

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

LAND CASE NO. 13 OF 2021

**M/S KIMWAGA MOTOR WORKS COMPANY
LIMITED.....PLAINTIFF**

VERSUS

THE CITY COUNCIL OF DODOMA.....1st DEFENDANT

THE ATTORNEY GENERAL.....2nd DEFENDANT

RULING

Date of last order: 07/08/2023

Date of Ruling: 10/08/2023

A.J. Mambi, J.

The plaintiff which is the limited Liability Company filed the Land Case No. 13 of 2021 at this court on 29th of September 2021. Before the matter proceed for trial, I observed the legal issue on the requirement of board resolution before the company files the suit. I thus invited the parties to address this court on that particular legal issue.

In his brief submission the learned counsel for the plaintiff Mr. Bwire submitted that he is aware that there is a requirement of board of resolution before the company files the case. He referred the decision of

the court in Simba *Papers Converters Limited vs Packaging and Stationary Manufacturers Limited and Another*, Civil Appeal No. 280 of 2017 at page 16-20 where the court of Appeal have observed the importance of board resolution before the company files the suit.

He averred that the plaintiff has complied with the requirement of board resolution by filing the resolution signed by the Managing Director and secretary of the Company.

Responding to the submission made by the plaintiff, the learned State Attorneys for the defendant lead by Jenifer Kaaya submitted they also agree that it is mandatory for a company to have an authority of the board of directors through board resolution. She referred that on the basis of section 147(1) of the Companies Act. She was of the view that the court of appeal in *Simba Papers (supra)* at page 20 clearly stated the mandatory requirement of board of resolution before initiating any suit. She argued that the document annexed as BCC by the plaintiff does not show if it is the board resolution. She contended that there is no proof to show if the board of directors met.

Having thoroughly gone through the submissions made by both parties in line with the relevant laws. The main issue before this court is whether the plaintiff filed the document to show if it was blessed by the board of directors before commencing the suit. In other words whether the plaintiff

attached the board resolution in its plaint he filed at this court. I wish to make it clear that the resolution is a document recording the decisions made by the board members regarding decisions and actions a company will take. That document (resolution) legally binds and functions as a compliance record to provide evidence of decisions made by the board regarding pivotal company matters. Looking at the file, there is a document titled "special resolution to commence litigation" which was signed by one Kessy Kimwaga as the Chairman and Ramadhan Ally identified as the Secretary. However, the document does not show if it was the resolution of the board of directors as there is no minute to show the names of directors and their names including the date of their meeting to show they actually met and passed the board resolution authorising the company to sue. In my considered view, such document filed at this court that was only signed by the chairman and secretary does not qualify to be the board resolution. It should be noted that and that is the practice and position of the law that it is the board of directors who creates a corporate resolution for a company. The rationale is that the company directors are the ones who are responsible for making binding decisions that affect the company which is recorded in the corporate resolution.

I am aware that it is the position of the law that a company is a legal person that is independent from its members or shareholders as well as its subscribers. One can borrow a leaf from the persuasive and land mark decision of the English Court in ***Solomon Vs. Solomon and Company (1879) AC 22***. It follows that, being a legal person, the company affairs are entrusted to its directors who perform all company's activities on behalf of all shareholders. One should also bear in mind that a company or corporation can only act through human agents (such as directors) that compose it. This in my view means that the company is at law a different person altogether from the subscribers, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers or directors. See ***Solmon (supra)***. It is trite law that a company is distinguishable from other business models and a preferred mode of transacting business for its few unique features separate legal entity, perpetual succession, ability to sue and be sued in its own name. In this regard, the company, being a juristic person acts only through a resolution and the power of the company can be given only by the company resolving to sue through a board resolution. This means that the directors are directly responsible for daily running of the company, thus whichever takes place or performed on behalf of the company has to be blessed by the directors through directors meeting. See also ***KATI GENERAL ENTERPRISES LIMITED VERSUS EQUITY***

BANK TANZANIA LIMITED IPYANA BERNARD MWALUKASA,

CIVIL CASE NO. 22 OF 2018. In our case at hand it is not disputed by both parties that when filing this suit the plaintiff did not attach the minutes of the board of directors (resolution of the board of directors) apart from one document purported as board resolution the fact which has also been admitted by the leaned counsel for the plaintiff. The plaintiff counsel in his submission argued that there is no legal requirement for the company to get an authority from the board before filling the case.

