



**Riungu v Ijenge Kenya Limited (Civil Appeal E538 of 2024)
[2025] KEHC 13058 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13058 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E538 OF 2024
JN NJAGI, J
SEPTEMBER 19, 2025**

BETWEEN

MARTIN GIKUNDI RIUNGU APPELLANT

AND

IJENGE KENYA LIMITED RESPONDENT

*(Being an appeal from the judgment and decree of Hon. Gillian Siatwo, Magistrate/
Adjudicator, in Nairobi Small Claims Court MM No.E4183 of 2023 delivered on 1/3/2024)*

JUDGMENT

1. The respondent herein brought suit against the appellants at the Nairobi Small Claims Court making a claim for costs of repair of a motor vehicle. The trial court entered judgment for the respondent in the sum of Ksh.199, 418 with costs and interest. The appellant was aggrieved by the judgment and lodged the instant appeal. The grounds of appeal are:
 - (1) That the learned Magistrate/Adjudicator erred in law and fact in entering judgment in favour of the claimant despite lack of a board resolution authorising filing of the suit.
 - (2) That the learned Magistrate/Adjudicator erred in law and fact in failing to consider and determine the issue of the fatality of the lack of resolution to file the case.
 - (3) That the learned Magistrate/Adjudicator erred in law and fact in considering and rendering a determination in the suit that in the absence of a resolution authorising the filing of the suit the company was not properly before the court and therefore no suit should have been entertained.
 - (4) That the learned Magistrate/Adjudicator wrongly applied the applicable principles of law in arriving at the judgment.
2. The appellants sought that the judgment of the Adjudicator be set aside with costs in the appeal and at the trial court being borne by the Respondent.



3. The appeal was canvassed by way of written submissions of the counsels appearing for the respective parties.

Appellant's submissions

4. The appellants submitted on one issue: whether the suit was properly before the trial court and with the authority of the company. It was their submission that the respondent did not file any board resolution to show that the company had authorised them to file the suit as well as that the board had authorised the two witnesses to act as their witnesses in the suit. The appellant made reference to Order 4 rule 4 of the Civil Procedure Rules that requires that where a company files suit, the same must be accompanied by a resolution under seal by the directors authorising the filing of the suit. It was submitted that the said requirement is couched in mandatory terms. More so that Order 4 rule 6 goes on to state that where a party has not complied with the provisions as set out in rules 3, 4, and 5, the court may on its own motion or on application of any of the parties order to be struck out a document that does not comply with the said rule.

5. It was submitted that the import of the section is that a company can only sue in its own name with the sanction of its Board of Directors or by a resolution. In this respect the appellants cited the case of *Bactlab Limited v Bactlabs East Africa Limited & 5 others* (2021) eKLR where it was held thus:

It is settled law that directors must conduct the affairs of the company in instituting suit by resolution. In the case of *Burgerere Coffee Growers Ltd v Sebaduka* 1970 EA at 147 the court held: "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"

6. Reliance was also placed in the case of *East African Portland Cement Co.Ltd v Capital Markets Authority & 4 others* (2014) eKLR where the court cited the case of *Affordable Homes Africa Limited vs Ian Henderson & 2 Others* HCCC No 524 of 2004, where it was held:

"The upshot of these considerations is that in the absence of a board resolution sanctioning the commencement of this action by the company, the company is not before the court at all. For that reason, the preliminary objection succeeds and the action must be struck out with costs, such costs to be borne by the advocates for the plaintiff."

7. It was submitted that the court should not have entertained a suit filed without a resolution as the same was not properly before the court. More so that the respondent lacked locus standi not only to institute the suit but also to prosecute the same without the authority of the directors. Therefore, that the suit was incompetent and fatally defective and in the premises the judgment entered by the Adjudicator should be set aside.

Respondent's submissions

8. The respondent on the other hand submitted that the requirement for a company filing suit to file a resolution of its directors is provided under Order 4 Rule 1 of the Civil Procedure Rules, 2010. That the jurisdiction of the Small Claims Court is provided for under section 17 of the Small Claims Act which provides that:

Subject to this Act and Rules, the Court shall have control of its own procedure in the determination of claims before it and, in the exercise of that control, the Court shall have regard to the principles of natural justice.



