

IN THE HIGH COURT OF ZANZIBAR

(COMMERCIAL DIVISION)

HOLDEN AT TUNGUU

COMMERCIAL CASE NO. 04 OF 2022

ZANZIBAR MARITIME &

MECHANTILE INTL CO LTD. PLAINTIFF

Versus

ZABWAS COMPANY LIMITED

T/A PILIPILI HOUSE..... DEFENDENT

RULING OF THE COURT

14/03/2024 & 21/03/2024

KOMBO, J.

This ruling emanates from Preliminary objections raised by the Defendant, Zabwas Company Limited T/A Pilipili House against the Plaintiff Zanzibar Maritime & Mercantile Intl co. ltd.

The defendant earlier in his statement of defense, has raised six points of preliminary objections as shown in the following sequence;

- a) That the court lack jurisdiction to hear and determine this suit,
- b) That plaintiff has no locus stand to sue defendant,
- c) The suit is bad in law for being signed by un authorized person,
- d) The suit is bad in law for contravening the rules governing the suit by or against the corporation,
- e) Plaintiff has no cause of action against defendant,
- f) The plaint is bad in law for contravening Zanzibar Commercial Court Rules.

When the case was called on for hearing of these preliminary objections, Plaintiff was represented by the learned Counsel Elia Leisha Mgoya assisted with Counsel Happiness Mathias Semagongo while Defendant was enjoying the representation from the learned Counsel Jambia Said Jambia who was in assistance of Counsel Aly Hamis Muhija.

In submitting to his point of preliminary objection, Advocate Jambia for the defendant has started to inform this court that, he opted to submit jointly his point a, b and e, indeed point c, d and f also in conjunction.

While submitting to his consolidated points a, b and e of his preliminary points of objections Advocate Jambia, energetically advanced to the court that, it is a trite law that for the court to

determine a suit it must satisfy itself that it has jurisdiction over such a suit. He contended that jurisdiction can be either pecuniary, territorial, subject matter of the case or locus standi. If the plaintiff does not have the locus standi, then the court ceases automatically to have jurisdiction over such matter because locus standi is one of jurisdictional issue. To reinforce his point Counsel Jambia cited a case of ***God Bless Lema V. Mussa Khamis Mkanga and 2 others*** Court of Appeal of Tanzania, Civil Appeal No. 47 of 2012. He continues arguing that it is from the case he has cited, the Court of Appeal of Tanzania held that locus standi is a jurisdictional issue.

Defendant advocate continue to argue that the plaintiff has no locus standi because, plaintiff is a registered company under the Company Act No. 15 of 2013. According to section 150(1) of the Company Act which read together with rule 49 (1) and (2) of Company Regulations of 2017 clearly stipulates that, any thing to be done by company should be done by a company written resolution. Advocate Jambia go forward to argue in relation with these cited provisions of laws that it has become now a principle of law that as long as a company acquire legal personality after being registered it is mandatory to pass resolution before instituting a case in court. This same position has been maintained by the court of appeal of Tanzania in the case of

Ursino Palms Estate Limited and 2 others Civil Application
No. 28 of 2014.

He continues to his argument by informing this court that the plaintiff has not shown the resolution of the company in his plaint to show that he has comply with mandatory requirements of instituting a case. Therefore, the plaintiff has neither locus standi in this suit nor cause of action against a defendant and hence the court lack jurisdiction to entertain this suit.

Furthermore, Advocate Jambia for the defendant submitted that, in the whole plaint there is nowhere to find any right that has been infringed by the defendant. There is no contract that, has been breached by the defendant, apart from mere statements based on unknown invoices which cannot be found in the plaint. By considering that a mere invoice does not constitute a contract, that is why plaintiff has failed to disclose cause of action in the plaint.

In winding up his arguments to the first limb of his submission, Counsel Jambia, contend that, as the remedy for lack of cause of action is to struck out but for lack of locus standi is dismissal of the suit, he prays to this court to dismiss the suit.

