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THE COLLEGE OF ARTS AND SOCIAL SCIENCES
[CASS]
SCHOOL OF LAW
LLM: BUSINESS LAW

**ANALYSIS OF COURT DECISIONS RELATED TO THE
LIABILITIES OF COMPANY DIRECTORS UNDER
RWANDAN LAW**

**THIS THESIS IS PRESENTED AS PART OF THE REQUIREMENT FOR THE AWARD OF A
MASTER'S DEGREE IN BUSINESS LAW (LLM BUSINESS LAW) OF THE UNIVERSITY OF
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ABSTRACT

This work explores a number of the important aspects of the Liabilities of Directors specifically under the Rwandan Law. It should however be noted that the aspect of Liability of Directors is a sub division of corporate governance and, in particular, it examines the role of directors 'duties in corporate governance and later analyses the legal implications behind duties of Company officers but specifically the directors.

Directors are obliged to carry out the duties established by the law and by the by-laws with the appropriate care depending of the kind of task and on their specific skills and competences. In that regard directors are jointly and severally liable to the company for damages caused by the failure to comply with their duties.

Notably liabilities of directors vary from country to country mainly due to the divergence in the socio-economic, political as well as the legal and regulatory determinant related factors prevailing in relation to most jurisdictions or countries.

Additionally, most developing countries for example, are identified as having variety of political and economic atmospheric precedes compared to the urbanized states. They are frequently characterized governments owning of companies coupled with a fragile legal and judiciary administration, fragile systems in their institutions, poor human resources competences among such other related companies as a result of such. Additionally, these problems cannot be generalized to fit each country's situation but rather particular study of each country would reveal its own particular situation mainly rooted in its socio-economic, political and legal history which now sets this work to the case of Rwanda.

THESIS CERTIFICATION

I, ZZIWA Herbert, declare that this thesis is my own work, unless referenced otherwise, and has been submitted for the award of A Masters' Degree in Business Law (LLM Business law) from the College of Arts and Social Sciences, School of Law of the University of Rwanda.

ZZIWA Herbert

Signature.....

Date.....

DEDICATION

To the Almighty God, for his blessings,

To my lovely wife,

To my dearest parents,

To my brothers and sisters,

To all my friends and relatives,

I very much thank you for your support, encouragement and for always believing in me' for it's you that I stand to be who I am today and to thee I dedicate this work.

ACKNOWLEDGMENTS

Writing this thesis has been fascinating and extremely rewarding from its beginning as a vague idea to explore Rwandan Court decisions related to the liabilities of Company Directors. I would like to thank a number of people who have contributed to the final result in many different ways:

I would like to thank first my supervisor Dr. Richard KARUGARAMA Lebero for accepting to not only read my work but also guide me among the many other tasks that have been involved to the final accomplishment of this dissertation. Really, a dissertation takes shape after a tiresome work that involves a lot of research and researcher's ideas must be challenged repeatedly for the work to develop. I am much indebted to you Sir for the supervision of this piece of work; your detailed comments and advise helped me to shape my ideas and realize my aim. I owe you a debt of gratitude. I also extend my gratitude to all tutors and lecturers who participated in my edification from my childhood up to date.

I would like also to express my sincere gratitude to my Law Firm Partners and Associates at Premier Law Chambers for the enormous support.

Much appreciation and gratitude goes to you my beloved wife for the persistence and consistence in reminding me as to the importance of concluding this work.

May the Almighty God bless all of you abundantly!!

Thank you!

LIST OF ABBREVIATIONS AND ACRONYMS

BCDI SA:	Bank of Commerce, Development & Industry Société Anonyme
RDB:	Rwanda Development Board
BNR:	Banque National du Rwanda
CHC:	Commercial High Court
Ed.:	Edition
HC:	Haute Cour
HCC:	Haute Cour de Commerce
Ibid:	Ibīdem
KIG:	Kigali
LTD:	Limited
MAGERWA:	Magasins généraux du Rwanda
MUS:	Musanze
Op. cit.:	Opere Citato (already quoted)
PLC:	Public Limited Company
RCOM:	Role Commercial
RCOM A:	Role Commercial en Appel
RG:	Registrar General
RPA:	Role Penal en Appel
SARL:	Société à Responsabilité Limitée
TC:	Tribunal de Commerce
UN:	United Nations
U.S.:	United States
USA:	United States of America
Vol:	Volume

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I. INTRODUCTION

Corporate Governance is meant to maintain a balance between goals which are social and economic and goals which are communal and individualistic. The framework of the corporate governance is in place to make sure there is the use of resources efficiently and in a similar way to demand accountability for the management of the resources mentioned herein. The purpose for governing corporately is to put in line where possible corporations', society's and individuals' interests.¹ Among individuals here referred to are members board members.

A director is such a person from identical Officers of a company that manages a given unit of the company, activities but not limited thereto depending on their main objectives. According to the Blacks' law online dictionary, a director is an elected or appointed member on the board of directors by the appointment committee of the company.² Company Directors have a responsibility towards company policies even though they don't necessarily have to be shareholders or employees. The basis of the decisions made, is meetings and contracts. They function as trustees and are liable to being sued for their actions.

The assessment of whether directors acted with the appropriate standard of care requires a case-by-case analysis. Moreover, the directors do not owe to the company any duty to perform the business successfully; it will be ascertain only whether, at the time the management decision was taken, the directors acted in a sound manner. In principle, directors may have liabilities towards the company; the creditors of the company; the company's shareholders and other third parties.³

¹ Sir Adrian Cadbury in Global Corporate Governance Forum World Bank, 2000, <http://documents.worldbank.org/curated/pt/831651468781818619/pdf/30446.pdf>, accessed on 13/09/2018.

² Henry Campbell Black, M. A., Black's Law Dictionary, Revised 4th Ed., 1968, ST. Paul, Minn. West Publishing Co.

³ Elena Gilardi, Liabilities of Directors and Shareholders of a Company Limited by Shares under Italian Law, BusinessJus, Il Mondo Del Diritto Cambia, <https://www.businessjus.com/wp-content/uploads/2014/05/Liabilities-of-directors-and-shareholders-of-a-company-limited-by-shares-under-Italian-Law.pdf>, accessed on 11/09/2018.

II. BACKGROUND

Due to the pressures of investors and international donor agencies and organisations, Rwanda has now put a lot of focus on its policies for restructuring and building its private sector. This has called for various changes which part is putting in place various legal and institutional frameworks to regulate corporate governance. Laws have been promulgated, reviewed and/or amended.

Further there has been institutional involvement under the Rwanda corporate governance for investment promotion and increase of investors with a favourable environment of starting up a business in Rwanda. For example, Rwanda Development Board (RDB), National Bank of Rwanda (BNR), Rwanda Utilities Regulatory Agency (RURA), Rwanda Governance Board (RGB) and among others.

As a consequence, many companies, both local and international, have been registered and incorporated a fact which calls for how such developments, investments among other new innovations in the private sector be sustained so many questions have come up among which is also how can investors, shareholders be encouraged to invest even more?, How can the general public be assured of a responsible stewardship of their resources? Under Rwandan Company Law, like in many other laws, the company's business direction and administration is entrusted with the company directors⁴ and more so the law further defines the scope of their powers and liabilities.

It is important to assess the Rwandan courts' interpretation of the said existing laws and their application to the so far raised cases in order to marry the existence legal framework with the actual practice, for better understanding the extent of directors' liabilities in Rwanda.

⁴ Article 142 of Law N°17/2018 of 13/04/2018 governing companies

III. STATEMENT OF THE PROBLEM

It is evidence that Laws regulating the operation and functioning of Companies revolve more to Law N°17/2018 of 13/04/2018 governing companies that is the law holding most regulatory elements of Companies in Rwanda.⁵ However this law might be adopted in addition to the laws that govern different corporate governance institutions.

Despite the existence of remarkable legal framework regulating company and especially corporate governance, few officers of companies who are well versed with business operations and system end up manipulating procedure for their own benefits and interest thereby deterring the set Company objectives and interests and moves of business owners.

In Rwanda, there have been different reports that involve business outrages both in large companies like commercial banks, small and medium enterprises, reports from microfinance Transparency, Rwanda Country Surveys, which contain claims and allegations for example that due to corruption scandals, the lack of good practices amongst entities like microfinance institutions (MFIs) and the poor management of funds, nine microfinance institutions were closed by the end of June 2006.⁶

Moreover Directors of different companies have been in the public eye and scrutinized for abuse of their powers in relation to the motives and interests of business owners and thus it is to the above fact that stakeholders need to express their discrepancies on the outrages of such individuals.

Relating this to the onus of the Directors, the company law of Rwanda thus expresses to responsibilities of the officers of the company and thus allows no more of the directors to continue hiding behind the corporate veil.

⁵ Law N°17/2018 of 13/04/2018 governing companies of Official Gazette n° Special of 18/04/2018

⁶ <http://www.mftransparency.org/wp-content/uploads/2012/05/MFT-RPT-105-EN-Country-Survey-Rwanda.pdf>, accessed on 13/08/2018

IV. RESEARCH QUESTIONS

As per the problem statement above, this work has the following research questions:

- **To what extent are company directors liable under Rwandan company law?**
- **Do company directors, appointed as such, understand the extent of the duties a director owes to the company itself, its shareholders, its creditors, as well as the community at large under Rwandan law and the liabilities that may arise when these duties are violated?**
- **What are some of the likely to happen or available remedies to the aggrieved parties?**
- **What are the loopholes of the laws in combating the abuse of business systems and procedures in Rwanda?**
- **What can be done to come out from that shortcoming?**

V. HYPOTHESIS

Based on the above stated research questions, the following hypotheses were generated:

- Company directors are jointly and severally liable to the company for damages caused by the failure to comply with their duties, except for functions vested solely in the executive committee or in one or more directors. Directors may have liability towards the company; the creditors of the company; the company's shareholders and other third parties.
- Company directors, upon appointment, they must carry out the duties established by the law and by the by-laws with the appropriate care depending of the kind of task and on their specific skills and competences, therefore an ignorance of one or more of those duties cannot be an excuse.
- In addition to the likely criminal and disciplinary sanctions which may be applicable to the defaulted director; he or she is also liable for civil damages toward the company, shareholders, creditors or any other third parties aggrieved by his or her act or omission.

