

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPEAL NO. 26 OF 2020

(CORAM: MKUYE, J.A., FIKIRINI, J.A. And MWAMPASHI, J.A.)

**BANSONS ENTERPRISES LIMITED APPELLANT
VERSUS**

MIRE ARTAN RESPONDENT

**[Appeal from the decision of the High Court of Tanzania, Land Division
at Dar es Salaam]**

(Mgetta, J.)

**dated the 25th day of November, 2016
in
Land Case No. 167 of 2012**

JUDGMENT OF THE COURT

14th February & 9th March, 2023

MWAMPASHI, J.A:

This is an appeal against the judgment and decree of the High Court of Tanzania, Land Division at Dar es Salaam (the High Court) dated 25.11.2016, in Land Case No. 167 of 2012. The appellant, BANSONS ENTERPRISES LIMITED (the Company), a liability company registered under the Companies Act [Cap 212 R.E. 2002] (the Companies Act), had sued the respondent, MIRE ARTAN, for vacant possession and other reliefs in respect of Plot No. 2 Title No. 42439 Service Trade Kurasini Dar es Salaam upon which the respondent had allegedly trespassed. The respondent denied the claims levelled against

him maintaining that the plot he occupies is not the one claimed by the appellant but it is Plot No. 7 Title No. 33890 located at Kilwa Road Kurasini Dar es Salaam which he had bought from one Fatma Mbaraka Abdullah on 20.12.2003. In his written statement of defence, the respondent did also raise a counter claim against the appellant seeking for, among other things, a declaration that he was the lawful owner of Plot No. 7 Title No. 33890 located at Kilwa Road Kurasini Dar es Salaam and that the appellant's Title No. 42439 over Plot No. 2 Service Trade Kurasini Dar es Salaam be declared null and void.

Having heard the evidence from both sides, the High Court dismissed both the appellant's suit and the respondent's counter claim on account that the parties had failed to prove their respective claims on the balance of probability. Aggrieved, the appellant has preferred this appeal raising two grounds of complaints which, for reasons that will shortly become apparent, need not be recited here.

When the appeal came before us for hearing, Messrs. Joseph Rutabingwa and Thomas Brash, both learned advocates appeared for the appellant. On the other hand, the respondent had the services of Messrs. Gabriel Mnyele and Jerome Msemwa, also learned advocates.

Before the hearing could commence, we firstly wanted to satisfy ourselves on the competency, propriety or otherwise of the appellant's suit before the trial Court. Our qualm was about the plaint filed in the institution of the appellant's suit. This resulted from our observation of the evidence on record, particularly that given by Mr. Malkit Singh Bansal (PW2) who signed and verified the plaint as well as that given by PW1. We thus, found it prudent to invite the counsel for the parties to address us as on whether Order XXVIII rule 1 of the Civil Procedure Code [Cap 33 R.E. 2019) (the Code), was complied with. We particularly directed them to address us on whether PW2 had an authority to sign and verify the plaint on behalf of the Company.

Before we proceed any further and for the better appreciation of the nature of the issue we have raised above, we find it appropriate to reproduce part of what was testified by PW2 and PW1 before the High Court regarding not only the relationship of PW2 to the Company but also the status of the Company at the time the suit was being instituted. At page 115 of the record of appeal, PW2 who, as we have alluded to above, signed and verified the plaint purporting to be a principal officer of the Company, is on record stating that:

"I have a garage. Formerly, it was known Diesel Garage Ltd at Keko Mwanga. Currently it is called or known as Bansal Pump Services Limited and is being run by my children. I have retired. The father of Harpar (PW1) called Surpreet Singh Virdee was related to me since 1970..."

It can be clearly observed from the above and in fact from the whole evidence on record, that PW2 gave his evidence in chief without disclosing the title or position he was holding in the Company. However, when asked on cross-examination at page 117, he stated that:

"...According to this letter addressed to Mr. Msemwa, Benson Enterprises Ltd has not yet been registered. I am a relative to the family who owns Benson Enterprises Ltd. I run their business as relative. It was Mrs. Rajinder who allowed me to institute this suit. I did not attach the document allowing me to institute the suit on behalf of the Benson Enterprises Ltd. I let the matter to our lawyer..."

