

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 32 OF 2022

SOGEOA TANZANIA LIMITED PLAINTIFF

VERSUS

SYLVIA SIMOYO SAIDI NAMOYO (Administratrix

Of the estate of SAIDI NAMOYO) **DEFENDANT**

RULING

Date of last Order: 28.04.2022

Date of Ruling: 05.05.2022

A.Z. MGEYEKWA

This is a ruling in respect of two preliminary objections raised by the Defendants. The objection is to the effect that: *this suit is bad in law and incompetent before the court for lack of Board Resolution of the Plaintiff's Company.*

Briefly stated, **SOGECOA TANZANIA LIMITED**, the Plaintiff in this suit is a Company incorporated under the Companies Act, Cap. 212 [R.E 2019]. The Plaintiff has brought this action against '**SYLVIA SIMOYO SAIDI NAMOYO** (Administratrix of the estate of SAIDI NAMOYO), the Defendant. The Plaintiff's claims against the Defendant is for declaration that the Plaintiff is the lawful owner of Plot No. 2129 Block 'A' Makongo Juu located within Kinondoni in Dar es Salaam with a Certificate of Title No. 123225.

On 25th March, 2022, through the services of Mr. Jackson Ngonyani, the Defendant filed his Written Statement of Defence. The Defendant's counsel denied the claims and prayed for this court to dismiss the Plaintiff's Case and enter Judgment for the Defendant. Before the suit had gone far, the Plaintiff encountered the preliminary objection from the Defendant's counsel that: -

- 1. That, this suit is bad in law and incompetent before the court for lack of Board Resolution of the Plaintiff's Company.*

At the hearing of preliminary objection, the Plaintiff enjoyed the legal service of Mr. Alphonse Kubaja and Ms. Sarah Matembo, learned counsels whereas the Defendant enjoyed the legal service of Mr. Andrew Chima and Mr. Jackson Ngonyani, learned counsels.

Submitting in support of the preliminary objection, Mr. Andrew submitted that before filing a suit a party is required to have a Board Resolution. He submitted that the Civil Procedure Code Cap.33 and Companies Act does not provide the requirement of having a Board Resolution. He went on to submit that it has been developed by case law that for the purpose for a company to commence a legal proceeding before the court it must have a Board Resolution. He stated that the same is developed in the cases of **Bugerere Coffee Growers Ltd v Sebaduka & another** [1970] EA 147, **Pita Kempap v Mohamed Abdul Hussein**, Civil Application No. 138 of 2004/2005 Court of Appeal of Tanzania and **Kati General Enterprises v Equity Bank & Ipyana Bernard Mwalakusa**, Civil Case No. 22 of 2018.

Mr. Andrew went on to argue that going through the entire Plaintiff of the Plaintiff there is no any Board Resolution which authorized the Plaintiff to file the suit at hand. It was his submission that the case before this court is incompetent for lack of the Board of Resolution. Mr. Ngonyani, learned counsel for the Defendant also valiantly contended that the present suit is untrainable for failure to accompany a Board Resolution in accordance with sections 147 (a) & (b) of the Companies Act which settles mandatory of anything to be done by the company to have been done by the Board

Resolution. He went on to submit that in paragraph 1 of the Plaintiff's Plaint the Plaintiff introduced himself as a company that is incorporated under the Companies Act, Cap. 212 [R.E 2019]. It was his view that as per the cited provision, the Plaintiff was required to attach and file in her Plaint makes the suit incompetent before the court.

On the strength of the above submissions, the learned counsels for the Defendant beckoned upon this court to strike out the suit with costs.

Mr. Alphonse, the learned counsel for the Plaintiff came out forcefully and claimed the preliminary objection is demerit. He submitted that the Defendant have admitted that there is no law which requires the Plaintiff to attach the Board Resolution. He claimed that section 147 (a) and (b) of the Companies Act does not show that the Board of Resolution needs to be attached. Mr. Alphonse argued that the case law is binding where there is a lacuna, but in the matter at hand, there is no any lacuna. He submitted that Order VII Rule 1 (a) – (1) of the Civil Procedure Code Cap.33 guides how to file a Plaint and the Board of Resolution is not mentioned/ listed. He added that Order XXVIII of the Civil Procedure Code Cap.33 states who is required to sign the documents and one of the signatories is mentioned under Order

XXVIII of the Civil Procedure Code Cap.33. Thus, in his view, the Plaintiff is in accordance to the law.

