

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

LAND CASE NO. 24 OF 2020

SAFINA HOLDINGS CO. LIMITED.....PLAINTIFF

VERSUS

AMANA BANK LIMITED.....1st DEFENDANT

JULIUS RAPHAEL NGEKELA.....2nd DEFENDANT

ADILI AUCTION MART.....3RD DEFENDANT

GRANITECH (T) CO. LIMITED4th DEFENDANT

(NECESSARY PARTY)

THE REGISTRAR OF TITLES5th DEFENDANT

THE ATTORNEY GENERAL6TH DEFENDANT

RULING

S.M. MAGHIMBI, J:

The current suit is on a claim of ownership over landed propertied described as Plot No. 2186 Block "D" Mbezi, and Plot No. 319 Ex Daya Estate, Ilala in

Dar es Salaam Region ("the suit properties"). The two Plots No. 2185 and 2186 are purported to have been sold by the 1st defendant to the 2nd defendant, a sale which the applicant prayed for this court to declare to be invalid, unjustified and contrary to the law. It is apparent on the pleadings that the plaintiff is corporate body as pleaded under para 1 of the plaint.

On the 02nd day of March, 2023 when the matter came for first pre-trial conference, I directed the plaintiff's advocate to address the court on the competence of the suit with regard to the absence of Board Resolution to authorize the institution of this suit. The address were to be done by way of written submissions. The applicant's submissions were drawn and filed by Mr. Peter Kibatala, learned Advocate while the 1st to 3rd defendants' submissions were drawn and filed by Ms. Georgina Bazil, learned advocate. The 4th and 5th defendants opted not to file any submissions.

In his submission to address the court, Mr. Kibatal submitted that there are two schools of thought on the subject; one is that antecedent proof of a Board Resolution is required, while the other school of thought hold consistently that such proof can be produced at any time during hearing, and that failure to exhibit the same at the time of filing of a Suit is not fatal. He advocated for the latter school, and in stating his reasons, he started by

citing the decision of the Court of Appeal when it had an opportunity to address the issue in but, rather unfortunately, did not deal with it, in **Civil Appeal No. 225 of 2019, The Registered Trustees of St. Anita's Greenland Schol (T) and 6 Other Versus Azania Bank Limited**. He argued that had such been a pure Jurisdiction issue that goes to the root of the case, the Court of Appeal would certainly have dealt with it. That the fact the Court of Appeal declined to deal with it for the stated reasons, is because it is a factual issue that does not affect Jurisdiction or validity of a Suit.

He then turned to the Civil Procedure Code, Cap 33 [RE 2022] ("the CPC") where he submitted that the Code has not unearthed any requirement of annexing a Board Resolution at the time of filing a Suit and that the same applied for the Companies Act Cap 212 (RE 2002). He pointed out that even the most recent amendments of the Civil Procedure Code have not codified any such requirement; at most the said CPC amplifies, vide Section 3A and 3B, the need to uphold substantive justice. That even the eminent authors on Civil Procedure, including Sarkar's Commentary on the Code of Civil Procedure, 1908, Dwedevi Law Agency; have not written on

any mandatory requirement of annexing a Board Resolution at the time filing a Suit.

He supported his submission by citing several cases including **Civil Case No. 220 of 2012, Betam Communications Tanzania Limited Vs. China International Telecommunication Construction Corporation and Another** (Hon. Muruke,J) at pages 474-475, **Commercial Case No. 90 of 2020 Between CRDB Bank Plc Versus Ardhi Plan Limited and 4 others** (Hon. Philip, J) at pages 6 -9, Civil Case No. 36 of 2019 Between **A one Product and Bottles Limited Versus Boge Kompressoren Otto Boge Gmbh & Co. Kg** (Hon. De- Mello,) as well as **Commercial Case No. 97 of 2015 Between Investment House Limited Versus Webb Technologies (T) Limited and 2 others** (Hon. Mansoor,J) at page 3 -10.

He then submitted that all the decisions that belong to other school of thought were predicated upon an objection raised by the Defendant in the respective cases, which is not the case at present.