As for PW1, that is, Mr. Harpar Singh Virdee, the son to the two directors of the Company, part of his evidence, at page 111 of the record of appeal, is to the following effect:

"...The plaintiff was set up by father who was one of the Directors. I was the manager of the company...My father passed away in 2009 and I

am living in the UK. I am the administrator of my father's estate...".

Responding to questions put to him on cross-examination, at page 112 of the record of appeal, PW1 is on record stating that:

"As of today, the Director of the company Benson is called Rajinder Kaur Virdee, my mother. On 27.08.2012, it was only my mother who was and still a director of the plaintiff... The plaint was signed by my uncle. He is in Dar es Salaam. His name is Malkit Singh Bansal. There is no company resolution that the suit be instituted against the defendant. The company has one director. It is impossible for one director to sit and give resolution authorising this suit to be instituted".

It was the above reproduced evidence from PW2 and PW1 that, as we have alluded to above, made us ask ourselves whether or not the plaint was properly signed and verified by PW2 and hence whether the suit was properly instituted.

In response to what we requested them to address us, Mr. Rutabingwa started by contending that the suit was filed by the Company and not by PW2 who signed and verified the plaint on behalf of the company in his capacity as the principal officer of the Company.

He further argued that the appellant company is peculiar as it is a family entity whose decisions are made at family level. Mr. Rutabingwa went on submitting that PW2 being the only representative of the Company in the country, had the authority to sign and verify the plaint and that the Company has not disowned him.

It was further submitted by Mr. Rutabingwa that under Order XXVIII rule 1 of the Code, principal officers of a company are among the persons who can sign and verify pleadings on behalf of a company and that the definition of who is a principal officer is wide and not confined to certain titles in the company. He finally insisted that PW2 was authorized to sign and verify the plaint. He however contended that if it is found by the Court that PW2 had no authority to so act for the Company, then the suit was vitiated as it was the respondent's counter claim.

Mr. Mnyele differed with Mr. Rutabingwa. He submitted that the law applies equally to all companies and that there is no family or peculiar company. He also contended that the main issue is whether PW2 had authority to sign and verify the plaint and file the suit on behalf of the Company. It was further argued by him that under Order XXVIII rule 1 of the Code, pleadings for or on behalf of a company must

be signed by directors, a company secretary or any of the principal officers of the company. He went on arguing that PW2 was neither a principal officer of the Company nor was he authorized to sign and verify the plaint on behalf of the Company. He added that according to PW1, the Company was being run by only one director who was, however, not the one who signed and verified the plaint. Mr. Mnyele further submitted that from his own testimony, PW2 told the High Court that he signed and verified the plaint as a relative to the directors and owners of the Company. He insisted that a relative cannot institute a suit on behalf of a company. He also pointed out that even the written statement of defence to the counter claim was improperly signed by PW2 who had no authority to do so. To cement his arguments, Mr. Mnyele referred us to the decision of the Court in **Georgia Celestine Mtikila v. The Registered Trustees of the Dar es Salaam Nursery School and International School of Tanganyika** [1998] T.L.R. 212.

As to what should be the way forward, Mr. Mnyele urged the Court to invoke its revisionary powers under section 4 (2) of the Appellate Jurisdiction Act [Cap 141 R.E. 2019] (the AJA) and nullify the High Court proceedings including the judgment save for the counter claim by the respondent which has to be heard *ex parte* because the appellant's

written statement of defence to the counter claim suffers the same ailment as the plaint. Alternatively, he urged us to nullify everything and revert the parties to square zero.

In his brief rejoinder, Mr. Rutabingwa argued that PW2 was authorized to act for the Company as he was given the mandate to do so by Mrs. Rajinder, the only surviving director of the company.

The issue for our determination is on the competency or propriety of the institution of the suit before the High Court on account of whether or not the plaint was properly signed and verified by PW2 in accordance with Order XXVIII rule 1 of the Code.

Our starting point should be section 22 and Order IV rule 1 of the Code which provide for the manner suits are instituted in courts. Section 22 of the Code provides that:

"Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed"

Again, under Order IV rule 1(1) of the Code, it is stated that:

"Every suit shall be instituted by presenting a plaint electronically or manually to the court or such officer appointed in that behalf".

