaser for the principal and had advised his principal not to sell to X. court held he was entitled to receive his commission.

It is immaterial that the principal has not benefited from the acts of the agent as long as the agent performs what he was contracted to do. Where principal does not benefit from act.

In FISHER V DREWETT (1879) 48 L.J.QB 32, the agent was employed to get a mortgage on the principal's property. A third party was found ready to advance the money. But the mortgage could not be made because the principal had no title. It was held that the agent was entitled to his remuneration, despite the fact that the principal had got no benefit from his act. For the agent had done what he was employed to do.

The agent is not entitled to his commission if he has not performed what the contract of agency required him to do before his commission was payable, even if the principal prevented the agent from achieving this, as long as the principals conduct was legitimate under the contract.

Under S.154 of CA, an agent guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business.

2. Indemnity.

The duty maybe expressly stated but usually is implied. The extent of this liability depends upon the nature of the agreement between the parties and the kind of business in which the agent is employed.

S.158 (1) of CA, a principal must indemnify an agent against the consequence of all lawful acts done by the agent in exercise of the authority conferred upon them.

3. Duty to compensate agent for injury suffered in the execution of their duties. S.158 of the CA.

4. right of principal to repudiate when agent deals without the consent of the principal.

REMEDIES AVAILABLE TO PARTIES UPON BREACH OF AGENCY.

Principal

1. Dismissal S.137 of CA / revocation.

On discovering the agent's misconduct, the principal may dismiss him without giving any notice and without being liable to pay the agent any compensation.

2. Court action.

If depending on the alleged cause of breach, the court action will be founded on that. For example, negligence, and fraud. In the action, the principal may recover damages. S.146 (2) of C.A

3. Prosecutions.

Where the agents misconduct takes the form of a criminal offence, such as acceptance of a bribe or misappropriation of the principals property, the principal, besides his remedy in damages, such as an action for conspiracy or conversion, can also institute the appropriate criminal proceedings under , for example the penal code act.

Agent.

1. Action

Say for payment of remuneration agreed upon in the agency

2. Set off

This happens where principal has a claim but also the agent claims some money from the principal.

3. Lien

If the principal has not discharged his obligation of paying remuneration or indemnity and the agent is in possession of goods belonging to the principal then subject to the consideration, the agent is entitled to exercise a lien on such goods and retain possession of them until such time as the principal has satisfied the due claims of the agent.

Effect of the agency relationship.

1. Contracts by agents.

In such contracts, it's necessary to ascertain the nature of the principal on whose behalf the agent contracted.

A named principal. This is one whose name has been revealed to the 3rd party by the agent.in such circumstances, the 3rd party knows that the agent is contracting a san agent and knows also the person for whom the agent is acting.

A disclosed principal is one whose existence has been revealed to the 3rd party by the agent, but whose exact identity remains unknown.

Where the agent contracts with a 3rd party on behalf of a disclosed principal who actually exists and has authorized the agent to make such contract, the principal can sue and be sued by the 3rd party on such a contract. The agent must have been acting with authority in making such a contract. The principal will not be liable where the agent contracted outside the scope of his/her actual, apparent or presumed authority whatever the derivation of the relevant type of authority.

In LINFORD V PROVINCIAL etc. INSURANCE CO. (1864), 34 BEAR 291, a stock broker who sold stock on credit, although in good faith and on behalf of his principal did not bind his principal by such contract since he was not expressly authorized to make such a sale, nor was it within his implied authority as being usual or customary.

Even if the agent appears to have authority, he will not bind his principal to any 3rd party with whom he contracts if such 3rd party has notice of the agent's actual lack of authority.

An undisclosed principal. Is one whose identity

Termination of an agency.

S.135 of contracts act lays down the ways in which an agency maybe terminated and these include:

a) A principal revoking his/her authority

b) An agent renouncing the business of the agency

c) The business of the agency is completed

d) A principal or agent dies.

e) A principal or an agent becomes of unsound mind

f) A principal is adjudicated an insolvent under the law.

g) The principal and agent agree to terminate

h) The purpose of the agency is frustrated.

In TRANSLINK LIMITED V CHEMI AND COTE INDUSTRIES LIMITED, TANZANIA (CCIL) AND 2 OTHERS (CIVIL SUIT 100 OF 2019),Principal's liability and agent immunity for acts within authority, the high court re-affirmed the following foundational principles regarding principal –agent liability in contractual matters

a) That where an agent enters into a contract on behalf of a principal, the contract is that of the principal not the agent and the only person who can sue or be sued on the contract is the principal.

b) That an agent cannot be sued on a contract made within the proper scope of their agency, provided the principal is known.

c) That where the contract is silent as to its duration and termination rights, kit can none the less be lawfully terminated by one or both parties upon the provision of reasonable notice

An agency agreement.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE CONTRACTS ACT,

2010.

AGENCY AGREEMENT

This AGENCY AGREEMENT is made this 3rd day of February 2020.

BETWEEN

Xxx of P.O BOX ## KAMPALA (hereinafter referred to as the "principal")

AND

Yyy of P.O BOX ## JINJA (Hereinafter referred to as the "agent")

WHEREAS:

1.

2.

3.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. SUBJECT MATTER

- Products/services which are the subject of the agreement.
- Minimum targets to be attained.

2. DURATION/COMMENCEMENT

- Fixed period
- Right to renew/automatic renewal

3. DUTIES OF THE PRINCIPAL.

- Supply promotional literature
- Refer to the agent enquires from within the territory
- Provide advice and assistance.

4. DUTIES OF THE AGENT.

5. RENUMEARTION/COMMISSION

- Basis of commission

- Time, manner and place of payment.
- Currency of payment.

6. INDEMNITY
7. EXCLUSIVITY/APPOINTMENT OF ADDITIONAL AGENTS
   - Is the agent exclusive/sole/non-exclusive
8. TERRITORIAL BOUNDARIES.
9. REPORTING GUDELINES
10. FINES,PENALITIES ,CHARGES AND TAXES
11. FORCE MAJURE
12. CONFIDENTIALITY
13. TERMINATION
    - Right to terminate by notice
    - Length of notice period
14. DISPUTE RESOLUTION
15. LAW APPLICABLE

IN WITNESS WHEREOF THE PARTIES here to put their respective hands and seals on the day and the year herein above stated.

PRINCIPAL	AGENT
Signature:.....	Signature
Name:	Name
Position:.....	Position
In the presence of:	
Signature:	signature
Name:	name

Profession: position.

FRANCHISE.

Franchise agreements are regulated under the law of contracts and thus the primary legislation is the contracts act.

Other laws applicable include the trade secrets act, the trademarks act, and the investment code act of 2019.

The black's law dictionary 8th edition defines a franchise as a privilege granted or sold such as to use a name or to sell products or services. The right is given by a manufacturer or supplier to a retailer to use his product and mane on terms and conditions mutually agreed upon.

IN BOLAN BEVERAGES V PEPSICO, 2004 CLD 1530, the supreme court of Pakistan citing the black law dictionary above stated that in its simplest terms, a franchise is a license from owner of trade mark or trade name permitting another to sell a product or to serve under that name or mark. Precisely this definition is mole akin to a license rather than an agency. A franchise is therefore not an agency.

Common features.

1. Contractual relationship from franchisor to franchisee

2. Control by the franchisor over entire business operations of the franchisee

3. Assistance by the franchisor to franchisee in setting up, development, operation and promotion of a business

4. Payment of royalty and fee by the franchisee to franchisor.

Note: franchisor and franchisee are two distinct legal entities having their own profit and loss liabilities.

Customer's relationship with Franchisor through franchisee.

Franchising contracts typically carry a clause relating to any product liability to be the responsibility of the franchisee and such liability cannot under normal circumstances be passed on the franchisor.

Franchise agreement.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE CONTRACTS ACT, 2010

FRANCHISE AGREEMENT

This FRANCHISE AGREEMENT is made this 3rd day of February 2020

BETWEEN

Xxx of P.O BOX ## KAMPALA (Hereinafter referred to as the "franchisor"

AND

Yyy OF P.O BOX ## KAMPALA (Hereinafter referred to as the "franchisee")

WHEREAS:

1.

2.

3.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Date of commencement and duration
2. USE OF TRADE MARK
3. NATURE OF BUSINESS
4. ESTIMATED INVESTEMENT
5. ASSIGNABILITY OF RIGHTS
6. CONFIDENTIALITY AND TRADE SECRETS
7. TAX OBLIGATIONS
8. ROYALTY RATE AND PAYMENT PERIOD

9. INTELLECTUALPROPERTY RIGHTS

10. DISPUTE RESOLUTION

11. LAW APPLICABLE AND FORUM

12. TERMINATION

IN WITNESS WHEREOF THE PARTIES here to put their respective hands and seal on the day and year herein above stated.

FRANCHISOR	FRANCHISEE
Signature:	signature:
Name:	name:
Position:	position:
In the presence of	in the presence of
Signature:	signature:
Name:	name
Profession:	position.

DISTRIBUTORSHIP

A distributorship re-sells goods bought from a supplier for a profit which derives as a result of the cost at which he/she sells the goods compared to the cost of the goods when they purchased them.

Unlike in an agency, the distributor has no authority to bind the supplier.

The distributor runs his/her own business and the supplier has no control over it except say in terms of resell price.

In LAMB AND SONS V GORING BRICK CO LTD (1932)1 K.B 710, court defined a distributorship as a business transaction under which the distributor often buys from a particular manufacture. In this case the distributor bought building materials from a supplier and sold them at a profit which they were not required to account to the supplier. Court held it was not an agency.

Also HONEY WILL AND STEINLTD V LARKIN (1934) 1 K.B 191

Distribution agreement.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE CONTRACTS ACT 2010.

DISTRIBUTORSHIP AGREEMENT.

This DISTRIBUTORSHIP AGREEMENT is made this 3rd day of February 2020.

BETWEEN

Xxx of P.O BOX ### KAMPALA (hereinafter referred to as the "supplier")

AND

Yyy of P.O BOX ## KAMPALA (Hereinafter referred to as the "distributor")

WHEREAS:

1.

2.

3.

NOWTHEREFORE THE PARTIES AGREE AS FOLLOWS:

1. SUBJECT MATTER

- The products subject of the agreement

2. TERRITORY

- The geographical area covered by the agreement.

3. SCOPE OF APPOINTMENT

- Is the distributorship exclusive/sole/non-exclusive.

4. DURATION AND COMMENCEMENT

5. TERMS OF SALE OF PRODUCTS FROM SUPLLIER TO DISTRIBUTOR

- Prices
- Payment terms
- Delivery terms
- Warranties
- Minimum purchase.

6. DUTIES OF DISTRIBUTOR.

- Purchase goods only from supplier
- Promote sales
- Pass back information on the market to the supplier
- Keep sufficient stock

7. DUTIES OF THE SUPPLIER

- Advertisement
- Provide know-how, technical support and training

8. AMENDMENT

9. TERMINATION

10. DISPUTE RESOLUTION

11. LAW APPLICABLE

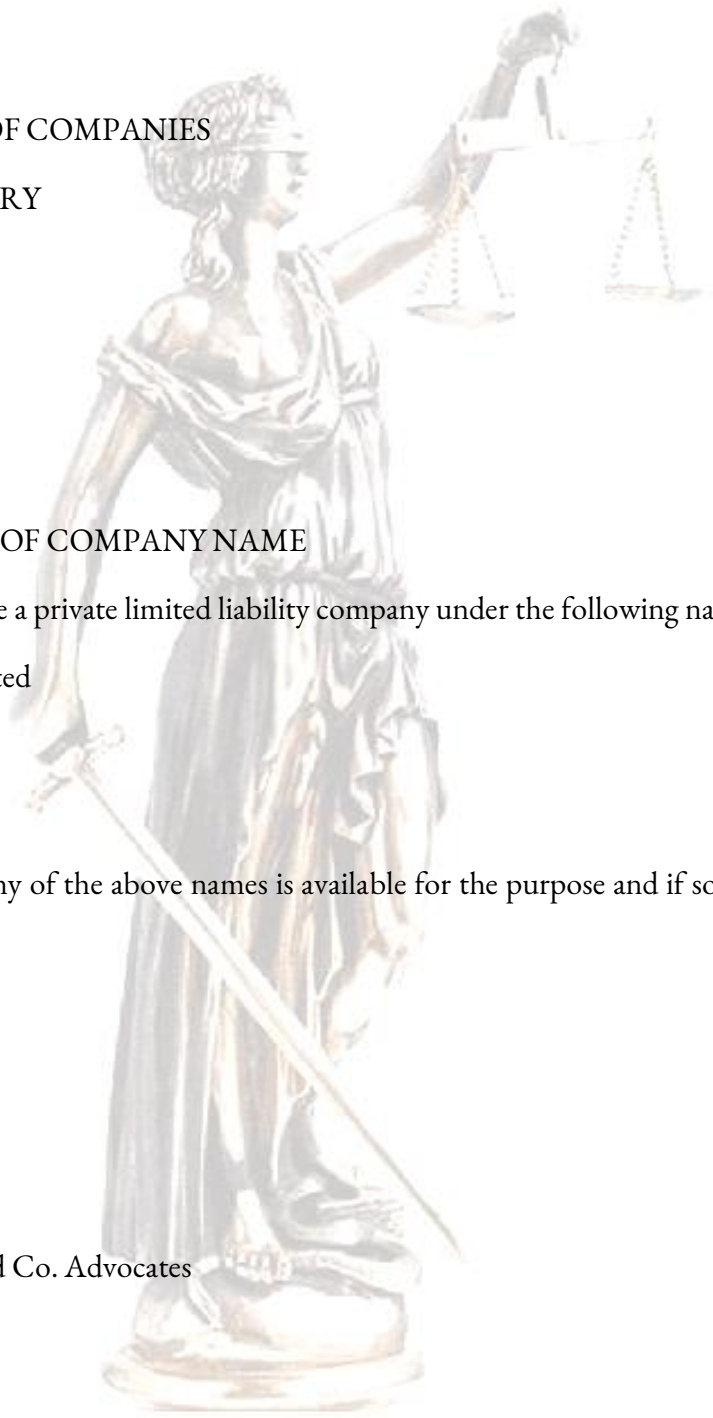
IN WITNESS WHEREOF THE PARTIES hereto put their respective hands and seal on the day and year herein above stated.

SUPPLIER	DISTRIBUTOR
In the presence of	in the presence of

Appendix B- Documents for Company matters

Our Ref: FMH/CC/04/2004 Date: 28th Oct 06

Your Ref:



THE REGISTRAR OF COMPANIES

COMPANY REGISTRY

KAMPALA

Dear Sir

RE:RESERVATION OF COMPANY NAME

We wish to incorporate a private limited liability company under the following names

1) Gavamukurya Limited

2)Gukuba Limited

Please let us know if any of the above names is available for the purpose and if so proceed to reserve the name for us.

Yours faithfully,

.....

For SUI GENERISand Co. Advocates

c.c. Promoters

I have searched the Register of Company and business name and found non similar.

Signed:

.. ..

Registrar of Companies

1st day of November 2003

Reserved name

.. ..

For: Promoters, 11th November 2( )3.

GOVERNMENT OF UGANDA

STATEMENT OF NOMINAL CAPITAL

In the matter of the Stamps act cap 342 and in the matter of JJ ltd

I ..... OF .....

Hereby state as follows:

1. That I am .... *of ..... Ltd.

2. That the nominal capital of the said ..... Ltd is Shs. ..... divided as follows:

..... shares of Shs. .....each

..... shares of Shs. .....each

..... shares of Shs. .....each

Dated at Kampala this ..... day of ....., 20 .....

Signature .....

Full Name .....

Address .....

An Advocate of the High Court engaged in the formation or person named in the Articles of Ass as Directors or secretary.

THE COMPANIES ACT 106

DECLARATION OF COMPLIANCE WITH THE REQUIREMENTS OF COMPANIES ACT, ON APPLICATION FOR REGISTRATION OF A COMPANY, PURSUANT TO SECTION ---- OF THE COMPANIES ACT 106

NAME OF THE COMPANY..... LTD.

PRESENTED BY . . . .

I ..... OF ..... Do solemnly and sincerely declare that I am .... *of ..... Ltd. and that all the requirements of the Companies Act, in respect of the matters precedent to the registration of the said company and incidental have been complied with.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act Cap. 22.

Declared at Kampala this ..... day of ....., 20 .....

DEPONENT

.....

BEFORE ME

.....

COMMISSIONER FOR OATH

* An Advocate of the High Court engaged in the formation or person named in the Articles of Ass as Directors or secretary.

THE REPUBLIC OF UGANDA

THE COMPANIES ACT 106

MEMORANDUM OF ASSOCIATION OF GAVAMUKURYA LTD.

1. The first name of the company is Gavamukurya Ltd.

2. The registered office of the company will be situate at Kireka, Kampala.

3. The objects for which the company is established arc to engage in business of

Importation and selling of tractors, tractor spare parts and accessories and establish a tractor assembly plant, and doing of all such other things as re . incidental or conducive to be attainment 0 I' the above.

4. The liabilities of the members are limited by shares.

5. The share capital of the company is Ug. Shs. Six hundred million shillings (600m/=). 600 shares each one (1) million..

6. We the persons whose names and addresses are subscribed are desirous of

being formed into a company in pursuance of the memorandum of association and we respectively. agree to take the number of shares in the capital of the company set opposite our respective names, addresses and occupation of the number of shares taken and shared for.

NAME, POSTAL ADDRESSES AND OCCUPATIONS OF SUBSCRIBERS NUMBER OF SHARES TAKEN BY EACH SUBSCRIBER

SIGNATURE OF SUBSCRIBER

DATED this .....day of .....2006.

WITNESS TO THE ABOVE SIGNATURES:

FULL NAMES: .....

POSTAL ADDRESS: .....

OCCUPATION: .....

SIGNATURE: .....

Total Shares taken - 600

Dated this ..... day of ..... 2006.

.....

Witnessed to the above signatures.

DRAWN BY:

SUI GENERIS& CO. ADVOCATES

P.O. BOX 7117, KAMPALA

THE REPUBLIC OF UGANDA

THE COMPANIES ACT 106

ARTICLES OF ASSOCIATION OF GAVAMUKURYA LTD.

COMPANY LIMITED BY SIIARES

1. This company is a private company and accordingly.

a) The right to transfer shares is restricted in the manner hereinafter

prescribed.

b) The number of members of the company (excluding persons who are in the

employment of the company and persons who, having been formerly in the

employment of the company was, while in such employment and have

continued, after the determination of such employment to the members of the company) is limited to fifty, provided that where two or more persons hold one or more shares in the company jointly, they shall for the purpose of the Articles, be treated as a single member.

2. PRELIMINARY

The regulation in Table A of the first Schedule of The Companies Act 106 shall apply to the company except in as far as they conflict with the A.O.A herein contained. .

3. Interpretation:

In these Articles, if not inconsistent with the subject or subjects, the words standing in the first column of the following table shall bear the meaning set opposite,

Word	Meaning
Company	The Company- Gavamukurya Ltd
The Act"	The Companies Act.
"The Office"	The registered office for the time being, of the company
The Secretary	Any person appointed to person the duties of the secretary of the company.
"Paid"	Paid or credited as paid
The register	The register of members the company required to be kept by sect. 112 of the Act.
The Seal	The Common Seal of the company,

Save as aforesaid, any words or expressions defined in the Acts shall bear the same meaning in the Articles,

The office of the company shall be at such place in Uganda as the directors shall from time to time appoint.

5. TRANSFER AND TRANSMISSION OF SHARES

Subject to such restrictions in these Articles as may be applicable, an) member may transfer all or any of his shares by instrument in writing in an) usual or common form or any other form which the directors may approve.

6. Any party to this Agreement proposing to transfer any shares shall give notice

in writing to other parties, The transfer notice shall state the number of

shares the transferee proposes transfer. The initial parties to this agreement shall have priority over every other party to purchase such shares.

7. ALTERATION OF CAPITAL

The company may from time to time, by ordinary resolution;

a) Consolidate and divide all or any of the company's share capital into shares of larger amounts than the existing shares.

b) Cancel any shares which, at the time of the passing of the resolution, have not been taken or agreed to be taken by any person and in the amount of the share capital by the amount of the shares so cancelled.

8. GENERAL MEETINGS

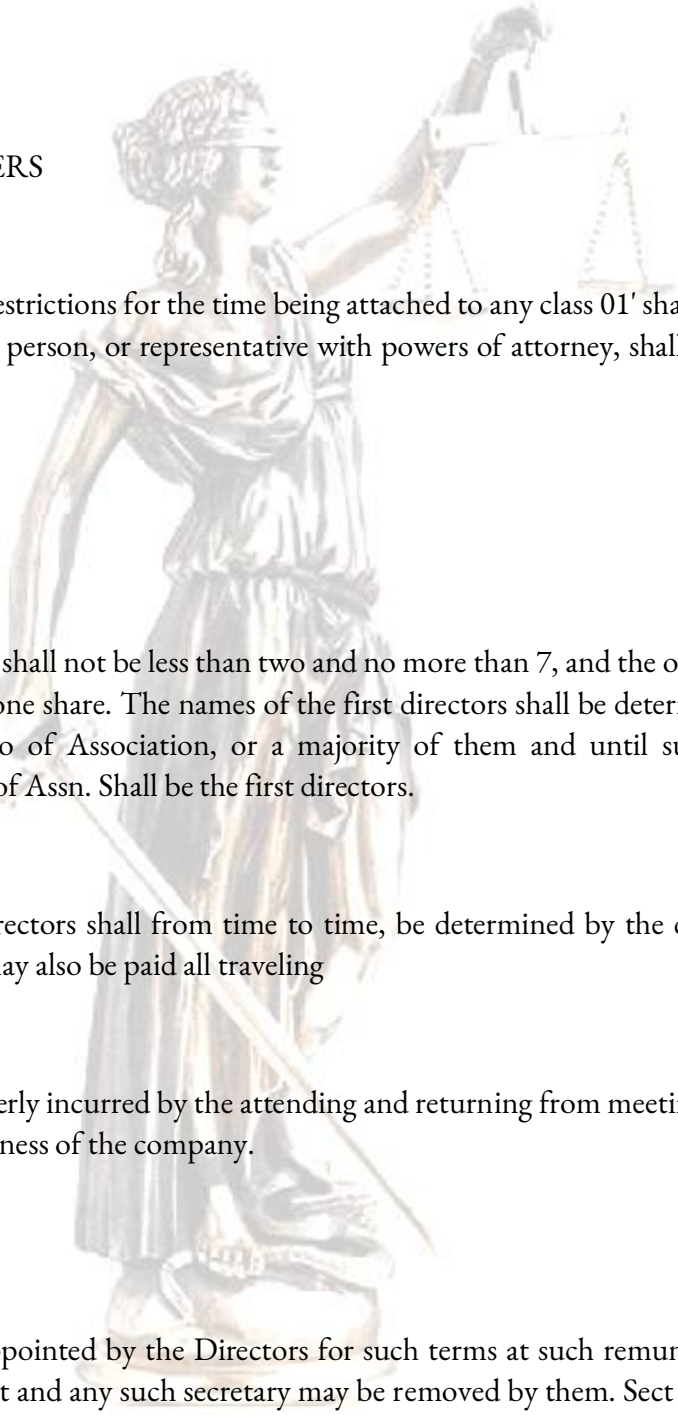
The company shall in each year, hold a general meeting as the Annual General Meeting in addition to any other meeting in that year, and shall specify the meeting as such in the notice calling it and not more than 15 months shall elapse between the date of one Annual General meeting within the 18 months of the company incorporation. It needn't hold in the year of the company's incorporation, but in the following year. These meetings shall be held at such time and place as the directors shall appoint.

All General meetings other than the Annual General Meetings shall be called extra ordinary General meetings.

The Directors may, whenever they think fit, convene an extra ordinary general meeting it shall also be convened on such requisition as provided by S.132 of the Act if at any time these are not, within Uganda, sufficient directors capable of acting to form a quorum, any director or any 2 members of the company may convene an extra ordinary general meeting Jig in the same manner.

A general meeting shall be called by 21 day:, notice in writing at least, except in situations where it is not practicable to do so.

The accidental omission to give notice of a meeting or the non-receipt of notice, shall not invalidate the proceedings at that meeting except where reasonable cause is shown.



13. VOTES OF MEMBERS

Subject to any rights or restrictions for the time being attached to any class 01' shares, on a show of hands, every member present in person, or representative with powers of attorney, shall have one vote and one poll.

14. DIRECTORS

The number of directors shall not be less than two and no more than 7, and the other qualification of the director shall be at least one share. The names of the first directors shall be determined in writing by the subscribers to the memo of Association, or a majority of them and until such determination, the signatories to the memo of Assn. Shall be the first directors.

The remuneration of directors shall from time to time, be determined by the company in the general meeting. The directors may also be paid all traveling

and office expenses properly incurred by the attending and returning from meeting of the company or in connection with the business of the company.

16. SECRETARY

The secretary shall be appointed by the Directors for such terms at such remuneration and upon such conditions as they may fit and any such secretary may be removed by them. Sect 178 - 180- of the Act to apply.

17. THE SEAL

The Director shall provide for the safe custody of the seal, which shall be used by the authority of the Directors.

We, the several persons whose names, postal addresses and occupations are hereto subscribed are desirous of being formed into a company in pursuance to the Articles of Association.

NAMEPOSTAL ADDRESSES OCCUPATION

Dated at Kampala this ..... day of ....., 20 .....

Witness to the above signatures.

Full Name: .....

Signature .....

Postal Address .....

Occupation: .....

THE REPUBLIC OF UGANDA

IN THE MATTER OF COMPANIES ACT 2012

IN THE MATTER OF CONTRACT ACT CAP 73

JOINT VENTURE AGREEMENT BETWEEN

FODDCRAFT (UK) LTD

AND

MARINE PRODUCTS (U) LTD.

The agreement made this 12th day of November 2004, between

FODDCRAFT (UK) LTD, a private liability company incorporated in UK (hereinafter referred to as Foddcraft) on one part

AND

MARINE PRODUCTS (U) LTD. a private liability company incorporated in Uganda (hereinafter referred to as Marine) on the other part.

AND THIS AGREEMENT WITNIESSETH AS FOLLOWS: (fill in info under these heads)

1. FORMATION OF A COMPANY
2. PURPOSE
3. NAME AND LOCATION
4. CAPITAL CONTRIBUTION
5. CONDITIONS AND WARRANTIES
6. MANAGEEMNT
7. ARBITRATION AND DISPUTE RESOLUTION
8. TERMINATION AND DURATION
9. COMMENCEMENT

In witness whereof the authorized representatives of the parties herein have affixed their signatures and seal on this 12th day of November 2005

SIGNED FOR AND ON BEHALF OF

FODDCRAFT (UK) LTD .....

IN THE PRESENCE OF .....

SIGNED FOR AND ON BEHALF OF

MARINE PRODUCTS (U) LTD .....

IN THE PRESENCE OF .....

DRWN AND FILED BY

Firm C and Co. Advocates

P.O.BOX 7117,

Kampala

THE REPUBLIC OF UGANDA

THE BUSINESS NAMES REGISTRATION

NOTICE OF CESSATION OF BUSINESS.

TO: THE REGISTRAR GENERAL.

C.C. THE REGISTRAR OF COMPANIES, REGISTRAR OF DOCUMENTS.

Whereas we the undersigned registered under the number .....in the index of registration have ceased to carry on business as NEW STYLES DRAPERS as from the 6th day of November, 2022 and immediately have commenced the incorporation of the company whose name shall be NEW STYLES DRAPERS LIMITED.

Dated this 6th day of November 2022.

1. KELEMENSIA MERIDA

2. OPIO ZAPPA

3. GABRIELI MEGANI

- Attach a letter to the effect that you're going to use the name for incorporation of a company.

Board resolution.

THE REPUBLIC OF UGANDA

THE COMPANIES ACT, 2012

IN THE MATTER OF MOLBY (U) LTD.

BOARD RESOLUTION.

At a board meeting held at the company premises on this 6th day of December 2022, it was resolved that:

1. Sylivanus Ngobi pay a sum of 5,250,000 being part of the sums due to the company as a result of the unpaid shares he subscribed to.

2. The sums shall be payable by the 23rd day of December 2022 in the bank account of the company as shall be provided to him.

Dated this 6th day of December 2022.

SUI GENERIS LUMALA JOEL

DIRECTOR SECRETARY

CERTIFICATE OF CONVERSION.

REPUBLIC OF UGANDA

THE COMPANIES ACT, 2012.

COMPANY NO: CN2009.

CERTIFICATE OF CONVERSION FROM A SINGLE MEMBER COMPANY TO PRIVATE COMPANY NOT BEING A SINGLE MEMBER COMPANY.

I CERTIFY THAT: KELEMENSIA SMC LTD has this day converted into KELEMENSIA LTD, private company with limited liability under the companies' act 2012.

Dated this 7th day of November the year 2022.

REGISTRAR OF COMPANIES.

FORM 4

Notice of conversion.

THE REPUBLIC OF UGANDA

THE COMPANOES ACT,2012.

NOTICE OF CONVERSION OF A SINGLE MEMBER COMPANY INTO A PRIVAE COMPANY.

1. Name of single member company: KELEMENSIA SMC LTD.

2. Company No: CN2009.

3. Name and Address of Single member: KELEMENSIA MERINDA, P.O BOX 7117, KAMPALA.

4. Grounds for conversion from single Member Company to private company. (Tick appropriate)

a) Transfer of shares

b) Further allotment of shares.

c) Death of single member

d) Operation of law.

5. Date of transfer of shares/allotment of shares/ death certificate or court order 7th Nov. 2022. (Enclose attested copies of transfer deeds or return of allotment or other document effecting the transfer of shares.)

6. Date of special resolution for conversion from single member company to a private company and alteration in article; 6th Nov.2022 (enclose copy of special resolution and altered articles if any).

7. Names, addresses and shareholding of members:

Name	Address	shares held	total
SUI GENERIS	P.O BOX 717 KLA	10	10
KUNYIGA ELVIS	P.O BOX 22 JINJA	10	10

Dated at KAMPALA this 7th day of November 2022.

SUI GENERIS

APPLICANT.

Form 5

Notice of death of S.M Reg 11(2)(b)

THE REPUBLIC OF UGANDA

THE COMPANIES ACT, 2012

NOTICE OF DEATH OF SINGLE MEMBER

1. Name of single member company: KELEMENSIA SMC LTD.

2. COMPANY NUMBER : CN 2009

3. Name and former address of the deceased single member: KELEMENSIA MERIDA

P.O BOX 7117, KAMPALA.

4. Date of death of member: 5th Nov 2022.

5. Particulars of personal representative:

a) Name: KAKIMA JOHN

b) Physical address: KIRA, WAKISO

c) Sex ; MALE

d) Occupation: TRADER

e) age: 25 YRS.

6. Any circumstances leading to impediment.

NONE.

7. Name and address of the nominee/alternate nominee director:

MPIIMA BLAISO

P.O BOX 7117, KAMPALA.

Dated this 7th day of November 2022.

MPIIMA BLAISO

NOMINEE DIRECTOR.

Return of allotment.

THE REPUBLIC OF UGANDA

THE COMPANIES ACT

RETURN OF ALLOTMENT OF SHARES

(Under Section 61(1) (a) of the act)

PARTICULARS OF COMPANY:

1. Name of company: MOLBY (U) LIMITED.

2. Presented by:

PERIOD OF RETURN

From the 30th day of June the year 2016

To the 30th day of June the year 2017

PARTICULARS OF ALLOTMENT

1. Number of the shares allotted payable in cash.

2. Nominal amount of the shares allotted.

3. Amount paid or due and payable on each share

4. Number of shares allotted for consideration other than cash

5. Nominal amount of the shares so allotted

6. Amount to be treated as paid on each such share.

7. The consideration for which such shares have been allotted is as follows.

NAMES, ADDRESS AND PARTICULARS OF ALLOTMENT.

				Details of non-cash contributions.		
names	Address	preference	ordinary	Other kinds	Amount paid	Amount unpaid

SHARE CAPITAL OF THE COMPANY

Particulars of shares	ordinary	Preference	Other
No.of shares			
Amount paid			
Amount unpaid			
Total nominal value			
Rights attaching to shares.			

Signed:

SUI GENERIS

SECRETARY.

Dated this 7th day of December the year 2022.

Form of Annual return.

REPUBLIC OF UGANDA

THE COMPANIES ACT

ANNUAL RETURN OF MOLBY (U) LIMITED.

Annual return of MOLBY (U) Limited, made up to the 30th day of December 2019 being the fourteenth day after the date of the annual general meeting for the year 2019.

Notice of situation of registered office.

S.115(1) requires that on the day of commencement of business or as from the 14 day after the date of incorporation, whichever is earlier , the entity must have a registered postal address to which all communications and notices may be addressed.

Under S.115 (2) of CA, where a company fails to comply with subsection (1), the registrar may give notice to the company giving it reasonable office or postal.

Any change to the registered office or postal address must be notified to the registrar under S.116(10 of CA regulations , 2016 the notice of situation of registered business or the change are made in the manner prescribed in form 18 in the schedule to the regulations.

Fees payable as per item 5, head A of the second schedule to the companies (fees) rules, 2005 is UGX 20,000.

Notice of particulars of directors and secretaries.

S.192(4) of CA requires that on application for registration of the memo and articles of a company, the applicant must deliver to the registrar a list of the persons who consented to be directors of the co.

Inclusion of any person who has not consented is an offence and the person is liable on conviction to a fine not exceeding 500 currency points.

Reg. 26(2) states that every company shall notify the registrar of appointment of a director or secretary by filing notice with the registrar in form 20 in the schedule.

Pursuant to S.192 (4) the particulars of directors must be filed after the filing of the memo and articles of association except if the Co adopts incorporation.

The notice of particulars must be filed within 14 days from the date of appointment of first directors pursuant to S.228 (6) (a).

Notification of change shall be within 14 days from date of change pursuant to S.228 (6) (b).

Where Article 75 is not adopted, it's unlawful to file the particulars of the directors together with the other documents at incorporation.

Fees payable is UGX 20,000 under item 5 of Head A to the schedule of the company (fees) rules 2005.

Notice of particulars of directors.

THE REPUBLICOF UGAMDA

THE COMPANIES ACT

NOTIFICATION OF APPOINTMENT OF DIRECTORS

AND SECRETARY OF COMPANY.

Name of company: MOLBY (U) LTD.

Presented by: SUI GENERIS .

SECRETARY.

TO: THE REGISTRAR OF COMPANIES.

TAKE NOTE that the person/persons whose particulars are provided below has /have been appointed as director/directors /secretary of the above named company with effect from the 7th day of December the year 2019.

a) PARTICULARS POF DIRECTORS-INDIVIDUALS.

Names Date of birth address nationality occupation Other directorships.

PARTICULARS OF CORPORATE DIRECTORS.

Corporate name Registered or principal office Postal address

b) PARTICULARS OF THE PERSON(S) WHO IS SECRETARY

PARTICULARS OF INDIVIDUAL SECRETARY.

Names (first name and surname) Residential and postal address

PARTICULARS OF CORPORATE SECRETARY.

CORPORATE NAME REGISTERED OFFICE.

Dated the 8th day of December the year 2019.

THE REPUBLIC OF UGANDA

THE COMPANIES ACT, 2012

IN THE MATTER OF MOLBY (U) LTD.

ORDINARY RESOLUTION.

At a members meeting held at the company premises on the 16th day of December 2019, it was resolved that:

1. That KUNYIGA DERROCK KIZITO, be appointed as a director of the company

Dated this 20th day of December 2019.

SUI GENERIS
LUMALA JOEL.

DIRECTOR.
SECRETARY.

TOPIC THREE

WINDING UP OF COMPANIES AND BANKRUPTCY

A) WINDING UP

In this part of the study, the law applicable includes;

The Companies Act 106

The Companies (General Regulations) SI 110-1

The Companies (Winding Up) Rules SI 110-2

The Companies (Fees) Rules SI 110-3

The Companies (High Court) (Fees) Rules SI 110-3

Distress for Rent (Bailiffs) Act Cap 76

Distress for Rent (Bailiffs) Rules SI 76

Income Tax Act Cap 240

The Civil Procedure Act Cap 282

The Civil Procedure Rules SI 71-1

Advocates (Remuneration and Taxation of Costs) Regulations SI 267-4

Case law

Common law and Doctrines of Equity

INTRODUCTION

This refers to the procedure through which a company's existence legally comes to an end. There is cardinal principle in Re Hoima Ginners (1964) EA 439 that a winding up petition is not a legitimate means of seeking to enforce payment of a debt and therefore; a petition presented ostensibly for winding up but to really exert pressure to pay a debt will be dismissed. This was noted with approval in Re House of Garments Company Cause 2/1972. There are many different modes of winding up, thus;

MODES OF WINDING UP

VOLUNTARY WINDING UP

According to S 266-268 of the Companies Act, a company may be wound up voluntarily in the following circumstances namely:

i) „When the period if any fixed for the duration of the company in its articles has expired or where the event if any provided for the dissolution has occurred and the company passes an ordinary resolution requiring the company to be wound up voluntarily.

ii) If the company resolves by special resolution that it should be wound up voluntarily

iii) If the company resolves by extra-ordinary resolution that it cannot by reason of its liabilities continue its business and that it is advisable to wind up.

In this case, the passing of a resolution for winding up the company voluntarily is deemed to commence the winding up. The effect is chat the company must cease to carry on business except where it is necessary for its winding up.

Voluntary winding up is categorized into:

a) Member"s voluntary winding up and

b) Creditor"s voluntary winding up.

a) Member"s voluntary winding up

The main feature of this mode is that the members pass a resolution that the company be wound up voluntarily, they then appoint a liquidator of their choice and must as well file a statutory declaration of solvency declared by the directors that it will be able to pay its debts within the next 12 months from the commencement of the winding up. It is an offence for a director to make this declaration well knowing that the company is in fact in no position to meet its debts within the next 12 months. Accordingly, this mode can only be used where the company is in a position to meet its financial obligations at the rime and for the next 12 months.

The company is required within 14 days after passing of this resolution to give notice of the resolution in the Gazette and in a newspaper of national circulation.

In a member‟s voluntary winding up, the following process would have to be undertaken:

(i) The directors of the company issuing a statutory declaration of solvency as required by Section 269 of the Companies Act and having it, registered with the Registrar of Companies: 30 days before passing a resolution for voluntary winding up of the company. Section 269 of the Companies Act also requires the statutory declaration to contain a statement of the company‟s assets and liabilities as at the latest practicable date before the making of the declaration.

The members passing a special resolution for the voluntary winding up of the company as required by Section 269 of the Companies Act;

(iii) The members in a general meeting appointing a liquidator pursuant to Companies Act to wind up the company and distribute its assets, The liquidator would be required to publish in the Gazette his appointment within 14 days from the date of his appointment and also to deliver to the registrar for registration a notice of his appointment as required by of the Companies Act;

(iv) The company within 14 days after the passing of the resolution, giving notice of the resolution for voluntary winding up by advertisement in the Gazette and advertising the winding up in a newspaper circulating in Uganda;

(v) Distribution of the remaining assets of the company to the members and settling any liabilities that may exist;

(vi) The liquidator calling a general meeting to lay before it an account of the winding up. This meeting is required by of the Companies Act 2012 to be called by at least thirty (30) days notice in the gazette and in a - newspaper circulating in Uganda.

(vii) The liquidator making an account of the winding up to the members in a general meeting of the company under Section of the Companies Act and sending a copy- of such account and a return of the holding of such general meeting to the registrar.

(viii) After the expiry of 3 months from the date of the registrar receiving the account and the return and registering the same, the company is deemed to be dissolved

Creditors' voluntary winding up

A creditor‟s voluntary winding up is a hybrid of a member‟s voluntary winding up and in fact begins as such. Under the Member‟s voluntary winding, if a Liquidator is appointed and he forms the view that the company will not be able to pay its debts in full within the required time, he must summon a creditor‟s meeting and lay before it a statement of the assets and liabilities of the company. From this point on, the

winding up cease to be referred to as a member‟s voluntary winding up and is instead called a creditor‟s voluntary winding up because the creditor‟s now take over the process once it becomes evident that the company is unable to meet its obligations.

In this case, the meeting of creditors must be called and the notice calling it must be advertised in the Gazette and in a newspaper of national circulation. The creditors in their meeting are supposed to appoint a liquidator.

The consequences of voluntary winding up are that the company ceases to carry on business except in so far as is necessary for its winding up and from that date, its official documents must have an annotation that it is in liquidation. In the-same way, the powers of directors cease except where they are expressly allowed to continue.

Winding Up By The Court

This mode usually arises from voluntary winding up. In this case, any person interested may petition court to order that such voluntary winding up shall continue but subject to supervision of court, such that the creditors of the company can now apply to court for such orders as they may deem fit. This winding up is deemed to proceed as a winding up by court and all procedures apply to it with the necessary modifications. The court has power to appoint an additional liquidator.

These include if, inter alia;

mm) The company has by special resolution resolved that the company be wound up by Court.

nn) The company defaults in delivering the statutory report to the Registrar or in holding the statutory meeting.

oo) The company does not commence business in within a year from date of incorporation or suspends its business for a whole year.

pp) The company is unable to pay its debts.

qq) The court is of the opinion that it is just and equitable that the company should be wound up.

rr) In case of a company incorporated outside Uganda and carrying on business in Uganda, winding up proceedings have been commenced in respect of it in the country of its incorporation; etc.

Forum and Procedure

- The court of jurisdiction in respect to winding up is the High Court as envisaged in the Companies Act. The procedure is by petition .In case the petition is successful, the court then appoints an official liquidator to wind up the company.

- The liquidator takes over, calls for a meeting of the creditors and lays before the creditors a statement of the assets and liabilities. It must be noted that powers of the Directors cease upon appointment of the liquidator.

- After the final meeting with the creditors, the liquidator sends a copy of the account to the Registrar of companies for Registration.

ss) Three months after the registration, the company is deemed dissolved.

The documents include

tt) A petition to wind up a company (verified by an affidavit where any of the circumstances in section 222 (a) to (g) of the Companies Act) are deponed.

uu) An advert of the Petition in the Gazette/Newspaper in circulation.

Affidavit of service of petition on relevant parties, hearing Notices etc

(The documents below are consequential upon grant of winging up order)

vv) Winding Up order (this is granted by court and may include an order to appoint an official liquidator)

ww) Appointment letter of liquidator

xx) Notice of General meeting.

yy) Statement of Assets and liabilities.

zz) Statement of Account

Winding Up Order And Its Consequences

A winding up order is given by court upon hearing of a petition to wind up the company. This order includes appointment of an official liquidator and its consequences include; the following.

- The company ceases to carry on business except for the purpose of winding up.

- The powers of the directors cease upon appointment of the liquidator.

- Any transfer of shares is deemed void.

- Contracts of employment between the company and the individuals are extinguished.
- Employees who are dismissed are entitled to damages.

Appendix C- Documents for winding up

THE REPUBLIC OF UGANDA

IN THE HIGH COURT AT KAMPALA

IN THE MATTER OF MB AUOTO TRADERS

AND IN THE MATTER OF THE COMPANIES ACT 106

COMPANIES CAUSE NO. ..... OF 2006

PETITION

The humble petition of JJ traders Ltd of P.O.BOX 444, Kampala showeth as follows:-

I. That MB AUTO TRADERS LTD (hereinafter called the company) was incorporated in Uganda in 1994 under the Companies Act, Cap 85 laws of Uganda 1964.

2. That the registered office of the company is at Kawempe, P.O. Box 224, Kampala, Uganda.

3. That the nominal capital of the company is Uganda shillings 60 million divided into shares of Uganda shillings 1000 each. The amount of paid up capital is shillings 60M.

4. That objects of which the company was established are to operate a business of selling auto spares, motor vehicles repair and service and other objects set forth in the memorandum and articles of association.

5. That the company is hereby indebted to your petitioner in sum of shillings 70 million in respect of spare parts supplies delivered to the company since 2002.

6. Your petitioner had made numerous demands to the company and served on the company by leaving it at the registered office of the company aforesaid a demand requiring the company to pay the sum as obtained herein before.

7. Over three (3) weeks have expired when the petitioner served the same but the company has failed to or neglected to pay or satisfy the said slim or part thereof.

8. The company is insolvent and unable to pay its debts.

9. That in the circumstances, your petitioner submits that the affairs of the company are in a hopeless financial situation and it is just and equitable that the company be wound up.

WHEREFORE the petitioner humbly prays.

(i) That the company be wound up by this honorable court under the provisions of the Companies Act.

(ii) That costs of this petition be met by the respondent.

(iii) That any other such order be made in the promise of this honourable court as shall be just.

Dated this ..... day of ..... 20 .....

.....

PETITIONER/ COUNSEL FOR PETITIONER

Filed in the High Court of Uganda this ..... Day of ..... 20 .....

Note: It is intended to serve this petition on MB AUTO TRADERS L TD

.....

THE REPUBLIC OF UGANDA

IN THE HIGH COURT AT KAMPALA

IN THE MATTER OF MB AUOTO TRADERS

AND IN THE MATTER OF THE COMPANIES ACT 106

COMPANIES CAUSE NO. ..... OF 2006

AFFIDAVIT VERIFYING PETITION

(Under rule 25 of the Companies (Winding Up)Rules SI 110-

I, Sam O'Neal make oath and swear as follows:

I. THAT I am the Managing Director of JJ TRADERS LTD, the Petitioner in the above matter and I am duly authorised by the said petitioner to make this affidavit.

2. That such of the statements in the petition now produced and shown to me marked with letter A as relates to the Acts of the said petitioner are true and such of the statements as relate to the acts and deeds of any other person or persons, I believe to be true.

SWORN at Kampala this ..... day of..... 20 ..... By the said SAM O'NE/\L.

DEPONENT

BEFORE ME

.....

COMMISSIONER FOR OATHS

Drawn and Filed By:

SUI GENERIS& Co. Advocates,

P.O. Box 7117

Kampala.

THE REPUBLIC OF UGANDA'

IN THE HIGH COURT OF UGANDA AT KAMPALA

IN THE MATTER OF MB AUTOGARAGE LTD AND

IN MATTER OF THE COMPANIES ACT 106

COMPANY CAUSE NO. .....OF 2002

ADVERTISEMENT OF PETITION BEFORE HEARING

(Under rule 23. Companies (Winding UP) Rules S 110-)

NOTICE is hereby given that a petition for winding up of the above named company by the High Court, Holden at Kampala was on the ..... day of ..... 20 ..... presented to the said court by J.J TRADERS LTD P.O, 80):(444,Kampala.

AND that the said petition is directed to be heard before the court sitting as the law courts, Kampala in Uganda on the ..... day of ..... 20 ..... and any creditor or contributor of the said company, desirous to support or suppose the making of order on the said petition may appear at the time of the hearing in person or by his advocate for that purpose and a copy of the petition will be furnished by the_ undersigned

to any creditor or contributory of the said company requiring such copy on payment of Shs ..... the regulated charge for the same.

Signed .....

COUNSEL FOR THE PETITIONER

SUI GENERIS&CO. AOVOCA TES

P.0. BOX 7117, KAMPALA

NOTE: Any person who intends to appear at the hearing of the said petition must serve or send by post to the above named

AMURO GORETTI OF SUI GENERIS & CO. ADVOCATES

P.O. BOX 7117, KAMPALA.

.....

SUI GENERIS and Company Advocates

Our Ref: FMH/CC/04/2004 Date: 28th Oct 06

Your Ref:

TO: MIS MS AUTO TRADERS LTD

P.O. BOX 224, KAMPALA.

Dear Sir,

RE: STATUTORY DEMAND FOR PAYMENT OF THE OUTSTANDING DEBT OF SHS:70,000,000/= OWED TO J.J TRADERS LTD.

We act for and on behalf of J.J Traders Ltd on whose instructions we

address you as hereunder;

That in 2006 your company concluded a deal with our client company where it was agreed that our client supplies you with spare pans,

That our client has since then made deliveries of spare parts to you and has not been paid for the same which has accumulated to the tune of shs:70,000,000/=. That you have on numerous occasions made promises to pay, which promises have not be fulfilled.

That your conduct prompted our client to institute a suit and secure judgment against the company and the Managing Director personally vide HCCS No.264/2002.

TAKE NOTICE that pursuant to section 223(a) of the companies Act, you are hereby required to pay the said sum within 21 days from the hereof.

TAKE FURTHER NOTICE that unless you comply with our clients' '. demands within the prescribed time, we have instructions to institute winding up proceedings against your company to your embarrassment, detriment, inconvenience and loss.

STAND WARNED

Yours faithfully,

ADVOCATE

BANKRUPTCY

INTRODUCTION

The law applicable under this part of the study is;

Insolvency Act 108

Insolvency Regulations, 2013

The Civil Procedure Act Cap 282

The Civil Procedure Rules SI 71-1

Parliamentary Elections Act (if the debtor is a member of parliament)

Presidential Elections Act (if the debtor is a president!)

Advocates (Remuneration and Taxation of Costs) Regulations SI 267-4

Case law

Common law and Doctrines of Equity

The checklist/ major issues for resolution include;

- Whether one can be adjudged bankrupt/ whether there are any acts of bankruptcy?
- Who has capacity to petition for one's bankruptcy? (creditors, affected individual)
- What is the proof and priority of debts?
- What other relief can be sought by creditors? (e.g. distress for rent, civil suits, seizure, etc).
- What is the effect of a bankruptcy and receiving order?
- What is the forum, procedure and documents?

Documents and Forum

The relevant documents differ depending on the party petitioning for bankruptcy. This will be discussed under the relevant heads. It must be noted that the jurisdiction to handle bankruptcy proceedings is mandated on the High Court by virtue of section 95 of the Bankruptcy Act.

Acts of bankruptcy

Bankruptcy is not defined in the Insolvency Act. It is defined by J.H. Thompson in The Principles of Bankruptcy as the legal status of an individual against whom the adjudication has been made by the court primarily because of his inability to meet his financial liabilities. A debtor has been described as one who owes an obligation to another, especially an obligation to pay money. A bankrupt person is one in respect of whom a bankruptcy order has been made per Section 20.

This is also stated under regulation 7 of insolvency regulations which states that a debtor may petition court for his or her bankruptcy where the debtor has been served with a statutory demand and is unable to comply with the demand or is unable to pay his or her debts). This is also termed as voluntary bankruptcy. Other persons that can petition for bankruptcy may be creditors under sec. 69, directors under sec. 271 and members of the company under sec. 62 as seen in Re Imperial Investment Finance Ltd

For one to sustain bankruptcy proceedings against an individual he should prove to court that the individual has committed acts of bankruptcy. Acts of bankruptcy are provided for in part 3 of the Insolvency Act. one commits an act of bankruptcy when he does any of the following;

1. Conveyance or assignment of property to a trustee for the benefit of creditors,

2. Fraudulent conveyance of a gift, delivery or transfer of his property, or of any of his property. This is conversed in Re woods (1872) 7 Ch. D 324 where court held that a conveyance in contemplation of bankruptcy with an intention to defraud creditors is an act of bankruptcy.

3. Creating a charge on Property,

4. Disappearance from Uganda with intent to defeat his creditors,

5. Keeping house

6. Execution levied against him by seizure in any civil proceedings against him.

7. If an individual files in court a declaration of his inability to pay his debtor presents a petition against himself.

8. If a debtor gives notice to any of his creditors that he has suspended or is about to suspend payment of any of his debts.

PROCEDURE

The starting point in bankruptcy proceedings is the inability to pay debts. This is discussed in section 3 of the Insolvency Act 108

When an act of bankruptcy has been committed and the debtors or creditors want to petition for bankruptcy, such a person has to file a petition which should follow the law as prescribed. The law varies with regard to who presents the petition whether, the debtor or creditor. Creditor's petitions are governed by section 9 and 10 of Insolvecy Act 108.

On A Creditor's Petition;

Section 10(2) allows a creditor to bring up a claim that a debtor be ruled as bankrupt. The Act sets out conditions are given which should be fulfilled before. It is important to note that creditor's petition has to be verified by way of affidavit sworn by the creditor or some other person on behalf of creditor who has knowledge of the facts. Most importantly, on a petition for the liquidation of a company or bankruptcy order, evidence of failure to comply with statutory demand is paramount.

THE CREDITOR SHOULD FULFILL THE FOLLOWING CONDITIONS

1. The debt should amount to at least 1,000 Shs.

2. The debt should be a liquidated sum payable immediately or at some certain future date

3. The Act of bankruptcy on which the petition is grounded should have occurred within three months before presentment of the petition.

4. The debtor should be domiciled in Uganda, or within a year before the date of presentment of the petition, has ordinarily resided or had a dwelling house or place of business or has carried on business in Uganda or by means of an agent or within that period has been a member of a firm or partnership which has carried on business in Uganda by means of a partner, partners, agent or manager

5. In case the petitioning creditor is a secured creditor, he or she must in his petition state that he is willing to give up his security for the benefit of the creditors if the debtor is adjudged bankrupt, or give an estimate of the value of his security as erquired in section 10 of the Insolvency Act 2011

At the hearing court shall require proof of the debt of the petitioning creditor within the meaning of section 2 of the Insolvency Act 108. Court has the discretion to dismiss the petition for lack of proof of

the debts. This can be by way of agreements and any other written undertaking, leading evidence inter alia. Unsecured creditors may make a dated claim informally in writing. Subject to section 9(2) where the liquidator or trustee requires a claim to be made formally, the claimant shall submit a claim verified by a statutory declaration_

(a) setting out in full the particulars of the claim; and

(b) identifying documents, if any, that evidence or substantiate the claim.

APPROPRIATE STEPS ON A CREDITOR'S PETITION;

1. The creditor makes a statutory demand for payment of the debt per section 3 of the insolvency act cap 108.

2. The creditor then issues a bankruptcy notice on the debtor. The bankruptcy notice acts as a notice of intention to sue and failure to adhere to the bankruptcy notice by the debtor is an act of bankruptcy.

3. The creditors petitions the High Court for a receiving order inter alia.

4. If Court is satisfied that the creditor has proved his case, then a receiving order is granted.

DOCUMENTS ON A CREDITOR'S PETITION;

- Statutory Demand for payment
- Bankruptcy Notice
- Notice of Petition (synonymous with a hearing notice)
- Petition verified by affidavit.
- Summary of Evidence, List of Witnesses, documents and Authorities

B. On a Debtor's Petition;

Section 20(1) of the Insolvency Act 108 provides that a debtor may petition court for bankruptcy alleging that the debtor is unable to pay his or her debts and the court may, subject to sections 21 and 22 make a

bankruptcy order in respect of the debtor. This comes after the debtor has failed to satisfy a satutory demand made under section 4. Thereafter, a petition for bankruptcy shall be presented by a creditor or a debtor and the court may subject to sections 21 and 22 make a bankruptcy order in respect of the debtor. The bankruptcy order decalrs the debtor bankrupt and appoints the official receiver as interm reciver of the estate, for the preservation of the estate of the bankrupt. Section 20(5) states that the bankruptcy shall commence on the date on which the bankruptcy order is made.

Appropriate Steps on a Debtor's Petition;

- Debtor files a petition in the High Court and alleges inability to pay debts. It must be noted that the petition is an act of Bankruptcy.

- He files a statement of affairs under section 21 the Insolvency Act.

- If court is satisfied, it makes a receiving order; whereby a receiver is appointed to receive the debtor's estate.

The receiver has the following duties:

- To call a meeting of creditors held for the sole purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted. This is conversed under the section 23 of Insolvency Act cap 108

- Realizing the assets and reporting to the creditors.

- Acting as an interim receiver pending appointment of a trustee.

- Verifying affidavits and administering oaths.

- Making reports to the registrar concerning the state of affairs.

- Acting as trustee during vacancy in the office of the trustee.

- Authorizing special managers to raise money and issue forms of proxy.

Documents on a debtor's petition

Petition supported by affidavit.

Summary of Evidence, List of Witnesses, documents and Authorities.

Guidelines on Petitions in Bankruptcy causes.

Rules 106 - 122 of The Bankruptcy Rules 1915 of UK set out the format in which petition should be presented. In a nutshell;

- The petition should state the title. It must be noted that the petition for is entitled "Bankruptcy cause". Under this title, is written "In the matter of a petition for a receiving order by XXXX- Creditor/Petitioner; and YYYY- Debtor/ Respondent".

- In the petition, the petitioning creditor should pray to Court for a receiving order to be made against the debtor which debtor's description and address have to be clearly spelt out.

- If the debtor has since changed his address then both addresses should be stated both the old and new and the petition should have all other elements in order to qualify to be brought into existence.

The effect of a bankruptcy order is visible in section 27 of the Insolvency Act 108 which states that;

27 (a) the bankrupt's estate shall, vest first in the official receiver and then in the trustee, without any conveyance, assignment or transfer; and

(b) except with the trustee's written consent or with the leave of the court and in accordance with such terms as the court may impose, no proceedings, execution or other legal process may be commenced or continued and no distress may be levied against the bankrupt or the bankrupt's estate.

BANKRUPTCY NOTICE

This notice is drawn by the creditor/intending petitioner to the debtor stating that he or she intends to institute bankruptcy proceedings against the debtor if he or she does not secure or compound for the sum due within 7 days.

THE RECEIVING ORDER

A receiving order under the Insolvency Act is an order given to by the Court hearing the petition to protect the estate of the debtor. Upon grant of the receiving order, the Insolvency Act provides that; the official receiver thereby appointed is constituted as a receiver of the property of the debtor; and thereafter, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have the remedy against the property of a person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with leave of the court and on such terms as court may impose. Section 180 of the Insolvency Act states that (1) Where the appointment of a receiver is made by court, the receivership shall commence and the appointment shall take effect as specified in the court order. The appointment of the receiver should be made known to the public through public notice showing the reciever's full name, address and date if commencement of the receivership.

It must be noted that where is appears to court that the petition is proved to be a mere abuse of court process, a receiving order will not be given. This is fortified in the English case of Re Bond (1888) 21 QBD at page 17. In particular regard to a creditor's petition, the receiving order shall not be granted if it appears to court that he/she has failed to comply with the conditions discussed above, or fails to prove any facts he may have to prove, or generally, he does not satisfy court that he is entitled to any of his prayers in the petition.

In the same way court may, under the Insolvency Act, stay any action against the person of the debtor if it seems so required. The receiver has powers to appoint a manager until a trustee in bankruptcy is appointed.

The effect of a receiving order on debtor as a person is that the order is not an adjudication of bankruptcy as such; it however does not divest a debtor of his property. He remains the only person who can sue, protect or recover her property and he cannot be ordered to give security for costs under such suit merely because a receiving order was made against him. This is fortified by Rhodes V Dowson (1886) 16 QBD 548 CA.

A receiving order does not vest any estate or interest in the receiver nor does it give him power of bringing or defending suits and it does not charge any interests or liability which would other be claimed against the debtor.

ADJUDICATION OF BANKRUPTCY

Proceedings for adjudication of a bankrupt commence upon grant of the receiving order and are discussed hereunder:

Proceedings consequent to the receiving order

1. The receiving order is advertised in the Uganda Gazette within the meaning of the Act.

2. Section 25 of the Insolvency Act is to the effect that a general meeting of the debtor creditors has to be held. This is called the first meeting of creditors. Its purpose is to consider whether, in case a proposal, composition, or scheme of arrangement has been presented by the debtor, is acceptable to the creditors. On the other hand to see whether it's better to proceed and have the debtor adjudged Bankrupt. The meeting will also see how to deal with the debtor's property in case he is adjudged bankrupt.

The first schedule to the rules provides that, the meeting has to be summoned for a day not later than 6 days after the date of the receiving order but court can extend such time. Such notice will be given by the official receiver, it will show time and place of the meetings. It will be published in the Gazette.

3. The debtor then submits a statement of affairs to the official receiver verified by affidavit, and showing the particulars of the debtor's assets, liabilities inter alia; within the meaning of section 21 of the Insolvency Act. if it's a debtor's petition, this is submitted 3 days before presentment of the debtor's petition. In case it is a creditor's petition, it submitted within 14 days from the date of receiving order. A debtor who contravenes this commits an offence and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.

4. A public examination of the debtor on a day appointed by Court, under section 22 of the Insolvency Act to examine his conduct and dealings. Re Bottomier 84 LR KB 1020 enunciates the principle to the effect that a debtor is obliged to answer all questions put to him and the answers he gives have to be written down and signed by the debtor.

5. It must be noted that if a composition scheme is not approved within 14 days after the public examination of the debtor or if the creditors resolve that the debtor be adjudged bankrupt, then the debtor is adjudged bankrupt. this is fortified by the case of Re Moon (1887) 19 QBD 669 on appeal).

6. Consequently, the creditors by ordinary resolution appoint a fit and proper person, under section 25 of the Insolvency Act to fill the office of Trustee in Bankruptcy. The trustee in bankruptcy so appointed may be required by court to give security. He is then given a certificate of Appointment. If the trustee is not appointed within 4 weeks from the date adjudication of bankrupt, the official receiver then reports to court which shall appoint someone to act as trustee.

7. Subject to section 46 of the Insolvency Act 108, Creditors go ahead to appoint a committee of Inspection for the purpose of superintending administration of the bankrupt's property by trustee.

TRUSTEE IN BANKRUPTCY

Trustee in Bankruptcy is consequently appointed by the creditors by ordinary resolution under section 25 of the Insolvency Act to fill the office of a Trustee in Bankruptcy. He / she may be required by court to give security. Upon appointment, he is given a certificate of Appointment.

It must be noted that If the trustee is not appointed within 4 weeks from the date adjudication of bankrupt, the official receiver then reports to court which shall appoint someone to act as trustee.

OFFICIAL RECEIVER

An official receiver is appointed upon grant of a receiving order. see section 198 of the Insolvency Act. He is endowed with the duty to receive the estate of the debtor. It must be noted further that an official receiver may act as a trustee in Bankruptcy, pending the appointment of the Trustee in Bankruptcy.

A receiver is a person who is appointed with his primary task being to repay the money d to the charge holder from the proceeds of sale and income otherwise arising from those assets covered by the charges. He must also make such necessary and reasonable changes the business to make it more profitable, discharge the indebtedness of the company a then return the company to the control of the directors. It is important to note that mere appointment of a receiver does not prevent the company being placed into liquidation and it is indeed the usual first step towards liquidation of most companies.

The Insolvency Act 108 makes provision for the appointment of receiver on behalf of the debenture holders or other creditors of the company which being wound up by court. However, usually the right to appoint a receiver will only arise the circumstance specified in the agreement or the charge or debenture document Circumstances which usually justify appointment of a receiver include the following:

• A request to that effect made by the directors of that company

• The security being in jeopardy

• A default in payment

• Judgment having been obtained by a creditor against the company

• The presentation of a winding up petition against the company.

The Companies Act does not provide any restrictions as to who may act as a receiver of company. However, a body corporate cannot be appointed a receiver and it is an offence for any company to so act. an undischarged bankrupt is not allowed to be appointed and to act as a receiver of a company. It important to ensure that the above persons are not appointed as receivers of the company. 131

Formalities of appointment

The right to appoint a receiver must of course have arisen before an appointment is root (GENERAL PARTS LTD Vs NPART SCCA NO. 5 OF 1999). The method by which a receiver appointed is normally specified in the security document. This mode should strictly be followed otherwise the appointment will be declared ineffectual. It has been held that the appointment must be in writing (GRINDLAYS BANK (U) LTD Vs BOAR SCCA NO 23 OF 1999). If joint receivers are appointed, the instrument of

appointment must state whether they are acting jointly or severally. This will enable one of them to act without the consent of the others at all times.

Notice of appointment

The appointor of a receiver is obliged to give notice of the appointment to the Registrar of Companies within 7 days. The receiver is then responsible for the other statutory notices. Every document on or in which the name of the company appears must then contain a statement that a receiver or manager has been appointed.

The receiver‟s position

A receiver is personally liable on any contract entered into by him except in so far as the contract provides otherwise, though he retains a right of indemnity out of the assets of the company. The security document will however usually provide that the receiver will be deemed an agent of‟ the company in receivership. (STEPHEN LUBEGA Vs BARCLAYS BANK (UGANDA) LTD SCCA NO, 2 OF 1992; G.M. COMBINED (U) LTD Vs AK DETERGENTS (U) LTD & ORS HCCS No 348 OF 1994).

The receiver has full powers to administer the assets over which he has been appointed including the company‟s business. In addition, a receiver appointed under any instrument may apply to court to empower him to do certain acts or to give directions in relation to any particular matter relating to the performance of his functions,

On the appointment of a receiver, the company‟s directors remain in office but are unable to exercise any of their powers relating to the assets under the receiver‟s control, they are still able to do such things as calling company meetings and presenting winding up petitions and they may also deal with those assets over which the receiver has not been appointed or which he is not interested in pursuing.

CONSEQUENCES OF ADJUDICATION/ DISQUALIFICATIONS OF A BANKRUPT

These are covered in the Insolvency Act, thus; one is disqualified from being a Justice of Peace, mayor, Alderman, Municipal Councilor, Member of Town Council, School Committee or Road Board, Member of Parliament (under Article 80 (2) of the Constitution), or being a President

It must be noted that adjudication vests the property of the debtor in trustee in bankruptcy such property is liable for distribution. If it's a debtor who made the petition and he entered certain agreements such as lease agreement in which he bound himself not to assign his property to any other the vesting of the property in trustee shall not be constructed as breach of such covenants.

Section 27(b) of the Insolvency Act states that except with the trustee's written consent or with the leave of the court and in accordance with such terms as the court may impose, no proceedings, execution or other legal process may be commenced or continued and no distress may be levied against the bankrupt or the bankrupt's estate.

ANNULMENT OF ADJUDICATION ORDER

This is conversed in section 33 (1) of the Act. An adjudication order can be annulled when the bankruptcy has paid as full, or when it taken never to have been made, or if it was made as a result of an abuse of the court process. This was upheld in Re Dunn (1949) CH 640 CA

The order can also be annulled if it was made under a defective petition, which was not subsequently cured before the order was made.

According to Re Shitton (1877) 5 Ch 979 CA, an adjudication order can be annulled if the debtor was dead at the time of making the adjudication.

PROOF AND PRIORITY OF DEBTS

Proof of a debt. This may be done by attaching court judgments if any exists, statement of affairs duly certified by the official receiver and attested by a notary public in which the details of his creditors and debts are fully specified. This was also judicially expressed by James Munange Ogoola, J (as he was then)in the case of Thomas I kato as he stated that where a petitioner had proved his indebtedness by attaching court judgments which showed decretal sums which were against him or her as remaining unsatisfied and which fact that the very petitioner had indicated so in his statement of affairs then the court's conclusion would be that the petitioner had committed an act of bankruptcy and therefore consequential orders should follow.

A debtor may petition court for bankruptcy alleging that he is unable to pay his debts and the court may subject to submission of a statement of affairs and a public examination of the debtor make a bankruptcy order in respect of the debtor per section 20(1). The petition is accompanied by a statement of affairs under section 21 . A statement of affairs is a list of the person's assets and liabilities.

Existence of a due debt. The court in SNP Panbus V Juronyshipyard Ltd noted that it is necessary for the creditor to have a Due debt which the debtor has neglected to pay or to secure or compound to the reasonable satisfaction of the creditor after it has been served with a statutory notice to pay. This means that the debt therefore should not be disputed debt.

Proof of a Contingent or prospective debts It is important to note that the nature of the failed debt need not necessarily be of due date. It can be failure to pay a debt payable in the future. This has been accordingly held so in Re Barr (A Bankrupt) where the appellant court held that the petition had been wrongly dismissed; a petition for bankruptcy may be presented in respect of a debt payable immediately or at some future date. However the requirement of a due debt does not prevent proof of inability to pay debt by other means such as proving contingent or prospective debts as against the debtor. Contingent or prospective debts are not presently due for payment but may be in the future. A prospective debt is one which will certainly become due in the future, either on some date which has already been determined or on some date determinable by reference to future events.

Where no debt exists. However, where court makes a finding that no debt exists court declares that there is no creditor and that the claimant has no locus standi. It follows that for any debt which is in dispute on some substantial grounds and not on frivolous grounds, or without substance and which the court should therefore ignore, the company is deemed solvent. This was the position in Re Global Tours and Travels .

PROOF OF INABILITY TO PAY.

Inability to pay debts is presumed where ;

(a) The debtor has failed to comply with a statutory demand

(b) The execution issued against the debtor in respect of a judgment debt has been returned unsatisfied in whole or in part

(c) All or substantially all the property of the debtor is in the possession or control of a receiver or some other person enforcing a charge over that property.

Failure to comply with a statutory demand. Subject to regulation 9 (1) of the insolvency regulations, a debtor's failure to satisfy a statutory demand and failure to apply for time extension to enable compliance to statutory demand can entitle a creditor to petition the court to make a bankruptcy order against the debtor. In the case of General Parts (U) Ltd V NPART30 where UCB initially sued General Parts (U) seeking a declaratory Judgment that it had properly appointed a receiver, court held that the demand must be unequivocal and must state the consequences. Thus it should be detailed enough. It should include that a debtor has a right to apply to the court to set aside the statutory demand.

Reasonable attempts to repay back. It avails a good reason for a debtor to adduce evidence before court of his/her having taken reasonable steps to pay back their debts but has failed. This serves to back their petition for bankruptcy. In the Kakyo case, court considered the fact that the petitioner had tried to do poultry business to raise money and pay off her creditors but had failed. The freezing of her bank accounts

and the seizure of the petitioner's home by the bank were also considered together with the fact that the petitioner did not have any more tangible or immovable property that could be used for ameliorating the situation and thus she was considered bankrupt.

Committal of an act of bankruptcy. An act of bankruptcy is committed when a debtor files before court a declaration of his inability to pay the debts stated in his statement of affairs and more so when he presents a bankruptcy petition against himself. A debtor commits an act of bankruptcy where he or she conveys or assigns all property to a trustee for the benefit of his creditors generally as was in Re Spackman where it was stated that the assignment must be for the benefit of all creditors generally and not just a class. Similarly, a notice given without prejudice has been held to be admissible as proof of the acts of bankruptcy .

A debtor may also petition for bankruptcy if he or she does not have any properties that can be administered by the trustee in bankruptcy . This is usually among the key aspects considered as soon as court declares one to be bankrupt although it is also a consideration in determining bankruptcy.

However, the debtor is not declared bankrupt until the court accepts and endorses the petition. This was expressed in the case of In Re Jackson exparte Jackson where it was held that it is not only presentation of the debtor's petition which makes a debtor bankrupt. It is the court's acceptance of the petition and endorsement of that acceptance. It is important to note that bankruptcy shall commence on the date on which the bankruptcy order is made in regards to the Insolvency Act 2011.

It is important to note that the debtor is not declared bankrupt until the court accepts and endorses the petition as was expressed case of in Re Jackson exparte Jackson where it was held that it is not only presentation of the debtor's petition which makes a debtor bankrupt. It is the court's acceptance of the petition and endorsement of that acceptance. Furthermore, bankruptcy shall commence on the date on which the bankruptcy order is made.

B) Priority of debts

Section 11 of the Insolvency Act provides for priority claims in the following order:

1) remuneration and expenses properly incurred by the liquidator;

2) any receiver's or provisional administrator's fees;

3) any reasonable costs of any person appearing on the petition whose costs are allowed by the court;

4) all wages or basic salary;

5) all amounts due in respect of workers' compensation;

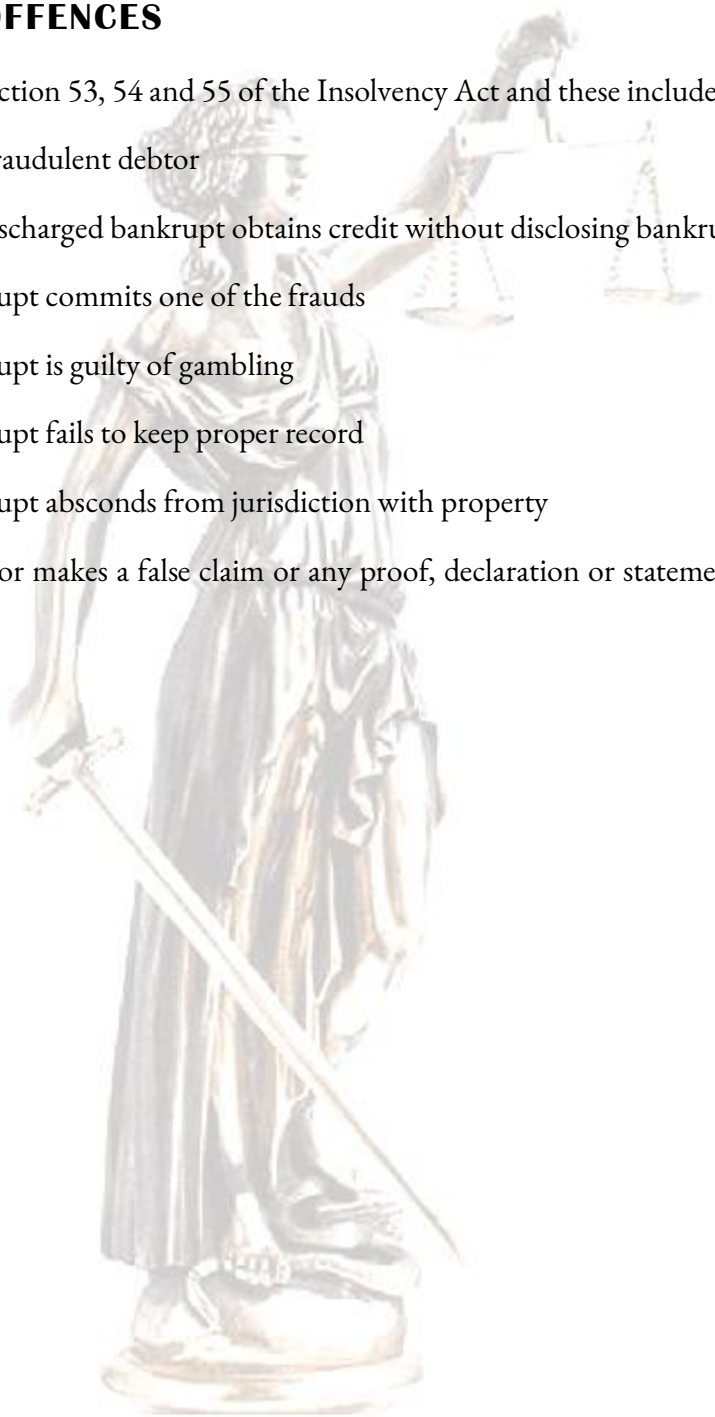
6) all amounts that are preferential debts relating to liquidator's documents;

7) any amount of tax withheld; and

8) contributions payable under the National Social Security Fund Act.

Under the statutory provisions, these claims have priority over those of a secured creditor only insofar as the assets of the company are insufficient to meet all the claims.

BANKRUPTCY OFFENCES



These are covered in section 53, 54 and 55 of the Insolvency Act and these include the following:

- Where one is fraudulent debtor
- Where an undischarged bankrupt obtains credit without disclosing bankruptcy. Section 54
- Where a bankrupt commits one of the frauds
- Where a bankrupt is guilty of gambling
- Where a bankrupt fails to keep proper record
- Where a bankrupt absconds from jurisdiction with property
- Where a creditor makes a false claim or any proof, declaration or statement of account which is untrue

INSOLVENCY PRACTICE

This covers areas such as: interim protective order, individual voluntary arrangements, bankruptcy, provisional administration, administration, receivership, and liquidation.

Purpose of insolvency proceedings.

1. To ensure an equitable distribution of the property of the debtor among creditors according to their respective rights against the debtor.

2. To relieve the debtor of liability to the creditors and to enable the debtor make a fresh start in life free from the burden of debts and obligations

3. To protect the interests of the creditors and the public by providing for the investigation of the conduct of the debtors affairs and for the imposition of punishment where there has been fraud or other misconduct on the part of the debtor.

GENERAL PRINCIPLES.

1. Inability to pay debts

In RE TEDDY SEEZI CHEEYE (1996) IV KALR 116, the court held that in a bankruptcy petition, the two essential elements are, proof of a debt and proof of inability to pay debts. Court emphasized that failure to pay a judgement debt is proof of inability to pay debts.

IN RE TANGANYIKA PRODUCE AGENCY LTD (1957) EA 627, a petition to wind up a company with a new of enforcing payment of a disputed debt is an abuse of process of the court and will be dismissed with costs.

S.1 of the insolvency act defines a debt as a debt or liability, present or future, certain or contingent and includes an ascertained debt or liability for damages.

Pursuant to S.2 (1) of the insolvency act, one is presumed to be unable to pay debts if:

a) The debtor has failed to comply with a statutory demand

b) The execution issued against the debtor in respect of a judgement has been returned unsatisfied in whole or in part.

c) All or substantially all the property of the debtor is in the possession or control of a receiver or some other person enforcing a charge over than property.

The list above in S.2 (1) of insolvency act, is inclusive and not exhaustive as one can prove inability to pay debts by any other means by virtual of S.2 (3) of the act. Under S.4 (6) of the act, failure to comply with timelines to pay under S.5 (5) is deemed inability to pay.

2. Statutory demand.

It is issued onto the debtor under S.4 (1) of the insolvency act. It should be verified by a statutory declarations unless it's in respect of a judgement debt.

Under S.4(2) of the insolvency act, the statutory demand must be made in respect of a debt that is not less than the prescribed amount and in the case of a debt owed by an individual is a judgement debtor or a company is an ascertained debt, but need not be a judgement debt.

The statutory demand takes the form prescribed in form 1 in schedule 1 of the insolvency regulations, 2013 as per Reg. 4(1) of the regulations.

Reg 4(2) requires that the statutory demand specifies: the amount of the debt and in case of a debt arising out of judgement or order of a court, the details of the judgement or order. It must also state how the debtor may comply with the statutory demand, where the debt is secured, the nature of the security, whether and how the debtor may compound the debt or give a changeover property to secure the debt, that insolvency proceedings will be commenced against the debtor if they donot comply with the demand and the right of the debtor to apply to the court to set aside the statutory demand.

SERVICE OF THE STATUTORY DEMAND.

S.3 (2) (d) of the insolvency act and Reg 5(1) of the regs require that the statutory demand is served personally on the debtor. Failure to effect personal service of the statutory demand on the debtor is a ground for setting aside the statutory demand as was in the case of

However, under Reg 5(2), where the debtor cannot be found, the demand maybe served:

a) At the registered office or place of business of the debtor.

b) By sending it to the address of the debtor by registered mail

c) By serving the legal representative of the debtor if known

d) In any other manner determined by court.

PROOF OF SERVICE.

Under Reg 5(3) proof of service of a statutory demand is by an affidavit of service stating the time and manner of service.

Timelines.

S.3(2)(e) provides that the statutory demand must be complied within 20 working days after the date of service or a larger period as the court may order.

A petition founded on the statutory demand must be brought within 30 working days after the last date for compliance with the demand as per S.3(2) of the insolvency act.

Setting aside a statutory demand.

A court may pursuant to S.4 (1) on application of the debtor, set aside a statutory demand.

Timelines.

Under S.4 (2) of the act, the application must be made within 10 working days after the date of service of the demand and should be served within 10 working days after the date of service of the demand.

S.4 (3) of the act empowers the court to extend any of the aforementioned timelines.

Application.

Pursuant to Reg. 6(1) of the regulations, the application is by notice of motion supported by an affidavit.

The application is brought pursuant to any of the grounds under S.5 (4) of the act and these are:

a) There is a substantial dispute whether the debt is owing or is due.

b) The debtor appears to have a counter claim, set-off or cross-demand and the amount specified in the demand less the amount of the counterclaim, set-off or cross demand.

c) That the creditor holds some property in respect of the debt claimed by the debtor and that the value of the security is equivalent to or exceeds the full amount of the debt.

d) The demand ought to be set aside on such grounds as it deems fit.

Note: under S.5 (7) of the act, a statutory demand cannot be set aside by reason only of a defect or irregularity, unless it's considered substantial.

Power of a court hearing an application to set aside.

Pursuant to S.4(5) of the act, if the court is satisfied that the debt is due and there is no counter claim, substantial dispute or cross demand, the court may order:

a) That the debtor pay the debt within a specified period and in default, the creditor may immediately petition for a liquidation or bankruptcy.

b) Dismiss the application and immediately make an order under S.20 OR 92 on the grounds of inability to pay debts.

3. Distribution of assets.

Pari passu.

In keeping with the purpose of insolvency i.e. ensuring that the estate of an insolvent is distributed among all his or her or its creditors and bearing in mind that the available assets are usually not sufficient to cover all creditors fully, the principle of pari passu is applied when paying off creditors of an equal ranking.

The principle of pari passu holds that where in relation to preferential debts and ordinary debts, there is a shortfall between the totality of liability within the category of priority and the sum of money available to discharge these, debts of equal rank shall abte in equal proportions as between themselves.

The principle is codified under S.12(2) of the insolvency act and applies in the payment of non-preferential debts. The distribution is done pro rata.

PREFERENTIAL DEBTS AND NON-PREFERENTIAL DEBTS.

Under S.11 (1) of the insolvency act, a liquidator or trustee must apply the assets realized to the preferential debts in the order listed under the section.

The preferential debts are listed under subsections 4, 5, and 6

Under sub-section 4, the first debts to be paid are:

1. Remuneration and expenses properly incurred by the liquidator or trustee.

2. Receivers or provisional administrators indemnity under S.159 or 187 and any remuneration and expenses properly incurred by any receiver, liquidator, provisional liquidator, proposed supervisor or supervisor.

3. Reasonable costs of any person who petitioned court for a liquidation or bankruptcy order, including the reasonable costs of any person appearing on the petition whose costs are allowed by the court.

Second debts to be paid are:

1. All wages or basic salary, wholly earned or earned in part by way of commission for four months.

2. All amounts due in respect of any compensation or liability for compensation under the workers compensation act, accrued before the commencement of the liquidation or bankruptcy not exceeding the prescribed amount.

3. All amounts that are preferential debts under S.33 or 105.

Third category of debts after those above been paid are:

1. The amount of tax withheld and not paid to the URA for 12 months prior to the commencement of insolvency

2. Contributions payable under the national social security fund act.

Having paid off the preferential debits, all the other debts are non-prefential and are

Paid under S.12 of the insolvency act. Under S.12 (2), these debts rank equally and unless paid in full, they abate in equal proportions in line with the pari passu principle. The distribution is done pro rata.

4. Anti-deprivation rule.

It is a common law rule aimed at attempts to withdraw an asset on bankruptcy with the effect that the bankrupt's estate is reduced in value to the detriment of creditors.

The rule flows from the rule that parties cannot intentionally contract out of insolvency legislation.

IN BELMONT PARK INVESTEMTNS PTY LTD V BNY CORPORATE TRUSTEE SERVICES LTD (2012)1 ALL ER 505, the supreme court of the united kingdom laid down the general principle that parties cannot contract out of the insolvency legislation. The court stated that the principle has to key aspects, of which these are:

1. The anti-deprivation rule, which is aimed at attempts to withdraw an asset on bankruptcy or liquidation or administration, thereby reducing the value of the insolvent estate to the detriment of creditors.

2. The pari passu rule, which reflects the principle that statutory provisions for pro rata distribution may not be excluded by a contract which gives one creditor more than its proper share.

The court further held that however, if a transaction makes good commercial sense, is entered into in good faith and does not intend to evade insolvency laws, then court will most likely uphold the transaction.

Essential elements for the application of the anti –deprivation principle.

1. Good faith.

For the principle to operate, there must be a deliberate intention to evade insolvency laws. The intent is objectively assessed and can in certain instance be inferred from the parties' actions.

2. Reasons for deprivation.

The principle is intended to operate only in cases where the deprivation occurs on the insolvency of the relevant debtor.

If the trigger for the loss of asset is an event other than insolvency then the principle cannot be relied upon.

Flawed assets.

In certain instances where one party will grant a proprietary interest in an asset that will automatically determine on the insolvency of the grantee.

Such assets are said to fall outside the scope of the anti-deprivation principle. However court will examine the nature of the flawed asset before deciding whether the principle applies.

5. Voidable transactions.

Under S.14 (1) (a), a transfer of property by an insolvent is voidable on the application of the creditor, receiver, liquidator or trustee where such transfer is made:

a) On account of an antecedent debt

b) At a time when the insolvent was unable to pay the debts.

The test for inability to pay debts is contained under S.14(2) and it is if the transfer was made within six months preceding the commencement of the liquidation or bankruptcy unless the contrary is shown or the transfer was an account of a debt not incurred in the ordinary course of business unless the contrary is shown.

c) Within the year preceding the commencement of the liquidation or bankruptcy.

□ The transaction is also voidable where the transfer enabled that person to receive more towards the satisfaction of the debt than the person would otherwise have received or be likely to receive in the liquidation or bankruptcy (S.15 (1) (b)). See BELMONT PARK INVESTEMENTS PTY LIMITED.

Exception to S.14 (1) (b)

Under S.14(1), the transaction won't be voidable where the debt was incurred in the ordinary course of business of the insolvent and the transfer was made not later than 45 working days after the debt was incurred.

See: RE GRAYS INN CONSTUCTION COLTD (1980)1 WLR 719

See: RE MODERN TRADING CO.LTD (1967) EA 182, on the test of fraudulent preference.

See: ARBUTHNOT LEASING INTERNATIONAL LTD V HAVELET LEASING LTD (NO.2) (1990) BCC 636, on fraudulent transaction. The court held that whereas the motive of transfer was not necessarily dishonest, it was still done with the purpose of putting assets beyond creditors reach and thus was a fraudulent transaction and void.

Transactions at under value.

Under S.15, a transaction may be set aside on application by a creditor, receiver, member or contributory, liquidator or trustee if such transaction:

a) Entered into within one year preceding the commencement of the liquidation or bankruptcy.

b) The value of the consideration received by the company or individual is significantly less than the value of the consideration provided by the insolvent.

c) When the transaction was entered the insolvent was unable to pay their debts ,or incurred the obligations when required to do so.

d) The insolvent become unable to pay their debt as a result of the transaction.

e) The transaction was entered into to aid the insolvent to put assets beyond the reach of the creditors: see: arbuthnot leasing international ltd.

In Phillips V Brewin Dolphin Bell Lawrie (2001) Ukhl 2, the court examined whether a series of arrangements could be understood as one "transaction" for the purposes of being an undervalue transaction under the insolvency act 1986. The brief facts are that the liquidator of AJ Bekhor and co sought to recover the 725,000 pounds and interest for a business and assets that been transferred to a subsidiary, which in turn was bought by Brewin Dolphin through a share purchase for one pound. The issue was whether that constituted a transaction at an under value. Brewin Dolphin contended that part of the agreement was that its parent company, private capital group ltd, would pay Aj Bekhor for yearly installments of 312,000 for renting computer equipment.

The HOL held that the transaction was effected at an undervalue, and was voidable under S.238. The computer rental agreement was taken as consideration for the deal, but when assessing its value, reality and not speculative values should be taken into account. The collateral agreement was precarious and worthless because the head lessors had immediately declared the transaction to be a repudiatory breach and it therefore had no value to Brewin Dolhin

VOIDABLE CHARGES.

These are under S.16 (1) of the act and relate to any charges created on antecedent debts within one year preceding the commencement of the liquidation or bankruptcy.

It is not a voidable charge however if the charge secured the actual price or value of property sold or supplied to the insolvent and at the value the insolvent was able to pay their debts. Under S.16 (2), a charge created within 6 months preceding the commencement of insolvency proceeding unless proven otherwise, was created when the insolvent could not pay their debts.

The charge is also not voidable if it was given in substitution for a charge given more than one year preceding the commencement of the liquidation or bankruptcy.

INSIDER DEALINGS.

Under S.17 (1), any transaction entered into by an insolvent between them and their spouses, siblings, children, or any person with a close social proximity or employees, officers, professional or other service providers or business associates, partners, shareholders, directors or other similar persons within 12 months preceding insolvency is deemed to be a preference or transaction aimed at aiding the insolvent to put the assets of the insolvents estate beyond the reach of creditors.

See: ARBUTHNOT LEASING INTERNATIONAL LTD, where the assets were transferred to a subsidiary.

Application to set aside a voidable transaction.

Under S.18 (1) (a), the application is by notice to court, specifying the transaction to be set aside or the value to be recovered. It is brought by either the liquidator, receiver, member or contributory, trustee or a creditor and served the person(s) from whom the recovery is sought.

Upon service, the person, must within 20 working days lodge an application under S.18 (2) for an order that the transaction should not be set aside. Failure to do so the transaction shall be set aside from the 2oth day after the date of service of notice under

S.18 (3). Application is by notice of motion with an affidavit in support as per REG 189(3).

Rights where the transaction is set aside.

Under S.18 (5), a person affected May after giving up the benefit as a creditor in the liquidation or bankruptcy.

Effect of setting aside of a transaction on 3rd party.

The order pursuant to S.18 (6) does not affect the title or interest of a person in property which that person has acquired:

a) From a person other than the insolvent

b) For valuable consideration and

c) Without knowledge of the circumstances of the transaction under which the person other than the insolvent acquired the property from the company or individual.

Defense to a notice to set aside a voidable transaction.

Under S.18 (7) the order to set aside may be denied wholly or in part if the person from whom recovery is sought received the property in good faith and has altered his or her position in the reasonable belief that the transfer or payment of the property to the person was validly made and would not be aside and in the opinion of court its inequitable to order recovery for example where person obtained a mortgage and pledged the property as security.

In the High Court of Uganda at Kampala, Jomayi Property Consultants Limited was the applicant, and NC Bank Uganda Limited was the respondent in Miscellaneous Cause No. 43 of 2020. The case was consolidated with Company Cause No. 5 of 2020 under the Insolvency Act, 2011, and the Insolvency Regulations, 2013. NC Bank Uganda Limited was the petitioner, seeking the winding-up of Jomayi Property Consultants Limited. The ruling was delivered by the Honorable Mr. Justice Michael Elubu on 27.04.2024. Below are the various key legal principles present in the case: 1. Validity of Statutory Demand Service: Service of a statutory demand must comply with specific procedures outlined in Regulation 5 of The Insolvency Regulations, 2013. (Regulation 5) 2. Service on Corporation: Service of any pleading or court process on a corporation must be on its secretary, any director, or other principal officer of the corporation. (Order 29 Rule 2 of the Civil Procedure Rules SI 71-1) 3. Effectiveness of Consent Judgments: A consent judgment, being an agreement between parties, cannot be varied unless there is proof it was obtained by fraud, collusion, or contrary to the policy of the Court. (Case Law: Bahadukali Mohammed Ali Viran vs Springs International Hotel Ltd - Company Cause No. 005 of 2019) 4. Estoppel from Disputing Debt: A party remains a judgment debtor and is estopped from disputing its admitted indebtedness if it fails to take steps to set aside the consent judgment or apply to stay its execution. (Case Law: Bahadukali Mohammed Ali Viran vs Springs International Hotel Ltd - Company Cause No. 005 of 2019) PAGE 1 5. Effect of Pending Applications on Statutory Demands: An application for extension of time within which to make an application to set aside a statutory demand does not exempt the debtor from complying with the demand. (Regulation 6 (3) of the Insolvency Regulations, 2013)6. Presumption of Inability to Pay Debts: Unless the contrary is proved, a debtor ispresumed to be unable to pay the debtor's debt if the debtor has failed to complywith a statutory demand. (Section 3 (1) (a) of The Insolvency Act,

2011)7. Abuse of Court Process: Abuse of court process involves the use of courtproceedings for an improper purpose, such as bringing frivolous or vexatiousactions or issuing proceedings seeking judgment on a claim or issue that hasalready been decided. (Case Law: Uganda Land Commission vs James MarkKamoga & Anor - SCCA 08/2004, Attorney General vs Baker [2000] EWHC 453(Admin))8. Presentation of Winding-Up Petition: A winding-up petition can be presentedif a company fails to comply with a statutory demand, and the debt is undisputed.(Sections 3(1)(a) and 3(2) of The Insolvency Act, 2011)9. Substantial Grounds for Dispute: If a company can demonstrate that thealleged debt on which the petition is founded is genuinely disputed on substantialgrounds, the court may strike out the petition. (Case Law: Bahadukali MohammedAli Viran vs Springs International Hotel Ltd - Company Cause No. 005 of 2019)10. Presumption of Inability to Pay Debts: Failure to comply with a statutorydemand is sufficient evidence of inability to pay the debt owed. (Section 3(1)(a) of The Insolvency Act, 2011)11. Company Court as Debt Collecting Court: The Companies Court should not beused as a debt-collecting court; instead, other procedures like execution upon ajudgment, distress, or garnishee orders should be used for debt collection. (CaseLaw: In Re A Company (No. 001573 of 1983))

BANKRUPTCY/INDIVIDUAL INSOLVENCY

Interim remedies or interim protective order.

An individual facing a looming commencement of insolvency proceedings may in view of one of the purposes of insolvency proceedings to wit allowing a debtor realign their finances so as to pay off his or her debts apply for an interim protective order.

What informs the decision to apply for an interim protective order.

Under S.119 (1), the application is informed by the intention of the debtor to make any arrangement with his or her creditors.

Effect of an interim protective order.

Pursuant to S.119 (2), during the subsistence of the order:

a) An application for bankruptcy relating to the debtor cannot be made or proceed.

b) A receiver of any property of the debtor cannot be appointed

c) Except with leave of court and in accordance with the terms imposed; no step can be taken to enforce a charge over any of the individual's property, no proceedings, execution or other legal process can be commenced or continued against the debtor or his or her property, and neither can distress be levied against the debtor or their property.

Duration of the order.

Pursuant to S.121, the order is effective for only 14 working days. The duration may however be extended by court subject to the conditions under S.123 (2) and (30 or if it has expired order for its renewal.

Note: under S.120 (3), court may stay any action, execution or other legal process against the property or person of a debtor where an application for an interim order is pending.

Procedure after issuance of the order.

1. The debtor must submit to the proposed supervisor pursuant to S.122 the following:

a) A document setting out the terms of the arrangement which the debtor is proposing

b) A statement of his or her affairs containing the particulars of the debtors, creditors, debts and assets.

2. The supervisor must within the 14 working days where the order is in effect call for a creditors meeting under S.124(1). The notice of the meeting must be published in the gazette and in the official language in a newspaper of wide circulation as per S.124 (2).

□ During the meeting, the creditors may agree to the proposed arrangement or with such modifications as agreed to by the debtor. S.124(5)

Effect of proposed arrangement on secured creditors and preferential debts.

Under S.124 (6), if the proposed arrangement affects the rights of a secured creditor to enforce their security, the creditors will seek the consent of the secured creditor otherwise they are not bound.

Under S.124 (7), creditors cannot approve a proposed arrangement where a preferential debt is not paid before a non- preferential debt or where a preferential debt is paid in a lesser portion than another preferential debt under the same category.

The application for an interim protective order.

The application as per Reg.63 (1) of the insolvency regulations is by summons in chamber with an affidavit in support.

Regulation 63(2), service of the application within 7 working days on; the trustee, proposed supervisor and the debtor, where the applicant is a trustee.

Regulation 64(2), the applicant shall take out a hearing notice and serve; the trustee, the proposed supervisor and the debtor where the applicant is a trustee.

Grounds.

These are contained under S.120 (2):

a) Debtor intends to make an arrangement

b) A named insolvency practitioner is willing to act as supervisor of the proposed arrangement.

c) The debtor is an undischarged bankrupt or is able to petition for his or her own bankrupt.

d) A previous application has not been made by the debtor for an interim order in the last 12 months

e) Making the order is appropriate for the purpose of facilitating, the consideration and implementation of the debtors proposed arrangement.

Forum

Court with pecuniary jurisdiction. If high court it's the civil division if in Kampala.

Documents

- Chamber summons
- Affidavit

Section 122 of the insolvency act 2011, upon the court making an interim order, the debtor shall submit to the proposed supervisor—(a)a document setting out the terms of the arrangement which the debtor is proposing; and(b)a statement of his or her affairs containing—(i)particulars of the debtor's creditors, debts and assets; and(ii)any other prescribed information.

Section 123(1) of the insolvency act and regulation 68(1) insolvency regulations 2013, The proposed supervisor shall, while the interim order has effect, give the court a report in writing stating whether, in his or her opinion, a creditors' meeting should consider the individual's proposed arrangement.

Section 123(2)(b) insolvency act and regulation 69(1) and (2) of the insolvency regulations 2013, if the interim protective order has expired, an application to extend is made by chamber summons within 7 working days after the expiry of the interim order.

Options after receiving the proposed supervisors report.

a) Secton 123(4)(a) of the insolvency act 2011, court can order the proposed supervisor to call a creditors meeting to consider arrangement.

b) Section 123(4)(b), discharge the interim order.

Arrangement order.

If the creditors meeting approved the proposal, the court upon the filling of the report by the supervisor may issue an arrangement order under S.125 (3).

The supervisor must immediately upon issuance of the order send written notice to all known creditors notifying them that the arrangement has taken effect and to the public. S.126

Effect of an arrangement order.

S.127 (1) provides that an arrangement binds:

1. Making or proceeding with an application for bankruptcy

2. Appointing a receiver for any of the debtor's property.

3. Except with leave of court, not take any other steps to enforce a charge or commence or continue other proceedings or execution or levy distress on the debtor's property.

VARIATION OF ARRANGEMENT ORDER.

Under S.133 (1), the order maybe varied by court on application by any party bound by the order.

S.133 (2), empowers a supervisor upon discovery of an asset after an arrangement order has been made to distribute the asset using the arrangement agreed upon and variation if any.