To the second limb of his submission which entails points c, d and f of his preliminary points of objection, defendant advocate contested that, the plaint was signed by an

unauthorized person, according to Order 33 rule 1 of Civil Procedure Decree Cap 8 of the laws of Zanzibar, when read together with rule 7 (6) of Commercial Court Rules of 2016 of Zanzibar, state that in absence of the party, the pleadings may be signed by any person duly authorized by him to sue or defend on behalf. To the provision of order 33 (1) it mention three people for verifying a suit filed by corporation, who are company secretary, director or agent of corporation. From the provision of law, he has cited, it is the contention of Mr. Jambia to this point that, this suit has not be authorized by either power of attorney or board resolution, which all of the two were not made part to the plaint.

In addition to that, Defendant advocate asserted to the court that, the suit contravenes the provision of section 5 (3) of Act No. 9 of laws of Zanzibar, because the plaint states the value only in US Dollars instead of Tanzania Shillings a thing which go contrary to the afore mentioned provision.

While closing his submission Mr. Jambia firmly maintains that, this suit is bad in law and it is not maintainable before this court and it should be dismissed with cost.

Responding on what has been submitted by Defendant Counsel, Advocate Elia for the Plaintiff tackled his counter submission in differently sequence as that taken by defendant

counsel. Mr. Elia resiliently opted to submit one by one on all of six points of preliminary objection as raised by the defendant.

To the first point of preliminary objection, Plaintiff Advocate, submitted that this court has jurisdiction to entertain this instant suit. To support his argument Mr. Elia cited sections 3 and 5 of Commercial Court Act No. 9 of 2013 and inform the court that by virtue of provisions he has cited this court has jurisdiction to hear and determine the suit and the contention raised by the defendant Advocate is totally baseless and unfounded.

To the second point of preliminary objection (b) counsel for the plaintiff counter submitted on what has been submitted by the defendant and confidently insisted that the plaintiff has locus standi because his right has been interfered by the defendant. To bolster his argument he cited a case of ***Ital Food Limited versus Attorney General of Zanzibar*** Civil case No.66 of the High court of Zanzibar where the meaning of locus stand has been well explained to wit locus stand means the right to be heard by the court of law.

Counsel for the plaintiff in hardening more his point, draw the attention of this court to a case of ***Lujuna Balonzi Senior versus Registered Trustees of Chama Cha Mapinduzi*** 1996 TLR 203 where the meaning of locus stand has been

emphasized as the principle governed by common law, of which a person who bring a matter to the court should show his right or interest has been breached or interfered.

Based on the case authorities he has cited Plaintiff Counsel argue that plaintiff has managed in his plaint to show that his right has been breached by the defendants by being supplied with beverage products and faulted to pay for them. Hence plaintiff has the right to relief from the defendant infringement.

Jumping to the third point of preliminary objection which is point (c) Mr. Elia started submitting to this point by first objecting what has been submitted by Defendant in respect to this point and later on proceeded to argue that, according to order 33 rule 1, require pleading to be signed or verified by Secretary, Director or principal officer of a corporation who is able to depose on the fact of the case. Thus, he claims that, the plaintiff plaint has been signed by authorized party. Mr. Elia went ahead in Reinforcing the niche of his argument by citing a case of ***Plasco ltd v. Efam ltd and Another*** High Court of Tanzania Commercial Case No. 60 of 2012 and contend that, the defendant advocate has introduced a new thing which is a "board resolution" which is a thing ought not to constitute preliminary objection as it is not a point of law and instead it is a point of fact.

In rationalizing his contention, Plaintiff Counsel cited a case of ***Mukisa Biscuits Manufacturing Company Ltd versus West End distributors ltd*** 1969 E.A.R. 696 where he submitted that, it has been long propounded that, preliminary objection must consist a point of law which may dispose off the case. Relying on the authority he has cited Mr. Elia strongly maintained that, the issue of board resolution is a pure matter of fact not of law, which need to be proved during trial.

To the case of ***Ursino Palms Estate Limited V. Kyella Valley Food LTD and 2 Others*** referred in support of defendant submission in relation to this point, Advocate Elia submitted that, it is immaterial to the matter before this court and indeed the court which decided that case disregard the availability of board resolution. On the bases of this case authorities he cited Mr, Elia invited this court to follow the same foot track taken by the court in the cases he has cited to overrule this point of preliminary objection made by defendant.

