

Volume 52 Issue 2

**PARTNERSHIPS AND THE PROBLEM OF WRONG NOMENCLATURE: A CASE FOR REFORM OF
UGANDA'S PARTNERHSIP LAW**

Okello Isaac Echipu

Recommended Citation: Okello Isaac Echipu (2023), "Partnerships and the Problem of Wrong Nomenclature: A Case for Reform of Uganda's Partnership Law" Volume 52 Issue 2 Makerere Law Journal pp. 159-185

**PARTNERSHIPS AND THE PROBLEM OF WRONG NOMENCLATURE: A
CASE FOR REFORM OF UGANDA'S PARTNERHSIP LAW**

Okello Isaac Echipu*

ABSTRACT

The Partnerships Act, No. 2 of 2010 in Uganda provides for limited liability partnerships, yet the relevant provisions of the Act apply to Limited Partnerships instead. This article examines the flaws of the legislation and advocates for reform and parliamentary activism to ensure that laws are drafted with precision to achieve their intended purpose. Inaccurately drafted laws fail to meet their objectives, and the existence of this error for over a decade constitutes an abuse of parliamentary power, detrimental to commerce, and misleading to all Ugandan citizens. This article analyses the impact of the flawed law on the legal landscape and proposes a way forward to rectify the situation. Through this analysis, the article underscores the importance of drafting laws with utmost accuracy to achieve their objectives effectively.

1.0 INTRODUCTION

1.1 Defining a Partnership

A partnership is a relationship subsisting between or among persons, not exceeding twenty in number, who carry on business in common with a view to making profit and not exceeding fifty where a partnership is formed for the purposes of carrying on a profession.¹ In the case of *Palter v Zeller*,² the

* Fourth year Student of Law at Makerere University School of Law.

¹ Section 2(1) & (2) of the Uganda Partnerships Act, No.2 of 2010.

² (1997) 30 OR (3d) 796.

defendant, Zeller, had set up a law practice and was later joined by his wife after their marriage. It was advertised by Zeller that Lieberman had "joined me in the practice of law". Factually, there was no proof in the firm's stationary or business cards that they were partners. The plaintiffs had entrusted the management of their accounts to Zeller through their relationship to Lieberman; and when Zeller misused the funds, they sought to make Lieberman jointly liable with Zeller because they were partners.

During the court proceedings, the argument was raised that a husband and wife share a partnership both legally and practically, and are partners in every aspect of their lives. However, the court held that the nature of their social and marital relationship is not relevant to determining whether they are business partners. Instead, what matters is how they conduct their joint business affairs, regardless of their personal relationship.

The Partnerships Act³ provides for instances where a partnership will not exist. The first is where there exists a relationship between or among persons of any company or association, which is first registered as a company under the Companies Act or any other Act relating to the registration of joint stock companies.⁴ The second is a company formed or incorporated by or in pursuance of any written law.⁵

Based on the reading of *Section 2(1)* of the Partnerships Act, it can be concluded that an association will be considered a partnership when there is a business conducted in common with the objective of making a profit, and this business is operated by a limited number of partners. The maximum number of partners allowed is twenty for general partnerships and fifty for professional partnerships. It is apposite to note, however, that it is easier to see than define or establish the existence or nonexistence of a partnership. However, the Partnerships Act does

³ No.2 of 2010.

⁴ Ibid, *Section 3(a) & (b)*.

⁵ Ibid

in a great deal under *section 3* provide rules for determining the existence of a partnership.

Briefly, the Act provides the following criteria:

- i) Under *Section 3(d)*, the rule that a partnership may be determined using ordinary evidence, such as whether the accounts are prepared for internal use or for other purposes, any admissions by the members of the partnership and advertisements, which include the alleged partners, among others.
- ii) Under *Section 3(a)* the rule, though in negative tone, postulates that “joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership.”
- iii) Under *Section 3(b)*, the sharing of gross returns does not lead to the conclusion that there exists a partnership between those persons sharing the same, whether the persons sharing those returns have or do not have a joint or common right or interest in any property or part ownership, or from the use of which, the returns are derived.
- iv) In *Section 3(c)*, the receipt of a share of the profits of a business is prima facie evidence that he is a partner. This general rule is in line with the definition of a partnership under *section 2(1)*; “with a view of making profits.” However, this is subject to exceptions under paragraphs (i)–(v) of *Section 3(c)*, where the receipt of such profit may not be conclusive proof of the existence of a partnership.

In the case of *Abubaker Walakira V Abubaker Walusimbi*,⁶ the plaintiff and defendant entered into a business partnership through a Deed of Partnership dated July 23, 2008. The plaintiff offered his land located in Busiro Block 438 Plot 1273 at Abayita Ababiri for the partnership business. It was agreed that the defendant was to build developments on the said land for business purposes. It

⁶ Civil suit no. 579/2012

Partnerships and the Problem of Wrong Nomenclature: A Case for Reform of Uganda's Partnership Law

was further agreed that the plaintiff was entitled to 40% shareholding while the defendant was entitled to 60% shareholding in the business.