Termination of arrangement.

The application is brought under S.134 (1) by any person bound by the arrangement.

Contents of an arrangement

Preliminaries

- Title
- Law
- Name of debtor, address, telephone ,email address
- Name of proposed supervisor and address
- Date of proposal.

Clauses

1. Introduction, brief facts

2. Debtors assets with estimated values

3. Debtors liabilities

4. Proposals

- Which property are excluded
- No assets other than the property of the debtor are included in the arrangement.
- How to deal with debtors property to pay debts
- Schedule of payment
- What money pays for what taking into account preferential creditors
- Duration of arrangement
- Supervisor opening/A/C
- Duties of a supervisor.
- The supervisor shall have the discretion to insert the funds surplus to the immediate requirements of the arrangement on deposit of money from time to time pending any distribution of such funds.
- It is proposed that the supervisors fees should be met out of the realizations under the arrangements as and when incurred or when funds so permit.
- The supervisor's fees and expenses shall rank ahead of the claims of the creditor.
- No further credit facilities are intended to be arranged for the debtor in the proposed arrangement.

5. Functions of the supervisor.

a) To receive funds payable into the arrangement

b) To make distributions to the creditor in due order of priority.

c) To report to creditors as to the progress of the arrangement from to time

d) To realize all assets comprised in the arrangement.

6. Variation

7. Confirmation of debtor that this document fairly sets out my proposals to my creditors for a voluntary arrangement and that to the best of my knowledge and belief all statements therein are true.

DATED

SIGNED BY

DEBTOR

Consent of supervisor and signature.

BANKRUPTCY PETITION.

A bankruptcy petition may be brought by either the debtor under S.20 (1) in which case it's called a debtors petition. Or

May be brought by a creditor under S.20 (2) in which case it's referred to as a creditor's petition.

Pre-conditions for bringing a creditors petition.

1. Judgement creditor. S.4(2)(a)(1) and execution has not realized the debt

2. Issue a statutory demand. S.20 (2), S.4 (2) (a) (1) and S.3 (1) (a).

Therefore, the creditor must be a judgement creditor who has attempted to execute and the execution has been returned wholly or in part unsatisfied.

See: SPRINGS INTERNATIONAL HOTEL V HOTEL DIPLOMATIC LTD AND ANOR H.C.C.MA NO.4227 OF 2019, justice sekana stated that it is trite law that the company's court is not, and should not to be used as a debt collecting court. The proper remedy for debt collecting is an execution upon a judgement, a distress, a garnishee order or some procedure.

In the present case, the respondent has not made any attempt to execute the order of taxation through the normal execution proceedings.

3. Where the debtor fails to comply with the statutory demand within 20 working days, then the creditor must bring the petition within 30 working days.

Form and content of the creditor's petition.

- The petition takes the form specified under form 3 in schedule 1 as per Regulation 9

- Regulation 10(1) requires that every petition is supported by an affidavit shown by the petitioner or one of the petitioners and where it's a company by a director, secretary or a person authorized.

SERVICE OF THE PETITION.

Reg 11(2) requires that the petition is served personally on the debtor and REg 11(3) specifies that service should be effected by delivering a petition sealed by the court to the debtor. Reg 11(4) provides for substituted service where the debtor cannot be found.

Public notice of the petition.

Reg 13(1) requires that the petitioner gives public notice of the petition within 7 working days. The notice is as prescribed in form 4 in schedule.

Procedure

1. All preliminaries must be satisfied

2. Petition lodged and served and notices issued accordingly

3. Failing of the statement of fairs by the debtor as required under S.21 (1) of the act and this way be filed with a reply to the petition as provided for under Reg 14(1). Reg 14(2) stipulates that the reply shall be supported by an affidavit setting out the grounds upon which the debtor opposes the petition

- The statement of affairs should be served onto the official receiver for purposes of enabling him/her participate in the public examination as required under S.22(4)

4. Court pursuant to S.22 (1) appoints a date for public examination of the debtor.

5. Pursuant to S.22(9), where the court is satisfied that the debtors affairs have been thoroughly investigated, it shall make an order that the examination is conclude and proceed to make a bankruptcy order under S.20(2) where need be.

6. The bankruptcy order made declared the debtor bankrupt and appoints the official receiver as interim receiver of the estate. S.20 (3).

7. The official receiver calls a first creditors meeting and during the meeting, a trustee is appointed and also prior to the meeting is required within days from the date of commencement of bankruptcy to give public notice of the date of commencement of the bankruptcy. S.24 (a) (b) and S.25.

- Bankruptcy commences on the date on which the bankruptcy order is made (S.20 (5)).

8. Trustee must then within 5 working days after their appointment give public notice of their full name, their address and the date of commencement of the bankruptcy. S.26

Committee of inspection may be appointed pursuant to S.30 and 46 of the I.A. its duties are under S.46 (1) of I.A

Effect and consequences of a bankruptcy order.

Effect

1. Under S.27 (1), the order vest the bankrupts estate into the official receiver and then into the trustee.

What constitutes the bankrupts estate.

S.31(1) provides that bankrupts estate comprises of all property belonging to or vested in the bankrupt at the time of commencement of the bankruptcy and any property falling under S.15,16,17 and 18 and a portion of the debtors salary as court determines.

S.31 (2) excludes from the estate:

a) Tools, books and other items of equipment used by the debtor for his trade, vocation or employment or for personal use being a value prescribed.

b) Clothing, beddings and provisions necessary for satisfying the basic domestic needs of the bankrupt and their family.

c) Property held in trust for any other person

d) Matrimonial home of the bankrupt.

2. Bars, except with written consent of the trustee or leave of court, any proceedings, execution or other legal process being commenced or continued and neither can distress be levied against the bankrupt. S.27 (1) (b).

However, S.27 (2). Subject to S.11 allows a holder of a charge over property in the bankrupt's estate to enforce the charge during the bankruptcy.

Consequences.

S.45 (1) and (2) stipulate the consequences of a bankruptcy order to include:

a) Disqualification from being appointed or acting as a judge of any court in Uganda.

b) Disqualification from being elected to or holding or exercising the office of the president, MP, minister, a member of the local government, council, board, authority or nay other governmental body.

Under sub-section 2, a public office or office of the justice of the peace immediately becomes vacant upon the person being adjudged bankrupt.

- The disqualifications cease to apply whereas per S.45(3)

a) The adjudication of bankruptcy against the individual is annulled

b) A period of 5 years elapses, from the date of discharge of the bankrupt

c) The individual obtains from the court their discharge with a certificate to the effect that the bankruptcy was caused by misfortune without misconduct on his/her part. Refusal to grant the certificate is appealable under S.45(4)

OTHER CONSEQUENCES CAN BE FOUND IN OTHER LEGISLATIONS, FOR EXAMPLE

1. Article 80(2) of the constitution bars an undischarged bankrupt from seeking elections as a member of parliament.

2. Article 102 bars a bankrupt from being a president

3. Under S.188 of the company's act, an undischarged bankrupt cannot be a director or take part in management of any company except with leave of court.

4. Under S.11 (a) of the advocates act, an undischarged bankrupt cannot practice law in the courts of Uganda.

Termination of bankruptcy.

Under S.41 (1), a bankruptcy terminates when a bankrupt is discharged, the bankruptcy order is annulled or upon withdrawal of a bankruptcy petition with leave of court.

Discharge

A bankrupt maybe discharged by court on application by the bankrupt under S.42 (1). Under S.42 (2) the court will take into account the official receivers report on the bankruptcy and the conduct of the bankrupt during the bankruptcy.

Reg.59 (1) stipulates that the application is by notice of motion supported by an affidavit. The application shall be served on the official receiver, the trustee and every creditor with an unsatisfied claim against the estate.

Effects of discharge

Under S.43 (1) a discharge order releases a bankrupt from all bankruptcy debts however it does not affect; the functions of the trustee which remain to be carried out; right of any creditor to the bankrupt to claim in the bankruptcy for any debts from which the bankrupt is released; the right of any secured

creditor of the bankrupt to enforce their security for the payment of a debt from which the bankrupt is released.

Annulment, revocation or setting aside of bankrupt order.

Under S.44(1), a court may whether the bankrupt has been discharged or not ,annul, revoke or set aside a bankruptcy order if it appears to the court that basing on any grounds existing at the time, the order was made, the order ought not to have been made.

Under S.44 (2) the property of the bankrupt upon annulment, revocation vests in a person appointed by the court or in default, it reverts to the bankrupt

As per Reg 57(2), the application is by notice of motion supported by an affidavit

Defenses to a bankruptcy petition.

1. Ability to pay

   Re teddy seezi cheeye (1996) IV KALR 116

2. Disputed debt

   MANN AND ANOTHER V GOLDSTEIN AND ANOR (1968) ALL ER 769. A holder of disputed debt is not a creditor and has no lows to present a petition. There is a substantial dispute if there is a plausible defense.

3. Using proceedings a debt recovery mechanism.

   SPRING INTERNATIONAL V HOTEL DIPLOMATIC AND ANOTHER.

4. Off set.

5. Debt not due

   SPRING INTERNATIONAL V HOTEL DIPLOMATIC AND ANOR.

Application for an interim protective order.

Chamber summon.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT

KAMPALA (CIVIL DIVISION)

IN THE MATTER OF AN APPLICATION FOR AN

INTERIM PROTECTIVE ORDER BY PHILIP

MPANGOYABONNA

BANKRUPTCY CAUSE NO.....OF 2020

CHAMBER SUMMONS.

(Under Regulation 63(1) of the insolvency regulations No.36 of 2013)

LET ALL PARTIES CONCERNED attend to the learned judge in chambers on the .....day of .....2020 at .....O'clock in the forenoon or soon thereafter as counsel for the applicant can be heard for orders that:

1. An interim protective order be granted in favor of Philip Mpangoyabonna

TAKE NOTICE that the grounds of this application are contained in the affidavit hereto annexed and deponed by Phillip Mpangoyabonna.

GIVEN under my hand and seal of this honorable court this.....day of .....2020.

REGISTRAR

Extracted by:

M/S DI AND CO Advocates

Law development Centre,

Mbarara-campus.

P.O BOX 7117

Kampala.

Affidavit.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

IN THE MATTER OF AN APPLICATION FOR AN INTERIM

PROTECTIVE ORDER BY PHILIP MPANGOYABONNA

BANKRUPTCY CAUSE NO.....OF 2020.

AFFIDAVIT IN SUPPORT

I PHILLIP MPANGOYABONNA C/O M/S SUI GENERIS & CO Advocates, P.O. Box 7117, Kampala, do hereby take oath and state as follows:

1. That I am a male adult Ugandan of sound mind the applicant herein in which capacity I swear this affidavit.

2. That I am indebted to four creditors to a turner of UGX 1,000,000,000 as particularized in the statement of affairs.(Attached hereto is a copy of the statement of affairs marked annexure A)

3. That I intend to enter into an arrangement with my creditors. (a copy of the proposed arrangement is hereto attached as annexure B).

4. That, Mr. SUI GENERIS , an insolvency practitioner has agreed to act as supervisor under any proposed arrangement. (A copy of the letter of consent to act as a superior is hereto attached as annexure C).

5. That I have not applied for an interim protective order within the past 12 months.

6. That I have USD 100,000 that was frozen on my bank account with standard chart bank which l hope to use in the arrangement once FIA in freezes the account. (A copy of my bank statement dated 20th September 2020, and a copy of the freezing order from FIA dated 3rd August 2020 are hereto attached as annexure D and E respectively.

7. That I am negotiating credit line supplies to revamp my business (copies of email correspondences with my prospective suppliers in China are hereto attached as annexure F).

8. That it is in my interest and that of my creditors that this application is granted to enable me re-arrange my finances to settle the creditors in full and sustain my business and myself.

9. That whatever I have stated herein is true and correct to the best of my knowledge and belief.

SWORN ON THIS.....day of .....2020 by the said PHILLIP MPANGOYABONA

DEPONENT

Before me

COMMISSIONER FOR OATH.

Drawn and filed by:

M/S DI & CO Advocates,

Law development Centre,

LAW FIRM

P.O Box 7117,

Kampala.

Petition for bankruptcy.

THE REPUBLIC OF UGANDA AT KAMPALA.

(CIVIL DIVISION)

IN THE MATTER OF THE INSOLVENCY ACT, 2011

AND

IN THE MATTER OFA CREDITOR'S PETITION

TO ADJUDGE PHILLIP MPANGOYABONA

BANKRUPT AND

IN THE MATTER OF AN APPLICATION BY

BANKRUPTCY CAUSE NO.....OF 2020

PETITIONER/CREDITOR

VERSUS

PHILLIP MPANGOYABONA .....DEBTOR

PETITION

(Under S.20 (2), S.4 (2) (1) (a) and S.3 (1) (a) & (b) of the insolvency act and Rule 9 and 10 (1) of the insolvency regulations S I NO.36 OF 2013)

The humble petition of .....whose address is M/S DI & CO Advocates, law development Centre, Mbarara-campus, P.O BOX 7117, Kampala, states as follows:

1. That Phillip Mpangoyabona is justly and truly indebted to me, the petitioner in the aggregate sum of UGX being outstanding decretal amounts issued by the court in H.C.C.S NO.2 OF 2016 (A copy of the judgement and order are hereto attached as annexure A and B respectively.

2. That I have conducted execution proceedings against Phillip mpangoyabona but the execution was returned unsatisfied (A copy of the return of execution is hereto attached as annexure C)

3. That having had the execution returned unsatisfied on the 21st day of August 2020, a statutory demand was served upon the debtor requiring him to pay the decretal sums amounting to UGX
(a copy of the statutory demand is hereto attached as annexure D).

4. That to the best of my knowledge and belief, the demand has neither been complied with nor set aside and further it is to the best of my knowledge and belief that there is no application to set aside pending before this honorable court or any other court.

5. This matter is within the jurisdiction of this honorable court.

WHEREOF THE PETITIONER prays that this honorable court:

a) a bankruptcy order be issued against the debtor PHILLIP MPANGOYABONA

b) costs of this petition be born out of the estate of the debtor

Dated at Kampala this.....day of 2020

.....

COUNSEL FOR THE PETITIONER.

Drawn and filed by:

DI & CO Advocates

Law development Centre,

Mbarara-Campus

P.O BOX 7117,

Kampala.

□ Should be verified by an affidavit.

CORPORATE INSOLVENCY

Under this we cover: provisional administration, administration receivership and liquidation and informal corporate rescue option.

A) Provisional administration.

A provisional administrator may only be appointed before the company goes into liquidation.

This is a corporate rescue mechanism intended to allow the company progress as a going concern as it irons out its financial challenges.

Purpose

The purpose can be deduced from S.140 (1)(b) which details some of the functions of the provisional administrator. The purpose of provisional administration is to:

a) Ensure the company survives in whole or part as a going concern

b) Allow for approval of an administration deed

c) Allow for a more advantageous realization of the company's assets would be effected in liquidation

See: UGANDA TELECOWM LIMITED V ONDAMA SAMUEL T/A ALAKA AND CO.ADVOCATES H.C.MA NO00212 OF 2018.

Procedure for commencement and appointment of a provisional administrator.

1. A company passes a special resolution agreeing that the company needs to make a settlement with the company creditors. S.141(3)

2. The company having agreed to make a settlement then petitions court for an interim order. S.141(4)

3. The company then by special resolution of board appoints a provisional administrator and issues a notice to that effect also stating the date of the interim order. S.141(1)

 Regulation 144(1) requires that the notice is issued within seven working days from the date of the protective order. As per Reg.144 (2), the notice takes the form in form 12 in schedule 1.

Note: S.141 (5), bars the appointment of a provisional administrator when the company has gone into liquidation.

□ Section 141(2) requires that the notice appointing the provisional administrator or includes a certificate signed by the appointer certifying that, at the time of the appointment, there is no reason to believe that the company is or will be unable to pay its debts within the meaning of S.2

DUTIES OF A PROVISIONAL ADMINISTRATOR.

These are spelt out under section 142(1) and S.143 and include:

a) To investigate the company's business, property, affairs and financial circumstances

b) To exercise powers for the survival of the company, the approval of an administration deed and a more advantageous realization of the company's assets.

c) Taking custody and control of all property that the company owns.

d) Keep company money separate from other money held by or under the control of the provision of administrator.

e) Ensure accountability in compliance with the acceptable accounting principles.

When does provisional administration commence

Per S.141 (1), provisional administration commences when the interim protective order is made.

EFFECT OF PROVISIONAL ADMINISTRATION.

These are postulated under S.145 (1) and are:

a) Liquidation by court cannot be commenced

b) Functions and powers of any liquidator are suspended

c) Resolution for liquidation cannot be made

d) No receiver can be appointed

e) Charges can only be enforced with the written consent of the provisional administrator or leave of court

f) Proceeding, execution or other legal process cannot be commenced or continued except with the written consent or leave of court. Reemphasized. In UGANDA TELECOM LIMITED V ONDOMA SAMUEL C/A ALAKA AND CO ADVOCATES (SUPRA)

Also see: BENARD MWEITEISE & CO V UGANDA TELECOM LTD HCMA NO.66 OF 2019.

Duration of provisional administration.

S.147 (1) provides that provisional administration terminates where:

a) The period specified in the interim order lapses and the period is not more than 30 days.

b) An administration deed is executed under S.151.

c) The provisional administrator gives the notices under S.153 and these include the following: the deed is not executed within the period of execution in S.152 (2), creditors resolve that the provisional administration should end, or the creditors don't pass a resolution under S.148.

Per Reg 147, the notice is as prescribed in form 18 in schedule 1.

Other provisions

the power of provisional administrator.

(Section 155 of the insolvency act 108)

a) To carry on the company's business

b) To manage the company's property and affairs

c) To perform any function and exercise any of the company or any of its directors or secretary would perform

d) To change the company's registered office

e) To remove from office a director of the company

f) To appoint a person as a director

g) To call any meeting of shareholders or creditors.

- S.156 provides for provisional admins relation with 3rd parties.
- S.157 stipulates the role of directors and secretary during provisional administration. S.157 (1) suspends any powers of the directors and secretary in the company while S.157 (2) enjoins them to avail and give all assistance to the provisional administrator.

Personal liability of a provisional administration

Under section 160 of the insolvency act cap 108, a provisional administration is entitled to indemnity out of the company's assets in respect of any personal liability incurred and any remuneration and expenses reasonably incurred.

a) Any contract entered into in the exercise of provisional administrated powers

b) Wages, salary and allowances incurred during the provisional administration; under a contract of employment and any services rendered after the adoption of the contract.

c) Rent and any other payments becoming due under the agreement.

PROVISIONAL ADMINISTRATOR'S PROPOSAL.

a) The proposal must set out the scheme for achieving the purpose of the provisional administration. It must set out; the full name and address of the company details relating to the appointment, account of the circumstances giving rise to the appointment, a summary statement of the company's affairs and details of the financial position of the company.

b) Section 149(1) insolvency act cap 108; A creditor's meeting to consider proposals must be called by the provisional or administrator not later than 10 working days after the commencement of the provisional administration.

c) Section 149 (2) of the insolvency act 108, the meeting is called by not less than 2 working day's public notice and individual written notice to each known creditor of the company.

d) The meeting is conducted in accordance with the 3rd schedule insolvency act.

The creditors may resolve any of the following;

a) That the company execute an administration deed as specified in the resolution

b) That the provisional administration ends

c) That the company be liquidated.

TERMINATION OF PROVISIONAL ADMINISTRATION

(section 171 and 173 of the insolvency act)

a) If the administration deed is not executed within 21 days after the meeting of creditors

b) If the creditors resolve that provisional administration should come to an end

c) If the period specified in the interim order lapses.

d) If an administration deed is executed.

Upon termination, the provisional administrator must as soon as possible give public notice and send notice to the official receiver, the registrar and court indicating that the provisional administration has come to an end without the execution of an administration deed.

The notice is in form 18 schedule 1 of the insolvency regulations. (regulation 147 insolvency regulations 2013)

Administration

Commencement and process.

a) Meeting to consider proposal.

S.148 (1) enjoins a provisional administrator to call a creditors meeting to consider his or her proposals. The public notice given must be for at least five working days and a written notice to cash creditors.

Reg 146(1) requires that the notice is accompanied by the proposal to be considered.

It should also be accompanied by a report by the provisional admin about the company's business, property, affairs and financial circumstances among others under S.149 (3) (b).

S.148 (1) stipulates that the provisional admin is the chair of the meeting.

Under S.148 (3) the creditors may during the meeting resolve that the company executes an administration deed, provisional admin ends, or that the company is liquidated.

ADMINISTRATION DEED

It constitutes the agreement between the company and its creditors. The provisions of the deed are meant to rescue the company as a going concern and ensure a distribution to creditors.

Contents of the administration deed

These are listed under S.151 and are:

1. Proposed administrator of the deed
2. Property available to pay the creditors
3. Nature and duration of any moratorium period or which the deed provides for.

4. Extent to which the company is to be released from its debts

5. Conditions, if any required for the deed to come into force(operation)

6. Order in which proceeds of realizing are to be distributed

7. Date when claims admissible under the deed should have a risen.

b) Execution of the administration deed.

This is under S.152 and it is executed by the company and the proposed administrator. S.164 postulates that that marks the commencement of administration. The administration deed is executed during a general meeting.

c) Notice of administration.

The administrator is required under S.165 to give each know creditor notice of the administration and also issue a public notice. . REG 149, provides that the notice is as in

Form 18 in schedule 1.

Effect of administration.

As per S.166(1) the administration deed binds the company, directors and secretary, shareholders, administrator and all company's creditors in relations to claims arising on or before the day specified in the deed.

See: UGANDA TELECOM LTD V ONDAMA T/A ALAKA AND CO ADVOCATES, on the creditors bound by the deed and effect of the deed on contingent and future debts.

The aforementioned persons bound by the deed are precluded under S.166 (2) from:

1. Making an application for liquidation or proceeding with one.

2. Except with leave of court, from taking steps to enforce any charge over the company property

3. Except with leave of court, commence or continue execution proceedings or other legal processes or levy distress against the company or its property.

Functions of the administrator.

Under S.168, the major function of the administrator is to supervise the implementation of the administration deed.

Variation of admin deed.

S.170 (1) provides that the administration deed may be varied by a resolution passed a creditors meeting.

An aggrieved administrator or creditor may petition court to cancel or confirm the variation in part or whole under S.170 (2)

Termination of administration.

Under S.171, termination occurs where the court makes an order or the circumstances stipulated in a deed occur

The application for termination by court, as per S.171 (1), may be brought by the administrator of the company, creditor of the company or any liquidator of the company.

Reg 157(1) requires that an application by the administrator is accompanied by a progress report covering the period from the last progress report

An application by the creditor must state the grounds on which the administration should be terminated as per Reg.157 (2)

S.173 enjoins the administrator to give public notice of the termination and send written notices of termination and send written notices of termination to each of the creditors, shareholders and the official receiver.

Corporate voluntary arrangement.

VANESA FINCH IN CORPORATE INSOLVENCY LAW AND PERSPECTIVE AND PRINCIPLES 2ND EDITION AT PG 488, argues that a company just like an individual could enter into a binding arrangement with its creditors by a simple procedure that would allow it to organize its debts.

Further, it is also argued that for a company voluntary arrangement to lead to rescue rather than liquidation, first the business needs to generate cash profits that are sufficient to pay off past debts and deal with on-going liabilities, second credit control procedures of the company must be effective and thirdly there is need to be a corporate strategy implementable through corporate voluntary arrangement proposal that will lead to financial survival.

Parameters for corporate voluntary arrangement

a) Ability to generate profits to pay debts

b) Effective credit control procedures

c) Corporate strategy for financial survival.

Procedure for corporate voluntary arrangement.

Section 230 (1)(2) and (3) of the companies act; Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the court may, on the application of the company or of any creditor or member of the company or where the case of a company being wound up, of the liquidator order a meeting of the creditors or class of creditors or of the members of the company or class of members as the case may be, to be summoned in such manner as the court directs.

(2)Where the majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors or on the members or class of members as the case may be and also on the company or in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3)An order made under subsection (2) shall have no effect until a certified copy of the order has been delivered to the registrar for registration and a copy of the order shall be annexed to every copy of the memorandum of the company issued after the order has been made or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

Section 231(1) of The Companies Act 106, provides for information as to compromise with creditors such as a statement explaining the effect of compromise or arrangement and in particular stating any material interests of directors.

Liquidation.

Liquidation may be commenced in three ways:

1. (A) Members voluntary liquidation

b. Creditors voluntary liquidation

2. Voluntary winding up

3. Liquidation by court.

LIQUIDATION BY COURT

Under S.92 (1) of the insolvency act, the court may appoint a liquidator. Order may also be made pursuant to S.4 (5) of the I.A.

Court with jurisdiction.

The court with jurisdiction as per S.91of the insolvency act is the high court.

Who can present the petition.

S.92 (1) of the I.A and Reg .85(1) of the insolvency regulations postulate that the petition may be brought by:

a. The company

b. A director of the company\

c. A shareholder of the company

d. A creditor of the company

e. A contributory

f. The official receiver

When can the petition be presented.

S.92 (2) of I.A and Reg 85(2) postulate that the petition may be brought where the company:

a. Has been served with a statutory demand and is unable to comply with the demand

b. Unable to pay its debts

c. Has agreed to make a settlement with its creditors or entered into administration.

Documents

1. Per Reg 86 of I.R, the petition is the form prescribed in Form 19 in schedule 1 to the regulations and must state the items laid down in the regulation.

2. Reg 87(1) requires that the petition is supported by an affidavit. The affidavit in the case of a company must be sworn by a director, secretary of the company or a person authorized by the company. In case of an individual, by the petitioner, or by one of the petitioners where there is more than one.

Process.

1. Draft petition and affidavit

2. Pay necessary fees

3. Lodge petition and affidavit ad evidence of payment.

4. Service of the petition. Reg 88(1) requires that the petition is served on the company, where it's not the petitioner, every it's not the petitioner, every known creditor, a contributory and the official receiver.

5. Publication of notice of the petition. The petitioner must within seven working days after filing the petition give public notice of the petition in form 4 in the schedule to the regulations. Reg 89

6. A creditor, c contributory or company may within 15 working days after service reply to the petition. Reg 90(1). The reply to the petition is by way of affidavit and should be served in the same manner as the petition. Reg.90 (2).

7. Any creditor who intends to be heard must within 5 working days after publication of the notice of the petition give court and the petitioner notice of intention to appear and he heard on the petition as per Reg 91(1). The notice is as prescribed in form 5 in schedule 1. If you don't give notice, you can only be heard with leave of court. Reg 91(3)

8. Petitioner then prepares a list of creditors and their advocates, who have given notice to be heard, specifying their names and address. Reg 92(1). The list is in the form prescribed in form 6 in schedule 1 to the Regs. Against each name, petitioner must indicate whether they are in support or not, Reg.92 (3).

Provisional liquidator

- Appointed by court. It may be the official receiver or any other I.P and they are appointed to preserve the value of the company. S.94 and Reg.97
- Must give notice of appointment using form 12. S.95 and Reg 98
- Must within 14 working days call a creditors meeting as per form 10. Reg 99

VOLUNTARY WINDING UP.

Winding up is the process by which a company is dissolved and ceases to be a going concern. The business is closed down, its assets are sold off, the creditors are paid and the balance is distributed to the members and at the end of the whole process, the company ceases to exist.

1. Under the companies act.

Effect.

S.270 (1) of the CA provides that from the commencement of voluntary liquidation, the company ceases to carry on business except so far as maybe required for the beneficial winding up of the company.

S.270 (2) postulates that the corporate status continues and its powers continue until it is dissolved.

When to invoke it.

S.269 of the companies act provides that directors of a company can commence liquidation where they have made a full inquiry into the affairs of the company and have formed the opinion that the company is able to pay its debts in full within a period not exceeding 12 months from the commencement of the liquidation.

The company must be solvent.

Procedure

1. Directors of the company investigate the affairs of the company and then form an opinion that the company can pay its debts within a period of one year. S.269(1)

2. The directors make a statement of the company's assets and liabilities

3. Directors call a board meeting to make a statutory declaration of solvency. S.269 (1). Meeting is as per Reg .98 of table A or the articles of the company.

4. The declaration is filed together with the statement of assets and liabilities within a period of 30 days with the registrar of companies. S.271(2)(9)(a) and (b)

5. Notice is issued to call for an EOGM under S.140 for purposes of winding up the company

6. A special resolution is passed.(S.266 of the CA)

7. The resolution is registered within 7 days with the registrar of companies. S.264 (2).

8. Advertise notice of the resolution to wind up in the Uganda gazette and a newspaper of wide circulation. S.267(1)

 S.270 of the companies act 106 provides for the application of the insolvency act to voluntary liquidation under the CA with necessary modifications.

9. Appointment of a liquidator through a meeting of members or board resolution. S.62 OF I.A

10. Liquidator must within 14 days after their appointment publish in the gazette and deliver to the registrar for registration a notice with a copy of a caveat. Reg 98 of insolvency Regs, the public notice is the form prescribed in form 12 in the schedule.

11. Should the liquidation continue for more than 12 months, the liquidator must call for a general meeting as per S.66 of I.A

12. Give a notice of final meeting in the gazette and in a newspaper of wide circulation specifying the time ,place and object of the meeting at least 30 days before the meeting .S.67(2) of I.A

13. The liquidator must then prepare an account of the liquidation showing how the liquidation was conducted. S.67(1)(a) of I.A

14. Hold the general and final meeting of the company and provide an account of the liquidation, his acts and dealings. S.67(1)(b) of I.A

15. Transmit a copy of the account to the registrar and make a return of the meeting and its date to the registrar within 14 days after the meeting S.67(3)(a) and (b)

16. On expiration of 3 months from the date of registration of the return, the company is taken to be dissolved. S.67(6) of I.A

2. UNDER THE INSOLVENCY ACT.

S.58(1) of the I.A provides that a company may be liquidated voluntarily if it resolves by special resolution that it cannot by reason of its liability continue its business and that it is advisable to liquidate.

S.58 (2) stipulates that voluntary liquidation is taken to commerce at the time of passing the resolution for voluntary liquidation.

Under S.59(1), the company must within 14 days after passing the resolution give notice of the resolution in the gazette and in a newspaper of wide circulation

S.59 (2) requires that the resolution is registered with the registrar within seven days and a copy sent to the official receiver.

Effect (S.97)

1. The company ceases to carry on business
- Liquidator takes custody and control of Co. S.97 (1) (a).

2. Any transfer of shares not sanctioned by the liquidator is void. S.97 (1)(d)
- Officers of the company have no power though in office. S.97(1)(b)

Members voluntary.

S.62 (1), the company members by special resolution appoint one or more liquidators for the purpose of liquidating the company.

S.62 (2) on his/her appointment, all the powers of the directors cease except where the company in a general meeting the liquidator sanctions the continuance of those powers.

S.82 provides for public notice of appointment of the liquidator.

S.67 provides for a final meeting.

Creditor's voluntary meeting.

S.69 (1) provides that the company shall cause a meeting of the creditors of the company to be summoned on the same day as the meeting for the resolution for liquidation is to be proposed or on the following day and send to the creditors notices for the meeting together with the notices for the meeting for proposing the resolution for liquidation.

S.69 (2) provides that the notice for the meeting of the creditors shall be published in Gazette and in a newspaper with a wide circulation.

S.69(3) obligates the directors to appoint one of them to preside at the meeting of creditors and present a statement of the company affairs and a list of the creditors and the estimated amount of their claims to the meeting of the creditors.

Under S.70(1), the creditors and the company may at their respective meetings nominate a person to be liquidator and if they nominate different persons, the person nominated by the creditors will be the liquidator and if the creditors don't nominate any person, then the person nominated by the company is the liquidator.

Procedure

1. Notice of EGM S.69(1)
2. Notice of creditors meeting in the Gazette and newspaper of wide circulation. S.69(2)
3. Company meeting passes a special resolution that company cannot pay its debts and appoints a liquidator. S.58
4. The creditors meeting convene a and resolution is presented and a liquidator appointed and the committee of inspection
5. Company gives a notice of the special resolution in the gazette and in a newspaper of wide circulation within four days.
6. Liquidator gives public notice of appointment. S.82
7. Committee of inspection sets liquidators remuneration
8. Liquidator collects assets and distributes proceeds as per act

- Read procedure under 11-16 under company winding up.

RECEIVERSHIP

A receiver receives or collects the income from a debtor's property for the benefit of a creditor.

Section 1 of the insolvency act , a receiver means a receiver or manager and includes a receiver and manager or administrative receiver in respect of any property and any person appointed as receiver by a document or by court.

Two types.

1. Individual receivership; where a receiver is appointed over the property or estate of an individual debtor.

2. Corporate receivership; where a receiver is appointed in respect of the property of the debtor company.

People who can't be appointed receivers (s.207)

1. A charge of the property under receivership

2. A person who is disqualified from acting as a receiver by the appointing document.

3. A person who has within the two years immediately preceding the commencement of the receivership, been a shareholder, director or auditor of any charge of the property in receivership.

Note: under S.203 (1) (a) and 204 of the insolvency act, only an insolvency practitioner can be appointed as a receiver.

Types of receivers.

a) Receiver-manager: is a receiver who also has power to operate or manage the debtors business

b) Receiver in simplicity: is a receiver who is appointed to only realize the asset and apply the proceeds to settle the debts under which they are appointed.

c) An administrative receiver is appointed over the whole or substantially the whole of the property and undertaking of a grantor.(section 2 of the insolvency act)

An administrative receiver is appointed by a creditor who has a security in the form of a floating charge.

The charge covers the whole or substantially the whole of the company's property.

The powers of an administrative receiver are subject to the instrument of appointment but generally are:

a) If the grantor is an individual, he or she can carry on any business of the grantor.

b) If it's a company, he or she can carry on the company business and manager its property, perform any functions and exercise any powers of the directors or the company secretary, change the company's registered address or postal office. S.183(1)

MODES OF APPOINTMENT.

1. By court order.

The order may be by the H.C in exercise of its statutory power to make such an appointment e.g. S.22 of Mortgage act. It may also be in exercise of courts inherent powers. section 180(1) of the insolvency act, provides for appointment of a receiver by court.

Section 180(2) stipulates that receivership commences and the appointment takes effect when the receiver accepts the appointment in writing.

Regulation 203(1) of the insolvency regulations 2013, provides that every application to court other than a petition shall be made by notice of motion.

Regulation 203(2), the application should be served on the grantor in not less than 14 days before the day for hearing the motion.

When the court orders the appointment, the order will be served on the receiver.

Regulation 164, acceptance and confirmation by the appointed receiver within 7 working days.

2. Instrument

A receiver may be appointed by instrument e.g. under a mortgage deed or a debenture.

EMRELAD HOTEL V BARCLAYS BANK.

A receiver can be appointed by a debenture holder under a deed. A receiver should be qualified as set out under section 204 of the act and appointment takes effect upon acceptance in writing as spelt out under section 180(2) of the act.

Appointment is by way of formal letter.

3. Appointment by minister.

Section 202 insolvency act An official receiver shall be appointed by the Minister to perform the functions of official receiver under this Act.

SECTION 203; Powers and functions of the official receiver

The official receiver shall—

(a)investigate the directors, shareholders, contributories and all present and past officers of an insolvent company or of a company which being wound up or liquidated, for the purpose of establishing any fraud or impropriety;

(b)investigate the promotion, formation, failure and conduct of business of an insolvent company;

(c)prosecute any person for offences committed under this Act or discovered to have a case to answer as a result of investigations carried out

;(d)investigate the conduct of insolvency practitioners and to prosecute them for any offences committed;

(e)act during a vacancy in the office of an insolvency practitioner; and

(f)take all necessary steps and actions considered fit by the official receiver to fulfill the provisions of this Act.

Duties, powers and obligations.

These are set out in S.180-185 of the insolvency act.

RECEIVER AS AN AGENT.

A receiver is typically designated as an "agent" of the debtor company. It's not a true agency but merely a device for making a debtor rather the creditor liable for the receiver's acts and omissions. However, the receiver owes a duty of good faith and a duty to manage the property with due diligence.

SILVER PROPERTIES LTD AND ANOR V ROYAL BANK OF SCOTLAND AND ORS (2004) 1 WLR 997

In DOUGLAS MEDFORTH V JAMES PETER BLAKE AND ORS (2000) CH 86, the receivers had according to the grantor mismanaged the pig farming business by failing to take large discounts from pig feed suppliers at the time it was on and buying later on when the discount was low. The court appeal held that the proposition that, in managing and carrying on the mortgaged business, the receiver ones the mortgagor .no duty other than that of good faith, offends commercial sense. The receiver is not obliged to carry on the business. He can decide not to do so. He can decide to close it down. In taking these decisions he is entitled and perhaps bound, to have regard to the interests of the mortgage in obtaining repayment of the secured debt provided he acts in good faith, he is entitled to sacrifice the

interests of the mortgagor in pursuit of that end. But if he does decide to carry on the business he is expected to do so with reasonable competence. A receiver/manager who sells but fails to take reasonable care to obtain a proper price may incur liability notwithstanding the absence of fraud or malafides.

POWERS OF RECEIVER ON LIQUIDATOR.

Pursuant to S.198(1) of the insolvency act, unless the court orders otherwise ,a receiver maybe appointed or continue to act as a receiver and exercise all the powers of a receiver in respect of any property of a company which have been put into liquidation or an individual in respect of whom a bankruptcy order has been made.

They however can only act as agents of the grantor only with approval of the court or with written consent of the liquidator or trustee. S .198(2) of the insolvency act.

The debts incurred by the receiver shall not be a cost of liquidation. S.198 (3) OF I.A

EXECUTION OR ATTACHMENT AGAINST A COMPANY IN RECEIVERSHIP.

IN JOHN VERJEE AND ANOR V SIMON KALENZI AND ORS (1997-2001) UCLR 83, it was stated that once a receiver has taken possession of the property before attachment, that property cannot be attached by subsequent decree holders against the judgement debtor. A receiver holds the property to pay debts of the company and therefore, the receiver is in possession not on behalf of judgement debtor but for the mortgage.

Procedure

1. Appointment is in writing i.e. by instrument of appointment. S.182 on indoor management rule is respect of appointment
2. Notice of the appointment of a receiver to the grantor and the public. S.178 of I.A
3. Notification of the official receiver.
4. Changing of company letter heads to indicate the status of receivership
5. Taking custody and control of the property under receivership

6. Preparation of an inventory (All company assets and lieu)

7. Within 14 working days after commencement of the receivership, give public notice using form 29 of schedule 1 to the regulations. S.178 and Reg 165

8. Within 14 working days notify official receiver by delivering notice above.

Court supervision

Receiver may apply under S.199 (1) of the I.A.

Others including receiver may also apply under S.199 (2) of the I.A

COURT ACTION BY A GRANTOR.

Only the receiver can sue on behalf of and in the name of the company. But if the receiver, who being in control of the company, is at the same time a wrong doer and refuses to sue, a shareholder can bring a derivative action for fraud that is expropriation of the company's property.

ALLIED BANK INTERNATIONAL LTD V SADRU KARA AND ABDUL KARA, H.C.C.S NO 191 OF 2002.

Directors may also sue where they are challenging the validity of the security under which the appointment has taken place or in any other case where the vital interest of the company are at risk from the receiver or from elsewhere but the receiver neglects or declines to act.

SAROPE PETROLEUM LTD V ORIENT BANK LTD AND OTHERS HCMA NO.72 OF 2011.

The grantor may bring an action against the receiver secured creditor or appointees or any other person for wrongful appointment of the receiver, trespass and other unlawful acts which prejudice the rights and interests of the grantor. S.188 (1) (a) of the I.A

Debtor may also bring an action to preserve or protect the estate or interest in receivership where the receiver does not take action. S.188 (1) (b) of I.A

Any other action cannot be brought without the consent and approval of the receiver. S.188 (1) (c)

REMOVAL AND TERMINATION

Section 201, 211,

-Reg 167, 170.

REGULATORY FRAMEWORK FOR FINANCIAL INSTITUTIONS AND FINANCIAL SERVICES.

Micro finance institutions.

These are in two types:

a) Those under the tier for microfinance institutions and money lenders act.

1. SACCOS
2. Non-deposit taking microfinance institutions
3. Self-help groups S.99
4. Commodity based micro finance institutions S.102

All the above are regulated by the Uganda microfinance regulatory authority as per S.8 (1)

b) Deposit taking microfinance institutions under the micro finance deposit –taking act No.5 of 2003.

SACCOS

- Must be a registered society and licensed under the tier for act S.36(1)
- It only provides financial services to its members. S.36(2)
- Its powers under S.37 are interlia to mobilize and receive savings from members, borrow in an aggregated amount not exceeding a limit prescribed by the authority, provide loans to its members.
- Must apply to UMRA for a license under S.38(1) and application is a companied by the requirements in S.38(3)
- Must use its name in its operations S.40
- Look at S.39-61, on annual fee, issue of a license, equity, shareholding, savings, and restrictions on borrowing, SACCO stabilization fund, and SACCO savings protection fund.

Non-deposit taking microfinance institutions.

- Its defined under S.5 of tier for as accompany or non-governmental organization licensed under S.62

- Apply to UMRA for a license under S.62 of tier for

- Institutions may grant micro loans which are to be in Ugandan shillings and may be granted without collateral or with. S.67

- A micro loan is defined under S.5 of the tier for to mean a loan of an amount not exceeding 1% of the core capital of the institution for an individual borrower or 5% of the core capital of the non-deposit taking micro fiancé total capital for the group borrower.

- Their scope of activities is set out under S.69 of the tier for act.

- They assist in the development of micro, small and medium sized business and expand access to micro loan resources to individuals for the promotion of their business, livelihoods and land holdings.

Micro finance deposit taking institutions

S.2 of the microfinance deposit-taking institutions act (MDI) defines a micro finance business to mean the business carried on a principal business of acceptance of deposits, employing such deposits wholly or partly by lending or extending credit for the account and such other activities as may be prescribed by the C.B.

Only a company in possession of valid license can carry on microfinance business. S.7 of MDI act and must use MDI after its name S.5 (2)

Minimum paid –up capital is UGX 500,000,000. S.15 of MDI and Reg 6 of MDI (Capital adequacy) Regs.

No person or group of related persons can hold more than 30% of the shares of an institution. S.21 (1) of MDI

Operations directed by a board consisting of at least 5 directors, headed by a chairperson who is a non-executive director of the institution. S.22 (1) of the MDI.

There must be approved by the C.B which shall ensure that they are fit and proper person in line with 2nd schedule. S.22 (2) of MDI

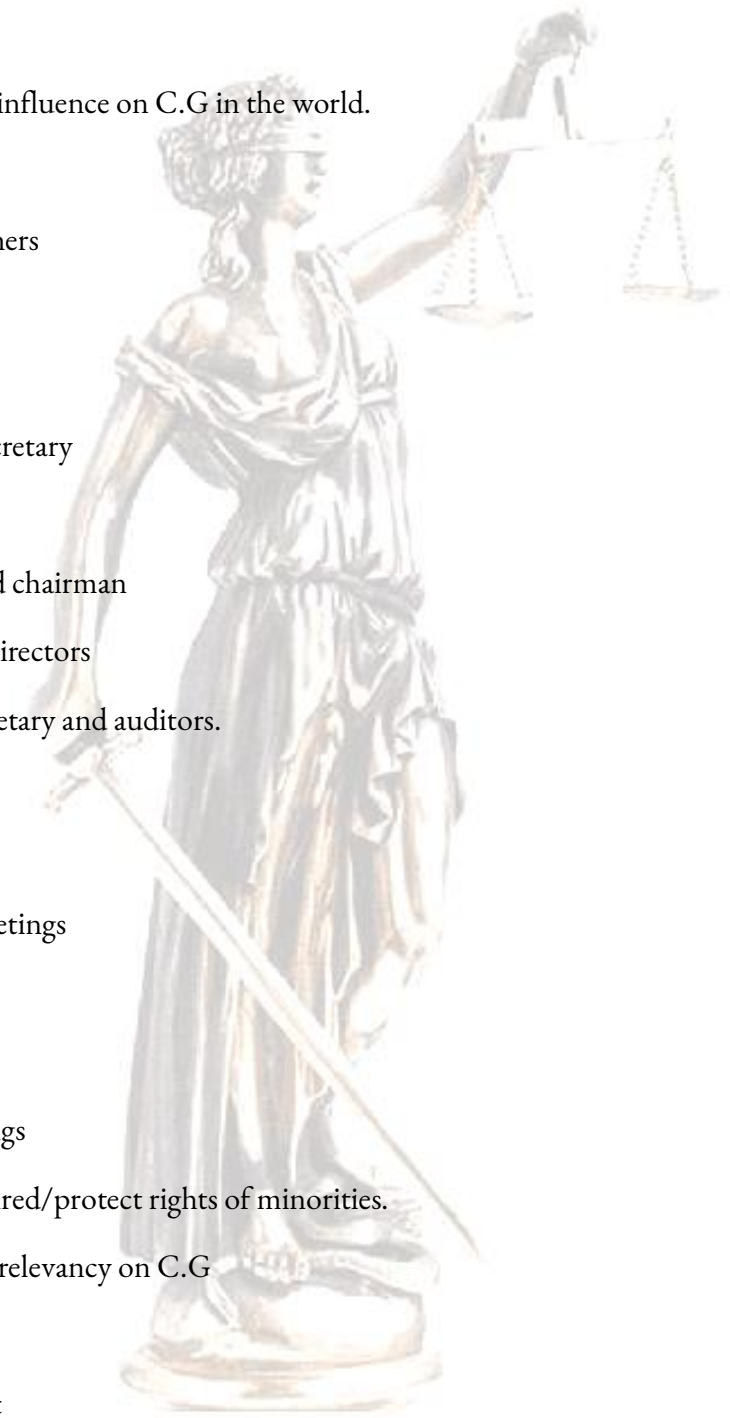
JOHN KIZITO V BOU, HCMA NO.244 OF 2016

Money lending business

- Law applicable is the tier four (S.2(1)(b)

- Money lender is a company licensed under S.79, S.5

- Money lender must be a company and not carrying on business of banking or insurance; a society registered under the cooperatives society act. S.78



Some cases and their influence on C.G in the world.

- Enron case
- Lelman brothers
- Crane bank

Board of directors

- Company secretary
- CEOS
- Role of board chairman
- Payment of directors

CEO, Company secretary and auditors.

- Roles of each

Company meetings

- Statutory meetings
- AGMs
- EGMs
- Board meetings
- Notices required/protect rights of minorities.

Analyze the rational, relevancy on C.G

- FIA
- Company act
- Anti-corruption act

Appendix D- Documents for Bankruptcy.

"THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

BANKRUPTCY CAUSE NO. 1 OF 2006

RE: MARSHAL OTTO AND

RE: BANKRUPTCY ACT CAP 71

BANKRUPTCY NOTICE

TAKE. NOTICE that within 7 after service of this notice on you; excluding the day of such service, you must pay to JEJE NONO or his advocate MS SUI GENERISand Co; 70.000.000 = claimed by it against you for spare supplies you, or you secure or compound for the said sum to their satisfaction or to the satisfaction of their advocates that you have a counter claim to set off or settle the demand .

Dated this ..... day of 2006

YOU ARE SPECIALLY TO TAKE NOTE that the consequences of not complying with the requisitions of this notice are that you will have committed an act of bankruptcy which bankruptcy proceedings may be taken against you.

COUNSEL JJ TRADERS

Drawn and Filed by:

SUI GENERIS and co. Advocates

P.O.Box7117. KAMPALA.

BANKRUPTCY PETITION

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

BANKRUPTCY CAUSE NO. 1 OF 2006

IN THE MATTER OF THE BANKRUPTCY ACT CAP 67

JEJE NONO ..... PETITIONER/CREDITOR

MARSHALL OTTO ..... RESPONDENT/ DEBTOR

PETITION

The humble petition of Jeje Nono Ltd of P.O.BOX 444, Kampala showeth as follows:-

I. That your petitioner is a male adult and Ugandan of sound mind.

2. That the respondent an adult Ugandan of sound mind with a place of domicile at Buziga, Kampala.

3. That the respondent is indebted to the petitioner to the tune of 70 million which is above the statutory ceiling of 1,000 shillings.

5. That your petitioner executed the decree against the respondent by seizure of his property vide HCCS 244/2005, in an earlier agreement in which judgment and decree was in favour of your humble petitioner on the 8th of September 2006.

6. That your petitioner duly served the respondent with a bankruptcy notice which to this day, he has failed to comply with.

8. That the Respondent has committed acts of bankruptcy under paras 5 and 6 (above).

9. That this petition is supported by an affidavit by your humble petitioner.

9. That in the circumstances, your petitioner submits that the affairs of the respondent are in a hopeless financial situation and it is just and equitable that the respondent be adjudged bankrupt.

WHEREFORE the petitioner humbly prays.

(iv) That a receiving order be made against the Respondent

(v) That costs of this petition be met by the respondent.

(vi) That any other such order be made by this honourable court as it deems be just.

Dated this ..... day of ..... 20 .....

.....

PETITIONER/ COUNSEL FOR PETITIONER

Filed in the High Court of Uganda this ..... Day of ..... 20 .....

Note: It is intended to serve this petition on MARSHALL OTTO

.....

BANKRUPTCY PETITION

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

BANKRUPTCY CAUSE NO. 1 OF 2006

IN THE MATTER OF THE BANKRUPTCY ACT CAP *67*

AFFIDAVIT VERIFYING PETITION

I, JEJE NONO do take oath and swear as follows;

I. That your petition is and adult Ugandan of sound mind and petitioner in this cause.

2. That the respondent an adult Ugandan of sound mind residing at Buziga, Kampala.

3. That sometime in April 2005, I gave the respondent spares parts to the tune of 70 million, which money was to be payable within six months from the date of issue. (see agreement attached and marked A), and as a result, the respondent is indebted to the petitioner to the tune of 70 million

4. That the Respondent has failed to pay the sums due despite numerous demands to do so (See demand letter marked B - F)

5. That the Respondent's conduct prompted your petitioner to institute summary proceeding against the said respondent in an earlier agreement vide HCCS 244/2005, in which judgment and decree was in favour of your humble petitioner.

6. That your petitioner executed the decree against the petitioner by seizure of his property.

7. That your petitioner duly served the respondent with a bankruptcy notice which to this day, he has failed to comply with.

8. That the Respondent has committed acts of bankruptcy under paras 6 and 7 (above).

9. That in the circumstances, your petitioner submits that the affairs of the respondent are in a hopeless financial situation and it is just and equitable that the respondent be adjudged bankrupt.

10. That whatever is stated herein is true to the best of my knowledge and belief.

.....

DEPONENT

BEFORE ME: .....

A COMMISSIONER FOR OATHS

Drawn and Filed by:

SUI GENERIS and co. Advocates

P.O. Box 7117. KAMPALA

BANKRUPTCY PETITION

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

BANKRUPTCY CAUSE NO. 1 OF 2006

IN THE MATTER OF THE BANKRUPTCY ACT CAP 67

SUMMARY OF EVIDENCE

The petitioner will adduce evidence to show that the Respondent has committed acts of bankruptcy and as a result, a receiving order should be made him.

LIST OF DOCUMENTS

Agreements

Demand Notices

Bankruptcy Notice

Others with leave of court

LIST OF WITNESSES

Mr. Jeje Nono

Others with leave of Court

LIST OF AUTHORITIES

The Judicature Act Cap 16.

The Bankruptcy Act Cap 67

The Bankruptcy Rules (UK) 1915

Case law

Common law and doctrines of equity.

Others with leave of court

.....

TOPIC FOUR: SALE OF GOODS AND NEGOTIABLE INSTRUMENTS:

(A) SALE OF GOODS:

The law applicable to the area of the study includes the following:

The sale of goods and supply of services act cap 292 cap 292

The Contract Act Cap 284

The Civil Procedure Act 282

The Civil Procedure Rules SI 71-1

Case law

Common law and Doctrines of Equity

The checklist for sale of Goods include the following issue for resolution

Whether there is a contract and if so; a sale of goods contract?

What are the formalities for formation of a sale of goods contract?

What are the terms and conditions in the facts given?

Whether there is passing of property and risk?

What is the effect of transfer of title by a non- owner?

What are the rights and obligations of the parties?

Whether there is breach of the contract of sale of goods?

What are the remedies available the parties?

What is the forum, procedure and documents?

The documents which arise include

A plaint or a specially endorsed plaint for summary procedure;

A written statement of defense.

DISTINCTION BETWEEN SALE OF GOODS CONTRACTS AND OTHER CONTRACTS

A contract for sale of goods defined in section 2(1) of The sale of goods and supply of services act cap 292 cap 292 as a contract by which the seller transfers/agrees to transfer property in goods to use buyer for a monetary consideration called the price.

A sale of goods contract is concerned with transfer of property in the goods.

Other contracts include contract for supply of goods whereby goods are supplied under a contract but consideration is not monetary so the supplier transfers possession/ownership of goods to another person for a consideration which may not include money. Thus contracts for barter; hire of goods, hire purchase where title doesn't pass but possession; there are not contracts for sale of goods.

Section 2(4) of The sale of goods and supply of services act cap 292, provides that where under a contract of sale, the property in the goods is transferred from the seller to the buyer,the contract is called a sale.

Section 2 (5) of the sale of goods and supply of services provides that where the transfer of the property in the goods is to take place at a future time or subject to conditions to be fulfilled after the making of the contract, the contract is called an agreement to sell.

Thus in Alderidge V Johnson court held that where 32 Bullocks were to be transferred by Alderidge to knights and a hundred quarters of Barley and the difference in cash was regarded as a contract of Barter.

If the object of the contract is transfer for the price then it's a contract of sale but if the object is performance of work then it's a contract for work or materials. The rationale followed is enunciated in Lockett Vs Charles by Blackburn J who stated that if a contract results into sale of a chattel then a party cant sue for work and Labor but if the result of the contract is that the party has done his work which ends in nothing; that cant sue for goods sold and delivered.

FORMALITIES FOR FORMING A SALE OF GOODS CONTRACT

Section 5(1) of the Sale of Goods Contract the contract may be in writing or by word of mouth or partly by word of mouth or in writing or can be implied by both parties conduct.

Sec 5(1) affirms that a contract for the sale of goods of 200 shillings or more shall not be enforceable unless:-

(1) Buyer accepts part of goods so sold and receipt of them or

(2) Gives something to bind the contract or to part payment or

(3) Contract is in writing; made and signed by the party to be charged

Acceptance of good is deemed to mean in section 5(3) that the buyer does something/an act in relation to the goods which recognizes a pre-existing contract of sale whether there is acceptance of performance of the contract or not.

TERMS OF THE CONTRACT

Implied terms under a contract for sale of goods (conditions/warranty).

Terms include conditions and warranties; condition go to the root of the contract; breach of which leads to termination of the contract.

Warranties are minor terms of the contract which don't get to the root of the contract. Breach of these doesn't lead to termination of the contract.

Section 13 of the sale of Goods and supply of services act cap 292, Contract affects that there is

(1) An implied condition that seller has to sell goods

- In case an agreement to sell; he will have a right to sell the goods at the time the property passes.

(2) An implied warranty that buyer shall enjoy quiet possession of the goods.

(3) An implied warranty that goods free from any charge or encumbrance in favour of any third party; not declared or known to buyer before or at the time of when the contract is made.

The case of BUTTERWORTHS VS KINGSWAY MOTORS(1954) 1 WLR 1286 establishes a few rules as hereunder;

- A buyer is entitled to repudiate a contract at a certain date and issue a written statement a cause of action.

- Defective title can be corrected if the buyer has not taken any step.

- A seller who buys a tithe in good faith from an earlier buyer who does not have title at the time is entitled to damages.

Court noted in Ali Kassam Virani Vs U.A.C affirms that where a buyer is involved in a certain business; and the price is too low but however takes it; then this means that court will enforce knowledge on him.

In reference to Microbeads Vs Vinehas (1975) 1 ALLER 529; court held that the seller must have a right to sell the goods at the time of the sale and the seller must warrant quiet possession.

It must be noted further that section 14 of the Sale of Goods and supply of services act cap 292, Act gives an implied condition that goods do correspond with the description and if the sale is by sample; the sample should correspond with the description. This is edified by Christopher Hill Limited Vs Ashington Piggeries (1972) AC 441, where court held that the buyer can fairly and unreasonably refuse to accept the physical goods; if they don't correspond with the part of what was said about them in the contract because this makes them goods of a different kind from those that he's agreed to buy. Court addressed two major issues thus:

- Quality of goods as implied by description.

- Extent to which goods are identified.

Section 15 of the Sale of Goods Act provides for an implied condition as to the quality of the goods for any purpose which covers three areas as hereunder;

(a) Purpose of goods given to seller; relying on seller's skill for judgment and the description is in course of seller's business .

Court held in Ingram Vs Emma (1955)2 OB 366;in the words of Lord Denning who stated that for this condition to anise, the customer/buyer must make known to the contractor/seller; expressly or by implication the particular purpose for which the materials are required so as to show that he relies on the contractors skill or judgment. This term is dependent on proper disclosure for the customer of any relevant peculiarities known to the customer.

(b) Goods bought by description from a seller who deals in such goods; such goods should be of merchantable quality.

Lord Pearce stated In the Hardwick Grain FarmCase that the question to ask is whether or not the goods were reasonably fir for the specific purpose. A particular purpose meaning a given purpose known to the parties.

(c) Implied condition/warranty as to qualify/fitness may be annexed by the usage of trade.

Section 17 talks of sale by sample. This is only endorsed where there is a term in the contract; express or implied so that effects.

Section 17(2) affirms that a contract is a sale by sample where there is:

- An implied condition that the bulk shall correspond with the sample in quality.

- An implied condition that the buyer shall have reasonable opportunity of comparing the bulk with the sample.

- An implied condition that goods shall be free from any defect rendering it unmarketable which would not be apparent on reasonable examination of sample.

In Cudahy Parking Co. Vs Nazinen field 3 F2D657 1924, Court held that before there is a sale by sample it must be understood by both parties the goods exhibited constitute the standard of goods not exhibited and that the delivery will correspond to the standard.

Secondly; the seller selects the sample because he knows the condition and qualify of his own property.

SALE OF GOODS AND SUPPLY OF SERVICES.

Contract of sale and agreement to sell

Section 2(1) of sale of goods and supply of services act (SGSSA) defines a contract of sale of goods as a contract by which the seller transfers or agrees to transfer the property in the goods to the buyer for a money consideration called price.

The contract of sale of goods is thus either a sale or an agreement to sell.

According to S.2 (4) of the SGSSA, where the property on the goods is transferred from the seller to the buyer, the contract is a sale.

Pursuant to S.2(5) of SGSSA, where the transfer of the property in the goods is to take place at a future time or subject to conditions to be fulfilled after the making of the contract, the contract is an agreement to sell.

Where an agreement to sell is breached, the sellers only remedy is an action for damages while in a sale, the seller can sue for the contract price and damages for non-acceptance of goods.

Where the agreement to sell is breached by the seller, the buyers only has personal remedy against the seller of specific performance where the goods are ascertained and specific.

Distinctive features of a sale and agreement to sell.

Sale

1. Property passes

2. In the case of breach, the seller can sue for price of damages for non-acceptance while the buyer can sue for damages

3. Seller can't resolve and where goods are sold the buyer can bring a claim against the seller and purchaser to recover the goods unless the purchaser is bonafide purchaser

4. Risk passes to buyer. Agreement to sell

Property does not pass. It passes in future.

The remedy available to the buyer for breach is to sue for specific performance where the goods are ascertainable.

The seller can resale the goods to a 3rd party and the buyer won't have a claim against a 3rd party.

Seller bears the risk.

MEANING OF GOODS.

S.1 of SGSSA defines goods to include all things and personal chattels, including specially manufactured goods, which are movable at the time of identification to the contract of sale other than the money representing the price, investment securities and all things in action.

Goods also include emblements, growing crops, unborn young of animals and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Goods further includes computer software and individual share in goods held in common.

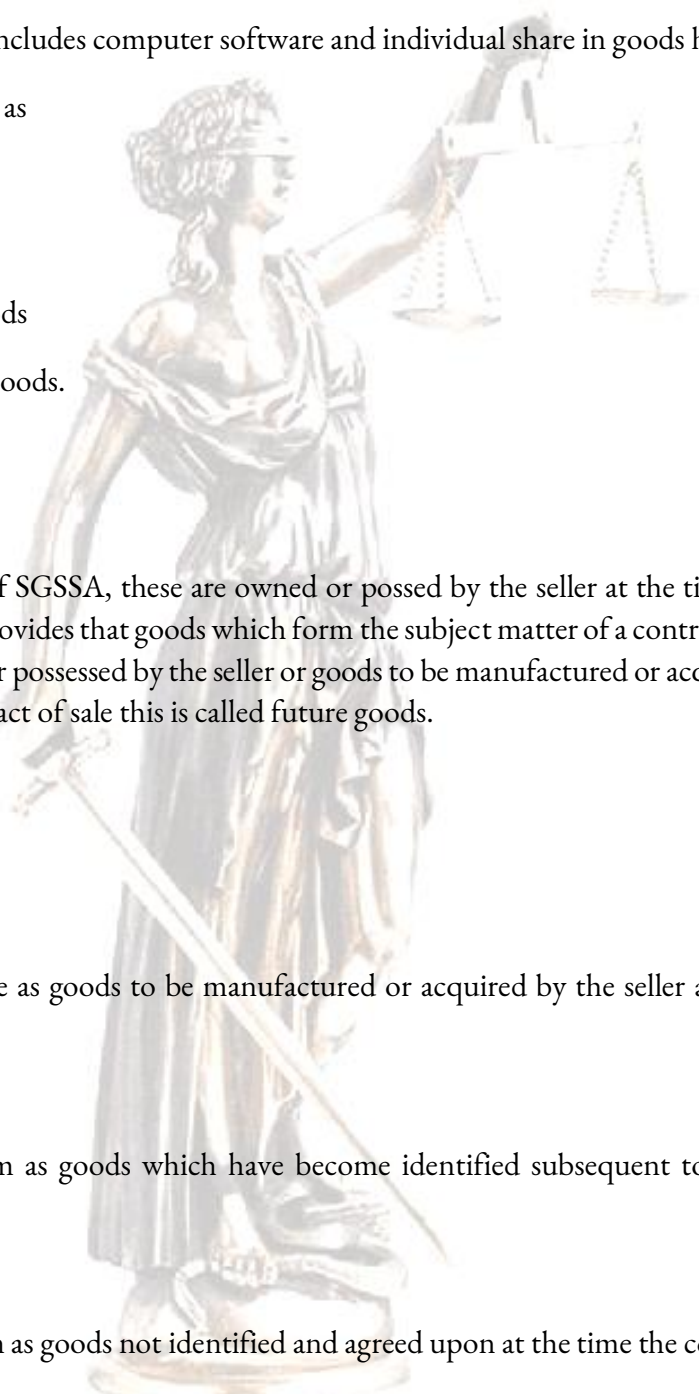
Goods may be classified as

a) Existing goods

b) Future goods

c) Ascertained goods

d) Unascertained goods.



Existing goods.

Under S.6 (1) of SGSSA, these are owned or possed by the seller at the time of execution of the contract. The section provides that goods which form the subject matter of a contract of sale may be either existing goods, owned or possessed by the seller or goods to be manufactured or acquired by the seller after the making of the contract of sale this is called future goods.

Future goods

S.1 defines these as goods to be manufactured or acquired by the seller after the making of the contract.

Ascertained goods

S.1 defines them as goods which have become identified subsequent to the formation of the contract.

Unascertained goods.

S.1 defines them as goods not identified and agreed upon at the time the contract is made.

Section 1 of the SGSS, a seller means a person who sells or agrees to sale whereas a buyer means a person who buys or agrees to buy goods or who procure or agrees to procure services

Formalities of a contract of sale.

According to S.5(1) of SGSSA, a contract of sale may be made in writing or by word of mouth or party in writing and party by word of mouth or in form of data message or maybe implied from the conduct of the parties.

CAPACITY TO CONTRACT

Under S.4 (1), a person has capacity to enter a contract of sale where that person is 18 years and above, of sound mind and not disqualified from contracting by any law e.g. if the person was adjudged bankrupt.

However where necessaries are the subject matter of the contract of sale, a minor or person who by reason of mental incapacity or drunkenness is incompetent to enter the contract will be liable to pay a reasonable price for the necessaries. S.4 (3) of SGSSA.

Necessaries are defined by S.4 (4) of SGSSA as goods suitable to the condition in life of a person under 18 years or other person to his or her actual requirements at the time of the sale and delivery.

SUBJECT MATTER OF THE CONTRACT.

Under S.6 (1), the contract of sale of goods may relate to existing or future goods. It may also be made were the acquisition of the goods by the seller depends upon a contingency which may or may not happen. S.6 (2) of SGSSA

Where the goods have perished at the time of execution of the contact without knowledge of the seller that the goods have actually perished, the contract executed is void. S.7 of SGSSA.

In the event of the goods perishing after an agreement of sell without any fault on the part of the seller or buyer and the risk had not passed to the buyer, the agreement is void. S.89 SGSSA.

Price.

Pursuant to S.9(1), the price in a contract of sale maybe fixed by the contract or maybe left to be determined in manner agreed by the contract or maybe determined by course of dealing between the parties.

Where the price is not determined, the buyer will pay a reasonable price. S.9 (2) and reasonable price is a question of fact dependent on the circumstances of each case and may include a consideration of the prevailing market price.

Transfer of property

Section 25 (1) of the SGSS, property in goods is said to pass when there is;

a) Ascertainment of goods

b) Intention of parties.

In JANE BWIRIZA V JOHN NATHAN OSAPI S.C.C.A NO.5 OF 2002, the supreme court of Uganda held that the general rule as to the passing of the property in goods can be modified by the intentions or conduct of the parties to the sale.

RIGHTS AND DUTIES OF THE BUYER AND SELLER.

Rights of the seller.

An unpaid seller who is defined under S.50(1) as a seller whose contract price has not been paid in whole or tendered or when a bill of exchange is received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonest of the instrument or otherwise.

The unpaid seller has the following rights pursuant to S.51 of SGSSA:

1) A lien on the goods or right to retain them for the price while he or she is in possession of the goods

2) Stopping the goods in transit after he/she has parted with the possession of the goods and the buyer is insolvent.

3) A right of re-sale

4) Action for the price pursuant to S.60 of SGSSA.

1. LIEN

Under S.52(1) of SGSSA, an unpaid seller is entitled to retain possession of goods until payment or tender of the price where the goods were sold without any stipulation as to credit, goods were sold on credit but the term of credit has expired or the buyer has become insolvent.

Where the seller has made part delivery of the goods, the seller may exercise his or her right of lien on the remainder unless the part delivery was in such circumstances as to show an agreement by the seller of goods to waive the lein or right of retention. S.53 of the SGSSA.

The seller's right to a lien will terminate when they deliver the goods to a carrier or other Bailee for purposes of transmission to the buyer without reserving the right of disposal of the goods, when the buyer or his or her agent lawfully obtains possession of the goods or by waiver of the lien or right of retention. S.53 SGSSA.

The seller's right to a lien will terminate when they deliver the goods to a carrier or other Bailee for purposes of transmission to the buyer without reserving the right of disposal of the goods, when the buyer or his or her agent lawfully obtains possession of the goods or by waiver of the lien or right of retention. S.52 (2) of SGSSA.

2. STOPPAGE IN TRANSIT.

S.55 of SGSSA grants a right to an unpaid seller who has parted with the possession of the goods has a right of stopping them in transit and resuming possession of the goods where the buyer is adjudged insolvent as long as the goods are in the course of transit and may retain them until payment or tender of the price.

The goods are said to be in transit from the time when they are delivered to a carrier by land, air or water or other Bailee for purposes of transmission to the buyer until when the buyer or their agent for purposes of taking delivery of them from that carrier or other bailees. S.56 of SGSSA.

Transit ends when the buyer or their agent obtains delivery of the goods before their arrival at the appointed destination.

Transit is not deemed to have ended if the buyer rejects the goods of the Bailee or carrier continues in possession of them even if the seller has refused to receive them back. S.56 (4) of SGSSA.

The seller may exercise their right of stoppage by either taking actual possession of the goods or by giving notice of his or her claim to the carrier or other bailee in whose possession the goods are. S.57 (1) of SGSSA.

WHERE THE BUYER RESALES THE GOODS.

The unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer has made unless the seller assented to it. S.58 (1) of SGSSA.

The right is only defeated where a document of title to goods has been lawfully transferred to any person as a buyer or owner and that person by way of sale transfers the document to a person who takes the document in good faith and for valuable consideration. S.58 (2).

3) RIGHT OF RESELL.

The seller passes on good title to a buyer when they exercise their right to re-sell. The new buyer acquires a good title to the goods as against the original buyer. S.59(2) of SGSSA.

4)ACTION FOR PRICE

The unpaid seller has a right to bring an action against the buyer for the price of the goods together with any incidental damages. S.60(1) OF SGSSA.

RIGHTS OF THE BUYER.

1. Right to an action for non-delivery and recover damages. S.62 of SGSSA.

2. Right to specific performance

Where it's an action for breach of contract to deliver specific or ascertained goods court may order that the contract be specifically performed. S.63 (1) of SGSSA.

3. Right to reject goods and rescind the contract.

The rejection is however pursuant to the provisions of the SGSSA. S.48 (2) of SGSSA requires that the buyer only rescind the contract if it is impossible for the seller to repair or replace the goods in comparison to other remedies available or it is disproportionate in comparison to an appropriate reduction in the purchase price or the buyer has required the seller to repair or replace the goods but the seller neglects or refuses to do so within a reasonable time and without significant inconvenience to the buyer.

4. Right of examining the goods.

Under S.42(1) of the SGSSA, the buyer has a right of examining the goods which he or she has not previously examined and will not be taken to have received the goods until he/she has had a reasonable opportunity of examining the goods in order to ascertain whether they are in conformity with the contract.

DUTIES OF THE SELLER.

1. Transfer title in the goods free of incumbrancers.

Under S.13(1) of SGSSA, in a contract of sale, unless otherwise ,there is an implied term that the seller has the right to sell the goods and in case of an agreement to sell that he or she will have such a right at the time when the property is to pass.

2. Deliver the goods.

Under S.34 of SGSSA, it's the duty of the seller to deliver the goods.

Delivery of the goods is defined in S.1 of SGSSA as the voluntary transfer of possession from one person to another and includes an appropriation of goods to the contract that results in property in the goods being transferred to the buyer.

Under S.35 (1) of the SGSSA, delivery of goods and payment of the price are concurrent conditions. The seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

The various methods of delivery of goods include:

a) Physical transfer of the goods

b) Transfer of the means of control e.g. the keys to the store where the goods are

c) Delivery of documents of title

d) Constructive delivery that is where the person who bought the goods already had them but he did not have them as the owner of the goods but after the contract of sale he becomes the owner of the goods.

PLACE OF DELIVERY.

Under S.36 (1) of SGSSA the question of the place of delivery is dependent on the contract of the parties. The term relating to place of delivery maybe implied or express.

Where there is no implied or express term as to the place of delivery, the place of delivery is the sellers place of business if the seller has one and if not the sellers residence S.36(2) of SGSSA.

Except where the contract is for sale of specific goods and this is known to the parties that the goods are in some other place, that place is the place of delivery. S.36 (3) of SGSSA.

TIME OF DELIVERY.

S.36(4) of SGSSA, if under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is stipulated then the seller is bound to send the goods within a reasonable time.

The delivery ought to be made at reasonable hour or it's considered in effectual and reasonable hour is question of fact. S.36 (6) of SGSSA.

Delivery of wrong quantity or description.

1. If the seller delivers to the buyer a quantity of goods less than the seller contracted to sell, the buyer may reject them but if they accept the goods so delivered then the buyer must pay for the goods at the contract rate. S.37 (1) of SGSSA.

2. Where the quantity of the goods is larger than contracted, the buyer may accept the goods including the contract and reject the rest or reject the whole but if he/she accepts the whole of the goods delivered, the buyer must pay for them at the contract rate. S.37 (2) of SGSSA.

3. Where the seller delivers to the buyer goods mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with contract and reject the rest or the buyer may reject the whole. S.37 (3) of SGSSA.

However, a buyer who is not a consumer may not reject all goods where the seller delivers a lesser or larger quantity unless if the shortfall or excess is so minor that it would be unreasonable for the buyer to do so. S.37 (4) (a) and (b) of SGSSA.

The burden is on the seller to show that a shortfall or excess is so minor.(S.37(5)) of SGSSA.

S.1 of SGSSA defines a consumer as a person who purchases goods or services for final use or ownership rather than for resale or use in production.

The above is subject to any usage of trade, special agreement or course of dealing between the parties. S.37 (7) of SGSSA.

DELIVERY BY INSTALLMENT.

A buyer is not bound to accept delivery of goods by installments unless otherwise agreed. S.39 (1). IN BEHREND AND CO LTD V PRODUCE BROKERS CO LTD (1920)3 KB 530, in this case the sellers by two contracts of sale and in the events which happened, bound themselves to buyers to deliver in London on the steamship port Inglis, to the buyers craft alongside, two separate parcels of cotton seed, one of 176 tons and the other 400 tons. The buyers on their part had to pay for these parcels against shipping documents and to send craft to receive the goods. The buyers fulfilled both these obligations and received from the port Inglis some 15 tons of one parcel and 22 tons of the other.

When these had been delivered it was discovered that the rest of the seed was lying under the cargo for Hull, and the port Inglis stopped delivery and left for that port, promising to return and deliver the rest of the seed. She returned in about a fortnight's time and the seed was tendered to the buyers, but they had meantime informed the sellers that they regarded the departure of the port inglis with the remainder of their seed on board as a failure to deliver and a breach of contract. They kept so much of the seed as had been delivered to them and demanded repayment of so much of the contract price as represented the seed undelivered. It was held in favor of the buyers.

In instances of delivery by installments, the facts giving rise to a breach of the contract entitling the aggrieved party to repudiation or merely compensation in respect of the installments, it is as the parties agreed. S.39 (2).

DELIVERY TO A CARRIER.

If the contract requires the seller or authorizes him or her to send the goods to the buyer, delivery of the goods to a carrier whether named by the buyer or not for purposes of transmission to the buyer, the act of delivery to the carrier is prima facie delivery to the buyer. S.40 (1) of SGSSA.

The seller must enter into a contract with the carrier on behalf of the buyer that is reasonable giving due regard to the nature of the goods and the other circumstances of the case. S.40 (2) of SGSSA.

If the seller omits to enter into a reasonable contract of carriage and the goods get lost or destroyed on the way, the buyer has a right to use for damages or even reject the goods. S.40 (3) of SGSSA.

Where there is need for insurance of goods involving sea transit, the seller must give notice to the buyer so as to enable the buyer to insure them during their sea transit. S.40 (4) of SGSSA. Failure to give notice to the buyer it's deemed the seller bears the risk during the sea transit. S.40(5) of SGSSA.

DELIVERY TO AGENTS.

At common law, if the seller has the duty to deliver to the buyers premises under the contract, if the seller finds a person at the premises who appears to be authorized to receive the goods, its enough that the goods are given to that person found at the premises.

3. Duty to supply the goods at the right time.

S.11 (1) of the SGSSA is to the effect that unless a contrary intention appears from the terms of the contract, stipulations as time of payment are not of essence. It states further in S.11 (2) of the SGSSA that any other stipulations as to time is of not essence unless the terms of the contract state so.

Therefore where the contract stipulates the time of delivery of the goods, the seller has a duty to deliver the goods at the stipulated time. Failure to deliver within the stipulated times entitles the buyer to repudiate the contract.

IN BOWES V SHAND (1877)2 app cas 455.

Where the time of delivery is stipulated and is extended either by implication or express consent of the parties, the buyer is estopped from insisting on the earlier time stipulation. In order to make time of the essence again, he/she must notify the seller that the time will be of the essence. The notice must be reasonable.

IN CHARLES RICKARDS LTD V OPPENHAIM, (1950)1KB 616, the plaintiff agreed to supply a Rolls-Royce chassis for the defendant to be ready at the latest on 20 march 1948. It was not ready on this day but the defendant continued to press for delivery, thereby impliedly waiting the conditions as the delivery date. By 29 June, the defendant had lost patience and wrote to the plaintiffs informing them that he would not accept delivery after 25th July. In fact, the chassis was not ready until 18th October and the defendant refused to accept it. C.A held that the defendant was entitled to reject the chassis as he had given the plaintiffs notice that delivery must be made by a certain date.

4. Duty to supply goods in the right quantity.

- Refer to the notes under delivery of wrong quantity and description
- Refer to notes under deliver in installments.

5. Duty to supply goods of the right quality.

Senono v Uganda Revenue Authority(Miscellaneous Cause 52 of 2024)The applicant sought an order for the release of goods warehoused at Maina Inland Container Depot, claiming ownership based on a purchase agreement with Edison Group International, the consignee on the bill of lading. However, the Uganda Revenue Authority (URA) argued that the applicant failed to comply with the East African Community Customs Management Act, which requires both parties to sign Form C16 and obtain the Commissioner's approval for transferring ownership of warehoused goods. The court also noted that communication from Kenya Ports Authority alleged fabrication of particulars and documents from Edison International USA, with no payment made to the shipper for carriage services .The court stated that under section 1 of the Sale of Goods and Supply of Services Act Cap 292, a bill of lading is a document of title to goods. In Rahima Nagita & 2 Others v Richard Bukenya & 3 Others (Civil Suit No. 389 of 2010),the general rule was that ownership rests with the consignee named on the bill of lading who holds the original document. Here, the court observed that both parties' affidavits confirmed Edison Group International as the recognized owner. The court further cited sections 47(1) and 51(1)(c) of the East African Community Customs Management Act, which allow goods to be warehoused without import duty and specify that a change of ownership requires both the original owner and the transferee to sign Form C16 , submitted to the Commissioner. Regulation 71 additionally mandates that the transferee must accept ownership upon the Commissioner's approval. The court concluded that Edison Group International remains the recognized owner of the goods as the consignee on the bill of lading. Although the applicant relied on a sales agreement as proof of ownership, the court noted that transfer of warehoused goods can only be effected with the Commissioner's permission via Form C16 , signed by both parties. As there was no evidence of compliance with this requirement, the applicant was not entitled to an order for the release of the goods. Consequently, the court dismissed the application with costs awarded to the respondent.

SUPPLY OF SERVICES.

S.1 of The sale of goods and supply of services act cap 292 defines a service to mean any service or facility provided for gain or reward or otherwise than free of charge.

Contract for supply of services.

S.3 (1) provides that a contract for the supply of services means a contract where a person agrees to carry out a service whether goods are transferred or are to be transferred or boiled or are to be boiled by way of hire, under the contract, regardless of the nature of the consideration for which the service is to be carried out but does not entail contracts of service or apprenticeship.

IN ROBINSON V GROVES(1935)1 KB 597, the court of appeal held that a contract by an artist to paint a client's portrait was not contract for the sale of goods, since the main element in the contract was the skill of the artist. The defendant had commissioned the claimant (artist) to paint the portrait of a lady.

The court stated that the substance of a contract of supply and services is the skill and Labor. Certain contracts of supply of a service may entail provision of goods .however that does not make it a contract of sale of goods because the goods are merely incidental to the service.

Pre-requisites for the existence of a contract and supply of services.

1. Provision of a service. S.3(1) and S.6(4) of the act
2. Time .S.11(3) of the act
3. Quality of materials used. S.16 of the Act.
4. Skill and reasonable care. S.18 of the act
5. Capacity to contract.

DUTIES OF BUYER.

1. Duty to accept goods and pay for the price. Section 34(1). Section 35(1) of SGSS, unless otherwise agreed, delivery of goods and payment of the price are concurrent conditions.

Section 35(2), this applies to sales by instalments in accordance with the agreement of parties.

Duties of supplier

1. To provide a service in accordance with the terms. S.34 (2) of the act.

NEMO DAT RULE

It is to the effect that nobody can pass better title than they have in the goods. It is codified in S.29 (1) of The sale of goods and supply of services act cap 292.

The act provides for exceptions to the rule under S.29 (2) of act and these are:

1. Sale by order of court under S.29(2)(b)

2. Sale under the power of statute or common law under S.29(2)(b) e.g.

a) Estoppel.

Where the owner of the goods conducts themselves in a manner as though the seller had the power to sell. IN HENDERSON AND CO. V WILLIAMS (1895)1QB 521, the owner of goods lying at a warehouse was induced by the fraud of F to instruct the warehouse man to transfer the goods to the order of F, and the goods were accordingly placed at F's disposal. F then sold the goods to an innocent purchaser, who before paying the price obtained a statement from the warehouseman that he held the goods at the purchasers order. On the discovery of F's fraud, the warehouseman refused to deliver the goods to the purchaser. In an auction by purchaser against the warehouseman. The court held that the warehouseman, having attained to the purchaser, was estopped from impeaching his title, that the refusal to deliver was a conversion and that the measure of damages was the market value of the goods at the date of the refusal.

b) Sale under a market overt.

The exception is applicable where goods are openly sold in a shop or market in the ordinary course of business of such a shop or market. The buyer acquires a good title provided they buy them in good faith and without notice of any defect or want of title on the part of the seller.

The purpose of the exception is to protect commercial transactions. It's designed to protect the integrity of the market.

In BISHOPSGATE MOTOR FINANCE CORPN LTD V TRANSPORT BRAKES LTD (1949)1 ALL ER 37 lord denning held that in the development of our laws, two principals have striven for mastery. The first is for the protection of property, no one can give a better title than he himself possesses. The second is the protection of commercial transactions, the person who takes in good faith and for valued without notice should get a good title."

In this case, in order to obtain good title to the vehicle which had been sold, the buyer had to prove that the vehicle been sold in market overt. Because the vehicle had been sold by private treaty the issue was whether it had been sold in a market overt. The court of appeal found that a vehicle can be sold by public auction or by private treaty in a market overt and in the circumstances it had been sold in market overt and the buyer acquired good title.

Sale under a voidable title.

Under S.30 of the act, when the seller of goods has a voidable title to the goods, but their title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, if he or she buys them in good faith and without notice.

SECOND SALE WHERE SELLER RETAINED POSSESSION OF GOODS/TITLE TO THE GOODS.

Under S.32 (1) of the act, if the seller who has sold goods continues or is in possession of the goods or of the documents of title to the goods, sells those goods again to another person acting in good faith and without notice of the previous sale, the person acquires good title and it is deemed that the seller had been expressly authorized by the owner of the goods to sell.

Sale by a buyer in possession of goods.

Under S.32(2) of the act, a buyer or a person who has agreed to buy obtains with the consent of the seller, possession of goods or the documents of title to the goods, they pass on good title if they transfer those goods to another person.

Effect of a warrant of attachment.

Pursuant to S.33(1) of the act, a warrant of attachment or other warrant of attachment of execution against the goods binds the property in the goods from the time then the warrant is delivered to the bailiff to be executed.

Under S.33(3) of the act ,a buyer obtains good title over goods subject to attachment in a warrant, if they acquired the goods in good faith and for valuable consideration and had no notice of the warrant of attachment at the time of purchase.

Effect of theft or fraud on title of owner of converted goods.

Under S.31 (1) of the act, upon conviction of the person who stole the goods, the title in them reverts to the person from whom the goods were stolen from notwithstanding any intermediate dealing.

However under S.31(3) of the act, where the goods were obtained by fraud or other wrongful means not amounting to theft, the property in the goods does not revert in the person who was the owner of the goods by reason only of the conviction of the offender.

The person (original owner) who has lost possession of the goods pursuant to S.31 (2), by order of the trial court recover possession of the goods from any person being in possession of the goods.

PROPERTY AND RISK.

In an agreement to sale

S.8 of the act postulates that where there is a contract for the sale of specific goods, and subsequently the goods, without any fault on the part of the buyer or seller, perish before risk passes to the buyer, the agreement is void.

Presumption of assumption of risk

Under S.27 (1), property passes with risk except if otherwise agreed

The buyer bears the risk whether delivery has been made or not. S.27 (2)

Where delivery is delayed through the fault of either party, the goods are at the risk of the party at fault as regards any loss, which might not have occurred, but for that fault. S.27 (4).

Rules for ascertaining intention as to time when property passes.

These are laid under S.26 of the act.

Master sales and service agreement.

THE REPUBLIC OF UGANDA

MASTER SALES AND SERVICES AGREEMENT.

THIS FINAL SETTLMT AGREEMENT IS MADE THIS .....DAY OF 2020

BETWEEN

.....OF..... (HEREINAFTER 'THE SELLER/SUPPLIER")

AND

.....OF..... (HEREINAFTER 'THE BUYER")

RECITALS:

WHEREAS:

NOWS THEREFORE THE PARTIES AGREE TO BE FOUND by the terms and conditions set out in the schedule hereto:

1. Particulars of the buyer
2. Definitions
3. Supply of goods or services
4. Specifications
5. Payment and consideration
6. Title and risk in the goods and services
7. Warranties
8. Termination
9. Force majeure
10. Waiver
11. Third parties
12. Dispute resolution
13. Choice of law and jurisdiction
14. Entire agreement: supersedes any prior agreement.

IN WITNESS WHEREOF THE PARTIES hereto have out their respective hands and seals the day and the year here in above written.

Seller: buyer:

In the presence of..... in the presence of.....

DIFFERENT MODES OF SALE OF GOODS.

a) By description (covered above)

b) By sample (covered) or

c) By trade name (Cf Sec 14, 15(a) & (b of the The sale of goods and supply of services act cap 292 cap 292.

PASSING OF PROPERTY AND RISK

Property in unascertained goods,(section 22 of the SGSS ACT 2017), property in the goods shall not pass to the buyer until the goods are ascertained.

Undivided shares in goods forming part of a bulk (section 23 of the SGSS ACT 292)

Applies to a contract for the sale of a specified quantity of unascertained goods where the following is met;

a) Goods form part of a bulk which is identified in the contract or by subsequent agreements.

b) The buyer has paid the price for some or all of the goods which are the subject of the contract and which form part of the bulk

Subject to an agreement between parties, property in an undivided share in the bulk shall pass to the buyer and the buyer shall become an owner in common of the bulk.

The undivided share of a buyer in abulk shall be such shares as to he quantity of goods paid for and due to the buyer out of the bulk bears to the quantity of goods in the bulk at the time.

Property in specific or ascertained goods passes when intended to pass. (section 25 of the SGSS)

a) The property in the goods passes to the buyer at such time as the parties to the contract intend in to pass.

b) The intentions of parties shall be determined based on the terms of the contract, the conduct of the parties and the circumstances of the case.

Risk primafacie passes with property. Section 27 SGSS

- Subject to agreement, the goods remain at the seller's risk until the property in the goods is transferred to the buyer

- Where property in goods is transfereed to the buyer, the goods are at the buyers risk whether delivery has been made or not.

- The risk of loss shall not pass from the seller to the buyer unless the actions of the seller conform with all the conditions imposed under the contract.

- Where delivery is delayed, the goods are at the risk of the party at fault as regards any loss.

RIGHTS OF UN PAID SELLER

The un paid seller is defined as a seller of goods in relation or when the whole of the price has not been paid (tendered or when a bill of exchange or other negotiable instrument has been relieving as conditional payment and the condition on which it was received has not been fulfilled (Sec 38)

Rights

1) Lien on the goods

2) Right to retain the goods for the prize while he's still in possession

3) In case of insolvency of the buyer; right of stopping goods in transit after the seller has parted with possession of the goods.

4) A right of resale

It must be noted that the unpaid seller's lien exists in the following cases:-

1) When goods have been sold without any stipulation as to credit

2) Where goods have been sold on credit; but the credit has expired

3) Buyer becomes insolvent

4) This right is exercisable whether he is in possession of goods as part or bailee for the buyer.

Termination of the Right (lien)

1) Delivers goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.

2) When the buyer/agent lawfully obtains possession of goods.

3) waiver of the lien or right of retention

BREACH OF CONTRACT AND REMEDIES

Where one party doesn't perform his part of the contract. Depends on terms of the contract; if a term, doesn't lead to repudiation; if a condition, leads to repudiation of the contract.

If the breach is by buyer

1) Seller can institute an action for price especially if buyer wrongfully reflects or refuses to pay for the goods according to terms of the contract (Sec 48).

2) Seller can bring an action for non-acceptance if buyer refuses to accept the goods and pay for them. Sues for damages for non-acceptance.

If the breach is by Seller.

1) Buyer brings an action for damages for non delivery if seller refuses to deliver.

2) Buyer bears an action for specific performance

3) In case of breach of warranty; buyer maintains an action for breach of warranty.

Procedure

It must be noted that the procedure under sale of goods, where one seeks redress is usually by way of plaint or summary procedure under O37 of the CPR SI71-1

IN THE CASE OF ZAINABU V CHEBORION AND 2 OTHERS (CIVIL APPEAL 103 OF 2018), The Court noted that the position of the law is that where the party elects to bring the contract to an end because it has been repudiated by the purchaser, it is not necessary for him or her to give a default notice as required by the standard contract of sale of real estate.

Documents

These include a plaint, summary of evidence, list of witnesses, documents, authorities.

If the plaint is brought under O37, then the document is a specially endorsed plaint accompanied by an affidavit.

See copy of plaint after this topic

Section 13 of The sale of goods and supply of services act cap 292 provides for implied terms as to title. In case of a sale, the seller has a right to sell the goods. Incase of an agreement to sale, the seller will have such a right at the time when the property is to pass. Implied term that the goods are free from any kind of incumbrance until the time when the property is to pass. Implied term that the buyer will enjoy quiet possession of the goods.

Section 14 of The sale of goods and supply of services act cap 292 (sale by description)

Implied condition that goods shall correspond with the description. Where there is both sale by sample and description, the bulk of goods ahould correspond with both samples and description. It applies to consumers as well as non consumers.

Section 15 of The sale of goods and supply of services act cap 292 (Implied undertaking as to quality and fitness for purpose)

- No implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.
- An implied condition that the goods supplied are reasonably fit for that purpose where;
- Selling goods of a description which are in the course of the sellers business to supply
- The buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required.
- An implied condition that the goods are of satisfactory quality except if there is any matter which makes the quality of the goods unsatisfactory and it is brought to the attention of the buyer prior to the making of the contract where the buyer examines the goods before the contract is made, which examination ought to reveal.
- Goods are of satisfactory quality if they meet the standards that a reasonable person would regard as satisfactory, taking into account any description, the price and other circumstances.
- Quality of goods includes; their state,condition, appearance and finish; their fitness for all purposes; safety and durability. Fitness for a particular purpose maybe implied in a contract by the usage of trade or custom.

Section 16 of The sale of goods and supply of services act cap 292 (quality of materials used in a contract for the supply for services)

- An implied term that materials will be sound and reasonably fit for the purpose for which they are required.

Section 17 of The sale of goods and supply of services act cap 292 (sale by sample)

- Contract of sale by sample is one where there is a term in the contract to that effect. An implied condition that the quality of the bulk shall correspond with the quality of the sample.
- That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- That the goods shall be free from any defect, rendering their quality unsatisfactory which wouldnot be apparent on the reasonable examination of the sample.

Section 18 of the SGSS (care and skill in supply of services contract)

An implied term that the supplier will carry out the services with reasonable care and skill.

Appendix E- Documents for Sale of Goods.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

CENTRAL CIRCUIT AT NAKAWA

CIVIL SUIT NO. .....OF 2006

JADWONG BILL::} PLAINTIFF

VERSUS

MAGODE BANOT ::::::::::::::::::::::::::::::::::::::} DEFENDANT

PLAINT

1. The Plaintiff is male adult Ugandan of sound mind whose address of service for purposes of this suit is C/O M/s. SUI GENERISand Co. Advocates, P.O.BOX 71117, KAMPALA

2. The Defendant is a male adult believed to be of sound mind and the Plaintiff's Advocates undertake to effect service of court process upon the First Defendant.

3. The Plaintiff's claim against the Defendant is for a 50,000,000 (fifty million shillings) for goods given the defendant worth the amount.

4. The facts constituting the cause of action are as follows:

(a) The Plaintiff has a wholesale shop located at Mutungo, voyager suites dealing in agricultural goods and cereals.

(b) By an agreement dated the 1st day of August 2004 the Plaintiff duly gave the defendant 15,000 bags of maize for feeding his animals on his farm in Mubende, upon payment of half price, the later to be paid on delivery. (See copy of the Sale Agreement annexed hereto and marked Annexture "A").

(c) The delivery was effect on 22nd August 2005 at the defendant's farm at Mubende to which he acknowledged receipt thereof. (See copy of the acknowledgement of delivery annexed hereto and marked Annexture "B").

(d) The defendant only made the first payment and has since failed to effect payment on the second installment.

(e) The Plaintiff contends that the Defendants' act amounted to breach of contract and ought to be stopped by this Honourable Court.

(f) The Plaintiff further contends that by reason of the aforesaid Defendants' acts the Plaintiff has suffered substantial loss, damage and injury to commercial credit for which he holds the Defendant liable for which the Plaintiff will claim General Damages.

6. Notice of Intention to sue was duly communicated to the Defendants.

7. The cause of action arose at Mutungo, Nakawa Division within the jurisdiction of this Honourable Court.

WHEREFORE the Plaintiff prays that judgment be entered against the Defendant jointly and severally for:

a) General damages for breach of contract;

b) Costs of this suit;

c) Interest on (a) and (b) at court rate from the date of judgment till payment in full;

d) Any other relief as this Honourable Court may deem fit.

DATED at KAMPALA this .....day of .....2006.

_____

FOR: SUI GENERISAND CO. ADVOCATES

COUNSEL FOR THE PLAINTIFF

DRAWN & FILED BY:

M/s SUI GENERIS and Co. Advocates,

P.O Box 7117,

KAMPALA.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

CENTRAL CIRCUIT AT NAKAWA

CIVIL SUIT NO. .....OF 2006

JADWONG BILL::} PLAINTIFF

VERSUS

MAGODE BANOT ::} DEFENDANT

SUMMARY OF EVIDENCE:

The Plaintiff will lead evidence to show that he contracted with the defendant to supply him with 15,000 bags of maize, which he did. The plaintiff shall further adduce evidence to show that the defendant defaulted on clearing the balance.

LIST OF WITNESSES:

1. Jadwong Bill
2. Any other witnesses with leave of court

LIST OF DOCUMENTS:

1. The Sale Agreement
2. Acknowledgement of delivery
3. Receipt of first payment

4. Any other documents with leave of court

LIST OF AUTHORITIES:

1. The Constitution, 1995
2. The Judicature Act Cap 16
3. The The sale of goods and supply of services act cap 292 cap 292
4. The Contract Act Cap 284
5. The Civil Procedure Act Cap 282
6. The Civil Procedure Rules SI 71-1
7. Any other authorities to be produced with leave of Court.

DATED at KAMPALA this .....day of .....2006.

_____

FOR: M/S SUI GENERIS& CO. ADVOCATES

COUNSEL FOR THE PLAINTIFF

DRAWN & FILED BY:

M/S SUI GENERIS& CO. ADVOCATES

P.O Box 7117, KAMPALA.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

CENTRAL CIRCUIT AT NAKAWA

CIVIL SUIT NO. .....OF 2006

JADWONG BILL::} PLAINTIFF

VERSUS

MAGODE BANOT ::} DEFENDANT

WRITTEN STATEMENT OF DEFENCE

1. Save as herein expressly admitted, the defendant denies each and every allegation contained in the plaint as if the same where herein expressly set out and traversed seriatim.

2. Paragraph 1 and 2 are admitted insofar and it is admitted that the defendant's address of service shall be SUI GENERISand company Advocates, P.O.BOX 7117, Kampala.

3. Paragraph 3 and 4 are denied in toto and the plaintiff shall be put to strict proof of its contents thereof.

a) Save for the jurisdiction of this honourable court, paragraph 5,6, and 7 are denied

WHEREFORE the Defendant prays that judgment be entered against the Plaintiff for:

e) Suit be dismissed

f) Costs of this suit to the defendant

g) Any other relief as this Honourable Court may deem fit.

DATED at KAMPALA this .....day of .....2006.

