

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM  
CIVIL CASE NO. 131 OF 2021**

**ZANZIBAR INSURANCE CORPORATION ..... PLAINTIFF.**

**VERSUS**

**ALAWI AHMED DAUDI (as administrator of  
The estate of the late Abdallah S. Abdallah) ....1<sup>ST</sup> DEFENDANT  
LAKE TRANS LIMITED.....2<sup>ND</sup> DEFENDANT**

**RULING**

**MKWIZU, J:**

The plaintiff's suit against the defendants is for the payment of a sum of United USD 546000 equivalent to Tsh 1,234,000,000/= being payment of indemnity settlement amount paid to Salim Salim Bakresa Co Limited as an indemnity for loss caused by the 2<sup>nd</sup> defendant's vehicle with Registration No. T 251 CMY/T579 CPM Scania. The suit was initially lodged in court on 13/8/2021 by a plaint introducing the plaintiff as a Limited liability company Incorporated in Tanzania under the Companies Act, Cap 12 of 2002. It is on the records that on 28/4/2022, the plaintiff advocate was granted leave to amend his plaint. The amended plaint was as ordered filed in court on 29/4/2022 followed by the filling of the amended

WSD by the 2<sup>nd</sup> defendant who was by then the only defendant in the suit.

The matter went through all the preliminary stages and just after the mediation, and before the Final Pretrial conference, the plaintiff's counsel prayed again to amend the plaint to add the driver who caused the accident whose indemnity is at issue as the defendant and to convert the USD amount claimed to Tanzanian Shillings. The plaintiff's amended plaint was filed as ordered. In his Amended WSD, the original defendant who is now reading as 2<sup>nd</sup> defendant filed a notice of preliminary objection to wit:

- a) The plant has acceded to orders of amendment granted by the court contrary to the law.
- b) There is no Board Resolution by the plaintiff to sue the Defendant.

When the matter came for a hearing of the preliminary objection, the plaintiff had the services of Mr. Salim Salim's advocate, 1<sup>st</sup> defendant was represented by Mr. Nesto Nkoba advocate while the 2<sup>nd</sup> defendant had the services of Mr. Jerome Msemwa also a learned advocate.

Submitting on the first preliminary point of objection Mr. Msemwa said, the order of the court had allowed the plaintiff to amend the plaint in two areas, change the USD currency claimed in the plaint to read also in

Tanzania Shillings and to add the name of the Administrator of the estate of late Abdala S, Abdadala defendant in the suit but the amended plaint filed in court on 11<sup>th</sup> August 2018 exceeded the order of the court dated 9<sup>th</sup> August 2023 by adding the 5<sup>th</sup> prayer in the amended plaint asking for the general damages of one Billion contrary to the orders of the court. Relying on the decisions of **Eco Bank Tanzania Limited Shana General Store Tanzania Limited, and 6 others**, in Civil case No 166 of 2018, he prayed for the order striking out the plaint with costs.

Regarding the second preliminary objection, Mr. Msemwa said, the suit lacks a board resolution mandating the plaintiff to institute the legal proceedings before the court rendering the suit incompetent. He cited the decisions in Exim **Bank Tanzania Limited V Jandu Construction and Plumbers Ltd and others**, commercial case no 135 of 2020 from pages 14-16, **and Simba Papers Convertors Limited V Packaging and Stationaries Manufacturers Limited and Another**, Civil Appeal No. 280 of 2017.

He stressed that Parties are bound by their pleadings and that since Paragraph 1 of the amended plaint designates the plaintiff as a limited company, Board resolution was a mandatory document to accompany the plaint. He urged the court to sustain the preliminary objections with costs.

Mr. Nkoba for the 1<sup>st</sup> defendant had nothing substantial to add to the points raised. He specifically told the court that since the order to amend the plaint was granted in his absence, he had nothing to say on the point, He however subscribed to Mr. Msemwa's submissions about the 2<sup>nd</sup> preliminary point and left the matter for the court's decision.

Mr. Salim Salim, an advocate for the plaintiff, was in opposition. While admitting t that the general damages claim was pleaded and quantified without the leave of the court over the court's order, he maintained that mistake is excusable for it does not go to the root of the claim. He cited the case of **The National Housing Corporation v Etienes Hotel**, Civil Application No. 10 of 2005 pages 4 to 5; **Zeberi Musa Vs Shinyanga Town Council**, TBR, Civil Application No. 3 of 2007 page 8; **Bin Fijaa Industrial Limited V Tanzania Electric Supply Company Limited**, (2008) EA 58, 59, **JS Mutungi V The University of Dar es Salaam**, Misc Civil case No 17 of 1994, and **Stanbic Bank U limited and Another V Commissioner General Uganda Revenue Authority**, (2012) EA 460-461(holding no 4) praying the court to overrule the 1<sup>st</sup> objection.

