

**IN THE COURT OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**  
**CIVIL CASE NO 08 OF 2020**

**PRIME PROPERTIES LTD.....1<sup>ST</sup> PLAINTIFF**

**HASNAIN GULAM HUSSEIN.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**AZANIA BANK LIMITED.....1<sup>ST</sup> DEFENDANT**

**MURTAZA SHERALI RASHID.....2<sup>ND</sup> DEFENDANT**

**FARIDA MURTAZA SHERALI RADHI.....3<sup>RD</sup> DEFENDANT**

**KAZIM MURTAZA SHERALI RASHID.....4<sup>TH</sup> DEFENDANT**

**MUHAMMADRIDHA MURTAZA SHERALI RASHID.....5<sup>TH</sup> DEFENDANT**

**JANETH PETER ISHENGOMA.....6<sup>TH</sup> DEFENDANT**

**MARK AUCTIONEERS AND COURT BROKERS**

**COMPANY.....7<sup>TH</sup> DEFENDANT**

**SMX LIMITED.....8<sup>TH</sup> DEFENDANT**

14<sup>th</sup> & 14<sup>th</sup> June 2023

**F. H. Mahimbali, J.**

**RULING**

This ruling is in respect of the legal concern whether the case is properly before the Court as it concerns the body corporate commencing a suit without an instrument of Board Resolution.

Both counsel were of the unanimous position that in line with the position of this Court and Court of Appeal (See **Kati General Enterprises**

**Limited V. Equity Bank Tanzania Limited and Another**, Civil Case No. 22 of 2018, HC at Dsm, **Oxley Limited V. Nyarugus Mine Company Limited and Another**, Commercial Case No. 14 of 2022, HC – Commercial Division at DSM, **Lwempisi General Company Limited and Another V. Richard Kweyamba Joseph Rugarabamu**, Commercial Case No. 6 of 2022, HC – Commercial Division at DSM, **Unction Trading Company V. KCB Bank and Another**, Land Case No. 222 of 2023, HC – Land Division at Dsm, **Sogecoa Tanzania Limited V. Sylvia Simoyo Saidi Namoyo**, Land Case No. 32 of 2022, HC – Land Division) which all had a common position as set out in the famous Ugandan case of **Bugeregere Coffee Growers Ltd V. Sebaduka and Another**, Civil Suit No. 546 of 1968 (1970) EA 147, that when companies authorize the commencement of a legal proceeding, a resolution or resolutions have to be passed either at a company or Board of Directors' meeting and recorded in the minutes.

However, Mr. Kyariga N. Kyariga, learned counsel for the Plaintiff was of the view that this Court could take a different view by the Court of Appeal in the recent Case of **Simba Papers Convertes Limited Vs. Packaging and Stationery Manufacturers Limited and Another**, Civil Appeal No. 280 of 2017. Nevertheless, considering the position I sides in the case of **Stanbic Bank Tanzania Limited Vs Sumry Bus Services Company Limited & 4 Others**, Civil Case No. 125 OF 2018 it has been hard to rule otherwise. Therefore, by consent of both learned Counsel, it was obvious that the main case as well as the counterclaim as raised by the 1<sup>st</sup> defendant suffer the similar legal defect, therefore liable to struck out as I hereby do in respect of the 1<sup>st</sup> plaintiff's case.

Despite this venture, Mr. Kyariga N. Kyariga argued that since the case for the Plaintiff was by two plaintiffs:

**1. PRIME PROPERTIES LTD as 1<sup>st</sup> PLAINTIFF and**

**2. CHAMSAIN GULAM HUSSEIN as 2<sup>nd</sup> PLAINTIFF,** he was of the view that the strike out order should only be in respect of the 1<sup>st</sup> plaintiff's case. The second plaintiff being a natural person, his suit should proceed and that the witness was available online linked from Dubai ready for his testimony.

Ms. Upendo, learned counsel for the 1<sup>st</sup> defendant was of the different view, arguing that since the suit was jointly and severally tried by the plaintiffs, equally the incompetence aspect of the case affects the whole case. Thus, should be struck out as a whole.

Furthermore, she raised an issue of verification clause of the 2<sup>nd</sup> Plaintiff's case as being improperly verified. Therefore, the case by him be struck out as well.

Mr. Kyariga learned counsel now for the remaining 2<sup>nd</sup> Plaintiff was of the view that the manner the said verification clause has been verified, it does not suggest that the named person is the second plaintiff. He then submitted that the same is fine in law. When probed by the Court whether a person not party to the case can avail information to the verifying advocate of the case, Mr. Karyiga became stammering, but then said, the person named in the verification clause is not stranger but the second plaintiff, contending that his name was badly written. He thus prayed for an amendment as the error is curable.

