

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**MISCELLANEOUS CAUSE NO 269 OF 2020**  
**IN THE MATTER OF THE COMPANIES ACT 2012**

**AND**

**IN THE MATTER OF NEW VISION PRINTING AND PUBLISHING COMPANY LIMITED**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ORDER ALLOWING THE CONVENING OF THE NEW VISION PRINTING AND PUBLISHING COMPANY LIMITED ANNUAL GENERAL MEETING FOR THE YEAR ENDED JUNE 30, 2020 BY A COMBINATION OF PHYSICAL AND ELECTRONIC MEANS UNDER SECTION 142 OF THE COMPANIES ACT 2012**

**MS. ROBINAH KAITIRITIMBA KITUNGI===== APPLICANT**

**(Section 142 of the Companies Act, 2012 and Section 98 of the Civil Procedure Act, Cap 71 and Order 38, Rule 6(h) of the Civil Procedure Rules SI 71-1)**

THIS APPLICATION coming up for final disposal on 12<sup>th</sup> day of October 2020 before **HONOURABLE JUSTICE MICHAEL ELUBU** and in the presence of **Kenneth Ntende** of New Vision Legal Department, counsel for the Applicant.

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. New Vision Printing and Publishing Company Limited (the "Company") is granted leave to convene and conduct the Annual General Meeting for the year ended 30th June 2020 by a combination of physical and electronic means.
2. Costs of this application are to be borne by the Company.

**GIVEN UNDER MY HAND AND SEAL OF THIS HONOURABLE COURT THIS..... DAY OF .....2020**





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**JUDGE**

**EXTRACTED BY:**

**The Legal Department**

**New Vision Printing & Publishing Co. Ltd**

**P.O Box 9815**

**Kampala.**

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)  
MISCELLANEOUS CAUSE NO. 269 OF 2020  
IN THE MATTER OF THE COMPANIES ACT NO. 1 OF 2012

AND

IN THE MATTER OF THE NEW VISION PRINTING AND PUBLISHING COMPANY  
LIMITED

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS ALLOWING THE  
CONVENING OF THE NEW VISION PRINTING AND PUBLISHING COMPANY  
LIMITED ANNUAL GENERAL MEETING FOR THE YEAR ENDED JUNE 30, 2020 BY  
A COMBINATION OF BOTH PHYSICAL AND ELECTRONIC MEANS UNDER  
SECTION 142 OF THE COMPANIES ACT

MS ROBINAH KAITIRITIMBA

KITUNGI

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APPLICANT

BEFORE: HON. JUSTICE MICHAEL ELUBU

RULING

1. This is an application brought under Section 142 of the Companies Act; Section 98 of The Civil Procedure Act; and Order 38 r 6 (h) of the Civil procedure Rules SI 71 - 1.
2. The applicant is Ms Robinah Kaitiritimba Kitungi, a member of THE NEW VISION PRINTING AND PUBLISHING COMPANY LIMITED, who seeks order that:
  - a. THE NEW VISION PRINTING AND PUBLISHING COMPANY LIMITED (the company) is granted leave to convene the Annual General Meeting for the year

ended June 30, 2020 by a combination of physical and electronic means, subject to obtaining a prior no objection from the Uganda Securities Exchange and complying with all applicable notices issued under the Uganda Securities Listing Rules 2003 that accommodates both the physical and virtual attendance of members.

b. Costs of this application be provided for.

3. The grounds on which this application is based are set out in the Chamber Summons but properly elaborated in the supporting affidavit that is deposed by applicant and a supplementary one sworn by Mr. Ndyanabo Gervase. In sum they state,
4. That Robinah Kaitiritimba Kitungi is a member of the Company who holds investor Identification Number 3759, on the Company's Register of Members while, Ndyanabo Gervase, is the Deputy Managing Director and the Corporation Secretary of the Company.
5. The company is a public company listed on the Uganda Securities Exchange and has about 2500 members domiciled both in Uganda and abroad.
6. That at the end of every financial year, the company is required to convene an annual general meeting in accordance with its Articles of Association, the Company's Act and the Uganda Securities and Exchange Listing Rules 2003.
7. That the Company's Articles of Association provide that the Annual General Meeting be convened physically for all members or their proxies entitled to attend in person.
8. That it is currently impracticable to convene a meeting, with members physically present, as is envisaged in the Articles of Association, owing to the various restrictions implemented by the Government of Uganda to fight the spread of the novel Corona virus (COVID 19).
9. That on the 11<sup>th</sup> of March 2020, The World Health Organisation declared COVID – 19 a global pandemic following which the Minister responsible for Health in Uganda declared a public health emergency on the 17<sup>th</sup> of March 2020.



