

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)
AT IRINGA**

CIVIL CASE NO. 13 OF 2022

BUDGET MOVERS COMPANY LTD PLAINTIFF

VERSUS

NMB BANK PLC 1ST DEFENDANT

BANI INVESTMENT LIMITED 2ND DEFENDANT

JONAS NELSON NYAGAWA 3RD DEFENDANT

RULING

14th March & 11th May 2023

I.C MUGETA:

The plaintiff is represented by Mr. Laurent Ntanga, learned advocate while Mr. Baraka Mbwilo, learned advocate represents the 1st defendant. Mr. William Mashoke, learned advocate represents the 2nd defendant and Mr. Gabriel Masinga learned advocate represented the 3rd respondent. Both the 1st and 2nd defendants have raised preliminary objections against the plaint. The 1st defendant's preliminary objections are as follows:

- 1. That the suit is incompetent before this court for failure to state the cause of action and the date when it arose for ascertaining if the suit is not time barred.*
- 2. That the suit is incompetent before this court as there is no board resolution of the plaintiff giving mandate to file this suit.*



3. That the whole suit is incompetent before this court as the plaintiff has no locus standi to sue on behalf of the mortgagors/guarantors including the 3^d defendant.

The 2nd defendant raised two preliminary objections which are;

1. That the suit is incompetent before this court as there is no board resolution of the plaintiff giving mandate to file this suit.

2. That the whole suit is incompetent before this court as the plaintiff has no locus standi to sue on behalf of the mortgagors/guarantors including the 3^d defendant.

The parties agreed to argue the preliminary objections by way of filing written submissions.

In supporting the 1st preliminary objection, advocate for the 1st defendant argued that the suit is incompetent as the plaint does not state the cause of action and when it arose. He argued that Order VII Rule 1(e) of the Civil Procedure Code, [Cap. 33 R.E 2019] requires a plaint to contain particulars of facts constituting the cause of action and when it arose for purposes of ascertaining time limitation. To support his argument that facts constituting cause of action and when it arose must be indicated in the plaint, he cited the case of **Robby Traders Ltd v. CRDB Bank Plc & Another**, Civil Appeal No. 70 of 2012, Court of Appeal of Tanzania – Dar es Salaam (unreported).

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On the 2nd point he argued that the plaintiff has not pleaded in his plaint that the plaintiff passed a board resolution to file the present case against the defendants and appointed an advocate to represent them. He added that it is the law that the plaintiff must plead and attach a board resolution to show that the company is authorized to commence legal proceedings. To cement his argument, he cited the cases of **Bugerere Coffee Growers Ltd v. Sebaduka and Another** [1970] 1 EA 147, **Masumin Printway and Stationers Limited v. M/S TAC Associates**, Commercial Case No. 7 of 2006, High Court as cited in **Kati General Enterprises Limited v. Equity Bank Tanzania Limited and Another**, Civil Case No. 22 of 2021, High Court of Tanzania at Dar es Salaam (unreported), **Exim Bank (Tz) Ltd v. Jandu Construction & Plumbers Ltd & 5 Others**, Commercial Case No. 135 of 2020, High Court of Tanzania – Commercial Division at Dar es Salaam and **Isa Limited & Another v. Bulyanhulu Gold Mine Limited**, Consolidated Commercial Case Nos. 114 and 115 of 2016, High Court of Tanzania- Commercial Division at Dar es Salaam. On the last objection, he argued that the plaintiff has no locus standi to institute this suit as she is not the owner of the land property situated at Plot No. 125 Block E, Kitwiru, Iringa.

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The 2nd defendant supported her 1st objection that the plaintiff has not attached a copy of board resolution to show that a board resolution was passed to authorize the plaintiff to institute this suit and appoint an advocate to prosecute. To support his stance, he cited the case of **Kati General Enterprises Limited** (supra).

On his last objection, the 2nd defendant's advocate argued that the plaintiff has no locus standi to institute the suit against the 1st defendant as she is not the owner of landed property situated at Plot No. 125 Block E, Kitwiru, Iringa.

