

TANZANIA / JUDGMENT

tanzania agricultural services and training tast vs mkulazi holding company limited others 2023 tzhc 22626 13 november 2023

COURT
TZHCDECIDED
13 November 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA CMOROGORO SUB-REGISTRY)
AT MOROGORO CIVIL CASE NO.01 OF 2023 TANZANIA AGRICULTURAL SERVICES AND
TRAINING (TAST) PLAINTIFF Versus MKULAZI HOLDING COMPANY LIMITED 1^^ DEFENDANT
FLAVIAN REGINALD 2^° DEFENDANT ATTORNEY GENERAL 3'^" DEFENDANT

RULING

November, 2023 CHABA, J. This ruling is in respect of preliminary objection raised by the Learned State Attorney for the and 3""^ Defendants, Mr. Nzumbe Eliakim Machunda on the following point of law, to wit;

1. The suit is bad and untenable in law as it was instituted prematurely without resolution of the board of directors of the company. In the end, the Learned State Attorney for the and Defendants prayed that the suit be dismissed with costs. At the hearing of preliminary objection (PO) on 5/10/2023, the Plaintiff was represented by Mr. Bartalomew L. Tarimo, Learned Advocate, the and 3""^ Page 1 of 10 Defendants enjoyed the services of Mr. Nzumbe Eliackim Machunda, Learned State Attorney and the 2""^ Defendant did not attend in Court without notice, hence the hearing of the raised PO proceeded ex-parte against him. By consensus, the two parties agreed to argue and dispose the raised PO by way of written submissions and both two parties adhered to the Court's scheduled order by filling their respective submissions in time. Arguing in support of the PO, Mr. Machunda submitted that, as indicated at the first paragraph of the plaint filed on the 30^^^ day of December, 2023, the Plaintiff, Tanzania Agricultural Services and Training (TAST), is the body corporate or legal person, hence a;company dully registered and incorporated.with Certificate No. 137443 dated 28'^ August, 2017 and TIN Number 135-176-753, hence in his view, the Plaintiff being a company is duly mandated to comply with the laws that regulates company affairs / activities. He argued that, once a company is registered it acquires a legal personality, and the affairs of the company are entrusted in the hands of the board of directors who perform all affairs / activities of the company on behalf of all shareholders, and that, in deciding whether to take an action or not, the requisites authority is sanctioned by the company

