

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 222 OF 2023**

**UNCTION TRADING COMPANY ..... PLAINTIFF**

**VERSUS**

**KCB BANK ..... 1<sup>ST</sup> DEFENDANT**

**MM AUCTIONEER AND DEBT COLLECTOR**

**COMPANY LTD MART ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

*Date of Last Order: 27.02.2023*

*Date of Ruling: 17.03.2023*

**A.MSAFIRI, J**

The Plaintiff in this suit is a Limited Company engaged in among other things logistic services in Dar es Salaam. She has instituted this suit claiming against the defendants jointly for return of the attached and intended sale of the House Plot No. 2443 Block A, CT No. 630967 situated at Pugu Kajiungeni, Ilala Municipality at Dar es Salaam and the House located at Plot No. 125328 Block C, CT No. 131999 LO No. 630967 situated or located at Mtoni Kijichi, Tememe District at Dar es Salaam in the name of Andrew Mhoja Maziku (hereinafter referred to as the suit properties) without any lawful cause, as well as an order of temporary injunction against the defendants from advertising and selling the attached houses as collateral until the determination of this suit to its finality. *Alle*

On 11.10.2022 when the defendants were filing their written statement of defence, they also lodged a Notice of preliminary objection against the plaintiff's claim to the effect that;


*a. That this suit is incompetent for failure to plead and annex resolution sanctioning the institution of the same.*

The hearing of the preliminary objection raised was by way of written submissions whereas, the defendants were represented by Mr. Makaki Masatu learned Advocate while the plaintiff enjoyed the service of Mr. Benedict Pius Chang'ambwe learned Advocate.

Mr Makaki Masatu, arguing in support of the preliminary objection, contended that this suit is incompetent before this Court for failure to plead and annex resolution sanctioning the institution of the suit.

Cementing on the above point, counsel for the defendants contended that for any company to institute a suit in court of law, there must be a resolution of the company or of a board of directors. He pointed that the plaintiff being a company, has not pleaded nor annexed the resolution of the Board of Directors which is the law requirement as far as suits instituted by the companies are concerned.

Furthermore, he cited the case of **Ursino Palm Estate Ltd vs Kyela Valley Foods Ltd**, Civil Application No. 28 of 2014 and **Bugere Coffee Growers Ltd vs Sebaduka and Another** [1970] where it was held that:-

*'... legal proceedings by a company must be authorized either by a company resolution or board of directors meeting.'* 

He further added that section 147(1) of the Companies Act, Cap 212 [R.E. 2019] provides that everything done by the company must be sanctioned by a resolution in writing signed by or on behalf of all members of the company save for resolutions stated under section 193(1) and section 170(7) of the same. He asserted that, failure to plead and annex a board resolution renders the suit incompetent hence, he prayed that this Court be pleased to dismiss this case with costs.

In reply, counsel for the plaintiff, Mr. Benedict Pius Chang'ambwe contended that the law governing the pleadings is Order VII of the Civil Procedure Code Cap 33 [R.E. 2019] (the CPC). He pointed that the same does not stipulate the mandatory requirement of board resolution as a necessary document to validate the plaint in instituting a case, to the extent that failure of which, the suit is incompetent as alleged by the counsel for the defendants.

He argued that the only requirement of the law in the suit involving corporation is provided under Order XXVIII Rule 1 of the CPC that provides: -

*'In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.'*

Hence, the counsel for the applicant asserted that the above requirement was adhered to, and that there is no any provision of the law which provides for the requirement to annex the Board of Directors' resolution. *Adelle*

He argued that the current suit is proper before this Court, and in addition, the raised preliminary objection does not fit to be characterised as point of law as the same would require evidence.

To bolster the above points, counsel for the plaintiff cited the case of **Mwananchi Insurance Company Limited vs Commissioner for Insurance** Misc. Commercial Cause No. 2 of 2016 (unreported) and the case of **CRDB Bank PLC VS Ardhi Plan Limited & 4 others** Comm. Case No. 90 of 2020 (unreported) where it was held that it is not mandatory for a company to annex to the pleading, the board resolution authorising the company to institute legal proceeding.

In rejoinder, counsel for the 1<sup>st</sup> defendant reiterated what was submitted in chief and further added that for the plaintiff to be able to prosecute his/her case must have locus standi to do so, to abide to the legal principle established by the Court of Appeal in the case of **Ursino Palm Estate Limited** (supra) hence, that the CPC must be read in line with the legal principle that requires institution of legal proceedings by a company to be authorised either by a Company or Board of Directors, as well as the provision of section 147 of the Companies Act(supra).