- The Rwandan company law is very new to the extent that some user are not aware of or familiar with it and there is a very limited number of interpreting case laws, this may facilitate manipulation of the process and procedures by business controllers for their own interest. The law also lack the effective enforcement to the perpetrators.
- In the absence of enough interpreting case laws, many research and awareness creation in regard to the existing legal framework relating to the corporate governance in general and director's liabilities in particular are highly encouraged.

VI. PURPOSE

Notwithstanding the previously authored/publications and literatures on corporate governance in general and directors liabilities in particular relating to justifiably the developed world, this work justifies that a little has been documented in relation to developed countries. Notably Directors liabilities analysis requires an individual country's scrutiny by considering the compounding factors leading to a particular system of governance adopted.

This work will provide the relevant background about corporate governance and how it came about from the past to the present way of its doing operations. This research study presents a critical analysis to the available court's decisions in regard to the liabilities of officers and Directors of a company.

VII. SIGNIFICANCE

This work will make an addition on the literature in existence on the general perception of corporate governance in Rwanda. The work will provide the relevant publications, notes and materials regarding the operational principles of corporate governance and the best practices of corporate governance from different countries as it may be adopted by the Rwandan corporate governance system. It will further stretch a narrative description of the liabilities of Company directors as stipulated in the new company law of 2018.

The work will further analysis cases that involve detriment sometimes leading to confinement company officers or Directors in compliance with the Rwandan laws and practice. The work will therefore aid law makers, legal researchers and those who implement the laws which will bring about an improvement in the corporate governance in Rwanda.

VIII. OBJECTIVES

General objectives

The general aim of the study shall be to critically scrutinise and assess whether there is a lacuna in the laws and policies as regards corporate governance.

Specific objectives

The specific objectives of this work are the following:

- To assess the conduct of both executive and non-executive directors in the company;
- To analyse the corporate legislations and policies regimes in Rwanda;
- To assess the director's duties as provided for by the law governing companies in Rwanda;
- To examine the liabilities of directors and their protections against corporate veil;
- To analyse the remedies that are available to the Directors who may act beyond their powers as required by the law;
- To ascertain the efficacy, adequacy and practicability of corporate governance legislations in Rwanda and to determine the best practice adopted from the international community and EAC region.

IX. METHODOLOGY

The methodology was based partly on doctrines and socio-legal or empirical approach. For example, in some areas of the research study, the analysis of doctrines was applied through the assessment of materials such as case laws, legislations, legal literature and also internet sources

were used . Nevertheless while doing an investigation whether directors are informed of their obligations and duties and even liabilities, the approach of socio-legal was applied.

A mixture of socio legal approach and doctrines was discovered to be the most favourable method for this research study because the answers to our research questions could not be discovered in any of the domestic or foreign legislations. Also an interdisciplinary or socio-legal approach was therefore preferred

Notwithstanding the fact that there are a couple of provisions in some Rwandan laws on liabilities of directors and the implicit apprehension of such provisions by the directors⁷, there exists still a requirement to investigate and comprehend the existing space between applicability of law in practice and the law itself.

X. SCOPE

This study will focus on a critical study of laws and literatures about corporate governance and an analysis on the liability of directors as construed in practice and in the laws in force in Rwanda. The study further discusses the effectiveness of corporate governance in Rwanda and the principle guidelines that may be adapted to all directors of the board for the good corporate governance. These principles apply to all board of directors in any company and they uphold good corporate governance.

The scope of the work covers the legal regime on good corporate governance in Rwanda and further the principles related in assessing the director's liabilities and their protections *vis-a-vis* the company. Notably in limiting abuses by directors, the Rwandan legislators have, through various laws, provided for directors' duties and where necessary, liability for violation of these duties. These duties and liabilities are however scattered across numerous laws and it is supposed that the concerned directors might not even be aware of what they are, where they are found, and whether they may actually incur personal liability when carrying out their corporate duties.

Liability as a consequence of mismanagement and unaccountability is no doubt part of corporate governance. Emphasizing on liability in relation to good corporate governance is paramount

⁷ Principle of "*Nul n'est censé ignorer la loi*".

since the rampant outrages show that the formation of some corporations may otherwise be for nothing else but a creation of a device through which unscrupulous individuals do and/or may freely escape debts and other liabilities in disguise of corporate veil.

XI. OUTLINE

The research study is composed of three chapters preceded by a general introduction. The work in chapter one discusses and gives an overview on existence of a company; the second chapter elaborates on the ownership and management of a Company; the third chapter discusses the liabilities of company directors under Rwandan laws by analysing some decided cases in that regard and then after the work is finalised with a conclusion and some recommendations which also come forth to closer of the work.

CHAPTER I: OVERVIEW ON EXISTENCE OF A COMPANY

According to the 2018 index, Rwanda is ranked the 39th freest economy, scoring 69.1.⁸ This implies that Rwanda has increased by 1.5 points, with significant improvements in government integrity, judicial effectiveness, and property rights outpacing declines for the tax burden, business freedom, and monetary freedom indicators. Rwanda is also ranked 2nd on the list of countries which are favorable for business in Africa in 2018.⁹

This chapter talked a bit the incorporation of a company in Rwanda by briefly highlighting requirements to register a company, categories of companies as well as available types of companies under Rwandan law.

1.1. INCORPORATION

The concept of company in Rwanda developed in the 90's during the period of colonization, that's to say when Rwanda was still under the influence of Belgium, France and Germany. During this era, all policies, law and regulations that were made or enacted mostly reflected the interests of the colonial masters.¹⁰

Rwanda has experienced different company law reforms and these include the company law of 1988 that establishes commercial organizations, company law of 2009 relating to companies in Rwanda as modified and complemented in 2010, the Law n° 27/2017 of 31/05/2017 governing companies, then recently, Law N°17/2018 of 13/04/2018 governing companies.

After Rwanda gaining its independence from Belgium in 1962, the country hoped for its interests in developing companies' legal framework and made a lot of changes reflecting their values. Previously, Rwandan companies were governed and regulated by Law No. 6/1988 of 12

⁸ 2018 index of Economic Freedom, <https://www.heritage.org/index/country/rwanda>, accessed on 13/09/2018.

⁹ <http://www.africabv.com/blog/top-5-countries-to-do-business-in-africa-in-2018>.

¹⁰ Didas M. K, Corporate Governance and the liability of corporate directors: the case of Rwanda, 2016.

February 1988¹¹ that comprised a lot of past events of the colonialists and protectorates of Rwanda and as such this law showcased a great deal from the civil system norms and the colonial master's interests.

Rwanda went through those series of reforms to the domestic business environment in effort to reduce the administrative and financial burden of business registration. In fact this was achieved in the new company act that is intended to strengthen investment protection and best practices of company incorporation in Rwanda. These reforms leave Rwanda with a substantially more business-friendly environment. For instance, the introduction of online registration, this has increased company registration in Rwanda and investors find it more effective since it does not require a lot of costs to initiate.

Pursuant to the new company law of 2018, incorporation is a legal process used for a company to be formed and have legal personality independent of its shareholders.¹² This implies that upon incorporation of a company, the corporate company gains the status of an artificial legal personality with power or capacity to sue and be sued.

After incorporation, a company becomes a legal entity, allowed by legislation, which permits a group of people known as shareholders, to apply to the government for an independent organization to be credited, which by then focus on pursuing the set objectives, and empowered with legal rights which are usually reserved for individuals, such as to sue and be sued, own property, hire employees or loan and borrow money.

It is through incorporation that a company gains a corporate personality. The principle of corporate personality was for the first time portrayed and showcased in first distinctly articulated in the House of Lords Judgment in a locus classicus case of *Salomon v. Salomon & Co., Ltd.*¹³ Aaron Salomon was for many years a sole

¹¹ Law n° 06/1988 of 12 February 1988 relating to organization of Commercial Establishments

¹² Article 2(20⁰) of Law N°17/2018 of 13/04/2018 governing companies.

¹³ *Salomon v. Salomon & Co Ltd* [1897] AC 22, https://www.trans-lex.org/310810/_salomon-v-salomon-co-ltd-%5B1897%5D-ac-22/, accessed on 13/09/2018.

successful business owner of leather merchant who specialized in manufacturing leather boots. By 1892, his sons had become interested in taking part in the business. Salomon decided to incorporate his business as a Limited company and named it *Salomon & Co. Ltd.*

By that time in British, the legal requirement for incorporation was that at least seven persons subscribe as members of a company and thus company had a maximum of 7 shareholders consisting of Salomon, the wife and his five children. Salomon owned 20001 shares of the 20007 shares while the wife and children owned 1 share each. The company faced some difficulties and it was wound up. When the company went into liquidation, the liquidator argued that the debentures used by Mr. Salomon as security for the debt were invalid, on the grounds of fraud. The judge, Vaughan Williams J. accepted this argument, ruling that since Mr. Salomon had created the company solely to transfer his business to it, the company was in reality his agent and he as principal was liable for debts to unsecured creditors.

