

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
IN THE MATTER OF THE COMPANIES ACT, NO. 1 OF 2012
AND
IN THE MATTER OF UNI OIL UGANDA LIMITED
COMPANY CAUSE NO. 14 OF 2016

1. ALFRED BYARUHANGA MUHUMUZA
2. JANE FRANCES MPAIRWE MUHUMUZA..... PETITIONERS

VERSUS

UNI OIL (U) LIMITED..... RESPONDENT/ CROSS PETITIONER

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The respondent was incorporated in 2006 with the petitioners and two of their children Pius Tumwesige Muhumuza and Pauline Atuhairwe Muhumuza as the only shareholders and directors.

In February 2012, a memorandum of agreement (MOA) was signed between the respondent and Synergy Oils Uganda Ltd (now called Ainushamsi Energy (U) Ltd) whereby Synergy acquired 75% shares in the respondent. Pursuant to the said MOA, the articles and memorandum of association of the respondent were amended and its share capital increased.

The petitioners filed this petition against the respondent for;

- 1) A declaration that synergy's continued management of the respondent is illegal, null and void;

- 2) An order of injunction permanently restraining Synergy from managing the affairs of the respondent;
- 3) An order of specific performance that synergy re-transfers the 75% shares held in the respondent to the petitioners and their children in accordance with the terms of the memorandum of agreement;
- 4) An order directing amendment of the Articles and Memorandum of association of the respondent to restore it to its pre 2012 status;
- 5) An order of injunction permanently restraining synergy from claiming to be the majority shareholder in the respondent;
- 6) General damages;
- 7) Costs of the petition among other reliefs.

They alleged that the respondent's affairs were being run dubiously, oppressively and fraudulently by synergy with an aim of illegally taking over the shares of the petitioners and others in order to have full ownership, control and management of the respondent company in breach of the terms of the MOA.

The respondent filed an answer to the petition along with a cross petition alleging that the petitioners committed fraudulent transactions, continued to accumulate loans which crippled the running of the respondent among other things. The respondent/cross petitioner stated that the affairs of the respondent are being legally and in accordance with the international corporate governance principles.

The respondent prayed that this court that the petition is dismissed, the cross petition is granted, a declaration that the affairs of the respondent are being run lawfully, an order that the respondent's major shareholder buys the respondent's shares at the nominal value depicted by the cross petitioner's amended memorandum and articles of association, a declaration that the 1st petitioner is indebted to the respondent, an order that the 1st respondent is removed as director of the respondent company, interest, general damages, costs and any reliefs deemed fit by this court.

The parties filed a joint scheduling memorandum wherein the following issues were framed for determination by this court;

1. *Whether the petition is properly brought before this court.*
2. *Whether the petition is barred by law.*
3. *Whether the petitioners have a cause of action against the respondent.*
4. *Whether the affairs of the company are being conducted in a lawful manner.*
5. *Whether the respondent has had any valid annual general meeting since 2012.*
6. *Whether the respondent has had a valid board of directors since 2012.*
7. *Whether synergy's acquisition of the shares of the petitioners, Pius Tumwesige Muhumuza and Pauline Atuhairwe Muhumuza in 2015 was valid.*
8. *Whether synergy's continued running of the affairs of the respondent after February 2015 is lawful.*
9. *Whether the affairs of the respondent are being dubiously, oppressively and fraudulently run by synergy.*
10. *Whether the 1st petitioner is indebted to the respondent company.*
11. *Whether the petitioners have committed acts of fraud against the respondent.*
12. *What remedies are available to the parties?*

At the hearing, the petitioners were represented by *Andrew Kahuma* whereas the respondent was represented by *Martin Mbanza*.

The parties filed final written submissions that were considered by this court.

I shall now proceed to determine the issues framed for court's determination.

Issues 1, 2 and 3 will be determined together;

Issue 1; Whether the petition is properly brought before this court.

Issue 2; Whether the petition is barred by law.

Issue 3; Whether the petitioners have a cause of action against the respondent.

The petitioners are minority shareholders in the respondent company who filed this petition alleging that the affairs of the respondent are being run dubiously, fraudulently and oppressively.

Counsel for the respondent submitted that the petition was filed without a supporting affidavit, a wrong party was sued, is barred by law in as far as the petitioners are using the Court to prevent a lawful process from proceeding. He further submitted that the petitioners commenced their claim in a wrong jurisdiction contrary to the provisions of the Companies Act 2012. It was also counsel's submission that the petitioners cannot rightfully and lawfully sue on the MOA that they were not parties to.