Regarding the 2<sup>nd</sup> preliminary objection, Mr. Salim said, all the cited cases refer to a situation where there is an internal dispute between the

Directors, which is not the case here. And that section 147 of the Companies Act doesn't state categorically that a Board Resolution is necessary for the company to institute a case in a court of law. It is more directed to the internal affairs of the company and not otherwise. Explaining the Plaintiff's status, he said, the Zanzibar Insurance Corporation is a corporation established under the Public Enterprises Decree of 1996 and is a public company, with different operations modes from that of the Companies Act. He urged the court to stick to the latest decision of the court in **Simba Papers Converter** and decided in the plaintiff's favor.

I have keenly considered the two preliminary objections raised, the pleadings and the party's submissions. Admittedly, the amended plaint filed in court on 11/8/2023 was broadened to include additional claims of general damages pegged at one Billion Shillings without the leave and contrary to the court order. The Plaintiff's counsel agrees to that effect but argues that such additional claims are not fatal for it has not affected the main suit that was originally brought before the court. His arguments were based on the facts that even without asking, general damages would have been considered and granted by the court.

I agree, it is a settled position that unauthorized amendments are not fatal unless have changed the gist and nature of the plaintiff's claims. The addition of the general damages claim in the amended plaintiff has not, in my view, affected the main claim because by its nature a general damages claim need not specifically be pleaded. It is only granted at the court's discretion. See **Bin Fijaa Industrial Limited V Tanzania Electric Supply Company Limited**, (supra). This objection therefore fails.

I am, however, convinced that the second preliminary objection is meritorious. On this point, the suit is being challenged for failure to exhibit a board resolution mandating the institution of these legal proceedings.

The status of the plaintiffs is well reflected in the plaintiff both the original and the amended plaintiff designating the plaintiffs as a limited liability company. Paragraph 1 of the amended plaintiff filed in court on 11/8/2023 provides:

*"1. The Plaintiff is a limited liability company incorporated in Tanzania under the Companies Act No. 12 of 2002 of the Laws of Tanzania, carrying on the business of Insurance under the Insurance Act, 2009. The plaintiff's address for this suit shall be in the care of..."*

The same averments appear in the original plaint filed in court on 13/8/2021 as well as the 1<sup>st</sup> amended plaint that was presented to the court on 29/4/2022 meaning that the designation of the plaintiff as a Limited Company incorporated under the Companies Act in the current amended plaint is not by mistake. As rightly stated by Mr. Msemwa, parties are bound by their pleadings and in this case, the plaintiff is bound by his averments in the plaint. The argument that the plaintiff is a corporation established under the Public Enterprises Decree of 1996 with different operations modes from that of the Companies Act is a statement brought in court as an afterthought without any force of law.

Now, being a limited company, the plaintiff's operations are regulated by section 147 of the Companies Act which requires every activity by the company to be sanctioned by a company resolution: 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 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 above section is not restricted to the internal affairs of the company with the exclusion of decisions to file suit in a court of law as suggested by the plaintiff's counsel. There is a plethora of authorities affirming the requirement of the board resolution for a company to institute a suit in a court of law. In **Masumin Printway and Stationers Limited Vs. M/S TAC Associates**, Commercial Case No. 7 of 2006 (High court unreported)

This court said, the board resolution is directed at securing the interest of the defendants and avoiding unnecessary sufferings by shareholders who are unknowingly dragged to court and commanded to pay huge costs.

In **Ursino Palms Estate Limited versus Kyela Valley Foods Ltd and two others**; Civil Application No. 28 of 2014 (DSM) (CA) (unreported) Court of Appeal citing with approval the decisions in **Bugerere Coffee Growers Limited v. Sebadduka and Another** (1970) E. A 147 said:

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



Also, in the current decision of the Court of Appeal in **Simba Paper Converters Limited** (Supra), the court held: -

*"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 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."(Emphasis added)*

The present suit was certainly instituted without the prerequisite mandate. Guided by the court's decision above, I find and hold the 2<sup>nd</sup> preliminary objection meritorious and sustain the same. The incompetent suit is hereby struck out with costs. Order accordingly.

**DATED at DAR ES SALAAM this 30<sup>th</sup> day of August 2023.**



**E. Y Mkwizu**  
**Judge**  
**30/8/2023**

