

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 209 OF 2022.**

**BETWEEN**

**NCG CHEMICAL INDUSTRIES LIMITED COMPANY.....PLAINTIFF**

**VERSUS**

**AMRI BAKARI MALOMBORA .....1<sup>ST</sup> DEFENDANT**

**JENIFER RICHARD KANGOZI .....2<sup>ND</sup> DEFENDANT**

**LOVENESS SHAMI NYUTON.....3<sup>RD</sup> DEFENDANT**

**ALLY SALUM MPENDA.....4<sup>TH</sup> DEFENDANT**

**REHEMA SHABANI.....5<sup>TH</sup> DEFENDANT**

**ALLY OMARI NJECHELE.....6<sup>TH</sup> DEFENDANT**

**HASSAN JUMA SEFU.....7<sup>TH</sup> DEFENDANT**

**IMANUEL GILBERT.....8<sup>TH</sup> DEFENDANT**

**HAMISI HALIDI.....9<sup>TH</sup> DEFENDANT**

**JAFARI IBRAHIMU MJIJI.....10<sup>TH</sup> DEFENDANT**

**ZAINABU OMARI CHINGEGE.....11<sup>TH</sup> DEFENDANT**

**AMIRI WAZIRI HAMZA.....12<sup>TH</sup> DEFENDANT**

**ASHA SALUM MCHECHELE.....13<sup>TH</sup> DEFENDANT**

**MGENI ALLY KUSA.....14<sup>TH</sup> DEFENDANT**

**VICTORIA ABDALLAH.....15<sup>TH</sup> DEFENDANT**

**HALIMA SALUMU MWELA.....16<sup>TH</sup> DEFENDANT**

**MOHAMED SALUM NAMKUNDA.....17<sup>TH</sup> DEFENDANT**

OMARI MOHAMED MKUMBA .....	18 <sup>TH</sup> DEFENDANT
MOHAMED HAMZA KILAMBO.....	19 <sup>TH</sup> DEFENDANT
RAMADHANI HAMIS MKINGIE.....	20 <sup>TH</sup> DEFENDANT
ATHUMAN MUSSA ATHUMAN.....	21 <sup>ST</sup> DEFENDANT
RAMADHANI KASIMU NDUNDUL.....	22 <sup>ND</sup> DEFENDANT
AMINA MOHAMEDI.....	23 <sup>RD</sup> DEFENDANT
ABDALLAH BAKARI MBONDE.....	24 <sup>TH</sup> DEFENDANT
VALENTINE MALIMA PAMBA.....	25 <sup>TH</sup> DEFENDANT
HALIFANI SUDI BINDA.....	26 <sup>TH</sup> DEFENDANT
ELIA ANTHONI MLAWA.....	27 <sup>TH</sup> DEFENDANT
HAMADI BODO.....	28 <sup>TH</sup> DEFENDANT
LEBEATUS.....	29 <sup>TH</sup> DEFENDANT
JAMES ELIAS.....	30 <sup>TH</sup> DEFENDANT
VERONICA ADRIANO.....	31 <sup>ST</sup> DEFENDANT
JULIUS JOHN NGWAYA.....	32 <sup>ND</sup> DEFENDANT
TAPHAEREL M. MAHIMBO.....	33 <sup>RD</sup> DEFENDANT
SIWEMA SHABANI.....	34 <sup>TH</sup> DEFENDANT
AMINA JAFARI.....	35 <sup>TH</sup> DEFENDANT
SEVERIN S. KOMBA.....	36 <sup>TH</sup> DEFENDANT
ZARUBIA MOHAMED.....	37 <sup>TH</sup> DEFENDANT
OMARI YAHYA.....	38 <sup>TH</sup> DEFENDANT
ADERTUS GIDION.....	39 <sup>TH</sup> DEFENDANT
RAUNESN SHANI.....	40 <sup>TH</sup> DEFENDANT
MARY JOHN MPAGANUA.....	41 <sup>ST</sup> DEFENDANT
ANASTAZIA ADUIS THOMAS.....	42 <sup>ND</sup> DEFENDANT
JOHARI ALLY SAID.....	43 <sup>RD</sup> DEFENDANT
MMOHAMED A. KIRAMBO.....	44 <sup>TH</sup> DEFENDANT
RAMADHANI HAMISI.....	45 <sup>TH</sup> DEFENDANT
HEMEDI ALLY.....	46 <sup>TH</sup> DEFENDANT
REHEMA SAIDI.....	47 <sup>TH</sup> DEFENDANT