The petitioners have a claim in as far as they are minority shareholders in the respondent company who claim that the affairs of the company are being run in a manner that is prejudicial to their interests. Their claim was rightly brought before this court as provided for under section 248 of the Companies Act hence this court has the jurisdiction to hear the matter. According to section 248 Companies Act 2012, *a member of a company may apply to the court by petition for an order under this Part on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members including at least himself or herself or that any actual or proposed act or omission of the company including an act or omission on its behalf is or would be so prejudicial.*

The nature of this case and the background to it has elements of derivative action. The issue of when there is a breach of directors' duties, who has the power to decide whether the company, as a separate legal person should sue? A decision to sue is a management decision, the board normally has the power to decide whether the company should sue the directors for breaching their duties.

An obvious problem arises, however, when the same directors who breached their duties are the ones who have the power to decide whether the company should sue. In such a case, normal corporate decision-making process produces an acute conflict of interest as it vests the wrongdoing directors with the power

to decide whether the company should, in effect sue themselves. This acute conflict of interest becomes intractable when the wrongdoing directors are also the controlling shareholders as they can entrench themselves and effectively foreclose the company from suing them for breaching their directors' duties.

The directors of the company owed fiduciary duties to the company and the company would have been the best petitioner but this is not possible, so the petitioner was at liberty to bring this action against the company for his benefit as minority shareholder and also the company in case of any alleged wrongdoing against the company.

The decision to defend the petition was also a decision of the majority shareholder or the Board of directors since the allegations are brought against them in challenge of their management of the company. The non-addition of the majority shareholder would not in any way defeat the petition. They are also at liberty to apply to be joined as parties if they intended to defend differently from the company.

The right party was sued since the claim is for oppression in the respondent company. Synergy is the majority shareholder in the respondent hence not necessary to add it as a party to the suit.

I shall now proceed to determine the following issues together as they are all hinged upon the management of the affairs of the respondent company.

Issue 4; Whether the affairs of the Company are being conducted in a lawful manner.

Issue 8; Whether Synergy's continued running of the affairs of the Respondent after February 2015 is lawful.

Issue 9; Whether the affairs of the Respondent are being dubiously, oppressively and fraudulently run by Synergy.

From the evidence on record, the respondent was incorporated in 2006 with the petitioners and two of their children Pius Tumwesige Muhumuza and Pauline Atuhairwe Muhumuza as the only shareholders and directors.

In February 2012, a memorandum of agreement (MOA) was signed between the respondent and Synergy Oils Uganda Ltd (now called Ainushamsi Energy (U) Ltd) whereby Synergy acquired 75% shares in the respondent. Pursuant to the said MOA, the articles and memorandum of association of the respondent were amended and its share capital increased.

PW1 testified that the arrangement between the respondent company and Synergy was to last 3 years after which the petitioners and their two children would have the option to buy back their shares. Counsel for the petitioners submitted that the continued running of affairs of the respondent by Synergy after February 2015 is unlawful since it was the understanding of both parties that their relationship would terminate after three years which ended in February 2015.

He further testified that he has not attended any board meeting since 2016 and was evicted from his office in 2018. PW1 was barred from accessing the respondent's premises in spite to the court injunction. An access control using finger prints was introduced but his finger prints were not taken hence effectively denying him access. He testified that there had remained three directors in the company and when he left the company remained with two directors with no one representing the respondent as constituted before the amendment of the articles and memorandum of association.

PW1 testified that he and his other co-minority shareholders have not been invited for any annual general meeting of the company since 2012 where some decisions could be taken.

PW1 testified that the position of managing director which he held was abolished and even when he was still a managing director they often bypassed him in decision making so he was basically playing a passive role.

Counsel submitted that the assets of the respondent are being used as security to borrow money to run the business of Synergy. The company is no longer doing business but synergy is to the prejudice of the company and other members.

Counsel for the respondent submitted that any allegation of mismanagement by majority is an AGM issue. He further submitted that **Clause 6.2** of the Agreement was giving Uni Oil (U) Ltd as the First Party to repurchase the shares Synergy had bought, but only after 3 years. The said clause was not in favour of the 1st Petitioner nor the 2nd Petitioner, as they were never parties to the said Agreement.

