

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM SUB-REGISTRY**

**AT DAR ES SALAAM**

**CIVIL CASE 3420 OF 2024**

**JAMBO KWANZA LIMITED.....PLAINTIFF**

**VERSUS**

**THE REGISTERED TRUSTEES OF TANZANIA**

**FREIGHT FORWARDERS ASSOCIATION.....1<sup>ST</sup> DEFENDANT**

**THE ELECTION COMMITTEE OF THE**

**TANZANIA FREIGHT FORWARDERS ASSOCIATION.....2<sup>ND</sup> DEFENDANT**

**THE CHAIRMAN OF THE TANZANIA FREIGHT**

**FORWARDERS ASSOCIATION ELECTION COMMITTEE .....3<sup>RD</sup> DEFENDANT**

**EDWARD JOHN URIO.....4<sup>TH</sup> DEFENDANT**

**RULING**

Date of last Order: 15.03.2024

Date of Ruling: 22.03.2024

**NGUNYALE, J.**

Before hearing of the main suit, the defendants raised a preliminary objection on point of law that; -

- 1. The suit is Res -sub judice, the Plaintiff instituted Civil Case No. 257 of 2023 at Kisutu Resident Magistrate Court which is still pending.*

- 2. The Complaint is incurable defective for containing a defective verification clause as to none disclosure of the source of information for averments in paragraph 9(viii).*
- 3. The suit is bad in law for suing the 2<sup>nd</sup> and 3<sup>d</sup> defendants who are not legal persons capable of being sued.*
- 4. The suit is bad in law for lack of a board resolution to institute the case.*

Briefly stated, **JAMBO KWANZA LIMITED**, the Plaintiff in this suit is a Company registered under the Companies Act, Cap. 212 [R.E 2019] to undertake the business of clearing and forwarding. The Plaintiff has brought this action against the defendants claiming for unfair convening of the entire election process, supervision and declaration of the final election results declaring the 4<sup>th</sup> defendant as a winner of presidential position of TAFFA; and prayed this court for declaratory orders that the entire election process was null and void ab initio.

Before the defendants could file their defence, they filed the preliminary objections as listed above. The Plaintiff was represented by Mr. Ereneus Swai, advocate while the defendants were represented by Mr. Anindumi Semu and Mr. Albert Lema both advocates. Parties agreed to determine the

matter by way of written submissions and they all adhered to the scheduling order. In the cause of submitting, the respondent did not submit anything on the 2<sup>nd</sup> point of objection. The other points were submitted as follows: -

In his submission in support of the objections raised, Mr. Lema started with the 4<sup>th</sup> point of objection that the suit is bad in law for lack of board resolution to institute the case. He submitted that the plaintiff being a limited company neither pleaded in the plaint to have a board resolution nor attached the board resolution authorizing the institution of the case. He cited the case of this court **Stanbic Bank Tanzania Limited versus Sumry Bus Services & Company Ltd & 4 Others, Civil Case No. 125 of 2018** before Hon. F.H. Mahimbali, J who quoted with approval the Court of Appeal decision in **Simba Papers Converters Limited versus Packaging and Stationery Manufacturers Limited and Another**, Civil Appeal No. 280 of 2017 and held that:

*"That said, in the wholesome, I agree with Mr. Mtogesewa's legal objection that the suit is legally improper before the court for want of the plaintiff's company resolution sanctioning the filing of a suit. The legal objection is thus sustained and the suit is hereby consequently struck out, though it must be very sorry*

*to the plaintiff, especially at this stage”.*

Regarding the 3<sup>rd</sup> point of objection, that the suit is bad in law for suing the 2<sup>nd</sup> and 3<sup>rd</sup> defendants who are not legal persons capable of being sued. He submitted that under paragraphs 3 and 4 of the plaint, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are neither natural person nor artificial persons created by legislature with capacity to sue or to be sued. The chairman is a position one holds, it is not a juristic person in the eyes of the law capable of being sued therefore the 2<sup>nd</sup> and the 3<sup>rd</sup> defendants are nonexistent persons in law. He cited the cases of **Selemani Sanai Kasuku T/A Kisimwa General Supplies V Attorney General**, Civil Case No. 17 Of 2023 and the case of **Respicius Emilian Mwijage vs The Municipal Director, Hala Municipal Council & 2 Others**, Land Case No.27 of 2021 High Court (Land Division) at Dar es Salaam to support his position that no suit can be maintained against a non-existing legal person.

Submitting on the 1<sup>st</sup> point of objection that the suit is Res -sub judice, the Plaintiff instituted Civil Case No. 257 of 2023 at Kisutu Resident Magistrate Court which is still pending. Submitted that the plaintiff herein previously instituted Civil Case No. 257 of 2023 at Kisutu Resident Magistrate Court (on 28<sup>th</sup> November 2023) which is still pending before Hon Maguto RM.

He prayed the court to struck out the plaint with suit.

On his reply to the 4th point of objection Mr. Ereneus Swai submitted that the requirement of board resolution is no longer a requirement of the law. He cited the high court case of **a One Products and Bottlers limited versus Boge Kompressoren otto bogegmbh & co kg, Civil Case No. 36 of 2019** (Unreported) Hon. J.A DE-MELLO, J at page 6 of the Ruling stated clearly and cited a case of **PLASCO LTD VS EFAHAM LTD & ANOTHER**, CMMERCIAL CASE NO. 60 of 2012 Where it was held that ....