DEO KOMBA.....	48 <sup>TH</sup> DEFENDANT
ARIFA M. MAIDA.....	49 <sup>TH</sup> DEFENDANT
HASSAN M. MAJAUUKWA.....	50 <sup>TH</sup> DEFENDANT
SALUM MSUSA.....	51 <sup>ST</sup> DEFENDANT
HAIRUN IDDI.....	52 <sup>ND</sup> DEFENDANT
ZULFA RASHIDI.....	53 <sup>RD</sup> DEFENDANT
NOEL CHIZOZA.....	54 <sup>TH</sup> DEFENDANT
LIMALI DINDEMELA.....	55 <sup>TH</sup> DEFENDANT
SHAHIDU HARUNA.....	56 <sup>TH</sup> DEFENDANT
MRISHO MOHAMED.....	57 <sup>TH</sup> DEFENDANT
ALBERT D. CHALE.....	58 <sup>TH</sup> DEFENDANT
VESTEN MKINGA.....	59 <sup>TH</sup> DEFENDANT
ABDUL SAID MGUNDA.....	60 <sup>TH</sup> DEFENDANT
ROBERT NGAZDA.....	61 <sup>ST</sup> DEFENDANT

## RULING

*Date of last Order: 02/08/2023*

*Date of Judgment: 25/08/2023*

**K. D. MHINA, J.**

This is the ruling in respect of the preliminary objection raised by the 2<sup>nd</sup>, 3<sup>rd</sup>, 7<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 34<sup>th</sup>, 35<sup>th</sup>, 41<sup>st</sup>, 42<sup>nd</sup>, 46<sup>th</sup>, 48<sup>th</sup>, 53<sup>rd</sup>, 58<sup>th</sup>, and 60<sup>th</sup> defendants against the plaintiff's suit on the dispute over the land ownership.

The main dispute between the parties is the ownership of surveyed land described as Farm No. 40 with a certificate of title No. 37278 located at Kazole, Vikindu, in Mkuranga District.

Despite filing their written statements of defence but also before the commencement of the hearing, the 2<sup>nd</sup>, 3<sup>rd</sup>, 7<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 34<sup>th</sup>, 35<sup>th</sup>, 41<sup>st</sup>, 42<sup>nd</sup>, 46<sup>th</sup>, 48<sup>th</sup>, 53<sup>rd</sup>, 58<sup>th</sup>, and 60<sup>th</sup> defendants confronted the plaintiff with a notice of a preliminary objection that canvassed one ground, namely;

- i. The suit filed by the plaintiff is incompetent as it contravened section 147 (1) (a) and (b) of the Companies Act, Cap 212 R: E 2002.*

Therefore, this Court had to deal with preliminary objections first because it is trite that once a court is seized with a preliminary objection, it is first required to determine the objection before going into the merits or the substance of the case or application.

The objections were argued by way of written submissions duly drawn and filed by Mr. Alex Enock, learned advocate for the 2<sup>nd</sup>, 3<sup>rd</sup>, 7<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 34<sup>th</sup>, 35<sup>th</sup>, 41<sup>st</sup>, 42<sup>nd</sup>, 46<sup>th</sup>, 48<sup>th</sup>, 53<sup>rd</sup>, 58<sup>th</sup>, and 60<sup>th</sup> defendants, and Mr. Ashirafu Muhidini, learned advocate for the plaintiff.

In supporting the preliminary objection, Mr. Enock submitted that in the present suit, the plaintiff, being the limited liability company registered under the Companies Act 2002 at the time of instituting this suit, did not

consider the requirement of section 147 (1) (a) and (b) of the Companies Act. The section provides that

*"Section 147(1) anything which in the case of a company may be done-*

*(a) By resolution of the company in a general meeting, or*

*(b) By a resolution of a meeting of any class of members of the company, may be done, without a meeting and without and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of the resolution would be entitled to attend and vote at such meeting: Provided that, nothing in this section shall apply to a resolution under section 193(1) removing a director before the expiry of his period of office or resolution under section 170(1) removing an auditor before expiry of his term of office"*

He further submitted that this suit was filed without having the company's body resolution, rendering this suit incompetent. The remedy is to strike out the plaint from the Court record. He bolsters his submission by citing the cases of **New Life Hardware and another vs. Shandong Locheng and two others, Commercial Case No. 86 of 2022 (HC- Commercial Division)** and **Oxley Ltd vs. Nyarugusu Mine Co. Ltd and another, Commercial Case No.14 of 2022, (HC- Commercial**

**Division)**, where the Commercial Court struck out the suit for being filed without Board resolution of the company authorizing the filing of such suit.

