

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

CONSOLIDATED COMMERCIAL CASES Nos. 114 and 115 OF 2016

BETWEEN

ISA LIMITED..... 1st PLAINTIFF

PETROLUBE LIMITED.....2nd PLAINTIFF

AND

BULYANHULU GOLD MINE LIMITED.....1st DEFENDANT

NORTH MARA GOLD MINE LIMITED.....2nd DEFENDANT

PANGEA MINERALS LIMITED aka

BUZWAGI GOLD MINE.....3rd DEFENDANT

Date of last order: 10th August, 2022

Date of Ruling: 17th August, 2022

RULING

MKEHA, J.

The defendants in Commercial Cases Nos. 114 and 115 of 2016 have raised a number of preliminary objections regarding maintainability of the suits. The objection which is common in both suits is an objection that the suits are bad for want of board resolutions to sue the

defendants. According to Mr. Audax Kahendaguza and William Mangéna learned advocates for the defendants, the omission is fatal as far as maintainability of the suits is concerned.

Mr. Kagirwa learned advocate for the plaintiffs in both suits was of the view that the objection is without merit. According to the learned advocate, the decision in **Bugerere** from which the objection emanates was overruled by the Court of Appeal of Uganda. He referred this court to the decision in **NAVICHANDRA KAKUBHAI RADIA VS KAKUBHAI KALIDAS AND CO. LTD, CIVIL APPEAL NO. 10 OF 1994, SUPREME COURT OF UGANDA**. He also added that, the decisions of the Court Appeal of Tanzania which seem to have followed the decision in **Bugerere's case** were concerned with Rule 30 of the Court of Appeal Rules. The learned advocate for the plaintiffs did not otherwise dispute the fact that there were no Board Resolutions authorizing institution of the two suits.

It is not disputed that in **PITA KEMPAMP LTD Vs MOHAMED I. A ABDULHUSSEIN, CIVIL APPLICATION NO. 128 OF 2004 c/f No. 69 of 2005, CAT, DSM**, the Court of Appeal cited with approval the decision in **BUGERERE COFFEE GROWERS LTD Vs SEBADUKA AND ANOTHER (1970) E.A 147**. The Court of Appeal was dealing with an

appeal from Kinondoni District Court whose trial no doubt was governed by the Civil Procedure Code. In **URSINO PALMS ESTATE LIMITED VS KYELA VALLEY FOODS LTD & TWO OTHERS, CIVIL APPLICATION No. 28 of 2014**, the Court of Appeal expressed a view that, the decision in Bugerere had been cited with approval by the Court of Appeal of Tanzania in **PITA KEMPAMP** (supra).

As correctly submitted by Mr. Kagirwa learned advocate for the plaintiffs, the position in **Bugerere's case** was overruled by the Court of Appeal of Uganda in **UNITED ASSURANCE CO. LTD VS ATTORNEY GENERAL, CIVIL APPEAL No. 1 of 1986**. However, since when the Court of Appeal of Tanzania cited with approval the position in **Bugerere's case**, the same became the position of the Court of Appeal of Tanzania hence, binding upon all courts below the Court of Appeal. This is because, all courts and tribunals below the Court of Appeal are bound by the decisions of the Court of Appeal regardless of their correctness. See: **JUMUIYA YA WAFANYAKAZI TANZANIA VS KIWANDA CHA UCHAPISHAJI CHA TAIFA [1988] T.L.R 146**.

According to the Court of Appeal's position in **PITA KEMPAMP** (supra), when companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or Board

of Directors' meeting and recorded in the minutes. The learned advocate for the plaintiffs conceded that, there was no Board Resolution passed by the company or Board of Directors before institution of both suits.

It is for the reasoning hereinabove I hold the objection to be meritorious. Consequently, both suits are struck out with costs for being incompetent.

Dated at DAR ES SALAAM this 17th day of August, 2022.




C. P. MKEHA,

JUDGE

17/08/2022

Court: Ruling is delivered in the presence of Mr. Simon Barlow learned advocate for the plaintiffs and Mr. William Mang'ena learned advocate for the defendants.




C. P. MKEHA,

JUDGE

17/08/2022