At High Court, Vaughan Williams J. accepted this argument, ruling that since Mr. Salomon had created the company solely to transfer his business to it, then the company and Salomon were one unit; the company was in reality his agent and he as principal was liable for debts to unsecured creditors.

On appeal, the Court of Appeal also ruled against Mr. Salomon, on the grounds that Mr. Salomon had abused the privileges of incorporation and limited liability, which the Legislature had intended only to confer on "independent bona fide shareholders, who had a mind and will of their own and were not mere puppets". The lord justices of appeal variously described the company as a myth and a fiction and said that the incorporation of the business by Mr. Salomon had been a mere scheme to enable him to carry on as before but with limited liability.

Further the matter was extended to the House of Lords who unanimously overturned this decision, rejecting the arguments from agency and fraud. It was held by the House of Lords that, Salomon followed the required procedures to set the company; shares and debentures were

issued. The House of Lords held that the company has been validly formed since the Act merely required 7 members holding at least one share each. Further the House of Lords articulated that there was no fraud as the company was a genuine creature of the Companies Act as there was compliance and it was in line with the requirements of the Registrar of Companies. It was stressed that a company being under the full control of one member does not mean that it is not a company, as long as it is legally registered; it is a legal person different from its members.

The rationale behind Salomon's case is to draw a clear distinction between a company and its members as separate persons. This therefore implies that upon legally incorporation of a company, a company is a corporate body separate from its shareholders, directors and employees; this requires the applicant to fulfil a number of prescribed requirements as elaborated by this work below.

1.1.1. Requirements for Company Incorporation

A company to be incorporate in Rwanda, necessary incorporation documents must be submitted to the Registrar General (RG) of Companies at Rwanda Development Board (RDB). According to the new company law of 2018, incorporation documents are defined to include articles of association or memorandum of association or both and any subsequent alteration to such documents as prescribed by RG.¹⁴

The new company law of 2018 provides for the requirements that should be filed at the Registrar General's office by any person applying for incorporation of a company to include, incorporation documents in the form prescribed by the Registrar General and with signatures of the shareholders of the company or by their agents authorised in written form.¹⁵

The law governing companies in Rwanda makes it mandatory for a company to be having a memorandum of association during incorporation process¹⁶ and on the other hand it is option for a company to be having articles of association.¹⁷

¹⁴ Article 2(18⁰) of Law N°17/2018 of 13/04/2018 governing companies.

¹⁵ Article 19 (1⁰).

¹⁶ Article 19, para, 2.

With an aim to improve corporate governance in Rwanda, the Rwandan Government has continued to reconnoitre inventive methods of improving its authorised bodies and institutions thereby easing business and creating the proper opportunities which also has made Rwanda outstanding as far as ratings related to Africa's investment and the world as a whole as far as investment hubs. For instance, currently incorporation of a company is done online without going to RDB to submit hard copies of incorporation document. Equally certificate of incorporation is also issued online and it acts as substantial evidence for having complied with all required particular during incorporation.¹⁸

The on-line registration is completed in four steps; firstly by requesting and obtaining an e-signature at www.org.rdb.rw, secondly by filling and submitting an on-line application form and required documents as attachments, thirdly by obtaining hard copy of the registration certificate- this is picked physically from RDB office, then lastly by obtaining an electronic copy of the registration certificate- this is sent on your email. It is worthy to note that currently, the on-line business registration is done for free.¹⁹

In all cases, after all the required documents have been correctly filled and all fees paid, and the Registrar General confirms that all the legal requirements have been met, a Certificate of Incorporation is issued by the office within six (6) hours. After registration is complete the company comes into existence and may start operating.²⁰

Following the incorporation process there above, a company gains a legal status after incorporation whereby it has its own legal personality distinct from that of its shareholders. This provision appreciates the principle of corporate personality as articulated in the case of *Salomon v. Salomon & Co., Ltd* discussed above. Duly incorporated companies have different categories to be discussed in the next point.

¹⁷ Article 21.

¹⁸ Article 24.

¹⁹ <http://rdb.rw/wp-content/uploads/2018/02/Company-Booklet1.pdf>.

²⁰ *Ibid.*

1.2. CATEGORIZATIONS OF COMPANY

Since a company is a corporation, it is necessary to first understand the categories of a corporation as recognized by the law regulating companies in Rwanda. It suffices that there are many types of a company, however it is mandated by the law that each and every company that must be registered in Rwanda shall be categorised as either a public or private company.²¹ This implies that a corporation cannot hold a status of being a private or public company at the same time.

1.2.1. Private Company

The category companies was introduced under Rwandan law by the law N°07/2009 of 27/04/2009 relating to companies which provided that every company was public except in the event that it is stipulated in its application for incorporation that it was a private company.²²

As per the new company law, the important requirements of a private company are a name that ends with the words “Limited” or the abbreviation “Ltd”, one or more shares with rights of transfer which are restricted in the case of a private company limited by shares, one or more shareholders or members, whose liability may be limited or unlimited, one or more directors of whereby at least one must be ordinarily resident in Rwanda as well as incorporation documents.²³

In that regards, characteristics of a private company include restricting the right to transfer its shares and debentures, limiting the number of its shareholders to one hundred (100) but excluding persons employed or formerly employed by the company, prohibiting any invitation to the public to subscribe for any shares or debentures of the company.²⁴

²¹ Article 4.

²² Article 7 of former company law N°07/2009 of 27/04/2009 relating to companies.

²³ Article 5.

²⁴ Article 6.

This implies that a private company cannot at any time have open shares that might be in future subscribed for by the public and thus a corporation must hold one status at a time of either private or public company.

1.2.2. Public Company

Public companies are generally companies which can raise money by inviting the public to purchase their shares. Under Rwandan law, Article 7 of the company law provides that for a company to be incorporated as a public company, it must have a name, that ends with the words “public limited company” or letters “plc”, one or more shares which must all be fully transferable, one or more shareholders, whose liability must be limited to the amount, if any, unpaid on the shares respectively held by them. A public company must also have two or more directors, a company secretary and incorporation documents.²⁵

From this provision, it is appreciated that public company must have a company secretary and its shareholders have liabilities which are limited to their shares in the company. However the law is silent about the minimum and maximum number of shareholders that a public company should have.

Additionally, a public company shall be characterized of its incorporation documents that allow its members the right to transfer their shares in the company and such incorporation documents don't obstruct invitations to the public to for subscription of debentures or shares of the company. Further a public company shall be characterized of certificate of incorporation stating that it is a public company.²⁶

It should be appreciated that public companies at some extent are of advantageous over private company in the way that they can raise money by inviting the public to purchase their shares. This is a considerable advantage for public companies, however not every public company will manage to make use of this advantage (most especially small public companies), since they might not necessarily have access to

²⁵ Article 7.

²⁶ Article 8.

the market. A company's shares will be much more attractive to investors if they can be traded on a properly regulated market because, not only it will be easy and safe purchased, but, also, it will be easy to disposed them.²⁷

1.2.3. Foreign Companies

The law also provides foreign companies as another category. A foreign company is defined as a company incorporated outside Rwanda but which operates or carries on business in Rwanda.²⁸ However, a company incorporated in a member state of the East African Community and companies from countries having relevant agreements with Rwanda are excluded from the definition of a foreign company and are accorded national treatment.²⁹

The law mandates foreign company that have established their place of business, including a share transfer or share registration office within Rwanda to apply for registration within ten (10) working days of establishing a place of business.³⁰ This implies that before registration, a foreign company must first establish its place of business in Rwanda. The rationale behind this is to limit and stop foreign companies from running without an address.

1.3. TYPES OF COMPANIES

Following the categories of the companies in Rwanda, there are four types of corporations that manifest themselves within the categories of corporations; these are Limited liability Company by share, Limited liability by guarantee, Limited liability by share and by guarantee and Unlimited Company.³¹ In all cases an unlimited company or a company limited by guarantee cannot be a public company. The law however, limits itself to enumerating types of companies without giving

²⁷ Simon Goulding, Company Law, Cavendish Publishing Limited, pg 51, <http://202.74.245.22:8080/xmlui/bitstream/handle/123456789/393/Company%20Law%20by%20Simon%20Goulding.pdf?sequence=1>, accessed on 13/09/2018.

²⁸ Article 2(22⁰).

²⁹ Ibid, para, 2.

³⁰ Article 232.

³¹ Article 9.

their characteristics nor advantages and/or disadvantages attached to each type of company.

1.3.1. Company limited by Shares

A company limited by share is a company whereby the liability of each shareholder is limited by the memorandum to the extent of face value of share subscribed by them. In other words, during the existence of the company or in the event of winding up, a shareholder can only be called upon to pay the amount remaining unpaid on the shares subscribed by him/her. A company limited by shares can be a public company or a private company³². These are the most popular types of companies.

1.3.2. Company Limited by Guarantee

A company limited by guarantees is a company which does not have a share capital and the liability of its shareholders is limited to the amount they have undertaken to contribute to the assets of the company, in the event it is wound up, not exceeding the amount specified in the memorandum.³³

Many charitable and professional bodies find this form of company to be a suitable vehicle as they wish to secure the benefits of separate legal personality and of limited liability but do not require to raise funds from the members. Thus non-trading or non-profit companies formed to promote culture, art, science, religion, commerce, charity, sports etc. are generally formed as companies limited by guarantee.

