

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO.26 OF 2020

TRIANGLE (EAST AFRICA) LIMITED..... PLAINTIFF

VERSUS

HALIETH MAZULA1ST DEFENDANT
PHILIP M.NDINDA 2ND DEFENDANT
JULIUS K.KITALY..... 3RD DEFENDANT
GILBERT ROMANI KITALY..... 4TH DEFENDANT
REDMNA GINWAS 5TH DEFENDANT
JOHN RICHARD SOLWA 6TH DEFENDANT
GEOFREY GODFREY KAHWILI 7TH DEFENDANT
HAMISI MAKARANGA MPIGAMAWE 8TH DEFENDANT

JUDGMENT

Date of last Order: 10.03.2023

Date of Judgment: 24.03.2023

A.Z. MGEYEKWA, J:

At the centre of controversy between the Plaintiff and the Defendants is unsurveyed land (MKAMBA FARM) measuring 93 acres located at Chekeni area at Ngoma Mapinduzi Kigamboni Municipality within Dar es

Salaam Region (henceforth the suit premises). The Plaintiff prays for Judgment and Decree against the Defendants as follows: -

1. *That a declaration order that, the plaintiff company is the lawful owner of the whole unsurveyed land (MKAMBA FARM) measuring 93 acres located at Chekeni area at Ngoma Mapinduzi Kigamboni Municipality, Dar es Salaam Region.*
2. *A declaratory Order that, all defendants are trespassers to the suit land.*
3. *A declaratory Order that, the defendants 'purported Agreements for sale are null and void abnatio and be nullified.*
4. *An order for a survey and grant of Certificate of Titles to Kigamboni Municipality forthwith.*
5. *An order to quit and deliver up vacant possession to all the defendants, their agent's assignee whomsoever from the suit land.*
6. *An order restraining permanently all defendants and their agents, servants, assignees whosoever from interfering or whatsoever to the suit land.*
7. *General damages in the tune of Tshs. 300,000,000/= or the Court may assess the 1st Plaintiff had suffered by the acts of the Defendants.*
8. *Costs to be paid by the Defendants.*

9. Any other reliefs the honorable court may deem just to grant.

In response to the Plaintiff, the Defendants filed separate Written Statements of Defence disputing all the claims and urged this court to dismiss the entire suit with costs. The 1st, 2nd, and 3rd Defendants were marked withdrawn from the list of defendants in the Plaintiff under Order XXIII, Rule 1 of the Civil Procedure Code Cap.33 [R.E 2019] under the Order of this court dated 31st August 2022.

It is imperative at the outset to point out that, the matter has also gone through the hands of my learned brother Hon. Luvanda J, who heard the Plaintiff's case. I thank my predecessor for keeping the records well and on track. I thus gathered and recorded what transpired at the disputed land and now I have to evaluate the evidence adduced by the witnesses to determine and decide on the matter in controversy.

The facts, as can be deciphered from the pleadings and evidence on record. They go thus: The Plaintiff claims jointly and severally against all the Defendants claiming ownership over the unsurveyed land located at Mkamba Farm measuring 93 acres as per the GPS Sketch Map and Valuation Report located at Chekeni Area at Ngome Mapinduzi in Kigamboni District within Dar es Salaam Region. According to the Plaintiff, it is alleged that in 1993, the Village Local Government allocated the suit

land to the late Makaranga Mpigamawe, the deceased who died intestate. Thereafter, the 11th Defendant who is among the beneficiaries of the estate was appointed by the Kigamboni Primary Court at Kigamboni to be a Personal Legal Presentative vide Probate Cause No. 69/2014. Later, the family of Mkaranga Mpigamawe sought of revoking the Letter of Administration of the 11th Defendant and they appointed Ayub Makaranga Mpigamawe to sanction by the Kigamboni Primary Court to be the new administrator. The 11th Defendant is a legal representative not revoked and stands as a Legal Personal Legal Representative to date.