_____

FOR: SUI GENERISAND CO. ADVOCATES

COUNSEL FOR THE DEFENDANTS

DRAWN & FILED BY:

M/s SUI GENERISand Co. Advocates,

P.O Box 7117,

KAMPALA.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

CENTRAL CIRCUIT AT NAKAWA

CIVIL SUIT NO. .....OF 2006

JADWONG BILL::} PLAINTIFF

VERSUS

MAGODE BANOT ::} DEFENDANT

SUMMARY OF EVIDENCE:

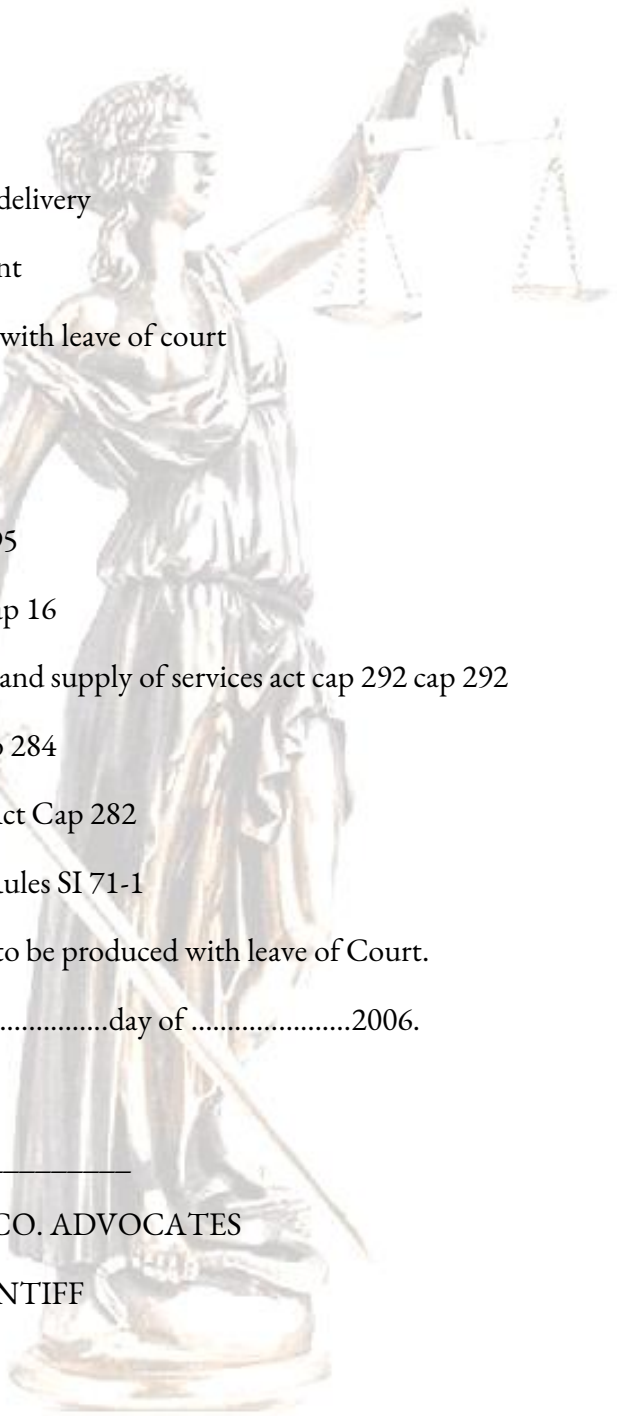
The Defendant will lead evidence to show that he has never contracted with the purported plaintiff to supply him with 15,000 bags of maize.

LIST OF WITNESSES:

3. Magode Banot

4. Any other witnesses with leave of court

LIST OF DOCUMENTS:



5. The Sale Agreement
6. Acknowledgement of delivery
7. Receipt of first payment
8. Any other documents with leave of court

LIST OF AUTHORITIES:

8. The Constitution, 1995
9. The Judicature Act Cap 16
10. The The sale of goods and supply of services act cap 292 cap 292
11. The Contract Act Cap 284
12. The Civil Procedure Act Cap 282
13. The Civil Procedure Rules SI 71-1
14. Any other authorities to be produced with leave of Court.

DATED at KAMPALA this .....day of .....2006.

_____

FOR: M/S SUI GENERIS& CO. ADVOCATES

COUNSEL FOR THE PLAINTIFF

DRAWN & FILED BY:

M/S SUI GENERIS& CO. ADVOCATES

P.O Box 7117, KAMPALA.

A2) HIRE PURCHASE

Section 2 (1) of the hire purchase act cap 72, hirepurchase agreement is defined to mean an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the hirer.

This creates the relationship of an owner and hirer and the same comes with obligations.

Obligations of the buyer.

a) To pay for the goods as per section 34 (1) of the SGSS

OBLIGATIONS OF THE SELLER

a) To deliver the goods section 34(1) of the SGSS

b) Duty to ensure that the goods are of merchantable quality or fit for purpose. Section 15 of the SGSS

c) Duty to replace or repair goods upon request by the buyer. Section 47 (2)(a) SGSS

DUTIES OF THE OWNER UNDER HIRE PURCHASE

a) Duty to ensure that goods are of satisfactory quality. Section 7(1)(b) hire purchase act cap 72

b) To ensure that goods are free from any encumbrances or changes in favour of a 3rd party at the time when the property is to pass.

c) Duty to provide goods fit for purpose; section 7(1)(d) HPA cap 72

d) Duty of confidentiality; section 12(1) HPA

e) Duty to inform the hirer of the manufacturer, the year and country of manufacture if necessary. Regulations 15 hire purchase regulations 2012

f) Duty to disclose the cash price of goods. Regulations 15(1)(f) hire purchase regulations.

RIGHTS OF THE OWNER

a) To take possession of the goods incase of default in making payments to the owner by the hirer as per regulations 17(a) hire purchase regulations.

b) To be paid hire purchase price

c) To regularly and at a reasonable time give notice to the hirer in writing of the intentions to enter and inspect the goods from the place where they are kept.

DUTIES OF THE HIRER

a) To disclose his particulars as to the name and address; regulation 15(2)(a) hire purchase regulations 2012

b) To disclose the purpose intended for the goods; regulation 15(2)(b)

c) To disclose the source of income

d) To disclose any other information pertinent to the transcation

e) To ensure that the hired goods are up to the value of goods; regulation 18(1) HPR

Appendix F-

DOCUMENTS FOR HIRE PURCHASE

THE REPUBLIC OF UGANDA

THE CONTRACT ACT CAP 284

THE THE SALE OF GOODS AND SUPPLY OF SERVICES ACT CAP 292

SALE AGREEMENT

This agreement is made this ..... day of 2006

BETWEEN

UGMA of P.O. Box 624 Kampala (Hereinafter referred to as "the Purchaser", which expression shall include its successors in title and assignees) on the one part

AND

DOLBY of P.O. Box 5318, Kampala (Hereinafter referred to as "the Vendor", which expression shall include its successors in title and assignees) on the Second part.

WHEREAS the Purchaser is desirous of purchasing equipment comprised in one Nanimax Generator Div x bundled, hereinafter referred to as the equipment the detailed description of which is contained in the schedule attached hereto and called "The First Schedule"

AND WHEREAS the Vendor is desirous of supplying to the Purchaser equipment comprised in, the above said equipment.

NOW THEREFORE, the Parties hereto agree as follows:

1. AGREEMENT TO SELL

The Vendor hereby agrees to sell and the Purchaser hereby undertakes to buy the products as specified in the schedule to this agreement.

2. PURCHASE PRICE

The purchase price shall be 80,000,000 (eight million shillings only)

3. MODE OF PAYMENT

The payment shall be in two equal installments: 40,000,000 before delivery and 40,000,000 after delivery.

4. JURISDICTION

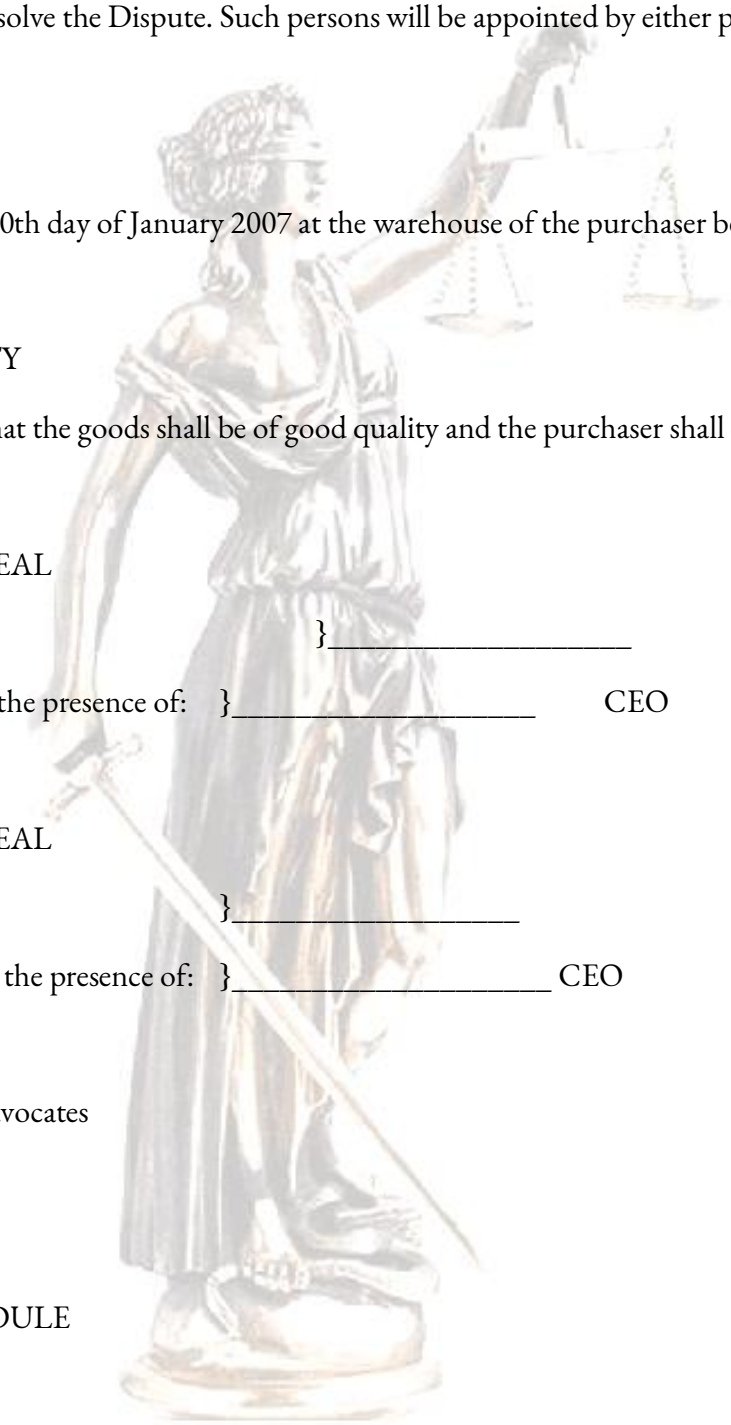
The law applicable to this Contract shall be the domestic laws of the Republic of Uganda in relation to Sale of Goods,.

5. FORCE MAJEURE

No party shall be responsible or liable for any failure or delay in performance of it's obligation under this agreement arising from or caused by acts of God or nature; intervention or acts of government; war, threat of war or conditions similar to war; acts of terrorism; equipment failures; poor weather conditions; shortages or delays of transportation; blockades; sanctions or embargoes; strikes; lockouts; or other causes or circumstances beyond the reasonable control of Vendor.

6. DISPUTE RESOLUTION

The Purchaser will attempt to resolve any claim, dispute, or controversy (whether in contract, tort or otherwise) against Vendor, arising out of or relating to this Agreement through negotiations with persons fully authorized to resolve the Dispute. Such persons will be appointed by either party to this contract.



9. DELIVERY

This shall be on the 10th day of January 2007 at the warehouse of the purchaser before 16.00 hours.

10. WARRANTY

The seller warrants that the goods shall be of good quality and the purchaser shall examine the goods.

THE COMPANY SEAL

of the UGMA }_____

was affixed hereto in the presence of: }_____ CEO

THE COMPANY SEAL

of the DOLBY }_____

Was affixed hereto in the presence of: }_____ CEO

DRAWN BY:

M/S Obol Ogolla Advocates

P.O. Box 7117,

KAMPALA.

THE FIRST SCHEDULE

Invoice of Dolby, containing;

Description of Item #1, comprised of a Nanimax Generator Div X Bundled

THE REPUBLIC OF UGANDA

THE CONTRACT ACT CAP 284

THE THE SALE OF GOODS AND SUPPLY OF SERVICES ACT CAP 292

HIRE PURCHASE AGREEMENT

This agreement is made this ..... day of 2006

BETWEEN

UGMA of P.O. Box 624 Kampala (Hereinafter referred to as "the hirers", which expression shall include its successors in title and assignees) on the one part

AND

DOLBY of P.O. Box 5318, Kampala (Hereinafter referred to as "Owners", which expression shall include its successors in title and assignees) on the Second part.

WHEREAS the Purchaser is desirous of purchasing equipment comprised in one Nanimax Generator Div x bundled, hereinafter referred to as the equipment .

AND WHEREAS the owner is desirous of supplying to the Purchaser equipment comprised in, the above said equipment.

NOW THEREFORE, the Parties hereto agree as follows:

1. HIRE

The owner of the machinery shall let and the hirer shall hire the machinery on terms as expressed hereunder.

2. CASH PRICE

The cash price shall be 80,000,000 (eighty thousand shillings only), in consideration of the option to purchase hereby granted.

3. HIRE PRICE

The hire price shall be 102,400,000 (one hundred two million and four hundred thousand). The hirer shall in continuance of the hiring pay a monthly price of shillings 7,700,000 (seven million seven hundred thousand).

4. FIRST PAYMENT

The first payment shall be made on the 1st day of November 2006 and a deposit of 10,000,000 by the hirer as a commitment fee for repayment of the hire price.

5. DURATION OF PAYMENT

The fund shall be paid over a period of 12 months commencing 1 November 2006 and shall attract an interest of 28% per annum calculated at an accrued balance on a monthly basis. The total interest shall be shillings 22,400,000.

6. RECALL

The owner shall exercise the right to recall the whole fund and realize its security; in default of payment of the hire price for a period exceeding 14 days.

7. SECURITY

The hirer shall execute a debenture to acknowledge the debt and provide security after execution of this agreement.

8. LIEN ON MACHINERY

The machinery shall remain the property of the owner until the payment is made in full.

9. OPTION TO PURCHASE

The hirer shall have the right to return the machinery at any time before completion of the final payment of the purchase fund.

10. DUTY OF HIRER

The hirer shall be duty bound top keep the machinery in good repair, exempting normal depreciation and to effect any major repairs that may arise during the repayment o the fund

THE COMPANY SEAL

of the UGMA }_____

was affixed hereto in the presence of: }_____ CEO

THE COMPANY SEAL

of the DOLBY }_____

Was affixed hereto in the presence of: }_____ CEO

DRAWN BY:

M/S Obol Ogolla Advocates

P.O. Box 7117,

KAMPALA.

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS

WHAT IS PROCUREMENT AND A PROCUREMENT PROCESS?

Procurement is defined in section 2 of The public procurement and disposal of public assets act Cap 205 (hereinafter as PPDPA) as acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise or any other contractual means of any type of works, services or supplies or any combination.

Section 2 further defines a procurement process as the successive stages in the procurement cycle including planning, choice of procedure , measures to solicit offers from bidders examination and evaluating of those offers, award of contact and contract management.

What is disposal and a disposal process?

S.2 of the PPDPA defines disposal as the divestiture of public assets, including intellectual and proprietary rights, good will and any other rights of a procuring and disposal entity by any means including sale, rental, lease, franchise, auction or any combination however classified other than those regulated by the public enterprise reform and divestiture statute 1993.

S.2 also defines a disposal process as the successive stages in the disposal cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers and award of contract.

KEY TERMS DEFINED.

These are defined under S.2 of the PPDPA.

a) Award is defined as a decision by a district contracts committee established under the LGA or contracts committee established under the PPDPA, or any other subsidiary body of a procuring and disposing entity to which a contracts committee or district contracts committee may delegate powers of adjudication and award within a specified financial threshold to determine the successful bidder.

b) Bid is defined as an offer to provide or to acquire works, services or supplies or any combination thereof, and shall include pre-qualification where applicable.

c) Bid-notice is defined as any advertisement by which eligible providers are invited to submit written offers to provide or acquire works, services and supplies, or any combination of them in case of procurement and disposal respectively.

d) Consultancy service means a service of an intellectual or advisory nature provided by a practitioner who is skilled and qualified in a particular field or profession and includes but is not limited to, engineering designer supervision, accountancy, auditing, financial services, procurement services, training and capacity building services, management advice, policy studies and advice and assistance with institutional reform.

e) Consultant is defined as an individual who or a firm, company, corporation, organization or partnership which provides consultancy services.

f) Foreign provider is a provider whose business is not registered in Uganda.

g) Resident provider is a provider registered in Uganda who is not a national provider

h) Non-consultancy services mean services of skilled or a non-skilled nature which is not a consultancy service and includes cleaning, security and maintenance and repair services.

i) National provider means a provider registered in Uganda and wholly owned and controlled by Ugandans.

j) Pre-qualifications is defined as screening process designed to ensure that invitations to bid are confined to capable providers.

k) Bid documents/solicitation documents are documents inviting bidders to participate in procurement or disposal proceedings and include documents inviting potential bidders to pre-qualify and standard bidding documents.

l) Suppliers means goods, raw materials ,products , equipment ,livestock, assets, land, or objects of any kind in the form of electricity or intellectual and proprietary rights as well as works or services: incidental to the provision of those supplies where the value of the works or services does not exceed the value of supplies.

m) Works means any work associated with the constitution, reconstruction, demolition, repair or renovation of a binding or structure on the surface or underground on and under water and includes the preparation, excavation, erection, assembly, installation, testing and commissioning of any plant, equipment or materials, decoration.....as well as supplies or services incidental to their works where the value of the incidental supplies or services does not exceed the value of the works.

ACTIVITIES TO WHICH THE PPDPA APPLIES.

Pursuant to Section 1, the act applies to all public procurement and disposal activities and in particular applies to:

a) All public finances

b) Resources in the form of counterpart transfers or any finances of similar nature within the context of development, cooperation agreements for the implementation of national programs.

c) Procurement and disposal entity, within or outside Uganda.

d) Procurement financed from specific public finances specified in (a) in the case of an entity not being of government, except where the authority confirms in writing, that the procurement system of the entity is satisfactory.

e) Procurement and disposal by a company registered under the company's act in which a procuring and disposing entity has majority interest.

The following activities by a procuring and disposal entity are not procurement as per S.1 (2) of the PPDPA.

I. The acquisition of an asset or of equipment where the asset or of equipment law being disposed of another procuring and disposing entity in accordance with Section 95

II. The acquisition of a service provided by another procuring and disposing entity except a service normally offered by that procuring and disposing entity for a fee.

III. The recruitment of the services of an individual as an employee of a procuring and disposing entity in accordance with the administrative policies of the procuring and disposing entity.

WHAT IS A PROCURING AND DISPOSAL ENTITY.

Under Section 2 of PPDPA, a procuring and disposing entity includes the following:

a) A ministry or department of government\

b) A district council or a municipal council

c) A body corporate established under an act of parliament other than the company act.

d) A company registered under the companies act in which government or a procurement and disposing entity

I. Controls the composition of the board of directors of the company

II. Is entitled to cast or controls the casting of more than 50% of the maximum number of notes that may be cast at a general meeting of the company.

III. Controls 50% of the issued share capital of the company, excluding any part of the issued share capital that does not carry a right to participate beyond a specified amount in the distribution of profits or capital.

e) An entity not being a government department but whose procurement is financed from specific public finances under S.2 (1)(d) of PPDPA.

f) A commission established under the constitution or under an act of parliament.

g) A public university and public tertiary institution established under the universities and other tertiary institutions Act

h) Bank of Uganda in S.4 of the BOU Act.

i) Any other procuring and disposal entity as maybe prescribed by the minister.

The Joint Ventures between ChinaNational Aero Technology InternationalEngineering Corporation & Anor v UgandaHeart Institute & Others (Application 38 of2024; Application 41 of 2024) The Tribunal referenced Section 3(1) of the Public Procurement and Disposal of Public Assets Act, which states that if there is a conflict between this Act and an obligation of the Republic of Uganda arising from an agreement with one or more States or international organizations, the provisions of that agreement shall take precedence. However, it also noted that the Act remains applicable and the Tribunal retains jurisdiction where there is nothing contrary in the funders'procurement rules or the funding agreement

BASIC PROCUREMENT AND DISPOSAL PRINCIPALS.

Pursuant to S.46 of PPDPA, all public procurement and disposal must be conducted in accordance with the following the principles:

a) Non discrimination

b) Transparency, accountability and fairness

c) Maximization of competition and ensuring the value for money

d) Confidentiality

e) Economy and efficiency

f) Promotion of ethics.

a) Non-discrimination (S.47)

A bidder cannot be excluded from participating in public procurement and disposal on the basis of nationality, race, religion, gender or any other criteria not related to qualification except as provided for in the act.

b) Transparency, accountability and fairness. (S.48)

All procurement and disposal processes must be conducted in a manner which promotes transparency, accountability and fairness to all involved.

c) Competition(S.49)

All procurement and disposal must be conducted in a manner that maximizes competition and achieves value for money.

d) Confidentiality (S.50)

Information obtained or relating to the procurement and disposal must be kept confidential.

However, where a written request is made in respect to the information, the procurement and disposing entity must disclose the information regarding the procurement or disposal process. (S.50 (1)).

S.50 (2) allows the entity to withhold information upon a written request being issued , where a person who is not involved in the preparation of the solicitation documents, the evaluation process or the award decision , seeks information relating to solicitation documents are officially issued an information relating to the examination, clarification, evaluation and comparison of bids before the best evaluated bidder notice is displayed on the procurement and disposal notice board of the procuring and disposal entity.

The entity may also withhold information where the disclosure is likely to prejudice the security or sovereignty of the state, the disclosure interferes with the right to the privacy of any person, the disclosure would amount to a breach of the law, impede law enforcement or would not be in public interest.

Further the entity shall not disclose information which contains proprietary information including information relating to any manufacturing process, trade secret, trademarks, copyright, patent , or formula protected by lower by international treaty to which Uganda is a party: or scientific or technical information , the disclosure of which is likely to cause harm to the interest of the proper functioning of any procuring and disposal entity or information supplied in confidence by a bidder , the disclosure of which could reasonably be expected to put that bidder at a disadvantage in contractual commercial negotiations or to prejudice the bidder in commercial competition.

e) Economy and efficacy (section 51)

Procurement and disposal must be conducted in a manner which promotes economy, efficiency and value for money.

f) Ethics (S.52)

Procurement and disposal must at all times be carried out in accordance with the codes of ethics as specified by the authority from time to time.

Under S.127 of PPDPA, public officers and experts engaged to deliver services must sign on to the code of ethical conduct provided in the 5th schedule to the act.

S.127 (2) mandates all providers of works, services or supplies to sign a declaration of compliance with codes of conduct determined by the authority from time to time.

The authority issued the public procurement and disposal of public assets guidelines No.4 of 2014 on codes of ethical conduct for bidders and providers.

The guidelines mandate that the code of ethical conduct must be part of the bid submission sheet and must be signed by the bidder.

THE VARIOUS PLAYERS IN A PROCURING AND DISPOSING ENTITY.

S.26 of the PPDPA provides for the composition of a procuring and disposing entity. The entity is comprised of:

a) An accounting officer

b) A contracts committee

c) A procurement and disposal unit

d) A user department

e) An evaluation committee.

a) Accounting officer.

Pursuant to S.28 (1), an accounting officer has the overall responsibility for the execution of the procurement and disposal process in the entity.

He or she is particularly responsible for:

I. Establishing a contracts committee

II. Appointing the members of the contracts committee as specified in the 3rd schedule

III. Causing to be established a procurement and disposal unit

IV. Advertising bid opportunities

V. Communicating award decisions

VI. Certifying the availability of funds to support the procurement or disposal activities

VII. Signing contracts for procurement or disposal of activities on behalf of the procuring and disposing entity upon approval by contracts committee. In emergency situations through approval of the contracts committee (S.226 (2)). The accounting officer must inform the contracts committee of the signing within 7 working days and send report to the authority within 10 days.

VIII. Investigating complaints by providers

IX. Submitting a copy of any complaints and reports of findings to the authority.

X. Ensuring that implementation of the awarded contract is in accordance with the terms and conditions of the award.

XI. Pursuant to S.26 (4), the accounting officer must prior to commencement of a procurement process undertake an assessment of the market price of the supplies, services or of the unit costs of the works in respect of which the procurement is to be made by the entity.

S.28(4) empowers the accounting officer to reject a contract, where the price quoted by the bidder who is evaluated by the contracts committee as the best evaluated bidder is higher than the market price established by the accounting officer. The officer is forbidden from signing such contract.

An accounting officer may pursuant to S.41 delegate certain procurement and disposal functions of accounting officer, contracts committee or procurement and disposal unit.

b) CONTRACTS COMMITTIE

S.29 (1) stipulates that the composition of the contracts committee is as specified in the 3rd scheduled to the act. The 3rd schedule stipulates that the composition of the contracts committee shall be:

a) A chairperson

b) A secretary

c) A maximum of three other members appointed by the accounting officer one of whom must be a lawyer.

The members are nominated by the accounting officer and approved by the secretary to the treasury. (S.29 (2)) The appointment is as prescribed in form 1 of the 2nd schedule of the PPDPA (procuring and disposing entity regulations.) also Reg. 9(1) of the PPDPA procuring and entities) regulations.

Under S.29 (3)(a), the following officers of the entity are not eligible for appointment to the contracts committee:

a) The head of procurement and disposal unit

b) The head of the finance department ,but not the head of the account's department where the positions are held by different officers

c) The staff of the department of internal audit

Accounting officer must pursuant to S.29 (4) inform the authority of the composition of the contracts committed and the qualifications of its members not later than 14 days from the date of its appointment.

Functions of the contracts committee

The functions of the contracts committed are stipulated under S.30 of PPDPA and these include:

a) Adjudication of recommendations from the procurement and disposal unit and award of contracts

b) Approving the evaluation committee

c) Approving negotiation teams

d) Ensuring that before it is approved, a procurement is in accordance with the procurement plan.

e) Approving bidding and contract documents.

f) for the purposes of disposal of the public assets of an entity:

I. Assessing and certifying the public assets identified by a user department or by the board of survey for disposal

II. Causing the assets identified under (1) to be valued in accordance with regulations made under the PPDPA

III. Approving the reserve price for the public assets to bed disposed of

g) Approving procurement and disposal procedures

h) Ensuring that best practices in relation to procurement and disposal are strictly adhered to by the entity

i) Ensuring compliance with the PPDPA

j) Liaising directly with the authority on matters within its jurisdiction.

Powers of the contracts committee

These are enshrined in S.31 of the PPDPA. The contracts committee is empowered to :

a) Authorize

I. The choice of a procurement and disposal procedure

II. Solicitation of documents before issue

III. Technical ,financial or combined evaluation report

IV. Contract documentation in line with the authorized evaluation report.

V. Any amendment to awarded contracts.

d) Recommend for the delegation of a procurement or disposal function by the accounting officer whenever the necessity arises

e) Award contracts in accordance with applicable procurement or disposal procedures as the case maybe.

C) PROCUREMENT AND DISPOSAL UNIT.

S.2 defines PDU as a division in each procuring and disposing entity responsible for the execution of the procurement and disposal function.

S.32 mandates every procuring and disposing entity to establish a procurement and disposal unit.

Functions of the PDU.

These are stated under S.33 of PPDPA and they include:

a) Manage all procurement or disposal activities of the procuring and disposing entity except adjudication and the award of contracts

b) Support the functioning of the contracts committee

c) Implement the decisions of the contracts committee.

d) Liaise directly with the authority on matters within its jurisdiction

e) Act as a secretariat to the contracts committee

f) Plan the procurement and disposal activities of the procuring and disposing entity

g) Recommend procurement and disposal procedures

h) Check and prepare statements of requirement

i) Prepare bid documents

j) Prepare advertisement of bid opportunities

k) Issue bidding documents

l) Maintain a providers list

m) Prepare contracts documents

n) Issue approved contract documents

o) Maintain and archive records of the procurement and disposal process

p) Prepare monthly reports for the contracts committee

q) Coordinate the procurement and disposal activities of all the departments of the procuring and disposing entity

r) Prepare any other such reports as may be required as may be required from time to time.

Powers of the PDU.

These are stated under section 34 of PPDPA and the PPDPA has powers to:

a) Recommend the composition of the evaluation and negotiation committees for the approval of the contracts committee

b) Contract independent advice as may be necessary in the discharge of its functions

c) Ensure compliance with the PPDPA, reg, and guidelines made there under.

d) Manage bid proposals and pre-qualification submissions and make recommendations on them to the contracts committee

e) Provide bid clarifications

f) Receive bids.

CONFLICTS BETWEEN A CONTRACTS COMMITTEE AND A PDU.

These are managed pursuant to S.35 of PPDPA. Where the contracts committee disagrees with the recommendations of the PDU, it has two options:

1. Return the submission to the PDU for review giving reasons for its disagreement

2. Request for independent advise from the authority

Where a PDU disagrees with the views of the contracts committee on its recommendations under S.35 (1)(a), the PDU may pursuant to S.35(2) request for advice from the authority.

Procedure for seeking advice from the authority.

S.35 (5) of PPDPA stipulates that the request shall be in writing stating the reasons why either of the players disagrees with the other.

D) USER DEPARTMENT.

S.1 of PPDPA defines a user department as any department ,division, branch or section of the procuring and disposing entity, including any project writ working under the authority of the procuring and disposing entity ,which initiates procurement and disposal requirements and is the user of the requirements.

Functions of the user department.

These are listed under S.36 (1) of the PPDPA and they include:

a) Liaise with and assist the PDU throughout the procurement and disposal process to the point of contract placement

b) Initiate procurement and disposal requirements and forward them to the PPDU.

c) Propose technical inputs to statements of requirements for procurement requirements to the PDU

d) Propose technical specifications to the PDU when necessary

e) Input with technical evaluation of bids received as required by the PDU

f) Arrange for payments to providers

g) Report any departure from the terms and conditions of an awarded contract to the PDU

h) Forward details of any required contract amendments to the PDU for action

i) Maintain and archives records of contracts management.

j) Prepare any reports required for submission to the PDU, the contracts committee or the accounting officer

k) Pursuant to S.36 (2) the user department must prepare a procurement plan based on the approved budget which it then submits to the PDU for implementation.

POWERS OF THE USER DEPARTMENT.

The user department pursuant to S.37 has the powers to:

a) Initiate procurement and disposal requirements

b) Recommend statements of requirements to PDU

c) Undertake conformity assessments

d) Issue change orders in accordance with the terms and conditions of the contract.

e) Certify invoices for payments to providers.

Conflicts between procurement and disposal unit and user department.

Under S.38(1), where a PDU disagrees with a user department concerning any decision pertaining to the application or interpretation of any procurement method, process or practice, the two parties may jointly consult with any two members of the contracts committee for a review and guidance in resolving the disagreement.

Under S.36(2) where such review fails to resolve the disagreement, either party may forward the cause of the disagreement as a submission to the contracts committee for a formal decision by the contracts committee.

E) EVALUATION COMMITTEE.

Composition and constitution.

Pursuant to S.39 , the PDU is charged with the powers to recommend the composition of the evaluation committee and same is approved by the contracts committee pursuant to S.28 (b) of PPDPA.

Section 39(2) provides that the membership of the evaluation committee shall be nominated by the PDU and approved by the contracts committee.

Regulation 3(2) of PPDPA (evaluation) regulations 2014, requires that a minimum of 3 members are nominated including a member from the user department and the PDU.

The required qualities for each member are interlia, knowledge of subject matter and financial management skills.

Section 39 (3) also stipulates a minimum of 3 members.

Form 1 (PPDA (procuring and disposing entities) reg. (appointment of members of contracts committee. (Reg 9).

MULAGO SCHOOL

OF NURSING AND

MIDWIFERY

P.O BOX 212

KAMPALA.

Date: 6th/01/2020

KUNYIGA SUI GENERIS

CHAIRPERSON CONTRACTS COMMITTEE.

APPOINTMENT TO THE CONTRACTS COMMITTEE.

I confirm your appointment as the chairperson of the contracts committee for MULAGO SCHOOL OF NURSING AND MIDWIFERY following the approval of your nomination by the secretary to the treasury dated 4th/01/2020.

The terms of reference for this appointment shall be in accordance with the PPDA, 2003

If you accept this appointment, please sign this letter in the space availed below and a copy of the code of ethical conduct in business and return the copies to these documents to the undersigned.

The term of this appointment shall be 3 years effective from 20th/01/2010.

JOEL LUMALA,

Accounting officer

I, KUNYIGA SUI GENERIS accept the appointment

Date: 7th/01/2020

Ec. Secretary to treasury

cc. ED, PPD authority.

PROCUREMENT CYCLE.

The procurement planning process is as follows;

1. procurement plan and budgeting
2. assessment of market price
3. procurement requisitions
4. confirmation of availability of funds
5. review and preparation of bidding documents
6. Approval of procurement method, bidding documents and evaluation committee.
7. Advertising and limitation of bids
8. Receipts and opening of bids
9. Evaluation of bids
10. Review of evaluation report and award of contract
11. Signing of contract

12. Contract management and monitoring.

1. PROCUREMENT PLAN AND BUDGETING.

S.60(1) of PPDPA mandates every procuring and disposing entity to come up with a procurement plan following the budget guidelines issued by the minister of finance in ever financial year and submit the same to the secretary of treasury at a specified time.

S.60 (7) bars the carrying out of any procurement outside the procurement plan except in emergency situations.

Process

User departments are pursuant to reg 3(2) of PPDA (PDEs) Regs 2014 mandated to prepare procurement plans in line with the approved work and plan and budget.

The user departments start by doing a needs assessment which it then budgets for.

The user departments forward their procurement plans to the PDU for consolidation pursuant to Reg 3(1) of PPDA (PDEs) Reg 2014

The consolidated plans are sent to the accounting officer for approval pursuant to Reg 3(4) of the PPDA (PDEs) 2014.

The procurement plans are approved by the board/council/management

The accounting officer pursuant to section 60 (5) submits the procurement plans to the authority and to the ministry of finance

The annual procurement plans of the entity are then displayed on the entity board as required under S.58(6) of the PPDPA and the website of ministry of finance and authority.

2. PROCUREMENT REQUISITION.

Under S.36(1)(b), the user department is charged with the duty to initiate procurement and disposal requirements.

A user department shall initiate the procurement of supplies, works and non consultancy services according to Reg. 3(5) of the PPDA (rules and methods for procurement of supplies, works and non-consultancy services) Regs. 2014 by using part 1 of form 5 in the schedule to the regulations.

A user department seeking to procure consultancy services shall initiate the procurement as per reg 3(5) of the PPDA (procurement of consultancy services) regulations by using part 1 of form 18 in the schedule to the regs.

The requisition must include the estimated values and statements of requirements as per Reg. 24 of PPDA (Supplies, works and non-consultnacy) regs.

Reg 3(2) of the PPDA (PDEs) Regs requires that the requisition is approved/confirmed by an authorized officer usually the head of trhe user departments.

Form 5 (supplies ,works,and non-consultancy services).

Part 1

MULAGO SCHOOL OF NURSING AND MIDWIFERY

P.O BOX 212 ,KAMPALA.

THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT CAP 205

REQUEST FOR APPROVAL OF PROCUREMENT

REQUEST BY THE ESTATES DEPARTMENT FOR APRROVAL OF

PROCUREMENT.

.....

Code of procuring and disposing entity

MSNM 03 Works Financial year

2019/20 Sequence number

16

Particulars of procurement.

Subject of procurement Construction of an auditorium

Procurement plan reference MSNM/03/2019/20/01

Location of delivery Mulago, Kampala, Uganda

Date required 31st December 2021.

Details relating to the procurement.

Item

No.

01 Description

1500 seater auditorium with modern seats and audio system Quantity

01 Unit of measure Est.unit cost

2,000,000,000

Market price of the procurement.

2,000,000,000

Estimated total cost in UGX 2,000,000,000

Request for procurement confirmation of request

Name: OKOT RONALD LUMALA JOEL

Signature..... .....

Title: MANAGER ESTATES DIRECTOR ESTATES

Date: 31st/12/2019 2nd /01/2020

(Member of user department) (Head of user department)

Confirmation funding and approval to procure.

Vote/head

No programme Sub-programme item Balance remaining.

Name: MULEMEZI HENRY

SIGNATURE:

TITLE: Accounting officer

DATE: 6th/01/2020.

Part 1 of form 18 of PPDA (procurement of consultancy services

3. ASSESSMENT OF MARKET PRICE.

Pursuant to S.28 (4), an accounting officer must undertake a market assessment of the price of the supplies, services or of the unit costs of the work in respect of which the procurement is made.

Under Reg 5(1) of the PPDA (supplies, works and non –consultancy Regs and the PPDA(consultancy) Regs, the accounting officer can rely on prices obtained on previous similar bids or contracts taking into account any difference in the quantities purchased and prices published or advised by potential providers/consultants.

4. CONFIRMATION OF AVAILABILITY OF FUNDS.

Pursuant to S.26(1) (f) of PPDPA, the accounting officer must confirm the availability of funds as per approved budget.

Reg 4 (1) of the PPDA (supplies, works and non-consultancy) regs of 2014 bars an entity from initiating any procurement for which funds are not available or adequate except if payment is to be effected from subsequent financial years or secretary to the treasury confirms in writing that the required funding shall be made available.

Reg 4(3) supplies, work and non-consultancy Regs of 2014 and consultancy Regs of 2014.

5. PREPARATION OF BID DOCUMENTS.

S.64 of PPDPA enjoins a procuring and disposing entity to use the standard documents provided by the authority as models for drafting all solicitation documents for each individual procurement or disposal requirement.

The bidding documents are prepared pursuant to Reg 32 of PPDA (supplies, works and non-consultancy services) regulations by the PDU. The documents prepared include: a statement of requirements which must as per S.64 (1) of PPDPA give a correct and complete description of the object of the procurement or disposal activity for the purpose of creating fair and open competition.

Bidding documents to be prepared for supplies.

These are stipulated under Reg.33 (1) of the PPDA (supplies, works and non-consultancy) Regs and they include:

a) The instructions to bidders which must stipulate the amount and form of bid security if required, the amount and form of performance security, if required ,the bid formal, the bid submission methodology, the currency in which the bid is to be submitted, the procedure for conversion of prices into a single currency and evaluation purposes including the source and date of exchange rates to be used for conversion, the currency in which a contract shall be paid and the evaluation methodology and criteria.

b) The standard bidding forms to be used.

c) The schedule of requirements which must stipulate, the specification and list of supplies, a sample of the supplies where required and the required delivery terms.

d) The draft contract which must include: the currency in which the contract shall be paid, the amount and form of performance security if required , the payment terms ,including any advance payment, stage payments , retentions and payment securities, the basis for fixed or variable prices and the method for calculating variations in variable prices. If required ,the method of payment , the documentation required for payment, the required delivery terms , any special requirements for

packaging, marking and labeling, the delivery documentation required, any inspection or test required, any insurance requirements, any required warrants and the type of contract to be placed.

Bidding documents for works.

These are stipulated under Reg 34 of the PPDA (supplies, works and non-consultancy) Regs and they include:

a) The instructions to bidder which must entail, the amount and form of bid security or form of bid security or form of bid securing declaration required, the bid format, the currency in which a bid is to be submitted, the bid submission methodology, the evaluation criteria and the procedure for conversion of prices to a single currency for evaluation purposes, including the source and date of exchange rates to be used for conversion.

b) The statement of requirements including design, specifications, drawings, bill of quantities or equivalent as may be applicable and the schedule for execution of the works.

c) The proposed form, terms and conditions of contract to be placed, the amount and form of performance security, if required , the currency in which a contract shall be paid , the payment terms, including any advance payments, interim or stage ,payments or payment retentions and required payment securities, the basis for faced or variable prices and the method for calculating variations, if required, the method of payment, the documentation required for payment, the functions and authority of the technical representative of the procuring and disposing entity, if any, any inspections or tests required and the test method ,requirements relating to certification of conformity and the insurance cover or indemnity required.

Bidding documents for non-consultancy services.

These are stipulated under Reg 35 of the PPDA (supplies, works and non –consultancy) regs and they include:

a) Instructions to bidders, which shall include the amount and form of bid security required, the amount and form of any performance security, the bid format, bid submission, methodology, currency in which the bid is to be submitted, the procedure for conversion of prices to a single currency for evaluation purposes, including the source and date of exchange rates to be used for conversion and the evaluation methodology and criteria.

b) The standard bidding forms to be used

c) The schedule of requirements which shall specify, a description of the non-consultancy services required, the duration, timing of inputs and completion schedule, the required deliverables or outputs and any requirements with respect to the personnel to be used in the performance of the non-consultancy services.

d) The draft contract (has similar terms as the supplies contract)

The evaluation criteria provided in the instruction to bidders must be adhered to without any amendments.(Reg 37).

6. APPROVAL OF PROCUREMENT METHOD, BIDDING DOCUMENTS AND THE EVALUATION COMMITTEE.

The contracts committee pursuant to S.30 of PPDPA approves procurement method, bidding documents or any addenda and the valuation committee. S.30 and S.31.

LIMITATION TO BID

Upon approval of the procurement method, bidding documents and evaluation committee by the contracts committee, the PDU prepares advertisements and issues the same writing bids through newspapers, website or notice boards pursuant to S.33 of PPDPA.

Reg 41(1) of the PPDA (supplies, works and non-consultancy) regs provides for various methods of inviting bidders and these include:

a) By publication of a bid notice

b) Through a pre-qualification

c) By development of a shortlist

d) By direct invitation of a sole or single provider.

Bid notices.

Reg 42 (1) of the PPDA (supplies, works and non-consultancy) Regs mandates that the bid notices be published in at least one newspaper of wide circulation.

Sub reg (2) requires that the bid notice be displayed on the website of the authority and the notice board of the entity from a date not later than the date of application of bid notice and until the deadline for submission of bids.

Bidding period.

Under Reg 45(1) of the PPDA (supplies, works and non-consultancy) Regs the bidding period shall start on the date the bid notice is first published or on the date of availability of the bidding document to bidders, whichever is later and shall end on the deadline for submission of bids by bidders.

Minimum bidding periods.

1. Pursuant to Reg 46(1) (a), the minimum bidding period in respect of open domestic bidding method is 20 working days.

2. Pursuant to Reg 46(1) (b), the minimum bidding period in respect of open international bidding method is 30 working days.

3. Pursuant to Reg 46(1) (c), the minimum bidding period in respect of restricted domestic bidding method is 12 working days.

4. Pursuant to Reg 46 (1) (d), the minimum bidding period in respect of restricted international bidding method is 20 working days.

5. The minimum bidding period under the quotations method is 5 working days as per Reg.46 (1) (e).

6. There is no minimum bidding period for direct procurement method. Reg 46(2)).

Issue and sale of bidding documents.

Under Reg 47(1) of PPDA (works, supplies and non-consultancy) Regs 2014, a procuring and disposing entity shall issue or sell bidding documents to a bidder who requests the documents in the case of open bidding.

Pursuant to Reg 47(2), where bidding documents are sold, the procuring and disposing entity shall allow a potential bidder to inspect the bidding documents before purchase.

The entity shall record the issue or sale of all bidding documents using form 8 in the schedule to the regulations. Reg 47(3)

Bidding documents may be sold in order to recover the cost of printing, copying and distribution and the price shall be calculated to over only these costs and shall not include any profit. Reg 47(4).

The price of the bidding documents shall be approved by the contracts committee before issuing the bid notice or bidding documents and shall be included in the bid notice. Reg 47(5)

Pre-qualification.

Pre-qualification is defined under S.1 of PPDPA as a screening process designed to ensure that invitations to bid are confined to capable providers.

Under Reg 18(1) of PPDA (supplies, works and non-consultancy) Reg 2014, a procuring and disposing entity any use pre-qualification under open domestic or open international bidding to obtain a shortlist of bidders.

Reg 18(2) enjoins the PDU to make a submission to the contracts committee to use pre-qualification using form 6 in the schedule.

The list of pre-qualified bidders is developed using the evaluation criteria prescribed by the procuring and disposing entity (Reg 18(3)) and published on the notice board of the entity for atleast..

Pre-qualification can only be used where:

a) The non-consultancy services or supplies are highly complex, specialized or require detailed design or methodology.

b) The cost of preparing a detailed bid would discourage competition

c) The evaluation is particularly detailed and the evaluation of a large number of bids would require excessive time and resources from procuring and disposing entity.

d) The bidding is for a group of similar contacts, for the purposes of facilitating the preparation of a shortlist. Reg 18(4) (a)-(d).

Pre-qualification notices and documents.

Under reg 19 (1), the entity must advertise to the public a pre-qualification notice inviting potential bidders to obtain the pre-qualification documents from the entity.

Reg 19(2) requires that the notice is published in at least one newspaper of wide circulation.

Bidding periods in pre-qualification.

Pursuant to Reg 20 (1) the bidding period for pre-qualification starts from the date of first publication of the pre-qualification notice or the date of availability of pre-qualification documents whichever is later and end on the deadline for submission of pre-qualification applications.

Minimum bidding periods.

Under Reg 20(3), the minimum bidding period for pre-qualification under domestic bidding is 15 working days and under open international bidding, it is 20 working days.

8. RECEIPT AND OBTAINING OF BIDS.

SECTION 71 OF THE PPDPA, a procuring and disposing entity shall require bidders to submit sealed written bids unless otherwise provided for in this act or regulations made under this act. . Reg 58(1) of the PPDA (supplies, works and non-consultancy) Regs provides for various methods of receipt of bids a procuring and disposing entity may use. These are:

a) Through the staff of the PDU, in person, who must acknowledge receipt of the same by issuing a receipt.

b) By use of a bid box. (Most favored approach). Good practice requires that you put a book around the area with the bid box so that the bidders sign to the book upon dropping the same.

Opening of bids.

Pursuant to reg 62(1) bids submitted under open bidding method or restricted bidding method must be opened at a public bid opening session. The bid documents must contain instructions to bidders regarding, the date and time of the bid opening session and the information to be read out and recorded at the bid opening session.

The procedure for public bid opening is stipulated under Reg 65 of PPDA (supplies, works and non-consultancy) Reg.2014

Sub Reg (1) of 65 provides that the public opening of bids shall be managed by PDU and must be witnessed by a member of the contracts committee or a person nominated by the user department.

The public bid opening must be recorded using form 12 in the schedule of the PPDA (supplies, works, and non-consultancy) Regs (Reg 65(9)

9. EVALUATON OF BIDS.

Pursuant to reg 5 of the PPDA(evaluation) Regs 2014, the evaluation committee having evaluated all bids using the evaluation criteria makes an evaluation report indicating the best evaluated bidder. Evaluation period is 20 working days for supplies and non-consultancy services, 40 working days for works. Days start to run from the date of bid opening (guidelines 5 of PPDA guidelines.)

Section 39(1) its done by the evaluation committee.

10. PREVIEW OF EVALUATION REPORT AND AWARD OF CONTRACT.

The contracts committee reviews the evaluation report and if satisfied approves the same and best evaluated bidder.

The best evaluated bidder and other unsuccessful bidders alike. Reg 4 of the PPDA(contracts) Reg 2014.

11. SIGNING OF THE CONTRACT

The contract can only be signed after 10 days from the date of display of the

Notice of the best evaluated bidder.

Contract is provide to the accounting officer who signs it on behalf of the entity under S.28 of the PPDPA and the contract must be approved by the A.G where necessary before it's signed. Section 55 of PPDA contract will be signed with the best evaluated bidder.

12. CONTRACT MANAGEMENT AND MONITORING

- Ensure you follow the proper procurement procedure
- Use of performance bonds/guarantees
- Establishment of a building/contracts management committee headed by a manager
- Use of defect liability periods.

EMERGENCY PROCUREMENT.

S.2 of the PPDPA, defines an emergency as circumstances which are urgent, unforeseeable and not caused by dilatory conduct. The section further defines urgent as not including circumstances that should have been foreseen by the procuring and disposing entity, are a result of inadequate planning or are a result of delays by or within the procuring and disposing entity.

In addition, the section defines an emergency situation as a circumstance which is urgent or unforeseeable or a situation which is not caused by dilatory conduct where:

a) Uganda is seriously threatened by or actually confronted with a disaster, catastrophe, war or an act of God.

b) Life or the quality of life or environment maybe seriously compromised.

c) The conditions or quality of goods, equipment, buildings or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness

d) An investment project is seriously delayed for want of minor items.

e) A government programme would be delayed or seriously compromised unless a procurement is undertaken within the required time frame.

Effect of an emergency on the procurement cycle.

Under Reg 8(1) of the PPDA (supplies, works and non –consultancy), an emergency situation may be used to determined then procurement method regardless of the estimated value of the requirement.

Under Reg 8(3), where an emergency situation is used as the criteria for determing the choice of a procurement method, competition shall not automatically be excluded from the procurement process solely on the basis of the emergency situation.

The entity must ensure it obtains maximum competition to the extent practicable in the procurement under an emergency situation (Reg 8 (4))

Before an entity uses direct procurement it must give priority to other competitive procurement methods (reg 8(5))

Where the value of the procurement requirement requires the use of the open bidding method the entity must before using direct procurement, in descending order consider to use:

a) The restricted bidding method

b) The quotations method

c) Any other competitive method with the appropriate modifications.(REG 8 (6))

Where the value of a procurement requirement requires the use of restricted bidding or restricted selection, a procuring and disposing entity must before using direct procurement in descending order, consider to use:

a) The quotations method

b) Any other competitive method with the appropriate modifications. (Reg 8 (7))

Where the value of the requirement requires the use of the quotations method, a procuring and disposing entity must before deciding to use direct procurement, consider using the quotations method with appropriate modifications. (Reg 8(8))

Under Reg 8(9), the permissible modifications to the competitive methods of procurement an entity may make before using direct procurement include:

a) A bidding period which is less than the minimum bidding period specified in theses regs

b) A shortlist of at least 2 bidders

c) Simplified documentation

d) A simplified bid submission method

e) A simplified evaluation methodology.

PROCUREMENT METHOD.

Pursuant to S.85 (1), a PDE may choose any of the procurement methods listed unders.86-95. Method is chosen by the use PDU and approved by the contracts committee.

Where a PDE is procuring supplies, works or non-consultancy services, S. 85 (1) provides that the entity may pick ether of the methods provided under S.86 to S.95 bearing in mind the regulations and guidelines and the thresholds. (Reg 6(4)).

Reg 6(3) of the PPDA (supplies, works and non-consultancy) Regs states that the procurement method shall be determined by:

a) The estimated value of the requirement

b) The circumstances relating to the requirement

c) The type of procurement, whether supplies, works or non-consultancy services.

Threshold for the various procurement methods.

These are stipulated in the PPDA Guidelines No.1 of 2014 on Thresholds for procurement methods.

Est. value of works (UGX) Est.value (UGX) of consultancy services Est. value of supplies and non-const. Permanent method.

Above 500 million Above 200m (for consultancy firms)

Above 50 million (for individual consultants) Above 200m Open

Domestic bidding or open international bidding

Value greater than 200m but not to exceed 500m Value greater than 100m but not to exceed 200m Restricted domestic bidding or restricted international bidding

Value greater than 100 million but not to exceed 200m Value greater than 50m but not to exceed 200m (for consultancy firms. Value less than 50m (for individual consultancy) Value greater than 5 million but not to exceed Quotation method or request for proposed without expression of interests for consultancy services.

Not to exceed 10m Not to exceed 5 m Micro procurement.

Special thresholds for the procurement of medicines and other health supplies.

Method of procurement Threshold (value in UGX) Conditions for use

Open bidding Default method maybe used irrespective of the value of procurement Providers should be registered by the NDA except where no registration has been done

Restricted binding Above 2 billion for national medical stores

Above 500 million for other entities Invite at least 5 bidders ,unless shortlist has less than 5

Request for Quotations Above 1 billion for national medical stores

Above 100 million for other entities Invite at least 3 quotations, unless shortlist has less than 3 providers.

Micro procurement Above 100 million for NMs

Above 5 million for other entities

Direct procurement No limit Where there is only a single or sole provider where there is need for continuity.

METHODS FOR WORKS, SUPPLIES, AND NON –CONST.

1. Open domestic bidding

Is provided for under S.86 of the PPDA, S.86 (2) defines the method as one which is open to participation on equal terms by all providers through advertisement of the procurement opportunity.

S.86 (4) permits foreign bidders to participate in domestic bidding.

When using the method, the entity must advertise a bid notice in at least one newspaper of wide circulation. Reg 12(1) of PPDA, (Supplies, works and non-const) regs.

Pre-qualification maybe used upon advertisement of a pre-qualification notice in at least one newspapers of wide national circulation. Reg12 (2)

2. Open international bidding

Its defined in S.87(1) of PPDA as a procurement method which is open to participation on equal terms by all providers through advertisement of the procurement opportunity and which specifically seeks to attract foreign providers.

It's used to obtain the maximum possible competition and value for money where the national providers cannot make the same achievable .S.87 (2) of PPDA.

Reg 13(1) of PPDA (supplies, works and non-const) Regs require a bid to be published in at least one publication of international circulation.

Pre-qualification maybe applied upon publication of the pre-qualification notice in at least one publication of wide international circulation. Reg13 (2)

3. Restricted domestic bidding

It's defined under S.88 (1) of PPDA as a procurement method where bids are obtained by direct invitation without open advertisements.

It is applicable pursuant to S.88 (2) of PPDA to obtain competition and value for money where the same cannot be obtained or the circumstances donot justify or permit the open bidding procedure.

Reg 14(1) of PPDA, (supplies, works and non-const) regs, stipulates that the procurement under this method must be by selection of a bidder using a shortlist.

All potential providers must be included on the shortlist where the procurement requirement is available from a limited number of providers. (Reg 14(2)(a)) and before issuing the bidding documents ,publish a notice of restricted bidding on the website of the authority. Reg 14(2) (b).

The notice for restricted bidding is prepared according to format in 2nd schedule and must be published prior to the issue of the bidding documents.

4. Restricted international bidding

It's defined in S.89 (1) as a procurement method were bids are obtained by direct invitation without open advertisement and the limited bidders include foreign products.

Its used to obtain competition and value for money to the extent possible where the value or circumstances donot justify or permit an open bidding method and short listed bidders include foreign products .S.83(2)

5. Quotation method.

It's a simplified procurement method which compares price, quotations obtained from a number of providers. (S.90 (1).

Schedule 4 paragraph 5(1) (b) writes that value of the procurement must not exceed the method stated of the procurement guidelines.

S.90(2) of PPDA stipulates that a quotation method must be used to obtain competition and value for money to the extent possible where the value or circumstances donot justify or permit open or restricted bidding procedures.

The method is only applicable in works and supplies (S.90 (3)).

Pursuant to Reg 15(1) of PPDA, supplies, works and non-const) Regs, the procurement using the quotations method must be by selection of bidders using a shortlist.

The entity must obtain at least 3 quotations. Reg 15(2)

There is no requirement to have the opening of the quotations in public. Reg 15

6. Micro procurement.

It is used for very low value procurement requirements. S.92 (1).

It is applicable to achieve efficient and timely procurement where the value does not justify a competitive procedure.

Paragraph 7 (2) (c) of the 4th schedule to the act mandates the entity to make a comparison of at least 3 quotations.

Paragraph 7 (3)(b) forbids the use of method for the procurement of works, services or supplies where they are required continuously or repeatedly over a set period of time or for which a framework contract is required.

Under Reg 16(1) of PPDA (supplies, works and non-const) Regs there is no requirement for issuance if a bidding document, submission of a bid , a public bid opening session, the use of an evaluation bidder and issue of a notice of award of contact.

7. Direct procurement.

Its used to procure requirements where exceptional circumstances prevent the use of competition.

Under paragraph 6(1) of the 4th schedule, the method may be used where there is insufficient time for any other procedure such as in an emergency situation, the works, services or supplies are available from only one provider etc. Reg 17.

METHODS FOR CONSULTANCY SERVICES.

Requires an entity to publish a notice as specified in the 4th schedule inviting expression of interest for a required assignment.

Under Reg 8(1) of PPDA (procurement of consultancy services) Regulations the period of expression of interest starts to run on the date the notice is first published and end on the deadline for submission of expression of interest.

Pursuant to Reg 8(3) the minimum period for expression of interest is:

a) 10 working days where the notice is only published in Uganda

b) 15 working days where the notice is published internationally.

The methods of procuring consultancy serves are: Reg 6 (a)-(c)

1. Publishing a notice inviting expression of interest.

Reg 7 of the PPDA (procurement of consultancy services) regulations.

- The notice must be published in at least one newspaper of wide circulation in Uganda.
- To ensure effective competition, the entity must publish in the relevant trade or professional publication. (Reg 7 (3))
- Where entity does not expect the required service to be available from at least 6 consultations in Uganda, the notice inviting expressions of interest shall be published in a publication of wide international circulation.
- Notice must also be displayed on the entities notice board and PPDA website.

2. By developing a shortlist without publication of a notice inviting expression of interest.

Pursuant to Reg 11(I), the entity can apply the method where, the consultancy service can only be provided by a limited number of consultants, in this case not more than 6 consultants, value of the procurement is lower than the value prescribed for publication of notice inviting expression of interest or there is an emergency situation.

3. Single and sole source consultants

There must be exceptional circumstances preventing the use of competitive bidding and where the conditions for using direct procurement method as specified Reg 16(1)

The single consultant must be identified from a number of consultants able to provide the consultancy service. Reg 16(2) (a). The sole service consultant is identified due to the unique skills or knowledge of that consultant or where there is need for continuity service. Reg 16(2) (b)

The entity must pick the consultant from the pre-qualified list and where the entity does not have are qualified list, the entity will use

a) The register of providers of the authority

b) The recommendations of a competent authority or the pre-qualified providers of another procuring and disposing entity. Reg 16(3).

DISPOSAL.

S.1 of the PPDA , defines disposal as the divestiture of public assets including intellectual and proprietary rights and good will and any other rights of a procuring and disposing entity by any means, including sale, rental, lease, franchise, auction or any combination however classified;

The disposal process is defined as the successive stages in the disposal cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers and award of contract.

Methods of disposal.

S.85 (2) of PPDA requires that the choice of a procurement or disposal method must first be approved by the contracts committee.

Under S.95 (1) the methods of disposal of public assets include:

a) Public auction

b) Public bidding

c) Direct negotiations

d) Sale to public officers

e) Destruction of the assets

f) Conversion or classification of assets into another form for disposal by sale

g) Trade-in

h) Transfer to another procuring and disposing entity

i) Donation.

Public bidding

Regulation 4 of the PPDA (Disposal of public assets) Regs 2014 states that the method will be used where: the assets is located in a remote area, the asset has a geographically dispersed potentially market, the sale has end user or export restrictions, conditions need to be attached to the sale of the asset or post bid negotiations may be required.

Reg 5(3) requires the entity to solicit for bids to dispose of a public asset by public bidding by publishing an invitation notice to the public.

The invitation must be published in at least one newspaper of wide circulation and communicated through other means to potential bidders so as to increase competition. Reg 5(4)

The bidding documents must among others stipulate that the asset is sold on an 'as is where is' basis or the alternative basis for sale. Reg 5(7) (9).

The minimum bidding period is 15 working days. Reg 5(11) and the bid are evaluated using the 'price only' methodology. Reg 5(12).

Public auction.

It shall be where there is a large number of potential bidders for the asset: value of the asset is low, more than one asset is to be disposed of and the assets are at one location or an site auction is arranged to avoid transport costs. Reg 6(1)

The sale under this method must be at a reserve price. Reg 6(2)

The entity solicits for bids by publishing an invitation notice to the public Reg 7(3) in at least one newspaper of national circulation. Reg 7(4) and the notice displayed on the entity's notice board Reg 7(5).

The entity must appoint an auctioneer and handover the asset to them to conduct the auction on the entity's behalf. Reg 7(6).

The entity must allow at least 10 working days of the potential bidders to inspect the asset. The period is between the date of publication of notice and the date of the public auction. Reg 7(8).

Bidding is made orally at the auction Reg 7(9) and the auctioneer will announce the successful bidder who must immediately after the announcement pay at least 50% of the contract price. Reg 7(12) and the balance within 5 days. Reg 7 (13).

Direct negotiation

It's used where national security, public interest, health and safety issues, legal and human rights issues or environmental considerations are served. When the asset is sold to a particular bidder. Reg 9

The entity must obtain a valuation for the asset before the negotiations are conducted .Reg 10(3).

The entity solicits for bids by issuing bid documents .Reg 10(4).

The minimum bidding period for disposal by direct negotiations is 3 working days. Reg 10(6) and the bid are evaluated using a 'price only' methodology.

Sale to public officers.

It's used where: the assets are small in number or are of a low value and a sale to the public would not achieve value for money, the use of the asset would directly enhance the performance of the public officer in the execution of his/her duties within the entity. Reg 11(1) (a) and (b).

The sale is done by an independent agent Reg 11(2) and the asset is sold to the public officer for their personal use and not for business or commercial use. Reg 11(3).

The independent agent solicits bids by publication of a non-public invitation notice which is displayed within at least 5 PDEs which are freely and easily accessible by public officers and on the website of the authority. Reg 12(3).

The bidding period must not be less than 10 working days .Reg 12(11) of the bids are evaluated using the 'price only' methodology.

Destruction of the asset.

It's used where: national security, public interests, health and safety issues, legal and human rights issues or environmental considerations will be served and the public asset has no residual value and it cannot be transferred to another PDE, converted or classified into another form or disposed of by donation. Reg 13(a) and (b).

Conversion or classification.

Reg 15 (a) and (b) as in Reg 13(a) and (b) above.

Trade in

Pursuant to Reg 17(1) and (2). Its only used where the asset of the PDE will be upgraded in a convergent, economic and efficient way, by trading in a surplus asset of the entity to offset the purchase price of the new asset and shouldnot be used where competition and value for money will not be achieved in the procurement process.

Donation

Applicable where the entity cannot obtain payment for the asset using any of the other methods and neither can the asset be transferred. Reg 21 (a) and (b)

Gulf Africa Limited v National Imformation(Application 39 of 2024)Gulf Africa Limited challenged the National Information Technology Authority's decision to award a contract to Netcon Technologies Limited for the supply of 2,000devices. The Public Procurement and Disposal of Public Assets Appeals Tribunal issued an order requiring the Respondent to submit procurement documents for review, but the Respondent, citing confidentiality under World Bank procurement regulations, failed to comply. Despite multiple opportunities, the Respondent did not produce the requested documents. The Tribunal emphasized that court and tribunal orders are not negotiable and must be obeyed, urging counsel to never aid or encourage their clients to disobey court orders. As a result, the Tribunal, in absence of any lawful justification for disobedience, cancelled the procurement.

DISPOSAL CYCLE.

1. Accounting officer institutes a board of suvey.

   Reg 3(2)

- Identification of disposal items
- Determination of reverse price.

2. Preparation of disposal pan.

   Reg 2(1)

- Approval of the same by ministry of finance and if disposing strategic assets.

3. User department initiates disposal process.

   Reg 3(1)

- Preparation of statement of requirements.

4. PDU prepares bidding does

   This applies to disposal by public bidding and sale to public officers. Reg 5,6,7

5. Contracts committee approves disposal method ,bidding document and evaluation committee .Reg 3(1)

6. PDU advertises and invites bids .Reg 5(4)
7. PDU receives and opens bids
8. Evaluation of bids. Reg 5(12)
9. Contract committee reviews evaluation report.
10. Signing of contract
11. Contract management. Reg 5(14)

- Provider pays entity
- Entity hands over asset.

NEGOTIABLE INSTRUMENTS

The relevant law to look at includes the following;

Bills of Exchange Act Cap 281

The Contract Act Cap 284

The Civil Procedure Act Cap 282

The Civil Procedure Rules SI 71-1

Finance Act Cap 180

Financial Institutions Act 2/2004

Case law, Common law and doctrines of equity

The checklist worth noting includes the following

- Who are the parties to a bill?
- What is the capacity and authority of the parties?
- What is the effect of a forged signature in a bill?
- What are the rights and liabilities of the parties to a bill?
- What is the forum, procedure and documents in case a party wishes to institute an action on a bill?

The common document used to sustain an action is a specially endorsed plaint, supported by an affidavit under O 37 of the CPR SI 71-1.

A Negotiable instrument is a document that has a legal right attached to it. They provide an efficient means of facilitating commerce by affording a conveniebt and secure method of payment. (black's law dictionary 8th edition)

A bill of exchange is defined in section 2 of the Bills of exchange Act Cap 281 as an unconditional order in writing addressed by one person to another; signed by the person giving it, requiring the person to whom it is addressed to pay on demand at a fixed or determinate future time, a sum certain in money to or order of a specified person or to the bearer.

a) CHEQUES.

A Cheque is defined on the other hand in section 72(1) of the Bills of exchange Act as a bill drawn on a banker (drawer) payable on demand to the payee or drawer.

It must be noted that a bill is not invalid if it is not dated, does not specify value give, does not specify place of payment, antedated or postdated or bears a date on a Sunday.

Section 9 propounds that a bill is payable on demand if it is expressed to be payable on demand; or at sight or on presentation or in which no time for payment is expressed.

PARTIES TO A BILL

These include:

The drawer- who write the Cheque;

The drawee- bank at which the Cheque is to be cashed;

The Payee- person or institution that receives the money;

Endorser- person who writes out or draws the Cheque;

Endorsee- person to whom Cheque is written;

Section 75(1) bills of exchange act cap 281, a general crossing consists of two parallel transverse lines with words "and company" or any abbreviation thereof in between the lines. Or where two transverse lines either with or without the words "not negotiable."

It may consist of 2 transverese lines with words "and company/not negotiable."

Section 75(2) of the bills of exchange act, special crossing is where the cheque bears across the face an addition of the name of the banker and it may or maynot be accompanied by words "not negotiable."

Special crossing instructs the paying bank to pay the cheque to the bank whose name appears on the cheque and no one else.

A generally crossed cheque can be collected by any banker. A cheque crossed "not negotiable" is a signal to the bank not to pay the cheque other than in an account.

CAPACITY AND AUTHORITY OF PARTIES

Capacity of the parties is governed by the laws of contract. Section 22 of the Bills of Exchange Act provides that no person can be liable as a drawer, endorser or acceptor except that where that person signs a bill in a trade name, assumed name; he or she is liable on the bill.

It must be noted that by virtue of section 22(b) the signature of the name of the firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

Section 23 states that a forged or unauthorised signature is wholly inoperative unless the party against whom it is it is sought to enforce payment is precluded from setting up a forgery or want of authority.

It is provided for in section 24 that where the signature is obtained by procuration; it operates as notice that the agent has limited authority to sigh and the principal is only bound by such signature if the agent so signing was acting within the actual limits of his or her authority.

CONSIDERATION FOR A BILL

This is provided for in Section 26 and consideration is constituted by:-

- Any consideration sufficient to support a simple contract
- An antecedent debt or liability whether bill payable on demand or at a future time.

NEGOTIATION OF A BILL

Section 30 of the Act provides that a bill negotiated when transferred from a one person to another in such a manner as to constitute the transferee. It must be noted that If it is payable to the bearer, its negotiated by delivery; If it is payable to order; negotiated by endorsement of holder completed by delivery.

Section 30(4) provides that if the holder of a bill payable, transfers the bill for value without endorsing it, the transferor gives the transferee such title as the transferor acquires right to have endorsement of the transferor i.e.

- There must be a holder of a bill

- The bill should be payable with order
- The holder shall transfer without endorsing it
- Thereby rights of holder pass on the transferee

Section 31 (a) to (f) provides that for an endorsement to be valid, the following should be evident;

- It must be written on the bill and signed by the Endorser

- the endorsement should cover the entire bill

- if bill payable to order ; payee /endorsee wrongly designated or the name is mis- spelt , a bill is endorsed as he is described in it, adding if he thinks fit his / her proper signature

- in case of two or more endorsements on a bill, each endorsement is deemed to have been made in the order in which it appears

- an endorsement may be made in blank or special; it may also contain terms making it restrictive

HOLDER AND HIS DUTIES

A holder is defined as a person in possession of a bill; who the bank undertakes to pay. He has various rights on the bill as enunciated under section 37 of the Bill of Exchange Act as noted hereunder;

He has a right to sue in his or her name;

If he is a holder in due course, he holds the bill free from any defects in title of prior parties.

It his or her title is defective and he negotiates the bill to a holder in due course, such a holder obtains a good and complete title.

In addition, if the title is defective and he obtains payment; the person who pays him or her gets a valid discharge for the bill.

Duties of a holder are under section 38 of the Bill of Exchange Act; and are discussed hereunder;

- He or she has a duty to present the bill for acceptance if the bill is payable after sight.

- He or she has a duty to present the bill if it is payable after sight within a reasonable time and failure to do so discharges the drawer and or endorsers.

Section 29(2) bills of exchange act, every holder of a bill is presumed to be a holder in due course

HOLDER IN DUE COURSE.

Section 28 of the Bills of Exchange Act defines a holder in due course as a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:

(1) He becomes holder of the bill before it was overdue and without notice that it

was previously dishonoured.

(2) He or she took the bill in good faith and for value and at the time of negotiating the bill; he had no notice of any defect in the title of the person who negotiated it.

It must be noted that a holder who derives title from a holder in due course and who is not himself a party to any fraud or illegality affecting it has all the rights of the holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Liability on a forged signature on a mandate

The general rule under section 23 of the bills of exchange act, forged signatures on a bill of exchange is wholly inoperative and no right to retain the bill or to give a discharge therefore or to enforce payment thereof against any party thereto can be acquired through or under that forged signature.

Exceptions to the rule.

a) FICTITIOUS PAYEE OR NON-EXISTENT PERSON.

Section 6(3) of the bills of exchange act, provides that where the payee is fictitious or non-existing , the bill may be treated as payable to the bearer.

BANK OF ENGLAND V VAGLIAMO BROTHERS (1891) AC 107, court held that a cheque is treated as payable to bearer where the person named as payee or to whose order it is payable on the face of it is a real person but was never intended to have rights under the bill. The word fictitious was defined to mean counterfeit i.e the name of the payee is written on the cheque as a matter of pretense

b) ESTOPPEL.

Section 23 bills of exchange act provides an exception where a customer is precluded from setting up the forgery or want of authority

In NIGERIA ADVERTISING SERVICE LIMITED V UNITED BANK OF AFRICA LIMITED (1968) 1 ALR Comm.6, Court noted that a customer who knows that his signature is being forged on cheques has a duty to his or her bank to inform it of such fact and if he or she fails to caary out this duty,

he or she will be estopped from contending against the bank that payment shouldnot have been made on the forged cheques.

Money had and received- cause of action.

In order for money paid by mistake to be recoverable, the following conditions must apply;

a) Payment to the payee must not be made under mandate from the customer

b) The mistake must be one of fact not law

c) The mistake must cause the payment

The established principle of law of liability of money had and received is based on the principle of unjust enrichment.

In the case of PREMCHANDRA SHENOI AND SHIVAM MKP V MAXIMOV OLEG PETROVICH S.C.C.A NO.9/2003, Where money is received from another in circumstances such as described, the law reagrds the money as having been received to the use of that other person. In default, on the promise for which the money was received, the law imposes on the receiver an obligation to make payment to the one who paid.

In BANK OF UGANDA V CLIVE MUTISI AND OTHERS H.C.C.S NO.152 OF 2007, money which is paid by one person to another rightfuly belongs to the person who paid where there is failure of consideration. Liability is based on unjust enrichment or benefit and its applicable whenever the defendant has received money which injustice and equity belongs to the plaintiff.

Combining accounts

Its an accounting situation whereby a banker might treat two or more accounts opened between himself and the customer as though they were one account entirely under his control. This done because the customer might remove assets from one account to meet the deficiencies in the other.

In NATIONAL WESTMINISTER BANK LTD V HALESOWEN PRESSWORK AND ASSEMBLIES LTD (1972) AC 785, The house of lords held unanimously that a banker, has in the absence of agreement express or implied to the contrary a long established common law right to combine accounts of the customer.

IN NKILOMA V NBC HOLDINGS CORPORATION LTD (2000) 1 E.A 187, where there was no agreement to keep funds separate, a bank was not obliged to give notice to the customer before combining accounts. Furthermore, where a customer was aware of his commitment to a bankbut deliberately avoided meeting them, then the bank is entitled to combine accounts without notice even where there was an agreement not to do so.

EXCEPTIONS TO COMBINATION OF ACCOUNTS.

a) Where a fund is deposited for a special purpose of which the bank has knowledge. In the case of BARCLAYS BANK LTD V QUISTCLOSE INVESTMENTS LTD (1968) UKHL 4, is an authority for the proposition that money in accounts that is held under a trust is not liable to combination

b) Account opened by a customer in a different capacity. For example client account and firm account.

c) An express agreement to the contrary.

d) Money held on a loan account

SET OFF

It's a situation where one account is used to meet the deficiencies of the other account.

In GARNETT V MCKEWAN (1872) L.R. 8. EX.10, a customer drew cheques against his credit balance at one branch of a bank. At another branch he was indebted to an amount almost as great as the credit balance at the first and the bank without notice to him combined the balances and dishonored his cheques. The court held that they had a right to do so.

LIABILITY OF PARTIES

Liability of the parties is covered in sections 53- 55 of the Bills of Exchange Act thus;

(1) Section 53 provides that a drawer who does not accept bill to operate as an assignment of funds in the hands of the drawee is not liable on the instrument.

(2) Secondly, Section 54 provides that the acceptor will have liability in light of the following:

a. Where he engages to pay the bill according to its tenure.

b. He is precluded from denying to the holder in due course:

i. The existence of the drawer, genuiness of the signature and capacity and authority to draw the bill.

ii. Capacity of drawer to endorse a bill payable to the drawer's order.

iii. Existence of the payee and his capacity to endorse the bill in case of payment to a third person.

(3) Thirdly, Section 55 provides that the drawer or endorser;

a. Engages that on presentment, the bill is to be paid and if dishonored the holder can be compensated.

b. Is precluded from denying to the holder in due course, the existence of the payee.

c. Is precluded from denying to the holder in due course, the Guinness of the drawer's signature and previous endorsements.

d. Is precluded from denying to the subsequent endorsee that the bill at the time of his or her endorsement was valid and subsisting.

(4) Section 56 provides that If a person signs the bill other than as drawer, acceptor, he or she thereby incurs the liabilities of an endorser to a holder in due course.

DISCHARGE OF A BILL

A bill is discharged in the following ways;

(1) By payment in due course by the drawee or on his behalf, under section 58

(2) If it is paid by the drawer to the order of a third party; the bill is not discharged but the drawer may enforce payment of it against the acceptor.

(3) When the acceptor of a bill becomes a holder of it after the date of maturity, the bill is discharged.

(4) When the holder, after maturity absolutely and unconditionally renounces the rights against the acceptor, the bill is discharged.

(5) When a bill is intentionally cancelled by the holder or his agent and cancellation is apparent on the bill.

b) PROMISSORY NOTES.

Section 82 (1) of the bills of exchange act, defines a promissory note as an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed time, a sum certain in money at a specified person or bearer.

In LOMBARD BANKING (U) LTD V VITHALDAS GORDHAMDAS AND ANOTHER (1960) 1 E.A 345, the court held that no particular form of words is essential to the validity of the note provided the requirements of the provision are fulfilled. It must show the intention to make a note.

c) TREASURY HILL

It is a short term borrowing instrument issued by the government to raise money on short-term basis.

d) INTEREST WARRANTS.

Its an instrument that demands payment of interest due on notes or debts.

e) DIVIDEND WARRANT

Cash payments off a company's earnings to a class of shareholders.

f) A CERTIFICATE OF DEPOSIT.

This a product offered by financial institutions and banks that allows customers to deposit and leave untouched a certain amount for a fixed period and in return, benefit from a significantly high interest rate, these deposits are repayable on demand and withdrawal by cheque , order or other means.

BANKING AND FINANCE.

What is a bank?

Banks are financial institutions according to the financial institutions act, CAP 57.

S.2 of the FIA defines a financial institution to mean a company licensed to carry on or conduct financial institutions business in Uganda and includes a commercial bank, merchant bank, mortgage bank, post office savings bank, credit institutions, a building society, an acceptance house, a discount house, a finance house, an Islamic financial institution or any institution which by regulation is classified as a financial institution by the central bank.

SECTION 2 further defines what amounts to financial business and this interlia includes:

a) acceptance of deposits

b) Issue of deposit substitutes

c) Lending or extending credit on deposits engaging in foreign exchange business, issuing and administering means of payment, including credit cards, traveler's cheques and bankers drafts, providing money transmission services among others.

The section further defines a bank to mean any company licensed to carry on financial institutions business as its principal business as specified in the second schedule to this act and includes all branches and offices of that company in Uganda.

This definition outlaws most of the prior definitions in the previous acts by virtual of S.133 of the FIA that gives precedent to the provisions of the act in cases of conflict. This includes definitions S.1 of Bills of exchange act and the evidence (banker's book) act.

Characteristics of Banks.

These were laid down in the English decision of UNITED DOMINIONS TRUST LTD V KIRKWOOD (1966) 2 QB 431. The brief facts are that united dominions trust was a finance company which brought an action to recover payment of a loan which it had made to a dealer. The dealer defended the claim for repayment on the basis that the united dominion trust was not registered under the money lenders act 1900 and hence the loan contract was unlawful. United dominions trust claimed that it was

exempt under S.6 (d) of the act because it conducted "banking business" in support of this it argued that it was recognized in the city as a bank, it enjoyed certain privileges given only to banks and it had a cleaning number.

Lord denning in answer to the issue as to whether united dominions trust ltd was a banker held that normally a company would only constitute a bank if undertook certain activities:

1. The acceptance of money from and the collection of cheques for customers and the placing of the funds to the customer's credit.

2. Honoring cheques or orders drawn on the bank by their customers when presented for payment and the debiting of the customers' accounts accordingly.

3. Keeping some form of current or running accounts for entries of customers credit and debits.

Lord diplock further stated that whilst acceptance of deposits was a necessary condition of being a bank, it was not of itself a sufficient condition. An institution cannot be a bank unless it opens on behalf of customers' current accounts which are operable by cheque and into which customers can pay cheques and other financial instruments for collection.

Who is a customer.

There are two parameters for one to qualify as a customer;

a) Having an account with the bank

One becomes a customer if he or she opens an account with the condition where the relationship is not one which duration is of essence. Guideline 3 distinguish between a consumer and a customer that is a customer is an individual or a firm employing less than 10 individuals who are using or intend to use the services of a financial institution.

This is evident from a number of decisions e.g. LADBROKE V TODD (1914)111 LJ43,where the bank opened an account for a thief who as first transaction handed to the bank for collection a cheque which he had stolen. The court had to decide whether the thief was a customer of the bank or not. It was contended that the banker-customer relationship could only be established over a period of time, so the thief was not a customer. Court held that a person need not have a series of dealings with the bank before he gets the status of a customer. The person becomes a customer at the moment the bank receives money or a cheque and agrees to open an account for the person in the bank.

b) Intention or agreement to open an account.

In WOODS V MARTIN BANK LTD (1958)3 ALL ER 166, court held that a mere likelihood that an account will be opened is enough to make a person a customer provided that the bank agreed to offer services to such a person.

CONSUMER.

Guideline 3 of the bank of Uganda financial consumer protection guidelines 2011, defines a consumer to mean an individual or a small firm who uuses , has used or is or maybe contemplating using, any of the

products or services prvided by a financial services provider. Guideline 5, key principles include; fairness, reliability and transparency.

NATURE OF THE RELATIONSHIP BETWEEN A BANK AND THE CUSTOMER.

1. It is contractual in nature.

The supreme court of Uganda in ESSO PETROLEUM V UGANDA COMMERCIAL BANK S.C.C.A 14/1992, reaffirmed the principle that the relationship of a banker and a customer is contractual in nature. The obligations under the contract were laid down in JOACHIMSON V SWISS BANK CORPORATION (1921) 3 KB 110.

2. Debtor-creditor relationship

In FOLEY V HILL (1843-60) ALL ER Rep 16, the HOL held that the relationship between a banker and the customer is one of a debtor and creditor. The court held that a banker does not hold the sums in a bank account on trust for its customers. Instead the relationship is that of debtor and creditor. When the customer deposits money in the account, it becomes the banks money and the bank has an obligation to repay an equivalent sum (and any agreed interest) to the customer on demand.

The demand is a pre-requisite before the bank pays back the sums. IN JOANCHIMSON V SUITS BANK CORPORATION (1921) 3 KB 110, court held that a customer does not have a right of action against its bank for repayment of sums until the customer makes a demand. For purposes of limitation periods, the time does not run until a demand for repayment must be made at the branch of bank where the account is kept. This position in light of the advance in banking is not applicable.

Lord Atkin further emphasized that there is only one contract made between a banker and its customer and that the terms of the contract involve obligations on both sides and require careful examination. The obligations include the following

a) That the bank undertakes to receive money and to collect bills for its customers account

b) The proceeds so received are not held in trust for the customer but the bank borrows the same and undertakes to repay them within the ordinary course of business of the bank.

c) It's a term of this contract that a bank shall not cease to do business with a customer without giving the customer reasonable notice.

d) Customer undertakes to execute his or her written orders in such a way as not to mislead the bank or facilitate forgeries.

e) Its necessary a term of this contract that the bank is not liable to pay the customer the full amount of the balance on their account except upon demand. (Demand is a prerequisite upon payment).

Duties under the banker-customer relationship.

1. Duties of the customer.

a) Duty to act with reasonable care in the running of the account not to faciliatate forgeries. Some of the careless conduct may include: issuing undated cheques, issuing open cheques, writing sums only in figures and not in words, disclosing their pins to other people.

In TAI HING COTTON MILL LTD V LIU CHONG HING BANK (1986) AC 80, court held that, the relationship between banker and customer is principally a contractual one between debtor and creditor. As between the banker and his customer, the risk of loss through forgery of the customer's signature falls on the banker unless negligence or other disentitling conduct of the customers precludes the customers claim. No wider duty should be imposed on the customer beyond a duty not to act in a way that facilitates forgery and to make the bank aware of any known forgeries occurred. "The business of banking is the business not of the customer but of the bank. They offer a service which is to honor their customer's cheques when drawn upon an account in credit or within an agreed overdraft limit. If they pay out upon cheques which are not his, they are acting outside their mandate and cannot plead his authority in justification of their debt to his account. This is a risk of the service which it is their business to affect."

IN NIGERIA ADVERTISING SERVICES LTD V UNITED BANK OF AFRICA (1968)1 A.l.R comm 6, court held that a bank customer who knows that his or her signature I being forged has a duty to inform the bank or be en-stopped from covering otherwise.

b) Disclosure of forgeries.

The customer has a duty to disclose any forgeries which come to their attention. In GREENWOOD V MARTINS BANKLTD (1933) AC 51, greenwood opened a cheque account with martin's bank. The wife forged his signatures and drew cheques on the account in her favor. Mr. Greenwood found out 11 months later but did not take any action allowing for 7 months to pass by since he got knowledge of the forgeries. The wife committed suicide and green wood claimed the bank could not debit his account for the cheques.

The HOL held that a banks customer has a duty to inform the bank of any forgery of a cheque purportedly drawn on the account as soon as he, the customer, becomes aware of it. The husband having failed to disclose that his signature had been forged by his wife was estopped from asserting the forgery against his bank.

c) Demand before repayment is made.

Refer to Joachimson v swiss bank corporation (1921)3 kb 110.

2. Duties of the bank to customer.

a) Duty to ensure that the money on the account is not lost carelessly. In STANBIC BANK V UGANDA CROCS LIMITED.

b) Duty to honour the customers mandate.

The bank ought to honor the mandates provided;

- They are drawn in proper form
- There is sufficient money or funds
- They are presented during banking hours
- There is no legal cause or service of garnishee order.

In UNITED DOMINIONS TRUST LTD V KIRKWOOD, the duty of the banker to carryout the mandates of the customer.

c) Duty to make reference when customer is opening up account.

This duty is codified under Reg 7 of the FI (A.M.L) regulations, 2010 enacted under the FIA.

It is also further codified under Regs. 19-27 of the anti-money laundering regulations 2015 enacted under the anti-money laundering act 2013 (as amended).

d) Duty of secrecy or confidentiality.

In TOURNIER V NATIONAL PROVINCIAL AND UNION BANK OF ENGLAND (1924) 1 KB 461,It is asserted with confidence that the duty of non-disclosure is a legal one arising out contract and the duty is not absolute but qualified. Lord atkin said that the obligation of secrecy must extend atleast to all transactions that go through the account and to the securities, if any given in respect of the account, it must extend beyond the period when the account is closed or ceases to be an active account.

There are exceptions to the duty and these include:

a) Disclosure under compulsion of e.g. under S.6 of the evidence (bankers bank) act cap 9. Also section 41 of the anti-corruption act and S.131(1) of income act

b) Where there is a duty to the public to disclose. S.28 of the leadership code act

c) Where the interest of the bank requires disclosure e.g. to the guarantor when the bank wishes to recover its dues. Sunderland v Barclays bank (1958) 5 l d a b 163, bank dishonored cheques principally, because account had insufficient balances. Husband interceded and he was told that most cheques were drawn in favor of bookmakers. Wife sued for breach of confidence. Court held that the disclosure interest of the bank.

d) Disclosure by express or implied consent of the customer. In the case of SUNDERLAND V BARCLAYS BANK LTD (938) 5 LDAB 163, the wife gave consent (implied) to the bank to disclose her insufficient balance to the husband, which arose out of cheques drawn in respect of gambling debts.
Should be in writing from the customer.

e) Inquiries of other banks.

The above exceptions were laid down in the case of TOURNIER V NATIONAL PROVINCIAL AND UNION BANK OF ENGLAND (1924)1 KB 461. In this case the bank disclosed to its customer's employer the fact that one of the customer's paid cheques was drawn in favor of a bookmakers account. As a result, the customer's employer did not renew his contract with the customer. The COA held that confidentiality was an implied term in the customer's contract and that any breach could give rise to liability in damages if loss result.

AGENCY BANKING

Regulation 4 of the financial institutions (agent banking) regulations 2017,

- Agent banking means the conduct by a person of financial institution business on behalf a financial institution as maybe approved by the central bank.

- Principal means a financial institution that contracts an agent to do any act for him or her to represent him or her in dealing with a third party.

- Agent means a person contracted by a financial institution to provide financial institution business on behalf of the financial institution.

- Agency banking is governed by the principal-agent relationship.

Approval of agent banking

- Regulation 5 (1) financial institutions (agent banking) regulations 2017, conducting agent banking is subject to written approval from the central bank

- Regulation 5 (2), application for written approval shall be made in form 1 specified in schedule 1.

- Regulation 5 (3), an application shall provide the following info; the strategy for agent banking, proposed tech platform, agent selection due diligence policy and procedure and service intended to be provided and other policies and procedures for the provision of services through agents.

- Regulation 5 (4), the application to be accompanied with the following documents; draft agency agreement and a risk management framework for agent banking .

- Regulation 6(1), persons eligible to be agents include; a sole proprietorship, a partnership; a company, a cooperative society, a microfinance institution or an entity approved by the central bank.

- Regulation 6(2), a financial institution shall not conduct agent banking with its employees, affiliates or associates.

OBLIGATIONS OF THE PRINCIPAL/ FINANCIAL INSTITUTION

- Regulation 9(2) financial institutions(agent banking) regulations 2017, the obligations of the bank/ financial institution include;

a) Assign each agent or agent outlet a unique identification number

b) Assign each agent to a specific parent branch

c) Display a list of agents respective parent branch

d) Ensure that technological infrastructure runs effectively

e) Ensure that agents have appropriate equipement

f) Ensure that agents receive appropriate training

g) Ensure appropriate management and supervision of all agents

h) Set limits and moni for compliance

i) Compensate agents for services rendered.

REQUIREMENT OF AGENCY AGREEMENT.

- Regulation 10(2), mandatory requirement of a valid agency agreement

- Regulation 11(1), an agency agreement shall not prohibit an agent from conducting agent banking with other financial institutions.

CONSUMER PROTECTION

Regulation 17(1), a financial institution A financial institution granted approval to conduct agent banking under these Regulation shall—

(a) put in place adequate policies and procedures to address financial consumer protection; and

(b) ensure that all it's agents conduct business in accordance with consumer protection requirements applicable to the financial institution.

Permissible activity or obligation of the agent.

Regulation 14, provides for Permissible activities

(1) An agent may provide any of the following services in conducting agent banking—

(a) the collection and forwarding of information and supporting documents for account opening or applications for payment instruments;

(b) cash deposit and cash withdrawal;

(c) the payment services including bill payments;

(d) money transfers;

(e) facilitating disbursement and repayment of loans;

(f) the receipt and forwarding of documents in relation to loans and leases and any other permitted products;

(g) payment of retirement and social benefits;

(h) account balance enquiry;

(i) the provision of account statements;

(j) the provision of a communication and distribution channel for the institution;

(k) any other activity as the Central Bank may approve.

PROHIBITED ACTIVITIES

Regulation 15, An agent shall not—

(a) offer financial institution business on its own accord, except where it is the agent's principal business as at the time of engagement;

(b) continue with the agency banking where it has a proven criminal record involving fraud, dishonesty, integrity or any other financial impropriety;

(c) provide, render or hold out to be providing or rendering any banking service which is not specifically permitted in the agency agreement;

(d) operate or carry out a transaction when the system is down or when there is any communication failure in the system, or in the customer's absence;

(e) carry out a transaction when a system generated receipt or acknowledgement of the transaction cannot be generated;

(f) charge fees directly to customers;

(g) undertake cheque deposits or encashment of cheques;

(h) distribute cheque books;

(i) distribute debit cards, credit cards or PIN mailers;

(j) conduct foreign exchange transactions;

(k) subcontract other persons to provide agency banking services;

(l) provide agency banking services at a location other than the physical address of the agent;

(m) open accounts, grant loans or advances or carry out any appraisal function for purposes of opening an account or granting of a loan or any other facility except as may be permitted by any other written law to which the agent is subject; or

(n) be a guarantor to the financial institution's clients.

(2) A financial institution shall stop all agent banking relations with it's agent, if in the opinion of the financial institution, the agent's licenced business has ceased or significantly diminished;

REMEDIAL MEASURES

Section 82 (1) of the financial institutions act cap 57, power of the bank of Uganda to intervene where affairs are being conducted in a manner detrimental to the interest of the depositors and may make the following orders;

- Order in writing that remedial action is taken to ensure compliance
- Issue directions regarding measures to be taken to improve the management or financial soundness
- Require the directors or management to execute an agreement concerning the implementation of orders.
- Perform or appoint a special agent to perform a special examination to determine the financial condition.

Section 82 (2) FIA CAP 57 , where the financial institution refuses or neglects to comply with an order or directive, the central bank may;

- Initiate legally binding cease and desist order
- Remove or suspend any person from management
- Impose penalties on the offending member
- Appoint a person suitably qualified to advise and assist the institution or manage the affairs
- Require a reconstitution of the board of directors
- Withhold approval of new branches
- Require additional of capital
- Impose any sanction they deem appropriate in the circumstances.

Types of accounts.

There are two types of accounts.

a) Demand deposits

b) Time deposits.

a) Demand deposits

Section 2 of FIA defines these to mean deposits repayable on demand and withdrawable by cheques order or any other means. These are generally referred to a current accounts/mercantile account/running account.

Current account.

Used regularly by clients for their financial transactions to discharge personal liability.

In FOLEY V HILL(1848)2 HLC 28, it was held that when an amount is paid to a customer's current account, be it by means of cash or a cheque payable ,the sum in question is forthwith regarded as paid rent by the customer to the bank.

The amount on the account is recoverable on demand and the demand is made by drawing of cheque or by ATM.

The bank however is not obligated to honor a demand where:

I. The customers balance is inadequate except if the bank agreed to grant the customer an overdraft. BANK OF NEW SOUTH WALES V LOIN (1954) AC 135

II. The demand is presented during ordinary business hours.

Features of a current account.

- Non interest bank account
- Minimum balance to be maintained
- Penalty may be charged for falling below the minimum balance
- Charges interest on the short term funds borrowed

- Continuing nature with no fixed period to hold the account
- No restriction on number of withdraws.

Overdrafts in current accounts.

A customer may be granted an overdraft. In ODUMOSU V AFRICAN CONTINENTAL BANK LTD 1976(1) ALR COMM. 53, court stated that drawing a cheque or accepting bill payable at the bankers where there are no sufficient funds to meet it amounts to a request for an overdraft.

An overdraft is payable on demand only. Therefore it is an implied term in the relationship between a banker and its customer that where:

a) Over draft facilitates are provided to the customer

b) Money is standing to the credit of the customer on his or her current account and in the absence of a special arrangement, a demand by the bank is a necessary pre requisite to an action by the other for money lent.

OVER –CREDITING OF ACCOUNT.

If a customer's account is over credited, if the customer honestly believes that the money is his or hers and alters his or her position in reliance on the statement, then the banker is estopped from recovering money from the customer. IN LIOYDS BANK LTD V BROOKS (1950) 72 JIB 114, it was held that there was duty on the banker not to over credit the customer's account and there is a duty on the banker not to induce the customer by representation, contained in the statements of account, to draw money from the account to which the customer is not entitled. The amount credited to the customer's account will be treated as being due to him. But the estoppel only operates after the customer has acted upon the representation.

OVER- DEBITING.

Usually occurs as a result of fraud or forgeries. In KEPITINGALLA RUBBER ESTATES LTD V NATIONAL BANKOF INDIA LTD (1909) 2 K.B 1010, the secretary of the company forged cheques drawn on a company's account over a period of two months. Statements had been given to the company but the directors had not examined them. The court held that the bank could not charge the company with amount paid out on forged cheques and the plaintiffs were under no duty to organize their business in such a way that forgeries of cheques could not take place.

Lord denning in TAI HING COTTON MILL LTD, noted that the duty to organize its business to minimize forgeries and fraud is on the bank. (Read holding under duty)

Also look at STANBIC BANK V UGANDA CROCOS LIMITED.

Interest.

A claim of interest by the bank according to the author of Paget's law of banking must be justified by the customer's acquiescence in the charging of interests.

Set off

It is a legal right according to which a debtor will take into account a debt owing to him by a creditor when he is required to settle the debt. In HALESOWEN PRESSWORK AND ASSEMBLIES LTD V WEST MINISTER BANK, lord cross stated where there have been mutual dealings between the debtor and someone who claims to prove as a creditor an account of mutual dealings shall be taken there be setoff of the sums mutually owing and it is only the balance that the creditor is to pay or prove for as the case may be.

In MUTTON V PEAT (1902)2 CH 79, stock brokers had a loan account and a current account with their bank. When they went bankrupt their current account was in credit and loan account in debit. It was held that the two accounts should be treated as one so they could use the securities to satisfy the differences between the two accounts. The court favored more of having the accounts combined/consolidated which is a right a bank has.

Saving accounts.

Type of account which allows you to deposit money, keep it safe and withdraw while earning interests.

Features

- Main objective of saving account is to promote savings
- No restriction on the number and amount of deposits
- Withdrawals are allowed subject to certain restrictions
- Money can be withdrawn by withdrawal ship of the respective bank
- Rate of interest payable is very nominal usually
- Minimum amount must be maintained
- No loan facility is provided against saving account

Withdrawal slip.

Account holders access their funds through a withdrawal slip. It is obtained out the bank, filled in and handed over to the teller, upon which the account specified is given to the customer.

Salient features.

- Date
- Account number
- Name of account holder (only drawn in that name)
- Amount to be withdrawn in number and words
- Signature.

CHEQUES AND OTHER NEGOTIABLE INSTRUMENTS.

S.72 of the bills of exchange act (BEA), defines a cheque to mean a bill of exchange frown on a banker, payable on demand.

S.2 (1) of BEA defines a bill of exchange as an unconditional order in writing addressed by one person to another, signed by the person giving it requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to the order or to a specified person or to the bearer.

From the reading of S.2 together with S.72(1) of BEA, a cheque is an unconditional order in writing drawn by one person upon another who is a banker to pay on demand a sum certain in money to or to the order of a specified person.

UNCONDITIONAL ORDER

IN BAVINS JNR AND SIMS V LONDON AND SOUTH WESTERN BANL LTD (1899) 81 L.T 655, an instrument which was in the form of a cheque but with the order followed by the words provided the receipt form at the foot thereof is duly signed. The court held that the receipt requirement was a condition which made the instrument not a cheque.

Parties.

1. Drawer: a person who draws a cheque

2. Drawee bank : a banker on whom the cheque is drawn

3. Payee: a person who is being paid. In certain instances there is no payee and so its payable to the bearer. S.6 (1) of BEA, provides that where a bill is not payable to the bearer, the payee must be named or otherwise indicated with reasonable certainty.

S.2 (4) of BEA, cheque without a date is not invalid.

Payable on demand.

A cheque must be payable on demand, however modern cheque forms rarely have the words 'on demand'. This is remedied however by S.9 of BEA which provides that a bill is payable on demand which is expressed to be payable on demand or at sight or on presentation or in which no time for payment is expressed.

INCHOATE CHEQUES.

S.19 of BEA deals with these. They arise were a drawer signs the cheque and arise were a drawer signs the cheque and leaves another person to complete it.

The instrument is lacking in some material particular and it's the holder to fill it up within a reasonable time and reasonable time is a questipn of fact. It must also be filled within the scope of authority given.

A HOLDER

S.1 of BEA defines a holder to mean the payee or endorsee of a bill or note who is in possession of it, or the bearer of a bill/note. Under S.37 (a) of BEA, holder can sue on the bill in their name. under S.33(4) of BEA, when a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing above the endorsers signature a direction to pay the cheque to or to the order of himself or herself some other person.

S.76 (2) where a cheque is uncrossed, the holder may cross it generally or specially.

S.76 (3) where a cheque is crossed generally, the holder may cross it specially.

S.76 (4) where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

A holder of a cheque can present it for payment at the drawee bank or present through his or her bank for collection if the cheque is crossed.

A holder in due course.

S.28 (1) of BEA defines a holder in due course as a holder who has taken a bill, complete and regular on the face of it, under the following conditions:

a) They became the holder before it was overdue and without notice it had been previously dishonored

b) That they took the bill in good faith

c) That they took the bill for value

d) At the time the bill was negotiated to him/her they had no notice of any defect in title of the person who negotiated it.