1.3.3. Company Limited by Shares and Guarantee

A Companies Limited by Guarantee sometimes may opt to have a share capital, in that case, in addition to the subscribed shares, each shareholder promises to pay a fixed sum of money specified in the Memorandum called 'Guarantee', in the event of liquidation of the company for payment of the debts and liabilities of the company. Such companies depend for their existence

³² <http://www.ddegjust.ac.in/studymaterial/bba/bba-201.pdf>

³³ <https://dbei.gov.ie/en/Publications/Publication-files/Quick-guide-to-the-New-Company-Types-.pdf>

on entrance and subscription fees.³⁴ The liability of the shareholder is limited to the extent of the guarantee and shares subscribed by them.

1.3.4. Unlimited Company

The other type of companies is unlimited Companies which are formed without limited liability where by the shareholders have not any limit on the liability. The shareholders of an unlimited company are not however liable to creditors for the debts of the company head on. When operating as a going concern, the members of an unlimited company are only liable to contribute any amount that is unpaid on the share capital that they have subscribed for in the company. On the liquidation of an unlimited company however, its members are liable on an unlimited basis for any debts of the company that cannot be discharged from the company's assets.³⁵ In other words, the unlimited liability of the members effectively crystallizes only when the unlimited company enters insolvent liquidation.

To sum up, under Rwandan law, a company is said to be in existence upon fully incorporation through registration with the Office of Registrar General upon fulfilment of all requirements, taking in consideration of the category and type in which companies' owner wish their company to be incorporated as. After registration, an incorporated company has ownership and defined structures as it is discussed in the next chapter.

³⁴ Ibid.

³⁵ Ibid.

CHAPTER II: COMPANY OWNERSHIPS AND MANAGEMENT

As discussed above, a duly incorporated company has a legal personality different from the one of its owners; the company ownership, upon incorporation, is expressed in the memorandum of incorporation and it can be proved by the appropriate certificate; normally a company is owned by its shareholders who most time entrust its management to the third body named board of directors. This chapter talked briefly about rights and duties of companies' shareholders and its management.

2.1. SHAREHOLDERS

The law that governs companies in Rwanda defines a shareholder as a person whose name is entered on the share register as the holder for the time being of one or more shares in the company. A shareholder is also defined as a person whose name is entered in an application for company registration at the time of its incorporation and who is regarded as a shareholder until his/her name is entered in the share register. Again, a person whose name is to be entered on the share register under an amalgamation proposal is regarded as a shareholder in an amalgamated company until his/her name is entered in the new company share register.³⁶

Notwithstanding the interest of ownership of a company by the shareholders, a company holds a different legal personality separate from its shareholders (Salmon doctrine of corporate personality). Generally, a shareholder is not responsible for the obligations of a company just by the virtual fact that he or she is a shareholder.³⁷

³⁶ Article 2(33⁰).

³⁷ Article 95.

Appreciating the provisions of company law in Rwanda shareholders' liabilities are limited to any amount unpaid on a share held by the shareholder,³⁸ any liability explicitly stipulated in the incorporation documents of the company that might stipulate that the liability of shareholders is unlimited³⁹ and any dispensation issued to the shareholder but then which has to be retrieved pursuant to Article 75 of the law governing Companies.⁴⁰

Despite the general of liability against shareholders, court may lift the veil of incorporation and insert personal liability on the shareholder for obligations of the company in the event that court discovers that the shareholder was involved in fraudulent or illegal activities or in a certain way acted in wrong way in relation to company assets using them as personal assets as if the company never existed.

2.2. BOARD OF DIRECTORS

Shareholders are normally less involved in the day-to-day running of the business affairs of the company; such management is left to the professional actors named directors and other officers of the company.

This however, is generally applicable to huge corporations and it would not necessarily be the same with small and privately held companies or even to family held companies. The majority of these are governed by their shareholders and thus, it becomes difficult to distinguish their private or family property from the property of a company. Even when they have outside managers, they work only as mouthpieces for the owners of the company and thus, leave the owners to be the de facto managers still.

Whereas the company management in most developing countries especially in the East Asian countries is family dominated, the situation would not be qualified as entirely the same in the Rwandan context. Notwithstanding the fact that there are

³⁸ Id. (1^o).

³⁹ Id. (2^o).

⁴⁰ Id.(3^o).

some small family dominated companies, the majority of companies in Rwanda are privately held, not necessarily by family members, but by a limited number of shareholders who own the majority stakes and ensure the management of the company.

Pursuant to Article 142 of company law, the Board of Directors of the company manages the affairs and business of a company and it possesses all the necessary powers for the management with an exception of where the company's incorporation documents or the law expressly keeps those powers for the shareholders or any other person. However, in the event that a private company has one director, he/she shall exercise the authority and does and is responsible for the duties of a Board of Directors as stipulated in the law. This implies that, the managerial powers of a corporation are vested in the board of director unless the law or incorporation documents provides otherwise.

Although the managerial power is vested under the board of directors, the law on relations to companies in Rwanda does not provide for corporate structure of a company. However, it is suffice that a corporate structure may be defined as company departments that are adopted to ease management and hence achieving the corporate mission and goals.

From the practical point of view, the common departments that are always or mostly adopted by companies in Rwanda include the finance, human resource, marketing and IT department. The creation of these departments is not mandatory, this insinuates that some of the companies in Rwanda don't adopt such departments internally but employ external persons where there is a need to carry out obligations that may be needed by a particular department.

For good corporate structure, each department may have its own director. Following corporate structure, the formation of board of directors is made for better management of a company.

It suffices that the Company law of Rwanda is silent on the issue of composition of Directors, however for better corporate structure, such composition may be adopted from the code of that guides corporate governance in Rwanda⁴¹. The Code of Corporate Governance in Rwanda provides for composition of the board of directors. The code is to the effect that the board shall include a balance of executive and non-executive directors (including independent non-executive directors) such that no individual or group of individuals or interests can dominate its decision making.⁴²

There are two key tasks at the top of the company, that of running the board and that of the Chief Executive responsible for running the company. Therefore as a general rule, there is a clear division of these roles to ensure that a balance of power and authority is maintained and that no individual has unfettered powers of decision. Where these roles are combined, the reasons thereof shall be publicly explained.

It is from this perspective that article 154 of the Company law of 2018 clearly provides that in a public company the duties of the Board Chairperson and the Chief Executive Officer are not carried out by one person. It is of essence that, there are two key tasks at the top of the company, that of running the board and that of the Chief Executive responsible for running the company. Therefore as a general rule, there is a clear division of these roles to ensure that a balance of power and authority is maintained and that no individual has unfettered powers of decision. Where these roles are combined, the reasons thereof shall be publicly explained.

As a norm of appreciating the law that governs companies in Rwanda sets the minimum number of directors required by a company and it is to the effect that a private company must have at least one Director whereas a public company must have at least two (2) members of the Board of Directors.⁴³ Members of the Board of Directors must act in a collegial administration and must be of a sufficient number

⁴¹ PSF, Guiding Code of Corporate Governance, July, 2009, www.psf.org.rw accessed on 13/09/2018.

⁴² Id., Article IV, pg.7

⁴³ Article 151.

provided for in incorporation documents of the company for a meeting to be attained.

2.3. DUTIES OF COMPANY DIRECTORS

Some jurisdictions do not define who a director is, but the Rwandan new company law defines a director as a member of Directors of the Board. This is so in a sense that he or she is being appointed by shareholders as to effectively coordinate the activities of the company and also such duties related to the management of a company.⁴⁴ This definition only includes a “*de jure director*” meaning one who is duly appointed to act as such and excludes a “*defacto director*” who is not appointed as director but acts as one.

In *R V. Camps*⁴⁵ case, articles of association of a company demanded every director to hold at least one (1) qualification share. Camps as a director did not acquire his qualification share and the question was whether under the circumstances he was actually a director. It was held that any person who performs the functions of a director though not duly appointed as such is occupying the position of a director as a “*defucto*” director and so was Camps.

As discussed *inter alia*, management of the company is done by the Board of Directors of the company and this section therefore shall be limited to the duties as enshrined to the company directors as by law and company norms based on best practices.

2.3.1. Statutory Duties

Following the discussion *inter alia*, directors manage the company on behalf of shareholders of the company and they are owed with a statutory obligation of providing equal treatment to each and every shareholder during their time as members of the board. By way of limiting discrimination to the shareholders that

⁴⁴ Article 2(35⁰).

⁴⁵ Case: R vs. Camps (1962) Court of Appeal for E.A.

may be brought by the directors, the new company law clearly stipulates that a member of the Board cannot when exercising authority or powers or while he performs obligations as a Board member, perform an act or accept to the company acting in a manner that unfairly prejudices or discriminates unfairly against any existing shareholder of the company, except when the director believes that his/her duty as a director mandates him/her to do so on reasonable grounds.⁴⁶

It was decided that the director's relationship with the shareholders is different in kind from their relationship with the other stakeholders' interests. The shareholders elect the directors. The directors as a board are responsible for relations with stakeholders; but they are accountable to the shareholders.⁴⁷ This is not simply a technical point. From a practical point of view, to redefine the directors' responsibilities in terms of the stakeholders would mean identifying all the various stakeholder groups; and deciding the nature and extent of the directors' responsibility to each. The result would be that the directors were not effectively accountable to anyone since there would be no clear yardstick for judging their performance.

A director of a company is mandated by law to act or perform his or her duties in compliance with the company law and incorporation documents of a company. This implies that the director must keep track and records of the company to ensure that each and every company's business is in line with the regulating law. The Rwandan Company law provides that a Board member shall not perform an act or accept to the company which acts in a manner that goes against its incorporation documents or the company law.⁴⁸

Additionally directors of the company are obliged to keep and maintain the books and registers of the company as provided for by the law. It is worthy therefore to note that members of the Board of Directors must ensure that the company's register

⁴⁶ Article 146.