Thereafter, three beneficiaries of Makaranga's family mutually and irrevocably agreed to sell the suit land, they mandated one Christopher Bernard Kaswalala who was charged with duties to search a prospective buyer and negotiate the price. Hence the Plaintiff found that the suit land had no encumbrances and agreed to purchase the suit land. The Plaintiff concluded a sale agreement between the Plaintiff Company and the Agent on behalf of all beneficiaries and Ayubu Makaranga Mpigamawe being the authorized representative from the family of the deceased, Makaranga Mpigamawe. The Plaintiff is claiming that he paid in total Tshs. 340,000,000/= to Christopher Bernard Kaswalala designed bank account and he paid the 10 legal heirs as mutually agreed. According to the Plaintiff, the Plaintiff developed the suit land but the Defendants trespassed the

suit land and caused damages to the Plaintiff, as a result, he suffered the loss of business for almost 3 years, hence this suit.

At all the material time, the Plaintiff was represented by Mr. Alex Balomi learned Advocate, while the 4th,5th 6th,7th, and 8th Defendants were represented by Mr. Hassan Mussa, learned Advocate, 9th Defendant was represented by Mr. Ngolo Malele, learned advocate and the 10th and 11th defendants were represented by Mr. Abubakari, Salim learned Advocate.

Upon completion of all preliminaries, the Final- Pre Trial-Conference was conducted and the following issues were recorded on 3rd August, 2022 at the request of the parties. The issues recorded are as follows: -

- 1) *Whether the plaintiff is the lawful owner of the suit land measuring 93 acres located at Chekeni Mwasonga area Ngoma Mapinduzi Kigamboni Municipality Dar es Salaam.*
- 2) *Whether the defendant is a trespasser to the suit land of the above description.*
- 3) *To what reliefs are the parties entitled.*

In what seemed to be a highly contested trial, the Plaintiff led evidence of three witnesses; Mr. Said Mohamed Makaranga, who testified as PW1, Mr. Akida Shekuyu who testified as PW2, Christopher Kiswalala who testified as PW3. The 1st to 5th Defendants led evidence of eight

witnesses; Daudi Alex Bahati who testified as DW1, Riziki Bahati Maganga who testified as DW2, Michael Sangija Kajoma who testified as DW3, Harieth George Mazula who testified as DW4, Gilbert Roman Kitaly who testified as DW5, Julius Kastabu Kitaly who testified as DW6, Philip M. Ndinda who testified as DW7, Geoffrey William who testified as DW8.

The 6th Defendant called one witness; Jonh Solwa who testified as DW9 and the 7th and 8th Defendants summoned six witnesses; Geoffrey Godfrey Kakilwi who testified as DW10, Narasco Ernest who testified as DW11, Thomas Manyamanda who testified as DW12, Hamis Makaranga Mpigamawe who testified as DW13, Swaumu Makaranja who testified as DW14.

The Plaintiff side tendered a total of five documentary Exhibits to wit; consent to Kaswalala dated 3rd February 2015 (Exh.P1), Sale Agreement dated 6th October 2016 (Exh.P2), receipt dated 8th November 2016, 16th January 2017 and 26th January 2017 and remittance Application Form dated 19th November 2016 (Exh.P3), Certificate for Payment and Receipt (Exh.P4) and the Letter dated 5th April 2017, 9th January 2019, 15th August 2019 and 29th October 2018 (Exh P5).

On their side, the Defendants tendered seven exhibits namely, a copy of minutes dated 15th May 1994, Loss Report and Affidavit dated 7th December 2022 (Exh.D1collectively), Sale Agreement dated 19th

September 2004 (Exh.D2), Proof of Sale dated 2nd July 2006 (Exh.D3), Sale Agreement dated 29th August 2004, a Loss Report and affidavit of the same dated 15th August 2004 (Exh.D4), Sale Agreement dated 3rd September 2006, A Loss Report and affidavit of the same dated 15th August 2022 (Exh.D5), Ruling of Civil Case No. 52/2004 dated 8th November 2004 (Exh.D6), and Execution certificate dated 22 November 2015 (Exh.D7).

