

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

AT DAR-ES-SALAAM

CIVIL CASE NO. 70 OF 2018

NANDHRA ENGINEERING & CONSTRUCTION LTD PLAINTIFF

VERSUS

AMBIERE REAL ESTATE LTD 1st DEFENDANT

Y & P ARCHITECS (T) LTD 2nd DEFENDANT

JUDGMENT

Date: 21/04 & 20/06/2023

NKWABI, J.:

The plaintiff has sued the defendants in this Court for judgment and decree as follows:

- a. An order for immediate payment by the 1st defendant of the sum of T.shs 453,543,004/=.
- b. Interest on (a) above at the commercial rate of 20% from the date of filing this suit to the date of judgment.
- c. A declaration order that the 2nd defendant to issue a final certificate upon termination of the contract as required of him.
- d. An order requiring the 1st defendant to pay the plaintiff the sum certified by the 2nd defendant in the final certificate as prayed in (c) above.

- e. Interest at court rate of 7% on the decretal sum from the date of judgment to the date of full satisfaction of the decree.
- f. General damages to be assessed by this Honourable Court.
- g. Costs of the suit; and
- h. Any other relief(s) that this honourable Court may deem fit to grant.

The 1st defendant resisted the suit. The plaintiff brought one witness and tendered five exhibits. The 1st defendant entered her defence and tendered four exhibits. After the closure of the defence case, the counsel for the parties prayed they file closing submissions, which they did.

In the final submissions filed by the counsel for the 1st defendant, there was raised an objection against the suit to the effect that the witness of the plaintiff was cross-examined as to whether he had authority to file this suit where he said he had none. The counsel for the 1st defendant argued that the suit contravenes the legal requirement which makes the suit to be without legal standing before the court for being filed by an unauthorized person. He cited **Ursino Palm Estate Ltd v. Kyela Valley Foods Ltd**, Civil Application No. 28 of 2014 which quoted with approval, the case of **Pita Kempap limited v. Mohamed Abdulhussein**, Civil Application. No. 128/2004 C/F 69 of 2005 CAT (unreported).

Indeed, the plaintiff's witness was cross-examined about it where he stated that he was authorized to institute the case. He added that he did not know if the authorization is in court file.

Looking at the exhibits that were tendered in court, one could see that exhibit P.1 is the contract for construction, exhibit P. 2 is interim certificates for payment, exhibit P.3 is the letter for termination of contract, exhibit P.4 is a letter replying exhibit P.3 and exhibit P5 is the demand notices for payment. There is neither a board resolution nor shareholders' resolution tendered in court as exhibit.

When I probed the counsel for the plaintiff as to the objection, he stated that the objection was abandoned, thus the suit was heard on merit. In his view, I think, he thought that that cannot be determined at this stage.

I have considered the argument of both parties, I am of the view that the suit is incompetent as it was filed without the authorization through either a board resolution or a shareholders' resolution. That resolution ought to have been attached to the plaint and admitted by the defence in the written statement of defence or tendered during the hearing stage as the suit

proceeded to be heard whereby witnesses of both parties were heard.
Neither was done.

In the final analysis, the objection on point of law is sustained. I need not determine the merits of the suit. The suit is, thus, struck out with costs.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 20th day of June, 2023.



A handwritten signature in blue ink, appearing to read 'J. F. Nkwabi', is written above the printed name.

J. F. NKWABI

JUDGE