⁴⁷ Re Richmond Gate Property Co Ltd [1965] 1 WLR 335.

⁴⁸ Article 147.

of shareholders and index of shareholders are at all reasonable times available in written form for inspection by any person.⁴⁹ Further the law stipulates that it is a duty of each board member to ensure that the register is all kept in the particulars as prescribed by the law.

It is a statutory duty of company directors to convene shareholders meetings as the law may provide for such meetings. It's suffices that the company directors have a mandate to convene different kinds of shareholders' meetings provided for in the Companies' law (annual meeting, extraordinary general meeting, general meetings, among other meetings as stipulated in the law). For instance, the law mandates company directors to call for an annual general meeting of shareholders that should be held once a year and not later than fifteen (15) months after the last preceding meeting and not later than six (6) months after the date of approving of the balance sheet of the Company.⁵⁰ Equally, The Board of Directors, or any other person so authorized in the incorporation documents of the company, may convene a shareholders' extraordinary meeting.⁵¹

Director must ensure that the financial books of records of a company are kept and maintained in a standard manner as prescribed by the law. The new company law is to the effect that the Board is responsible for keeping records of accounting at all times which gives a clear picture and fair view of the financial position of the company and explains in its entirety the companies' transactions and is compliant with the acceptable accounting standards.⁵² This calls for the director's obligations to approve the balance sheet and profit and loss account of the company before it is signed on their behalf and thus maintaining the financial position of a company.⁵³

⁴⁹ Article 116(1⁰).

⁵⁰ Article 103.

⁵¹ Article 106.

⁵² Article 119.

⁵³ Article 119 further it provides for what is equivalent to the accounting books of a company. It stipulates that accounting records contain proper books of account and are kept in a written form or in a manner in which they are easily accessible and convertible into a written form with particular respect to: (i). Daily receipts and expenses with their accounting documents; (ii). a register of assets and liabilities of the company; (iii). where the company's business involves the sale of a register of goods, (all sales and purchases of goods by the company, those who

It is a statutory obligation of Directors, who are concerned or interested in a proposed contract or arrangement with the company in any way (company or business transaction) to disclose the nature of their concern or interest to the Board in relation to the transaction.

The law stipulates that a Board member or controlling shareholder of a company who has an interest in a transaction or proposed transaction with the company, at that moment after getting notice of the said transaction or proposed transaction causes to be written in the interests' register, the company's annual report and in the event that the company exceeds one director, reveal to the board the stature and level of his/her interest and where the interest can be measured and the monetary value of that interest.⁵⁴

This is a statutory mandate that obliges directors to disclose the interest they have in a transaction to the board. This obligation appreciates the principle of transparency which aimed at avoiding conflict of interests.

2.3.2. Fiduciary Duties

The director has a duty to act in the best interests of the company. This is one of the major fiduciary duties of a director and it more fundamental during company management. It is suffice that one of the main fiduciary duties is that he/she should act honestly and in good faith in the interests of the company as a whole. The law eloquently stipulates that the fundamental duty of a member of the Board of Directors of a company, when exercising authority or performing obligations as a Board member, acts in good faith in a state that he/she believes on reasonable grounds which are reasonable enough to be in the best interest of the company, and utilize reasonable diligence which is reasonable to execute the obligations of his/her office.⁵⁵

bought them and related invoices and a register of stock held and its variation); and (iv). where the company's business involves providing services, a register of services provided and relevant invoices.

⁵⁴ Article 165.

⁵⁵ Article 145.

Additionally, the director of the company has a duty not to exercise powers for proper purpose of the company and thus limited to exercise his or her power for a collateral purpose. It is therefore to note that, it is the duty of a director not to exercise his powers for any collateral purpose (or mainly for collateral purposes, if there is more than one purpose) and thus he or she must exercise those powers for proper purposes.⁵⁶

According to the company law in force in Rwanda, a Board member of Directors, when exercising authority or performing obligations as a Board member, exercises caution, skills and diligence which are reasonably expectable of a director act in similar circumstances.⁵⁷ It further stresses that a member of the Board of Directors also exercises the authority for a proper purpose.⁵⁸

The directors of the company have a duty of not to compete or engage in any business that competes with that of the company. The eloquently stipulates that a director has an obligation of company loyalty which includes not him or her to engage in business competition with the company including among others competing as an individual or as a director of another company which is in competition in business with the company.⁵⁹

As in any other business, a director of a company owes a company with duty of confidentiality. The company in force in Rwanda is to the effect that a director has a duty to act with loyalty to the company, which includes not disclosing or using the company's confidential information for his/her benefit or any other person's personal benefit.⁶⁰ A director has the duty to ensure that any confidential information is not directly or indirectly divulged. This implies that a company director must not disclose or make use of that confidential information for any purpose, other than for the benefit of the company.

⁵⁶ Simon Goulding, op. cit., p.255.

⁵⁷ Article 149.

⁵⁸ Ibid note 56.

⁵⁹ Article 168(4⁰).

⁶⁰ Article 168(2⁰).

Additionally, director of the company is obliged not to make secret profits against the company. This obligation limits the director from take over company's business opportunities for his or her own benefit.⁶¹ In essence, a Board member of ought not to misuse his or her position as an employee director of the company or of any such information obtained by the virtue fact that he is a director in the company, to obtain indirectly or directly, a personal profit for himself or for another person or to cause loss to the company other than for the uses of the company.⁶² It is against this backlog that the director's fiduciary duties is to act in a royal manner to the company, he must not make secret profits out of his position.

As conclusion, companies are formed and owned by shareholders who, due to the technicality and professionalism needed by the company, entrust its management to the board of directors; these ones, for better discharge of their responsibilities, the law provided for them a number of duties toward shareholders, company itself as well as to other third party dealing with the company. In that regards, in case of any breach of their duties, directors are liable as discussed in the following chapter.

⁶¹ Article 168(3^o).

⁶² Article 168, para 2.

CHAPTER III: LIABILITIES OF COMPANY DIRECTORS AND RELATED CASES

Director's liabilities are as a result of failure to perform their duties under a corporation⁶³. Following this backlog, some authors argue it out that; directors are jointly and severally liable to the company for damages caused by their failure to comply with their duties, except for functions vested solely in the executive committee or in one or more directors.⁶⁴

As of fact herein, chapter three first discusses some of liabilities of directors and then analyses the court decisions related to the liabilities of company directors under Rwandan Law.

3.1. LIABILITIES OF DIRECTORS UNDER COMPANY LAW

The directors shall be held liable to the company if their breach of duty causes damages to the company. Breach of company directors can be in different forms as discussed under this section.

3.1.1. Breach of directors duties

Differing from other countries (mostly the common law countries) where duties of a director were set from precedent, in Rwanda duties of company directors are well coded under the law governing companies. There are many provisions under the Rwandan company law that provide for duties of a director.⁶⁵ In that regard, under circumstances where a director acts dishonestly against the interests of the company, he or she will be held liable for breach of his or her duties. It is therefore

⁶³ A corporation is a succession or collection of persons having at law an existence, rights and duties, separate and distinct from those of the persons who are from time to time its members.

⁶⁴ Elena Gilardi, Liabilities Of Directors And Shareholders Of A Company Limited By Shares Under Italian Law, pg 1 & 2

⁶⁵ Article 145, 149, 168.

to note that, most of the powers of directors are powers in trust and, therefore, should be exercised in the interest of the company and not in the interest of the directors or any section of its members. In *Great Eastern Ry. Co. v. Turner*,⁶⁶ Lord Selborne L.C. pointed out the two fold position which directors fill. He said: “*The directors are the mere trustees or agents of the company – trustees of the company’s money and property –agents in the transactions which they enter into on behalf of the company.*” This implies that each and every business that may be executed by the Director of a company must be in the company’s interest or else they may be held liable for their actions.

As discussed inter alia, under article 145, company directors must perform their obligations in the best interest of the company. However this obligation is only limited to company and does not extend to the shareholders of the company. In *Bell Group Ltd. (in liq) v Westpac Banking Corporation*⁶⁷ a Supreme Court decision in Australia. In relation to the company director’s duty to act in the best interests of the company, Justice Owen observed that “*It is incorrect to read the phrases 'acting in the best interests of the company' and 'acting in the best interests of the shareholders' as if they meant exactly the same thing. To do so is to misconceive the true nature of the fiduciary relationship between a director and the company. And it ignores the range of other interests that might (again, depending on the circumstances of the company and the nature of the power to be exercised) legitimately be considered. On the other hand, it is almost axiomatic to say that the content of the duty may (and usually will) include a consideration of the interests of shareholders. ...*”.

In this regard, in all cases, directors must act in the ‘best interest of the company’ or else they can be held in breach of their fundamental duties to the company.

⁶⁶ *Great Eastern Ry. Co. v. Turner* [(1872) L.R. 8 Ch. 149 152].

⁶⁷ *Bell Group Ltd. (in liq) v Westpac Banking Corporation* (No 9) [2008] WASC 239, <http://www.austlii.edu.au/au/cases/wa/WASC/2008/239.html>, accessed on 20/09/2018

3.1.2. Act ultra vires

Following the incorporation documents, company directors are limited to act within their mandate as stipulated by the law and in the incorporation documents, acting beyond their mandate may steer them to be liable for their acts. Such limitations stop directors from acting *ultra vires* (acting beyond their powers) at the time of execution of their responsibilities.

According to Didas M. K in his book,⁶⁸ this restriction or limitation often becomes difficult especially with small companies whose shareholding (ownership) is single or limited to the family. He stresses that under this situation it becomes hard to distinguish ownership from management and yet this is the typical case in Rwanda. However, it suffices to note that the director exceeded his authority conferred to him/her by statute and/or incorporation document is enough to pursue the case of *ultra vires* against directors.

