WANYAMA ATTORNEYS'
KNCU BUILDING, 1st FLOOR
PLOT NO 10 BLOCK H
P. O. Box 350
KILIMANJARO
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LEGAL OPINION REGARDING CONDUCTS IN PRINCIPAL-AGENT RELATIONSHIPS AND ITS EFFECTS TO THIRD PARTIES

FACTS;

Pisikali and Baharia being in Principle -Agent relationship, whereas Baharia tend to conduct business against the instruction/authority of his principal, and accumulate profit of his own. Where it comes to Sofa ltd (Principles' Supplier) mind that Baharia is acting by his own wishes therefore it becomes a peril on the side of the principal to lose her suppliers and customers. The situation put the principal into panic hence purported to ratify the transactions done without her instructions. Hence this opinion to parties involved.

ISSUES;

i. Whether there is a room for the Principal (Pisikali) to ratify these transactions done by her agents' own wishes.
ii. Whether there is any legal avenue to deal with her agents' behavior.

LAWS APPLIED;

The Law of Contract Act Cap 345 R.E 2019

ELABORATION OF ISSUES ABOVE;

While arguing in seriatim to the issues above, on the *first issue*. It is a general rule that, within Principal-agent relationship, an agent shall act only under instructions of his/her principle, save for few exceptions as to

necessary acts subsequent to the accomplishment of his authorized activities and agents' authority in emergence[1].

For the act done by an agent suo motu without knowledge and instruction/authority of the principal, the law under section 148 of the LCA Cap 345 provides for two options for the principal which are; -

i. Principal may opt to ratify such act by the agent.
ii. Principal may disown such act by the agent.

Pisikali therefore, must keep in mind that, if she opts for **ratifying** an act done by Baharia without her authority, the whole transaction will have same effect as if it was done under her authority.[2] Such ratification may be given expressly or by implied,[3] that is to say, Pisikali may, viva voce or through writing accept/acknowledge the transaction done by Baharia to Mchizi or impliedly take part in such transaction.

Upon ratification, Pisikali has the room to claim any proceeds/benefits acquired by her agent from such transaction.[4]

Also, Pisikali has been given the room to **disown** the transaction by Baharia. To disown means to detach herself from such transaction and made an agent personally liable. However, this option for Pisikali will not exempt her from any liability accrued by third parties (Sofa ltd and Mchizi) from that transaction by Baharia, as stipulated under section 184 of the Act.

Because Sofa ltd is reluctant to honor the agreement on transaction to Mchizi, Mchizi will be affected by such act, hence consequently hold liable Baharia or principle herself or both at once as stipulated by the Act.

Shifting to the *second issue*, since the agreement have already entered between Baharia and Mchizi for transaction of black sofas, it is therefore binding the principle on performance of the same. Therefore, Pisikali has no

[1] Sections 140 and 141 of The Law of Contract Act Cap 345 R.E 2019
[2] Section 151 of the Act Cap 345 R.E 2019
[3] Section 149 of The Law of Contract Act Cap 345 R.E 2019
[4] Section 168 of the Act Cap 345 R.E 2019

legal avenue to revoke agent's authority to act on her behalf as per section 155 of the Act Cap 345 R.E 2019.

However, Baharia is legally bound to make it good to his principal when his acts which were unauthorized causes damage to his principal and account for all proceeds acquired.[5]

OPINION

For the foregoing arguments and provision of laws adduced. We hereby opine that in order for the principal (Pisikali) to avoid incurring unnecessary damages for paying third parties, she has to ratify the transaction done suo motu by Baharia. This will attract Sofa Ltd to honor the agreement and furnish the present transaction with Mchizi. Nothing will be lost by the principal as she will recover all proceeds acquired by her agent in such transaction. Then after accomplishment of that transaction, shill have the room to revoke her authority from Baharia who is not trustworthy.

We hereby opine.

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WAMBURA WANGECI(Advocate)

For and on behalf of Wanyama Attorneys'

[5] Section 163 of the Act Cap 345 R.E 2019