**Sandhu v Noble Builders (U) Ltd and another**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 22 February 2005

**Case Number:** 13/02

**Before:** Odoki CJ, Oder, Tsekooko, Karokora and Kanyeihamba JJSC

**Sourced by:** Lawafrica

*[1] Company law – Change of directors and shareholders – Status of directors and shareholders –*

*Completion and registration of form A8 showing change of directors and members – Effect of form on status of directors and members – Whether the appellant had ceased to be a director and member of first respondent on registration of form – Whether appellant had locus standi to seek winding up of company*

*– Form A8 – Companies Act.*

*[2] Practice – Judgments – Content of judgments – Addition to jurisprudence of Uganda – Whether it*

*was obligatory for judgments to add to the jurisprudence of the country.*

**JUDGMENT**

**Kanyeihamba JSC:** This is a second appeal from the judgment of the Court of Appeal allowing an appeal from the judgment and orders of the High Court, (Okumu Wengi J) in which the appellant had been the successful plaintiff. The facts of this case may be summarised as follows: The appellant Jaspal Singh Sandhu and the second respondent, Raghbir Singh Sandhu formed the first respondent, Noble Builders (U) Ltd (hereinafter called the respondent company) on 5 January 1984 and had it registered. On 12 January 1984, the appellant notified the Registrar of Companies that he had ceased to be a director and member in the respondent company and that he had appointed his wife, Balwinder Kaur Sandhu, to replace him as both director and member. The day before this notification, the appellant had filled in and completed company form A8 which he personally signed showing that he had ceased to be a director/member of the respondent company and his wife was appointed a new director/member of the company. Shortly after these transactions, the appellant left for Canada, where he became a resident. Later on, his wife followed him. In the meantime, the second respondent stayed in Uganda running and administering the business affairs of the respondent company. It would appear that the respondent company registered some business successes because when eventually the appellant returned to Uganda, he discovered that the respondent company had made profits for which he asked that company to account. The second respondent refused to account for the profits of the respondent company on the ground that since the appellant had ceased to be a shareholder before departing for Canada, he had no *locus standi* in the company and could, therefore, not claim accountability from it. Faced with this resistance from the second respondent, the appellant decided to petition the High Court to order the winding up of the respondent company and to declare the second respondent a delinquent director with an order to account for all the monies and assets of the respondent company. The trial judge entered judgment for the appellant and made the orders prayed for in the petition. In addition, the learned trial Judgej ordered the appellant’s name to be restored in the company register. Dissatisfied with the judgment and orders of the High Court, the respondents appealed to the Court of Appeal, which allowed the appeal- hence this appeal. Mr Mubiru *Kalenge* and Mr *Bwanika*, counsel for the appellant, had filed nine grounds of appeal before us, but after objections from Mr *Byenkya*, counsel for the respondents, that some of the grounds framed for the appeal offended against rule 81 of the rules of this Court, Messrs Mubiru *Kalenge* and *Bwanika*, abandoned grounds 6, 7 and 9. They argued grounds 1 and 8 separately and grounds 2 and 3 together and 4 and 5 together, respectively. The grounds argued were framed as follows:

1. The learned Justices of Appeal erred in fact and law in finding that the words contained in company form number A8 were unambiguous.

2. The learned Justices of Appeal contradicted themselves and thereby arrived at the wrong decision after correctly finding that shares can only be transferred in accordance with section 75 of the Companies Act and then finding that the appellant validly transferred his shares to his wife.

3. The learned Justices of the Court of Appeal erred in finding that the appellant relinquished his membership in the first respondent by signing company form number A8.

4. The learned Justices of the Court of Appeal misdirected themselves and erred in law, in finding that evidence given in *Noble Builders v Sietco Ltd,* High Court suit number 174 of 1994, was inadmissible.

5. The learned Justices of the Court of Appeal erred in holding that had the trial judge not relied on evidence in *Noble Builders v Sietco Ltd* High Court civil suit number 174 of 1990, he would have come to different conclusions.

6. The learned Justices of the Court of Appeal grossly erred and misdirected themselves in holding that the whole appeal case resolved on one issue only and thereby ignored other grounds of appeal, which raised important questions for the jurisprudence of this country.