Considering the fact that the principle of *ultra vires* in Rwanda is not yet appreciated that much with regard to company management, the law that governs companies in Rwanda is silent and not elaborative on the issue of *ultra vires*. However, quoting some provision from the new company law of 2018 that may lead a director to be personally held liable. For instance, article 88, gives a right to shareholders to approve major transactions and further after receipt of a proposal for a major transaction, directors are mandated to disclose such to the shareholders and the attached company's interests thereof⁶⁹. Under circumstances where the director enters into a major transaction without the approval of shareholders, the director will be held liable for his or her acts.

In conclusion, directors must carry out the duties established by the law and by the incorporation documents with the appropriate care (duty of care), depending on the kind of task and on their specific skills and competences as discussed *inter alia* and acting beyond this may lead to *ultra vires*.

⁶⁸ Didas M. K, book of Corporate Governance and the liability of corporate directors: the case of Rwanda, pg 165

⁶⁹ Further readings should be made on article 196, supra note 26

The act of ultra vires appeared in the Commercial High Court case in appeal, number RCOM A 000742/017/CHC/HCC of 17/07/2017 opposing INGABIRE Angella on one side and ECOBANK RWANDA LTD and MUDENGE Emmanuel on the other side⁷⁰ whereby INGABIRE a shareholder of PEACE VILLE ESTATE LTD, appellant who was also a claimant at the first level, was alleging MUDENGE managing director of PEACE VILLE ESTATE LTD, to have been acted ultra vires while giving the property of their company PEACE VILLE ESTATE LTD as mortgage of loan got by EXERTS ENGINEERING Ltd from ECOBANK RWANDA LTD without any consultation and approval from the shareholder as stipulated under article 170 of the then Law N°07/2009 of 27/04/2009 relating to companies which stipulates that a company shall not enter into a major transaction unless the transaction is approved by special resolution from the meeting of shareholders.

In this case, it was unfortunate that the court did not enter into the substance of it due to the lack of interests of the claimant to sue on behalf of the company which equally has legal personality and capacity to sue on its own behalf.

The court basing to the article 224 of the then Law N°07/2009 of 27/04/2009 relating to companies which provides that a shareholder or former shareholder may bring an claim against a company, its Board members or a director or an officer, for breach of a duty owed to him or her as shareholders; it found it not applicable to INGABIRE case because INGABIRE did not file a case against MUDENGE as a managing director for breaching his duty, but instead the case was against ECOBANK RWANDA LTD and was requesting cancellation of mortgage contract signed between ECOBANK RWANDA LTD and PEACE VILLE ESTATE LTD.

Therefore, INGABIRE Angella's case was dismissed due to the lack of interests to file a case on behalf of the company PEACE VILLE ESTATE LTD.

⁷⁰ Commercial High Court case No RCOM A 000742/017/CHC/HCC of 17/07/2017, INGABIRE Angella vs ECOBANK RWANDA LTD & MUDENGE Emmanuel.

3.1.3. Negligence

Following the provisions of the new company law, a Board member of a company, while exercising authority or performing obligations as a member of the Board, exercises the diligence, caution and skills reasonably anticipated of a director to act in similar conditions.⁷¹ This provision mandates a company director to perform his or her obligations with due diligence and skills of a reasonably director acting under his capacity. This implies that, as long as the director's act within their powers with reasonable skill and care as expected of them as prudent businessman, they discharge their duties to the company.

However, where they fail to exercise reasonable care, skill and diligence, they shall be deemed to have acted negligently in discharge of their duties and, consequently, shall be liable for any loss or damage resulting there from.⁷²

The law requires a standard of care from director that needs to be owed to the company, however it does not define or provide the degree of care that may be required by the directors. This is further appreciated that such care or standard of care is owed to the company and not shareholders.⁷³

Borrowing decided decisions elsewhere, in *Re D'Jan of London Ltd*⁷⁴ a London case, a director and 99% shareholder had signed an insurance proposal submitted by the company to the insurer, which had been completed by another person, without reading it himself. In fact, the proposal contained inaccurate information, which allowed the insurer to repudiate liability. *Hoffmann LJ* (sitting as an additional judge of the Chancery Division) held that the duty of care a director owed a company was equivalent to that contained in section 214(4) of the Insolvency Act 1986 of UK. This means that a director against whom allegations of negligence are

⁷¹ Article 149.

⁷² OECD, The Principal Duties and Powers of Company Directors under the Companies Act <http://www.odce.ie/Portals/0/Directors.pdf>, accessed on 15/09/2018

⁷³ Article 213, para 3(2^o).

⁷⁴ *Re D'Jan of London Ltd* [1994] 1 BCLC 561, <http://dictionnaire.sensagent.leparisien.fr/Re%20D'Jan%20of%20London%20Ltd/en-en/>, accessed on 15/09/2018.

made can be judged by an *objective standard*, so that his actions should be judged against those which could be expected from a director having the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director. In the words of *Hoffmann J*: “*In my view, the duty of care owed by a director at common law is accurately stated in section 214(4) [of the Insolvency Act 1986]*”. The judge held that at both on the objective test and ... on the subjective test, I think that he did not show reasonable diligence when he signed the form. He was therefore in breach of his duty to the company.

The “*objective test*” therefore means that the standard required from the director by the law governing companies in Rwanda is not an extra-ordinary one. It suffice that the degree of care required by the company director is that what an ordinary reasonably prudent director, who is placed in a similar situation would do. This can further be appreciated that while examining the standard of care required by the director, court should consider whether the director employed the knowledge, skills and experience that a reasonable prudent director carrying out same functions of a director in relation to a company would act. It is more broadly that, different company carrying out different business require different standard of care from the directors.⁷⁵

Whereas, the “*subjective test*” is different from the objective test where the standard of care of a director is tested basing on reasonably prudent director running the same obligation. Under subjective test, the standard of care of a director is based on other directors with similar skills, knowledge and experience like those of the director being tested. Here the director being tested is strictly compared with those other directors with the same technical qualifications including skills, knowledge and experience.⁷⁶ A mere reasonable director, prudently carrying out the same functions like those of a tested director does not work under subjective test.

⁷⁵ Kayihura M. Didas, op. cit., p.160.

⁷⁶ Ibid.

3.1.4. Mala fide acts

Directors are the trustees or company agents that a company trusts them with its moneys and property, as well as the exercise of the powers vested in them on behalf of the company. This mandates them to act in a bona fide manner while dealing with the company's money and property.

The law that governs companies in Rwanda stipulates that, in the event that any proceedings for fraud, negligence, breach of trust, or breach of duty against a director, auditor or secretary of the company, it happens within the time for court hearing process that the secretary, director or auditor is or may be held liable, but that he/ she was acting reasonably in good faith, and that, with due regard to all the conditions of the case, with inclusion of those linked with his/her appointment, he/ she must fairly be excused, the court might diminish him/her, either as a whole or in part, from being held liable on terms as the court may deem it necessary.⁷⁷ This implies that, upon bona fide performance of a director, company director may be discharged from his or her liabilities.

On the other hand, a company director who dishonestly acts or in a mala fide manner, or do not exercise their powers and perform their duties in the interest of the company, they will be liable for breach of trust and may be required to make good the loss or damage suffered by the company by reason of such mala fide acts.⁷⁸

From the provisions of the law, for a director to be held liable as having acted under a mala fide manner, the company has to prove to court that such a director was not acting in good faith and in the best interest of the company. In other words, if it is proven to court that the director was acting with bad intentions, that is, when they were taken well aware that those decisions would harm the company in any way, then such director's acts tantamount to bad faith and calls for his or her liability.

⁷⁷ Article 121, supra note 26

⁷⁸ www.esupportkpo.com, accessed on 5/09/2018

3.1.5. Declaration of False Account

Serving the company as director requires a person to perform his or her responsibilities as mandated and obliged by the law and incorporation documents. Using the Rwandan Company law, it enshrines the provision that mandates directors to ensure that annual accounting records are maintained. It is therefore provided that the Board of Directors makes sure that, certain annual accounts in regards the company as at the reference date of accounting are audited by an auditor who is independent and then approved by the Board of Directors and two members of the Board, sign on behalf of the Board of Directors or in the event that there is only one member, then that person can sign himself.⁷⁹

The responsibility of maintaining and filing annual account records is required by both a public and private company and failure of such my cause liabilities to the company director. Article 290 of the new company law, stipulates that if the company directors give approval to accounts which are not compliant with the provisions of the new company in relation to proper annual accounts of the company (Article 123 and 125), every director who is party to this approval and who is aware that they are not compliant or is negligent not to find out whether they are compliant or not, has liability to a fine of between one million (1000000) Rwandan francs and ten million (10,000,000) Rwandan francs.

Following the provision above, it collectively makes the directors liable for their negligence performance. This is eloquently explained under the Rwandan company law, it provides that every company director is taken to be a party to their being approved at the time the accounts are approved with the exception of where he/she showcases that he/she was not aware of and could not be aware of their approval and took all the necessary measures to restrain their approval.

Consequently, nothing done by the Board can impose a liability on a director who did not participate in the Board's action or who had no knowledge of it. To incur a

⁷⁹ Article 123.

liability, a director must either be a party to the wrongful act or later consent to it. Thus, the absence of a director from the meeting of the Board does not make him liable for the fraudulent act of a co-director on the ground that he ought to have discovered the fraud. This means that directors have collective liability to their decisions and any missing director, who may not have attended the board meeting, is not liable for any actions or decisions adopted by the rest of directors.

