AN ANALYSIS ON THE PROTECTION OF THE MINORITY SHAREHOLDERS' RIGHTS IN UGANDA

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1153-01024-03112

A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF BACHELOR OF LAWS OF KAMPALA INTERNATIONAL UNIVERSITY

JULY, 2019
DECLARATION

I Samora Machel do declare that the work presented here is my own and has not been submitted for any other award in any other institution of higher learning.

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APPROVAL

This special research report has been submitted to school of Law with the approval from the academic supervisor.

Submitted with my consent

Signature: ........................................ Date: 06/June/2009

MR. ISAAC AFUNADULA

Supervisor
DEDICATION

This work is dedicated to my father Stephen Mugarura and my late mother Nassali Margaret for their support and unending love.
ACKNOWLEDGEMENT

I acknowledge the tremendous support and work that my father Mr. Steven Mugarura and my mother late Nassali Margaret for the love they have really given me since a little boy, raising me up wasn’t easy, they have been there for me even in the hardest times in life and through my education career and in this noble profession.

I wish to convey my greatest love and thanks to Tukachungurwa Ronald who has been there for me through law school, providing for me with materials, financial support and thorough discussion through the profession. I also convey love and thanks to my sister Sharon Nyebesa, Shilla Mbasingwire, Kennedy Keneitaka, for their unending love. My love and big heart goes to Cooper Ssali (spiritual mentor), Becky Nantale, James Mugaga (Uncle Jay) and the entire G-Way family.

Most of all I can never forget Musinguzi Ivan who I’ve always leaned on at school his love and compassion as a brother is tremendous, Angella Tusubira, Aceru Florence I really wish to extend big love and thanks for you all for living with me like a family away from home.

Special thanks to Counsel Victoria Nassuna who is an inspiration and a mentor in the legal profession.

My special thanks to Counsel Isaac Afunadula for not only being my supervisor and guide on proper understanding of the work, but he has been a friend and best lecture through this course.

I wish to send a big heart of love and special thanks to my dearest uncle, Dennis Katungi for being there through all my time at school and his advice is never taken for granted and his moral support is great. Uncle Paul Mafundo Katamba, I greatly appreciate the care and material support throughout this course, not forgetting Kikomeko Dennis and Karungi Vivian. Love you all so much, indeed.
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ABSTRACT

The study aimed at examining the extent to which minority shareholders are protected by the Uganda's legal framework in publicly held companies. The objectives of the study were; to examine the legal framework for protection of minority shareholders rights in Uganda, to examine the rights and infringements on the minority shareholders rights in Uganda, to identify the remedies for the minority shareholders in case of infringement of their rights. The researcher used qualitative research that used desktop review of primary and secondary data on the legal frameworks for minority shareholder protection. Primary sources will include the Constitution, legislation, company's Annual Reports, decided cases relevant to the study. Secondary sources of information used include textbooks, relevant newspaper articles, Journal Articles, and on-line sources. During the field studies, the researcher applied the questionnaire approach to the main directors and some shareholders which involved interviewing them and getting reliable primary information on the subject matter of the study. The purpose for visiting or going to the field was to gather the primary and reliable source of information, to find out the problems or prejudices that are faced by the minority shareholders. The legislators who enacted the Companies Act of 2012 which establishes the division of the shares among the shareholders in the company had in mind that people of shareholder in that area of study and Ugandans as a whole have been suffering with cost involved in institution of case in the formal court, transport expenses, legal professional fees expenses due to the high level of poverty and the high court of the proceedings in court. Minority shareholders who may be the majority company members you find they cannot find or afford the legal representation in the formal courts. Therefore, it is incumbent upon the directors and the majority shareholders to abide the Articles of Associations and the memorandum of associations which govern the company. They should have the inner courts or proceedings or tribunal to control the evil of the violation of other members' rights so that justice can be seen done in the company and among the shareholders and other company members.
CHAPTER ONE
INTRODUCTION

1.0 Introduction

The protection of minority shareholders is a legal principle that is based on the company law. However, this can be established from the case of Salomon vs. Salomon\(^1\) to which Salomon was the majority shareholder who had 95% of the shares in the company and the other share the 5% shares. The decisions that were made by Salomon preceded the decisions of the other minority shareholders. In other words, the minority shareholders make no substantive decision for the company rather it all lies on the majority shareholder even when the decisions affect the minority shareholders and hence that creates the prejudice that's deemed unfair.

1.1 Background to the study

Corporate governance has since its inception been pre-occupied with the conflict between ownership and control and has often overshadowed the relationship between the controlling majority and minority shareholders.\(^2\) This has been at the core of the agency problem where dispersal of shareholding or ownership has been known to herald conflicting goals between the owner or principal and the management.\(^3\) The only two jurisdictions with a majority of companies with dispersed shareholding are the USA and the UK.\(^4\) The majority of corporations even in other developed countries such as Germany, Japan, Korea, Sweden, France and those in the emerging economies, such as Uganda, are characterized by dominant ownership or concentration of power and an inadequate protection of minority shareholders.\(^5\) This corporate structure changes the nature of conflict from the classic principal/agent to that of majority/minority shareholder.\(^6\) Empirical evidence has shown that any time “large owners gain nearly full control of the corporation they prefer to generate private benefits of control that are

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1 (1876) AC 11
not shared by minority shareholders.” In Uganda the problem of protecting minority shareholders is exacerbated by a weak legal framework among others.

Carl Fuerstenberg, a high profile German banker of the between wars period once referred a minority shareholder. Since then a lot has changed. Today the argument that a minority shareholders are more opportunists can always be taken seriously. In recent years, a number of studies showed that enhanced minority shareholder protection is associated with higher valuation of corporation assets and with more developed and valuable capital markets. With that, in the past decade a consensus emerged in academic circles suggesting that minority shareholders deserve legal protection not only for equitable but for efficiency considerations as well. The intellectual foundation of minority shareholders can be traced to the plan of national Development, a set of guidelines for national industrial policies that were put in place during the 1970s decade.

Accordingly, the formation of large national economic groups was viewed as a central component of developmental strategies across the developing world.

Inspired by South Korean case, the corporations law was conceived as or vehicle that would foster the creation of national “champions” that is large conglomerates controlled by Ugandan groups.

The 1997 reform to the Corporation’s Act aimed at facilitating the then ongoing Ugandan privatization program. The most relevant and most polemic change brought about was the elimination of tag along right for minority voting shareholders. (Non-voting stocks have never had the privilege of being submitted to mandatory tender offer).

According to Yu-Hsin Lin8 One share one vote is the key principle behind the allocation of corporation ownership and control. In keeping this principle, shareholders who contribute more equity to a firm exert more control through their voting power. With proportionate equity ownership and control, this governance structure should provide shareholders with proper incentive to make appropriate decisions and properly monitor the firm through voting.

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7 Rafael La Porta, Florencio Lopez-de Silanes and Andrei Shleifer, Corporate ownership around the world, Journal of Finance Vol. 54 at Page 471 (1999).
8 Controlling minority shareholders, corporate governance and leveraged corporate control
9 Extracted from Frank H. Easterbroock and Daniel R. Fischel, the Economic Structure of Corporation Law (1991) Pg 67 – 70
When disputes between minority and majority shareholders occur, the losers are normally minority shareholders. This is because minority shareholders are out-maneuvered at the annual general meeting. The result is that minority shareholders feel oppressed and exploited by the controlling majority shareholders. Good corporate governance envisages equality between and among shareholders because companies should be seen as avenues of investment and not as avenues of power-play and exploitation.