Article 3.5 of the MOA provides that;

“SOUL shall be responsible for the financial management of the Company and shall be at liberty to alter or substitute the financial systems of the company existing at the time of execution of this memorandum, provided that the parties hereto may revise the terms of the financial management clause after a period of three years from the date of this memorandum.”

Clause 6.1(a) provides that;

“In the event that either party intends to dispose of the shares held by them, they shall offer the same to the other party, which offer will stand open for 60 days before the vending party may obtain offers from other parties.”

Clause 6.2 further provides that;

“The sale price of the shares shall be agreed between the vending and purchasing parties or failing which, shall be the fair value as determined and certified by the Company’s Auditors....”

Clause 6.2, as continued on the next page, further provides that;

“The First Party shall have the option to repurchase from SOUL the share to be acquired by SOUL after a period of 3 years from the date of execution of this agreement.”

From the evidence on record, the parties exercised the option of the respondent repurchasing its shares from Synergy however it was not concluded.

Synergy tabled their offer to sell their shares back to the respondent company but from the back and forth communication between Synergy and the petitioners, the

sale/repurchase was not concluded. As per the last correspondence dated 18th September 2015, the court notes that the petitioners failed to observe the timelines set by Synergy to conclude the buy-out. There is a draft memorandum on the record of this court that was never signed by the parties.

Being the majority shareholder with the highest stake in the company, it was in the best interest of Synergy to continue management of the respondent company even after the expiry of 3 years since the buy-out option as agreed by the parties was never concluded.

As to whether the affairs of the company are being run in a manner that is oppressive to the petitioners, this issue has to be approached as a question of fact. To constitute unfair prejudice the value or the quality of the shareholder's interest, that is his/her shares in the company limited by shares must be adversely affected.

In the case of **Kigongo v Mosa Courts Apartment Ltd (Company Cause No. 01 of 2015)**, Justice Stephen Musota discussed unfair prejudice in detail.

To invoke the principle of 'unfair prejudice' two elements must be present for one to succeed in a petition under Section 248.

- 1. The conduct must be prejudicial in the sense of causing prejudice or to the relevant interest of members or some part of the members of the company i.e shareholders; and*
- 2. It must also be unfair.*

The objective test of unfairness is what amounts to unfair prejudice. It is not necessary for the petitioning shareholder to show that anybody acted in bad faith or with intention to cause prejudice. The courts will regard the prejudice as unfair if a hypothetical reasonable standard would regard it to be unfair. Fairness is judged in the context of a commercial relationship, the contractual terms which are paramount and as are set out in the Articles of association and in any binding shareholders agreement. This court believes that the protection for a shareholder is found in the Articles themselves. Therefore is the

conduct of which the shareholder complains in accordance with the Articles and the powers which the shareholder have entrusted the board? If the conduct is in accordance with the articles to which the shareholder has agreed it will be difficult to succeed in a cause based on unfair prejudice. This does not mean that anything done outside the articles amount to unfair prejudice. Far from it. Even if the conduct is not in accordance with the articles, it does not necessarily render the conduct unfair since trivial and technical infringements of the articles may not give rise to a remedy under Section 248 of the Companies Act.

Therefore unfair prejudice is a flexible concept incapable of exhaustive definition. This means that the categories of conduct which may amount to unfair prejudicial conduct are not closed. Examples that may constitute unfairly prejudicial conduct are:

- 1. Exclusion from management in circumstances where there is (legitimate) expectations of participation.*
- 2. The diversion of business to another company in which the majority shareholder holds interest.*
- 3. The awarding of the majority shareholder to himself of excessive financial benefits.*
- 4. Abuses of power and breaches of Articles of Association for example the passing of a special resolution to alter the Company's Articles maybe unfairly prejudicial conduct if such alterations would affect the petitioner's legitimate expectation that he would participate in the management of the company.*
- 5. Repeated failures to hold Annual General Meetings.*
- 6. Delaying accounts and depriving the members of their right to know the state of the Companies affairs.*

In this case, the petitioners alleged the following particulars of oppression;

- a) Dismissing competent staff recruited by the respondent before 2012
- b) Ignoring or abolishing established administrative structures of the respondent before 2012