In 2012, the plaintiff sought to dissolve the partnership, request the defendant to provide an account of the business, obtain an order for a valuation of the business and payment of the profits owed to the plaintiff, obtain a permanent injunction to prevent the defendant from interfering with the partnership property, and recover general damages and costs of the suit. The plaintiff argued that the defendant had violated the obligations outlined in the Partnership Deed, had taken complete control of the business, had deposited all profits into their personal account, and had failed to compensate the plaintiff for their share of the business proceeds.

On the question of whether there was partnership, Justice Kainamura posited thus:

“The definition of a partnership in the Partnerships Act is instructive in determining whether a partnership still subsists between the parties. Section 2(1) of the Act states as follows; “Subject to subsection (2), a partnership is the relationship which subsists between or among persons, not exceeding twenty in number, who carry on a business in common with a view to making profit”. It appears to me, from the above, that in order to say that a partnership is in existence and operational, there must be business being carried on by the partners. David.J Bakibinga in his Partnership Law in Uganda, states as follows, and I agree: “The High Court of Northern Nigeria (as it then was) held that no partnership existed between the parties. The court further stated; ... the existence of partnership depends on the carrying on of business in partnership and not on the agreement to form a partnership ... if the parties have begun to carry on business (though prematurely) they will be regarded as partners. In similar tone, Jones S.P.J. thus observed in Bank of the North V Dabare 1976 NCLR 448 (High Court of Kano) (see Bakibinga Ibid pg. 37).”

He held thus:

“I have taken into consideration the submission raised for the plaintiff that a company is a separate legal entity and that the defendant could not bring any matters which concerned the Company to court. However,

I find that the existence of the company at the location where the partnership business was being carried on is relevant in determining the existence and operations of the partnership. There is no proof that the partnership had registered a business name so as to be compelled to file a notice of cessation of business with the Registrar, in accordance with Section 14 of the Business Names Registration Act. Even then, the wording of the said section does not imply that in case the parties do not file a notice of cessation of business, then the business is to be presumed as being in existence even when it was ended by the parties. It is my finding that in the circumstances of this case, the plaintiff and the defendant ceased to carry on business under the partnership.”

In this case therefore court found the partnership to have ceased to exist on grounds that where there was a partnership before now existed a company. Generally, partnerships can be classified into three main types, and these are general partnerships, limited partnerships, and limited liability partnerships.⁷ Of recent emergence is the Limited Liability Limited Partnership (LLLP),⁸ which I will briefly describe in this paper.

2.0 HISTORICAL EVOLUTION OF PARTNERSHIPS

A partnership is an ancient form of business enterprise, and the laws governing it date as far back as 2300 BC when the Code of Hammurabi explicitly regulated the relations between partners. Partnerships were also an important part of Roman law and played a significant role in merchant law, the international commercial law of the middle Ages.⁹ This makes a partnership one of the oldest forms of business organization involving more than one person.¹⁰

It was traditionally non-statutory, with its creation being comparatively simple, inexpensive, and informal.¹¹ Partnership law, however, progressively developed

⁷ C.E. Halliday and G.C. Okara, “*Limited Liability Partnerships and Limited Partnerships as Vehicles for Business in Nigeria Challenges and Prospects*”.

⁸ Robert R. Keatinge et. al, “*The Next Step in the Evolution of the Unincorporated Business Organization*”, *The Business Lawyer*; Vol.51, November 1995, pp 147-207.

⁹ Foundations of Business Law and the Legal Environment, <<https://saylordotorg.github>> [Accessed 24 June 2022]

¹⁰ Philip J. Scaletta, Jr and George D. Cameron III, *Foundations of Business Law* (1986), p 662.

¹¹ Ibid.

on a case-by-case basis, and it was through this lack of uniformity that a lack of clarity on certain points of law was created. This prompted the National Conference of Commissioners on Uniform State Laws to draft the Uniform Partnership Act (UPA) in 1914.¹²

The Uniform Partnership Act (UPA) played a crucial role in consolidating various court decisions on partnership law into a single statutory form. Its impact has been felt across numerous common law jurisdictions, including Uganda, where the UPA became applicable through the 1902 Order in Council. However, the task of adapting to the UPA has been a persistent challenge for Uganda's legislature. This was especially evident during the 2010 amendment of Cap.114, where the provisions of the new Act on limited liability partnerships diverged significantly from the corresponding provisions under common law.

This paper discusses the lacuna present in Uganda's Partnerships Act¹³, which provides for limited liability partnerships, but the contents thereunder are provisions which apply to limited partnerships. It is a clarion call for reform and Parliamentary activism to ensure that laws are clearly drafted to obtain the desired objective. The law cannot attain its objective if it is erroneously drafted, therefore the presence of such a mistake for over 11 years is an abuse of parliamentary power and a misguidance to all citizens of Uganda.

3.0 LIMITED PARTNERSHIPS AT COMMON LAW

3.1 Definition, Justification and Characteristics

The traditional partnerships fell short of being appropriate for all business situations. The only available means of raising additional capital that was available to the general partnerships was through adding more partners to the business.¹⁴ These new partners would usually have a right to an active role in the management of business, yet this was not acceptable to a person who simply

¹² Ibid n.12, 663

¹³ No. 2 of 2010.

