

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LAND DIVISION
(AT DAR ES SALAAM)**

LAND CASE NO. 147 OF 2018

EVARIST STEVEN SWAI 1st PLAINTIFF

MS MSAFIRI ENTERPRISES COMPANY LIMITED 2nd PLAINTIFF

VERSUS

THE REGISTERED TRUSTEES OF

CHAMA CHA MAPINDUZI 1ST DEFENDANT

THE COMMISSIONER FOR LANDS 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING:

S.M. MAGHIMBI,J:

The objection beforehand is raised by the 2nd and 3rd defendants who are challenging the competence of the current suit for want of Board Resolution of the 2nd plaintiff to institute the current suit. The plaintiff's brief reply on the issue, as submitted by Mr. Ngaleba, learned Counsel, was that the suit is properly before this court as it was commenced pursuant to the provisions of Order XXVIII Rule 1 of the Civil Procedure Act, Cap. 33 R.E 2002. He argued that the rule only requires the suit by a cooperation to be signed and verified by the principle officer of the Company as it was done in the case at hand whereby the plaint is duly signed and verified by the Managing Director one Evarist Steven Swai, the 1st plaintiff who is a majority shareholder of the family company. His prayer was that the objection be dismissed for lacking merits. Mr. Ngaleba also raised an argument that the objection on board resolution is not a

pure point of law as it is a matter of fact to be proved in evidence during hearing of the case.

On my part, I need not dwell much on the argument that the objection raised does not qualify to be determined as a preliminary objection, the point need not adduce evidence for reasons I shall elaborate while determining the merits of the objection.

To begin with, the board resolution is a key document that the company requires to institute a suit. One of the plaintiffs' claim in their submissions is that the 2nd plaintiff is a family business and the plaint is signed by the 1st plaintiff who is the majority shareholder. However, in the case of the case of **Solomon Vs. Solomon and Company [1879] AC 22**, it was held that;-

"A Company in the eyes of the law is a person distinct from its members or shareholders, a metaphysical entity or a fiction of law, a different person altogether from a subscriber to the memorandum of association".

It is without a doubt that once registered a company acquires a legal personality; its affairs are entrusted in the hands of Boards of Directors who performs all activities of the company on the behalf of all shareholders. Furthermore, Section 67 of the Companies Act, Cap. 212 R.E 2002 provides that the business of the company shall be managed by the Directors who are therefore the proper person to perform any act in the name of the company, this action is confirmed by a Board Resolution. In the Case of **Masumin Printway And Stationers Limited Vs. M/S TAC Associates (Commercial Case No.7 of 2006)** (unreported) the court referred to several other cases including the case of **Bugerere Coffee Growers Limited Vs. Sebadduka and Another (1970) E.A.147**, where a firm of Advocates instituted a suit on behalf of the Plaintiff's company without the authority of the Board of Directors, and the court 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 and recorded in the minutes".

In the same case of Masumini Printways and Stationeries Limited (supra) the court held at last paragraph of page 10/11:

"So, on the authorities, it is true that there is a long unbroken chain of case law that a company must authorize by a resolution, the commencement of legal proceedings in its name. And the rationale is two folds. First is to show that the company still exists. Secondly to show that the decision has been reached in accordance with its constitution or articles of association and therefore legally binding on it. And the rule is intended to secure the interests of the defendants and also save the court's time. It may also avoid unnecessary sufferings by shareholders who are unknowingly dragged to court and commanded to pay huge costs".

From the foregoing, throughout their pleadings, the plaintiffs have not indicated anywhere that the said Board Resolution was passed to authorize institution of the suit. Therefore in my view, the fact that there is a board resolution authorizing institution of proceedings should be reflected as one of the clauses of the plaint with the proof attached as an annexure to the plaint. Hence the issue of board resolution does not require arguments basing on evidence to be adduced during trial; instead it should be availed clearly on the plaint that the company has authorized institution of certain proceedings. The plaintiff was hence duty bound to show at the initial stage of the proceedings that a company has authorized the institution of the proceedings and in the absence of such averment on record, the defendant need not take any risks and proceed to incur any costs to have to answer the claim against him.

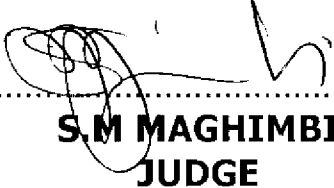
From the above therefore, an absence of body resolution in the plaint need not be taken cognizance by adducing any evidence but rather it has to form part of the initial pleadings. The rationale behind the requirement of board resolution may be summarized in three folds, **first;** instead of having any number of suits instigated and subsequently discontinued by individual shareholders, a board resolution is one decision that single litigation be initiated in order to eliminate wasteful litigation at the expense of a company by individual shareholder. **Second;** suing by an authority of a resolution eliminates possibility of vexatious actions initiated by troublesome minority shareholders trying to harass the company or have greed gain from the proceeds of a litigation. Furthermore, if the litigations do not end in favor of those greedy shareholders/directors, the action will incur loss to the company at the expense of unaware shareholders/directors. **Third;** if a wrong is done to a company, it is the company alone which can decide to sue and that decision shall be made by the majority via the vocal termed earlier as board resolution.

From the above reasons, it cannot be left open to individual members to assume to themselves the right of suing in the name of the company without the formal knowledge of the company. That being the case, all the above rationale can be achieved and proved at the initial stage of instituting an action in a court of law by a presence of a board resolution or an authority to the effect that bringing an action to court was a decision of the company as a corporate body and not a decision by an individual director/shareholder/member. Therefore, unless the exception is to the extent inter alia that the litigations are against the internal affairs of a corporation and not against a third party, a board resolution authorising institution of litigation is part and parcel of the pleadings initiated by a corporate body and has to be a condition precedent to filing of any action.

Having said that, and since in the current case the plaintiff has admitted not to have a board resolution passed prior to the institution of this suit, the preliminary point of objection raised by the defendants is hereby sustained. This suit is incompetent before this Court for want of a board resolution. Since the claim of ownership of the disputed land lies between the second plaintiff and the 1st defendant, the 1st plaintiff remains without a claim against the defendants. Consequently, the suit is hereby struck out.

Suit Struck Out

Dated at Arusha this 06th day of March, 2020


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S.M MAGHIMBI
JUDGE