The protection of minority shareholders from oppressive controlling majority shareholders is an issue that is common not only in developing countries but developed ones as well. In many jurisdictions, minority shareholders are often viewed as an unnecessary burden by the controlling majority shareholders. The collapse of corporations is often a symptom of poor corporate governance and demonstrates the havoc that can be caused by concentration of power by the controlling majority shareholders. In all the scandals, the biggest losers are minority shareholders. In the view of majority shareholders, minority shareholders tend to increase transaction costs through slowing down of crucial investment related decisions, they do not take part in restructuring discourses while placing unreasonable demands on management. While this could be true of developed economies, minority shareholders are the only insurance against management self-interest in emerging markets which tend to have weak capital markets, more especially, where ownership and control is not separated.

This research examines the legal challenges minority shareholders face in trying to protect their investments against those who have capacity to influence the board of directors or minority shareholders. To do so a comparative analysis of the regulatory frameworks for the protection of minority shareholders in Uganda and the United Kingdom (UK) will be used with Cooper Motors Corporation Ltd as a case study. The two jurisdictions have been chosen because

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12 Ibid. at 19.
15 Ibid. at 302. 6 Ibid.
Uganda’s legal system in Company law is derived from the English law. The English common law, Companies Act, principles of equity and case law form a regulatory framework for corporations as provided for by the Judicature Act. Uganda’s legal system has not reformed to embrace modern trends in protecting minority shareholders like the British corporate law. Dispersal of shareholding in the UK gives oppressed minority shareholder the option of selling off his share as compared to the concentrated shareholding, which gives minority shareholders fewer options.

Protection of minority shareholders is an important aspect of good corporate governance. This is because the mechanical application of the majority rule, without restrictions, as the cornerstone of modern company law, has serious detrimental effects to the interests of minority shareholders for various reasons. Firstly, it is harmful to minority shareholders as it reduces their overall investments. Secondly, whereas corporations are generally created to maximize shareholder value, the board of directors rather than the shareholders become centers of power in concentrated shareholding. With such power, the board gets leeway to use unethical conduct to violate shareholder interests. If this practice is not closely monitored or rectified, it could lead to the collapse of the firm and thus end the perpetual existence of an entity.

1.2 Statement of the Problem

Minority shareholders are protected by the Companies Act of 2012 and the Uganda Securities Exchange and other statutes. However, they generally find it difficult to protect themselves against the oppressive conduct of the majority shareholders. This is because as majority shareholders they have a definite advantage in annual general meetings where decisions are made by the majority. The majority rules mean that majority shareholders can vote in support of any wrong doing on their part against the interests of minority shareholders. Minority

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16 Section 45 (2), Judicature Act (Chapter 13, Laws of Uganda).
17 Chapter 120 of the Laws of Uganda.
18 Section 45 (2), Judicature Act.
19 Ibid.
20 Chapter 13, Laws of Uganda.
22 Ibid.
23 Ibid.
shareholders find it difficult to move to court under Sections 170 and 211 of the Companies Act on account of the courts holding that the proper plaintiff in a suit by minority shareholders is the company. Section 211 of the Companies Act is too restrictive as it fails to protect members who are unable to show that the affairs of the company are run in such a bad manner as to justify the making of a winding up order. The requirement of depositing security for costs in Section 170 further makes it difficult for minority shareholders to file a derivative action due to excessive demands.

1.3 Objectives

The broader and the major objective is to examine the extent to which minority shareholders are protected by the Uganda’s legal framework in publically held companies.

1.3.1 Specific objectives

i) To examine the legal framework for protection of minority shareholders rights in Uganda
ii) To examine the rights and infringements on the minority shareholders rights in Uganda
iii) To identify the remedies for the minority shareholders in case of infringement of their rights

1.4 Research Questions

i) What is the legal framework for protection of minority shareholders rights in Uganda?
ii) What are the rights and infringements on the minority shareholders rights in Uganda?
iii) What are the remedies for the minority shareholders in case of infringement of their rights?

1.5 Hypothesis

Protection of the Minority shareholders rights can improve performance of the company.

1.6 Scope of the study

The content scope of the study focused on examining the extent to which minority shareholders are protected by the Uganda’s legal framework in publically held companies. The study considered the time period 2000 to 2018. The year 2000 signifies the beginning of the change and development of company law in Uganda especially through the revision of laws that paved
way for modification and adoption of new laws\textsuperscript{24} such as the Companies Act Cap 110. It also signifies the time when major companies in Uganda started to blossom.

1.7 Significance of the study

The study has a significant role in which some impacts the minority shareholders to understanding their rights in the company, for the minority shareholder to create proper evaluation on how useful they are to impact the company despite holding less than 50\% of the preferred company shares.

The study will be of significant cause to the minority shareholder to draw mechanisms on procedure for enforcing their legal rights in the company and bringing justice to them regardless of their unfair prejudice in the company.

The significance of the study is also considered upon the purposes of academics, and research excavation to be utilized by the successors who may take up similar study for guidance and creating a wider scope of knowledge and wisdom relevant in the commercial transactions and company law regarding the shareholders.

1.8 Literature Review

According to Lois Musikali in his article The Law Affecting Corporate Governance in Kenya: A Need for Review\textsuperscript{25} a country’s legal system determines the success of its corporate governance. This has been shown by jurisdictions with effective and efficient legal systems that also display good corporate governance.\textsuperscript{26} The blame in the view of the author is having borrowed corporate governance codes from various developed countries without establishing the market dynamics under which the codes operate. Musikali is doubtful whether they can achieve good corporate governance with the existing law and corporate governance code. This is illustrated by the corporate scandals that occurred at Kenya Co-operative Creameries, National

\textsuperscript{24} In 2000, there was a revision of all statutes and Statutory Instruments leading to the Revised laws Edition of 2000


Housing Corporation, Kenya National Assurance Company and the collapse of 33 banks in the 1980s. The author avers that self-regulation through corporate governance codes is not tenable and prosecution for the directors of these corporations was not possible as they were appointed to head other corporations. Similarly in Uganda, the major shareholders in accompany are untouched leaving out the minority shareholders to suffer from any wrong events.

Musikali adds that, depending on the size of one’s holding a particular company; a shareholder may be categorized either as a minority or as majority shareholder. While the rights of shareholders are the same generally, minority shareholders often find themselves in disadvantageous situations which arise as a result of their not being able to exercise control or influence company policies.

Rafael in his article Best practices in minority shareholders’ right protection states that the phenomena of controlling shareholders is not just found in developing countries in publicly traded firms are able to designate and monitor managers, a practice which benefits both majority and minority shareholders. The problem that arises in this scenario is not an agency problem since the controlling majority shareholders are able to dilute minority shareholding within the limits of the law. With the dilution, majority shareholders increase their power at the expense of the minority shareholders which could then be used as a tool to oppress minority shareholders.

Rafael takes a view of the effect of legal protection of minority shareholders and cash flow ownership by a controlling shareholder on the valuation of firms. Using a sample of 539 large firms in 27 developed economies, it was found that higher valuation of firms was experienced in countries that espoused better protection of minority shareholders accompanied by higher cash flow ownership by the controlling shareholder. These findings are consistent with similar studies done elsewhere showing that protection of investors in a country is an important determinant of the development of its financial market. This is because, when investors and creditors are better protected, they are willing to pay for financial assets in the form of equity

27 A. Esiwani, ‘Director Liability in the Wake of Uchumi (Collapse)’, Institute of Directors (Kenya), July 14, 2006 (Nairobi, 2006).
and debt. This protection translates to better profits on their investment. These findings were, however, made in an advanced state (USA) where the rights of minority shareholders are well protected and may not necessarily be applicable in Uganda but have valuable lessons for the country.

According to Mwaura in his article The Kenyan Regulation of Company Directors: An Analytical Study, inadequate protection of minority shareholders is a serious anomaly, considering that protecting investors is a sure way for the country to boost capital investment. This is because when left on their own, majority shareholders have the tendency to use their voting power to influence the board and general meetings for abuse and advancement of personal interests.

