

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

CIVIL CASE No. 25 OF 2019

ERIC KUNEZA RUTAKONYA PLAINTIFF

AND

HEMED JUMA MRISHO DEFENDANT

JUDGMENT

23rd October -14th November, 2019

J. A. De-Mello, J.

The claim against the Defendants, is as depicted under paragraph 3 of the Plaint for **TShs. 250,000,000/=** for **Breach of a Contract**, following sale of **Plot No. 2381/ Block "G" Tabata, Ilala Municipal, Dar es Salaam** for a consideration sum of **TShs. 90,000,000/=**. Failure to trace and locate the Defendant where the two used to meet and, which was his residence, substituted service by publication was ordered but to no avail which, similarly, an Ex Parte hearing was prayed and, granted.

First Preliminary Hearing was conducted on the 3/5/2019 but missing issues framed on which this suit is to determine.

For clarity's sake, the gist of this case has a brief back ground arising out of a sale agreement dated the **3rd of February 2014** between the Plaintiff and, the Defendant. The purchase price was agreed to be

TShs. 90,000,000/= payable into two instalments, with TShs. Fifty million advanced on the date of execution of the presents, while TShs. Fourty Million upon signing. The full amount was hence duly paid with the Plaintiff taking possession of the suit premise, accomplishing the existing unfinished structure as transfer process was ongoing. However, as this was taking place, he was summoned at **Tabata Police Station** to be informed to stop developing the premise following someone emerging and claiming to be the lawful owner. That, he later came to know him as **Rutta Kajaula** claiming on Plot 259 Block C Tabata a different one from this suit premise. Search from **Municipal** as well as **Ministry of Lands** confirmed non existence of **Plot 238/1 Block G Tabata but 295 Block C** the precise scene of suit land. Efforts to locate the Defendant proved futile as well as little or no cooperation from Police. Prior to purchasing, the Plaintiff claims to have conducted a thorough due diligence with the local authority (ies) who assured him of its authenticity and, owned by one **Jemmy Kadawa** the wife of the Defendant. Much as the purchase price was **TShs. 90,000,000/** the facelift and complete finishing, reached **TShs. 250,000,000/=**. **PW2** one **Samwel Shadrack** an **Advocate** one, who drafted and executed the Sale, testified in that spirit and which had been tendered and marked as **exhibit P1**. He was fully conversant with the suit premise which the Plaintiff bought from the Transfer Deeds as Commissioner for oaths After analyzing and, evaluating all the evidence from these two witnesses, the Defendant having absconded, I am satisfied that the Sale was entered between the Plaintiff and the Defendant, before **PW2**. It is even evidenced how

the Plaintiff took deliberate measures to verify the authenticity of the said suit land, from local government, Municipal up to the Land Registry with all alluding the owner being **Jemmy Kadama** whom the Defendant acknowledged as well. The disappearance of the Defendant not even at his residence notwithstanding defiance as indicated from Court record, suggests ill motive and even fraud and, which the Police being notified ought to take it up professionally but opted to neglected. As per **exhibit P1** he did receive **TShs. 9,000,000/-** as consideration value for the suit land. The **TShs. 250,000,000/=** less the said consideration value and, unsubstantiated remains fabricated, it being specific for proof. As observed the Plaintiff could not tender anything documentary or otherwise for proof which leaves much to be desired. The law on damages rather compensation on both specific/special and General cannot be over stated. It is settled here that vide exhibit P1 only 90,000,000/= is owing against the Defendant. Of course since 2014 to date the money lying with the Defendant has accrued interests both Commercial as well as Court's rate. General damages a discrimination of the Court similarly justifiable as I exercise my discretion judiciously for granting of TShs. 50,000,000/=. Decree with costs is to issue accordingly.

Ordered accordingly.



J. A. DE- MELLO

JUDGE

14th November, 2019