After a careful consideration of the submission of the parties it would appear to me that the issue for determination is whether the board resolution of the company is mandatory legal requirement in instituting the case where the Company is concerned.

In determining the issue hereinabove, it should be noted that there are different schools of thought over the position. This is revealed from the decision of this Court by my Learned Sister Hon. Phillip, J. in the case *Alls.*



of **CRDB Bank PLC vs Ardhi Plan Limited & 4 Others**, Commercial Case No. 90 of 2020 at page 7 where it was observed that;

*'...there are two schools of thought on this issue, the first one is that, it is not mandatory requirement to attach to the plaint a copy of a Board Resolution authorizing institution of a case by a company or plead its existence. The second one is the opposite of the first one, that is, failure to attach to the plaint a copy of a Board resolution authorising the institution of a case by a company and plead the existence of the same renders the case unmaintainable.'*

There being two schools of thoughts, one has to consider the circumstances of each case while determining the matter. In the most recent case of **New Life Hardware Co. Ltd vs. Shadong Cocheng Export Co. Ltd and 2 Others**, Commercial Case No. 86 of 2022(Unreported), the Learned Brother Hon. Magoiga,J upheld an objection which was couched in similar manner as the case at hand that, the plaintiff who was a company did not annex a Board of Resolution authorizing the commencement of the proceedings in Court. The Court, referring to the provisions of section 147 of the Companies Act, held thus;

*"Going by literal wording of section 147 (1), it is obvious that anything a **company** does must be sanctioned by resolution in writing signed by or on behalf of all members of the company save for resolutions on matters expressly stated under section 193(1) and section 170(7) of the Act. The immediate questions is why written resolutions? The answer is simple, companies being legal person, need to operate and* *Alle.*

*be managed by natural persons who for the interest of companies as distinct legal person must operate by way of meetings and resolutions, otherwise we may have a company run by one individual without knowledge of shareholders and directors at the detriment of the company itself or its members. The resolution binds members and directors of the company and in case of dispute and liability lifting veil of incorporation becomes easier...."*

The Court in the above referred case, went further and observed that, section 147(1) of the Companies Act must be read together with Order VII Rule 1 of the CPC if the plaintiff is a company registered under the Companies Act.

I wholly subscribe to this position and I associate myself with the same. In my view, I agree and take the school of thought that a Company resolution is necessary for the commencement of legal proceedings where a company is concerned.

Looking back to the facts of the case at hand, it is clear that the plaintiff is a limited company and this is reflected in the Plaint. However, the same does not state clearly whether being a limited company, this suit was preferred by a sanction of the Board of Directors or members. It is my finding that the resolution sanctioning the institution of this case was necessary.

Much as I agree with the principle set in the case of **Mukisa Biscuits** as it was referred to this Court by the counsel for the plaintiff, with respect, I don't subscribe to his argument that the raised preliminary

*Atte.*

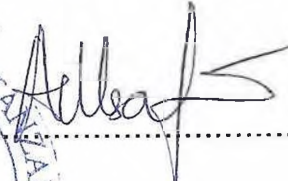
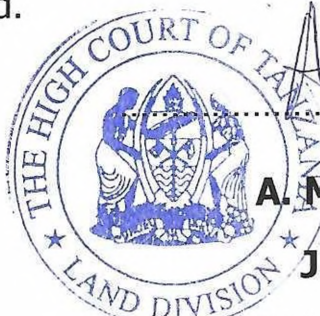
objection requires evidence so it does not qualify to be a pure point of law.

I say so for the reason that this argument could hold water if it was clearly stated in the Plaint that the suit has been preferred by sanction of the Board of Directors or members. But as observed earlier, this was not pleaded in the Plaint. Hence, the issue of evidence on this fact cannot arise even in the course of hearing because it is a trite law that parties are bound by their own pleadings. This means that the issue whether there was a Board Resolution or not, cannot be raised during the hearing of the case as it is not pleaded. So, the argument that the raised objection needs evidence to ascertain it cannot stand.

As pointed earlier, the plaintiff is a company and this is not in dispute, so it is also governed by the provisions of the Companies Act. It was necessary that the company resolution sanctioning the institution of this case to be pleaded and annexed thereto. In absence of that, I find the case to be unmaintainable.

For the foregoing reason, I sustain the preliminary objection raised and proceed to struck out this suit with costs.

It is so ordered.

  
  
**A. MSAFIRI**  
**JUDGE**  
**17/03/2023**