

Kampala City Council Football Club Limited v. Capital Markets Authority HCCS No. 367 of 2007

On 15th March 2007, Kampala City Council Football Club Limited (KCC FC Ltd) passed a special resolution to increase its share capital to Uganda Shillings 50 billion through the creation of 50 million shares, each valued at UGX 1,000. The company intended to offer 40% of these shares for sale to its members and supporters.

On 22nd March 2007, KCC FC Ltd notified both the Registrar of Companies and the Capital Markets Authority (CMA) of its intention to offer shares, requesting the Registrar to delay registering the prospectus to allow the company to first assess investor interest. In the absence of a formal response, KCC FC Ltd proceeded to advertise the share offer in print media.

However, on 29th March 2007, the CMA intervened, directing KCC FC Ltd to halt the sale, citing the lack of regulatory approval for the offering. The CMA also published public notices cautioning potential investors against purchasing the shares.

KCC FC Ltd contended that the offer was a private placement and therefore did not require CMA approval. The company argued that there was no law in Uganda mandating CMA oversight for private share offerings.

CMA, on the other hand, asserted its regulatory authority under the Capital Markets Authority Act, emphasizing its statutory duty to protect investors from unregulated securities offers. The Authority maintained that it acted in good faith to safeguard the investing public.

The High Court found that although the CMA's advertisements did not expressly ban the public from purchasing the shares, they contained cautionary language that implied risk. This, the Court held, effectively discouraged potential investors and caused the offer to fail.

The Court concluded that the CMA acted within its mandate under the law by issuing the public warnings and did not exceed its jurisdiction. The actions taken were in furtherance of its statutory responsibility to protect investors.

Decision:

The suit was dismissed, and costs of the suit were awarded to the Capital Markets Authority.