Citation	Parties	Legal Principles Discussed
CIVIL APPEAL NO. 26 OF 2003- COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM- RAMADHANI, J.A., NSEKELA, J.A. And KIMARO, J.A.)-	**1. TANGANYIKA LAND AGENCY LIMITED, 2. KAMAL KUMAR VOHORA, 3. ASHNI KUMAR VOHORA, 4. SHAILA VOHORA, 5. DEV NATH KAPOOR, 6. SNEHLATA KAPOOR, 7. SATISH NANDA, 8. ARUNA NANDA Vs. MANOHAR LAL AGGARWAL- (Appeal from the Decision of the High Court of Tanzania at Dar es Salaam- Chipeta, J.)**	Failure of a Company to hold a general meeting of company once at least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting **Liability of a juristic person such as a company for a statutory offence**- questions to consider: see Denning L.J. in the case of **H. L. Bolton (Engineering) Co. Ltd.** V **T. J. Graham and Sons Ltd** (1957) 1 QB 159 at page 179. **Section 53 of the Interpretation of Laws and General Clauses Act, Cap 1 RE 2002-** An offence under any Act is committed by a body corporate. **Order 1 Rule 13 of the Civil Procedure Code**- objections on the ground of non-joinder of the parties must be raised at the earliest opportunity and if the objection is not raised at an early stage, it is deemed to have been waived.

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: RAMADHANI, J.A., NSEKELA, J.A. And KIMARO, J.A.)

CIVIL APPEAL NO. 26 OF 2003

1. TANGANYIKA LAND AGENCY LIMITED
2. KAMAL KUMAR VOHORA
3. ASHNI KUMAR VOHORA
4. SHAILA VOHORA
5. DEV NATH KAPOOR ..... **APPELLANTS**
6. SNEHLATA KAPOOR
7. SATISH NANDA
8. ARUNA NANDA

VERSUS

MANOHAR LAL AGGARWAL ..... RESPONDENT

(Appeal from the Decision of the High Court of Tanzania at Dar es Salaam)

(Chipeta, J.)

dated the 12th day of March, 1998
in
Miscellaneous Civil Cause No. 32 of 1997

RULING OF THE COURT

21 March & 24 December, 2007

NSEKELA, J.A.:

The respondent herein, Manohar Lal Aggarwal was the applicant in Miscellaneous Civil Cause Nos. 180; 181; 182 of 2006 in the High Court at Arusha. The appellants were Tanganyika Land Agency Limited; Kamal Kumar Vohora; Ashni Kumar Vohora; Shaila

Vohora; Dev Nath Kapoor; Suchlata Kapoor; Satish Nanda and Aruna Nanda being the 1st; 2nd; 3rd; 4th; 5th; 6th and 7th appellants herein respectively. On the 6.12.96 the said applications were consolidated by Munuo, J. (as she then was) and subsequently on the 17.1.97 transferred to the High Court at Dare s Salaam. The appellants were apparently shareholders and directors of the 1st respondent as well as Kongoni Coffee Estate Limited; Karamu Limited; Kiran Coffee Estate Limited. In the consolidated applications, the respondent sought from the High Court orders to the effect that the court directs the calling of General Meetings of the said companies and that the said General Meetings be conducted under the chairmanship, supervision, direction and guidance of an officer of the office of the Registrar of Companies. On the 12.3.98 Chipeta, J ordered, *inter alia*, that the appellants should call for and hold general meetings of the companies under the chairmanship of senior officer nominated by the Registrar of Companies. Each appellant was also condemned to pay a fine of Shs. 500/=.

Mr. Rutashoborwa preferred seven grounds of appeal in his memorandum of appeal, namely that –

"1. The Honourable Judge erred in law and in fact in allowing the application to proceed, consolidated with Manohar Lal Aggarwal as the applicant whereas in the application concerning "KARAMU LTD" was SHANTILAL AGGARWAL who has no legal status in KILIMANI COFFEE ESTATE LTD and KIRAN COFFEE LTD.

