IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL CASE NO. 15 OF 2017

TANZANIA AMERICAN INTERNATIONAL
DEVELOPMENT COOPERATION 2000 LIMITED
(TANZAM) ..... 1ST PLAINTIFF
BUCKREEF GOLD COMPANY LTD ..... 2ND PLAINTIFF

Versus

FIRST WORLD INVESTMENT AUCTIONEERS,
COURT BROKERS..... DEFENDANT

RULING

DR. OPIYO, J.

Plaintiffs filed a claim for judgment and decree against the defendant for the following reliefs:

1 declaration that the auction was irregular

2. Compensation to the 1st plaintiff for value of the auctioned items

3. Damages

4. Costs in the suit and

5. Any other relief (s) the honourable court may deem fit to grant.

Defendant in their Written Statement of Defence filed on the 24/7/2017 raised two preliminary objections challenging the competence of the suit now pending before this court:-

1. The suit is bad in law for want of board resolution by the 1st and 2nd plaintiff authorizing and or sanctioning the institution of the present suit.

2. That the 2nd plaintiff has no cause of action against the defendant or at all

Before me the plaintiffs were represented by Mr. Kapaya learned counsel while the defendant was represented by Mr. Sambo. Hearing of the preliminary objections proceeded by the way of written submission. Submitting on the first raised preliminary objection, it was Mr. Sambo submissions that, the suit now pending before this court is bad in law for want of Board Resolution by the 1st and 2nd plaintiff authorizing and or sanctioning the institution of the present suit.

It was his submission that, the history behind this development of the law can be drawn far back in 1916 in the case of **Daimler Company Limited vs Continental Tyre and Rubbr Company (Great Britain) td (1916)**

AC 307; by the House of Lords**.** In this old case, he House of Lords held *inter alia* that;

> *"That the auction was commenced without authority and ought to be struck out as irregular."*

The position which he argued was also reiterated in the case of **Russian Commercial and Industrial Bank vs Comptoir D'escompte De Mulhouse and Others (1925) AC 112 H,** where the House of Lords also held *inter alia* as follows;

> *"My Lords, I do not think that it is open to the defendant's to raise this question by way of defence to the action. If the defendants desired to dispute the authority of Mr. Jones to commence these proceedings in the name of the Plaintiff Company, their proper course was to move at an early stage of the action to have the name of the company struck out as plaintiff and so to bring the proceedings to an end".[Emphasis Supplied]*

Mr. Sambo further submitted that, from the two old decisions of House of Lords, it is without doubt that the requirement of the company to institute proceedings in court in the name of the company is matter of law and not matter of fact. It was therefore his submission that, that position of the law was further brought in east Africa by the case of **Bugerere Coffee**

Growers vs Ssebbaduka and Others (1970) E.A. 147 which was quoted with approval in our jurisdiction *via* unreported case of **Pigadeal Enterprises Limited vs Njake Enterprises Ltd, Land Case No.1 of 2011, High Court of Tanzania at Arusha**

It was his submission that, it is a sacrosanct principle in a company law that as the company has distinct legal personality; it cannot act on itself or on its own. It has to act through the requisite authority of a resolution sanctioned by the company board of directors. The authority must be expressly provided and not merely perceived. He contended that, in the case at hand, that is Civil Case Number 15 of 2017, both plaintiffs never pleaded anywhere in the plaint that there is a board resolution by the company's directors sanctioning the institution and or filing of this suit. This is contrary to the sacred principle and law which require any company prior to the institution of the suit to have passed a board resolution to save the company from unauthorized act which might lead and or take the company to the liabilities which was not foreseen and or consented to by other interested shareholders.

It was his further submission that, they are aware of same few decisions which has departed from the long established principle as elaborated in the submission above, i.e. **M/S. Dar Ocean Product Ltd Vs Principal Secretary Fisheries Division and Others Civil Case No.379 of 1996 High Court of Tanzania at Dar es Salaam** and that of **Addar v. Geneva Branch Vs Kigamboni Oil Co. Ltd, Commercial Case No.72**

of 2008. Not only that those decision are not binding to this court. But also in those decisions the court was not brought to the awareness on the existence of long cases of House of Lords, which is the **Daimler's case and Russian case** cited above. It was his further submission that due to the fact that these two cases are highly persuasive had it brought to the attention of the court, the court could have ruled otherwise. Thus, it is his argument that, it is mandatory for the plaint to clearly show that there is express authority by board resolution sanctioning the institution of the suit, failure of which, the instituted suit is rendered incompetent and ought to be struck out with costs.

