

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)
AT IRINGA**

LAND CASE NO. 8 OF 2022

BOIMANDA MODERN CONSTRUCTION CO. LTD. PLAINTIFF

VERSUS

TENENDE MWAKAGILE		1ST DEFENDANT
THE REGISTERED BOARD OF	}	
TRUSTEES OF ROMAN CATHOLIC		
CHURCH DIOCESE OF NJOMBE		2ND DEFENDANT
MANIMA COMPANY LIMITED		3RD DEFENDANT
NJOMBE TOWN COUNCIL		4TH DEFENDANT
THE COMMISSIONER FOR LANDS		5TH DEFENDANT
THE REGISTRAR OF TITTLES		6TH DEFENDANT
THE HON. ATTORNEY GENERAL		7TH DEFENDANT

RULING

22/12/2022 & 24/02/2023

I. C. MUGETA, J:

This is a ruling on issues raised by the court *suo moto* on the competence of the suit at hand.

The plaintiff is represented by Mr. Innocent Kibadu, learned advocate while Mr. Frank Ngafumika, learned advocate represented the first, second and third defendants and Mr. Bryson Ngullo, learned State Attorney (SA) represented the fourth, fifth, sixth and seventh defendants.



When the suit came for hearing before Justice Utamwa (as he then was) he questioned the competence of the suit on grounds firstly, that the plaintiff did not plead if there is a Board Resolution for the plaintiff company to sue as required by the law. Secondly, that whether the notice to sue fourth, fifth, sixth and seventh defendants was proper in law for, *inter alia*, not specifying the claims against them. Thirdly, whether the failure to join the Solicitor General offends the current law.

The parties were directed/ordered to argue the court issues by way of filing written submissions. However, only the Attorney General for the fourth, fifth, sixth and seventh defendants filed a joint written submissions.

The learned State Attorney submitted on the first issue that once a company is registered it acquires a legal personality. The affairs of the company are entrusted in the hands of the board of directors who perform all activities of the company on behalf of all shareholders. In deciding whether to take action or not, the requisite authorities of resolution sanctioned by the company board of directors is mandatory. He cited the case of **Bugerere Coffee Growers Limited v. Sebadduka and Another** (1970) E.A 147 where the court observed that when the companies authorize the commencement of legal proceedings, a resolution



or resolutions of the board of directors to that effect have to be passed. He argued further that the plaintiff in this suit has not indicated anywhere in the pleadings that the requisite board resolution was passed to authorize institution of the suit as the presence of a board resolution ought to be reflected in one of the paragraphs in the plaint and also annexed to it.

The learned State Attorney submitted further that section 147(1) of the Companies Act, Cap. 212 RE 2019 requires anything done by the company to be done by resolution of the company in general meeting or any class of members of the company. Failure to comply with the said provision renders the act so done to have no legal effect, hence, unenforceable. He argued that this position was emphasized in the case of **Sogecoa Tanzania Limited v. Sylvia Simoyo Said Namoyo**, Land Case No. 32 of 2022, High Court, Land Division at Dar es Salaam (unreported), **Kati General Enterprises Limited v. Equity Bank Tanzania Limited & Another**, Civil Case No. 22 of 2018, High Court at Dar es Salaam (unreported) and **Tanzania American International Development Cooperation 2000 Limited (TANZAM) & Another v. First World Investment Auctioneers Court Brokers**, Civil Case No. 15 of 2017, High Court at Arusha (unreported).



Therefore, he concluded that board resolution authorizing institution of litigation is part and parcel of the pleadings initiated by a corporate body and has to be condition precedent before filing the suit. That since the present suit lacks Board Resolution to sue, it is incompetently before this honorable court and its effect or impact is for the same to be struck out.

As regard the second issue, the learned State Attorney contended that it is the requirement of section 6(2) of the Government Proceedings Act, Cap. 5 RE 2019 that before commencing any suit against the government there must be a notice of intention to sue, such notice must include all necessary components as provided by the law. The plaintiff issued a 90 days' notice of intention to sue dated 5th November, 2020 to the fourth, fifth and sixth defendants and served a copy to the seventh defendant as pleaded under paragraph 17 of the plaint. However, he argued the notices are vague as they contain evasive claims against the named defendants. The purported notice of intention to sue does not specifically show the claims against each defendant. That the fourth defendant is a Local Government Authority established under section 5 of the Local Government (Urban Authorities) Act, [Cap. 288 RE. 2002]. The requirement of notice to take legal action against her is also provided by section 106(1) and (2) of that Act as

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amended by the Written Laws (Miscellaneous Amendment) Act, No. 1 of 2020. Therefore, the plaintiff was duty bound to prepare a notice to show cause of action, name of the intending plaintiff, place of abode and relief claimed. Failure by the plaintiff to convey the specific claims or reliefs claimed in the notice of intention to sue renders the whole notice defective in law as per the contents provided under section 106(2) of Cap. 288.

It was the learned State Attorney's further contention that since the notice by the plaintiff is defective in law such anomalies go to the root of the case, making it incompetent.

On the third issue, the learned SA submitted that section 6(3) and (4) of the Government Proceedings Act provides on the requirement of joining the Attorney General in a suit and not the Solicitor General. That the Solicitor General is a representative of the Attorney General in suits. Therefore, non joinder of the Solicitor General in this suit does not vitiate the proceeding.

In view of the foregoing, he prayed the court to strike out the suit with costs for being incompetent based on first and second issues raised by the court.



I have read the contents of the plaint, the court issues, the submissions by the learned State Attorney and the law. I will discuss each issue independently.

To start with I am inclined to answer the first issue in the affirmative. This is because, the law makes it a pre-requisite for a company to pass a board resolution to sue before it institutes a suit. This has been the position through various case laws such as the **Bugerere Coffee Growers Limited case** (supra) which was cited with approval in **Ursino Palms Estate Limited v. Kyela Valley Foods Limited & Others**, Civil Application No. 28 of 2014, CAT at Dar es Salaam, (unreported) where the Court observed that when companies authorize the commencement of legal proceedings a board's resolution or resolutions have to be passed. The fact that a board resolution was passed to authorize the plaintiff company to institute legal proceedings in court has to be pleaded in the plaint. The plaintiff's plaint does not bear this fact in any of its paragraphs. Further, as correctly submitted by the learned SA, Section 147(1) of Cap. 212 requires that anything done by the company must be sanctioned by a Board's Resolution



Having observed as above, I answer the issue posed above in the affirmative that the absence of a Board Resolution before instituting the suit offends the law.

I also agree entirely with the submissions of the learned State Attorney on the second and third issues. That the notice of intention to sue the 4th – 7th defendants was not clear and that the failure to sue the Solicitor General as a party to this case did not violate any law. In the event, I strike out the suit for want of the plaintiff board of directors' authorization to sue. The suit is struck out without costs because the issues leading to this order was raised by the court.




I. C. MUGETA

JUDGE

24/02/2023

Court: Ruling delivered in chambers in the absence of the plaintiff, 1st, 2nd and 3rd defendants and in the presence of Ansila Makyao, SA for the 4th – 7th respondents.

Sgd: I. C. MUGETA

JUDGE

24/02/2023