

PC
4483

Uganda

35/62

IN THE PRIVY COUNCIL

No.15 of 1961

ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N

MUSABHAI NOORMOHAMED TEJANI
EBRAHIM NOORMOHAMED TEJANI
ALLIBHAI SULEMAN KABA

Appellants

- and -

THE OFFICIAL RECEIVER

Respondent

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

RECORD OF PROCEEDINGS

68278

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Lincoln's Inn, W.C.2.
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ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N :

MUSABHAI NOORMOHAMED TEJANI
EBRAHIM NOORMOHAMED TEJANI
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Appellants

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RECORD OF PROCEEDINGS

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B E T W E E N

MUSABHAI NOORMOHAMED TEJANI
EBRAHIM NOORMOHAMED TEJANI
ALLIBHAI SULEMAN KABA

Appellants

- and -

THE OFFICIAL RECEIVER

Respondent

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RECORD OF PROCEEDINGS

NO.1

ORDER OF APPOINTMENT OF OFFICIAL RECEIVER
AS LIQUIDATOR

In the
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No.1

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA

COMPANIES CAUSE NO.11 of 1959

IN THE MATTER OF The Companies Ordinance
and

Order of
Appointment
of Official
Receiver as
Liquidator
3rd April 1959

IN THE MATTER OF Industrial Oil Products
Corporation Limited
(in liquidation)

20

HUGHES - Petitioners

No Opposition

On hearing Counsel and reading papers order made.
Official Receiver appointed Liquidator.

Sgd. I.E.G.LEWIS Judge.

In the
High Court
of Uganda

No.2

ORDER OF APPOINTMENT OF J.S.O'NEILL
and J.M.MACKENZIE as LIQUIDATORS

No.2

Order of
Appointment
of J.S. O'Neill
and J.M. Mac-
Kenzie as
Liquidators
19th August,
1959

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA
COMPANIES CAUSE NO.11 of 1959

IN THE MATTER OF The Companies Ordinance
and

IN THE MATTER OF Industrial Oil Products
Corporation Limited
(in liquidation)

10

HUGHES - Petitioners

Official Receiver not present

On reading application of the Official Re-
ceiver, J.S. O'Neill and J.M.MacKenzie appointed
liquidator in lieu of the Official Receiver.

Sgd. K.G. BENNETT Judge.

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Report of the
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FURTHER REPORT OF THE OFFICIAL RECEIVER
AND ANNEXURES

IN HER MAJESTY'S HIGH COURT OF UGANDA

20

HOLDEN AT KAMPALA

Companies Cause No.11 of 1959
Industrial Oil Products Corporation Ltd.
in liquidation.

FURTHER REPORT

The Official Receiver in pursuance of Sec-
tion 182(2) of the Companies Ordinance hereby
further reports to the court as follows:-

1. The company was incorporated in Uganda on

sic the 28th July, 1959.

2. The original directors of the company were :-

- (a) Narshibhai Margabhai Patel.
- (b) Mrs. Manibhai w/o Narshibhai Margabhai Patel.

3. As from the 1st day of May 1952 the directors were :-

- 10
- (a) Narshibhai Margabhai Patel
 - (c) Musabhai Noormohamed Tejani
 - (d) Hussenali Jetha Esmail
 - (e) Ebrahim Noormohamed Tejani
 - (f) Purshottam Laldas Patel

4. As from the 27th November 1952 the directors were :-

- (c) Musabhai Noormohamed Tejani
- (d) Hussenali Jetha Esmail
- (e) Ebrahim Noormohamed Tejani
- (f) Purshottam Laldas Patel

20 5. As from the 18th June 1953 the directors were :-

- (c) Musabhai Noormohamed Tejani
- (d) Hussenali Jetha Esmail
- (e) Ebrahim Noormohamed Tejani
- (f) Purshottam Laldas Patel
- (g) Alibhai Suleman Kaba

6. As from the 28th December 1954 the directors were :-

- 30
- (c) Musabhai Noormohamed Tejani
 - (e) Ebrahim Noormohamed Tejani
 - (f) Purshottam Laldas Patel
 - (g) Alibhai Suleman Kaba
 - (h) Jetha Bros. Ltd.

7. As from the 1st January 1957 the directors were :-

- (c) Musabhai Noormohamed Tejani
- (f) Purshottam Laldas Patel
- (g) Alibhai Suleman Kaba

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continued

8. As from the 1st February 1957 the directors were :-

- (f) Purshottam Laldas Patel
- (g) Alibhai Suleman Kaba

9. As from the 26th July 1957 the directors were :-

- (g) Alibhai Suleman Kaba
- (i) Kassamali Suleman Kaba

The above two persons are the present directors of the Company.

10

Knowledge of Insolvency.

10. Since the end of 1955 the directors of the company appear to have been aware that the Company was insolvent in both meanings of the word, that is, inability to meet the company's debts and the deficiency in the value of assets over liabilities. This knowledge of insolvency is evidenced in four ways.

(i) The Minute of directors' meetings held on the 14th November 1955, 30th November 1955, 30th December 1955, 6th January 1956. (Annexures "A" to "D").

20

(ii) The directors' handling of the cotton seed trading between November 1954 and December 1955. In November and December 1954 the company contracted to purchase a total of 5,700 tons of cotton seed of which 5,378 tons were delivered at prices ranging from Shs.551/- to Shs.601/- per ton (against Shs.400/- in 1953). No forward contracts for the sale of cotton seed, oil and cake were made. The selling prices of cotton seed oil and cake were insufficient to cover the increased cost of cotton seed and both the cotton seed oil and cake was sold at a loss.

30

(iii) The statement of the approximate capital position drawn up as at the 10th January 1956 (Annexure "E") where no depreciation was made for fixed assets and on the contrary where the value of the assets was written up.

40

- (iv) At the beginning of 1956 the auditors of the company Messrs.R.M.Shah & Company advised the directors to put the company into liquidation on the ground that the Company was unable to pay its debts.

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Fraudulent Trading.

11. The directors of the company appear to have carried on business with intent to defraud creditors and for fraudulent purposes. This fraudulent trading is evidenced in two ways

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- (i) A Statement of approximate capital position as at the 10th January 1956 was prepared by the company in order to obtain an extension of credit from the Lint Marketing Board and to obtain a licence to bid at the auction held on the 14th January 1956. This statement shows a surplus of £2,995 as at the 10th January, 1956. This statement is quite untrue. As at the 31st December, 1955, only 10 days prior, the liabilities exceeded the assets by £43,593.

The conversion of this deficiency to a surplus of nearly £3,000 was effected.

- (a) by adding back to the value of the fixed assets depreciation previously written off amounting to £23,400;
- (b) by adding a further £19,000 to the value of the fixed assets;
- (c) by eliminating the bad debts provision of £2,500;
- (d) by eliminating the income tax provision of £2,500;
- (e) by a reduction in the excess of current liabilities over current assets amounting to approximately £1,000.

These "adjustments" had the result of showing the fixed assets at nearly double their real value.

- (ii) The credit obtained from the Lint Marketing Board was misapplied.

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(a) in the year ending 31st December 1955
£193,676 was available for application
during the year and was applied as
under

1. Lost in trading	£66,519	
2. Paid to share- holders by way of dividend	7,500	
3. Used to reduce liabilities to other credi- tors	<u>119,657</u>	£193,676

10

(b) In the year ending 31st December 1955
£256,896 was received by the Company
from the sale of oil, cake and cotton
seed but only £30,744 was paid to the
Lint Marketing Board against the bal-
ance of the purchase price of cotton
seed which amounted to £139,615.

Illegal Payments.

20

12. The Directors of the Company appear to have
made some illegal payments. Two dividends have
been paid by the Company. The first amounted
to £2,500 and was paid in 1954. The second was
£7,500 paid in 1955.

(i) At the Annual General Meeting held on the
20th September 1954 it was resolved that, on
the recommendation of the Directors, no
dividend should be declared. Nevertheless
a meeting of the Directors held on the 31st
December 1954 purported to declare the divi-
dend of £2,500 out of the profits of the
year to the 31st December 1953. This divi-
dend exceeds the amount recommended by the
directors and infringes Article 89 of Table
A which is adopted by the Company. This
dividend not being an interim dividend
should have been declared at a general meet-
ing and not at a meeting of directors.

30

(ii) The second dividend of £7,500 was purported
to be declared at a directors' meeting held
on the 12th March 1955 and to come out of
profits of the year to the 31st December

40

1954. This dividend also not being an interim dividend should have been declared at a general meeting and not at a meeting of directors.

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The first dividend of £2,500 was paid out of capital to the extent of £1,411 and the second dividend of £7,500 was paid out of capital to the extent of £664 according to the books of account of the company.

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10

(iii) In the first balance sheet of the company as at 15th November 1952 the difference between the value of the assets acquired of £31,583 and the issued share capital of £25,000 that is a sum of £6,583 was credited to Masaka Ginners Ltd. This amount of £6,583 was included in creditors in the balance sheet at 31st December 1953. In the balance sheet at 31st December 1954 it was shown as "due" to shareholders and in September 1955 it was credited to the following individual shareholders' accounts :-

20

E.N. Tajani	1,316
Jetha Brothers Ltd.	1,316
P.L.Patel	1,317
M.N.Tajani	1,317
A.S.Kaba	<u>1,317</u>
	£ 6,583

30

All that time all these shareholders were also Directors of the Company. These credits were drawn in cash by the shareholders or used to offset debit balances in their accounts during 1955. It appears that this £6,583 should have been credited to the appropriate asset accounts. In any event, if available for distribution, it should not have been distributed to shareholders when the Company was insolvent thereby reducing the money available to the creditors.

40

WHEREFORE in view of the facts hereinbefore recorded the Official Receiver is of the opinion that a fraud has been committed by the undermentioned Directors since the formation of the Company and accordingly requests that

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this Honourable Court shall direct the under-mentioned Directors of Industrial Oil Products Corporation Ltd. to attend before the Court at a date to be appointed for the purpose and be publicly examined as to the conduct of the business of the Company and as to each of their conduct and dealings as a Director thereof :-

- (c) Musabhai Noormohamed Tajani,
P.O.Box 1371, Kampala.
- (d) Hussenali Jetha Esmail, P.O.Box 690,
Kampala. 10
- (e) Ebrahim Noormohamed Tajani, P.O.Box 1371,
Kampala.
- (g) Alibhai Suleman Kaba, P.O.Box 1559,
Kampala.

Dated at Kampala this 22nd day of October 1959.

(signed) B. BATCHELOR

Ag. OFFICIAL RECEIVER.

