

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
LAND CASE NO. 23 OF 2016**

**SANITAS MEDICS & DIAGNOSTIC
LIMITED.....APPLICANT**

VERSUS

QUALITY CENTRE.....RESPONDENT

RULING

Date of last order: 28/10/2019

Date of Ruling: 31/12/2019

S.M. KULITA J;

This is an Ex-parte ruling on an application for review filed by SANITAS MEDICS AND DIAGNOSTIC LIMITED against the Ruling and Order of the High Court in the Land Case No. 23 of 2016 delivered on 25th October, 2019. The application is made under section 78(1) and Order XLII Rule 1(a), (3) of the Civil Procedure Code [Cap 33 R.E.2002]. In the Memorandum of Review the applicant seeks for review on the ground that there is an apparent error on the face of the records that the trial Judge overlooked and dismissed the Applicant's counterclaim

for want of board resolution while the same was attached in the Written Statement of Defence (WSD). Wherefore the applicant prays for the following orders;

- i. An order of this Court to review its Ruling and Order dated 25th October, 2017 thereby making appropriate orders in the circumstances.
- ii. Any other relief this Court may deem fit to grant.

During the hearing of this application which was done orally the Applicant's Counsel Mr. Shepo John submitted that the Respondent, QUALITY CENTRE LIMITED filed a suit against the Applicant. After being served with the Plaint the Applicant filed a WSD which was accompanied with the Counterclaim and the Preliminary Objection on the ground that the plaint was filed without attachment of the ***board resolution*** consequently the same was dismissed.

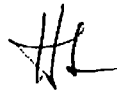
Mr. Shepo John went on to submit that the presiding judge dismissed the counter claim on the same ground used to dismiss the plaint. He submitted that he is of the view that there was an error on the face of record that the presiding Judge in the original case overlooked to dismiss the counterclaim while the board resolution document was actually there, attached in the WSD.

Mr. Shepo John concluded by praying for this court to review the proceeding and allow the counter claim to proceed.

The foregoing submission of the made me go through the respective pleading that is WSD which was accompanied with the counter claim and annexures for the said matter and discovered that all the annexures in the said document were marked as SANI "1", SANI "2" and SANI "3". They were also pleaded in the Counter Claim. The said ***Board Resolution*** of which Mr. Shepo John claims to be authentic one can now be seen being the last document attached in the WSD/Counter Claim. But its current presence in the case file creates a doubt for the following reasons; First, the said document had not been pleaded in the said Counter Claim. Secondly, it is not marked as it has been done for the other annexures. These scenarios create a doubt if the said document was actually attached in the said WSD/Counter Claim. Furthermore, the said document has no rubber stamp of the applicant's company to secure its authenticity, though not stated but that might have rendered it to be treated or seen as just a mere paper with no legal weight. And the fact that it has been attached as the last document in the pleading annexures there is a great possibility that it was the cunning maneuvers done by the Applicant.

It is unanticipated for the presiding Judge to have overlooked that document if it was actually there, bearing in mind that the attached documents were not bulky.

In my view the presiding judge rightly dismissed the said counter claim for lack of authority. The application is therefore dismissed. As the matter was heard ex-parte I grant no order as to costs.



S.M. KULITA

JUDGE

31/12/2019