

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

LAND CASE NO. 10 OF 2023

**THE REGISTERED TRUSTEES OF ROMAN
CATHOLIC DIOCESE OF KIGOMA PLAINTIFF**

VERSUS

**REGISTERED TRUSTEES OF THE
CHAMA CHA MAPINDUZI1ST DEFENDANT**

**THE HON. MINISTER FOR LANDS AND
HUMAN SETTLEMENTS DEVELOPMENTS..... 2ND DEFENDANT**

UVINZA DISTRICT COUNCIL3RD DEFENDANT

THE HON. ATTORNEY GENERAL4TH DEFENDANT

RULING

21/8/2023 & 29/9/2023

Mlacha, J.

The plaintiffs, The Registered Trustees of Roman Catholic Diocese of Kigoma filed a suit against the Registered Trustees of the Chama cha Mapinduzi, The Hon. Minister for Lands and Human Settlements Developments, Uvinza District Council and the Hon. Attorney General (hereinafter, where need be, referred to as the first, second, third and fourth respondents respectively). It is a claim for land which they allege to own from 1932 but which is now being trespassed by the defendants. The land measures 39.6 acres. Service

was effected and the defences were filed. Some efforts to settle the matter were done during mediation without success. It is an old dispute.

Parties were invited to present their cases. While in that direction, counsel for the first defendant, Mr. Fabian Donatus lodged a preliminary objection which is the subject of this ruling. It reads as under:-

a) This case is incompetent as it was filed without the resolution passed by the Board of Trustees as the plaintiff herein is a body corporate and it contravene the laws and the constitution of the plaintiff herein.

The main suit was stayed and parties were invited to make their respective submissions. Mr. Fabian Donatus made a submission which was replied by Mr. Mtaki and Kabuguzi who represented the plaintiffs. Mr. Nickson Tengesi state attorney who appeared for the second, third and fourth defendants declined to support the object. When he was called say something he replied shortly saying that. "My Lord, I have nothing to add. I support what had been said by Mr. Mtaki"

What then is the contents of submissions made by Mr. Fabian? The gist of his submission is that, the plaintiff is a body corporate registered under the

Trustees Incorporation Act Cap 318 R.E. 2019. Its operations are governed by the Trustees Incorporation Act and its constitution. He submitted that article 14(iv) of the plaintiff's Constitution requires a resolution of the Board to be passed and signed by the 'ordinary' and 2 members or to be signed by the Vica General and 2 members. He said that the word 'ordinary' refers to the Bishop. The Vica General is his assistant. Counsel submitted that, there is no resolution of the Board in this case. It is not attached making the case improperly before the court, he said. He referred the court to **Newlife Hardware company Ltd and Manwaly Investment Ltd v. Shadow Locheng Export Co Ltd and 2 others**, Commercial Case No. 86 of 2022 page 12 and **Unction Trading Company Ltd v. KCB and another**, Land Case No. 222 of 2013 (High Court Land Division DSM) page 7. He ended saying that if they had not attached the resolution, they could at least plead it. He argued the court to dismiss the case.

Mr. Mtaki started by arguing that the point raised does not qualify to be a preliminary objection if taken in line with the case of **Mukisa Biscuits Manufacturing Ltd v. West End Distributors Ltd** (1969) E.A 696, Pages 700 and 701. He said that a preliminary objection contains a point of law which has been pleaded or arise in the pleadings. He said that one does not

need evidence to substantiate his preliminary objection. Counsel submitted that, moving to the provisions of the constitution was a move to gather evidence. He referred the court to its decision made in **Mohamedali Sadrudin Mohamedali vs. Mahamoud Mwemusi Chatikundi and another**, Miscellaneous Civil Application No. 9 of 2021 (High Court Mtwara) where it was said that a preliminary objection must be pleaded in the written statement of defence as required by rule order VIII rule 2 of the CPC. He went on to submit that it was wrong to bring the preliminary objection on a separate piece of paper. He invited the court to make a further reference to **CRDB Bank Ltd v. Noorally K.J. Dhanani and Shirazi H.K. Dhanani**, Commercial Case No. 102 of 2001 on the same line of reasoning. He stressed that it was wrong to raise the preliminary objection through a separate piece of paper because it contradicts rule 2 of order VIII of the Civil Procedure Code Act, Cap 33 R.E 2019 (the CPC)