Annexure "A"
to Further
Report of the
Official
Receiver
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ANNEXURE "A" - MINUTES OF MEETING

APPENDIX "A"

MINUTES OF THE MEETING HELD ON
14TH NOVEMBER 1955
INDUSTRIAL OIL PRODUCTS CORPN. LTD.

20

The Meeting of the Board of Directors was held today, the 14th November 1955 in the Mill Office at 6.30 p.m. wherein the following were present :-

Mr. Musa N. Tajani	Chairman
Mr. Abraham N. Tajani	
Mr. P. L. Patel	
Mr. S. J. Ismail	
Mr. A. S. Kaba	Absent, in Mombasa on business.

30

The Chairman explained the interview he had jointly with Mr. S. J. Ismail with the representative of the Uganda Lint Marketing Board namely

M/s. Spencer and Wilcock. The Lint-M. Board pointed out that our Company was owing to them approximately £110,000 for the cotton seeds supplied to us during 1955 and further pointed out that some of the bazaar people have spread rumours that our Mill is in a heavy loss and added that our business was sealed by Bank on the 12th instant.

10 The L.M.B. also asked what arrangements we have for paying them their money.

It was explained to them that no doubt the Company has lost money in business of cotton seed and maize due to fluctuations of market. It was further assured to the L.M.B. that the rumours about the sealing of our business were unfounded and false.

20 As regards to the payment Mr. Wilcock pointed out that the L.M.B. have demanded money from each and every oil Millers and that they do realise that no Millers were in a position to pay immediately on demand. But if we could secure their money by giving some sort of security then there shall be no difficulty. But we must have sufficient security.

30 The above was answered that it is possible for us to give the L.M.B. our title deed of the Oil Mill as security but this must be decided by the Board of Directors and will inform them the results of the meeting as soon as possible. Of course we shall have to pay some money to the bank before we could clear our title deed from the bank.

40 The Chairman explained that the position of trade was that we have been doing a very large trade in our line and it would be difficult to find out the exact figure of the loss at the moment, but under these circumstances it seemed difficult to maintain the present position of the business. The Chairman also pointed out regarding the investment made by the Company in purchasing the shares of the Ug. Pressure Brick Ltd. and told the meeting that we should sell those at least at cost to any interested buyers.

It was also discussed that the present

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overdraft facility with the Standard Bank of S.A. Ltd. we have of about £20,000 to be paid which is of course against the stock and property debentures. If we collected our outstanding and sell our goods it is possible that we could get our title deed cleared from the bank and this could be deposited with the Lint Marketing Board, as the security.

It was also stated by the Chairman that Mr. Kaba will stay about a week more in Mombasa in order to seal various consignments of our cotton seed cake held up in Mombasa which are refused by the buyers.

10

All the Directors agreed unanimously to the above and asked the Chairman to proceed further.

The meeting terminated at 9.30 p.m. after vote of thanks to the Chairman as there was no other business to attend.

(signed) Musa N.Tajani (Chairman).

Annexure "B"
to Further
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ANNEXURE "B" - MINUTES OF MEETING

20

APPENDIX "B"

MINUTES OF THE MEETING HELD AT THE
REGISTERED OFFICE OF THE INDUSTRIAL
OIL PRODUCTS CORPORATION LIMITED,
KAMPALA.

The Meeting of the Board of Directors was held at the office of the Industrial Oil Products Corporation Ltd. Kampala on 30.11.55 at 9 p.m. and the following were present :-

Mr. Musa N. Tejani	Chairman
Mr. Abraham N. Tajani	
Mr. Purshottam L. Patel	
Mr. S.J. Ismail	
Mr. A.S. Kaba	on business in Mombasa.

30

The Chairman pointed out that the Lint Marketing Board have demanded their moneys Shs. 2,254.000/- as soon as possible and according

to personal interview with the officers they have agreed to take the title deed against security and that we must hurry up and give them the title deed.

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The Chairman also pointed out that first of all we must pay out Bank overdraft in order to make out title deed free from Bank charges registered by Bank.

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10 It was unanimously agreed that we must collect out our outstanding and must sell whatever stock we have including the Delinting machines and store built on plot No.148, Industrial Area, Kololo, and obtain cash as much as possible and pay the same to the Lint Marketing Board. The title deed of the Mill should also be delivered to the Lint Marketing Board after paying out to the bank as a security for safeguarding the L.M.B. money. This was agreed.

20 The Chairman pointed out that as the Company is under loss we must give one month's notice to our permanent staff except our accountant Mr. Shah who is required to draw our balance sheet of the Company, and this was agreed upon.

The Chairman also informed that as our cotton seed crushing is over and we have only maize left for gristing and therefore we only need about 10 africans to run this and 10 Africans including the mechanic to overhaul the expeller and this was approved.

30 The Chairman also suggested that as our Company is under loss we, the directors, must work free for some time until the definite return of the profit is worked out and the Chairman proposed that no monthly salary is to be drawn from 1/12/55 and we must work hard to finalise the company asset and liability and put before our biggest creditor, Messrs. Lint Marketing Board, Kampala, to give us a necessary advice for future trading and continuation of the business.
40 This suggestion was unanimously agreed and passed.

Mr. Suleman raised a question that how much is the cost of our Mill: this was answered by the Chairman Shs. 1,510,000/- building and machinery without depreciation and plus site value.

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Second question was in case if the Lint Marketing Board does not facilitate us in respect of their debt what will happen.

Answering this question the Chairman said that our Company is not in a position to pay out these full amounts due, but after collecting the outstanding some money could be paid and the title deed could be given for security to the Board for their money's safeguard. Should any difficulty arise we shall have to file a Bankruptcy with the Official Receiver, but let us hope for the best. If no trouble comes from the Board, we will continue the business, and work hard until the Board money is paid off 100%. Chairman also added that the delinting machines and plot 199 is sold and the Company's outstanding is collected in time then the Company would remain with some money which can be used to pay out 10% deposit for 1956 purchases and for maize gristing we do not require big finance as we will work on daily stock basis and will not hold large quantity of maize i.e. buy today and sell today or in some cases one week crushing maize could be bought.

10

20

This was agreed by the Board of Directors.

It was also suggested by the Chairman that personally we are 5 working directors and are paid Shs.1200/- each month also home leave and petrol for the respective's car. But from the end of November this should be stopped and for the new cotton season we shall have a further Directors meeting to decide, further working of 2 or 3 directors only at lower salary just to economise the Company's overhead and this was agreed.

30

The Directors also discussed the matter of Uganda Pressure Bricks Ltd. and Chairman said we have not been able to sell our I.O.P.C. shares, but we hope to sell our share probably at Shs. 25,000/- to Shs. 30,000/- and if this happened then the money will assist the Company to carry on business in nature of Oil and Maize.

40

It was also agreed that the copy of this minute may be sent to our creditor M/s. Lint

Marketing Board (The Officer-in-charge) for the necessary advice to be given to our company by them.

In the
High Court
of Uganda

There being no other business, the meeting terminated at 1 a.m. with vote of thanks to the Chairman.

No.3

Signed Musa T. Tejani

Annexure "B"
to Further
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continued

Directors.

CHAIRMAN

10

ANNEXURE "C" - MINUTES OF MEETING

APPENDIX "C"

INDUSTRIAL OIL PRODUCTS CORPORATION
LIMITED

Minutes of the Board of Directors of the Company held on 30th December 1955 at 7.30 p.m. at the registered office of the company :-

Present: Mr.M.N.Tejani - Chairman
Mr.E.N.Tejani
Mr.P.L.Patel
Mr.A.S.Kaba
Mr.S.J.Ismail

Annexure "C"
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Mr. M.N. Tejani was unanimously elected to the chair.

20

Mr. M.N. Tejani explained that he wished to resign from the post of directorship and as well was prepared to sell his 1,000 fully paid shares to any member willing to buy as our company is already in loss position, and therefore, the shares are considered to be of no value.

30

Initialled Other present members were of the opinion that Mr. Tejani must remain as the director and Mr. Tejani should hold one or ten shares in the company. Mr.E.N.Tejani suggested that he was quite prepared to buy his 990 shares provided Mr.M.N.Tejani continued as the director and shareholder and he would pay Shs.100/- only for all the 990 shares. This was agreed by the rest of the directors and it was resolved unanimously that the transfer of 990 shares to Mr.E.N.Tejani as above be approved.

Sgd. M.N.TEJANI
CHAIRMAN

SGD:

A.S. KABA
P.L.PATEL
E.N.TEJANI
S.J.ISMAIL

40

In the
High Court
of Uganda

ANNEXURE "D" - MINUTES OF MEETING

APPENDIX "D"

6th January, 1956.

No.3

MINUTES

Annexure "D"
to Further
Report of the
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continued

The meeting of the Board of Directors of Industrial Oil Products Corporation Limited, was held at Plot No.54, Bukoto Street the residence of Mr. Ebrahim N. Tejani, and the following were present :-

Mr. Musa N. Tejani	(in the chair)	10
Mr. Ebrahim N. Tejani		
Mr. Purshottam L. Patel		
Mr. Sulleman J. Ismail		
Mr. Allibhai S. Kaba		

Mr. Jaffer Kassam was present on invitation.

The Chairman explained the rough position of the Company's affairs, the losses during 1955. It was also explained that we had approximately Shs.600,000/- yearly expenses together with electricity charges, and owing to the marked fluctuations our company is under the loss.

20

Now we must be prepared for entirely new plans in which we could minimise the Company's expenses instead of £30,000.0.0. I suggest £1,000 to be the yearly expenses.

First of all our present Accountant who draw the high salary should be released from 31st January 1956 as soon as the Company's balance sheets drawn for the year ending 1955, and this job could be taken up by one of our Directors.

30

2. I suggest that all the directors instead of Shs. 1,200/- car allowances and leave allowances they should draw Shs.500/- only per month. That means yearly budget remain as follows :-

Directors Salary	Shs. 30,000.00	
Staff (all Asian)	8,400.00	
Electric charges	90,000.00	
Labour	37,500.00	
Stamp & Postage & telephone	10,000.00	
Auditor	1,500.00	
Repairs & Petrols	25,000.00	40
Telephone	2,400.00	
	<u>Shs.204,800.00</u>	

If these things are taken economically surely will not exceed more than £10,000.

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Annexure "D"
to Further
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10 3. Working: I suggest the Company must deal in two articles only, that is crushing of cotton-seed and maizemeal, and at the same time our policy should be not to stock anything, and risk, but simply buy and sell at the present market price, and I am sure if we do this and according to our present large capacity we are sure to earn £20,000, after deducting our expenditure. At the same time we must work hard and look after the business properly in order to rebuild our position.

The negotiations between Lint Marketing Board are still going and we hope that this will be through, so far we are lodging our factories title deed as security.

20 Mr. Jafferbhai also suggested that when you wish to pay out 100% of money to all the creditors there will be no difficulty at all provided the matter is tackled in a proper and economical way.