board of directors through resolution which is mandatory. He went on accentuating that, in the present suit the Plaintiff has not indicated anywhere in the pleadings that the requisites board resolution was Page 2 of 10 passed to authorize the institution of the suit as the presence of the resolution of the board of directors ought to have been reflected in one of the paragraphs in the plaint and the same ought to be annexed to form part of the plaint. To support his contention, Mr. Machunda cited the provision of section 147 (1)(a) and (b) of the Companies Act, [CAP. 212 R.E. 2019], which requires anything done by the company, to be authorized by the resolution of the company. Placing reliance on the holdings in cases of Bugerere Coffee Growers Ltd vs. Sebaduka And Another (1970) 1 EA 147; Simba Papers Convertes Limited vs. Packaging And Stationery Manufacturers Limited & Another, Civil Appeal No 280 of 2017, at page 16 (unreported); Ursino Palms Estate Limited vs. Kyela Valley Foods Ltd And Two Others, Civil Application No. 28 of 2014 at page 05 (unreported); Oxiey Limited vs. Nyarugusu Mine Company Limited, Commercial Case No. 14/2022, at page 06 (unreported); Giant Machine and Equipment Ltd vs. Gilbert R. Mlaki and Another, Civil Case No. 05 of 2019, at page 3 (unreported), and Boimanda Modern Construction Co Ltd vs. Tenende Mwakagile and 6 Others, Land Case No. 08 of 2022, at page 06(unreported), the State Attorney urged this Court to sustain the PO and proceed to strike out the entire suit with costs. In rebuttal, the Plaintiff's counsel did not dispute the fact that, a company is a legal person and that, the company resolution is necessary for the company to give its consent for institution of any legal proceedings, on which results and . - Page 3 of 10 . consequences shall in turn bind the company's directors and members, If any. However, he contended that, the matters in this case are distinguishable because the claims in this case are so connected to the matters which are incidental to the Tender, whereby the board of directors in that respect had resolved and conferred power of attorney to a person namely, ENOCK MECK MNYANJALA who signed the suit for and on behalf of, and in the names of the company. Mr. Tarimo averred that, the respective power of attorney was conferred to HENOCK MECK MNYANJALA through the Board Resolution No. 04 of 30/12/2019, and that the same has not been revoked to (date till the completion of the incidental matters in the said Tender No.PA/150/2019-2020/G/011-Lot.I, is discharged. Mr. Tarimo asserted further that, by the Board of Director's Resolution No. 04 of 2019, dated 30/12/2019,;which appointed MR. MNYANJALA to be their attorney and conferred him with the full power and authority for the company, in the names of the company, for the accounting of the company and benefits, to do any or all of the following acts in the Execution of Tender No. PA/150/2019-2020/G/0II-Lot 1, that is to say: . ."To act for. the company and do any other thing or things , Incidental.for. TenderNo. PA/150/2019-2020/G/011-Lgt T" AND we hereby undertake to ratify everything which pur Attorney or substitute or substitutes or agent or agents appointed by him underpower on his behaiftherein before Page 4 of 10 contained shall do or purported to do In the virtue of this power ofAttorney". According to him, the above proposition conferred to HENOCK MECK MNYANJALA powers to sue on behalf and by the names of the company, to do things incidental for the said tender, and that the said power of attorney is still in force and in the hands of the said HENOCK MECK MNYANJALA. In his view, there is no need for having another board members resolution for this suit to be

marked legally instituted by the said company. In winding up, Mr. Tarimo referred this Court to the case of Mukisa Biscuit Manufacturing Co Ltd vs. West End Distributors Ltd [1969] 1 EA 696 and argued that, the PC raised by the State Attorney for the 1st and 3rd Defendants is the matter of oversight that, the the counsel for the Plaintiff, could not peruse the plaint to the extent of the power of attorney by board resolution and the copy of tender agreement which is also attached to the plaint. . Based on the above submission, Mr. Tarimo prayed the Court to dismiss the PO raised by the State Attorney in its entirety with costs for a reason that,,the same has been raised due to failure to properly peruse the plaint and its annexures. I have considered and examined the rival submissions for and against the raised PO in line with the plaint filed by the Plaintiff. The sole contentious issue for Page 5 of 10 consideration and determination is whether or not the instant suit is competent before this Court. Without much ado, having gone through the Court's records, I would right away completely agree with the Learned State Attorney's submission that, the instant suit has been filed prematurely for want of Resolution by the Board of Tanzania, : Agricultural Services and Training (TAST). I say so because, it is on records that, the plaint was lodged before this Court on 30th December, 2022 without the requisite resolution authorizing the institution of the instant suit in this Court. Moreover, such, fact has not been pleaded in the plaint as a proof that the counsel for Plaintiff as well as MR. HENOCK MECK MNYANJALA have, been legally authorized to institute the instant suit by the Company's Board Resolution, and further that, the counsel for the Plaintiff, Mr. Tarimo has been duly instructed by the Plaintiff and not MR. HENOCK MECK MNYANJALA. It therefore goes without saying that, the explanation by Mr. Tarimo,,that, there was power of attorney conferring authority to MR. MNYANJALA to act on behalf of the Company in Civil Case No., 1 of 2023 before this Court, in, my unfeigned opinion, is merely an afterthought. , - In-my view, the fact that the plaintiff annexed the alleged power of attorney could not in any way mean that the same was sufficient to prove that the case was instituted after the express deliberation coupled with the authority by way of Page 6 of 10 Resolution of the Board of Directors of the Tanzania Agricultural Services and Training (TAST), and not the resolution that specifically authorized the same and conferred the power of attorney to MR. MNYANJALA to act on behalf of the company as far as the instant suit is concerned. In as much as my understanding of the law and practice is concerned, the power of attorney was supposed to be preceded by the Resolution of the Board of Directors which not only blessed the initiation of legal battle against the defendants, but also appointed Mr. Bartholomew Tarimo to draw the plaint and represent the Plaintiff in Court. Unfortunately, although the counsel for the Plaintiff averred that the said power of attorney was issued as a result of the Resolution of the Board of Directors of TAST, to my greatest surprise, the said board resolution is nowhere to be found in Court records. It is now a settled law that, institution of legal proceedings by a company must be authorized by the meeting held by the board of directors through a resolution passed in the meeting. [See - Tanzania Glee-lam Industries & Another vs. Bjo.rn-Sehau & 4 Others, Commercial. Case. No. 103 of 2003, HCT

