

Educate shareholders on features of Companies Act



The bulk of Kenyan entrepreneurs use company incorporation as the vehicle for doing business.

They confer on the shareholders unlimited liability and are also thought to be more prestigious than sole proprietorships and partnerships.

Many form companies which they have no use for.

A typical outfit is comprised of two shareholders and a dormant company secretary, who is only required when incorporating the company for his stamp.

They are wont to operate in disregard of the Companies Act, a case that pushes them into complicated situations in the future.

Perhaps unbeknown to many entrepreneurs, operating a venture as if the Companies Act was non-existent is taking a dangerous plunge.

It brews somewhat unwarranted disputes that only serve to pull the establishment back.

For example, when you purchase shares worth millions in a company but do not file transfer of share form or correct the register.

You are content with a receipt that has been issued by the seller.



This exposes you to a possibility of being kicked out of the company as the official records do not show your name as a shareholder. Yet you own the shares.

You cannot even sustain a claim in court because you do not have the mandate to do so as you “are not a shareholder.”

Another example. You were appointed a director of a company by means of an appointment letter.

However no statutory forms were filed and no resolutions filed. After sometime, the decisions made by you are declared null and void as a search does not show you hold this position.

Or you use your company to transact. One day someone challenges a particular deal by the company on grounds it is ultra vires, meaning without authority.

A quick perusal of the company’s objects as contained in the Memorandum of Association shows indeed the company did not have the authority to undertake the transaction.

et proper procedure requires the company to first alter its Memorandum of Association to include the object that has not been provided for.

Also common is failing to file annual returns. Most companies fail to file resolutions and therefore face the risk of de-registration.

These are only but a few of the common problems mismanaged companies face due to ignorance of the provision of the Companies Act.

Essentially the company secretary is supposed to guide on secretarial matters and adherence to the Act.

However how many shareholders have even met the company secretary who signed their incorporation forms?

At a cost of Sh2,000 a registered CPS can stamp and sign your incorporation form and have nothing to do with the company thereafter.

I can therefore also safely conclude that this practice also lead to a lot of mismanagement in companies as the officer charged with this duty is absent.

What do these gaps entail and lead us to? There is need for shareholder education on the features of the Companies Act.

Absent secretaries

For starters, the practice of having absent secretaries should somehow be curtailed.



Shareholders should strive to acquaint themselves with this Act as ignorance can make them lose millions of shillings just because they failed to file a one-page form costing less than Sh500.

The Companies Act is a large one consisting of thirteen different parts. The Act is available from the Government Printer at a small cost.

It is also important to participate in incorporation instead of sending the forms to your lawyer and wait for a certificate.

Your lawyer should explain to you how the company shall be run and what you need to do so as to be within the Act.

The stakeholders should also try and create some shareholder awareness by means of public talks and forums.

A large percentage of the cases in the commercial courts are about company disputes with a good number arising out of ignorance.

Shareholders should know that it is important for them to do all the statutory filings as some of these records constitute evidence in a court of law.

On the backdrop of the old adage, 'Prevention is better than cure,' it behoves shareholders to prevent unnecessary disputes by arming themselves with a working knowledge of the Companies Act.