A) holder

Defined in S.1 of BEA. A payee cannot be a holder in due course. In RE JONES LTD V ARING AND GILLOW (1926) A.C .670, respondents contended they were holders in due course and entitled to proceeds of a cheque. The court held that the expression holder in due course does not include the original payee of a cheque.

S.28 (1) limits the scope of a holder in due course to a person to whom the cheque has been negotiated.

b) Bill must be taken complete and regular on the face of it.

Incomplete means that there is some material details missing e.g. names of payee, amount payable etc.

A cheque is regular on the fact of it whenever it is such as not to give rise to any doubt that it is the endorsement of the payee. S.28 of BEA is instructive.

c) Cheque was not overdue.

Under S.35 (3) of BEA, a cheque is payable on demand and will be deemed overdue when it appears on the face of it to have been in circulation for unreasonable length of time.

According to the bank of Uganda clearing rules, a cheque is valid for a period of six months from the date of issue.

d) Good faith and value

Per S.89 of the BEA, a thing is deemed to be done in good faith where it is in fact done honestly whether done negligently or not.

S.1 of BEA defines value to mean valuable consideration. Under S.26 (1) (a), valuable consideration sufficient for a cheque maybe constituted by any consideration sufficient to support a simple contract. As per S.26 (2), where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and the parties to the bill who became parties prior to that time.

In METALIMPEX V A.G LEVERITIS AND CO (NIGERIA) LTD (1976)1ALR COMM.20, court stated that a bill of exchange and promissory notes are presumed to be supported by valuable consideration and a party who alleges want of consideration therefore must prove.

e) No notice of defect in title.

S.29 (2) of BEA provides that in particular the title of a person who negotiates a bill is defective within the meaning of the act, when he/she obtained the bill or acceptance thereof by fraud, duress or force of fear or other unlawful means or for an illegal consideration or when he/she negotiates in breach of faith or under such circumstances as to amount to fraud.

Deriving title from a holder in due course.

Under S.28 (3) of BEA, a holder who derives his/her title to a bill through a holder in due course (whether for value or not) and he/herself aint a party to any fraud or illegality affecting it, has all rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Presumption as to holding in due course.

Under S.29 (2) of BEA, every holder of a bill is primafacie deemed to be a holder in due course. In HASSANALI ISSA AND CO V JEVAJ PRODUCE SHOP 1967(2) ALR COMM.64, the court stated that under S.29 (2), a holder of a bill is prima facie deemed to be a holder in due course but that, of course, is a presumption of fact which may be rebutted. It may e.g. be shown that no consideration was given, in which event the p/f would not be able to succeed on the cheque.

SUMMARY ON PROTECTION ENJOYED BY A HOLDER IN DUE COURSE.

1. S.37(b) ; holds the bill free from any defect
2. S.37(c) (I): good and complete title to the bill where holder has a defective title.
3. S.20(2) : unauthorized delivery will not affect a holder in due course
4. S.28(3): holder in due course can pass good tittle with all rights to a holder
5. S.11(b): is protected from a wrong date on a bill
6. S.19 (2): an inchoate instrument converted into a bill negotiated to a holder in due course is valid.
7. S.35 (5): a holder in due course is not affected with a dishonored overdue bill.
8. S.47 (a): a holder in due course's rights are not prejudiced by omission of notice of dishonor.
9. S.53(b): the acceptor is precluded from denying a holder in due course

10. S.54(1)(b) : drawer is precluded from denying a holder in due course

11. S.54(2)(b): endorser is precluded from denying a holder in due course

12. S.55: a person who signs a bill incurs liabilities of an endorser to a holder in due course

13. S.63: a holder in due course is not affected by alteration of a bill.

LIABILITY OF PARTIES' TO A CHEQUE.

a) Drawer

Under S.54(1)(a), a drawer of a cheque by drawing it engages that on due presentation it shall be paid according to its character and if dishonored ,he or she will compensate the holder or any endorser who is compelled to pay on it as long as the requisite proceedings on dishonor are duly taken.

However the drawer may limit liability under S.15 (a) by inserting the words "without recourse to me" or "san recours."

b) Endorsers liability

Under S.54(2)(a), the endorser of a bill by endorsing it engages that on due presentation, it shall be accepted and paid according to its tenor and that if is dishonored he or she will compensate the holder or a subsequent endorser who is compelled to pay it, provided the requisite proceedings on dishonor are duly taken and under S.54(2)(c) is precluded from denying to his or her immediate or a subsequent endorsee that the bill was at the time of his/her endorsement a valid and subsisting bill and that he/she had a good title to it.

Under S.15 (a) an endorser may add an express stipulation negating or limiting his or her own liability to the holder.

c) Transferor by delivery

Under S.57 (1), where a holder of a bill payable to bearer negotiates it by delivery without endorsing it he is called a "transferor by delivery" and according to S.57 (2) such transferor by delivery is not liable on the cheque.

However S.57 (3) provides that such person who negotiates a bill thereby warrants to his or her immediate transferee, being a holder of value

a) That the bill is what it purports to be

b) That he or she has a right to transfer it

c) That at the time of transfer, he or she is not aware of any fact which renders it valueless.

A banks liability is enhanced on account of acting negligently. MAKAU NAIRUBA MABEL V CRANE BANK H.C.C.S No. 380 of 2009.

d) Drawee.

1) If it pays on a forged mandate it is liable.

2) Paying a 3rd party cheque immediately violates banking practice, duty of care and the Uganda clearing house rules and procedure.

Defenses to a claim on a cheque.

The main defenses to claims on a cheque are largely to a defense on a suit in contract. S.20 (1) talks of every contract on a bill which means that the relationship of the parties is contractual.

1. Failure or absence of consideration.

S.26 codifies the common law rules relating to valuable consideration. Due to the presumption of valuable consideration under S.29 (1), the defense has the duty to rebut the presumption.

In STERLING PRODUCTS (NIGERIA) LTD V DINKPA (1975) (2) ALR COMM.75, the plaintiff brought an action against the defendant for the price. The court said that as regard the claim on a cheque this had to fail because the evidence showed that there was total failure of consideration. The goods for which the cheque was issued were returned to the plaintiff in the same condition as they were delivered to the defendant. There was therefore an entire failure of consideration and this is a valid defense to an action on a bill of exchange.

2. Failure to present the cheque in proper time.

S.44 (3) (b) of BEA stipulates that where the bill is payable on demand, presentment must be within a reasonable time. Should ideally be presented within six months.

However under S.73 (a) where a cheque is not presented for payment within a reasonable time of its issue, the drawer will only be discharged to the extent of any actual damage which he or she suffers as a result of such failure.

In ESSO PETROLEUM (UGANDA) LTD V UCB, CIVIL APPEAL NO.14/1192, the court stated that if a banker /as an agent for collection) fails to present a cheque within a reasonable time after it reaches it, it is liable to the customer for loss arising from the delay, the drawer or endorsee if any, is discharged to extent of damage he/she may have suffered by the failure to pay the cheque by the bank on which the cheque was drawn.

3. Failure to give notice of dishonor.

The act lays down rules relating to notice of dishonor. Under S.47, when a bill is dishonored by non-acceptance or by non-payment, notice of dishonor must be given to the drawer or endorser to whom the notice is not given is discharged.

S.48 (1) requires that notice is given as soon as the bill is dishonored and must be given within a reasonable time.

In NANJI KHODABHAI V SOHAN SINGH (1957) EA 291, a cheque was dishonored on the 25th April 1955 and notice was not given until 29th April 1995. The court held that the defendant was discharged because there were no special circumstances to justify any delay and notice ought to have been given on 26th April 1955.

4. Material alterations of a cheque.

S.63(1) provides that where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided ,except as against a party who has himself or herself made, authorized or assented to the alteration and subsequent endorsers. The defense does not apply to a holder in due course.

The following alterations as per S.63(2) are material; date, sum payable, time of payment, place of payment and where a bill has been accepted generally, the addition of a place of payment without the acceptors consent.

In OVERMAN AND COV RAHEMTULLA (1930) 12K.L.R 131, the supreme court of Kenya held that the list in S.63 (2) is not conclusive but are given as examples of alterations which would be considered material.

In KOCH V DICKS (1933)1 K.B 307, an alteration in which place of drawing of a bill was changed making it a foreign bill from an inland bill. The court found that was a material alteration. This notwithstanding that alteration of place of drawing is not enumerated in the equivalent of S.63 (2).

5. Forged signatures.

S.23 of BEA provides that a person cannot be liable where his/her signature has been forged or placed on the cheque without his authority.

Refer to STANBIC BANK V UGANDA CROCS LTD.

FICTITIOUS/ NON EXISTING PERSON.

S.6 (3) provides that where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer. This was emphasized in the case of BANK OF ENGLAND V VAGLIANO BROTHERS (1891) AC 107.

The rule in S.6 (3) was held in BOMA MANUFACTARIES LTD V CANADIAN IMPERIAL BANKOF COMMERCE (1997) 23 CLB740, to be an exception to the rule of nemo dat quad non habet.

The policy behind the fictitious payee rule is that if the drawer drew a cheque payable to order, not intending that the payee receive payment, the drawer lost, by his/her conduct, the right of protection afforded to a bill payable to order and there was no reason why the defense of fictious payee was not available to the collecting banker.

In CLUTTON V ATTENBOROUGH AND SONS (1897) A.C 90, an employer was fraudulently induced by the clerk to draw cheque in favor of nonexistent payees whose endorsement was forged by the clerk in favor of a bonafide transferee for value. The 3rd party, the transferee who acted in good faith obtained payment of the cheques. Clutton, after discovering the fraud sued the third party for money they had received. The HOL held that the equivalent of S.6 (3) applied and the money could not be recovered.

Impersonal payees.

Is a payee of a bill or note designated as cash, bills payable or order. They may be designated otherwise than in the name of a person, association, partnership or corporation.

The effect of drawing a bill in the name of an impersonal payee is that the instrument is payable to bearer and need not have other words of negotiability.

Under S.6 (3), a cheque is treated as being payable to the bearer only when the payee is a fictitious /nonexistent person. The word person is defined in S.3 as including a body of persons whether incorporated or not. Obviously this definition does not cover impersonal payees such as instrument drawn in a cheque form to order or bearer in favor of 'cash.' This issue arose in KHAN STORES V DELAWER (1959) EA 714, the document in issue was a cheque drawn on the national bank of India signed by the applicant, directing the bank to pay 'cash or bearer' the sum of shs.2000. The word 'cash' was in manuscript word ''bearer'' was printed. Law J, held that a person who uses cheque forms made out to blank or 'bearer' and who fills in the blank either the word 'cash 'or with the name of specified person without deleting the word bearer must be presumed to intend that the words or bearer and complying with other requirements of the act, and the plaintiff respondent as the person in possession of the cheque was the holder thereof within the meaning of the terms bearer and holder.

Crossed cheques.

S.75 provides for both general and special crossing of cheques.

S.75 (1) provides for a general crossing as a cheque which bears a cross its face an addition of: a) the words and company between two parallel transverse kines either with or without the words "not negotiable "or

b) Two parallel transverse lines either with or without the words "not negotiable."(Account payee only")

S.75(2) provides for a special crossing as where a cheque bears across its face an addition of the name of a banker ,either with or without the words "non-negotiable"

A crossing is an instruction by the customer to the bank to pay the proceeds of the cheque into a bank account (chosen by the payee) and not to cash it over the counter.

Further S.80 provides that where a person takes a crossed cheque which bears on it the words "not negotiable", he or she shall not have and shall not be capable of giving , a better title to the cheque than that which the person from whom he or she took it had.

S.77 stipulates that a crossing is material part of the cheque and therefore it is not lawful for any person to obliterate, or add or alter the crossing except as provided by the act.

Negotiability and transferability.

Cheques are negotiable instruments. However a crossed cheque with the words "not negotiable" ceases to be a negotiable instrument.

S.7(1) provides that when a bill contains words prohibiting transfer or indicating an intention that it should not be transferable is valid as between the parties to it but it is not negotiable.

S.35 (1) postulates that a bill which is negotiable in its origin continues to be negotiable until it has been either respectively endorsed or discharged by payment or otherwise.

Endorsement.

S.1 defines endorsement as an endorsement completed by delivery. Holden in his law of banking practice defines endorsement as signature on a cheque, usually on the back, by the holder or his/her authorized agent, followed by delivery of the instrument whereby the holder of a cheque payable to his or her order negotiates it to another person who takes it as a new holder.

Endorsement may be special or in blank. A special endorsement is provided for under S.33 (2) as one which specifies the person to whom or to whose order, the instrument is payable.

S.33 (4) allows for the conversion of bill endorsed in blank to be endorsed specifically.

S.31 (a) provides that an endorsement in order to operate as a negotiation must be written on the bill itself and be signed by the endorser.

Agency

S.90(1) provides that where in the act any instrument or writing is required to be signed by the person, it is sufficient if his or her signature is written thereon by some other person by or under his or her authority.

S.24 provides that a signature by procuration (agency) operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his or her authority.

WRONGFUL DISHONOR OF CHEQUES.

In UNDECHEMIST LTD V NATIONAL BANK OF NIGERIA LTD, 1976(1) ALR COMM. 143, that a banker is bound to pay cheques drawn on it by a customer in legal form provided there are in the bank at the time sufficient and available funds standing to the credit.

A bank that without justification dishonors its customers cheques is liable to the customer in damages for injury to his/her commercial credit. The customer must however prove damage suffered.

In ROLIN V STEWRAD 139 E.R. 245, three cheques were presented and dishonored. They were presented again the following day and they were honored. The plaintiff was a trader. In an action for damages no evidence was given to show that he suffered any injury or damage. He was awarded 200 pounds as substantial damages.

Damages are presumed when the person is a trader, it not so when a person isn't a trader. EVANS V LONDON AND PROVINCIAL BANK (1917)3 L.D, A, B 152, the plaintiff drew a cheque which owing to the mistake of the bank was dishonored. He was not in business and there was no suggestion of actual damage. Nominal damages were awarded.

The above decisions were applied by the high court of Uganda in PATEL V GRINDLAYS BANK LTD 1968(3) A.L.R COMM 249, that where the court said that a trader whose cheque is wrongfully dishonored need not plead and prove special damage in order to recover substantial damages for the bankers breach of contract; the refusal of payment is injurious to his/her trade, credit and commercial reputation and the damages should be reasonable compensation for the injury having regard to all the

circumstances and commercial probabilities of the case; not excessive but temperate and neither punitive or exemplary.

The word 'trader' was enlarged in the case of BALOGUM V NATIONAL BANK OF NIGERIA LTD, 109 E.R 842, by the supreme court of Nigeria. The court replaced the owned trader with "person in trade". Court reasoned that while it is true that a trader is in business, all persons in business are not necessarily traders. Citizens running say private schools, although engaged in business are not necessarily traders. Therefore the expression "a person in trade" is preferred as it refers to persons engaged in some occupation, usually skilled but not necessarily learned, as a way of livelihood. It was held that a legal practitioner was a person in business and therefore was entitled to substantial damages without proof of damages.

The above reasoning was applied in JOHN KAWANGA AND ANOTHER V STANBIC BANK(U) LTD UCLR (2002-2004) 262, were the plaintiffs being advocates were granted substantial damages for dishonor of their cheques without proving actual damages for dishonor of their cheques without proving actual damage or injury since they were persons in business.

Damages for libel

The common words used when dishonoring a cheque are "refer to drawer" or "R/D". These words were subject of adjudication in DOGRA V BARCLAYS BANK (1955) EA 541, the court held that those words were not defamatory as they indicate that the bank will not honor the cheque on the instant presentment and the person who presented it and others concerned should contact the drawer for an explanation. The words are not published in any sort of connection or relation to the plaintiff's profession, trade or calling if they are to be held libelous, it must be shown that in the circumstances of the publication they subjected to the plaintiffs to hatred, ridicule or contempt. That these words do not subject the plaintiff necessarily to hatred ridicule or contempt.

The test for whether words used are libelous was laid down in SIM V STRETCH (1936) 2 ALL ER 1237, the words tend to lower the plaintiff in the estimation of right thinking members of society generally. The use of words such as 'not sufficient' 'refer to drawer' 'not arranged for' and 'no account' would definitely have such an effect on the plaintiff.

In DAVIDSON V BARCLAYS BANK (1940) 1 ALL ER 316, the plaintiff's cheques was dishonored with the words 'not sufficient' and court held that that amounted to libel.

Limitation of actions.

Owing to S.3 (2) of the limitation act cap80, an action relating to an account cannot be brought after the expiration of six years from the date on which it accrued.

The limitation applies to all actions on an account e.g.

In NATIONAL BANK OF NIGERIA V PETERS 1971(1) ALR COMM 262, the court held that a banker cannot recover a dormant overdraft more than six years after the last advance if the stature of limitation is pleaded nor can it recover interest which even within six years has in accordance with the ordinary practice of bankers been added to the principal from time to time and become part of the principal.

Combination of accounts.

Combination of accounts is a situation whereby a banker might treat two or more accounts opened between its customer and itself as though they were one whole account, entirely under its control by reason of which it might remove assets from one account to meet deficiencies in the other.

In T AND H GREENWOOD TEATE O.WILLIAMS V WILLIAMS BROWN AND CO.(1894-1895) 11 T.L.R 56, right to combine and set off at any time was restated by lord denning in HALESOWEN PRESSWORK AND ASSEMBLIES LTD V WESTMINISTER BANK LTD (1971) 1 Q.B1

Wright j held that a bank had the right to combine a customer's separate accounts subject to three exceptions:

a) The right to combine could be abrogated by a special agreement

b) It would be inapplicable where a special item of property was remitted to the bank and appropriated for a given purpose.

c) A bank could not combine a customer's private account with the one known to be a trust account or to be utilized for operations conducted by the customer as trustee.

IN OBED TASHOBYA V DFCU BANK LTD HCCS NO 742/2004, the plaintiffs UGX current account and USD account offset by monies from the UGX account. The issue was whether the defendant bank had correctly exercised the right of setoff. Kiryabwire J citing the Halsbury laws stated that unless precluded by agreement, express or implied, from the course of business, the banker is entitled to combine accounts kept by the customer in his own right, even though at different branches of the same bank and to treat the balance, if any as only amount really standing to his credit, but the banker may not arbitrarily combine a current account with a loan account.

In BARCLAYS BANK OF KENYA LTD V KEPHA NYABOR AND 191 ORS CIVIL APPEAL NO.169 OF 2007, the court explains the banks right to set off a debt owed to it by a customer who maintains more than one account. The court stated that a banker may combine two current accounts at

any time without notice to the customer as though the accounts are maintained at different branches. In circumstances where a bank has a loan account and also a current account in credit with the same customer and holds security for the ultimate balance, the banker is at liberty too combine and consolidate the accounts and set off the accounts.

In NICHOLAS MAHIHU MURIITHI V BARCLAYS BANK KENYA LIMITED ,CIVIL APPEAL NO.340 OF 2012, the appellant objected to the consolidation of his loan accounts in which the bank owing to default had written off with his current account that was in credit. The court held that the loan accounts could be consolidated with the current accounts despite having been written off. The writing off did not absolve the appellant of the money owed to the bank under the loan accounts as writing off is merely an internal mechanism to clear up the balance sheet for taxation purposes.

Approbation and reprobation.

This is a maxim/principle whereby a person cannot both approve and reject an instrument.

IN VERSCHURES CREAMERIES LTD V HULL AND NETHERLANDS STEAMSHIP CO. LTD (1921)2 KB 608, the court stated that the equitable principle that one cannot approbate and reprobate at the same time. The court stated that the principle is based on the doctrine of election and a person cannot say at one time that a transaction is valid and thereby obtain some advantage to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage.

In GOLF VIEW INN LTD V BARCLAYS BANK (U) LTD H.C.CS NO.358 2009, court held that the plaintiff who had benefited from the SRA could not turn around to say it was illegal due to duress having obtained a benefit.

Performance bonds and guarantees.

These are instruments taken out by a party to a contract, written by a third party guaranting the performance of a contract.

They include: performance bonds/guarantees and other guarantees such as advance payment guarantees.

The law on these instruments was summarized by lord denning

In EDWARD OWEN ENGINEERING LTD V BARCLAYS BANK INTERNATIONAL LTD (1978)1 ALL ER 976, he stated that the law applicable to them was similar to that applicable to letters of credits. He thus held that performance guarantees were virtually promissory notes payable on demand. The bank must pay if the documents are in order and the terms of the guarantees satisfied. Any dispute between the buyer and seller must be settled between themselves. The only exception is in case of what is called established or obvious fraud to the knowledge of the banker.

The learned author, Geraldine Mary Andrews in law of guarantees 2nd edition 1995 at page 443 and 444 states that “performance bonds are essentially unconditional undertakings to pay a specified

amount of money to a named beneficiary usually on demand and sometimes on the presentation of certain documents. Therefore it is established that if the beneficiary seeks payment in accordance with the terms of the bond, the bank must pay regardless of how unfair that might be to the account party.

The above position was cited with approval by Madrama j in

NATIONAL HOUSING AND CONSTRUCTION CO LTD V LION ASSURANCE COMPANY LIMITED H.C.C.S NO. 25 OF 2013, in which the defendants had declined to pay on a demand made on an advance payment guarantee issued of the benefit of the plaintiff. He went on to state that the demands made according to the terms of the performance bond must be paid.

Principle of money had and received.

It is a form of action that lays to recover money paid under a mistake or compulsion or for a failed consideration. It is available where a payment or transfer of value takes place voluntarily but is made under the compulsion of urgent and pressing necessity.

IN DR JAMES KASHUGYERA TUMWWINE AND ANOTHER V. SR.WILLIE MAGARA AND ANOTHER H.C.C.S NO .576 of 2004, court held that a claim for money had and received is an equitable action that may be maintained to prevent unjust enrichment by the defendant when it obtained money which in equity and good conscience belongs to the plaintiff.

IN MAHABIR KISHORE AND MADHYA PARADESH 1990 ALR 313, claim based on principles of unjust enrichment must satisfy the following requirements

1. That the defendant has been enriched by the receipt of a benefit

2. That this enrichment is at the expense of the plaintiff

3. That the retention of the enrichment is unjust.

In SHENOI V MAXIMOR (2005)2 EA 280, the court held that in an action for money had and received, the purpose for which the money was received is relevant when applying the principle.

In DR.JAMES KASHUGYERA (supra), court stated that it is immaterial that the plaintiff was negligent to a certain degree. The plaintiff is not precluded from recovering the amount from the defendant as money had and received.

BANK AND CUSTOMER RELATIONSHIP

The banker – customer relationship is a contractual one whereby the banker is under a duty to honour the customer's demand and pay whenever the customer's account has sufficient funds. This principle was followed in Stanbic Bank Vs Uganda Cross Limited SCCA 4 0f 2004 where court was of the cardinal view that the banker ha s a duty to honour the customer's mandate. The court held in addition, that a banker is also under a duty of care to its customer not to act negligently.

The customer too, owes a duty to the bank not to act negligently as enunciated in Barclays Bank of Kenya Vs Jandy (2004) 1 EALR 8

TOPIC FIVE

EMPLOYMENT CONTRACTS & AGENCY

LAW APPLICABLE:

1. The 1995 Constitution of the Republic of Uganda
2. The Contract Act Cap
3. The Companies Act 106
4. The Employment Act, cap 226
5. The Employment Regulations S.1 14/77
6. Civil Procedure Act Cap 282
7. Civil Procedure Rules S.1 71-1
8. Common law and Doctrines of Equity
9. The Evidence Act Cap 8
10. Case Law and Common Law
11. The Uganda Citizenship and Immigration Control Act Cap 66
12. Workers Compensation Act Cap 233
13. Workers Compensation Regulations SI 225-1
14. The Labor Disputes (Arbitration and Settlement) Act 8 of 2006
15. The Children's Act Cap 62

16. The Occupational Safety and Health Act Act cap 231

17. the Arbitration and conciliation Act Cap 4

Checklist/ issues arising

1. Whether the intending employer has a recruitment permit?

2. Whether the prospective employees can be employed?

3. What are the formalities for the contract of employment?

4. What are the rights and obligations of the employees in the contract of employment?

5. What are the duties of the employers in the contract of employment.

6. what procedure should be followed in case of dispute settlement?

THE NECESSARY DOCUMENT TO BE DRAFTED IS THE EMPLOYMENT CONTRACT.

(A) EMPLOYMENT CONTRACTS

EMPLOYMENT UNDER THE EMPLOYMENT ACT CAP 226AND REGULATIONS

Section 2 of THE EMPLOYMENT ACT CAP 226, defines contract of service to mean any contract whether oral or in writing, whether expressed or implied, to employ or to serve as an employee for any period of time and includes any contract of apprenticeship.

A contract of service as defined in THE EMPLOYMENT ACT CAP 226 should be distinguished from a contract for service. In Ready Mix (SE) Ltd Vs Minister of Pensions [1968] 1 All ER 423; court held that the difference is about control; thus a contract of service is where the master does not order or require what ought to be done unlike a contract for service, whereby the master does order or require what ought to be done.

It ought to be stressed from the onset that the employment relationship is a contractual one; thus governed by the principle of contract. One of these principles is that the employment relationship is one where one enter at his or her fee will. This is upheld in the locus classicus case of PRINTING AND NUMERICAL REGISTERING CO. –VS- SAMPSON (1875) LR19 E.g. 462 by SIR GEORGE JESSEL, where he held that Public Policy required that men of full age and competent understanding shall have the almost liberty in contracting and that their contracts, when entered into freely and voluntarily shall be held sacred and

shall be enforced by Courts of justice. The Legislature developed many in roads into this principle through codification in the Law of Employment where there is evidence of exploitation at the expense of an employee's rights.

Recruitment

It must be noted that before an employer engages an employee, he or she must have a valid recruitment permit under section 37(1) of the Employment Act. Sub section 2 qualifies the need for a recruitment permit. It is not to be got by a person recruiting domestic servants or non manual laborers for employment.

Characteristics of a contract of employment.

i. Control; manifests in how the work is to be done, at what time, exhibiting a certain form of character including the dress code, salary scale etc

ii. Right to terminate; generally an employer has a right to terminate. Previously there was no obligation to give reasons for termination, but now the law emphasizes procedural fairness.

iii. Notice; generally in a contract of employment, termination is preceded by a notice. Notice arises as a result of contract or as a result of law.

iv. Summary termination and summary dismissal; in summary dismissal, you are very disgraceful person and affects entitlement under Pensions Act. Before you summarily dismiss, you must be sure about the justification of the dismissal.

FORMALITIES:

Introduction

First and foremost, the contract can be in writing or oral except as otherwise provided for by the Act section 25 makes a mandate for a contract of employment to be attested where the employee is unable to read or understand the language in which the contract is written. Attestation is before a magistrate or a labor officer.

The contents of an employment contract should have clauses to the following effect:

The Name of the Employer, undertaking and place of employment,

The name of the Employee, place of engagement, origin and particulars necessary for his or her identification,

Nature of employment,

Duration of employment,

Rate of wages and methods of calculating wages,

Manner and periodicity of payment of wages.

Conditions of repatriation. Inter alia.,

Termination of the contract,

Summary dismissal

Duties of the Employer,

Right and Obligations of the Employee.

It must be noted that section 32 makes it a preliquisite for a prospective employee wishing to enter a contract of service to be first examined by a medical practitioner at the expense of the Employer.

Foreigners

Foreigners who wish to work in Uganda have to be subjected to the provisions of the Uganda Citizenship and Immigration Control Act as noted earlier under the discussion on companies.

LAW OF EMPLOYMENT

Definitions

These are defined under S.2 of the employment act, 226.

a) Contract of service is defined as any contract, whether oral or in writing, whether express or implied, where a person agrees in return for remuneration to works for an employer and includes a contract of apprenticeship

b) Employee is defined to mean any person who has entered into a contract of service or apprenticeship contract, including without limitation any person who is employed by or for the government of Uganda, including the Uganda public service, a local authority or parastatal organization but excludes a member of the UPDF.

c) Employer is defined to mean any person or group of persons including a company or corporation, a public ,regional or local authority governing body of an unincorporated association, partnership,

parastatal organization or other institution or organization whatsoever, for whom an employee works or has worked or normally worked or sought to work, under a contract of service and includes the heirs, successors, assignees and transfers of any person or group of person for whom an employee works, has worked or normally works. In the case of YEWENS V NOAKES (1880) QBD 530,Bramwell LJ stated that a person is an employee if his employer has the right to control not only what work is done but the way in which the work is done.

d) Dismissal from employment is defined as the discharge of an employee from employment at the initiative of his/her employer when the said employee has committed verifiable misconduct.

e) Termination of employment means the discharge of an employee from an employment at the initiative of the employer for justifiable reasons other than misconduct, such as expiry of contract, attainment of retirement age. Etc.

f) Wages means remuneration or earnings however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations which are payable under an oral or written contract of service for work done or to be done or for services rendered or to be rendered but excluding any contributions made or to be made by the employer in respect of his/her employees insurance, medical care, welfare ,education, training ,invalidity, retirement pension, post service gratuity or severance allowance.

The distinction between a contract of services and a contract for services is important in that in the former , there is an employer and employee while in the latter there is an employer and independent contractor.

Infectious Diseases Institute v Uganda Revenue Authority (Civil Appeal 6 of 2022) In Infectious Diseases Institute v Uganda Revenue Authority (Civil Appeal 6 of 2022), the High Court of Uganda reviewed a Tax Appeals Tribunal (TAT) decision in which the Uganda Revenue Authority (URA) classified team members engaged by IDI as employees rather than independent contractors, resulting in a UGX 185,200,728tax assessment for unpaid Pay-As-You-Earn (PAYE) tax. IDI appealed, arguing that its consultants functioned as independent contractors under project-specific agreements that provided autonomy over deliverables and did not entail “fixed or ascertainable remuneration,” as defined under Section 2(z) of the Income Tax Act. The court examined these agreements and applied legal tests for employment relationships, referencing Ready Mixed Concrete v Minister of Pensions [1968] 2 QB 497 , which assesses factors like control, mutuality of obligation, and integration to distinguish employees from independent contractors. The High Court emphasized that, in line with Section 2 of the Income Tax Act, a person must occupy a position with fixed or ascertainable remuneration to be classified as an employee. Unlike employees, IDI’s consultants were retained on a project basis, lacked employment benefits such as leave, and were not subject to IDI's human resources policies, aligning more closely with the characteristics of independent contractors. Referencing precedents like Yewens v Noakes (1880) 6 QBD 530 on the control test, the court underscored that IDI’s consultants maintained significant control over how they

executed their tasks, further distinguishing them from employees. The court set aside URA's reclassification, ruling that IDI's consultants did not meet the statutory criteria of " employment " for tax purposes, and ordered a refund of the assessed PAYE amount along with costs awarded to IDI for the appeal

APPLICABILITY OF THE EMPLOYMENT ACT

Pursuant to S.1 (1) of the employment act, the act applies to all employees employed by an employer under a contract of service.

Under S.1 (2) of the act does not apply to

a) Employers and their dependent relatives when dependent relatives are the only employees in a family undertaking as along as the total number of dependent relatives does not exceed five

S.2 defines a dependent relative means a member of an employee's family who substantially depends on that employee for his or her livelihood.

b) The Uganda peoples defense forces other than their civilian employees.

EMPLOYER-EMPLOYEE RELATIONSHIP.

For there to subsist an employer-employee relationship, there must exist a contract of service as between the parties.

The most common test for whether there subsists a contract of service is the control test.

The traditional criterion of distinguishing an employee from an independent contractor is the right and degree of control. In many cases a servant has been seen as anyone subject to command of employer in what to do, and how, time & place and equipment etc.- express or implied. If contract gives employer extensive control over work to be done it is a contract of service absent strong indication to contrary from other factors of relationship.

It was first established in the authority of Yewens v Noakes, where Bramwell LJ stated: 'A person was an employee if his employer has the right to control not only what work he does but the way in which that work is done.' "A servant is a person subject to the command of his master as to the manner in which he shall do his work.' This test was furthered in the case of Performing Rights Society v Mitchell and Booker, which stated that, 'the final test, if there is to be a final test, and certainly the test to be generally applied, lies in the nature and degree of detailed control over the person alleged to be a servant.'

In this case the defendants were sued for the breach of copyright by a jazz band. The defendant owned a dance-hall and had agreed in writing for a band to play at the hall as long as it did not infringe any copyright in the music it chose to perform. Unfortunately the band chose to play some music but did not have the plaintiff's permission. The plaintiff decided to sue the owners of the dance hall looking to hold them responsible for the actions of the band. However the defendant's liability depended on it being proved

that the band were employed by them. The court looked at the facts that regular hours where worked each day by the band, there was a fixed period of employment, the band had been told where they should work, and they had exclusivity of service, there was also a right to dismiss the band for the breach of any fair instructions or requirement. In short the court looked at the 'nature and degree of detailed control over the person alleged to be a servant' and the band was held to be an employee.

Lord Thankerton in Short v J W Henderson Ltd [1946] 62 TLR 427 identified many key features that would show that the master had control over the servant. These included the power to select the servant, the right to control the method of working, the right to suspend and dismiss, and the payment of wages.

Such a test is virtually impossible to apply accurately in modern circumstances. Nevertheless, there are circumstances in which a test of control is still useful, in the case of borrowed workers.

Mersey Docks & Harbour Board v Coggins and Griffths (Liverpool) Ltd [1947] AC 1

Here the test was applied when a crane driver negligently damaged goods in the course of his work. In this case the Harbour Board hired a crane and the crane driver out to stevedores to act as their servant. Under the contract between the Board and the stevedores the crane driver was still to be paid by the Board and only they had the right to dismiss him, but for the duration of the contract he was to be regarded as the employee of the stevedores. The Harbour Board was still held to be liable for his negligence, however, since he would not accept control from the stevedores.

In the case above Lord Porter gave a very clear explanation of the control test:

'the most satisfactory [test] by which to ascertain who is the employer at any particular time, is to ask who is entitled to tell the employee the way in which he is to do the work upon which he is engaged & it is not enough that the task to be performed should be under his control, he must control the method of performing it.'

This can be seen in Hawley v Luminar Leisure plc [2005] EWHC 5 (QB) where a nightclub owner was held to be in control of and therefore vicariously liable for bouncers actually employed by a security frm. This was because the owner gave the men detailed instructions on how to do the job.

If employer only determines what is done not how, then the worker is independent contractor.

Honey Will & Stain Ltd v. Lakin Brothers Ltd [1934] 1 KB 19Slaser LJ said... "the determination whether the actual wrong doer is a servant or agent on the one hand is or... contractor.. depends on whether or not the employer only determines what is to be done but retains the control of the actual performance in which case the doer is a servant or agent... if the employer while prescribing he work to be done levels the manner of doing in to the control of the doer, later is an independent contractor."

This test is criticized as being more appropriate for an earlier age. It reflects the state of society in which ownership of means of production coincided with possession of technical knowledge and skill- which was acquired largely by being handed down from one generation to the next by old tradition and not being systematically imparted in institutions of learning. As specialist skills of employees increased, the unskilled employer was less and less able to control their work.

Morren v. Swinton&Pendlebury Borough Council [1965]2 ALLER 349, A contract for services, made between a local authority and consultant engineers, provided for the consultant engineers to supervise the execution of sewerage works and that the local authority should appoint and pay a resident engineer, to be approved by the consultants, to supervise the works under the consultants' instructions. The local authority, with the approval of the consultants, appointed the appellant at a salary. The local authority had the right to dismiss the appellant; he was paid subsistence allowance and for holidays, employer's national insurance contributions were paid in regard to him, and there was provision for a month's notice.

Held – The appellant was employed by the local authority under a contract of service, not a contract for services, notwithstanding that he was to work under the instructions of the consultant engineers;

Lord Parker said that the factor of superintendence and control is of little use as a test whether a contract is or is not a contract of service where the person concerned is a professional man, engaged for his skill and experience. Instances of that have been given in the form of the master of a ship, an engine driver, a professional architect or, as in this case, a consulting engineer. In such cases there can be no question of the employer telling him how to do work; therefore, the absence of control and direction in that sense can be of little, if any, use as a test

In Gold v. Essex County Council [1942] 2 KB 293 Court of Appeal held that a radio grapher was a servant of the hospital that employed him and thus it was vicariously liable for his negligence in the course of his duty, even though hospital authorities were not competent to dictate him on how he should exercise his skill

In Collins v Hertfordshire County Council and Another

While undergoing and operation, a patient in a county council hospital was killed by an injection of cocaine which was given by the operating surgeon in the mistaken belief that it was procaine. The operating surgeon had ordered procaine on the telephone, but the resident house surgeon (who was then unqualified) had mis-heard "procaine" as "cocaine," and had told the pharmacist to dispense a mixture which was, in fact, lethal. The pharmacist dispensed the mixture without making further inquiry and without requiring the written instruction of a qualified person, and the operating surgeon had given the injection without checking that it was what he had ordered. The operating surgeon, the house surgeon, and the pharmacist were all three in the full-time or part-time employment of the council. In action for negligence.

Held – (i) The county council, in managing the hospital, was permitting a dangerous and negligent system to be in operation, and the operating surgeon and the house surgeon had failed to exercise reasonable skill and care.

(ii) the council were able to control the manner in which the resident medical officer performed her work and, therefore, the acts of the house surgeon done in the course of her employment were acts for which the council was responsible.

(iii) although the operating surgeon was a part-time employee on the staff of the council, the council could not control how he was to perform his duties and was not responsible for his want of care.

Hilbery J summarised the distinction in this way:

"... in a contract for services the master can order or require what is to be done, while in the other case [a contract of service] he can not only order or require what is to be done but direct how it shall be done

Cassidy V. Ministry of Health [1951] 1 ALLER; the plaintiff was operated on a couple of fingers of his left hand, but due to inaction of the doctors not responding to his alarms of feeling pain he ended up losing feeling and sensing in the entire hand by the time the bandages were removed.

in finding the hospital liable;

Lord Denning-

liability of hospital authorities for the negligence of a doctor on permanent staff of hospital does not depend on whether he is employed under a contract of service or for services. It depends on who employs him. If patient himself selects and employs the doctor, the hospital authorities are not liable for his negligence. Where doctor consultant or not employed and paid by hospital authorities, authorities are liable for his negligence in treating the patient." the negligence in the duty itself was the employers' duty to provide." The defendant was therefore liable. The reason why the employers are liable in such cases is not because they can control the way in which the work is done—they often have not sufficient knowledge to do so—but because they employ the staff and have chosen them for the task and have in their hands the ultimate sanction for good conduct—the power of dismissal.

This can be seen in Hawley v Luminar Leisure plc [2005] EWHC 5 (QB) where a nightclub owner was held to be in control of and therefore vicariously liable for bouncers actually employed by a security firm. This was because the owner gave the men detailed instructions on how to do the job.

THE INTEGRATION OR ORGANISATION TEST

Lord Denning in Stevenson Jordan and Harrison Ltd v McDonald and Evans [1969] 1 TLR 101 established this test. The basis of the test is that someone will be an employee whose work is fully integrated into the business, whereas if a person's work is only accessory to the business then that person is not an employee.

Lord Denning proposed that 'It is often easy to recognise a contract of service when you see it, but difficult to say wherein the difference lies. A ship's master, a chauffeur, and a reporter on the staff of a newspaper

are all employed under a contract of service; but a ship's pilot, a taxi-man, and a newspaper contributor are employed under a contract for services. One feature which seems to run through the instances is that, under a contract of service, a man is employed as part of the business and his work is done as an integral part of the business whereas, under a contract for services, his work, although done for the business, is not integrated into it but is only accessory to it.'

1. SELF-CLASSIFICATION/CHARACTERIZATION.

Though courts will be inclined to attain the true meaning to a transaction entered by parties whatever nature they call, courts are also hesitant to deviate from the express stipulations of the parties. In NSSF V MTN (U) LTD AND ANOR H.C.CS no.94 of 2009, where the question to be answered was who was the employer of the UNISIS temporary contract employees who worked for MTN under the control of MTN. justice Hellen Oburu rejected the control test suggested by the Ply's advocate and held that the intention of the parties insofar as who the employer was clearly stated in the contract which named UNISIS as the employer and not MTN.

2. THE MULTIPLE TEST/ECONOMIC OR ENTREPRENUER REALITY TEST.

The courts in recent times have at last recognised that a single test of employment is not satisfactory and may produce confusing results. The answer under this test is to consider whatever factors may be indicative of employment or self-employment. In particular, three conditions should be met before an employment relationship is identifed: ■ The employee agrees to provide work or skill in return for a wage.

■ The employee expressly or impliedly accepts that the work will be subject to the control of the employer.

■ All other considerations in the contract are consistent with there being a contract of employment rather than any other relationship between the parties.

This test was first established in the case of Ready Mixed Contcrete (South East) Ltd v MPNI

Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497

The case involved who was liable for National Insurance contributions, the company or one of its drivers. Drivers were used under a new contract under which they drove vehicles in the company colours and logo that they bought on hire purchase agreements from the company. Under the contract they were also obliged to maintain the vehicles according to set standards in the contract. They were only allowed to use the lorries on company business. Their contracted hours, however, were fexible and their pay was subject to an annual minimum rate according to the concrete hauled. They were also allowed to hire drivers in their place. Although it might be seen to have operated unfairly on the claimant, the drivers were held to be independent. The case is important because McKenna J developed the above test in determining their lack of employment status.

Lord McKenna commenced by categorising the facts of case into either self-employment or employment. Lord McKenna then examines the facts against three conditions that required building a contract of employment. Firstly, the skills provided must be in exchange with wages. Secondly, control elements should exist on the employer (resembles control test). Thirdly, the contract provision must be in consistent with the control of service. As in this case, Lord McKenna J held, due to the freedom of delegation, the contract between the plaintiff and defendant was contract for service (self-employment).

All of these are useful in identifying the status of the worker but none of them is an absolute test or is definitive on its own.

Some of the guiding principles include'

i. Control

ii. Ownership of tools

iii. Loss of profits

iv. Benefit test or who is the owner of the business

You must consider the whole contract as a whole and all the tests in determining the type of contract it is.

The multiple test was also applied in Market Investigations Ltd v Minister of Social Security 1969 2QB where it was stated by Judge Cooke that "if the person who has affianced him or herself these services, performing them as an individual in business on his or her own account?".

In this case Mrs Anne Irving from time to time did market questionnaires. There was a dispute between the business for whom she did the surveys, Market Investigations, and the Minister for Social Security over whether National Insurance contributions should have been made on her behalf. This depended on whether she was an employee.

3. MUTUALITY OF OBLIGATION TEST.

In mutuality of obligation test this basically looks at the relationship between the employer and and the employee. For there to be mutuality the employer has the obligation to provide work and the employee to provide services in return for remuneration. When there is an absence of mutuality of obligation the claimant is concluded to be self-employed person in relation to payment of income tax and national insurance contribution as seen in the case of Parade Park Hotel v Comrs of HM Revenue and

Customs 2007 S.T.C (S.C.D.) 430 where R May had no obligation to carry out work for Parade Park Hotel, and Parade Park Hotel under no obligation to offer work to Mr May. As mutuality of obligation was part of the irreducible minimum of a contract of employment it followed that the relationship between Parade Park Hotel and Mr May could not amount to a contract of employment. There also has to be an irreducible amount of personal service to claim self-employed persons.

Distinction between contracts for services and a contract of service.

A contract for services gives rise an employer-independent contractor relationship while a contract of services once established creates an employer- employee relationship.

Why the distinction is important.

1. Vicarious liability. Employers are liable for the torts of their employees committed in the course of employment. The employer except in certain special circumstances is not vicariously liable for the tots of an independent contractors committed during the execution of their work.

2. Compensation for injury.

Under The workers compensation act cap 233 , employees are generally entitled to compensation for injuries sustained in the course of employment. In an employer-independent contractor relationship, the employer has no obligation to compensate the independent contractor for injuries sustained during work.

3. Mandatory contribution

Employers are by law mandate to remit certain contributions on behalf of employees for example PAYE, NSSF contributions under section 11and 12 of the NSSF act. These deductions are permitted under S.46 of the employment act.

4. Employment benefits.

Employment benefits such as sick leave among others are stipulated under THE EMPLOYMENT ACT CAP 226 only accrue to employees and not independent contractors.

EMPLOYMENT CONTRACTORS.

These are regulated by the contract act and THE EMPLOYMENT ACT CAP 226. S.22 of THE EMPLOYMENT ACT CAP 226 provides that no person shall be employed under a contract of service except in accordance with the act. Further section 26(1) of THE EMPLOYMENT ACT CAP 226 bars the exclusion of any provision of THE EMPLOYMENT ACT CAP 226 in any contract of service and states that such agreement is null and void.

However, in sub-section 2, the act allows for the parties to vary the provisions of the act in favor of terms and conditions which are more favorable to the employee than those stipulated in the act.

Requirements of an employment contract.

As noted earlier, these are governed by the contracts act and THE EMPLOYMENT ACT CAP 226 with each creating various requirements.

Under S.10 of the contracts act, the requirements are that there is

a) An offer and acceptance

b) Consideration

c) Lawful subject matter

d) Capacity to contract

e) Intention to be legally bound.

1. Offer and acceptance.

Usually the offer is made during the interviews or through a letter of appointment after the interviews. Negotiation if any are made and concluded during this period usually relating to the salary, other employment benefits and the starting date.

2. Consideration

The consideration in employment contracts is the employers promise to pay the agreed wages in return for the employee performing a particular task. IN DELANEY V STAPLES (1992) IRIR 191, Lord Browne Wilkinson was of the view that the essential characteristic of wages is that they are contributions for work done or to be done under a contract of employment. If payment is not referable to an obligation on the employee under a subsisting contract of employment to render his services, it does not fall within the ordinary meaning of the word wages.

S.40 (1) of THE EMPLOYMENT ACT CAP 226 provides that wages have to be paid in legal tender. Although the section also allows the employer to pay by cheque,postal order, money order or by direct payment to employees bank account having sought the consent of the employee to do so.

3. Capacity.

Section 11(1) of the contracts Act provides that a person has capacity to contract where such a person is of 18 years and above, of sound mind and not disqualified from contracting by any law to which he or she is subject.

Section 11(2) goes further to stipulate that a person of 16 years plus has the capacity to enter into a contract of employment as provided under Article 34(4) and (5) of the 1995 constitution of the republic of Uganda.

4. The other requirement of a contract of service under THE EMPLOYMENT ACT CAP 226 are stipulated under section 58 of the employment a contract and these include the following

a) Full names and address of the parties.

b) The date on which employment began

c) Title of the job the employee is employed to do

d) Place where the employees duties are to be performed

e) Wages which the employee is entitled to receive or the means by which they can be calculated intervals they are too paid in, the deductions or other conditions to which they shall be subject.

f) The rate of any overtime pay applicable to the employee

g) The employee's normal working hours and the shifts or days of the week on which such work is to be performed.

h) The number of days annual leave to which the employee is entitled and their entitlement during such leave.

i) The terms or conditions relating to incapacity for work due to sickness or injury, including a provision for sick pay.

j) Length of the notice of termination

k) Terms and conditions relating to incapacity for work due to sickness or injury, including any provision for sick pay.

5. Attestation.

S.25 of THE EMPLOYMENT ACT CAP 226 requires an employment contract made with an employee who is unable to read or understand the language in which the contract is written to be attested to. Attestation is by means of a written document drawn up by the magistrate or Labor officer.

Formalities.

1. Oral and written contracts.

S.24 states that a contract of service other than a contract which is required by THE EMPLOYMENT ACT CAP 226 or any other act to be in writing maybe made orally and except as otherwise provide, the act applies equally to oral and written contracts.

2. Written particulars

S.58 (1) of THE EMPLOYMENT ACT CAP 226 requires employers to provide employees with a notice in writing specifying the particulars of employment. The notice is called a statement of written particulars.

The notice must pursuant to S.58 (3) of THE EMPLOYMENT ACT CAP 226 be given by the employer to the employee not later than 12 weeks after the date of which employment commenced.

The statement of written particulars is under S.59 (a) of THE EMPLOYMENT ACT CAP 226 admissible evidence in courts of law of the existence of the terms and conditions about which there is a dispute.

In addition under S.59 (b) of the employment act, the written statement of particulars create a rebuttable presumption that the terms and conditions of employment are accurately stated in the written particulars and in any notified changes.

In SYSTEMS FLOORS (UK) LTD V DANIEL (1982) ICR 54, Browne- Wilkinson j stated that the written statement of particulars provide very strong prima facie evidence of what were the terms of the contract between the parties but does not constitute a written contract between the parties. Nor are the statements conclusive terms; at most they place a heavy burden on the employer to show that the actual terms of the contract are different from those which he/she has set out in the statutory statement.

Employment contract.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE EMPLOYMENT ACT

6 OF 2006 AND

IN THE MATTER OF AN EMPLOYMENT

CONTRACT

EMPLOYMENT CONTRACT

This contract is made at Kampala on this 10th day of February 2020.

Between

BHALO TRAVELS LIMITED of P.O BOX 869, Kampala, Uganda,

(Hereinafter referred to as 'THE EMPLOYER" of one part:

And

(Hereinafter referred to as 'the employee") of the other part:

WHEREAS.

1. The employer intends to engage the services of the employee and the employee is interested and desirous of offering his services to the employer.

2. The employer having represented to the employer that he has the required skills and expertise

3. The employee is desirous of taking up the employment and to provide the services on the terms and conditions set forth in this contract.

NOW THEREFORE, THIS CONTRACT IS WITNESSETH AS FOLLOWS:

1. JOB TITLE:

The employer shall employ the employee in the capacity of sales person for a period of 2 years from the date of execution of this contract.

2. PLACE OF WORK.

2.1 the employee shall sell he employers products only within the required boundaries as stipulated in the first schedule to this contract

2.2 the employee shall not sell the products outside the stipulated boundaries in clause

2.2.1 except with the express written permission from the marketing manager

2.3 The employer reserves the right to relocate the employee to another location upon issuance of a 7 days' notice communicating the intention to transfer the employee.

3. DUTIES/RESPONSIBILITIES

The employee shall be expected to:

a) Diligently and faithfully perform the duties of a sales person and such other duties as may be required of them by the employer from time to time with a view of making profit for the employer.

b) Devote substantially the whole of their time and attention while at work to discharge of their duties which are clearly spelt out in the employees job description specified in the second schedule of this contract.

c) Perform and meet daily, weekly and monthly performance targets that shall be set by the employer through the marketing manager or any duly authorized agent and these targets maybe adjusted by the management at any time without the employees consent.

d) Failure to meet the target stipulated in clause 3(a) may lead to termination of this contract.

e) At all times comply with all other regulations and guidelines set by the employer

4. PERFORMANCE APPRAISALS.

4.1 The employer shall conduct performance appraisals through the employers designated supervisor as a means of monitoring and evaluating the employee's performance for the year.

4.2 The final annual performance report shall be the only basis for promotion from the sales person position to senior sales person position or renewal of the employee's contract.

5. RENUMERATION

5.1 The employee shall be entitled to Gross monthly salary of UGX.600,000 (six hundred thousand shillings only)

5.2 The employees remuneration shall be paid into their bank account

6. COMMISSION.

6.1 the employer shall pay to the employee a commission on all sales made

6.2 the commission payable on each sale of the employers product made shall be 8% of the total amount paid on the product.

7. HOURS AND DAYS OF WORK.

7.1 The employee shall be expected to work for 8 hours per day for 6 days of the week

7.2 The working hours shall start at 8;00 am and end at 5;00pm with the time between 1:00pm and 2:00pm excluded for a lunch break.

7.3 The days of work shall be Monday to Saturday.

7.4 In case the employee reports to work later than 9:00am or leaves the work place earlier than 4:00pm, they shall be paid a wage for half a day.

7.5 The employee may be required to work past the set working hours where there is a target that needs to be met and the employer shall pay the employee for the overtime in such instances.

7.6 The employer reserves the right to call an employee to work on a weekly off in which case the employee shall be paid in the equivalent of 1.5 days wage.

8. ANNUAL LEAVE.

The employee shall be entitled to 21 days of paid annual leave or payment in lieu of the leave

9. SICK LEAVE

The employee shall be entitled to sick leave as stipulated in the employment act

10. EMPLOYMENT BENEFITS.

The employee shall be entitled to all benefits allowing to employees in the position of a sales person as stipulated in the human resource manual of the employer.

11. MATERNITY OR PATERNITY LEAVE.

The employee shall be entitled to a maternity for a period stipulated in THE EMPLOYMENT ACT CAP 226or a paternity leave for the duration stated in the employment act.

12. CONFIDENTIALITY.

12.1 in the course of employment under their contract ,the employee will have access to and be entrusted with information in respect of the business, dealings, transactions and affairs of the employer.

12.2 The employee shall not during or after the period of employment under this contract, divulge and shall prevent the use , disclosure or publication to any unauthorized person whatsoever of any confidential information concerning the business, dealings, transactions and affairs of the employer.

13. TERMINATION OF EMPLOLYMENT.

13.1 This employment shall terminate:

a) Automatically on completion of the 2 years herein stated unless renewed with express consent in writing of both parties per this contract.

b) By either party by giving a written notice to the other party of not less than one month

13.2 The employer reserves the right to terminate the employee's contract on grounds of misconduct or poor performance and giving the employee a one months' notice or a month's salary in lieu.

13.3 The acts constituting misconduct are stipulated in the employer's human resource manual.

14. SUSPENSION

14.1 The employer may suspend the employee from duty pending investigation into the matter leading to such suspension.

14.2 The suspension shall not exceed 21 days consecutive days.

14.3 The employee shall be entitled to half pay for the duration of the suspension

14.4 The employer shall accord the employee a fair hearing before an independent tribunal appointed by the employer and

a) If found that the reasons for the suspension are justified, the employee shall be dismissed from employment

b) If found that the reasons for the suspension are unjustified, the employee shall resume his/her duties.

15. SUMMARY DISMISSAL

The employer reserves the right to summarily dismiss the employee for any gross misconduct as stipulated in employer's human resource manual.

16. RENEWAL OF THE CONTRACT.

16.1 This contract maybe renewed pursuant to the provisions of this contract at the discretion of the employer depending on work availability and the employees performance appraisal report.

16.2 The renewed contract shall be in the form of a new contract signed between the parties and it shall be the employee's duty to ensure that they obtain a new contract as and when this one expires.

17. DISPUTE RESOLUTION.

17.1 All disputes arising under this contract shall be resolved in line with the established company policies and rules.

17.2 Should the parties fail to amicably resolve the dispute, then a mediator from the CADER agreeable to both parties shall be appointed to resolve the dispute.

18. LAW APPLICABLE.

This contract shall be governed by the laws of Uganda.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed in their respective names as of the day and year first above mentioned.

Signed for and on behalf of the employer

SUI GENERIS

HEAD OF HUMAN RESOURCE

FOR BHALO TRAVELS LIMITED.

Signed by the said

NAME.....

SIGNATURE.....

EMPLOYEE. .....

In the presence of

NAME.....

PROFESSION.....

SIGNATURE.....

DOCUMENTATIONAL AND INFORMATION CONTAINED IN A HUMAN RESEOURCE FILE.

1. Human Resource Manual.

Is a document detailing an organizations policy regarding employee management and the relationship between managers and employees.

2. Sexual harassment policy.

Section 6 of THE EMPLOYMENT ACT CAP 226 defines a sexual harassment as an unwelcome sexual advance, requests for sexual favors and other verbal or physical conduct of a sexual nature. Reg 2 expounds on the definition further.

S.6 (4) mandates every employer who employees more than 25 employees to have in places measures to prevent sexual harassment occurring at their work place.

Regulation 3 of the employment (sexual Harassment) regulations stipulates that the sexual harassment must be written and must be written and must include the following:

a) Notice to employees that sexual harassment at the workplace is unlawful

b) A statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for co-operating in an investigation of sexual harassment complaint.

c) A description and examples of sexual harassment

d) A statement of the consequences for employers who are found to have committed sexual harassment.

e) A description of the process for filing sexual harassment complaints and the addresses and telephone numbers of the person to whom complaints should be made.

f) Education and training programs on sexual harassment for all employees on a regular basis.\

g) Additional training for the committee on sexual harassment, supervisory and managerial employees.

Regulation 8 requires an employer with more than 25 employees to designate a person who is gender sensitive to be in charge of sexual harassment complaints.

Under Regulation 10, the sexual harassment committee shall be constituted of four members who shall be persons knowledgeable in and sensitive to gender and sexual harassment issues. Any member of the committee may receive a sexual harassment complaint.

Regulation 4(1) requires that an employer provides each employee with a copy of the sexual harassment policy.

Regulation 6 necessitates that the sexual harassment policy is placed in a conspicuous area at the work place.

Pursuant to Regulation 12, a sexual harassment complaint maybe lodged by the employee with a labor officer where they are sexually harassed by the employer or their representative.

Regulation 13 provides for the procedure for handling such complaints

Where a labor commissioner to when a sexual harassment is made fails to dispose of the complaint, they may under Regulation 14(1) refer the complaint to the industrial court for hearing.

Further a person aggrieved by the decision of a Labor officer may within 21 days give a notice of appeal to the industrial court under Reg14(2). The notice is in the form prescribed in the 3rd schedule.

Reg 15 states the principles that must be exhibited in a sexual harassment complaint procedure and these are:

a) Thoroughness

b) Impartiality

c) Timeliness

d) Gender sensitivity

e) Social dialogue

f) Discretion

g) Confidentially

h) The right to privacy of the victim of harassment.

Reg 17(1) bars any form of retaliation and discrimination against persons involved in sexual harassment complaints. Sub reg 3 defines discrimination under this regulation to include:

a) Termination

b) Denial of promotion

c) Demotion in title or duties

d) Transfer to a less favorable

e) Involuntary placement on leave

f) Hostile or abusive treatment

g) Decreasing remuneration or benefits

h) Coercion

i) Threats and intimidation

Under Reg 18(2) false or frivolous sexual harassment complaints may attract disciplinary action against such an employee.

SPECIAL CATEGORIES OF EMPLOYEES.

1. Children

Article 34(4) and (5) of the 1995 constitution of the republic of Uganda states that a child of 16 years may enter into an employment contract.

S.2 of THE EMPLOYMENT ACT CAP 226 defines a child to mean a person below the age of 18 years

S.31 (1) of THE EMPLOYMENT ACT CAP 226 bars absolutely the employment of children under the age of 12 in any business, undertaking or workplace.

Sub-section 2 further bars the employment of children under the age of 14 in any business, undertaking or workplace except for light work carried out under the supervision of an adult aged 18 years and which does not affect the child's education, social development etc.

Reg 2 of the employment (employment of children) regulations 2012, defines light work to mean work which is

a) Not harmful to a child's health

b) Not harmful to a child's development

c) Not prejudicial to a child's attendance at school

d) Not prejudicial to a child's participation in vocational training and

e) Not in excess of 14 hours per week.

Reg 6 designates a list of hazardous work not permitted for employment of a child

Section 31(5) of THE EMPLOYMENT ACT CAP 226and Reg. 12 of THE EMPLOYMENT (employment of children) regulations bar right work for children. The provisions restrict a child's working work to be between 7:00am and 7:00pm.

Over time work is prohibited for children under Reg.11.

A child before engaging in any job must undergo a medical examination as per Reg.13 (1) and sub reg 2 requires that a medical examination is done every 6 months. The child upon undergoing a medical examination under sub reg 1 must be issued with a medical certificate in the form prescribed in the 4th schedule.

An employer is further required under Reg.14(1) to obtain authorization from the commissioner before employing a child aged between 15 years to 17 years.

The employer must also maintain a register of the children he/she is engaging in employment as per Reg 15 and the register is in form prescribed in the 5th schedule to the regulations.

2. Expectant mothers.

Article 33 recognizes the special role women play in recreation and that the same must be taken into account.

These are pursuant to Reg 42(1) of the Employment regulations 2011 not obliged to perform work which is harmful to their health.

The employer is mandated under Sub-regulation 2 to provide an expectant mother with any of the following alternatives:

1. Flexible hours of work

2. Lighter work load

3. Alternative arrangements of work

S.74 (a) further emphasizes that a female employees pregnancy or any other reason connected with her pregnancy shall not constitute a fair reason for dismissal or for the imposition of a disciplinary penalty.

3. Casual employees.

S.2 of THE EMPLOYMENT ACT CAP 226 defines a casual employee to mean a person who works on a daily or hourly basis where payment of wages is due at the completion of each day's work.

In KITAKA ERIMUS V AIM DISTRIBUTORS, LABOR DISPUTE REFRENCE NO 75 OF 2017, the industrial court defined a casual laborer as one who gets paid per day after doing what he has been engaged to do. There is no guarantee that his employer will give him a job the next day and the obligations and responsibilities towards either the employee or the employer end with the work and payment of a particular day.

Under Regulation 39(1) of the employment regulations 2011, a person must not be employed as a casual employee for a period exceeding four months. Under sub-reg 2, a causal employee engaged continuously for 4 months is entitled to a written contract and such employee ceases to be a casual employee and all rights and benefits enjoyed by other employees will apply to them.

IN KITAKA ERIMUS V AIM DISTRIBUTORS (SUPRA) , the industrial court defined the phrase 'continuous engagement" as used in Reg 39(2) of the employment regulations to connote engagement every day to do particular works over a certain period being four months in this case. For a person to rely on Reg 39(2), they must lead evidence to show that they were 'continuous engagement for four months. Failure to do so means that the person was a casual laborer

In WILSON WANYANA V DEVELOPMENT AND MANAGEMENT CONSULTANTS INTERNATIONAL , it provides for test of a causal worker. Justice Yorokamu Bamwine stated that there are to main factors which identify a casual employee. First he/she is not employed for more than 24 hours at a time and secondly his/her contract provides for payment at the end of each day.

4 . Migrant workers

S.36 (2) of THE EMPLOYMENT ACT CAP 226 bars any person from employing a person whom he or she knows to be unlawfully present in Uganda. Sub section 3 criminalizes such action.

A person is unlawfully present in Uganda under S.53 (1) of the Uganda citizenship and immigration control act cap 66. If such a person not being a citizen of Uganda enters or remains in Uganda without a valid entry permit, certificate of permanent residence or pass issued under the act.

Under S.53(4) of the Uganda citizenship and immigration control act, a person can only take an employment in Uganda if they have been granted an entry permit class G as specified in the fourth schedule to the act.

Entry permit is applied for pursuant to S.54(2) and the application is made to the National Citizenship and Immigration board as established under Article 16 of the 1995 constitution of the republic of Uganda.

Pursuant to Regulation 19(1) of the Uganda Citizenship and Immigration control Regulations 2004, every employer must furnish a return of all the non-citizens employed by him or her to the commissioner for immigration every 6 months.

5. Persons with disabilities.

S.1(c) of the persons with disabilities act 2019, defines a disability as a substantial functional limitation of a person's daily life activities caused by physical, mental or sensory impairment and environmental barriers resulting in limited participation in society on equal basis with others.

S.5 (3) of THE EMPLOYMENT ACT CAP 226 bars discrimination in employment on the basis of disability. This is buttressed by S.9 of the persons with Disabilities Act of 2019.

Regulation 35 of the employment regulations, 2011 impose various obligations on an employer in regard to employees with disabilities e.g.

1. To encourage person with disabilities to apply when advertising for vacancies subject to the inherent requirement of a particular job.

2. Avoid using screening methods during interviews which have the effect of discriminating against a person on grounds of their disability.

3. Ensure that the physical officers of a workplace are accessible and to provide assistance and devices required by an employee with disability to enable them execute their duties.

TRANSFER OF EMPLOYMENT

Under S.27 (1) of the employment act, a contract of service cannot be transferred from one employer to another without the consent of the employee except as provided for in sub section 2.

Under Reg 29(1) of the employment regs, the consent must be sought at least 30 days before the employee is transferred.

Under Reg 29(2) where the employee does not consent, they shall be paid all their terminal benefits, outstanding balances, wages and other accrued benefits and the contract terminated.

Sub-section 2 is to the effect that where a trade or business is transferred in whole or in part, the contracts of service of employees employed at the date of transfer will automatically be transferred to the transferee, all nights and obligations between each employee and transferee will continue to apply as if they had been rights and obligations concluded between the employee and transferee.

The assumption of all obligations by the transferee was discussed in the case of SHAKIL PATHAN ISMAIL V DFCU BANK LTD HCCS No.236 of 2017, in which the court stated that the defendant having taken over crane bank took over all employments contracts of the employees of crane bank and any obligations there under. Thus whereas the deductions complained of by the plaintiff were by crane bank, the defendant having taken over was liable to pay back the deductions unlawfully deducted since it has assumed the employment contracts of crane banks former employees by virtual of operation of S.28 (2) of the employment act.

TERMINATION, DISMISSAL AND SUMMARY DISMISSAL.

Under S.82 (2) of the employment act, the employer has a duty to ensure conformity of employment, however where it's not possible then the employer may:

Termination.

Termination is defined under S.2 of THE EMPLOYMENT ACT CAP 226 to mean the discharge of an employee from an employment at the initiative of the employer for justifiable reasons other than misconduct such as expiry of contract, attainment of retirement age etc.

In FLORENCE MUFUMBA V UGANDA DEVELOPMENT BANK, LABOR CLAIM N0.138 of 2014, the industrial court stated that in terminating the employment of an employee there must be circumstances that are justifiable but which may have no bearing on the fault or misconduct of the employee.

Under S.64 (1) of the employment act, termination is deemed to take place where:

a) The contract of service is ended by the employer with notice

b) The contract of service being a contract for a fixed term or task ends with the expiry of the specified term or the completion of the specified task and is not renewed within a period of one week from the date of expiry on the same terms or terms not less favorable to the employee.

c) The contract of service is ended by the employee with or without notice as a consequence of unreasonable conduct on the part of the employer towards the employee.

d) The contract of service is ended by the employee in circumstances where the employee has received notice of termination of the contract of service from the employer but before the expiry of the notice.

The notice stated under S.64 (1) of the employment act, is governed by S.57. S.57 (1) states that a contract of service shall not be terminated by an employer unless he or she gives notice to the employee.

S.57 (2) requires that the notice is in writing and in a language the employee to whom it's related understands.

S.57 (3) stipulates the notice periods and these are:

a) not less than 2 weeks, where the employee has been employed for a period of more than 6 months but less than one year

b) not less than one month, where the employee has been employed for a period of more than 12 months but less than 5 years

c) Not less than 2 months where the employee has been employed for period of 5, but less than 10 years.

d) Not less than 3 months where the service is 10 years or more.

DISMISSAL.

S.2 of THE EMPLOYMENT ACT CAP 226 defines dismissal from employment as the discharge of an employee from employment at the initiative of his/her employer when the said employee has committed verifiable conduct.

In BENON H KANYANGOGA AND ORS V BANK OF UGANDA, LABOR DISPUTE CLAIM n0. 80 OF 2014, the industrial court stated that in dismissing an employee, the employer must establish that there is verifiable misconduct on the part of the employee. Verifiable misconduct includes but is not limited to abuse of office, negligence, insubordination and allow circumstances that impute fault on the part of the employee which include incompetence.

Whereas an employer has the right to dismiss an employee, he\/she must do so in accordance with the established legal procedure.

The employer must also pursuant to S.67(1) give a reason for the dismissal or else that would be construed as unfair dismissal/unlawful dismissal. IN FLORENCE MUFUMBA V UGANDA

DEVELOPMENT BANK, LABOR CLAIM NO.138/2014, the industrial court held that whether the employer chooses to terminate or dismiss an employee, such employee is entitled to reasons for the dismissal or termination. 'in employing the employee, we stringy believe that the employer had reason to so employ him/her .in the same way, in terminating or dismissing the employee there ought to be reason for the decision.

Constructive dismissal.

In BYANJU JOSEPH V BOARD OF GOVERNORS OF ST AUGUSTINE COLLEGE WAKISO, LABOR DISPUTE NO.062 OF 2016, and the court relying on the black's law dictionary 9th edition defined constructive dismissal to mean a termination brought about by the employer making the employees working conditions so intolerable that the employee feels compelled to leave.

The court further laid down the ingredients of constructive dismissal as follows:

a) That the employer must be in breach of the contract of employment

b) The breach must be fundamental as to be considered as a repudiatory breach

c) The employee must not delay in resigning after the breach has taken place.

What amounts to constructive dismissal

IN BYANJU JOSEPH V BOARD OF GOVERNORS OF ST.AUGUSTINE COLLEGE WAKISO (SUPRA), court held that constructive dismissal does not require a formal termination but unilateral act by the employer to substantially change the contract of employment.

Lord denning in WESTERN EXCAVATING (ECC) LTD V SHARP (1978) ICR 222 CITIED IN BYANJU JOSEPH (SUPRA) he stated that if the employer is guilty of conduct which is a significant breach going to the root of the contract or which shows that the employer no longer intends to be bound by one or more of the essential terms of a contract then the employee is entitled to treat himself as discharged from any further performance.

If he does so then he terminates the contract by reason of the employers conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or alternatively he may give notice and say that he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once.

Wrongful dismissal.

It arises where the employee disputes the reasons for his /her dismissal.

Unlawful dismissal.

It arises were S.65 of THE EMPLOYMENT ACT CAP 226 was not complied with. In this, the employee disputes the procedure adopted for their dismissal.

Summary dismissal.

Under S.68 (1), summary dismissals defined to mean when an employee terminates the services of an employee without notice or with notice than that to which the employee is entitled by any statutory provision or contractual terms.

Under S.68 (3) an employer is entitled to dismiss summarily and the dismissal is justified where the employee has fundamentally broken their contract of service.

In FRANCIS OYET OJERA V UGANDA TELECOM LTD, HCCS No.161 of 2010, court stated that

1. A single act of gross misconduct was sufficient to lead to summary dismissal

2. Even in summary dismissal, the person must be accorded a fair hearing under S.65 of the employment act.

In FRED WAKIBI V BOU ,court held that the respondent acted lawfully under S.69(1) and (3) to summarily dismiss the claimant when he was terminated for financial embracement which was a fundamental breach of his contract as his employer was a bank regulator and the employees ought to be exemplary.

IN KABOJJA INTAL SCHOOL V OYESIGYA (LABOR DISPUTE APP NO.003 OF 2015, court found that failure to issue an exam amounted to fundamental breach of the teachers employment contract.

SUSPENSIONS AND DISCIPLINARY SANCTIONS.

THE EMPLOYMENT ACT CAP 226 provides for two types of suspensions under the act. These are suspension as a disciplinary sanction or punishment and suspension pending an inquiry.

Suspension as a disciplinary sanction.

Pursuant to S.61 (1) of the employment act, an employee may impose a disciplinary penalty onto the employee other than dismiss them where such employee was negligent, failed or allegedly failed to carry out their duties under the employment contract. S.61(3) stipulates that an employer can only impose a disciplinary penalty where it is reasonable to do so and in deciding what is reasonable ,the employer is guided by the nature of the neglect, failure or alleged failure committed by the employee and the code of discipline set out in the 1st schedule to the act.

Under S.61 (2), THE EMPLOYMENT ACT CAP 226 defines a disciplinary penalty to mean a written warning, reprimand or suspension from work. Under Sub-section 4 of the provision, an employer cannot be suspended from work for more than 15 days in any 6 months period.

Under S.61(5), an employee who fails to impose a disciplinary penalty within 15 days from the time of occurrence or when he/she became aware of the occurrence giving rise to disciplinary action is deemed to have waived the right to do so.

Suspension pending inquiry.

Under S.62(1) of the employment act, whenever an employer is conducting an inquiry into the conduct of an employee which they believe might reveal a cause for dismissal of an employee, the employer may suspend the employee with half pay.

Whether to suspend an employee with half pay or full pay is determined by what the employment contract and the human resource manual of the employer stipulates. For example in OKELLO NYMLORD V RIFTVALLEY RAILWAYS (U)LTD HCCS NO 195 OF 2009, the human resource manual of the dependent stipulated that on suspension an employee is entitled to their full pay for the duration of the suspension. Pursuant to S.27(2) of the employment act, such a variation of the provisions of the act by the HR manual or employment contract which is in favor of the employee is permissible however any agreement between the employer and employee to allow for suspension without any pay at all is null and void by virtual of s.27(1).

The suspension according to S.62 (1) of THE EMPLOYMENT ACT CAP 226 must not exceed four weeks or the duration of the inquiry whichever is shorter. In OKELLO NYMLORD V RIFTVALLEY RAILWAYS (U)LTD, HCCS NO.195 OF 2009, the plaintiff was suspended in excess of the four weeks permitted under S.63(2) of THE EMPLOYMENT ACT CAP 226was an unlawful suspension.

IN KATINDA V NNHP ENTERPRISES LABOR DISPUTE REFERENCE NO.169, court stated that it is important that the suspension letter clearly states that the suspension is an interim pending finding out whether or not the employee should be responsible for the allegation mentioned in the suspension letter.

Suspension letter.

FRAZER DISTILLERS LIMITED

P.O BOX 456, KAMPALA,

UGANDA.

DATE: 10TH FEBRAURY 2020.

MR.BONGO NKATA,

HEAD OF FINANCE.

Dear Sir,

RE: SUSPENSION FROM WORK

Reference is made to the above.

Following a forensic audit conducted on the 14th day of January 2020 by the external auditors and their findings contained in report dated 1st February 2020, it was discovered that funds amounting to UGX. 1.2 billion Were not fully accounted for. Further, forged receipts amounting to UGX.111 million were also found. The report is attached to this letter for your reference.

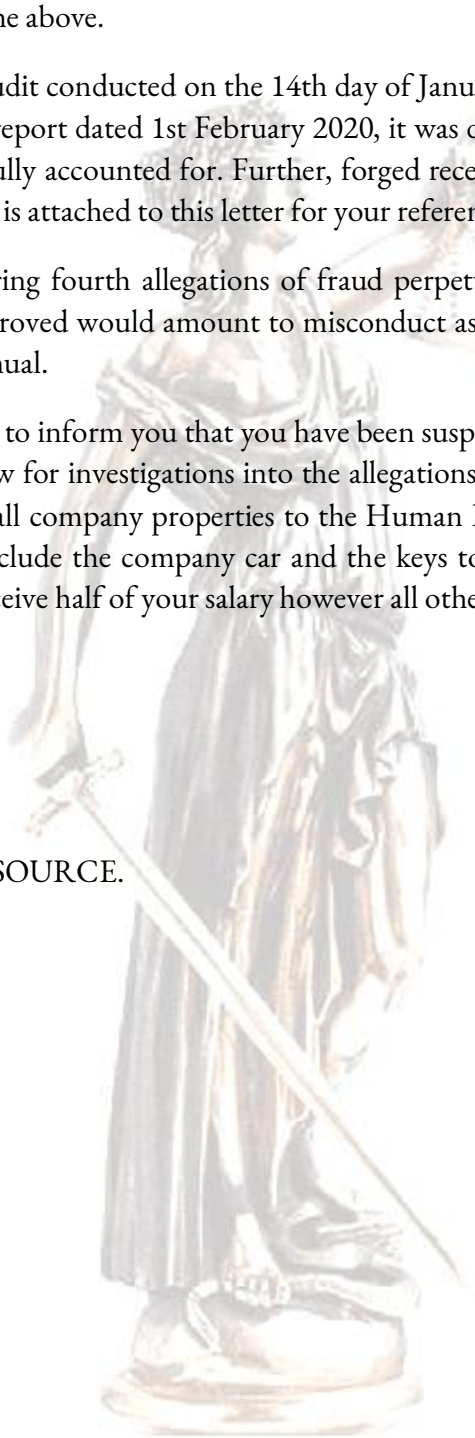
The above findings bring fourth allegations of fraud perpetuated by you as the head of the financial department which if proved would amount to misconduct as per regulation 6 (1) (b) of the company's Human Resource Manual.

Therefore, this letter is to inform you that you have been suspended from work from today until the 9th of March 2020 to allow for investigations into the allegations of fraud against you to take place. You're required to handover all company properties to the Human Resource Department by close of day and these among others include the company car and the keys to your office. During the duration of this suspension you will receive half of your salary however all other benefits shall be suspended.

Yours faithfully

LUTIMBA ALLAN

HEAD HUMAN RESOURCE.



REMEDIES AVAILABLE TO AN EMPLOYEE FOR UNFAIR TERMINATION, UNFAIR DISMISSAL AND UNLAWFUL DISMISSAL.

The remedies are provided for in THE EMPLOYMENT ACT CAP 226 and under common law.

1. Payment in lieu of notice. Pursuant to S.57 (1) of the employment act, an employment contract cannot be terminated by an employer without giving notice to the employee. Where such notice is not issued, then under S.57(5),the employee who is terminated is entitled to payment in lieu of notice that her or she ought to have been given. In BANK OF UGANDA V BETTY TINKAMANYIRE Tseseko jsc held that 'in my opinion where any contract of employment like the present stipulates that a party may terminate it by giving notice of the specified period, such a contract can be terminated by giving the stipulated notice for the period. In default of such notice by the employer, the employee is entitled to receive payment in lieu of notice and where no period for notice is stipulated, compensation will be awarded for reasonable notice which should have been given depending on the notice and duration of employment.

Payment in lieu of notice can be viewed as an ordinary way of giving notice.

2. Reinstatement.

In instances of unfair termination, an employee has the remedy of reinstatement when ordered by a court pursuant to S.70 (5) (a) of E.A. in ordering the remedy court must under subsection 6 give due regard to whether the employee does wish to be reinstated, whether the circumstances surrounding the termination are such that a continued employment relationship would be intolerable and whether its reasonably practicable for the employer to reinstate the employee.

Courts are however very unlikely to issue this remedy despite the same being available to an aggrieved party under the act. In STANBIC BANK V KIYEMBA MUTALE SCCA N0.2 OF 2010, justice katureebe held that it is trite law that normally an employer cannot be forced to keep an employee against his will.

3. Compensation

Under S.70 (5) (b) of the employment at, the court if satisfied that the employee was unfairly terminated may order the employer to pay compensation to the employee. Under S.77 (1) an order of compensation must include a basic compensatory order equal to the employees four weeks wage. Pursuant to S.77 (2), the compensatory order may include additional compensation which according to sub-section 3 must not exceed an amount amounting to the employees 3 months wage. In OKELLO NYMLORD V RIFTVALLEY RAILWAYS (U) LTD (SUPRA), Musota j held that where an employer unlawfully terminates the services of an employee the latter is entitled to compensatory orders under the E.A

4. Severance allowance.

Subject to S.87 (a), an employee is entitled to a severance allowance from the employer where the employee was unfairly dismissed.

Musota j in OKELLO NYMLORD V RIFTVALLEY RAILWAYS (U) LTD (SUPRA) held that where an employer unlawfully terminates the services of an employee, the latter is entitled to not only compensatory orders but also severance allowance or pay under the E.A.

5. DAMAGES

These are a common law remedy and include the following:

a) Several damages

In HADLEY V BAXENDALE (1894) 9 EXCH 341, court held that the purpose of damages is to put the injured party in the position he or she would have been if the injury had not occurred. In STANBIC BANK V KIYEMBA MUTALE SCCA NO.2 OF 2010, justice katureebe held that whereas an order of specific performance in employment contracts cannot be issued, the employer must be prepared to pay damages for wrongful dismissal. IN GULLABHAI SHILLING V KAMPALA PHARMACEUTICAL LTD SCCS NO. 6 OF 1999, mulenga JSC held that a wronged employee is entitled to recover as damages, the equivalent of the remuneration for the period stipulated in the contract of notice.

b) Aggravated damages

In ISAAC NSEREKO V MTN UGANDA LTD , Justice kabiito stated that aggravated damages compensate the victim of a wrong for mental distress in circumstances in which that injury has been caused or increased by the manner in which the defendant committed the wrong or by the defendants conduct subsequent to the wrong or by the defendant conduct subsequent to the wrong. They are damages awarded as compensation for the P/F mental distress, where the manner in which the defendant has committed the tort, or his motives in so doing or his conduct subsequent to the tort has upset or outraged the P/F. such conduct or motive 'aggravates' the injury done to the P/f and therefore warrant a greater or additional compensatory sum.

c) Special damages

These must be specifically pleaded and proved. Special damages in such cases may relate to outstanding bank loan obligations at the time when the employee was unfairly terminated, unfairly dismissed or unlawfully dismissed. In NATIONAL FOREST AUTHORITY V SAM KIWANUKA CIVIL APPEALS NO.005 OF 2009, the court of appeal held that special damages may be awarded where a party contracts a loan obligation but as a result of unlawful or wrongful act of another making the loan contractor fail to pay the loan, the latter is entitled to special damages of an amount equivalent to the outstanding bank loan at the time of the unlawful act. The victim is also entitled to general damages for the inconvenience and embarrassment caused to him as a result of the unlawful acts of the defendant.

JURISDICTION OF THE LABOR OFFICER AND THE INDUSTRIAL COURT.

S.12 (1) of the EA enshrines Labor officers with the jurisdiction to entertain and resolve Labor disputes arising from employment contracts or under the operation of the act. In addition, section 93(1) of the EA stipulates that the only remedy available to person claiming an infringement of any of the rights fronted under the employment act, is to make a complaint to a Labor officer.

Under S.3 (1) of the Labor disputes (arbitration and settlement) act Labor disputes whether existing or apprehended may be reported to Labor officers in writing. S.2 of L A (A&S) act defines a Labor dispute to mean any dispute or difference between an employer and employees or between Labor unions, connected with the employment or non-employment terms of employment , the conditions of Labor of any person or the economic and social interests of a worker or workers.

Under S.93(2) of the EA, the Labor officer has the jurisdiction to hear and settle by conciliation or mediation a complaint by a person alleging that another party is in breach of the employment contract between them.

In the case of BUSINGE MAIM AND AYELLA GEORGE ZACK V SINOPEC SERVICES (U) LIMITED (CIVIL SUIT 7 OF 20230[2024] UGHC 21 (30 JANUARY 2024), It was reasserted that the employment act of 2006 did not oust the original jurisdiction of the high court in employment matters.

Procedure for lodgment of a complaint.

The procedure is outlined under regulations 7 and regulations 8 of the employment regulations, 2011.

Industrial court (I.C)

The I.C is established by S.7 (1) of the Labor disputes (arbitration and settlement act 227. In justice ASAPH RUHINDA NTENGYE AND ANOTHER V ATTORNEY GENERAL, CONST PET.NO.33 OF 2016, the constitutional court stated that the industrial court is part of the courts of judicature although is not a superior court. It is a subordinate court established under Article 12 of the constitution even though it is at the same level as the high court in appellant ranks.

Jurisdiction.

Under S.8 (2) of the Labor disputes (arbitration and settlement) act no.8 of 2006, the jurisdiction of the I.C includes:

a) Arbitrate on Labor disputes referred to under the LD (A &S) act.

b) Adjudicate upon questions of law and fact arising from references to the industrial court by any other law.

Pursuant to S.23 (7) of the E.A, a complainant may pursue a claim before the I.C if the complaint is dismissed or the Labor officer has within 90 days not issued a decision.

S.93 (1) of THE EMPLOYMENT ACT CAP 226further states that a party who is not satisfied with the decision of a Labor officer on a complaint may appeal to the I.C.

According to S.94 (2) of the EA, the appeal must relate to a question of law and on question of fact only with leave of court.

Composition of I.C

S.10(1) of the L.D (A &S) act, states that the industrial court consists of a chief judge , a judge (both of whom must have similar qualifications as those of a high court judge and are appointed by the president on the recommendation of JSC under S.10(2), an independent member, a representative of employers and a representative of employees.

Procedure.

A matter may pursuant to Rule 3 of the Labor disputes (Arbitration and settlement)(industrial court procedure) rules, be referred to the industrial court either by a Labor officer at the request of a party to a dispute in which case the reference will be in form specified in the first schedule to the rules or a party to a dispute that has been reported to a Labor officer may refer the matter to the industrial court if the matter has not been referred by the Labor officer or otherwise disposed of the dispute within 8 weeks.

1. The reference in this case is in the form specified under the second schedule to the rules. The reference by the Labor officer must be accompanied by report of the Labor officer describing the nature of the disputes and steps taken to resolve the dispute and all documents and information furnished to him or her by the parties.

2. Upon receipt he reference by the registrar of industrial court, he/she must as required by rule 4 of L.D (A&S) (I.C procedure) rules file the reference and allocate it a reg number.

3. The registrar must under rule 5(1) give notice to the parties to the dispute that a reference has been made to the I.C within 7 days from the date of receipt of the notice.

4. The claimant must serve the memorandum onto the respondent

5. The claimant must then file 6 copies of the memorandum accompanied by an affidavit of service with the registrar of the I.C as stipulated in Rule 5(2)

6. Rule 5(4) mandates a respondent to file a reply to the memorandum within 7 days from the day of service of memorandum

7. Respondent must serve the reply onto the claimant and file 6 copies of the memorandum in reply accompanied by an affidavit of service.

Note: under Rule 6(1), a party to a dispute who fails to file documents within the prescribed time, may apply to the court for extension of time.

Appeals from I.C

Under S.22 of the L.D(A &S) act and rule 23(1) &(2) of the L.D (A & S) (I.C procedure) rules an appeal from a decision of I.C is to the court of appeal and must only be on a point of law or on whether the I.C had jurisdiction over the matter.

The appeals are pursuant to Rule 23(3) governed by the judicature (court of appeal) rules S.I NO.13-10

IN KOMAKECH V MUTTICO TECHICAL SERVICES LIMITED AND ANOTHER 2024 UGIC 25(5 JULY 2024), it was held the industrial court has no jurisdiction to hear disputes arising from injuries sustained in workplaces.

COLLECTIVE TERMINATION.

Under S.64 of the EA, an employment contract may be terminated.

Section 2 of the EA, defines what termination of employment mean

Under S.88 (2) of E.A, the employer has a duty to ensure continuity of employment however where it is not possible then the employer may terminate in accordance with the law.

Under S.80(1) of the E.A, if the employer contemplates termination of not less than 10 employers over a period of not more than 3 months for reasons of an economic, technological structural or similar nature then that is collective termination.

Economic reasons, the employer is financially distressed and if nothing is done might be declared insolvent and any of the insolvency proceedings may happen that is receivership, administration or liquidation and therefore to avoid these, the company must lay off some workers so as to cut costs and stay afloat.

Technological reasons, the employer has acquired new efficient technology to perform a given tasks there by rendering the present employees doing that task surplus.

Structural

Procedure.

1. Notify the employees affected of the pending termination. Notice periods in S.57 of the E.A are applicable. BEN KIMULI V SANYU 2000.

2. Notify the representative of the Labor union if the employees affected are unionized as per S.80 (a) of E.A and the minimum period for such notice is four weeks before the 1st termination.

3. Notify the commissioner for Labor in writing of the reasons for the termination ,the number and categories of workers likely to be affected and the period over which the termination are intended to be carried out. S.80(b) of E.A

Reg 44(a) of the employment Regs 2011 states that the notice must be in form prescribed in Part A and B of the 6 the schedule.

UNIONIZED EMPLOYES.

Labor union is defined in S.1 of the Labor unions act cap 228, to mean any organization of employees created by employees for the purpose of representing the rights and interests of employees and includes a registered Labor union at the time of coming into force of the act

Right of employees to form Labor unions.

Article 29(1) (e) of the 1995 constitution of the republic of Uganda guarantees the right to freedom of association.

Further Art.40 of the constitution provides for the right to work which entails the formation of the Labor unions

Under section 2 of the Labor unions act, employees have the right to organize themselves in any Labor union.

Right of employees in a Labor union

Under S.2 of the Labor act, unionized workers have the right:

a) To assist in the running of the Labor union

b) To bargain collectively through a representative of their own choosing

c) Withdraw their Labor and take industrial action. The industrial action may take the form of sit down strikes.

In UGANDA DEVELOPMENT BANK V FLORENCE MUFUMBA CACA NO.241 OF 2014.

Holding.

1. An employee who terminates the contract of employment is not under an obligation to give reasons why they terminated the contract in the termination letter.

2. Wrongful dismissal/ termination are one and the same and they mean that the employee was dismissed or their services terminated without following the contractual/provisions of the employment act. Wrongful termination/dismissal is a common law cause of action concerning itself more with the reasons for dismissal or termination. The remedies for wrongful dismissal are founded in the common law while those for unfair termination are stipulated under the E.A

3. Wrongful dismissal being a breach of contract and statutory provisions, it follows that the employer repudiated the terms of the contract and the court can award reasonable remedies. The award of reasonable remedies is not tied to the contractual terms but the rather principle of restitution in integrum which requires court to put the claimant in a position he/she would have been had the breach not occurred. The same principle applies in the assessment of damages in claims for wrongful dismissal. The court should consider loss of income as the natural and probable consequence of dismissal and should classify these as special damages since they are capable of being quantified.

4. General and aggravated damages may be awarded but not for the same claim as they are same kind. Aggravated damages court looks at the employers conduct and manner of committing the tort which may have injured the proper feelings of the dignity and pride of the employee.

5. Remedies available to an employee for a claim of wrongful dismissal ,donot include remedies for unfair dismissal such as severance pay and leave pay as provided under the E.A

6. EMPLOYMENT OF YOUNG PERSONS AND WOMEN

7. Section 32(1) of THE EMPLOYMENT ACT CAP 226 provides that a child under the age of 12 years shall not be employed in any business undertaking or work place.

8. Regulation 2 of the employment of childrens regulations, defines a child as a person below the age of 18 years.

9. Section 11 of the contracts act, a person has capacity to contract where that person is 18 years and above.

10. Article 34(4) of the 1995 constitution of Uganda, children are entitled to be protected from social and economic exploitation and shall not be employeed in or required to perform work that is likely to be hazardous or interfere with their education.

11. Section 32(2) of THE EMPLOYMENT ACT CAP 226 provides that a child under the age of 14 years shall not be employed in any business undertaking or work place except for light work carried on under supervision of an adult aged over 18 years and which does not affect a child's education. This is in line within the constitution stand on this matter which is to the effect that a person below the age of 18 is considered a minor.

12. Regulation 3 of the employment of children regulations, children under the age of 14 years shall be employed in light work that shall be supervised by an adult and where the work doesnot exceed 14 hours per week.

13. Regulation 10 of employment of children regulations, a child aged between 15 and 18 years who has completed his or her education or doesnot attend school may work up to 7 hours a day but shall not exceed 35 hours per week.

14. In relation to women, section 56(1) of THE EMPLOYMENT ACT CAP 226provides that female employees shall as a consequence of pregnancy have the right to a period of 60 working days leave from work on full wages hereafter referred to as maternity leave, of which at least four weeks shall follow the child birth or miscarriage.

15.

WORKERS COMPENSATION.

This is governed by The workers compensation act cap 233 .

Applicability of act.

Under S.1, the act applies to all persons in private or government employment but does not apply to active members of the armed forces of Uganda.

Key terms (S.2)

1. Worker means any person who performs services in exchange for remuneration, other than a person who performs services as an independent contractor or an apprentice who is engaged primarily for the purpose of receiving training in a trade or profession as per section 2 .

2. Injury means an accident and a scheduled disease.S.2

3. Total incapacity means incapacity whether of a temporary or permanent nature which incapacities a worker for any employment which he or she was capable of undertaking at the time when the accident occurred. S.2

Employer's liability.

S.3 (1) for personal injury by accident arising out of and in the course of the workers employment.

The following are deemed to be done out and in the course of employment:

1. S.3 (3), when a worker acts to protect any person on the employers premises where the worker believes to be injured or imperiled, or when a workers acts to protect the property on the employers premises.

2. S.3 (4), while the employee is travelling directly to or from his or her place of work for purpose of employment. As per S.3 (5), it's upon the employee to prove that such travel was to or from work.

S.3 (6), stipulates that compensation under the act is payable whether or not the incapacity or death of the worker was due to the recklessness or negligence of the worker.

S.3 (2) excludes liability where the injury does not result into permanent injury or incapacity for less than 3 days.

Who can claim.

1. The worker. Worker is defined in S.2

2. If the worker is deceased, then his/her family members who are dependent on his/her earnings. (S.4(1), S.2, defines member of the family to mean the wife, husband, father, mother, grandfather, grandmother, stepfather ,step mother, son, daughter, grandson, granddaughter, stepson, step daughter, brother, sister, uncle, aunt, niece, nephew, cousin or adopted child.

Compensation quantum

1. Under S.4 (1) where the deceased worker leaves any family members, the amount of compensation is 60 times their monthly earnings.

Where the deceased has no any dependent family member, the employer only pays expenses of the medical aid provided and burial expenses of the deceased under S.4(2). Note that there is a presumption that a worker has dependents unless the local authority of the home area of the deceased proves otherwise. (S.4 (4)).

Permanent total incapacity.

2. Except if the terms and conditions of service provide for a lighter compensation, the amount of compensation is 60 months earnings. (S.5 (1)).

If the injury is likely to require the injured worker to have constant assistance of another person on a permanent basis, then the compensation is 75 months earning.

S.2(2) stipulates that permanent total incapacity results from an injury or from any combination of injuries specified in the 2nd schedule to the act where the percentage or aggregate specified in that schedule in relation to the injury or injuries amount to 100%.

Permanent partial incapacity

3. The compensation payable here is such percentage of 60 times the workers monthly earnings as is specified in the 2nd schedule. The permanent partial incapacity relates to an injury specified in the 3rd schedule.

Where the injury aint scheduled in the 3rd schedule, each percentage of 60 times the workers monthly earnings as is proportionate to the loss of earning capacity permanently caused by the injury .S.6 (1) (b)

In the event that more than one injury under the 2nd schedule arises from the same accident, the compensation is aggregated but the amount of compensation payable must not be greater than amount that would have been payable if the accident had caused the worker to suffer permanent total incapacity.

Temporary incapacity.

4. Under S.7 (1), temporary incapacity, whether total or partial, resulting from injury, the compensation can be paid either in lump sum or periodically. The compensation payable shall take into account, the circumstances in which the accident happened, the probable duration of the incapacity of the worker, the injuries suffered by the worker and the financial consequences for the worker and his/her defendants.

Under S.7(2), period covered by hospitalization or absence from duty certified as necessary by a medical practitioner shall be regarded as a period of temporary total incapacity irrespective of the outcome of the injury and this will be inclusive of the period preceding final assessment of disability both periods being continuous of each other.

Calculation of earnings.

S.2, defines earnings to include wages and any allowances paid by the employer to the worker, including the value of any food, accommodation or benefit in kind.

Under S.8(1), the monthly earnings used are the workers earnings during the 12 months immediately preceding the accident and the computation of annual earnings is multiplied of 12 of that sum

Deductions from compensation payable by the employer.

Under S.8 (4), an employer may deduct any sums paid to a worker pending the settlement of the claim arising under the act from the final compensation payable.

S.11 (4) obliges an employee to pay for medical expenses during the period of temporary total incapacity.

Medical expenses expended as required.

Under S.24 and S.11 (4) are not deductible neither is the cost of conducting the medical examination by a medical practitioner as per S.11 (1).

S.24 (1) mandates the employer to defray the reasonable costs incurred by a worker in respect of medical expenses and incidental costs.

Notification of accident by worker.

S.9 (1) postulates that compensation may not be payable under the act unless notice of the accident has been given to the employer by or on behalf of the worker as soon as is reasonably practicable in any case within one month after the date when the accident occurred or within three months after the date the symptoms of the occupational disease became apparent.

No notice is required however where it is how that the employer was aware of the accident or disease at or about the time it occurred or at the time when the symptoms became evident or for any reasonable cause.

The form of the notice is specified under form1 in the 1st schedule to the workers compensation regulations S.1.225-1 as per Reg 2

Notification by employer to Labor officer.

S.10 requires an employer, upon the accident happening causing injury to the worker which entitles him/her to compensation to notify the Labor officer within a reasonable time.

The form of the notice is specified under form 2 to the first schedule of S.1.225-1

Contestation on assessment of disability.

If the assessment made by a medical doctor under S.11 is disputed by either party, the aggrieved party may apply to the Labor officer to request that the dispute be referred to the medical arbitration board. S.13 (1)

The decision of the medical arbitration board is final unless the aggrieved party goes to court. S.13 (3).

Determination of claims.

Where the worker and employer fail to agree on the amount of compensation after 21 days from when the employer received the notice, the worker may make an application for enforcing a claim to compensation to the court having jurisdiction in the place where the accident arose. S.14 (1)

The application takes the form prescribed in form 1 of the 1st schedule to workers compensation (rules of court) rules S.1. 225.4

The court has jurisdiction irrespective of the money involved. S.14 (2)

S.2 court under the act is defined to mean a magistrates court presided over by a C/M or G1, having jurisdiction in the area where the accident to the worker occurred.

OCCUPATIONAL DISEASES.

Where a medical practitioner grants a certificate stating that a worker is suffering from a scheduled disease or that their death was as a result of a scheduled disease, and the disease was due to the nature of their work within the preceding 24 months, the worker is entitled to compensation as if that disablement or death arose from an accident. S.27 (1).

A disease is said contracted as per S.27 (2), when the symptoms of the disease are clearly manifest in physiological or psychological signs or when first diagnosed by a medical practitioner.

Liability

Under S.29(1) the compensation is payable by the employer who last employed the worker during the period of 24 months referred to in S.27(1)(b) unless that employer proves that the disease was not contracted while the worker was in his/her or its employment.

Under S.29 (3), the employer denying liability may take out 3rd party proceedings against the new employer.

CONTRACTS OF EMPLOYMENT AND TERMS OF CONTRACT

Payment of Wages

Section 2 of THE EMPLOYMENT ACT CAP 226defines a wage as remuneration or earnings however86 designated or calculated capable of being expressed in terms of money payable to an employee under a contract of service. Wages are provided for in Part V of THE EMPLOYMENT ACT CAP 226and in particular, section 41 makes it a mandate to the effect that the employee is entitled to wages.

