



**Manjewa Station Limited v Kenya Electricity Transmission Co Ltd (Environment & Land Case 127 of 2021) [2023] KEELC 16052 (KLR) (13 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16052 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT & LAND CASE 127 OF 2021**

**AE DENA, J**

**MARCH 13, 2023**

**BETWEEN**

**MANJEWASTATION LIMITED ..... PLAINTIFF**

**AND**

**KENYA ELECTRICITY TRANSMISSION CO LTD ..... DEFENDANT**

**RULING**

1. Before court is a chamber summons application dated April 19, 2022. The same is brought pursuant to the provisions of order 1 rule 14, order 4 rule 1[4] of the [Civil Procedure Rules](#) and all other enabling provisions of the law. The defendant seek the following orders;
  - a. That the honourable court does order that this suit is incompetent and fatally defective for want of authority by the plaintiffs representative to institute the same
  - b. That this honourable court be pleased to strike out this suit in its entirety
  - c. That the costs of this application and the entire suit be awarded to the defendant/applicant.
2. The application is premised upon grounds listed on its face and which summarily state that this suit was instituted vide a plaint filed on June 15, 2021 and amended on June 18, 2021. That annexed to the plaint was the plaintiffs company resolution dated June 4, 2021 signed by one Johnson Mkala Mwero authorizing Tom Mwachiti Mwero to swear all documents relating to the suit. That on November 30, 2021 the defendant/applicant received a letter authored by Johnson Mkala Mwero disowning the company resolution of June 4, 2021. That the said Johnson ranks equally in status with Tom Mwachiti Mwero and for that reason the suit has been filed incompetently and is fatal and defective for want of authority from the plaintiff's representative. The court is urged to strike out the defendant/applicant from this suit.



3. The application is supported by the affidavit of Walter Akwabi the legal officer for the defendant/ applicant. The contents of the same reiterate the averments raised in the grounds upon which the application is set. It is averred that the company resolution authorizing Tom Mwachiti Mwero to swear all affidavits and sign all documents in relation to this suit on behalf of the plaintiff was disowned by the plaintiffs co director. That in light of the same, this suit is incompetent and the court lacked jurisdiction to delve into the merits of the case.

## Response

4. The chamber summons was opposed through the replying affidavit sworn by Tom Mwachiti Mwero filed on October 6, 2022. The same denies the averments raised in the summons and the affidavit in support of the application. It is deponed that the letter dated November 30, 2020 predates the filing of this suit. That even if there was no board resolution filed in the matter, the same does not make the suit a non-starter. That a resolution can be filed during the pendency of a suit. That the provisions of article 159[d] of the *Constitution* are invoked on administration of justice without regard to undue technicalities. The application is termed an afterthought intended to obstruct justice and an abuse of the court process. The court is urged to dismiss the application with costs.

## Submissions

5. The defendant/applicants curved two issues for determination namely, whether the plaintiffs suit is incompetent and fatally defective and who bears the costs of the application and suit if the same is struck out. On the first issue for determination, it is submitted that the verifying affidavit to the application was sworn incompetently and the same offends the provisions of order 4 rule 1[4] and [6] of the *Civil Procedure Rules*. That it has not been proved that the person who swore the affidavit on behalf of the plaintiff had authority under the company to do so. For that reason, the applicant submits that the plaintiffs suit is incompetent and fatally defective and should be struck out with costs. Reliance is placed on several authorities as listed in the submissions and which this court has considered.
6. On the second issue for determination, the applicant relies on the provisions of section 27[1] of the *Civil Procedure Act*. It is submitted that the applicant has exhibited appropriate conduct in this matter and urges the court to allow it have the costs of the application. Reliance is placed in the precedent of *Cecilia Karuru Ngayu v Barclays Bank of Kenya & another* [2016] eKLR.
7. The plaintiffs/respondents submissions were filed before court on November 18, 2022. The respondent on whether lack of a board resolution is fatal to a suit and whether this was a suit for striking out. Counsel relied on the case of *Salomon v Salomon & Co Ltd* [1897] AC 22 which held that a company is a distinct legal personality capable of suing and being sued. That order 4 rule 1 of the *Civil Procedure Rules* does not require the filing of a resolution of directors together with a plaint. That once a resolution is presented to court notwithstanding at what stage, the same should be considered good enough for the suit as was held in *Fubeco China Fushun versus Naiposha Company Limited & 12 others* Civil Case No 222 of 2012. It was urged that order 3 rule 2 of the *Civil Procedure Rules* states the documents that should accompany a plaint and a company resolution of board of directors is not listed amongst them.
8. According to the respondent, Tom Mwachiti Mwero is a director of the plaintiff company and no evidence has been presented to state that he has no authority to act on behalf of the plaintiff or that he is not a director of the same. That the other director has only raised allegations of the signature in the resolution being fake. The court is asked to administer justice with disregard to procedural technicalities as per the provisions of article 159[d] of the *Constitution*. On whether the suit is for striking out, it is submitted that lack of a proper resolution of the company is not fatal as the same can



