

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
(ORIGINAL JURISDICTION)**

CIVIL CASE NO. 196 OF 2014

MOROGORO HUNTING SAFARIS LIMITED PLAINTIFF
VERSUS
**REGISTERED TRUSTEES OF JUMUIYA
YA KUHIFADHI NA MATUMIZI BORA YA
MALIASILI UKUTU ("JUKUMU SOCIETY") DEFENDANT**

Date of Last Order: 02/12/2016
Date of Judgment: 08/02/2017

JUDGMENT

FELESHI, J.:

The plaintiff sues the defendant for payment of Tshs. 500,000,000/= being refund and compensation of all monies invested by the plaintiff for extension survey, development and acquisition of village land certificates in respect of a hunting block situated at Gonabis in Kidunda area within Morogoro region. She also prays for restraint orders against the defendant, general damages, interest, costs of the suit and any other relief(s) as the Court finds just and equitable to grant in the interest of justice.

To establish his claims, the plaintiff paraded three witnesses, that is, PW1 Ally Ahmed Ally, PW2 Zuberi Didi Msekeni & PW3 Jamal Abdallah Suleiman. On her side, the defendant also had three witnesses, that is, DW1 Abuu Omary Silliah, DW2 Abdallah Kizuia & DW3 Shabani Ramadhani Kolahili. The defendant engaged Ramatlaw, Advocates & Legal Consultants while the plaintiff was represented by FK Law Chambers, Advocates.

This Court framed and shared the following seven (7) issues:-

- 1. What are the terms and conditions of the agreement/Memorandum of Understanding between the plaintiff and the defendants?**
- 2. Whether the defendant breached the terms of the agreement/Memorandum of Understanding.**
- 3. Whether the defendant by then had powers to allocate hunting blocks to the plaintiff.**
- 4. Whether or not the plaintiff was ever allocated the hunting block and that the defendant had then refused to grant licence to the plaintiff for hunting.**
- 5. Whether the plaintiff has ever paid to the defendant a total of Tshs. 17,000,000/=.**
- 6. Whether the plaintiff suffered any damage due to the defendant's refusal to grant licence to the plaintiff for hunting.**
- 7. What reliefs are the parties entitled to.**

PW1 testified that, they applied for hunting permit from JUKUMU Society in 2006 whereas he was informed by their director one Jamal that their application was granted in which they had to pay Tshs. 17,000,000/= in installments, the first installment being Tshs. 13,000,000/=.

Despite payment, they were not given the said hunting Block but instead, they heard the same to have been given to Intercom. PW1 added that, one motor cycle drilled 3 borehole wells also made several donations. The plaintiff claims for Tshs. 500,000,000/= being compensation for the incurred costs in hiring lawyers and survey of the hunting blocks.

Another witness was PW2 who testified that, he worked with the plaintiff as an administrative officer. The plaintiff applied for a hunting block whereas upon receipt of a letter, the defendant wrote the Regional Commissioner indicating their no objection to the said application. Thereafter, the defendant communicated with the plaintiff asking for Tshs.656, 000/= for members of the

- General Council's and Tshs. 180,000/= being allowances for members of the central committee.

The defendant also asked for one motorcycle which was also given. It was valued at Tshs. 850,000/=. Besides, the plaintiff contributed Tshs. 1,000,000/= for construction of Bwakila Secondary School and offered to construct two borehole wells in Bon village. They also offered sports jerseys valued at Tshs. 2,500,000/=, footballs valued at Tshs. 2,500,000/= and Tshs. 2,000,000/= being salaries for the defendant.

Parties in this suit entered into a formal agreement signed on 03/08/2004 referred to as Exhibit "P6" though the same was not executed as the said block was allocated to another company known as Intercom. In 2008, the plaintiff sponsored the defendant at Tshs. 4,800,000/= through Morogoro District Council in an extension survey involving 14 villages.

In 2006, the defendant was given a permit to hunt 200 wildebeests and 60 buffalos in Gonabis area. The permit was sold to the plaintiff by the defendant. They further entered into an agreement on sale of the hunting permit at Tshs. 17,000,000/= which they agreed. It was also agreed for Tshs. 13,000,000/= to be paid upon signing of the agreement and Tshs. 4,000,000/= payable upon completion of the hunting exercise.