The plaintiff challenged the preliminary objections raised by the 1st and 2nd defendants. He argued that the cause of action is stated at paragraph 10 of the plaint. That, therein it is shown that the 1st defendant mismanaged the account of the plaintiff as a result the plaintiff could not pay back the loan. Again, paragraph 8 of the plaint shows the cause of action arose when the plaintiff was served with the demand notice dated 31/1/2022 as shown in the annexures filed by the plaintiff.

On the lack of board resolution, the plaintiff's advocate argued that board resolution is not mandatory as it can be brought in court at any time even as an additional document. In his view, the cited cases by the 1st and 2nd defendants have not stated that a board resolution must be filed during



filing of the case. Had it been the case, then the registry would have rejected the plaintiff's plaint. He cited the case of **A one Products and Bottlers Limited v. Boge Kompressoren Otto Boge GMBH and Another**, Civil Case No. 36 of 2019, High Court of Tanzania- Dar es Salaam (unreported) which held that it is not a requirement for a company to produce a board resolution when filing a plaint. He contended that the only legal requirement as according to Order XXVII Rule 1 of the CPC is the pleadings to be signed or verified by the secretary, director or principal officer of the corporation.

On the lack of locus standi, the plaintiff's advocate argued that the plaintiff has *locus standi* as the suit originates from the loan agreement between the plaintiff and the 1st defendant where the suit property was used as mortgage. Thus, the plaintiff's interest is to protect securities used to secure the loan.

In his rejoinder, the 1st defendant's advocate reiterated his submissions in chief.

I will start with the objection that the suit is incompetent for failure to state the cause of action and when it arose. I have traversed the plaint; indeed, I have not seen any paragraph which contains facts constituting the cause of action against the defendants. Order VII Rule 1 requires the plaintiff

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who moves the court by suits to plead particulars in their plaint to disclose a cause of action. Paragraph 10 of the plaint in my view does not show the cause of action. There is merits in this objection.

On the incompetence of the suit due to lack of board's resolution. I agree with the counsel for 1st and 2nd defendants that the law makes it a pre requisite for a company to pass a board's resolution to sue before it institutes a suit. This has been the position through various case laws such as **Ursino Palms Estate Limited v. Kyela Valley Foods Limited & Others**, Civil Application No. 28 of 2014, Court of Appeal of Tanzania - Dar es Salaam (unreported) where the court observed that when companies authorize the commencement of legal proceedings a board's resolution or resolutions have to be passed. The practice is for the plaintiff to plead such facts in the plaint. I reject the proposition that the reason need not be pleaded as it can be filed as additional list of documents. Additional lists are filed to support pleaded facts not to introduce new facts. In view of the plethora of case law including the **Ursino Palms Estate Case** (supra) to the effect that a board resolution ought to be pleaded, the **A one case** (supra) was decided in per incurium. The plaintiff's plaint does not bear this fact in any of its paragraphs. This objection has merits too.



In addition to that, section 147(1) of the Companies Act, [Cap. 212 R.E 2019] requires that anything done by the company must be sanctioned by a board's resolution. Failure to comply with the said provision renders the act so done to have no legal effect, hence, unenforceable.

As regarding the last preliminary objection, I do not agree with the 1st defendant's counsel that the plaintiff does not have *locus standi* to institute the suit against her. The plaintiff sues on a loan facility advanced by the 1st defendant. Regarding the case against the 2nd defendant, the issue is not *locus standi* rather lack of cause of action. The plaintiff, throughout the plaint, has not stated her cause of action against not only the 2nd defendant but also the 3rd defendant.

In the event, the first and second objections of the 1st defendant are upheld while the third objection is overruled. The first objection of the 2nd defendant is upheld while the second one is overruled. Costs follows the event. The plaint is struck off the court's register.




I.C. MUGETA

JUDGE

11/05/2023

Court: Ruling delivered in chambers in the absence of both parties.

I.C. MUGETA

JUDGE

11/05/2023