Counsel for the appellant proceeded to present numerous and prolonged arguments and submissions which were not always designed to advance their client’s cause. Counsel advanced arguments which had been made in both the Court of Appeal and the High Court. Much of the same had been covered in lengthy written submissions which contained much more than what was pertinently relevant to this appeal. Indeed, the Court of Appeal aptly described all these submissions and arguments as copious. I note that ground 8 of the appeal complains that the justices of appeal grossly erred and misdirected themselves, when they held that the whole appeal case revolved on one issue only and thereby ignored other grounds of appeal which raised important questions for the jurisprudence of this country. Important as the jurisprudence of this country may be, the basis of the court’s consideration in any case is the application of law and principles of justice founded on the actual facts and circumstances of the case. The primary function of the court, in determining a case involving disputes amongst citizens and organisations, is to resolve those disputes judicially and not to seek and declare jurisprudential wisdom. Such wisdom evolves incidentally and not by design in any one given case. In my opinion, the notion that because in its deliberations, a given court did not enhance the knowledge of jurisprudence in Uganda, should constitute a ground of appeal is very far fetched in any legal system. For these reasons, I would dismiss ground 8 of the appeal. Having pursued the voluminous record of proceedings and heard counsel, I am of the same view as Kato JA, who wrote the lead judgment in the Court of Appeal, that this whole case resolves on one vital issue. That issue is whether or not it was the appellant who completed form A8 of the Companies Act and if so, what effect the registration of that same form had on the status, rights and obligations of directors and shareholders of the company. It is pleaded on behalf of the appellant, that he is still a member of the respondent company with all his rights as a member subsisting and enforceable. The second respondent claims that the appellant ceased to be a member the day he surrendered his shares and membership of the company to his wife and that from then onwards, he ceased to have *locus standi* and could not claim any rights either as a member or as a contributory. If the evidence was to show that as a member of the company and it is so declared by court, the court would proceed to consider the other grounds of appeal including a declaration of rights and compensation, if any (*sic*). If the pleadings and submissions prove that the appellant ceased to be both a member and a contributory of the company, the case ends there because all the other listed grounds would only be considered on the presumption that the appellant is still a member and contributory of the company. In my view, the grounds which are pertinently relevant to matters in this appeal are grounds 1, 2, 3 and 8 of the appeal. I have already disposed of ground 8. On ground 1, Mr Mubiru *Kalenge*, counsel for the appellant, submitted that the Court of Appeal erred in fact and law in holding that the words which the appellant used in completing form A8 of the Companies Act were vague, ambiguous and confusing. Counsel again contended that in light of the nature of the words used, it could not be deduced from the completed form A8, that the appellant had surrendered or transferred his shares to his wife. Counsel contended that the appellant had signed the memorandum and Articles of association of the first respondent. They were subsequently registered and by virtue of this procedure, the appellant had become a member of and a contributory to the respondent company. Mr Mubiru *Kalenge* further contended that the appellant has had those shares registered in his name since 1984, and he is still their owner. Counsel pointed out that the appellant never relinquished or transferred his shares to anyone, at all. This is evidenced furthered by the fact that the formalities demanded under the Companies Act for the transfer of shares were not followed. Consequently, the appellant’s wife was never registered as the transferee of the shares. Counsel for the appellant further contended that the alleged act of transfer to his wife was never effective. In the first instance, form A8 which he completed was headed “Notification of Change of Directors or Secretary or In the Particular” and was not designed for the surrender or transfer of shares *per se* Mr Mubiru *Kalenge* further submitted that for a transfer of shares to be effective, the transfer has to comply with the provisions of the Companies Act and the Articles of association of the company in question. He cited the relevant provisions for his submissions. In relation to the doctrine of estoppel which had been advanced on behalf of the respondents in the Court of Appeal, counsel for the appellant contended that it was not applicable in this case since the attempted transfer of the appellant’s shares had not succeeded. Counsel submitted further that the fact that no stamp duty had been paid on the transfer is further evidence that the appellant was still the true owner of his shares in the first respondent and any purported transfer of his shares did not materialise. Mr *Bwanika*, second counsel for the appellant, made submissions on grounds 4, 5 and 8. On grounds 4 and 5, he contended that the learned Justices of Appeal had not properly evaluated the evidence. In his view, they had failed to consider the appellant’s counsel’s submissions and arguments. Mr *Bwanika* contended that the second respondent had been delinquent and came to court with soiled hands and in counsel’s view, he should not have been granted a relief. Mr *Bwanika* further argued that the fact that the appellant