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Legal Alert: Key Decision on Company Law in Uganda.

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High Court holds that the Registrar of Companies, while discharging his or her *quasi*-judicial functions, is immune from any civil or criminal suits brought either against individual registrars or the institution.

Immunity of registrars exercising *quasi*-judicial functions: *Kintu Samuel & Another v Registrar of Companies & 2 Others*, Misc. Cause No. 58/2021

Brief facts

The Applicants filed an application for orders seeking extension of the time within which to file an application for judicial review against a decision/ruling of the Registrar of Companies, the First Respondent. On April 20, 2019, an Assistant Registrar of Companies, in exercise of the registrar's *quasi*-judicial functions under the *Companies Act 2012* and *Companies (Power of Registrar) Regulations 2016*, heard and determined a dispute on an illegal alteration of the register on the company file of Nsangi High School Ltd that had been brought by the 2nd and 3rd Respondents against the Applicants. With intent to file an application for judicial review against the First Respondent's ruling delivered on September 20, 2019, the Applicants applied to the High Court (Civil Division) *vide* Miscellaneous Cause No. 58/2021 for extension of time. The application was brought under section 96 and 98 of the *Civil Procedure Act* and rule 5(1) of the *Judicature (Judicial Review) Rules 2009*. The matter was heard and determined by the Honourable Judge Ssekaana.

At the hearing of the application, while the advocate for the Applicants argued for extension of time to file the application for judicial review, the First Respondent's advocate contended that the Registrar of Companies cannot be sued for his or her *quasi*-judicial decision and that, while discharging *quasi*-judicial functions, the Registrar is immune from any civil or criminal proceedings. In support, the advocate referred to the decision of *Money Lenders Association of Uganda and MK Financiers v Uganda Registration Services Bureau*, Company Cause No. 11/2019. Additionally, the advocate argued that it is immaterial the Applicants are seeking for extension of time to file an application for judicial review, the *quasi*-judicial maker of the decision is not a party to any proceedings relating to a decision made in exercise of its *quasi*-judicial power conferred on it by statute.

Ruling of the High Court.

The High Court rendered its ruling on June 30, 2021. In upholding the First Respondent's objection, the court stated that the Applicants erroneously brought court proceedings against the First Respondent. The court held there is no justification for instituting these proceedings against a *quasi*-judicial body, and as such, it observed that the First Respondent was wrongly joined to the proceedings.

The court agreed with the First Respondent's submission in light of the decision in the *Money Lenders Association of Uganda case* and held that while discharging *quasi*-judicial functions, the Registrar of Companies is immune from any civil or criminal suits brought against either

the individual registrar or the institution, the Uganda Registration Services Bureau. And, in its holding, the court concurred with the decision of Wabwire Wejuli, J. in the *Money Lenders Association of Uganda* case who had held that: "...an appeal cannot be commenced against a presiding officer of a *quasi*-judicial body." Having so stated, the application against the First Respondent was struck off on this point of law. In any event, the court additionally held that no sufficient grounds had been adduced by the Applicants to warrant the court's discretion to extend time within which to file the judicial review application.

Reflections on the Court's ruling in light of decisions from other common law jurisdictions.

The issue of *quasi*-judicial immunity in common law is not new as it is a concept that has been around for centuries. Originally, judicial immunity extended only to judges to assure their freedom to execute their duties with independence and without fear of consequences. However, the courts extended *quasi*-judicial immunity to various other public officials who are entitled to the same type of immunity from liability for the acts performed while acting in their official capacities.

The rationale of the concept of *quasi*-judicial immunity is to ensure the independence of the officials but also to discourage collateral attacks. This rationale was fully articulated in *Ernst v Alberta Energy Regulator* [2017] 1 SCR 3 where the Supreme Court of Canada noted that *quasi*-judicial immunity—although in this instance, a specific statutory immunity clause had been enacted—was aimed at ensuring a regulatory board was not distracted from its statutory duties, or affected in its decision-making, or compromised in its impartiality, or opened to new and undesirable modes of collateral attack on its decisions.

Two important issue that arises is in relation to *quasi*-judicial immunity. Firstly, which acts amount to or qualify as a *quasi*-judicial function? The case of *Patridge v General Council of Medical Education and Registration* (1980) 25 QBD 90 is instructive, where Lord Esher stated that: "... if a body has a public duty reposed in it by statute and, in order to fulfil that duty, it must exercise discretion, then, for the purpose of immunity, it is a judicial act."

Secondly, which persons qualify as discharging *quasi*-judicial functions for the purposes of the immunity? In the case of *Everett v Griffiths* [1921] AC 631, Lord Moulton stated that:

... [I]f a man is required in the discharge of a public duty to make a decision which affects, by its legal consequences, the liberty or property of others, and he performs that duty and makes that decision honestly and in good faith, it is a fundamental principle of our law that he is protected.

In *Howard v Drapkin* 222 Cal. App. 3d 843, 271 Rptr (1990)—the defendant, a psychologist, had performed an evaluation of the plaintiff and her family in a child custody and visitation dispute and claimed the common law immunity as a *quasi*-judicial officer participating in the judicial process—the Court of Appeal of California stated:

We ... hold that absolute *quasi*-judicial immunity is properly extended to neutral third parties, such as family law arbitrators, for their conduct in performing dispute resolution services which are connected to the judicial process and involve either (1) the making of a binding decision, (2) the making of findings to the Court, or (3) the arbitration, mediation, conciliation, evaluation or other similar resolution of pending disputes. As the defendant was clearly engaged in this latter activity, she is entitled to the protection of such *quasi*-judicial immunity.

Crucially, in the *Ernst* case, the Supreme Court of Canada cautioned against any attempts to segment functions of regulatory body into "adjudicative" and "regulatory" activity for purposes of considering whether its actions give rise to liability. In that regard, whether the assistant registrar of companies, in determining an illegal alteration of the register on the company file, was engaged in adjudicative or purely regulatory function should be immaterial in upholding *quasi*-judicial immunity.

From the foregoing discussion, it is clear the concept of *quasi*-judicial immunity, as upheld by the High Court in *Kintu Samuel* case, is one that has deep roots in common law. Its rationale and basis do not differ from those of judicial immunity that is accorded to court-room judges and other judicial officers that administer justice in a formal court setting, which is to ensure independence in decision-making.

Conclusion.

In a nutshell, it would be absurd to ignore the fact that there are so many men and women who hold positions in public life that require them to administer justice outside the courts. As such, they should do execute these *quasi*-judicial functions with independence and assurance that they are secure from civil suits.

In reality, in determining with the application, the High Court re-visited the issue of immunity of *quasi*-judicial officers, and in its ruling, the court clearly re-affirms the position in the 2019 decision in *Money Lenders Association of Uganda case* that a registrar or anybody exercising their discretion, while discharging *quasi*-judicial functions, enjoy a level of immunity and cannot be part of civil or criminal proceedings.

The key implication of the ruling is that it sets immunity not only for company registrars but all *quasi*-judicial officers, including any non-judicial body that can interpret or apply the law, including arbitration panels or tribunal boards.

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