

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 232 OF 2021

*(Arising from the decision of the Resident Magistrate Court of Dar es Salaam at Kisutu
in Civil Case No. 122 of 2019)*

ERICK JOHN MACHIWA.....APPELLANT

VERSUS

STANDARD CHARTERED BANK TANZANIA

LIMITED.....RESPONDENT

JUDGMENT

01/06/2023 & 15/06/2023

POMO, J

The appeal herein by Erick John Machiwa is on his dissatisfaction with the judgment and decree passed on 29/3/2021 by the Resident Magistrate's Court of Dar es Salaam at Kisutu in Civil Case No.122 of 2019 (the Trial Court) Hon. R.W. Chaungu, PRM against his favour. Four grounds of appeal are fronted, namely: -

- 1. That, the learned trial magistrate erred in law and fact for failure to ascertain and determine if there was a loan agreement between the Appellant and the Respondent*

- 2. The learned magistrate erred in law and fact for failure to consider that the Respondent had failed to prove the case on balance of probability as such occasioned a miscarriage of justice to the appellant*
- 3. The learned magistrate erred in law and fact for failure to ascertain and determine properly the issues framed and hence reached unfair decision*
- 4. The learned magistrate erred in law and fact for basing on insufficient evidences of the Respondent and hence reached a wrong decision*

The background to the appeal, albeit briefly, is as follows. On 8th July, 2019 the Respondent sued the appellant before the trial court for recovery of an outstanding personal loan of Tshs. 33,459,761.59/- out of the Tshs. 35,000,000/- loan advanced to him in February,2014 payable within fifty-eight (58) equal monthly instalments which commenced on 5th April,2014 and ended on 25th January,2019. The loan attracted 19% interest. During the time the Appellant was an employee of MIC (T) Limited and the loan advanced to him was based on the salary he was receiving out of his employment. That, the Appellant only managed to service monthly instalments for April, 2014 to November,2014 then he stopped. Based on the above facts, the respondent commenced the said suit against him and having paraded one witness and two exhibits made the trial court believe the respondent to have proved her suit on the balance of probability against

the Appellant henceforth decided in favour of the Respondent. As hinted, the Appellant is aggrieved hence this appeal.

On 1/06/2023 when the appeal was called on for hearing Mr. Omega Myeya, learned counsel appeared for the Appellant while Mr. Seni Songwe, learned advocate appeared for the Respondent. Mr. Seni prayed for short adjournment to afford him time for appeal hearing preparations and by consensus the hearing was adjourned to 2:00 PM noon on the same date, i.e 1/6/2023. At the time set the court resumed but the respondent defaulted appearance hence appeal hearing had to proceed *ex parte* against her

Before arguing the appeal Mr. Myeya, dropped the 4th ground of appeal and remained with three grounds.

Arguing the first ground, it was Mr. Myeya's submission that there was no loan agreement tendered by the respondent to establish that the Appellant is indebted thus the trial court could have taken trouble to find out if the loan agreement existed and if any then whether it bound the parties. That, the respondent had a duty to tender loan agreement as failure of which is against the principle that he who alleges has the duty to prove, the proof

which is on balance of probability as per S.110(1) & (2) of TEA [Cap. 6 R. E. 2022] he then asserted that the appeal is thus merited.

Having argued the first ground of appeal, Mr. Myeya combined the 2nd and 3rd grounds and argued them altogether. Submitting, it was his contention that there was insufficient evidence from the respondent hence the decision was a wrong one. That, the respondent is a bank, thus when bringing a suit, it had a duty to have board resolution authorizing instituting the suit. Such requirement was not heeded to by the Respondent. In support, he cited the decision of this court in **Giant Machine and Equipment Ltd Vs Gilbert R. Mlaki and Another Civil Case No. 5/2019 High Court at Mbeya** (unreported) at page 3 – 4. That, the rationale behind the requirement for board resolution is to give power the respondent to institute the suit. That, by determining the Respondent's suit without such board resolution led to a wrong decision.

Arguing further, Mr. Myeya submitted that the Respondent's **exhibit P1** she tendered which is electronic data message showing a loan agreement did not follow the legal requirement for tendering it. That, there was no affidavit in support of the tendering of it. Also, no explanation as to where it was stored. He thus argued that the omission is contrary to **S.18 (2) (a) &**

(b) of the Electronic Transaction Act, [Cap. 442 R. E. 2022]. The authenticity of exhibit P1 is therefore in question. To bolster, he referred the decision of this court in **Simbanet Tanzania Ltd Vs Sahara Media Group Ltd, Commercial Case No. 2/2016 High Court (Commercial Division) at DSM (unreported)** at page 5 last paragraph. That, the requirement was not complied with by the trial court adding that the admitted exhibit P.1 was insufficient and warranted the court to arrive at wrong decision. In the end, Mr. Myeya concluded his submission by asking the court to find the appeal merited and it be allowed with costs.

