

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 533 of 2008

ASHISH MAGON1ST PLAINTIFF

TRIKUTI INVESTMENT LTD.....2ND PLAINTIFF

VERSUS

AMEE MANAGEMENT LTD..... DEFENDANT

RULING

The hearing of Preliminary Objection was fixed by Court but on 21.10.2008 only Mr. Kamau for Respondent attended Court. He submitted on grounds of Preliminary Objection dated 23.09.2008. He stated that the 2nd Plaintiff is a limited liability Company as stated in the supporting affidavit. The first Defendant is a Director of the Company. It is clear no meeting was held and in absence a resolution by the Company to institute suit it was held in the case of ***Affordable Homes Africa Ltd. –vs- Ian Henderson & Africa Ltd, HCC No. 524/2004*** that in the absence of a board resolution sanctioning the commencement of the suit the company was not in Court and for that reason the Preliminary Objection succeeds and the action must be struck out with costs. Such costs to be borne by Advocates for the Plaintiff.

The Company cannot be held liable if it has not authorized the action. In the case ***Friendship Container manufacturers Ltd –vs- Mitchell Cotts (k) Ltd.*** it was held that a person who acts for disclosed agent is not liable to a Plaintiff in respect of the particular transaction.

In the case of ***Wareham t/a Wareham & 2 others –vs- Kenya Post Office Sacco Bank***, also discussed the issue of agents. The authority of ***Bugerere Coffee Growers Ltd –vs- Sebaduka.*** It was held that proceedings of a company must be authorized by a resolution at a company or Board of Directors meeting and recorded in the minutes.

It is clear that the Defendant is an agent of a disclosed principal. This suit is therefore fatally defective. The suit is defective for want of the Plaintiffs Advocates authority to sue/act on behalf of the company. And second Plaintiff has not exhibited any resolution authorizing the institution of suit in its name of company.

I therefore uphold the Preliminary Objection and order the suit to be struck off with costs to the Respondent.

It is so ordered.

DATED this 10th day of November 2008.

JOYCE N. KHAMINWA

JUDGE