3.2. LIABILITIES OF A COMPANY DIRECTORS UNDER TORT

Rwanda is improved on its business environment, and it enacted new company law of 2018 that could cope up with the current business issues. With the aim of adopting the best practices under corporate governance, the new company law appreciates liabilities of corporate directors. However, the corporate governance history in Rwanda indicates that directors were not held liable for faults committed. Traditionally, company directors and officers could not be held individually liable for torts or wrong committed by the companies or its employees solely by virtue of their status as company directors and officers.⁸⁰

Following the current corporate environment in Rwanda, directors can be personally held liable for their fault or wrong (tort). In *Standard Chartered Bank v. Pakistan National Shipping Corporation*,⁸¹ Mr Mehra was the managing director of Oakprime Ltd, the beneficiary under a letter of credit which had been issued by Incombank, a Vietnamese bank, and confirmed by Standard Chartered Bank, London (SCB). The credit was issued in connection with a cif sale of Iranian bitumen by Oakprime to Vietranscimex, a Vietnamese organisation. A condition of the credit was “*Shipment must be effected not later than 25 October 1993*”. This was not fulfilled because of

⁸⁰ Grantham notes that, “while tort law imposes liability on the individual tortfeasor, Company law places that liability exclusively on the corporate entity, Ross Grantham, “Company Directors and Tortious Liability”, The Cambridge Law Journal, Vol. 56, No. 2 (July 1997), pp. 259-262.

⁸¹ *Standard Chartered Bank v Pakistan National Shipping Corporation and others* (Nos 2 and 4): [2002] UKHL 43, <https://publications.parliament.uk/pa/ld200102/ldjudgmt/jd021106/pakist-1.htm>, accessed on 21/09/2018.

the delay under negotiation But the shipping agents and shipowners (Pakistan National Shipping Corporation (PNSC)) agreed with Mr Mehra to issue bills of lading dated 25 October 1993 and did so on 8 November 1993, before the goods had been shipped. On 9 November 1993 Oakprime presented the bill of lading and other documents to SCB under cover of a letter signed by Mr Mehra stating that (with one omission) the documents were all those required by the credit.

This statement was false to the knowledge of Mr Mehra because he had himself arranged for the backdating of the bill of lading. The false statement was made to obtain payment under the letter of credit and it is agreed that if there had been no bill of lading or SCB had known that it was falsely dated, payment would not have been made. The omitted document was presented a few days later and certain other documents which had shown discrepancies from the terms of the credit were resubmitted after the final date for negotiation of the credit had passed. Notwithstanding that SCB knew that these documents had been presented late, it decided to waive late presentation. It authorised payment of US \$ 1,155,772.77 on 15th November 1993.

Incombank, although unaware of both Mr Mehra's false dating of the bill of lading and SCB's false dating of the presentation of the documents, rejected the documents on account of other discrepancies which SCB had not noticed. Despite further requests, SCB was unable to obtain reimbursement. SCB then sued the shipowners (PNSC), the shipping agents, Oakprime and Mr Mehra for deceit. They had all joined in issuing a false bill of lading intending it to be used to obtain payment from SCB under the credit. Cresswell J held that they were all liable for damages to be assessed. However on appeal this tort was restored by the House of Lords.

As discussed earlier, a director's tortious act may make him or her liable, under the Rwandan law *inter alia* there are many provisions that stipulate for tortious acts of a director and his or her liabilities, for instance, article 221 and 290 of the company law among other. However court requires on some torts to prove the intention of the director to sustain the claim of liabilities against directors.

In Rwanda, considering tort law, the courts usually apply the famous article 258 of Civil Code Book III⁸² (obligations and liabilities) which provides that any act of a person that causes damage to another, obliges him to repair it.⁸³ According to this provision, in case the court found that a given damage is resulting from director's fault, it orders him or her to pay damages as compensation.

For instance the Commercial Court case No RCOM 0273/15/TC/MUS opposing HORIZON SOPYRWA Ltd and its director Mr. Muvunyi Paul⁸⁴; whereby the later filed a case against Muvunyi Paul, who was a director of HORIZON SOPYRWA Ltd, claiming payment of 1,200,000USD resulting from the production of HORIZON SOPYRWA Ltd supplied outside the country but no payment was ever received by the company.

HORIZON SOPYRWA Ltd also claimed a payment of 1,103,618,428Rwf resulting from a contract with Ministry of Health of supplying mosquito-nets, of which the company did not receive any payment thereto. HORIZON SOPYRWA Ltd also claimed different damages resulting to the liability of its director Muvunyi Paul.

After several hearings, field visits and further investigations carried out by the court, the court decided basing to the article 9 of the Law n°21/2012 of 14/06/2012 relating to the Civil, Commercial, Labour and Administrative Procedure, article 62, 64 and article 65 Law N° 15/2004 of 12/06/2004 relating to evidence and its production as were as on article 85 of the Law N° 21/2006 of 28/04/2006 establishing the customs system.

The court held that the products of HORIZON SOPYRWA Ltd was invoiced under number 02/07 to the Kenyan company named PYRETHRUM Board of Kenya were neither returned to the HORIZON SOPYRWA Ltd as the director Muvunyi Paul failed to prove it. The court also based on the audit carried out by the Rwanda Revenue Authority which showed that the invoice number 02/07 was actually issued to the PYRETHRUM Board of Kenya therefore the

⁸² Decree of 30/07/ 1888 relating to contracts or conventional obligations

⁸³ Original version is in French, (Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer.) this was translated by the author.

⁸⁴ Musanze Commercial Court case No RCOM 0273/15/TC/MUS of 12/08/2016, HORIZON SOPYRWA Ltd vs Muvunyi Paul.

corresponding payment supposed to have been received by the HORIZON SOPYRWA Ltd as no cancellation of either invoice or shipment was made.

Muvunyi was therefore ordered to pay to HORIZON SOPYRWA Ltd amount of 1,200,000USD resulting from the products of HORIZON SOPYRWA Ltd supplied to a Kenyan company plus its interests amounting to 1,113,203,700 Rwf; the court also ordered him to refund to the HORIZON SOPYRWA Ltd amount of 24,449,202 Rwf paid to RRA as penalties and fine for tax evasion amounting to 159,029,100 Rwf. The court further ordered him to pay punitive interests amounting to 176,139,169 Rwf as well as a penalty of 200,000 Rwf per month in case he does not execute the judgment voluntarily. While ordering payment of all those damages, the court base to the article 258 of Civil Code Book III above said.

Concerning a claim of 1,103,618,428Rwf resulting from a contract with Ministry of Health of supplying mosquito-nets; the court found that the payment of this contract was made to the account open in the company name though having Muvunyi Paul as a solo signatory and had some transaction which were not appearing into company's book like payment made to a company named Mountain Gorilla NEST said to be owned by Muvunyi Paul; however it was found that the owners of the HORIZON SOPYRWA Ltd were aware of the existence of the said account to the extent that they acquired a loan through it whereby a payment from the disputed contract served to pay that loan's balance; therefore the court rejected HORIZON SOPYRWA Ltd claim against its director Muvunyi Paul regarding the amount from the contract with Ministry of health.

3.3. LIABILITIES OF COMPANY DIRECTORS UNDER CRIMINAL LAW

The Organic Law N° 01/2012/OL of 02/05/2012 Instituting the Penal Code provides for under Chapter II, Title II of Part II the commercial and cooperative offences, where by it punishes grave and simple fraudulent bankruptcy, poor book-keeping, refusal to provide information about an insolvent company, removal or fraudulent concealment of assets in favour of the bankrupt, fraudulent dealings with a bankrupt, false statement, submitting a false document or report, fraudulent usage and destroying of company's properties, falsifying records, usage of a

fraudulent document as well as fraudulent business acts which are committed by company's directors.⁸⁵

In this regard of criminal liabilities of company directors, Rwandan courts found directors criminal liable of acts committed while exercising their duties, for instance the famous case of Kalisa BCDI; High Court case number RPA 0573/08/HC/KIG of 21/11/2008. In this case, KALISA GAKUBA Alfred was a shareholder of BCDI SA of which he was General managing Director; he has also shares in SAKIRWA INDUSTRIES, SAKIRWA PETROLEUM, AKAGERA GAME LODGE and in AFRIMOTOR, whereas his co-accused RUTAJOGA Eugene was employed by ONG INTRA HEALTH and a chief accountant of BCDI SA.⁸⁶

Kalisa was accused of offence of deceiving, committed while constructing a building of BCDI SA with more than budgeted amounts and using clients' savings in that construction; unlawfully granting loans to his own company SAKIRWA, to his relatives and to some shareholders of BCDISA; he was also accused of committing the offense of deceiving while determining his own salary.

Kalisa was also accused of the offense of favoritism provided and punishable by the then article 22 of the Law No 23/2003 of 07/08/2003 relating to the punishment of corruption and related offences which provided that any official of a private institution or his or her representative whose mission is connected with public interest, who will have taken a decision based on favoritism, nepotism or enmity shown with regard to a person seeking service, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from 50,000 RWF to 1,000,000 RWF.

Kalisa was again accused of gaining benefits from activities he was not allowed to carry on as provided and punishable by article 23 of the law punishing corruption and related offences above stated.

⁸⁵ Organic Law N° 01/2012/OL of 02/05/2012 instituting the Penal Code, article 333 to the article 348.

⁸⁶ High Court case number RPA 0573/08/HC/KIG of 21/11/2008, Prosecution vs KALISA GAKUBA Alfred & RUTAJOGA Eugene.