An employee is not entitled to receive wages, under section 41(6) in respect of a period when he or she is absent from work without authorization or good cause except that in case of an employee who has completed at least three months continuous service with his or her employer, there are some scenarios which do not constitute absence without good cause, thus

- Absence attributed to occurrence of exceptional events preventing the employer from reaching his place of work.

- Absence attributed to a summons to attend a court of law or any other public authority having power to compel attendance.

- Absence attributed to death of a member of the employee's family or defendant relative, subject to a maximum of three days' absence on any occasion and a maximum of six days in any calendar year.

The above discussion is fortified by the principle of RAMANBHAI VS MADHIVANI INTERNATIONAL COMPANY LTD (1992-93) HCB 189 where court held that where payment is due at the end of the month and it is not made; such a contract gives rise to a cause of action each month accrues and which once vested is not subsequently lost or divested of the servant's abandonment of the contract.

It must be noted that, under section 43 of the Employment Act, the payment of wages shall take place at the Employee's place of work or if he or she works at more than one location, the premises of his or her employee from which he or she works or from which his work is administered.

The payment of wages to another person other than the employee entitled to it is prohibited in section 44.

The permitted deductions from remuneration of an employee are spelt out in section 46 and these include, an amount in respect of any tax, rate, subscription or contribution imposed by law, or where the employee has given his written consent to a deduction being made, deduction by way of reasonable rent or other accommodation provided by the employer for the employee's family, or union dues inter alia.

Social Security

This is a statutory protection whereby the employer is under a strict obligation to remit 5% of the employee's salary to National social Security Fund. This is mandated in section 10(2) of the National social Security Act Cap 230.

Taxation of the wages

Taxation is an allowable deduction under section 46(1)(a) of the Employment Act. Taxation is governed by the Income Tax Act Cap 340 and section 116(1) of the Income Tax Act Cap 340 allows an employer to withhold the tax notwithstanding any law providing that employment income of an employee shall not be deducted or be subject to attachment. An example of this withholding tax is P.A.Y.E

Safety at Work

This is governed by The Occupational Safety and Health Act Act cap 231 which repeals the Factories Act and the Workers Compensation Act. this is furthermore sanctioned by article 40(1)(a) of the Constitution 1995 which puts a duty on the employer to provide and ensure safety and welfare of the worker. This is fortified by the case of Asila vs. NYTIL [1975] HCB 292, where court upheld the common law principle which is to the effect that the employer is under a duty and owes a duty of care towards his employees in terms of safety.

Insurance

This is a fascinating concept in the Employer- Employee relationship. The employer is under an obligation to provide insurance cover to the employee under section 18 of the Workers Compensation Act.

TERMINATION OF CONTRACT

Section 2 of THE EMPLOYMENT ACT CAP 226 means the discharge of an employee from an employment at the initiative of the employer for justifiable reasons. An employer has an inherent right to terminate an employee.

In Barclays bank of Uganda v godfrey mubiru s.c.c.a no.1 of 998, the supreme court noted that where a service contract is governed by a written agreement between the employer and the employee, termination of employment or service to be rendered will depend on both the terms of the agreement and on the law applicable.

Section 57 gives the cardinal rule that a contract of service shall not be terminated by an employee unless he or she gives notice to the employee; except where a contract is terminated summarily under section 69 or where for reason of termination, is attainment of retirement age. The notice shall be in writing and shall be in a form and language that the employee to whom it relates can reasonably be expected to understand.

Section 65 provides for the different modes in which termination is deemed to take place thus;

a) Where the contract is ended by the employer on notice3

b) Where the task given in the contract of service expires.

c) Where the contract is ended by the employee as a consequence of unreasonable conduct

d) Where the contract of service is ended by the employee, where the employee has received notice of termination of the contract of service from the employer but before expiry of the notice.

In JOSEPH KIBUUKA AND ORS V BANK OF UGANDA LABOUR DISPUTE NO.184/2014,the industrial court held that whether the employer chooses to terminate or dismiss an employee, such employee is entitled to give reasons for dismissal or termination and such reasons must be in existence at the time the decision is made.

Section 80 (1) of the employment act, where an employer contemplates termination of not less than 10 employees over a period of not more than 3 months for reasons of an economic, technological, structural or similar nature, he or she shall;

a) Provide the representatives of the labour union, the number and categories of workers likely to be affected and the period over which the terminations shall be carried out.

b) Notify the comiisioner in writing of the resons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

Regulation 44 of the employment regulations 2011, a person shall;

a) Notify the commissioner in a form prescribed in parts A and B of the 16th schedule.

b) Provide a report detailing the terminal benefits and plan of payment of those benefits to the affected employees.

Section 81(2) of the employment act, an employer who acts in breach of the section commits an offence.

Section 57(3), provides for the notices required to be given by an employer or employee;

a) Not less than 2 weeks, where the employee has worked for 6 months but not less than 1 year.

b) Not less than 1 month , where the employee has worked for 12 months but less than 5 years.

c) Not less than 2 months , where the employee has worked for five years but less than 10 years.

d) Not less than 3 months where the service is 10 years or more.

BANK OF UGANDA V BETTY TINKAMANYIRE S.C.C.A NO.12 OF 2007, Justice Tseekoko stated that where any contract of employment stipulates that a party may terminate it by giving notice of a specified period, such a contract can be terminated by giving the stipulated notice for a period . in default of such notice by the employer, the employee is entitled to receive payment in lieu of notice and where no period for notice is stipulated, compensation will be awarded for reasonable notice which should have been given depending on the nature and duration of employment.

Rights and remedies of employees.

a) Collective terminatiom

Section 80 of the employment act

Section 57(3)(d) of the employment act, states that a contract of service shall not be terminated unless notice of not less than 3 months where the service is 10 years or more.

Section 38(1), an employee entitled to be repatriated at the expense of the employer if at a place more than 100km.

b) The employees have a right to benefits. Section 42(6) E.A, an employee shall within 7 days from the date on which the employment terminates be paid his or her wages and other remuneration and accrued benefits to which he or she is entitled.

c) The employees are entitled to atleast one half day off per week for purposes of seeking new employment as per section 57(7) of THE EMPLOYMENT ACT CAP 226

d) Complaint to labour officer. Section 69(1) of THE EMPLOYMENT ACT CAP 226, where an employee has been smmarily dismissed without justification

WRONGFUL AND SUMMARY DISMISSAL

Summary dismissal is deemed to take place when an employer terminates the services of an employee without notice or with less notice than that to which the employee is entitled to by any statutory provision or contractual term. The conduct should be so gross that it affects one's line of employment. This was the principle in AM Jabi Vs Mbale Municipal Council [1975] HCB 191; court went on to state that dismissal [is wrongful] where it is effected without any justifiable cause and or reasonable notice.

Summary and wrongful dismissal were discussed at length by Manyindo J; where he stated that for summary dismissal to occur, the act of the employee warranting the dismissal must be so grave; where in contract, it would amount to repudiation of the contract. Some of the examples of summary dismissal include the following:

- Alcoholism/ drunkardness;
- Incompetence (in line of duty)
- Misconduct for example fighting fellow staff.
- Immorality
- Disobedience of lawful orders.

Court held further in Deep Surfing Vs Insad (1886- 90) All ER 65 that a single act of misconduct can lead to a summary dismissal if it undermines the relationship between the Employer and the Employee.

Wrongful dismissal on the other hand is the termination of the contract of service without regard to the terms of the contract; for example dispensing with notice. Wrongful dismissal can lead to an award of general damages. This is fortified by the case of John Kiwanuka and others vs. Kiboga District Local Government Council HCCS NO. 588 OF 2000 where Okumu Wengi J awarded general damages. Before termination of services of an employee, it is proper to give someone a chance to be heard. Court held thus in Obwolo vs. Barclays Bank (1992-93) HCB 179 and stated further that where no opportunity has been granted to a victim to be heard, then the dismissal is wrongful. The justification for summary dismissal is evident in Mubiru Vs Barclays Bank SCCA 1 of 1998 where court held that an employee is empowered to summarily dismiss without notice if an employee is guilty of professional misconduct.

REMEDIES

a) The basic remedy is by bringing a complaint with the Labor Officer for settlement under section 93 0f the Employment Act.

Procedure

Lodging a complaint to Labor Officer by way of ordinary letter; under section 93 of the Employment Act.

- The Labor officer shall then notify the other party and request for a reply.
- The officer shall then hear the matter and settle it by conciliation or mediation under section 92(2).

The relevant document at this stage:

A notice of complaint (by ordinary letter)

Must be noted that unlike the situation before the enactment of the new Employment Act, an aggrieved person would proceed by way of a civil suit to seek redress. It is now different; the complaint should first be lodged with the Labor Officer.

It must be noted that upon dismissal , reinstatement is not a common remedy as held in AM Jabi Vs Mbale Municipal Council [1975] HCB 191.

b) Lodging a complaint in court for unfair dismissal. Section 71(5) E.A , if court finds the dismissal unfair, the court may;

- Order the employee to reinstate the employee
- Order the employer to pay compensation

c) Obtaining severance allowance

COMPLAINT BY EMPLOYEE

SECTION 63 (1) OF THE EMPLOYEMENT ACT, Where an employee believes that an employer was not justified in imposing a disciplinary penalty on him or her, or in imposing a suspension with half pay, the employee may, within a period of four weeks after the imposition of the penalty or suspension, make a written or oral complaint to a labour officer.

(2)Where a complaint under this section has been made to a labour officer, the officer shall—(a)investigate the circumstances leading to the imposition of the disciplinary penalty, and in the course of these

investigations he or she shall consult any Labour Union, if any, established in the business in which the employee is employed; and

(b)seek to settle the matter in the first instance by mediation.

SECTION 63(5); Where a labour officer decides that the imposition of a disciplinary penalty or the suspension with half pay was unreasonable, the labour officer may make an order—

(a)that the original penalty be revoked;

(b)that the original penalty be revoked and be replaced by another specified lesser penalty; or

(c)that the employer pay to the employee the wages which would otherwise have been due for the period of suspension with half pay.

REMEDIES TO THE EMPLOYER AND EMPLOYEE IN CASE OF BREACH

Section 92 of the employement act Except where the contrary is expressly provided for by this or any other Act, the only remedy available to a person who claims an infringement of any of the rights granted under this Act shall be by way of a complaint to a labour officer.

Section 93 (2)A labour officer shall have jurisdiction to hear, and to settle by conciliation or mediation a complaint—(a)by any person alleging an infringement of any provision of this Act; or(b)by either party to a contract of service alleging that the other party is in breach of the obligations owed under this Act.

Regulation 7(1) of the employment regulations 2011 every complaint lodged with the labour officer shall be registered in the form prescribed in the fourth schedule.

Regulation 7(2), upon receipt of a complaint the labour officer shall notify the respondent of the complaint against him or her in the form prescribed in part B(1) OF the fourth schedule.

Procedure to be followed by labour office during hearings.

a) Regulation 8(1) upon receipt of a response from a respondent to a dispute, the labour officer shall within 14 days, summon the parties in question for a conciliation meeting, facilitate discussions, guide parties on matters concerning relevant laws and try to settle the matter in accordance with section 12(1)

b) Regulation 8(2), where parties fail to come to a compromise, the labour officer shall summon witnesses or require the production of documents relating to the complaint, and may propose solutions to the complaints.

c) Regulation 8(), upon completion of the hearing proceedings, the labour officer shall make an order binding the parties and state the reasons for his or her decisions on the complaint

d) Reg 8(4), the order shall be complied with by either party within 7 days from the date the order was made.

e) Section 92(7) of the employment act Where within ninety days of the submission of a complaint under this Act to a labour officer, he or she has not issued a decision on the complaint or dismissed it, the complainant may pursue the claim before the Industrial Court.

f) Section 94(1) of the employment act A party who is dissatisfied with the decision of a labour officer on a complaint made under this Act may appeal to the Industrial Court in accordance with this section

g) Section 94(2);An appeal under this section shall lie on a question of law, and with leave of the Industrial Court, on a question of fact forming part of the decision of the labour officer.

REFERRAL OF DISPUTES TO THE INDUSTRIAL COURT

a) Under section 3(1) of the labour disputes (arbitration and settlement act 2006; Subject to subsection (2), a labour dispute, whether existing or apprehended, may be reported, in writing, to a Labour Officer, by a party to the dispute in such form and containing such particulars as may be prescribed by regulations made under this AcT

b) Section 5(1) If, four weeks after receipt of a labour dispute—(a)the dispute has not been resolved in the manner set out in section 4 (a) or (c); or(b)a conciliator appointed under section 4(b) considers that there is no likelihood of reaching any agreement,the Labour Officer shall, at the request of any party to the dispute, and subject to section 6, refer the dispute to the Industrial Court.

c) Section 5 (2)Notwithstanding subsection (1), the period of conciliation may be extended by a period of two weeks, with the consent of the parties.

d) Section 5 (3)LDASD Where a labour dispute reported to a Labour Officer is not referred to the Industrial Court within eight weeks from the time the report is made, any of the parties or both the parties to the dispute may refer the dispute to the Industrial Court.

e) Rule 3(1) of the labour dispute(arbitration and settlement)(industrial court procedure) rules 2012; where a labour officer is requested by a party to a dispute to refer the dispute to the court under section 5 of the Act, the labour officer shall refer the dispute in the form specified in the First Schedule.

f) Rule 3(3) A reference to the court by a labour officer shall be accompanied by—(a)a report of the labour officer describing the dispute and the steps taken by him or her to resolve the dispute; and(b)all documents and information furnished to the labour officer by the parties.

g) Rule 3(2) Where a labour dispute has been reported to a labour officer and he or she has not referred it to the court or otherwise disposed of it within eight weeks, a party to the dispute may refer the dispute to the court in the form specified in the Second Schedule.

h) Rule 3(4); Where a party to the dispute has referred the dispute to the court the Registrar shall require the labour officer in writing to furnish the court with the information referred to under subrule (3).

i) Rule 4 Upon receipt of a reference under rule 3 the Registrar shall file and register the reference in a form specified in the Third Schedule and allocate a registration number to the reference

RULE 5 (1)The Registrar shall, within seven days after registering a reference, give notice to the parties that a dispute has been referred to the court and require each party to file a memorandum and in the ease of the claimant, the memorandum shall be filed within seven days after receipt of the notice.

(2)The memorandum referred to in subrule (1) shall set out, in the case of the claimant, the nature and particulars of each item of the claim involved in the dispute and the claimant shall serve a copy of the memorandum on the respondent.

(3)The memorandum under subrule (2) shall be accompanied by an affidavit of service.

(4)The respondent shall, within seven days after receipt of the memorandum, file a reply as he or she may wish to give to the items of the claim raised in the claimant's memorandum and shall serve the memorandum on the claimant.

(5)The memorandum under subrule (4) shall be accompanied by an affidavit of service

RULE (6)Each party to the dispute shall submit six copies of the party's memorandum to the court and six copies of such documents as in the opinion of the Registrar may be necessary.

Where the dispute is between an employer and a labour union, the claimant shall attach the recognition and collective bargaining agreement between the employer and the labour union to the memorandum.

RULE 6. Extension of time (1)A party to a dispute who fails to file documents within the prescribed time, may apply to the court for extension of time.(2)The court may determine the application as it deems fit.

RULE 7. Registrar to fix hearing

a) (1)The Registrar shall fix a date, place and time of hearing where—(a)both parties have filed a memorandum; or

b) the time for filing a memorandum has lapsed and no extension of time has been granted by the court.

Section 8 (1) LDASA, The Industrial Court shall—(a)arbitrate on labour disputes referred to it under this Act; and(b)adjudicate upon questions of law and fact arising from references to the Industrial Court by any other law.

h) Appendix H- document for Employment

THE REPUBLIC OF UGANDA

EMPLOYMENT CONTRACT

This Agreement is made the ..... day of ..... 2003 BETWEEN THE BOARD OF GOVERNORS OF BUTALEJA HIGH SCHOOL of P.O. Box 912 Butaleja (hereinafter referred to as "Employer") of the one part and ..... Of P.O. Box ..... (hereinafter referred to as the "Employee") of the second part.

1.0: Job title and term of employment.

The employer shall employ the employee from .....day of ..... 2003 as ..... on permanent term for a period of ..... subject to termination as set out below and also in accordance with the job description whose details are separately annexed hereto.

2.0 Duties:

The employee shall:.

- Diligently and faithfully perform the duties of ..... and such other duties as may be required of him during such hours and on such days as are normally worked by those holding similar posts at the said school or and devote the whole of the employees time and attention to the service of the Employer.

- Act in all respects according to the instructions and directions given to the Employee by the Employer through the Employer's duly authorized officers; and.

- At all times comply with all other School Teacher's Service, Regulations, code of conduct and guidelines in force at the school as is required under the Education Act.

3.0: Place of Employment:

The Employee shall work at Butaleja High School and in such other places as is necessary for the proper discharge of the Employee's duties under this agreement or as the employer shall from time to time direct and the employee shall be subject to posting for training or other duties in connection with this employment for such period as the employer may require.

4.0: Hours of Employment:

The Employee shall carry out his duties between 8.00 a.m. – 10.00 p.m. and such further hours as may from time to time become necessary in order to meet the needs of the employer's business or during such hours as the employer's board may from time to time reasonably require of him and the employee shall not be entitle to receive any additional remuneration for work done outside his normal hours of work. Or (there are no normal working hours for this employment and the employee is required to work at such time and for such period as are necessary for the efficient discharge of his duties) as may be appropriate.

5.0: Remuneration

The Remuneration of the employee shall be a gross salary at the rate of U Shs ..... per month (which shall be deemed to accrue from day to day) payable every month on the ..... day of every month and any increment shall accrue at rates determined by the Board of Governors of the Employer on annual basis as and when money shall be available for such.

6.0: Expenses

The Employer shall reimburse the employee all reasonable expenses wholly and exclusively incurred by him in or about the performance of his duties under this agreement (provided that the employee furnishes the employer with receipts or other evidence of such expenses).

7.0: Holidays:

The Employee shall be entitled to take the usual public holidays and in addition, to take working days as holidays and the employee will be paid his normal basic remuneration during such holidays. However, the employee shall be free to go on holiday when the students break off from their normal school calendar but the length of such holiday shall be approved by the Employers School Management Team

The employee will be paid in respect of holidays accrued due but untaken as at the date of termination of employment or the employee will be entitled to payment in lieu of holidays accrued due but untaken as at the date of termination of employment.

8.0: Illness:

In the event of absence from work on account of sickness or injury the Employee (or someone on his behalf) must inform the Employer of the reason for the employee's absence as soon as possible and must do so not later than the end of the working day on which absence first occurs.

In respect of absence lasting for seven or fewer calendar days the employee is not required to produce a medical certificate unless specifically so requested by the employer.

The employee shall continue to be paid during any period or periods of absence due to incapacity for a total of up to 4 consecutive weeks of employment under this agreement.

9.0: Confidentiality:

The employee shall not (except in the proper course of his duties) during or after the period of his employment under this agreement divulge to any person whatsoever or otherwise make use of (and shall use his best endeavors to prevent the publication or disclosure of) any confidential information concerning the business dealings transactions and affairs of the employer.

10.0: Termination of Employment:

The employment of the employee may be determined by the employer without notice or payment in lieu of notice if the employee is guilty of any gross default or misconduct in connection with or affecting the business of the employer or in the event of any breach or non-observance by the employee of any of the stipulations contained in this agreement which is materially detrimental to the employer's interests.

By either party upon giving to the other not less than 30 days notice in writing.

11.0: Notice:

Notices may be given by either party by letter addressed to the other party (in the case of the employer) its registered office for the time being and (in the case of employee) his last known address and any notice given at the time at which the letter would be delivered in the ordinary course of the post if delivered by hand upon delivery and in proving service by post it shall be sufficient to prove that the notice was properly addressed and posted.

12.0 Miscellaneous:

This agreement is governed by and shall be construed in accordance with the laws of Uganda. The parties to this agreement submit to the jurisdiction of the Uganda courts.

AS WITNESS this Agreement is signed by the said as at the day first above mentioned

Employer: :.....

For: Butaleja High School

In the presence of: .....

Employee: :.....

In the Presence of:

DRAWN BY:

SUI GENERISand Company Advocates

P.O.BOX 7117

KAMPALA

IMPORTING AN D EXPORTING LABOURERS.

Section 1 of the employment act defines migrant workers as a person who migrates from one country to another with the view of being employed by another person and it include any person regularly admitted as a migrant worker.

Section 36 of the employment act prohibits employment of migrants unlawfully present in Uganda.

Section 53 (1) of the Uganda citizenship and immigration control act, no person shall enter or remain in Uganda unless that person is in possession of a vlaid entry permit, certificate of permanent residence or pass.

Section 53(3), a person who is not a citizen shall not be issued with an entry permit unless they have a passport, certificate of identity, conventional travel documents or any other valid travel document.

Section 59(1), a person not a citizen should be in possession of a valid entry permit, certificate of permanent residence or special pass inorder to be employed.

Section 59(2), criminalises the violation of sub-section (1) and attracts a punishment of a fine not exceeding 150 currency points or punishment not exceeding 2 years or both.

IN AHMED IBRAHIM BHOLM V CAR AND GENERAL LTD SCCA NO.12/2002, court noted that failure to comply with the immigration law makes an employment contract illegal. The employee is

liable to breach unless the employer undertakes to acquire a valid work permit for them. Migrant workers need special passes and work permits.

Section 53(4), a person intending to take on employment under entry permit class G specified in the fourth schedule may only enter Uganda after his or her application for the entry permit has been granted. The applicants ought to demonstrate that the job has been advertised and no Ugandan is qualified to do such a job.

Article 10 of the common market protocol (EAC), guarantees the free movement of workers within the region who are citizens of the member states.

Article 11 of the common market protocol, requires member states to mutually recognize academic and professional qualifications granted by member states.

Article 12 mandates the member states to harmonize their labor and employment policies , national laws and programs to facilitate the free movement of labour across the region.

Procedure for importation of labour.

a) The employee must obtain valid documents, preferably a passport. A pass (special) maybe used however the purpose is to enable entrance into the country legally.

b) Upon entry into the country, the employee must register with the registration office within 90 days after the entry.

c) Upon registration the employee must apply for a work permit and fill the work permit form. This must be followed by a copy of the employment letter, 2 pass port size photos, photocopies of travel documents, academic qualifications etc.

d) Upon obtaining the work permit, the employee must then apply for an alien identification certificate.

EXPORTATION OF LABOUR.

A) Regulation 5 of the employment(recruitment of Ugandans migrant workers abroad) regulations 2005, a person shall not be granted a licence to operate as a recruitment agency in Uganda unless it is;

- A partnership
- A company

B) Regulation 5(2) and (3), if the recruitment agency is a partnership, then half of its partners must be Ugandans and for a company, it must have a share capital of at least 50 million Ugandan shillings

C) Regulation 6, persons not eligible to be granted a license as agencies include; travel agencies, ales agency of an airline company, a company where members are engaged in travel agency, a political, religious or tribal organization.

D) Regulation 7 (1) application for a licence is made to the eternal employment unit of the ministry of labor and it must be in writing.

E) Regulation 7(2), contents of the application include; name and address of the proposed recruitment name and address of directors and shareholders and partners, if a partnership, the nationality and occupation of directors, shareholders, proposed location of the agency, a copy of the partnership deed or the M AND AOA duly registered with the URSB.

F) The application for a licence must include the following;

- Certificate of an employment services of the administration on the existence of new markets
- Proof of international connections e.g emails, websites
- Clearances from Interpol.

G) Regulation 12, transfer or change of ownership in a recruitment agency may lead to revocation of the licence, where the new owners have not been cleared by CIDE and eternal employment unit of the ministry.

H) Regulation 23(1), the eternal employment unit is authorized to carry out inspection of the premises of the recruitment agency with or without prior notice for purpose of issuance of a licence.

I) Regulation 30(1), permits a recruitment agency to advertise for job vacanices.

J) Regulation 69(1), agency to ensure the welfare of workers deployed overseas.

K) Regulation 70(1), mandates every licensed agency to provide each worker deployed overseas with a thorough pre-departure orientation seminar.

CASE

NAMALE DESIRE & MUYINGO MUTASA CHARLES V. HOREB SERVICES UGANDA LTD & EZRA MUGISHA (MISCELLANEOUS CAUSE NO. 0021 OF 2023)

Key Highlight: A labor export company that send sworkers outside Uganda bears the primary responsibility for the safety and life of its migrant workers

Ruling of Hon. Justice Boniface Wamala Judge on 7th October, 2024

The applicants, including the biological daughter of the late Milly Namutamba, sued Horeb Services Uganda Ltd and its director, Mr. Ezra Mugisha, for violating the right to life of the applicants' mother while she was working in Saudi Arabia. Milly Namutamba was sent to Saudi Arabia by Horeb Services in August 2018 for domestic work and was in perfect health at the time. After five months of communication, Milly suddenly went silent, and despite the applicants' repeated inquiries to Horeb Services over two years, the company was nonresponsive. In September 2022, the applicants learned that

Milly Namutamba had passed away in Saudi Arabia. Horeb Services confirmed the death but failed to provide further information on the cause.

The High Court of Uganda issued a significant ruling, declaring that Horeb Services and its director had violated the right to life of the applicants' mother, protected under Article 22 of the Constitution of Uganda. The court held that Horeb Services, as a licensed recruitment agency, bore the primary responsibility for the safety and welfare of the deceased migrant worker. The court awarded UGX 200,000,000 in general damages and UGX 50,000,000 in exemplary damages to the applicants. Horeb Services and its director were also ordered to pay the taxed costs of the application.

RESTRAINT OF TRADE.

Under article 25(1) of the 1995 constitution of Uganda, no person shall be held in slavery or servitude. Article 25(2), no person shall be required to perform forced labour.

Article 40(2), every person in Uganda has a right to practice his or her profession and to carry on any lawful occupation, trade or business.

Article 40(3)(c, every worker has a right to withdraw his or her lobar according to law. In light of the above provisions, it can be said that contracts in restraint of trade are unconstitutional

CONTRACTS IN RESTRAINT OF TRADE.

A provision in a contract by which a party undertakes to restraint his own freedom and to carry on business, a profession or manage a trade. The general rule is that such a restraint of trade is illegal because it tends to discourage competition.

One of the types of contracts in restraint of trade include ;employer –employee contracts whereby the employee, upon termination of contract wont work for a rival company or set up a competing business.

(B) AGENCY:

Introduction

Agency is the relationship that exists between two or persons when one called the, agent is considered in 'law to represent the other, called the principal In such away as to be able to affect, the principal's legal position in respect of strangers to the relationship by the making of contracts or disposition of property,

Hence agency can only be defined in terms of its consequences, Agency as a relationship is defendant upon the extent to which and ways in which one person can produce legal consequences for another.

The law applicable to Agency includes the following:

The Judicature Act Cap 16

The Civil Procedure Act Cap 282

The Civil Procedure Rules SI 71

The Contract Act Cap 284

The Registration of Documents Act Cap 81

The Registration of Documents Rule SI 81-2 as amended by SI 55 of 2005.

The stamps Act Cap 342 as amended by Act 12 of 2002

The Companies Act 106

The Advocates (Remuneration and Taxation of Costs) Rules SI 267-4

Common law and doctrines of Equity

The checklist for a prudent lawyer includes the following

Whether an agency can be formed in light of one's facts?

What happens in case the principal winds up business, or the principal's business is taken up by another individual or entity; when the agency agreement is still in force?

What are the relevant fees and duties

PRINCIPAL AND AGENT RELATIONSHIP

The cardinal rule is evident in Kelner Vs Baxter (1866) CR CP 174 where court held that a non existing principal cannot appoint an agent. Thus if the principal is a legal entity like a company; it should be in existence. It must be noted that the law of agency applies only when such representation or action of another person's behalf affects the latter's legal position, thus, his rights against and liabilities towards other people. The law of agency has no relevance to social or other non-legal obligations.

Secondly, the law of agency stresses the importance of the law in which the law regards the relationship that has been created. Cf Sonels V Firch [1977 AC 728. It is the effect in law of the way the parties have conducted themselves, and not the conduct of parties considered apart from the law, or the language used by the parties that must be investigated, in order to determine whether the agency relationship has come into existence.

Thirdly, the relationship connotes service; An agent performs a service for the principal. In order to understand the legal nature and function of the' agency relationship, the following must be put into consideration;

A) Consent of the parties:

The definition of agency entails that principal arid agent have agreed, either in the form of a contract, or otherwise, that the agent should represent the principal. Agency is the fiduciary relationship which exists between 2 persons, one of whom expressly or impliedly consents that the other should represent him or act on his behalf and the other who similarly consents to represent the former or so to act. This is fortified by the locus classicus case of Garnac Grain Co. Inc V HMF Faire & Falrclouqh Ltd. [1967] 2 All ER. 353 at 358.

It must be noted however, that there are possibilities when an agency relationship exists even where no consent and no contract exists. This was discussed in the case of Boardman -Vs- Phipps (1967) 2 AC 46 or [1966] 3 All ER. 721. This- case refers to self-appointed agents and further discusses tr3t it is not nice to base an agency relationship strictly on consent is because much of the law relating to agency is derived from equity, quasi - contract, or tort. Also see Branwhite V Worcester _Works Finance Ltd.

QUALIFICATIONS OF AN AGENT.

Section 117 of the contracts act, defines an agent to mean a person employed by a principal to do any act for that principal or to represent the principal in dealing with a third party.

Section 118 of the contracts act, a person may employ an agent where that person;

a) Is 8 years or more

b) Is of sound mind

c) Is not disqualified from appointing an agent by any law to which the person is subject.

Capacity to act as an agent.

Section 119 of the contracts act, a person may act as an agent where that person;

a) Is 18 years or more

b) Is of sound mind

c) Is not disqualified from acting as an agent by an law to which he or she is subject.

Section 1 of the contracts act, defines a mercantile agent to mean a person who in the ordinary course of his or her business has authority either to sell goods or to consign goods for the purposes of sale or to buy goods or raise money on the security of goods.

Section 120 of the contracts act, consideration is not necessary to create an agency.

Section 121 (1) of the contracts act, authority of an agent may be express or implied.

In PALE V LEASK (1863) 33 L.J CH 155, no person can become an agent of another except by will of that person. His will maybe manifsetd in writing , orally or simply by placing another in a situation in which according to the ordinary usage of man kind that other is understood to represent and act for the person who has so placed him.

Section 158 of the contracts act, a contract entered into through an agent and obligations arising from acts done by the agent 'under the contract shall be enforced in the same manner and have the same legal consequences as if it was entered into or done by a principal.

B) Authority of the parties

The question of authority of an agent is at the very core of agency. The authority of the agent helps define the relationship between principal and agent hence agency has sometimes been referred to as a consensual relationship in which one (the agent) holds in trust for and subject to the control of another (the principal) a power to affect certain legal relations of that other.

FORMATION OF AN AGENCY

An agency is a relationship between two people, a principal and an agent to carry out an act for the principal as noted hereinabove. An agency may be created by express agreement or implication by conduct.

In relation to an express appointment the appointment of the agent is made in writing, usually and this is a requirement of common law. It can be by word or mouth but this has its shortcomings.

a) By agreement; under section 121(1) of the contracts act, authority of an agent may be express or implied.

b) By operation of the law or necessity; section 123 of the contracts act, the authority of an agent in an emergency in order to protect the principle from loss.

c) By ratification; section 129(1) of the contracts act, ratification where an act is done without authority or knowledge. Section 130 of the contracts act 284, ratification may be express or implied.

d) By estoppel; through words or conduct or behavior acts in a way that induces third party

The salient terms to be included in the agency agreement include the following:

1) Parties included.

2) Geographical Territory involved.

3) Products involved - description, catalogue.

4) Period of agreement - depends on the product, usually three years with right of renewal. A termination clause should be included - so many months' notice by either party and any time by mutual agreement.

5) Probationary period – (if necessary).

6) Provisions for renewal

7) Remuneration of the Agent

8) Prices - (if necessary).

9) Tax liability

10) Insurance

11) Restrictive covenants.

12) Discounts - promotional discounts and responsibilities. The agreement should include the principles to work on, not the detail.

13) Method and timing of payment.

14) Minimum orders.

15) Restraint of trade following termination of agreement.

16) Spares and stock - distributor to hold stock/spares only, not an agent.

17) Communication costs - each party to cover their own costs.

18) Performance measures.

19) Training and technical support.

20) Samples.

21) Advertising and promotion.

22) Ownership of brand.

23) Agent to protect trademarks, patents, etc.

24) Exchange of market information.

25) Procedures for defective goods.

26) Agent to keep books of accounts.

27) Relationship management - contact list, official addresses, etc.

28) Confidentiality.

29) Early termination for breach of agreement.

30) Transfer of rights - distribution rights cannot be transferred without permission.

31) Arbitration - a last resort and country in which legal action/arbitration to take precedence in case it is an international agency agreement.

32) Force Majeure.

33) Assignments, Waiver, Notice.

34) Modification/ Amendment

35) Law Applicable to the relationship

36) Legal Compliance.

37) Remedies to the parties.

38) Relationship between the parties.

39) Indemnity.

40) Action in case default.

The procedure to be followed is as follows:

1) By drafting an agency agreement which should be signed by the parties, and witnessed to.

2) The agreement is then registered with the Registrar of Documents for evidential value. The steps to be followed include the following.

a. Taking document to registrar of documents to have it assessed for duty.

b. Paying the requisite fees and lodging the document for registration.

The Document to be drafted is an agency agreement.

(see copy at end of sub topic)

RELATIONSHIP BETWEEN AGENT AND THIRD PARTIES

An agent acts on behalf of the principal in relation to third parties. This implies that whatever he or she does within the scope of his authority in relation to third parties is an act of the principal. It must be noted that an agent will be directly or personally liable to 3rd parties if the property belonging to the principal but held in the agent's possession for the principal is assigned or charged by the principal to or in favour of the third party. This is fortified by Webb Vs Smith (1885) 30 Ch.D 192

An agent will be liable to a 3rd party if the principal directs the agent to pay the 3rd party from money held by the agent to the use of the principal. The agent is only liable to pay if the principal has paid him the money as noted in the case of Shamia Vs Francis (1958)1 QB 448.

RIGHTS OF AN AGENT

a) Retaining sums received on account of principal; section 150(1) of the contracts act

b) Remuneration

c) Lien of an agent on property of principal; section 154 of the contracts act

d) Compensation to agent for injury caused by principal; section 158

e) Right to indemnity; section 155(1) of the contracts act

DUITIES OF AN AGENT.

a) Reasonable steps to protect and preserve the interests entrusted to him or her as per section 143 of the contracts ac

b) Conduct of business according to directions of the principal, section 144 (1) of the contracts act

c) Skill and reasonable diligence (section 145(1)

d) Rendering proper accounts to the principal on demand as per section 146 of the contracts act

e) Payment of sums received for the principal ;section 151 of the contracts act

f) Reasonable diligence to communicate with the principal incase of difficulty; section 147 of the contracts act

g) Duty to act in good faith based on fiduciary duties.

In the case of MITOR INVESTMENTS PROPERTY LTD V GENERAL ACCIDENTS FIRE AND LIFE ASSURANCE CORP (1934) WAR 865, where an insurance broker was instructed by a client to contain unqualified insurance cover against damages of storm or floods. The broker did not obtain the cover for floods caused by the sea. The client subsequently suffered loss for flooding by the sea in a cyclone. He was found liable for his failure to exercise due diligence, skill and care.

h) Duty to obey instructions of the principal; section 144 (1) of the contracts act.

RIGHTS OF THE PRINCIPAL

a) Right to be compensated due to loss occasioned by lack of following instructions ; section 144(2) and section 145(2) of the contracts act

b) Repudiation when agent deals without consent of principal; section 148

c) Right to benefit gained by agent on own account in business of agency; section 149 of the contracts act

DUTIES OF THE PRINCIPAL

a) Remuneration of an agent.

NELSON(E.P) AND CO. V ROLFE (1949) 2 ALL ER 584, once the agent has acquired a vested right to commission, even if the principal doesnot benefit the revocation by the principal willnot deprive the agent of the right of commission.

b) Indemnification of an agent (section 155(1) of the contracts act

c) Compensation to agent for injury caused by the principal. (section 157 of the contract act)

REMUNERATION OF AGENT

This stands out as the most important duty of the principal towards the agent. It must be noted however that this duty only exists where it has been created by an express or implied contract between he principal and agent. This is fortified by the case of Way Vs Latilla [1937] 3 All ER 759 at 762. in addition, the duty to pay remuneration only arises where the agent has earned it. In this respect, the agent must show not only that he has achieved what he was employed to do but also that his acts were not ,merely incidental to that result but were essential to its happening. It must be noted that a principal is under no obligation to pay an agent where the transaction for which the agent was employed is illegal. This is fortified by Crouch and Less Vs Haridas.

TERMINATION OF AGENCY

An agency created by an act of the parties can be terminated by:

a) Agreement,

b) Revocation by principal

c) Renouncing by agent

d) Closure of the business. This is fortified by the case of Rhodes vs. Forwood (1876) 1 App Cas 256

e) Death of any party

f) Unsoundness of any party

g) Insolvency of principal

h) Operation of the law

Operation of the law includes the following:

- Normal termination; thus if the transaction to which the agent was led to has been performed.

- Subsequent physical events that render the transaction not possible to be performed for example if the goods are destroyed, principal/agent dies

- Subsequent legal events like bankruptcy of either party or the operation of the doctrine of frustration.

It must be noted that an agency created by operation of the law can terminate if the necessity to which caused its creation ends or the Agency from cohabitation terminates if the cohabitation ceases.

The Effect of termination of the agency is as follows:

The principal can sue for breaches of contract or negligence committed by the agent before the agency was terminated.

The agent can sue for remuneration which would have been earned before termination and possibly the remuneration which would have been earned had the agency not been terminated.

The agency ceases to have any authority of the principal hence if he does anything with a third party after the termination, then the agent is personally liable.

Appendix I –

Document for Agency

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE CONTRACT ACT CAP 284

AGENCY AGREEMENT

Agency Agreement (hereinafter referred to as "this Agreement") is made and entered into this ..... day of ..... 20 .....

BETWEEN.

KOOL SOLUTIONS, under the laws of Uganda, having its legal domicile at 672, North Bluff, Wichita KS, United States (hereinafter referred to as the "First Party") of the one part; and

JEZITECH SOLUTIONS, a company established under the laws of Uganda, having its legal domicile at Plot 60 Jinja Road, Kampala, Uganda (hereinafter referred to as the "Second Party") of the other part.

WITNESSETH

WHEREAS, the First Party hereto is the legal and beneficial owner of "NANS-FLASH DISKS" and "MICRO CHIPS" trademark and engages in the business of sales and marketing of tooth paste products

under the "NANS-FLASH DISKS" and "MICRO CHIPS" trademark (hereinafter referred to as "the Products") which are manufactured in the USA only.

WHEREAS, the Second Party hereof is desirous of being the Agent of the First Party's Product in Uganda.

NOW, THEREFORE, the Parties hereto agree to enter into this Agreement upon the terms and conditions as follows:

Article 1

DEFINITIONS

In this Agreement and the schedule, unless the context otherwise requires:

"First Party"

Shall mean Nans-Flash Disks Inc., a company established under the laws of the USA, having its legal domicile at 672N. Bluff, Wichita KS

"Second Party"

shall mean Clay Traders (D) Ltd., a company established under the laws of Uganda, having its legal domicile at Plot 66 Kampala Road, Kampala, Uganda.

"Force Majeure"

Shall mean circumstances beyond reasonable control of a party which occur without the fault or negligence of the party affected, and includes inevitable accident, storm, flood, earthquake, explosion, peril or navigation, strike, lockout, boycott or other industrial dispute, hostility, war, insurrection, executive or administrative order or act either general or particular application of a government, whether de jure or de facto or of any official purporting to act under the authority of such a government,

prohibition or restriction by domestic or foreign laws, regulations, policies, quarantine or customs, restrictions and breakdown or damage to or confiscation of property.

"The parties"

Shall mean the first Party and the Second Party collectively.

"Products"

Shall mean tooth paste products manufactured in Indonesia only by the First Party under the "NANS-FLASH DISKS" trademark and "MICRO CHIPS" trade mark.

"Quota"

Shall mean a number at least 25 (twenty-five) of20 feet containers annually and increase to 10% (ten percent) annually from the above stated number hereto.

"Territory"

Shall mean Uganda territory.

Article 2

PRODUCTS

The product means in this Agreement the tooth paste products under "NANS-FLASH DISKS" and "MICRO CHIPS" trade mark that is legally registered under the name of the First Party and manufactured by the First Party on Indonesian territory only.

Article 3

IMPORT AUTHORIZATION

The first party, as long as it is able the First party shall use its best efforts in helping the Second Party in providing the documentation(s) required to acquire authorization to import the products should the need arise.

Article 4

TERRITORY

Under this Agreement, the Second Party shall be the only or Agent of the First party's Products in the territory exclusively in Uganda. (hereinafter referred to as the "Territory").

Article 5

QUOTA

The Second Party hereby guarantees to the First Party that the Second Party will order the Products at least 25 (twenty-five) of 20 feet containers annually. Further, the Second Party also guarantees that the quota will be increased to 10% (ten percent) annually from the above stated number hereto.

Article 6

CURRENT BUSINESS LICENCES OF THE SECOND PARTY

(1) From time to time under the effective time of this agreement the Second Party shall carryon the business of an Agent of the Products in the Territory.

Article 7

ORDERS AND SHIPMENTS

The Second Party shall confirm in writing for the next period and delivery schedule to

the First Party at least 2 (two) months prior to the expected delivery time.

Article 8

PAYMENT FOR PRODUCTS ORDERED

At the latest of 14 (fourteen) days before the delivery scheduled, the Secondary Party hereby shall pay the down payment at least 50% (fifty percent) of the total amount of the products ordered to the First Party. All the payments for ordered Products placed by the Second Party shall be paid by Letter of Credit (L/C).

Article 9

INSPECTION

Immediately after the acceptance of the Purchase Order Confirmation, the Second Party shall take all necessary actions to inspect the ordered Products regarding the quantity and condition of the said Products ordered.

Any defects of the Products, either caused by the manufacturing or packaging faults, or the lack or excess of the ordered Products shall be notified in writing to the First Party at the latest of 3 (three) days after the acceptance any of the delivery order.

Article 10

PRODUCT QUALITY

The First Party hereby shall be responsible for maintaining its standards in all manufacturing and quality control matters relating to the Products delivered by the First Party to the Second Party.

The Parties hereby agree and bound themselves that the compensation shall be limited to either:

(a) Replacement of the Products which in the judgment of the First Party fails to meet the standard of the First Party's Products.

(b) Refunding the Second Party for the landed cost of the relevant Products.

Article 11

INDEMNITY

The Second Party hereby undertakes to indemnity the First Party against any loss or claim including but not limited to, any and all claims, losses, damages, charges, costs and expenses of any kind of nature, from anyone whomsoever, arising out or otherwise connected with the Second Part's operation of business carried on by the Second Party other than action against the Parties with respect to alleged infringement of any trademark or trade name utilized by the Second Party in exercising the right granted by this Agreement of the registered trademark or patent or trade secret of third parties.

Article 13

CONFIDENTIAL INFORMATION

The First Party hereby undertakes from time to time under its judgment as may be necessary to furnish the Second Party with the confidential information and know-how, as it is reasonably sufficient to enable the Second Party to market and distribute the Products in the Territory.

The Second Party shall under no circumstances allow either to disclose or furnish to any person, firm, company or other third party regarding the confidential information and know-how supplied by the First Party, or either to use it for any other purpose other than the marketing and distribution purposes, except in the specific circumstances in which the confidential information and know-how shall be disclosed to any of the government agencies.

Article 14

EFFECTIVE DATE

This Agreement shall remain in force the duration 10 (ten) years, commencing from the date first above mentioned.

The terms of this Agreement can be extended or renewed only by the mutual agreement of the Parties hereto.

Article 15

DEFAULTS

Notwithstanding anything stated herein to the contrary, any breach by either party of any term or condition in this Agreement where such breach is capable of being remedied shall not give rise to a right of rescission or termination by the no defaulting party not to a claim for damages if such breach shall in fact be remedied within 30 (thirty) days from the receipt of a notice in writing from the non-defaulting party to the party in default.

Article 16

ASSIGNMENT

This agreement shall be binding upon and shall be enforceable by the Parties and Parties' respective successors and assigns. The Parties shall have no right to assign or transfer its rights or obligations hereunder except with the written consent from the other party.

Article 17

FORCE MAJEURE

A party affected by force majeure shall:

As soon as possible after being affected give to the each other party full particulars of the force majeure 9including why it is a circumstance beyond its reasonable control), the manner in which its performance is thereby prevented or delayed and its calculation of the estimated period of prevention or delay as a consequence of force majeure; and promptly and diligently take appropriate action to enable it to perform the obligations, compliance with which is prevented or delayed by force majeure except that a party is not obliged to settle a strike, lockout, boycott or other industrial dispute.

Article 18

WAIVER

Save as otherwise provided for herein, no failure on the part of any party to exercise and no delay on the part in exercising any right hereunder shall operate as a release or waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise of it. The rights and remedies provided in this Agreement are cumulative and not exclusive of any right or remedy provided by law.

Article 19

NOTICE

All communications between the parties shall be sent to the following addresses:

a)The First Party:

NANS-FLASH DISKS INC.,C/o Mr. Moses Lugemye, 672N. Bluff, Wichita Ks, USA

- The Second Party:

JEZITECH SOLUTIONS, C/o Mr. Peter Wegulo, P.O.BOX 7117, Kampala, UG

All communications in writing 9including notices) between the Parties with respect to this Agreement shall be delivered by hand. or sent by pre-paid registered post with recorded delivery to the address of the other party as set out above or to such other address as the addresses may from time to time have notified the other party in writing for the purpose of this clause.

Article 20

MODIFICATIONS

This Agreement shall not be modified from time to time except by a written instrument executed by duly authorized representatives of the Parties hereto.

Article 21

GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of the republic of the republic of Uganda.

Article 22

DISPUTES

The Parties agree to settle amicably all disputes within the scope of the Agreement by conference and negotiation.

WHEREFORE THE PARTIES SET THEIR SEALS HEREINBELOW ON THE DATE FIRST ABOVE MENTIONED.

SEAL OF KOOL SOLUTIONS _____

In the presence of _____

SEAL OF JEZITECH SOLUTIONS _____

In the presence of _____

Drawn and filed by;

Ojore and Co. Advocates

P.O.BOX 7117,

Kampala, UGANDA.

DISTRIBUTORSHIP

Black's law dictionary 8th edition page 1434, distributorship is a franchise held by a person or company which sells merchandise usually in a specific area to individual customers.

In the case of LAMB AND SONS V GOING BRICK AND CO. LTD (1934) KB 710, defines distributorship as a transaction from which the distributor often buys from a particular manufacturer.

There is no agency relationship between distributorship and manufacturer but it is a relationship of sale of goods.

In HONEY WELL AND STEIN LTD V LARKIN BROS (1934) KB 191, distributor is the same as an independent contractor who undertakes to effect a given result and is not under the control of the principal in his manner of execution.

A distribution agreement concerns the sale of goods between parties that are bound by a contract and therefore, both the classic international rules, including the treaties that govern such relationships. (UN Convention on contracts for the international saleof goods, the Incorterms).

A distributor is only supplied with the goods and sells them on his account. He or she is free to make profits or loss without accounting to the manufacturer.

Types of distributorship

a) Exclusive distributorship; sell of the manufacturer's product within a particular market, free from competition.

b) Non-exclusive distributor; sell of the manufacturer's products within a particular market subject to competition from other distributors.

c) Selective distributorship; the supplier allows the distributor to appoint a network of distributorship provided the additional distributors meet a certain criteria in cases where the product requires an enhanced level of service either during or after the sale.

Salient features of a distributorship agreement.

a) Subject of the agreement

b) Payments to be made and the mode

c) Terms and conditions of the agreement

d) Termination of the contarct.

Rights and dutes of both parties.

DUTIES OF MANUFATURER

a) Duty to provide products or goods.

b) Duty to pay to the distributors

c) Direct or guide the distributor how the good or products should market

Duties of the distributor.

a) To market the products of the manufacturer

b) To sell at the price set by the manufacturer

c) To take good care of the products

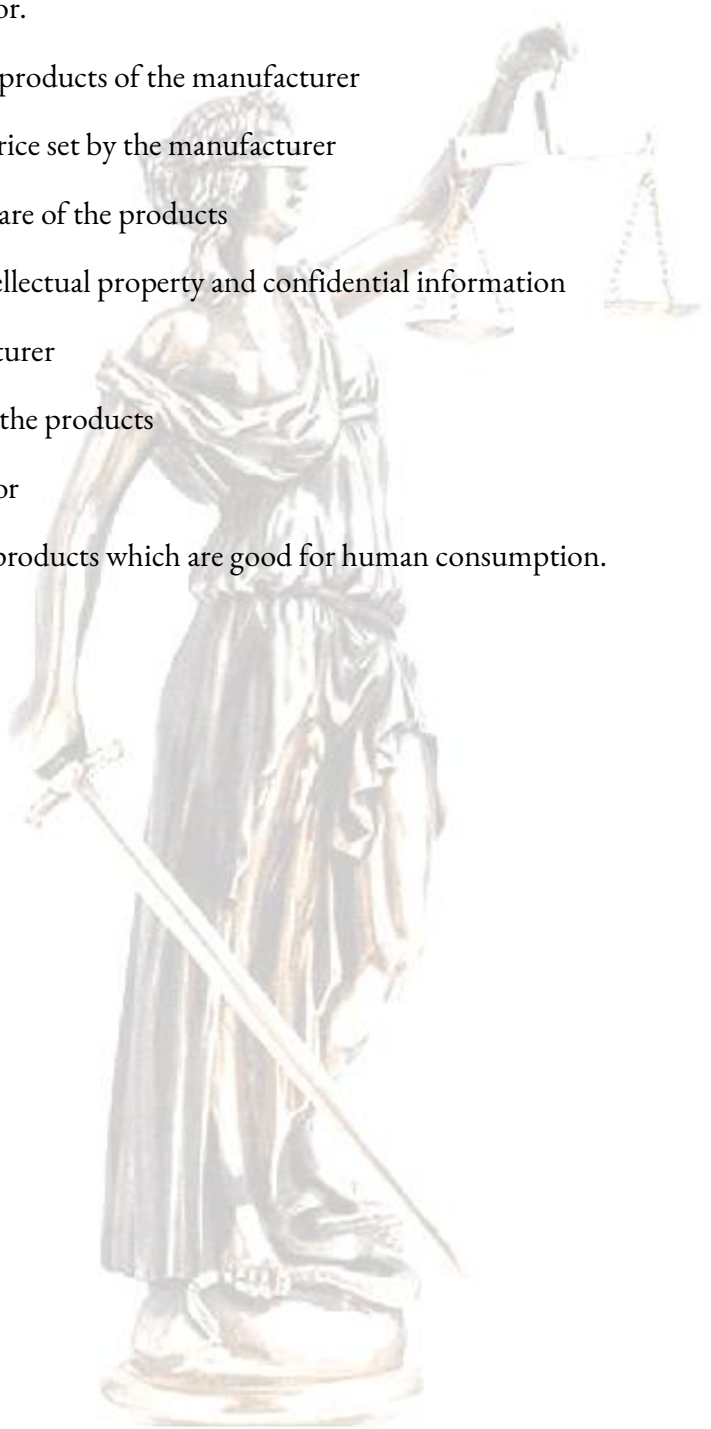
d) To protect intellectual property and confidential information

Rights of the manufacturer

a) To be paid for the products

Rights of the distributor

a) to receive the products which are good for human consumption.



FRANCHISE

An agreement or license between two legally independent parties which gives a person (franchisee) the right to market a product or service using the trademark or trade name of another business (franchisor) for a specific fee (royalty)

Characteristics of franchise

a) Use of trade marks or trade name

b) Payment of royalty

c) Training is offered

d) Proven track record or good will

Salient features of a franchise agreement

a) Use of trademarks

b) Territory

c) Rights and obligations of parties

d) Duration of franchise

e) Payment or royalty

f) Termination

FINANCIAL INSTITUTIONS

a) BANKS

Section 25(1) FIA CAP 57, a minimum paid up cash capital of not less than 200,000 currency points invested initially in such liquid assets as the central bank may approve.

Regulation 6(1) of the financial institutions (capital adequacy requirements) regulations 2018, the minimum capital funds unimpaired by losses of a licensed bank shall at any one time not be less than 25 billion Uganda shillings.

Section 51 (1) FIA, every financial institution shall have a board of directors of not less than 5 directors.

Section 51(4), all persons to become or remain directors ought to conform to the fit and proper persons test and the central bank shall vet all persons proposed as directors of financial institutions within 6 months and notify the financial institution accordingly.

Criteria for fit and proper persons test (3rd schedule to the FIA)

1. General probity
2. Competence and soundness of judgement
3. Diligence
4. Whether interests of depositors are likely to be threatened
5. Previous conduct and activities
6. Professional or moral suitability.

In the case of JOHN KIZITO V BANK OF UGANDA MISC.CAUSE NO.244 OF 2016,the central bank is endowed with powers to order the removal of a director from the board for failure to meet the fit and proper persons test. The central bank is not obligated to give reasons.

In bank of Uganda v caring for orphans, widows and elderly ltd COA civil Appeal No.35/2007, the powers of the central bank to remove a person for failure to meet the fit and proper person's test can only be challenged in court if exercised in bad faith.

Section 53(1) FIA, prohibits conflict of interest involving a director or any officer.

Section 55(1) FIA and Regulation 6 of the Financial institutions (corporate governance) regulations 2005

a) To act honestly and in good faith

b) To act in the best interest of the institution.

c) To act independently and free from undue influence

d) To access necessary information to enable him or her execute responsibilities.

Section 60(1) of the FIA, appointment of an internal auditor to report to audit committee of board of directors.

Section 61(1) FIA, appointment of external auditors.

Section 3(1), mandatory requirement of a valid licence to transact.

Section 3(2), license shall only be granted to a person if it is a company.

Section 10, provides for the considerations before the grant of a licence by the central bank and these include;

a) The financial conditions and history of applicant.

b) Nature of business

c) Competence and integrity of management

d) Adequacy of capital structure, earning prospects, business plans and financial plans.

e) The convenience and the needs of community

f) Whether the directors and officers are fit and proper persons.

Section 11(2),the central bank shall within 14 days consider the application for a licence.

Regulation 11 of the financial institutions (licensing) regulations 2005, provides for application for a licence after payment of a non-refundable fee of one million Uganda shillings.

Regulation 12, the licence shall be accompanied by supporting documents such as; personal declaration form under schedule 3, individual credit references for each of he substantial shareholders, directors and officers, proposed capital structure, business plan, certificate of incorporation ,memorandum and articles of association, certified copy of the resolution of the board of directors.

Section 78(1) FIA, central bank to periodically cause an inspection of its financial records and books of accounts on the premises and copy of a report of inspection shall be provided to the institution.

Section 79(1) FIA, furnishing of all info and data of operations including periodic returns, audited balance sheets and profit and loss accounts.

Section 79(2), financial institutions to report to the central bank all loans granted once every month.

Section 17(1) FIA, limitation of cownership and shareholding to 49%

Section 17(2), no allotment ,issue or transfer of 5 % or more shares without permission of the central bank.

Section 18(1), persons that donot meet the fit and proper persons test not to acquire more than 5 % shares in the financial institution.

- **MICRO FINANCE DEPOSIT TAKING INSTITUTION.**

Section 2 of the micro finance deposit taking institutions act cap 58;

a) Microfinance business means the business carried on as a principal business of;

Acceptance of deposits

Lending and extending credit including the provision of short term loans

b) Micro finance deposit taking institution mean a company licensed to carry on conduct or transact in microfinance business in Uganda.

c) Short-term loan means a loan, the period for the repayment of which does not exceed 2 years.

Procedure to set up MDI (PART 2 MDI ACT AND LICENSING REG 2004)

a) Incorporate private company

b) Apply for a licence

c) Pay application fee

d) Licensing interview

e) Letter of acceptance issued

f) Publication of notices

g) Pre-licensing inspection

h) Grant of approval

i) Publication of license in the gazette

CAPITAL REQUIREMENTS.

Section 15(1) Subject to this Act, a company shall not be granted or hold a licence unless it has a minimum paid-up capital of twenty five thousand currency points invested in such liquid assets in Uganda as the Central Bank may approve

Section 89(3)(c) regulations made under this section may relate to minimum level of capital for institutions.

Regulation 6 of the micro finance deposit-taking institutions (capital adequacy) regulations 2004, sub regulations (1), minimum paid up capital of 500,000,000

Qualifications, management and ownership

Section 24(1) MDI ACT cap 58, restriction of shareholding to 30%

Section 25 (1), board of directors consisting of atleast 5 directors headed by a chairperson.

Section 23 MDI, provides for categories of persons who are disqualified from being directors; less than 18 years, unsound mind, status of bankruptcy, not a natural person, under legal disability, doesnot satisfy fit and proper person's test.

Section 27 MDI,appointment of a finance manager upon consultation with the central bank.

Section 32(1) MDI, appointment of an internal auditor with the approval of central bank, who shall report to the board of directors.

Section 30(1) MDI, appointment of a firm of accountants approved by the central bank to be the external auditors of the institutions.

Licensing

Section 3(1) mdi, prohibition of transcating microfinance business without a valid licence granted by the central bank. Section 7(1) mdi, application for a licence and the accompanying documents include; copy of memarts, notification of the company's registered place of business, prospective place of business, biographical data on each of the founders, info on professional qualifications, copy of the latest balance sheet of the company, feasibility study of the company.

Section 12 of the MDI, provides circumstances for revocation of licence;

a) Submitting false or misleading application

b) Insolvency or inability to pay debts

c) Liquidation

d) Winding up

e) Dissolution

f) Conducting business in a manner detrimental to the interests of depositors or customers

g) Contravening the provisions of the law

h) Deception of the central bank or the general public in respect of its financial condition, ownership, management, operations.

Regulation 15 MDI(Licensing) regulations 2004 the application fee paid to the central bank is 25 currency points.

SUPERVISION

Section 59 (1) MDI, the central bank shall require all institutions to furnish periodic reports at all times to the central bank.

Regulation 6 MDI (REPORTING) REGULATIONS 2004, submission of financial statements to the central bank.

Regulation 7, submission of required returns to the bank of uganda.

- Non Deposit Taking Microfinance institutions

Section 4 the tier 4 microfinance institutions and money lenders act cap 61, non deposit taking microfinance institutions.

Section 8,the Uganda microfinance regulatory authority has the duty to license tier 4 microfinance institutions.

Section 68(1) tier 4, a non deposit micro finance institution shall assist in the development of micro ,small and medium sized businesses and expand access to micro loan resources to individuals for the promotion of their businesses, livelihoods and land holdings.

Section 61 tier 4, issuance of a license to the applicant upon satisfaction of the requiste conditions.

Section 65 tier 4, revocation of a license.

Regulation 3 (Tier 4 micro finance and money lenders (non-deposit taking microfinance institutions) regulations 2018, application for a licence shall be made to the authority by a company or NGO(fom 1A-Schedule 1)

Regulation 5, rejection of application on grounds of failure to submit required documents, misleading information, forged or fraudulent information and any other reason as the authority may determine.

Section 30(1) tier 4, the authority has the duty to analyze audited accounts, analyze statutory returns or inspect and analyze records.

Section 31(1) tier 4, furnishing of periodic reports of operations at such time as the authority may require.

Section 32 tier 4, provides for the management and take over of institutions where they are in unsound financial condition, fail to meet the minimum capital requirement where an institution refuses to be inspected or the business is detrimental to interests of stakeholders.

- Savings and credit cooperatives (SACCO's)

Section 35(1) and (2) Tier 4, a SACCO shallnot carry on the business of financial services unless they are a registred society and licensed under this act and shall provide services to only its members.

Section 37(1) and (2) Tier 4, provides for application to the authority for SACCO licence and this application shall be accompanied with; a certificate of registration of SACCO,evidence that the SACCO meets the minimum equity requirements, information on the prospective place of business, indicating the head office and branches.

Section 38(1) Tier 4,the authority shall within 3 months issue the licence.

Section 43 Tier 4, provides for the revocation of SACCO licence, where business has not commenced within 6 months, furnishing false and misleading particulars, insolvency, winding up, conducting business in a manner detrimental to the interests of its members.

Management and shareholding or ownership.

Section 45 Tier 4, A SACCO to maintain a minimum holding of liquid assets in relation to savings of members and this shall be in the form of; legal tender, account balances, money at call in Uganda, treasury bills and any other asset.

Section 46 Tier 4, the equity of SACCO includes; sharecapital, retained earnings, capital donations and grants, statutory reserves and other net-worth accounts owned collectively by all members.

Section 47 Tier 4, A SACCO may offer unlimited number of shares at a per value established by the bye laws.

An individual member shall not hold more than one third of the paid up capital of a SACCO.

Section 53 and 54 Tier 4, the SACCO stabilization fund shall be managed by the authority and it shall be managed by the authority and it shall provide financial assistance to SACCO's that are solvent or are likely to become insolvent.

Section 56, SACCO savings protection fund is established and every SACCO shall subscribe to the fund. The fund shall provide protection for savings of the individual members upto the amount determined by the authority.

- Cooperative societies.

Section 4(1)(a) the cooperatives societies act, it consists of atleast 30 persons all of whom are qualified for membership of the society.

Section 13(1), provides for qualifications of membership which includes; attaining 18 years and being a resident within or in occupation of land within the society's area of operation as prescribed by byelaw.

Section 14, restriction on shareholding up to one third of paid up share capital.

Regulation 3 of the cooperative societies regulations s.i 12-1, application for the registration of a society shall be submitted to the registrar in the form specified accompanied with 3 copies of the bye laws and proof of payment of fees.

Regulation 5, upon registration, the registrar shall forward to the society; a certificate of registration and a copy of the approved bye laws duly certified.

Regulation 7, a society to make bye laws governing its affairs.

Regulation 17, the supreme authority shall be general meetings at which every member has the right to attend and vote

Regulation 18, the committee to convene an AGM of the members of the society within 3 months after the end of the financial year of that society.

- Money lending

Section 77(1) Tier 4 act cap 61 , a person intending to engage in money lending business shall be a company

Section 77(3) Tier 4, an application for a licence for money lending shall be made in writing to the authorityand shall be accompanied by; certificate of incorporation, resolution of particulars of directors, particulars of secretary, the postal and physical address of the company and the prescribed fee.

Section 78(1), issuance of licence to applicant.

Section 83, provides for the consequences of carrying out business without a money lending licence;

a) An offence and on conviction liable to a fine of 200 currency points and on second or subsequent conviction is liable to 400 currency points.

b) Suspension of a money lending licence

c) Disqualification from engaging in money lending business

Regulation 7 Tier 4 microfinance and money lenders regulations 2018, provides the general conditions for licences which include;

a) It shall be personal and not transferable

b) Written notice to the authority incase of any intended change in the directors and other management staff

Regulations 17, duties of a money lender shall include;

a) Furnish a copy of the loan agreement including all annexures to the borrower.

b) Display interests rate charges at all times in a conspicuous place at the premises.

c) Keep and maintain records including proper books of accounts , a cash book, ledger, register of securities etc

d) Maintain a physical address and notify the authority of any change within 7 days.

e) Maintain and retain records for a period of 10 years.

- Self help groups

Section 98(1) Tier 4 act, a self help group shall;

a) Mobilise and manage its own savings

b) Provide interest bearing loans to its members

c) Offer a limited form of insurance to members

d) Share out member equity at least once a year

e) Be time bound

Section 98(3) Tier 4 act, a self help group may provide the following services;

a) Savings and credit

b) Revolving fund

c) Fundraising

d) Rotational group farming or barter trade.

Section 100 Tier 4 act cap 61, a self help group shall comprise members with a common bond. It shall form among themselves a governance committee which shall be responsible for the day to day management and the committee shall convene meetings and keep records.

- Commodity based microfinance.

Section 101 Tier 4 act defines a commodity based microfinance to mean the provision of microfinance services in the form of goods and services.

- Forex companies

Section 3 of the foreign exchange act, foreign exchange means or includes bank notes, coins or electronic units of payment in any currency other than currency of Uganda: financial instruments denominated in foreign currency.

Foreign exchange business means the business of buying,selling borrowing or lending of foreign currency

Persons includes any company or association or body of persons corporate or unincorporated.

- Section 4 of the FEA, provides for the authority of bank of Uganda
- Section 5 (1), requirement of a licence for any person dealing in the business of foreign exchange.
- Section 5(2), bank of Uganda issues a licence for a fee of 50 currency points.
- Section 5 (3), the minium paid up share capital to carry out business of dealing in foreign exchange business shall be 1000 currency points
- Section5 (4), the minimum paid up share capital for a person to carry out the business of money transfers shall be 2500 currency points.
- Regulation 6 of the foreign exchange (forex bureaus and money remittance) regulations 2006, the applicant for a licence shall fulfill the following conditions;

a) a company registered as limited liability whose main object is to conduct foreign exchange bureau business.

b) Have a minimum paid up share capital of atleast 1,000 currency points

c) Have a fixed and identifiable place of business that is accessible to the public

d) If owned by a bank, be registered as a wholly owned subsidiary of that bank

e) Provide the name and full address

f) Propose management, directors and owners who must be persons of good repute and integrity.

Regulation 10, an application for a forex bureau licence shall be accompanied by a non –refundable fee of 20 currency points payable to BOU

Regulation 14, foreign exchange (forex bureaus and money remittance bsiness without a valid money remittance licence.

Regulation 15 (1), an applicant for a money remittance licence shall be locally incorporated in Uganda as a company limited by shares.

Regulation 15 (2) and (3) provides for the classes of licences to be issued or applied for;

- Class A- international mpney transfer agency
- Class B- forex bureau and money remittance
- Class C- Direct Entrants licence.
- Class D- Sub –Agency licence.

Regulation 16(1), every licensee shall pay a licence fee of 50 currency points.

Regulation 17 (1), a licence shall be valid for a period of 12 months from the date of the issue or ,maybe renewed for a similar period

Regulation 15 (6)(a), the bank of Uganda may grant the money remittance licence if satisfied that the application satisfies all requirements.

ADDRESSING POTENTIAL BREACHES OF THE ANTI-MONEY LAUNDERING ACT 2013 AS AMENDED (TACKLING MONEY LAUNDERING PRACTICES.)

Section 3 of the Anti Money Laundering act prohibits money laundering ;

It is prohibited for any person to intentionally—(a)convert, transfer, transport or transmit property, knowing or suspecting that such property to be the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the crime generating the proceeds to evade the legal consequences of his or her actions; or(b)conceal, disguise or impede the establishment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing or suspecting that such property to be the proceeds of crime; or(c)acquire, possess, use or administer property, knowing, at the time of receipt, that the property is the proceeds of crime; or(d)act to avoid the transaction reporting requirements provided in Part III of this Act; or(e)assist another to benefit from known proceeds of crime; or(f)use known proceeds of crime to facilitate the commission of a crime; or(g)participate in, associate with, conspire to commit, attempt to commit, aid and abet, or facilitate and counsel the commission of any of the acts described in paragraphs (a) to (f).

Section 2 of the Anti –money Laundering act 118, (replaces section 6 of the Principal Act)

How an accountable person can mitigate money laundering)

Maintaining an account name in the true name of the holder and not to open or kee anonymous accounts.

Due diligence in the following circumstances;

a) Before and during the course of opening an account

b) Before carrying out an occasional transaction equal to or above 500 currency points.

c) Before carrying out an occasional transaction of a domestic or international wire transfer.

d) Understand the ownership and control structure of the customer.

e) Customer identification data

f) Identify and take reasonable measures to verify identity of a beneficial owner

g) Implementing risk management systems

h) Regarding cross border banking and similar relationships

i) Avoiding transactions with shell banks

j) Regulations of transactions identified as high risk

k) Examine the background and purpose of all complex , unusal large transactions and all patterns of transactions.

l) Developing and implementing programs for the prevention of money laundering and terrorism financing.

m) Keeping all data, documents orinformation upto date.

Section 7 anti money laundering act cap 118, provides for risk assessment of all transactions

Section 8 , record keeping by the accountable person.

Section10 , reporting of suspicious transactions

Section 11 act, protection of identity of persons and information in suspicious transcation reports.

FINANCIAL INTELLIGENCE AUTHORITY (FIA)

Section 20(1) anti money laundering act , provides for establishment of the financial intelligence authority; There is established a Financial Intelligence Authority.(2)The Authority is a body corporate with perpetual succession and may sue and be sued in its corporate name and do all acts and things as a body corporate may lawfully do.(3)The Authority shall have its head office in Kampala and may establish branches elsewhere in Uganda as it may decide.

Section 21 of the Anti-money laundering act , The objectives of the Authority are to—(a)enhance the identification of the proceeds of crime and the combating of money laundering ;

(b)ensure compliance with this Act;

(c)enhance public awareness and understanding of matters related to money laundering.

(d)make information collected by it available to competent authorities and to facilitate the administration and enforcement of the laws of Uganda; and

(e)exchange, spontaneously or upon request, any information with similar bodies of other countries that may be relevant for the processing or analyzing of information relating to money laundering or terrorism financing.

Section 22 of the Anti- money laundering act 2013; To achieve its objectives, the Authority—(a)shall receive process, analyse and interpret information disclosed to it and obtained by it in terms of this Act

(b)shall disseminate, either spontaneously or upon request, information and the results of its analysis to any relevant competent authority in Uganda and if the analysis and assessment shows that a money laundering offence, a terrorism financing offence or a crime has been, or is being committed, to send a copy of the referral or information to the relevant supervisory authority

(c)shall inform, advise and cooperate with other competent authorities;

(d)shall give guidance to accountable persons, competent authorities, and other persons regarding compliance with the provisions of this Act;

(e)shall retain the information referred to in paragraph (a) in the prescribed manner for a period of at least ten years;

(f)shall be responsible for the collection of fines adjudicated under this Act;

(g)shall issue guidelines to accountable persons not under the jurisdiction of supervisory authorities in relation to customer identification, record keeping, reporting obligation and the identification; and(h)may provide training programs for accountable institutions in relation to customer identification, record keeping, reporting obligations and the identification of suspicious transaction.

TOPIC SIX

INTELLECTUAL PROPERTY

(A) TRADEMARKS:

The law applicable under this scope of study includes the following;

The Trademarks Act cap 225

The Trademarks Rules SI 217-1

The Trademarks (Amendment) Rules SI 58 of 2005

The Trademarks (Costs) Rules SI 217-3

The Lusaka Agreement 1976

The Banjul Protocol on Marks of 1993

WTO Agreement

TRIPS Agreement 1994

NICE Agreement of 1957, revised 1967, 1977, amended 1979

The checklist in resolution of issues includes the following:

1) Whether the mark is registrable;

2) If so what is the procedure, forum and documents?

3) Whether the mark can acquire international or regional protection?

4) Whether the registration of the mark can be opposed?

The basic documents include the following:

Application for registration of a mark

Representation of the mark

INTRODUCTION

A trademark is defined in section 1 of the trademarks Act Cap 225 as a sign or mark or combination of signs or marks capable of being represented graphically and capable of distinguishing goods or services of one undertaking from those of another undertaking.

□A trademark is a visual representation attached to goods or services for the purpose of indicating their origin in trade.

Nice House of Plastics Ltd v HamiduLubegaHCCS No. 695 of 2006 per YorokamuBamwineJ at p. 2:"Inmattersofintellectualproperty,atrademarkisaword,phrase,symbol,productfeature,oranycombinatio nofthesethatdistinguishesincommercethegoodsorservicesofitsownerfromthoseofothers."

ELEMENTS OF A TRADEMARK

DISTINCTIVNESS OF MARK

Section 3(2) of the Trademarks Act (TMA) deals with the distinctiveness of a trademark.

According to this section, a trademark must be distinctive in order to be registered[1]. In other words, a trademark must be capable of distinguishing the goods or services of one

person from those of others. Here are some of the factors that are considered when

determining the distinctiveness of a trademark under Section 3(2) TMA:

- The inherent distinctiveness of the trademark: This refers to the extent to which the trademark is inherently capable of distinguishing the goods or services of one person from those of others. A trademark that is highly distinctive, such as an invented word or a fanciful design, is more likely to be registered than a trademark that is less distinctive, such as a descriptive word or a common design.

- The acquired distinctiveness of the trademark: This refers to the extent to which the trademark has become associated with the goods or services of one person in the minds of

consumers. A trademark that has acquired distinctiveness through use and promotion,

such as a well-known brand name, is more likely to be registered than a trademark that

has not yet acquired distinctiveness. - The nature of the goods or services: This refers to the type of goods or services that the trademark is used to identify. A trademark that

is used to identify highly specialized or unique goods or services is more likely to be

registered than a trademark that is used to identify common or generic goods or services.

- The similarity of the trademark to other trademarks: This refers to the extent to which the trademark is similar to other trademarks that are already registered or in use. A trademark that is too similar to another trademark is less likely to be registered than a trademark that is sufficiently distinct. Overall, the distinctiveness of a trademark is an important factor in determining whether it is eligible for registration under Section 3(2) TMA.

Trademarks that are highly distinctive and capable of distinguishing the goods or services

of one person from those of others are more likely to be registered than trademarks that are

less distinctive or too similar to other trademarks.

GRAPHICAL REPRESENTATION

This means that the trademark should be represented in a clear and precise manner that

allows it to be reproduced on paper or in electronic form. Examples of graphical representations of trademarks include drawings, images, and digital files.

In the BV v Joost Kist case, the issue was whether a sound mark could be registered as a

trademark. The sound mark in question was a series of notes that were played when a user

logged into a website. The Dutch Supreme Court held that the sound mark was not capable of graphical representation and therefore could not be registered as a trademark. The court reasoned that the sound mark could not be represented in a clear and precise manner that would allow it to be reproduced on paper or in electronic form.

This case highlights the importance of graphical representation in trademark law. In order for a trademark to be registered, it must be capable of being represented in a clear and

precise manner that allows it to be reproduced.

This requirement ensures that trademarks are easily identifiable and distinguishable, and that they can be protected under trademark law.

PROTECTABLE SUBJECT MATTER

In the case of Kampala Stocks Supermarket

v Seven Days International, the issue was whether a trademark could be registered for

the phrase "Everyday Low Prices" in relation to retail services. The court held that the phrase was not capable of being protected as a trademark because it lacked distinctiveness

and was a common phrase used in the retail industry.

The concept of protectable subject matter in trademark law refers to the types of marks that

are eligible for protection under trademark law.

In general, a trademark must be capable of distinguishing the goods or services of one person from those of others in order to be eligible for protection. Here are some

examples of protectable subject matter in trademark law:

Word marks: A word mark is a trademark that consists of one or more words that are used to identify a particular product or service.

Examples of word marks include "Coca-Cola," "Nike," and "Apple."

Design marks: A design mark is a trademark that consists of a design or logo that is used to identify a particular product or service.

Examples of design marks include the Nike "swoosh," the Apple logo, and the McDonald's

golden arches.

Slogan marks: A slogan mark is a trademark that consists of a phrase or slogan that is used to promote a particular product or service.

Examples of slogan marks include "Just Do It,""I'm Lovin' It," and "The Ultimate Driving

Machine."

Color marks: In some cases, a trademark can consist of a particular color or combination of colors that are used to identify a particular product or service. Examples of color marks

include the Tiffany blue color used by Tiffany & Co. and the UPS brown color used by United Parcel Service.

DURATION OF TRADEMARK REGISTRATION

Duration and renewal of registration of a trademark are governed by Section 19 of the

Trademark Act. Here is a breakdown of the duration and renewal process:

- A trademark registration is valid for a period of 7 years from the date of registration.
- After the initial 7-year period, the trademark can be renewed for successive periods of 10 years each.
- There is no limit to the number of times a trademark can be renewed, as long as the

renewal fees are paid and the trademark is still in use.

Renewal:

- To renew a trademark registration, an application must be filed with the relevant trademark office before the expiration of the current registration period.
- The renewal application must include the registration number, the name and address

of the trademark owner, and evidence of use of the trademark in commerce.

- The renewal fees must also be paid at the time of filing the renewal application.
- If the renewal application is accepted, the trademark registration will be renewed for

another 10-year period.

- If the renewal application is not filed before the expiration of the current registration

period, the trademark registration will expire and the trademark owner will lose the legal protection afforded by the registration.

REGISTRATION OF TRADEMARKS

Registering a trademark is under section 2 of the Trademarks Act.

1. The registrar shall maintain a manual register of trademarks in his or her office.

2. The registrar may also maintain an electronic register of trademarks subject to prescribed safeguards.

3. The register shall contain all registered trademarks with the names, addresses, and descriptions of their owners, registered users, notifications of assignments and transmissions, disclaimers, conditions, limitations, and other matters relating to registered trademarks as may be prescribed.

4. The register shall be divided into two parts called Part A and Part B respectively.

5. A record of particulars or other matter made using electronic form for the purpose of

keeping the register shall be taken to be an entry in the register.

6. The register shall be open to the inspection of the public subject to such regulations as

may be prescribed.

7. The register shall be kept under the control and management of the registrar.

STEP BY STEP GUIDE OF REGISTRATION OF A TRADEMARK

1. Trademark search: Before filing a trademark application, it is important to conduct a trademark search to ensure that the proposed trademark is not already registered

or in use by another party. This search can be conducted online or through a trademark agent.

2. Filing of the trademark application: Once the trademark search has been conducted, the next step is to file a trademark application with the relevant trademark office. The application must include the proposed trademark, the goods or services to which the trademark will be applied, and the name and address of the trademark owner.

3. Examination of the trademark application:

After the trademark application has been filed, it will be examined by the trademark office to

ensure that it meets the requirements for registration. This examination includes a review of the distinctiveness of the trademark, as well as a search for any conflicting trademarks.

4. Publication of the trademark application:

If the trademark application is found to be acceptable, it will be published in the trademark journal to allow for opposition by third parties. If no opposition is filed within the

specified period, the trademark will proceed to registration.

5. Registration of the trademark: Once the trademark has been accepted and no

opposition has been filed, it will be registered and a certificate of registration will be issued.

The trademark owner can then use the registered trademark to identify and distinguish

their goods or services from those of others. The procedure for registering a trademark in

Uganda is outlined in Part III of the Trademarks Act, 2010. The following is a stepby-

step guide to the registration process under Sections 5, 6, 7, 9, 10, 11, and 12:

Section 5 Trademarks Act - Conduct a search: Before applying for registration, the applicant should conduct a search to ascertain whether the trademark exists in the register.

Section 6 Trademarks Act -Seek preliminary advice: The applicant may obtain advice from the registrar as to whether the proposed trademark appears to be inherently adapted to distinguish or capable of distinguishing goods or services of the proposed undertaking from those of other undertakings.

Section 7 Trademarks Act - Application for registration: The applicant should apply in

writing to the registrar in the prescribed form for registration in Part A or Part B of the

register. The registrar may accept the application absolutely or subject to amendments, modifications, conditions, or limitations.

Section 9 Trademarks Act – Distinctiveness requisite for registration under Part A: In order for a trademark other than a certification mark to be registered in Part A of the register, the trademark shall contain or consist of at least one of the following essential particulars: the name of a company, individual or firm,represented in a special or particular manner; the signature of the applicant for registration or of some predecessor in his or her business; and invented word or invented words; a word or words having no direct reference to the character or quality of the goods or services, and not being according to its ordinary

signification, a geographical name or a surname; or any other distinctive mark .

Section 10 Trademarks Act - Capability of distinguishing requisite for registration under

Part B: For a trademark to be registered in Part B of the register, it must be capable of

distinguishing goods or services of one undertaking from those of another undertaking

Section 11 Trademarks Act - Publication of application: The registrar shall publish the

application in the prescribed manner.

Section 12 Trademarks Act - Objection to registration: Any person may, within sixty days

from the date of publication of the application, give notice of opposition to the registration of

the trademark.

If there is no opposition, the registrar shall proceed to register the trademark.

OBJECTION TO REGISTRATION

Objection to registration is a process by which a third party can challenge the registration of a trademark. Here are the relevant sections and regulations that govern the objection process:

Section 12 of the Trademarks Act provides for the grounds of objection to the registration

of a trademark. These grounds include: The trademark is identical or similar to an

earlier trademark that is already registered or in use in relation to the same or similar goods

or services. The trademark is likely to deceive or cause confusion among consumers.

The trademark is contrary to law or morality. The trademark is likely to hurt religious susceptibilities

Regulation 29 of the Trademark Regulations provides for the procedure for filing an objection to the registration of a trademark. The objection must be filed in writing with the relevant trademark office, and must include the grounds for objection and any evidence in support of the objection.

Regulation 30 of the Trademark Regulations provides for the procedure for hearing and deciding an objection to the registration of a trademark. The trademark office will notify the trademark owner of the objection and provide an opportunity to respond. The trademark office will then consider the evidence and arguments presented by both parties and make a decision on whether to allow or refuse the registration of the trademark.

IN THE CASE OF CROCS DISTRIBUTORS LIMITED V CROCODILE INTERNATIONAL (PTE) LIMITED (MISCELLANEOUS CAUSE 67 OF 2022)[2024]UG COMMC 94 (30 APRIL 2024), the high court held that it is unlawful to register a trade mark without a bonafide intention of using it.

REGISTRATION UNDER PART A & PART B

Registration under Part A

Section 9(1) of the Trademarks Act provides for the registration of trademarks under Part A.

Here is an explanation of what registration under Part A entails:

Part A registration is a full registration of a trademark that provides the trademark owner

with exclusive rights to use the trademark in relation to the goods or services for which it is

registered. Part A registration is available for trademarks that are capable of distinguishing the goods or services of one person from those of others and that are not prohibited by law.

To register a trademark under Part A, an application must be filed with the relevant trademark office. The application must include the proposed trademark, the goods or services to which the trademark will be applied, and the name and address of the trademark owner.

The trademark office will examine the application to ensure that the trademark meets

the requirements for registration, including distinctiveness and non-prohibition.

If the trademark is found to be acceptable, it will be published in the trademark journal to

allow for opposition by third parties. If no opposition is filed within the specified period, the trademark will proceed to registration. Once the trademark is registered under Part A, the trademark owner can use the registered trademark to identify and distinguish their

goods or services from those of others. The trademark owner also has the exclusive right to

prevent others from using the same or similar trademark in relation to the same or similar

goods or services. Part A registration is valid for a period of 7 years from the date of registration, and can be renewed for successive periods of 10 years each

" Surnames" Fantastic Sam's Service Mark (1990) RPC 531 , The applicants sought registration in part A of the register of the words FANTASTIC SAM'S as an unused service mark for hair dressing services included in class 42.

Held; refusing the application, The mark constituted of a laudatory word and the possessive form of a common familiar Christian name and having regard to the widespread practice of hair dressers using their Christian names as a trading style, the mark was not distinctive. Accordingly, it was not acceptable prima facie in part A.

REGISTRATION UNDER PART B

Sections 10(1) and (2) of the Trademarks

Act provide for the registration of trademarks under Part B. Here is an explanation of what

this means:

Registration under Part B:

Part B of the Trademarks Act is a register of trademarks that are considered to be less distinctive or have not yet acquired distinctiveness.

Trademarks that are registered under Part B are entitled to a lower level of protection than

trademarks that are registered under Part A, which is a register of trademarks that are

considered to be inherently distinctive or have acquired distinctiveness through use.

To be eligible for registration under Part B, a trademark must be capable of distinguishing

the goods or services of one person from those of others, but may not be inherently distinctive or may not have acquired distinctiveness through use.

The registration process for Part B trademarks is similar to that for Part A trademarks,

including the requirement to file a trademark application, undergo examination, and publish

the application for opposition. Once a trademark is registered under Part B,the trademark owner has the exclusive right to use the trademark in relation to the goods or services for which it is registered.

The registration of a Part B trademark is valid for a period of 7 years from the date of registration, and can be renewed for successive periods of 10 years each

SECTION 4 OF THE TRADEMARKS ACT CAP 225, Protectable subject matter.

(1) A sign or combination of signs, capable of distinguishing goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark.

(2) Where a sign is not inherently capable of distinguishing the relevant goods or services, qualification for registration shall depend on distinctiveness acquired through use.

(3) A sign shall be capable of graphical representation in order to be registered.

In ScandecorDevelopments AB v ScandecorMarketing AB [2002] FSR 112, Lord Nicholls of Birkenhead at para. 33 observed that:-Inherent in this definition (ofatrademark)Is the notion thatdistinctivenessastobusiness source(ofthegoodsorswervicesofanundertaking)is the essential function of a trademark today.

Registration in part B is for a trademark which is capable for distinguishing goods with which you connected from goods with which you are not connected (Under Sec 10).

The procedure to be followed in registering the mark is enunciated below:

1) Mode of application (Sec 18 & 20 of the Trademarks Act and Rule and Rule 21 to the Trademarks Rules SI 217-1) by filling out form TM2; one applies to the Register of Trademarks in writing; thus

f) Fill trademark form 2 and sign it (Rule 21)

g) Put picture of Trademark on T.M. form 3 i.e. the representation

h) Registrar carries out a search for any other trademark similar to it (Rule 30).

i) Upon satisfaction; the registrar advertises the Application ion the Gazette (per Rule 42).

j) Within 60 days of the advert running, and upon payment of the prescribed fee, the registrar may enter the mark on the register (under Rule 60 therein)

Certification Trademarks

These are registered in Part A of the Register in respect of the goods in the name of the proprietor. Such a mark is adopted to distinguish good from others in relation to the course of trade and they are certified by that person with due regard to origin, mode of manufacture, quality, and accuracy inter alia.

OPPOSITION TO APPLICATION FOR TRADEMARKS

- In case of objection; the Registration can be opposed Under Sec 20 of the Trademarks Act (i.e. Notice of Opposition should be within 60 days from date of publication of advert as enunciated in Rules 46-58 of SI 217 -1).
- Registrar to set and listen to adverse parties.
- If opposition is dismissed; Registrar registers trademark under sec 21.
- The duration of the Registration (Under Sec 21) is for 7 years.
- Upon expiration; renewed for a further period of 14 years; on application.
- The procedure for renewal; Rules 64-70.

RIGHTS OF TRADEMARK OWNERS

Rights accruing from registration of trademark are enunciated below and they include the following:

a) Right to use mark under section 6 of the Trademarks Act.

b) Right to prevent other persons from using the mark (section 6)

c) Right to assign the Mark (under section 32)

d) Right to transmit the Mark (i.e. selling business- goes on the mark – Sec 32).

PASSING OFF

Passing off is a common law tort, which can be used to enforce unregistered trademark rights. The law of passing off prevents one person from misrepresenting his goods or services as that of another.

The concept of passing off has undergone changes in the course of time. At first it was restricted to the representation of one person's goods as those of another. Later it was extended to business and services. Subsequently it was further extended to professions and non-trading activities. Today it is applied to many forms of unfair trading and unfair competition where the activities of one-person cause damage or injury to the goodwill associated with the activities of another person or group of persons.

The basic question in this tort turns upon whether the defendants' conduct is such as to tend to mislead the public to believe that the defendants' business is the plaintiff's or to cause confusion between the business activities of the two.

The tort of passing off is sufficiently wide to give relief to charities engaged in trading type activities.

In British Diabetic Association V Diabetic Society, both the parties were charitable societies. Their names were deceptively similar. The words 'Association' and 'Society' were too close since they were similar in derivation and meaning and were not wholly dissimilar in form. Permanent injunction granted.

The principles of law of passing off as quoted in the case of Supa Brite vs. Pakad Enterprises Ltd [2001] two EA 563 where the Court of Appeal of Kenya quoted with approval the case of Reckitt and Colman Products Ltd versus Borden Inc and others [1990] 1 WLR 59.

What the plaintiff needs to prove is that he had acquired a reputation or good will connected with the goods or services supplied and such goods or services were known to the buyers by some distinctive get up or feature; that the defendant had, whether or not intentionally made misrepresentation to the public leading them to believe that the defendants goods or services were the plaintiffs' and; that the plaintiff suffered damages because of the erroneous belief engendered by the defendants misrepresentation, and that all the three elements were questions of fact.

Section 35 of the Trademarks Act preserves the common law cause of action of "passing off" and the remedies in respect thereof and it provides as follows:

"35. Passing off

Nothing in this Act shall be taken to affect a right of action against a person for passing off goods or services as the goods or services of another or the remedies in respect of the right of action."

The right of action by a plain reading of the section is the right of action of a rights owner of a trademark suing another person for passing off goods and services as the goods and services of the rights owner.

Passing off has a statutory definition under section 1 which defines it in the following words:

"passing off" means falsely representing one's own product as that of another in an attempt to deceive potential buyers"

By this definition there is an attempt by another person to pass of their product as that of another in an attempt to deceive potential buyers.

Courts have however found the phrase "representing one's own product" problematic. What if the trader who sells the product is a buyer from the person who actually counterfeited the product to resemble that of the person who has the exclusive right thereof? Is the trader liable without proof of who packaged or imitated the trademark if another person in packaging the product?

Passing off was discussed in Reckitt and Colman Products Ltd v Borden Inc and others [1990] 1 All ER 873 by Lord Jauncey of Tullichettle in similar terms like that under section 1 (1) of the Ugandan Trademarks Act, Act 17 of 2010. He said:

"That a man is not to sell his own goods under the pretence that they are the goods of another man and accordingly, a misrepresentation achieving such a

result is actionable because it constitutes an invasion of proprietary rights vested in the plaintiff".

Court further summarized the essence of the cause of action that the plaintiff has to prove in addition to the quote to include; that the misrepresentation of the product has deceived or is likely to deceive. The plaintiff is likely to suffer damages from such deception.

The right protected in a passing action is the business or goodwill injured by the misrepresentation.

Lord Jauncey of Tullichettle cited with approval the judgment of Lord Diplock in Erven Warnink BV vs. J Townend& Sons (Hull) Ltd [1979] 2 All ER 927 at 932–933 which gives five essential ingredients of a passing off action namely: There has to be a misrepresentation. Secondly, the misrepresentation is made by a trader in the course of trade. Thirdly, it is made to prospective customers of his or ultimate consumers of goods or services supplied by the trader. Fourthly the misrepresentation is calculated to injure the business or goodwill of another trade or as a reasonably foreseeable consequence and fifthly it causes actual damage to a business or goodwill of the trader by whom the action is brought or will probably do so.

The plaintiff of course has to prove that his or her goods have acquired a reputation in the market and are known by some distinguishing feature. Lord Jauncey of Tullichettle further held that:

"the proprietary right which is protected by the action is in the goodwill rather than in the get-up distinguishes the protection afforded by the common law to a trader from that afforded by statute to the registered holder of a trade mark who enjoys a permanent monopoly therein."

Furthermore, passing off requires evidence of actual sale of goods as that of the plaintiff. The tort is in the goods rather than in the mark.

That conclusion is consistent with the Ugandan statutory definition which emphasizes that the action is in the act of "passing off one's product" as that of another with the intention to deceive.

Classical Definition;

Therefore with the above foregoing, Passing Off may be defined as a misrepresentation in the course of trade by one trader which damages the goodwill of another.

The three essential elements of passing, the "classical trinity" are; Goodwill, misrepresentation and damage.

RELATIONSHIP WITH TRADEMARKS

The protection offered to a trader by a passing off action, on one hand and by a registered trademark on the other hand may overlap at many points.

The fundamental difference between these two is that in Passing off there is no property in the relevant name as there is a registered trademark. Instead passing off protects the claimant's ownership of his goodwill or reputation, which maybe damaged by the defendant's misrepresentations. Changes to the Trademark law introduced by the Trademarks Act of 2010 have increased the overlap with passing off. These include the possibility of protecting identical or similar registered trademarks with reputation on similar and dissimilar goods. Also, the category of registrable marks was enlarged to include any which maybe represented graphically, including inter alia, shapes.

Nonetheless it is clear that in some respects, the protection offered by passing off may still be wider than that endowed by trademark registration. It is arguable that traditionally judges have been willing to provide more extensive protection to traders under passing off, for instance in cases involving descriptive names, precisely because the law of passing off does not provide the potentially indefinite monopoly endowed by trademark registration.

ELEMENTS

In order to succeed in a passing off action the basic tests to be met include the existence of goodwill, misrepresentation and damage.

These emanate from the case of Reckitt & Colman Products Ltd. V Borden Inc [1990] 1 All ER 873 as deduced by Lord Oliver from the list laid down by Lord Diplock in the case of Spalding & Bros V AW Gamage Ltd (1951) 84 LJ Ch 449.

These included existence of a misrepresentation, made by a trader in the course of trade, to prospective customers of his or ultimate consumers of goods or services supplied by him, which is calculated to injure the business or goodwill of another trader and which causes actual damage to a business or goodwill of the trader by whom the action is brought or in a quia timet action will probably do so.

This was cited with approval by this Court by Hon. Justice Yorokamu Bamwine in the case of Anglo Fabrics (Bolton) Ltd & Anor V African Queen Ltd & HCCS 0632 of 2006.

(I) GOODWILL

Goodwill is the first element in the "Classical Trinity" necessary to establish an action for passing off. Goodwill is personal property and it is the claimant's goodwill which is the property right protected by a passing off action.

According to Lord Diplock in Star Industrial Co. Ltd v Yap Kwee Kor (1976):

"A passing off action is remedy for the invasion of a right in property not in the mark, name or get-up improperly used, but in the business or goodwill likely to be injured by the misrepresentation made by the passing off of one person's goods as the goods of another".

Note; the contrast with trademark law, where the claimant's property is in the mark, name or get-up provided it is validly registered as a trademark.

MEANING OF GOODWILL

Goodwill was defined by Lord Macnaghten in IRC v Muller & Co's Margarine Ltd (1901) as "the benefit and advantage of the good name, reputation and connection of business. It is the attractive force which brings customers home to the source from which it emanates."

As to the test for goodwill, a useful definition was given by Lord Macnaughten in Commissioners of Inland Revenue v Muller & Co's Margarine Ltd [1901] AC 217 at 223 where he held 'What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which begins in custom. It is the one thing which distinguishes an old established business from a new business at its first start. The goodwill of a business must emanate from a particular center or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has power of attraction sufficient to bring customers home to the source from which it emanates.'

In other words it can be said that, goodwill is the attractive force attached to the name, get-up or logo which brings the customer back home to the source from which it emanates. The onus is therefore on the plaintiffs to establish this goodwill as a key ingredient to a passing off action.

The owner of goodwill has a property right that can be protected by an action in passing off. Buckley LJ described the nature of the proprietary right in the case of HP Bulmer Ltd. V J Bollinger SA [1978] RPC 79 at 93 as follows:

"A man who engages in commercial activities may acquire a valuable reputation in respect of the goodwill in which he deals or of the services which he performs or of his business as an entity. The law regards such reputation as an incorporeal piece of property, the integrity of which the owner is entitled to protect."

The learned author Bainbridge in his book Intellectual Property Law 8th Edition argues that passing off goes beyond the type of mark that is registrable as a trademark and can also apply in respect of containers and packaging.

This was the position taken in the case of Reckitt & Coleman (supra) where it was held that the law of passing off protected the Jif lemon, a plastic lemon shaped and coloured container of the plaintiffs. The Jiff lemon had been on sale since 1956 and a considerable goodwill had built up associated with it and it was as was held by Lord Oliver.

In the Ugandan case of Zeneca Ltd. V Vivi Enterprises Ltd. HCCS No. 842/94 Byamugisha J (as she then was)held that a product which had been on the market for 25 years was sufficient period for any product worth its salt to acquire a reputation and goodwill.

Good will can also found in a product get up; that is a container together with its shape or appearance. This was the position taken in the case of Hodgkinson and Corby Ltd V Wards Mobility Services Ltd. [1995] FSR 169 where the claimant made a cushion for use by permanently immobile persons to prevent pressure sores with a distinctive appearance. The defendant was planning to sell a 'lookalike' cushion though under a different trade name. It was held that passing off could occur even when the appearance of goods had been copied and that passing off was not restricted to taking a name, mark or sign. Although copying the appearance of a product is not unlawful per se in the absence of infringing an intellectual property right, in terms of passing off, the defendant must always do enough to avoid the deception.

The ability of purchasers to make subtle distinctions was considered to be a factor in the Privy Council case of White Hudson & Co Ltd V Asian Organisation Ltd. [1964] 1 WLR 1466. The claimant sold cough sweets wrapped in red wrappers in Singapore since 1953 which bore the word 'Hacks' with ingredients. From the 1958 the defendant sold cough sweets with a similar colour and shape also wrapped in red but with the name 'Pecto' printed on the wrappers.

It was held that the claimant had established a get-up in the red coloured wrapper that was distinctive of his cough sweets and there was a danger of confusion especially as few purchasers could read the words. It was stated that the defendant could have used another colour of wrapper or used a prominent symbol on the wrapper to avoid confusion.

Bainbridge in his book Intellectual Property Law reasons at p.641 that there are 2 main reasons why a trader would wish to pass off his goods or services as being those of another, established trader. The first is that by doing so, a significant portion of the established trader's customers might be captured because of confusion amongst the buying public as to whom they are dealing with. The second reason is that sales might be boosted by unjustifiable imputing a quality to the second trader's goods that is widely recognized in connection with the goods of the established trader.

Similar products in the market place can cause confusion. The question therefore is whether the two get ups are so similar so as to cause the erosion of good will of one of them that has been on the market first.

