

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND CASE NO. 502 OF 2023

ALKEMIST WORLDWIDE LIMITED PLAINTIFF

VERSUS

HOTEL SEA CLIFF LIMITED DEFENDANT

RULING

26th February, 2024 & 16th April, 2024

L. HEMED, J.

ALKEMIST WORLDWIDE LIMITED, the Plaintiff in the instantaneous suit is a company registered in Tanzania under the provisions of the Companies Act, Cap. 212. In January, 2024, she presented a plaint with the following claims against the defendants: -

"(i) That, the defendant to pay specific damages to the tune of Tshs. 478,320,623.79 which is the value of assets detained by the defendant until to date.

(ii) That, the defendant to pay specific damages to the tune of Tshs. 71,402,347.5 which is the value of stock of drinks detained by the defendant until to date.



(iii) That, the defendant to pay specific damages to the tune of Tshs. 1,000,000,000/ for loss of business since the day of closure until to date.

(iv) That, the defendant to pay specific damages to the tune of Tshs. 96,000,000/= and USD 6200 which is the sum of money which was inside the locker of the leased premise.

(v) That, the defendant to pay general damages for the detention of the Plaintiff's assets to date.

(vi) That, this honourable court should be pleased to order the defendant to reinstate the plaintiff to the leased premise.

(vii) Interest of what is prayed in (i)(ii)(iii) and (iv) above at the court rate from the date of detention until payment in full.

(viii) That, defendant to pay general damages to be assessed by this honourable court.

(ix) That, the defendant to bear costs of this suit.

(x) Any other relief that this honourable court deem just and equitable to be granted".

The Defendant, Hotel Sea Cliff Limited, disputed all the claims through the written statement of Defence. She also raised a preliminary objection on the following points: -

"a) This honourable court has no original jurisdiction to determine the suit.



- b) The Plaintiff's plaint is incurably defective for contravening mandatory provision of Order VII Rule 1(e) of the Civil Procedure Code, (Cap. 33 R. E. 2019) (sic).*
- c) The Plaintiff's plaint is incurably defective for contravening mandatory provision of order VI Rule 3 of the Civil Procedure Code, [Cap. 33 R. E. 2019].*
- d) The Plaintiff's plaint is incurably defective for failure to comply with mandatory provision of order VII Rule 1(f) of the civil Procedure Code, Cap. 33 R. E. 2019) (sic).*
- e) The Plaintiff's plaint is incurably defective for failure to comply with mandatory provision of Order VII Rule 1(i) of the Civil Procedure Code Cap. 33 R. E. 2019) (sic)".*

When the matter was called on 26th February, 2024 for orders; Mr. Said Hanya, advocate for the defendant, successfully prayed to add another point of law that: -

"The plaint is defective for want of Board resolution of the plaintiff".

The preliminary objection was argued by way of written submissions. The defendant filed her submissions in chief on 4th March, 2024. Reply submission was presented for filing on 25th March, 2024, while rejoinder submission was lodged on 2nd April, 2024. In arguing the preliminary objection, **Mr. Paul Kaunda**, learned advocate acted



for the Plaintiff while the defendant enjoyed the service of **Mr. Said Hanya**, learned counsel.

In determining the points of preliminary objection, I have opted to start with the point of the defectiveness of the plaint for want of the company, board resolution authorizing the institution of the suit.

In support of the 1st limb of objection, Mr. Hanya argued that it is well – established principle that for a company to institute any proceeding before the court, there must be a board resolution authorizing the institution of such proceedings before the court of law. He added that in the instant suit, it has been impleaded in paragraph 1 of the plaint that the plaintiff is a limited liability company. According to the learned counsel for the defendant, the entire plaint has no paragraph that shows the authorization of the institution of the suit by the board of directors of the company.