Jacob Gakeri in his book Enhancing Kenya’s Securities Markets through Corporate Governance: Challenges and Opportunities views corporate scandals as having provided an opportunity to reshape the way corporations are directed and controlled. This is because scandals are a symptom of poor corporate governance. This is because good corporate governance practices ensure integrity, transparency, accountability and enforceability of the law. Good corporate governance also facilitates allocation of resources and investor confidence on their level of investment. This is in addition to protecting investors together with their investments. Generally, companies with good corporate governance structures attract more investors and foreign direct investments. It is for this reason that corporate governance systems were established in developed countries to address the interests of investors and management especially those touching on agency costs. This was relatively possible in developed countries because they have effective legal and regulatory frameworks.

Smith and Keenan on the company law was relied on through the research study this provided for the derivative action, the relief of the minority shareholders like the general and specific damages.

31 Mwaura op. cit. 92.
The other material relied on in the research is company laws by sign. Company law, a guide to the Companies Act of Uganda by Winifred Tarinyeba Kiryabwire, is another literature based on in the research on the minority shareholders, majorly chapter four which laid down the protection mechanisms and the appropriate remedies for the minority shareholders.

This is discussed on the page 191 Chapter 19, which clearly extrapolates on the importance of the protection of the minority shareholders, however, according to the material; the Company’s Act does not define a minority shareholders.

1.9 Research Methodology

This is a qualitative research that will use desktop review of primary and secondary data on the legal frameworks for minority shareholder protection. Primary sources will include the Constitution, legislation, company’s Annual Reports, decided cases relevant to the study. Secondary sources of information used include textbooks, relevant newspaper articles, Journal Articles, and on-line sources.

During the field studies, the researcher applied the questionnaire approach to the main directors and some shareholders which involved interviewing them and getting reliable primary information on the subject matter of the study.

The purpose for visiting or going to the field was to gather the primary and reliable source of information, to find out the problems or prejudices that are faced by the minority shareholders.

The researcher made the adequate use of the Kampala International University Libraries, Law Development Centre Library Kampala and other information gathered from actual visit to the field.

This is where the literature about the subject matter was gathered or got from.

1.10 Synopsis

Chapter One covers the introduction, background of the study, statement of the problem, research questions objectives of the study, hypothesis, scope of the study, and significance of the study, literature review, methodology and synopsis.
Chapter Two discusses the legal framework for protection of minority shareholders rights in Uganda.

Chapter Three discusses the rights and infringements on the minority shareholders rights in Uganda.

Chapter Four covers protection and the remedies for minority shareholders in case of infringement of their rights.

Chapter Five lays a conclusion and suggests some recommendations on how to increase protection of minority shareholders rights in Uganda.
CHAPTER TWO

LEGAL FRAMEWORK ON THE PROTECTION OF MINORITY SHAREHOLDERS

2.1 Introduction

In the prejudice of the minority shareholders which may amount to the infringements of their rights, the frustrated minority shareholders may turn to the law for help. Some of the statutory provisions that the victims can run to are the Companies Act, derivative action, common law and others like Securities legislation for remedies.

2.2 Minority shareholders protection under the Companies Act of 2012

Minority shareholders who are frustrated in the violation of their rights the Companies Act exists an alternative to the statutory derivative action. These however must be exercised with the caution to ensure that the law protects the legitimate business of the company without condemning unfair and wrongful acts, that decisions properly made by the majority of members are upheld, and that it does not overly and unnecessarily indulge the minority.

Some provisions are designed specifically to protect minority shareholders but to ensure that all shareholders in a company are treated fairly.

Section 248 of Companies Act, was originally introduced and was intended to provide more flexible remedies which were also free from the harshness of the majority shareholders. The Cohen committee had recommended this development in the area of minority shareholders protection but their views were based on the concept of oppression. In other words, a member of could bring an action where the affairs of the company were being conducted in a manner oppressive to some of the members (including the petitioner).

Generally, any member or personal representative may petition the court on the grounds that the affairs of the company are being conducted in a manner unfairly prejudicial to the interests of its members generally, or of some parts of its members, including the petitioner himself. The court must be among other things, be satisfied that the petition is well founded.

34 The Cohen Committee Report of 1946 in United Kingdom
The provision relating to a petition by personal representative of a deceased shareholder is important because the major form of abuse in private companies has been the refusal by the board, under powers in the articles, to register the personal representatives of the major deceased shareholder and also to refuse to register the beneficiaries under the will or on intestacy. Thus the giving of notice of a meeting at which the directors propose to use their majority power to introduce policies allegedly unfair to the minority is probably enough for the minority to commence a claim under S. 248 of Companies Act. The court also decided that it was enough that the affairs of the company had, in the past, been conducted in such away as to be unfairly prejudicial to the petitioner, even though the date of the petition, the unfairness had been remedied. The court could still make an order to check possible future prejudice.

2.3 Importance of minority shareholder protection.

The companies act does not define a minority shareholder. However, this is typically a shareholder who is not in a position to exercise control over the affairs of the company. Depending on the size of one’s holding in a particular company, a shareholder maybe categorized either as a minority or majority shareholder. While the rights of shareholders are the same generally, minority shareholder often find themselves in disadvantageous situations which arise as a result of their not being able to exercise control or influence companies policies.

The major concerns of the minority shareholders include inability to effectively participate in the affairs of the company and to ensure that the company is managed in a manner that does not prejudice their interests. Minority shareholders must in principle accept the decisions of the majority and in cases where they feel that the majority shareholders are acting in a manner that is prejudicial to them, they may try to protect their interest either by lobbying or publicizing the actions of the majority as a deterrent measure. Other concerns are discussed below;

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35 Minority shareholders; paying the pipe but can they call the tune? By Muhereza Kamutetera, the Monitor, February 200 P. 13
2.3.1 Access to information concerning the affairs of the company especially the financial affairs of the company.

For example, where directors engage in transactions that benefit them at the expense of the company, this information may not be readily available to those shareholders who may wish to challenge the transactions.

2.3.2 Dividend policy

Individual shareholders tend to invest with a short term outlook while institutional shareholders tend to think long term and it is sometimes difficult to balance the differing interests with the long term objectives of a company. Some individuals shareholders who often are minority shareholders have expressed concern about the dividend policies of some companies, especially where a company has continued to perform well but has conservative dividend policy. This is often driven by the desire to finance company operations using retained earnings as opposed to borrowing. However, shareholders with a short term outlook may prefer higher dividend pay outs.

2.3.3 Exit mechanisms

Shareholders are concerned about the availability of exit mechanisms for closely held private companies, this can be quite a challenge, while with public listed companies, and the major issue is liquidity of the securities on the secondary market. The protection of minority shareholder is an important aspect of company law as it has implications for ownership structures, access to finance for companies and the developments of capital markets.

2.4 Essential of the minority claim

Section 248 of Companies Act of 2012 is essentially designed to protect the minority against unfairly prejudicial conduct by the majority. Indeed, S. 248 states that a member of a company may apply to court by petition for an order under this part on the grounds that,

(a) That that the company’s affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some of some part of its members (including at least himself).

\(^{36}\)Winifrey Tarinyebakiryabwire in a Guide to Companies Act of 2012,
(b) That an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

The provision will not normally be available to enable the majority to acquire the shares of a minority under a court order, even though there is evidence that the minority concerned is acting in an unfairly prejudicial way. This is because the majority control the company and can remove directors and so on and, in effect, put matters rights without aid of the court.

Thus in Re Legal Costs Negotiations Ltd\textsuperscript{37}, two partners converted their business into limited company in which one held 75% of the shares and the other 25%. The majority shareholder alleged that the minority shareholder was not carrying out his or her duties properly and obtained his resignation from the bank. He was also dismissed from his employment with the company. The majority shareholders then asked the court to use S. 248 to grant him an order requiring the minority to sell his shares to him. The High Court refused the claim as an inappropriate use of provisions. After all, the majority shareholder had removed his ex-partners from the board and from his employment, and to that extent had removed any problems to the company and might have resulted from the alleged conduct of the minority.