¹⁴ A. James Barnes, et al; *Law for Business*, 3rd Edition (1987), p 463.

wanted more capital and was not ready to share managerial roles with any other person.¹⁵ It is also argued that other persons would desire to invest in a business but may have neither the time nor the expertise to concern themselves with the actual operation of the business.¹⁶ Actual investors were also often scared away by the thought that they could be held liable for debts in excess of their actual investment.

The aforementioned concerns gave rise to a demand for a business structure that could merge the characteristics of both partnership and corporate forms of businesses, and the solution came in the form of a Limited Partnership. The primary objective of limited partnerships is to provide certain investors with limited liability, while also relinquishing their right to engage in the management of the partnership business in exchange for such protection.¹⁷

In this form of partnership, like a corporate shareholder, the limited partner may lose his investment, but no more.¹⁸ When taxation is sought in a partnership but investors want to reduce their obligation, this route is frequently taken. It is always considered as a vehicle of investments such as real estate investment activities, oil and gas, and other "tax shelter endeavours."¹⁹

Limited Partnerships are characterised by the existence of at least one general partner with unlimited liability, and at least one limited partner.²⁰ Usually limited partners have no obligation for the debts of the partnership and the management of the business rests in the hands of the general partner(s).²¹ Often, there is a requirement for formalities when it comes to Limited Partnerships, since they are a privilege granted by a state through a statute.²²

¹⁵ Ibid n. 15,

¹⁶ Ibid n.16, 464.

¹⁷ Ibid n. 18, 464.

¹⁸ Ibid, p 467.

¹⁹ Ibid, p 467.

²⁰ Philip J. Scaletta, Jr and George D. Cameron III; Foundations of Business Law, 1986, p 694.

²¹ A. James Barnes, J.D. et al; Law for Business 3rd Edition, 1987

²² Ibid. p 464.

3.2 Rights and Liabilities of Limited Partners

Under common law, a limited partner is generally not obligated to take on specific duties and is instead viewed as an investor. However, under section 10 of the Uniform Partnerships Act of the UK, limited partners are afforded certain rights. For instance, they have the right to inspect the partnership's books and to receive all relevant information regarding matters that may affect the partnership's affairs when it is deemed just and reasonable under the circumstances.²³

This means that, despite the fact that a limited partner may not have a say in how the limited partnership is run, he is not have to watch while the general partner(s) engages in dishonest and wasteful behaviour.²⁴ It is also the position under common law that a limited partner may petition a court with jurisdiction to have the limited partnership dissolved and wound up. He is, upon this, entitled to have a share of the profits or compensation as income, and in other cases, have his capital contributions returned in accordance with the provisions of the local law and subject to the agreement between the partners.²⁵

In the case of *Philips v Kula 200, Wick Realty, Inc.*²⁶, KULA 200 was established as a limited partnership with the purpose of purchasing, selling, and developing real estate. The general partners of KULA 200 were Wick Realty, Inc. and Erling P. with Erling Wick serving as the president of Wick Realty and also being a partner in Wick Associates. During a land purchase transaction, Wick Associates received \$165,000, which was not disclosed to the limited partners.

However, Wick Realty was paid \$135,000 for organizing the limited partnership, and \$269,000 in commission on sales by KULA. Two of the limited partners filed a lawsuit against the general partners, claiming that they had breached their duties by making these payments without disclosure. The main issue was whether the limited partners had the right to bring legal action against the

²³ Scaletta, Jr and D. Cameron III; *Foundations of Business Law* (1986), pp 696-697.

²⁴ *Ibid*, p 697.

²⁵ *Ibid*, n.25, p 697.

²⁶ 629 P.2d 119 (Intermediate Court of Hawaii 1981)

general partners. The court ruled in favour of the limited partners, affirming their right to sue the general partners and to seek damages for their breach of fiduciary duty towards the limited partnership.

4.0 LIMITED LIABILITY PARTNERSHIPS (LLPs) AT COMMON LAW

4.1 Definition, Justification and Characteristics

A Limited Liability Partnership is an entity formed by registration that becomes a corporate body upon registration with perpetual succession. It is a legal personality separate from its partners, and a change in the partners does not affect the existence, rights and obligations of the LLP.²⁷ In an LLP, partners have equal roles in decision making and share equally in the business profits and losses.²⁸

Limited Liability Partnerships are legally required to have the acronym 'LLP' at the end of the business name and are a common type of organisation in professional businesses like accounting, legal practice, and medicine.²⁹ LLPs are a preferred type of business organisation as they limit liability and come with taxation benefits to the business,³⁰ among others.

4.2 Liability of Partners in Limited Liability Partnerships (LLPs)

At common law, liability of members of a company normally depends on the number of shares they possess in the company and their capital contributions in that regard. In some cases, it depends on their guarantee upon dissolution.³¹ This position is not different from what is found in Limited Liability Partnerships, where the partners are not personally liable for the partnership debts.³²

²⁷ Limited Liability Partnership Act of Kenya, CAP. 30A, *Section 6*.

²⁸ Scaletta, Jr and D. Cameron III; *Foundations of Business Law* (1986), p 697.

²⁹ Legal Department Financial Services Commission, *Concept Paper on Limited Liability Partnerships*.

