



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**PETITION NO.28 OF 2015**

**(Before Hon. Justice Hellen S. Wasilwa on 8<sup>th</sup> June, 2015)**

**GEOFFREY KIPKIRUI CHERUIYOT & OTHERS .....PETITIONERS**

**VERSUS**

**TOPLIS & HARDING INTERNATIONAL LIMITED.....RESPONDENT**

**RULING**

1. The application before court is the one dated 24/3/2015. However, in respect to this application, the Petitioners have raised a Preliminary Objection on a point of law to the Respondents Notice of Appointment dated 8<sup>th</sup> April, 2015 as follows:
  1. *That the firm of Iseme, Kamau & Maema Advocates have without any lawful authority and/or mandate appointed itself as Counsel for the Respondents herein/and*

**Specifically:**

- a. *A Limited Liability Company is governed by its Memorandum and Articles of Association and a Limited Liability company is a separate legal entity from its members and directors and can only act through its organs and the recognized means by which it operates is by way of resolutions from the Board of Directors on behalf of its shareholders.*
- b. *The entire Board of Directors ought to be responsible for the day to day running of its activities. This includes the appointment of agents such as auditors and advocates for which there must be a resolution of the Board of Directors.*
- c. *From the Notice of Appointment by Iseme, Kamau & Maema Advocates, nowhere does it say that they were appointed by the Respondent through a resolution of the board, and there is no evidence of a board resolution annexed thereto.*

**Without Prejudice to the Foregoing:**

2. *That Iseme, Kamau & Maema Advocates is not properly on record for the Respondent before the Honourable Court and cannot therefore purport to represent or take out any proceedings on behalf of the Respondent.*

***Specifically:***

- a. ***To this point there has been no board resolution appointing Iseme, Kamau & Maema Advocates to act for the Respondent. Therefore, the company has not instructed any advocates to act on its behalf in this suit.***
- b. ***It therefore follows that the firm of Iseme, Kamau & Maema Advocates was not legally appointed to act for the Respondent and therefore cannot purport to represent the Respondent.***
3. ***The Notice of Appointment purporting to appoint Iseme, Kamau & Maema Advocates is incompetent, null and void ab initio and should be struck out.***
2. The Respondents – the firm of Iseme, Kamau & Maema Advocates through their Counsel opposed the Preliminary Objection. They submitted that a Preliminary Objection should bring out principles of law capable of disposing of the case as established in the case of **Mukisa Biscuit** & this cannot be raised in the event any fact has to be explained. They argued that the existence of a board resolution is not a point of law but of fact. They also submitted that if this court is to decide that there was no board resolution to appoint the firm of Iseme, Kamau & Maema Advocates then the court will stay the proceedings and require that such an authority be produced. They asked court to dismiss the Preliminary Objection.
3. I have considered the submissions of both parties. In the case of **East African Safari Air Limited vs Anthony Ambaka Kegode & Another (2011) eKLR Civil Appeal No. 42/2007** cited by the Respondent herein, the learned JJA Tunoi, Waki and Visram in discussing a similar application, cited the case of **Royal British Bank vs Turquand (1856) 6 E. & B. 327** and rendered themselves as follows:

“while persons dealing with a company are assumed to have read the public documents of the company and to have ascertained that the proposed transaction is not inconsistent, therewith, they are not required to do more; they need not inquire into the regularity of the internal proceeding-what Lord Hatherley called “the Indoor Management” and may assume that all is being done regularly. This rule which is based on the general presumption of law, is eminently practical, for business could not be carried on if a person dealing with the apparent agent of a company was compelled to call for evidence that all internal regulations had been duly observed. Thus, where the articles give power to borrow with sanction of an ordinary resolution of the general meeting, a leader who relies on this power need to inquire whether such sanction has in fact been obtained. He may assume that it has, and if he is acting bona fide, he will, even though the sanction has not been obtained, stand in as good position as if it had been obtained”.

4. The learned JJA also cited “**Gower’s Principles of Modern Company Law**” which summarized the rule in Turquand’s case as follows:

***“This rule is manifestly based on business convenience, for business could not be carried out if everybody who had dealings with a company had meticulously to examine its Internal Machinery in order to ensure that the officers with whom he dealt with had actual authority Not only is it convenient, it is also just. The lot of creditors of a Limited Liability Company is not a particularly happy one. It would be unhappier still if the company could escape liability by denying the authority of the officer to act on its behalf.”***

5. The JJA thus concluded that it would be in interest of justice if it is found that certain acts of an agent had not received proper authority, to have the same cured by ratification. The court then held that:

***“It is our view that the proper thing for the High Court to have done was not to strike out the proceedings but to stay the same pending ratification if it was of the view that the evidence of ratification was not clear”.***

6. Following the above authority for which I totally agree with and I am bound by, I do find, in this instant case that, given that it is not clear whether the Respondents Counsels have authority to appear in this case on behalf of the Respondent, I will stay these proceedings until authority to so act is presented to court or the authority ratified. This should however be done within 14 days from today's ruling given that the main application has been filed under Certificate of Urgency.

**Read in open Court this 8<sup>th</sup> day of June, 2015**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Otieno holding brief for Wandago for David Russel – Present

Oyuke for Petitioner

Ochieng Opiyo holding brief for Respondent