- c) By passing the 1st petitioner as managing director of the respondent in decision making
- d) Bulldozing the 1st petitioner in board meetings
- e) Treating the 1st petitioner and Uni Transport Ltd as one whereas not
- f) Demanding with menaces that the 1st petitioner discloses business transactions of Uni Transport Ltd about the planned depot project
- g) Usurping the powers of the 1st petitioner as managing director
- h) Circulating false and malicious rumors about the 1st petitioner
- i) Convening board meetings largely to discuss the business transactions of Uni Transport Ltd rather than the respondent
- j) Mortgaging company property without the 1st petitioner's knowledge and consent as representative of the minority shareholders in the company as reconstituted
- k) Abolish the post of managing director
- l) Attempting to block the 1st petitioner from accessing his office at the company premises
- m) Attempting to break into the 1st petitioner's office at the company head office
- n) Introducing an access control machine without informing the 1st petitioner purposely to deny him access to his office because his finger prints were not taken

As we can see, the larger parts of the acts complained of by the petitioner are with regard to the management of the respondent.

Article 3.5 of the MOA empowered *SOUL to be responsible for the financial management of the Company and shall be at liberty to alter or substitute the financial systems of the company existing at the time of execution of this memorandum.*

From the reading of that Article, the petitioners did not have legitimate expectation for management of the respondent company up until after the expiry of 3 years when the provision would be revised. Since management of the company was in the hands of synergy, they were mandated by the MOA to make

any financial decisions for the best interest of the company which I find that they executed lawfully. Those in control of the company have acted *bonafide* in the best interests of the company.

The legitimate expectation that the petitioner was to remain a Managing Director was only subject to the best interests of the company. In this context, the majority shareholder's acts of removing the plaintiff as Managing director or Changing the position of Managing Director and later excluding him from the management of the company did not amount to oppression; it was simply an exercise of the majority shareholder's legal rights. See *Leong Chee Kin v Ideal Design Studio Pte Ltd [2017] SGHC 192*

The act of mortgaging the company's asset without the consent of the petitioner was an act in breach of the director's duties but they had not acted oppressively since it was done in the best interest of the company and the petitioner or other minority shareholders would benefit as a consequence in the long run. This was not an act for individual benefit rather it was for the entire company. Not every corporate wrong would amount to oppression or prejudice, especially when it has caused no commercial unfairness or prejudice to the petitioner.

There is need to distinguish between corporate wrongs and personal wrongs in the context of oppression claims. In reality, the distinction between personal wrongs and corporate wrongs is rarely clear and that there often concurrent wrongs. A single breach wrongful act- normally a breach of directors' duties may be both personal wrong and corporate wrongs. The breach of directors' duties which is a corporate wrong will invite an action under the companies Act, which will prima facie provide a remedy for personal wrongs in so far as the breach serves as evidence of the wrongdoer's oppressive behavior.

I find the other acts are trivial and do not fall within the meaning of unfair prejudice. The nature of the complaints against the respondent is countered by complaints against the petitioner. The respondent could as well have brought an action under section 248 of the Companies Act to preclude the petitioner from claiming relief under the same provision. The respondent majority shareholder

would have been precluded from claiming such relief, since it was possessed with “the power to exercise self-help by taking control of the company and bringing to an end the prejudicial state of affairs”.

The respondent rightly used majority voting power to take full control of the management of the company and removing the petitioner from the board and causing the company to bring an action for recovery of the money owed or siphoned by the 1st petitioner. The court should deny relief to a majority shareholder who voluntarily chooses not to exercise his controlling power to help himself when he claims to have been oppressed or prejudiced in light of his inaction.

Bearing in mind the decision quoted above, I find the acts complained of by the petitioner not amounting to unfair prejudice or oppression. I do not find the acts complained of as unfair or oppressive to the petitioners.

I also find that the affairs of the respondent are being lawfully run even after February 2015.

These issues therefore collectively fail.

Issue 5; Whether the respondent has had any valid annual general meeting since 2012.

From the evidence, the respondent has held several board meetings and extra ordinary general meetings attended by board members. There is only evidence of one annual general meeting being held on 30th March 2016. PW1 denied ever having been invited to attend the general meeting.

The petitioners submitted that the above AGM was invalid in so far as the minority shareholders were not notified or invited to attend the meeting.

Counsel for the respondent submitted that in accordance with the provisions of **Article 61 of the Articles of Association** of the Respondent Company, Service of the Notices of the meetings and the AGM inclusive were duly served as depicted in *Min.1/30/03/KLA/2016* of the Minutes. The same was also depicted for the

subsequent meeting of 6th May 2016 (**at Pages 584-587 of the Trial Bundle**). The self-explanatory minutes of the meetings show that due process was observed.

From the respondent's evidence, the minority shareholders were duly invited however they did not attend. Therefore one valid AGM has been held by the respondent since 2012.