Turning to the fourth point of preliminary objection (d), as raised by the defendant, plaintiff Counsel submitted that, in respect of order 33 of Civil Procedure Decree of Zanzibar provides that the verification may be signed by secretary, director or agent of cooperation, the plaintiff's complaint has been signed by principal officer on behalf of the company. Indeed,

counsel for the plaintiff further argue that, under rule 5 and 6 of Commercial Court Rules of 2016 provide that principal officer can sign on behalf of the company. Hence plaintiff's complaint has been signed by a proper principal officer and he prays to the court to dismiss this point of preliminary objection raised by the defendant.

When proceeded to the fifth point of preliminary objection (e), plaintiff's Advocate opposed the contention that the plaintiff has not disclosed cause of action. He resorted to the case of ***Frank Marealle versus National Housing Cooperation and 2 Others*** High Court of Tanzania Land Case No. 189 of 2009. Upon which he submitted that, It has been articulated in that case that, for a cause of action to be established there must be existence of three essentials which are; one the plaintiff enjoys the right; two the right has been violated and three the defendant is liable. It is the assertion of plaintiff's advocate upon the authority he has cited that the plaintiff has managed to cater for all of the three essentials in his complaint. Therefore, on the strength of his argument Mr. Elia prays to the court to overrule this point (e) of preliminary objection raised by the defendant.

Finalizing his submission to the last point of preliminary objection, which is point (f) advocate for the plaintiff submitted

that, by virtue of rule 4, 7, 9, 11 and 14 of Commercial rules of procedure has been all complied with in the plaintiff plaint.

In concluding, Advocate Elia pray to this court that the entire preliminary points of objection should be overruled and in case the court found a default to the plaintiff plaint, its remedy is not to dismiss and instead the court should order amendment of plaint.

When rejoining to his submission, Advocate Jambia inform the court that plaintiff counsel despite of long submission he has made but he has failed to scratch the preliminary points of objection raised, as all what has been submitted has not encountered the defendant objection on point of Jurisdiction.

Indeed Mr. Jambia supported his earlier submission by informing the court that the case authority cited by plaintiff counsel of ***Ital Food Limited versus Attorney General of Zanzibar*** (supra), its decision was only based on limitation not locus stand. Hence the case is irrelevant to the matter before this court.

In addition to that, defendant counsel assert that plaintiff advocate has misunderstood on point of law in relation with board resolution. Because the issue of board resolution is not a matter fact, it is a matter of law featured in section 150(1) of Company Act No15 of 2013.

Finally, Mr. Jambia concluded his rejoinder submission by insisting to his prayers that this court should dismiss the suit.

After considering the submissions and arguments made by both rival parties to the suit. I will deliberately opt to start my determination by consolidating point (b) (c) and (d) of preliminary points of objection and I will ponder them together.

In recalling defendant submission to the points of preliminary objection (b) (c) and (d) Mr, Jambia if I may sum up the gist of his points argue that, since the plaintiff company has failed to attached a body resolution that warranted her to institute this suit, therefore the plaintiff has no locus stand, hence this court lack jurisdiction to entertain this suit.

In countering the defendant argument, in the same vein as I did for the defendant, in essence plaintiff has objected on the necessity of company to have board resolution for instituting the suit and accordingly argue that, the plaintiff has locus stand and the court has jurisdiction to entertain this suit.

This rivalry between defendant and plaintiff arguments, brings me to anchor in this pertinent issue on whether an advocate representing a Registered company can appear before the Commercial Court of Zanzibar and sue without authorization by a company resolution.

In addressing the aforementioned question, I deemed it necessary to first ascertain the relevant laws in Zanzibar pertaining to the issue I have raised earlier.

To commence, I turn to Section 150(1) of the Companies Act No. 15 of 2013 of the laws of Zanzibar, which states the following:

Anything which in the case of company may be done: -

- (a) By a resolution of a company in General meeting:*
or
- (b) By a resolution of a meeting of any class of members of the company:*
- (c) Without a meeting and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of resolution would be entitled to attend and vote at that meeting:*

Provided that nothing in this section shall apply to a resolution passed under section 197(1) removing a director before the expiry of his period of office or a resolution under section 167(7) removing an auditor before the expiry of his term of office.