had signed form A8 indicating the transfer of his directorship and membership to his wife was a mere technicality and the appellant should not be deprived of his remedies on a mere technicality. Counsel for the appellant cited *Charlesworth and Morse: Company Law* (7ed), *Re-National Savings Bank Association* (1866) LR 1 Ch App 594, *Re-London and Provincial Consolidated Cost Company* (1877) Ch Volume V 52, *Colonial Bank v Hapworth* 1887, Volume 36 Chapter 37 L, *Hall’s Company Secretarial Practice* (6ed) and provisions on the Companies Act, as authorities in support of their submissions and arguments. For the respondents, Mr *Byenkya* made submissions on the grounds as presented and argued by counsel for the appellant. The thrust of Mr *Byenkya*’s submission was that the appellant ceased to be a member on the day he signed form A8 and revealed to all and sundry that he had transferred his shares to his wife. Counsel contended that the words used by the appellant in that transfer were clear and unambiguous and should be given their natural and technical meaning in company law matters. Counsel contended that the appellant ceased to be a member of the company with effect from 12 January 1984, when he signified that he had transferred his shares to his wife. Mr *Byenkya* contended further that in company law, the term member only refers to shareholders and in signing form A8, the appellant had said that he had ceased to be director/member of the company and on the same day his wife, Mrs Balwinder Kaur Sandhu, had been appointed a new director/member of the company. Respondents’ counsel contended further that in informing the officials of the respondent company and those at the Companies Registry, he intended that those officials and any other stakeholders should act upon the information he provided. He further submitted that, in consequence, both respondents acted and managed the company in the belief that the appellant had quit the respondent company and was replaced by his wife who had stepped in his shoes and became both a director and member. It was also a contention for the respondents, that the signed acknowledgement by the appellant of surrender of his shares to his wife estopped him from denying that he had ceased to be a member. Mr *Byenkya* contended that on the basis of the appellant ceasing to be a member, the respondent company had gone ahead and created a new issue of shares and allotted the same to other people. Following the appellant’s departure as director/member, the respondent company started dealing with his wife as the new director/member and there is evidence that she was warned of the consequences if she persistently continued to be absent from the respondent company’s Board meetings. Finally, it was counsel’s contention that the appellant had no *locus standi* to petition for the winding up of a company of which he was neither a member nor a contributory. respondents’ counsel cited *Henry Kawalya v Dan Semakadde, Comp* Cause number 8 of 1990, *Nurdin Bankali v Lombarak Tanganyika Ltd* [1963] EA 304, *Mugenyi and Company Advocates v Attorney-General*, Supreme Court civil number 43 of 1955 and *Re Tal v Drws State Company* (*Mackley*’s case) 1875 1 Ch 247, as authorities for his submissions. As noted earlier, on the 30 April 1984, the appellant, who together with the second respondent had previously formed the respondent company, executed a document hereinafter called form A8 with the words: “With effect from 12 January 1984, Mr Jaspal Singh Sandhu ceased to be a director/member of the company. On the same day/date Mrs Balwinder Kaur is appointed a new director/member of the company.” In the lead judgment of the Court of Appeal, Kato JA (as he then was) said of the contents of that document: “The appellants are adamant that those words meant that the respondent did not only cease to be a director but also a member of the first appellant. The respondent’s interpretation is that he only resigned from the directorship of the company. I accept the interpretation given by the appellants’ counsel as the correct one. It is trite law that words which are not ambiguous must be given their ordinary and natural meaning. In this case the respondent was clear that he ceased being a director and member of the company. If he wanted to remain a member then why should the word member have been included in the document? The respondent does not say anywhere in his affidavit that he never wrote that word. On the contrary, both the respondent and his wife in their affidavits dated 16 October 2000 and 2 March 2001 respectively, show clearly that the appellant actually signed the document” Then, after citing extracts from the affidavits of both the appellant and his wife and re-evaluating other evidence, the learned Justice of Appeal concluded: “It is my considered opinion that as from 12 January 1984, the respondent ceased to be a member of the first appellant and all his rights in that company were vested in his wife. I find that the respondent had no *locus standi* in the affairs of the first appellant and as such he could not petition for its winding up nor could he call upon the second appellant to account to him how he had been managing the business of the company. The respondent does not fall under any of the categories which may institute proceedings to wind up a company under section 224 of the Companies Act.” *The other two justices of appeal agreed with Kato JA*.” In my opinion, the learned Justices of Appeal cannot be faulted. In support of their decision, I find further evidence that the wife of the appellant acquired the shares of her husband, who was the original subscriber at the initial stage of the company’s incorporation. The record shows that her husband, who is the appellant in this appeal, owned 49 percent of the shares and the first respondent owned the remaining 51 percent of