

**IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY
AT DAR ES SALAAM**

LAND CASE NO. 105 OF 2011

ZK MCCANN (T) LTD.....PLAINTIFF

V

MRS. TABEA MAKANGE.....DEFENDANT

R U L I N G

Shangwa. J

On 25th September, 2012, learned counsel for the defendant Mr. Cuthbert Tanga of Law Associates Advocates filed an amended written statement of defence and counter – claim to the amended plaintiff. At paragraph one of his amended written statement of defence and counter-claim to the amended plaintiff, he raised a point of preliminary objection against the suit on three major grounds. The third ground was raised in the alternative to the rest of

them. The first ground is that the plaintiff has no locus to sue as Z. K. McCain as the same had ceased to exist in the Registry since October, 2004. The second is that no demand notice to sue had been issued by the plaintiff. The third is that no Board Resolution had been issued to sue the plaintiff.

In his written submissions, Mr. Cuthbert Tenga abandoned the first and second grounds. He proceeded to submit on the third ground which was raised in the alternative and prayed the court to dismiss the suit with costs. In his submissions, he said that the plaintiff is a corporate body which is incorporated under the Companies Act, Cap. 212 R.E. 2002. He contended that being a corporate body, it could not sue without the Resolution of the Board of Directors as doing so without such resolution is contrary to existing law. In support of his contention, he cited four cases namely the case of **Bugerere Coffee**

Growers Ltd. V. Sebaduka & Another (1969) UGHC No. 14, Pan Construction Company Ltd. V. Chawe Transport Import and Export Co. Ltd. (2008) HC No. 25 and Danish Mercantile Co, Ltd & Another (1951) I All ER 925 and M/S Haydon Development Co. Ltd. V. Joseph Tadayo & Others (2006) No. 22 which are to the effect that before commencement of legal proceedings to be instituted by a corporate body there must be a resolution by the Board of Directors and that such resolution has to be annexed to the plaint for the purposes of showing that the commencement of legal proceedings has been authorized. From the above cited authorities, it is well established that before commencement of legal proceedings by a corporate body, there should be a resolution by the Board of Directors and such resolution has to be annexed to the plaint. Mr. Cuthbert Tenga submitted that the rationale behind the requirement of the Board's Resolution

before the commencement of legal proceedings is to avoid the filing of the suit in the company's name for the private interest of one of the Directors. That is correct.

In this case, although the Board's Resolution to sue the defendant was not annexed to the amended plaint, it was annexed to the reply to the written statement of defence as annexure ZEK4 which was filed before the name of the plaintiff was substituted to read Z.K. Communications instead of Z.K. MCCAIN (T) Ltd. Thus, there cannot be any doubt that the Board's Resolution to file the suit against the defendant was passed. As we all know, the procedural law on pleadings is flexible. The flexibility of procedural law on the presentation of documents is embodied in OVII r. 18 (1) of the Civil Procedure Code which provides as follows:-


*"A document which ought to be produced
in court by the plaintiff when the plaint is*

presented or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.”

As correctly argued by Mr. Nyange, in certain situations, a copy of the Board's Resolution may not be accessible at the time when the plaint must be filed due to the absence of its custodian. As it can be seen from the above quoted provision of law, there is nothing which prevents the plaintiff from producing the same at a later stage after presentation of the plaint provided that he obtains leave of the court to do so. So far, Mr. Nyange is not late from obtaining leave of the court to produce the same as additional document. Although, it is well established by the

court in some cases cited by counsel for the defendant that the Board's Resolution has to be annexed to the plaint, in my opinion, a failure to do so does not render the suit incompetent and liable to be dismissed. As correctly argued by Mr. Nyange at page 7 of his written submissions, a suit can only be dismissed where it has been heard and determined on merits. For these reasons, I overrule the point of objection raised by counsel for the defendant. In the circumstances of this matter, I order that each party should bear its own costs.




A. Shangwa

JUDGE

2/12/2013

Delivered in open court in the presence of Mr. Nyange for
the plaintiff this 2nd day of December, 2013.




A. Shangwa

JUDGE

2/12/2013