³⁰ Ibid

³¹ C.E. Halliday and G.C. Okara, *Limited Liability Partnerships and Limited Partnerships as Vehicles for Business in Nigeria; Challenges and Prospects*

³² Ibid

Partnerships and the Problem of Wrong Nomenclature: A Case for Reform of Uganda's Partnership Law

An LLP has the capacity to sue and be sued because it is in law a separate legal entity from the members that constitute it. It is however relevant to note that limited liability partners may be held personally liable in cases of fraud, misrepresentation, and for any other improper conduct and if it is in the interest of the public for an action to be maintained against an individual limited liability partner.³³

The liability of partners in LLPs is similar to that of shareholders in corporations; that is, limited only to the amount contributed by each partner for the formation or running of the partnership. His or her estate is not jointly/severally liable for the debts incurred by the LLP while he or she was partner.³⁴ LLPs are important tools for generational wealth transfer, as shares and benefits held therein are easily transferable subject to the agreement between the partners.

This form of partnership equally comes with the concept of perpetual succession, which is not commonly present in a general or limited partnership unless agreed otherwise. Therefore, in an LLP, the death of a partner does not affect the existence of the partnership. The case of *Henry V Mason*³⁵ involved two partners in an orthopaedic surgery practice, which they registered as an LLP in 2001. Disputes arose, after which they agreed to wind it up in 2003.

In a subsequent issue resulting from the settlement agreement they had signed, Mason argued that the lower court erred in ordering members of an LLP to contribute when, in fact, the partnership was an LLP. The court had ordered them to contribute to the partnership's winding up. The Texas Court of Appeal agreed that an LLP is personally liable for its debts rather than the partners. This was because, in law, it is a separate entity from its members. It however found that it did not apply in the state of winding up and that the agreement did

³³ Ibid n.33

³⁴ Halliday and Okara, *Limited Liability Partnerships and Limited Partnerships as Vehicles for Business in Nigeria; Challenges and Prospects*

³⁵ S.W. 3d 2010 WL 5395640 (Tex. App. 2010)

not preclude them from contributing during winding up and actually provided that they would contribute for such purposes.

From the preceding discussion of the common law position and understanding of what limited partnerships are, and what limited liability partnerships mean, it can be seen that they are not the same thing. Next, I discuss the conundrum arising from the 2010 Partnerships Act following an exposit discussion of the Uganda Law Reform Commission's recommendations of 2004.

5.0 LIMITED LIABILITY LIMITED PARTNERSHIPS (LLLPs)

As signified above, the development of partnerships has significantly grown historically, making this the fourth type of partnerships. It is the type in which the liability of the general partner is limited in the same way as the liability of a partner in an LLLP.³⁶ Both limited partnerships (LPs) and limited liability limited partnerships (LLLPs) are types of partnerships with limited liability, which means that the personal assets of the partners are not at risk if the partnership is sued or goes bankrupt.

However, there is a key difference between the two.³⁷ In a limited partnership, there are two types of partners: general partners and limited partners. The general partners have unlimited liability for the debts and obligations of the partnership, while the limited partners have limited liability and are not responsible for the debts and obligations beyond their investment in the partnership. Limited partners typically do not have management authority over the partnership.

On the other hand, in a limited liability limited partnership, all partners have limited liability, including the general partners. In an LLLP, the personal assets of the general partners are protected from the debts and obligations of the

³⁶ Robert R. Keatinge et. al, *The Next Step in the Evolution of the Unincorporated Business Organization*, *The Business Lawyer*; Vol.51, November 1995, p 196.

³⁷ Meridith Turits, *What is an LLLP (Limited Liability Limited Partnership)?*, <<https://www.nerdwallet.com>> [Accessed 25 July 2022]

partnership, which is not the case with a traditional limited partnership. In summary, while both LPs and LLLPs offer limited liability protection to the partners, an LLLP is a special type of limited partnership where all partners, including the general partners, have limited liability.

6.0 THE UGANDA LAW REFORM COMMISSION STUDY REPORT ON REFORM OF BUSINESS ASSOCIATIONS-PARTNERSHIP LAW

6.1 Justifications for Reform

According to a report by the Uganda Law Reform Commission (ULRC), Ugandan society has undergone various phases of change, like any other society. However, the country's laws have remained unchanged since 1902 when they were introduced under the 1902 Order in Council.³⁸ The ULRC acknowledged the emerging government policies like decentralization, poverty eradication, privatization and economic liberalism and maintained that there was a great need to reform the law.

It further observed that the then *Partnership Act, Cap. 114* was a photocopy of the United Kingdom Partnership Act, which had long undergone reforms, while it remained the same.³⁹ The suggested reforms required the amendment of certain areas of the Act and the introduction of limited partnerships. The ULRC justified reform on the grounds that even when the main law applicable to partnerships was the *Partnerships Act Cap. 114*, other laws were being applied in partnership regulation. These included the *Bankruptcy Act Cap. 76*, The *Companies Act Cap 110* and the *Stamps Act Cap. 342* among others.⁴⁰

³⁸ Uganda Law Reform Commission, *A study Report on the Reform of Business Associations-Partnership Law*, Law Com Pub. No. 26 of 2004.

