

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

LAND CASE NO. 207 OF 2023

ANDREW ANTONY SINDABAHA.....PLAINTIFF

VERSUS

AKIBA COMMERCIAL BANK.....1ST DEFENDANT

MAJEMBE AUCTION MART.....2ND DEFENDANT

RULING

18th July, 2023 & 28th August, 2023

L. HEMED, J.

This ruling is in respect to the preliminary objection against the counter claim raised by one ANDREW ANTHONY SINDABAHA, the plaintiff in the original suit on the following points of law: -

"(i) That suit by counter claim field by plaintiff's Advocate on 14th day of July, 2023 is unmaintanable for being field without appending the company Board Resolution to the counter claim as required under section 147(1) (a) and (b) of the Companies Act No. 12 [Cap. 212 R.E 2019]

(ii) That, the joining of 2nd Defendant is bad in law by contravening order VIII Rule 10 (2) of the Civil Procedure Code Cap. 33 R.E 2023.

(iii) The counter claim is bad in law by contravening section 9 of the Civil Procedure Code Cap. 33 R.E 2023"

The preliminary objection was argued by way of written submissions. In the course of arguing the preliminary objection, the 1st defendant to the counter claim opted to abandon the 2nd limb of objection.

Let me start with the first limb of objection on the absence of Company Board Resolution to institute the counter claim. It was argued by the 1st defendant to the counter claim that it has been instituted without complying with section 147(1) of the Companies Act, Cap 212, that requires a board resolution to sue. In reply thereto, the counsel for the plaintiff in the counter claim contended that the point of objection is misconceived as the law cited is inapplicable.

He asserted that the law regulating procedure in civil matters does not requires the presentation of pleadings with a board resolution under the Companies Act, Cap 212. The learned counsel was of the view that the presentation of a board resolution is not mandatory.

Having considered the rival submissions made by the parties in respect to the 1st limb of objection, the issue is whether the point has merits. It is factual that the plaintiff in the counter claim is a company which is regulated by the Companies Act, Cap 212. Therefore, every action of a company has to be in compliance with the provisions of the Companies Act.

Section 147 (1) of the Act requires anything done by the Company to be by resolution of the company made in the general meeting or any class of members of the company. I have gone through the counter claim to find out if it has been pleaded that there was a resolution of the company towards institution of the cross – suit (counter claim). I could not find anything being so impleaded. The question is whether it is fatal.


In **Bugerere Coffee Growers Limited vs Sebaduka and Another** [1970] EA 147, the court held that:

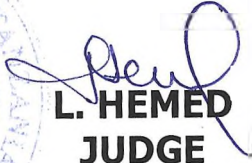
*"When companies authorize the commencement of legal Proceedings, **a resolution or resolutions** have to be passed either at a company or Board of directors' meeting and recorded in the minutes."*
(Emphasis added)

The above position was reiterated by the Court of Appeal of Tanzania in the case of **Pita Kempap Ltd vs Mohamed L.A. Abdulhussein**, Civil Appeal No. 128 of 2004 & 69 of 2005 and in **Ursino Palms Estate Limited vs Kyela Valley Foods Ltd & 2 Others**, Civil Application No. 28 of 2014.

From the foregoing precedents, it is obvious that failure to comply with the provision of section 147(1) of the Companies Act, Cap 212 renders the act done by the company to have no legal effect. In the event, I proceed to strike out the entire counter claim with costs for want of the board of directors' authorization to sue. It is so ordered.

DATED at DAR ES SALAAM this 28th August, 2023.




L. HEMED
JUDGE