

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
DODOMA DISTRICT REGISTRY  
AT DODOMA**

**CIVIL CASE NO. 01 OF 2021**

**LOT GENERAL SUPPLIES.....PLAINTIFF**

**VERSUS**

**ITIGI DISTRICT COUNCIL .....1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL OF THE  
UNITED REPUBLIC OF TANZANIA.....2<sup>ND</sup> DEFENDANT**

**THE SOLICITOR GENERAL OF THE  
UNITED REPUBLIC OF TANZANIA.....3<sup>RD</sup> DEFENDANT**

**RULING**

Last Order: 03<sup>rd</sup> August 2023

Ruling: 04<sup>th</sup> August 2023

**MASABO, J:-**

The gist of this ruling is a two limbed notice of preliminary objection raised by the defendants contesting the competence of the suit. Its two limbs are that, *one*, the suit is bad in law for suing a wrong party and *two*, the plaintiff has no authority to institute the suit.

The hearing of the preliminary objection proceeded ex parte after the plaintiff defaulted appearance. The defendants were represented by Ms. Jennifer Kaaya Senior State Attorney and Mr. Nicodemus Agweyo, learned state Attorney. Submitting in support of the first limb of preliminary

objection, Mr. Agweyo passionately argued that the plaintiff has wrongly sued the Solicitor General, as per the law establishing the Office of the Solicitor General, the role of the Solicitor General is to represent the government in suits for or against the Government and can not be made a party. To derive his point, he referred this court to section 4 of the Act which stipulates the duties of the Solicitor General and fortified his argument with the decision of this court in **Uhuru Hospital Limited vs National Health Insurance and Others**, Misc. Civil Application No. 111, HC AT Mwanza, where upon holding that the Solicitor General was wrongly impleaded, it struck out his name under Order I rule 10(2) of the Civil Procedure Code, Cap 33 RE 2019.

As to the second limb of the objection, he submitted that the suit has been instituted by a person who lacks authority. He amplified that, as per paragraph 1 of the plaint, the plaintiff is a cooperate body incorporated under Companies Act, Cap 212. Thus, the institution of the suit ought to have been with a formal authority in the form of a resolution of the board of directors through whom the company transacts its business. To the contrary, no such resolution was appended to the plaint which shows that the plaintiff had no such authority. In fortification, he cited the case of **Simba Papers Converters Limited vs Packaging & Stationery Manufacturers Limited & Another** (Civil Appeal No. 280 of 2017) [2023] TZCA 17273 (23 May 2023) [Tanzlii] and argued that in that case, the court held that the suit was incompetent and ought to have been dismissed by the High Court as it was not accompanied by a resolution of the plaintiff's board of directors

authorizing the institution of a suit. Based on that case he prayed that the present suit be struck out.

I have carefully considered the submission by the learned counsel and I am ready to determine the preliminary objection. For appreciation of the preliminary objection and the submission, I will provide the abbreviated background of the present suit. The plaintiff claims from the first defendant a sum of Tshs 6, 827,200/= in specific performance of a contract between them. He has also joined the Attorney General and the Solicitor General as second and third defendants, respectively. After being served the defendants jointly raised the preliminary objection now under determination.

Back to the merit of the preliminary objection, I prefer to start with the second limb of the preliminary objection in which the defendants are challenging the competency of the suit for want of authority. Looking at paragraph 1 of the plaint, it is plainly clear that, indeed the plaintiff is a cooperate body incorporated under the Companies Act as it has been identified so. Mr. Agweyo has argued that, because of the legal status of the plaintiff, it was crucial for the plaint to enclose a board of resolution authorizing the institution of the suit and that, since none was enclosed, it suggests that the suit was instituted with no authority hence incompetent.

In my examination of the plaint to ascertain the correctness or otherwise of Mr. Agweyo observation that the plaint is not accompanied by a board resolution, I have found his observation not farfetched as the plaint is not

accompanied by a board resolution of the plaintiff company nor is it pleaded in any of the 9 paragraphs of the plaint that the suit has the blessings of the board. The sole question to be determined, therefore, is what is the consequences of non-enclosure of the resolution. In resolving this issue, the decision of the Court of Appeal in **Simba Papers Converters Limited vs Packaging & Stationery Manufacturers Limited & Another** (supra) is of guidance. As correctly submitted by the learned State Attorney, one of the issues that the Court of Appeal was called upon to determine in that case was the consequences of non-enclosure of a board resolution formally authorizing the institution of the suit. Resolving the issue, the Court of Appeal held that;

“In the premises, since the claimant was a company, it was not proper 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 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.....

In view of what we have demonstrated above, since the suit at the trial court which was at the instance of the 1<sup>st</sup> respondent was instituted without its mandate through the board of directors, it was incompetent and the respective judgment and proceedings are void.”

In the foregoing, since the present suit just like the suit in **Simba Papers Converters Limited vs Packaging & Stationery Manufacturers Limited & Another** (supra) was instituted without the express authority by

way of resolution of the Board of Directors it is obvious that the plaint was fatally defective and by that defect, the suit has been rendered incompetent. The second limb of the preliminary objection is that with merit and upheld.

Having upheld the second limb of the preliminary objection, I find no need to proceed to the first limb as the finding in respect of the second limb disposes of the suit.

Accordingly, the suit is struck out with costs for incompetency.

**DATED** and **DELIVERED** at Dodoma this 04<sup>th</sup> day of August 2023



A handwritten signature in blue ink, appearing to be "J. L. MASABO".

**J. L. MASABO**  
**JUDGE**