The above suggestion was agreed by all the directors and it was resolved that Mr. Musa N. Tejani and Mr. Sullemand Jetha to do and organise the work according to the Company's intention and Mr. Allibhai S. Kaba to be a Secretary and Accountant to the Company.

30 There being no other business the meeting was terminated at about 11.30 p.m.

Sgd. Musa N. Tejani
CHAIRMAN.

Other Directors.

In the
High Court
of Uganda

No.4

ORDER DIRECTING PUBLIC EXAMINATION

No.4

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA

Order directing
Public Examina-
tion
25th January,
1960

COMPANIES CAUSE NO.11 OF 1959

IN THE MATTER OF THE COMPANIES ORDINANCE

and

IN THE MATTER OF INDUSTRIAL OIL PRODUCTS
CORPORATION LIMITED
(in liquidation)

On considering the further report of the
Official Receiver dated the 22nd October 1959:-

10

O R D E R

It is ordered that the persons whose names
appear at the foot of the report attend before
the court to be publicly examined as to the
conduct of the business of the company and as
to their conduct and dealings as directors.

Sgd. K.D. BENNETT Judge.

No.5

No.5

Notes of
Court Pro-
ceedings
26th January
1960

NOTES OF COURT PROCEEDINGS

20

Batchelor for Official Receiver.

Hughes for Liquidator

Hunt for K.S.Kaba, A.S.Kaba, H.J.Esmail.

E.N.Tejadi and M.N.Tajani

Batchelor: P.L.Patel is dead.

Hunt: I apply for adjournment. In this case
an order under Section 214 of Companies Ordinance
was made only yesterday, and was served
yesterday afternoon at 4.00 p.m. in my office.

A hearing notice had been served on K.S.Kaba on 23.1.60 at Pakwach, on A.S.Kabe on 20.1.60 at Arua, on H.J.Esmail at Mbarara on 22.1.60, and on the two Tejanis at Kampala on 19.1.60. There must be specific prima facie cases of fraud against each individually. When hearing notices served there was no order by this Court that they should be publicly examined.

In the
High Court
of Uganda

No.5

Notes of
Court
Proceedings
26th January
1960
continued

10 Sections 214(6) of Companies Ordinance entitles the person to be examined to be supplied at his own expense with copy of Official Receiver's report. We have not yet seen the report.

Companies Winding Up Rules, 1929, of U.K. are applied in Uganda by Section 356 of the Ordinance, Rule 61 and Rule 62.

20 Knowledge that a further report had been filed was only obtained yesterday. None of my clients has seen the report. No opportunity given to them to apply for discharge of Order made yesterday on ground of lack of jurisdiction. Section 216 of U.K. Act corresponds with Section 214 of local Ordinance. Halsburys Statutes Vol.II, page 922. 10 Digest (1924 Edition), page 869, para.5891, page 870, para.5893.

30 In public examination questions asked must be related to allegations made in Official Receiver's Report. Ex parte Barnes (1896) A.C. 146 at page 151. Rule 65 requires that public examination should be advertised. Gore-Brown on Joint Stock Companies, 39th Edition, 688. Public examination of a penal character. That is why the rules provided safeguards. Halsburys Statutes, Vol.II 922. Application can be made to Court to discharge Order for Public Examination on ground of lack of jurisdiction. Should be made within 14 days or so of service of Order.

40 I would ask for an adjournment for 14 days. If there were grounds for application for discharge I would make it within the 14 days. I was only instructed yesterday. Two of them saw Mr. Wilkinson on Saturday. Batchelor: I submit the law complied with save for lack of advertisement in Gazette. Advertisement in Argus appears in today's issue. There is virtually

In the
High Court
of Uganda

No.5
Notes of
Court
Proceedings
26th January
1960
continued

only one creditor and he is present.

Further Report dated 22.10.59. Hearing
notices dated 22.12.59.

Not mandatory on Official Receiver to supply copy of report. Kruger Gold Mining Co. (1892) 3 Ch. D.307 on page 312.

Only entitled to copy of report if he asks for it. Persons concerned knew of public examination because they were served with hearing notices.

10

M.N.Tejani and E.N.Tejani were served with hearing notice on 19.1.60, and could have applied for copy of report.

Notice to attend public examination is Form No.28, in Company Winding Up Rules. Rule 223. I conceded notice should have been gazetted. I oppose an adjournment.

Hunt: No order that they should be publicly examined till yesterday. We want a copy of report and are prepared to pay for it. We want time to consider it.

20

Order delivered.

Sgd. K.G.BENNETT Judge 26.1.60.

No.6
Order
Granting
Adjournment
of Public
Examination
26th January
1960

No.6

ORDER GRANTING ADJOURNMENT OF PUBLIC
EXAMINATION

ORDER

In my opinion a good case has been made out for an adjournment. It is plain that a person who is ordered to be publicly examined under Section 214 of the Companies Ordinance is entitled to proper notice of the examination, and that notice must be in the form of Form 28 in the Schedule to the Companies Winding Up Rules.

30

It is equally clear from Form 28 that the notice must inform the person upon whom it is served that he himself is to be publicly examined. Notice in the proper form was only served upon the Directors or ex-Directors of the Company at 4 o'clock yesterday afternoon. Prior to that they had been served with an ordinary hearing notice, but that notice was not in such form as to indicate that they themselves were to be publicly examined, or that they were obliged to attend at the public examination.

10

A further difficulty which, in my opinion, cannot be cured, is the fact that this public examination has not been gazetted as required by Rule 63 of the Companies Winding Up Rules. Furthermore the advertisement in the Argus only appeared today, and would therefore not come to the notice of creditors who lived at any distance from Kampala.

20

The public examination will be adjourned to a date to be fixed by the Registrar after hearing Official Receiver and Counsel. When a date has been fixed notice thereof should be advertised in the Gazette and the Argus.

Sgd. K.G.BENNETT Judge

26.1.60

No.7

NOTICE OF PUBLIC EXAMINATION OF
MUSABHAI NOORMOHAMED TEJANI

30

IN HER MAJESTY'S HIGH COURT OF UGANDA

HOLDEN AT KAMPALA

Companies Cause No.11 of 1959

Re: Industrial Oil Products
Corporation Ltd.
in Liquidation.

TAKE NOTICE THAT the public examination

In the
High Court
of Uganda

No.6

Order
Granting
Adjournment
of Public
Examination
26th January
1960
continued

No.7

Notice of
Public
Examination
of Musabhai
Noormohamed
Tejani
20th February
1960

In the
High Court
of Uganda

No.7

Notice of
Public
Examination
of Musabhai
Noormohamed
Tejani
20th February
1960
continued

of MR. MUSABHAI NOORMOHAMED TEJANI in the above matter, held on the 26th day of January, 1960, at 9.30 a.m. was adjourned to the 14th day of March, 1960, and will accordingly be held at Her Majesty's High Court of Uganda at Kampala, on the said day at 9.30 o'clock in the forenoon.

NOTICE IS HEREBY GIVEN that you are required to attend at the said time and place, and at any adjournments of the examination which may be ordered, and to bring with you and produce all books, papers, and writing and other documents in your custody or power in any way relating to the above-named company.

10

AND TAKE NOTICE that if you fail, without reasonable excuse, to attend at such time and place, and at the adjournments of the said public examination which may be ordered, you will be liable to be committed to prison without further notice.

Dated the 20th day of February, 1960.

20

Sgnd. B. Batchelor

OFFICIAL RECEIVER

P.O.BOX 251,

Kampala.

TO: MUSABHAI NOORMOHAMED TEJANI

(Forwarded to M/S Wilkinson & Hunt, Advocate,
Kampala. acting for the addressee, for service).

No.8

NOTICE OF PUBLIC EXAMINATION OF
EBRAHIM NOORMOHAMED TEJANI

IN HER MAJESTY'S HIGH COURT OF UGANDA

HOLDEN AT KAMPALA

Companies Cause No.11 of 1959

Re: Industrial Oil Products
Corporation Ltd. in
Liquidation.

In the
High Court
of Uganda

No.8

Notice of
Public Examination of
Ebrahim Noor-
mohamed Tejani
20th February
1960

10 TAKE NOTICE THAT the public examination of
Mr. Ebrahim Noormohamed Tejani in the above
matter, held on the 26th day of January, 1960,
at 9.30 a.m. was adjourned to the 14th day of
March, 1960, and will accordingly be held at
Her Majesty's High Court of Uganda at Kampala,
on the said day at 9.30 o'clock in the fore-
noon.

20 NOTICE IS HEREBY GIVEN that you are re-
quired to attend at the said time and place, and
at any adjournments of the examination which
may be ordered, and to bring with you and pro-
duce all books, papers, and writings and other
documents in your custody or power in any way
relating to the above named company.

AND TAKE NOTICE that if you fail, without
reasonable excuse, to attend at such time and
place, and at the adjournments of the said
public examination which may be ordered, you
will be liable to be committed to prison with-
out further notice.

30 Dated the 20th day of February, 1960.

Sgd.

OFFICIAL RECEIVER,
P.O.Box 251,
Kampala.

To: MR.EBRAHIM NOORMOHAMED TEJANI.
(Forwarded to M/S Wilkinson & Hunt, Advocates,
Kampala, acting for the addressee, for service).

In the
High Court
of Uganda

No.9

NOTICE OF PUBLIC EXAMINATION
OF ALLIBHAI S. KABA

No.9

IN HER MAJESTY'S HIGH COURT OF UGANDA

Notice of
Public Exam-
ination of
Allibhai S.
Kaba
20th February
1960

HOLDEN AT KAMPALA

Companies Cause No.11 of 1959

Re: Industrial Oil Products
Corporation Ltd. in
Liquidation

TAKE NOTICE THAT the public examination of
MR. ALLIBHAI S. KABA in the above matter held on
the 26th day of January, 1960, at 9.30 a.m., was
adjourned to the 14th day of March, 1960, and
will accordingly be held at Her Majesty's High
Court of Uganda at Kampala, on the said day at
9.30 o'clock in the forenoon.

10

NOTICE IS HEREBY GIVEN that you are requir-
ed to attend at the said time and place, and at
any adjournments of the examination which may be
ordered, and to bring with you and produce all
books, papers, and writings and other documents
in your custody or power in any way relating to
the above-named company.

20

AND TAKE NOTICE that if you fail, without
reasonable excuse, to attend at such time and
place, and at the adjournments of the said pub-
lic examination which may be ordered, you will
be liable to be committed to prison without fur-
ther notice.

Dated the 20th day of February, 1960.

30

Sgnd.

OFFICIAL RECEIVER
P.O.Box 251,
Kampala.