He then pointed that it is trite law that where there are conflicting decisions of the same Court, the Court is enjoined to follow those that best compliment justice and gives efficacy to a speedy resolution of substantive dispute between parties. That striking out a suit for a non-jurisdictional issue

only serves to erode trust in the Court and to prolong disputes. That a case that has matured to the stage of 1st Pre-trial Conference ought not to be struck out on a non-jurisdictional issue.

In reply, Ms. Bazil submitted that the case before this Honourable Court is instituted since the year 2020 and as per the Court's records, the Plaintiff secured an order against the 2nd Defendant and his agent or appointees to be restrained from taking possession of and evicting the agents, appointees and employees/ staff of the Applicant from the suit properties that were previously, prior to this suit registered in the name of the Plaintiff, pending hearing and final determination of this suit. She therefore prayed that, for safeguarding interest of parties on merits, the omission to attach board resolution in the Plaint be relaxed up to the stage of hearing of the substantive matter. To that effect, she submitted, a preliminary objection on lack of a board resolution should be raised on the day the Suit is scheduled for hearing otherwise striking out the matter at this preliminary stage will defeat the requirement of Order XIII Rule 1(1) of the Civil Procedure Code, that allow filing of list of additional documents at any time before hearing of the case.

Having heard the parties submissions, it is obvious that the parties do not dispute that there is a school of thought that requires a Board Resolution to be filed in order to show that the body corporate authorized the institution of suit. The parties did not further dispute the fact that in this case, and for the three years that the case has been pending, no board resolution has been filed in court. From Mr. Kibatala's submissions trying to convince the court to take one line of argument, he did not make any submission on the fact that there was actually a Board Resolution that was passed to institute the current suit. His only argument was based on the fact that it was not filed in court. From the status of affairs, the court cannot be sure whether the company actually instituted a suit or one person thought they should fight to re- possess their land sold by a mortgagee. The importance of having a board resolution will be elaborated so as to give insight to the parties on why there should be a board resolution and the subsequent shortfalls that may befall a suit in its absence.

The requirement for a company to have a board resolution before initiating legal proceedings in court was resolved way back in the 70's in the Ugandan case of **Bugerere Coffee Growers Limited Vs. Sebaduka and Another [1970] EA 147**, where the court held:

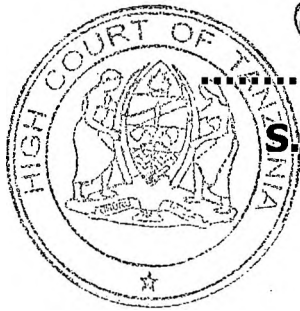
*"When companies **authorize the commencement** of legal proceedings, **a resolution or resolutions have to be passed** either at a company or Board of directors meeting and recorded in the minutes."*

The above position is not foreign in our jurisprudence as it was adopted by the Court of Appeal in the case of **Pita Kempap Ltd. v. Mohamed L A. Abdulhussein, in Civil Appeal No. 128 of 2004 & 69 of 2005** (unreported) and that of **Ursino Palms Estate Ltd vs Kyela Valley Foods Ltd & Others (Misc. Civil Application No. 28 of 2014) [2018] TZCA 48 (14 June 2018)**. Given the fact that the courts of law have precedented that an action by a company has to be authorized by a Board Resolution, Mr. Kibatala's argument that striking out a suit for a non-jurisdictional issue only serves to erode trust in the Court and to prolong disputes.

The absence of a Board Resolution has many implications which may even expose an honest defendant to greedy shareholders who institute suits without having a resolution to do so. It may prevent the defendant from being reimbursed of his costs in case a suit ends in his favor and a majority of directors/shareholders disown any institution of a suit proof of which should have been by way of a Board Resolution.

The above said, I find the suit before me to be incompetent for lack of a Board Resolution to institute the suit. The same is hereby struck with no order as to costs.

Date at Dar es Salaam this 22nd day of May 2023




S.M. MAGHIMBI
JUDGE