Issue 6; Whether the Respondent has had a valid Board of Directors since 2012

The petitioner submitted that there was no valid board of the respondent after the resignation of two of the directors appointed by the majority shareholders. He further submitted that the company had only two legally appointed directors until 29/12/15 when the 1st petitioner stormed out of the meeting leaving only one appointed director conducting the business of the respondent.

The respondent led evidence to show that several board meetings were held since 2012 that the 1st petitioner himself attended.

Counsel for the respondent submitted that it is clear from the several meetings so-far held between 2012 and 2016 when the instant suit was commenced, that the Respondent Company's management followed due process in accordance with the law otherwise, the 1st Petitioner would certainly have refused to attend meetings which were inappropriately convened. The meetings of the whole period from 2012 to 2016 were well attended by members and none of them complained that the meetings had been badly convened. The 1st Petitioner himself participated, contributed with recommendations to some of the resolutions and raised no question as to the illegality of any of the meetings held.

The 1st petitioner was a director of the respondent company who himself attended the respondent's board of directors meetings. It seems quite like an afterthought to now complain to this court that the respondent did not have a valid board of directors. The majority shareholder had every right to remedy the wrongs or prejudices through *"the power to exercise self-help by taking control of the company and bringing an end the prejudicial state of affairs"*.

The parties to a statutory contract are the company and members. To the extent that the corporate constitution has vested the powers of management in the board, any shareholder usurpation of such powers may be resisted by the board in so far as the board is an organ of the company which is the party to the statutory contract rather than the board or individual directors as a contracting party.

This issue is resolved in the affirmative.

Issue 7; Whether Synergy's acquisition of the shares of the Petitioners, Pius Tumwesige Muhumuza and Pauline Atuhairwe Muhumuza in 2015 was valid.

The petitioners counsel submitted that the call on alleged unpaid shares first arose in the meeting of 10/11/15 which according to the petitioners was not properly constituted lacked quorum and therefore the resolution to make a call was null and void. The meeting of 29/12/15 which was the follow up meeting from the previous one equally lacked quorum when the decision to forfeit the shares was taken. The call to the members to pay for their shares was not served on them, the extract resolution was not registered, the statutory declaration was made by a person who was not a director and therefore incompetent to make such a declaration hence the acquisition of those shares by synergy was unlawful.

It was counsel for the respondent's submission that due process was followed by the respondent when it opted to make a call on all the unpaid shares.

The respondent's counsel submitted that the above position was depicted in **D.EXH. 10 at Pages 284 to 297 of the Trial Bundle** which shows that;

1. In the Respondent Company's meeting held on 10th November 2015[D.EXH. 9(8) at Page 266 andD.EXH. 10 at page 286, all of the Trial Bundle], attended by the 1st Petitioner, it was resolved that any shares that were allotted to members in the year 2012 but had not been paid-up be recalled in accordance with the provisions of the Articles of Association of the Company.

This process was in accordance with **Articles 21, 22 and 25** of the Respondent's Articles of Association.

2. By notice [**D.EXH. 10** at **pages 291&296** of the Trial Bundle] dated 11th November 2015 and served on the Petitioners on 13th November 2015, the Company formally notified four (4) shareholders of the Call on Shares allotted but not paid. The 1st Petitioner's comment on acknowledgment of receipt was *"NB: Total figure known to us is 240,000,000/=. Please amend accordingly."* The erroneous comment was later explained to the 1st Petitioner, and the 247,500,000/= remained.

This 14-days' Notice was in accordance with **Articles 22, 40 and 41** of the Respondent's Articles of Association.

3. In the subsequent Company meeting held on the 29th day of December 2015[**D.EXH. 9(9)** at **Page 271** and **D.EXH. 10** at **pages 292&297**, all of the Trial Bundle], it was resolved that Alfred Byaruhanga Muhumuza, Jane Frances Mpairwe Muhumuza, Pius Tumwesigye Muhumuza, and Pauline Atuhairwe Muhumuza not having paid a total of Ushs. 247,500,000 (Two hundred forty-seven million five hundred thousand shillings only) as was required by notice served on 13th November 2015, that the 9900 unpaid ordinary shares in the Company's capital registered in their respective names be forfeited.

This process was in accordance with **Articles 21, 22, 25, 40, 41, and 42** of the Respondent's Articles of Association.

