

Original

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

MISC LAND APPLICATION NO. 590 OF 2023

(Arising from Land Case No. 298/2023, Land Division)

MEIYA PROPERTIES LIMITED.....APPLICANT

VERSUS

CRDB BANK PLC.....1ST RESPONDENT

MULTIMODAL TRANSPORT AFRICA LTD.....2ND RESPONDENT

ACCURATE RECOVERY & AUCTIONS LTD.....3RD RESPONDENT

LEONARD IGAGA MAHENDE.....4TH RESPONDENT

RULING

31/10/2023 to ¹⁹20/12/2023

E.B. LUVANDA, J

The First and Third Respondent named above raised two preliminary objections:

One, that the suit is incompetent in law for lack of applicants board resolution authorizing institution of the suit; Two, the application is bad in law for non rejoinder of the Registrar of Titles/Commissioner for Lands.

Nzaro Nuhu Kachenje learned Counsel for the First and Third Respondent submitted that it is undisputed that the application is neither accompanied by a board of resolution nor does it, application, contain a qualifying statement to the effect that the board of directors or members sanctioned the institution of

the application. He submitted that the application has been instituted without a board resolution, arguing it to be incompetent and therefore be struck out. She cited section 147(1)(a) and (b) of the Companies Act, Cap 212, section 7(1) of the Civil Procedure Code, Cap 33 R.E. 2019, for a proposition that an application filed without a board of resolution it is cognizance is expressly barred. Also cited a most recent decision of the Court of Appeal in **Simba Papers Converts Limited vs. Packaging Stationaries Manufactures Limited**, Civil Appeal No. 280 of 2017. She submitted that even the main suit Land Case No. 298/2023 does not contain the board resolution or a qualifying statement.

In rebuttal, Mr. Yudathade Paul learned Counsel for Applicant, submitted that a company cannot convene meetings to pass resolution to grant itself permission to conduct subsequent procedures after institution of a suit. He submitted that a company is duty bound to pass a resolution for institution of a case in court including subsequent procedure, argued the Applicant did it. He submitted that even the First and Third Respondent who are also companies like the Plaintiff (sic, Applicant) have not presented a board resolution which warranted them to file these point of preliminary objections. He submitted that the First and Third Respondent ought to challenge attachment of board resolution in the main suit and not at this stage. He submitted that the court has stated in numerous decision that enclosure of the same to the plaint or application is not a

mandatory legal requirement nor is it a pure point of law which can be resolved through preliminary objection. He cited numerous cases of this Court along High Court of Uganda, including **CRDB Bank PLC vs. Ardhi Plan Limited & Others** Commercial Case No. 90/2020. He submitted that the First and Third Respondent have raised this point of objection prematurely, for an argument that it was raised at the time the Applicant had yet filed a reply to the written statement of defence where she could have attached the board of resolution. He distinguished **Simba Paper** (supra) that it was dealing with the internal conflicts within the company.

On rejoinder, the learned Counsel for First and Third Respondent submitted that the board of resolution was not part of a plaint and an application, nor a qualifying statement to that effect. He submitted that the First and Third Respondent did not initiate this suit and slamed an argument that the First and Third Respondent needed a board of resolution to present a preliminary objection. He submitted that following the precedent set by the Court of Appeal, the High Court has upheld preliminary objections raised to the effect that there was no board resolution authorizing institution of the suit.

According to the provision of section 147(1) (a) and (b) of Cap 212 (supra), provide, I quote,

'(1) Anything which in the case of a company may be done

- a) *By resolution of the company in general meeting, or*
- b) *By resolution of a meeting of any class of members of the company,*

May be done, without a meeting 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'

In the case of **Simba Papers** (supra) at page 20 the apex Court held generally, I quote,

'In view of what we have demonstrated above, since the suit at the trial court which was at the instance of the 1st respondent was instituted without its mandate through the board of directors, it was incompetent and the respective judgment and proceedings are void'

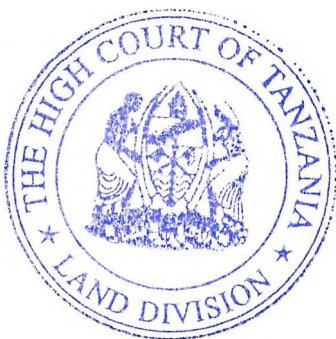
This path was taken by this Court in **Exim Bank (Tanzania) Limited vs. Jandu Construction & Plumbers Ltd & Others**, Commercial Case No. 135/2020, before Nangela, J; **Boimanda Modern Construction Co. Limited vs. Tenende Mwakagile & Others**, Land Case No. 8/2022, before Mugeta, J; **New Life Hardware & Another vs. Shandong Loncheng & Others**, Commercial Case No. 86/2022 before Magoiga J; **Unction Trading Company**

vs. KCB Bank & Another, Land Case No. 222/2023 before Msafiri, J; all these cases were cited by the learned Counsel for the First and Third Respondent.

On my part, I take a similar position that where a suit or application for this matter, is instituted by a legal entity registered under Cap 212, without a board resolution or formal authorization or mandate from board of directors, or a statement to the effect that by sanction of the board or members the suit or application was preferred (see **Exim Bank** (supra), at page 17), the suit or application will be incompetent.

Herein, the Applicant who is registered under Cap 212 did not attach any board resolution to sue and file this application, neither made a statement that the board of directors or members sanctioned the institution of these proceedings. Therefore, this application is defeated on that point alone. The preliminary objection is sustained.

The application is struck out with costs.



E. B. LUVANDA
JUDGE
20/12/2023

19