2. The Honourable Judge erred in law and in fact in holding that impleading the companies in an application such as the present one does not arise at all.

3. The Honourable Judge erred in law in imposing fine on the appellants.

4. The Honourable Judge erred in law and in fact in condemning the four companies namely Karamu Coffee Estate Ltd; Kiran Coffee Estate Ltd; Kilimani Coffee Estate Ltd and Kongoni Estate Ltd without affording them contrary to the principles of natural justice a right to be heard and respond to the allegations of default.

5. The Honourable Judge erred in law and in fact in holding that an application under section 112 of the Companies Ordinance, Cap. 212 can only be brought

jointly against a company and any directors knowingly party (sic) to the alleged default.

6. The Honourable Judge erred both in law and in fact in giving orders against four companies which were not party to the suit.

7. The ruling of the Honourable Judge is flawed in that it makes orders against persons who have no legal authority to carry out those orders or enforce compliance with them."

In elaborating on the grounds of appeal the learned advocate argued grounds 2, 4, 5, 6 and 7 together and the remaining grounds 1 and 3 were argued separately.

In the High Court before Munuo, J. (as she then was), Mr. Ngalo, learned advocate for the appellant made an application to the effect that the applications before the court be consolidated. The prayer was duly granted. The consolidated applications were then transferred to the High Court, Dar es Salaam. Chipeta, J. on the 5.1.98 ordered that the parties file written submissions. Dr. Sengondo Mvungi, learned advocate for the respondent and Mr.

Ngalo, learned advocate for the appellants complied with the order. The court delivered its ruling on the 12.3.98, the subject matter of this appeal. Mr. Rutashoborwa cannot now be heard to complain that Chipeta, J. should not have heard the consolidated applications. His learned friend representing the same clients made the application before the High Court at Arusha, made written submissions here in Dar es Salaam. The question of consolidation of the applications was not an issue before Chipeta, J. With respect, we are constrained to say that the first ground of appeal is without merit and frivolous.

We now turn to the third ground of appeal. Section 112 of the Companies Act, Cap 212 provides as follows –

> "1. A general meeting of every company shall be held once at least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting.
>
> 2. If default is made in holding a meeting of the company in accordance with the provisions of this section, the company and every director or manager of the company who is knowingly a party to the

default shall be liable to a fine not exceeding ten thousand shillings.

3. If default is made as aforesaid, the court may on the application of any member of the company call, or direct the calling of a general meeting of the company."

It is evident from these provisions that a general meeting must be held in each year and the meeting must not be held later than fifteen (15) months from the date of the previous general meeting. Failure to comply with either constitutes an offence for which the company and every director or manager who is knowingly a party to the default is liable to a fine. The sentence of fine can be imposed in terms of section 112 (2) above on both the company and on persons or body of individuals. A question we ask is, were the appellants knowingly parties to the default? In the course of his ruling, the learned judge had this to say –

> "In the instant application there is incontrovertible evidence that the respondents have failed to hold general meetings of the said companies not only during the statutory

> period, but for several years despite the clear and mandatory statutory provisions and requests by the shareholders for the holding of such meetings. Indeed, they even ignored the orders of the Registrar of Companies. The respondents gave no explanation at all why they have not complied with those statutory provisions."

After referring to sections 112 (2) and (3) of the Companies Act, the learned judge continued –

> "In the instant matter, it has clearly been established, and none of the respondents attempted to deny, that all the respondents knew of that default and are continuing to break the law. I cannot see a more deserving case for imposing the statutory penalty which, in the circumstances, appears to be mandatory."

The liability of a juristic person such as a company for a statutory offence requires a consideration of two questions. **First,** does the particular statute apply to the juristic person concerned? The answer here is, **Yes**. Then follows the **second** question, whose

act can be attributed to the juristic person for the purposes of the particular statute? In the case of **H. L. Bolton (Engineering) Co. Ltd.** V **T. J. Graham and Sons Ltd** (1957) 1 QB 159 at page 179, Denning L.J. stated thus –

> "A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which the tools and act in accordance with the directions from the centre. Some of the people in the company are mere servants who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such."