4. In the said meeting, it was further resolved that **9900 unpaid ordinary shares** in the Company's capital registered in the names of Alfred Byaruhanga Muhumuza (**5445 unpaid ordinary shares**), Jane Frances Mpairwe Muhumuza (**3465 unpaid ordinary shares**), Pius Tumwesigye Muhumuza(**495 unpaid ordinary shares**), and Pauline Atuhairwe Muhumuza (**495 unpaid ordinary shares**) in respect of which the Company exercised its lien; and forfeited be sold to M/s Ainushamsi Energy Uganda

Ltd at a premium total sum of Ushs. 354,855,766.65 (Three hundred fifty-four million eight hundred fifty-five thousand seven hundred sixty-six shillings and sixty-five cents only).

This process was in accordance with **Articles 44 and 45** of the Respondent's Articles of Association

5. By Notice [**D.EXH. 10** at **page 293** of the Trial Bundle] served on M/s Ainushamsi Energy Uganda Ltd on 5th February 2016, the forfeited 9900 shares in the Company's capital were offered for sale.

This process was in accordance with **Article 44 and 45** of the Respondent's Articles of Association.

6. On 15th February 2016, the Company duly received a payment of Ushs. 354,855,767 from M/s Ainushamsi Energy Uganda Ltd [**D.EXH. 10** at **page 294** of the Trial Bundle], being consideration for the 9900 ordinary shares.

I have looked at the evidence adduced by the parties on this issue. The notice calling on shares allotted but not paid up was addressed on all the shareholders however there was no proof of service upon all of them.

The notice was received by the 1st petitioner alone which leaves this court questioning whether the other minority shareholders were served with the notices. Failure to serve the concerned shareholders rendered the call on unpaid shares invalid.

I therefore find that the acquisition of the shares of the 2nd petitioner, Pius Tumwesige Muhumuza and Pauline Atuhairwe Muhumuza was invalid. However, the shares of the 1st petitioner were later acquired by Ainushamusi Energy Uganda Limited (formerly Synergy) the majority shareholder in the respondent company.

Issue 10; Whether the 1st Petitioner is indebted to the Respondent Company.

The plaintiff submitted that there is a pending suit in the commercial court; HCCS No. 373 of 2014 Uni Oil (U) Ltd vs Alfred Byaruhanga Muhumuza that was filed two years before this petition to recover the same sum of UGX 1,202,502,272 that the respondent claims is owed by the 1st petitioner.

This court has decided not to pronounce itself on this issue since there is whole other suit wherein the issue will be amply determined.

Issue 11; Whether the petitioners have committed acts of fraud against the Respondent.

The petitioner submitted that the respondent led no evidence to prove fraud by the petitioners.

Counsel for the respondent submitted that contrary to the Petitioners' unfounded assertions of the non-existence of evidence of fraud adduced by the Respondent against the Petitioners, the Respondent clearly pleaded and particularized fraud by the petitioners under **paragraph 26 of the Respondent's Answer to Petition** and **paragraph 24 of the Respondent's Cross-Petition**. It was also corroborated by the Respondent Company's DW1's unrebutted testimony under **paragraphs 35 and 45 of his Witness Statement**. The said **Paragraph 35 of his testimony**, in line with paragraph 26 of the Answer to Petition and paragraph 24 of the Cross-Petition, provided that;

*"That during the years 2012 and 2016, the Petitioners committed fraudulent transactions using the Respondent Company's name against Standard Chartered Bank, Bank of Africa, Guaranty Trust Bank, The Micro Finance Support Centre Ltd, Ms. Sarah Seruwu, among others. Evidence is attached at **Pages 302-541** of the Respondent's Trial Bundle and marked **"D13", "D14", "D15", "D16", "D17", "D18", "D19", "D20", "D21", "D22", and "D23"**.*

According to counsel for the respondent, the following were the particulars of fraud committed by the petitioners against the respondent company;