According to PW2, Tshs. 13,000,000/= was initially paid whereas Tshs. 4,000,000/= was paid when the plaintiff was about to commence. They did not execute the 2nd agreement as Intercom Company was in dominance of the area. They sent an application to the Wildlife Director as directed by the defendant upon realizing that they had no mandate. To PW2, the defendant had persuasive

- power regarding their application for allocation of hunting blocks for powers are vested to the Wildlife Director.

The last witness was PW3 who testified that, they paid to the defendant Tshs. 13,000,000/= and Tshs. 4,000,000/= in respect of a contractual relation executed in 2006. It is from the above thus PW3 urged for the listed prayers in the plaint in favour of the plaintiff.

In defence, DW1, a Secretary to the Board of Trustees of the defendant testified that, in 2010, the defendant was given a user right, that is, a right given by the responsible Ministry for it to directly get involved in preliminary processes to nominate those to be allocated with hunting blocks.

He added that, after being given that right, they advertised their hunting block known as Gonabis, Kidunda whereas Greenmails Safaris won the allocation. Through Greenmails, they earned Tshs. 150,000,000/= per year. Both Greenmails and the plaintiff offered material support to the defendant. Besides, the defendant had no mandate to allocate hunting blocks for their role is just to recommend to the responsible Ministry.

DW2 on his part testified that, in 2003, the plaintiff applied for allocation of a hunting block to the defendant but she was dully informed and advised to lodge such an application to the Wildlife Division in the responsible Ministry for by then, the defendant was yet to be given an "Authorized Association". To D2's knowledge, the referred support extended by the plaintiff to the defendant was at her willingness.

Moreover, it was PW3 who took the defendant's crew to Steven Mashishanga, the then Morogoro Regional Commissioner and Zakia Megji, the

- then Minister responsible for the defendant to support him in his bid whereas Zakia Megji informed him to follow the requisite procedure. Additionally, it was clear that the user right, mandate to allocate hunting blocks is reserved to the Director of Wildlife.

The last witness was DW3 who testified that, the plaintiff did not pay Tshs. 17,000,000/= for the purposes of allocation of a hunting block from the defendant. He added that, the Wildlife Regulations, 2009 accommodate their society and due entitlements in authorized hunting.

In final submissions, the defendant's counsel submitted that, the defendant was approached by the plaintiff on friendship basis without contractual obligation or business relations. He added that, the defendant applied for the quota and was approved in terms of provision of regulation 48 (1) & (2) of the Wildlife Conservation (Wildlife Management Areas) Regulations, 2012 published vide Government Notice No. 206.

It was further submission by counsel for the defendant that the pieces of evidence by PW1, PW2 and PW3 are clear that the defendant entered into an agreement with the plaintiff while knowing that another company named Intercom had already been allocated the same.

Besides, DW1, DW2 and DW3 were clear that, the defendant had no power to allocate hunting blocks as such power is solely reserved to the Director of Wildlife pursuant to regulation 40(1) & (2) of The Wildlife Conservation (Wildlife Management Areas) regulations, 2012 published under G.N 206 and section 44 (2) of the Wildlife Conservation Act, 2009.

Furthermore, section 7(5) of the Wildlife Conservation Act, 2009 clearly expresses that, it is Director of Wildlife who is the licensing Officer. The plaintiff never applied and was never allocated a hunting block in terms of sections 38 & 39 of the Wildlife Conservation Act, 2009. Additionally, the plaintiff did not comply with the procedure under section 31 (7) of the Wildlife Conservation Act, 2009 & regulation 51(1) of the Wildlife Conservation (Wildlife Management Areas) Regulations, 2012.

The defendant's counsel argued that, the suit ought to have been instituted before expiration of six (6) years time. Considering that the one year contract was signed in 2004, the same is time barred. He urged for the suit to be dismissed with costs for lack of merits and alternatively, to be dismissed with costs for being time barred in the interest of justice.

On their part, the plaintiff's counsel submitted for the 1st issue that, the terms of agreement was for hunting and transportation of animals from the quota to the defendant's headquarters for 2004. Besides, the same was for the plaintiff to use her own costs in hunting. The defendant further agreed to sell the hunting block for the 2006 season at Tshs. 17,000,000/= and grant hunting license for hunting of 200 wildebeests and 60 buffalos.