2.5 Enforcement of minority shareholders’ rights

2.5.1 Introduction

Persons aggrieved by the decision of directors have some remedies contrary to the rule in Foss Vs Habottle\textsuperscript{38}. These are cases where a suit cannot be instituted by the director on behalf of the company because usually it is an infringement on the rights of the minority shareholder and the directors and majority shareholders are the wrongdoers. It is nevertheless, advisable to pursue and exhaust internal remedies before one using external enforcements of the rights.

2.5.2 The Requirement for special resolutions

Certain acts can only be done by way of special resolution passed by the company for example, where a company proposes a reduction of its share capital (Section 76), alteration of the memorandum (Section 10) and Articles of Associations (section 16) and voluntary winding up of a company (Section 28). A special resolution has to be passed by a majority of not less than

\textsuperscript{37}[1998] CLY 9

\textsuperscript{38}[1843] 67 ER 189
three-fourths of such members entitled to vote (Section 148 of the Companies Act 2012). Although, the requirement for a special resolution does not in any way give special protection to minority shareholders, it ensures fairness, participation and due process in the conduct of the affairs of a company.

2.5.3 Requirements for court to sanction some matters;

There are instances where the acts of the company have to be confirmed by court before they are effective, such as a reduction in the company’s share capital (S.77), reconstruction and amalgamations.

Such transactions have no effect unless confirmed by court. The requirement for approval of court does not give any special protection to minority shareholders, but it is intended to ensure that the company has followed proper procedures and the involvement of all stakeholders.

2.5.4 Request for extra-ordinary General meeting

S. 139 of the Companies Act provides that notwithstanding anything in the articles of associations, members holding not less than one-tenth of the paid up capital of the company and entitled to vote at general meetings may requisition for an extra-ordinary meetings of the company. If the directors fail to convene the meeting, the members requisitioning for the meeting as any of them with more than one half of the total voting rights of all of them, may convene a meeting.

Although, this provision makes it possible for minority shareholders to convene a meeting of shareholders were those in control have refused and or neglect to do so, it does not also guarantee that their wishes will be carried forward as opposed to the majority.

2.5.5 Petition to registrar of companies and courts for redress;

The companies act provides instances where a member can petition less than one-tenth of the shares issued make an application to the registrar of companies to investigate the affairs of company (S.173(1)(a)). If satisfied as to the merits of their application, the registrar may appoint an inspector to do so and report thereon. The powers of the investigator include powers to investigate the affairs of the related companies if necessary.
It should be noted that the above and other petitions to the register usually require the petitioners to meet certain minimum requirements such as the holding of a minimum percentage of shares or voting rights in the company. Where minority shareholders do not meet the said requirements, the extent to which they can rely on the above provisions to protect their interest is limited.

A minority shareholder may also sue where his personal rights as an individual have been infringed such as the right to vote or where the name of any persons is without sufficient cause entered or in omitted from the company register (S.125).

2.5.6 Alternative remedy to winding up – protection of minority shareholder from oppression conduct.

S.247 of CA provides that petitioning the register where the affairs of a company are being conducted in an oppressive manner. The Act does not define conduct that amount to oppression. However, some cases have attempted to do so. In Elder V Elder and Watson Ltd\(^3\); it was held that oppression is a departure from standard of fair dealing, violation of conditions of fair play on which every shareholder is entitled to rely.

Court further stated that oppression does not include loss of confidence, negligence, inefficiency, deadlock and lack of business ability.

In Irene Kulabako V Moringa Ltd\(^4\); the petitioner applied to court under S.211 of CA and Rule 2(1)\(^4\) for orders that the respondents purchase her shares in the company at market value. The petitioner was a minority shareholder with only 10% while the respondents David and Charles held 30% and 40% respectively. The grounds for petition were that the affairs of the company were being conducted in a manner oppressive to her as a minority shareholder. Justice Yorokam Bamwine held that there cannot be an all-embracing definition of what in law amounts to oppression it manifests itself in various ways. One therefore needs to look at the conduct complained of vis-à-vis the genuine exercise of power by the majority in a business organization. The honorable judge considered the following as oppressive to the petitioner,

\(^3\)[1952] SC 49
\(^4\) the companies cause No. 2 of 2009
\(^4\) companies (winding) rules
(a) Transferring the property of the company to another company owned by the minority shareholder.

(b) Coercing the petitioner into accepting a payment of Ugshs 10,000,000 when her interest in the company had not been valued and before the issue of ownership of the suit property was resolved coupled with issuance of threats to throw her out of the company for being stubborn.

The judge also took into account the possibility that are a human being prone to weakness, the petitioner may have contributed to the bad relations between her and other shareholders and ordered the respondents to pay the petition Ugshs 107,836.

In Re Allied Food Products Ltd\textsuperscript{42}, the petitioning shareholder was deprived of his remuneration as a sales manager, fees as director and removed from being a director. It was held that his conduct did not amount to oppression within the meaning of Companies Act.

If the Registrar finds evidence of oppressive conduct but is of the opinion that to wind up the company would unfairly prejudice the petition members but that the facts would justify winding up on just equitable grounds, he may make orders relating to the conduct of the company's affairs in future, or for the purchase of shares of any members of the company by other members or the company and consequently for the reduction of the company's capital.

2.5.7 Shareholder buy out

Section 24 of the Companies Act, provides an exit mechanism to minority shareholders who may be opposed to a compromise or arrangement that results into amalgamation of two or more companies. This remedy is however narrow because it is restricted to amalgamation.

For companies that are listed on the Uganda Securities Exchange, the shareholders enjoy the advantages of a much more flexible exit and entry mechanism provided by the secondary markets. Therefore, minority shareholders who feel aggrieved by the policies of the majority shareholders, can exercise their rights in a manner that is in more advanced markets referred to as a shareholder revolt and sell their shares.

\textsuperscript{42}(1978) HCB 294
A shareholder revolt can result in bad publicity for the company and affects its share price thereby serving as a potential deterrent to directors. It may also have an impact on further prospects of the company, especially its ability to be able to come back to the market and raise capital.

This option is however, not suitable for those shareholders who invest for long term capital growth. It is also based on the assumption that the market is liquid. In cases where certain stocks are not liquid, any shareholder wishing to exit for whatever reason, may find themselves locked in for some time.

2.6 Protection mechanism under common law

2.6.1 Introduction

The minority shareholders are protected under the common law, in this instance, their rights are enforced and seen that are protected. However the above is by the statutory provisions. Therefore in this section it is under the common law.

2.6.2 Derivative Action.

It should be noted from the outset that many of these remedies are concerned with the action or conducts of the company’s officer officers which infringe the rights or affects the interest of shareholders. Equally it should be noted that all of those remedies provide a personal remedy to the shareholder in question. A derivative action is brought by a member of a company in respect of a cause of action vested in the company and seeking relief on behalf of the company.

Usually a minority shareholder seeking a remedy from the company for a wrong that has been done to it, not every wrong to the company will justify a derivative action to remedy it. It must be a wrong that cannot be adequately remedied by the company either in general meeting or through the board of directors.

Ordinarily, a company being a legal entity has capacity to sue and seek remedies for wrongs done to it and this rule was clearly laid in the case of Foss v Habottle\(^4\) where the minority shareholder sued directors for misapplying company properly. It was held that it is a fundamental principle of our law that a company is a legal person with its own corporate identity, separate and distinct from the directors or shareholders and with its own property rights and interests to which

\(^{4}\) Foss v Habottle [1843] 67 ER 189
alone it is entitled. If it is defrauded by a wrong doer the company itself is the one person to sue for the damages.

However, in circumstances where a wrong gas been done to the company by the majority who are in control, then it is unlikely that they will sanction any intended action against themselves. It may also be futile to call a general meeting to address the issue and take action because of the influence exercised by the wrongdoers over the board and directly or indirectly over the votes capable of being cast in a general meeting.

