

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**CIVIL CASE NO. 11 OF 2019**

**LUWAITA AMCOS LIMITED.....APPLICANT**

**VERSUS**

**TANZANIA COFFEE BOARD.....1<sup>ST</sup> RESPONDENT**

**ASTERY BITEGEKO.....2<sup>ND</sup> RESPONDENT**

**RULING**

2/9/2020, 10/11/2020

**MWENEMPAZI, J.**

The plaintiff has filed this plaint against the defendant claiming against them for payment of USD 200,000(say United States Dollar Two Hundred only) being compensation for unlawful deduction and withholding of Coffee sale during the 2017/2018 seasons; payment of Tshs. 100,000,000.00(say Tanzania shillings One Hundred Million only) as general damages; and also, interest and costs of the suit.

The plaintiff is a Primary Cooperative Society established under the Cooperatives Societies Act, No. 6 of 2013 with Registration Number RVR 20.

The plaint is signed by Gerold M. Ndunguru who is a Principal officer of the plaintiff.

The 1<sup>st</sup> Defendant has filed a Written Statement of Defence in opposition to the claims and also has filed a Notice of a Preliminary Objection on a Point of Law that the plaintiff does not have requisite Locus standi to institute this suit and that the 1<sup>st</sup> defendant shall pray for the suit to be dismissed with costs.

On the 14<sup>th</sup> July, 2020 the 1<sup>st</sup> Defendant was ordered to proceed ex parte as the plaintiff was not in appearance and there was no any information to explain her absence. It was further ordered that the hearing be conducted by way of written submission. The same was duly filed on the 28<sup>th</sup> July, 2020 as ordered.

The essence of the objection in this case is that the plaintiff does not possess the requisite locus stand to institute this suit as she has not demonstrated to have been vested with powers to sue on behalf of the plaintiff (LUWAITA AMCOS).

*Locus standi* it is defined in the Bryan Garner, The Black's Law Dictionary, 7<sup>th</sup> Edition, 1999. St. Paul Minn. as "the right to bring an action or to be heard in a given forum."

In the case of **Lujuna Shubi Ballonzi, Senior V Registered Trustees of Chama Cha Mapinduzi** 1996 T.L.R. 203 (Hc) it was observed that:

*"In this country, locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power*

*to determine the issue but also that he is entitled to bring the matter before the court”*

The suit has been instituted by Luwaita Amcos Ltd represented by its alleged Principia officer, Mr. Gerold Ndunguru. Luwaita Amcos Ltd being a registered primary society is governed by the **Cooperative Societies Act, Cap. 211 (R.E.2002)**. A cooperative society according to section 2 of the referred Act means a society registered under this act and includes a Primary Society, a secondary society, apex and the federation. A Primary society means a registered society whose members are individual persons or an association of such individual persons or an association and any cooperative body other than a body registered under the Companies Act. Section 35 of the same Act states that the registration of a society shall render it a body corporate by the name which it is registered, with perpetual succession and a common seal and with power to own property, to enter into contracts, to institute and defend suits and other legal proceedings, to do all things necessary for the purposes laid down in its by-laws. Liability of a primary society, joint enterprises, secondary society and federation shall be limited.

A cooperative society therefore is recognized as a separate legal entity from its members. Therefore, the suit brought forth by Luwaita Amcos Ltd has been instituted independently of its members.

In the case of **Omondi v National Bank of Kenya Ltd and others [2001] 1 EA 177** the court held that:

*"It is a basic principle of company law that the company has a distinct and separate personality from its shareholders and directors even*

*where the directors happen to be the sole shareholders (see **Salomon v A Salomon and Co Ltd [1897] AC 22**). The property of the company is distinct from that of its shareholders and the shareholders have no proprietary rights to the company's property apart from the shares they own. From that basic consequence of incorporation flows another principle: **only the company has capacity to take action to enforce its legal rights**"*

The counsel for the 1<sup>st</sup> defendant has submitted that any suit instituted by a body corporate, must be instituted independent of its members or shareholders through presentation of a resolution of the body corporate to file a suit and or authorize a member or other person to represent it in a court proceedings, such authorization is missing from the plaint and therefore does not give the required assurance of the genuineness of the suit instituted before this court.

The counsel submitted that it is not established on the face of record whether Gerold Ndunguru held a managerial position at the time of institution of this suit, for as far as it has already been established that Mr. Gerold Ndunguru ceased to hold the office as General manager on the 10<sup>th</sup> August, 2019 when he handed over the office and responsibilities to the new management of the society. He prayed this court to be guided by the case of **Bugerere Coffee Growers Ltd v Sebaduka and another** [1970] 1 EA 147 where it was held that:

*"when companies authorise 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; no such resolution had been passed authorising these proceedings;"*

Also, he referred this court to the case of **Tanzania Glie-Iam Industries & Another vs. Bjorn Schau & 4 others**, Comm. Case. No. 103 of 2003 (unreported) where Kimaro J., held that: -

*"...the case of **Bugerere Coffee Growers Ltd v Sebaduka and another(supra)** sufficiently illustrates the position on what limited liabilities companies require before filing an action in court. There must be a resolution sanctioning court proceeding. There is none in this case. This objection alone suffices to dispose of the matter."*

The 1<sup>st</sup> Defendant prays that the plaintiff in this matter to be found that she has no locus standi to bring this matter before this court as it has not established a corporate interest in the claims therein. He prays the suit to be struck out with costs.

With the submission above I am required to decide as to whether the plaintiff has a locus standi. In the case of **Omondi v National Bank of Kenya Ltd and others** [2001] 1 EA 177 it was held that: -

*"The issues of locus standi and res judicata are pure points of law that can properly be raised as preliminary objections. In determining both points, the court is perfectly entitled to look at the pleadings and other relevant matter in its records."*

The 1<sup>st</sup> defendant has submitted in length and established that for the company or body corporate to file a suit it must have a board resolution sanctioning court proceeding. In order for find out whether such resolution

is in place, we need to look at the pleadings and other documents, I believe attached to the pleadings. The nature of resolution sought in the record has to be in the nature clearly explained in the case of **St. Bernard's Hospital Company Ltd. Vs. Dr. Linus Maemba Mula Chuwa, High Court and Commercial Division No. 57 of 2004 Dar es salaam Registry**(unreported) where it was stated as follows:

*"...Having carefully considered the matter, I have reached a settled conclusion that indeed the pleading(plaint) should expressly reflect that there is a resolution authorizing the filing of an action. A company which does not do so in its pleading risk itself to the dangers of being faced by an unsurmountable preliminary objection as it the one at hand...**the resolution should be of a general rule, that is, it is not necessary that particular firm or person be specifically appointed to do the task.** It suffices if the resolution empowers the company management to take the necessary action..."*

I have read the plaint and the attached documents. In them I could not find any kind of sanctioning resolution with the aim of filing the present suit. That said, I subscribe to the submission made by the learned advocate for the 1<sup>st</sup> defendant and hold that the plaintiff has no locus standi to file this suit.

For the reasons, the objection is sustained and the suit is thus struck out with costs. It is ordered accordingly.



  
**T. M. MWENEMPAZI**

**JUDGE**

**10/11/2020**

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**Court:** Ruling delivered in Court in the presence of Englasia Mongi, State Attorney for the 1<sup>st</sup> Defendant and In the Absence of the Plaintiff and the 2<sup>nd</sup> Defendant.



**O.H. Kingwele**  
**Deputy Registrar.**

**10/11/2020**