Regarding the 2nd issue, the plaintiff's counsel submitted that, the defendant breached the terms of agreement and memorandum of understanding for failure to disclose that he had a conflict with another company trading as Intercom (T) Limited in respect of the same hunting block. He added that, the defendant disregarded the plaintiff's efforts and investments made on the hunting block whereas instead, she reallocated the same to another company known as Green Milles (T) Limited.

As to the 3rd issue, the plaintiff's counsel submitted that, in terms of regulation 22(a) & (b) of the Wildlife Conservation (Wildlife Management Areas) Regulation, 2005 G.N. No. 283 published on 16/09/2005 powers to Authorized Association are extended to: acquire user rights and enter into agreement with the village council on the management of a Wildlife Management Area. Besides, regulation 39(1), (4) and (5) of the Wildlife Conservation (Wildlife Management Areas) Regulation, 2005 read together with section 31(7) of the Wildlife Conservation Act, 2009 extends such powers for the purposes of entering into investment agreement with any potential investors for the purposes of utilizing wildlife resources.

In respect of the 4th issue, the plaintiff's counsel submitted that, the plaintiff complied with all the requirements and the demands presented by the defendant but the disputed hunting block was never allocated to the plaintiff. He added that, by then, the defendant had user right but refused to grant the plaintiff with the referred hunting license as agreed.

Regarding the 5th issue, the plaintiff's counsel submitted that, the evidence on record proves that the defendant was paid Tshs.17, 000,000/= paid in two installments, that is, Tshs. 13,000,000/= and Tshs. 4,000,000/= which was not disputed by DW3. Besides, the defendant was aware that the plaintiff had applied for investment and development of Wildlife Management Areas pursuant to Regulations 55 & 63 of the Wildlife Conservation (Wildlife Management Areas), Regulation of 2005.

As to the 6th issue, the plaintiff's counsel submitted that, the plaintiff as a business dealer in animal hunting, tour operations, wildlife and conservation,

- invested huge amount of money for development of the block and she also financed various activities belonging to the defendant.

The plaintiff also incurred costs for extension survey of villages land around the defendant's areas including the Wildlife Management Areas in acquiring land certificates for the concerned respective villages at Tshs. 4,513,700. Regarding the 7th issue, the plaintiff's counsel prayed for the prayed reliefs.

Before addressing the framed issues, the following slots of evidence are crucial:

In the first place, according to the availed documentary evidence, on 10/12/2003, the Office of the President, Regional and Local Government Administration famously "TAMISEMI" wrote the defendant introducing the plaintiff to the defendant regarding the respectful plaintiff's application for a hunting block in Gonabis which is situated in the defendant's area. This letter was marked Exhibit "P1" in evidence.

On 11/12/2013, the plaintiff wrote the defendant's chairperson, applying for hunting block in the fateful block, that is, in Gonabis. The said application comprises of, amongst, various commitments in case the same is granted as applied for and was marked Exhibit "P2". In response, on 29/12/2003, the defendant informed the plaintiff that vide a meeting held on 13/12/2003 in respect of the subject matter, members of the Council had no objection as to the said application but insisting that mandate of allocation of hunting blocks is vested to the Director of Wildlife thus advising the plaintiff so to comply. This letter was marked Exhibit "P3".

On 15/06/2004 in response to an application by the defendant for what is referred to as "quota" (mgao), the defendant was allowed to hunt a total of sixty

(60) buffalos and two hundred (200) wildebeest. The said letter was marked Exhibit "P5". It was from the above permit that on 20/07/2004, the defendant wrote the plaintiff asking for hunting assistance in a letter titled "YAH: MAOMBI YA KUTUSAIDIA KUTUPIGIA KOTA YETU YA MSIMU 2004/2005 KWA RISASI NA USAFIRISHAJI VIJIJINI".

In the immediate above letter, the contents go that:-

"Kuhusu somo la hapo juu tunategemea utasaidia kama ulivyowahi kusaidia kijiji cha Bonye visima 2 thamani ya milioni 3 pia kudhamini mkutano wa Baraza la Jukumu msimu 2003/2004. ... Nitashukuru kama ombi hili utakubali pia hata kuchangia sehemu ya Badjet yetu ya msimu 2004/2005. Asilimia hamsini ya mapato yetu yote tunapeleka vijiji wanachama ukiondoa mauzo ya nyama ya kota".