³⁹ Ibid

⁴⁰ Ibid, n.40

6.2 The Recommendations

6.2.1 Limited Partnerships

The ULRC called for the law to:⁴¹

- i) provide for the formation of limited partnerships and that
- ii) In such a limited partnership subject to the agreement of partners, only general partners should be involved in the management of the firm.
- iii) The law should require mandatory registration of a limited partnership and
- iv) Possibility of converting a limited partnership into a general partnership.

In justifying its decision, the Commission argued that the introduction of limited partnerships would encourage large-scale investments and trading by legal entities, similar to joint ventures. By limiting the role of general partners to individuals with expertise in the relevant field of business, the new partnership structure would also promote greater professionalism. Furthermore, the Commission noted that mandatory registration and lower formation costs would improve tax planning and collection, making limited partnerships a more attractive option than private limited partnerships.

The Commission also believed that financial institutions would be more likely to trust these partnerships, making it easier for them to access credit compared to general partnerships.

6.2.2 Limited Liability Partnerships

Under recommendation (1.5.1.), the ULRC proposed the introduction of limited liability partnerships in Uganda, since there seemed to be a growing demand for the partnership law in Uganda to borrow a leaf from the developments in the United Kingdom and the United States of America on Limited Liability

⁴¹ Under recommendation 1.5,

Partnerships.⁴² However, the Commission noted the unique nature of Ugandan enterprises, which are often simple and comfortable with loose business formations that do not require many formalities. While the Commission saw the potential benefits of the proposed idea, it emphasized the need for a separate law on Limited Liability Partnerships (LLPs), as they are distinct from traditional partnerships and should not be governed by the Partnerships Act.

7.0 THE PARTNERSHIPS ACT No.2 OF 2010; PROVISIONS ERRONEOUSLY ATTRIBUTED TO LIMITED LIABILITY PARTNERSHIPS.

7.1 The Problem

Under its long title, the Partnerships Act, No.2 of 2010 is described as:

“An Act to amend and consolidate the law relating to partnerships; to provide for the formation of limited liability partnerships; to repeal the Partnerships Act, Cap.114; and to provide for other related matters.”

By ignoring the ULRC's recommendations, Parliament made the first blunder by including "Limited Liability Partnerships" in the Partnerships Act rather than a distinct law. Second, as will be seen later, it included provisions for "Limited Partnerships" under the heading "Limited Liability Partnerships." For the past eleven years, these two errors have resulted in an absurdity in the legislation, prompting calls for revision.

7.2 Illustration

I will illustrate the above conundrum by reproducing verbatim the provisions of sections 47, 48 and 52 of the Partnerships Act No.2 of 2010, and show how these provisions only apply to limited partnerships. This will give an illustration of what the true but related provisions are for a limited liability partnership.

a) Section 47 of the Partnerships Act

The provision reads:

⁴² Uganda Law Reform Commission, *A study Report on the Reform of Business Associations- Partnership Law*, Law Com Pub. No. 26 of 2004.

“47. Limited Liability Partnership.

- 1) A limited liability partnership may be formed in the manner prescribed by this Act.*
- 2) A limited liability partnership shall consist of not more than twenty persons, and shall have one or more persons called general partners who shall be liable for all debts and obligations of the firm.*
- 3) A limited liability partnership shall, in addition to general partners have one or more persons called limited liability partners who shall contribute a stated amount of capital to the, and shall not be liable for the debts or obligations of the beyond the amount of capital so contributed.*
- 4) A limited liability partner shall not, during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his or her contribution to the partnership, and if a limited liability partner draws out or receives back any part of his or her contribution, he or she shall be liable for the debts and obligations of the partnership up to the amount so drawn out or received back.*
- 5) A body corporate may be a limited liability partner.”⁴³*

While *Section 47* is on limited liability partnerships, in its definition, it brings in the concept of the existence of a general and a limited partner which is an attribute relegated to limited partnerships under common law, as discussed above.

b) Section 48

The section provides:

“48. Registration of Limited Liability Partnership

- 1) A limited liability partnership shall, subject to subsection (2), be registered with the Registrar in accordance with section 50; and a limited liability partnership that is not so registered shall be taken to be a general partnership and all its members’ general partners.*
- 2) A partnership registered as a limited liability partnership under section 50 shall, at the end of its name, add the letters “(LLP).”⁴⁴*

The provision that mandates a company with both general and limited partners, as described in *Section 47* and required in *Section 50*, to register under the name of "LLP" is problematic. As discussed earlier, the acronym "LLP" denotes a limited

⁴³ *Section 47* of the Partnerships Act No.2/2010.

⁴⁴ *Ibid, section 48.*

liability partnership, which has a distinct legal structure and requirements. However, the business that is being mandated to register under this name is not actually a limited liability partnership in content.

The primary issue with this provision is that it requires the presence of a general partner in the business, which goes against the fundamental principle of limited liability partnerships. In an LLP, all partners have limited liability, and there is no concept of a general partner who assumes unlimited liability for the partnership's debts and obligations. By mandating businesses with both general and limited partners to register under the name of "LLP," the provision creates confusion and misleads stakeholders about the actual legal status and liabilities of the business. This could potentially lead to legal disputes and financial risks for the partners and investors involved.