In the case of Brooke Bond KENYA Ltd. V Chai Ltd. [1971] EA 10 Spry Ag.P held that the likelihood of confusion is not disproved by placing the two marks side by side and demonstrating how small chances of error may arise. In his words he stated that:

'It is more useful to observe that in most persons the eye is not an accurate recorder of visual detail, and that marks are remembered rather by general impressions or by some significant detail than by any photographic recollection of the whole.'

Spry Ag. P went on to hold that '... The test is the impression on the average customer...' In the Brooke Bond case (supra) the court took judicial notice of the number of illiterate persons in Kenya a situation which court had to bear in mind. This argument is not far from the reality in Uganda and the circumstances of this case warrant a similar application which still offers the same conclusion.

In the further case of Hassanali M. Sachoo V John Hopkins O.V.T [1958] EA 463 Sir O'Connor held that

'It seems to me that each of these cases must be looked at by itself and the Judge looking at the label or get-up or the device, whatever, it may be that is complained of, with such assistance as to the practice of the trade as he can get from witnesses must decide for himself whether the article complained of is calculated to deceive or not.'

At the end of the day what ever the evidence presented to court it is for the Judge to decide whether the offending product is calculated to deceive or not.

Difference between Goodwill and Reputation

Although goodwill and reputation are often used interchangeably in relation to passing off, there is strong authority for the proposition that the two do not mean the same, and that passing off protects the former and not the latter.

As Millett LJ put it in Harrods Ltd v Harrodian School Ltd (1996);

"Damage to goodwill is not confined to loss of custom, but damage to reputation without damage to goodwill is not sufficient to support an action for passing off." In the "Harrod's case, the claimant was the proprietor of the "world famous" department store. It sought t restrain the defendant from running a private preparatory school, named "The Harrodian Club", originally established for the store's employees. The claimant certainly had a worldwide reputation, but it was held that the defendant's activities would not damage its goodwill, as such.

As Millett LJ stated;

"The name "Harrods" maybe be universally recognized, but the business with which it is associated in the minds of the public is not all embracing. To be known to everyone is not to be known for everything".

DEALING WITH GOODWILL

Goodwill is a form of property and can be assigned, licensed bequeathed etc. however; goodwill cannot be separated from the business that generated it. It cannot, for instance, be assigned alone. In wide sense goodwill is inseparable from the business to which it adds value and exists where the business is carried on.

By contrast, registered trademarks can be assigned, licensed etc by their proprietors separately from the business to which they attach so long as they do not become deceptive.

WHAT CONSTITUTES GOODWILL

The courts will decide whether or not a claimant has the relevant goodwill, not on the basis of whether he actually has a place of business in Uganda, but rather on whether he carries on business in Uganda, in the sense of there being a sufficient number of customers for his product.

Who Owns Goodwill

This is a question of fact in each case. It is not necessary for the public to know which individual or company may own the goodwill. It is enough if they think that the claimant's goods derive from a particular source. Reckitt & Coleman Products Ltd v Borden Inc.

The End of Goodwill

Goodwill will not necessarily dissipate when a business closes. Provided the claimant intended and still intends to recommence trading, it may be possible to bring an action for passing off.

In "Ad-Lib Club Ltd v Granville (1972), the claimant had run a successful night club called the

"Ad-Lib Club"; which it had been forced to close, some four years before, because of noise complaints. It was looking for alternative premises when the defendant opened its own club "AdLib". The claimant claimed that customers of the latter would be confused. The court held that the claimant still retained sufficient residual goodwill in the name to be entitled to an injunction.

(II) MISREPRESENTATION

This is the second element of passing off. To be actionable in passing off, the misrepresentation must be a material misrepresentation. The deception must be more than monetary and inconsequential. In other words the claimant must demonstrate that it is a reasonably foreseeable consequence of the defendant's misrepresentation that his business or goodwill will be damaged. (Reckitt & Coleman Products Ltd v Borden Inc)

Nature of Material Misrepresentation

The misrepresentation may be express or implied, although express misrepresentations are rare. The classic misrepresentation as described by Lord Oliver in Reckitt & Coleman case, is one by the defendant to the public to believe (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the claimant.

Difference between Confusion and Misrepresentation

Confusion alone does not necessarily amount to material misrepresentation. In Phones 4U v Phones4u.co.uk Internet Ltd (2007), Jacob LJ summarized the difference between confusion and a material misrepresentation as whether what is said to be deception rather than mere confusion is likely to be damaging to the claimant's goodwill or divert trade from him.

An example of confusion rather than misrepresentation arose in HFC Bank v HSBC Bank plc (2000). Here the claimant operated a bank called HFC, which attracted customers through credit brokers, retail agreements and credit card business. The defendant, formerly known as Midland Bank, was a high street bank owned by HSBC Holdings. In December 1998, it re-branded itself as HSBC. The court held that if the use of HSBC were to constitute a "relevant or material" misrepresentation, then it would have to be shown that its use had led to some HFC customers or potential customers being exposed to the Midland Bank in circumstances in which might not otherwise have occurred. But the court could envisage no circumstances in which, where the identity of the bank mattered to the customers, the customer would enter a transaction without being disabused of such confusion.

Conversely in Phones 4U, the claimants had since 1995 owned and operated a nationwide chain of shops under the name of Phones 4U, which sold mobile phones and arranged customer contacts. It also had a domain name, phones 4u.co.uk.

In 1999, the defendant registered the domain name "phone4u.co.uk". It sold mobile phones from this site, although, in 2000 it offered to sell its domain name to the claimant for a considerable sum.

The Court of Appeal found that, by the time the defendant commenced trading, the claimant had substantial goodwill in the name, Phones 4U. A considerable number of people sought to contact the claimant, via the defendant's website. Once on the site, the defendant offered to sell them phones, but also stated that it was unconnected with the claimant's business. It was found in the Court of Appeal that despite this disclaimer, customers or potential customers were being deceived into contacting the defendant's website, under the assumption that it was connected with the claimant and once there, the defendant sought to take advantage of this initial deception.

As a result the claimant's goodwill and trade would be damaged and passing off was made out.

In Britania Allied Industries Ltd v Aya Biscuits H.C.S No. 24 of 2009, Justice Kiryabwire ably discussed the clear distinction between the two. He stated that;

"As to the test of misrepresentation this to my mind is not too different from the issue of confusion discussed above." He relied of a wealth of authorities as follows;

Lord Langdale MR. laid down the classic underlying principle in the case of Perry v Truefitt (1842) 49 ER 749 where he stated that 'a man is not to sell his own goods under the pretence that they are the goods of another trader'

The law therefore restrains one trader from passing off the goods as being those of another trader this being the essence of the action under misrepresentation. This was discussed in the case of Spalding & Bros v AW Gamage Ltd (1915)84 LJ Ch 449 where the defendant advertised defective footballs as 'orb' balls a

description of the claimant. An injunction was granted in favour of the claimant and Lord Parker considered the nature of passing off saying:

'The more general opinion appears to be that the right is a property right…property in the business or goodwill likely to be injured by the misrepresentation.'

A misrepresentation is a false description made consciously or unconsciously by the defendant.

Case in point is that of Arsenal Football Club plc V Reed [2001] RPC 922 where it was held that for passing off to have occurred customers or ultimate consumers must have been deceived with a real likelihood of confusion.

TYPES OF ACTIONABLE MISREPRESENTATION

- Defendant's Goods are the claimant's

- Misrepresentation as to Quality

The defendant may sell the claimant's goods, but pass off inferior goods as if they were of superior quality.

- Misrepresentation as to Origin

What if the goods sold by the defendant are precisely the same as those of the claimant, but have been sold without the claimant's authorization? This was the situation in Primark Stores v Lollypop Clothing Ltd (2001). 10 KAJUBI BRIAN UCU FACULTY OF LAW- Guidance Notes

Last Element:

(III) DAMAGE.

Courts have held that the damage in question means the damage to good will. Bainbridge in his book Intellectual Property (Supra at p.670) states that damage may take different forms which includes lost sales, the fact that the defendant's product is inferior and consumers think it's the plaintiff's and lastly erosion or debasement of a name that is exclusive and unique to the claimant.

The learned author asserts the view that a claimant must be able to satisfy court that he has or he will suffer substantial damage to his good will. In this regard mere speculation will not suffice.

In Allied Britania Industries case justice Kiryabwire emphasized the need to prove damage. He held that;

"the plaintiff failed to aid Court with evidence of actual damage to the good will of its biscuits.

As and even the sales figures shown to Court by the plaintiff did not show a drop or slow down of sales. This may be because the defendant's products were on the market for a short time namely September 2009 to April 2010 before being withdrawn. The situation may well have

been different if the defendant's products were still on the market. A repeat of this however has to be avoided by the defendant".

- Damage for the lost business

- Damage by association

Here damage is caused by the defendant's misrepresentation that there is some connection between the parties. In these cases, the claimant's reputation maybe damaged without the defendant receiving a corresponding gain. (Harrods Ltd v Harrodian School Ltd.) where the quality of the defendant's reputation is inferior to that of the claimant, the courts may be more ready to assume the likelihood of damage.

- Damage for loss of Distinctiveness

Defences

- Use of own name

- Honest concurrent use

- Delay

Remedies (Read more about this, but note a remedy of account for profits can not be awarded alongside that of damages. Refer to Allied Britania case)

Relevant Applicable Cases

- Haria Industries v. P.J Products Ltd [1970] E.A 366

- Colgate Palmolive Co. Ltd vs. Sombe Supermarket Ltd, HCCS No. 689 of 2016

- Vision Impex Ltd vs. Sansa Ambrose & Anor, Civil Suit No. 303 of 2013

- Columbia Picture Industries v Robinson [1987] 1 Ch 38

- Nice House of Plastics Ltd v. Moses Buule HCT – CC-CS- 0602 of 2005

- Reddaway v Benham [1896] AC 199

- Commissioners of Inland Revenue vs. Muller & Co.'s Margarine Ltd [1901] AC 127

- White Hudson & Co. Ltd vs. Asian Organisation Ltd [1964] WLR 1466

- Reckitt & Colman Products Ltd v Borden Inc [1990] 1 All ER 873

- Cadbury-Schweppes Ltd v Pub Squash Ltd [1981] 1 All ER 213

- Napro Industries Ltd v. Five Star Industries Ltd & Anor Misc. Appln. No. 773 of 2004

- Megha Industries (U) Ltd v Conform Uganda Ltd, Misc. Cause No. 21 of 2014

- Britania Allied Industries v. Cogef Impex Ltd, Misc. Appln. No. 722 of 2013

- Anton Piller KG V. Manufacturing Processes Ltd & Ors [1976]1 ALL ER 779

- Guangzhou Tiger Head Battery Group Co. Ltd v. Milly Nakanjako & Anor, Civil Suit No. 0516 of 2012

INFRINGEMENT.

In case of infringement of a mark, the aggrieved party can gain from any of these remedies. Court held in Acontractiebolaget Vs The East African Match [1964] EA 62 that the burden of proof of infringement of the mark is on the plaintiff who is mandated to prove the semblance between the marks in dispute.

- Filing a civil action; seek an injunction, damages, delivery up etc, under O5,7 or O41 of the CPR SI 71-1.

- instituting criminal proceedings and preferring charges, in respect to and contrary to sections 377-380 of the Penal Code Act .

- Rectification and correction of the Register.

- Obligation of owner of registered Mark.

- Duty to use a mark; or else application to strike mark off register (section 28).

INTERNATIONAL PROTECTION AGAINST TRADEMARK INFRINGEMENT

Protection of Trademark in other countries in possible with due regard to the following:

a) if one desires protection in the region, one can use ARIPO (Africa Registered Intellectual Property Organisation) for registration of the mark in the region.) ARIPO was set up by the Lusaka agreement of 1976 which has protocols for implementing various parts of I.P.

- The Banjul Protocol – regulates Trademarks in African Region ARIPO registers trademarks (under Banjul Protocol) on behalf of contracting States.

Procedure

- File application with National office which transmits it to ARIPO
- Or file application directly with ARIPO
- In application; indicate goods or services in respect of which you want protection; indicate classes of the goods (if Trademarks Rules; Schedule Two).

HOW COUNTRIES MANAGE THE CLASSES.

They use the NICE Agreements concerning international classification of goods and services for the purposes of registration of marks.

- ARIPO examines application and gives it a file date.
- ARIPO notifies designated states about the application.
- If there is no objection within period of 12 months, ARIPO registers the mark in all the designated states. (Uganda is a party to the Banjul Protocol).

It must be noted that it is impossible to get international protection of trademarks because

- System of international registration is governed by Madrid agreement concerning international registration of Marks (1891) which Uganda is not a signatory.
- However, if Uganda was a member to Madrid Agreement, an applicant would file an application with international bureau provided the Mark is registered in your own country (Uganda for this matter)
- the applicant designates these states where he or she want protection.
- The international bureau records mark and publishes it in gazette and each contracting party where protection has been sought in enforced.

- If country wishes to refuse protection; it notifies bureau within 12 months.

- In case of no objection; International Registration effective for 10 years; renewal for a further period of 10 years at a payment of prescribed fees.

- Fees for registering trademarks are evident in the Trademarks Act cap 225 section 87.

- Another International Instrument is the famous TRIPS Agreement. The Agreement in Trade Related Aspects of Intellectual Property Rights. It is an annexure to the WTO Agreement.

REMEDIES

The remedies available to a trademark owner on infringement include the following;

Suit for damages, general and special;

Application for an injunction.

Delivery up of the goods or destruction of the goods

Application to rectify the register.

FUNCTIONS OF A TRADEMARK

oIdentifies the product and its origin,

oProposes to guarantee quality,

oAdvertises the product (representing the product),

oCreates an image of the product in the minds of the public (consumers or prospective consumers of such goods)

Appendix J-

DOCUMENTS FOR TRADEMARKS

THE UGANDA GOVERNMENT

THE TRADE MARKS ACT

Application for Registration of a Trade Mark in Part * of the Register

Application is hereby made for Registration in Part* of the Register of the accompanying Trade Mark in Class..... in respect of

(a) .....

.....

.....

.....

In the name of (b) .....

Whose trade or business address is (c).....

.....

.....

trading as (d) .....

by whom it is (e) proposed to be used and who claim(s) to be the proprietor thereof

(f) .....

.....

.....

.....

Dated the ..... Day of ..... 20 .....

(g) .....

.....

To: THE REGISTRAR OF TRADE MARKS,

PARLIAMENTARY BUILDINGS,

P.O. BOX 6848,

KAMPALA

REGISTRAR OF TRADEMARKS RECORD FORM

TRADE MARK NO. ..... PART "A"/ "B"

CLASS ..... (Schedule III)

I. SEARCH FOR SIMILARITY .....

Class: ..... (Schedule III) and Class .....(Schedule III)

Similarity marks on the Register: .....

TM. No. Class Description of Mark Owner

II. SEARCH BRITISH PHARMACOPIA:-

III. SEARCH WORLD ATLAS:-

Comments:-

(1) On Application:-

(2) Re association:-

Registrar's Decision on:-

(1) On Application:-

(3) Re association:-

ADVERTISEMENT OF TRADE MARK IN UGANDA GAZETTE

Application No:..... IN PART "A" / "B" .....

Class

Disclaimer:- .....

Restriction to Colors:- .....

.....

.....

Association:- .....

.....

.....

Nature of Goods:- .....

.....

.....

.....

Name of Applicant and Address:- .....

.....

.....

Address for Service:- .....

.....

.....

Date of Filing the Application: .....

Kampala .....

.....

Assistant Registrar of Trade Marks

COPYRIGHT

The basic law applicable to Copyrights is the Copyright and neighboring rights act cap 222.

Copyright is a set of rights that protect original creative works once they're made tangible (like written down or recorded). It gives the creator the right to make or allow others to make

copies of things like art, plays, books, and music. - Blacks Law Dictionary / Slyvia Katende v Bank of Uganda

Statutory right that protects - literay , artistic, and Scientific works

In University of London Press Ltd v University Tutorial Press Ltd [1916] 2 Cn 601 - justice Perterson stated that Copyright seeks to protect expression of thought and not

ideas themselves - he said " What is worth copying is worth protecting " / S.6 CNRA

LAWS APPLICABLE

The TRIPPS - Article 3 of the Tripps provides for the Principle of National Treatment

Article 3 and 4 of the TRIPS Agreement provide the following: Article 3 of the TRIPS Agreement- each member to accord to the nationals of other members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property.

WORKS ELIGIBLE FOR COPYRIGHT

Works eligible for copyright protection are provided for in section 4 of the Copyright and neighbouring rights act cap 222 and theses include, literally works, musical works, artistic works, cinematography works, gramophone records, broadcasts. Is it a statutory cardinal principle in section 4(2) of the Act that the works will only be eligible if sufficient effort has been expended to make the work look original in character and form. Such work expended, can be recorded or written down inter alia.

It must be noted further that one has to be a resident in Uganda or domiciled in Uganda to have copyright protection.

The case of Supra Studio Vs Tip Top Clothing, [1971] EA 489 provides to the effect that a copyright , given the fact that it is granted automatically; a copyright is granted on eligible works within the meaning of the Act and secondly a copyright does not require payment of a licence.

Elements of Copyright

1. AUTHOURSHIP

Section 2 of the CNRA - an authour means the person who created / creates work that is

eligible to be copyrighted - University of London Press Ltd v University Tutorial Press Ltd [1916] 2 Cn 601- the University of London was held to be the authors of the paper

In Naruto v Slater - it was held that a monkey couldn't be an authour because it was not a

human being. In the case of Thaler v. Shira Permuter, Stephen Thaler filed a complaint in the D.C.District Court against the United States Copyright Office and its director requesting the refusal of his AI-generated artwork be set aside and the artwork be registered.Thaler filed a motion for summary judgment arguing that AI-generated work is copyrightable because the Copyright Act provides protection to "original works of authorship." This argument was premised on Thaler's assertion that "author" is not explicitly defined in the

Copyright Act and that the ordinary meaning of "author" encompasses generative AI. However, the D.C. District Court disagreed and held that the Copyright Act plainly requires human authorship. The court affirmed the Copyright Office's denial of Thaler's application, holding that "human authorship is an essential part of a valid copyright claim." Section 101 of the Copyright Act requires that a work have an "author" in order to be eligible for copyright.

The court concluded that the author must be human, for three primary reasons.Therefore,

the court ruled that AI-generated works cannot be copyrighted

ORIGINALITY

S.4(2) CNRA- it must be Original

S.4(3) CNRA - This means it's the independent work of the authour In the case of Ladbroke Football Ltd v William Hill Football Ltd, the court held that the "fixed odd" football coupons created by William Hill were copyright protected "original" compilations and that Ladbroke had infringed on the copyright. The court rejected Ladbroke's argument that the coupons were not original and therefore not protected by copyright. The court found that the coupons were the result of a "vast amount of skill, judgement, experience and work" and that they were not merely a collection of facts. The case established that originality is a requirement for copyright protection and that copyright protection depends on originality to maintain the incentive for authors to create new works.

In Sylvia Nabiteeko Katende v Bank of Uganda.

Facts: The plaintiff, Sylvia Nabiteeko Katende, participated in and won a competition organized by Kampala City Council (KCC) and created a sculpture as part of her prize. She

later discovered that the sculpture had been used by the Bank of Uganda without her permission.

3.MATERIAL FORM

S.3(1) CNRA - it must be reduced in material form

S.5 CNRA - highlights the principle of ideas should be reduced in material form so as

aquire copyright and that ideas are not protected .Originality of work happens at the

point of fixation of work however reducing work into material form isnt sufficient enough but

registration is nessecary. Alhaji Nasser Ntege Ssebagalla v MTN U Ltd HCCS no.283 - 2012- Court held that a conversation did not ammount to a literary work because it wasn't expressed in material form

4.ELIGIBILITY

All works under S.4 fall under either Literary and Scientific / artistic works

Original works reduced into material form whatever method irespective of the quality fall

under the following categories;

A) Literary works

B) Artistic works

C) Scientific works

LITERARY WORKS

S.4 (a) - articles , books ,pamphlets ,lectures adresses ,sermons and other works of similar

nature fall under Literary works .They are all fixated / put into material form by writing

DRAMATIC & MUSICAL WORKS

For dramatic works the mode of fixation is by showcasing it .- Tate v Fullbrook.

Copyright in Musical works vests in 3 ways

1 The Lyrics of the Song

2. The Melody of the Song

3. The Recording of the Song ie Sound recording and the visual compilation

A Song may consist of Literary and Musical Works the Lyrics being the Literal works

The Artist - Performing Rights / Neighboring rights

The Lyricist -

Producer Look at Garfield spence v Airtel.In UB40 v Alex Campbell , court held that

Alex campbell a former member of the UB40 band couldn't hold out as a UB40 member as

he forfeited out of the band and assigned his rights and couldn't play songs of the band

SPEECHES, SOUND RECORDINGS ,FILMS & BROADCASTS

1. Speeches & Sounds

Meaning a speech is a spoken presentation or address given to an audience. In the context of copyright law, speeches are considered literary works and are protected as such. The author of the speech is the first owner of the copyright, and the speech is protected for the author's lifetime plus 50 years after their death.

For a Speech to be Protected it must be fixated into Material Form - In the Estate of

Martin Luther King v CBS inc - Court vested copyright in Dr. Kings speech because it was

placed in material form.

Sound recordings of speeches are also protected under copyright law as a separate

category of works. The author of the sound recording is the first owner of the copyright, and the sound recording is protected for 50 years from the end of the year in which it was

made.- In Alhaji Nasser Ntege Ssebagalla v MTN Uganda & SMS - Alhaji Nassers sound

recordings didn't enjoy copyright because they were never put into material form

2. Films / Movies

Films are protected under copyright law as cinematograph pictures. The author of the film

is the first owner of the copyright, and the film is protected for 50 years from the end of the

year in which it was made- Copyright Infringment in Movies / Films occurs When someone reproduces, distributes or display the copyrighted movie without obtaining the proper permission from the copyright owner, then it comes under the movie copyright infringement.

Copyright law will safeguard the intellectual property rights of the copyright owners.

These exclusive rights will also control how to utilise the works and gain from it.

Infringement can occur in various ways, including but not limited to:

Unauthorised copying or sharing of a copyrighted movie, which could involve making physical copies, downloading or uploading it online, or sharing via peer-to peer networks.

Publicly displaying or broadcasting a copyrighted movie without the appropriate license or permission, such as in a public space, on a website, or through social media Creating derivative works based on a copyrighted movie, like a remake, adaptation, or parody, without obtaining the necessary rights or permissions from the copyright holder.

In Horizon Comics Productions v. Marvel Entertainment LLC. In this case, Horizon

Comics Productions sued Marvel in 2016, claiming that the movie poster for "Iron Man 3"

copied the design of their comic book character Caliban. However, in 2019, the judge

ruled in favor of Marvel, stating that Horizon failed to demonstrate that the images were

"strikingly similar," and that Marvel produced evidence of independent creation of the poster.

COPYRIGHT IN FITICIOUS CHARACTERS

The Rocky movie copyright case is a well known example of a case where copyright

protection was granted to fictional characters.In the case of Anderson v. Stallone, the court found that the characters from the original Rocky movies were afforded copyright

protection. The court found that the boxer Rocky Balboa from the Rocky film series was a

copyrightable character

Elements for Copyright to vest in a Fiticious character

1. The Character must be Important

2. The Character constitutes the story being told

3. character is well defined.

Works Excluded From Copyright

Section5 of the Copyright and

Neighbouring Rights Act cap 222- in Uganda states that ideas are not protected by

copyright. Copyright protection only applies to the expression of ideas in a material form. This means that copyright does not protect the idea itself, but rather the way in which the idea is expressed. - University of London v University of Tutorial Press

Section 6 of the Act states that works that are in the public eg Acts, News of the day and

Statutes are not protected by copyright. .- British Broadcasting Corporation v British

Satalite Broadcasting Limited - one cant copyright news of the day

Section 7 of the Act deals with employed authors and works of government. It specifies

that where a work is made by an employee in the course of their employment, the employer

is the first owner of the copyright in the work. However, where a work is made by an employee under a contract of service or apprenticeship and the work is not made in the

course of their employment, the employee is the first owner of the copyright in the work. The section also specifies that copyright in a work made by or under the direction or control of the government belongs to the government Commissioned works by Government - Prof

Geofrey Kakkoma v Attorney general- the case provides for work to be commissioned

works the following elements must be considered

1. There must be consideration

2. The parties must have intention

3. The parties must have capacity to contract

4. The agreement must comply with any formal legal requirements required for creation of a

valid contract.

Works made in Course of Employment

Courts will tend to look at the Control and direction to determine who has the copyright

The employee shall only remain with a Moral right Stevenson, Jordan & Harrison Ltd v MacDonald and Evans

Facts: A management engineer wrote a book using information he gained while working for

his firm, first as an employee, and then as an executive officer. Some of the information was from the text of lectures that he wrote and delivered, and some was material he acquired while on an assignment. The engineer died before publication.

Issues: Whether the person was considered to be an employee under a "contract of

service" for the purposes of allotting copyright to the employer.

Whether the employer owned the copyright of the book.

Holding:- The Copyright Act 1911 section 5(1) granted first copyright to the author of a work, unless they were an employee and made the work in the course of their employment. "If the author was under a contract of employment and the work was in the course of employment, the employer would own the copyright in the absence of another agreement. The engineer simply put together his know how of the profession and had not betrayed

any mystery of the firm's business or disclosed trade secrets. His contract was mixed, partly of and partly for services outside the contract. His lecture work was not covered by the Act, but the material acquired while on assignment did fall within the Act. The publishers should be restrained from printing that section, which was severable.

TYPES OF RIGHTS UNDER COPYRIGHT

1. Neighbouring rights- these are rights related to copyrighy attached to the auxilary

role played by Performers - Sikuku Agaitano v Uganda Batti

Producers of sound Broadcasting Companies .The auxilary role is dependent on the work of the authour /owner -S.20 CNRA

2. Economic Rights

These are rights that allow the owners of copyright to derive a finacial reward from the

use of their works by others - S.8 CNRA

In Proffesuer Geofrey Kakoma v Attorney General

3. Moral Rights

These are rights that allow authours and creators to take certain actions to preserve and

protect there work it entails acknowledment in use, Objection to distorttion and dillution - S.2 CNRA , S.9 CNRA - A moral right shall have a right to atribution and a right to integrity

Moral rights arent assignable. Moral rights exist in perpetuity – Angella Katatumba v ACCA

DURATION OF COPYRIGHT

S.12 CNRA - For an Individual- Liftime of the authour and 50years after the death

For a Legal Entity- 50 years from the date of the first publication of work

For computer programs - 50 years from the date of making the program public.

CO AUTHOURSHIP

co-authorship refers to a situation where two or more people contribute to the creation of a

single work. Section 11 of the Act provides that where a work is created by two or more

authors, the authors are co-owners of the copyright in the work. Each co-owner has an

equal right to exploit the work, subject to the rights of the other co-owners. Co-ownership of

copyright can arise in various situations, including where two or more authors collaborate on a single work, or where one author incorporates another author's work into their own.- In Angella Katatumba v ACCU - the plaintiff claimed that she had co -authoured the lets go green song with Joycelyn Keko however she paid keko who sold to her her economic rights to the song

Copyright in Ephmeral Recordings / Broadcasts

An ephemeral recording is a recording made by a broadcasting company of a broadcast, in

one or several copies of any work which it is authorized to broadcast, for the purpose of its

own broadcast and by means of its own facilities. - Attorney General v Sanyu TV

Section 15 CNRA outlines the conditions under which a broadcasting company may

make an ephemeral recording of a broadcast.

1. A broadcasting company may make an ephemeral recording of a broadcast for the

purpose of its own broadcast and by means of its own facilities.

2. No copyright shall exist in a broadcast that infringes, or to the extent that it infringes, the

copyright in another broadcast.

3. All copies of the ephemeral recording shall be destroyed within a period of six months or a longer period as may be authorized by the copyright owner

4. If a recording under subsection (1) is of exceptional documentary character, a copy of

the recording may be preserved for the National Archives.

5. The preservation of a copy under subsection (4) does not affect the rights of the

author in the work that was broadcast. Whether the recording of a broadcast under

subsection (1) is of an exceptional documentary character is a question of fact to

be determined having regard to all the circumstances and in particular to the need for

the enhancement of the historical or social aspect of life in Uganda.

COPYRIGHT IN THE DIGITAL AGE

Navitre Inc v EasyJet Airline Co. and BulletProof Technologies, Inc. was a copyright infringement case in the digital era, involving the protection of software and user interfaces The case highlights the challenges of copyright protection in the digital age, particularly in relation to software and user interfaces.

In this case, Navitre Inc. claimed that EasyJet Airline Co. had infringed its copyright in various aspects of their booking system software. The key points of the case are as follows:

1. Navitre Inc. developed a software system for British Airways and later sold it to EasyJet

.

2. Navitre Inc. claimed that the "business logic" of the program was copyrightable, but the court rejected this claim as it would unjustifiably extend copyright protection

3. The court did protect the Graphic User Interfaces (GUIs) and icons, as they qualified

as artistic works and required skill and labor to arrange the screens in a certain way.

4. EasyJet was found to have infringed Navitre's copyright by copying the icons used

in the GUIs.

5. The court also considered the "TakeFlight" functionality, but ultimately found that EasyJet

had not infringed Navitre's copyright in this area..

COLLECTING SOCITIES

Collecting societies are organizations that are responsible for collecting and distributing

royalties on behalf of copyright owners. In Uganda, collecting societies are regulated by

the Copyright and Neighbouring Rights Act of 222. Sections 56 to 57 of the Act outline the

roles and qualifications of collecting societies as follows:- Uganda Performing Rights

Society v MTN

Section 56: CNRA No collecting society shall operate in Uganda without a registration

certificate issued by the Registrar of Companies.- The Registrar of Companies shall not register another society in respect of the same bundle of rights and category of works if there exists another society that has already been licensed and functions to the satisfaction of its members.

- Any person operating as a collecting society or causing any society or body to operate as a collecting society without a registration certificate commits an offence and is liable on

conviction to a fine not exceeding one hundred currency points or to a term of imprisonment

not exceeding two years or to both the fine and imprisonment.

Section 57 CNRA -The Registrar may register as a collecting society any society or body

which has for its main object the promotion of the economic and social interest of its members through defending their copyright and neighbouring right interests.

- The function or other objects of the society shall include promoting and encouraging

creativity in the artistic, literary, and scientific fields in Uganda, promoting and carrying out

public awareness on copyright and neighbouring rights, paying royalties to its members who are the appropriate beneficiaries, making reciprocal agreements with foreign societies or other bodies of authors or neighbouring rights owners for the issue of authorizations in respect of their members' works and for the collection and distribution of copyright fees deriving from those works, and providing its members or other persons in need of it with information on all matters relating to copyright and neighbouring rights and to give

advice and keep its members informed about their rights and interests.

- The Registrar shall not register a society unless the Registrar is satisfied that the society

is capable of promoting its members' interests and of discharging its functions and objectives, it consists of at least thirty persons all of whom are qualified to be members, and the society is incorporated under the provisions of the Companies Act.

Collecting societies are responsible for collecting and distributing royalties on

behalf of copyright owners.

Sections 56 to 57 of the Copyright and Neighbouring Rights Act 222 in Uganda outline the roles and qualifications of collecting societies, including the requirement for registration, the main objects of the society, and the conditions for registration.

UPRS v MTN is a copyright litigation case in Uganda that involved the Uganda Performing

Rights Society (UPRS) and MTN (U) Ltd. UPRS sued MTN for copyright infringement,alleging that MTN was using copyrighted music without paying royalties to UPRS. The Commercial Court came out with a pronouncement on the powers of a collecting Society to demand for royalties in music performances, which was seen as a step in the right direction for Uganda's copyright law. The general rule under Section 7 of the

Copyright and Neighbouring Rights Act of 222 in Uganda outlines the economic rights

of the owner of a protected work. The section specifies that the owner of a protected work

shall have the exclusive right to do or authorize other persons to do the following:

1.To publish, produce or reproduce the work.

2. To distribute or make available to the public the original or copies of the work through sale

or other means of transfer of ownership.

3. To perform the work in public.

ACQUISITION OF COPYRIGHT AND RIGHTS OF COPYRIGHT OWNERS

It must be noted that protection of copyrights is automatic; by statute.

There is no need for registration. The copyright work is vested in the author by virtue of section 3 of Copyright and neighbouring rights act cap 222 .

Some of the principles to be followed are that; the person is either domiciled or resident in Uganda. In case of a corporation, it should be a body incorporated in Uganda

It must be noted that citizens and Companies of countries specified in the 2nd schedule to the copyrights Act (i.e. signatories to UCC, Berne Convention for the protection of literacy and Artistic Works can be protected in Uganda. This means that works having copyright protection in particular countries have statutory protection in Uganda. This is illustrated by the case of John Murray Publishers and Mackean (viz Introduction to Biology) Vs Senkindu HCCS 1018/1997 that given the fact that United Kingdom is one of the countries listed in the schedule to our laws, a copyright protected in UK can receive copyright protection in Uganda.

A work is eligible for copyright protection under section 3 and 1st schedule to Act (re Musical work).

The form of protection under section 4(2) and the third schedule is defendant on whether the work is published or unpublished. It must be noted that if the work is unpublished, the protection granted lasts for 50 years, after the copyright owner's death.

Procedure

It must be noted that the mode of protection is customary thus, one simply writes copyright or uses the following format: © Nanima Robert 2006.

INFRINGEMENT AND REMEDIES

The above remedies are fortified by John Murray Publishers and Mackean (viz Introduction to Biology) Vs Senkindu HCCS 1018/1997, where Ntabgoba PJ awarded general damages, special damages, an injunction restraining the defendants from further infringement, delivery up of the books produced for destruction, and Interest.

DURATION OF A COPYRIGHT

If the work is unpublished literally, or musical or artistic work, the copyright lasts for 50 years after the end of the year of the author's death. In case there is joint ownership, the time of the right to the copyright begins to run from the death of the survivor.

Where the work is published literally, musical or artistic work; the duration is reflected in two scenarios; thus either at the end of the year in which the author dies or 50 years after the end of the year in which the work or broadcast was made.

Where the work includes unpublished cinematography or film or gramophone record the duration of the copyright is 50 years after the end of the year in whichthe work or broadcast was made.

PATENTS

The law applicable to patents includes the following:

The industrial property act cap 224

The TRIPS Agreement 1994

Protocol on Patents and Industrial Designs (ARIPO) 1982

The Lusaka Agreement 1976

The Harare protocol on Patents and Industrial Designs 1982

The Paris Convention 1883

The checklist to be conversant with includes the following:

Whether the product is patentable/ whether it is a patentable invention?

If so what procedural steps should be taken to patent the product?

What are the fees payable?

The requisite documents

Application for a patent

PATENTABLE INVENTIONS

A patent is a right given by a Government authority to an inventor exclusive rights to exploit his invention for a given period of time. This document issued by a government authority to the owner of an invention, giving the patent owner the right for a term of years to prohibit others from making or selling the discovery unless they have permission from the owner is what is called a patent for invention.

An invention is defined in section 7 of the industrial property Act to mean a solution to a specific technological problem and may be of may relate to a product or process.

Section 8 of the industrial property act provides that for an invention to be patentable, it must have three characteristics, thus;

It must be new, (characteristic of novelty)

It should involve an inventive step and

It should be industrially applicable.

NOVELTY

This is considered under section 9(1) of the industrial property Act, thus an invention is new if it is not anticipated by prior art. This principle was enunciated in the case of Vander Vs Bamford [1963] RPC pg 61.

INVENTIVE STEP

Section 10 that an invention is considered as involving an inventive step if, having regard to the prior art within the meaning of section 9, it would not have been obvious to a person skilled in the art, on the date of the filing of the application or if priority is claimed, on the priority date validly claimed in respect of it.

INDUSTRIAL APPLICATION

This is considered under section 11 of the Act thus; an invention is considered industrially applicable if, according to its nature, it can be made or used in any kind of industry.

It must be noted that Patents are granted to true inventors of a patentable invention. A patent may be applied for by any person who claims to be "true and first inventor" or by the assignee of such a person in respect of the right to apply.

UTILITY MODELS

Utility Models are covered under section 67 of the industrial property act cap 224 Act and provide a type of Intellectual property protection similar to that of patents but with fewer requirements. Thus an inventive step need not be proved under the patent law. This expression is a name given to certain inventions which contain provisions on utility Models but are actually in the mechanical field.

Utility Certificates have three characteristics which differentiate them from inventions for which patents are granted.

- Utility Certificates require either only novelty or industrial application but no inventive step for protection under section 67 (1) of the Act

- The maximum term for protection is 7 years which is shorter than the term for protection for patents (see section) for is shorter.

- The fees required for obtaining and maintain the right are generally lower than patents.

REGISTRATION OF PATENTS

An application for a patent is made to the Registrar of patents in the Ministry of Justice under section 2 of the industrial property Act. The application is accompanied by the following (as provided for in section 20 of the Patents Act)

- A description of the invention.

- A clear and concise claim defining the matter for which protection is sought.

- Any drawing essential for understanding the invention.

- As abstract serving the purpose of technical information

- The prescribed fee

Procedure

1. An application is lodged by making a request in Form 1 (Reg.17) of the Patents Regulations SI 216- 1. This form can be obtained from the registry located at the Ministry of Justice Headquarters. For a foreign application, copies of any communication received concerning the result of any search or examination carried out will be essential.

2. Upon receiving the application the Registrar will accord it a filing date. Thereafter the application is forwarded to ARIPO (African Regional Industrial Property Organisation) for examination. The report of this examination will then be submitted to the Registrar and the applicant.

3. If the application is not rejected a patent is granted and issued to the applicant in Form 2A (Certificate of Grant of a Patent).

4. Thereafter the patent granted is recorded in the register and the prescribe particulars of the Patent are published by the Registrar in the Uganda Gazette.

A patent protection last for fifteen years from the filling date. However, the owner of the patent may request for an extension. This request is made to the registrar in Form 3 (Reg. 32) of the Patents Regulations SI 216- 1

Utility models have a life span of seven years from the date of the grant of the application without the possibility of renewal.

How much does it cost to obtain a patent?

A typical application for the patent costs Ug Shs 180,000/=

It must be noted that upon grant of a patent, the inventor pays a grant and publication fee of U. Shs. 300,000/=. To keep a patent in force an annual maintenance fee of Ug Shs 48,000/= for the first anniversary, and U.Shs. 12,000/= is paid every other year the patent will be in operation.

In case of extension of term of a patent, the inventor has to pay Ug Shs 60,000/= other costs involved may arise as of when and why it is necessary.

RIGHTS AND OBLIGATIONS OF A PATENT OWNER

These are covered in Part 7 of the Act; section 37(1) provides that the owner of a patent has an exclusive right to make, use, exercise, exercise and vend the invention and may preclude any person from exploiting the patented invention without his or her authorisation in any of the following ways:

Section 37(1)(a) provides that where the patent has been granted in respect of a product, the patent owner may preclude the making, importing, offering for sale and using the product, or stocking the product for the purpose of offering for sale, selling or using the product.

Section 37(1)(b) provides that where the patent has been granted in respect of a process, the patent owner may preclude the using of the process or dong any of the acts referred to in section, importing, offering for sale and using the product, or stocking the product for the purpose of offering for sale, selling or using the product.

The owner of a patent has the following obligations; as enunciated under section 38 (a) to (e)

- To disclose the invention in a clear and complete manner and in particular indicate the best mode for carrying out the invention in accordance with the requirements and subject to the sanctions under the Act.

- To work the patented invention within the country in the prescribed time and,

- To pay the prescribed fees.

INFRINGEMENT (EXPLOITATION BY PERSONS NOT OWNERS OR LICENCEES)

Section 91 of the industrial property act cap 224, provides that subject to sections 43,48, 58 and 59 and 67, any act specified in section 37 or 78 and performed by a person other than the owner of the patent or of the registered utility model or industrial design without the owner's authorization, in relation to a product or a process falling within the scope of a validly granted patent or certificate of registration shall constitute an infringement.

Section 92 provides for relief that include;

a) An injuction

b) Damages

c) Any other remedy provide for in law.

INTERNATIONAL PROTECTION AGAINST TRADEMARK INFRINGEMENT

Protection of a patent in other countries in possible with due regard to the following:

a) if one desires protection in the region, one can use ARIPO (Africa Registered Intellectual Property Organisation) for registration of the mark in the region.) ARIPO was set up by the Lusaka agreement of 1976 which has protocols for implementing various parts of I.P.

- The ARIPO regulates patents in African Region. ARIPO registers patents (under Banjul Protocol) on behalf of contracting States.

Procedure

- File application with National office which transmits it to ARIPO

- Or file application directly with ARIPO

- In application; indicate goods or services in respect of which you want protection; indicate classes of the goods (if Trademarks Rules; Schedule Two).

Appendix K-

DOCUMENTS ON PATENTS

THE REPUBLIC OF UGANDA

THE PATENTS ACT CAP

APPLICATION FOR PATENTS

I /we the applicant(s) request(s) the grant of a Patent in respect of the following particulars.

1. TITLE OF INVENTION:

II. APPLICANT(S) (a)

Name: .....

Address: .....

Nationality : .....

Country: .....,

Country of residence or principal place of business: ..... ,.....

III. REPRESENTATIVE:

Name: .....

Address: .....

IV. INVENTOR:

The Inventor is the applicant Yes/ No

If not

Name of applicant: .....

Address: .....

V. DIVISIONAL APPLICATION (b)

Initial Application No. .....

Date of Filing Initial Application: .....

VI. PRIORITY DECLARATION (e)

Country (d) .....

Filing Date: .....

Application No.: .....

IPC Symbol: .....

VII. CHECK LIST:

This application contains the following

3. Request
4. Description
5. claims
6. Abstract
7. Drawings
8. Power of Attorney
9. Statement specifying the basis of applicant's right to the patent
10. statement that certain disclosures be disregarded.
11. priority documents (certified)

12. English translation of earlier applications on which priority may be based.

13. other documents (please specify)

Drawing No. ..... is suggested to accompany the abstract for publication.

VIII. SIGNED: ....

..... Date .....

(a)Data concerning each applicant must appear in this space. If this space is not sufficient put additional information on separate sheet.

(b)If divisional application supply reference to the initial application and indicate whether benefit from any priority claimed for initial application is sought.,

(c) if priority of more than one earlier application is claimed, the data should be indicated on additional sheet of paper.

(d) If earlier application is a regional or international application. Indicate here the office in which and the countries for which it was filed.

CASE LAW

STELLA ATAL V ANN ABELS KIRUTA & T/A "97 AFRICA ARTS &

CRAFTS" HCCS NO. 0967 OF 2004

BRIEF FACTS

The Plaintiff, an artist, authored various artistic works and used to supply the

Defendant with the same in the latter's stores. The Plaintiff, after sometime, came to

learn, from her assistant, a one Mr. Andrew Morgan Atoka, that the Defendant had

approached him to fabricate and reproduce the Plaintiff's artistic works at a cheaper

price. Consequently, the Plaintiff terminated her supply arrangement with the Defendant whereupon she came to discover that the Defendant was already engaged in infringement of the works in question by reproducing counterfeit copies.

The Defendant claimed that the Plaintiff was her employee under contractual undertaking to produce and offer for sale artistic works based on pre-existing African symbols, articles and pictographs. The Defendant, in addition, claimed that the Plaintiff was to produce particular artistic works for the Defendant during employment and that during the subsistence of the contract, the Plaintiff produced and sold similar works to other persons. The Defendant contended that she had to terminate her relations as the market was flooded similar products hence not lucrative.

In her counterclaim, the Defendant claimed that she was the owner of the copyright in the artistic works made by the Plaintiff during her employment and that the Plaintiff was in breach of the license agreement for the copyright in the work. The Defendant also claimed that the flooding of the market with similar products resulted into financial loss.

ISSUES

1. Whether the Plaintiff was the author of the various artistic works and the owner of copyright if any?
2. Whether the Defendant infringed the Plaintiff's copyright?
3. What remedies were available to the parties?

HOLDING

On the first issue, it was held that the Plaintiff was the author of the artistic works in question and therefore entitled to copyright protection. The rationale behind this was that the evidence adduced by the Plaintiff was in conformity with the criteria of originality, efforts and manifestation of ideas into tangible form and that it is immaterial that the Plaintiff imitated works from pre-existing articles so long as she created what was different from what existed before.

On the second issue, the learned judge examined all the articles claimed by the

Plaintiff to have been infringed on and found out that of all the articles, only two had been infringed on. The reason behind this decision was that many of the articles of the Plaintiff, when compared to the Defendants, represented the same but, the expression was significantly and substantially different which led him an inference of noninfringement save for the two.

On the third issue, the Learned Judge held that there was no justification for counterclaim as the Defendants testified that the Plaintiff was not her employee and that the Defendant did not adduce any evidence to prove the license and existence of such contractual relationship.

On the fourth issue, Court awarded general damages of five million Ugandan shillings for depriving the Plaintiff fruits from her originality as the Defendant was selling the works without any financial benefit accruing to the Plaintiff.

Court also awarded exemplary damages of five million Ugandan shillings on the basis that intellectual property rights in Uganda are not well observed and that this would send a clear warning to the perpetrators of this practice to refrain therefrom.

Court however, declined to award special damages as there was no proof of the same yet they are supposed to be specifically pleaded and strictly proved. Court also declined to order for account of profits as no evidence was brought forth as regards the sales and profits made by the Defendant and the Plaintiff did not submit on such.

Court granted an injunction against the Defendant, in respect those products that being infringed upon, from continuing to infringe on the copyright of the plaintiff.

Court ordered delivery up of items impounded under Anton Pillar Order which infringed on her copyright and return those which did not to the Defendant.

Court also awarded half of the costs to the Plaintiff as she failed to prove that all the impounded artworks infringed on her copyright.

In conclusion, the judgment was entered in favour of the Plaintiff.

UGANDA PERFORMING RIGHTS SOCIETY V MTN (U) LTD HCCS NO. 287 OF 2010

BRIEF FACTS

UB40, a United Kingdom based band, had executed a Deed of Assignment with Performing Rights Society based in UK (hereinafter referred to as PRS (UK)) wherein some individuals in the band assigned all their performing copyrights, for purposes of effective management worldwide, to latter. PRS entered into a reciprocal agreement with the Plaintiff wherein the latter assumed duties conferred upon the former under the Deed of Assignment mentioned above by licensing, collecting royalties, and where necessary to take proceedings for infringement of the rights of PRS conferred upon it in the Deed of Assignment.

UB40 performed a concert at Lugogo grounds in Kampala having been contracted by the Defendant. The General Secretary of the Plaintiff, having known that the Defendant intended to sponsor UB40 artists, notified the Defendant of their obligation to pay royalties which the Defendant did not heed. The Defendant asserted that albeit the members of UB40 had assigned their rights to PRS (UK), it could not stop them from enjoying their personal rights as assignors nor did it constitute a transfer, sale or surrender of their individual copyrights.

The Defendants further claimed that UB40 were proprietors of the copyrights and had exclusive rights to contract and deal with such rights without prior authorization from anybody including PRS (UK). They further claimed that the purpose of the Deeds of Assignment was not to deprive them their inalienable performance rights but rather, as a mechanism for protection of the assignors' rights from infringement by third parties and that the plaintiff had no right to sue without powers of attorney.

The Plaintiff therefore, sued on grounds that the performance that took place was unauthorized and sought special damages for infringement on the copyright.

ISSUES

1. Whether the Plaintiff had a cause of action?

2. Whether the Plaintiff had locus standi to sue the Defendant?

3. Whether the Defendant was liable to pay any royalties to the Plaintiff?

HOLDING

One of the first issue, Court relied on the three ingredients of a cause of action as was set out in AUTO GARAGE V MOTOKOV (NO. 3) [1971] EA 514 to wit; that the plaint must show that the plaintiff enjoyed a right, that right was violated and that the defendant was liable or is liable.

On as to whether the plaintiff enjoyed the right, the plaintiff argued that upon execution of the Deeds of Assignment, all economic and performing rights of the members were vested in PRS(UK) and that the latter was the legal owner and hence the assignors enjoyed no right. And that therefore the Plaintiff enjoyed a right protected under copyright following the reciprocal contract. The Defendants argued that the rights were with PRS(UK) and not the Plaintiff since the latter was not party to the Deed.

Court found that from the Deeds of Assignment, some members of UB40 had assigned all their rights to PRS(UK) and pursuant to the reciprocal agreement, the Plaintiff assumed rights and consequently the plaintiff enjoyed a right by virtue of the contract.

On whether the right had been violated, Court noted that from the evidence that was

adduced, not all members had assigned all their rights and that it was not clear as to whether the group that performed in the UB40 concert comprised of those who signed the Deeds of Assignment. Court further noted that it was the duty of the Plaintiff to prove that the members of UB40 who performed under the control of the Defendant were those who had assigned their performance rights to PRS (UK). And that the songs performed were part of the music works that were assigned failure of which there would be no infringement and consequently no violation of the plaintiff's right. Consequently, Court found that the plaintiff failed to prove that the rights it acquired under the contract had been violated and found no reason to consider the third ingredient of a cause of action.

In conclusion Court held that the plaintiff did not have any cause of action.

On the second issue, the Defendants argued that the Plaintiff did not have the right to sue as it had not obtained the Powers of Attorney from PRS (UK) and that the reciprocal representation contract did not amount to a power of attorney as it fell short of the legal requirements and that they were not entitled to initiate proceedings in their own names as they were not party to the deeds.

The Plaintiff argued that they did not institute the proceedings as agents of PRS (UK), but as per their obligations they assumed under the reciprocal representation arrangement which included right to enforce such rights originally vested in PRS (UK).

Court had also to consider whether PRS(UK) was the owner of the copyrights pursuant the assignment of performing rights to it by individuals of UB40, which it could confer upon the Plaintiff. Court had to look into the definition of assignment to ascertain its effect and regard was had to the intention of the assignors in the Deeds of Assignment and from the wording of the provisions of the deed, Court observed that the members had assigned all their performing rights and film synchronization rights for all parts of the world to PRS(UK) and it consequently found that PRS was the owner of the copyright and entitled to enforce such rights.

Having found that PRS (UK) was the owner of the copyrights and with exclusive right enforce them, the next question Court considered was whether PRS(UK) could confer power to enforce the rights to another collecting Society. Court relied on the evidence adduced which demonstrated how collecting societies work and their purpose and the international recognized practices in various conventions for example TRIPS Agreement. It was realized that performing societies assume all the performing rights of the assignors and they are the ones who monitor to see if such rights are being infringed and collect all the royalties for the members.

Court further noted that under these conventions to which Uganda is a signatory collecting societies are granted rights to enter into reciprocal agreements to aid in monitoring, collecting royalties and enforcement of copyrights on foreign lands. Court held that PRS (UK) had the power to grant enforcement rights to another collecting society since stating otherwise would constrain global enforcement of intellectual property.

Court noted that from the provisions of the contract, the Plaintiff was granted right to sue either in its name, in which case no power of attorney was required, or on behalf and in the names of the author of the copyrighted work, in which case the power of attorney was requisite.

In conclusion Court found that the Plaintiff had the Locus standi to bring an action in its own name against the defendant.

On the third issue, Court, having found that the Plaintiff did not have a cause of action, noted that there would be no need to address the third issue and it was supposed to dismiss the case. Nonetheless, it decided to address it for purposes of

aiding the appellate Court (in case of an appeal) in case the judge had misdirected himself.

Court found that they Plaintiff had failed to prove special damages as the evidence relied on was hearsay it got from media and internet, yet special damages must be strictly proved. It also held that it would, in case the Plaintiff was successful, award nominal damages, instead of general damages, of three million Ugandan shillings since there was no proof of injury suffered by the plaintiff.

SIKUKU AGAITAINO V UGANDA BAATI HCCS NO.0298 OF 2012

BRIEF FACTS

The Plaintiff was an employee of the Defendant company. Following the meeting with employees including the Plaintiff, it was agreed that the company was going to take pictures of them while at work in a new uniform which they were to receive on that day. It was further agreed between the Defendant and employees that their images would be used for advertisement. The Plaintiff claimed that the Defendant used his image for commercial advertisement in calendars, on television stations among others and that this was done without his consent and that no consideration was given to him yet the Defendant benefited commercially. The Plaintiff claimed that the Defendant's action constituted infringement on his constitutional, image and neighbouring rights. The Defendant however, claimed that the Plaintiff was among the employees who volunteered to have their images the purposes complained of and that he never at any time objected or expressed any problem with the use of his images for advertisement.

ISSUES

1. Whether the Plaintiff had a cause of action?
2. Whether the Plaintiff's neighbouring rights were infringed?
3. Whether the Plaintiff is entitled to any remedy or relief?

HOLDING

On the first issue, the Plaintiff relied on the case of AUTO GARAGE V

MOTOKOV [1971] EA 514 where ingredients of a cause in action were evinced to wit: - that the Plaintiff enjoyed a right, that right has been violated and that the Defendant is liable.

The Defendants concurred with the law as was set out in Auto garage case as well as the Copyright and Neighbouring Rights Act of 2006, however, they contended that it can't be violation with the Plaintiff's consent.

In arriving at an inference that the Plaintiff had a cause of action, the learned judge referred to the definition of "cause of action" in the Halsbury's Laws of England where it was defined as the factual situation the existence of which entitles one person to obtain from court a remedy against the other. The learned Judge also relied on S.45 of the Copyright and Neighbouring Rights Act of 2006 which conferred upon any person, whose rights are in imminent danger of being infringed, to bring an action to prevent the continuance of the infringement.

The Learned Judge observed that the Defendant seemed to be in consensus with the Plaintiff that the latter had a cause of action, but the dispute was on whether there was consent. Accordingly, Court held that the Plaintiff had a cause of action against the Defendant.

On the second issue, Court noted that the Plaintiff claimed that he never consented for the use of his images.

The Defendant submitted that the employees who were not interested in participating in the photo shooting were free to step out and that they were informed that the shooting was to take place while performing their duties and that those images were to be used in still photos, audio-visual images, magazine, calendar and on national media.

They therefore, argued that the participation by the Plaintiff clearly indicated that he consented and that he can't claim infringement as the photos were used in promotion of his employer's business with his authorisation.

In determining whether the Plaintiff's neighbouring rights were infringed, the Court referred to S.2 of the Copyrights and Neighbouring Rights Act which defines neighbouring rights as rights of performing artists in their performances, rights of producers, music publishers and rights of broadcasting companies. Therefore, they are rights attached to auxiliary role played by performers, producers of sound recording and audio-visual and broadcasting companies.

Court noted that by referring to neighbouring rights, the Plaintiff conceded that he was not the author of the work subject to copyright ownership, that therefore, a performer is dependent on the author and that he is an intermediary between the original work and the consumer.

From the evidence adduced, Court noted that the Plaintiff was going about his business when he was filmed and photographed and that he was not required to pose and hence held that he was not a performer under S.2 of the Act. Court also relied on S.8 of the Act which provided that where a person creates work in the course of his employment by another person, save for where there is a contract to the contrary, the copyright in respect of that work vests in the employer or the body that commissioned it. Accordingly, Court held that the Plaintiff was not the author.

Court held that the person who created and did the video shooting or who employed the one who did the shooting was the author that under S. 9, such person is entitled to economic rights which include publishing, producing, reproducing, distributing and making the work available to the public for sale or transfer of ownership. Therefore, the Defendant was entitled to perform work in public or broadcast and communicate the work and make work available for rent or sale.

Accordingly, Court concluded that the Plaintiff had no neighbouring rights associated with the works owned by the Defendant under the Act.

Court also noted that subject to any right to privacy, the employer should have the right to take group photos of employees for inclusion in a calendar or any advertisement for purposes of marketing his products unless such is used in a manner detrimental to the employee. It also pointed out that where an employee does not want their photo exposed to public, they should make clear reservations. It further noted that from the evidence adduced, the Plaintiff's was not at the prominent feature in the advertisement.

Court observed that seeking consent is a necessary courtesy and, in this case, the employees were informed of what was going to take place. Court further noted that the Plaintiff failed to demonstrate that the photos were taken in his private moments such as when resting or eating and that there was no express contract precluding the employer from using the photos for advertisement. It further noted that someone who works in a factory cannot claim right to privacy as the factory owner can bring, at any time, people to inspect the factory hence precluding the right to privacy.

Accordingly, Court concluded that the Plaintiff was unable to establish his case against the Defendant and his action was dismissed. Court granted a seventh of the costs to the Defendant because the Plaintiff had not been guided on the law and having been a faithful employ for 18 years.

WORKSHOP

FACTS

A group of four persons would like to set up a legal practice under the name; Divinely Inspired Legal Inc. They want to set up a specialized law firm to explore synergies amongst public international law, international law and political advocacy. They hope to be among the top 3 firms in Uganda in the next five years. They would like the firm to outlive them and be up and running centuries after they have departed this world.

Nixon Zinde ("Nixon") is a student at the Law Development Centre. He is repeating the course after failing to sit for his final examinations and special exams because he was on his honey moon in Ho Chi Minh City. He can't wait to appear in court and try out the skills he gathered from all the years he spent in school. He also wants to impress his newly wedded wife who cannot wait to see him in action in court amassing wealth like most famous lawyers in town. He hopes he can put up a mansion for their matrimonial home in Kololo before Easter Sunday

2019.

Makubul Simpson ("Simpson") was a renowned lawyer and a high flier starting in the year

1983 He was very much known for running a one –man law firm at Kampala Road majoring in expropriated properties. He however, fell sick in the year 2005 and has been bed ridden because of diabetes. This led to his landlord distressing for rent against Simpson and confiscation of all his law books including all clients' files. He has no idea what happened to the cases he had in court. He cares less and wants a fresh start with this group of young men who are ready to conquer the legal world.

Nabende Nicole ("Nicole") completed her master's degree at New York University where she majored in mercantile law. She enrolled to the New York Bar where she has practiced since

2009. She is a member of the International Bar Association. She wants to return home and bring her legal skills to Uganda. She also thinks she can interest her friend Kifampa Dickson who has a successful legal practice (Kifampa & Partners) in Kigali to work closely with her and her friends. This will enable them leverage Nicole's contacts in Rwanda so that Kifampa & Partners and Divinely Inspired Legal Inc and can practice across the East African region.

However, Nicole is worried that with her immense contacts, her partners may live off her when she brings in the bulk of clients and work. She wants an arrangement which takes this into account and protects her.

She hopes she can keep some of the 'proceeds of her sweat' to herself. She was also not very amused by the manner in which Simpson hugged and groped her during their first meeting to lay strategy for the firm.

Sir. Kasansula Emmas a venture capitalist and a condominium mogul is ready to advance as much money to Divinely Inspired Legal Inc to start their practice as long as they are able to give him some returns when they rake in the money as they have promised him.

All four parties above would like to have a mutually respectful arrangement between themselves as equal partners with an equal stake, power and influence in their firm but mindful of their unique contributions. Advise the Parties before you on;

ISSUES

1. Whether the parties are qualified to practice law in Uganda?
2. Whether the firm name meets requirements for a generic name?
3. Whether cross border legal practice possible?
4. Whether parties have the legal expertise to establish a specialized law firm?
5. Whether Simpson is in breach professional conduct regulations?
6. Whether the firm is likely to experience challenges?
7. Whether a non-lawyer can be a partner in a law firm?
8. whether there are legal formalities to be complied with?
9. Whether there are best practices to establish a modern practice?
10. Whether there are documents and agreements to be drafted?

LAW APPLICABLE

1. The Partnerships Act, 2010.

2. The Contracts Act No.7 of 2010

3. The Business Names Registration Act, Cap 109

4. The Registration of Documents Act, Cap 81

5. The Stamps Act, Cap 342 as amended

6. Uganda Registration Services Bureau Act, Cap 210

7. The Advocates Act Cap 295

8. The Business Names Registration Rules S.I 109-1.

9. The Business Names Registration (Amendment) Rules S.I 53 of 2005.

10. The Registration of Documents (Fees) (Amendment) Rules S.I 55 of 2005.

11. The Registration of Documents Rules S.I 81-2.

12. The Advocates (Professional Conduct) Regulations, S.I 267-2.

13. The Advocates (Inspection and Approval of Chambers) Regulations, SI 65 of 2005.

14. The Advocates (Use of Generic Names by Law Firms) Regulations, SI 16 of 2006

15. The Advocates (Enrollment and Certification) Regulations SI 267-1

16. The Protocol on the Establishment of the East African Community Common Market and the Annexes

a) The qualities and considerations they should look out for from each other before establishing the practice.

Professional qualification; one of the major considerations they should look out for from each other is regarding the qualifications expected of any person intending to practice law as an advocate in Uganda. Firstly, the academic qualifications required of any person intending to practice law as an advocate in Uganda are contained in Section 8(5) of the Advocates Act Cap.267 of Uganda as amended. This provides that any such person as stated above must be either the holder of a degree in law granted by a university in Uganda or other institution recognized by the law Council in a country operating the Common law System or has been enrolled as a legal practitioner by whatever name called, in any other country operating the common law system and designated by the law council by regulations; or holds a qualification that would qualify him or her to be enrolled in any country operating the common law system and designated by the Law Council by regulations. In addition, the person must then attend a bar course at the Law Development Centre after which they should be awarded a diploma in legal practice as provided for in regulation 2 of the Advocates (Enrollment and Certification) Regulations.

After getting enrolled, a person intending to practice law as an advocate must obtain a practicing certificate as per the provisions of Section 11 of the Advocates Act and regulation 4 of the regulations which shall be valid until the 31st day of December each year and must be renewed each year.

They should look out for the above qualifications because without them, a person is not authorized to practice law as an advocate in Uganda and according to Section 64(1) of the Advocates Act, any person other than an advocate who acts as an advocate either directly or indirectly commits an offence. Further Section 65 prohibits any person who is not an advocate

from holding out as such. Therefore, the qualifications are an important consideration that they should look out for in each other. That is being an advocate with a valid practicing certificate

Non-lawyers; Further a person cannot be a partner in a law firm unless he or she is an advocate. Law firms are partnerships under the partnership Act which provides for professional partnerships under S.2 of the Act. One feature of a partnership, is that each partner is an agent of the firm and his or her other partners (S.5 of the Act). However, S. 71 of the Advocates Act prohibits an advocate to be an agent an unqualified person. This means that if a person is not an advocate, he cannot be a partner in a law firm.

Citizenship; The other important consideration that they should look out for in each other is the issue of citizenship. This is because, under the Advocates Act, for a person who holds a degree from a university located outside Uganda to be considered for enrollment, they must be a Ugandan citizen, otherwise they are not eligible.

Motives of joining the firm; They should equally consider each other's intentions for entering into this venture. This is because a law firm is a partnership and under Section 2 of the partnerships Act, a partnership is defined as a relationship between or among persons who carry on business in common with a view to making a profit.

Professional ethics and integrity; They should also look out for qualities of ethics and integrity as expected of an advocate in Uganda. These are contained in the Advocates (Professional Conduct) Regulations SI 267-2. These include, among others, honesty, accountability and confidentiality. In Bolton v Law Society, it was held that a profession's most valuable asset is its collective reputation and confidence, which that inspires. The reputation of the profession is

more important than the fortunes of any individual member. With that in mind, ethical considerations must be some of the qualities that the people intending to start the law firm must look out for in each other.

Expertise; since the above persons are desirous of establishing a specialized law firm, they should find out if either of them possesses expertise in those areas of law that is public international law, international law and political advocacy.

Experience Knowledge of the law Criminal record Bankruptcy Insolvency

b) The Likely challenges to the realization of their objectives

Lack of qualifications to practice law; The first likely challenge that they might face is the lack of qualifications of most of the members. Nixon has not completed the bar course, does not possess a valid practicing certificate and neither has his name been entered on the roll of advocates as required by the advocates act so he is unable to practice as an advocate which shall hinder his objective of showing off the legal skills and knowledge he has acquired by handling cases in courts of law. Simpson has been out of practice for a long time and he therefore does not possess a valid practicing certificate. Further, Nicole has academic qualifications from a country which is not recognized by the law council under the regulations.

Use of a generic name; Secondly, they are likely to face a challenge with the registration of their firm name. Under section 4 of the partnerships act, 2010, a firm carrying on business in Uganda under a business name which does not consist of the true surnames of all partners must register its name under The Business Names Registration act Cap 105. This is reiterated by S. 2 of the Business Names Registration Act.

However before registering a law firm name, Regulation 5(3) of the Advocates (Inspection and Approval of Chambers) Rules provides that a law firm with generic names shall only be approved if consent is sought from the Law Council prior to the registration of that name.

The Advocates (Use of Generic Names by Law Firms) Regulations 2005 provides for approval of generic names. A generic name is defined under regulation 1 to mean a name other than the name of a partner of a law firm. Regulation 3 requires a generic name to include the word "Advocates" at the end of the name of the law firm.

However, Reg 3(5) provides that generic name shall not make any reference, actual or derived, to any symbolic, cultic, political, religious, sectarian, discriminatory or specialty classification.

Sub-regulation 6 further requires that a generic name should not be misleading.

The name chosen for this firm is Divinely Inspired Legal Inc; it lacks the requirements for approval; it does not contain the word "Advocates", it has a religious connotation "divine inspired" and is misleading to

believers that such a law firm is inspired by God. It is therefore likely not to be approved in its current form.

Lack of expertise; They might equally face a challenge where expertise is concerned. According to the facts, these individuals intend to set up a firm which specializes in synergies amongst public international law, international law and political advocacy. However there is no evidence that any of them has any special qualifications in that area and so they might lack expertise and fail to achieve their objectives.

Profit and loss sharing; The other challenge that they might face is in the area of profit and loss sharing. As it is, according to the facts, Nicole is already worried that the other partners might live off her contributions which implies that she might be expecting to be entitled to a larger percentage of the profits than the rest once the firm business commences. As such, this might be a source of conflict between her and the other partners which might pose a big challenge to the realization of their objectives.

Management; In close relation to the above, they might also face a challenge of failure to agree on management. They are likely to fail to agree on who among them should be the managing partner and also who has powers to bind the other members.

Cross-boarder practice may be yet another challenge that they face especially with trying to bring Kifampa and his successful practice on board. This is because, they intend to partner with him and practice law allover East Africa. Even though the Protocol to the Establishment of the East Africa Common Market under Article 11 recognizes cross border professional practices, the common Labor market policy is yet to be adopted and implemented in the East African Community and as such, their objectives in that regard might prove difficult to realize.

Professional misconduct; The other challenge that they might face is with professional misconduct among some of the firm members. Firstly, Nixon's major concern is amassing wealth and impressing his new bride and this brings into question his ethical standards. Further, Simpson has committed a violation of the Advocates (professional conduct regulations) below when he abandoned his cases without formally withdrawing from them. Therefore he may continue to violate other provisions which would reflect poorly on the firm.

Interpersonal relationships; the firm is likely to have mistrust among the partners; already Nicole is complained of how Simpson hugged and groped her when the met first time. This can lead to a break down in communication and trust.

Financial challenges; they have no money

Health challenges

C) The legal formalities they need to satisfy to lawfully establish their intended practice.

Acquiring the required professional skills to practice;

Nixon

Nixon is not an advocate. He therefore cannot practice in courts of law as he wants to. Nixon therefore has to fulfill certain legal requirements to become an advocate.

He must first complete his diploma in legal practice. Regulation 2(a) of the Advocates (Enrollment and Certification) Regulations is to the effect that the requirement s as to the acquisition of skill and experience under Section (1) of the Act shall be in the case of a person specified in Section 8(8)(b) Of the Act , attendance of the postgraduate bar course conducted by the law development center and award of the diploma in legal practice by the law development center on completion of the course.

After successfully completing and being awarded a diploma in legal practice he can apply to have his name entered on the roll by making an application to the law council and the Law Council if satisfied that the applicant is so eligible and is a fit and proper person to be an advocate shall issue to him or her a certificate to that effect. This is in accordance with section

8(2) of the Advocates Act.

Regulation 5 of Advocates (Enrollment and Certification) Regulations S. I 267-1 provides for the mode of applying for a certificate of eligibility and a form of the application is provided in Form 1 of the second Schedule of the same rules. And that the application and affidavit shall each be accompanied.

There after a certificate is issued by the Law Council whose form is provided for in in Form 2 of the 2nd Schedule to the Regulation.

After obtaining the certificate the person may apply to the Chief Justice to have his or her name entered on the roll and the Chief Justice shall unless cause to the contrary is shown to his or her satisfaction, direct the register on receipt of a fee to enter the name on the roll.

Regulation 8 of the Advocates (Enrollment and Certification) Regulations provides that an application for enrollment is made by petition to the Chief Justice accompanied by a certificate of enrollment issued by the Law council.

Section 11of the Advocates Act give authority to the registrar to issue a practicing certificate to every advocate whose name is on the roll and who applies for such a certificate on such form and on payment of such fees as the Law Council may by regulations prescribed the different fees

may be prescribed for different categories of advocates.

Regulation 12 of the Advocates (Enrollment and Certification) Regulations provides that the form of the application is in Form 4 of the Second Schedule to the Advocates (Enrollment and Certification) Regulations.

After this Nixon will then be able to appear in court. Regulation 13 of the Advocates (Enrollment and Certification) Regulations provides that the person with such a certificate shall have a right of audience before magistrate's courts for a period of at least 9 months.

Makubul Simpson

Simpson can apply for renewal of his practicing certificate so that he can practice. Section 11(2) of the Advocates Act provides that the practicing certificate is to be renewed after its expiry on the thirty-first day of December every year.

Regulation 14 of the Advocates (Enrollment and Certification) Regulations provides that the application is provided for in form 5 of those rules in the third schedule.

He has to lawfully withdraw from his cases.

Nicole

Nicole is a Ugandan citizen who has enrolled in New York. However she is unable to practice in Uganda because the USA is not among the countries that are approved by the council under s.8(8) of the amendment.

Sir Kasansula Emma

Kasansula will enter into a contract with the partners regarding the relevant loan which will be governed by the Contracts Act 2010 Laws of Uganda.

The overall formalities required for the parties to achieve the Partnership.

THE FIRM NAME.

They need a name that is acceptable by the Law Council. They need to change their firm name to a more acceptable name that the law council can approve as a generic name.

They have opted to use a generic name. A generic name is defined in Regulation 2 of the Advocates (Use of Generic Names by Law Firms) Regulations S. I No. 7 of 2006 as a name other than the name of a partner of a law firm.

Regulation 3 of the Advocates (Use of generic names by Law Firms) Regulations, 2006

provides that a generic name shall include the word 'advocates' at the end.

Regulation 5 of the Advocates (Use of generic names by Law Firms) Regulations, 2006 also provides that a generic name shall not make any reference, actual or derived, to and symbolic, cultic, political, religious, sectarian, discriminatory or specialty classification.

The facts disclose that the parties are desirous to name the firm "Divinely Inspired legal Inc".

The name does not end with the word advocates and it makes reference to religious classification which is contrary to the rules. Therefore, a more acceptable name would be recommended in order for the name to be registered with the registrar of business.

Regulation 5(1) of the Advocates (Use of Generic Names by Law Firms) Regulations S. I No.

7 of 2006 is to the effect that a generic name cannot be registered with the registrar of Business unless it has been approved by the Law Council. Further Regulation 5(3) of the Advocates (Inspection and Approval of Chambers) Rules provides that a law firm with generic names shall only be approved if consent is sought from the Law Council prior to the registration of that name.

In order to use the firm name, it will require approval of the Law Council. This means that the partners should choose a different name without religious connotations and add the word "Advocate"

REGISTRATION OF THE BUSINESS NAME

In order to effectively carry out business, parties are advised to register their business name. S. 4 of The Partnership Act 110 provides for mandatory registration of a business name where persons are trading under a business name other than their true surnames. This is reiterated under S.2 of the Business Names Registration Act.

They should conduct a search and reserve a business name at the Uganda Registration Service Bureau offices by filling the respective forms and then apply for registration. There is need to pay for relevant fees.

THE PARTNERSHIP DEED.

The partners should write down a partnership deed providing for the rights, duties and obligations during their subsistence of their business relationship.

A partnership is defined under section 2 (1) of the Partnership Act as a relationship which subsists between or among persons not exceeding twenty in number who carry on a business in common with a view of making profits

All the ingredients are existent among the parties for a partnership to be formed. Therefore a deed which governs that relationship should be drafted.

EXECUTION AND REGISTRATION OF THE PARTNERSHIP DEED

There is no mandatory requirement for having a written agreement in order to establish a partnership. In Dr. Okello N. David Vs Komakech Steven, HCCS No. 30 Of 2004 , it was held; The fact that there is no partnership agreement is irrelevant because a partnership can be formed informally or by the conduct of the parties.

However, in order to protect the interests of the partners and for proper management of the business, we advise the clients to sign a properly drafted partnership deed that unequivocally encompasses all their concerns.

A Partnership deed1 is a contract defining the partners' rights and duties toward each other. Section

10 (1) of the Contracts Act is to the effect that the parties are legally bound by the contract signed.

This Partnership deed can be registered for evidentiary purposes, however, this requirement is not mandatory. The case of Mohammed Kafero V J Turyagenda [1980] HCB 122 provides that the registration or non-registration of a document has no bearing on its validity or invalidity.

Registration shall consist in the filing of a copy (to be furnished by the person presenting the document for registration) of the document brought for registration after that copy has been certified by the registrar as a true copy as per Section 5 of the Registration of Documents Act Cap 81.

In Rule 2 of the Registration of the Documents Rules Statutory Instrument 81 – 2. It provides that copies of all documents presented to the registrar for filing under Sec 5 of the Act shall be either in manuscript and written in ink, or the original of type writing with a record ribbon on lined full scarp folio paper measuring approximately 13 inches in length and 8 inches in width and shall contain a margin of at least one- and one-half inches on the left hand side of the paper, the paper to be written on one side only and to be bound or sown together in book form. The fees for registering is Sh.10, 000 under the Registration of Documents (Fees) (Amendment) Rules, 2005.

This is registered at the Uganda Registration Service Bureau (URSB) as provided for in section 4 (2) (a) of the Uganda Registration Service Bureau Act which gives it the mandate to carry out all registration required under the relevant laws.

PAYMENT OF STAMP DUTY

Stamp duty must be paid on all instruments executed or received in Uganda under the Stamps Act as amended. It is paid on all instruments received in Uganda within 30 days. Stamp duty rates are either fixed or ad valorem rates.

The clients shall pay stamp duty of UGX 10, 000/- (Uganda Shillings 10,000) as provided for

Stamps (Amendment)Act 2016.

OPENING UP OF AN ACCOUNT

According to Section 40 of the Advocates Act the Law firm is required to have a separate account for the firm and another for the clients.

INSPECTION AND APPROVAL OF THE FIRM PREMISES

Then the premises from which the firm shall conduct its business is to be inspected by the law council.

Regulation 3 of the Advocates (inspection and Approval of Chambers) Regulations S. I No. 15 of 2005 makes it mandatory for chambers to be inspected yearly.

Regulation 5 of the same Regulations provides for the requirements to be met before approval (1) An advocate's chambers shall be well maintained with a professional appearance and must have—

(a) a suitable desk for an advocate;

(b) a separate room for each advocate and another for a clerk, secretary and cashier; (c) a secretarial desk and computer or typewriter;

(d) a reception with chairs or benches for clients; (e) a bookshelf;

(f) a chest of drawers or a filing cabinet;

(g) a reasonable collection of reference law books including a full set of the Revised Laws of Uganda 2000;

(h) access to a toilet and sanitary facilities; and

(i) books of accounts.

(2) The headed paper of every law firm shall bear the names and qualifications of each partner, advocate and legal assistant in the firm.

(3) A law firm with generic names shall only be approved if consent is sought from the Law Council prior to the registration of that name.

(4) The consent referred to in sub- regulation (3) shall be in writing. (5) Trading shall not be carried on in any chambers.

(6) The Law Council may refuse to approve any chambers that do not meet any of the requirements set out in these Regulations and may order the closure of those chambers until the chambers meet the required standards set out in these Regulations.

After the inspection is completed, a certificate to that effect shall be issued by the Law Council. Regulation 6 provides that;

(1) A firm of advocates whose chambers have been approved shall be issued with a certificate of approval of chambers.

(2) A certificate of approval of chambers shall remain valid for one year.

The firm shall pay a fee of 62,000/- for the inspection of the premises according to the

Advocates (Council Fees) Regulations 2004.

TRADING LICENSE

Under section 8 of the Trade (Licensing) Act as amended 2015, no person shall trade in any goods or carry on any business specified in the schedule to this Act unless he or she is in possession of a trading license granted to him or her for the purpose under this Act.

Section 1(h) defines trade or trading to mean the selling of goods in which a license under the act is required in any trading premises whether by retail or wholesale.

However, the process of granting trade licences to law firms has been halted by an interim injunction in the case of Uganda Law Society V KCCA and Attorney General HCMA 533 of

2017.

NOTICE OF CESSATION OF BUSINESS

Simpson should notify the registrar of his intention to stop operating under his old business name.

S. 14 of the Business Names Registration Act imposes a duty on a partner or individual to notify the registrar in case of cessation of business. Rule 8 of the Business Names Registration rules provides for notice where firm or individual ceases to carry on business and provide that the notice is in the form D of the Second Schedule of the Rules.

(d)The best practices that will enable them establish the intended modern practice. Compliance with the law; have the name approved, chambers inspected and approved, get license, pay taxes etc

Proper location of premise and well equipped chambers the partners should consider a location that can be easily accessed by many people so as to get clients and the chambers should be approved by the low council as required by the Advocates(inspection and approval of chambers) regulations under regulation 5

Regulation 5; Requirements to be met before approval and inspection of chambers regulations

(1) An advocate's chambers shall be well maintained with a professional appearance and must

have—

(a) a suitable desk for an advocate;

(b) a separate room for each advocate and another for a clerk, secretary and cashier;

(c) a secretarial desk and computer or typewriter; (d) a reception with chairs or benches for clients; (e) a bookshelf;

(f) a chest of drawers or a filing cabinet;

(g) a reasonable collection of reference law books including a full set of the Revised Laws of

Uganda 2000;

(h) access to a toilet and sanitary facilities; and

(i) books of accounts.

(2) The headed paper of every law firm shall bear the names and qualifications of each partner, advocate and legal assistant in the firm.

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Council prior to the registration of that name.

(4) The consent referred to in sub- regulation (3) shall be in writing. (5) Trading shall not be carried on in any chambers.

(6) The Law Council may refuse to approve any chambers that do not meet any of the requirements set out in these Regulations and may order the closure of those chambers until the chambers meet the required standards set out in these Regulations.

Good relationship between the client and advocate

Record keeping

Proper maintenance of client's files; It should have a proper filing reference system for easy

location of files.

Regulation29, every advocate shall account for client's moneys

Regulation 7, Advocate not to disclose or divulge information of the clients unless it is required by law

Regulation 10, advocate to disclose any personal interests to the clients and to maintain the fiduciary relationship

Regulation 11, not to exploit the lack of understanding of his clients

Regulation 12 Advocate to advise his clients diligently

Regulation 8 advocate not to use the client's money for his or her own benefit

Handling clients work diligently like appearing in court in time, proper keeping of the files

Highly qualified staff

Encourage advocates to go for continuing legal education so as to improve on their skills

Qualifications of the partners and other employees, e.g need for specialized advocates with special skill in different areas of law, well connected team in terms of network so as to easily get clients

The proposed best practices were also adopted in the IBA law firm governance initiative best practice guidelines which include the following;

The firm should set out in writing its governance and decision making structure

The firm should have transparent process for selection of leaders and appointment of managers

The capital structure of the firm should be described to partners in a clear way

The firm should establish an appropriate mechanism for partners to communicate with each other and with the firm leaders or management.

The way in which the profits and losses of the firm are to be distributed among the partners should be clearly described to all the partners

The firm should set out its recruitment policies and processes in writing so that all potential recruits like new partners and associates have access to enough information to allow them to make an informed decision about whether or not they wish to pursue recruitment discussions with the firm

The firm should adopt recruitment and promotion policies and process that are non- discriminatory in nature and that are designed to encourage diversity at all levels of the firm.

The partners should ensure that every person in the firm receives a clear written statement of the performance and behavior expected of them

The firm should seek to operate according to the highest professional and ethical standards. It should develop a policy on dealing with conflicts of interests with due regard to rules and requirements of the law.

The firm should state clearly and openly the basis on which people are promoted to higher positions in the firm

The firm should seek to ensure that the partners comply with the applicable laws and regulation. In order to catch up with contemporary practices, a firm should have a website and social media accounts.

There should be regular staff meetings

It should have all the relevant tools of trade; a well stocked library, telephones, emails, faxes, computers, business cards, safe, cabinets, firm seal. Stamp, practicing certificates, professional gowns etc.

It should have good security.

It should have proper management of finances by opening an office account, client account and a trust account as per S. 40 of the Advocates Act.

E. Documents and Agreements.

Search Fees-Shs.25.000/=

FORM OF APPLICATION TO SEARCH A RECORD

RECORD TO BE SEARCHED

REGISTRATION PARTICULARS: Date

Registration Number

PURPOSE OF SEARCH

DATE OF APPLICATION

PARTICULARS OF APPLICANT: Name

Telephone number

E-Mail Address

Place of Work/Address

COMMENTS RECORD OFFICER

COMMENTS REGISTRAR

THE REPUBLIC OF UGANDA

APPLICATION FORM FOR RESERVATION OF NAME

(Under Section 36 of the Companies Act No.1 of 2012 & Section 4(b)(1b) of NGO Registration Amendment Act, 2006)

TO : The Registrar of Companies P O Box 6848 KAMPALA

FROM :

Name/s:.....

.....

.....

.....

Tel. No/s

:.....

.....

Email/s :

.....

.....

Signature/s :

.....

.....

Being promoters of an Entity : (please tick and indicate if it is a change of name.)

Company limited by Shares

Company limited by

Guarantee

Non-Governmental

Organisation

Apply for the reservation of a name(Indicate in order of priority choice)

NAME

CHOICE

PROPOSED NAME

1st Choice

2nd

Choice

3rd Choice

Date

.....

...

+NB: The Reservation Is Valid For Only 30 Days from Date Of Approval

APPLICATION FOR REGISTERING A BUSINESS NAME

Form A

THE REPUBLIC OF UGANDA

APPLICATION FOR REGISTRATION OF BUSINESS NAME.

THE BUSINESS NAMES REGISTRATION ACT

Statement of Particulars required to be given pursuant to the Business

Name Registration Act

IN CASE OF A FIRM

1. Business names to be registered: Simpson, Nixon, Nicole & CO ADVOCATES.

2. General nature of the business: LEGAL PRACTICE

3. Principle place of the business: KAMPALA WORKERS HOUSE 5th FLOOR (East Wing)

4. Present Christian name (s) and surname of each of the individuals who are partners: NIXON ZINDE, MAKUBUL SIMPSON, NABENDE NICOLE and KIFAMPA DICKSON.

5. Former Christian name (s) and surname (if any) of each of the individuals who are partners:

NON

6. Nationality of each of the individuals who are partners: ALL ARE UGANDA

7. Usual Place of residence of each of the individuals who are partners: UGANDA

8. Other business occupation (if any) of each of the individuals who are partners: NON

9. Date of commencement of business: 01 OCTOBER 2018

10. Corporate names of each corporation which is a partner: NON

11. Registered or principal office of each corporation which is a partner: KAMPALA WORKERS HOUSE 5th FLOOR (East Wing).

Sign .....

Date 01 day of October 20 18

STATUTORY DECLARATION

I,

.....

of.....Uganda

DO SOLEMNLY AND SINCERELY declare that the particulars hereon are true and correct AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act.

DECLARED at .....in this

.....District

Of.....this.....day of.....20..... BEFORE ME,

.....

..... Magistrate/Commissioner for Oaths.

THE REPUBLIC OF UGANDA

CERTIFICATE OF REGISTRATION.

THE BUSINESS NAMES REGISTRATION ACT

Form B

I certify that Simpson, Nixon, Nicole & CO ADVOCATES this 01 day of OCTOBER 2018 has/have been duly registered pursuant to and in accordance with the provision of the Business Names Registration Act and the Rules made under that Act and has/have been entered under the number LDC2H2018/19 in the index of registration.

Given under my hand at KAMPALA this 01 day of OCTOBER 2018.

Registrar of Business Names

THE REPUBLIC OF UGANDA

NOTICE OF CESSATION OF BUSINESS

Pursuant to the Registration of Business Names Act

TO: THE REGISTRAR,

APPOINTED FOR THE PURPOSES OF THE ABOVE-MENTIONED ACT WHEREAS I/we the undersigned registered under the number..... in the index of Registration have ceased to carry on business.

Now I/we hereby give notice that I/we hereby give notice that I/we have ceased to carry on business as.....as from the.....day of.....20.....save for the purpose of winding up the said business.

Dated this .....day of

.....,20.....

(Signed)

.....

.....

.....

SUI GENERIS ADVOCATES

P.O Box 7117,

KAMPALA, UGANDA.

THE SECRETARY LAW COUNCIL, P.O BOX 7183, KAMPALA

Dear Sir/Madam,

RE: APPLICATION FOR THE INSPECTION AND APPROVAL OF CHAMBERS.

As the above matter refers, we hereby do apply for the inspection and approval of chambers in the name and style of ..... All the necessary requirements have been

compiled. We look forward to your positive consideration.

Yours faithfully

Makubul Simpson

(For and on behalf of SUI GENERIS ADVOCATES)

SUI GENERIS ADVOCATES

P.O Box 7117, KAMPALA UGANDA

1st – OCT – 2018.

THE SECRETARY LAW COUNCIL, P.O BOX 7183, KAMPALA

Dear Sir/Madam,

RE: APPLICATION FOR THE USE OF GENERIC NAME.

The above subject matter refers and on which I wish to address you as follows;

1. That I am a practicing advocate enrolled under the laws of Uganda.

1. That I intend to open up a law firm operating in Uganda under the name.....Advocates.

3. That I do hereby seek your approval to use the name .....Advocates prior to the name reservation of my law firm.

Hoping my application will be put under your utmost consideration. Yours faithfully

Makubul Simpson

(For and on behalf of SUI GENERIS ADVOCATES) Makubul Simpson

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE CONTRACT ACT 2010

CONTRACT AGREEMENT

This Contract Agreement is hereby made this 2nd day of October 2018 between Sir Kasansula Emmas and the future partners of Simpson, Nixon, Nicole & CO ADVOCATES) that go by the names of Nabende Nicole,Nixon Zinde and Makubul Simpson.

WHEREAS IT IS AGREED AS FOLLOWS,

The above named persons enter into an agreement with Sir Kasansula Emmas in which he agrees to advance money to the partnership to enable it to start in exchange for a return of 10% of the firm's annual profit for the period in which the firm will exist.

Sir Kasansula and the partners thus agree as follows:

1. That Sir Kasansula Emmas shall advance as much money to the firm as it will need to start.

2. That as consideration for the above said advance, Sir Kasansula will receive an annual return of 10% of the firm's annual profits for a period of 25 years after commencement of business of the firm.

3. That in case of failure by the partners to advance the 10% returns, Sir.Kasansula will be entitled to legal action against the firm.

4. That the above contract does not entitle Sir Kasansula to the status of a partner in the firm but rather an associate of the firm. His actions therefore shall in no way bind the firm or its members.

In witness, have the above mentioned person appended their respective signatures here under on this 2nd day of October 2018.

Sir Kasansula Emmas. .....

Nabende Nicole. .....

Nixon Zinde.

.....

Makubul Simpson.

.....

Witnesses

1.....

2.....

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE PARTNERSHIP ACT 110

PARTNERSHIP DEED

This partnership deed is made this 3rd day of October 2018 by and among NABENDE NICOLE, MAKUBUL SIMPSON and NIXON ZINDE of Kampala, Uganda being of sound mind and full age herein collectively referred to as partners.

WHEREAS the above named partners have decided to establish the professional partnership business of legal practice have deemed it necessary and desirable to reduce the terms and conditions into writing as mentioned hereunder;.

IT IS NOW HEREBY AGREED AS FOLLOWS;

1. PARTNERSHIP:

That the partners shall form a partnership to be governed by the Partnerships Act 2010 and all relevant laws governing partnerships in Uganda.

2. NAME:

That the partnership shall operate under the name Simpson, Nixon, Nicole & CO ADVOCATES

3. NATURE OF BUSINESS:

That the partners shall engage in legal practice in the fields of Public International Law, International Law and Political Advocacy.

4. PRINCIPAL PLACE OF BUSINESS

The principal place of business of the Partnership shall be at Mapeera House Kampala

Road.

5. VISION

To be a leading specialized law firm in Uganda

6. MISSION

To explore synergies amongst public international law, international law and political advocacy.

To venture into cross border legal practice in East African region

To ensure the operation of the firm for centuries

7. STRATEGIC PLAN

The firm shall come up with a strategic plan every year.

8. COMMENCEMENT

The partnership will be deemed to have commenced upon the issuance of a certificate of registration of the business name.

9. MANAGEMENT

5.1 Leadership;

i) All members shall be eligible to manage the business of the firm.

ii) The managing partner shall be agreed upon by all members whose term of office shall be two years. On expiration of the two years, another partner may take over the management of the firm for the same period.

9.2 Meetings;

The firm shall have meetings every first Monday of the month. The managing partner may

call upon the partners for a meeting in case of any urgent issues with a day's notice.

10. RIGHTS AND DUTIES

7.1 Duties

Every partner shall;

i) Not engage in any business that compete with the firm

ii) Give accountability of all monies earned from running the firm's business

iii) Attend meetings except where such attendance is prevented by any genuine and reasonable cause.

iv) Execute their duties and with the legally required level of professionalism.

10.2 Rights

Every partner;

i. Has a right to take part in the management of the firm. ii. Has the right to inspect the books of account

11. FINANCES AND ACCOUNTABILITY

7.1 Accounts;

The firm shall run two accounts namely; the client's account and firm account. The accounts shall be opened at a financial institution to be agreed upon by the partners.

11.2 Sources of Finances

The firm may receive finances from non-partners upon agreement of the partners.

11.3 Signatories to the Account;

Money from the firm account shall only be withdrawn by the managing partner upon approval of the other partners.

4.4. Accountability;

4.5. All necessary and proper books of account shall be maintained at the office of the partnership and shall be conclusive and final between the partners. The firm shall employ a qualified accountant to handle the books of account. These books of account shall be audited after every 4 months so as to ensure proper accountability of the firm's finances

12. PROFIT AND LOSS SHARING

8.1 Profits

Partners shall have an equal share of the profits made from the firm business.

8.2.Losses;

Losses shall be borne by the partners in equal shares.

8 COMMISSION

Any partner who registers a new client for the firm shall be entitled to 30% of the fees paid by the client and the balance of 70% shall be shared equally among all the partners.

9 PARTNERSHIP PROPERTY

The Partnership shall own all its personal property as an entity. No Partner shall have any ownership interest in the Partnership personal property in his or her own individual name except as other of the Agreement may provide.

10 BORROWING

The written consent of all Partners will be required for the partnership to avail credit facilities from any financial institution or any other creditor. The money borrowed shall be partnership money and to be used for partnership purposes.

11 ADMISSION

The partners may agree to admit a new member into the partnership provided such person bears the required qualifications and expertise.

12 CROSS BORDER PRACTICE

The firm shall enter into partnership with law firms in other countries to ensure cross border practice within the East African region subject to the laws governing states within East Africa.

13 AMENDMENT AND VARIATION

The Partners may amend and or vary this Agreement at any time by signing a written agreement

14 DISPUTE RESOLUTION

The partners shall resolve disputes amicably among themselves. Failure to agree, the partners may refer the dispute for mediation.

Where mediation is unsuccessful, the aggrieved party may seek redress in the courts of law.

15 LIABILITY;

All partners are jointly and severally liable for all debts and obligations incurred by the firm while they are partners.

16 TERMINATION OF PARTNER'S INTEREST

A Partner's interest in the Partnership terminates upon the occurrence of any of the following:

(i.) Withdrawal or retirement of the Partner upon written notice to the other partners within a reasonable time.

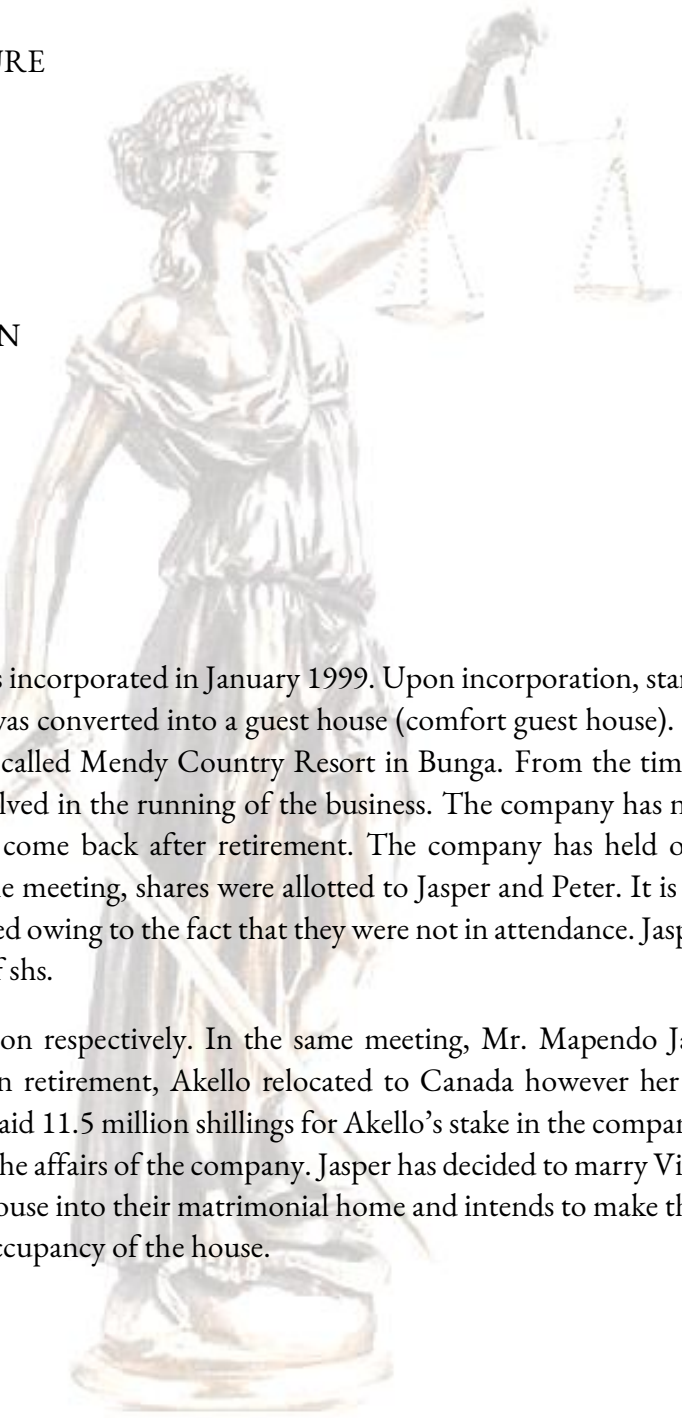
(ii) suspension or disbarment from the practice of law by the law council which will automatically terminate the Partner's interest without any additional formal action; (iii) Death of the Partner.

(iv) where a partner is declared bankrupt, convicted of a crime, violating the partnership agreement or other actions that are harmful to the partnership upon a supermajority vote of three quarters of the partners.

17 DISSOLUTION

The partnership shall be dissolved by unanimous agreement of the partners. Death of a partner shall not dissolve the partnership but shall continue to be carried on by and between the surviving partners.

In witness hereof;



PARTNERS SIGNATURE

1. NABENDE NICOLE

2. MAKUBUL SIMPSON

3. NIXON ZINDE

BRIEF FACTS

Mendy hotels limited was incorporated in January 1999. Upon incorporation, started business in a house owned by Jasper which was converted into a guest house (comfort guest house). The company has now grown and owns a hotel called Mendy Country Resort in Bunga. From the time of incorporation, Ms Akello has not been involved in the running of the business. The company has not heard from her ever since, but she hoped to come back after retirement. The company has held only one meeting since incorporation. During the meeting, shares were allotted to Jasper and Peter. It is indicated that Joel and Akello were not considered owing to the fact that they were not in attendance. Jasper and Peter have since paid up for their shares of shs.

150 million and 10 million respectively. In the same meeting, Mr. Mapendo Jamilu was appointed a company secretary. Upon retirement, Akello relocated to Canada however her brother Mackmot has presented proof that he paid 11.5 million shillings for Akello's stake in the company and he insists that he should be made party to the affairs of the company. Jasper has decided to marry Vivian who now wants to convert Comfort guest house into their matrimonial home and intends to make the company pay for the years they have been in occupancy of the house.

Issues

a. What breaches if any, of the Companies Act were committed, if so by whom and the

likely consequences thereof.?

b. Whether the intentions of Komu-luck with regard to the house in Busega are tenable, and how they will affect the company?

c. What is the status of Macmot with regard to the company?

d. What are the obligations of Akello to the company if any?

e. What potential actions can Akello and Macmot take against the company?

f. What response do you anticipate from the company and how will you respond to it?

g. What are the necessary documents above?

h. How can the company process the request from Akello and Mackmot?

i. What is the procedure of the company enforcing its rights if any?

j. What are the necessary documents to effect the above procedure?