- a) *Various actions and omissions were perpetrated by 1st Petitioner but were neither known nor approved by the Respondent Company or the other shareholders.*
- b) *Documents were signed and filed by 1st Petitioner and other persons who were not Directors at the time.*
- c) *Annual Returns for the years 2009, 2010, 2011, and 2012 were filed by the 1st Petitioner as one of the Directors and 2nd Petitioner; with the Annual Return for the year 2012 being made up to 15th February 2012 not depicting the changes that had been made on 4th February 2012. Evidence is attached at **Pages 461-464** of the Respondent's Trial Bundle and marked "**D14(1)**"*
- d) *A resolution passed on 8th April 2013 and a fixed debenture made on 8th April 2013 were made with Bank of Africa for USD. 186,850.70; with the Petitioners signing as Directors whereas not. Evidence is attached at **Pages 465-473** of the Respondent's Trial Bundle and marked "**D14(2)**", "**D14(3)**", and "**D15**"*
- e) *A Board Resolution (signed by the Petitioners as Directors) was made and filed on 15th July 2013 providing a corporate guarantee for Uni Oil Transport Limited. Evidence is attached at **Page 474** of the Respondent's Trial Bundle and marked "**D16**"*
- f) *A Board Resolution (signed by the Petitioners as Directors) was made and filed on 15th July 2013 depicting the Respondent Company as accepting a facility and a Debenture (signed by the Petitioners on 16th July 2013 as Directors) for Ushs. 1,811,600,000 allegedly issued by Uni Oil Uganda Limited and Uni Oil Transport to Standard Chartered Bank Uganda Limited whereas not. Evidence is attached at **Pages 475-503** of the Respondent's Trial Bundle and marked "**D17**" and "**D18**"*
- g) *A Special Resolution, (back-dated to 12th January 2012 to defeat the Memorandum of Agreement transactions of 4th February 2012) but filed on 22nd August 2013, was made allegedly separating Uni Oil Uganda Ltd from Uni Oil Transport Ltd; with Uni Oil Uganda Limited as the holding company*

*whereas not. Evidence is attached at **Page 504** of the Respondent's Trial Bundle and marked "D19"*

- h) The Transfer of shares to Uni Oil Uganda Limited but only known by the Company through the aforementioned search by the Company Secretary consequent to a tip-off by the bank. Evidence is attached at **Page 505** of the Respondent's Trial Bundle and marked "D20"*
- i) A Further Charge (signed by the Petitioners) for Ushs. 610,000,000 was allegedly created by Uni Oil Uganda Limited 09/04/2014 as depicted by filed Company Form No.4 showing particulars of a mortgage or charge created. Evidence is attached at **Page 506** of the Respondent's Trial Bundle and marked "D21"*
- j) A Further Debenture (signed by the Petitioner) was allegedly issued by Uni Oil Uganda Limited and Uni Oil Transport to Standard Chartered Bank Uganda Limited whereas not. Evidence is attached at **Pages 507-533** of the Respondent's Trial Bundle and marked "D22"*
- k) The fraudulent opening and continued illegal operation of a Bank Account with GT Bank in the names of Uni Oil Uganda Limited in a clear breach of the Company's trust, as it is to date unknown by the management or the Company itself. Evidence is attached at **Pages 534-541** of the Respondent's Trial Bundle and marked "D23"*
- l) The 1st Petitioner's accumulation of a debt in the total of Ushs. 1,202,502,272.40 (Uganda Shillings One Billion Two Hundred Two Million Five Hundred Two Thousand Two Hundred Seventy-Two and Forty Cents) that was procured by the 1st Petitioner under gross misrepresentations."*

The petitioners in their submissions in rejoinder submitted that the particulars a) and b) above were unfounded whereas d), e), f), i) and j) related to documents regarding transactions of Uni Oil Transport Ltd which had nothing to do with the respondent company.

The petitioners also submitted that the g) referred to a resolution which was in line with a board of directors' meeting held in January 2012 which allowed separation of the respondent's petrol stations and transport businesses to form a separate company called Uni Oil Transport Ltd as had been requested by Synergy prior to closing and signing of the MOA.

Counsel for the petitioners submitted that particular h) refers to a resolution that was filed in error and evidence was adduced showing that the resolution was reversed.

On particular k), counsel submitted that the account was used by the respondent until when the majority shareholder stopped all business operations of the respondent company and that no evidence was adduced in court to show that the petitioners were using the account for personal benefit.

Counsel for the petitioners submitted that the particular i) referred to a debt owed by the 1st petitioner to the respondent but there is no proof that this debt is due and owing.

I have reviewed the evidence adduced by the respondent as well as submissions by both counsel on this issue.

On particulars a) and b) I have found no evidence to support the allegations of fraud by the respondent company against the petitioners.

Exhibit D14 shows that the petitioners filed Annual returns without reflecting the changes as per the MOA signed between the respondent company and Synergy.

