

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MBEYA SUB-REGISTRY)
AT MBEYA
PC. CIVIL APPEAL NO. 19 OF 2022**

(From the decision of the District Court of Mbeya in Civil Appeal No. 20 of 2021 and
Original Civil Case No. 124 of 2021 of the Primary Court of Mwanjelwa)

OLAPH ALOYCE KOMBA.....1ST APPELLANT
MAGRETH KOMBA.....2ND APPELLANT
VERSUS
MGHAKA COMPANY LIMITED.....RESPONDENT

JUDGMENT

Date of last order: 10/10/2023

Date of Judgment: 11/01/2024

NDUNGURU, J.

This is a second appeal. The appellants in this case, Olaph Aloyce Komba and Magreth Komba are challenging the decision of the District Court of Mbeya in Civil Appeal No. 20 of 2021 which upheld the decision of the Urban Primary Court at Mbeya (the trial Court) in Civil Case No. 124 of

2021 which was made in favour of the respondent, Mghaka Company Limited.

Briefly, the facts giving rise to this case can be summarized as follows: On 03rd day of December 2018, the respondent and appellants had entered into an agreement to deal with oil business at the agreed purchase price in the sum of Tshs. 35,000,000/= . The agreement between the respondent and appellants was that, the respondent should supply oil to the appellants. Again, it was agreed that, the purchase price should be paid into two installments. The first installment was fixed on 18th day of December 2018 and the second installment was fixed on 02nd day of January 2019. The record also reveals that, the appellant secured the original registration card of the two motor vehicles namely; Kenta Mitsubishi make with registration No. T 347 BPD and Noah Vox make with registration No. T 119 DFC as security.

It was further averred that, the respondent supplied oil to the appellants as agreed but the appellants failed to pay the due amount in full. Thereafter, on 07th day of April 2020, the respondent and appellants re-structure the mode of payment of the outstanding sum of money,

whereby the appellants agreed to pay such outstanding sum of money on 07th day of September 2020. The contractual relations were strained following the appellants' delay in paying the respondent the balance of Tshs. 30, 000,000/= so had been agreed between them. As result, the respondent filed the suit against the respondent at the Urban Primary Court at Mbeya vide Civil Case No. 124 of 2021 claimed for outstanding balance of Tshs. 30,000,000/=.

After considering the evidence before it, the trial Court held that, the respondent was proved her case on the balance of probabilities hence awarded a decree of Tshs. 30,000,000/= being specific damages. Being discontented by the trial Court decision the appellants successfully appealed to the District Court of Mbeya vide Civil Appeal No. 20 of 2021. In that appeal the first appellate Court upheld the decision of the trial Court and dismissed the appeal. That decision disgruntled the appellants hence this appeal.

The appellants being dissatisfied with the decision of the District Court of Mbeya preferred the instant appeal on two grounds that:

- 1. That, the Honourable trial magistrate erred in law and facts for failure to properly evaluate evidence on record.*
- 2. That, the trial Court erred in law and facts to hold and entertaining the respondent's case which is incompetent and unmaintainable before the Court for having been filed without prior approval and written consent of the Board of Director of the respondent during commencement of these legal proceedings.*

At the hearing, Mr. Jackson Ngonyani, learned advocate, prosecuted the appeal for the appellants whereas Ms. Irene Mwakyusa, learned advocate, stood for the respondent. Upon request of the parties and for interest of justice the same was ordered to be disposed of by way of written submissions.

In supporting of the appeal, Mr. Ngonyani commenced his submission by abandon the first ground of appeal and submitted only on the second ground of appeal. As regards the second ground of appeal, Ngonyani faults the decision of the trial Court on the ground that it was erred to entertaining the respondent's case without its authority by way of the Board of Director's resolution. He cited the section 147 of the Companies

Act (Cap 212 R.E. 2019), to the effect that the board of directors are vested with mandate and powers to act on behalf of the company. He added that, failure to attach the board resolution invalidates the action commenced by the respondent company.

Mr. Ngonyani cited a number of authorities to justify his submissions including the case of **Kati General Enterprises Limited versus Equity Bank Tanzania Limited & another**, Civil Case No. 22 of 2018, HC at DSM (unreported), which discussed the importance of Board of Director's resolution in filing the suit on behalf of the company. Finally, he prayed that, the appeal be allowed with costs and quash the decision of the District Court and Primary Court for failure to adhere the procedure.

In response, Ms. Mwakyusa submitted that, the board resolution would be necessary where the involves a dispute between a company and one of its shareholder or directors, which is not the case in the present appeal. It was also submitted by the counsel for the respondent that, in the present appeal the appellants were neither shareholder nor directors of the respondent company. To buttress her argument, she referred the Court to the case of **Simba Papers Convertes Limited versus Packaging &**

Stationery Manufacturers Limited and another, Civil Appeal No. 280 of 2017, CAT at DSM (unreported), which discussed the circumstances of which the board resolution would be necessary.

She further distinguished the application of a number of authorities cited and relied by the counsel for the appellants because are irrelevant in the circumstances of the present appeal. In conclusion, she prayed the Court that the appeal be dismissed with costs and upheld the decision of the both lower Courts.

In his rejoinder, the appellant reiterated his submission in chief. He went on submit that, in the case of **Simba Papers Convertes Limited** (supra), nowhere the Court of Appeal change this requirement of having approval from Directors to initiate legal proceedings on behalf of the company rather than cementing on general mandatory of board resolution. Finally, he reiterated his earlier prayer.

Upon perusing the written submissions by the parties to this appeal, pleadings and Court record, the crucial issue calling for determination is whether or not the appeal has merit. I find it appropriate, at this point, to start my deliberation by acknowledging of a number of authorities cited by

the counsel for the parties to convince this Court. It must be noted that, the decision of the both lower Courts did not satisfy the appellants, who subsequently lodged the instant appeal to this Court to challenge it.

With respect, I decline the invitation extended to me by Mr. Ngonyani for reasons which will emerge hereunder. Indeed, the facts of the instant appeal are so clear and direct that, the appellants and respondent are just business partner deal with oil business. Again, I disagree with the counsel for the appellants that, in the case of **Simba Papers Convertes Limited** (supra), the Court of Appeal cementing on general mandatory of board resolution in any case involve the company. In the case of **Simba Papers Convertes Limited** (supra), at page 18, the Court inter alia stated 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."

From the above decided case of the supreme Court, I concur with the counsel for the respondent that, the board resolution would be necessary where it involves a dispute between a company and one of its shareholder or directors, which is not the case in the present appeal. In other words, the board resolution would be necessary where the dispute it revolves on the internal conflict within the company. In fact, in the instant appeal, the appellants were neither shareholder nor directors of the respondent company. Therefore, this rule will not be extended in any other case.

In the upshot, I find the both lower Courts were correctly to entertain the respondent's case. Consequently, I find this appeal has no merit and dismiss it. Considering the nature of this case, I make no order as to costs.

It is so ordered.




D. B. NDUNGURU
JUDGE

11/01/2024