

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR-ES-SALAAM DISTRICT REGISTRY)**

**AT DAR-ES-SALAAM**

**CIVIL CASE NO. 131 OF 2022**

**AZIM ALARAKHIA HOODA (Holder of power of  
Attorney of NIZARARI HOODA) ..... PLAINTIFF**

**VERSUS**

**TRANSIT LIMITED ..... 1<sup>st</sup> DEFENDANT**

**NISCHAL RAJEY ..... 2<sup>nd</sup> DEFENDANT**

Date: 27/03 & 24/04/2023

**RULING**

**NKWABI, J.:**

Through their written statement of defence, the defendants raised a preliminary point of objection. The same has four limbs of legal points of objection as I will list them herein below:

- 1. The plaintiff's suit is bad in law for being hopelessly time barred.*
- 2. The plaintiff's suit is incompetently before this honourable Court for having been brought by inappropriate form.*
- 3. The plaintiff's plaint is defective for having not been signed by the plaintiff's advocate.*
- 4. The plaintiff's suit is bad in law for being instituted by a person with defective/ineffective/inoperative power of attorney.*

The plaintiff, however, in his plaint is asking for the following reliefs:

- a. The defendants be ordered to allow and recognize the plaintiff to discharge his duties as a shareholder and director unconditionally.
- b. The defendants be ordered to reimburse the plaintiff T.shs 300,000,000/= (say Tanzania shillings Three hundred million only) to be paid to the plaintiff being the dividends which were not distributed to the plaintiff.
- c. The defendants be ordered to conduct all business transparently and to produce all past and present records of the company to the plaintiff.
- d. The general damages to be assessed by the Court.
- e. Judgment and decree against the defendants.
- f. Costs; and
- g. Any such other and further reliefs the honourable Court may deem just and appropriate to grant.

Based on the prior listed legal points of objection the defendants pray the case to be dismissed or otherwise struck out with costs. I ordered the preliminary objection be argued by way of written submissions. The submissions were accordingly filed. Mr. Emmanuel Safari, learned counsel,

filed the submissions for the defendants while reply submission was filed by Mr. Laurent Ntanga, also learned counsel.

Elaborating on the 2<sup>nd</sup> legal point of objection, Mr. Safari argued that the suit is incompetent for having been brought by inappropriate form. Under paragraph 8 and 9 of the plaint, the plaintiff is complaining that the Company's affairs are being conducted in a manner which is unfairly prejudicial, that is, refusal to pay dividends and for lack of transparency in the business of the company. He stated that in determining appropriate remedy a resort should be made to section 233(1) of the Companies Act, Cap. 212 R.E. 2019. Thus, the suit ought to be by way of an application in the form of a petition and not by way of plaint. It was prayed the objection be sustained and the plaintiff's suit be struck out with costs.

Mr. Ntanga was of a different view. He submitted that the provision cited by Mr. Safari is discretionary one. He said the suit can be filed by way of plaint or petition. He thus, insisted that the form used by the plaintiff to file his claims via plaint was appropriate form. He added that, some of the orders prayed for cannot be prayed in the petition.

In rejoinder submission, Mr. Safari explained that the word “**may**” is used to give any member of the company who thinks the affairs of the company are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members to opt to file or not to file a suit to the Court by way of petition. Mr. Safari cited **Masumbuko Fadhili Khafidhi Makolokolo v. Elias Mwanisawa**, Civil Case No. 3 of 2020 HC. (unreported) and **James Ibrahim Manule & Another v. Oswald Masatu Mwizarura**, Civil Revision No. 11 of 2016 HC (unreported) I Maige, J. (as he then was) where he had these to say:

*"This is a pure issue of management and affairs of a company. As held in JONH O. NYARONGA VS. CAPTAIN FERDINANDO PONT & 2 Others, Commercial Case No. 62 of 2009 (unreported) it would therefore fall within the domain of company law which has its special forms of dealing with dispute under the Companies Act. In this regard, the appropriate provision is section 233 of the Companies Act which requires such an application to be brought by way of petition."*

The counsel for the defendants prayed the suit be struck out for being incompetent.

I have paid deserving attention to the submissions of both parties. Indeed, the counsel for the plaintiff did not mention the law that prohibits such claims to be brought in the petition. I may also add that the counsel for the plaintiff did not point out which claims cannot be made in the petition.

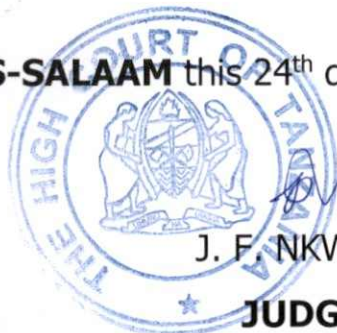
I am persuaded by the argument advanced by the counsel for the defendants, I purchase it because, the suit that was instituted by the plaintiff falls under section 233(1) of the Companies Act, Cap. 212 R.E. 2019 which requires the dispute be brought by way of application in the form of a petition. At this point the plaintiff cannot be allowed to amend the plaint to be a petition, even if it were permissible, yet amendment would change the nature of the dispute instead of a civil case into an application through a petition which entails change even of its case number. The discretion in that section is for the any member who is discontented by the way the affairs of the company are carried out, to either to file an application by way of petition or not to file one. So, the discretion is not on the form but in respect of lodging the application or not.

In fine, the preliminary objection is sustained as indicated above. I need not address and determine the rest of the limbs of the preliminary objection as

it will merely be an academic exercise. In fine, Civil case No. 131 of 2022 is hereby struck out with costs for being incompetent.

It is so ordered.

**DATED** at **DAR-ES-SALAAM** this 24<sup>th</sup> day of April, 2023.



*J. F. Nkwabi*  
J. F. NKWABI

**JUDGE**