The above provision of law has been also complimented with rule 49 (1) of the Company Regulations 2017 that state:

Without prejudice to the section 150(1)(c) of the Act, a written resolution of a company shall be deemed to have been passed at a meeting held on the date on which the resolution was signed by the last member

When interpreting the aforementioned provisions of the law, I am cognizant that our judicial decisions have resulted in two incompatible judicial positions when dealing with law which is *pari materia* (the same) to the provision of Section 150(1) of the Zanzibar Companies Act.

The first position is the mainstreaming one, originated way back from famous historical case of ***Bugerere Coffee Growers Ltd versus Sebadduka & Another*** [1970] EA. 147, in which it was stated that:

"When a companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or board of Director's meeting and recorded in minutes ..."

This principle enunciated from ***Bugerere Coffee Growers Ltd versus Sebadduka & Another*** (supra) was also cited with

approval by Court of Appeal of Tanzania in the case of ***Ursino Palms Estate Limited v. Kyela Valley Foods Limited & Others***, Civil Application No. 28 of 2014, (unreported) where the Court observed that, when companies authorize the commencement of legal proceedings a board's resolution or resolutions have to be passed. This simply mean, 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 second position is that of far left from ***Bugerere Case*** (supra) principle. This school of Judicial thought profess no need for a registered company when filing a suit to attach in plaint a body resolution authorizing such a company to sue. This school has been philosophically manifested in the case of ***Plasco Ltd versus Efam Ltd and Fatma M. Rweymamu*** High Court of Tanzania Commercial Case no 60 of 2012 (unreported), where the Court at page 11 has stated that and (for the purpose of exhibiting the point), I quote:

"if parliament intended that a board resolution was a requirement for instituting a suit by corporation it would have stated so expressly. It seems to me therefore that the requirement for a company board resolution

*authorizing institution of a suit by a corporation is largely Judge-made law, traceable to the **Bugerere Coffee Growers Ltd versus Sebaduka and Another [1970] EA 1471**, which has been religiously followed by courts in this country."*

See also the case of **Resolute Tanzania Limited versus LTA Construction (Tanzania) Limited and 3 others** Commercial Case No. 39 of 2012 (unreported) in which the court has rationally dismiss a point of preliminary objection grounded on absence of board resolution in a plaint filed by a registered company.

After carefully examining the contrasting judicial viewpoints outlined above within the purview of the case at hand, I have reached a thorough understanding. However, my perspective shifted upon delving into the legal statutes governing the jurisdiction of suits and their respective filing procedures within Zanzibar. Specifically, I was struck by the clear and decisive stance taken by the legislature regarding the prerequisites for litigating and representing a registered company before the Commercial Court of Zanzibar.

Rule 26 (2) of the Commercial Court Rules of Procedure of 2016 in Zanzibar explicitly lays out these conditions, which I deem crucial and therefore reproduce verbatim for emphasis:

A corporation or company may either appears by its Director, manager or secretary, who is appointed by Resolution under the seal of the corporation or the Company, or may be represented by an advocate.

Indeed, rule 27 (2) (a) of the same Commercial Court Rules of 2016 went further to stipulates on those mandatory conditions to be complied for an advocate who appear before the Commercial Court for representing client. The rule state as follows:

An advocate who appears in Court shall be:

*Fully acquainted with the facts of the case in Relation to which he appears and **fully authorized to enter into agreements, both substantive and Procedural, on behalf of his client.***

By closely examining the relationship between Section 150(1) of the Company Act No. 15 of 2013, Rule

49(1) of the Company Regulations 2017, and Rule 26(2) and Rule 27(2)(a) of the Commercial Court Rules of 2016 of the laws of Zanzibar, one can derive coherent insights from these provisions that, in representing a client, particularly a registered company, an advocate is unequivocally required to explicitly demonstrate authorization from said company to act on its behalf in entering to an agreement of both procedural and substantive matters. This prescription in the above referred provision of law, necessitates to be clearly indicated within the advocate's pleadings.