And in **Tesco Supermarkets Ltd** v **Nattrass** (1972) AC 153, Lord Reid said at page 171 –

> "There have been attempts to apply Lord Denning's words to all servants of a company whose work is brain work, or who exercise some managerial discretion under the direction of superior officers of the company. I do not think that Lord Denning intended to refer to them. He only referred to those who represent the directing mind and will of the company, and control what it does.

(See also: **Meridian Global Funds Management Asia Limited** v **Securities Commission** (1995) 3 All ER 918). Section 112 (1) of the Companies Act requires a general meeting to be held at least in every year, and the object of section 112 (3) is to enable a member of the company, where there has been default on the part of those whose duty is to summon the meeting, to apply to the Court to direct the calling of a meeting. On the evidence, it is clear that no meetings were held in compliance with section 112 (1). The question is, are the directors liable to be punished. Chipeta, J. answered this question as under –

> "In the instant matter, it has clearly been established, and none of the respondents

> attempted to deny, that all the respondents knew of that default and are continuing to break the law. I cannot see a more deserving case for imposing the statutory penalty which, in the circumstances, appears to be mandatory."

With respect, we agree with this conclusion. The burden was on the companies to prove that the directors were not the directing mind and will of the companies.

We also have to take into account section 53 of the Interpretation of Laws and General Clauses Act, Cap 1 RE 2002. It provides as follows –

> "53. Where any offence under any Act is committed by a body corporate then, unless a contrary intention appears, as well as the body corporate, any person who, at the time of the commission of the offence, was concerned as a director or an officer, with the management of the affairs of such body corporate shall be guilty of the offence and shall be liable to be proceeded against and

> punished accordingly, unless he proves to the satisfaction of the Court that he had no knowledge and could not, by the exercise of reasonable diligence, have had knowledge of the commission of the offence."

We now come to the remaining grounds of complaint which Mr. Rutashoborwa argued together. The issues involved in some of them have already been discussed above and we need not repeat them here. Elaborating on these grounds, the learned advocate submitted that the court below erred in making the orders against the four companies because they were not impleaded in Miscellaneous Civil Cause No. 32 of 1997. It was the individual directors who we parties to the proceedings in the High Court. Closely connected with this the learned advocate submitted that the order to convene meetings should have been made against the companies and not the directors. On his part, Mr. Kesaria, learned advocate for the respondent, submitted that there was uncontroverted evidence on the record to the effect that the companies in question did not convene meetings as required by law. The Registrar of Companies had written several letters reminding the companies to comply with the statutory

requirements of the law on the necessity to convene meetings. H e added that the individual appellants were present before the court and should comply with the court order. However, he admitted that the companies were not impleaded in the court below.

Order 1 Rule 9 and 13 of the Civil Procedure Code provide as follows –

> "9. No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties before it.
>
> 13. All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived."

Admittedly, the four companies were not impleaded in the court below. As we see it, this is a matter of convenience only. The companies are legal persons which cannot summon meetings. Meetings are summoned by physical human beings who act on behalf of the companies. In terms of Order 1 Rule 13 of the Civil Procedure Code, objections on the ground of non-joinder of the parties must be raised at the earliest opportunity and if the objection is not raised at an early stage, it is deemed to have been waived. There is therefore no merit in this ground of complaint.

In the result and for the foregoing reasons, we dismiss the appeal in its entirety with costs.

DATED at DAR ES SALAAM this 18th day of December, 2007.

A.S.L. RAMADHANI
JUSTICE OF APPEAL

H. R. NSEKELA
JUSTICE OF APPEAL

N. P. KIMARO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S. M. RUMANYIKA)
DEPUTY REGISTRAR