Mr. Alphonse went on to submit that in case there is any lacuna then under Order XXXIII Rule 1 (1) of the Order XXVIII of the Civil Procedure Code Cap.33, a party can file any document at any time before hearing of the case. It was his view that this court can admit a document thus the Defendant's objection is prematurely filed since they have time to file the Board Resolution. To buttress his contention he cited the cases of **CRDB BANK PLC v Ardhi Plan Limited and 4 others**, Commercial Case No.90 of 2022 and **A One Product and Bottlers Ltd v Boge Komrressoren OTTO Bogie GMBH & CO KG**, Civil Case No. 36 of 2019. He added that in the case of **Mukisa Biscuit Manufacturing Company Ltd v West end Distributors Ltd** (1969) EA 696 the court held that a point of law must be pleaded but the Plaintiff has not pleaded thus saying that there is no Board Resolution is guessing.

He continued to submit that the Defendant contradicted themselves whether to dismiss or strike out the suit, however, in their Plaintiff they prayed for this court to dismiss the Plaintiff. It was his view that any matter which requires evidence cannot be dismissed. Fortifying his submission, he cited

the case of **Investment House Ltd v Web Technology (T) Ltd & others**, Commercial Case No. 97 of 2015. He also cited section 3 of the Law of Limitation Act, Cap. 89 that in case a matter is brought out of time the remedy is to dismiss the matter.

On the strength of the above submission, Mr. Alphonse beckoned upon this court to dismiss the preliminary objection with costs.

In his rejoinder, the learned counsel for the Defendant reiterated his submission in chief. Mr. Andrew submitted that saying that there is no need for Board Resolution is to mislead the court since lack of Board Resolution renders the suit incompetent. He insisted that there is no need of evidence, the same is required to be attached in the pleading. He added that failure to do so the suit is incompetent hence the same be dismissed. He submitted that there is no dispute that Directors are the ones signing the documents but all affairs are within the Directors and they are party to the company thus they had to pass the board resolution.

Mr. Ngonyani added that section 147 (1) (a) of the Companies Act, Cap. 212 state that in all matter there must be a board resolution not only in lodging a case. He added that a preliminary objection is not a matter of

evidence. He insisted that the cited cases require the party not only to attach but to plea in the Plaint.

In conclusion, he urged this court to find that the suit is incompetent for failure to plea and attach the board resolution.

The issue which I am called upon to resolve in this ruling is whether the preliminary objection raised by the Defendant is meritorious. I have carefully summarized the submissions made by learned counsels for the Plaintiff and Defendant. Before I address the main issue, I find it necessary to consider the validity of the preliminary objection since the Plaintiff's counsel has contended that the point of objection is misconceived since it needs evidence to prove it.

In view of that, the Plaintiff's counsel contended that the objection does not qualify as a preliminary objection in law as they do not meet the tests set out in **Mukisa Biscuits** (supra). That is the Plaintiffs argument. However, the Defendants have counteracted it, stating that, the objection is valid since lack of the Board Resolution renders the suit incompetent. To address the above issue, let me revert to what the Court in the famous case **Mukisa Biscuits** (supra) defined the term preliminary objection as:-

"A point of law which has been pleaded, or which arises by clear implication out of pleadings and which if agreed as a preliminary point may dispose of the suit."

A number of cases have cited with approval the **Mukisa's Biscuit** case (supra). These include the case of Tanzania Union of Industrial and Commercial Workers TUICO at Mbeya Cement Company Ltd v Mbeya Cement Company Ltd, and National Insurance Corporations Ltd [2005] TLR 49 and **Mbonipa Kasase v Tanzania Revenue Authority**, Revision No.422 of 2016) (unreported), to mention a few.