- Commercial Division, (unreported)); 5M General Supplies Company Ltd vs. Duwasa and Another (Land Case 3 of 2019)[2022] TZHC 10168 (28 March 2022)(Extracted from www.tanzlii.org); Kati General Enterprises Limited vs. Equity Bank Tanzania Limited and Xpyana Bernard Mwalusaka, Civil Case No. 22 of 2018 (HC) and Bugerere Coffee Growers Ltd vs. Sebaduka and ;: . . . Page 7 of 10 Another(1970)1 EA 147. For instance, in the latter case which have been cited with approval by this Court times without number when confronted with akin situation like the present one, the High Court of Uganda firmly held that: "when companies authorize the commencement of iegai proceedings a resoition or resoitions have to be passed either at-a. company or Board of Directors'meeting and , . recprdedin the minutes,..". ■ , , Additionally, in Kati General Enterprises Limited's case (supra), this Court while addressing the anoriialy of not annexing to the plaint the Company's Board of directors' resblutioh authorizing institution of the suit, the Court observed that: "in view ofthe above deliberation^ Ifind the firstground of bbjectibn have merit and therefore uphold itas the plaintiff . oughthtohavecompliedwith the requirement ofsection.147 ■ , . > (1)(a)and: (.b).pfthe Companies Act, No. 12[CAP, 212-R.E. \ . ' ,: ! . , 2002]by annexing to the plaint Company board ofdirectors' resolution authorizing institution of the suit and appointment ofthe advocate to prosecute the suit, butshe failed to do so." Page 8 of 10 Turning to the matter under consideration, its undisputed fact that, the Plaintiff did not annex to the plaint board of directors' resolution authorizing the institution of the instant suit. Applying the principle expounded by the Court as shown above, no doubt that the matter under consideration is incompetent before this Court. That being said and done, it is my holding that, the appropriate remedy in the circumstance of this case is to strike out the suit and sustain the preliminary objection raised by the l^'^and 3^^ Defendants through the Learned State Attorney, Mr.; Machunda. Accordingly, the entire civil suit crumble with costs. , . ; , DATED at MOROGORO this 13^^ day of November, 2023. o c a: lu M. J. CHABA JUDGE 13/11/2023 Page 9 of 10 Coyrt; Ruling clelivered under my Hand and Seal of this Court in Chamber's this 13^^ day of November, 2023 in the presence of Ms, Leah Mwasa, Learned Advocate h/b for Mr. B.L Tarimo, Learned Advocate for the Plaintiff and in the presence of Ms. Emma .Ambonisye, Learned State Attorney for the and 3'^'^ Defendants and in the absence of the 2"" Defendant. a O C A. W. Mrnbando DEPUTY REGISTRAR 13/11/2023 Court; Rights of the parties to appeal to the C/VT fully explained OF O A. W. Khipandp e? DEPUTY REGISTRAR X > Li-l y 13/11/2023 Page 10 of 10

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