In my interpretation, the legislative language articulated in Rule 27(2)(a) of the Commercial Court Rules of 2016, which states, "**An advocate who appears in Court shall be fully authorized to enter into agreements, both substantive and procedural, on behalf of his client,**" gains further clarity when considered alongside Section 150(1) of the Company Act No. 15 of 2013 and Rule 49(1) of the Company Regulations 2017 within the legal framework of Zanzibar. Essentially, this signifies that an advocate representing a client in the commercial court must possess explicit authorization from the client, that enable

him to engage in procedural or substantive agreements on client behalf.

In simpler terms, if the client is a registered company, the advocate appearing on its behalf must manifestly or expressly indicate in their pleadings that they have been fully authorized by a company resolution to undertake agreements, both substantive and procedural, on behalf of said company in case the need be in course of litigating in Commercial Court of Zanzibar.

If I may go further by drawing the inspiration from Court of Appeal of Tanzania on the legal position relating to the power of the company to sue in its own name or to be sued. The Court Appeal of Tanzania while deciding Simba ***Papers Converters Limited vs Packaging & Stationery Manufacturers Limited & Another*** Civil Appeal No. 280 of 2017 (un reported) the court has fully subscribe to the commentary of Robert Pennington who is a famous leading author in the province of company law. Where the Court at page 18 and 19 state as follows:

*This position is well summed up by Pennington's
Company Law, 15th edition, London,*

Butterworths by Robert Pennington thus: "The intention of the legislature was undoubtedly that the Court should assist the Company to achieve its expressed objects by implying all powers necessary for it to do so... On the whole the Courts have been liberal in implying powers. Thus powers have been implied to do acts obviously appropriate to the carrying out on of any business such as appointing agents and engaging employees; and instituting, defending and compromising legal proceedings..."

Guided by the above inspirational legal position, it is my opinion that, such manifestly indication (that I have explained above) of a registered company **to fully authorize an advocate to appear in court (Commercial Court of Zanzibar) and enter into agreement of either procedural or substantive nature on behalf of such company** is what has been contextual termed as **"written resolution of company"** according to the provision of section 150 (1) of Company Act and rule 49 (1) of The Company Regulations 2017 of Zanzibar.

After having seen and ascertain the position of law, I now found appropriate at this juncture to recall back the essence of argument in the defendant points (b) (c) and (d) of his preliminary objection and weigh them with the above position of law.

It is Mr, Jambia argument for Defendant that, the plaintiff advocate has failed to show in his plaint, that he has been authorized by the plaintiff to represent in court by way of board resolution. Hence according to counsel Jambia the plaintiff has no locus stand to file this instant suit and the court has no jurisdiction to entertain the same.

Upon analysing the legal framework, as I have previously done, I unreservedly endorse the argument presented by the Defendant's advocate. This is because Section 150(1) of the Company Act No. 15 of 2013 stipulates that any actions undertaken by a company must be authorized by resolution. When this provision is read in conjunction with Rule 26(2) and Rule 27(2)(a) of the Commercial Court Rules of 2016, which require an advocate representing a company to be fully authorized by their client (company) to enter into agreements of procedural and substantive nature on behalf of said

client (company), the requirement of company resolution is imperative.

To sum up in a more comprehensive way, I may say that, all of the above provisions of law necessitate that an advocate representing a company in the Commercial Court of Zanzibar must manifestly indicate in their pleading (plaint) a Company resolution signifying approval to undertake all actions identified under rule 26(2) and rule 27(2)(a) of the Commercial Court Rules of 2016. Failure to adhere to this requirement would consequently not only put in danger the appropriateness of the pleadings but also the appearance of the plaintiff to sue before the Court.

I have meticulously considered the counterargument presented by Advocate Elia on behalf of the plaintiff. He contends that, according to Civil Procedure Decree Cap 8 of the laws of Zanzibar, there is no requirement to attach a board resolution authorizing an advocate to represent a company, thus asserting the plaintiff's standing to file this suit has complied with Civil Procedure Decree.

