

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 202 OF 2022

(Arising from Civil Case No 20 of 2022 of Resident Magistrate Court of Dar es Salaam at
Kisutu dated 5th December, 2022 before Hon. Kabate R-PRM)

EQUITY BANK (T) LIMITED..... APPELLANT

VERSUS

BILO STAR DEBT COLLECTORS COMPANY LIMITED..... RESPONDENT

RULING

Date of last Order: 15/06/2023

Date of Ruling: 14/07/2023

E.E. KAKOLAKI, J.

This appeal by Equity Bank (T) Limited arises from the decision of the Resident Magistrates Court of Dar es Salaam at Kisutu, in Civil Case No.20 of 2022 where the appellant was ordered to pay the respondent the sum of Tsh. 106,784,100/=, being the principal debt, Tsh. 30,000,000/=as compensation for breach of contract, and costs of the suit.

In nutshell the factual part of this case as scanned from the records goes thus, the appellant had engaged in an agreement with the respondent for

collection services of her debts from the loan defaulters and sell mortgaged properties and cars pledged by borrowers as security for the loaned money. It is alleged that, the appellant defaulted in paying for the services rendered by the respondent, the result of which the respondent issued her with demand notice claiming for the sum of Tsh.106,784,100.00 allegedly accrued from the service rendered by the respondent on diverse period of time. In response to the demand notice, appellant advised the respondent to sell all the attached cars in the yard so as to settle the claimed amount, but the respondent could not take the offer instead she attempted to repossess appellant's motor vehicle in recovery of her claimed amount, the act which annoyed and moved the appellant to sue her vide Civil Case No. 20 of 2022 for being embarrassed and have her operation paralyzed as the said motor vehicle was in daily use. The appellant therefore prayed for declaratory orders that, the respondent attempt to seize her motor vehicle with Registration No. T.467 DQW is unlawful, declaration that the respondent has no any valid claim against her, an order of permanent injunction against respondent its agent, employees, servant or any person acting under its instruction restraining them from unlawfully attaching, seizing or sale of any of her properties, general damages, interest at the court rate of 7 % per

annum, costs of the suit and any other reliefs the court may deem fit and just.

Upon being served with a plaint the respondent filed her WSD together with a counter claim claiming for the following reliefs against the appellant, payment of Tsh. 144,001,300/= for repossession services and other associated cost directly emanating from the instructions by the appellant to her including storage, transportation, advertising and security since 2017 to 31st January 2022, general damages, interest at court rate from the date of judgment to the date of payment in full and cost of the suit.

After full hearing of both parties' cases, the Court dismissed appellant's suit but was satisfied that, the respondent had proved her case against the appellant in the counter claim thus awarded her the reliefs as alluded to above. Aggrieved, the appellant preferred the instant appeal fronting ten (10) grounds of grievances which for the reasons to be apparent soon I shall not reproduce them.

At first hearing of the appeal took the form of written submission, in which both parties had representation. Applicant had representation of Caroli V. Tarimo while the respondent enjoyed the legal services of Ms. Shamimu Kikoti both learned advocates and both parties filed their respective

submission in accordance with the scheduled orders. In the course of preparation to compose the judgment to that effect, this Court noted and suo motu raised an issue as to whether the two suits by the parties were properly preferred and entertained by trial court without company board resolution. Both parties were therefore invited to address the Court on the said issue in which the appellant was represented by Mr. Kephas Mayenje and the respondent enjoyed the services of Ms. Shamimu Kikoti, both learned counsel.

Addressing the Court on the issue raised by the Court suo motu Mr. Mayenje was very categorical that, as per the pleadings filed by both parties in the main suit and counter claim in Civil Case No. 20 of 2022, none of the parties either annexed the company board resolution or pleaded its existence. According to him, company's board resolution is a necessary document to be pleaded and annexed to the plaint before any company prefers a suit against the other party, failure of which renders the entire proceedings and judgment therefore a nullity. To reinforce his stance the learned counsel referred the Court to the case of **Simba Papers Converters Limited Vs. Packaging and Stationary Manufactures Limited and Another**, Civil Appeal No. 280 of 2017 (CAT). He said, similar position was taken by this

Court **WellWorth Hotels and Lodges Ltd Vs. East Africa Canvas Co. Ltd & 4 Others**, Commercial Case No. 107 of 2020 (HC), where the Court also went further to hold the requirement affects also the suit preferred by the way of counter claim. Further to that the case of **Ally Ally Mchekanae and Another Vs. Hassady Noor Kajuna and Another**, Civil Case No. 03 of 2022, was cited to cement the position that, the board resolution is also a requirement when the counter claim is raised by the company in the main suit. As in this matter neither the appellant in the main suit nor the respondent in the counter claim either annexed a copy of board resolution in the plaint or pleaded its existence, the whole proceedings and judgment of the trial court in Civil Case No. 20 of 2022 were rendered a nullity, thus should be quashed and set aside and so prayed without costs.