In those circumstances courts have recognized that a minority shareholder may petition on behalf of the company.

In **Kabale Housing Estate tenants Association Ltd V Kabale Municipal Council**44, where counsel was instructed by a few members of the company to represent them and not the company itself. It was held that where a wrong has been done to the company and an action is brought to restrain its continuance or recover compensation the company is the true plaintiff.

The appropriate agency to start an action on behalf of the company is the board of directors, to whom the power is derogated to manage the affairs of the company. However, in the instance, where a shareholder is aggrieved with what the directors or the majority shareholders did, the shareholder could bring a derivative suit on behalf of the minority.

Fraud on the minority; in **Menier V Hopper's telegraph works**45, it was held that a minority shareholder may bring an action where the majority shareholders are dealing with the assets of the company as to benefit themselves at the expense of the minority. In **Brown V British Abrasive Wheel Co. Ltd**46; majority shareholders in the defendant company failed to convince minority shareholders to transfer shares to them so they amend the company’s articles making the transfer compulsory. It was held that amounted to expropriation.

Derivative action maybe brought by any person aggrieved with the running of the company for instance where there is breach of rules. Where conduct that is the subject of a complaint arises out of procedural rules where an act requires a consent of 2/3 majority was only effected by a

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44 SCCA No. 15 of 2013
45 1874) 8 Ch. 30
46 1919] 1 Ch. 290

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simple majority. Thus in Olive Kigongo V Mosa Courts Apartments Ltd\textsuperscript{47}, a petition under S.247 and 249 of Companies Act 2012; The petitioner complained that her co-shareholder/director being the majority shareholder unilaterally removed the petitioner from the management of the company by taking away from her all the cheque books, books of accounts and records of the company and also employed staff who exclusively reported to him. The petitioner was removed from all affairs of the company and denied access to the properties of the company like vehicles and telephones. The petitioner was not invited to any board or general meetings where in he appointed a company secretary, opened accounts and ordered payments to be made to an account where he was the sole signatory. The petitioner had since incorporation not been given any dividends or other payments by the company.

It was held that the petitioner being a subscriber to the memorandum of Association was a member of the company who could bring a petition under section 248 CA. hence there was breach of duty unto which the derivative action is invoked.

2.7 Conclusion

When a shareholder is doing to restrain the majority from acting illegally or continuing to commit a personal wrong upon him, he has a choice. He may sue in his own name or in the representative form on behalf of him and other shareholders with whom he enjoys the right allegedly denied. Therefore the above provision in Chapter three indicate the enforcement of the rights of minority shareholders, the importance of protection of their rights, the procedure on how the action is brought against unfair prejudice.

\textsuperscript{47}High Court company cause No. 1 of 201
CHAPTER THREE

RIGHTS AND INFRINGEMENTS ON THE MINORITY SHAREHOLDERS RIGHTS IN UGANDA

3.1 Introduction

In a corporation, some shareholders hold enough shares of the corporation stock that they can exercise control over the corporation. A minority shareholder is any shareholder that does not exercise control over a corporation. By definition, minority shareholders have certain legal rights. The minority shareholders rights are determined by the law of the share where the company is incorporated.

Every corporation, large or small, has shareholders. In large corporations with stock bought and sold on a public stock exchange, shareholders can easily sell their shares. However, shareholders in privately held close corporation (where shares are owned by a small number of persons) cannot as readily sell their shares.

In privately held corporations, especially smaller privately held corporations, the stock cannot be readily valued and sold on a public exchange. Without state laws that grant minority shareholders in close corporations certain rights and protections, those minority shareholders are in particular vulnerable to the oppressive actions of the controlling shareholders, and they have little ability to sell their interest quickly or protect their investment.

When a corporation, acting through its officers, directors or majority shareholders violates the rights of minority shareholders, the minority shareholder can bring an action against the corporation.

If you are a minority shareholder in such a case, you can consult a litigation and dispute resolution attorney to discuss your case.
3.2 Rights of the minority shareholders

3.2.1 Rights to vote at annual shareholders meeting

3.2.1.1 Introduction

The company regulations normally empower the directors to manage its business, this is provided for under Table A. Article 80. However, the ultimate control lies with the general meeting.\(^{48}\)

The regulation requires the convening each year of an annual general meeting and for extraordinary meetings to be convened when the needs arises\(^{49}\). A single member cannot generally constitute a meeting, save as may be directed by the registrar in given circumstances — a Section 131(2) of the Companies Act.

Or where the quorum is realized at the beginning of the meeting but subsequently falls to one as in Re Hartley Baird Ltd\(^{50}\), a meeting may be dispensed with if all the individual shareholders, and not a majority only expressed assent to the transaction which is intra-vires the company...\(^{51}\)

Okeowo V Migliore\(^{52}\), there were five members, 3 Italians and 2 Nigerians. Between them, they held about 4 percent of the total number of shares in the company. The ownership of the remaining 4 percent was disputed with the Nigerian shareholders challenging the claim of Italian shareholders despite the latter being the administrators of the estate of the original holder and a court order in favour of the Italian shareholders. It was thus clear that the membership and directorate of the company was divided. The Secretary was biased in favour of one fraction. The court concluded that it would not be easy to have a meeting of either the directors or company to decide on question of the removal of the Secretary or issues affecting the general management of the company. Consequently, it ordered that the meeting of the company be held.

There three kinds of general meetings at which all members are entitled to attend and vote, namely the statutory meetings annual general meetings and extra-ordinary meetings.

Statutory meeting;

\(^{48}\) Barron Vs Porter [1914] 1 Ch 89
\(^{49}\) Table Arts.47 — 49
\(^{50}\)[1954] 3 All ER 9
\(^{51}\)Okeowo Vs Migliore [1979] 11 S.C 138
\(^{52}\)[1979] 11 S.C 138
S.137 CA provides that every public limited company with a share capital must hold a general meeting of the members of the company, to be called the statutory meeting. Not less than one monthly nor three months from the date at which it is entitled to commence the meeting or business, hold a general meeting of the members of the company which shall be called the statutory meeting.

**Annual general meeting;**

Every company must hold an annual general meeting specified as such in the notice calling it every year.

However, the proceedings at general meetings, the shareholder have the rights to vote. The minority shareholders in the company much as they have the few shares in the company, they have the right to vote.

Unless the articles otherwise provide, the common law rule is that a resolution put to the meeting is decided in the first instance by show of hands.\(^{53}\)

Articles usually provide that on the show of hands each member has one vote only and proxies are not counted.

Table A Art. 2 provides that subject to any right or restrictions attached to any class or shares, every member present in person shall have one vote on a show of hands i.e. proxies cannot vote.

The shareholder’s vote is a right of property and prima facie may be exercised by a shareholder as he may think fit in his own interest per Lord Maugham in Carruth Vs ICI Ltd\(^ {54}\), stated that the majority of the members must not unfairly oppress the minority shareholders.

### 3.2.2 The legal rights of the minority shareholders

Right to review information about the company including company books, and records and list of all shareholders; for example, where directors engage in transaction that benefit them at the expense of the company, this information may not be made readily available to those shareholders who may wish to challenge the transactions.

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53. Re Horbory Bridge Coal Co. [1897] 11 Ch.D 109

54. [1937] AC 707
3.2.3 Shareholder representation on the board

For some shareholder to feel adequately protected they usually want to have a representation on the board of directors and where they are unable to do so, it is not uncommon to find suspicion and discontent. Shareholders in some of the listed companies have expressed concern about the manner in which directors are appointed to the board and the appointees presented to the shareholders to “rubber stamp” the appointment and the lack of a shareholder’s representative on the board.\(^{55}\)

3.2.4 Dividend Policy

Individual shareholders tend to invest with a short term outlook while institutional shareholders think long term and it is sometimes difficult to balance the differing interests with the long term objectives of the company. Some individual shareholders who often are minority shareholders, have expressed concern about the dividend policies of some companies, especially where the company has continued to perform well but has a conservative dividend policy. This is often by the desire to finance company operations using retained earnings as opposed to borrowed. However, shareholders with a short term outlook may prefer higher dividend payout.