be filed at any time before pre-trial or post-trial but before the hearing of a suit. The court is urged to dismiss the application.

### Determination

9. The court has considered the application, the affidavits both in support and opposition to it, the annexures thereto, the submissions, as well as the law and authorities cited. To me the defendant/applicant questions the plaintiff's *locus standi* to bring this suit on the basis that the affidavit sworn in verifying the contents of the plaint was signed by a person with no authority to do so. The main issue for determination therefore is whether the plaintiff has *locus standi* to bring the present suit.
10. The intent of the provisions of order 4 rule 1[4] of the [Civil Procedure Rules](#) is safeguarding companies by ensuring that only authorised persons institute proceedings on its behalf. The court takes note of the letter addressed to the defendants dated November 30, 2020 as well as the resolution given to Tom Mwero to swear affidavits and sign all documents on its behalf. It is clear that the resolution was passed after the letter to the defendant. It is also noteworthy that the plaint instituting this suit was filed on June 15, 2021 after the letter dated November 30, 2020. The contents of the resolution from the board of Directors meeting held on June 4, 2021 were after the letter dated November 30, 2020 and therefore the resolution supersedes the said letter.
11. In my view, had it been that no resolution had been filed, the same would not be fatal to this suit as claimed by the applicant. In this regard I'm guided by the dictum in the case of [Leo Investments Ltd v Trident Insurance Company Ltd](#) [2014] eKLR wherein Odunga, J was in agreement with the decision of Kimaru J in the case of [Republic v Registrar General and 13 others](#) Misc Application No 67 of 2005 [2005] eKLR where the court stated: -

“...such a resolution by the Board of Directors of a company may be filed at any time before the suit is fixed for hearing as there is no requirement that the same be filed at the same time as the suit. Its absence is, therefore, not fatal to the suit.”
12. I also find support in [Spire Bank Limited v Land Registrar & 2 others](#) [2019] eKLR where the Court of Appeal stated as follows: -

“...It is essential to appreciate that the intention behind order 4 rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address the mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company's seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized.” (emphasis is mine)
13. The Court of Appeal has in numerous cases expressed that striking out pleadings should be the last resort. In this regard the respondent referred this court to the cases of [Cooperative Bank Ltd v George Fredrick Wekesa](#) (Civil Appeal No 54 of 1999) and [Yaya Tower Ltd vs Trade Bank Ltd \(In Liquidation\)](#) Civil Appeal No 35 of 2000 both echoing this position.



14. Further in the case of *Trust Bank Ltd v Amalo Co Ltd* [2009] KLR 63 the Court of Appeal had this to say; -

“(1) The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merit and that errors should not necessarily deter a litigant from the pursuits of his right.

(2) The spirit of the law is that as far as possible in the exercise of judicial discretion the court ought to hear and consider the case of both parties in any dispute in the absence of any good reason for it not to do so.”

15. In view of the foregoing, it is clear that a resolution is on record authorising the filing of the suit before court. To hold otherwise would be to elevate procedural technicalities to a point where they would be an impediment to the administration of justice. Article 159 (2) (d) of the *Constitution* together with section 19(1) of the *Environment and Land Court Act, 2011*, enjoins the court to administer justice expeditiously and without undue regard to technicalities of procedure.

16. The upshot of the foregoing is that the application lacks merit and is hereby dismissed. Costs shall be in the cause

It is so ordered.

**Delivered and Dated at Kwale This 13<sup>th</sup> Day of March,2023**

**A.E. DENA**

**JUDGE**

**Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:**

**Mr Wachira for the Applicants**

**Mr.Magolo Paul holding brief Ms. Okumu for the Respondents applicants.**

**Mr. Disiii- Court Assistant.**