Kalisa was lastly accused of the offence of not following different instructions issued by the BNR relating to the then laws governing Banks and finance institutions and accused of forgery, falsification and use of forged documents provided and punishable for by the then Penal code.

Kalisa's co-accused RUTAJOGA Eugene was accused of forgery, falsification and use of forged documents provided and punishable for by the then Penal code an offence which he was found innocent by the high court.

On the accusations against Kalisa, the court found him guilty of offense of deceiving due to mismanagement of company's property committed while constructing a building of BCDI SA with more than budgeted amounts and using clients' savings in that constructions; unlawfully granting loans to his own company SAKIRWA, to his relatives and to some shareholders of BCDISA; he also found guilty of deceiving while determining his own salary by; the court therefore punished Kalisa to a sentence of six (6) years of imprisonment; whereas for other offenses the prosecution failed to prove to court beyond reasonable doubt that Kalisa actually committed them.

It is however worthy to note that all offences which were provided for in penal code of 2012 as above mentioned, were repealed in the current company law 2018 under Chapter XIII relating to offenses and penalties from article 293 to article 306, in the spirit of having offenses related provisions in each specific law as the penal code is now under revision.

However, even if the company law 2018 under article 312 stipulates that all prior legal provisions made before this company law and are inconsistent with it are hereby repealed, we assume that this provision cannot be applicable to the penal code as this one is an organic law and cannot be repealed by an ordinary law.

Fortunately so far as we wait for publication of the new penal code already approved by the parliament, to the best of our knowledge there is no case relating to the issues provided in the new company law at the same time with the current penal code such that we can get guidelines from the decided cases. We hope that the new penal code will be published without delay to remove the raised confusion of existing laws.

3.4. CHALLENGES RELATING TO THE LIABILITIES OF DIRECTORS

As discussed the long of this chapter, company directors may be held liable under company law, tort or under criminal law; however, as a principle in law that “*who alleges must prove*” must be respected, under this scenario, the burden to prove damages and liability lies in the company and or any other person alleging liabilities of company directors.

In that regard, while deciding on cases relating to the responsibility of companies’ directors, it is always hard to get sufficient evidence, as all documents and operational management of the companies are within director’s portfolio, hence to find evidence against them it is some time challenging.

For instance the case of Gahizi Thaddée vs Ruhamyambuga Paul both shareholders in the SOKERWA Sarl⁸⁷, the later sued Ruhamyambuga Paul who was director of SOKERWA Sarl requesting to transfer all assets of the company which are registered under the name of the director (Ruhamyambuga Paul) into the name of the company; in those assets include vehicles and a commercial building known as City Plaza.

However the appellant (the case was decided at last instance by the Supreme Court on appeal lodged by the claimant who has lost at the first instance level) Gahizi Thaddée failed to prove to court that the building City Plaza actually belongs to the SOKERWA Sarl instead of being a personal property of director Ruhamyambuga Paul.

Therefore basing to the article 9 of the Law n°21/2012 of 14/06/2012 relating to the Civil, Commercial, Labour and Administrative Procedure which provides that every plaintiff must prove a claim, failure to obtain proof, the defendant wins the case; article 9 of Law N° 15/2004 of 12/06/2004 relating to evidence and its production, the Supreme Court rejected the request of the appellant Gahizi Thaddee of transferring the building City Plaza into the names of the company SOKERWA SARL due to the lack of evidence proving that that building actually

⁸⁷ Supreme Court case No RCOMA 0069/13/CS of 06/02/2015, Gahizi Thaddée vs Ruhamyambuga Paul.

belongs to the company instead of being a person property of the director Ruhamyambuga Paul as there was no any written evidence, witness, presumption, admission or any other tangible evidence proving the ownership of City Plaza by SOKERWA SARL.

This court decision was a result of poor management of SOKERWA SARL, the absence of book keeping and a system of well tracking company property. We understand that mutual trust between shareholders and company's directors is a key, but recording everything in the company including company's property, is very important for audit purpose and company growth.

Another case of directors liabilities dismissed due to lack of evidence is the Commercial High Court case Number RCOM A 00247/2017/CHC/HCC of 02/02/2018 of GAKWERERE Francis vs KALISA TOM and NTAGANZWA Joseph who was forced to intervene in this case.⁸⁸

The case was at appeal level before Commercial High Court where by the appellant GAKWERERE Francis (he was the claimant at the first level) was requesting the court to establish liabilities of KALISA Tom a Managing Director of a company named RAHA TRADING LTD due to damages caused to the company.

In his case, Gakwerere alleged that under the leadership of Managing Director KALISA Tom the company got a loss of 96,783 USD resulting from company's products which got lost from Magerwa premises; the evidence Gakwerere based on was a case number RCOM0724/12/TC/NYGE which opposed RAHA TRADING LTD represented by Kalisa Tom and Magerwa whereby Kalisa was claiming payment of 96,783 USD of company's products which got lost from Magerwa premises, in this case RAHA TRADING LTD represented by Kalisa Tom lost the case at the first level and no appeal was made yet it was a big value case which would have been even went to the Supreme court; basing to that Gakwerere took it as negligence on the side of director Kalisa as he was supposed to act on the best interests of the company in recovering the company's properties.

On this issue the court found that there is no evidence showing any negligence of Kalisa as director in that loss of 96,783 USD, therefore basing to the article 9 of the Law n°21/2012 of

⁸⁸Commercial High Court case Number RCOM A 00247/2017/CHC/HCC of 02/02/2018, GAKWERERE Francis vs KALISA TOM & NTAGANZWA Joseph

14/06/2012 relating to the Civil, Commercial, Labour and Administrative Procedure which provides that Every plaintiff must prove a claim failure to obtain proof, the defendant wins the case; the court rejected the request of Gakwerere Francis.

Gakwerere also requested to establish liabilities of director on his act of depositing company money on the account of another company named SUBIRA Ltd belonging to Kalisa's mother. The money was initially paid to a company named BAKHRESA GRAIN MILLING LTD and this one transfer it to SUBIRA Ltd; thus Gakwerere alleged that that transfer was made upon Kalisa's instructions with intention to embezzle company's funds.

On this issue the court found that the money was directly sent by BAKHRESA GRAIN MILLING LTD to SUBIRA Ltd and after realizing it, the money was paid back to RAHA TRADING LTD; therefore the fact that the owner of SUBIRA Ltd is the mother of Director of RAHA TRADING LTD it cannot be enough evidence to prove that Kalisa was intended to embezzle company's money.

The court further noted that the management of RAHA TRADING LTD seemed to have been based on relationship of shareholders and directors to the extent that the court could not apply to it rigorous laws which are normally applied to the other companies managed in professional manner. Therefore Gakwerere did not manage to prove the fault of Kalisa in transferring money to SUBIRA Ltd as the money was transferred by BAKHRESA GRAIN MILLING LTD; thus this issue also was dismissed.

The other issue raised by Gakwerere against the managing director of RAHA TRADING LTD Kalisa Tom was the fact that Kalisa bought rice packed in white bags yet the company was resolved to only by rice packed in yellow bags which are easily sold by the company. However the decision of buying only rice packed in yellow bags was taken after the order of rice packed in white bags was made. Therefore this issue was also dismissed due to the fact that Gakwerere failed to prove that there was a prior decision of ordering rice which is packed only in yellow bags and director overlooked it and order different rice.

To sum up, in court it is all about evidence proving that a given director committed any act amounting to his/her liability towards the company, shareholders creditors or any third party and

this is not easy to get as in most case directors are ones who has all relevant document which can be used as evidence of mismanagement or abuse of power entrusted to them; it is however possible when from the beginning of company's life the management being done properly and professionally with available control stabled in the company.

CONCLUSION

Generally speaking directors have liabilities towards the Company, Shareholders, Creditors as well as any other third party dealing with the Company. However this does not mean that directors are held liable on the company's behalf but rather it signifies that a director is held liable upon failure to perform his or her obligations. At a certain extent, these liabilities are considered as exceptions to the legal personality of a company and hence under these circumstances it's the director who is held liable and not the company.

In Rwanda like many other jurisdictions, there are a number of cases relating to company directors' liabilities initiated mainly by the shareholders and as per this works analysis some of them got a challenge of proving actual breach of concerned directors mostly due to mismanagement of the company from the beginning or due to the lack of evidence as in most case the directors are ones who keep records of company life and in case of mismanagement it is easy for them to manipulate those records in their interests.

Additionally company directors in Rwanda need to be aware of all sorts of liabilities and offences as set out in the applicable laws. As discussed above, some business decisions may end up as commercial offenses where, an appropriate risk assessment and ample time prior to decision making was not taken into consideration. It is worthy to note that the criminalization of many practices into offences does not in any way replace the civil, administrative or disciplinary sanctions that may be imposed on the individual directors and officers.

Although the nature of the liability of corporate directors is considered to be collegiate, practice shows that liability may turn out, especially in relation to criminal charges, to be personal or directed to some of the directors while leaving out the others. As we have seen, this happened in the prosecution vs Kalisa Alfred

case. The prosecution shall always reserve the right and the discretion to prosecute or not to prosecute anyone.

The government and policy makers have deliberately preferred criminalizing most of these otherwise civil wrongs just to ensure that investments are attracted but also, that these investments may be sustainable through proper governance.

We therefore recommend considering professionalism while appointing and managing company; to keep proper records of company's life; to have a permanent auditing system. It is also recommend to the judiciary system to compile and publish directors' liabilities and related cases and be translated for ease reference in order to help in improvement of Rwandan legal system.

The government should also create a platform of legal awareness for directors to be aware of extent of their duties once serving as directors on one hand and for shareholders or any other third party dealing with a given company to know their rights in case directors are in breach of their duties.

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