In my view, before any person or company decides to institute a suit against any person it must first get an authority from the board of directors and the board of directors can do so through resolution that is conducting a meeting and prepare the document to be signed by all members who attended the meeting. In this regard once a resolution is passed the company has the duty to attach that resolution or minutes under the plaint before filling a case. In our case at hand, the document purported to be a board resolution does not qualify to be called the board resolution as it was not made by the members of the board of directors. There are various authorities that have made a clear position on the requirement of board resolution before any person or company commences a suit. Recently The Court of Appeal in ***SIMBA PAPERS CONVERES LIMITED versus PACKAGING AND STATIONARY***

MANUFACTURES LIMITED and DR STVE K. MWORIA, Civil Appeal

No.280 of 2017. Indeed the court posed the question that the company which according to the record had 5 directors could commence a suit without the authority of the company?. The court referred the famous decision of the Uganda Court in **BUGERERE COFFEE GROWERS LTD VS. SEBADUKA [1970] 1 EA 147 (HCU)**. Indeed, the Uganda Court as cited by the Court of Appeal of Tanzania held that:

"Having carefully considered the matter, I have reached a settled conclusion that, indeed the pleadings (plaint) should expressly reflect that there is a resolution authorizing the filing of an action. A company which does not do so in its pleadings, risks itself to the dangers of being faced by any insurmountable preliminary objection as is the one at hand. I should hurriedly add however that in my view the resolution should be of a general nature, that is, it is not necessary that a particular firm or person be specifically to do the task. It suffices if the resolution empowers the company management to take the necessary action. I am making this insistence because from the wording in Bugerere case one may be led to believe that the resolution should point out a particular person or firm".

Conversely, the Court of Appeal in **Simba Papers** (supra) at page 21 clearly held that:

*"Whoever wishes to institute a similar suit on behalf of the company is at liberty to do so **subject to obtaining the authority of the company**".*

It is clear from the above quotation of the case that any person such as a company who wishes to commence a suit must first seek the authority (board resolution of directors) of a company and not just a chairman and secretary like in our case. Similarly, referring the case of Bugerere (supra) when discussing Rule 30(3) of the Court of Appeal Rules on whether a corporation must appear by an advocate or directors or managers duly appointed by resolution of the Company the Court of Appeal in the case of ***Ursino Palms Estate Limited Civil Application No. 28 of 2014*** observed that:

"The provision derives its objective from the principle that, institution of legal proceedings by a company must be authorized either by a company or Board of Directors' meeting"

It is my understanding that the proper filing of the suit before a civil/commercial court is achieved by virtue of attaching the proper board resolution with the plaint. I entirely agree with the defendant Senior State Attorney Ms Jenifer Kaaya that it was mandatory for the plaintiff which is the company to be blessed or authorized by its directors through board resolution before commencing the suit. This means that the plaintiff was required to attach proper board resolution or minutes authorising it to commence a suit. I am of the settled view that the company had to first convene the meeting that would result with the board resolution made by

directors blessing the commencement of the suit. Failure to do so, it is as good as saying there is no suit before this court.

Consequently, since the company acts its transactions and its business through its directors, any act done by the company without the authority of its directors' board resolution cannot be regarded as legally binding decision. In my view, a board resolution is eminently desirable for initiation of suits by a company. In this regard, the court cannot permit the company to rush to the court without first complying with mandatory legal requirements.

It follows that, the plaintiff have wrongly moved this court for commencing a suit without attaching the resolution of board of directors. Conversely, the suit before this court has also been wrongly filed and I find the suit to be fatally defective.

Having found that the matter at this court is defective, can we say there is proper suit before this court?. The answer is NO since I have held that the suit is defective. Reference can also be made to the decision of the court of Appeal of Tanzania in ***the Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others*** Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

"this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have

no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings."

Reference can also be made to the decision of the court in ***Joseph Ntongwisangu another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005*** (unreported)

where it was held that:

"in situation where the application/suit proceeds to a hearing on merit and in such hearing the matter is found to be not only incompetent..., it must be struck out. The rationale is simple. Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court.

In light of the foregoing observation and discussion supported by authorities, this Court finds that the suit before this court is incompetent for noncompliance with the mandatory legal requirements. I am of the settled mind that the purported suit is incompetent and cannot stand as a valid suit.

In the circumstance and from the reasons stated above I find there is no proper suit before this court. In the premises the purported suit is accordingly struck out.

No orders as to the costs.



A. J. MAMBI

JUDGE

10/08/2023

Ruling delivered in Chambers this 10th day of August, 2023 in presence of Kumbukeni Kondo, Nicodemus Agweyo and Adrian Chiwila, State Attorneys for the defendants.



A. J. MAMBI

JUDGE

10/08/2023

Right of appeal explained.



A. J. MAMBI

JUDGE

10/08/2023