

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

CIVIL SUIT NO.0534 OF 2014

RUBAGA BUILDING COMPANY LTD.....PLAINTIFF

VERSUS

1. GOPAL DEVSI VEKARIA

2. VIRBHAI NANJI BECHAR KERAI.....DEFENDANTS

BEFORE: HON. MR. JUSTICE HENRY I KAWESA

JUDGMENT

The instituted by the Plaintiff Company against the Defendants alleging;

- i) trespass to land, and seeking an order of vacant possession of **flat No.13 Block 3 and Flat No.28 Block 4 situated on Kibuga Block 12 Plot 656 at Rubaga-Kyadondo, Kampala** (*hereinafter referred to as the suit property*),
- ii) Mesne profits,
- iii) General damages and;
- iv) Aggravated damages among others.

The Plaintiff alleges that she was and is still the registered proprietor and entitled to immediate possession of the suit properties. That the control and management of the suit properties among others, has at all times been with Mohammed Allibhai; the proprietor of Alderbridge Real Estates Management

Ltd., whose duties were, among other, to collect rent from the tenants and institute suits in the name of the Plaintiff company.

That by letters dated 2nd February 2007, from M/s Niwagaba & Mwebesa Advocates, the company's tenants were given notices to vacate the suit properties by 31st of March 2007 and to pay rent for the months of February and March 2007, directly to the said advocates on allegations that the same belonged to the Defendants.

Further, that each of the Defendants trespassed upon the suit properties and took possession thereof until today.

In their respective written statements of defence, the defence, the Defendants denied trespassing on any of the suit properties. The 1st Defendant claimed that the Plaintiff company has no interest in the suit properties, as interest in the same expired on the 1st day of October 2016 when its lease expired.

That he lawfully purchased Flat 13 through a one; Naran, who in turn passed the purchase money onto the 2nd Defendant. That he lawfully took possession on the said Flat after the tenant therein vacated upon a notice to vacate. It was his allegation also that the said Mohammed Allibhai holds out to represent the Plaintiff without any authority. In the same spirit, the 2nd Defendant alleged that there is no *nexus* between the Plaintiff and the Mohammed Allibhai and that the latter, has no valid and verifiable authority to sue in the Plaintiff's name.

Further that there is no Plaintiff's resolution to sue the Defendants nor any other authority to begin the instant suit. It

was his allegation also that he lawfully took possession of Flat No. 28 and that any rent collected therefrom by him, was lawful.

In rejoinder, the Plaintiff claimed that the Defendant did not lawfully acquire flat 13 for valuable consideration because the persons he dealt with were neither the owners nor the Plaintiff's company agents. It was her contention that the 1st Defendant should prove that Muhammed Allibhai does not have authority in respect of the suit subject matter. In respect of the 2nd Defendant, she joined that this suit was properly instituted, and that the *nexus* between Muhammed Allibhai/Alderbridge Real Estates & Management Ltd and the Plaintiff cannot prejudice the Plaintiff company's rights. Further that the title used by the 2nd Defendant to collect the rent for flat No.28 was fraudulent and resulted into loss of income by the Plaintiff.

The parties filed a joint scheduling memorandum in which the following issues were proposed for determination, that is:

- 1. Whether the Plaintiff instituted the suit without legal authority.**
- 2. Whether there was a valid purchase of flat No.13 block 3 on Kibuga Block 12, Plot 656 at Rubaga Road – LRV 693 Folio 10 by the 1st Defendant.**
- 3. Whether there was a valid purchase of flat No. 29 Block 3 on Kibuga Block 12, Plot 656 at Rubaga Road – LRV 693 Folio 10 by the 2nd Defendant.**

4. Whether the Defendants are trespassers on the suit properties.

5. Whether the parties are entitled to the reliefs sought.

At the trial, the Plaintiff called four witnesses that is;

PW1; Nicholas Ssali, PW2; Muhammed Allibhai, PW3; Nazir Jahani, PW4; Riaz Hassanali, and the 1st Defendant called one witness that is; DW1; Gopal Devsi Vekaria. The suit proceeded *ex-parte* against the 2nd Defendant.

Counsel for the Plaintiff and the 1st Defendant filed written submissions in respect of the aforesaid issues, which I shall consider in determining the matter.

Issue No. 1:

Whether the Plaintiff instituted the suit without legal authority.

As a matter of fact, this issue raises a preliminary point of law. Counsel for the 1st Defendant raised it before the hearing, but court guided that it be argued as an issue.

The contention of the 1st Defendant is that this suit was instituted in the name of the Plaintiff company without its authority. It is his argument that the suit was instituted by a one Muhammed Allibhai, who is neither a member nor a director of the Plaintiff company. Counsel for the 1st Defendant cited several decisions to support his submissions to wit; *Real Gaba Market Property Owners versus Kampala Capital City Authority; Suit No.248 of 2008, Makerere Properties Ltd versus Mansukhlal Ranji Karia; HCCS No.32 of 1994,*

Bugerere Coffee Growers Ltd versus Sebadduka & Anor [1970] 1EA 147.