Having heard the submission in support of the appeal and gone through the pleadings and the trial court record in general, the issue for determination is whether the appeal herein is merited or not.

I will start with an issue raised that to the effect that the Respondent's suit was filed without board resolution authorizing the filing of it. Although it was not pleaded in the appellant's grounds of appeal, nevertheless it goes to the root of the matter before the trial court in a sense that it is a jurisdiction issue. It can be raised at any stage of the case including during an appeal. See: **Tanzania Revenue Authority Vs Kotra Company Limited, Civil Appeal No.12 of 2009 CAT at Dar es Salaam; Baig and**



Butt Construction Ltd vs Hasmat Ali Baig, Civil Appeal No.9 of 1992 CAT; Fanuel Mantiri Ng'unda vs Herman Mantiri Ng'unda & 20 Others Civil Appeal No.8 of 1995 CAT; Richard Julius Rukambura vs Issack Ntwa Mwakajila and Another, Civil Application No.3 of 2004 CAT at Mwanza (All unreported).

For instance, in **Kotra Company Limited** case (**supra**) the Court of Appeal had this to state at page 7: -

*"It is now settled law that **the question of jurisdiction is fundamental in court proceedings and can be raised at any stage, even at the appeal stage.** The court, **suo motu**, can raise it. In **Baig and Butt Construction Ltd vs Hasmat Ali Baig, Civil Appeal No.9 of 1992** this court raised suo motu in an appeal to it the question of the High Court not having jurisdiction to hear a review case regarding an order made by the District Registrar. It said the judge of the High Court had no jurisdiction as only the District Registrar could review the order he had made earlier...."*

Guided by the above authorities, although the issue of lack of board resolution in the respondent's suit before the trial court was not raised nevertheless, I have to determine on the ground that goes to the root of the jurisdiction of the trial court on whether it had power to determine such suit of not.

I have taken trouble to go through the trial court record, particularly into the Respondent's plaint initiating the suit, and from it, I find there is nowhere in it is pleaded nor annexed that the board resolution was passed authorizing the filing of the suit. In my view, as correctly so submitted by the counsel for the appellant, this is a compulsory legal requirement to be complied with whenever a suit by a company is institutes before a court of law. See: **Simba Papers Converters Limited vs Packaging and Stationery Manufacturers Limited and Another**, Civil Appeal No.280 of 2017 CAT at Dar es Salaam; **Ursino Palms Estate Limited Vs Kyela Valley Ltd & 2 Others**, Civil Application No.28 of 2014 CAT at Dar es Salaam; (both unreported); **Bugere Coffee Growers Limited Vs Sebaduka and Another** [1970] EA 147; **Tanzania American International Development Cooperation 2000 Limited (TANZAM) & Another Vs First World Investment Auctioneers, Court brokers**, Civil Case No.15 of 2017 HC at Arusha (Unreported); to mention but a few.

For instance, in **Simba Papers Converters Limited** case (*supra*) the court had this to state at page 20: -

"Since the claimant was a company, it was not proper to institute a suit on behalf of the company without its forma authority. This required the express authority by

way of resolution of the Board of Directors to institute the case in the absence of which, the suit in the name of the company was defective and it ought to have been struck out".

Since the Respondent's suit was filed without board resolution authorizing filing of it, I find merit in the appeal. And since the same suffice to dispose the appeal without dwelling in determining the rest of the grounds of appeal, guided by **Simba Papers Converters Limited** case (**supra**) I hereby allow the appellant's appeal and I therefore hold that, the trial court had no jurisdiction to entertain the Respondent's suit before it. It ought to have struck it from the beginning as the suit was defective *ab initio* having been filed without board resolution authorizing it to filed.

Consequently, I hereby nullify the trial court record; proceedings; judgment and orders thereto. The appellant shall have his costs. It is so ordered

Right of Appeal explained to any aggrieved party

Dated at Dar es Salaam this 15th day of June, 2023



MUSA K. POMO

JUDGE

15.06.2023

Judgment delivered in chamber on this 15th June, 2023 in presence of Mr. Omega Myeya and Ms. Hilda Msanya, learned advocates for the Appellant and Salmin Misongo legal officer for Seni Songwe, learned advocate for the Respondent respectively



A handwritten signature in blue ink, appearing to read "M.K. Pomo", is written above the printed name.

MUSA K. POMO

JUDGE

15.06.2023

