



CASE DIGEST

PROCEDURE FOR A LAWFUL CHANGE OF COMPANY NAME:

CTM Uganda Ltd & 2 Ors Vs Allmuss Properties Uganda Ltd & 3 Ors, Supreme Court Civil Appeal No. 11 of 2022: *The law does not require the approval of the Registrar of Companies just as a matter of formality – Justice Stephen Musota, JSC.*

www.kaa.co.ug

1.0 Summary of Court Findings.

The Supreme Court has held emphasized that the procedure set down by *Section 40 of the Companies Act of 2012 (“the Act”)* to be followed by a company when it decides to change its name is not a mere formality, it is mandatory. The Court has that it is mandatory for the Registrar of Companies to approve in writing, the said change after carefully examining the special resolution before it is accepted and registered.

The Supreme Court held the setting aside and invalidating the Consent judgment on the premise that the 1st Appellant’s Managin Director did not follow the proper procedure for the change of the 1stAppellant’s name would unfairly prejudice the Respondents as the Respondents did not have to inquire into the internal dealings of CTM.

2.0 Factual Background

The 1st Appellant, CTM Uganda Limited represented by the 4th Respondent as its managing director entered into a Joint Venture (JV) with Italtile Ceramics (Pty) Ltd of South Africa. The JV created Allmuss Properties Uganda Limited, 1st Respondent as a Special Purpose Vehicle (SPV).

It was agreed that Italtile Ceramics (Pty) advances a loan to CTM against the security of its shares to pay for the said shareholding held. Italtile Mauritius Ltd also cleared a loan and also advanced money to CTM, all which was treated as a loan to be repaid. However, CTM failed to pay the loan amounts which lead to filing of a suit.

It was also agreed under the JV that CTM would contribute land and the 2nd Respondent would contribute funds towards the SPV. Due to the 2nd Respondent's failure to meet its obligations, CTM filed a suit to have court compel it to pay the said money. The suit filed by CTM was resolved by way of a Consent Judgment executed by the 4th Respondent on behalf of the 1st Appellant and the 1st to the 3rd Respondents. It was agreed that CTM changes its name and pays the agreed amounts. The shareholders of CTM filed an application to set aside the consent on grounds that it was illegal since it was not sanctioned by the 1st Appellant's shareholders. They also argued that no general or special meeting sat and no special resolution has ever been passed by CTM to allow it to change its name.

It was the Respondents argument that CTM knew about the consent judgment as the 4th Respondent acted in his capacity as CTM's managing director. The consent was also witnessed by its two legal representatives who had prepared CTM's Articles of Association. The High Court agreed with the Respondents, upheld the consent judgment and dismissed the Application. The Appellants appealed to the Court of Appeal which agreed with the High Court decision hence this appeal before the Supreme Court.

3.0 Key Findings of the Court

The approval by the Registrar of Companies under Section 40 of the Companies Act 2012 is not a formality

The Supreme Court emphasized the need for the Registrar of Companies to carefully execute their duty under Section 40 of the Companies Act. The Court buttressed the need for the Office of the Registrar of Companies to carefully execute its duty by examining special resolutions brought for registration. The necessity to scrutinize such resolutions is to ensure that they were obtained in strict adherence to the procedure set down by the Act.

The Court directed that it is only upon fulfilling the above duty that the Registrar of Companies should go ahead to approve and consent **in writing** to the special resolution to change a company's name.

4.0 Legal Implications and Key Company Law Practice Takeaways

- i. Companies, as and when they decide to change their names, should ensure that the procedure set down under the Companies Act is meticulously adhered to, to the letter. The special resolution filed by the Company should fit within the definition under the Act.
- ii. The Office of the Registrar of Companies should, as a matter of law and prudence, carefully examine the contents of Special Resolutions brought to it for filing before it accepts and consents to them so as to detect any defects in the said documents, as was in this case.
- iii. Lawyers/Company Secretaries should as a matter of practice indicate the names of the parties/members of the company in attendance in the resolutions prepared for registration before the Registrar of Companies.

5.0 Legal Representation

Kampala Associated Advocates through Augustine Idoot and Patience Akampurira ably represented three of the four successful parties that is Respondents number one to three (Allmuss Properties Uganda Limited and the Italtile Group).

AUTHORS



Augustine Idoot
Partner
aidoot@kaa.co.ug
info@kaa.co.ug



Patience Ngabirano
Senior Associate

