

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO.84 OF 2023

UNIQUE AGRO-INDUSTRIAL LIMITED.....PLAINTIFF

VERSUS

CRDB BANK PLC.....1ST DEFENDANT

STEAM GENERATION RECOVERIES LIMITED.....2ND DEFENDANT

RULING

POMO; J

On 5th May, 20203 the plaintiff, UNIQUE AGRO-INDUSTRIAL LIMITED, instituted the suit herein against the defendants. This suit is founded on a loan facility to the tune of Tshs 958, 500,000/- advanced to her in 2020 by the 1st Defendant. Out of the loan, Tshs 808,500,000/- was for purchasing two brand new cane loaders and the remaining Tshs 150,000,000/- was a working capital. The loan was to last for thirty-six months from the date of drawdown, meaning, was to end on July, 2023. The plaintiff failed to service the loan asserting the cause to be the *force majeure* in that heavy rain

ensued in 2021 to the extent of distorting the whole process of sugar cane haulage and loading for almost two months. The 2nd Defendant is the auctioneer commissioned by the 1st defendant to sale the loan securities to recover the outstanding loan. Following that, the plaintiff filed the suit herein praying for judgment and orders: -

- 1. That, the defendants breached terms of agreement entered on December, 2022*
- 2. That, a declaration that the 1st defendant illegally altered the terms and conditions of the agreements*
- 3. An order that the defendants failed to follow the procedures prior to publication of notice*
- 4. Costs of the suit*
- 5. Any other or further relief as this court may see appropriate to grant*

When the suit came for mention on 9/5/2023 this court *suo motu* observed that the suit, being by the company, was filed without company's board resolution authorizing its filing. Following that, parties were invited to address this court on the competence or otherwise of the suit.

On 31/5/2023 the matter came for mention. Messrs. David Ndossi and Livino Haule, learned advocates appeared for the plaintiff and 1st Respondent respectively. By consent, it was agreed the *suo mottu* issue raised on the competence of the suit be address by way of written submissions. Parties dully complied the schedules of filing the respective submissions. I am grateful to the learned counsel for their well-researched submissions.

Addressing this court, Mr. Ndossi, is of the submission that although this is a suit by a company which was filed without pleading and accompanying the board resolution authorizing the filing of it, to him, still the suit is competent before the court asserting that the same is not a legal requirement. To bolster his stance, he cited the following cases **SIMBA PAPERS CONERTES VERSUS PACKAGING AND STATIONERY MANUFACTURERS LIMITED AND ANOTHER**, CIVIL APPEAL NO.280 OF 2017 CAT AT DAR ES SALAM (UNREPORTED); **EMITAC MOBILE SOLUTIONS LLC VS ZANZIBAR TELECOM LIMITED**, CIVIL CASE NO.206 OF 2022 HIGH COURT AT DAR ES SALAAM (UNREPORTED); **SALOMON VERSUS SALOMON & CO. LTD** [1897] A.C 22. Thus, in his view, the suit herein is properly before the court

In his reply, Mr. Bernard Nkwabi, learned counsel for the defendant argued that once a company is registered it acquires a legal personality whereby its affairs are entrusted in the hands of the board of directors who performs all the activities on behalf of the shareholders basing on authorities sanctioned by the company board of directors' resolution as a mandatory requirement. In support he cited section 147(1) of the Companies Act, [Cap.212 R.E.2019] and the following case laws: **Boimanda Modern Construction Co. Ltd versus Tenende Mwakagile and 6 Other**, Land Case No.8 of 2022 High Court (Land Division) at Dar es Salaam; **Kawe Apartment Limited versus Exim Bank (Tanzania) Limited**, Land Case No.146 of 2020 High Court (Land Division) at Dar es Salaam, and lastly, **Simba Papers Convertes Limited versus Packaging and Stationery Manufacturers Limited and Another**, Civil Appeal No.280 of 2017 CAT at Dar es Salaam (All unreported).

That, since it is not indicated anywhere in the pleadings that the requisite board resolution was ever passed to authorize filing of this suit, which ought to be reflected in one of the paragraphs of the plaint and annexed thereto, the same being a conditional precedent, then the suit herein is incompetent before the court and it be struck out.