As stated above since the first plaintiff is not a natural person, he being legal person, legal proceedings by her are only commenced when there is a sanction by board resolution. As it was not, the same was not properly before the Court. Thus, the 1<sup>st</sup> Plaintiff's claims as well as the counterclaim are hereby struck out.

Whether the suit by second plaintiff can now proceed. There has been opposing view (for and against). I agree with Kyariga N. Kyariga learned advocate for the Plaintiffs that when a suit is jointly filed by several plaintiffs, each one has his own interest but only that the cause of action might have arisen out of common transaction. Therefore, a proof of one party is not necessary a proof by all. In the circumstances therefore, the suit by the second Plaintiff can proceed as it is not affected by the 1<sup>st</sup> plaintiff's legal effect.

However, there is a legal issue on verification clause by the second plaintiff. Is it a proper verification Clause as per law; and effective?

As per title of the case in the amended plaint, the plaintiffs are

1. Prime properties Limited and
2. Hasnain Gulam Hussein

The verification clauses are worded as follows, I quote:

*I, Tony Makinda, being General Manager of the Plaintiff's Company (Sic) do hereby verify that all what is stated in paragraph 1,2,3,4,5,6,7,8,9,10,11,12,13,14, and 15 are true to the best of my knowledge.*

***I, Jerome Joseph Msemwa, DO HEREBY verify that all what is stated in pagraph 1 to 15 above inclusive is based on information received from Chamsain Gulam Hussein which information I verify believe to be true***

***Verified of Dar es salaam this 25<sup>th</sup> day of March 2020.***

.....

***sgd***

*Principal Officer of the 1<sup>st</sup>  
Plaintiff able to depose to  
the facts of the case.*

.....

***Sgd***

*Advocate for the 2<sup>nd</sup>  
Plaintiff dully authorised to  
sign these Pleadings.*

This legal issue on verification clause calls for importance of the verification Clause as who can verify.

I have keenly digested the legal submissions argued by both sides. To start with, I better review what order V1, Rule 15 says on rule of pleadings:

*15.-(1) Save as otherwise provided by any law for the time being in force, **every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.***

*(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, **what he verifies of his own knowledge and what he verified upon information received and believed to be true.***

*(3) **The verification shall be signed by the person making it and shall state the date on which and***

***the place at which it was signed. [Emphasis mine].***

According to the facts of this case, it appears that the same facts have been verified by two persons : one is the principal Officer of the 1<sup>st</sup> plaintiff and Mr. Jerome Msemwa Counsel for the 2<sup>nd</sup> plaintiff but on information given to him by one **Chamsain Gulam Hussein**. The issue is, who is this **Chamsain Gulam Hussein**. Is he a party to the case? The reply is no. Is he counsel for the party? The answer is no. Who is he then? The law is, the person verifying shall either be the party or **some person proved to the satisfaction of the Court to be acquainted with the facts of the case.**

In this case the court has not been satisfied how the said stranger person **Chamsain Gulam Hussein** is acquainted with the facts of this case involving Hasnain Gulam Hussein. This then contravenes order V1, Rule 15(1) of the CPC.

It is therefore not enough that the said pleading is signed, but verifying person must be proved to have been acquainted with the facts of the case to the satisfaction of the Court. In this case, that rule strictly speaking has not been complied with (see **Aloys Lyanga Vs Inspector General of Police and Another** (1997) TLR 101 – 104, **Francis M. Njau vs Dar es salaam City Council**, Civil Appeal No 28 of 1994, CAT at Dar es Salaam).

Since the integrity and foundation of any case is based on the properly verified pleadings, it is not enough that the same is signed, but the person verifying must be proved to the satisfaction of the court that is acquainted with the facts of the case he is verifying. In the absence of that proof, the purported verified pleadings become unworthy of credit before the court of law. It merely remains as a decoration as there is nothing




verifiable and therefore nothing holds the purported filed case. Since the said **Chamsain Gulam Hussein** has not satisfied the Court as who is he in the case to be such a person possessed with the acquainting facts other than the party to the case, I find the verified plaint on his part as wanting and bad in law.

What is the way forward then, the answer is as provided under Order VI, Rule 16 that the court may order to be struck out or amended. On my side I consider the error being fundamental and affecting the case as a whole.

On that stance, the verification clause by the said 2<sup>nd</sup> plaintiff suffers legal deficiency thus liable to be struck out with costs as I hereby do.

DATED at DAR ES SALAAM this 14<sup>th</sup> day of June, 2023.



F.H. Mahimbali

Judge

Ruling delivered today the 14<sup>th</sup> of June, 2023 before me in the presence of Mr. Kyariga N. Kyariga learned advocate for the plaintiff and Ms Upendo Mmbaga for the 1<sup>st</sup> to 5<sup>th</sup> defendants and Ms Inviolato Wangoma for the 8<sup>th</sup> defendants and Ms. Aurelia Bahati RMA, present in Chamber Court.



F.H. Mahimbali

Judge