

THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY

IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MBEYA)  
AT MBEYA

LAND CASE NO. 17 OF 2021

WAKULIMA TEA COMPANY LIMITED.....PLAINTIFF

VERSUS

JOSEPH LUPUNGU.....1<sup>ST</sup> DEFENDANT  
MIKAELI MWANDEMBO.....2<sup>ND</sup> DEFENDANT  
ELICK MWAKASUMBULE.....3<sup>RD</sup> DEFENDANT  
LONGINO MFAUME.....4<sup>TH</sup> DEFENDANT  
MALAIKA GRINI.....5<sup>TH</sup> DEFENDANT  
ISRAEL MSIANI.....6<sup>TH</sup> DEFENDANT  
VOSTA PANJENGA @ NJABO.....7<sup>TH</sup> DEFENDANT  
FEDELIKO DICKSON.....8<sup>TH</sup> DEFENDANT  
JAPHET MWAKIHABA.....9<sup>TH</sup> DEFENDANT  
ERICK DAUDI.....10<sup>TH</sup> DEFENDANT

RULING

Date of Last Order: 24/03/2022  
Date of Ruling : 05/05/2022

**MONGELLA, J.**

The plaintiff is a corporate body duly registered and incorporated under the Companies Act, 2002 of the laws of Tanzania. It has its registered office at Katumba Town in Rungwe district, Mbeya region. He filed the suit at hand seeking for the defendants to be declared trespassers on the land in dispute located at Bugoba village-Rungwe district. He claims to be the rightful owner having being allocated the land by the government



through Certificate of Title No. 23785-MBYLR, L.O. No. 174971 L.D./RD/L/26267 harbouring a farm with No. 1336. While filing their joint Written Statement of Defence, the defendants filed a notice of preliminary objection on two points to wit:

- i. The suit is incompetent in law for lack of board resolution by the plaintiff company to institute legal proceedings against the defendants.
- ii. The suit is incompetent and bad in law for non-joinder of a necessary, proper and interested party.

The preliminary objection was argued by written submissions filed by the parties' counsels in compliance with the orders scheduled by the Court.

The respondent was represented by Ms. Mary Mgaya, learned advocate. On the 1<sup>st</sup> point Ms. Mgaya submitted that it is now a settled law on our jurisdiction that a prerequisite requirement to be observed by a company, which is an artificial person, prior to institution of suit in a court of law, is that there has been obtained an express authority from the company itself through board resolution or authorisation from its directors. Explaining the rationale behind the legal requirement she said that the same is geared at avoiding fake incidences that the company proceeded to institute a suit while in actual sense it is not the position. That, it is geared at authenticating the company's move in its dealings.



To buttress her point she referred to a number of decisions from this Court and the Court of Appeal being: ***Ursino Palms Estate Ltd. vs. Kyela Valley Food Ltd. & 2 Others***, Civil Application No. 2014 (CAT, unreported) in which the Court of Appeal acknowledged the principle settled in a Ugandan decision in ***Bugerere Coffee Growers Ltd. vs. Sebadduka & Another*** (1970) EA 147; ***Pita Kempamp Ltd vs. Mohamed L.A. Abdul Hussein***, Civil Appeal No. 128 of 2004 (CAT, unreported); and ***Giant Machine and Equipment Ltd. vs. Gilbert R. Mlaki and Another***, Civil Case No. 05 of 2019 (HC at Mbeya, unreported). Referring to the plaint, Ms. Mgaya concluded that there is nothing in there suggesting that there is an authorisation from the company or its board of directors. She was of the view that the defect goes to the foundation of the matter thus fatal.

Regarding the 2<sup>nd</sup> point, she argued that the defendants are not owners but merely licensees invited to conduct their economic activities subject to payment of levy to Bugoba Village Authority, who is their landlord. In the premises, since the plaintiff is seeking to be declared the lawful and exclusive owner of the suit property, it was imperative for Bugoba Village Authority to be joined in the suit for effective and complete determination of all questions concerning the matter once and for all. She had a stance that the absence of Bugoba Village Authority as the defendant's landlord paralyses the entire suit. In support of her argument she referred to Court of Appeal decisions in ***Ngerengere Estate Company Limited vs. Edna William Sitta***, Civil Appeal No. 209 of 2016; and ***Tanzania Railways Corporation (TRC) vs. GBP (T) Limited***, Civil Appeal No. 218 of 2020 (both unreported).