I agree with Mr. Elia that Civil Procedure Cap 8 of the laws of Zanzibar does not stipulate such a requirement for a company to attach a board resolution

to its plaint. However, based on the legal position I have outlined previously regarding the applicable laws concerning the inclusion or exclusion of a board resolution in the plaint filed by a registered company, I respectfully decline to accept the argument put forth by the plaintiff's counsel.

In order to ensure compliance with the procedural requirements of the Commercial Court of Zanzibar, such as the present case, it is essential that any lawsuit brought before this court should adhere to the regulations outlined in the Commercial Court Rules of Procedure of 2016. This has been instructed by the provisions set forth in Section 2(1) of the Commercial Court Act No. 9 of 2013, which establish these rules of procedure as the compulsory standard procedure for accessing or rather obtaining right of audience to the filed suit in Commercial Court of Zanzibar.

According to Section 2(2) of the Commercial Court Act No. 9 of 2013, exemptions from the Commercial Court Rules of Procedure may only occur under specific circumstances, as specified within the same provision. These exemptions are contingent upon the existence of any lacunae (gaps or deficiencies) within the Commercial

Court Rules of Procedure of 2016. In such cases, parties involved may resort to the Civil Procedure Decree Cap 8 of the laws of Zanzibar for guidance and regulation.

Since the authority to represent and advocate on behalf of a registered company in court proceedings has been clearly outlined in the Commercial Court Rules of Procedure of 2016, there exists no lacunae (gap or deficiency) within these regulations. Therefore, the provisions outlined in Order 33 Rule 1 of the Civil Procedure Decree Cap 8, which the Plaintiff's Advocate has relied upon, do not apply to the point in context of the present case as the point has been clearly covered in the Commercial Court Rules of Procedure of 2016.

In addition to the above, Mr. Elia invoked the case of ***Mukisa Biscuits versus West End Supplies Limited*** (supra) to bolster his argument, he contend that, at the pleading stage, the court is constrained to consider only points of law that dispose of the suit, rather than points of fact requiring proof during trial. I respectfully salute and up hold this well-established principle elucidated in the ***Mukisa Biscuits Case*** (supra).

Nevertheless, upon reflection on the circumstances under which the ***Mukisa Biscuits case*** (supra) principle arose, and in light of the present suit, this court believe that, the principle should be applied within the specific context of the current provisions of Order 33 Rule 1 of the Civil Procedure Decree, Cap 8 of the Laws of Zanzibar as relied by Mr. Elia. However, this application should occur in the absence of any other contrary legislative express provision, as appropriately indicated by Justice Makaramba in the Case of ***Plasco Ltd versus Efam Ltd and another*** (supra), at page 11, the court states:

"... the requirement for authorization by a company for instituting a suit is not expressly stated in the Civil Procedure Code Cap 33 R.E 2002 or any other written laws dealing with institution of actions in this country... In my considered view if parliament intended that a board resolution was a requirement for instituting a suit by corporation it would have stated so expressly.

Based on the clear and well-defined statements by the court, I am convinced that the requirement for a "board resolution" in the context of the suit filed in Commercial Court of Zanzibar, a legislature has been expressly and prominently stated in Rule 26(2) and Rule 27(2)(a) of the Commercial Court Rules of Procedure of 2016. These rules, when considered alongside Section 150(1) of the Company Act No. 15 of 2013 and Rule 49(1) of the Company Regulation 2017 of the laws of Zanzibar, make it evident that such a resolution is necessary for initiating a lawsuit in the Commercial Court of Zanzibar by a registered company.

Therefore, upon careful examination of these legal provisions, one can undoubtedly ascertain the requirement of a board resolution for a suit instituted in Commercial Court by a registered company.

In going further to justify inapplicability of ***Mukisa Biscuits*** (*supra*) case principle to this instant case. If this court accept and follow the interpretation advocated by Mr. Elia for the plaintiff, it would not only undermine the consistent application of the Commercial Court Rules of Procedure in Zanzibar but also render its systematic application practically impossible. These rules were strategically mended to serve the rational objectives of

the Commercial Court in Zanzibar. For instance, an advocate representing a party might enter into settlement agreements that bind their client during the pretrial conference or mediation stages, all of which are required by law to occur before the trial stage.

