

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 28 OF 2014**

**URSINO PALMS ESTATE LIMITED ..... APPLICANT**

**VERSUS**

**1. KYELA VALLEY FOODS LTD .....1<sup>ST</sup> RESPONDENT**

**2. THE REGISTRAR OF TITLES .....2<sup>ND</sup> RESPONDENT**

**3. THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**(in the matter of an intended application for revision of the ruling and  
order of the High Court of Tanzania at Dar es Salaam)**

**(Mandia, J.) (as he then was)**

**dated the 8<sup>th</sup> day of December, 2006**

**in**

**Misc. Civil Appeal No. 4 of 2003**

**RULING**

4<sup>th</sup> & 20<sup>th</sup> June, 2018

**MWARIJA, J.A.:**

By a notice of motion filed on 3/3/2014, the applicant brought this application seeking restoration of Civil Application No. 144 of 2013, which was dismissed on 13/2/2014 for non-appearance of the applicant.

This application, which was brought under Rule 63 (3) and (4) of the Tanzania Court of Appeal Rules, 2009 (the Rules), is supported by the affidavit of Joseph Ishengoma Rutabingwa, advocate.

When the application was called on for hearing on 4/6/2018, the applicant was represented by Mr. Joseph Rutabingwa, learned counsel.

On their part, the 1<sup>st</sup> respondent had the services of Mr. Daimu Halfani, learned counsel, while the 2<sup>nd</sup> respondent was represented by Mr. Hangi Chang'a, learned State Attorney.

The learned State Attorney had earlier on 9/6/2014, filed a preliminary objection. As is the practice therefore, the same had to be heard first. The objection is to the following effect:

*"The application is bad in law for being signed by an authorized person contrary to Rule 30 (3) of the Tanzania Court of Appeal Rules, 2009"*

In his brief submission, Mr. Chang'a argued that since the applicant is a company, Mr. Rutabingwa who signed the application and later entered appeared for the applicant, has done so without authority as he has not shown that he was appointed by a resolution of the applicant company as required by Rule 30(3) of the Rules. Mr. Chang'a went on to argue that, the requirement stipulated under that Rule covers not only appearance by directors, managers and secretaries of companies but advocates as well.

On the issue whether or not existence or otherwise of the company's resolution require evidence to be ascertained to qualify the preliminary objection as a pure point of law, the learned State Attorney

argued that a resolution of the applicant company ought to have been attached to the application as a proof that the learned counsel has been appointed to represent the applicant.

In reply, both Mr. Rutabingwa and Mr. Daimu opposed the learned State Attorney's submission. Although he did not deny inexistence of a company resolution which authorized him to file the application, Mr. Rutabingwa argued that the requirement under Rule 30 (3) of the Rules, that a person appearing for a company must be appointed by a resolution of the company does not apply to an advocate. It was his submission that the requirement applies to directors, managers and secretaries of companies. He submitted that the learned State Attorney, who did not cite any court decision to bolster his argument, had misinterpreted the provisions of Rule 30 (3) of the Rules.

Supporting Mr. Rutabingwa's arguments, Mr. Daimu premised his submission on sub-rule (1) of Rule 30 of the Rules which vests an advocate with the right to appear for a party to any proceedings in the Court. He thus stressed that Rule 30 (3) of the Rules relied upon by Mr. Chang'a does not cover appearance by an advocate.

From the submission of the learned State Attorney and the learned advocates for the respondents, the issue for determination is whether or not the application is incompetent in terms of Rule 30 (3) of the Rules. The provision states as follows:

*"30 (1)....*

*(2)*

*(3) A corporation may appear either by advocated or by its director or manager or secretary, who is appointed by resolution under the seal of the company, a sealed copy of which shall be lodged with the Registrar"*

Given the use of the word "or" which, in the context of the provision, is disjunctive and positioning of the punctuation comma, after the word "Secretary", it is patent that all the named persons, including an advocate, are covered by the requirement of being appointed by a resolution to appear for a corporation or a company.

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. In the case of **Bugerere Coffee Growers Ltd v Sebaduka and another** [1970] IEA 147 which was cited with approval by this Court in the case of **Pita Kempap Ltd v. Mohamed I.A Abdulhusein**, Civil Application No. 128 of 2004 c/f No. 69 of 2005 (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...."*

In order to qualify to represent a company therefore, an advocate has to be appointed by a resolution. It was for this reason that in that case, after having found that the firm of advocates, Messrs Parkhiji & Co. had acted without having been appointed by a resolution of the company, the suit was dismissed.

Turning to the point at issue, as stated above, the applicant is seeking restoration of its application which was dismissed on 13/2/2014 for non – appearance. According to the record, in that application the applicant had applied for revision of the decision of the High Court in Civil Appeal No. 4 of 2003. The applicant was not a party in that appeal

which arose from the decision of the 2<sup>nd</sup> respondent (the Registrar of Titles). In the application for revision which is sought to be restored, the applicant intends to defend its interests over Plots No. 45A and 45 B, Ursino Estate which it claims to have been lawfully registered in its name but which, following the decision of the High Court, it had been required to surrender the Certificate of Title thereof on the ground that previously, the 2<sup>nd</sup> respondent had wrongly registered the title in favour of the person from whom the applicant purchased the plots.

Now thereof, in this application, since the applicant did not commence the proceedings before the Registrar of Titles, the requirement of a company resolution does not arise because the applicant is merely defending its interests after having been affected by the decision of the High Court. In the case of **Pita Kempap** (supra) the Court, Ramadhani J.A. (as he then was) stated as follows:

*"In the present case legal proceedings were commenced by Abdulhusein, and not the Company, in the District Court of Kinondoni. Then the company went to the High Court, still defending itself as the decision was against it. Even in this application to strike out the notice of*

*appeal, the Company is defending itself against Abdulhussein by trying to avoid his appeal from being heard at all. Therefore, there is no need of any resolution....."*

The circumstances of the above cited case are similar to that of the case at hand.

On the basis of the above stated reasons, the preliminary objection is hereby overruled. Costs to abide the outcome of the application

**DATED at DAR ES SALAAM** this 14<sup>th</sup> day of June, 2018.



A.G. MWARIJA  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.

A handwritten signature in black ink, appearing to read 'A. H. Msumi', is written over the printed name.

A. H. MSUMI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**