The plaintiff was represented by Mr. Essau Abraham Sengo, learned advocate. Arguing on the first point, he challenged the point of objection on the ground that it does not qualify to be a point of objection as settled in the case of **Mukisa Biscuits Manufacturing Co. Ltd. vs. West End Distributors Ltd** [1969] EA 701. He argued so on the ground that the same requires proof in evidence and courts have discouraged such preliminary objections. To support his argument he referred to the case of **Ibrahim Abdallah (the Administrator of the Estate of the late Hamis Mwalimu) vs. Selemani Hamis (the Administrator of the Estate of the late Hamis Abdalla)**, Civil Appeal No. 314 of 2020 in which the Court insisted that a preliminary objection has to be based on a pure point of law. He contended that the plaintiff requires to be given an opportunity to present the board resolution something which cannot be done at this stage.

He added that if the court decides in the plaintiff's disfavour without according him the chance to present the board resolution, his right to be heard shall be violated. In what I find absurd, Mr. Sengo argued that if this Court is to make a decision that is adverse to the plaintiff and them as a firm of advocates representing the plaintiff, they should be given the right to be heard whereby they shall present evidence before a ruling is delivered. To that effect he cited the case of **Tang Gas Distributors Limited vs. Mohamed Salim Said & Two Others**, Civil Application for Revision No. 68 of 2021.

With regard to the 2<sup>nd</sup> point of objection, while conceding that non-joinder of a necessary party to a suit is fatal, he counter argued that the plaintiff has the right to choose who to sue. He was of the opinion that if

the defendants wish for Bugoba Village Authority to be joined they have a room to apply before this Court for leave to join the village authority as a defendant in the suit or to convince the court to invoke its powers under Order I Rule 10 (2) of the Civil Procedure Code, Cap 33 R.E. 2019.

Mr. Sengo further argued that non-joinder of parties has to be differentiated from misjoinder of parties. Therefore, in the premises, if they sue the defendants and the village authority they may face another preliminary objection on misjoinder of parties or on lack of cause of action against the defendant whereby they shall be in an awkward position to establish a case against the village authority. He challenged the defendants' counsel for not explaining how the plaintiff has contravened the provisions of Order I Rule 3 of the Civil Procedure Code in drafting the plaint.

He added that when going through the available evidence they ascertained that the plaintiff has no cause of action against Bugoba Village Authority, hence seeking no relief against the village authority. He referred the Court to the case of **Tang Gas Distributors Limited** (supra) in which the Court chose to respect the plaintiff's prerogative to sue the applicant as the plaintiff was entitled to choose the person or persons as defendants. He further referred the case of **George Ndege Gwandu & 19 Others vs. Kasturi Safari Tekko & Karatu Township Authority**, Civil Appeal No. 225 of 2018; and that of **Nuta Press Limited vs. MAC Holdings**, Civil Appeal No. 80 of 2016.



Mr. Sengo further distinguished the case of **Ngerengere Estate Company Limited** (supra) cited by Ms. Mgaya. He argued that in that case the party to be joined was the Registrar of Titles and the Court found his non-joinder fatal as the Court's Ruling was to compel the Registrar to remove or not to remove the caveat in respect of the disputed farm. That the Court found the Registrar of Titles a necessary party as he had to be accorded the right to be heard. He argued further that in that case it was necessary to join the registrar of titles as he was to be affected by the order sought by the applicant unlike in the case at hand where Bugoba village is not affected by the reliefs sought by the plaintiff.

Explaining on the reliefs sought by the plaintiff, Mr. Sengo contended that the plaintiff wishes for the defendants to be declared trespassers in the suit land. He said that the facts pleaded disclose no issues on ownership. That, for a case on trespass to succeed there is no need of establishing ownership. In support of his point he referred the case of **Jela Kalinga vs. Omari Karumwana** [1991] TLR 67.

On the argument by Ms. Mgaya that Bugoba village is landlord to the defendants, he argued that the village authority manages the village land under The Village Land Act, Cap 114 and that the Certificate of Title annexed to the WSD was issued under section 7 of the Village Land Act. On the other hand he said, the title deed that the plaintiff has been issued under section 29 of the Land Act, Act No. 4 of 1999 therefore the administrator of that land is not the village authority in terms of section 4 (4) of the Land Act. In the premises he was against joining of Bugoba village authority saying that it shall not assist this Court in determining the



dispute before it as the authority has nothing to do with the land in dispute.