Dispassionately, I have considered the parties' rivalry submissions addressing the issue raised by the court on the competence or otherwise of this suit. From their respective submissions, both are in agreement that this suit, being a suit by a company, was filed without board resolution authorizing the filing of it in court, neither is the same pleaded nor annexed to the plaint.

While the plaintiff stance is that the board resolution authorizing the filing of it is not a legal requirement, the defendant position is that it has to be pleaded and annexed.

The plaintiff's argument is pegged on the court of appeal decision in **Simba papers Convertes Limited** (supra) where it held, at page 18, that:

*"We subscribe to the said position to the extent that it relates to the institution of a suit by one or more directors in the name of the company whereas in the present matter, it **revolves on the internal conflict within the company**. In any other case we will be **hesitant to extend the rule any further mindful of the legal position relating to the power of the company to be sued in its own name**".*

The above position to which the Court of Appeal subscribed to, as obtaining in **Bugegere Coffee Growers Ltd versus Sebadduka**, stand quoted at page 18 and reads thus: -

*"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".*

My understanding of the above stance taken by the Court of Appeal in **Simba Papers Convertes** case (**supra**) is that reservation is made on the requirement of board resolution authorization in instituting a suit by a company save for cases on conflicts involving internal affairs of the company. **Simba Papers Convertes** case is a decision of the Court of Appeal delivered on 23rd May, 2023 hence a recent decision to **Ursino Palms Estate Limited versus Kyela Valley Ltd and 2 Others**, Civil Application No.28 of 2014 CAT at Dar es Salaam (Unreported), which was delivered on 20th June, 2018. Under the principle of **stare decisis** as was so expounded

at page 17 in **Mantra (Tanzania) Limited versus The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No.430 of 2020 CAT at Dodoma (Unreported) the Court of Appeal held thus: -

*"Where there are two conflicting decisions of the court on the similar matter, **the court, unless otherwise justified, is expected to follow the most recent decision**".* End of quote

[See also: **Ardhi University versus Kiundo Enterprises (T) Limited**, Civil Appeal No. 58 of 2018 CAT at Dar es Salaam; **Geita Gold Mining Ltd versus Jumanne Mtafuni**, Civil Appeal No.30 of 2019 CAT at Mwanza and **Mabula Damalu and Another versus Republic**, Criminal Appeal No.160 of 2015 CAT at Tabora, (all unreported); **Kantibhai Patel versus Dahyabhai Mistry** [2003] TLR 437]

Now, reading the plaint forming the suit, it is vivid from it that what moved the plaintiff to file the instant suit was the dispute over the outstanding loan she had from the Defendant of which has nothing to do with the company's internal affairs conflict. Had it been involving internal affairs conflict, according to **Simba Papers Convertes Limited** case (**supra**), imperatively, the board of directors' resolution sanctioning the filing of the suit had to be passed and accompany the filing of it.

The defendant's argument is that company's board resolution sanctioning the filing of the suit is inevitable to be pleaded and annexed to the plaint reliance being made to section 147(1) of the Companies Act, [Cap.212 R.E.2019]. This section provides: -

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

(a) by resolution of the company in 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 wording of the above provision of the law entails that there is list of things which requires resolution of the company. The question comes, is filing of the suit in a court of law one of the listed things? The answer on this is found in **Simba Papers Convertes** case which gave an elaborate on the kind of a case by a company which needs resolution to accompany the filing of it and currently are the cases on conflict involving internal affairs of the company

Basing on the foregoing, I subscribe to the submission by Mr. Ndossi that as long the plaintiff has not filed a case against the directors or shareholders, rather on the third party, in my view, the suit is competent before the court as board resolution authorizing filing of it is not a legal requirement.

Ordered accordingly

Dated at Dar es Salaam this 15th day of November, 2023



MUSA K. POMO

JUDGE

15/11/2023



Court: - Ruling delivered this 15/11/2023 in the presence of Ms. Regina Herman for Benard Nkwabi for the Defendants only

Sgd: S. B. Fimbo

Deputy Registrar

15/11/2023