10. That the restrictions implemented by the Government of Uganda include a ban on public meetings meaning that the members of the company cannot all convene at a designated venue to attend to the business usually conducted at an Annual General meeting.
11. That as a matter of urgency, it is essential that the company convenes the Annual General meeting for the financial year ended 30<sup>th</sup> June 2020 so as to comply with the statutory requirement for a public company to hold an annual general meeting within 15 months of the previous one. Failure to comply with this condition constitutes an offence.
12. That the Articles of Association of the Company require that an Annual General Meeting should be convened within 6 months of the end of the Financial year. The last meeting was held on the 21<sup>st</sup> of November 2019. Therefore the next meeting should be convened before the 31<sup>st</sup> of December 2020.
13. That there are matters which are crucial for the governance, management and operations of the company reserved for consideration by the members at the Annual General Meeting. These include: adoption of audited financial statements; declaration of dividend; and the appointment or re-appointment of external auditors.
14. Because the Articles of Association do not provide for means other than the physical attendance of members, for convening an Annual General Meeting, and taking into account the restrictions imposed by government to fight the spread of the virus, which are envisaged to remain in place for the foreseeable future, it is imperative that the company seek the leave of court to hold the Annual General Meeting by a combination of both physical and electronic means. That would allow a certain number of eligible members and invited parties (such as the external auditor) to be present at a physical location while the rest of the members would attend by electronic means (such as video conferencing) as may be provided by the company.
15. That on the 20<sup>th</sup> of May 2020, The Uganda Securities Exchange issued guidelines for Virtual and Hybrid Annual General meetings in light of the COVID-19 related restrictions.

16. It was prayed that the application be granted subject to obtaining a prior no objection from the Uganda Securities Exchange and complying with the notices issued under its rules.

17. Mr Robert Kabushenga is the Chief Executive Officer of the Company and swore an affidavit in reply to the application.

18. It is stated by Robert Kabushenga that the applicant is indeed a member of the Company and represented the minority shareholders on its Board. He also confirmed that the company has no objection to this application.

#### **Issue**

19. The question is whether the Company should be granted leave to convene its Annual General Meeting by a combination of physical and electronic means?

#### **Submissions**

20. The applicant was granted leave to file written submissions which are on record but will not be reproduced here. They have however been closely referred to by this Court in resolving this matter.

#### **Determination**

21. The background to this application is properly laid out in the affidavit evidence above.

22. It is true that the Company is a Public Limited Company. A copy of its Articles of Association have been exhibited and marked 'B'. As such the company is subject to a mandatory statutory obligation to hold an Annual General Meeting; and that no more than 15 months shall elapse between each convened Annual General Meeting (see Section 138 of **The Companies Act**).

23. Under Clause 41 of the Articles of Association, the Notice for general meetings shall specify the place the meeting is to be conducted. In Clause 45 the meeting shall not transact any business unless a quorum of members is present at the time the meeting proceeds to business. Then Clause 54 which provides for the manner in which voting shall be done stipulates that it shall be by a show of hands. Evidently all these provisions indicate that the business conducted in Company meetings was envisaged to be executed in the physical presence of the members or their proxies.

24. This however has been a remarkable year presenting unprecedented circumstances. The Country is faced with the threat of the global COVID - 19 pandemic. As a result, the Uganda Government, in a bid to control or curb the spread of the COVID – 19 virus has instituted a number of preventive measures. **The Public Health (Control of COVID - 19) Rules**, and several Statutory Instruments to extend their duration, have since the 19<sup>th</sup> of March 2020, imposed numerous restrictions including the banning of public meetings. Although many of these restriction have been eased in the recent past the ban on public meetings and mass gatherings remains in force.
25. In this situation the company cannot call its 2500 members to a physical meeting to conduct business in the ordinary way. It is for that reason that the applicant petitioned this Court for the orders sought for.
26. Under Article 139 of the **Constitution of the Republic of Uganda**, The High Court is clothed with unlimited jurisdiction. It has the mandate to grant such remedies as any of the parties is entitled to in respect of any legal or equitable claim (Sec 33 of **the Judicature Act**).
27. As stated earlier the law did not envisage a meeting other than a physical one. In such circumstances recourse may be had the Section 142 of **the Companies Act** which states,  
Where for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or conduct the meeting of the company in the manner prescribed by the articles or this Act, the court may of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting order a meeting of the company to be called, held and conducted in the manner the court thinks fit.
28. It was been properly established that the applicant is a member of the Company and a member of its Board entitled to vote. That the time to hold an Annual Meeting is now due. That the restriction on public gatherings has made it impossible to convene a meeting in the ordinary way. This Court has noted that the Uganda Securities Exchange has also issued guidelines to it members, like the Company, on the manner in which such a



meeting may be convened. The applicant and the Company appear to have followed the guidelines in making this application. The company should also ensure that as a listed company it follow all requisite preliminaries before convening the meeting.

29. In view of the foregoing it would be fair and just for this Court, acting under Section 142 of the Companies Act, to grant this application allowing the company to hold an Annual General Meeting by a combination of physical and electronic means.

### Remedies

30. It is therefore directed that,

- a. **THE NEW VISION PRINTING AND PUBLISHING COMPANY LIMITED** (the company) is granted leave to convene the Annual General Meeting for the year ended June 30, 2020 by a combination of physical and electronic means.
- b. Costs of this application be borne by the Company.



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Michael Elubu

Judge

12.10.2020