Law Applicable

1. The Companies Act, No. 1 of 2012

2. The Stamps Act as amended

3. The companies General Regulations of 2016

4. Case law

RESOLUTION.

1. The breaches of the company if any The following breaches were committed; Failure to hold annual general meetings.

Company management is done through holding meetings from which resolutions are made and registered with the company registrar.

The Companies Act provides for 3 types of meetings;- A statutory meeting, annual general meeting and extraordinary meetings.

i. A statutory meeting.

S. 137(1) provides for a statutory meeting and it provides that a meeting shall be held for every company limited by shares not more than 3 months from the date of commencement of business. For other companies that are not public companies, the meeting is to be held upon receiving a certificate of incorporation.

Under the statutory meeting, there is a requirement for directors to forward a statutory report 14 days prior to the members. The format and content of such report is given in S.137(4)(a-e). The report must be certified by not less than 2 directors especially for public companies. (this is for proper management).

However, private companies are exempted from this requirement under S. 137(11) Companies

Act 2012.

ii. The Annual General Meeting (AGM)

This is a meeting which is held once a year and is applicable to both private and public companies.

The meeting is exclusive to members of the company and shareholders. (S.138)

Under S.138(2) a private company, at the requisition of a member can hold an Annual General Meeting. Subsection 4 provides that where default is made in holding a meeting of the company in accordance with subsection (2), the registrar may, on the application of any member of the company, call or direct the calling of a general meeting of the company and give such ancillary or consequential directions as the registrar thinks expedient including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the company's articles.

In this meeting adequate notice 6should be given of at least 21 days. (S.140)

The objective of the AGM has generally been understood to mean an opportunity for the company to deliberate on directors, to look at the balance sheets, to look at the audited accounts of the company, to appoint a company secretary and appoint company auditors. The AGM is technically referred to as the company meeting.

iii. The Extra-ordinary meeting

Where some matters were not discussed or if an important and emergent point arises a resolution may be made to sit an extra-ordinary meeting. This is provided for under S. 139 Companies Act

2012;

This meeting can be by a requisition which should state the objectives of the meeting, which objective should be deposited at the requested office of the company.

For a member to requisition this meeting, they should have paid up10% of their shares. Once the requisition for the meeting is deposited, the directors have up to 21 days to convene this meeting

Requirements as to meetings;

The Act regulates procedures for conducting meetings and any violation of provisions relating to notices, quorum, and other matters specifically provided for under the Act may render the meeting null and void.

Notice;

Notice.

S.140 provides for a notice to hold a company meeting not to be shorter than 21 days. Notices

are intended to give members full information, fair and reasonable disclosure, in order that members can make a decision as to whether or not to attend the meeting.

S. 140(4) members can consent to meeting called on short notice.

S. 141(a) requires that the notice of the meeting of a company shall be served on every member of the company

The notice should fully have the details of what is intended to be discussed in the meeting.

It was held in Re Pearce Duff Co Ltd [1960] 3 All ER 222 that the mere fact that all the members are present at the meeting and pass a particular resolution, either unanimously or by a majority holding 95 per cent of the voting rights, does not imply consent to short notice and anyone who voted for a resolution in these circumstances can later challenge it.

Notice of convening a meeting must be sufficient and specific to enable members decide whether to attend or not.

In In Tiessen v. Henderson (1899) 1 Ch. 861 it was held that notice of a company meeting must be full and specific enough to enable a shareholder to decide whether he wants to attend or not.

Notice of a general meeting must be sent to every member of the company and every director and if notice of a meeting is not given to every person entitled to notice, the proceedings and any resolution passed at the meeting will be invalid.

Young v Ladies Imperial Club [1920] 2 KB 523

Mrs Young, who was a member of the club, was expelled by a resolution passed by the appropriate committee. The Duchess of Abercorn, who was a member of the committee, was not sent a notice of the meeting, it being understood that she would not be able to attend. In fact, she

had previously informed the chairman that she would not be able to attend. Nevertheless, in this action which was concerned with the validity of the expulsion, it was held – by the Court of Appeal – that the failure to send a notice to the Duchess invalidated the proceedings of the committee and rendered the expulsion void. Per Scrutton LJ:

Every member of the committee ought, in my view, to be summoned to every meeting of the committee except in a case where summoning can have no possible result, as where the member is at such a distance that the summons cannot effectively reach the member in time to allow him or her to communicate with the committee. Extreme illness may be another ground, though I should myself require the illness to be extremely serious, because a member of the committee receiving a notice to attend may either write to ask for an adjournment of the meeting or express his views in writing to the committee, and I should require the illness to be such as to prevent that form of action being taken on receiving notice of such a meeting.

Quorum.

Quorum refers to the number or members of any body of persons whose presence at the meeting

is required in order that the business may be validly transacted. There is no agreed number for purposes of quorum and it is entirely dependent on the provisions of the articles in the absence of which recourse must be had to the company's Act or Table A, if the company so adopted it. S.141(c) of the Companies Act, the default position of quorum is 3 in public companies and 2 in private companies.

Sharp v Dawes (1876) 2 QBD 26

The Great Caradon Mine was run by a mining company in Cornwall and was carried on the

cost-book system, being controlled by the Stannaries Act 1869. The company had offices in London, and on 22 December 1874 notice of a general meeting was properly given. The meeting was held, but only the secretary, Sharp, and one shareholder, a Mr Silversides who held 25 shares, attended. Nevertheless, the business of the meeting was conducted with Silversides in the chair. Amongst other things, a call on shares was made and the defendant refused to pay it. He was sued by the secretary, Sharp, who brought the action on behalf of the company, and his defence was that calls had to be made at a meeting and there had been no meeting on this occasion.

Held – by the Court of Appeal – the call was invalid. According to the ordinary use of the

English language, a meeting could not be constituted by one shareholder.

Directors' meetings.

Definition.

S.2 of the Companies Act defines director" to include any person occupying the position of

director

by whatever name called.

The word director was defined in the case of R v Camps (1962) EA 403 that;

A person who acts as, and performs the functions of, a director, although not duly appointed as a director, is occupying the position of a director and includes a de facto director unless the context otherwise requires.

Under s. 185 every company must have at least one director. For public companies, there must at least be two directors. It is a legal requirement for every company to have at least one director. Under s. 186 the company in a general meeting has the right to appoint any number of directors and specify their general qualifications in accordance with the guidelines specified under the law. For public companies which have a share capital, a person is not capable of being appointed as a director unless that person has undertaken in writing and delivered for registration a consent to act as a director of the company. s. 192.

The directors should conduct a board of director's meeting to efficiently manage the affairs of

the company.

Under Art 98 of Table A, it states that subject to the provisions of the articles, the directors may regulate the proceedings as they think fit and directors can't act individ ually unless they have been delegated powers by the BOD to do so.

The words as they 'think fit" were discussed in Re Portuguese Consolidated Mines Ltd (1990)

42 Ch D 160 where Lord Justice Bright stated "when you talk of thinking fit must they not meet in order to think"

This requires issuance of notice to all persons supposed to attend a meeting.

Re Portuguese Consolidated Mines Ltd"

In this case an application was made for shares in a company and on the same day there was a meeting of 2 out of 4 of the directors. The other two not having been given sufficient notice, the meeting resolved that the 2 should form a quorum and allot the shares applied for. They adjourned the meeting till the next day. On that day, the allottee withdrew his application and again the meeting adjourned till the following day. On this 3rd occasion, 3 directors were present and one of those who had been previously absent approved the resolution relating to the quorum and the meeting to confer the allotment. The fourth director on the same day wrote approving the quorum and his letter was received the next day.

The Court of Appeal held that as there had been no notice of original meeting, none of the subsequent meetings was valid and the allotment was therefore bad and void.

This case is the authority for the rule that in general, the only way in which directors can exercise their powers is at or under the authority of a meeting which is properly convened or where proper notice had been given or where all directors are entitled to attend.

Slade, J., stated in Industrial Coffee Growers (Uganda) Ltd v Tamale High Court Civil Case

No. 215 of 1963 (unreported),

'It seems well settled law that a meeting of directors is not duly convened unless due notice has been given to all the directors and that any business transacted at a meeting not duly convened is invalid"

In Mohanlal K Radia vs Rose Kato Nakeyenga and Six Others (HCT-00-CC-CS-0274-2005)

The plaintiff contended that he has been a director of the company since 1965 through to 200 but

when he appointed his son Radia Atul as his attorney to represent him on the board of directors, the defendants ignored Mr. Radia Atul, and did not invite him to meetings of the company. They did so contending that he is not a member of the company. There was a resolution of the company amending the memorandum of association of the company for the purpose of admitting new members. The meeting took place on 20th December 2000. No notice of this meeting was provided to the plaintiff or his attorney.

Held;

Clearly calling meetings of the company without due notice to all members of the company is mismanagement of that company's affairs, especially to the detriment of the members not notified. Business transacted at such meetings is invalid.

That the defendants wrongfully excluded the plaintiff from the management of the company both in his capacity as a shareholder and director of the company, by not inviting him to general meetings of the company and its board of directors in accordance both with the Companies Act, and the Memorandum and Articles of Association of the Company.

In Re Homer District Consolidated Gold Mines ltd (1883) 39 Ch D 546

There was a quorum for the BOD meeting but the meeting was held at a few hours notice, shorter than that prescribed by the company's articles and one of the directors did not receive the notice while another received it and sent his apologies that he would not be able to attend and court held that the resolution passed at the meeting was invalid.

From the facts, the company has held only one meeting since incorporation whereat shares were allotted to Jasper Mulefu, and Peter Mbolimboli. Joel Bosiko and Akello Betty were not considered because they did not attend the meeting.

This means that the company has failed to hold annual general meetings. Further the meeting that was called was not preceded by notice calling the rest of the members. This meeting was more of a board of directors meeting which was invalid as it did not issue to notice to the other two directors and as a result they were not considered for allotment of shares.

The directors were in breach of their duty to call meetings. The resulting effect is that any decision taken during such a meeting is invalid.

Failure to file relevant documents;

i. Return of allotment.

Under section 61 of the company act that whenever a private company limited by shares or guarantee makes any allotment of its shares, the company has to within 60 days after date of allotment deliver the return of allotment to registrar for registration stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees and the amount if any, paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale or services or other consideration in respect of which that allotment was made such contract being duly stamped and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up and the consideration for which they have been allotted.

Under S. 61(3) Where default is made in complying with this section, every officer of the company who is in default is liable to a fine of twenty five currency points and an additional fine of five currency points for every day during which the default continues.

The facts show that at the meeting, shares were allotted to two of the directors. However, the facts disclose that the only documents that have been filed are those documents attached to the file. This means that the directors are liable for failure to file a return of allotment to the registrar for registration.

ii. Notice of appointment of secretary;

S. 187 provides that (1) Every company shall have a secretary. Article 110 of Table A states that a secretary shall be appointed by directors. Section 190 provides for qualifications of a company secretary. The person should be an advocate of the high court, capable of discharging those duties and should be a member of Chartered Public Accountanta or Chartered Secretaries and Administration. The facts show that the meeting at which the secretary was appointed lacked quorum as the other directors were not there. The facts further so not show that Mr. Mapendo Jamilu the appointed secretary met the qualifications under Section 190.

Further S. 228(1) requires A company to keep at its registered office a register of its directors and secretaries.

S. 228(5) provides that the company shall, within the periods respectively mentioned in subsection (6), send to the registrar a return in the prescribed form containing the particulars specified in the register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

Under Subsection (6) The periods referred to in subsection (5) are the following—

(a) the period within which the return is to be sent shall be fourteen days from the appointment of the first directors of the company; and

(b) the period within which the notification of change is to be sent shall be fourteen days from the happening of the change.

Under subsection (9) where there is default in complying with subsection 6 the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

Regulation 26(2)of the Companies General Regulations 2016 provides; Every company shall notify the registrar of the appointment of a director or secretary by filing a notice with the registrar in Form 20 in the Schedule.

The facts do not show compliance with this provision.

iii. Notice of situation of registered office. S. 115 provides that.

(1) A company shall, as from the day on which it commences to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, have a registered office and a registered postal address to which all communications and notices may be addressed.

(2) Where a company fails to comply with subsection (1), the registrar may give notice to the company giving it reasonable time in which to comply.

S. 116. Provides for Notification of the situation of the registered office, the registered postal address and of any change in them.

(1) Notice of the situation of the registered office and the registered postal address, and of any

change in them shall be given within fourteen days after the date of incorporation of the company or of the change as the case may be, to the registrar, who shall record the change.

(2) The inclusion in the annual return of the company, of a statement as to the situation of its registered office or as to its registered postal address shall not be taken to satisfy the obligations imposed by this section.

(3) Where there is default in complying with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

Regulation 25 provides that the notice of the situation of the registered office, postal address and of any change in them shall be filed with the registrar in Form 18 in the Schedule.

These documents were not filed.

iv. Notice of register of members;

S. 119 provides that (1) A company shall keep a register of its members at the registered office of the company. Subsection 3 requires that a company shall send notice to the registrar of the place where its register of members is kept and of any change of place. Default in compliance for fourteen days in the company and every officer of the company who is in default is liable to a daily default fine of twenty five currency points (subsection 6)

In the case of Mathew Rukikaire v Incafex supra, it was held that it is "the company" which has the obligation to enter each member on the members register. In this context the company's duty lies with the company secretary, whose duty it is to ensure that the company complies with relevant legislation and regulations.

v. Filing annual returns;

S. 132 provides that (1) A company having a share capital shall, once at least in every year,

make a return containing with respect to the registered office of the company, registers of members and debenture holders, shares and debentures indebtedness, past and present members and directors and secretary.

Subsection 4 provides that Where a company fails to comply with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

From the above, since the only documents were filed upon incorporations, it means there has been a failure by company officers to file documents subsequent to formation of the company.

2. If the intentions of Vivian Komu-luck with regard to the property in Busega are tenable, and how they will affect the company.

A company can own property independent from its members. This principle finds its roots in the case of Salomom V Salomon & Co. Ltd.

As such it enjoys a variety of privileges that a natural individual enjoys amongst which include the right to own property.

This is a Constitutional right by virtue of Article 26 of the 1995 Uganda Constitution as amended. In Shonibare V Probate Registrar (1966) 2 A. L. L. Comm. 389, it was held that an incorporated company is able to own property separately from its members.

. Company property belong to the company and not its members; Macaura V. Northern Assurance Co. Ltd (1925) A.C. 619

The Appellant owner of a timber estate assigned the whole of the timber to a company known as

Irish Canadian Saw mills Company Limited for a consideration of £42,000. Payment was effected by the allotment to the Appellant of 42,000 shares fully paid up in £1 shares in the company. No other shares were ever issued. The company proceeded with the cutting of the timber. In the course of these operations, the Appellant lent the company some £19,000. Apart from this the company's debts were minimal. The Appellant then insured the timber against fire by policies effected in his own name. Then the timber was destroyed by fire. The insurance company refused to pay any indemnity to the appellant on the ground that he had no insurable interest in the timber at the time of effecting the policy.

The court held that it was clear that the Appellant had no insurable interest in the timber and though he owned almost all the shares in the company and the company owed him a good deal of money, nevertheless, neither as creditor or shareholder could he insure the company's assets.

That when Macaura sold the property to the company he ceased to enjoy any legal or equitable interest in it. The property was wholly and completely owned by the company.

Lord Buckmaster;

No shareholder has any right to any item of property owned by the company for he has no legal or equitable interest therein. If his contention were right, it would follow that any person would be at liberty to insure the furniture of his debtor and no such claim has ever been recognized by the courts.

In the instant facts, the house in Busega belongs to Jasper Mulefu and not the company. There is no indication that Jasper transferred ownership of the house to the Company or any indication that the company has paid any consideration for the utilization of the house.

Therefore, the house in Busega belongs to Jasper Mulefu and not the Company. The company has not been paying rent for the utilisation of the land and there is no formal arrangement between Jasper and the company as to how their relationship in relation to the house should work.

It follows then that Jasper can successfully occupy part of the house in Busega.

On the issue of whether Vivian can get rent for the duration the company has used the house, it is submitted that she cannot.

Jasper let the company use the house without payment of rent. He should therefore not be heard to require for rent after his conduct made the company omit payment of rent during that period.

This is known as the principle of equitable estoppel.

In Pickard v Seers (112 E. R. 179) it was held that for one to rely on this kind of estoppel, he must prove the following:

a) That there was conduct in question, which led or caused him to believe something to be true;

b) That he acted on such belief by doing or omitting to do something and thereby altered his position to his detriment;

c) That as a result, denying the representation would be prejudicial to him.

All these requirements are met by the conduct of Jasper and therefore the rent for the previous duration cannot be claimed.

However, when jasper and Vivian occupy the house, they can claim for rent of the remaining house occupied by the company moving forward.

In Kampala Cotton Co. ltd V Madhvani (1954) 21 EACA 129, it was held that a company can occupy business premises as a tenant. Therefore the company can begin to pay rent if jaspers requires it.

A company has capacity to be a tenant.

Hindu Dispensary, Zanzibar v NA Patwa and Sons [1958] 1 EA 74

Held;

(i) a trading company could be a "suitable tenant" of premises for the purposes of its business.

(ii) the suit premises, though intended to be occupied as a dwelling house were qua the

Dispensary "business premises".

Per Curiam– "A company can have possession of business premises by its servants or agents. In fact that is the only way it can have physical possession."

Notably, Vivian cannot do all this in her individual capacity. All the rights to deal with the land are vested only in Jasper the owner.

The consequences of the acts of Vivian on the company means that the company will start to pay rent and should enter into a tenancy agreement with Jasper.

3. The status of Mackmot with regard to the company.

Despite paying Akello for her stake in the company, Mackmot is not a member of the company n or a shareholder.

S. 47 of The Companies Act 106 provides for two instances when a person is regarded as a mem ber of the company.

(1) The subscribers to the memorandum of a company shall be taken to have agreed to become m embers of the company, and on its registration shall be entered as members in its register of mem bers.

(2) A person who agrees to become a member of a company, and whose name is entered in its reg ister of members shall be a member of the company.

In the case of Matthew Rukikaire V Incafex Limited SCCA No. 3 of 2015 it was stated that be ing on the register is evidence to prove membership. Hon. Lady Justice Prof Dr. Tibatemwa E cle arly stated that an applicant for shares is neither a member nor a shareholder while his rights rest in contract until the issue of shares has been completed by registration.

In defining who shareholder is, she stated; who a shareholder or memberof a Company

is. The process of incorporating a company limited by shares involves registration of the compan y's memorandum and articles of association which are signed by subscribers. A 'subscriber' is th e term applied to the first members of a private limited company who add their names to the me morandum of association during the company formation process. By so doing, they agree to form a company and become members/share- holders in the company.

However, other persons can become members of the company when shares in the company are al lotted. When a person either individual or corporate is allotted shares subsequent to the formation of the company, that person becomes a 'shareholder', 'member' or 'owner' and stands in the sa me position as the subscriber. Such persons agree to become part of a company by taking a partic ular number of shares through a process known as allotment.

She thus concluded that what can be deduced from S. 47 is that a person may become a member of a company in two ways;

(a) by subscribing to the memorandum of association; and

(b)by agreement to be a member subsequent to the formation of a company.

That that a person becomes a shareholder or member of a company if allotment is followed by re gistration. that it is "the company" which has the obligation to enter each member on the member s register. In this context the company's duty lies with the company secretary, whose duty it is to

ensure that the company complies with relevant legislation and regulations.

Quoted; Lord Templeman in National Westminster or Bank Plc vs. IRC

(1995) A.C111 at 126 held that"allotment does not make a person a member of the company.Ent ry in the register of members is also needed to give the allottee legal title to the shares.Allotment confers a right to be registered as a member."

Lord Templeman further stated that an applicant (for shares) is neither a member nor a shareholder while his rights rest in contract until the issue of the shares has been completed by registration.

In this case, Akello is a subscriber to the memorandum of association of the company and hence i s a member of the company. However, she sold her stake in the company to Mackmot who can't become a member until there is a valid transfer of shares and his name being reflected on the regi ster.

If a person is not entered on the register yet he or she is a member, the remedy is provided for un der S. 125 whereby court has the power to rectify the register and payment by the company of an y damages sustained by any party aggrieved.

Despite the above, courts and learned authors have noted that a person who buys shares from a m ember, becomes a beneficial owner of those shares in equity and thereby obtains an equitable int erest.

According to Smith and Keenan's COMPANY LAW 14th edition 2009 at page 207, the following legalk transactions are involved in transfer of shares.

The purchase and sale of shares involves the following separate and distinct legal transactions:

(a) An unconditional contract is agreed between the transferor and transferee. The transferor then holds the shares as a trustee for the transferee (who has an equitable interest) until registration but is still a member of the company and retains the right to vote as he chooses.

(b) The transferee pays for the shares. The position remains as in (a) above except that the transferor must now vote as the transferee directs. An unpaid transferor has the right to vote the shares free from any obligation to comply with the transferee's requirements (JRRT (Investments) v Haycraft [1993] BCLC 401).

(c) The position remains as in (b) above while the transfer is approved by the directors and the transfer is stamped.

(d) The transferee's name is entered on the register of members. At this stage the transferor ceases to be a member of the company. The transferee becomes the member and acquires the legal title to the shares. Since membership and membership rights are only effective when the transferee is on the register of members, it may be necessary to ask the court to rectify the register of members under CA 2006, s 125 where the company is refusing to register the transferee, but only if this is contrary to the powers of the board.

In Hawks v McArthur and Others, [1951] 1 All ER 22,

shares were transferred by M to two shareholders (R and F) without exhausting the pre-emption

rights of other shareholders in accordance with a company's articles. R and F paid to M the full

purchase price for the shares, but the shares were still registered in the name of M. On 4 October

1949, the plaintiff (who was also a member of the company) recovered judgment for £539 2s 4d and costs in an action against M, and was granted leave to proceed under the judgment. On the same day he obtained a charging order nisi on the shares in the company standing in M's name, and on 17 October the charging order was made absolute. F and R claimed that by 4 October the beneficial interest in the shares was in them and that M had no interest therein on which the charging order could operate.

Held – Notwithstanding the complete failure to comply with the company's articles in regard to the procedure to be followed before shares could be transferred, F and R, having paid to M the full consideration for the shares, had obtained equitable rights therein, and, as their rights accrued earlier than the equitable right of the plaintiff under the charging order, their rights must prevail over his claim.

VAISEY J.; The one thing, however, which seems to me to be important is that they paid Mr McArthur the money, and I cannot bring myself to suppose that they got nothing by their bargain and that the whole property in the shares remained in Mr McArthur, notwithstanding the transfers which had been executed and the money which he received.

Hakim Semuwemba v Pius Kamugisha HCCS 0499 of 2012. Justice David Wagututsi;

The question that arises therefore is that when the Defendants paid the Plaintiff the 20,000,000/=

(twenty million shillings), what was he paying for? What was the company to benefit? It must have been in the absence of any other explanation, that they were paying for shares. What is important here is that they paid out money to the Plaintiff and I would find it very difficult that in paying, they got nothing for the bargain and that the whole property in the shares remained that of the Plaintiff,

He thus Concluded that the Plaintiff in receiving the 20,000,000/= (twenty million shillings) knew that it was payment for shares and indeed he severed all relations and interest in the 4th Defendant due to his the conduct of the Plaintiff after payment as he stayed away from the company until 2011, over two years later. He did not attend meetings, nor question the company about company meetings or ask for payments as a shareholder.

The issue of beneficial ownership of shares before transfer has been considered in the case of ;

AMRIT GOYAL v HARI CHAND GOYAL and ors MISCELLANEOUS APPLICATION NO. 649 OF 2001

HELD; Second, it is trite law that pending the formal transfer of a company's shares, the transferee (whether such transferee is the buyer or donee of such shares or otherwise) enjoys a beneficial interest in those shares as the equitable owner thereof — see GOWER's Principles of Modern Company Law (6th Edn. 1997), p. 348, which explains that:

"...only if and when the transfer is registered will the transferor cease to be a member and shareholder. However, notwithstanding that registration has not occurred, the

beneficial interest in the shares may have passed from the transferor to the transferee.

Notwithstanding that the transfer is not lodged for registration or registration is refused,

the beneficial interest in the shares will, it seems, pass from the seller to the buyer.

The seller then becomes a trustee for the buyer and must account to him for any dividends he receives and vote in accordance with hi instructions (or appoint him as his proxy)." [emphasis added]

see Hardoon v. Belilios [1901] AC 118, P.C. With regard to gifts (rather than sales of shares), it has been held that so long as the donor had done all he needs to do, the beneficial interest passes from him to the donee — see Re Roe [1949] Ch 78, and Re Roe [1952] Ch 499 CA.

Court thus declared the Plaintiff as the beneficial owner of the ROADMASTER CYCLE shares via a Memorandum of Family Arrangement and ordered for rectification of the share register of ROADMASTER CYCLES (U) LTD by deleting there from the name of the Fourth Defendant, and substituting therefore the name of the Plaintiff and his nominee as the true owner of the Fourth Defendant's shares in ROADMASTER CYCLES (U) LTD;

In conclusion therefore, Mackmot having paid Akello for her stake in the company obtained an equitable interest in her shares and is therefore a beneficial owner of those shares.

Task 4..The obligations of Akello to the company, if any.

Akello is a subscriber in the company and the article of association proved that the subscribers

shall be the first directors of the company, which therefore makes her a director of the company.

A subscriber is a shareholder or guarantor who agrees to become a member of a company at the time of its incorporation - original members must subscribe their names to the memorandum, hence the name subscriber.

Section21 (1)of The Companies Act 106, is to the effect that the memorandum and Articles shall when registered, bind the company and the members of the company to the same extent as if they had been signed and sealed by each member.

Section 47 of the Act provides that a person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company.

In OLIVE KIGONGO v MOSA COURTS APARTMENT LTD COMPANY CAUSE NO. 01

OF 2015, Justice Stephen Musota stated;

My interpretation of the above provisions is that there are two ways of becoming a member of a company and these are:

(i) By being a subscriber to the Memorandum of Association of a company at the time of incorporation of that company as in Section 47(1) of the Companies Act; or

(ii) By acquiring shares in the company after incorporation that's section 47(2) of the Companies Act.

In interpreting option 1, the judge stated; To become a member as subscriber to the memorandum of association of a company one needs only to sign the memorandum as a subscriber and automatically will become a member of the company and holder of shares for which she or he has signed even if the company omits to fulfill its duty to put him on the register of members or to allot the shares to him or her. This was the position enunciated in Evans Case [1867] L.R.2

Ch App 424; and Bytrust Holding Limited Vs I.R.C [1971] 1 W.L.R 1333.

The rationale of this position is that an agreement between the company and the subscriber is that the subscriber shall become a member and the memorandum of association is a public document which makes publicity of the fact that the subscriber is a member of the company.

S ee; L u gan 's case [19 02] 1 Ch 707. In this option therefore entry on the register of members is not a condition precedent to being a member. All members are shareholders in the company but not all shareholders are members.

Borland's Trustee v Steel Brothers & Co Ltd [1901] 1 Ch 279

Farwell J; A share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders inter se in accordance with s 16 of the Companies Act 1862. The contract contained in the articles of association is one of the original incidents of the share. A share is not a sum of money settled in the way suggested, but is an interest measured by a sum of money and made up of various rights contained in the contract, including the right to a sum of money of a more or less amount.

A shareholder, is any person, company, or institution that owns at least one share of a company's stock. According to the facts Akello owns 15 shares in the company and thus making her a shareholder. Since she subscribed to the memorandum of association. She automatically becomes a member.

Therefore a shareholder, she is obligated to observe all the conditions stipulated in the articles and memorandum of association.

As a shareholder she has a duty to pay up the full amount of her shares and as when called up, in case of liquidation of a company the shareholders are to be placed in the list of contributories. In certain cases a transferor of a share still liable for the unpaid shares of a company.

All the shareholders are bound to follow the decision of the majority shareholders unless the majority are guilty of mismanagement and oppression.

The main duty of shareholders is to pass resolutions at general meetings by voting in their shareholder capacity. This duty is particularly important as it allows the shareholders to exercise their ultimate control over the company and how it is managed.

The articles of association constitute a binding contract between the shareholders and the company as stated under section 21(1). The Articles of association state some duties or obligations expected of a director, among which is the duty to manage the company and paying of all expenses incurred during the promotion of the company.

Section 198 of the Act provides for the duties of a director to include the following a) act in a manner that promotes the success of the business of the company.

Lord Greene MR in Re smith and Fawcett ltd [1942] Ch. 304 at page 306 held that the directors have to act bonafide in what they consider is in the company's interests and not for any collateral purpose.

b) exercise a degree of skill and care as a reasonable person would do looking after their own business

In RE CITY EQUITABLE FIRE INSURANCE COMPANY LTD [1925] 1 Ch 407, Romer J opined that In discharging company duties, a director must exercise such degree of skill and diligence as would amount to the reasonable care which an ordinary man might be expected to take in the circumstances, on his own behalf but such skill need not be of greater degree than reasonably expected of a person of his knowledge and experience, he isn't liable for mere errors of judgement.

C) act in good faith in interest of the company as a whole

He also has an obligation to ensure compliance with this Act and any other law.

Section 225 and Article 84 table A of the Act is to the effect that a director has an obligation to notify the company in writing, before the expiration of five days beginning with the day if appointment, of the subsistence of his or her interests at that time and of the number of shares of each class and the amount of debentures of each class of, the company or other such body corporate in which each of his interest subsists at that time.

She also has a duty under section 213 of the Act to disclose payment for loss of office made in connection with take over or take over or transfer of shares in a company.

She also has an obligation under section 197 to disclose her age.

Liability; as a member of the company she is liable for the company's debts up to the amount of

shares not fully paid up in case of winding up/liquidation. Shareholders have a duty not to compete with the company.

5. Assuming further that upon receiving the demand from Mackmot with a cover letter from Akello to back it up, the company has not responded thereto. Mackmot and Akello's reminders have fallen on 'deaf ears' with Jasper saying for as long as he is in charge, he will not be bothered by small issues of Mackmot and Akello who abandoned the company at its hour of need and now wants to 'reap where she didn't sow'. Jasper and Akello have waited for a period of 8 months for a response from the company, in vain; advise Akello and Mackmot on any potential action to take against the company. What response do you anticipate from the company and how will you respond to it?

The facts show that Akello agreed to transfer her shares in the Company.

Shares are personal property and are transferable subject to any restriction contained in the articles.

The most famous definition of a share is that of Farwell J in Borland's Trustee v Steel Brothers

& Co Ltd [1901] 1 Ch 279, where he states that:

... a share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders. A share is not a sum of money ... but is an interest measured by a sum of money and made up of various rights contained in the contract.

According to Section 83 of The Companies Act 106, "The shares or other interests of any member in a company shall be movable property transferrable in the manner provided by the articles of the company."

In a company therefore shares are really transferable and upon a transfer the assignee steps into the shoes of the assignor as a member of the company with full rights as a member.

Anything to do with transfer of shares has to be at the shareholder's free will. A share

holder has a right to transfer his or her own shares anytime he or she wants.

In Re Smith & Fawcet Ltd (1942) 1 ALL ER , 542 Lord Greene stated that it is to be borne in mind that one of the normal rights of a share holder is the right to deal freely with his property and to transfer it to whomsoever he pleases. That the shareholder has prima facie right, and that right is not to be cut down by uncertain language or doubtful implications.

S. 83 provides that transfer is subject to the Articles of Association. Therefore, unless the company's Articles provide otherwise, in a private company, a shareholder is entitled to transfer as he wishes.

According to the Articles of Association of Mendy Hotels (Uganda) Limited Article 2b provides that "The right to transfer shares shall be restricted as hereinafter prescribed." Article 3 provides that the regulations contained in Table A of the First Schedule of the Act shall apply to the Company. Therefore this means that in relation to transfer of shares recourse shall be taken to Table A which has been adopted through the Companies Articles in line with Section 13(1) of The Companies Act 106.

Section 85 of the Companies Act also provides that notwithstanding anything in the Articles of a Company, it is not lawful for the Company to register a transfer of shares in or debentures of the Company unless a proper instrument of transfer has been delivered to the company.

Article 22 of Table A provides that the instrument of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be taken to remain a holder of the share until the name of the transferee is entered in the register of members in respect of the shares.

Article 23 further provides that subject to such of the restrictions of these Regulations as may be applicable, any member may transfer all or any of his or her shares by instrument in writing in any usual or common form or any other form which the directors may approve.

This means that there is no standard form as to what the transfer instrument should be used.

In Jaspal Singh Sandhu vs Noble Builders (U) Ltd & Anor SCCA No. 13/2002. The Supreme Court agreed with the Court of Appeal that there was a valid transfer of shares where the parties used Company Form 8, "Notification of Change of Directors or Secretaries or their particulars" stating the husband agreed to cease to be a member of the company and was replaced by his wife who took his shares.

Therefore the above procedure is the one the company has adopted in light of the transfer of shares and basing on the facts Akello gave Mackmot a cover letter stating that Mackmot paid up for her stake in the company and therefore her shares should be transferred to him. The cover letter in this case, would amount to a proper instrument of transfer.

Under S.88 On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee

However, the company may restrict transfer of shares and creates its own procedure on how shares are to be transferred.

Buckley LJ explained the core company law position in Re Discoverers Finance

Corporation Ltd, Lindlar's Case [1910] 1 Ch 312 at 316:

'The regulations [articles] of the company may impose fetters upon the right of transfer. In

the absence of restrictions in the articles the shareholder has by virtue of the statute the right

to transfer his shares without the consent of anybody to any transferee.'

Where a restriction is imposed, it binds parties as per s.21

According to Section 21, Article 22 & 24 of Table A, a company may restrict transfer of shares. And if the directors refuse a shareholder from transferring his shares, they have no duty to give reasons for the refusal. However, if the Articles lay down grounds for refusal of transfer, then the directors must adhere to those grounds or it must be in the company's interest.

Re Smith & Faucett Ltd 1942 1 All ER, 542, The articles of association of a private company provided that "the directors may at any time in their absolute and uncontrolled discretion refuse to register any transfer of shares. Fawcett died and the newly appointed director refused to register Fawcett's shares in the name of executer unless he was willing to sell half of them to Smith. Held – having regard to the terms of the article, the only limitation on the directors' discretion was that it should be exercised bona fide in the interests of the company.

Court considered what constitutes the interest of a company and held that the directors of the company must act bonafide and not for any collateral purpose and in the interest of the company.

Court emphasized that in cases where articles are framed with some such limitation on the discretionary power of refusal

, it follows on plain principle that, if they go outside the matters which the articles say are to be the only matters to which they are to have regard, the directors will have exceeded their powers

As to the meaning of bonafide for the benefit of a company as a whole, Lord Evershade in the case of Greenhalgh v Adine Cinemas (No.2) (1950) 2 ALL ER 1120

it is now plain that "bona fide for the benefit of the company as a whole" means not two things but one thing. It means that the shareholder must proceed on what, in his honest opinion, is for the benefit of the company as a whole. Secondly, the phrase, "the company as a whole," does not (at any rate in such a case as the present) mean the company as a commercial entity as distinct from the corporators. It means the corporators as a general body

Article 24 does indeed give the directors discretion to decline to register the transfer of a share. It states that, "The directors may decline to register the transfer of a share not being a fully paid share to a person of whom they do not approve, and they may also decline to register the transfer of a share on which the company has a lien."

However, the powers vested in directors to refuse to register a transfer must be exercised within a reasonable time.

In this respect Section 89(1) of the Companies Act provides that "Where a company refuses to register a transfer of any shares or debentures, the company shall, within sixty days after the date which the transfer was lodged with the Company send to the transferee notice of the refusal."

This is also provided for under Article 26.

Re Swaledale Cleaners [1968] 3 All ER 619

The personal representatives of H and A had executed transfers of H and A shareholdings in favour of L, but S as director refused to register them purporting to exercise a power of refusal contained in the articles. There was no resolution either of the board or of the shareholders on the matter of refusal to register the transfers. On 11 December 1967 L began proceedings for rectification of the register, and on 18 December 1967 S appointed an additional director and the two directors formally refused to register the transfers.

Held – by the Court of Appeal – the register must be rectified to show L as the holder of the

shares of H and A. The power to refuse a transfer must be construed strictly because a shareholder ordinarily has a right to transfer his shares. Furthermore, the delay in exercising the power of refusal, i.e. four months, had been unreasonable and the power was no longer capable of being exercised.

Re Hackney Pavilion Ltd [1924] 1 Ch 276

The company had three directors, Sunshine, Kramer and Rose, each of whom held 3,333 shares in the company. Sunshine died, having appointed his widow as his executrix. Her solicitors wrote to the company, enclosing a transfer of the 3,333 shares from herself as executrix to herself in an individual capacity. At a board meeting at which Kramer, Rose and the secretary were present, Rose proposed that the shares be registered, but Kramer objected in accordance with a provision in the articles. There was no casting vote. The secretary then wrote to the solicitors informing them that his directors had declined to register the transfer.

Held – by the High Court – the board's right to decline required to be actively expressed. The mere failure to pass the proposed resolution for registration was not a formal active exercise of the right to decline. The right to registration remained, and the register must be rectified

From the facts Mackmot and Akello have waited for a period of 8 months for a response from the Company in vain.

Section 89(2) provides that where the default is made in complying with this section, the company and every officer of the Company who is in default is liable to a default fine of twenty five currency points. Therefore already Jasper being an officer of the Company i.e. a director by virtue of Section 2 of the Act and the Company as well, he is liable by virtue of this section.

Therefore in light of the above position I would advise Akello and Mackmot to cause Mackmot's name to be added as a member of the Company on the Company Registrar by the Registrar of Companies i.e. rectify the Register by applying to Court.

S. 125. Provides for the power of the court to rectify register.

(1) Where— (a) the name of a person is without sufficient cause entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member, the person aggrieved or any member of the company or the company, may apply to the court for rectification of the register.

(2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the court may decide any question relating to the title of any person who is party to the application to have his or her name entered in or omitted from the register whether the question arises between members or alleged members on the one hand and the company on the other hand and generally may be decided for rectification of the register

In Re Milton Obote Foundation, Company Cause No 1. Of 1997, held; The High Court affirmed its jurisdiction to hear an application for rectification of the register of companies kept by the registrar of companies.

Court's power to rectify the register where no instrument of transfer

It was held by the Court of Appeal in Re Hoicrest Ltd [1999] 2 BCLC 346 that the power of the

court to rectify the membership register of a company could be used to effect a transfer where there was no instrument of transfer so that the company had not had an opportunity to refuse the transfer.

In AMRIT GOYAL v HARI CHAND GOYAL and ors MISCELLANEOUS APPLICATION NO. 649 OF 2001

It was held that when the court entertains an application to rectify a share register, it is bound to

go into all the circumstances of the case, and to consider what equity the applicant has to call for its interposition — see Halsbury's Laws of England, (4th Edn.), Vol. 7(1) para 394. In this case even in absence of a transfer instrument Court declared the Plaintiff as the beneficial owner of the ROADMASTER CYCLE shares by relying on a Memorandum of Family Arrangement and ordered for rectification of the share register of ROADMASTER CYCLES (U) LTD by deleting there from the name of the Fourth Defendant, and substituting therefore the name of the Plaintiff and his nominee as the true owner of the Fourth Defendant's shares in ROADMASTER CYCLES (U) LTD

Therefore the above is the potential action that Akello and Mackmot can take against the company.

The procedure is provided for under Order 38 rule 4 of the Civil Procedure Rues SI 71-1which states that Applications to rectify the register of members of a company shall be made by motion or summons in chambers.

The Companies Anticipated Response

Article (24) of table A states that, "The directors may decline to register the transfer of a share

not being a fully paid share to a person of whom they do not approve, and they may also decline to register the transfer of a share on which the company has a lien

The anticipated Company's response shall be that they have a right under the law to decline to register the transfer of a share not being a fully paid up share when they called up the shares, RESPONSE TO COMPANIES RESPONSE

The company waived its right to refuse.;

The company had sidelined Akello in the management of the company. The company has held

only one meeting of which Akello was not even invited. Secondly, the company did not exercise their discretion to refuse registration and thereby waived their right to refuse. The company had sixty days

within which to refuse registration and since its now 8 months, the right to exercise its discretion was waived in the circumstances.

As was noted by the learned authors Smith and Keenan's COMPANY LAW supra on page 206

Any power of veto on transfer vested by the articles in the directors must be exercised within two months after the lodging of the transfer for registration and the transferee notified. If not, the company may be compelled to register the transferee as a member.

This is supported by the above case of Re Swaledale Cleaners [1968] 3 All ER 619

DOCUMENTS;

THE REPUBLIC OF UGANDA

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

MISCELLANEOUS CAUSE NO. ... OF 2018

1. AKELLO BETTY

2. MACKMOT ODONGO.....APPLICANTS

VERSUS

MENDY HOTELS (UGANDA) LIMITED.....RESPONDENT

NOTICE OF MOTION

(Under Order 38 Rule 4, 5(d) of the Civil Procedure Rules, SI 71-1)

ALL PARTIES CONCERNED attend the learned Judge in chambers on the ..... day of ..... 2018 at ..... O'clock in the fore/afternoon or as soon as counsel for the applicant can be heard for Orders that:

a) The shares of the first plaintiff in the respondent company be transferred to the second applicant

b) The respondent's register be rectified by replacing the name of the first plaintiff with the second applicant

c) The respondent company pays damages to the applicant d) Any other order that court deems fit.

e) Costs of this application be provided for.

TAKE NOTICE that the grounds of this application are;

a) That the first plaintiff was a signatory to the Articles and Memorandum of Association. b) That the first plaintiff sold her stake in the company to the second plaintiff.

c) That the first plaintiff executed a transfer instrument of his shares to the second plaintiff d) That the plaintiffs informed the directors of the company about the sale and sought to

have the transfer of shares duly registered by the company.

e) That for eight months, the plaintiffs have waited for a response from the directors of the company in vain.

f) That the refusal to register the transfer of shares for 8 months without notice is unreasonable.

g) It is in the interest of justice that this application be granted.

TAKE FURTHER NOTICE that this application is supported by the affidavit of Akello Betty attached hereto.

Given under my hand and the seal of this Honourable court, at Kampala, this ..... day of .....

2018

.....

DEPUTY REGISTRAR

Drawn and Filed by:

SUI GENERIS & Co. Advocates

P.O Box, 7117, Kampala.

THE REPULIC OF UGANDA

IN THE HIGH OF UGANDA AT KAMPALA (COMMERCIAL DIVISION)

MISCELLANEOUS CAUSE NO. ... OF 2018

1. AKELLO BETTY

2. MACKMOT JOHN ODONGO.....PLAINTIFFS

VERSUS

MENDY HOTELS (UGANDA) LIMITED .....DEFENDANT

AFFIDAVIT IN SUPPORT OF MOTION

I, Akello Betty of SUI GENERIS & Co. Advocates, P.O Box 7117, Kampala, do hereby state on oath as follows:

1. That I am an adult female Ugandan of sound mind, one of the plaintiffs herein and I swear this affidavit in that capacity

2. That the defendant is a private company limited by shares, duly incorporated under the

Companies Act, with capacity to sue and be sued in its name.

3. That in January, 1999, the company was incorporated and I was one of the original signatories to its Memorandum and Articles of Association.

4. That from that time, I stayed away from the day to day running of the company because I had a full time job as a police officer with the Uganda Police Force.

5. That upon retirement from the force in 2016, I relocated to Canada where I work as secondary school teacher.

6. That I decided to sell my stake in the Company to my brother, the second plaintiff for a consideration of shs, 11,500,000. (Find attached the receipt marked A)

7. That I duly executed a transfer instrument to that effect, which is hereby attached as annexure

B.

8. That the second plaintiff approached the company with proof of payment for my shares and the transfer instrument executed by me and requested that the transfer be registered by the company and that he be allowed to get involved in the affairs of the company.

9. That we have waited for a response from the company for eight months in vain despite issuing the directors a number of reminders.

10. That I am informed by my lawyers, which information I believe to be true, that the statutory period for the company to register a transfer of shares or issue a notice of refusal is sixty days and it already lapsed.

11. That the directors of the company have not offered us any substantial reason for refusing to register the transfer of shares.

12. That the second plaintiff and I have suffered great inconvenience resulting from this refusal.

13. That whatever I have stated above is true and correct to the best of my knowledge.

Sworn at Kampala by the said AKELLO BETTY this .....day of .....2018.

BEFORE ME

....

DEPONENT COMMISSIONER FOR OATHS

Drawn & Filed by

SUI GENERIS & Co. Advocates

P.O Box 7117, Kampala

7. Assuming that the company has decided to consider Mackmot and Akello's request,

Advise the company on

a. How to process the request from Akello and Mackmot

b. The procedure of enforcing its rights against Akello if any

8. Draft the necessary documents anticipated in 7 above

The best way to do this is through;

FIRST calling for a board meeting to approve the transfer. Articles 24 and 25 of Table A. Calling for a meeting and this would be conducting a board meeting called by a board of directors.

The Articles of the company provide that Table A would apply. S. 13 of the Companies Act; (1) Articles of association may adopt all or any of the regulations contained in Table A.

(1) (2) In the case of a company limited by shares and registered after the commencement of this

Act, if articles are not registered or, if articles are registered in so far as the articles do not

exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in the duly registered articles.

Table A under article 98 which is to the effect that "The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairperson shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Uganda."

This could be through either a formal or an informal meeting. this is based on the decision in the case of UK Safety Group ltd v Heane [1998] 2 BCLC 208 where it was held that it is not necessary for a board meeting to meet formally in order to transact business. It may be possible

for all directors to informally transact in business. Furthermore the case of Runciman vs Walter Runchiman plc [1992] BCLC 1084 stated that although the boards decision was made in an informal manners the directors had acquiescenced and accordingly the decision had been validly made.

When calling for a board of directors meeting there are a few requirements which must by law be fulfilled and among others include;

• Presence of all directors except those abroad

Every director has a right to attend and participate in all meetings of the board of directors. This is because a formally and duly appointed director cannot be excluded from a meeting by other directors as was held in the case of Hayes vs Bristol Plant Hire ltd [1957]1 ALL ER 685 and on that basis he can enforce his right.

• Notice

A notice of all meetings must be given to all directors whose whereabouts are known except for those outside Uganda otherwise whatever decisions are made will be invalid. Section 140 of the Companies Act provides for the Length of notice for calling meetings and states that for all meetings at least a 21 days' notice in writing will be given before a meeting is conducted and except for insofar as the articles of a company make other provision in that behalf, a meeting of the company other than an adjourned meeting may be called by the twenty-one days' notice in writing.

The notice issued must also comply with some requirements for example;

1. The issuing person must have authority.

In the case of Al-Amin Seatrans ltd vs Owners and Party interested in vessel MV loyal bird

(1996)1 comp lj cal it was held that notices issued by a secretary when she did not have power and authority to issue them was invalid.

2. Form

Section 140(2) of the companies Act is to the effect that every notice issued calling for and

notifying persons of a meeting shall be in writing

3. Time

section 140(1) of the companies act is to the effect that the notice will be for at least 21 days

otherwise it will be invalid. this was further discussed in the case of Re Homer District Consolidated Gold Mines ltd ex parte Smith (1888) 39 Ch. D 546 that a meeting held after a few hours notice did not amount to the statutory notice as required by law. Likewise a letter sent

on Sunday for a board meeting on Monday was declared inadequate by court in the case of

Bently and Stevens v Jones [1974] 1 WLR 638.

The case of N.V.R Nagappa Chettiar v the madras race club (1949) MLJ 662 discussed the

aspect of what amounts to a day and stated that a day means clear day excluding both the date on which the notice for the meeting is served or expected to be served and the date of the meeting. The learned judge further held that the notice should be served at least 25 days before the meeting date to ensure that the 21 days notice is given to the recipients of the notice.

4. service of the notice

the notice at all times must have been duly served and if for any reason like service on wrong

person or wrong time, the meeting is then irregular and any purported decisions taken through that meeting are invalid as was discussed in Re Portuguese consolidated copper mines limited [1889]42 Ch. D 160

5. Quorum

Table A article 99 stated that the quorum necessary for transaction of the business of the

company may be fixed by directors and unless so fixed shall be two. the case of Niddle Industries India ltd v Niddle Industries Neway Holding ltd (1981) 50 comp case 743 (S and C) where court held that provisions for quorum are not directory but mandatory and a decision taken by a lesser number than that quorum is void.

it is during this Board of Directors meeting that a decision regarding the request made by Mackmot and Akello would be considered. This decision is through a resolution which would be a board resolution as a board of directors meeting can only make board resolutions.

Section 152 of the Companies Act is to the effect that minutes of proceedings of meetings of dire ctors shall be entered in books kept for that purpose.

Procedure for transfer;

Under S. 85, it is not lawful for the company to register a transfer of shares in or debentures of

the company unless a proper instrument of transfer has been delivered to the company. Therefore a transferee should have a proper instrument of transfer which he delivers to the company for regsistration.

Under S.88 On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee

Upon transfer, the transferee is entitled to a share certificate. According to S. 90, a share certificate is prima facie evidence of title. The company is also required to notify the registrar of companies about the transfer of shares, and the transferee will be liable to pay a stamp duty assessed with regard to the share transfer.

S.91 of The Companies Act 106 (1) A company shall, within two months after the date on which a transfer of the shares, is lodged with the company, complete and have ready for delivery the certificates of all shares, transferred, unless the conditions of issue of the shares otherwise provide. Subsection two provides that For the purposes of subsection (1), "transfer" means a transfer duly stamped and otherwise valid and does not include a transfer which the company is for any reason entitled to refuse to register and does not register

In Re Bahia and San Francisco Railway Company (1868) LR 3 QB 584, court held that a share certificate is prima facie evidence of the ownership of the person named thereon as shareholder. The company is estopped from denying as against a bonafide purchaser of the shares that the person named is entitled to the shares referred to.

The fees payable on Stamp duty is 1% of the Total Number of Shares as per Item 62(a) of the

Stamps Amendment Act 2016.

The company should also file annual returns to reflect the new shareholding position as er S. 132 of The Companies Act 106.

Documents Board resolution Annual returns

Part b

What rights can be enforced and under what procedure

Before registering the transfer of shares, the company can make a call on the shares. The starting point is S. 21,Companies Act 2012 which states as follows:

Subject to this Act, the memorandum and articles shall, when registered, bind the company and the members of the company to the same extent as if they had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the memorandum and articles.

This has the effect of establishing the memorandum and articles as a 'statutory contract' between the company and its members, and among members inter se the terms of which can be enforced both by the company and the members

Reference may be made to the case of Hickman v. Kent (1950) 1 Ch. D 881

Justice Ashbury had the following to say: "That the law was clear and could be reduced to 3 propositions;

i i. That no Article can constitute a contract between the company and a third party;

ii ii. No right merely purporting to be conferred by an article to any person whether a member or not in a capacity other than that of a member for example solicitor, promoter or director can be enforced against the company.

iii iii. Articles regulating the rights and obligations of the members generally as such do create

rights and obligations between members and the company".

Therefore it is on this premise that a company has rights that can be enforced against Akello. Generally, a share is a unit of capital. The most famous definition of a share is that of Farwell J in Borland's Trustee v Steel, where he states that:

... a share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders. A share is not a sum of money ... but is an interest measured by a sum of money and made up of various rights contained in the contract.

According to the facts at hand, shares of 15 in number were issued to Akello each at 2,000,000 s hillings which were unpaid. The facts disclose that Akello sold her shares to her brother at 11,500,000 Million which means that out of 15, the number of shares issued to her which totalled up to

30,000000 Million each at 2,000,000 million, the balance of 18,500,000 Million was not paid up. Whenever a Company issues shares then those shares can either be fully paid or partly paid.

• "Fully paid shares" are those shares for which full issue price has been paid by the

shareholder to the Company.

• On the other hand, "partly paid shares" are those shares for which the shareholder has paid only part of the issue price of the share. In case of partly paid shares, the Company has the right to demand from the shareholder the remaining payment on the partly paid shares as and when required by it.

"Call on shares" means the demand made by the Company on its shareholders holding partly pai d shares to pay part or full unpaid amount on the shares. The board of directors of the Company makes such a call on shares in accordance with terms and conditions of issue of shares and as per articles of association of the Company.

The unpaid amount on partly paid shares is the liability of the shareholders to the Company and t he Company has the right to call for payment of such liability as and when deemed fit by the boa rd of directors of the Company. Generally, Companies prefer to collect the full amount of share is sue price at the time of issue of shares. However, some companies may give the option to its shar eholder to pay the share price in below instalments:

If a shareholder fails to pay the call money as demanded by the Company within the time period provided by the Company, then the Company may forfeit his shares.

The articles of association of this company has provisions on calling of shares. CALLS ON SHARES

16. The Directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed two fourth of the nominal amount of the share, or be payable less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on his shares. A Call may be revoked or postponed as the Directors may determine

17. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of eight per centum per annum from the day appointed for the payment thereof to the date of the actual payment, but the Directors shall be at liberty to waive payment of that interest wholly in part.

Procedure to make a call on shares.

A company which intends to make calls on its unpaid shares shall follow the following procedure:

Board Resolution

The board of directors shall pass a board resolution to make calls on shares which shall clearly specify the time and place to make payment for a call on shares. A call is deemed to be made when a board resolution is passed in this regard, such call can be paid in instalments also if so required.

Call notice

The Company should send to each shareholder as mentioned in its register of members a 14 day

"Call notice" specifying the time and place for payment of calls. In the case of Re National Bank of Wales, Taylor, Phillips and Rickards (1897)1 Ch 298 at

306 it was held that where shares have been transferred, the transferor remains liable for calls already made. Therefore, the company should make calls on shares of Akello before they are transferred to

Mackmot.

DOCUMENTS

Board resolution

THE REPUBLIC OF UGANDA BOARD RESOLUTION

AT THE MEETING OF THE DIRECTORS OF..... Ltd Reg.

No..... ("THE COMPANY 0R 0RGANISATION") held at Kampala on the ..... of

19.....

IT WAS RESOLVED:

1. That the Company admits a one Mackmot as a shareholder in the company having

purchased the same form Akello and as such he will be registered on the members register.

2. That a call on shares has been made to share holders who hold unpaid shares to pay up by

5th January 2019 through the Company's bank account of 147899383799843 Centenary

Bank in the names of Mendy Hotels Uganda ltd.

.....Chairman

.....Secretary

.....Date

This document is to be certified by the registrar of companies of the republic of Uganda.

No. Of Company .....

GOVERNMENT OF UGANDA FORM OF ANNUAL RETURN

OF A COMPANY HAVING A SHARE CAPITAL

Third Schedule Part II (section 132)

Annual return of ..... Limited,

made up to the ..... day of ..... 20 ..... being

the fourteenth day after the date of the annual general meeting for the year 20.....).

s

1. Address. (Situation and postal address of the registered office of the company)

2. Situation of registers of members and debenture-holders. a) (Address of place at which the register of

members is kept, if other than the registered office of the company).

b) (Address of any place in Uganda other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of that register or part of the register

which is kept outside Uganda).

Delivered for filing by .....

Note: All parts of the form must be properly completed; if not applicable using the words "not applicable","nil", "none", etc

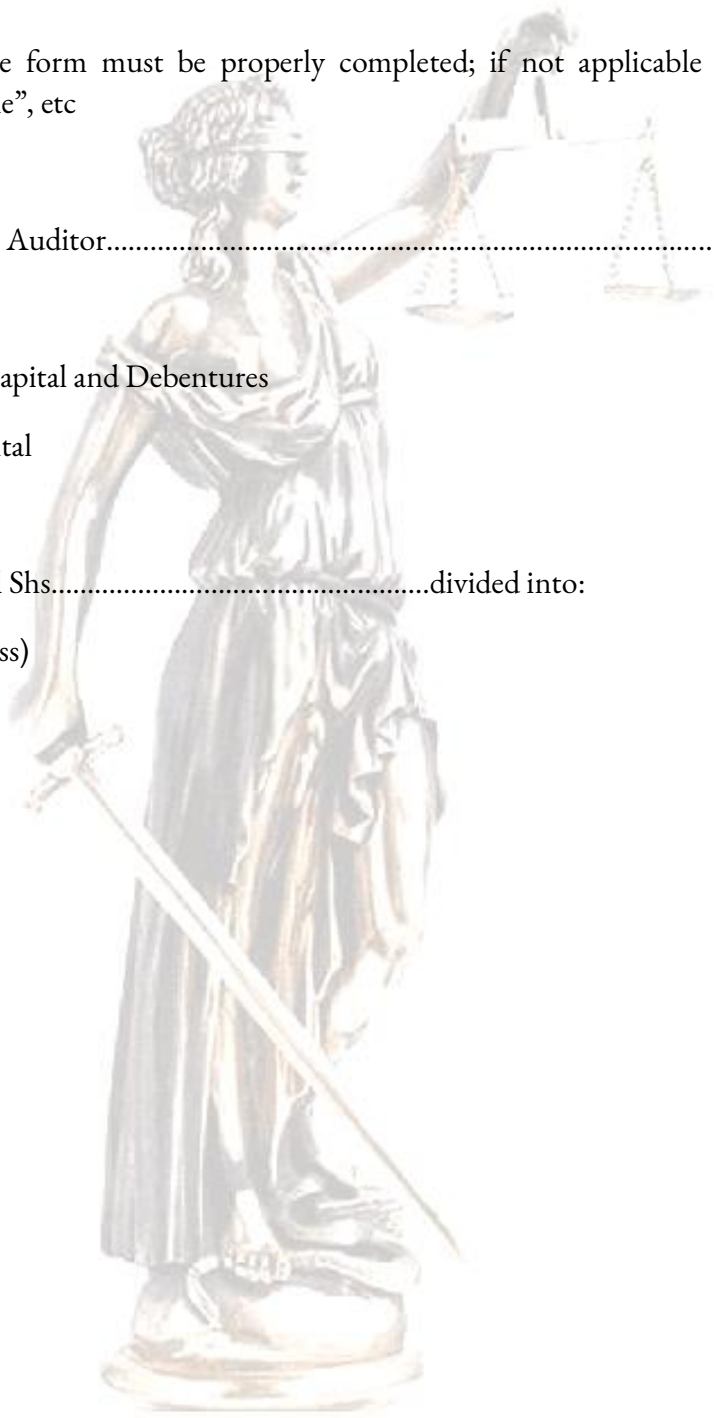
Name & address of the Auditor.....

3. Summary of share Capital and Debentures

a) Nominal Share Capital

Nominal Share Capital Shs.....divided into:

(Insert number and class)



.....each

.....each

..... Share of

..... Share of

..... Share of

.....each

b) Issued Share Capital and Debentures

Number Class

Number of shares of each class taken up to date
of this return (which number must agree with the
total shown in the list held by existing members.)

.....

..

.....

..

.....

...

.....

...

.....Shares

.....Shar

es

.....Shar

es

.....Shar

es

Number of shares of each class issued subject to Payment wholly in cash

.....

....

.....Shares .....Shares .....Shares .....Shares

.....-.....Shares

..Shares.....Shares

ber of shares of each class issued as fully paid up for a consideration other than cash.

Shares issued as paid up to the extent of shs.....per share Shares issued as paid up to the extent of

Shs.....on

.....

.....shares

.....

.....shares

.....

.....shares

.....

.....sharestal amount (if any) agreed to be considered as .....

Paid on number of shares of each class issued as partly paid up for a consideration other than cash.

Shs.....on .....shares

.....

.....shares

.....

.....shares

.....

.....shares

Total amount of calls unpaid Shs.....

..... Total amount of the sums (if any) allowed by way of commission in respect of any shares of debentures.

Shs.....

.....

Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of last return.

Shs.....

.....Total number of each shares of each class forfeited Number

Class

.....

.....shares

.....

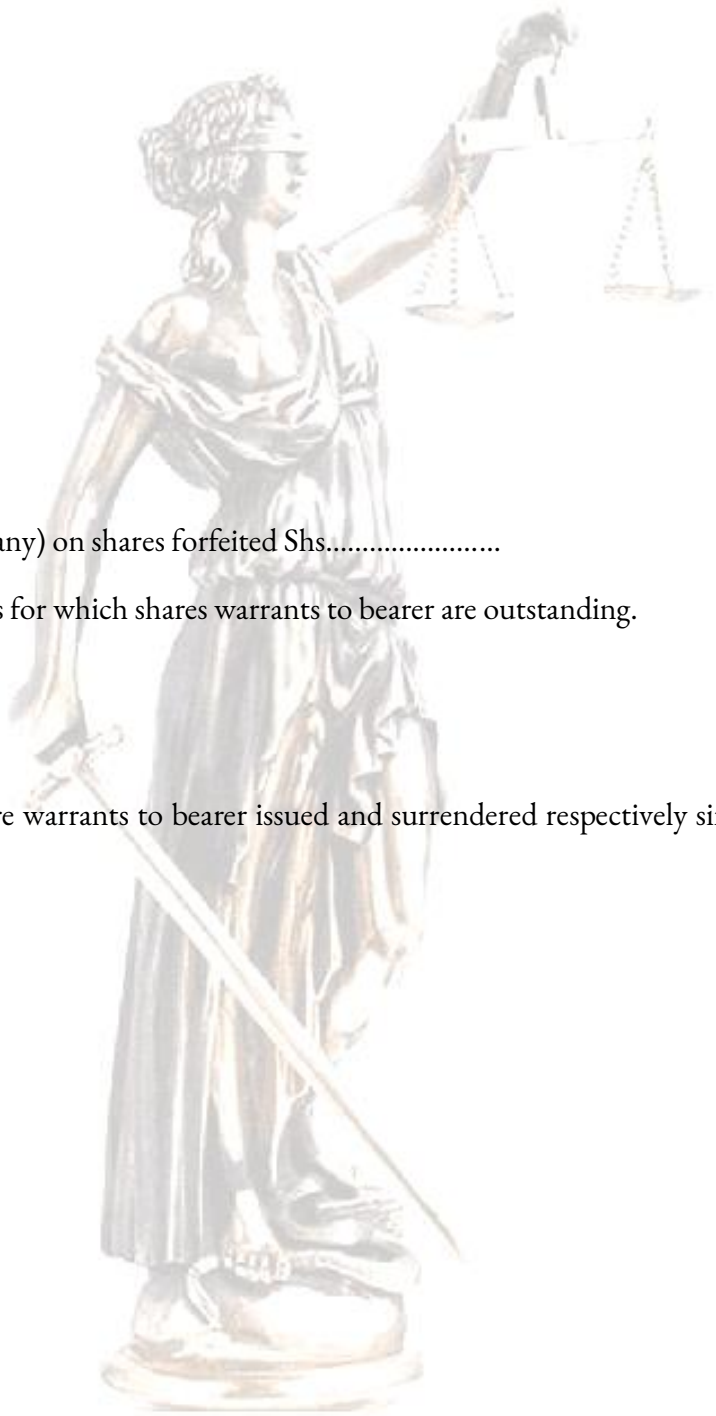
.....shares

.....

.....shares

.....

.....shares



Total amount paid (if any) on shares forfeited Shs.....

.....tal amount of shares for which shares warrants to bearer are outstanding.

Shs.....

.....otal amount of share warrants to bearer issued and surrendered respectively since the date of the last return.

Issued: Surrendered:

Shs.....

.....

Shs.....

.....

Number of shares comprised in each share warrant tobearer, specifying in the case of warrants of different kinds, particulars of each kind.

. List of Past and Present Members

List of persons holding shares or stock in the company on the fourteenth day after the annual meeting for 20.....and of persons who held

shares or

stock therein at any time since the date of the last return, or in the case of the first return, of the incorporation of the company.

Folio in

register ledger containing particulars

Name and Postal addresses Number of

shares held by existing members at date of return

+* ACCOUNTS OF SHARES

Remarks

Particulars of shares transferred since the dare of the last return, or in

case of the first return, of the incorporation of the company, by (a) persons who are still members and (b) persons who have ceased to be members

Number +

Dates of registration of transfer

(a) (b)

*The aggregate number of shares held by each member must be stated and the aggregates must be added up so as to agree with the number of shares

stated in summary of shares Capital and Debentures to have taken up.

When shares are of different classes these columns should be sib-divided so that the number of each class held or transferred, may be shown separately, where any shares have been converted into stock the amount of stock held by each must be shown.

The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferrer and not opposite that of the

transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer

Notes:

1. If the return for either of two immediately proceeding years has given as at the date of that return the full particulars required as to past and present

members and the shares and stock held and transferred by them, only such of the particulars need given as relate to persons ceasing to be or

becoming members since the date of the last return to shares transferred since the date or to changes as compared with that date in the amount of stock held by member.

2. If the names in the list are not arranged in alphabetic order an index sufficient to enable the name of any person to be readily found must be annexed.

6. Particulars of Directors and Secretaries

Particulars of the persons who are Directors of the company at the date of this return. (See footnote on page 6)

particulars of the person who is secretary of the company at the date of this return

Name

(In the case of an individual, present first name or names and surname.

In the case of a corporation the

Corporate name)

Any former first name or names and surname

Usual postal address. (In the case of corporation the registered office)

Signed.....Director

Signed.....Secretary

NOTES:

1. “Director” includes any person who occupies the position of a director by whatsoever name

called, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

2. “First name” includes a forename, and “surname”, in the case of peer ot person usually known by title different from his surname, means that title.

3. “Former First name” and “former surname”, do not include:-

a) in the case of any person, a former first name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

b) In the case of a married woman the name or surname by which she was known previous to the marriage

The names of all bodies corporate incorporated in Uganda of which the director is also a director, should be given except bodies corporate of which the company making the return is the wholly – owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly owned subsidiary.

A body corporate is to be the wholly-owned subsidiary of another if it has no members except that other and that other’s wholly-owned subsidiaries and its or their nominees. It the space provided in the form is insufficient particulars of other directorships should listed on a separate statement attached to this return.

Dates of birth need only to be given in the case of a company which is not private company or which, being a private company, is the subsidiary of a body corporate incorporated in Uganda which is not a private company.

Where all he partners in a firm are joint secretaries the name and principal office of the firm may be stated.

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN

Certificate to be given by a Director and the Secretary of Every private Company

We certify that the company has not since the date *(incorporation of the company/the last annual return) issued any invitation to the public to subscribe for any share or debentures of the company.

Signed.....

...Director

Signed.....

...Secretary

Further Certification to be Given if the Number of Members of the Company Exceeds One hundred.

We certify that the excess of the number of members of the company over One hundred consists wholly of persons who, under paragraph (b) of sub-section (1) of section 5 of the Companies Act,

2012, are not to be included in reckoning the number of fifty

Signed.....

...Director

Signed.....

...Secretary

Certified Copies of Accounts

In the case of any company to which section 135 of the Act applies, there shall annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates including every document required by law to be annexed to the balance sheet and a copy so certified of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet.

If the balance sheet or document required by law to be annexed to it did not comply with the requirements of the law to be annexed to it is a foreign language there must also be annexed to that balance sheet a translation in English of a balance sheet or document certified in the prescribed manner to be a correct translation.

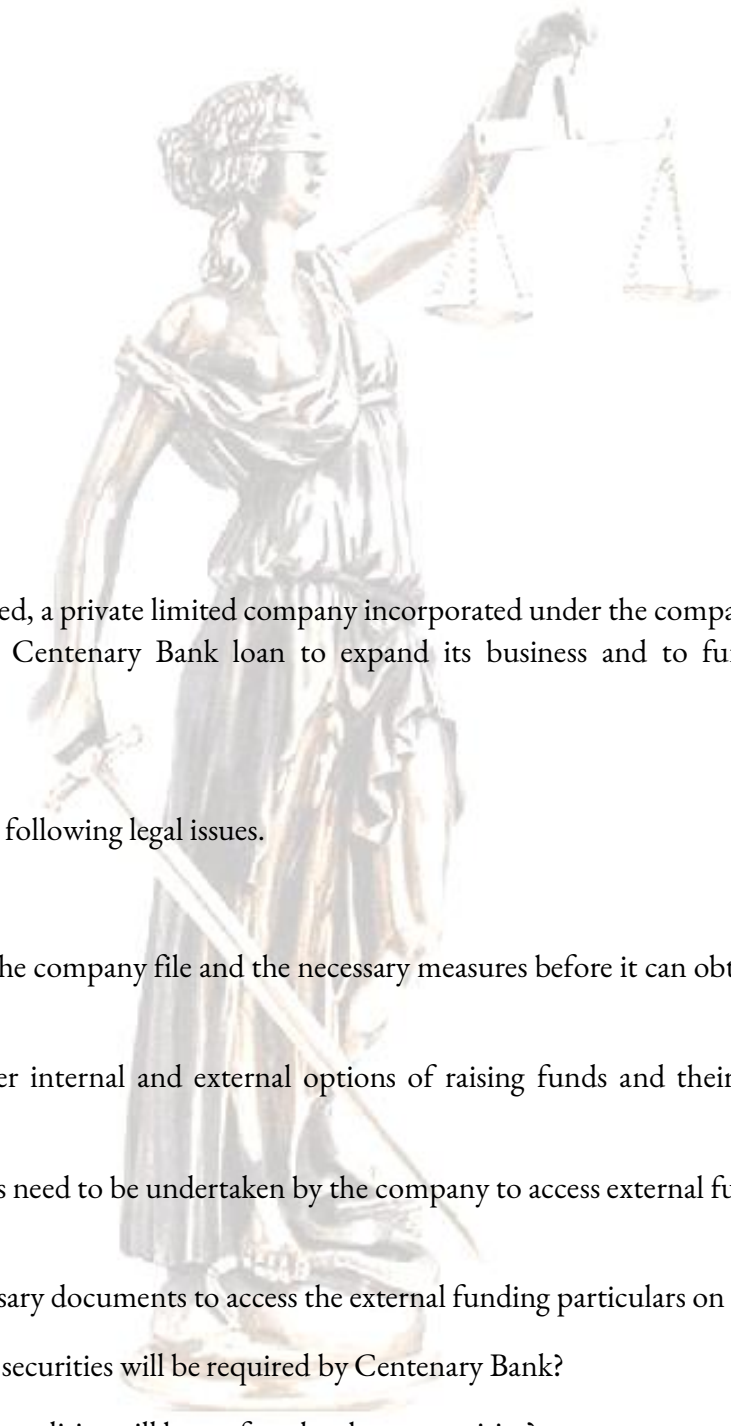
If the balance sheet or document required by law to be annexed to it did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheet or documents as the case may be, there must be made such additions to and the corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with those requirements, and the fact that the copy has been amended must be stated on it.

Signed.....

.....Director

Signed.....

.....Secretary



WORKSHOP

Brief facts

Hish Hash (U) Limited, a private limited company incorporated under the companies ordinance of 1958 is in dire need of a Centenary Bank loan to expand its business and to further set up a factory manufacturing tiles.

The facts disclose the following legal issues.

1. What gaps are on the company file and the necessary measures before it can obtain the centenary bank loan?

2. What are the other internal and external options of raising funds and their respective merits and demerits?

3. What process flows need to be undertaken by the company to access external funding from Centenary Bank?

4. What are the necessary documents to access the external funding particulars on the resolution?

5. What are probable securities will be required by Centenary Bank?

6. What procedure formalities will be perfect the above securities?

The law applicable.

1. The Companies act No. 1 of 2012
2. The Contracts act No. 7 of 2010
3. Table A of the Companies act No. 1 of 2012
4. The stamps act cap 342
5. The stamp rules S1 342-1
6. The Uganda Registration services Bureau

Issue No.1: What gaps are on the company file and the necessary measures before it can obtain the centenary bank loan?

One of the attributes of a company is that it is a legal person as per Salmon Versus Salmon (1897) AC 22. A company can therefore contract to the same extent as a natural person but however, the directing mind of the company should strictly observe and comply with the intra vires rule to avoid the executed contracts being null and void. This is a protective mechanism to insiders and outsiders who part with money on the faith of the implied representation that the capital will be applied for the business purposes stated in the company's memorandum. Therefore a company should at all times act within its objectives to avoid ultra vires, null and void contracts as per AG Versus Great Eastern Railway (1880)5AC, Rolled Steal (1985) 3

ALLER 52.

Therefore co-relating the ultra vires doctrine, the intended contract, purpose and the company objectives set out in the memorandum of association, the intended contract is intra vires, legal and valid but there are gaps on the file and correction measures that need to be taken.

a) Appointment of directors and secretary;

Article 41 of the Company's articles states the directors shall be appointed

in WRITING by the subscribers to the Memorandum of Association.

The documents on the file are executed by someone signing as a director but without stating the name of that person.

So the question as who are the directors of the company is not clear. There is no resolution of company meeting appointing the directors nor is there an appointment letter of the said directors. In absence of these, the Bank would not be certain that the persons signing have capacity to enter into such contracts.

Article 50 of the company's articles provide for appointment of company secretary by the directors. However, there is no Board resolution appointing the secretary. Yet some documents bears the signature of the secretary.

b) Manner of signing.

The manner of signing documents is in latin character, that is by writing the full name of the person appending a signature.

In FREDRICK J.K. ZAABWE v ORIENT BANK LTD SCCA No. 04 of 2006 court emphasized the execution of documents being in latin character. In this case the persons signing merely scribbled and their signatures did not give the names of the persons signing. It was held; that documents should be signed in latin character. The rationale requiring a signature to be in Latin character must be to make clear to everybody receiving that document as to who the signatory is so that it can also be ascertained whether he had the authority or capacity to sign. When the witness attesting to a signature merely scribbles a signature, without giving his name or capacity, how would the

Registrar or anyone else ascertain that that witness had capacity to witness. Court declared the mortgage invalid where there was no signing in Latin character.

The judge noted; The names of the signatories are not given, nor their

capacity to sign on behalf of the company. One cannot tell whether they are directors, secretary or even officers of the company at all. There is no company seal or stamp at all. Furthermore, even the witness to the signatures has neither disclosed his name nor his capacity to witness instruments. In the circumstances, how would the registrar know that the persons who signed the mortgage deed on behalf of the company, had authority to execute that deed? Or that the attesting witness had the legal capacity to do so?

As per the facts, the documents merely have scribbles of persons signing as director or secretary. Further Article 49 of the Company's articles require the company to sign documents by affixing a company sea but none had ever been used.

c) Return of allotment of shares.

S. 61 of The Companies Act 106 requires companies to file with the registrar for registration of a return of allotment of shares where shares have been allotted. Article 6 of the Company's articles provide that shares shall be under the control of directors who may allot them to such persons and on such terms as they think fit.

Clause 5 of the company's Memorandum of Association and Article 4 of the Company's articles show that the share capital of the company is 2,000,000 divided into 100 ordinary shares of 20,000/= with power to increase or reduce them.

S, 71 of The Companies Act 106 provides (1) A company limited by shares or a company limited by guarantee and having a share capital, if authorised by its articles, may alter the conditions of

its memorandum by—

(a) increasing its share capital by new shares of such amount as it thinks expedient

However S. 73 requires that (1) Where a company having a share capital, has increased its share capital beyond the registered capital, it shall, within thirty days after the passing of the resolution authorising the increase, give the registrar notice of the increase and the registrar shall record the increase.

Article 26(b) of the Companies Articles provide that the company may increase its share capital by ordinary resolution.

According to the Memorandum of Association out of 100 shares, only two shares were issued to two subscribers, meaning the company remained with 98 unissued shares.

However, according to the Board resolution dated 20th July 2018, Mr Jjombwe Joe, transferred

250 shares to Mrs Joy Jjombwe. He again transferred 2250 shares to Mr. Ola Otto.

This means that Joe alone had 2500 shares yet the maximum number of shares are 100 of which

98 are unissued. The question is where did the 2500 come from? This means there was increase of a company's share capital and subdivision into more shares. This requires an ordinary resolution which is not on file. Also this requires a notice to the registrar which is not on file.

Secondly, it means there was an issue and allotment of shares to Joe who had one share on subscription. Allotment of shares requires a Board Resolution which is not on file. The allotte should have been issued

with a share certificate under Article 9 but this is also not on file. Further, the company should have filed a return of allotment with the registrar but this is also not on file.

d) Notice of change of director;

According to Board resolution dated 20th july 2018, Mrs Joy Jjombwe was appointed director of company replacing mr. Jjombwe Joe. Under S. 228 of The Companies Act 106 requires S.

228(5) provides that the company shall, within the periods respectively mentioned in subsection (6), send to the registrar a return in the prescribed form containing the particulars specified in the register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

Regulation 26(2)of the Companies General Regulations 2016 provides; Every company shall notify the registrar of the appointment of a director or secretary by filing a notice with the registrar in Form 20 in the Schedule.

Further article 43 provides for removal of a director by ordinary resolution or shareholders holding more than 51% of all the shares of the company. On the file, there is a board resolution replacing Joe with Joy yet what is required is a company resolution by shareholders. This is not on file. Also the notice of change of directors is not on file. In fact this raises a contradiction in regard to the certificate of board resolution to borrow and give security which gives Jjombwe and Sam Mpiima the right to execute documents on behalf of the company but does not state in what capacity. Then five days later, a resolution is passed replacing Joe as director. The bank might be confused about the capacity of Joe in absence of a filed notice to the registrar on change of directors.

e) Board Resolution to borrow.

On file is a certificate of board resolution to borrow but the original board resolution is not attached. There is no resolution on the creation of a mortgage.

f) Guarantees;

The certificate for resolution to borrow contain numerous guarantees from Brejo (U) ltd and Directors but there is no evidence of such guarantee.

g) Contradictory dates.

The certificate of board resolution to borrow shows that the resolution was made on 15th July 2018 but again it shows it was filed on 06/02/2002 and that's when it was received.

The board resolution for transfer of shares is dated 20th July 2018 but again shows that it was filed on 26th August 1999.

The Mortgage was dated on 15th March 2006 but shows was registered 16th March

2006 but there is a handwritten date of 23/12/1988...

These dates are contradictory.

h) Profits and loss account attachments provided for in section 155(1) of the companies act and the balance sheet as per section 155 (3) which is supposed to the date when the profit and loss account is made up. This is all because in line with section 156(1), the company balance sheet gives a true and fair view of the state of affairs of the company as the end of its financial year and also every profit and loss account of the company gives a true and fair view of the profit or loss of the company for the financial year.

i) A satisfaction certificate of all previous charges on the intended property of the company debenture. There was a previous mortgage created on 15th March 2006 and it is therefore pertinent to find out whether the property was released from the charge and a memorandum of satisfaction issued because the company seems to want to charge the same property.

Task 2. Advise the company on the available options of funding, both internal and external. Discuss the merits and demerits of each option.

Corporate financing refers to the transactions by which accompany raises capital in order to create, develop or grow its business.

According to Gower & Davies, Principles of Modern Company Law, 9th Edition there are 2 broad ways in which a company can fund its operations, internally and externally .These are discussed below.

The internal options include;

1) Share capital / Equity financing.

The funds provided by the company's shareholders in exchange for shares are referred to as

share capital. It can also be termed as equity or shareholders equity. Equity is a term used to describe ordinary share capital of a company. Thus equity financing is a contribution made out of the shareholders own fund or from a retained profits to the company. The company reserves power to increase the share capital hence generating more funds.

2) Allotment and issue of shares at nominal value.

After the company has been registered, any unissued shares may be allotted to interested persons, the allotees must pay the company the nominal value of shares and thus the company earning more funds this method.

A right issue is an offer of new shares to existing shareholders in proportion to their current holding. A right issue is communicated by sending a letter of allotment to all shareholders and the shareholder pays the issued shares in accordance with terms of issue.

Therefore, since Hish Hash (Uganda) Ltd has own issued shares, the same can be allotted to existing shareholders at a nominal value so as to raise more funds.

3) Issuance of unallotted shares at a premium.

Section 66 of the Companies Act permits Company's to issue shares at premium. This happens in instances in which a company issues shares at an amount which is higher than their nominal value.

According to the Gower & Davies, Principles of Modern Company Law 9th edition at Pg 891- Allotment is the process by which a company finds someone who is willing to become a shareholder of the company.

A premium is the difference between the nominal value of the shares and what is actually paid and in this case, if it is the amount which exceeds the nominal value of the share.

Section 5(1) (c) Companies Act prohibits Private companies from inviting of the public to subscribe for any shares in the company.

4) Issuance of Redeemable shares.

Section 68 of the Companies Act, a company limited by shares can issue redeemable shares. According to Nelson Nerima, "A practical guide to company law and practice in Uganda", the

term redeem means bought back, preference refers to those shares which have priority over ordinary shares, usually fixed at a percentage per value.

S 68 (2) (a) the said shares if issued have to be redeemed or bought back out of the profits of the company they must be fully paid for.

There must be unallotted shares out of which the redeemable preference shares may be issued and the Act must be permissible under the company's articles of associations.

Regulation 3 of Table A of the Companies Act allows accompany to issue preference shares. This shall be effected by an ordinary resolution.

Therefore Hish Hash (Uganda) Limited, the company redeemable preferences shares.

5) Increase of share capital.

The company can increase its nominal share capital in order to create new shares.

Regulation 44 of the companies act provides that the company may from time to time by ordinary resolution increase the share capital by such sum to be divided into shares of such amount as the resolution shall prescribe

S.71 (2) Companies Act –(1) (a) of the Company ltd by shares if authorized by its articles, may alter the conditions of its memorandum by increasing its share capital by new shares of such amount, as the resolution shall prescribe.

Regulation 20(2) of the Companies (General) Regulations provides that the increase of share capital is effected by special resolution of the company in a general meeting.

Regulation 20(1) of the Companies (General) Regulations provides that this resolution shall be accompanied with notice of increase of the share capital by filling Company Form 12 which must be filled with the registrar of companies.

A stamp duty shall be paid to that effect of 0.5% of the increment.

Registration fees for the ordinary resolution, notice of increase of share capital and return of allotment are also payable.

However Article 26 of the Articles of association of Hish Hash (Uganda) limited allows the company to increase its share capital by ordinary resolution.

6) Retained profits.

According to Nelson Nerima, A practical guide to company law and practice in Uganda, a company law and practice in Uganda' a company can retain money instead of distributing it to shareholders as dividends.

Article 128 table A the company may in general meeting upon recommendation of directors, resolve that it is desirable to capitalizes any part of the amount for time being to stand to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or at for distribution.

Article 51 of the Articles of Hish allows the company to capitalize its profits and Article 53 allows directors to create a reserve fund.

The company therefore has an option of retaining the dividends of the shareholders so as to fund its operations .

Call on shares

The company can raise funds internally by calling on shares.

A call is a demand from the company to a member to pay all or part of the money unpaid on his share.

Art 16 of the company's articles permits directors of the co. to call upon members in respect of it, all or any monies unpaid of shares, whether on account of nominal values or by way of premium.

Therefore in case a company had unpaid up shares, it can make a call on them.

External options of funding.

Private companies have limited sources of funding. These include banks, insurance companies and other financial institutions.

1. Borrowing (Debts Financing)

The Memorandum of Association allows the company to borrow money for corporate purposes (Clause 3(i) by making and accepting promissory notes, bills of exchange, bonds, debentures and to secure payment of any obligations by mortgage, pledge, guarantee, deed of trust or otherwise.

Debt securities are financial instruments issued by a company to financers in exchange for cash where a company agrees to pay the money at an agreed date with interest.

A charge is a form of security for payment of a debt or other obligation consisting of the right of the creditor to receive payment out of some specific fund or out of the proceeds of the realization of specific property.

A company's borrowing must be for reasons consistent with the company's objects contained in

the memorandum as per the case of Re-introduction Ltd V Nathan Provincial Bank 1970 Ch. D

199-209

2. Over draft

It allows a company to draw money from the bank in excess of the amount in credit or an agreement between the bank and the company that allows the business to over draw their account up to an agreed limit and for a specific time to help overcome a temporary cash fall. The company can obtain an overdraft from where it maintains a current account. No security is required but the parties may agree to have security for an overdraft which may be converted into a loan.

Advantages

- It assists with liquidity/ cash flow problems

- Can be arranged at short notice

- Convenient

- Easy to make repayments

- Tax deductions on interests.

Disadvantages

-High interest rate as interest is charged for each day the account is overdrawn.

3. Bank loan

It involves Conventional lending through a financial institution such as a bank or credit union is available for a private business that can provide proof of a strong financial track record. Banks may require owners to show revenue sources, profit levels and detailed business plans prior to approving the loan.

Advantages

- It allows extended repayment over time.

-Creditors have priority over equity holders and must be paid interest on the money borrowed before dividends are paid to shareholders

Disadvantages

-It does not favor businesses in the start -up phase as they usually don't qualify for

financing from a bank, nor does an established company that makes losses each year.

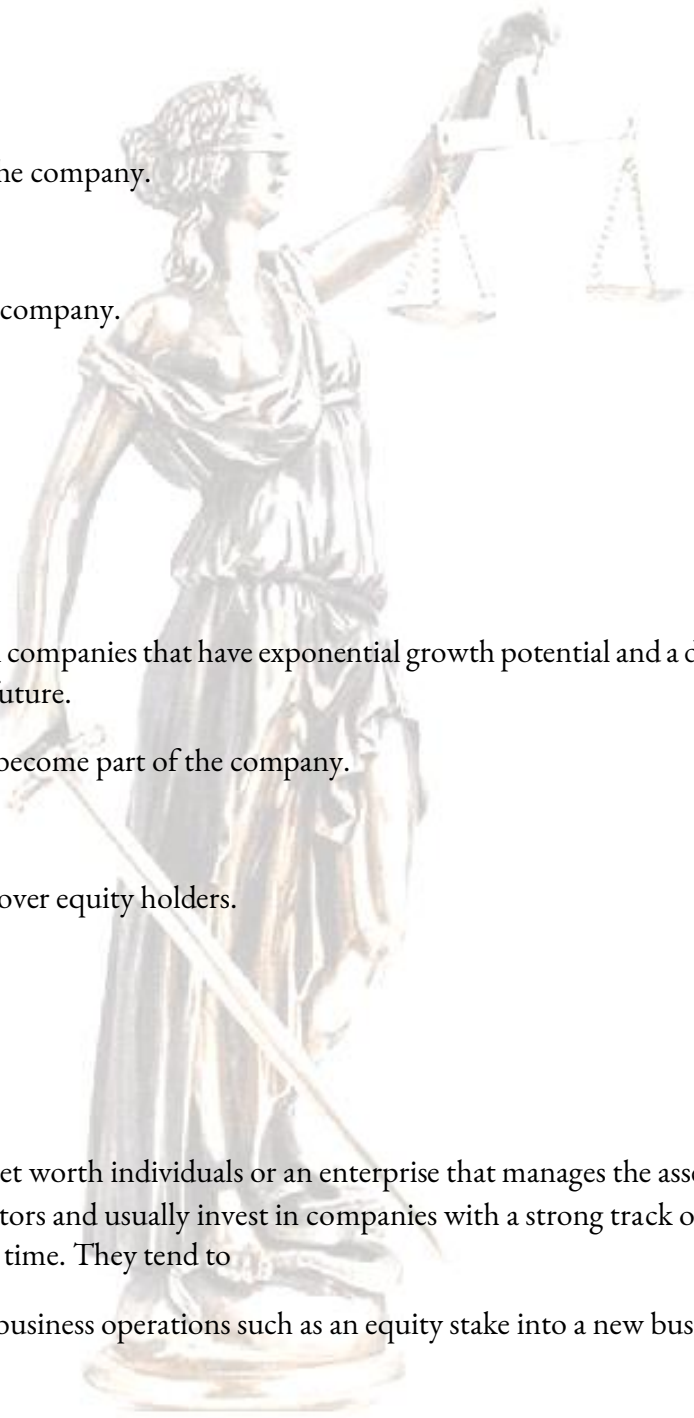
-The interests on the loan tend to be high making it hard to make repayments.

-the creditor may force the company in to bankruptcy where the debtor is unable to pay or work out an arrangement with the creditor.

4. Saving of the Investors. (Equity)

Investors are usually high net worth individuals who lend funds to companies in exchange for an ownership stake in the company. The business seeking funding must pitch its need for financing along

with current financial statements, its business plan and a viable exist strategy because most angle investors are professionals in private equity.



Advantages

-High income flow for the company.

-It creates equity for the company.

Disadvantages

- They usually work with companies that have exponential growth potential and a desire to transition from private to public in the future.

-They usually intend to become part of the company.

-Creditors have priority over equity holders.

5. Venture capital.

This is a group of high net worth individuals or an enterprise that manages the assets of those individuals. They are similar to investors and usually invest in companies with a strong track of revenue and potential for extreme growth over time. They tend to

require an active role in business operations such as an equity stake into a new business, a

management buyout or a representative appointed to the company's board. They also tend to require an exit strategy which makes this financing option best for companies that plan to go public or sell to another company in the future.

Disadvantages

- They require a high expected rate of return on investments to compensate for the high risk. They usually don't want to retain their investment in a business

indefinitely.

6. A private company can also go public so as to raise funds.

This can be done by inviting the public to subscribe for shares and debentures in the company as a means of raising additional funds. This can be through direct offers to the public done by means of a prospectus issued by the company. It can also be through offers to sale i.e. the company sells the issue of shares or debentures to an issuing house which invites the public through a prospectus to buy the shares at a high price. The issuing house bears the risk and is responsible for underwriting the issue.

Alternatively capital can be raised through placing, which is done by the issuing house undertaking to place the securities with or without buying them itself. The issuing house then persuades its clients to buy the securities.

Disadvantages

The company becomes a public company from a private company limited by shares.

7. Donation / Grants

8. Government assistance

The government provides finance to companies in cash grants and other forms of direct assistance as part of its policy of helping to develop the national economy.

9. Franchising

This alternative to raising extra capital for growth. It is a method of expanding business on less capital than would otherwise be needed by the franchise paying the franchisor for the right to operate a local business, under the franchisors trade name.

Advantages

-the capital outlay needed to expand the business is reduced substantially.

-the image of the business is improved and the franchise benefits from the franchisors

company's good name.

Task 3. Advise the company on the process flow so as to access external funding from its bankers Centenary Bank.

Article (1) of the Memorandum of Association of Hish Hash (U) Limited empowers its directors to borrow money for its corporate purpose, and to make, accept, endorse, execute and issue promissory notes, bills of exchange, bonds, debentures other obligations from time to time, for the purchase of property or for any purpose relating to the business of the company and if deemed proper, to ensure the payment of any such obligations by mortgage, pledge, guarantee, deed for trust or otherwise.

Section 13 of the Companies Act Cap 2012 empowers Company limited by shares to adopt Table A if so requires. Hence Article 79 of the same Table gives the directors powers to borrow on behalf of the company through a board resolution. However the same Act is to the effect that if accompany wants to

borrow money which exceeds the nominal amount of the share capital of the company shall be required to call an extra general meeting to pass an ordinary resolution to borrow such amount of money.

However, the Articles of HishHash specifically excluded application of Table A by 1 of the articles. Money lent by the bank or other lender is known as debt facility and the contract made thereunder is

under is known as a loan agreement or facility agreement which should contain; the type of facility,

amount of the facility, interest rate and how it is to be computed, collateral or security required, penalties, conditions present, representations and warranties, methods and procedure of realisation of security, undertakings, purpose of the facility, conditions subsequent, and other terms the parties deem necessary.

There are various types of facilities such as overdraft facility, term loan, receiving credit facility, syndicate facility

The process flow for a company to access external funding from the bank centenary bank is as follows;

1. BOD should first make inquiries regarding the securities to be pledged and availability of funds

2. Hold a board meeting.

Article 98(1) of Table A provides that the directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meeting, as they think fit. The quorum if not fixed is two.

Article 86 of the same table is to the effect that directors shall cause minutes to be made in books provided for the purpose with all resolutions and proceedings at all meetings of the company and the names of every directors present at the meeting.

3. Aboard resolution.

This is obtained from the minute taken from the board meeting held under Article 98 of the

Table A of the Company Act Cap 2012.

4. Notice to members for an extra general meeting.

However, when a company intends to borrow a loan that exceeds the nominal share capital of a company, it shall issue out notice to hold an extra ordinary general meeting as required under Article 32 of the articles of HishHash allows directors to call for an extra ordinary general meeting.

5. Hold an extra-ordinary general meeting.

This must be in conformity with Article 52 of Table A of the Act which provides and governs the proceedings at a general meeting.

6. An ordinary resolution.

Article 79 of the same table is to the effect that the company shall only borrow such amount of money which exceeds its share capital if it is duly passed and approved through an extra ordinary general meeting and a resolution passed to that effect.

7. Filling of the above resolutions to the registrar of companies for registration.

8. Apply to the bank formally for a loan with certified copies of Memorandum of Association and

Articles of Association.

5. Enter into a loan agreement with the bank.

ORDINARY RESOLUTION

At the meeting of company shareholders and members held at its registered offices on the ..... day of ..... 2018, an ordinary resolution was passed as follows:-

1. That the Company increases and consolidates its current share capital to a sum of UGX. 500,000,000/= divided into 100 shares of 5,000,000/= each.

2. That the said increased and consolidated share capital is divided between JJOMBWE JOY, SAM MPIIMA and JJOMBWE JOE in a sum of

80, 10 and 10 shares respectively.

3. That the Registrar of Companies be notified accordingly.

Dated at Kampala this.....day of.....2018

.... SAM MPIIMA JJOMBWE JOE
(SHAREHOLDER/DIRECTOR) (DIRECTOR/SHAREHOLDER)

.....

JJOMBER JOE (SHAREHOLDER)

Drawn By:-

SUI GENERIS & Co. Advocates

Company Form 12

THE REPUBLIC OF UGANDA

Reg 20

THE COMPANIES ACT

NOTICE OF INCREASE OF SHARE CAPITAL

(Under section 73 of the Act)

TO: THE REGISTRAR OF COMPANIES

.....

(Insert name of company)

Hereby gives notice in accordance with section 73 of the Act that by resolution of the company dated the .....day of.....the year....., the share capital of the company was increased from..... to.....

A copy of the resolution authorizing the increase is attached.

The conditions (such as voting, dividend rights) subject to which the new shares have been or are to be issued are as follows:

Signed.....

(Director/Secretary)

Dated this.....day of.....the year.....

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE COMPANIES ACT No.1/2012

AND

IN THE MATTER OF HISH HASH (U) LIMITED

ORDINARY RESOLUTION

At the extraordinary meeting of company shareholders and members held at its registered offices on the ..... day of ..... 2018, an ordinary resolution was passed by the shareholders and members as follows:-

1. That the shareholders and members resolved and approved the

Directors' resolution to borrow UGX. 50,000,000/= and USD 350,000.

2. That the Registrar of Companies be notified accordingly.

Dated at Kampala this.....day of.....2018

.... SAM MPIIMA JJOMBWE JOE
(SHAREHOLDER/DIRECTOR) (DIRECTOR/SHAREHOLDER)

.....

JJOMBER JOE (SHAREHOLDER)

Drawn By:-

C1 Advocates

Company Form 14

THE REPUBLIC OF UGANDA

Reg 23(3)

THE COMPANIES ACT

STATEMENT OF PARTICULARS OF CHARGES TO SECURE A SERIES OF DEBENTURES.

(Under section 105 (8) of the Act)

Name of the company:..... Presented by:.....

The company hereby gives notice that the following charges created by the

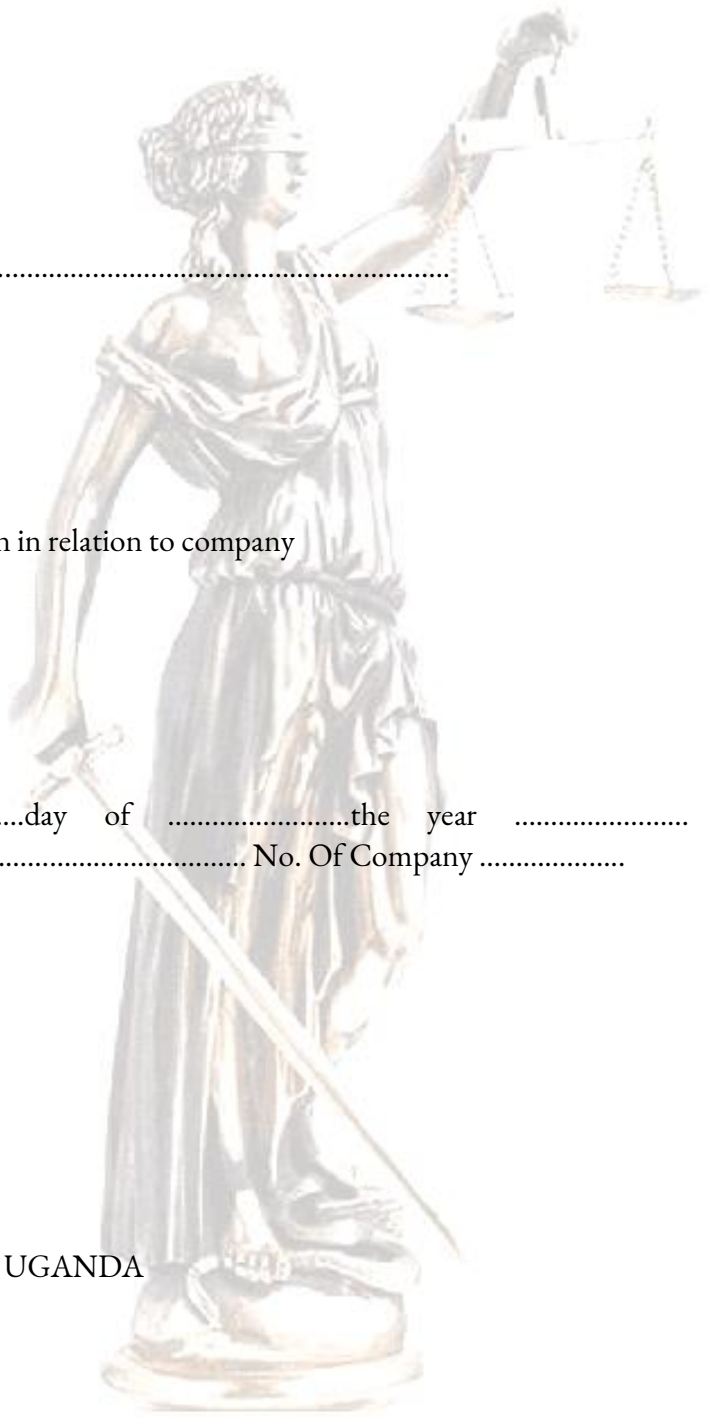
company are subsisting-

Date & Description of the instrument creating or

evidencing the mortgage or Charge Amount secured Short Particulars of property

mortgaged or charged Names, addresses and Description of mortgages or persons entitled

to the charge Commissions/ allowances/ discounts paid by company



Signature: .....

