

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO. 103 OF 2003

TANZANIA GLUE-LAM INDUSTRIES LTD....1ST PLAINTIFF/APPLICANT
SCAN TANZANIA LIMITED.....2ND PLAINTIFF/APPLICANT
VERSUS
BJORN SCHAU.....1ST DEFENDANT/RESPONDENT
ROALD KRISTIANSEN.....2ND DEFENDANT/RESPONDENT
TOR EINAR LARSEN.....3RD DEFENDANT/RESPONDENT
JOYCE FRANCIS KOLLSROM T/A FAMILY OF
KOLLSTROM & ASSOCIATES.....4TH DEFENDANT/RESPONDENT
JANDAR KOLLSTROM.....5TH DEFENDANT

R U L I N G

KIMARO, J.

TANZANIA GLUE LAM INDUSTRIES LTD and SCAN TANZANIA LTD are the first and second plaintiffs respectively. They describe themselves as limited liability companies. They are suing the 1st – 3rd defendants jointly and severally for allegedly committing frauds, misfeasances, breaches and wrongs while they were in the management of the plaintiff companies between 1999 to 2002. The three defendants are alleged to have continued commission of the acts through interference in the management of the 1st plaintiff. It is further pleaded by the plaintiffs that the 1st Defendant purportedly elevated himself to the position of the Managing Director and the 3rd Defendant to the position of the Chairman of the 1st Plaintiff

Company Board of Directors in place of one AGE ECKNES and they are intermeddling with the day to day activities and other operations of the 1st Plaintiff Company. It is also averred by the plaintiffs that the three defendants have also threatened the 1st Plaintiff company management with dismissal if they will not comply with orders to hand over to them the company assets and pay them the company money.

As regards the 4th and 5th defendants who are said to be spouses, they are alleged to have been paid out of the 1st Plaintiff's company funds an amount in excess of T.shs 32,326,380/= on the pretext that the said amounts were commission and consultation fees while the 1st Plaintiff Board of Directors never authorized payment as commission or consultation fee.

The plaintiff are praying for –

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- (i) *A declaration that the First, Second and Third Defendants have no right or power to interfere with the day-to-day activities of the First Plaintiff Company.*

- (ii) *A permanent Injunction restraining the First, Second and Third Defendants from intermeddling with the First Plaintiff Company funds and assets.*

- (iii) Damages.*

- (iv) A declaration that the Defendants and each of them hold on constructive trust for the First Plaintiff Company or are liable to account for all assets now or previously in their possession acquired directly or indirectly with the First Plaintiff Company money and assets.*

- (v) All necessary accounts and inquiries to enable the Plaintiff Companies to trace and recover the assets referred to in (iv) above*

- (vi) Orders for the delivery up or transfer to the First Plaintiff Company of the assets referred to in (iv) above.*

- (vii) Interest in equity at the bank rate of 20% per annum from the dates of embezzlement until judgment.*

- (viii) Interest.*

- (ix) Interest on the decretal amount and on costs at the court's rate of 12% per annum from the date of judgment until payment in full.*

- (x) Costs.*

- (xi) All further orders and relief in favour of the Plaintiffs against the Defendants as may to the court seem just and equitable."*

The plaintiffs have been confronted by a number of preliminary objections from the defendants. Among them is the competency and propriety of the suit. Mr. Rutabingwa, the Learned Advocate who appears for the defendants contended that an action in the name of the company must be sanctioned by a Resolution of the Board of Directors and if those complained against are the directors, then it must be by a Resolution of the general meeting.

Mr. Rutabingwa argued that the plaintiff's pleadings show clearly, that the suit is not concerned with the Board of Directors. There is not even an indication that any attempt was made to convene a general meeting to deliberate on the complaints.

Mr. Shayo, the Learned Advocate appearing for the plaintiffs has made a submission which I find difficult to follow. I also fail to agree with his opinion. He has focused more on the verification of plaintiff. However, that was not the point raised by Mr. Rutabingwa. Mr. Rutabingwa's concern is whether this action could be filed by the plaintiffs without having a Resolution which sanctioned the commencement of these proceeding. As far as the issue raised by Mr. Rutabingwa is concerned, the law is settled. There is no debate on who has commenced this action. Paragraph 1 of the plaintiff is self-explanatory. It reads:

*" 1. That the Plaintiffs are private companies with limited liability established and registered in Tanzania under the Provisions of the **Companies Ordinance, Cap.212**. The Second Plaintiff Company is a shareholder of the First Plaintiff Company. The Plaintiffs address for service for the purposes of this suit is in the care of,*

Sylvester Shayo & Co. Advocates,

Cooperative Building,

Lumumba Street,

P.O. Box 11934,

Dar es Salaam. "

The plaintiffs who filed this case are limited liability companies. In the case of **Bugerere Coffee Crowers LTD V SEBADUKA AND ANOTHER** 1970 EA 147, the suit was dismissed because the action was brought in the name of the company without there being a resolution or resolutions passed either at the company or Board of Directors meeting authorizing the filing of the suit. The court 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;”

Mr. Shayo has in his reply to this issue avoided the question posed by Mr. Rutabingwa and concentrated on verification of the plaint. This is not what Mr. Rutabingwa had questioned.

The position in this case is clear and I need not waste the courts time on it. It suffices to say that the case of **Bugerere Coffee Crowers Ltd** (supra) sufficiently illustrates the position on what limited liabilities companies require before filing an action in court. There must be a resolution sanctioning court proceedings. There is none in this case. This objection alone suffices to dispose of the

matter. This preliminary objection is upheld and the suit is dismissed with costs.

N.P.KIMARO,
JUDGE
25/03/2004

26/03/2004

Coram: A.R. Mruma – DRCC

For the Plaintiff- Mr. Francis Lukwaro (Principle Officer of the Plaintiff) Mr. Rutabingwa holding Mr. Shayo's brief for Plaintiff.

For the 1st Defendant }
For the 2nd Defendant } Mr. Rutabingwa
For the 3rd Defendant }
For the 4th Defendant }
For the 5th Defendant }

CC: Ngonyani.

Court: Ruling delivered in presence of Mr. Rutabingwa for the Defendants who holds Mr. Shayo's brief for the Plaintiff. Mr. Francis Lukwaro, Management Director of the second Plaintiff's Company is present in person.

1,398 - words

A.R.MRUMA
DEPDUTY REGISTRAR
26/03/2004

I certify that this is a true and correct copy of the original order of Judge A.R. Mruma

Mr. Mwanjama
Registrar

Commercial Court
Dar es Salaam

Dated *29/3/04*