

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)**

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**COMPANIES CAUSE NO. 09 OF 2004**

**IN THE MATTER OF MTN village phone (U) LIMITED**

10

**AND**

**IN THE MATTER OF THE COMPANIES ACT CAP 110**

15 **BEFORE : THE HON. Ag. JUSTICE GEOFFREY KIRYABWIRE.**

**RULING :-**

20 This is a petition for the court to confirm a special resolution of the Petitioner Company for the reduction of share capital.

The nominal share capital of the Petitioner Company is Shs. 5,400,000/= divided into 3 shares of Shs. 1,800,000/= which is not paid up. The Petitioner Company  
25 was incorporated on the 4<sup>th</sup> December 2003, about four months ago. It has 3 shareholders namely Grameen Foundation USA, MTN Uganda Ltd. and Mr. Elly Karuhanga.

By the affidavit of Mr. Elly Karuhanga dated 4<sup>th</sup> March 2004 in paragraph 5 and 6 there exists a shareholders agreement between the shareholders and the shareholders Agreement is at variance with that in the Memorandum and Articles of Association. He states that this variance is as a result of a topographical error, which does not reflect the intention of the shareholders in the Memorandum and Articles of Association. The resolution is therefore to reduce the share capital to Shs. 5,000,000/= divided into shares of Shs. 1,000/= each. This is in practical terms a realignment of Shs. 400,000/= on the nominal share capital which is being reduced and Shs. 800/= per share for the shares which have been paid up. In this case only 3 shares are paid up, so a total of Shs. 2,400/= is being reduced.

For a reduction of share capital to be confirmed by court it has to inquire into basically two main questions. First that a Special Resolution has been passed by the Company within the meaning of Section 68 of the Companies Act (CAP 110), and that the creditors of the said Company have not objected to the reduction or such a reduction would not be prejudicial to them within the meaning of Section 69.

With regard to the Special Resolution I have perused the affidavits of Mr. Elly Karuhanga a shareholder, and that of Ms Alice Lwanga the Company secretary, to the effect that indeed such a resolution was passed. A copy of the Minutes of the Meeting held on the 22<sup>nd</sup> January 2004 are attached to the affidavit of Ms Alice Lwanga.

With respect to the creditors I have read the affidavit of Mr. Richard Mwami the General Manager of the Petitioner Company and heard his testimony on oath. He states that during the 4 months of the Petitioner Company's operations it has relied entirely on the funding from its shareholders and therefore has no creditors inclusive of staff salaries.

Mr. Mbalinda counsel for the Petitioner has argued that this is a fit case for the application of Section 69(3) of the Companies Act to dispense with the requirements of Section 69(2) to call for the objection of creditors before the court confirms the Special Resolution. He also argues that given the  
5 circumstances of this case there is no need for court to apply Section 70(2) for the court on confirming the order to add the words "and reduced" after the Petitioner's name.

10 Section 69(3) of the Companies Act requires me to have regard to "special circumstances" before dispensing with the need to call for the objection of creditors. This is not defined in the law but I find that each case should be handled on its own merits when determining what are special circumstances.

15 In this particular case the reduction appears to be consequent upon a topographical error. Further more this is still a very new company which has hardly traded and is still financially being supported by its founder shareholders. As a result it has no said creditors. The amount of share capital being affected at this stage of its operations i.e. Shs. 2,400/= is insufficient to prejudice the  
20 creditors if any.

I accordingly dispense with the need to have creditors to object to this reduction given the above states special circumstances of the Company within the meaning of Section 69(3) of the Companies Act. I also find no need to make order to the  
25 words "and reduced" to be added to Petitioner Company's name.

I now confirm the Special Resolution reducing the share capital and direct that the Registrar of Companies register this order and the Minute of Reduction within the meaning of Sections 71(1) and (2) of the Companies Act.

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I further order that the Notice of Registration be published in a newspaper of wide circulation within Uganda within a period not exceeding 14 days of the Registration of the reduction. The copy of the said publication shall also be filed with the Registrar of Companies within 14 days of the said publication as  
5 evidence of compliance with this directive.

No order as to costs is made as this was an ex parte petition.

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**G. KIRYABWIRE**

**Ag. JUDGE**

**2/4/2004.**

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