It was stated further that the court has pronounced in several instances on the mandatory requirement of the board resolution to be appended to the pleadings at the time of instituting a suit. Reliance was put on the case of **Lawaita Amcas Limited vs. Tanzania; Coffee Board and Another**, Civil Case No. 11 of 2019 and **Begerere**



Coffee Growers Ltd vs Sebaduka and Another [1970] E.A. 1471

and that of **Pita Kempap Limited vs. Mohamed L. A. Abdul Hussein**, Civil Application No. 128 of 2004. The learned counsel ended up arguing the court to strike out the entire suit for want of board resolution.

In reply there to, the advocate of the plaintiff contended that board resolution of the company is a *sine qua non* in decision making of the corporate entity, however, it is not always the case in every suit involving the company. He was of the view that a company being a legal person, it has a right to sue and be sued for other extraneous matters without the sanction of board resolution. He tried to cement his point by the decisions of the Court of Appeal of Tanzania in **Simba Papers Converters Limited vs. Packaging and Stationery Manufactures Limited and Another**, Civil Appeal No. 280 of 2017 and the content in the book by Pennington's company Law, 15th edition, London arguing that the power to sue is implied in the day to day function of the directors. In his opinion, directors are the brain of the company and anything which is done by the respective director also binds the company. He asserted that in the matter on record, Mr. Amour Mohamed Shamte is the principal Officer and Managing Director



of the plaintiff who executed the non-disputed lease agreement on behalf of the plaintiff with the defendant and he is running the company until to date. He ended up praying for the cost to overrule the 1st point of objection.

In his rejoinder submission, the counsel for the defendant reiterated his submissions in chief. He stated further that the instant suit contravenes section 147(1) of the companies Act, Cap. 212.

Having gone through the rival submission, the question for determination is whether the suit is incompetent for want of board resolution authorizing institution of it. The plaintiff is a juristic person created and regulated under the provisions of the Companies Act, Cap. 2012. All conducts of companies including the plaintiff herein must be in line with what is demanded by the Act (the Companies Act). Section 147(1) of the companies Act, (supra) requires for a board resolution for anything done by a company. It provides that: -

"147 (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..."*



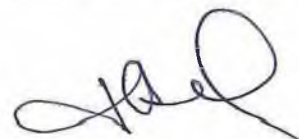
The use of the word anything in the above provision include the decision to commence legal proceedings. The requirement of resolution to authorize the commencement of legal proceedings was stated in **Bugerere Coffee Growers Limited vs. Sebaduka and Another (1970) EA 147**, that:

"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".

The position taken by the court in **Bugerere Coffee Growers Limited** (supra) was also echoed by the Court of Appeal of Tanzania in **Ursino Palms Estates Limited vs. Kyela Valley Foods Ltd**, Civil Application No. 28 of 2014, where it stated 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".

I am at one with the plaintiff's advocate's contention that a company being a juristic person, runs its day to day activities through its directors who are the brains of it. However, whenever the directors make any decision including commencement of legal proceedings by a company there must be a resolution by their board to that effect. One

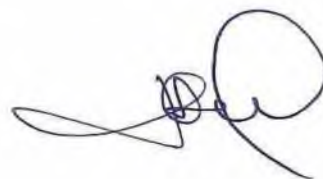


director or principal officer cannot just make a decision to commence legal proceedings in court. All directors through the board meeting must deliberate on whether or not to commence legal proceedings.

The requirement of authorization to institute legal proceedings by board of directors was re-stated by the court of Appeal of Tanzania in **Pita Kempap Limited vs. Mohamed L.A. Abdul Hussein**, Civil Application No. 128 of 2004, where it held that the absence of resolution to commence a suit makes it incompetent.

I have gone through the entire plaint filed to commence this suit and I could not find any paragraph with facts showing that the Board of directors authorized commencement of this case. There are no even the minutes of the Board meeting annexed to the plaint to signify authorization of the Board of directors in commencing the instant suit.

From the fire going, I find merits in the limb of objection that this matter is incompetent for want of the resolution of the Board of Directors. The fact that this limb of objection suffices to dispose the entire suit, I find no need to resort to the other limbs. I proceed to strike out the entire suit with costs. It is so ordered.

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the left.

DATED at **DAR ES SALAAM** this 16TH April, 2024.




L. HEMED

JUDGE