

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA
LAND CASE NO. 12 OF 2017.**

**ATHWAL'S TRANSPORT AND TIMBER LIMITED.....PLAINTIFF
VERSUS
TANZANIA RAILWAYS CORPORATIONDEFENDANT**

RULING

Date of Last Order: 18/06/2021

Date of Delivery: 19/07/2021

AMOUR S. KHAMIS, J.

The plaintiff, Athwal's Transport and Timber Limited, a limited liability company registered in Tanzania is suing the defendant and seeking for the following reliefs:

- (i) *That, the two suit plots comprising plot No.4 Industrial area (Title No. 13836) and plot No. 5 Block "O" CORONATION ROAD (Title No. 118104) are lawfully owned by the plaintiff.*

- (ii) *Permanent injunction restraining the defendant, its officers or agents from interfering with the plaintiff's ownership of the suit plots or demolishing the building and all other developments thereon.*
- (iii) *Costs of the suit*
- (iv) *Any other relief (s)*

Upon being served, the defendant, Tanzania Railway Corporation filed a Written Statement of Defence in which denied the plaintiff's claims. In addition to that, filed a notice of preliminary point of objection contending that **the Land Case No. 12 of 2017 was instituted without a Board Resolution.**

By consent and with approval of the Court the preliminary point of objection was disposed of by way of written submissions.

Submitting in support of the point of objection raised, Mr. Lukelo Samwel, learned counsel submitted that it is a requirement of the law that before a company institutes a matter in court there must be a board resolution to do so. He stated that in the present case there is no resolution passed authorising the commencement of the present suit. He submitted that, as this suit was instituted without a board resolution then, the suit is incompetent. To buttress his submission, the learned counsel referred this court to the decisions in **St. Bernad Hospital Company**



Limited v. Dr. Kinus Maemba Mlula Chuwa, Commercial Case No. 57 of 2004, **Buiké Estate Coffee Ltd and Two Others Vs. Lutabi and Another**, (1962) E.A 358 and **John Shaw & Sons Ltd vs. Shaw**, (1935) 2 K.B. 113.

On the basis of the submission made, the learned counsel urged this court to sustain the objection raised and dismiss the suit with costs.

In his reply submission, Mr. Method Kabuguzi, learned counsel briefly submitted that the point of objection raised is misconceived and lacks merit in that, the same is not pure point of law. To clarify what constitutes a preliminary objection, the learned counsel made reference to the laid down principle in **Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors Ltd** (1969) E.A 696, cited with approval in the case of **Ulimwengu Rashid t/a Ujiji Mark Foundation vs. Kigoma /UjijiMunicipal Council**, Misc. Land Application No. 29 of 2018 in which, among other things, it was emphasized that a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained.

The learned counsel pointed out that the preliminary points of objection raised do not fall within the parameters of the principle

established in **Mukisa's** case. He stated that the issue whether or not the plaintiff had company resolution is the issue of fact which needs to be proved by evidence. On that basis, the learned counsel prayed to this court that the preliminary point of objection raised be dismissed with costs.

The learned counsel went on submitting on the issue of the Company Board Resolution. He stated that, it was not necessary to annex Board Resolution appointing its directors to sue because the plaintiff has the capacity to sue or be sued. He referred to the case of **Communication Tanzania Limited vs. China International Telecommunications Construction Corporation and another**, [2016] TLR 468.

On that basis, the learned counsel prayed to this court that the preliminary point of objection raised be dismissed with costs for devoid of merit.

I have given the submissions of both counsel due consideration. This Court had a time to discuss the requirement of Company Board Resolution in instituting a suit. In the case of **Ndiyo United Company Limited v. Irene Simon Kahemele**, Civil Case No. 14 of 2018 (HC at Mbeya, unreported) the Court was of the view that a Board Resolution is a mandatory requirement for a company to file suit in court. The same

view was underscored by the Court of Appeal in **Ursino Palms Estate Limited v. Kyela Valley Foods Ltd. & 2 Others**, Civil Application No. 28 of 2014 (CAT at DSM, reported at Tanzlii).

The requirement for a company to have a Board resolution before instituting legal proceedings traces its roots from the Ugandan case of **Bugerere Coffee Growers Limited vs. Sebaduka and Another**, (1970) E.A 1471, in which it was held:

"When companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or Board of directors meeting and recorded in the minutes."

On the strength of the preceding cited authorities in above, the point of objection raised is therefore sustained. That said, the suit is incompetent for lack of Board Resolution and the same is struck out. I make no orders as to costs.

Dated at Tabora this 19th day of July 2021.





AMOUR S. KHAMIS

JUDGE

19/7/2021

Ruling delivered in chambers in presence of Mr. Amos Gahise, advocate holding brief of Mr. Method Kabuguzi, learned advocate for the plaintiff.

Right of Appeal explained.

The seal of the High Court of Tanzania is circular, featuring the national coat of arms in the center. The text "THE HIGH COURT OF TANZANIA" is written around the perimeter of the seal, with a small star at the bottom.

AMOUR S. KHAMIS

JUDGE

19/7/2021