To: MR. ALLIBHAI S. KABA

(Forwarded to M/S Wilkinson & Hunt; Advocates,
Kampala, acting for the addressee, for service).

No.10

AFFIDAVIT OF BENEDICT EXPECTATION
D'SILVA FOR DISCHARGE OF ORDER.

In the
High Court
of Uganda

No.10

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA
COMPANIES CAUSE NO.11 of 1959.

In the Matter of Industrial Oil Products
Corporation Limited in liquidation
and

Affidavit
of Benedict
Expectation
D'Silva for
Discharge
of Order
24th February
1960

10

In the Matter of Companies Ordinance for
an application for discharge of an order
for public examination to be held on
14th March 1960 at Her Majesty's High
Court of Uganda at Kampala.

AFFIDAVIT

I, BENEDICT EXPECTATION D'SILVA, an Advocate practising Kampala make oath and state as follows :-

20

1. I am instructed to act in the above matter.
2. As per instructions received I have perused the Court file and notes made by the Learned Judge concerned in the above companies cause and there is no compliance with Companies (winding up) Rules 1929 R.(8) and R.(9) in so far as :-

30

- (a) That before applying for Ex Parte order made on 25.1.1960 on filing a further report no notice of motion or summons was filed to move the Court under Companies (winding up) Rules 1929 R.(8) for the purpose of making an order for public examination under Section 214 (1) of the Companies Ordinance nor any such motion or summons was served upon my clients indicating that the Court was moved Ex Parte on motion or summons for an Order under Section 214(1) of the Companies Ordinance.

In the
High Court
of Uganda

No.10

Affidavit
of Benedict
Expectation
D'Silva for
Discharge
of Order
24th February
1960
continued

(b) That there was no appearance by the Official Receiver personally or by Counsel on consideration of the further report on 25.1.1960 in pursuance of Companies (winding up) Rules R.59 as the Learned Judge's notes on the court file do not show that there was such appearance.

3. I am of the opinion that the order made on 25th January 1960 for public examination was without any jurisdiction.

10

4. What I have stated herein is true to the best of my knowledge, information and belief.

SWORN at Kampala this 24th day of February, 1960.

Sgd. B.E. D'Silva
Deponent.

Before me: Sgd. M.C.Ghelani
A COMMISSIONER FOR OATHS.

No.11

Affirmation
of Musabhai
Noormohamed
Tejani for
Discharge of
Order
25th February
1960.

No.11

AFFIRMATION OF MUSABHAI NOORMOHAMED
TEJANI FOR DISCHARGE OF ORDER.

20

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA

COMPANIES CAUSE No.11 of 1959

In the Matter of Industrial Oil Products
Corporation Ltd. in liquidation

and

In the Matter of Companies Ordinance for an
Application for Discharge of an Order for
his public examination to be held on 14th
March 1960 at Her Majesty's High Court of
Uganda at Kampala.

30

APPLICATION FOR DISCHARGE OF THE ORDER
FOR PUBLIC EXAMINATION ON THE GROUND
OF WANT OF JURISDICTION.

I, MUSABHAI NOORMOHAMED TEJANI, one of the

persons served with the order for my public examination to be held on the 14th March 1960 solemnly affirm and state as follows:

In the High Court of Uganda

1. That this court has no jurisdiction to order my public examination on the ground :

No.11

(a) That no order for public examination of a particular person can be made unless Official Receiver expresses the opinion that such person has been guilty of fraud or

Affirmation of Musabhai Noormohamed Tejani for Discharge of Order 25th February 1960 continued

(b) Shows facts how he is connected with fraud.

2. That the further report from the Official Receiver does not state that in his opinion there has been a fraud by me personally in so far as

(a) It does not state in what manner I am personally guilty of fraud or

(b) That the facts disclosed therein do not show what specific allegations of fraud are made against me personally

3. That a general allegation of fraud against all directors is not sufficient to found jurisdiction of this court to order my public examination.

4. That what I have stated herein is true to the best of my knowledge information and belief.

Affirmed at Kampala this 25th day of February 1960.

Before me,
J.K.Patel 25.2.60.
A COMMISSIONER FOR OATHS.

To 1.The Official Receiver,
P.O.Box 25, Kampala
2.M/S Wilkinson & Hunt,
Advocates Kampala.

Filed by:
Messrs.Wilkinson & Hunt,
Advocates, Kampala.

In the
High Court
of Uganda

No.12

AFFIRMATION OF EBRAHIM NOORMOHAMED
TEJANI FOR DISCHARGE OF ORDER

No.12

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA
COMPANIES CAUSE No.11 of 1959.

Affirmation
of Ebrahim
Noormohamed
Tejani for
Discharge of
Order
25th February
1960

In the Matter of Industrial Oil Products
Corporation Ltd. in liquidation

and

In the Matter of Companies Ordinance for
an application for discharge of an
order for his public examination to be
held on 14th March 1960 at Her Majesty's
High Court of Uganda at Kampala.

10

APPLICATION FOR DISCHARGE OF THE ORDER
FOR PUBLIC EXAMINATION ON THE GROUND
OF WANT OF JURISDICTION.

I, EBRAHIM NOORMOHAMED TEJANI, one of the
persons served with the order for my public ex-
amination to be held on the 14th March 1960
solemnly affirm and state as follows :-

20

1. That this court has no jurisdiction to
order my public examination on the ground:

(a) That no order for public examination of
a particular person can be made unless
Official Receiver expresses the opinion
that such person has been guilty of
fraud or

(b) shows facts how he is connected with fraud.

2. That the further report from the Official
Receiver does not state that in his opinion
there has been a fraud by me personally in so
far as

30

(a) It does not state in what manner I am
personally guilty of fraud or

(b) That the facts disclosed therein do not

show what specific allegations of fraud are made against me personally.

3. That a general allegation of fraud against all directors is not sufficient to found jurisdiction of this court to order my public examination.

4. That what I have stated herein is true to the best of my knowledge information and belief.

10 Affirmed at Kampala this 25th day of February 1960.

Before me,
J.K.Patel 25.2.60
A Commissioner for Oaths.

To 1.The Official Receiver
P.O.Box 25 Kampala.
2.M/S Wilkinson & Hunt,
Advocates, Kampala.

In the
High Court
of Uganda

No.12

Affirmation
of Ebrahim
Noormohamed
Tejani for
Discharge of
Order
25th February
1960
continued

No.13

20 AFFIRMATION OF ALLIBHAI S. KABA FOR
DISCHARGE OF ORDER.

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA
COMPANIES CAUSE No.11 of 1959

In the Matter of Industrial Oil Products Corporation Ltd. in Liquidation

and

30 In the Matter of Companies Ordinance for an application for discharge of an order for his public examination to be held on 14th March 1960 at Her Majesty's High Court of Uganda at Kampala.

APPLICATION FOR DISCHARGE OF THE ORDER
FOR PUBLIC EXAMINATION ON THE GROUND
OF WANT OF JURISDICTION.

I, ALLIBHAI S. KABA, one of the persons

In the
High Court
of Uganda

No.13

Affirmation of
Allibhai S.
Kaba for
Discharge
of Order
25th February
1960
continued

served with the order for my public examination to be held on the 14th March 1960 solemnly affirm and state as follows :-

1. That this court has no jurisdiction to order my public examination on the ground:

(a) That no order for public examination of a particular person can be made unless Official Receiver expresses the opinion that such person has been guilty of fraud or

(b) shows facts how he is connected with fraud. 10

2. That the further report from the Official Receiver does not state that in his opinion there has been a fraud by me personally in so far as

(a) It does not state in what manner I am personally guilty of fraud or

(b) That the facts disclosed therein do not show what specific allegations of fraud are made against me personally.

3. That a general allegation of fraud against all Directors is not sufficient to found jurisdiction of this court to order my public examination. 20

4. That what I have stated herein is true to the best of my knowledge information and belief.

Affirmed at Kampala this 25th day of February, 1960.

Before me,
Sgd. V.K.Patel
25.2.60.

A Commissioner for Oaths. 30

To 1. The Official Receiver,
P.O.Box 25 Kampala.

2. M/S Wilkinson & Hunt,
Advocates Kampala.

Filed by:
Messrs.Wilkinson & Hunt,
Advocates Kampala.

No.14

FURTHER NOTES OF COURT PROCEEDINGS

In the
High Court
of Uganda

No.14

D'Silva for five Applicants.

Batchelor for Official Receiver.

Sparrow for Liquidator.

D'Silva reads his affidavit of 24.2.60
Section 356(1) of Cap.212.

1929 Rules, Rule 8 - application by
motion.

10

Further Report under Section 214.

Summons prerequisite to give Court
jurisdiction.

In its absence no order can be made.

Rule 59

No appearance by Official Receiver on
25.1.60

Necessary safeguard - Official Receiver
to answer queries.

20

Non-compliance. Order for public exam-
ination valid

Atken Vol.6, p.340, 339. Summons Form 25.

Will argue on merits if necessary.

Batchelor: Application for order for public ex-
amination may be made ex parte. In re Trust &
Investment Corporation of South Africa: (1892)
3 Ch. 332.

Ex parte - one party in absence of other.

Para.2 (a) nothing to be served on appli-
cants.

30

There should have been a summons to move

Further Notes
of Court
Proceedings.
9th March 1960

In the
High Court
of Uganda

No.14

Further Notes
of Court
Proceedings
9th March 1960
continued

the Court. No one prejudiced as not to be served on applicants. Only Official Receiver and Court involved. Rule 223. Formal defect not to invalidate proceedings. No substantial injustice.

Company Cause No.41 of 1956. No argument.

Rule 59 not complied with.

Official Receiver to be present for benefit of Court - so as to be able to give information or guide Court if Court should wish. Court has power to dispense with presence. Shall be present for benefit of Court. Form of order says. Form 256: "Upon reading the report" Not "on hearing Counsel". Significant omission. Palmer Pt. Winding Up, 15th Edn. 613. Alternative. Not absolutely essential for Official Receiver to be present. Court can make order on strength of report. No U.K. Authority. Sparrow: Summons always in same form. Ex parte depends on who is summoned.

10

20

Rule 59. Judge can dispense with Official Receiver. Official Receiver may take a risk if he is not there. Matter of form. Judge knows what he is being asked to do. Alternative form is Official Receiver not there. Services not required if report amply clear.

Technicality.

D'Silva replied:

Vol.5, Halsbury 586. Report is not application. Penal rules. Page 949: "Shall" imperative. Set aside report.

30

Court: Reserve my view on preliminary points. Will hear merits.

Batchelor: Purshottam is dead.

Not enough to connect Kassamali with fraud, I do not propose to examine him.

D'Silva: Official Receiver to set out what fraud committed by each director. Schedule not enough. Palmer (12th Edn.) 435. Ex parte Barnes (1896) A.C. 146.