*"The existence or non-existence of board resolution for instituting a suit constitutes a point of fact, which is disputed and has to be investigated, and as such it cannot constitute a fit candidate for a preliminary objection on a point of law".*

Also, cited a recent CAT case of **Mohan's Oysterbay Drinks Limited Versus British American Tobacco Keota Limited**, Civil application no. 70 of 2022 dated 14<sup>th</sup> February and 5<sup>th</sup> March 2024 to substantiate his position that board resolution is no longer a requirement of the law. Mr. swai distinguished the position in the case of **Stanbic** (supra) cited by the respondent that the court found board resolution to be necessary in the circumstances where there were internal conflicts and that principle does not

extend to third party.

Regarding the 3<sup>rd</sup> point of objection, that the suit is bad in law for suing the 2<sup>nd</sup> and 3<sup>rd</sup> defendants who are not legal persons capable of being sued. Mr. Swai submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are legally existing organs within the association and their presence in this suit is mostly demanding. He added that Order I Rule 9 of the Civil Procedure Code deals with Misjoinder and non-joinder of parties and that non joinder or mis joinder of a party cannot by itself defeat a suit. See the case of **Tanzania Railways Corporation (TRC) versus GBP (T) Limited**, civil appeal no. 218 of 2020.

On the 1<sup>st</sup> point of objection that this matter is res-sub judice, Mr. Swai contended that this is not a pure point of law as it demands proof by evidence of the case at Kisutu and the moment the court start to evaluate the evidence the point raised lacks the qualities of a legal point of objection. He added that, the matter cannot be res-sub judice since what is triggered in the case at hand was the election of 7<sup>th</sup> February 2024. The Kisutu case is about what happened in 2023 where the cause of action, parties and relief sought are different.

He prayed the court to find the objections lacking merit and dismiss them

with costs.

I have keenly considered the rival submission advanced by the learned counsels for the parties concerning the raised issues, it is now opportune for the court to make deliberation on them.

I will start with the 4<sup>th</sup> point of objection that the suit is bad in law for lack of a board resolution to institute the case. From the outset there is no dispute that the plaintiff is a legal person registered under the companies Act. The law is very clear under section 147 (1) (a) and (b) of the Companies Act No 12 of 2002, that anything which is in the business of a company may be done by resolution of the company in a general meeting or by resolution of a meeting of any class of members of the company. As the law stands, when the company institutes the suit, proof of formal authority sanctioning its decision to sue is duly issued by the board of directors and must be disclosed by way of pleading that fact and annexed the minutes of board resolution. The object of so disclosing was observed by this Court in the cases of **Oxley Limited vs Nyarusu Mining Company Limited and Another**, Commercial Case No. 14 of 2022, which aimed to protect interest of shareholders and/or other directors in the company from unilateral decisions or act of an individual person. In the case of **Oxley Limited** (supra) on

interpretation of the provisions of section 147 of the Companies Act, had this to say:

*"As such, the requirement for board resolution before institution of the case is intended to safeguard the interests of shareholders who may be bound by the decision of the court of which they were not aware."*

The same position was held in a number of cases including **Simba paper** (supra), **Stanbic bank** (supra), **Ursino Palms Estate Limited Vs. Kyela Valley Foods Ltd and Others**, Civil Application No. 28 of 2014, **Segecoa Tanzania Limited vs. Sylvia Simoyo Namoyo (administratrix of the estate of Said Namoyo)**, land case no. 32 of 2022 and **Boimanda Modern Construction Co. Ltd Vs. Tenende Mwakagile** and 6 Others, Land Case No. 8 of 2022, **Atlas Plumbers & buliders ltd versus M. A. Kharafi & sons**, civil case no. 171 of 2023.

I appreciate the presence of the current decision of the Court of Appeal in Mohans case (supra) cited by Mr. Swai on the issues of board resolution, that it is no longer a requirement of the law. However, I find the facts in that case being different from the case at hand. In Mohans case, board resolution was discussed in the view of instructions to the advocate to represent a part



to the case while at the case in hand board resolution is discussed in the view of instituting a case, therefore the two are distinguishable.

Taking in mind the object of the board resolution in instituting as case as illustrated **Oxley limited** (supra), I find the same to be necessary and the plaintiff should plead it in the plaint and attach it. Upon perusal of the plaint there is no board resolution was attached to it. In **Atlas Plumbers** (supra) the court had this to say:

*"The above notwithstanding it is trite law that, whenever a suit is preferred by the company, board resolution in a minutes form must be pleaded or/and annexed to the plaint, failure of which renders the suit incompetent."*

In view of the above position of the law and in absence of board resolution renders the plaint incompetent the consequences of which is to have it struck out. The point of objection therefore disposes of this matter and I see no need to consider the other raised points of objection because they will not serve any legal purpose save for academic purpose.

In the premises I hereby uphold the preliminary objection and hold that the instant suit is incompetent, the same is struck out with costs for want of competence.

It is so ordered.

Dated at Dar es Salaam this 22<sup>nd</sup> day of March, 2024.



D. P. Ngunyale  
**JUDGE**

Ruling delivered this **22<sup>nd</sup>** day of **March, 2024** in presence of learned  
Counsels Mr. Makore for the plaintiff and Mr. Semu for the defendants.



D. P. Ngunyale  
**JUDGE**