In rejoinder, the Plaintiff's counsel asserted that the 1st Defendant was departing from his pleadings. I do not see a point, however, from these submissions, because the issue at hand raises a point of law, which arguably supersede issues of pleadings.

Going further, counsel for the Plaintiff argued that Muhammed Allibhai had authority in the form of powers of attorney, to institute this suit in the name of the Plaintiff company.

It is trite law that a suit instituted in the name of a company without the authority of the directors is incompetent. This principle was first established in *Bugerere Coffee Growers Ltd versus Sebadduka & Anor [1970] 1EA 147*, where court observed that;

“When companies authorize 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”.

The principle was later recognised in *Makerere Properties Ltd versus Mansukhlal Ranji Karia; HCCS No.32 of 1994*, and extended to situations where an Advocate purports to commence proceedings in the name and on behalf of a company without authority. In 2004, it was followed by *Justice Sarah Arach Amoko* in *Masaka Tea Estates Ltd versus Samalia (Kiganja) Tea Estate Ltd & Others; HCMA No.505 of 2004*, where she noted that;

In the *Makerere Properties* case, *Berko J*, (as he then was), held that;

“A suit instituted in the names of a company without authority of the Directors is not maintainable in law. The suit was also struck off for want of authority to institute it.

*In the case of **Walugembe, Lugobe & Co. Ltd**, the Court found that;*

“There was no meeting of the company at which the decision to institute the said suit in the name of the Plaintiff company against the Defendant was taken. Walugembe stated that he and Lugobe as majority shareholders, decided to institute the suit. Lugobe stated that he, as a Director of the company, together Walugembe, gave authority for filing the suit. In view of this finding Phadke Ag. J (as h then was) held that;

“the suit was instituted without he authority of the Plaintiff company, and I agree with Mr. Wilkinson’s submissions that it is misconceived and not maintainable this finding really disposes the suit in favour of the Defendants.... In the result, I dismiss the suit against all the Defendants.”

In addition to the above authorities, counsel for the Plaintiff also cited **Navchandra Kakubhai Radia versus Kakubhai Kalidas & Co.; SCCA No.10 of 1994**, wherein the Supreme Court approved the principle above, and emphasised that the authority of the company may be exhibited in another form, and not necessarily a board resolution alone. The principle therefore, seems to be settled on this matter.

There is little doubt that the suit was instituted by Mohammed Allibhai on behalf of the Plaintiff company. Counsel for the Plaintiff argued that Mr. Mohammed Allibhai had authority from the company in the form of powers of attorney issued to him by the directors and shareholders of the Plaintiff's company. If this is true, the matter would then be decided by the proposition of the Supreme Court above.

I was referred to PEXH10, PEXH24 and PEXH30 by counsel for the Plaintiff in support of his submissions. PEXH10 is a power of attorney donated to Mohammed Allibhai by Abdul Manji Harji; a Director of the Plaintiff company and dated the 16th day of September, 1996, PEXH24 is a power of attorney donated to Mohammed Allibhai by Nazir Jahani; a shareholder in the Plaintiff company and dated the 21st of September 2010; and PEXH30 is a power of attorney donated to Mohammed Allibhai by Riaz Ladha; a shareholder in the Plaintiff company.

Of the three exhibits, only PEX10 was issued by a director, and only one director. An annual report, PEXH7, preceding the date of institution of this suit indicates that the Plaintiff company had 15 directors as of 6th November 2015. There is no indication in the Plaintiff Company's Article of Association, PEXH2, that the quorum of directors' meeting for transacting the company's business shall be four.

There is no evidence to suggest that there was a board meeting, which empowered the said director to appoint Muhammed Allibhai to act on behalf of the Plaintiffs' company.

As such, it cannot be said that PEXH10 is an act of the Plaintiff's company.

As regards PEXH24 and PEXH1030, these were issued by shareholders and only two shareholders out of 64 shareholders, according to PEXH7. I have not come across any authority where acts of some shareholders, out of the many acting on their own volition, bind the company. As such, I find that PEXH24 and PEXH30 is not sufficient to bind the Plaintiff Company.

In view of the above, it is my finding that the Plaintiff Company did not authorize Mohammed Allibhai to institute the instant suit in her name. Consequently, this suit, unmaintainable against the Defendants, in view of the above authorities. On this finding alone, the first issue is found in the affirmative.

The other consequence of the above holding is that the other issues do not arise, as there is no suit properly before me. In the end, this suit is here dismissed.

Since the Plaintiff, company did not authorize the institution of this suit, it cannot be ordered to pay costs. Mohammed Allibhai who instituted the same shall instead pay the costs personally.

I so order.

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Henry I. Kawesa

JUDGE

09/11/2021

09/11/2021:

Natukunda Faith for the Plaintiff.

Patrick Alunga for the 1st Defendant.

2nd Defendant unrepresented.

Court:

Matter is for judgment.

Judgment delivered to the parties above

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Henry I. Kawesa

JUDGE

09/11/2021