

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**  
**CIVIL CASE NO. 48 OF 2023**

**MARIAM HAULALIERS CO LTD..... PLAINTIFF**

**VERSUS**

**1. FRANK ALEX ..... DEFENDANT**

**2. SALIM IBRAHIM TAJDID..... DEFENDANT**

**RULING**

**MKWIZU J:**

The plaintiff was invited to address the court on the competence of the suit in the absence of the Board resolution mandating the plaintiff, a board cooperate to institute the present suit before the court.

Citing to the court several decisions including that of **Bettam Communications Tanzania Limited V China International Telecommunication Limited and other**, Civil case No 220 of 2012, and **Simba Papers Converters Limited V Packaging and Stationaries and another**, Civil Appeal No 280 of 2017 CAT (Unreported) the plaintiffs' counsel maintained that board resolution is not a mandatory pre-requisite for the company to file a suit before the court of law. His contention is that the resolution is only mandatory where the dispute relates to the internal affairs of the company and not otherwise.

I have passionately considered the matter. It is trite that a company is a cooperate body that does not transact on its own. It is operated by the directors whose decisions are made through board resolutions as expressly stated in section 147(1) of the Company's Act, [Cap. 202 R.E 2002]. The section reads:

*147.-(1) Anything which in the case of a company may be done –*

*(a) by resolution of the company in a general meeting, or*

*(b) by resolution of a meeting of any class of members of the company, may be done, without a meeting and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of the resolution would be entitled to attend and vote at such meeting:*

The sanctioning of the institution of the suit by a company is one of the functions of the Board of Directors which according to the above section is only to be done through the board resolution. Underlining the position, the court of appeal in **Bugerere Coffee Growers Ltd V. Sebaduka** **And Another** (1970) 1 EA 147 observed:

*"When companies authorize the commencement of legal proceedings a resolution or resolutions have to be passed either at a Company or Board of Director's Meeting and recorded in the minutes, no such resolution had been passed authorizing these*

*proceedings'*

The above decision has been referred with approval in many of decisions including the **Simba papers** case relied upon by the plaintiff's counsel.

I subscribe to the above-cited cases. The plaintiff is a body corporate duly incorporated under the Tanzania laws, by virtue of its name and what is pleaded in the Plaint, and therefore the institution of the suit without a board resolution renders the suit incompetent.

The only remedy available is to strike out the case as I hereby do with no order to costs.

Order accordingly

**DATED at DAR ES SALAAM this 29<sup>th</sup> day of September 2023.**



**E. Y Mkwizu**  
**Judge**  
**29/9/2023**