Furthermore, he submitted that the position also was clearly determined by the Court of Appeal in the cases of;

One, **Ursino Palms Estate Ltd vs. Kyela Valley Foods Ltd**, Civil Application No. 28 of 2014 (unreported), where it was held that;

*'...in the case of **Bugerere Coffee Growers Ltd v Sebaduka and another [1970]** EA 147 which was cited with approval by this Court in the case of **Pita Kempap Ltd v. Mohamed LA Abduihussein**, Civil Application No. 128 of 2004 (unreported) the High Court of Uganda 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..."*

Two, **Simba Papers Converters Ltd vs. Packaging and Stationery Manufacturers Ltd and another**, Civil Appeal No. 280 of 2017 (Tanzlii); it was held that;

*"Having carefully considered the matter, I have reached a settled conclusion that, indeed the pleadings (plaint) should expressly reflect that there is a resolution authorizing the filing of an action.*

*A company which does not do so in its pleadings risks itself to the dangers of being faced by any insurmountable preliminary objection as is the one at hand."*

In response, Mr. Muhidin submitted that the provision of Section 147 (1) of the Companies Act is not mandatorily to be performed. That law provides for discretionary power as per Section 53 (1) of the Interpretation of Laws Act, Cap 1 R.E 2015, which provides that;

*"Where in a written law the word "may" is used in conferring a power, such word shall be interpreted to imply that the power so conferred may be exercised or not at discretion."*

Therefore, he maintained that the suit was not incompetent because the provisions that were said to be contravened were discretionary.

Further, Mr. Muhidin also cited Order XXV11I (1) of the Civil Procedure Code Cap 33 R.E 2019, which provides that;

*"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 of the corporation who can depose to the facts of the case."*

And he argued that the administration of the plaintiff was aware of this matter, and the plaint had been signed and verified on behalf of the plaintiff by the company's manager, Justin William Mlacha.

He added that the Civil Procedure Code, as the mother law of civil cases, is silent on the issue of resolution but gives the clear green light to an authorized company officer who can depose the facts of the case to sign and verify the pleading.

Regarding the cited case of **Simba Papers Converters Ltd (Supra)**, Mr. Muhidin stated that it dealt with the institution of a suit that revolves around the internal conflict within the company; therefore, in such a situation, the board resolution is required because that company management needs to consent on instituting a suit against one of its directors or any other officer of the company. In this matter, there is no internal conflict within the company; instead, the company is generally suing against the trespassers.

Therefore, he prayed for the preliminary objection to be dismissed.



Mr. Enock filed a rejoinder, but I don't see the reason to summarize here what was submitted because mostly the submissions reiterated what he had submitted earlier in the submission in chief.

Having considered the pleadings and the written submissions made by both learned counsel for the parties, the issue that has to be resolved are:

*"1. Whether the suit is improper for being filed without the company's body resolution".*

In the determination, I will go straight to the recent decision of the Court of Appeal on the subject matter, i.e., the cited of **Simba Papers (supra)**, where it was held that;

*"In the premises, since the claimant was a company, it was not proper to institute a suit on behalf of the company without its formal authority. This required the express authority by way of resolution of the Board of Directors to institute the case in the absence of which, the suit in the name of the company was defective and it ought to have been struck out".*

In **Wellworth Hotels and Lodges Ltd vs. East Africa Canvas Co. Ltd and four others**, Commercial Case No. 107 of 2020, HC-

Commercial Division (Tanzlii), when the Commercial Court struck out the suit for being filed without the body resolution, it held that;

*"In my view, there is no doubt that, with the recent decision of the Court of Appeal in the Case of Simba Papers (supra), the dusts have been settled regarding whether a Board Resolution is a necessary document to be filed in court when a suit is instituted by a Company this being a means of evincing the authority to bring such a suit".*

Therefore, from the cited cases above, it is quite clear that there must be an express authority by way of board resolution to enable the company to institute the suit. Without a body resolution, that suit became incompetent.

Flowing from above, it is, therefore, the submission by Mr. Muhidin that the requirement of a body resolution under section 147 (1) of the Companies Act is not mandatory because of the word "may" lacks merit because of the decision of **Simba Papers (supra)**.

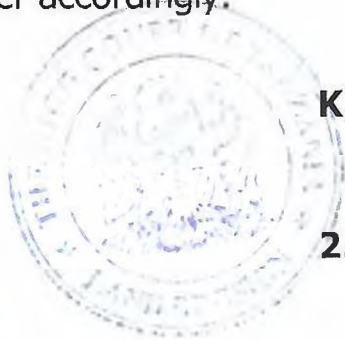
Furthermore, the contention of Mr. Muhidin that since CPC, which is the mother law of civil cases, is silent on that issue and, on the other hand, under Order XXV11I (1) of the CPC, that pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other

principal of the corporation who can depose to the facts of the case, is misconceived. The issue here is the body resolution to authorize the institution of the suit and not who signed the pleadings.

In conclusion, since this court has no jurisdiction to hear such a suit without being accompanied by the body resolution, this suit is not competent. Further, this issue touches on the jurisdictional issues.

In the upshot and conclusion, I sustain the preliminary objection that the suit is incompetent for the reasons I elaborated above; consequently, I strike out the suit with costs.

I order accordingly.



  
**K. D. MHINA**  
**JUDGE**  
**25/08/2023**