It is very clear from the above provisions of the law, that, a duly instituted suit must be by presentation of a plaint to the court or in any other manner as may be prescribed. Further, under Order VI rules 14 and 15 of the Code, pleadings must be signed and verified. For avoidance of doubts, according to Order VI rule 1 of the Code "pleadings" means a plaint or a written statement of defence (including a written statement of defence filed by a third party) and such other subsequent pleadings as may be presented in accordance with rule 13 of Order VIII.

As for suits by or against corporations or companies, a duly instituted suit must be by the presentation to the court of a plaint signed and verified by the company secretary or by any of its directors or other principal officer of the company who is able to depose to the facts of the case. Order XXVIII rule 1 of the Code, provides that:

"In suits by or against a corporation any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case".

In accordance with Order XXVIII rule 1 of the Code, a plaint for the institution of a suit by a corporation or company must be signed and

verified by three categories of persons: **One**, the company secretary, **two**, any of the directors of a company and **three**, any principal officer of the company who is able to depose to the facts of the case.

In the instant case, the plaint was signed and verified by PW2, Mr. Malkit Singh Bansal. He did so, purporting to be the principal officer of the Company. The question that arises here is whether PW2 was really one of the principal officers of the Company. Basing on the evidence on record and particularly from what was testified by PW2 himself and by PW1 on that aspect, we should preferably begin to answer the above posed question by looking at who is regarded as a principal officer of a company. Unfortunately, neither the Companies Act nor the Code defines who is a principal officer of a company. However according to the **Black's Law Dictionary**, 11th Ed, at page 1308, in corporate law, the term refers to a person elected or appointed by the board of directors to manage the daily operations of a corporation, such as a CEO, president, secretary or treasurer. We are highly persuaded by this definition.

Guided by the above and basing on the evidence on record, we are of the settled view that PW2 was not a principal officer of the Company. The evidence from PW2 and PW1 clearly reveal that at the

time the plaint was being filed in the High Court to institute the suit for the Company, there was only one surviving director and no resolution was passed to appoint PW2 to manage the daily operations of the Company or even to authorise him to institute the suit on behalf of the Company. In his evidence, PW2 is on record telling the High Court that he was a mere relative to the Company owners and he acted for the Company as such. His claim that he was authorized by the surviving director of the Company to sign and verify the plaint and institute the suit is supported by no cogent evidence. Further, the evidence on record does not show that PW2 held any position at the management level for him to be regarded one of the principal officers of the Company.

Basing on the above observations, the earlier posed issue is answered in negative. We share the view with Mr. Mnyele that PW2 was not a principal officer of the Company and since he was also neither one of the directors or the company secretary then he had no authority to sign and verify the plaint and institute the suit on behalf of the Company. He was not part of the Company. We find the arguments by Mr. Rutabingwa that the Company is a family entity whose decisions are made at family level and that the definition of who is a principal officer should be widened to cover PW2, not tenable in law. Even his argument

that the Company has not disowned PW2 does not, in the circumstances of this case, make him capable of signing, verifying the plaint and instituting the suit on behalf of the Company.

In conclusion, it should be emphasised that a plaint by a company cannot be duly presented to the court and a suit duly instituted unless it is duly signed and verified by persons listed under Order XXVIII rule 1 of the Code. Where a plaint is not duly signed and verified in accordance with the law, there is no suit which the court can legally try. It is also not out of place if we restate that the object of duly signing a plaint is not only to prevent fictitious suits but also prevent disputes as to whether the suit was instituted with the plaintiff's knowledge and authority.

Finally, we find that in the instant case, the ailment in the plaint for not being duly signed and verified go to the root of the plaint and vitiates it as well as the whole suit. As we have alluded to above, there was no suit for the High Court to try. That being the case, we invoke our revisionary powers under section 4 (2) of the AJA and nullify the whole proceedings before the High Court and quash the resulting judgment. For the sake of clarity, even the counter claim by the respondent faces the same wrath of the law. We also direct that any party who wishes to

commence legal proceedings against the other should do so in accordance with the law. Owing to the circumstances of this matter, we make no order as to costs.

DATED at DAR ES SALAAM this 7th day of March, 2023.


R. K. MKUYE
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Judgment delivered on this 9th day of March, 2023 in the presence of Mr. Thomas Brashi, the counsel for the Appellant and Mr. Lucas Myula, counsel for the Respondent, is hereby certified as a true copy of the original.




J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL