

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT MWANZA**

**COMMERCIAL CASE NO. 6 OF 2022**

**BETWEEN**

**LWEMPISI GENERAL COMPANY LIMITED ..... 1<sup>st</sup> PLAINTIFF**

**CHARLES KAHATANO LWEMPISI.....2<sup>nd</sup> PLAINTIFF**

**Versus**

**RICHARD KWEYAMBA JOSEPH RUGARABAMU ..... DEFENDANT**

Date of last Order: 25<sup>th</sup> November 2022

Date of Ruling: 29<sup>th</sup> November 2022

**RULING**

**MKEHA, J:**

After being served with a plaint, the defendant, through Mr. Nasimire learned advocate raised a number of preliminary points of objection. One of such objections was to the effect that whereas the 1<sup>st</sup> plaintiff is a limited liability company, institution of the present suit is not backed up by a board resolution.

According to the learned advocate for the defendant the requirement for having Board Resolution before instituting a civil suit on part of companies was emphasized in the case of **BUGERERE COFFEE GROWERS LTD Vs SEBADUKA AND ANOTHER (1970) EA 147** where it was held that, 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. The learned advocate for the defendant insisted that, this legal principle had been adopted to be a correct and binding principle by the Court of Appeal of Tanzania in **PITA KEMPAMP Vs MOHAMED I.A ABDULHUSSEIN, CIVIL APPLICATION NO 128 OF 2004 c/s No. 69 of 2015, CAT AT DSM.**

Mr. Innocent Michael learned advocate for the plaintiff submitted in reply that, the requirement to plead presence of Board Resolution is not a statutory requirement. The learned advocate submitted that, after all, there were conflicting decisions over the issue hence the objection ought to be overruled. The learned advocate did not dispute the fact that, indeed, there was no Board Resolution before institution of this case in court.

In **PITA KEMPAMP LTD Vs MOHAMED I.A ABDULHUSSEIN CIVIL APPLICATION NO 128 OF 2004 C/S No. 69 of 2005, CAT AT DSM**, the Court of Appeal of Tanzania cited with approval the decision in **BUGERERE COFFEE GROWERS LTD Vs SEBADUKA AND ANOTHER (1970) EA 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. Almost ten (10) years later, in **URSINO PALMS ESTATE LIMITED VS KYELA VALLEY FOODS LTD & TWO OTHERS, CIVIL APPLICATION NO. 28 OF 2014**, the Court of Appeal of Tanzania expressed a view that, the decision in **BUGERERE'S CASE** had been cited with approval by the Court of Appeal of Tanzania in **PITA KEMPAMP** (supra).

I am mindful that, the position in **Burere'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, in my considered opinion, 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 plaintiff did concede that, there was no Board Resolution on part of the 1<sup>st</sup> plaintiff passed to authorize commencement of this suit.

For the foregoing reasoning, I hold the objection to be meritorious. Consequently, the suit is struck out with costs for being incompetent.

DATED at DAR ES SALAAM this 29<sup>th</sup> day of NOVEMBER 2022.

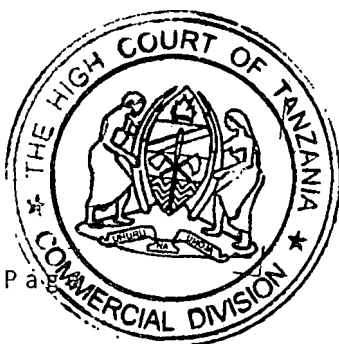


  
C. P. MKEHA,

JUDGE

29/11/2022

**Court:** Ruling is delivered in the presence of parties' advocates.



  
C. P. MKEHA,

JUDGE

29/11/2022