the shares. Thereafter, the appellant transferred both his directorship and membership of the company to his wife, Mrs Balwinder Kaur Sandhu. There is no evidence that the appellant was ever contacted again by the company after he transferred his shares. On the other hand, his wife was apparently contacted, from time to time, as a director by the company. The evidence shows that the wife remains the second director and owner of the 49 percent of the shares in the first respondent, namely Noble Builders (U) Ltd. There was an attempt to reorganise the management and shareholding of the company. The attempt never succeeded because it could not comply with either the provisions of the Companies Act or the regulations of Noble Builders (U) Ltd. Indeed, the company itself recognised this dilemma when corresponding with the appellant’s wife. Having realised that a single director could not effect changes they desired in the company, they wrote to the appellant’s wife whom they recognised as the new director on 25 August 1988 and observed: “I write to inform you that since you were appointed as director you have never attended any board meeting of the company. Board meetings are held once every month. You are only two directors. A board meeting cannot take place without yourself; that you are rendering the company’s business ineffective. (*sic*)” It follows therefore that the attempted allotment of new shares by the single remaining director or his attempted reorganisation of Noble Builders (U) Ltd management failed. The inability of the company to effect changes after the appellant had departed from its management is itself an acknowledgment of their difficulties by the respondents when they pleaded with Mrs Balwinder Kaur Sandhu, the new director and shareholder on the basis that without her attendance and participation in the running of the company, they would be unable to transact business. In consequence, I would dismiss grounds 1, 2 and 3 of this appeal and as I have already dismissed ground 8 for lack of merit and held that the other ground, namely ground 5, is irrelevant, I would dismiss this appeal with costs to the respondents in this Court and in the courts below. Before leaving this appeal, I am constrained to observe that it was inadvisable for the appellant’s wife, Balwinder Kaur Singh, not to be joined as a party to the proceedings in this case. The fact that she may have not attended board meetings or fulfilled her responsibilities as a director, does not adversely affect her rights and obligations as a shareholder and owner of the 49 percent of the equities of Noble Builders (U) Ltd. I agree with Kato JA, the learned Justice who wrote the lead judgment in the Court of Appeal, that it is remarkable that the appellant’s wife has not chosen to pursue her rights. Of course, this judgment and all previous proceedings in this case do not in any way affect her rights as a shareholder in Noble Builders (U) Limited. **Tsekooko JSC:** I have had the benefit of reading in draft the judgment prepared by my learned brother, Kanyeihamba JSC and I agree with him that this appeal should be dismissed with costs to both respondents here and in the two courts below. It is common ground that the appellant and the second respondent were the initial subscribers to the first respondent (the company). Both the memorandum of association and the Articles of association show that the two were the only subscribers by the time the company was incorporated on 5 January 1984. The appellant stated clearly in paragraph 6 of his petition that he relinquished his directorship and membership on 12 January 1984. According to paragraph 7 of the affidavit of second respondent, the appellant endorsed on a formal company form entitled “Notification of Change of Directors or Secretary or in their Particulars”. The following words written manually in ink: “With effect from 12 January 1984 Mr Jaspal Singh Sandhu ceased to be a director/member of the company. On the same day/date Mrs Balwinder Kaur is appointed a new director/member of the company.” The said Mrs Balwinder Kaur is, in fact, the wife of the appellant. The form is dated 30 April 1984 and was signed by the two subscribers. The second respondent signed the form apparently as the managing director of the company while the appellant appears to have signed it as director of the company. The form was filed in the Registry of Companies. In these circumstances and contrary to the findings of the trial judge there is not the slightest doubt in my mind that the appellant ceased to be a director and member of the company on 12 January 1984. Or at latest upon lodging the form in the Registry of Companies, the appellant ceased to be a director as well as a member of the company. Counsel for the appellant attempted to minimise the effect of the endorsement, arguing that Mrs Balwinder Kaur was not active in the company and so the appellant remained a shareholder in the company, and therefore he can present to court a member’s winding up petition. In my opinion, the appellant publicly relinquished his directorship and shareholding on 12 January 1984 or latest by 8 May 1984. Therefore, for him to come to court nearly twenty years later to seek, as a member of the company, to have the company wound up is nothing short of a deliberate attempt to abuse court process. I am satisfied that the learned trial Judge erred to hold that the appellant was a shareholder and I agree that the Court of Appeal acted properly when it rejected the evil efforts of the appellant to have the company wound up since he had ceased to be both a member and a director early in 1984. I would dismiss this appeal with costs here and in the courts below. Odoki CJ, Oder and Karokora JJSC concurred in the judgment of Kanyeihamba JSC. For the appellant:

*Mr Mubiru Kalenge* and *Mr Bwanika*

For the respondent:

*Mr Byenkya*