3.2.5 Right to vote on major corporate events

These such as selecting directors, approving mergers, dissolution, major asset sales, and amendments to the corporate charter documents. This is provided for under S.194, 195. The shareholders have authority to remove a director by ordinary resolution at a general meeting. This power supersedes anything contained in the articles or in any agreement between the companies. However, the right to vote on a major corporate event like selecting directors and etc., much as it’s on the shareholders the minority shareholders also have that right and that right supersedes anything contained in the article.

3.2.6 Fiduciary duties owed by majority shareholders towards minority shareholders.

3.2.6.1 Duty to issue of certificates

Under the Companies Act of 2012, the majority shareholders owe a fiduciary duty to the minority shareholders. Some of which are seen below;

\(^{55}\) Company Law by Winfred Tarinyebi at Pg 193
The company has a duty, within sixty days after the allotment of any of its shares, debentures or debentures stock and within 2 months after the date of which a transfer of the shares, is lodged within the company, complete and have ready for delivery of the certificates of all shares.\(^{56}\)

Access to Company financial records; the majority shareholders owe a duty of accessing company financial records to the minority shareholders. For instance, access to the cash flow statement of the company, income statement accounts and auditing of the books of account.

A company with share capital is required, at least once in each year to make a return to the registrar of companies. Every company must keep proper books of account relating to (a) all moneys received and expended by it in respect of which the receipt and expenditure takes (b) all sales and purchase of goods (c) so its assets and liabilities. For this purpose the books must be kept at the company’s registered office or such place in Uganda as directors may decide.

However, the company’s majority shareholders should within 18 months after incorporation and, subsequently at least in every year lay before the company in general meeting a profit and loss account or income and expenditure account in case of a company not trading for profit. The first account must date from the company’s incorporation and subsequent accounts must be made up from the proceeding account to date not earlier than nine months before the meeting or twelve months if the company has interest allowed, this is provided for under S. 148 of CA. therefore, this duty which creates the clear avenue for the minority shareholder to access the books of accounts as the fiduciary duty owed to them by the majority shareholders.

### 3.2.6.2 Minority discount

This is an economic concept reflecting the notion that a partial ownership interest may be worth less than its proportional share of the total business. The concept applies to equities with voting power because the size of voting position provides additional benefits or drawbacks. For example, ownership of a 15% share in the business is usually worth more than 15% of its equitable value – this phenomenon is called the premium for control. Conversely, ownership of 30% share interest in the business maybe worthless than 30% of its equity value. This is so because the minority ownership limits the scope of control over critical aspects of the business.

\(^{56}\) Section 91 of Companies Act.
Share prices of public companies usually reflect the minority discount, hence this is also another fiduciary duty owed to the minority shareholder by the majority shareholders.  

3.2.7 Benefits from shareholdings as the right of the shareholders or minority shareholders.

This may refer to the percentage of proceeds that may be earned from the shares that a minority shareholder owns. However, this right to a minority shareholder cannot be violated by the majority shareholders since the minority have few shares.

3.3 The unfairly prejudicial conducts on the minority shareholders

2.3.1 Exclusion from management

Although the persons managing the company are usually called directors, other names are sometimes used for example managers, governors or committees of management. It is important to note the provisions of Companies Act 2012 which provides for the management and administration under Section 132(1) which provides that 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, register of members and debentures. However other forms of management are branch register, stamp duty in cases of shares register in branch register, meetings and proceedings, under S. 137 of Companies Act of 2012 are some of the management of the company. However, excluding the minority shareholder from the management is an infringement of the right.

In Noble Builders (U) Ltd V Balwinder Kaur Sandhu, citing Gower’s principle of modern company law, the Court of Appeal, stated thus about the purpose of the company register:

A company is prima facie evidence of any matters which the Companies Act director authorizes to be inserted in the said register. It shows the address and name of a member of the company, the date a member became or ceased to be such a member and, in case of a company with share capital, the register also states the number and class of shares a member hold and the amount paid upon each share.

57 www.divestopedia.org/minoritydiscount
58 Civil Appeal No. 70/2009
59 6th edition, Page 505 and 507
3.3.2 Diversion of business to another company to which the majority shareholders have interest

S.198(c) the directors have the duty to act in good faith in the interest of the company as a whole and this includes avoiding the conflicts of interests. In this circumstance, the director of a company must avoid a situation in which he has or can have, or direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

A director and the majority shareholders must account to the company for personal profits they may make in the course of their dealings with company's property. Thus, if a director buys shares in the company at par when the issue price is greater, he must account to the company for the difference. However, where the directors and majority shareholders divert the business to another company where they have the interest without disclosure, it amounts to the infringement of the rights of minority shareholders.

In Regal (Hastings) Ltd v Gulliver\(^{60}\). The Regal Company owned one cinema and wished to buy two others with the object of selling all three together. The Regal Company formed a subsidiary so that the subsidiary could buy the cinemas in question but the Regal Company could not provide all the capital needed to purchase them and the directors bought some of the shares in the subsidiary themselves thus providing the necessary capital. The subsidiary company acquired the 2 cinemas and eventually the shares in Regal Company and in to bring an action to recover the profit made. Held by the House of Lords that the directors must account to the Regal Company for the profit on the grounds that it was only through the knowledge and opportunity they gained as directors and majority shareholders of that company that they were able to obtain the shares and consequently to make the profit and this was their own interest above the interest of the other minority shareholders hence unfair prejudice.

3.3.3 Abuse of power and breaches of Articles of Association

It has been an accepted party of the Director's duties to the company that they owe as a duty of care to the company at common law and not negligently in managing its affairs. The standard is that of a reasonable man in looking after his own affair. Under these, there must be no abuse of powers or acting ultra-vires and the breach of the articles of association, this is unfairly

\(^{60}(1942)\) All ER 378
prejudicial to minority shareholder. For instance where the Articles denying provides for equitable share of proceeds and the minority shareholders are denied hence breaching the Articles of Association.

In the case of **Re City Equitable Fire Insurance Co**\(^61\); in this case, the Chairman of the company committed frauds by purporting to buy Treasury bonds just before the end of the accounting period and selling them after the audit. By this method, a debt due to the company from a firm in which the chairman had an interest was considerably reduced on the balance sheet by increasing the gilt-edged securities shown as assets. With regard to the duty of auditors, it was held that they might have been negligent in that they had not asked for the production of the Treasury bonds but appeared to have trusted the Chairman.

### 3.3.4 Repeated failure to hold Annual General Meeting

*Section 138 of the Companies Act of 2012* provides that a public company shall in each year hold a general meeting in addition to any other meetings in that year and shall specify the meetings as general meetings in the notices calling it and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next, and in a private company may at a requisition of a member hold an annual general meeting.

The meetings provide the primary mechanisms through which shareholders participate in the affairs of the company. Shareholders capitalize the company and determine the general purpose and policies of the company. In the case of **Matter of BDC Online Limited**\(^62\); Court considered an application made under the recently repealed Companies Act (Cap 110) for orders than an extra-ordinary general meeting be convened and that the quorum of one shareholder be provided as sufficient to conduct an extra ordinary general meeting of the company.

The application was made on grounds that the company had never held any annual general meeting since its incorporation and was carrying on business in contravention of its Articles of Association and the Companies Act. The company had only 2 shareholders, the managing director who was a minority shareholder and the majority shareholder who was resident in the

\(^{61}\)[1925] Ch. 407

\(^{62}\)HCT-00-CC-Cl-2005
UK. The same was discussed in the matter of Lukuli Coffee factory Ltd. Thus the repeated failure to hold Annual General Meetings is unfair prejudice to the minority shareholders.