In conclusion, the provision that requires companies with both general and limited partners to register under the name of "LLP" is a flawed approach that fails to consider the nuances of different business structures and legal requirements. A more appropriate and accurate naming convention should be adopted to reflect the actual legal status and liabilities of the business.

c) *Section 52*

The section states:

“52. Management of Limited Liability Partnership.

- 1) A limited liability partner shall not take part in the management of the partnership business and shall not bind the firm.*
- 2) Without prejudice to subsection (1), a limited liability partner may, upon giving seven days' notice to the general partners, in person or by that partner's agent, inspect the books of the firm and ascertain the state and prospects of the partnership business.*
- 3) Where a limited liability partner takes part in the management of the partnership business, that partner shall be liable for all debts and obligations of the firm incurred while he or she takes part in the management as though he or she were a general partner.*
- 4) For the purposes of this section, a limited liability partner does not participate in the management and control of the partnership business solely by doing one or more of the following —*

- a) *being a contractor for or an agent or employee of a limited liability partnership or of a general partner, or being an officer, director or shareholder of a general partner in the limited liability partnership, which is a corporation;*
- b) *consulting with and advising a general partner with respect to the business of the limited liability partnership;*
- c) *acting as surety for the limited liability partnership or guaranteeing or assuming one or more specific obligations of the limited liability partnership; or*
- d) *exercising a right or power permitted by or under this Act or which a shareholder in a company may exercise.*
- 5) *A limited liability partnership shall not be dissolved by the death or bankruptcy of a limited liability partner, and the mental incapacity of a limited partner shall not be a ground for dissolution of the partnership by the court unless the contribution of the limited liability partner who is mentally incapacitated cannot otherwise be ascertained and realised.*
- 6) *In case of the dissolution of a limited liability partnership, its affairs shall not be wound up by the general partners unless the court directs otherwise.*
- 7) *Subject to any agreement express or implied between or among the partners—*
 - a) *any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners;*
 - b) *a limited liability partner may, with the consent of the general partners, assign his or her contribution in the partnership, and upon such assignment, the assignee shall become a limited partner with all the rights of the assignor;*
 - c) *partners shall not be entitled to dissolve the partnership by reason of any limited liability partner suffering his or her contribution to be charged for his or her separate debt;*
 - d) *a general partner may be introduced as a limited liability partner without the consent of the existing limited liability partners; and*
 - e) *a limited liability partner shall not be entitled to dissolve the partnership by notice.*⁴⁵

Section 52 of the Limited Partnership Act outlines the requirements for the management of limited partnerships, which traditionally involve a clear distinction between general and limited partners, with the latter not taking an active role in the business's management. However, in contrast to this common

⁴⁵ Ibid, Section 52

law understanding, all partners in a limited liability partnership (LLP) participate fully in the management and running of the partnership, as discussed in the previous section.

This blending of principles applicable to limited partnerships with those akin to an LLP is a flawed combination, resulting in a sour cocktail. The Kenyan perspective, which will be discussed shortly, demonstrates the negative effects of this mix of principles, as it creates confusion and inconsistency in the legal framework governing partnerships. Rather than providing clarity and certainty, the conflation of these two distinct legal structures leads to ambiguity and uncertainty in determining the roles and responsibilities of partners in a partnership, which can lead to disputes and legal challenges.

Therefore, it is crucial to revisit the legal framework governing partnerships and clarify the distinctions between limited partnerships and LLPs to ensure a more robust and coherent legal system.

8.0 THE PARTNERSHIP REGULATIONS, 2016

The Partnership Regulations, 2016⁴⁶ confirmed the intentions of the law makers and the mistakes made. Regulation 9, which requires registration to be done by filing the statement provided for in form 6, makes it a legislation explicitly for limited liability partnerships. This is so because the form does not provide for a general partner and only requires the listing of the limited partners, their form of liability, and mode of contribution.

Similarly, a look at form 7 under schedule 2 of the Regulations, which provides for the form of a certificate of registration of limited liability partnership, makes it apparent that it must include the abbreviation "LLP." These regulations, oblivious of the nature of the provisions of the Partnerships Act, require persons to call a Limited Partnership – "a limited liability partnership." In my opinion, this huge mishap has stayed in the letter of the law for far too long. There needs

⁴⁶ SI No.15 of 2016

to be a reform of the laws in Uganda on Limited and Limited Liability Partnerships.

9.0 THE NEIGHBOURS PERSPECTIVE: THE KENYAN LIMITED LIABILITY PARTNERSHIPS ACT:

Just as recommended by the ULRC in 2004, Kenya has a separate law providing for Limited Liability Partnerships, which is in line with the common law understanding of this type of partnerships as discussed there above. The LLP Act of Kenya⁴⁷ has the right codification of the common law principles that apply to LLPs, and the relevant provisions related to the problems criticised above shall, for comparison purposes, be quoted verbatim hereunder:

9.1 Section 6

The section provides:

“Limited liability partnership to have separate legal personality

- 1) A limited liability partnership is an entity formed by being registered under this Act.*
- 2) On being registered under this Act, a limited liability partnership becomes a body corporate with perpetual succession with a legal personality separate from that of its partners.*
- 3) A change in the partners of a limited liability partnership does not affect the existence, rights or obligations of the limited liability partnership.”⁴⁸*

9.2 Section 10

The section provides:

“Liability of partners in limited liability partnership to be limited

- 1) A limited liability partnership shall be solely obligated to an issue arising from contract, tort or otherwise.*
- 2) A person is not personally liable, directly or indirectly, for an obligation referred to in subsection (1) only because the person is a partner of the limited liability partnership.*
- 3) Subsection (1) shall not affect the personal liability of a partner in tort for the wrongful act or omission of that partner.*
- 4) A partner is not personally liable for the wrongful act or omission of another partner of the limited liability partnership.*

⁴⁷ Limited Liability Partnerships Act No. 42 of 2011, L.N. 15/2012

⁴⁸ Ibid

- 5) *If a partner of a limited liability partnership is liable to a person other than another partner of the partnership as a result of a wrongful act or omission of that partner in the course of the business of the limited liability partnership or with its authority, the partnership is liable to the same extent as that partner.*
- 6) *The liabilities of a limited liability partnership are payable out of the property of the limited liability partnership.*⁴⁹

There are also default positions provided for under schedule 1 of the Act that explain thus:

“DEFAULT PROVISIONS FOR A LIMITED LIABILITY PARTNERSHIP

- 1) *Subject to the terms of the limited liability partnership agreement (if any), the mutual rights and duties of the partners, and the mutual rights and duties of the limited liability partnership and the partners, shall be determined in accordance with this Schedule.*
- 2) *All the partners of a limited liability partnership are entitled to share equally in the capital and profits of the partnership.*
- 3) *A limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by the partner in—*
 - a) *the ordinary and proper conduct of the business of the limited liability partnership; or*
 - b) *doing anything necessary for the preservation of the business or property of the limited liability partnership.*
- 4) *Each partner in a limited liability partnership is entitled to participate in the management of the partnership.*
- 5) *A partner in a limited liability partnership is not entitled to remuneration for acting in the business or management of the partnership.*
- 6) *A person can only become a partner in a limited liability partnership with the consent of all the existing partners.*
- 7) *A matter relating to a limited liability partnership is to be decided by a resolution passed by a majority of the partners. For the purpose of deciding a matter relating to a limited liability partnership, each partner shall have one vote.*
- 8) *Each partner in a limited liability partnership shall provide to the partnership and to the other partner's true accounts and full information of all matters affecting the limited liability partnership about which the partner has knowledge or over which the partner has control.*

⁴⁹ Ibid n. 46

- 9) *If a partner in a limited liability partnership, without the consent of the partnership, carries on a business of the same nature as, and competing with the partnership, that partner shall account for, and pay over to the limited liability partnership, all profits made by that partner in that business.*
- 10) *A partner in a limited liability partnership shall account to the partnership for any benefit derived by the partner without the consent of the partnership from any transaction concerning the partnership, or from any use by that partner of the property, name or any business connection of the partnership.*
- 11) *A partner in a limited liability partnership may not be expelled by a majority of the other partners unless a power to do so has been conferred by an express agreement among the partners.”⁵⁰*

9.3 Section 20

“Requirements for names of limited liability partnerships

- 1) *The name of a limited liability partnership shall end with—*
 - a) *the expression “limited liability partnership”; or*
 - b) *the abbreviation “lp” or “LLP”.*
- 2) *A limited liability partnership that is registered under this Act may not carry on business under a name that is not registered under section 18 or 32.*
- 3) *The registration of a name under which a limited liability partnership carries on business does not authorise the use of that name if, apart from that registration, the use of that name is prohibited.*
- 4) *A limited liability partnership that contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.”⁵¹*

9.4 General Appraisal and Commentary.

The foregoing provisions of the Kenyan LLP Act are in contradistinction with the provisions of the Ugandan Partnerships Act discussed above. Whereas *Section 47* of the Ugandan Act mentions the existence of a limited and general partner, *section 10(4) of the LLP Act of Kenya* provides for limited liability of all partners without the existence of a general partner, which is the correct position of the law relating to Limited Liability Partnerships as understood at common law.

⁵⁰ Limited Liability Partnerships Act No. 42 of 2011, L.N. 15/2012

⁵¹ Ibid

Section 48(2) of the Ugandan Partnerships Act 2010 mandates that a limited liability partnership must have the suffix "LLP" in its name, similar to *section 20* of the Kenyan LLP Act. However, the application of this provision in the Ugandan Act can lead to incorrect naming of the entity, as it pertains to a limited partnership rather than a limited liability partnership. In addition, *section 52* of the Ugandan Partnerships Act provides that a limited liability partner shall not participate in the management of the LLP while the Kenyan LLP Act⁵² correctly states that a limited liability partner has a right to participate in the management of the LLP.

10.0 A CALL FOR REFORM

After a thorough examination of Uganda's legal framework, it is clear that the country must adopt a more proactive and dynamic approach to legislative reform. With rapid changes in the global business environment, it is imperative for Uganda's laws to keep pace with modern trends and best practices. Failure to do so creates an unfavourable business environment that may hinder investment and economic growth.

One area requiring immediate attention is the Partnerships Act of 2010. Despite being a step forward in modernizing Uganda's business laws, the Act falls short of global best practices, particularly with regard to Limited Partnerships and Limited Liability Partnerships. These business structures have become increasingly popular globally owing to their flexibility, simplicity, and reduced liability for investors.