In effort to prove their case, Mr. Said Mohamed Makaranga (PW1), the son of Mohamed Makaranga Mpigamawe testified to the effect that his father survived with nine children who are Hamis Mohamed Makaranga, Fatuma Mohamed Makaranga, Moshi Mohamed Makaranga, Ester Mohamed Makaranga, Magreth Mohamed Makaranga, Swaumu Mohamed Makaranga, Ayoub Mohamed Makaranga, Saidi Mohamed Makaranga, and Dotto Mohamed Makaranga. He testified that Mohamed Makaranga and Mohamed Makaranga Mpigamawe referred to the same person who is his father.

From the foregoing, before confronting the issues framed for the determination of the present dispute between the parties. I have noted a point of law and called the parties to address me on whether the Plaintiff was authorized to lodge the instant suit the same is also featured in the

final submission made by Mr. Hassan, Advocate for the 1st - 5th Defendants.

I have perused the Plaintiff's Complaint and annexures thereto and noted that the Plaintiff under paragraph 1 of the Complaint introduced himself as an existing Company body corporate incorporated and organized and existing under the Companies Act, Cap. 212 [R.E 2012] of the Laws of Tanzania, carrying on business in Tanzania and having the registered main office in Dar es Salaam. My scrutiny of the Complaint left me in doubt that no averments were evidencing sufficiently that the Plaintiff is registered incorporated as alleged since they did not tender any document to confirm the same. The subsequent question which does crop is whether the suit is maintainable for want of board resolution from Plaintiff to sue Defendants?

Mr. Alex Baromi submitted that the Plaintiff did not include the Board Resolution in the Complaint, although he understands that the Board was aware about the dispute and blessed the process of instituting the suit.

The 1st and 3rd Defendants submitted that as long as the Plaintiff did not file a Board Resolution then his claims cannot hold water.

The counsel for the 7th and 8th Defendant submitted in length but in summary, Mr. William concluded by stating that this suit is not maintainable for want of Board Resolution.

In my considered view, since the Plaintiff is a limited liability company, the institution of the present suit was required to be backed up by a Board Resolution. I have gone through the Plaint and noted that the Plaintiff has not even pleaded that the Board Resolution passed a resolution to authorize the Plaintiff to lodge the instant suit.

Therefore, as long a legal person and his affairs are entrusted in the hands of Directors who always perform all company's activities on behalf of all shareholders, means whichever 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 a 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].

Equally in the case of **Bugerere Coffee Growers Ltd v Sebaduka & Another** (1970) EA 147. 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 be authorized either by a company or Board of Directors' meeting." [Emphasis added].

Similarly, 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].

See also the case of **Jumuiya Ya Wafanyakazi Tanzania v Kiwanda Cha Uchapishaji Cha Taifa** (1988) T.L.R 146, the Court observed 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.

From the above deliberation and cited authorities of the cases, I hold that 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 law.

In addition, I fully subscribe to the submissions made by the 1st, and 3rd Defendants and the learned counsel for the 7th and 8th Defendants that it was mandatory to plea and attach to the Plaint a copy of Board Resolution at the time of filing the suit.

Given the manner in which the suit was brought, I hold that the suit is incompetent and unmaintainable against the Defendants.

In the upshot, I proceed to strike out Land Case No. 26 of 2020. I make no order as to costs because the issue which formed the basis of this Judgment was raised *suo mottu* by the Court.

Order accordingly.

DATED at Dar es Salaam this 24th March 2023.



Judgment delivered on 24th March 2023 in the presence of Mr. Alex Balomi, counsel for the Plaintiff, 1st, 2nd and 3rd Defendants. Mr. William Changoma, counsel for the 7th and 8th Defendants also holding brief for Ms. Ngolo, counsel for the 6th Defendant.