Contrary to the petitioners' claim that particulars d) e) f) i) and j) relate to documents regarding transactions of Uni Oil Transport Ltd, I find that all the documents equally involve Uni Oil (U) Ltd. The petitioners illegally signed on behalf of the respondent company to acquire loans without the knowledge of the respondent.

From the evidence it is more likely than not that the petitioners also illegally separated Uni Oil Transport Ltd from Uni Oil (U) Ltd. Had the parties intended

to separate the two companies, the details of the arrangement would probably have been clearly included in their recently signed MOA where all the other details of the respondent's relationship with synergy were stipulated.

The petitioners also transferred some of the shares of Uni Oil Transport Ltd to the respondent company without the authorization or knowledge thereof. Even though this was reversed, it shows a pattern of unauthorized illegal acts by the petitioners.

The petitioners also illegally opened up an account for the respondent company. Their defence that that it was not for personal benefit or that the MOA had expired is insufficient to disregard this illegal act. Synergy had not handed over management of the respondent to the petitioners when they opened up this account which shows bad faith on the petitioners' side.

With regard to particular i), this court has already resolved that the parties involved wait for determination of the pending suit in the commercial court; HCCS No. 373 of 2014 Uni Oil (U) Ltd vs Alfred Byaruhanga Muhumuza that was filed two years before this petition to recover the same sum of UGX 1,202,502,272 that the respondent claims is owed by the 1st petitioner.

The 1st petitioner was also found guilty of fraudulent actions in the case of Sarah Seruwu which also resulted into him losing his shares in the respondent company. The 1st respondent was found to have irregularly and fraudulently sold the company's property and exercised powers of the company without its authority.

Issue 11 is therefore answered in the affirmative. The petitioners committed acts of fraud against the respondent.

Issue 12: What remedies are available to the Parties.

According to **Section 250(1) of the Companies Act, 2012**, *where the court is satisfied that a Petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.*

The petitioners sought the following remedies

1. a declaration that synergy's continued management of the respondent is illegal, null and void,
2. an order of injunction permanently restraining Synergy from managing the affairs of the respondent,
3. an order of specific performance that synergy re-transfers the 75% shares held in the respondent to the petitioners and their children in accordance with the terms of the memorandum of agreement,
4. an order directing amendment of the Articles and Memorandum of association of the respondent to restore it to its pre 2012 status,
5. an order of injunction permanently restraining synergy from claiming to be the majority shareholder in the respondent,
6. general damages plus costs of the petition among other reliefs.

The respondent on the other hand sought the following orders;

1. the petition is dismissed, the cross petition is granted,
2. a declaration that the affairs of the respondent are being run lawfully,
3. an order that the respondent's major shareholder buys the respondent's shares at the nominal value depicted by the cross petitioner's amended memorandum and articles of association,
4. a declaration that the 1st petitioner is indebted to the respondent,
5. an order that the 1st respondent is removed as director of the respondent company,
6. interest, general damages, costs and any reliefs deemed fit by this court.

Basing on the circumstances of this case and the rulings on the above issues, this court finds the following reliefs fit in respect of the different matters complained of.

1. A declaration that the affairs of the company are being run lawfully.
2. Due to the fraudulent acts committed by the 1st petitioner against the respondent, he is thereby removed as a director of the company. I also

have to note that the 1st petitioner is no longer a shareholder in the respondent company since his shares were subject of execution proceedings vide *Civil Suit No. 128 of 2016; Sarah Seruwu vs Uni Oil (U) Ltd.* His shares were purchased by Ainushamusi Energy Uganda Limited (formerly Synergy) the majority shareholder in the respondent company.

3. The remaining minority shareholders choose a new representative director as per the terms of the MOA.
4. With regard to general damages, they are presumed or implied to naturally flow or accrue from the wrongful act. General damages are awarded in the discretion of court to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the Respondent. It is the duty of the claimant to plead and prove that there were damages losses or injuries suffered as a result of the Respondent's actions.

The petitioners committed acts of fraud against the respondent, strained the relationship among the shareholders and in the long run resulted into loss of business for the respondent. The respondent has also not been able to conduct business since this suit was filed resulting into loss of anticipated profits. I find the award of **UGX 50,000,000** sufficient as general damages to the respondent for the wrongful acts of the petitioners.

5. The petition is thereby dismissed and the cross petition granted.
6. Costs to the respondent/ cross petitioner.

I so order.

Dated, signed and delivered be email and WhatsApp at Kampala this 8th day of June 2020

SSEKAANA MUSA
JUDGE