3.3.5 Delaying accounts and depriving members of the rights to know the state of the Company’s Affairs

This is also unfair prejudice on the minority shareholders rights. Since they have that right to know and manage their affairs of the company. Delaying the accounts is an infringement to their rights.

The petitioner’s shareholding in the company came with the legitimate expectation of participation in the management of the company which she has been effectively and unfairly denied. Therefore the affairs of the respondent company have been conducted in a manner unfairly prejudicial to the interests of the petitioner as a member. The court ordered that her 15% shares to be purchased by the company itself at 1 million per shares plus give her 15% of the profits made from Jan 1\textsuperscript{st}, 2011 to the date of judgment.

3.4 Conclusion;

Chapter two of the dissertation discussed the legal approach to minority shareholders’ rights, which clearly laid down the rights that the minority shareholders. However, upon that note, it discusses the infringement or the unfair prejudice on the minority shareholders, therefore, in circumstances of the breach action should be taken and this will be discussed in Chapter 3 as the legal framework on the protection of the minority shareholders.
CHAPTER FOUR

PROTECTION MECHANISM AND APPROPRIATE REMEDIES TO THE MINORITY SHAREHOLDER

4.1 Introduction;

There are various protection mechanisms to the minority shareholders. However, the importance of the protection has been indicated, the legal framework on the protection and the bringing of the proceeding to the enforcement of their rights. However this chapter focuses on the protection mechanism and the remedies that are available to the minority shareholder in case of infringement.

4.2 Capital markets and securities laws

The key objectives of the capital markets and securities law are to maintain market confidence and protect investors according to Brian R. Cheffin\(^{63}\), this is mainly due by enacting legislation that obliges issuers to provide adequate and timely information to investors and to treat investors fairly, some of the requirements are not specifically aimed at protecting the interests of the minority shareholders but provide a general frame work for protection for all shareholders in listed companies.

4.2.1 The capital markets\(^{64}\);

These regulations contain provisions that an issue of securities to the public must comply with before publishing a prospectus. The purpose of the disclosure requirements is to ensure that potential investors are given full and adequate information about the issuer so as to enable them to make an informed decision. The requirement of a particular interest to investor who would ultimately find themselves in the category of minority shareholders.

a) Disclosure of information relating to rights applicable to holders of the shares as regards dividend, preemptive rights to subscribe to new shares, redemption, voting rights and the creation or issue of further shares of equal priority with the shares.

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b) A summary of the material provisions of the articles of associations with respect of annual
genral meeting of shareholders, voting rights of shareholders, the election and removal of
directors and the rights of directors to vote on proposal in which they have an interest.

4.2.2 The Uganda Securities Exchange (USE) Listing Rules;

4.2.2.1 Transferability of securities

The USE Listing Rules contain provisions that may offer some degree of protection to minority
shareholders for example Rule 29 provides that the securities for which listing is sought shall be
paid up and fully transferrable. This is not only crucial for secondary market trading, but it
allows any shareholder, including minority shareholder who feels aggrieved to exit on the
secondary market, without necessary restrictions.

4.2.2.2 Continuous Disclosure Obligation of the USE;

The disclosure keeps requirements imposed on listed companies are intended to keep all
shareholders informed about the performance of their investment and therefore any shareholder,
including a minority shareholder does not have to go an extra mile to obtain information.

In addition, the information is disclosed to the public at the same time so all shareholders are
treated equally. The information required to be disclosed periodically include information on
dividends, interim and quarterly financial report, annual financial statements, change in capital,
and notice of annual general meeting.65

4.3 The Capital Market Corporate Governance Guidelines of 2003;

The guidelines are published in 2003 and contain minimum standards for goods corporate
governance practice for listed companies and issuer of corporate debt in Uganda. It should be
noted that being guidelines, they are not enforceable; however they contain some specific
provisions relating to the treatment of the minority shareholders as well as broader principles
aimed at promoting transparency, fairness and accountability.

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65 Extract from Part VI USE Listing Rules
4.3.1 The Board of Directors;

Every listed company should be headed by an effective board with clear functions such as defining the company’s vision, overseas management and operations. The Board should reflect a balance between independent, non-executive, and executive directors. The composition of the board should reflect the company’s shareholding structure and not to be biased towards representing a substantial shareholder.

4.3.2 Rights of shareholders;

The board of every listed company ensures equitable treatment of shareholder including minority and foreign shareholders, all shareholders should receive relevant information relating to the company’s performance as a matter of best practice. The guidelines also provide for allowing for shareholder participation in all major decisions of the company such as restricting, takeover, mergers and acquisition and rights of shareholders to vote.

4.3.3 The conduct of the general meeting;

The guidelines require listed companies to provide shareholders with sufficient and timely information concerning general meeting, ensure shareholders rights to participate in general meeting is protected by giving them with information in a manner that is easy for them to understand, allowing them to place items on the agenda and to exercise their votes.

The guidelines also contain provisions on best practice relating to the position of chief executive and chairperson of the board with regard to separation of the roles, balance of power of authority for checks and balances to ensure that no individual has unfettered power of decision making. In addition, there are best practices relating to accountability and the role of the audit committee such as appointment of auditors, use of international financial reporting standards, internal control systems and establishing audit committees.

The guidelines are intended to promote good corporate governance with the objective of enhancing prosperity of the company, protecting and promoting shareholders’ rights irrespective of their individual holdings and realizing shareholders’ long-term value while taking into account the interest of all shareholders.
4.4 Use of Alternative Investment Vehicle;

Minority shareholders especially those with very small holding in listed companies and whose return on investment is often eroded by transaction costs may consider alternative forms of investment in securities markets such as use of Collective Investment Scheme. These are investment vehicles that pool the resources of many savers, generating a large pool of funds that is then invested in a variety of investments with the objective of maximizing return and minimizing risk for the investor. The advantage of investing through CIS is that the investor collectively enjoys lower transaction costs.

4.5 Minority petition for a just and equitable winding up;

The court has jurisdiction under section 57 of the insolvency Act to winding up the company on the petition of a minority shareholder on the grounds that is “just and equitable” to do so. This ground is subjected to a flexible interpretation by the courts. In context of minority rights, however, order have been made where the managing director who represented the majority shareholders interests in this management of the company refused, for example, to produce account or pay dividend as seen in the case of Loch vs. John Blackwood Ltd66 where in the case of a small company, formed or continued on the basis of a personal relationship, involving mutual confidence and which is in essence a partnership, the person petitioning is excluded from management participation and circumstances are as such would justify the dissolution of a partnership.67

However, since the enactment of the unfair prejudice provisions and following the case of Re a Company (No.002567 of 1983)f8 other matters have been brought to the fore; these are

a) That if majority make an offer to buy out the shares of the director who has been removed at a fair price e.g. to be decided on by the company’s auditor, the court is not perhaps likely to windup the company because the ex-director’s capital is available by other means. No such offer was made in Ebrahim vs. Westbourne Galleries.

65 (1924)AC 783
66 Approach from Ebrahim vs. Westbourne Galleries
67 (1983)2 ALL ER 854
b) That even if no such offer is made the better approach these days might be by petition under
the unfair prejudice provision. The court can, as well have order the purchase of the ex-
directors shares, at a fair, either by other member or by the company in reduction of capital.

However, the productive through just and equitable winding up is not specifically repealed and
there is no rule of law preventing that approach, and indeed it was held in Jesner vs. Jarrad69,
that lack of unfair prejudice under the companies Act of 2012 will not prevent the court from
winding up an company on the just and equitable ground.

It’s worth mentioning that the winding up by the court commences on the presentation of the
petition and as soon as a prayer for winding up has been made, the company becomes
paralyzed, resulting in the fact that no transaction relating to the company’s property can be
entered into after this point.