9. It was submitted that section 1(2) of the *Civil Procedure Act* applies to proceedings in the High Court and subject to the Magistrate's Court Act, to the proceedings in subordinate courts. It was submitted that Section 1(2) of the *Civil Procedure Act* does not make mention of the of the Small Claims Court and therefore the *Civil Procedure Act* and its rules are not applicable in the Small Claims Court. Consequently, that there is no legal requirement for a corporate litigant to file a director's resolution authorising the institution of a claim in the Small Claims Court.
10. The respondent submitted that a stamp of the respondent was affixed at the declaration paragraph of the statement of claim of the suit. That the statement of claim was also signed by one Charles Wang'ondu Samson who stated in his witness statement that he is a director of the respondent.
11. The respondent submitted that the appellants in their response to the statement of claim did not raise an objection or even make mention of lack of a director's resolution. More so the appellants did not provide any evidence before the Adjudicator to demonstrate that the person who affixed the stamp and signature in the statement of claim was unauthorised to do so. Consequently, it was submitted that the lack of a director's resolution cannot be utilized as a technicality to strike out a suit particularly where no evidence is produced to demonstrate that such officer was unauthorised. In this respect the respondent relied on the Court of Appeal decision in the case of *Spire Bank Limited v Land Registrar & 2 others*, (2019) eKLR where it was held that:

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.

12. The respondent urged this court to dismiss the appeal with costs.

Analysis and Determination

13. This being a first appeal, the duty of this court is to re-evaluate the evidence and arrive at its own conclusions. In so doing the court must take into account that it had no opportunity to hear and see witnesses, and therefore must make an allowance for that. (See: *Selle & Another v Associated Motor Boat Co. Ltd & Another* (1968 (E.A. 123)).
14. I have considered the grounds of appeal and the submissions tendered by the respective advocates for the parties.
15. Order 4 Rule 1(4) of the Civil Procedure Rules, 2010 provides that -

“Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.”
16. There is no dispute in this matter that the respondents filed their suit on behalf of their company without first obtaining a resolution of the Board of Directors of the company. The issue for



- determination is whether the respondents' suit was fatally defective for lack of authority by the board of directors of the company to file suit.
17. The appellant argues that it is mandatory for a resolution of the Board of Directors to be obtained for a suit filed on behalf of a company to be sustainable. The respondent on the other hand argues that the requirement to obtain a resolution of the board is a mere technicality and as such a suit should not be defeated on such a ground where there is no evidence that the person who signed the relevant documents to the suit was not authorised by the company.
 18. Order 4 Rules 2 -6 of the Civil Procedure Rules provide as follow:
 - (2) The plaint shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in rule 1(1)(f) above.
 - (3) Where there are several plaintiffs, one of them, with written authority filed with the verifying affidavit, may swear the verifying affidavit on behalf of the others.
 - (4) Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.
 - (5) The provisions of sub-rule (3) and (4) shall apply mutatis mutandis to counterclaims.
 - (6) The court may of its own motion or on the application by the plaintiff or the defendant order to be struck out any plaint or counterclaim which does not comply with sub-rule (2), (3), (4) and (5) of this rule.
 19. The operative words in rule 1 (6) are: "the court may..." This means that the court has discretion on whether or not to strike out a suit filed without a resolution of the Board of Directors.
 20. Article 159 of *the Constitution* of Kenya, 2010 requires courts of law to administer justice "without undue regard to technicalities of procedure." The matter herein was before the Small Claims Court. Section 32 of the *Small Claims Court Act* provides that the court "shall not be bound wholly by the rules of evidence". In the instant matter, the appellant did not raise the issue of lack of resolution of the board when the suit was before the Adjudicator. The issue is therefore being raised for the first time in this appeal. In my view, it can only mean that the issue is being raised now so as to defeat a judgment lawfully entered yet none of the directors of the subject company has complained that the suit was filed without its authority. There is no merit in the appeal. I am in this respect guided by the Court of Appeal decision in the case of *Spire Bank Limited v Land Registrar & 2 others* (supra) where the court stated the following on the requirement under Order 4 rule (1) 4 of the Civil Procedure Rules for a suit filed by a company to be accompanied by a resolution under seal by the directors authorising the filing of the suit.:

.....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.
 21. In the instant matter the claim form was signed by one Charles Wang'ondy Samson who in his witness statement stated that he was a director of the company. There was no evidence that he was unauthorised by the company to file the suit. In view of the Court of Appeal decision as cited above, the authorities relied on by the appellant in support of the dismissal of the suit are of no consequence.
 22. The upshot is therefore that this court finds no merit in the appeal and the same is dismissed with costs to the Respondent.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2025.



J. N. NJAGI

JUDGE

In the presence of:

Miss Gathoni HB for Mr. Mbaabu for Appellant

Miss Njoroge HB for K. Njoroge for Respondent

Court Assistant -