It was then on 03/08/2003 the parties entered into the controversial agreement whereas parties agreed on how the said hunting exercise immediately referred to could be effected. Notably, in the said Exhibit "P6", terms and conditions were stated regarding the said hunting though no specifications were stated as to the involved number of animals as specified in the permit issued by the responsible authority.

Remarkably, on 23/08/2006, the Office of the Prime Minister, Regional and Local Government Authorities Administration issued a letter addressed to the plaintiff barring/rescinding the hunting agreement entered between parties in this suit on reasons that there manifested a number of defects including involvement of unauthorized number of animals in a quota as passed or authorized by the Government. This letter was admitted in Court and marked Exhibit "P7".

Notably, most of the exhibits collectively admitted as Exhibit "P4" are in respect of money been asked, advanced or said to be advanced to the defendant

- by the plaintiff in different occasions for various programmes and nowhere the same indicates that they were so advanced in consideration and or as a condition precedent to allocation of the referred hunting block located in Gonabis which is subject of the suit.

Now, resorting to the 1st issue as to what are the terms and conditions of the agreement/Memorandum of Understanding between the plaintiff and the defendants, definitely, the terms of the referred agreement vide Exhibit "P6" were for the purposes of executing the granted hunting permit to the defendant involving 60 buffalos and 200 wildebeests. Nowhere in the said agreement set conditions for or on anticipation of grant of a hunting permit regarding Gonabis hunting block.

Resorting to the 2nd issue as to whether the defendant breached the terms of the agreement/Memorandum of Understanding, since the hunting permit, that is, Exhibit "P5" covered only the season of 2004, thus, since the letter cancelling the permit, that is, Exhibit "P7" was issued on 23/08/2006, therefore, the said permit had by 2006 expired.

Alternatively, due to the expressed breach occasioned in the said hunting which was been executed by the plaintiff, the breach (if any) was occasioned by the very plaintiff thus in no manner he can be relieved from liability. In a nutshell, the 2nd issue is answered in the negative for the defendant did not at any rate occasion any breach of the agreement.

In respect of the 3rd issue as to whether the defendant by then had powers to allocate hunting blocks to the plaintiff, as correctly submitted by the defendant's counsel and as per Exhibit "P3" and clearly prescribed in the cited

- provisions, the mandate and powers of allocation of hunting blocks are vested to none else than the Director of Wildlife and not the defendant. In that regard, the 3rd issue is answered in the negative.

Regarding the 4th issue as to whether or not the plaintiff was ever allocated the hunting block and that the defendant had then refused to grant license to the plaintiff for hunting, the evidence in totality finds this issue in the negative considering that the granting powers are not vested to the defendant and considering that the evidence is clear that no part of it which shows that such an application was ever made but refused.

Additionally, what is branded as a grant of the hunting block is what basically as earlier stated was a prayer to the plaintiff by the defendant to facilitate them in hunting their quota of animals as allocated to the community and its execution in terms of Exhibits "P5" collectively prior to the order issued by the Ministry barring the said hunting vide Exhibit "P7".

As to the 5th issue whether the plaintiff has ever paid to the defendant a total of Tshs. 17,000,000/=, no evidence was ever availed on record to that effect. Notably, there are various letters showing that certain money were paid to the defendant but not amounting to a total of Tshs. 17,000,000/=. Besides, whatever was stated to have been so advanced through the admitted letters the same were given in various occasions in courtesy and for development purposes, meaning that, they were not given in consideration of or for grant of the referred hunting block. In other words, the said money cannot at any stretch be reclaimed.

In respect of the 6th issue as to whether the plaintiff suffered any damages due to the defendant's refusal to grant license to the plaintiff for hunting, since

- the 4th issue had been answered in the negative that the defendant did not refuse grant of a hunting block license to the plaintiff, it thus obvious follows that, the plaintiff could not have suffered damages.

Lastly as to the reliefs sought, the suit is baseless for lack of merits. In the premises, it is hereby consequently dismissed with costs. Order accordingly.

DATED at Dar es Salaam this 8th February, 2017



E.M. FELESHI
JUDGE

COURT:

Judgment delivered this 8th day of February, 2017 in the presence of Mr.Sabho Wambura, Advocate for the plaintiff and Mr.Abuu Silliah, Principal Officer of the Defendant for the defendant. Right of appeal explained.



**E.M. FELESHI
JUDGE**