In the end Mr. Sengo prayed for the Court to be guided by the spirit of **Article 107A of the Constitution of the United Republic of Tanzania** and that under **section 3A and 3B of the Civil Procedure Code**, which developed the principle of overriding objective by focusing on attainment of justice and timely disposal of suits.

After considering the rival submissions by the learned counsels I wish to start with the 2<sup>nd</sup> point of objection regarding joinder of a necessary party. As much as joining a necessary party is important for effective execution of a decree to be issued by the court, a suit cannot be defeated for non-joinder of a party. See: **Order I Rule 9 of the Civil Procedure Code**. The matter at hand concerns trespass to land whereby the plaintiff claims that the defendants have invaded his land and are conducting activities therein. The Court if satisfied that there is necessity of joining a party shall order for that party to be joined during the hearing of the matter. See: **Abdullatif Mohamed Hamis vs. Mehboob Yusuf Osman & Fatna Mohamed**, Civil Revision No. 6 of 2017 (CAT at DSM, unreported). Besides, since the appellants claim to be licensees of Bugoba village they can as well apply for the Village Authority to be joined as argued by Mr. Sengo. This point is therefore overruled.

With regard to the first point of preliminary objection, Mr. Sengo first argued that the requirement to have a board resolution is not provided in the Civil Procedure Code. In my considered view, under common law,

which is followed by our legal system, case law is one of the major sources of law. Thus once a position has been settled by the higher court in the hierarchy, the courts subordinate to it are bound by it. The requirement to have a board resolution for a company to sue has been underscored by the Court of Appeal of this land and thus I am going to base my deliberation in line with the position set by the Court of Appeal which in accordance with rules of precedent, which make the decisions binding upon this Court.

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 v. Sebaduka and Another** [1970] EA 147, 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."*

The above position was reiterated by the Court of Appeal in the case of **Pita Kempap Ltd. v. Mohamed L. A. Abdulhussein**, Civil Appeal No. 128 of 2004 & 69 of 2005 (CAT, unreported). The CAT also in **Ursino Palms Estate Limited v. Kyela Valley Foods Ltd. & 2 Others**, Civil Application No. 28 of 2014 (CAT at DSM, reported at Tanzlii) reverted to this position by adding that even the advocate representing the company must be appointed by a resolution. Though in this case the Court was faced by a preliminary objection involving the defendant company and it ruled that the





defendant company did not need a board resolution because it is defending itself after being sued or affected by a court order, it took cognizance of the position settled in **Bugerere Coffee Growers** (supra) and **Pita Kempap** (supra). However, reading between the lines, I am of the settled position that the decision of the CAT in this case connotes that a company does not need a board resolution when it is being sued, but it certainly needs the resolution if it is the one instituting the suit as a plaintiff.

Mr. Sengo further argued that the point of objection requires proof in evidence as it is factual. As such he was of the opinion that the plaintiff should be given the opportunity to marshal evidence to prove that a board resolution was passed to file the matter. The CAT in the above referred decisions further acknowledged that this requirement is one of the legal requirements in our law as of now. I therefore do not subscribe to Mr. Sengo's argument that the requirement is purely based on facts thus needing evidence and cannot be entertained as a legal issue. In my considered view, the same need not be proved by the plaintiff at this stage of determining the preliminary objection by providing the copy of the board resolution.

However, the fact that a board resolution was passed to authorise the plaintiff company to institute legal proceedings in court has to be pleaded in the plaint. The plaintiff's plaint as it stands does not bear this fact in any of its paragraphs. Points of preliminary objection require to be disposed by considering the pleadings and the law only. See: **The Soitsambu Village Council v. Tanzania Breweries Ltd and Tanzania Conservation Ltd.**, Civil Appeal No. 105 of 2011 (unreported). Therefore,

even if the plaintiff would have been given the opportunity to bring proof, he could not do that as he would not be in a position to tender a document not pleaded.

Having said all, it is my finding that the plaintiff's suit is incompetent for lack of board resolution. The first point of preliminary objection is therefore sustained. The plaintiff's suit is hereby struck out with costs.

Dated at Mbeya on this 05<sup>th</sup> day of May 2022.

  
**L. M. MONGELLA**  
**JUDGE**

**Court:** Ruling delivered in Mbeya in Chambers on this 05<sup>th</sup> day of May 2022 in the presence of the applicant's counsels, Mr. Essau Sengo and Mr. Peter Kiranga, and the respondents' counsel Ms. Rehema Mgeni.



  
**L. M. MONGELLA**  
**JUDGE**