In the instant case, the controversy on which the objection is anchored is whether *this suit is bad in law and incompetent before the court for lack of Board Resolution of the Plaintiff's Company*. The Defendant's counsels have locked horns with the Plaintiff's counsel on this. Each part opposes the version of the other and above all, the Plaintiff has argued that this point is not a pure preliminary objection. In the instant application I am of the considered opinion that the point of objection raised by the respondent's Advocates might dispose of the suit either by way of being strike out or dismissal orders.

I have perused the Plaintiff's Complaint and as rightly submitted by both learned counsels, the Plaintiff is a Company incorporated under the Companies Act, Cap. 212 [R.E 2019]. Therefore, is a legal person and its affairs are entrusted in the hands of Directors who always perform all company's activities on behalf of all shareholders. Therefore, whichever takes place or is performed on behalf of the company has to be blessed by the Directors through the Directors' meetings. In this suit, it is not disputed by all learned counsels that the Plaintiff has not attached the board of Directors minutes to exhibit its resolution that the company through its directors or any special class of members authorized the institution of the suit as well as the advocate taking the conduct of this suit to represent it in court. Section 147 (1) (a) of the Companies Act, provides that:-

*"147.-(1) Anything which in the case of a company may be done –
(a) by resolution of the company in general meeting," [Emphasis added].*

In the case of **Bugere Coffee Growers Ltd** (supra) and **Tanzania American International Development Corporation 2000 Ltd (TANZAM) & Another v First World Investment Auctioneers, Court**

Brokers, Civil Case No. 15 of 2017. In the case of **Bugere Coffee Growers Ltd** (supra), the court held that: -

"The provision derives its objective from the principle that, institution of legal proceedings by a company must authorized either by a company or Board of Directors' meeting." [Emphasis added].

Equally, in the case of **Pita Kempap**, (supra), the High Court of Uganda held that:-

*"When companies authorise 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..."* [Emphasis added].

From the above deliberation and cited authorities of the cases, I hold that the Plaintiff ought to have complied with the requirement of section 147 (1) (a) of the Companies Act, Cap. 212 [R.E 2019] to prove that the Board of Directors' resolution approved or passed the matter to be lodged in the court of the law.

Additionally, I fully subscribe to the submissions made by the learned counsels for the Defendant that it was mandatory to plea and attach to the

Plaint minutes of the board of directors resolution at the time of filing the suit. It is crucial to determine the objection to find out whether the board resolution was passed otherwise, it will be a wastage of time to proceed with hearing the suit while the Plaintiff has not complied with the legal requirement as stated under section 147 of the Companies Act, Cap. 212 [R.E 2019]. The issue raised by the Plaintiff's counsel to allow him to file the board resolution will be meaningless since the Plaintiff is incompetent before this court since the Plaintiff is required to reflect the authorization of the board resolution in his pleadings.

For the sake of clarity, I have read the cases of **CRDB Bank PLC v Ardhi Plan Ltd** (supra) and **A one Products and Bottlers**. These are persuasive authorities, therefore they are not binding precedents. In my findings, I have chosen to rely on the provision of section 147 (1) (a) of the Companies Act, Cap. 212 [R.E 2019] and the cited cases of **Bugerere Coffee Growers Ltd (supra)**, **Pita Kempap** (supra), and **Kati General Enterprises Limited** (supra).

In the upshot and for the aforesaid reasons, cited law and authorities, I do hereby uphold the preliminary objection and hold that the instant suit is

incompetent and the same is struck out with leave to refile within 30 days from today. Each party has to bear his or her own costs.

Order accordingly.

DATED at Dar es Salaam this 5th May, 2022.

 **Z. MGEYEKWA**
JUDGE
05.05.2022

Ruling delivered on 5th May, 2022 in the presence of Mr. Alphonse Peter Kubaja and Ms. Sarah Matembo, learned counsels for the Plaintiff.

 **Z. MGEYEKWA**
JUDGE
05.05.2022