On the respondent's side Ms. Kikoti adopted the position taken by the counsel for the appellant and submitted that, both main suit by the appellant and counter claim by the respondent before the trial Court were defective for want of board resolution hence rendered the whole proceedings and judgment thereof a nullity as submitted by Mr. Mayenje. Like Mr. Mayenje she prayed the Court to quash the proceedings and set aside the judgment in Civil Case No. 20 of 2022, without costs.

Having taken time to consider the submission from both parties and perused the trial court record including the pleadings in line with the issue raised by the Court suo motu, it is true and I agree with both legal minds' submission that, as the law stands no suit shall be preferred by the company unless the facts related to existence of company board resolution are pleaded in the plaint and its copy annexed thereto. The object for such requirement is to ensure the company's affairs are run and managed by board of directors and to avoid unilateral decisions or acts of an individual person which might be detrimental to the company and other shareholders, thus protect shareholders' interest from court's decision that might affect them but not being aware of. See the cases of **New Life Hardware Company Limited and another Vs. Shandong Locheng Export Co. Limited and 2 others**, Commercial Case No. 86 of 2022 and Misc. Commercial Application no. 135 of 2022 and **Oxley Limited Vs. Nyarugusu Mining Company Limited and Another**, Commercial Case No. 14 of 2022 (both HC),

It is settled law and this Court and Court of Appeal have pronounced themselves in a number of cases that, a suit filed by the company without having its board resolution pleaded and the copy thereof annexed is incompetent before the Court and any attempt by the trial Court to proceed

in disregard of the same risks the case of being nullified for rendering the entire proceedings and the judgment there of a nullity. See the cases of **Simba Papers Converters Limited** (supra) and **Aloyce Elias Kitambi and 2 Others Vs. CRDB Bank PLC and 2 Others**, Civil Case No. 40 of 2018. On the principle of law regarding the requirement for obtaining board resolution before the company prefers any suit in Court, the Court of Appeal in **Simba Papers Converters Limited** (supra), declared its position when said that:

"In the premises, since the claimant was a company, it was not proper to institute a suit on behalf of the company without its formal authority. This required the express authority by way of resolution of the Board of Directors to institute a case in the absence of which, the suit in the name of the company was defective and it ought to have been struck out."

The above position of the law notwithstanding the requirement for board resolution applies also to the counter claim (suit) filed by the company as in law under Order VIII Rules 9(2) read conjunctively with Order VII of the Civil Procedure Code, [Cap. 33 R.E 2019], a counter claim *is substantially a cross suit which should be treated, for all purposes as an independent action*. See the cases of **Nic Bank Tanzania Limited Vs. Hirji Abdallah Kapikulila**,

Civil Application No. 561/16 of 2018 (CAT), **Aloyce Elias Kitambi and 2 Others** (supra), **WellWorth Hotels and Lodges Ltd** (supra) and **Ally Ally Mchekanae and Another** (supra).

In this matter as conceded by both counsel neither the appellant in the main suit nor the respondent in the counter claim in Civil Case No. 20 of 2022, pleaded in the pleadings or annexed the copy of board resolution in compliance with the mandatory requirement of the law. The omission therefore I find rendered the entire proceedings and the judgment and orders thereto a nullity. Invoking the revisionary powers bestowed to this Court in under section 44(1)(b) of the Magistrates Court Act, [Cap. 11 R.E 2019] I proceed to quash the proceedings in Civil Case No. 20 of 2022 and set aside the judgment and orders thereto.

As the appeal before this Court is originating from the nullity, I hold the same is incompetent before the Court and proceed to strike it out. Since the issue disposing of the matter was raised by the Court I order each party to bear its own costs.

Ordered accordingly.

Dated at Dar es Salaam this 14th July, 2023.



E. E. KAKOLAKI

JUDGE

14/07/2023.

The ruling has been delivered at Dar es Salaam today 14th day of July, 2023 in the presence of Mr. Kephass Mayenje, advocate for the appellant and Mr. Oscar Msaki, Court clerk and in the absence of the respondent.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

14/07/2023.