Must connect person with facts.

In the
High Court
of Uganda

No.14

Page 151. If A guilty of fraud B.C. and D. not necessarily guilty: 1899 1 Ch. D. 215. Promotion of Company. Call upon for explanation. Four persons. What part played by each Director. Can't tell from report. Page 922. Application to discharge order Page 435. Application to discharge order within 14 days of order.

Further Notes
of Court
Proceedings
9th March 1960.
continued

10

1892 3 Ch.332. "without jurisdiction". Bennett J. didn't go into merits. No arguments before him. Whether sufficient evidence is question of jurisdiction (sic) 10 Digest para. 5896, 5904. E.A. Digest 78. Prima facie case of fraud 2 E.A.C.A. 51.

Batchelor: Order can only be discharged on only one ground - want of jurisdiction. 1899 2 Ch. 773.

20

1 1900 Ch.27. 1892 3 Ch.332 "not sufficient fraud".

Previous trial be Official Receiver.

Barnes: Preliminary report no further report.

1892 3 Ch.D.p.307, 313. Discretion.

Sparrow: Supports Official Receiver.

Fraud matter for public examination.

Prima facie case.

1899 2 Ch.776. Object of examination.

"Considered" all Bennet J. required to do.

Costs five notices of motion, similar affidavits.

30

One notice - joint affidavit.

D'Silva replies. Page 922. 2 Halsbury Statutes.

C.A.V. to 11.3.60.

Sgd. D.J. SHERIDAN
Judge

Hunt applies for leave to appeal.

Batchelor does not oppose.

ORDER: Leave to appeal is granted.

Public examination adjourned pending decision in the appeal.

40

Sgd. D.J. SHERIDAN
Judge.

In the
High Court
of Uganda

No.15

JUDGMENT DISMISSING APPLICATION

No.15

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA

Judgment
Dismissing
Application
19th March 1960

COMPANIES CAUSE NO.11 of 1959.

IN THE MATTER of THE COMPANIES ORDINANCE

and

IN THE MATTER OF INDUSTRIAL OIL PRODUCTS
CORPORATION LIMITED
(in Liquidation)

Before - The Honourable Mr. Justice Sheridan. 10

O R D E R

This is an application by the applicants, the Directors of Industrial Oil Products Corporation, in liquidation, for discharge of the Order for public examination made by Mr. Justice Bennett on 25th January, 1960, on the ground of want of jurisdiction. The Order of the learned Judge is in the following terms :-

"25.1.60. On considering the further report of the Official Receiver dated the 22nd October, 1959 - 20

Order It is ordered that the persons whose names appear at the foot of the report attend before the Court to be publicly examined as to the conduct of the business and dealings as Directors.

Sgd. K.D.Bennett."

The further report referred to is a report of the Official Receiver under Section 214(1) of the Companies Ordinance (Cap.212), in which she stated that in her opinion a fraud had been committed by the Applicants since the formation of the Company and requested the Court to direct that they should attend the Court for the purpose of being publicly examined as to the conduct of the business of the Company. 30

By Section 356(1) of the Ordinance the Companies (Winding-Up) Rules, 1929, of the Imperial Parliament are made applicable to Uganda. The relevant rules, in considering this application, are rule 8(2).

In the
High Court
of Uganda

No.15

"Every application in Chambers shall be by summons which, unless otherwise ordered, shall be served on every person against whom an order is sought and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons."

Judgment
Dismissing
Application
10th March
1960
continued

And rule 59 -

"The consideration of a report made by the Official Receiver pursuant to subsection (2) of Section 182 of the Act (Section 214(1) of the Ordinance corresponds) shall be before the judge of the court personally in Chambers and the Official Receiver shall personally or by counsel or solicitor attend the consideration of the report and give the court any further information or explanation with reference to the matter stated in the report which the court may require."

The Order of the learned Judge is attacked for failure to comply with these two rules. The applicants have also filed affidavits, the substance of which is that the Court lacked jurisdiction to make the order because the further report did not disclose sufficient evidence of fraud committed by them. Mr. D'Silva argued on their behalf that the issue of a summons is a pre-requisite to confer jurisdiction upon the court and that in its absence no order could be made. He further relies on the use of the word "shall" in rule 59 as indicating that it is mandatory on the Official Receiver to attend on the Judge in Chambers. He concedes that a summons to consider a further report would be ex parte. The authority for this is In re Trust & Investments Corporation of South Africa (1892) 3 Ch. D. page 332 where it was held that such an order may be made ex parte leaving the party to move to discharge it if he alleges it could have been made without

In the
High Court
of Uganda

No.15

Judgment
Dismissing
Application
19th March 1960
continued

jurisdiction. The Official Receiver concedes that no summons was issued in this case, and that Rule 59 was not complied with. There should have been a summons to move the court, but no one was prejudiced by this omission as it was not to be served on the applicant. At that stage only the Official Receiver and the Court were involved. I am satisfied that this formal defect does not invalidate the proceedings as no substantial injustice has been caused by it; see rule 223 of the Rules.

10

With regard to the failure to comply with Rule 59 the Official Receiver contends that the judge has power to dispense with her presence, as it can only be for the benefit of the Court so as to give further information or "guidance" on the report if it is not clear. There is no direct authority on this, but it is significant that in the form of Order for Public Examination as set out in Volume 6 of Atkins Encyclopaedia of Forms at page 340 the opening words are - "Upon reading the reports of the Senior Official Receiver". Further, in *Palmer's Company Precedents* (15th Edn.) Part 2 at page 316 alternative forms are given, (1) upon hearing the Official Receiver and upon reading the reports, and (2), upon reading the reports; which would seem to support the view that a Judge in Chambers can make an order on the strength of the report and that it is not absolutely essential for the Official Receiver to be present.

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30

On the second leg of this application Mr. D'Silva asks me to reconsider the order made by Mr. Justice Bennett and to discharge it on the ground that the further report did not disclose sufficient evidence of fraud to connect the applicants with it. I fail to see how I can discharge the order of a brother judge who was satisfied, that the report warranted the public examination of the applicants, nor can I see how this can be argued to be a question of jurisdiction. The question whether the applicants did take part, as reported by the Official Receiver, in the fraud is one of the very things which it is the object of the examination to ascertain: see *In re National Stores Ltd.* (1899) 2 Ch. D: page 773 per Wright J. at page 776. Further, the question whether or not there shall be a

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public examination is entirely a matter for the discretion of the court and the exercise of its discretion can only be impugned on the ground that the court has no jurisdiction: see In re Gt. Kruger Gold Mining Company ex parte Barnard (1892) 3 Ch. D. 307. All that Mr. Justice Bennett was required to do was to consider whether there was prima facie evidence to support the opinion of the Official Receiver that a fraud had been committed by the applicants or any of them in relation to the company since its formation. That matter will be determined at the public examination. I fail to see how I can in any way interfere with the order of the learned Judge. The application is dismissed with costs.

JUDGE.

No.16

FORMAL ORDER DISMISSING APPLICATION

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA
COMPANIES CAUSE NO.11 of 1959

IN the Matter of Industrial Oil Products Corporation Limited in liquidation

and

In the Matter of Companies Ordinance for application for discharge of an order for public examination to be held on 14th March 1960 at Her Majesty's High Court of Uganda at Kampala.

O R D E R

Before Honourable Mr. Justice Sheridan

Upon the motion made unto this court by Mr. B.E. D'Silva, Counsel for Applicants M.N. Tejani, H. J. Esmail, E.N. Tejani and A.S. Kaba

AND UPON HEARING the affidavits of the said Applicants filed in the matter, and the affidavit of the said B.E. D'Silva, filed on behalf of the said Applicants

AND UPON HEARING the said B.E. D'Silva and upon reading the further report filed by the Official Receiver and upon hearing Miss Batchelor for the Official Receiver

AND UPON HEARING Mr. Sparrow for the liquidator

In the
High Court
of Uganda

No.15

Judgment
Dismissing
Application
19th March
1960
continued

No.16

Formal Order
Dismissing
Application
9th March
1960.

In the
High Court
of Uganda

No.16

Formal Order
Dismissing
Application
9th March 1960
continued

IT IS HEREBY ORDERED that the motion of the Applicants for the discharge of the Ex Parte order for public examination of the said Applicants is dismissed with costs, such costs to be taxed

AND IT IS FURTHER ORDERED that leave to appeal to the Appeal Court for Eastern Africa against the said order of dismissal is hereby granted.

GIVEN under my hand and the seal
of this Court this 9th day of
March, 1960.

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JUDGE.

No.17

In the Court
of Appeal for
Eastern Africa

No.17

Memorandum of
Appeal by
Musabhai
Noormohamed
Tejani
21st May 1960

MEMORANDUM OF APPEAL BY MUSABHAI
NOORMOHAMED TEJANI

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA

HOLDEN AT KAMPALA

COMPANIES APPEAL NO. of 1960.

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BETWEEN

MUSABHAI NOORMOHAMED TEJANI as
Director of Industrial Oil Pro-
ducts Corporation Ltd. (in
liquidation)

APPELLANT

and

THE OFFICIAL RECEIVER

RESPONDENT

(Appeal from an order of Her Majesty's High
Court of Uganda at Kampala (Mr. Justice Sheridan)
dated 11th March 1960).

in

COMPANIES CAUSE NO.11 of 1960

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BETWEEN

THE OFFICIAL RECEIVER

APPLICANT

and

MUSABHAI NOORMOHAMED TEJANI
as Director of Industrial
Oil Products Corporation
Ltd. (in liquidation)

RESPONDENT

MEMORANDUM OF APPEAL

MUSABHAI NOORMOHAMED TEJANI the Appellant
abovenamed appeals to Her Majesty's Court of
Appeal for Eastern Africa against the whole of
the said decision abovenamed on the following
grounds :-

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1. The Learned Judge erred in law in holding that non-compliance with Rule 8(2) of the Companies Winding Up Rules 1929 was a formal defect not invalidating the proceedings for the following reasons:-

In the Court
of Appeal for
Eastern Africa

No.17

Memorandum of
Appeal by
Musabhai
Noormohamed
Tejani
21st May 1960
continued

10

(a) A proper construction on the provisions of Rule 8(2) of the Companies Winding Up Rules 1929 would necessitate a summons to invoke the jurisdiction of the Court and making the chamber summons mandatory.

(b) The court had no power to make an Ex Parte order without an Ex Parte chamber summons being filed before the order was made.

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2. The Learned Judge misdirected himself in law in holding that it is not absolutely essential for an Official Receiver to be present in person or by Counsel pursuant to Rule 59 of the Winding Up Rules 1929 for the following reasons:-

(a) The provisions of Rule 59 are mandatory.