Designation of Position in relation to company

Dated this .....day of .....the year ..... Company Number ..... No. Of Company .....

GOVERNMENT OF UGANDA

FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL

Third Schedule Part II (section 132)

Annual return of ..... Limited,

made up to the ..... day of ..... 20 ..... being

the fourteenth day after the date of the annual general meeting for the year 20.....).

1. Address. (Situation and postal address of the registered office of the company)

2. Situation of registers of members and debenture-holders. a) (Address of place at which the register of

members is kept, if other than the registered office of the company).

b) (Address of any place in Uganda other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of that register or part of the register

which is kept outside Uganda).

Delivered for filing by .....

Note: All parts of the form must be properly completed; if not applicable using the words “not applicable”,“nil”, “none”, etc

Name & address of the Auditor.....

3. Summary of share Capital and Debentures

a) Nominal Share Capital

Nominal Share Capital Shs.....divided into:

(Insert number and class)

..... Share of .....each

..... Share of .....each

..... Share of .....each

b) Issued Share Capital and Debentures

Number Class Number of shares of each class taken up to date ....Shares of this return (which number must agree with the ....Shares total shown in the list held by existing members.) ....Shares

....Shares

Number of shares of each class issued subject to

Payment wholly in cash

.....

.....

.....Shares

.....Shares

....Shares

....Shares

....Shares

....Shares

....Shares

....Shares

Number of shares of each class issued as fully paid up for a consideration other than cash.

Shares issued as paid up to the extent of shs.....per share Shares issued as paid up to the extent of shs.....per share Shares issued as paid up to the extent of shs.....per share Shares issued as paid up to the extent of shs.....per share

Number of shares (If any) of each class issued at ....Shares

a discount ....Shares

....Shares

....Shares

Amount of discount on the issue of shares, which

has not been written off at the date of this return Shs .....

Amount called Shs.....per share on..... .....Shares

up on number Shs.....per share on ....Shares

of shares of Shs.....per share on..... .....Shares

each class Shs.....per share on ....Shares

Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited Shs.....

Total amount (if any) agreed to be considered as paid on number of shares of each class issued as fully paid up for a consideration other than cash

Shs.....on

....shares

....shares

....shares

....shares

Total amount (if any) agreed to be considered as paid on number of shares of each class issued as partly paid up for a consideration other than cash.

Shs.....on

....shares

....shares

....shares

....shares

Total amount of calls unpaid Shs.....

Total amount of the sums (if any) allowed by way of commission in respect of any shares of debentures.

Shs.....

Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of last return

Shs.....

Total number of each shares of each class forfeited Number Class

....shares

....shares

....shares

....shares

Total amount paid (if any) on shares forfeited Shs.....

Total amount of shares for which shares warrants to bearer are outstanding.

Shs.....

al amount of share warrants to bearer issued and surrendered respectively since the date of the last return.

Issued:

Surrendered:

Shs.....

Shs.....

Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind.

Shs.....

Particulars of Indebtedness .....ount of indebtedness of the company in respect of all mortgages and charges which are required to

be registered with the Registrar of Companies under the companies Act. 2012

Shs.....t of Past and Present Members

List of persons holding shares or stock in the company on the fourteenth day after the annual meeting for 20.....and of persons who held shares or stock therein at any time since the date of the last return, or in the case of the first return, of the incorporation of the company.

Folio in

register ledger containing particulars

Name and Postal addresses Number of

shares held by existing members at date of return

+* ACCOUNTS OF SHARES

Remarks

Particulars of shares transferred since the dare of the last return,

or in case of the first return, of the incorporation of the company, by (a) persons who are still members and (b) persons who have ceased to be members

Number +

Dates of registration of transfer

(a) (b) *The aggregate number of shares held by each member must be stated and the aggregates must be added up so as to agree with the number of shares stated in summary of shares

Capital and Debentures to have taken up.

When shares are of different classes these columns should be sib-divided so that the number of each class held or transferred, may be shown separately, where any shares have been converted into stock the amount of stock held by each must be shown.

The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferrer and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer

Notes:

1. If the return for either of two immediately proceeding years has given as at the date of that return the full particulars required as to past and present members andthe shares and stock held and transferred by them, only such of the particulars need given as relate to persons ceasing to be or becoming members since the date of the last return to shares transferred since the date or to changes as compared with that date in the amount of stock held by member.

2. If the names in the list are not arranged in alphabetic order an index sufficient to enable the name of any person to be readily found must be annexed.

6. Particulars of Directors and Secretaries

Particulars of the persons who are Directors of the company at the date of this return. (See footnote on page 6)

Particulars of the person who is secretary of the company at the date of this return

Name

(In the case of an individual, present first name or names and

surname.

In the case of a corporation the

Corporate name)

Any former first name or names and surname

Usual postal address. (In the case of corporation the registered office)

Signed.....Director

Signed.....Secretary

NOTES:

1. “Director” includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

2. “First name” includes a forename, and “surname”, in the case of peer ot person usually known by title different from his surname, means that title.

3. “Former First name” and “former surname”, do not include:-

a) in the case of any person, a former first name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

b) In the case of a married woman the name or surname by which she was known previous to the marriage

The names of all bodies corporate incorporated in Uganda of which the director is also a director, should be given except bodies corporate of which the company making the return is the wholly – owned

subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly owned subsidiary.

A body corporate is to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees. It the space provided in the form is insufficient particulars of other directorships should listed on a separate statement attached to this return.

Dates of birth need only to be given in the case of a company which is not private company or which, being a private company, is the subsidiary of a body corporate incorporated in Uganda which is not a private company.

Where all he partners in a firm are joint secretaries the name and principal office of the firm may be stated.

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN

Certificate to be given by a Director and the Secretary of Every private Company

We certify that the company has not since the date *(incorporation of the company/the last annual return) issued any invitation to the public to subscribe for any share or debentures of the

company.

Signed.....

...Director

Signed.....

...Secretary

Further Certification to be Given if the Number of Members of the Company Exceeds One hundred.

We certify that the excess of the number of members of the company over One hundred consists wholly of persons who, under paragraph (b) of sub-section (1) of section 5 of the Companies Act,

2012, are not to be included in reckoning the number of fifty

Signed.....

...Director

Signed.....

...Secretary

Certified Copies of Accounts

In the case of any company to which section 135 of the Act applies, there shall annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates including every document required by law to be annexed to the balance sheet and a copy so certified of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet.

If the balance sheet or document required by law to be annexed to it did not comply with the requirements of the law to be annexed to it is a foreign language there must also be annexed to that balance sheet a translation in English of a balance sheet or document certified in the prescribed manner to be a correct translation.

If the balance sheet or document required by law to be annexed to it did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheet or documents as the case may be, there must be made such additions to and the corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with those requirements, and the fact that the copy has been amended must be stated on it.

Signed.....

.....Director

Signed.....

.....Secretary

*In the case of the first return strike out the second alternative. In the case of the second or subsequent return strike out the first alternative.

e) What is the possible range of securities Centenary Bank may require of the company?

In Bristol Airport Plc. Vs. Powdrill (1990) Ch. 744 at 760, Browne- Wilkinson V.C stated; "Security is created where a person (the Creditor) to whom an obligation is owed by another (the debtor) by statute or contract, in addition to the personal promise of the debtor to

discharge the obligation, obtains rights exercisable against some property in which the debtor has

an interest in order to enforce the discharge of the debtor's obligation to the creditor."

Gower and Davies in Principles of Modern Company Law, 9th Edition mentions the essential features of a security;

a) Classification of security interests is a matter of law and depends upon the rights agreed upon between the parties, not on their intention to create one form of security rather than another.

b) Every security gives the holder a proprietary claim over assets. An unsecured creditor on the hand merely has a personal claim to sue for the payment of their debt.

The learned authors stated further the benefits of taking security to include;

i. In the event of insolvency of the company, a secured creditor has priority over unsecured creditors.

ii. A secured creditor has a right of pursuit. This arises where a company wrongfully

disposes of the property subject to the charge. The charge is entitled to enforce the security against any identifiable proceeds of the disposition.

iii. It gives the holder the right of enforcement. This allows a charge to remain outside any concurrent insolvency proceeding and to enforce the charge independently of such proceedings.

iv. Affords a charge a measure of control over the business of the debtor.

The possible securities include;

1. Debentures.

Section 2 of the Companies Act defines debentures to include debenture stock, bonds and other securities of a company whether constituting a charge on the assets of the company or not.

In Levy Vs. Abercorris Slate & Slab Co. (1887) 37 Ch. D 260 at 264 Per Chitty J, " The Word debenture is not, either in law or commerce, a strictly technical term, or what is called a term of art. Etymologically, the word is a derivation from the Latin Debentur mihi meaning "owing" which were the opening words of certain documents which used to be issued by the English companies in the 1860s as acknowledgement of a loan the companies had received from persons to whom the debenture was issued. With the passage of time, the word acquired the meaning it generally has today, namely a document issued by a registered company to acknowledge or evidence an indebtedness primarily"

A number of documents have been held to be debentures.

□ A legal mortgage of freehold and leasehold land (Knightsbridge Estates Trust Ltd Vs

Bryne (1940) AC 613).

□ A series of income bonds by which a loan to a company was repayable only from profits.(Lemon Vs Austin Friars Investment Trust Ltd (1926)Ch. 1)

□ A note by which a company undertook to pay a loan but have no security. (British India

Steam Navigation Co. Vs IRC (1881)7 QBD 165).

Types of Debentures.

• Debentures issued singly or in a series.

Debentures may be issued in a series, e.g. where there is a public offer, or alternatively they may be issues singly, e.g. to secure a bank loan or overdraft. Where debentures are issued in a series, it is usual to provide expressly that they are to rant pari passu i.e. equally. This is essential because loans rank for priority according to the time they are made, and if such expression provision was not made, the debentures in the series would rank for priority of payment and security according to the date of issue, and if all were issued on the dame day, they would rank in numerical order.

Where debentures rank pari passu, there can be no action at law brought by an individual debenture holder merely in respect of his own rights, and any such action brought by him is deemed to be a representative action on behalf of all the debenture holders of the series.

In Gartside Vs Silkstone and Dodworth Coal and Iron Ltd (1882) 21 Ch. D 762, "When two deeds are executed on the same day, the court must inquire which of them was executed first, but if there is anything in the deeds to show such an intention, they may take effect pari passu."

• Secured debentures.

These are normally secured by a charge on the company's assets, either by a provision to that effect in the debenture itself, or by the terms of the trust deed drawn up in connection with the issue. Sometimes a provision appears in both documents.

In Mbarara Coffee Curing Works Vs Grindlays Bank (1976) HCB 175, the bank had a debenture secured as a floating charge over movable property and a fixed charge over immovable property. The Bank sealed the factory and sold it to realize the money owing. Court held that at the time the bank realized its security, the debenture was valid and operative. The company had not discharged it. The company never requested a discharge and the bank was therefore entitled to realize its security under the debenture for so long as discharge had been executed or money owing paid.

A negative pledge or restrictive clause is a term in a debenture or other loan security by which the company undertakes not to create later charges ranking in priority or pari passu with the present security.

In Rother Iron Works Ltd Vs Canterbury Precision Engineers Ltd (1973) ALL ER 394; court held that a negative pledge or restrictive clause in a secured debenture is an equitable restriction on the company's power to create later charges having priority to the first. It will therefore bind a later charge having notice of the pledge and a later equitable charge having no notice of the pledge if the equities between the first and second charge are equal.

• UNSECURED DEBENTURES

Such a debenture is no more than an unsecured promise by the company to repay the loan. The holder can, of course, sue the company on the promise, but is only an ordinary creditor in a winding up, although, since he is a creditor, he can petition the court for a winding up. A negative pledge in an unsecured debenture will not constitute an equitable restriction on the company's power to create further charges and will operate only contractually between the company and the original lender.

• REGISTERED DEBENTURES.

These are recorded in the register of debenture holders. Such debentures are transferrable in accordance with the provisions of the terms of issue, but transfer is usually effected by an instrument in writing a way similar to that of shares. The transferee of a debenture takes it subject to equities, and this includes claims which the company has against the transferor. However, the company's claims are normally excluded by the terms of issue of the debentures, these terms usually stating that the money secured by the debentures will be paid without regards to any equities between the company and the previous holders.

In Hilger Analytical Ltd Vs Rank Precision Industries Ltd (1984) BCLC 301; held that where the actual agreement specifically allows the holder of transfer free of all equities, following such a transfer, the issuing company is bound to register the transfer.

Under Section 99(3) of the Companies Act, every registered holder of debentures may require a copy of the register of the holders of debentures of the company or any part of it on payment of a reasonable fee prescribe by the company for every hundred words required to be copied.

• Redeemable debentures.

Debentures are usually redeemable, and the company may provide a fund for their redemption. The annual amount so provided must be charged whether profits are made or not, though in some cases the terms of issue may stipulate that the fund be provided only out of profits, if made.

DEBENTURES MAY BE REDEEMED IN THE FOLLOWING WAYS.

a) By drawings by lot, either at the company's option or at fixed intervals.

b) By the company buying them in the market, and if the debentures are brought in the market at a discount, the consequent profit to the company is a realized profit available for divided unless the articles otherwise provide.

c) By the company redeeming them either out of a fund or possibly by a fresh issue of debentures. A fresh issue is useful to the company where rates of interest have fallen, because the old debentures can be redeemed and the money re-borrowed by the fresh issue at lower rates of interest. Where redemption is by fresh issue, it is usual to allow the existing debenture holders to exchange the old debentures for the new ones if they so wish.

The company will redeem at a fixed future date, but usually has an option to redeem on or after a given earlier date, and this allows the company to choose the most convenient time for redemption.

Section 112 of the Companies Act provides for the powers to reissue redeemed debentures in certain cases.

• Bearer debentures.

They are negotiable instruments and are transferable free from equities by mere delivery and it is not necessary to give the company notice of transfer. Interest is paid by means of coupons attached to the debenture, these coupons being in effect an instruction to the company's banker to pay the bearer of the coupon a stated sum on presentment to the bank after a certain date. The company can communicate with the holders of bearer debentures only by advertisement, and it is often provided that the holders of such debentures may exchange them for registered debentures.

• Irredeemable Debentures.

A debenture which is issued with no fixed date of redemption is an irredeemable debenture, though such debentures are redeemable on a winding up, and the liquidator is empowered to discharge them. In addition, irredeemable debentures always empower the debenture holders to enforce their security should the company, for example fail to pay interest on the loan and such enforcement will result in the payment of the debenture debt.

Section 101 of the Companies Act provides that such debentures may be issued, and this provision is necessary because otherwise the general rule of equity, that redemption of a mortgage cannot be postponed for long a time, would apply. The result is that a company can create long mortgages over its land and other property by means of debentures, whether irredeemable or for a long contractual period prior to redemption.

Acquisition of debentures.

□ Issue by the company

Article 79 Table A; the directors may exercise all the powers of the company to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party.

A company may issue debentures either individually or in a series or in a series. They may be allotted at par, at a discount, or at a premium, unless this is forbidden by the company's articles. If debentures are issued at a discount together with a right to exchange them for shares at par value, the debentures are good but the right to exchange is void unless the provisions of Section

67 that permit the issue of shares at a discount are complied with.

If a person agrees to take a debenture from the company in return for a loan, the contract may be enforced by both the lender and the company by specific performance. Section 103 gives this right because, in the absence of such statutory provision, equity would not specifically enforce a loan.

Under Section 91 (1); A company shall, within sixty days after the allotment of any of its shares, debentures or debenture stock and within two months after the date on which a transfer of the shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

Registered debentures are transferrable in accordance with the method laid down in the terms of issue, usually a stock transfer form as for share. The company cannot refuse to register a properly stamped transfer provided the terms of issue allow transfers and contain restrictions, but a proper instrument of transfer must be produced to the company except in cases of transmission. Where the company refuses to register a transfer, it must send a notice to this effect to the transferee of the transfer being lodged.

Certification by the company of an instrument of transfer has the same effect in the case of debentures as it has in the case of shares, i.e. it is representation that documents have been produced to the company which shows a prima facie title in the transferors. In the case of bearer debentures, transfer is by mere delivery and the company is not involved.

Section 85 of the Companies Act; Notwithstanding anything in the articles of a company, it is not lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company.

Section 90: Certification of a transfer.

(1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company, such documents as on the face of them show a prima facie title to the shares or debentures in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares or debentures.

(2) Where a person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him or her as if the certification had been made fraudulently.

(3) For the purposes of this section—

(a) an instrument of transfer shall be taken to be certified if it bears the words "certificate lodged" or words to the like effect;

(b) the certification of an instrument of transfer shall be taken to be made by a company if—

(i) the person issuing the instrument is a person authorized to issue certificated instruments of

transfer on the company's behalf; and

(ii) the certification is signed by a person authorized to certificate transfers on the company's

behalf or by any officer or servant either of the company or of a body corporate so authorized; (c) a certification shall be taken to be signed by a person if—

(i) it purports to be authenticated by his or her signature or initials whether handwritten or not;

and

(ii) it is not shown that the signature or initials was or were placed there by himself or herself or by any person authorized to use the signature or initials for the purpose of certificating transfers on the company's behalf.

Under Section 99 of the Companies Act, a debenture holder has a right to inspect the register of debenture holders and to have copies of a trust deed.

Company Charges

Any charge created by a company over an asset may be a legal charge or an equitable charge. A legal charge will, potentially, bind any person who acquires a charged asset from the company, even if that person knows nothing of the charge (however, note that the position is different where the charge is registrable.

In contrast, an equitable charge does not bind a person who subsequently acquires an interest in the charged asset bona fide, for value and without notice of the existence of the charge

Debentures may be secured by a fixed or by a floating charge, or by a combination of both types of charge. The expression "mortgage debenture" normally denotes a debenture secured by a fixed charge.

A) Fixed (or specific) charge.

Such a charge usually takes the form of a legal mortgage over specified assets of the company. E.g. its land and buildings and fixed plant. The mortgage is usually created by a charge by deed expressed to be by way of legal mortgage.

The major disadvantage from the company's point of view is that it cannot dispose of the assets subject to the charge without the consent of the debenture holder. However, the major advantage for the directors in a fixed charge because they will almost always have personally guaranteed the company's draft, and in insolvency it is important to them that the bank gets as much as possible from the debenture securing the overdraft so that their liability is extinguished or reduced.

It is trite to note that a fixed charge is not postponed to preferential creditors and other creditors as is a floating charge and the bank will get more from the security on realization.

B) Floating charge

In Illingworth Vs Houldsworth (1904) AC 355; per Lord Halsbury LC; The terms "floating charge" and "floating security" mean a charge or security which is not to be put into immediate operation, but is to float over a company's assets so that the company is allowed.

In Re Yorkshire Woolcombers Association Ltd (1903) 2 Ch. 284, Romer L.J stated that if a charge has the following 3 characteristics, it is a floating charge.

i. If it is a charge on a class of assets of a company present and future

ii. If that class is one which, in the ordinary course of the business of the company, would be changing from time to time.

iii. If you find that by the charge it is contemplated that, until some future step is taken by or on behalf of those interested in the charge, the company may carry on its business in the ordinary way as far as concerns the particular class of assets I am dealing with..

In other words, a fixed or specific charge is taken over identified assets of the company, not used in the day to day business of the company whereas a floating charge may cover company assets used in the ordinary course of business.

The charge floats or hovers over the assets until some event occurs causing it to crystallize. This may arise with default of payment, default of the company, liquidation or is wound up or cessation of business, etc.

□ When is a charge deemed to have crystallized?

The essence of a floating charge is that it leaves the company free to deal with the charged asset in the ordinary course of business without consulting the charge holder (although the security contract may restrict this freedom). Since a floating charge is over a class of assets, the chargee is uncertain as to the value of his security at any moment before the charge 'crystallises'.

Crystallization, when a floating charge becomes a fixed charge over the assets currently comprising the relevant class, occurs automatically on the happening of certain events, namely:

a) if a receiver is appointed by the court or any chargee;

b) when winding up commences (even a member's voluntary winding up); or

c) when the company ceases to carry on its business as a going concern

However, a company may also, in its debenture, create conditions when the charge may crystallize.

In Stephen Lubega v Barclays Bank (U) Ltd (1992) 111 KALR 30, Mrs. Ssezibwa Estates Ltd, secured a loan from the respondent bank for purchase of a lorry, and the bank took all assets, debentures plus legal mortgages for the debtors coffee factory and one residential house. The lorry was subject to a floating charge created by the debenture from the respondent bank. The bank appointed a receiver, impounded the lorry and advertised it for sale. It was held that a floating charge crystallizes the moment there is default and a receiver is appointed.

In Mbarara Coffee Curing Works v Grindlays Bank (1976) HCB 175; the plaintiff company entered into a debenture with the bank to secure an overdraft on its current account for

500,000/=. It was agreed that the debenture would rank first charge on all of the property, in the event of unmovable property which as thereby mortgaged to be a fixed charge and as regards all other property, a floating security, the bank was given power to appoint a receiver in case of default in payment. The company later entered into another debenture, which was an

enlargement of the first debenture increasing the level of the overdraft. The plaintiff owned a factory in Mbarara and the factory was mortgaged through the debenture with the bank. Later the bank sealed this factory and sold it to realize the money owing by the company. Held; At the time the bank realized its security, the debenture was still valid and operative and the bank was entitled to realize its security under the debenture in the absence of repayment or discharge.

Effect of crystallization

Upon crystallization, a floating charge becomes a fixed charge. The right of the company to deal with the charged assets in the ordinary course of business ceases and the rights of the charge holder/bank are essentially those stated for a fixed charge holder. That is when the floating charge crystallizes, it becomes fixed. When there is crystallization, the charger's right to deal with the property comes to an end and it becomes a fixed charge attached to the assets within the scope of the charge.

Upon crystallization, the charge becomes fixed only from that moment and the charge is not retrospectively transformed into a fixed charge from its inception. This has important consequences on winding up. If there are two charges attaching to the same asset, a floating charge, being, until

crystallization, an equitable charge, is ranked in the order of priorities after a fixed legal charge over the same asset. The fixed charge has priority even if it was created after the floating charge and that charge had been registered.

The freedom of the chargor to deal with the assets in the ordinary course of business includes the freedom to create other fixed charges ranking in priority.

□ Priority of charges.

Provided charges have been properly registered with the registrar pursuant to the provisions of the Companies Act, the following basic rules apply to determine the priority of charges:

i. Fixed charges rank in order of the time at which they are created: the first in time takes priority over all subsequent fixed charges over the same property. Fixed charges establish stronger rights than floating charges and a later-in-time fixed charge ranks in priority over an earlier floating charge In Re Castell & Brown Ltd [1898] 1 Ch. 315, a company created a floating charge over debentures but later created an equitable mortgage over the various properties by deposit of title deeds. It was held that the mortgage charge had priority over the floating charge.

Except that if the subsequent fixed charge holder had actual knowledge, at the time its charge was entered into, that the pre-existing floating charge expressly prohibited the company from creating a subsequent charge with priority, the pre-existing floating charge will take priority over the subsequent fixed charge as was held in Siebe Gorman & Co Ltd v Barclays Bank Ltd [1979]

2 Lloyds Rep 142,). Such a clause is known as a 'negative pledge'. Since there is the risk of a

later charge obtaining priority, prudent floating chargees commonly insert negative pledge clauses into the security contract.

A negative pledge principally operates as a contractual right between the company and the first charge holder. If the subsequent fixed charge holder has actual knowledge, because it has actually read the information on the public register, Siebe Gorman is authority for the proposition that the pre-existing floating charge will take priority over the subsequent fixed charge.

ii. Floating charges rank in order of time of creation: the first in time takes priority over all subsequent floating charges over the same property In Re Benjamin Cope & Sons Ltd [1914] 1 Ch. 800. It was held that prior general floating charge does, of course, have priority over a subsequent general floating charge

A floating charge over specific assets may rank in priority to an earlier floating charge expressed to be a charge over all the assets and undertaking of the company ('a general floating charge') if power is reserved to the company in the earlier charge to create a later charge having priority In Re Automatic Bottle Makers Ltd [1926] Ch. 412, It was held that even true that a subsequent specific floating charge will take priority over a prior general floating charge.

Distinction between a floating and a fixed charge?

i. Whilst the floating charge remains floating (before crystallization), the company/ chargor remains free to deal with the charged property in the ordinary course of business.

ii. Various statutory rules relating to validity and priority are worded to apply to one form of security (e.g. floating charges) but not the other, including:

- Registration requirements are different: all floating charges are registrable but not all fixed charges are registrable;

iii. Floating charge property proceeds are available to pay the expenses of winding up, preferential debts and a statutory 'prescribed' part is set aside for unsecured creditors out of them;

iv. Priority of charges against the same property: the floating nature of the floating charge until it crystallises, results in it being treated differently from a fixed charge in determining priority of charges.

v. Note that it is common for banks to take both a fixed charge and a floating charge in the same document thereby seeking to combine the priority advantages of the fixed charge with the flexibility of the floating charge. A bank can even create three charges, i.e. a

legal mortgage, a fixed charge and a floating charge over the same assets. It is instructive to look at the language actually used in such documents.

In Re Spectrum (above), for example, the charge was expressed in the following language: 'A specific charge [of] all book debts and other debts ... now and from time to time due or owing to [Spectrum]' (para 2(v)) and 'A floating security [of] its undertaking and all its property assets and rights whatsoever and whosesoever present and/or future including those for the time being charged by way of specific charge pursuant to the foregoing paragraphs if and to the extent that such charges as aforesaid shall fail as specific charges but without prejudice to any such specific charges as shall continue to be effective' In this case, a fixed charge and a floating charge were created over the same assets.

vi. A subsequent fixed chargee takes free of an earlier floating charge even where the fixed chargee is aware of the existence of that earlier floating charge except where he had actual knowledge of a romalpa clause.

In Wheatley v Silkstone and Haigh Moor Coal Co (1885) 29 Ch. D 715 per North J, where a mortgage made in the ordinary course of business and for the purpose of the business was found to be a good mortgage upon and a good charge upon the property comprised in it and thus not subject to the claim created by [a] debenture ... intended to be a general floating security over all the property of the Company. This is because companies creating floating charges may generally, without the consent of the charge holder; deal with them in the ordinary course of business.

vii. As between two floating charges over the same assets, the first created will have priority; competition must be between two floating charges. Thus if one charge has already been crystalized or otherwise converted into a fixed charge, then the facts no longer involve two floating charges and the charge which has crystalized will have priority.

In terms of enforcement, if a secured creditor took out a legal mortgage, the mortgagee takes priority under the express terms of the mortgage or common law. Likewise if a creditor has taken a fixed charge over the company's plant or equipment, a creditor has rights in rem with respect to those plants and machinery.

viii. A floating charge as noted just hovers over the assets within it until it crystallizes. In addition, once a charge has crystallized, it becomes a fixed charge. The chargee is entitled to realize the assets as provided in the debenture deed by appointment of the receiver. However, the chargee may not recover in respect of other assets taking priority. For example, assets subject of a fixed charge, and a floating charge earlier registered.

ix. A floating charge which is not a fixed charge is subject to the prior claims of preferential debts accorded statutory priority e.g. government taxes, judgment debts. Fixed charges on the other hand have priority over all unsecured claims, preferential or otherwise. A floating charge would therefore rank after preferential claims if the latter cannot be satisfied by the other assets of the company, potentially leaving very little or nothing for the floating charge holders whilst paying the preferential creditors in full. It is clear that a fixed charge is the superior charge. But it is worth noting that a floating charge is also required to secure the rights of a lender. Even when a floating charge is subject to prior preferential debts and expenses on winding, it still has priority over the claims of unsecured creditors.

x. A fixed charge would give the chargee control and participation in the company's business.

3. Guarantee

According to S68 contracts Act ,2010 a contract of guarantee means a contract to perform a promise or to discharge the liability of a 3rd party in case of default of that 3rd party which may be oral or written

It is common for the lender to require the directors or shareholders of a borrower to guarantee the payment of the facility .In case of breach the guarantees are personally liable for the debt .Execute personal guarantees and register them evidence purposes.

4. Pledge

This arises when a debtor delivers a chattel or its document of title to a creditor as security for the discharge of an obligation .The creditor retains possession of the chattel or document of the title until the debtor fulfills his contractual obligations .The creditor has a right to sell the asset in case the debtor fails to pay. A pledge of chattels is registrable under the chattels securities Act No.7 of 2014.

f) Illustrate the process of perfecting the securities in (e) above.

Perfection relates to the additional steps required to be taken in relation to a security interest in order to make it effective against third parties or to retain its effectiveness in the event of default by the grantor of the security interest.

Generally speaking, once a security interest is effectively created, it gives certain rights to the holder of the security and imposes duties on the party who grants that security. However, in many legal systems, additional steps regarding perfection of the security interest are required to enforce the security against third parties such as a liquidator.

DEBENTURES

Under Section 98 of the Companies Act, 2012 (1) A company which, issues a series of debentures shall keep at the registered office of the company a register of holders of the debentures.

The company must give notice to the registry of the place where the register and any duplicate is kept and of any change in that place.

A company is not required to give notice if the registrar or duplicate has at all times since it came into existence after the commencement of the companies Act been kept at the registered office of the company.

Debenture holders and shareholders have a right to inspect the register of debenture holders and to have copies of the trust deed for securing the issue of the registered office of the company.

• Charges

□ Charges created by a company may need to be registered: with the registrar of companies;

□ in the company's own register of charges;

□ With Land Registry (charges on registered land) or at the Land Charges Department

(charges on unregistered land.

The procedure is provided for under Section 105- 108 of the Companies Act. The company has a primary duty of ensuring registration of the charges within forty two days after the date of its creation. The document for registration should include the following particulars.

Section 105(8) the following particulars— (a) the total amount secured by the whole series; (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; (c) a general description of the property charged; and (d) the names of the

trustees, if any, for the debenture holders, together with the deed containing the charge or a copy of it verified in the prescribed manner or, if there is no such deed, one of the debentures of the series.

Regulation 23 of the Companies (General) Regulations 2016, charges created by companies situate in Uganda must be registered using Form 13.

According to Section 111 of the Companies Act, it provides that registration must be done within

42 days from the date of creation of the charge, but an application for extension of time may be made to the registrar.

Once the charge is registered, the registrar issues a certificate which is conclusive evidence that the registration requirements have been complied with. S.108.

Stamp Duty:

Subject to certain limited exemptions, stamp duty is payable on all security documents which relate either to;

(i) property situated in Uganda; or

(ii) a transaction which relates to a thing done or to be done in Uganda.

If the security instrument is executed in Uganda it must be stamped within 45 days of execution. Any security instrument executed outside of Uganda must be stamped within 30 days from the date the security document is delivered to Uganda. The person taking security bears the cost related to stamp duty, unless otherwise agreed.

The failure to pay stamp duty on a security document can result in a fine not exceeding 10 currency points for each day the default subsists. Furthermore, the security document may not be validly registered and will be deemed inadmissible in the Ugandan courts.

Stamp duty is typically payable at a fixed or ad volarem rate. Ordinarily, security instruments are charged at a rate of 0.5% of the amount secured by any principal security document. Where there is more than one security instrument relating to the same transaction, the parties may elect a principal document which shall attract stamp duty, such that any supplemental security will only attract nominal duty. However, where the various security instruments relate to different aspects of the same transaction and are capable of separation, each instrument is to be charged stamp duty separately.

In exceptional circumstances, an exemption from paying stamp duty may be obtained from the Minister of Finance upon application. This only applies if the industry where the entity seeks to invest is deemed to be a priority industry. In this case, stamp duty may be waived when perfecting security. The relevant Minister waives the duty by issuing a statutory instrument to that effect.

According to Section 108 and Regulation 23(4) Companies (General) Regulations 2016, upon registration, the registrar issues a certificate of registration of a charge in the company Form 17.

The effect of registration.

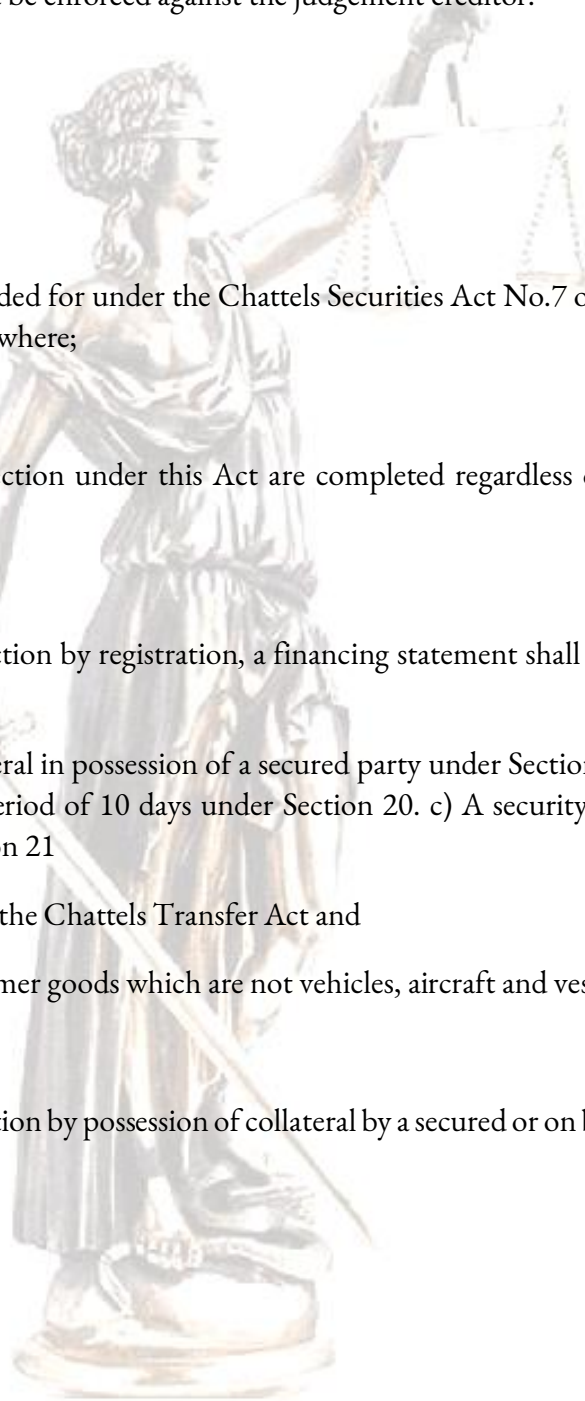
Registration ensures that the charge is effective against other creditors and he liquidator. However, registration is not notice of the terms of the charge instrument.

Consequences of non-registration.

S.105 provides that the security given by a registrable a charge shall be void against the liquidator and any creditor of the company. However, the debt is still repayable immediately on an unsecured basis. The result is that the holder of the charge is reduced to the level of an unsecured creditor. Indeed S. 105(2) states that under this section the money secured by the charge shall immediately become payable. The other consequence of failing to register is the liability of the company to a fine for a continuing default under S. 107(3).

In Kasozi Ddamba v M/S Male Constructions Co. (1981) HCB 26, Grindlays Bank advanced money to a judgement debtor secured by debentures. The decree holder contained a decree against the judgement debtor and advertised property for sale. The bank tried to impose the debenture; however counsel for

decree holder argued that the debenture was void for failure to have it registered within 42 days. It was held that the debenture was not registered within 42 days and was void against a liquidator and any creditor of the company and could not be enforced against the judgement creditor.



• PLEDGE

Perfection of a pledge is provided for under the Chattels Securities Act No.7 of 2014. Under Section 17, a security interest is perfected where;

□ It is attached and

□ All steps required for perfection under this Act are completed regardless of the order in which the attachment and steps occur.

Section 18 provides for perfection by registration, a financing statement shall be registered to perfect all security interests except;

a) A security interest in collateral in possession of a secured party under Section 19. b) A security interest temporarily perfected for a period of 10 days under Section 20. c) A security interest in proceeds for a period of 10 days under Section 21

d) A security registered under the Chattels Transfer Act and

e) A security interest in consumer goods which are not vehicles, aircraft and vessels.

Section 19 provides for perfection by possession of collateral by a secured or on behalf of the secured party, perfects a security interest in;

i. Chattel paper ii. Goods

iii. Money

iv. A negotiable document of title v. A negotiable instrument or

vi. A security, but only while it is actually held as collateral.

Subsection (2), a security interest in money or a negotiable instrument other than a certified security or a negotiable instrument which constitutes part of a chattel paper is perfected only by possession under subsection 1.

Under subsection (3), where collateral is an uncertified security, a secured party is deemed to take possession of the security when a transfer of the security to the secured party is registered.

Under subsection (4), where collateral other than goods covered by a negotiable document of title is held by a bailee, the secured party is taken to have possession from the time the bailee receives notification of the interest of the secured party.

WORKSHOP TWO

Assuming you set up the local entity in workshop 1. 5 Years after setting up the business entity, Blasio Mpiima died peacefully in his sleep. This information has just been brought to your attention as counsel, 8 months after the death. However, the company continued transacting business using his electronic signature as they decided on how to move forward.

1. Advise Jules Mitterand and Faustin Rochelu on;

i) The legal consequences of Blasio's death on their business.

A company is at law separate and distinct from all its members

Salomon Vs Salomon and Co. Ltd (1897).

Held - Lord Macnaghten - "The company is at law a different person all together from the subscribers to the memorandum".

One of the features of corporate personality is that a company has perpetual succession. This Means that a company continues to exist despite a change in membership.

Therefore, Death, insolvency or insanity of the members doesn't affect the company's legal

existence.

In Micheal Oscar Kayemba Vs James Mulwana and 3 ors (1999) Facts: The sole owner of the shares in the company died.

Held –Bossa J; On the authority of Salomon Vs Salomon, where a company had only one paid up shareholder, it still remains in law a corporation with independent existence. The company continues to exist despite the death of its shareholder.

Similarly in Re Noel Tedman Holdings Pty Ltd [1967] QDR 561. A husband and wife were the only shareholders of the company. Both of them died in an accident and were survived by their infant. Court held that the company still existed in law inspite of their death.

According to the learned authors K Smith and DJ Keenan in their book Company Law 14th edition at page 2, "A company has perpetual succession, i.e. its existence is maintained by the constant succession of new persons who replace those who die or are in some other way removed. This means that even though a member dies, goes bankrupt, or retires from the company by transferring his shares, the company carries on and is not dissolved."

When a shareholder, dies his shares are transmitted to his or her legal representative. As stated by the learned author Simon Goulding in his book; Company Law Second edition at page 8 "because the company is a corporate body and a recognized legal entity, it survives the death of one, or even all, of the members. The shares of any deceased member are simply transferred to their personal representatives. The company therefore has a potentially perpetual existence."

The transfer of shares on death of a shareholder is by operation of law and is termed as transmission.

S. 85(1) of The Companies Act 106;

(1) Notwithstanding anything in the articles of a company, it is not lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company.

However, subsection (2) provides that nothing in this section shall prejudice any power of the company to register as shareholder or debenture-holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of the law.

This is reinforced by regulation 29 of Table A which states that . (1) In case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the personal representatives of the deceased where he or she was a sole holder, shall be the only persons recognised by the company as having any title to his or her interest in the shares.

(2) Nothing in this regulation shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him or her with other persons.

In conclusion therefore, the death of Blazio has no effect on the conduct of business. The shareholders can continue carrying out business as before and register the personal representative of Blazio on whom the shares have been transmitted by operation of law.

Any breaches committed by Jules and Rochelu.

S. 198 of the Companies Act provides for duties of directors, these include to; (a) act in a manner that promotes the success of the business of the company;

(b) exercise a degree of skill and care as a reasonable person would do looking after their own business; and

(c) act in good faith in the interests of the company as a whole

S. 55 provides for the execution of documents; A document executed by a director and the secretary of a company or by two directors of a company and expressed to be executed by the company has the same effect as if executed under the common seal of the company.

S. 59 further provides for the authentication of documents; A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company and need not be under its common seal.

S. 52 provides for power of directors to bind the company; (1) The power of the board of directors to bind the company or authorise others to do so in favour of a person dealing with the company in good faith shall not be limited by the company's memorandum.

S. 53 provides that a party to a transaction with a company is not bound to enquire whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorize others to do so.

A company is bound by any transaction entered into by a person it holds out as having the capacity to enter into such a contract.

This was stated by Diplock LJ in Freeman and Lockyer v Buckhurst Properties, (1964)2 Q.B, 480,

"If the foregoing analysis of the relevant law is correct, it can be summarised by stating four conditions which must be fulfilled to entitle a contractor to enforce against a company a contract entered into on behalf of the company by an agent who had no actual authority to do so. It must be shown: (a) that a representation that the agent had authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor; (b) that such representation was made by a person or persons who had 'actual' authority to manage the business of the company either generally or in respect of those matters to which the contract relates; (c) that he (the contractor) was induced by such representation to enter into the contract, i.e., that he in fact relied on it; and (d) that under its memorandum or articles of association the company was not deprived of the capacity either to enter into a contract of the kind sought to be enforced or to delegate authority to enter into a contract of that kind to the agent.

So, the principle operates as a form of estoppel, in that a company which holds out a person as someone who is authorised cannot subsequently plead lack of actual authorisation if a contracting party had relied on the holding out.

The facts show that after the death of Blazio, the company continued to transact business using his electronic signature. This would amount to a forgery if it was done by persons who did not have an authority to enter into such transactions. However, in this case, the surviving directors had power to enter into such transactions and by using Blazio's signature only HELD HIM OUT as a person who could bind the company. Therefore whatever transactions they entered into, the company would be bound under the doctrine of holding out.

In explaining a similar scenario, the learned author Simon Goulding in his book; Company Law

Second edition at page 166 explains;

"Certainly, if an unauthorised outsider obtains the company's seal and uses it on a document, forging the signatures of the directors, this will be held to be a forgery. But, where there are genuine signatures of the directors and simply an unauthorised use of the seal, it is difficult to justify a finding of forgery, since the company is holding out those persons as having authority to represent the document as genuine."

S. 2 of the Electronic Signatures Act defines "electronic signature" to mean data in electronic form affixed to or logically associated with a data message, which may be used to identify the signatory in relation to the data message and indicate the signatory's approval of the information contained in the data message; and includes an advance electronic signature and the secure signature.

A "signatory" is defined to mean a person that holds signature creation data and acts either on its own behalf or on behalf of the person it represents.

Section 6 of the Electronic Signatures Act 2011 provides for the use of electronic signature. It states that where a law requires a signature or provides for consequences where a document is not signed, the requirement fulfilled if an electronic signature is used. Therefore use of an electronic signature on documents is legally binding.

Under S. 2 of the Act; To "forge a digital signature" means—(a) to create a digital signature without the authorization of the rightful holder of the private key;

The facts do not suggest that the directors forged the digital signature. This means the signature was already created, the directors were holders of that signature and after the death they continued using it not fraudulently but for purposes of running the business.

Therefore in using Blazio's signature for purposes of carrying on business and in absence of any fraud, the directors did not commit a forgery but rather the company had held out Blazio as having authority to bind it.

Breaches

The only breach committed by the Jules and Rochelu is in respect to S. 119(1)(c) and subsection

6 thereof.

S. 119(1)(c) provides that A company shall keep a register of its members and enter in the register the following particulars (c) the date on which any person ceased to be a member. Subsection 2 thereof provides that the register of members shall be kept at the registered office of the company.

Subsection (6) provides that where a company defaults in complying with subsection (1) the company and every officer of the company who is in default is liable to a daily default fine of twenty five currency points.

This is reinforced by Regulation 22 of the Companies (General) Regulations 2016 which states that;

(1) A company shall notify by resolution, the registrar of any change in the register of members kept by the company under section 119 of the Act within 30 days after the change.

Subsection (2) provides that a company, which does not notify the registrar of a change in the register of members is liable to a default fine of forty currency points and shall, in addition, be liable to a default fine of six currency points for every day on which the default continues after the

30 days.

Since the company continued carrying on business using the electronic signature of Blazio for 8 months after his death, the company should have notified the registrar that Blazio ceased to be a member. This wasn't done and was a breach of the above provisions of the law.

The changes to be made to the business after Blasio's death and how to effect them

Transfer/transmission of Blazio's shares.

Section 83 of the Companies Act No .1 of 2012 provides that the shares or other interest of any member in a company shall be movable property transferable in a manner prescribed by the articles of the company.

Under section 85 of the companies act no. 1 of 2012 a share transfer of shares is not effective until registered by delivering a proper transfer instrument to the company.

However, subsection (2) provides that nothing in this section shall prejudice any power of the company to register as shareholder or debenture-holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of the law.

When a person dies, his shares are transmitted to his personal representative. The first change is to register the personal representative of Blazio or any person elected by him to take the shares.

S. 2 of the Companies Act defines "personal representative" to mean—

(a) in the case of a deceased person to whom the Succession Act applies either wholly or in part, his or her executor or administrator;

Article 29 of Table A. (1) In case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the personal representatives of the deceased where he or she was a sole holder, shall be the only persons recognised by the company as having any title to his or her interest in the shares.

Article 30 of Table A provides that any person becoming entitled to a share in consequence of the death or bankruptcy may upon such evidence being produced as may from time to time properly be required by the directors and subject to these regulations elect either to be registered himself or herself as holder of the share or to have some person nominated by him or her registered as the transferee of the shares but the directors shall have the same right to decline or suspend registration as they would have had in the case of transfer of shares by a member before his death or bankruptcy.

S. 94 provides that the production to a company of any document which is by law sufficient evidence of—

(a) probate of the will or letters or certificate of administration of the estate, of a deceased person having been granted to some person; or

(b) the Administrator General having undertaken administration of an estate under the

Administrator General's Act,

shall be accepted by the company, notwithstanding anything in its articles as sufficient evidence of the grant or undertaking.

The personal representative can have the shares transferred to him or to any other person. The transmission of shares does not require a transfer instrument as stated in S. 85(2) above.

Under article 31 where a person entitled in regulation 30 elects to be registered himself or herself he or she shall deliver or send to the company a notice in writing signed by him or her stating that he or she so elects.

31(2) Where he or she elects that some other person registered he or she shall testify his or her election by executing to that person a transfer of shares.

Section 86 of the Companies Act provides for the transfer of shares or other interests of the deceased member of a company, made by his or her representative shall although the personal representative is not himself or herself the member of the company be valid as if he or she had been a member at the time of the execution of the instrument of transfer

Under article 32 where a person become entitled to shares by death or bankruptcy they are entitled to dividends as well.

Under 32(2); The directors may at any time give notice requiring a person referred to in regulation

31 to elect either to be registered himself or herself or to transfer the share, and if the notice is not complied with within ninety days, the directors may withhold payment of all dividends, bonuses or other monies payable in respect of the share until the requirements of the notice have been complied with.

Thus the procedure on death of a shareholder is that the person representative must elect to have the shares transmitted to him or transfer them to someone else. This is by delivering a notice in writing to the company.

The director and other company meeting will thus hold a meeting in which they will either accept or decline.

When they accept, they must notify the registrar of the resolution.

In case of a change in directors the registrar should be notified. S. 228 (1) A company shall keep at its registered office a register of its directors and secretaries.

Subsection5 provides that he company shall, within the periods respectively mentioned in subsection (6), send to the registrar a return in the prescribed form containing the particulars specified in the register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

Subsection (6) The periods referred to in subsection (5) are the following—

(b) the period within which the notification of change is to be sent shall be fourteen days from the happening of the change.

DOCUMENTS;

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE COMPANIES ACT NO.1/2012

AND

IN THE MATTER OF ..... LIMITED

RESOLUTION

At the Board of Directors meeting of the Company held at its registered offices on the ..... day of ..... 2018 to consider registration of shares in Blasio Mpiima's personal representatives in .....limited, it was resolved and passed as follows:-

1. That the entire 30 shares of the deceased Blasio Mpiima in

.....limited be transferred to his personal representatives Bobi

Byansi and Kentaro Eudancio.

2. That the personal representatives shall proceed to register the said shares in their names.

3. That the Registrar of Companies be notified accordingly of the changes in the company memorandum of association.

Dated at Kampala this.....day of.....2018

.....

JULES MITTERRAND EXECUTIVE DIRECTOR.

..... FAUSTIN ROCHELU

DIRECTOR

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE COMPANIES ACT No.1/2012

AND

IN THE MATTER OF ..... LIMITED

RESOLUTION

At the Board of Directors meeting of the Company held at its registered offices on the ..... day of ..... 2018 upon the demise of the company secretary/director Blasio Mpiima, it was resolved and passed as follows:-

1. That the company appoints .....as the new

company Secretary/director

2.That the Registrar of Companies be notified accordingly.

Dated at Kampala this.....day of.....2018

.....

JULES MITTERRAND EXECUTIVE DIRECTOR.

..... FAUSTIN ROCHELU

DIRECTOR

Company Form 20

Reg 26(2)

THE REPUBLIC OF UGANDA

THE COMPANIES ACT

NOTIFICATION OF APPOINTMENT OF DIRECTOR AND SECRETARY OF COMPANY

(Under section 192(4) of the Act).

Name of Company:..... Presented by:.....

TO: THE REGISTRAR OF COMPANIES.

TAKE NOTE that the person/ persons whose particulars are provided below has/ have been appointed as director/ directors/ secretary of the above named company with effect from the..... day of..... the year.....

(a) PARTICULARS OF DIRECTORS -INDIVIDUALS

Names (first

name and surname)

Date of birth

Address

Nationality

Occupation

Directorshi ps Other

PARTICULARS OF CORPORATE DIRECTORS

Corporate Name Registered or principal office Postal address

(b) PARTICULARS OF THE PERSON (S) WHO IS SECRETARY

PARTICULARS OF INDIVIDUAL SECRETARY

Names (first name and surname)* Residential and postal address

*state any former first and surnames

PARTICULARS OF CORPORATE SECRETARY

Corporate Name Registered office

Dated the .....day of ..... the year .....

.....

DIRECTOR

PART B

Jules Mitterand decided to maintain his company Great Travels Incorporated in Belgium. His intention is to give it a presence so that it can contract on its own and execute business without having to revert to him or to Great Travels Inc in Belgium. He wants the entity to enter into a working relationship with whatever entity Faustin Rochelu and Blasio

Mpiima may have set up in Uganda.

ADVISE JULES MITTERRAND ON;

(i) HOW TO SET UP HIS COMPANY'S PRESENCE IN UGANDA.

The first step would be to establish principle place of business in Uganda as required under section

252 of the companies Act. This place of business must be registered and also have a registered postal address to which all communications and notices may be addressed in compliance with section 115 of The Companies Act 106.

It should be noted that Sections 252 to 260 shall apply to all foreign companies, being companies incorporated outside Uganda which, establish a place of business in Uganda and companies incorporated outside Uganda which have, established a place of business in Uganda and continue to have a place of business in Uganda.

PROCEDURE.

Section 252 (1) of The Companies Act 106 provides that a foreign company which, establishes a place of business within Uganda shall, within 30 (thirty) days after the establishment of the place of business, deliver to the registrar for registration;

(a) A certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, where the instrument is not written in the English language, a certified translation of the instrument;

(b) A list of the directors and secretary of the company containing the particulars mentioned in subsection (2) below

The list referred to in subsection (1) (b) shall contain the following particulars with respect to each director and secretary

- in the case of an individual, his or her present first name and surname and any former first name or surname, his or her usual postal address, his or her nationality and his or her business occupation, if any; and

- In the case of a corporation, its corporate name and registered or principal office and its postal address, except that where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in this subsection.

Regulation 29(2) of the Companies (General) Regulations 2016; The list of directors and secretary of a foreign company required by section 252(1) (b) of the Act shall be in Form 24 in the Schedule

(c) A statement of all subsisting charges created by the company, being charges of the kinds set out in section 105(2) and not being charges comprising solely property situated outside Uganda; S.105 (2); these charges refer to any contract or obligation for repayment of the money secured by the charge and when a charge becomes void the money secured by the charge shall immediately become payable.

(d) The names and postal addresses of one or more persons resident in Uganda authorized to accept on behalf of the company service of process and any notices required to be served on the company;

(e) The full address of the registered or principal office of the company. Regulation 29(4) (4)

The particulars of the address and registered or principal office of a foreign company required by section 252(1) (e) of the Act shall be in Form 26 in the Schedule

According to Section 253 (1) on the registration of the documents specified in section 252 the registrar shall issue a certificate signed by him or her that the company has complied with that section, and that certificate shall be conclusive evidence that the company is registered as a foreign company under this Act.

Regulation 30; The form of the certificate of registration of a foreign company in Uganda issued by the registrar under section 253 of the Act shall be in Form 27 in the Schedule.

It's important to note that upon registration of a foreign company, the provisions of this Act shall with the necessary modifications apply to the foreign company as they apply to a company incorporated under this Act. (S. 253(2))

From the date of registration under this Act, a foreign company shall have the same power to hold land in Uganda subject to the Constitution, the Land Act and the Investment Code Act, as if it were a company incorporated under this Act.

A foreign company registered above wont be able to carry out business in Uganda unless it gets an investment license

License;

S. 10 of the Investment Code Act Cap 92 provides that a foreign investor shall not operate a business enterprise in Uganda otherwise than in accordance with an investment licence issued under this Code.

S. 11 provides that; (1) An application for an investment licence shall be made in writing to the executive director and shall contain the following information—

(a) the name and address of the proposed business enterprise, its legal form, its bankers, the name and address of each director or partner, as the case may be, and the name, address, nationality and shareholding of any shareholder who is not a citizen of

Uganda;

(b) the nature of the proposed business activity and the proposed location where that activity is to be carried on;

(c) the proposed capital structure, amount of investments and the projected growth over the next five years or more;

(d) the estimated number of persons to be employed

(e) the qualifications, experience, nationality and other relevant particulars of the project management and staff;

(f) the incentives for which the applicant expects to qualify and the details of such qualifications; (g) any other information relating to the viability of the project or other matter as the applicant considers relevant to his or her application.

S. 15 Investment licence.

(1) When the applicant for an investment licence and the authority have agreed on the terms and

conditions of the investment licence and the incentives, if any, the authority shall issue to the applicant an investment licence

Therefore, on top of getting registered as a company, Jules must obtain a license in order to invest.

(II) How to co-operate with the entity that Faustin and Mpiima may have set up

The working relationship that can best be introduced is a joint venture

A joint venture is a business entity created by two or more parties generally characterized by shared ownership, shared returns, and risks and shared governance. Companies typically pursue joint ventures to access new market, to gain scale efficiencies by combining operations and assets.

In the case of Intercar(u) Ltd v spear motors limited HCT CC MA 0704 2004 where Hon. Justice Lameck Mukasa held that a joint venture relationship maybe characterized as a partnership under the Partnership Act where it qualifies as such and where either party presents or holds out the other as a partner.

In United Dominion Corporation ltd v Brian Pty ltd (1985) 157 CLR 1

Court on commenting on joint ventures held that the term joint venture is not a technical one with a settled common law meaning, that it connotes an association of persons for the purpose of a particular trading, commercial, financial undertaking with a view of making profit with each participant contributing money, property or skill. Such a joint venture will often be a partnership. The term is however opposite to refer to a joint undertaking or activity carried out through a medium other than a partnership such as a company, a trust, an agency or joint ownership.

It is important for the parties in a joint venture agreement entered into for a specific business purposes to hold out as partners. To the extent they do, their relationship falls to be categorized as a partnership which will attract the usual legal implications of partnerships under the partnership Act

Blacks Law Dictionary 8th edition defines a joint venture as A business undertaking by two or more

persons engaged in a single defined project. • The necessary elements are: (1) an express or implied agreement;

(2) a common purpose that the group intends to carry out; (3) shared profits and losses; and (4) each member's equal voice in controlling the project.

(II) WHAT are the documents to be drafted and necessary fees

These are provided for under S. 252 of the Companies Act.

(i) A certified copy of the charter, statutes or memorandum and articles of the company

(ii) A list of the directors and secretary of the company containing the particulars mentioned in subsection. The list referred to shall contain the following particulars with respect to each director and secretary

(iii)A statement of all subsisting charges created by the company. Form 13

(iv)The names and postal addresses of one or more persons resident in Uganda authorized to accept on behalf of the company service of process and any notices required to be served on the company;

(v) The full address of the registered or principal office of the company.

Fees payable

Head C of The Companies (fees) Rules 2005 provides that $250.00 should be paid for registering

certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, where the instrument is not written in the English language, a certified translation of the instrument.

$55.00 should be paid to register any other document required to be delivered to the registrar under

S.252(1) of the Companies Act

PART 2 documents

Company Form 24

THE REPUBLIC OF UGANDA

THE COMPANIES ACT

LIST OF DIRECTORS AND SECRETARY OF FOREIGN COMPANY.

(UNDER SECTION 252 (1) (B) OF THE ACT)

Name of Company.....(insert name of company) Presented by ..... (a) PARTICULARS OF THE PERSONS WHO ARE DIRECTORS

Reg 29

PARTICULARS OF INDIVIDUAL DIRECTORS

Names (first

name and surname) Date of birth Address Nationality Occupation Other

Directorships

PARTICULARS OF CORPORATE DIRECTORS

Corporate Name Registered or principal

Office Postal address

(b) PARTICULARS OF THE PERSON (S) WHO IS SECRETARY

PARTICULARS OF INDIVIDUAL SECRETARY

Names (first name and surname)* Residential and postal address

*state any former first and surnames

PARTICULARS OF CORPORATE SECRETARY

Corporate Name Registered office

Dated the ..... day of ..... the year.....

Signed .....

Director

Signed .....

Secretary

Company Form 25

THE REPUBLIC OF UGANDA

THE COMPANIES ACT

LIST OF NAMES AND ADDRESS OF PERSONS RESIDENT IN UGANDA AUTHORISED TO ACCEPT SERVICE ON BEHALF OF A COMPANY INCORPORATED OUTSIDE UGANDA

(Under section 252 (1) (d) of the Act).

List of Persons Resident in Uganda authorised to accept on behalf of the Company

Service of Process and any Notices required to be served on .....

.....(insert name

Reg 29

of company), a company incorporated in .....

(insert country of incorporation) and which has established a place of business

in Uganda at .....

Names (first name and

surname) Address Occupation

Signed*..... Dated the .....day of .....the year .....

*Signed by the person authorised to act on behalf of the company under section

252(1), (d).

Company Form 26

THE REPUBLIC OF UGANDA

THE COMPANIES ACT

ADDRESS OF THE REGISTERED OR PRINCIPAL OFFICE OF A COMPANY INCORPORATED OUTSIDE UGANDA (Section 252 (1) (e) of the Act)

NOTICE

NOTICE of the situation of the Registered or Principal office of .....

Reg 29(3)

.....(insert name of company), a company Incorporated in ..... (insert country of incorporation) and which has established a place of business in Uganda

at.....

TO THE REGISTRAR OF COMPANIES:

I hereby give notice, in accordance with section 252(I) (e) of the companies Act

that the Registered office of the Company is situated at.....

.....

..... Signed*
.....

Dated this .....day of ..... the year.....

*Signed by the person authorised to act on behalf of the company under section

252(1)(d).

Company Form 27

Reg. 30,

THE REPUBLIC OF UGANDA

THE COMPANIES ACT

CERTIFICATE OF REGISTRATION OF FOREIGN COMPANY

(Under section 253 of the Act)

I CERTIFY THAT: .....

(insert name of company) has this day been registered as a foreign company under the Companies Act, 2012 with the following company number.....

Dated this.....day of.....the year.....

..... REGISTRAR OF COMPANIES

Company Form 13

Reg 23(2)

THE REPUBLIC OF UGANDA

THE COMPANIES ACT

STATEMENT OF ALL SUBSISTING CHARGES CREATED BY THE COMPANY BEING CHARGES OF THE KIND SET OUT IN SECTION

105(3) THE ACT AND NOT BEING CHARGES COMPRISING SOLELY

PROPERTY SITUATE OUTSIDE THE REPUBLIC OF UGANDA.

(Under section 105 (3) of the Act)

Name of the company: .....

Presented by:.....

The company hereby gives notice that the following charges created by the company are subsisting:—

Date & Description of

the instrument creating or evidencing the mortgage or Charge Amount

secured Short Particulars of

property mortgaged or charged Names, addresses

and Description of mortgages or persons entitled to the charge

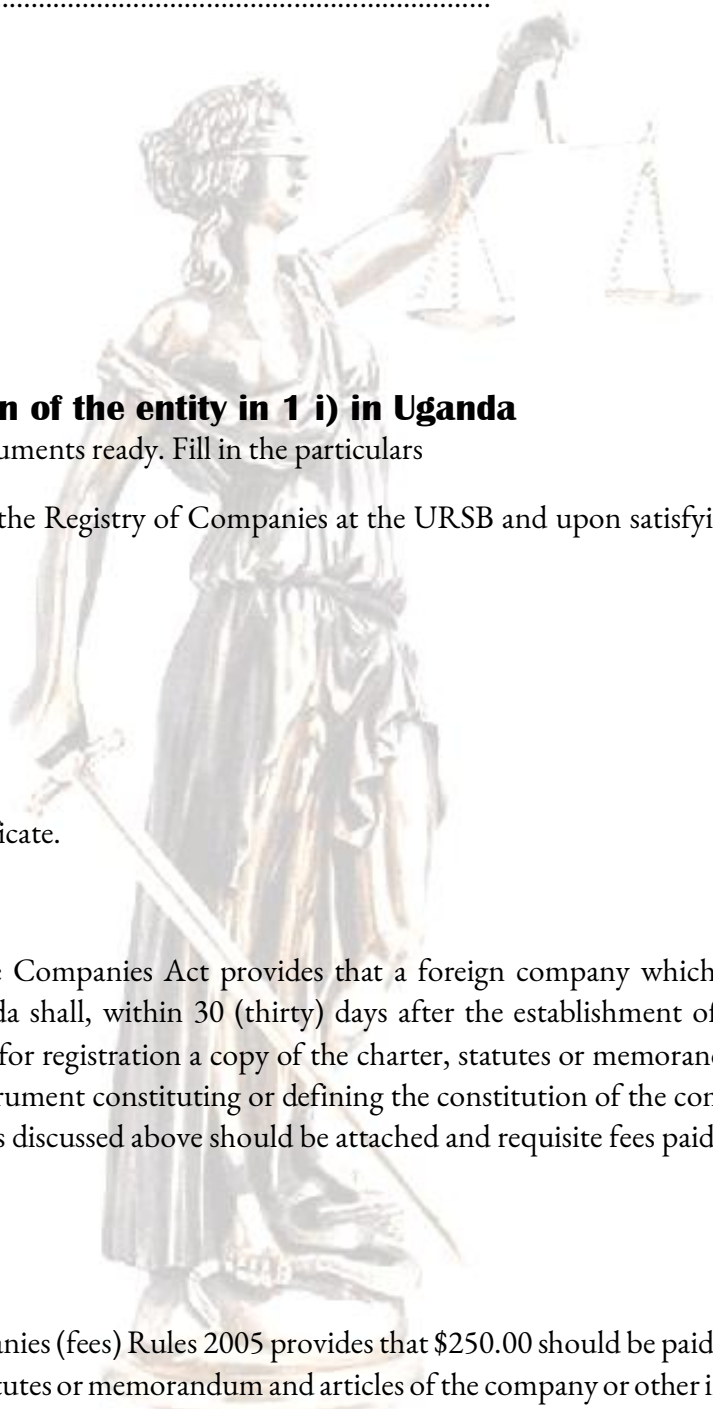
Signature .....

.....

Designation of Position in relation to company

Dated this .....day of .....the year .....

Company Number .....



PART 3

Effect registration of the entity in 1 i) in Uganda

Have the required documents ready. Fill in the particulars

File the documents at the Registry of Companies at the URSB and upon satisfying themselves as to the contents.

Pay the requisite fees

Registrar issues a certificate.

Section 252 (1) of the Companies Act provides that a foreign company which, establishes a place of business within Uganda shall, within 30 (thirty) days after the establishment of the place of business, deliver to the registrar for registration a copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company. The documents listed under S.252(2) as discussed above should be attached and requisite fees paid

Head C of The Companies (fees) Rules 2005 provides that $250.00 should be paid for registering certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, where the instrument is not written in the English language, a certified translation of the instrument.

$55.00 should be paid to register any other document required to be delivered to the registrar under

S.252(2) of the Companies Act

According to Section 253 (1) on the registration of the documents specified in section 252 the registrar shall issue a certificate signed by him or her that the company has complied with that section, and that certificate shall be conclusive evidence that the company is registered as a foreign company under this Act.

PART C

Blasio Mpiima has the blessing of his wife Kentaro Eudancio decided to run Meketa Foods alone. However, Mpiima and Kentaro would like to ensure the continuity of the business should Blasio who is now aged 83 years die. Blasio trusts his wife Kentaro who is a tender 55 years old to carry on this wish. Blasio believes that his wife Kentaro and son Bobi Matyansi can take over and run the business upon his demise.

i) The best possible business organization to set up

The best possible business organization to set up would be a single member company.

Since 2012 when company law in Uganda was reformed and a new legislation, The Companies Act 106 put in place, several changes were introduced in relation to company formation and management. One of the landmark changes was the introduction of a single member company. Unlike before 2012 where every company had to be constituted of at least two members, a single person, be it individual (natural person) or corporate (artificial entity) may register a company as sole member and shareholder.

S.4 of the Act provides that any ONE or two persons may for lawful purposes form a company by subscribing their names to the memorandum of association or registering the company as provided under the Companies Act.

Single Member Companies have been provided for under the Companies (Single Member) Regulations, 2016 which provide the procedure for their registration.

Under Regulation 3 a single member company is a company incorporated under the Act with one person; whether natural or corporate.

The single member company is the best option because in the facts we are made aware that Kentaro Eudancio, the wife of Blasio Mpiima has given her blessing for their informal business, Meketa Foods to be run by her husband alone. Therefore Blasio can register a single member company in which he could be succeeded by his wife and son Bobi Matyansi.

Procedure for registration;

According to Regulation 4 of The Companies (Single Member) Regulations, 2016, any person who wishes to form a single member company shall submit to the registrar a duly filled form for registration of a company specified in the Second Schedule to the Act. This form may be in hard copy or electronic form as per regulation 4 (2). However where the form is submitted in

electronic form, the promoter shall, in addition, print out the duly filled form and submit it to the registrar.

Pursuant to regulation 4 (4), every form for the registration of a single member company shall be accompanied with the prescribed fees.

Under Regulation 5 (1) the form of the memorandum of association of a single member company, if any, shall, with necessary modifications, be in accordance with the form set out in Table B of the Second Schedule to the Act. A single member company may also adopt or modify the articles of association contained in the First Schedule to these Regulations.

The nature of a single member company is that there is a single director and that can be problematic if such director dies and for such reason, S. 186 of the Act provides that (1) A single member shall nominate two individuals, one of whom shall become nominee director in case of death of the single member and

the other shall become alternate nominee director to work as nominee director in case of non-availability of the nominee director.

This is reiterated in Regulation 6(1) of the Regulations which provides that a person registering a single member company shall, at the time of incorporation, file with the registrar the particulars of a nominee director in Form 1 set out in the Second Schedule. Regulation 6(2) provides that a nominee director or alternate nominee director shall be an individual; not being the secretary of the company or member of the company.

Regulation 7 is to the effect that the memorandum, if any, and articles of association of a company, shall be submitted to the registrar at the time of submitting the form for the registration of the company.

The registrar shall, upon the registration of a company, issue to the company a certificate of incorporation in Form 2 set out in the Second Schedule. Reg. 8

According to regulation 9, every single member company shall add the initials "SMC LTD"

or the words "Single Member Company Limited" at the end of its name.

Online registration;

• Conduct a search. This process takes between two days to two weeks. You are required to fill a form at Uganda Registration Services Bureau (URSB). Charges for this service is Ush

2,000.

• Once the Uganda Registration Services Bureau (URSB) confirms that your name is unique and non-existence in their system, they reserve it until you fully register your business. Name reservation is done once an individual fills a form and submits it to the Uganda Registration Services Bureau (URSB). The fully filled form is returned to the same institution together with a fee which should not exceed Ush 23,000. The amount should be paid at the bank.

• The form obtained from the URSB should have the following details:

i) Business name

ii) Nature of the business

iii) Name, surname, nationality and place of residence

- Name reservation takes 30 days. If the period elapses, an individual must do reservation again; this must include the name reservation fees.

- Log into Uganda Revenue Authority website and obtain a form which will enable you fill the details, submit and wait for your URA pin. This pin is very important, especially when applying for a tender.

• Once you have submitted the required details to the Uganda Registration Services Bureau

(URSB), wait for one month to confirm whether you are fully registered.

ii) the structures he needs to set up and the role kentaro will play.

It should be noted that the key organs of the company are, the board of directors and the secretary who is charged with the duties of a secretary provided for under the Act.

Nominee director;

Regulation 3 defines a nominee directors as an individual nominated by a single member company to act as director in case of death of single member

S. 186 provides for director of a single member company. It states;

(1) A single member shall nominate two individuals, one of whom shall become nominee director

in case of death of the single member and the other shall become alternate nominee director to work as nominee director in case of non-availability of the nominee director.

This is reiterated by Regulation 11.

This means Kentaro should be appointed a nominee director.

The roles played by a nominee director are stated in S. 186(2) and regulation 11(2).

(2) The nominee director shall—

(a) manage the affairs of the company in case of death of the single member until the transfer of shares to legal heirs of the single member;

(b) inform the registrar of the death of the single member, provide particulars of the legal heirs and in case of any impediment report the circumstances seeking directions within fifteen days after the death of the single member;

(c) transfer the shares to the legal heirs of the single member; and

(d) call the general meeting of the members to elect directors.

Alternate nominee director

Regulation 3 defines an alternate nominee director as an individual nominated by a single member company to act as a nominee director in case of non-availability of the nominee director. The appointment of an alternate nominee director is provided for under S. 186 of the Act and Regulation 11.

Secretary.

S. 187(1) provides that every company shall have a secretary and a sole director shall not also be

secretary. But subsection 3 thereof states that Notwithstanding subsection (1) a single member company is not obliged to have a secretary

However regulation 12 provides that subject to S. 187(3), a single member company may appoint a company secretary. Where a single member company appoints a company secretary, the company shall notify the registrar of the appointment in the form and time specified in the regulations.

Other structures are contained in the code of corporate governance under Table F in the schedule

Board of directors. The single member operate as a director but may appoint other directors to form a board of directors. This is a unitary board with executive and non executive directors. It is accountable for the performance and affairs of the company. Its duties are provided for under Article 4 of table F, The board is expected to act in good faith with due diligence and care in the interest of the company. It retains full and effective control.

Chairperson and CEO. This is provided for under Article 3 of table F that there shall be a division of responsibilities between the CEO and the Board chairperson to ensure no one has unfettered power or authority. They report to the board of directors. They are responsible for the day today operations of the company and can appoint manager..

Internal auditors. These report to all audit meetings and to the CEO and they are charged with the duty to evaluate risk management control and governance. Table F Article 14.

Audit committee. Provided for under table F Article 19 these are charged with the duty to prepare annual reports and the committee chairperson has to answer questions relating to that report.

As per

a. Board committee. Table F article 7 shall assist the board in the performance of its duties. There shall be transperancy and full disclosure of committee matters. This committee is chaired by the non executive director, and these include the audit committee, remuneration committee.

How his wife and/or son will be able to take over the business upon his death

The best way to take over the business upon Blazio's death is by converting a single member

company into a private company. This is after transferring the shares into their names.

S. 87 of The Companies Act 106 provides that (1) A single member company may transfer or allot shares on the death of the single member.

Subsection 3 provides that (3) In case of death of single member, the company may either be wound up or be converted into a private company not being a single member company for which— (a) the nominee director shall transfer the shares in the name of the legal heirs of the single member within thirty days;

(b) the company shall pass a special resolution for change of status from single member company to private company not being a single member company and alter its articles accordingly within thirty days of transfer of shares; and

(c) the members shall appoint or elect one or more additional directors in accordance with this Act and within fifteen days of date of passing of the special resolution and notify the appointment to the registrar.

Subsection 6 provides that (6) Where a single member company converts into a private company pursuant to subsection (1), it shall file a notice in writing, with the registrar within sixty days from the date of passing of special resolution.

Regulation 9(2) provides that where a single member company converts into a private company under S. 87 the company shall deliver to the registrar the certificate previously issued and the registrar shall issue a new certificate.

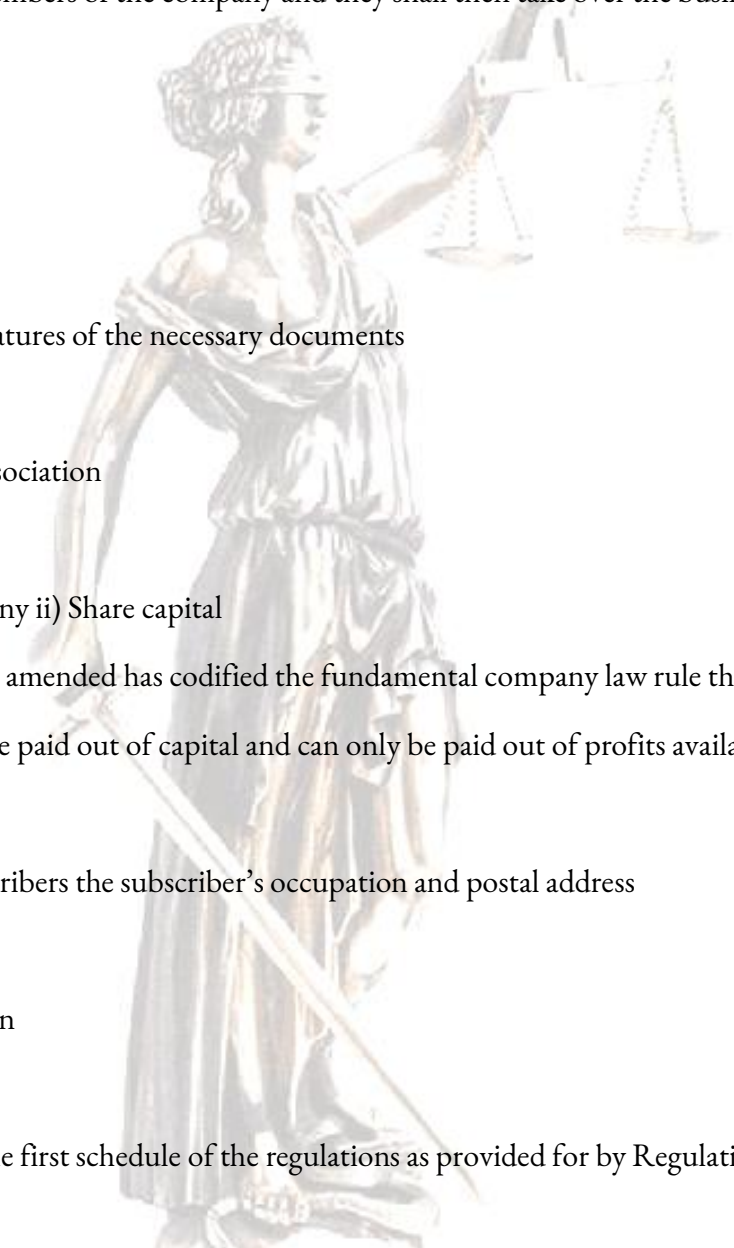
Regulation 10 (2) provides that. Where a single member company converts into a private company, it shall;

a. Appoint and notify the registrar of the appointment of directors within fifteen days from the date of the appointment.

b. File with the registrar, a notice of conversion from a single member company to a private company in Form 4 within 60 days from the date of the resolution of conversion.

Under sub regulation 3, on conversion, the positions of nominee director and alternate nominee director shall cease.

In this case, the nominee director will have to notify the registrar of companies of the death of Blasio and also provide the particulars of Blasio's personal representatives, that is, Kentaro and Bobi. He will then have to transfer shares to Blasio and Kentaro and call a meeting for them to elect directors. That way, they shall have become members of the company and they shall then take over the business.



PART C (2)

Explain the salient features of the necessary documents

Memorandum of Association

i) name of the company ii) Share capital

The companies act as amended has codified the fundamental company law rule that

dividends must not be paid out of capital and can only be paid out of profits available for that purpose

iii) Objects

iv) Signature of subscribers the subscriber's occupation and postal address

Articles of Association

These are found in the first schedule of the regulations as provided for by Regulation 5(2)

They contain an interpretation clause, nature of the company as a single member, shares and share capital, transfer and transmission of shares, change of status, meetings, notice of general meetings, directors, secretary, dividends, accounts, indemnity, notices, and company seal.

Form for registration.

This is found in the second schedule to the Act. It contains name of the company, subscribers address, place of business, nature of business, proposed share capital and signature of subscribers.

PART D

PART D

Suppose upon incorporation of the local entity in workshop No. 1 above, the parties inform you that as a corporate citizen and part of its corporate social responsibility their company would like to;

a) Fund and assist People Power movement of Bobi Wine in their quest to resist misrule by

the 'misleaders'

b) Assist Batwa youth in Bwindi by equipping them with skills relating to crafts and how to fight poverty, and to this end are willing to avail some of the real estate to collect rental and royalties to support this cause. The company is also ready to provide some funds from its profits for this cause.

The entity however intends to do (a) & (b) through an independent entity.

Advise the parties on;

i. the considerations to make before implementing the decision above

Corporate Social Responsibility is a concept whereby companies integrate social and environmental concerns into their business operations and in their interaction with their stakeholders (employees, customers, shareholders, investors, local communities, government), on a voluntary basis. Corporate responsibility programs can help businesses entice customers, attract and retain talent, assure investors, reduce operating costs, improve employee morale and enhance a company's reputation.1

Before carrying out corporate social responsibility a number of factors must be taken into consideration.

It must be in line with the company's objectives, vision and mission. In the case of Hutton

V. West Cark Railway Co. (1883) 23 ch D 654

Court Held that directors can not spend money which is not their's but the Company's if

they are spending it for the purposes which are incidental to the Company.

The project being undertaken should have demonstrative support of the beneficiaries. The Company should make no profits from it.

Benefits and limitations; business owners should understand the benefits and limitations of corporate responsibility programs in order to choose an initiative that benefits the community and the company.

Corporate responsibility programs must be embraced and supported by top management and woven into company culture and operations.

Regulatory framework. Before establishing a charitable cause, you need to be guided by the laws of the country. Some acts are prohibited by law.

Culture of the community. It is important to consider the cultural behavior of the community within which to operate. For example which can kind of basic needs are acceptable among the Batwa tribe.

Level of economic development; a good charitable cause should aim at alleviating the poor living conditions.

Corruption; most people use charitable entities to benefit themselves

Environmental issues; whether the activities to be carried out have an effect on the environment. Human rights; this must be put into consideration; for example the members want to exploit the

cheap Labor of the Batwa people. This could lead to violations of Labor rights. Availability of Labor and human resource; which people will put the desire into effect.

ii. the most appropriate entity that can be established in Uganda to carry out the activity

Non- Government Organizations.

The most appropriate entity is the Non-Governmental Organization governed by the NGO Act of

2016.

This is provided for under the Non-Governmental Organization Act 2016

S. 2 defines an "Organisation" to mean a legally constituted non-governmental organisation under this Act, which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes;

Section 4 (e)(i) is to the effect that the Non-Governmental Organization shall promote and to develop a charity culture that is voluntary, non-partisan and relevant to the needs of the and aspirations of the people of Uganda. Therefore an NGO may be established assist the youth in Bwindi by equipping them with skills relating to crafts and how to fight poverty.

Under Section 44 (g) of the NGO Act require the Organization to be non-partisan and shall not engage in fundraising or campaigning to support or oppose any political party or candidate for an appointive office or elective political office, nor may it propose or register a candidate for elective political office

However that our client's wish maybe to assist people power movement of Bobi Wine in the quest to resist misrule by misleaders it is our cardinal role to advise our client who wants to invoke the

2 objectives in one independent entity that, the Law under NGO Act may not favor him to converse assistance for any political movement and this is manifested

Procedure;

S.29 (1) Non-Government Organization Act- a person or group of persons incorporated shall register with the Bureau

Regulation 3 (2) NON-GOVERNMENT ORGANIZATION Regulations 2017-provides for the form of the application as being in Form A in the Schedule and shall be accompanied by;

• evidence of a statement in the application as the Minister may prescribe by the regulations.

• certified copy of the certificate of incorporation

• a chart showing the governance structure of the organization

• a copy of the constitution

• evidence of payment of fees

• source of funding of the activities of the organization

• copies of valid identification documents for at least 2 founder members

• minutes and resolutions of the members authorizing the organization to register with the

Bureau

• a statement complying with S.45 of the Act

• a recommendation from District NON-GOVERNMENT ORGANIZATION Monitoring Committee where the headquarters are located and the responsible ministry or ministries or a governmentt department or agency.

Regulation 3 (3)- the application for registration shall be signed by at least 2 founder members

S.29 (3) Non-Governmental Organisations Act/ Regulation 5 the Bureau shall register the entity upon proof of the above requirements and shall issue a certificate of registration to the organization as in Form B.

S. 30 (a) Non-Governmental Organisations Act is to the effect that an organization shall not be registered where it is in contravention with the laws of the country.

Regulation 6 states that where the Bureau refuses to register an organization, the Bureau shall give the reasons for the refusal and notify the organization for its decision within 30 days from the date of refusal, notification is in Form C.

In our facts, the company wants to provide funding and assistance to the Peoples Power Movement of Bobi Wine in their quest to resist misrule by the leaders.

Regulation 7, requires the parties to include the objectives of the entity which in our facts among others is to 'fund Peoples Power Movement .....'. The application is likelt to be granted on grounds that one of

the objectives is unlawful in contravention with section 30 (a) of the Non-Governmental Organizations Act

S.30 (b) Non-Governmental Organisations Act states where the application for registration does not comply with the requirements under the Act it may not be registered. S.3 the Act restricts

organizations from making profits and engaging in commercial purposes.

In our facts, the company intends to equip the Batwa youth with skills relating to crafts and fight poverty and real estate to collect rentals and royalties to support this cause. The company is ready to provide some funds from its profits for this cause. The company's objective of equipping the Batwa youth with skills in crafts and fighting poverty is in line with S.3 of the NON- GOVERNMENT ORGANIZATION Act.

Regulation 7- an organization shall upon registration apply to the Bureau for a permit in Form D.

The application for permit shall specify the following: the operations or objectives of the organization, staffing of the organization, geographical area of coverage of the organization, location of the organization's headquarters, evidence of payment of the prescribed fees and intended period of operation not exceeding five (5) years

Regulation 7 (4)- subject to S.31 of the Act and this regulation, the Bureau shall not issue an organization with permit to operate in the permit beyond five years.

The permit shall be in Form E indicating the name, the operations or objectives, geographical area of operation and the date of issue and expiry of the permit.

Regulation 8-provides for conditions under which the permit is to be used as follows;

(i) The permit shall not be used for purposes or objectives other than those specified in the permit, and an organization shall not engage in any form of activity relating to sector than the sector specified in the permit.

(ii) The permit shall not be transferable to any other organization or person

(iii)The permit shall be specific to the geographical area of operation specified in the permit

(iv)The organization shall within fourteen days after making any change in the area of operation, headquarters of the organization or activities, notify the Bureau of the change.

(v) Any other condition that may be specified in the permit by the Bureau.

Regulation 41 provides that an organization seeking to operate in a district shall seek in writing the approval from the District NON-GOVERNMENT ORGANIZATION Monitoring Committee

& the Local Government of that district.

Regulation 42 provides that where the District NON-GOVERNMENT ORGANIZATION Monitoring Committee and the Local Government has approved an organization to operate in a district, the Local Government shall sign a Memorandum of Understanding with the organization to carry out its activities in the district. The MOU has a template in Form V in the Schedule.

Therefore, the company must seek for permission from the district in which they want to operate.

FORM A

regulation 3 (2)

THE REPUBLIC OF UGANDA

THE NON-GOVERNMENTAL ORGANISATIONS ACT, 2016

APPLICATION FOR REGISTRATION.

To the Executive Director

National Bureau for Non-Governmental Organisations

We the undersigned members hereby apply for registration of an organisation under the Non-Governmental Organisations Act, 2016.

(a) Name of the incorporated

organisation.....
...

.....

(b) Nationality of the members

.....
...

.....

(c) Physical address of the

organisation.....

.....

(d)Telephone contacts of the

organisation.....

.....

(e) Name of each organisation or group established outside or inside

Uganda, if any, to which the organisation is affiliated or connected to

.....
...

.....
...

.....

NO. 2

FORM D

regulation 7 (2)

THE REPUBLIC OF UGANDA

THE NON-GOVERNMENTAL ORGANISATIONS ACT, 2016

APPLICATION FOR A PERMIT

To the Executive Director National Bureau for Non-Governmental

Organisations

We the undersigned members hereby apply for a permit for an organisation registered under the Non-Governmental Organisations Act,

2016 or the Companies Act, 2012 or the Trustees Incorporation Act.

(a)Name of the registered

organisation.....
...

..... (b)
The registration number of the organisation .....

(c) Physical address of the

organisation.....
...

.....

(d) List of operations/ objectives of the organisation

.....
...

.....
...

.....
...

.....

(e)The staffing structure of the organisation

.....
...

.....
...

.....
...

.....

N0.3

FORM F

regulation 9 (1)

THE REPUBLIC OF UGANDA

THE NON-GOVERNMENTAL ORGANISATIONS ACT, 2016

APPLICATION TO REVIEW A PERMIT

To the Executive Director National Bureau for Non-Governmental Organisations

We the undersigned members hereby apply for a review of a permit issued by the Bureau.

(a) Name of the registered

organisation.....
...

..... (b)
The registration Number of the organisation .....

(c) Physical address of the

organisation.....

.....

(d) List of operations/ objectives of the organisation

include.....
...

.....
...

.....

(e) Specify the changes proposed and the justification for the proposed

changes.....
...

.....
...

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...

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...

.....

TRUSTS

The most appropriate entity that can be established in Uganda to carry out the activity.

There are a number of bodies through which an entity can carry out charitable work. These include company limited by guarantee, Non-Governmental Organisations and Trusts.

The facts show that the company wants to

c) Fund and assist People Power movement of Bobi Wine in their quest to resist

misrule by the 'misleaders'

d) Assist Batwa youth in Bwindi by equipping them with skills relating to crafts and how to fight poverty, and to this end are willing to avail some of the real estate to collect rental and royalties to support this cause. The company is also ready to provide some funds from its profits for this cause.

To realise these objects, the appropriate entity is a trust. A company limited by guarantee recquires incorporation under the Companies Act and has more requirements which might make it hard for this company to establish another company.

A Non-Governmental Organisation is established under the NGO Act 2016 which has stringent procedures and requirements in order to form one. Under S. 44, an NGO should be non-partisan. Therefore it wouldn't fit these objects. Further NGO is not viable because it requires more administrative presence, more employees and supervision.

This leaves an incorporated trust as the most appropriate entity. This is because the employees can do the work at the same place of business and doesn't have many restrictions on establishment.

INCORPORATED TRUST

This is governed by the Trustees Incorporation Act Cap 165.

Section 1 of the Trustees Incorporation Act provides that a trustee(s) may be appointed by anybody or association of persons established for any religious, educational, literary, scientific, social or charitable purpose and such trustee(s) may apply in the manner herein after mentioned to the Minster for a certificate of registration of the trustee(s) of such body or association of persons as a corporate body.

If the Minister having regard to the extent, nature and objects and other circumstances of such body or association of persons considers that incorporation expedient they may grant such certificate accordingly subject to such conditions or directions generally as s/he shall think fit to insert in the certificate relating to;

(i) The qualifications and number of trustee(s) (ii) Their nature and avoidance of office

(iii) The mode of appointing new trustees

(iv) The custody and use of the common seal

(v) The amount of land the trustees may hold and the purpose for which that land may be applied

The procedure and documents required.

Appointment of trustees. This requires a company resolution. The trustees should form a board of trustees and proceed to be incorporated.

An application letter; the procedure is by making a written application letter to the Minister for a certificate of incorporation.

S. 1 provides that the trustees appointed may apply for a certificate of incorporation.

S.3 is to the effect that every application to the Minister for a certificate under this Act shall be in writing signed by the person making it and shall contain the several particulars specified in the Schedule of this Act or as may be prescribed or such of them as shall be applicable to the case.

According to the schedule these are the Particulars to be inserted in applications for incorporation

(i) The objects of the of the body or association of persons, and the rules and regulations of the body or association of persons, together with the date of, and parties to every deed, will or other instrument, if any, creating, constituting or regulating the body or association of persons.

(ii) The statement and short description of the land or interest in the land which at the date of application is possessed by or belonging to or held on behalf the body or association of persons.

(iii)the names, residences and additions of the trustees and the manner and date of their appointment, their number, qualification, tenure and avoidance of office;

(iv)Mode of appointing new trustees

(v) The proposed title of the proposed body of which title the words ''registered trustees'' shall

form part.

(vi)The proposed device of the common seal.

(vii) The regulations for the custody and use of the common seal.

Subsection 2 thereof provides that (2) The Minister may require such declaration or other evidence in verification of the statements and particulars in the application, and such other particulars, information or evidence as he or she may think necessary or proper.

Regulation 2 of the The Trustees Incorporation Rules Statutory Instrument 165—1 provides that every application for a certificate of registration as a corporate body shall be submitted to the commissioner for land registration and shall in substance follow Form I in the First Schedule to these Rules.

S. 9 provides that on every application for a certificate of incorporation under this Act, and on the issue of every such certificate, the prescribed fee shall be paid.

Regulation 6 of the The Trustees Incorporation Rules Statutory Instrument 165 provides that The fees set out in the Second Schedule to these Rules shall be payable in respect of the matters specified in that Schedule. This is 20,000 upon submission of an application for a certificate of registration as a corporate body

S. 4 provides that Before a certificate of incorporation is granted, the trustees or trustee shall have been effectually and lawfully appointed to the satisfaction of the Minister.

S.1(2) provides that if the Minister, having regard to the extent, nature and objects and other circumstances of such body or association of persons, considers that incorporation expedient, he or she may grant such certificate accordingly

On grant of certificate S.1(3) provides that the trustees or trustee shall thereupon become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in the corporate name

S. 6 is to the effect that a certificate of incorporation granted under this Act shall be conclusive evidence that all the preliminary requisitions herein contained and required in respect of the incorporation have been complied with, and the date of incorporation mentioned in the certificate shall be deemed to be the date at which incorporation has taken place.

DOCUMENTS

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE TRUSTEES INCORPORATION ACT CAP 165

AND

IN THE MATTER OF ..... LIMITED

RESOLUTION

At the Board of Directors meeting of the Company held at its registered offices on the ..... day of ..... 2018 to consider the establishment of an incorporated trustee, it was resolved and passed as follows:-

i. That an incorporated trust be registered to assist the Batwa tribe.

ii. That real estate be availed to collect rental and royalties to support this cause iii. A board of trustees be appointed for this cause.

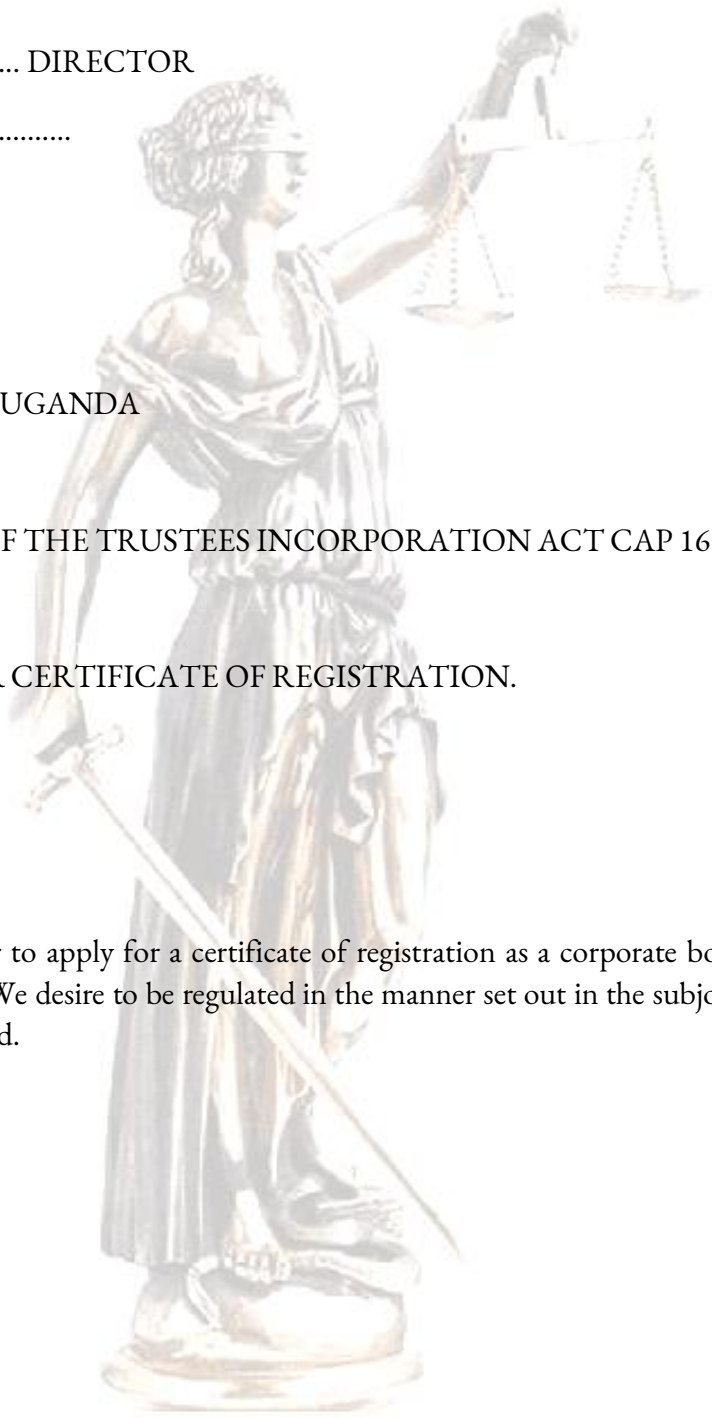
iv. That the following persons be appointed as trustees for purposes of incorporating a trust.

a. .....

b. .....

c. .....

Dated at Kampala this.....day of.....2018



..... DIRECTOR

.....

DIRECTOR

FORM I.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE TRUSTEES INCORPORATION ACT CAP 165

APPLICATION FOR CERTIFICATE OF REGISTRATION.

To the Minister,

I/We have the honour to apply for a certificate of registration as a corporate body under the Trustees Incorporation Act. I/We desire to be regulated in the manner set out in the subjoined particulars and in the documents attached.

Date , 20

Signatures of all Applicants Being the

Trustees of the Proposed Corporate Body

Particulars.

(It is unnecessary to set out below any particulars contained in any printed book of rules, instrument or document attached.)

1. The objects of the proposed corporate body are'

2. A copy of the rules of the attached(state name of body or association) is

(if none submitted so state)

3. Copies of the following instruments or documents are attached

(state nature, setting out date and parties to the instruments or documents; if none submitted so state)

4. It is desired to acquire the following (interest in) land

(give particulars of situation, title, reference and area; and state if already held on behalf of the body or association)

5. The number of trustees of the proposed corporate body is

6. The names, addresses and occupations of the trustees are

(in full in block letters)

7. The trustees have been appointed in the following manner—

(certified copy of the minute relating to any resolution of any meeting, with full particulars thereof to be attached)

8. The proposed qualification of future trustees is_

9. It is proposed that the trustees shall hold office for

period)

6. Any trustee may avoid his or her office (in the following circumstances)_____

(state

11. Any trustee may be removed from his or her office (in the following circumstances) _____

12. The proposed mode of appointing new trustees is _____

13. The proposed name of the corporate body is the Registered Trustees of _____

14. The common seal shall be kept

_____

(state where and by whom)

15. The common seal shall be affixed in the presence of _____

Trustees)andthe (statenumberoftr _____

[Always Give Praise To God; Creator of the Entire Universe]

END

AUTHOR'S NOTE

Isaac Christopher Lubogo, the esteemed author, remarks: "This revised edition reflects my unwavering commitment to advancing Ugandan jurisprudence and supporting the legal community."

A NEW BENCHMARK IN LEGAL EXCELLENCE

With the revised edition of "Objection, My Lord!", Isaac Christopher Lubogo has once again raised the bar, delivering another tour de force that surpasses the original's groundbreaking impact. This masterpiece solidifies its position as the go-to resource for Uganda's legal fraternity, providing unparalleled depth, clarity, and expertise.

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