If then, this court go by ***Mukisa Biscuits case*** principle as replacement of Commercial Court Rules of Procedure of 2016 and keep aside (not in use) the provisions of rule 26(2) and rule 27(2)(a) of Commercial Court Rules of Procedure of 2016 that require an advocate who appear in commercial court to be fully authorized to enter into procedural or substantive agreement on behalf of his or her client. How would then enable the Commercial Court to ascertain whether an advocate who appear before it and represent a client has been fully authorized to enter into such agreements which are concluded before the trial stage of the suit as provided under section 14 (4), section 20(1) and section 26(1)(a) of Commercial Court Act No. 9 of 2013.

I don't think it was the intention of legislature to keep the Commercial Court handcuffed and await until during the trial to ascertain or rather question on whether an advocate who enter appearance before it, has been fully authorized to enter into agreement on

behalf of his or her client, as that would be illogical and Impracticable. Because all of those agreements (if may be entered by the parties) have been directed by the Commercial Court Act No. 9 of 2013 to be entered at a stage of pretrial conference and mediation which are all conducted before the trial stage.

It is my belief that, to avoid such absurdity of this court being handcuffed in questioning the right of party to appear for litigating, the provisions of rule 26(2) and rule 27(2)(a) of Commercial Court Rules of Procedure of 2016 that require an advocate who appear in commercial court to be fully authorized to enter into procedural or substantive agreement on behalf of his or her client, has come to rescue and to give intended effect (allowing parties to enters into settlement agreements during pretrial conference and mediation stages) as per provisions of section 14 (4), section 20(1) and section 26(1)(a) of Commercial Court Act No. 9 of 2013.

As we have seen earlier the provision of rule 26 (2) and rule 27 (2) (a) of Commercial Court Rules of 2016, require an advocate who appear in Commercial Court to represent a company to be fully authorized by his client to enter into agreements of procedural and substantive nature on behalf of such client.

In respect with the above explained position of law, together with the reality on records that, the learned Advocates Elia Leisha and Happiness Semagongo who appeared before this court in representing a registered Company Maritime & Marchantile Int. Co. Ltd which is a plaintiff to this instant suit. Mr. Elia and Mrs. Happiness with my due respect to them were obligated to comply with the above cited rules of procedure of this court and indeed ought to manifestly indicate that they have been **fully authorized by a plaintiff company to enter into procedural and substantive agreements on behalf of his client.**

In addition to that, and by virtue of section 150 (1) of Company Act No 15 of 2013 and rule 49(1) of the Company Regulations 2017 of law of Zanzibar which require anything done by the company to be by resolution of such company. I have curiously endeavor to go through the entire plaint drawn and signed by the same Counsel Elia Lesha and I found neither company resolution authorizing him or his assistance counsel to enter into procedural and substantive agreements on behalf of plaintiff company, nor even deposition or any writings that empowered them to enter any agreement on behalf of Maritime & Marchantile Int. Co. Ltd,

contrary to what has been provided by rule 26 (2) and rule 27 (2) (a) of Commercial Court Rules of 2016 that read together with section 150 (1) of Company Act No 15 of 2013 and rule 49(1) of the Company Regulations 2017 of Zanzibar.



With this finding, I may now conclude to answer affirmative to the issue, I have earlier direct the attention of this court, on whether an Advocate representing a registered company can appear before the Commercial Court of Zanzibar and sue without authorization by a company resolution. For the analysis and reasons, I have made an Advocate representing a registered company cannot appear before the Commercial Court of Zanzibar and sue without authorization by a company resolution.

I accordingly sustain points (b), (c) and (d) of preliminary points of objections raised by the defendant.

Since the determination of the above three points of preliminary objection is sufficient to dispose of the suit, I found no need to continue determining other points of preliminary objections, as to do so would be only writing a fiction of law.

I therefore, strike out this suit with cost for want of company resolution to authorize plaintiff advocates to appear and sue before this court.

It is so ordered.



M. Kh. Kombo

Judge

21/3/2024