(b) Court has no jurisdiction or power to dispense with the presence of an Official Receiver or a Counsel representing Official Receiver.

(c) Rule 223 of the Rules could not be invoked to cure the cumulative effects of non-compliance with Rule 8(2) and 59.

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3. The Learned Judge did not sufficiently appreciate the arguments advanced by the Appellant when he said "I fail to see how I can discharge the order of a brother Judge who was satisfied that the report warranted the public examination of the Appellants" for the following reasons :-

(a) There was not a specific allegation of fraud nor were there facts constituting a prima facie case of fraud against the Appellant in question

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(b) A general allegation of fraud against 5 directors (the allegation against Kassamali Kaba, one of the Directors was withdrawn at the hearing of the application) was not sufficient

In the Court
of Appeal for
Eastern Africa

No.17

Memorandum of
Appeal by
Musabhai
Noormohamed
Tejani
21st May 1960
continued

(c) The court has no jurisdiction to order a public examination if frauds have been committed upon members of the outside public when such frauds were not connected in any way with the promotion or formation of the company.

DATED at Kampala, this 21st day of May, 1960.

Sgd. B.E.D'Silva
ADVOCATES FOR THE APPELLANT.

No.18

Memorandum of
Appeal by
Ebrahim Noor-
mohamed Tejani
21st May 1960

No.18

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MEMORANDUM OF APPEAL BY
EBRAHIM NOORMOHAMED TEJANI

IN HER MAJESTY'S COURT OF APPEAL FOR
EASTERN AFRICA

HOLDEN AT KAMPALA.

COMPANIES APPEAL NO. 1960.

BETWEEN

EBRAHIM NOORMOHAMED TEJANI
as Director of Industrial
Oil Products Corporation
Ltd. (in liquidation)

APPELLANT

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and

THE OFFICIAL RECEIVER

RESPONDENT

(Appeal from an order of Her Majesty's High
Court of Uganda at Kampala (Mr. Justice
Sheridan) dated 11th March 1960)

in

COMPANIES CAUSE NO.11 of 1960.

BETWEEN

THE OFFICIAL RECEIVER

APPLICANT

30

and

EBRAHIM NOORMOHAMED TEJANI
as Director of Industrial
Oil Products Corporation
Ltd. (in liquidation)

APPELLANT

MEMORANDUM OF APPEAL.

EBRAHIM NOORMOHAMED TEJANI the Appellant

abovenamed appeals to Her Majesty's Court of Appeal for Eastern Africa against the whole of the said decision abovenamed on the following grounds :-

In the Court
of Appeal for
Eastern Africa

No.18

Memorandum of
Appeal by
Ebrahim Noor-
mohamed Tejani
21st May 1960
continued

1. The Learned Judge erred in law in holding that non-compliance with Rule 8(2) of the Companies Winding Up Rules 1929 was a formal defect not invalidating the proceedings for the following reasons :-

- 10 (a) A proper construction on the provisions of Rule 8(2) of the Companies Winding Up Rules 1929 would necessitate a summons to invoke the jurisdiction of the court and making the chamber summons mandatory.
- (b) The court had no power to make an Ex Parte order without an Ex Parte chamber summons being filed before the order was made.

20 2. The Learned Judge misdirected himself in law in holding that it is not absolutely essential for an Official Receiver to be present in person or by counsel pursuant to Rule 59 of the Winding Up Rules 1929 for the following reasons:-

- (a) The provisions of Rule 59 are mandatory.
- (b) Court has no jurisdiction or power to dispense with the presence of an Official Receiver or a counsel representing Official Receiver.
- 30 (c) Rule 223 of the Rules could not be invoked to cure the cumulative effects of non-compliance with Rule 8 (2) and 59.

3. The Learned Judge did not sufficiently appreciate the arguments advanced by the Appellant when he said "I fail to see how I can discharge the order of a brother judge who was satisfied that the report warranted the public examination of the Applicants" for the following reasons :-

- (a) There was not a specific allegation of fraud nor were there facts constituting a prima facie case of fraud against the Appellant in question,

In the Court
of Appeal for
Eastern Africa

No.18

Memorandum of
Appeal by
Ebrahim Noor-
mohamed Tejani
21st May 1960
continued

(b) A general allegation of fraud against 5 directors (the allegation against Kassamalai Kaba, one of the directors was withdrawn at the hearing of the application) was not sufficient.

(c) The court has no jurisdiction to order a public examination if frauds have been committed upon members of the outside public when such funds were not connected in any way with the promotion or formation of the company.

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DATED at Kampala, this 21st day of May, 1960.

Sgd. B.E.D'Silva
ADVOCATES FOR THE APPELLANT.

No.19

Memorandum
of Appeal by
Allibhai S.
Kaba.
21st May 1960

No.19

MEMORANDUM OF APPEAL BY
ALLIBHAI S. KABA

IN HER MAJESTY'S COURT OF APPEAL FOR
EASTERN AFRICA

HOLDEN AT KAMPALA.

COMPANIES APPEAL NO. of 1960.

20

BETWEEN

ALLIBHAI S. KABA as
Director of Industrial
Oil Products Corporation
Ltd. (in liquidation) APPELLANT

and

THE OFFICIAL RECEIVER RESPONDENT

(Appeal from an order of Her Majesty's High
Court of Uganda at Kampala (Mr. Justice
Sheridan) dated 11th March 1960)

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in

COMPANIES CAUSE NO.11 of 1960

BETWEEN

THE OFFICIAL RECEIVER APPLICANT

and

ALLIBHAI S. KABA as
Director of Industrial
Oil Products Corporation
Ltd. (in liquidation) APPELLANT

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MEMORANDUM OF APPEAL.

ALLIBHAI S. KABA the Appellant abovenamed

appeals to Her Majesty's Court of Appeal for Eastern Africa against the whole of the said decision abovenamed on the following grounds:-

In the Court
of Appeal for
Eastern Africa

No.19

Memorandum
of Appeal by
Allibhai S.
Kaba.
21st May 1960
continued

1. The Learned Judge erred in law in holding that non-compliance with Rule 8 (2) of the Companies Winding Up Rules 1929 was a formal defect not invalidating the proceedings for the following reasons :-

- 10 (a) A proper construction on the provisions of Rule 8(2) of the Companies Winding Up Rules 1929 would necessitate a summons to invoke the jurisdiction of the court and making the chamber summons mandatory.
- (b) The court had no power to make an Ex Parte order without an Ex Parte chamber summons being filed before the order was made.

20 2. The Learned Judge misdirected himself in law in holding that it is not absolutely essential for an Official Receiver to be present in person or by counsel pursuant to Rule 59 of the Winding Up Rules 1929 for the following reasons:-

- (a) The provisions of Rule 59 are mandatory.
- (b) Court has no jurisdiction or power to dispense with the presence of an Official Receiver or a counsel representing Official Receiver.
- 30 (c) Rule 223 of the Rules could not be invoked to cure the cumulative effects of non-compliance with Rule 8 (2) and 59.

3. The Learned Judge did not sufficiently appreciate the arguments advanced by the Appellant when he said "I fail to see how I can discharge the order of a brother judge who was satisfied that the report warranted the public examination of the Applicants" for the following reasons :-

- 40 (a) There was not a specific allegation of fraud nor were there facts constituting a prima facie case of fraud against the Appellant in question.

In the Court
of Appeal for
Eastern Africa

No.19

Memorandum
of Appeal by
Allibhai S.
Kaba.
21st May 1960
continued

(b) A general allegation of fraud against 5 directors (the allegation against Kassamali Kaba, one of the directors was withdrawn at the hearing of the application) was not sufficient.

(c) The court has no jurisdiction to order a public examination if frauds have been committed upon members of the outside public when such frauds were not connected in any way with the promotion or formation of the company.

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DATED at Kampala, this 21st day of May, 1960.

Sgd. B.E.D'Silva
ADVOCATES FOR THE APPELLANT.

No.20

Judgment
(a) Gould
AG.V-P
27th July
1960

No.20

J U D G M E N T

IN HER MAJESTY'S COURT OF APPEAL FOR
EASTERN AFRICA

HOLDEN AT KAMPALA

CIVIL APPEAL NO.36 of 1960

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BETWEEN

MUSABHAI NOORMOHAMED TEJANI
as Director of Industrial
Oil Products Corporation Ltd.
(in Liquidation)

EBRAHIM NOORMOHAMED TEJANI
as Director of Industrial
Oil Products Corporation Ltd.
(in Liquidation)

H.J.ISMAIL as Director of
Industrial Oil Products Corporation Ltd. (in liquidation)

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ALLIBHAI S. KABA as Director
of Industrial Oil Products
Corporation Ltd. (in
Liquidation)

APPELLANTS

AND

THE OFFICIAL RECEIVER

RESPONDENT

(Appeal from an order of H.M.High Court of

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Uganda at Kampala (Mr. Justice Sheridan)
dated 11th March 1960, in

Companies Cause No.11 of 1959

Between

The Official Receiver

Applicant

and

Musabhai Noormohamed Tejani as
Director of Industrial Oil
Products Corporation Ltd.
(in liquidation) and 3 others.

Respondents

(a) GOULD AG. V-P

In the Court
of Appeal for
Eastern Africa

No.20

Judgment

(a) Gould

AG.V-P

27th July 1960
continued

By virtue of Section 182(2) of the Companies Ordinance (Cap.212) of Uganda the Official Receiver in a company winding up is empowered to make a further report to the Court -

"stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court."

On the 22nd October, 1959, the Official Receiver, in exercise of that power made a further report in Companies Cause No.11/1959, which, the court was informed from the bar, embodies liquidation proceedings in respect of Industrial Oil Products Corporation Ltd., at the instance of creditors. It is not necessary to set out the report in full, but, after incorporating details of the persons comprising the directorate of the company since its incorporation and the periods during which they respectively held office, and setting out a number of facts in support of allegations of (1) knowledge of insolvency (2) fraudulent trading and (3) the making of illegal payments, it concluded with the following passage :-

"WHEREFORE in view of the facts hereinbefore

In the Court
of Appeal for
Eastern Africa

No.20

Judgment
(a) Gould
AG.V-P.
27th July 1960
continued

recorded the Official Receiver is of the opinion that a fraud has been committed by the undermentioned directors since the formation of the company and accordingly requests that this Honourable Court shall direct the undermentioned directors of Industrial Oil Products Corporation Ltd. to attend before the Court at a date to be appointed for the purpose and be publicly examined as to the conduct of the business of the company and as to each of their conduct and dealings as director thereof -

- (c) Musabhai Noormohamed Tajani, P.O.Box 1371, Kampala
- (d) Hussenali Jetha Esmail, P.O. Box 690, Kampala
- (e) Ebrahim Noormohamed Tajani, P.O. Box 1371, Kampala
- (g) Alibhai Suleman Kaba, P.O. Box 1559, Kampala.