Consequently, this is a drastic course of action and as such should be viewed as one best resort
for the minority shareholders. This is reinforced by the fact that court may refuse to grant the
winding up order if it is of the opinion that;

a) Some remedy is available to the petitioner and

b) The petitioners are acting unreasonably by seeking to have the company wound up instead
   of pursuing other remedies.

As this is an equitable remedy, the petitioner must come with “clean hands” which may be
 contrasted with the provisions of the Companies Act on the minority shareholder protection
whereby the petitioner does not have to come with “clean hands”.

There are other remedies or relief for the minority shareholders due to unfair prejudice, these
are;

Section 284 of the Companies Act is essentially designed to protect the minority against
unfairly prejudicial conduct by the majority. Indeed s.284 provides, “ a member of a company
may apply to the court by petition for an order under this part on the grounds that the company’s
affairs are being or have been conducted in a manner that is unfairly prejudicial to the interest

of the members generally or of some part of its members, that an actual or proposed act or omission of the company is or would be would be prejudicial.

The provision will not normally be available to enable the majority to acquire shares of the minority under a court order, even though there is evidence that the minority concerned is acting in an unfairly and can remove director and so on and , in effect, put matters right without the aid of the court.

4.6 Relief available;

4.6.1 Specific damages:

This is as follows,

i) The court may make an order regulating the company’s affairs for the future.

ii) The court may restrain the doing of or the continuing of prejudicial acts.

The above two heads are illustrated quite validly as the principle discussed in the case of Re HR Harmer Ltd70, the company was formed in July 1947, to acquire a business founded by Mr. Harmer, the business of the company was stamped auctioneering and dealing in and valuing stamps. The company had a nominal capital of 50000 Pounds, Mr. Harmer senior and wife were between them able to control the general meeting of the company and could obtain extraordinary resolution. The father and his sons were the life directors under the articles, the father being the chairmen with a casting vote. The sons claimed that their father had repeatedly abused his controlling power in the conduct of the company’s affairs so that they were bound to apply for relief. Mr. Harmer senior had, they said, always acted as though the right of appointing and dismissing senior staff was vested in him alone and this right also extended to the appointment of directors, and unfair prejudicial conducts, like he also endeavored to sell off the company’s American business which severely damaged the goodwill.

Roxburgh J. at first instance, granted relief and the Court of Appeal confirmed the order, saying that the relief was properly granted because the circumstances were such that the court would have been justified in ordering a winding up.

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The courts also had the effect of changing the provision in the articles under which Mr. Harmer was a director for life with a casting vote. The order also restrained him for the future from interfering with the valid decision of the board.

4.6.2 General damages;

In addition to the above, the court may make such order as it thinks fit for giving relief in respect of the matters complained of under the companies Act of 2012. Thus in Re a company (No. 005287 of 1985)\(^1\), the controlling shareholder took all the profits in management fees and was ordered to account for the money to the company and this although at the time of the action he had sold all his shares in the company concerned to his Gibraltar company. Thus, a petition can be presented even against a person who has ceased to be a member.

\(^1\) (1986)WLR 281
CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This chapter presents the conclusions and recommendations that have been got from the research study, and what should be done in order to see that the minority shareholders’ rights are recognized and the violation of the rights handled expeditiously. It is important to settle the disputes within the company as the basis of the economic development.

5.1 Conclusion

Chapter one gave the introduction on the unfair prejudice of the minority shareholders’ rights in Uganda, discusses the various unfair prejudice and the violations of the rights, within the company among the shareholders. The effect and the mechanisms that was in place to settle the dispute among the shareholders in the company, the problem of the study, objectives of the study, hypothesis, the scope of the study, statement of the problem and the synopsis of the study. The chapter also stated the significance of the study.

The chapter ended by describing the methodology that was adopted during the whole of this study.

The valid conclusion from those studies is that prolong disputes in the company between the minority and majority shareholders is a phenomena which causes civil strife among the members of the company.

Chapter two gave the introduction to the legal framework of the protection of the minority shareholders’ rights from unfair prejudice. This then discussed various infringement on the rights of the minority shareholders.

The various rights that must be enjoyed by all the members and shareholders were discussed tentatively and illustrated that this can be achieved expeditiously.

Chapter three discussed the rights and infringements of the rights of the minority shareholders in the company.
The chapter was then concluded illustrating that this can be achieved by the minority shareholders by the provisions of the statutes which lays the procedure to achieve them.

Chapter four discussed the other protective mechanisms and relief on how the minority shareholders can be protected.

Minority shareholders are bound to find themselves in difficult situations. The companies Act and securities law may not offer protection in all cases. This is because it is a fundamental principle of company law that the affairs of a company and relations between shareholders are governed by the articles and memorandum of association. The law may only come in when there are specific breaches such as oppression by the majority shareholder or fraud on the minority.

In addition to this, securities law ensures fair treatment of all shareholders irrespective of their holdings and capital markets provide an exit mechanism for those shareholders whose shares are listed on a securities exchange and may also deter improper conduct of directors and shareholders through fear of bad publicity and its effects on share price.

Findings,

The legislators who enacted the Companies Act of 2012 which establishes the division of the shares among the shareholders in the company had in mind that people of shareholder in that area of study and Ugandans as a whole have been suffering with cost involved in institution of case in the formal court, transport expenses, legal professional fees expenses due to the high level of poverty and the high court of the proceedings in court. Minority shareholders who may be the majority company members you find they cannot find or afford the legal representation in the formal courts.

Therefore, it is incumbent upon the directors and the majority shareholders to abide the Articles of Associations and the memorandum of associations which govern the company. They should have the inner courts or proceedings or tribunal to control the evil of the violation of other members’ rights so that justice can be seen done in the company and among the shareholders and other company members.

Qualification and eligibility of tribunal members, rules of procedure in the company management and settlement of disputes among shareholders.
Qualification and eligibility of High Court and Court of Appeal judges who can be able to rectify the challenges that are faced within the company by the minority shareholders. The chapter lastly discussed the protection mechanism that must be put in place so to control and to retrieve the rights of the minority shareholders in controlling of the unfair prejudice.

A conclusion was made to the effect that failure to access tribunal in the company is a major impediment to justice. Acceleration of corruption by unscrupulous officials. Executive committees are restored to, although in some cases they lack jurisdiction.

5.2 Recommendations

In view of the above, there is need to empower shareholders to ensure that they are treated fairly through;

a) Strengthening disclosure requirement to enhance accessibility to company information for shareholders at all times and to ensure that all shareholder irrespective of their holdings enjoy equal rights of access to information.

b) Shareholder activism, in some markets shareholders form associations where they are able to discuss various issues and exert pressure on directors to pay attention to their concerns. In cases where shareholders are aggrieved, they should be able to seek appropriate remedies and even take out class action suits against directors.

c) Increased shareholder participation in the affairs of the company. The practice of using annual general meeting to simply “rubber stamp” decisions should be discouraged and shareholders encourage to voice their opinions and contribute to the agenda of the meeting.

d) Increased public awareness this is probably the greatest challenge especially in developing economies. Considering that not all shareholders are in position to analyze information given to them and respond to it, there is need to increasingly create awareness about corporate action, secondary market transaction and how shareholders can use available information to protect their interests.

e) The government or the law making bodies sought wise to establish the Alternative Dispute Resolution as a means of extending justice to the company members the shareholders and the
other workers, and the minority shareholders who cannot afford the formal court and the legal representative or counsel.

f) However, a lot need to be done by the company directors. It should be emphasized that mediators should be afforded secretaries to record proceedings of the mediation so that enforceability can be afforded.

g) Procedural guidelines in respect of mediation, conciliation and arbitration should be put updated in conformity with the economic development in the company. Hence the conclusion of the dissertation.

5.3 CONCLUSION

In conclusion therefore, according to the above information and recommendations, it is worth noting that the rights of the minority shareholders should be harmonized with those of the majority. Hence in the violation of which shall lead to the action for damages, exit mechanism as the law has founded it necessary for the aggrieved party.
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