In Response, it was Mr. Kapaya's submission that, they do concede to the first preliminary point of objection to the effect that, there is a requirement to plead or attach a board resolution of the 1st and 2nd Plaintiffs which authorized the institution of the suit at hand. He therefore agrees to the striking out of the suit, but prayers that, the cost of this matter be waived, basically on account that the board resolution is present only that it was not attached to the plaint in view of the conflicting authorities on the question but it was attached to the reply to the written statement of defense. He further submitted that, these conflicting authorities include but not limited to the case of **Tanganyika Law Society v. The Attorney General**, Miscellaneous Civil Cause No. 31 of 2014, **Investment House Limited v. Webb Technologies (T) Limited & Another,** Commercial Case No. 97 of 2015, (Unreported) where it was held that:

"Under normal circumstances the suit should have not been admitted without demanding a copy of the resolution. If a demand has been raised at the time of filing of the suit, by the Registry Officer, the plaintiff would have had an opportunity to file the document and rectify the problem, in any case, the plaintiff has a chance to file it now as additional document, there is such room under CPC".

It was his prayer for the direction of this court as to the position whether it is necessary to attach the said board resolution or plead the same to the plaint or it may be submitted in the course of the proceedings as some authorities show.

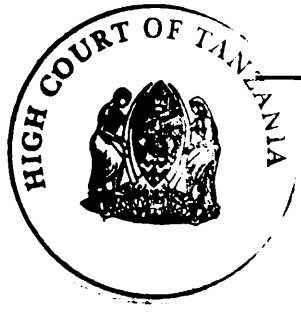
I have considered parties submission for and against the first preliminary objection that the suit is bad in law for want of board resolution by the 1st and 2nd plaintiff authorizing or sanctioning the institution of the present suit. There is no dispute that there are conflicting decisions of the High Court in the effect of the suit instituted without board resolution, the first school of thought advocates that, there must be express reflection of a board resolution authorizing the filing of an action for a corporate body and the same must be attached to the pleadings prior to the commencement of the suit. The second school of thought advocates that, it is not a legal requirement that a board resolution be made and be attached to the pleadings prior to the commencement of the suit.

I fully subscribe to the spirit and position of the High Court which are to the effect that, the plaintiff being a corporate entity must have a board resolution of an entity before instituting a civil suit. I take the above position basing on the fact that, a company is formed by more than one person and those persons have interest in the company. Thus, since the suit touches that interest, it is prudent to have board resolution prior to the filing of a suit, the board resolution will show that people whose interest will be affected have consented to the institution of a suit. In that sense, I fully subscribe to the spirit and wisdom of my brother Kalegeya, J (as he then was) *in* ***St. Bernard's Hospital Company Ltd Vs Dr. Linus Chuwa,*** *Commercial No 57 of 2004 (unreported) when he stated at page 6, I quote in extensor:-*

> *"... I have no doubt in my mind that actions including filing of suits on behalf of a corporate body must be taken or embarked upon with the requisite authority. Such authority should be express and no merely perceived. The logic behind this is the most obvious. Left uncontrolled, companies would find themselves in futile and costly disputes commenced at the whims of erratic (or those with personal grudges to quench officers) in their employment."*

From the above reason, I am of the firm stand that, it is a legal requirement that a body cooperate or a company in institution of a suit, the plaint must be accompanied by a board resolution sanctioning the same. In the present suit as conceded by the plaintiff's counsel the plaint is

not accompanied with the same. Then the suit before me is incompetent, and I hereby upheld the first preliminary objection raised by the defendant, consequently struck out the suit. Based on presence of two conflicting position on the matter by this court, I make no award as to costs as prayed by the counsel for the plaintiffs. Since the first preliminary objection suffices to strike out the suit I will not entertain the second preliminary objection.



DR. M. OPIYO,

JUDGE

28/08/2018