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When such a report has been made to the court the ensuing proceedings are governed by Section 214 of the Ordinance, sub-section (1) of which reads as follows :-

"214.(1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Ordinance stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person, director, or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof."

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In the record of the proceedings in Companies Cause No.11/1959 there is the following record of an order made by Bennett J. on the 25th January, 1960:-

"25.1.60

On considering the further report of
the Official Receiver dated the 22nd
October, 1959 -

O R D E R

It is ordered that the persons
whose names appear at the foot of the
report attend before the court to be
publicly examined as to the conduct of
the business of the Company and as to
their conduct and dealings as directors.

Sgd. K.D. Bennett Judge 25.1.60"

An application to the court was made by five
directors for the discharge of the foregoing
order, and in the course of argument counsel
for the Official Receiver said that there was
not enough to connect one of the directors
(Kassamali Suleman Kaba) with the fraud and
that he did not propose to examine him. That
would appear to be a concession that the ord-
er was wrongly made against that particular
director (though it does not appear that it
has been discharged in relation to him) and
examination of the report in fact indicates
that he became a director for the first time
at a date subsequent to the allegedly fraudu-
lent dealings specified. On the 11th March, 1960
Sheridan J. dismissed the application to dis-
charge the order of Bennett J. and from that
order of dismissal the present appeal has
been brought (by leave) by four of the direct-
ors.

The first ground of appeal relates to
two deficiencies in the procedure adopted
prior to the making of the order of Bennett
J. of the 25th January, 1960. By virtue of
section 356(1) of the Ordinance, the English
Companies (Winding-Up) Rules of 1929 are in
force in Uganda. Rule 8(2) reads :-

"Every application in Chambers shall be
by summons which, unless otherwise ord-
ered shall be served on every person

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Eastern Africa

No.20

Judgment
(a) Gould
AG.V-P.
27th July 1960
continued

In the Court
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Judgment
(a) Gould
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27th July 1960
continued

against whom an order is sought and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons."

Rule 59 is as follows :-

"The consideration of a report made by the Official Receiver pursuant to subsection (2) of Section 182 of the Act (Section 214 (1) of the Ordinance corresponds) shall be before the judge of the court personally in Chambers and the Official Receiver shall personally or by counsel or solicitor attend the consideration of the report and give the court any further information or explanation with reference to the matter stated in the report which the court may require."

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It is common ground that no summons was taken out before Bennett J. and that the Official Receiver did not attend the consideration of the report personally or by advocate. Sheridan J. in his order, held that there ought to have been a summons to move the court, but as it was conceded that the summons would have been ex parte no substantial injustice had been caused. The formal defect was therefore cured by rule 223(1) which reads :-

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"223(1) No proceedings under the Act or the Rules shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court."

30

As to rule 59, the learned judge upheld a submission that the court had power to dispense with the Official Receiver's presence - "it is not clear whether he considered it necessary to invoke rule 223(1), but it can safely be assumed that he did not consider that any substantial injustice had been caused."

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I am in agreement with the learned judge

10 that neither of these defects in procedure caused any substantial injustice, and it follows that, provided that they are properly to be regarded as falling within the category of formal defects or irregularities, and do not go to the root of the jurisdiction of the judge to make the order, they must be regarded as cured by rule 223(1). As to the requirement of Rule 59 that the Official Receiver shall be present in chambers when the report is considered I think there can be little doubt. His presence is for the benefit, of the judge, in case he may require further explanation or information, and there would be little point in his being present if the judge did not require such assistance. The Official Receiver is an officer of the court (see rule 207) and the judge could direct his attendance at any time if he so desired. I think these considerations are sufficient to indicate that Rule 59 is properly construable as directory only and non-compliance with it would not go to jurisdiction. Nevertheless non-compliance is an irregularity and, as is pointed out in footnote (t) at page 952 of Stiebal's Company Law and Precedents (3rd Edn., Vol.2) in England the practice is that the Official Receiver invariably attends in person.

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30 Whether the absence of a summons is a matter which goes to the jurisdiction is not an easy question. It is normal English practice to issue an ex parte summons. That is so stated in Stiebal (supra) at p.952 and in Palmer's Company Precedents (16 Edn.Pt.2) at p.563, both text books rely upon Trust & Investment Corporation of South Africa (1892) 3 Ch.332, as authority. If an application is necessary it should have been by summons in order to comply with rule 8(2), but if the court chose to treat the report itself as an ex parte application I think that that amounted to no more than an irregularity in procedure, and not to a fundamental and incurable error. That is one way of looking at the question. There is another approach. The wording of Section 214(1) of the Ordinance, when compared with a number of other sections, is significant. It states categorically that the court may direct the examination of the person concerned when three things have

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In the Court
of Appeal for
Eastern Africa

No.20

Judgment
(a) Gould
AG.V-P.
27th July 1960
continued

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of Appeal for
Eastern Africa

No.20

Judgment
(a) Gould
AG.V-P.
27th July 1960
continued

happened: when an order has been made for winding up by the court, when the Official Receiver has made a further report to the court and when the court has considered that further report. There is nothing about an application in the subsection. In Section 273(1) relating to misfeasance by directors, there is a specific provision that the court's powers are exercisable on the application of the Official Receiver, the liquidator or a creditor or contributory; in Section 271, relating to the responsibility of directors for fraudulent trading, it is also specified that the application is to be made by one of the same category of persons. More significant is Section 215 which provides that the court, after the Official Receiver has made a further report, may, "on application of the Official Receiver" restrain certain persons from taking part in the management of a company. It must be remembered, that though normally the jurisdiction of a court is invoked by some form of application (I use the word in its widest sense) there is, under section 182(2) no necessity for any application to place the further report before the court. It is put before the court, by one of its officers, pursuant to a statutory right or duty. The court is therefore seised of the basic document upon which its jurisdiction under Section 214(1) is founded, and I think that it must be within the court's own discretion to act upon that document or otherwise. No application is prescribed (Rule 60 of the Rules of 1909, which provided that the Official Receiver "may" apply to fix a date for the consideration of his report, is absent from the Rules of 1929) and the practice which may be adopted by the court for its convenience, does not, in my view, in any way alter the fact that the court is already seised of the further report and is authorised by law to act upon it. I think that my opinion receives some support from the following words of Vaughan Williams, J. in In re the Great Kruger Gold Mining Co. (1892) 3 Ch.D.307 at 313-4 :-

"Neither section gives any right to anybody to obtain an order for this examination. The real fact of the matter is, that the making of the order is wholly and entirely

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the act of the Court. The examination, when it takes place, is the examination of the Court. Nobody has a right to call upon the Court to exercise its discretion".

I think therefore, that upon either of the two approaches, what took place did not go beyond mere irregularity.

10 The next main ground of appeal is that the type of fraud alleged in the further report in the present case does not fall within the purview of Section 182(2) of the Ordinance. It was submitted that the fraud relied upon, was a fraud against outside creditors and that, on the authority of In re Medical Battery Co. (1894) 1 Ch.444, such fraud was not the type contemplated by the section. In that case Vaughan Williams J. did not have before him a further report, but was considering whether he should order a winding up by the court or permit a voluntary liquidation to continue. One of the submissions made in favour of a winding up by the court was that, if it were not ordered, the creditors would be prejudiced by not getting the benefit of a public examination under Section 8 of the Companies (Winding-Up) Act, 1890. Subsection 2 of that section corresponds, with immaterial differences, with section 182(2) of the Ordinance, while subsection 3 is, in essence, the same as section 30 214(1) of the Ordinance.

In the course of his judgment Vaughan Williams J. said, at pp.447-8 of the report :-

40 "In my judgment, I should be acting very wrongly if I held that Section 8 was intended to apply to a case where the charges made were brought against the company of having committed frauds in the course of its business with the outside world, and not connected in any way with the promotion or formation of the company - that is to say, of its conduct towards persons dealing with it other than shareholders as regards their membership in the company."

In the Court
of Appeal for
Eastern Africa

No.20

Judgment
(a) Gould
AG.V-P.
27th July 1960
continued

In the Court
of Appeal for
Eastern Africa

No.20

Judgment
(a) Gould
AG.V-P.
27th July 1960
continued

The equivalent passage in the report in 69 Law
Times Reports 799 at 800 reads :-

"I will deal with the last suggestion first,
and I say that in my opinion I should be
acting wrongly if I were to hold that the
section was intended to apply to a case
where charges are made against a company of
having committed frauds in the course of
its business upon members of the outside
public, and not connected in any way with
the promotion or formation of the company -
that is, upon persons who have simply dealt
with the company, and not upon shareholders
as regards their membership in the company."

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With the greatest respect to the learned
judge, he does not appear to have given detailed
consideration to the whole of the section, and I
think that the limited construction which he has
put upon it can only be justified by reading
into it words which are not there. The essen-
tial words in subsection 2 of Section 8 of the
Act of 1890 are :-

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".....by any person in the promotion or
formation of the company or by any director
or other officer of the company in relation
to the company since the formation thereof
..."

The learned judge appears to have placed weight
upon the opening words of that passage, but they
certainly do not state in terms, that the fraud
in relation to promotion or formation must be a
fraud upon shareholders or upon those who be-
came shareholders by reason of the fraud. Un-
less it is impossible (and I do not think it is)
to visualize fraud in the promotion or formation
of the company, upon a person who never became a
shareholder the construction placed upon the
words appears to be a very narrow one. That,
however, is rather a nice distinction, and one
which it was unnecessary for Vaughan Williams J.
to consider; the broad distinction he drew was
between those outside persons dealing with the
company as such, and the members or shareholders
of the company themselves. As to this it is my
respectful suggestion that the words "or by any
director or other officer of the company in

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relation to the company since the formation thereof", are not, in their ordinary meaning, to be understood as limited to frauds practised directly upon the shareholders, as, say, by misappropriation by fraudulent means of the company's funds. Surely it is a fraud "in relation to the company" if fraud is practised in the company's business dealings with others that is something which may render the company itself liable to damages and penalties. If the section was intended to bear the narrower meaning attached to it in Re Medical Battery Co. Ltd. (supra) I would have expected to find somewhere in it, some such phrase as "fraud... upon the members or shareholders". It is to be observed that once the public examination has been ordered, the persons concerned may be examined inter alia as to the conduct of the business of the company: see Section 8(3) of the Act, Section 214(1) of the Ordinance. That appears to me to favour the wider construction.

Some support for the view I have taken is to be found in the text books. In Stiebel (supra) at pp.854-5 is the following :-

"The fraud which must be alleged in such report must, it has been said, be fraud in some way connected with the company or its contributories, and not merely fraud committed by the company in dealings with the outside world or persons who are not contributories. This view seems inconsistent with the clear words of the section, and it is thought that frauds which would come within Section 275 of the Act will be matter for a further report."

In Palmer's Company Precedents (supra) p.562 it is stated :-

"The section was not 'intended to apply to a case where the charges (are) brought against the company of having committed frauds in the course of its business with the outside world, and not connected in any way with the promotion or formation of the company - that is to say, of its conduct towards persons dealing with it

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No.20

Judgment
(a) Gould
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Judgment
(a) Gould
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continued

other than shareholders as regards their membership in the company'. But query whether this view is quite correct, for the section contemplates two classes of cases - (a) fraud in the promotion or formation of the company; (b) fraud committed "by any director or other officer of the company in relation to the company since its formation". The latter is not confined to fraud in the promotion or formation." 10

I am, with respect, unable to accept what was said in Re: Medical Battery Co.Ltd. as a full exposition of the meaning of the section under consideration then and here, and I think that the further report alleges fraud of a type covered by the section and that this ground of appeal must consequently fail.

The last ground is that the further report does not contain a prima facie case of fraud against each of the Appellants. Sheridan J. took the view that he could not discharge the order of Bennett J. who was satisfied that the report warranted the public examination of the Appellants. He did not think that the matter could be argued as a question of jurisdiction. With respect I do not think this is quite the right approach. In re Great Kruger Gold Mining Co. (supra) at p.314 Vaughan Williams J. pointed out that the order for examination would be discharged if it was made without jurisdiction, or if it was oppressive or an abuse of the court's powers. It would I think be clearly oppressive if the order were made upon a report which did not, as required by In re Barnes (1896) A.C. 146, contain allegations which would amount to a prima facie case against the individual to be examined. The order for examination is normally made ex parte and, in my opinion, upon an application for its discharge the judge hearing the application must be satisfied upon this question. In the case of In re Civil, Naval and Military Outfitters, Ltd. (1899) 1 Ch. D. 215, Wright J. was the judge who heard the application for discharge. On appeal from his order Lindley M.R., at pp. 232-3, said :- 20 30 40

"Now, putting these facts together, is there not some basis for the opinion of the Official Receiver 'that fraud has been committed by Mr.Long in the promotion or formation of this company'? I do not say that this charge is proved in such a way as would authorise a court of civil jurisdiction to compel Mr.Long to make good the profits which he has made; still less do I say that there is such a charge as Mr.Long should be called upon to meet in a court of criminal jurisdiction. The question we have to consider is whether this report is so flimsy, so sketchy, so unfair that Wright J. exceeded his jurisdiction, or exercised his discretion wrongly, in saying that Mr.Long ought to be publicly examined under the provisions of the Act. In my judgment, although the report might have been plainer (and I hope that on any future similar occasion the report will be plainer, so that we shall not have to waste a day in discussing the matter), this report gave Wright J. ample jurisdiction to make the order, and that he exercised his discretion in the way in which I myself should have exercised it."

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In that case both Wright J., and on appeal from him, the Court of Appeal, considered whether the further report sufficiently supported the opinion of the Official Receiver. That would appear to be the approach which ought to have been adopted in the present case in the Supreme Court.

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I have considered the further report in the present case and, without going into detail, am of the opinion that it clearly supports the opinion of the Official Receiver, in the cases of the Appellants Musabhai Noormohamed Tejani, Ebrehim Noormohamed Tejani and Allibhai S. Kaba. As to the Appellant H.J.Ismail, it is alleged that he was a director from the 1st May, 1952, to the 28th

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continued

December, 1954. The further report alleges that the Directors had been aware of the company's insolvency since the end of 1955, and that fraudulent trading had taken place in 1955 and 1956. The only matter challenged in the report which might be said to have commenced prior to the 28th December, 1954, was the treatment of the sum of £6,583, allegedly a company asset, which was divided among a number of shareholder-directors, not including H.J.Ismail. The actual division by book entry did not take place until September, 1955. In these circumstances I am of the opinion that the further report did not show a sufficient prima facie case against this Appellant.

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For these reasons I would dismiss the appeals of Musabhai Noormohamed Tejani, Ebrahim Noormohamed Tejani and Allibhai S. Kaba and order them to pay the costs of the Official Receiver in this Court. As, however, a great deal of the time in both Courts has been taken up in argument upon the question whether irregularities upon the part of the Official Receiver were curable under rule 223 (1), I would make no order for the Official Receiver's costs in the court below. Although in my opinion the irregularities are curable, they ought not to have occurred. I would allow the appeal of the Appellant, H.J. Ismail and order the discharge of the order of Bennett J. so far as it relates to him; his costs in both courts to be paid by the Official Receiver. The Liquidator was served with the proceedings in the court below and on appeal. The court agreed that he had a sufficient interest to warrant his appearance and I would order his costs in both courts to be paid by the three unsuccessful Appellants.

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Dated at Kampala this 27th day of July,
1960.

T.J.GOULD
ACTING VICE-PRESIDENT.

(b) O'CONNOR P.

I agree. The appeals of Musabhai Noormohamed Tejani, Ebrahim Noormohamed Tejani and Allibhai S. Kaba are dismissed; the appeal of H.J. Ismail is allowed, and, so far as it relates to him, the order of Bennett J. is discharged. The orders for costs will be as proposed in the judgment of the learned acting Vice-President.

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(b) O'Connor P.

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K.K. O'CONNOR
PRESIDENT.

(c) WINDHAM J.

I also agree.

(c) Windham J.

R. WINDHAM
JUSTICE OF APPEAL.

Delivered by the Registrar,
High Court, Kampala.

In the Court
of Appeal for
Eastern Africa

No.21

FORMAL ORDER

No.21

Formal Order
27th July
1960

IN HER MAJESTY'S COURT OF APPEAL FOR
EASTERN AFRICA

AT KAMPALA.

CIVIL APPEAL NO.36 OF 1960.

BETWEEN

MUSABHAI NOORMOHAMED TEJANI
as Director of Industrial Oil
Products Corporation Ltd.
(in Liquidation)

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EBRAHIM NOORMOHAMED TEJANI
as Director of Industrial Oil
Products Corporation Ltd.
(in Liquidation)

H.J. ISMAIL
as Director of Industrial Oil
Products Corporation Ltd.
(in Liquidation)

ALIBHAI S. KABA
as Director of Industrial Oil
Products Corporation Ltd.
(in Liquidation).

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Appellants

AND

THE OFFICIAL RECEIVER
(Appeal from an order of H.M.High Court of
Uganda at Kampala (Mr.Justice Sheridan)
dated 11th March 1960.

Respondent

in

Companies Cause No.11 of 1959

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Between

The Official Receiver
and
Musabhai Noormohamed Tejani
as Director of Industrial Oil
Products Corporation Ltd.
(in Liquidation) and 3 others

Applicant

Respondents

O R D E R

This appeal coming on for hearing before

10 Sir Kenneth N.O'Connor, President of the Court, Mr. Justice T.J.Gould, Acting V-P. and R.Windham Esq., Justice of Appeal in the presence of Mr.B.E.D'Silva, Advocate for Appellants, Mr. Hitchin, Official Receiver and Mr. Sparrow, Advocate for Liquidator and upon reading the memoranda of appeal and upon hearing the counsel of Appellants, the Official Receiver and the Counsel for Liquidator and mature deliberation thereupon had

In the Court
of Appeal for
Eastern Africa

No.21

Formal Order
27th July
1960
continued

It is hereby ordered that :

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1. The appeal of H.J.Ismail is allowed with costs in both courts such costs to be taxed and to be paid by the Official Receiver to the Appellant H.J.Ismail and the order of Bennett J. so far as it relates to him is hereby discharged.
 2. The appeals of Musabhai Noormohamed Tejani, Ebrahim Noormohamed Tejani and Allibhai S. Kaba are dismissed affirming the order of Bennet J. with costs incurred in this court such costs to be taxed and to be paid to the Official Receiver by the said 3 Appellants.
 3. The three unsuccessful Appellants do pay costs of both courts to the Liquidator such costs to be taxed.

Dated at Kampala this 27th day of July 1960.

DEPUTY REGISTRAR.

In the Court
of Appeal for
Eastern Africa

No.22

ORDER GRANTING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

No.22

Order Granting
Final Leave to
Appeal to Her
Majesty in
Council
4th May 1961.

IN HER MAJESTY'S COURT OF APPEAL FOR
EASTERN AFRICA
AT KAMPALA.

CIVIL APPLICATION NO.6 of 1960

(In the matter of an intended appeal to
Her Majesty in Council)

BETWEEN

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MUSABHAI NOORMOHAMED TEJANI
EBRAHIM NOORMOHAMED TEJANI
ALLIBHAI S. KABA
(as Directors of Industrial
Oil Products Corporation
Ltd. in Liquidation).

APPELLANTS

AND

THE OFFICIAL RECEIVER

RESPONDENT

(Application for conditional leave to
Appeal to Her Majesty in Council from a
Judgment and Order of Her Majesty's
Court of Appeal for Eastern Africa at
Kampala delivered on the 27th day of
July 1960 in Civil Appeal No.36 of 1960)

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BETWEEN

Musabhai Noormohamed Tejani
Ebrahim Noormohamed Tejani
Allibhai S. Kaba
(as Directors of Industrial
Oil Products Corporation Ltd.
in Liquidation)

Appellants

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and

The Official Receiver

Respondent

O R D E R

UPON APPLICATION made to this Court by Counsel

for the abovenamed Applicants on the 4th day of May 1961 for final leave to appeal to Her Majesty in Council after conditional leave to appeal having been granted on the 15th December 1960 as a matter of discretion under subsection (b) of Section (3) of the East African (Appeal to Privy Council) Order in Council 1957 AND UPON HEARING Counsel for the Applicant and Counsel for the Respondent AND UPON being satisfied that all conditions subject to which conditional leave to appeal was granted have been complied with by the Applicants AND ALSO UPON being satisfied that Notice for final leave to appeal has been given to the Respondent as required under Section 12(1) of the said order in council THIS court doth order that the applicants do have final leave to enter and prosecute their appeal to Her Majesty in Council from the judgment and order abovementioned AND it is further ordered that the costs of and incidental to this application be costs in the intended appeal.

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Dated at Kampala this 4th day of May One thousand nine hundred and sixty one.

Sgd. R.W.Cannon

D. Registrar.

H.M. COURT OF APPEAL FOR
EASTERN AFRICA.

In the Court
of Appeal for
Eastern Africa

No.22

Order Granting
Final Leave to
Appeal to Her
Majesty in
Council
4th May 1961
continued