To address this gap, Uganda must amend the Partnerships Act of 2010 to accommodate the Limited Partnerships under *Section 47*. This amendment would ensure that Uganda aligns with the ULRC report's recommendations and aligns its laws with modern global trends. In addition, Uganda should follow the

⁵² Under schedule 1 paragraph 4

lead of neighbouring countries such as Kenya and enact a separate Act to provide for Limited Liability Partnerships.

The benefits of these reforms are manifold. First, it would enhance Uganda's reputation as a business-friendly destination and promote investment in the country. It would also simplify the process of starting and running a business and reduce the risks associated with investment. Ultimately, this would contribute to the country's economic growth and development.

To achieve this goal, it is crucial that the Parliament amend the Partnerships Act, No.2 of 2010, to reflect the common law's understanding of Limited Partnerships. This would involve replacing each instance of "limited liability partnerships" with "Limited partnerships" and aligning the principles applicable to this type of partnership. With the right legal framework in place, Uganda can position itself as a hub for investment and business in the region, creating a prosperous and vibrant economy for all.

11.0 CONCLUSION

In conclusion, with such contemplated reforms will come a basic and orderly guide that will help people make the suitable choice of partnership for their business enterprise. This will, in the long run, encourage foreign investments in Uganda, with the understanding that limited partnerships act as vehicles for capital investment with limited liability partnerships being a shield against unprofessional conduct in partnerships with its limit on liability to all partner.⁵³

These, according to Keatinge et.al, can be used in medical and legal practice to avoid liability in negligence cases owing to faults of individual partners in the business where such faults are expected due to differences in professional ethics and ability.⁵⁴ It is important to note that as of the writing of this article, the Partnerships Act of 2010 had been amended by the Partnerships (Amendment

⁵³ Robert R. Keatinge et. al, "*The Next Step in the Evolution of the Unincorporated Business Organization*", *The Business Lawyer*; Vol.51, November 1995, pp. 147-207.

⁵⁴ Ibid

Partnerships and the Problem of Wrong Nomenclature: A Case for Reform of Uganda's Partnership Law

Act) of 2022. However, these amendments did not address the problems discussed above. Instead, the amendments defined beneficial ownership in relation to limited liability partnerships, required beneficial owners to register, and empowered the minister to make regulations on beneficial ownership and related matters. It is unclear how these changes will be applied when the act does not provide for limited liability partnerships as known under common law, as discussed earlier.

It is long overdue that the Partnerships Act No.2 of 2010 be amended and the law relating to Limited Liability Partnerships be rethought and properly provided for, as understood under common law and reflected in the Kenyan Limited Liability Partnerships Act. Such changes will go a long way in promoting the formation and growth of limited liability partnerships in Uganda, which offer numerous advantages over traditional partnerships. By allowing partners to limit their liability for the partnership's debts and obligations, limited liability partnerships encourage investment and entrepreneurship, as well as promote economic development.

It is my hope that policymakers will take the necessary steps to amend the Partnerships Act of 2010 and provide a more conducive legal framework for limited liability partnerships, in line with global best practices. This will not only benefit entrepreneurs and investors in Uganda, but also enhance the country's attractiveness as an investment destination.

LIST OF REFERENCES

A. James Barnes, Terry Morehead Dworkin and Eric L. Richards; *Law for Business*, 3rd Edition (Homewood, Illinois, 1987).

Abubaker Walakira V Abubaker Walusimbi, civil suit No. 579 of 2012.

C.E. Halliday and G.C. Okara, *Limited Liability Partnerships and Limited: Partnerships as Vehicles for Business in Nigeria; Challenges and Prospects*

Foundations of Business Law and the Legal Environment,
<<https://saylordotorg>>(accessed on June 24th, 2022).

Henry V Mason, S.W. 3d 2010 WL 5395640 (Tex. App. 2010)

Legal Department Financial Services Commission, *Concept Paper on Limited Liability Partnerships*.

Limited Liability Partnerships Act, Cap. 30A, Kenya of 2011, Act No. 42 of 2011, L.N. 15/2012

Meridith Turits, “What is an LLLP (Limited Liability Limited Partnership)?”, <<https://www.nerdwallet.com>>(Accessed on 25th July 2022)

Palter V Zeller, (1997) 30 OR (3d) 796.

Philip J. Scaletta, Jr and George D. Cameron III, *Foundations of Business Law* (Plano, Texas: Business Publications Inc., 1986)

Philips V Kula 200, Wick Realty, Inc., 629 P.2d 119 (Intermediate Court of Hawaii 1981)

Robert R. Keatinge et. al, “The Next Step in the Evolution of the Unincorporated Business Organization”, *The Business Lawyer*; Vol.51, November 1995, pp. 147-207.

The Partnership Regulations, SI No.15 of 2016.

Partnerships and the Problem of Wrong Nomenclature: A Case for Reform of Uganda's
Partnership Law

The Partnerships (Amendment) Act, 2022.

The Uganda Partnerships Act, No.2 of 2010.

Uganda Law Reform Commission, *A study Report on the Reform of Business Associations-Partnership Law*, Law Com Pub. No. 26 OF 2004.