Making reference to section 3A of the CPC and the case of **Alliance One Tobacco (T) Ltd and another v. Mwajuma Hamisi and another**, Miscellaneous Application No. 803 of 2018 pages 4-5, he submitted that much of what has been submitted by Mr. Fabian Donatus is curable in this era where courts are required to administer justice without technicalities.

Counsel went on to submit in the alternative that the case of Newlife Hardware (supra) was based on the interpretation of section 147 of the Companies Act which has specific provisions which require a Board resolution to sue something which is not existing in the Trustees Incorporation Act. A company and a Trust corporation are two different bodies, he said. He added that the case is a decision of this court which has no binding effect. He said that the plaintiff is governed by section 8(1) (b) of the Trustees Incorporation Act which gives it the capacity to sue or be sued. The Act has no requirement of a Board resolution, he said. He said that article 14(iv) has been given a wrong interpretation by counsel for the first defendant.

Mr. Kabuguzi joined hands with Mr. Mtaki. He said that even under the companies Act, there two schools of thoughts on the issue as to whether there is need to attach the Board resolution in pleadings. Making reference to **Betam Communications (T) Ltd v. China International Telecommunication Construction Corporation and another**, Civil Case No. 220 of 2012 (H/C DSM), he said that it may not be attached and yet the case can be legally before the court.

Counsel for the first defendant made a rejoinder and reiterated his earlier position.

I had a chance to read the provisions of the law cited by the parties and the cases. I have reasoned out carefully. I think, with respect to counsel for the first defendant, the objection is misconceived and baseless. I will try to demonstrate albeit briefly.

Article 14 (iv) of the Constitution of The Registered Trustees of the Roman Catholic Diocese of Kigoma reads as under:-

“(iv) For purposes of **carrying out or giving authentic and legal effect to any transactions** connected with the general thrust of aims and objections stated in **part two** of this constitution, the signature of the ordinary together with that of another member of the Registered Trustees or two signatures of any other Registered Trustees plus that of the vicar General shall validate that transaction of transactions”

Part two has the 'AIMS AND OBJECTIVES OF THE REGISTERED TRUSTEES OF THE ROMAN CATHOLIC DIOCESE OF KIGOMA'. They are three namely:

- i) To preach promote, propagate, spread and teach Roman Catholic Christian faith...

- ii) To champion, enhance and promote religious, social, charitable, educational, medical and health schemes activities....
- iii) To acquire, hold and own movable and immovable property, to convey, assign, demise and mortgage any land or any interest there in, belonging to or being held for the benefit and in the interest of the Registered Trustees.

There is nothing in article 14 (iv) and part two making reference to filing a suit. What is provided is that where the Trustee need to do any of the three things mentioned part two (which are not connected to filling suits), there must be an instrument signed by the ordinary (Bishop) with one member of the Broard or two members of the Board and the vicar General.

Further to that as correctly observed by Mr. Mtaki, the cases he cited make reference to provisions of the Companies Act which are not similar to the provisions of the Trustees Incorporation Act. a company and a trustee are two different bodies and should not be mixed up. In other words, the provisions of the Companies Act do not govern trustee corporations which have their separate legislation and set up. Again, as observed by my sister Muruka J. (as she then was) in Betam Communications Limited (supra) even in companies now failure to attach a Board Resolution is not fatal because it

is an internal management issue which should not be the concern of third parties. Further, as correctly observed by Mr. Mtaki there is cure under section 3A of the CPC so long as there was no miscarriage of justice in the matter.

That said, I see no base for discussing the other points raised by counsel which may be the subject future discussions. The preliminary objection is dismissed with costs. It is ordered so.




L.M. Mlacha
Judge

29/9/2023