

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE No. 144 OF 2019

LEGAL CLINIC ADVOCATES.....PLAINTIFF

Versus

JACOBSEN ELECTRO AS.....DEFENDANT

JUDGMENT

4th December – 17th December

J. A. DE-MELLO J;

The Plaintiff herein is claiming against the Defendant, for among others for **Specific Performance** of the terms of the **Professional Retainer Agreement** dated the **23rd February, 2013**, and, a declaration that the Defendant has breached the **Retainer Agreement dated 13th February, 2013**, as outstanding profession and legal retainer fee in the sum of **USD \$ 323,000.00, General Damages** suffered for **Non Specific Performance** of the **Retainer agreement, 11%** Court Interest per annum on the Decretal sum from the date of filing the suit to the date of full satisfaction of the Decree, Commercial rate interest at **13%** per annum on the decretal sum from the date of judgment to the date of full satisfaction of the Decree as well as cost of this suit. Apart from that, it is his further prayer that this Court orders for permanent restraining the Defendant from merging, winding up or amalgamation of his business ,closing of operations whatsoever, until he satisfies the entire

claim owing and pending from the Plaintiff. This is pure retainer agreement entered between these two parties in which the Defendant instructed and engaged the Plaintiff to render various legal services for the unlimited period until when one of the party and on due Notice decides to terminate the contract. It had started to run from **1st date of March, 2013** Plaintiff in full gear providing various legal undertakings. From the terms of the agreement, it is evident that, facts of the Defendant agreed to pay the **Plaintiff in United States Dollars** currency to the tune of **USD \$ 19,000.00** less withholding Tax at the rate of **5%** for every invoice submitted within **seven (7) days**, in clear working days from the date of submission to the Defendant, a fee note for legal services receives from the Plaintiff. As this was taking place, the Defendant did not paid the Plaintiff the agreed fee for the period covering **seventeen (17) months** at the total value of **USD \$ 20,000.00 less 5% withholding Tax**, leaving the gland payable sum to be in the tune of **USD 19,000.00** for every month and therefore the aggregate of un-paid in those months amounted to **USD \$ 323.000.00**. This is what caused the birth of the present suit. Following the default on the Defendant's part the matter and duly satisfied heard the suit **Ex Parte** for not even filing of his Written Statement of Defense as per **Order VIII Rule 14 (1) of the Civil Procedure Act Cap. 33 R.E 2002 as amended by GN No. 381 of 2019**.

At the hearing of the main suit, the Plaintiff and an Advocate himself, was represented by **Counsel Douglas Mmari**, wherein two issues were framed as hereunder;

a) Whether there was a fundamental breach of the terms and conditions of the Retainer Agreement?

b) To what Relief(s) the Parties are entitled to?

It is one **Alex Mashamba Balomi** himself and, the Managing Partner of the Plaintiff's Law firm and an Advocate who testified in support of the claim. Other than tendering the Retainer Agreement but dated **22nd February 2013** and, admitted in Court as exhibit **P1** the work commenced **23rd day of February 2013**. **PWI** further testified that, as per Retainer Agreement, the Defendant was supposed to pay the as retainer fee in lump sum of **USD \$ 20,000.00** per month. And all along, notwithstanding that the Plaintiff discharging his duty to date nothing has been forthcoming. This is breach as drawn from clause No.4 of the Retainer Agreement which was marked as **exhibit P1** evidencing non payment from the cumulative invoices from the fee note covering **seventeen (17)** months from **January 2018** to the value of **USD \$ 20,000,00 less 5% withholding Tax** leaving the grand payable sum in the tune of **USD \$ 19,000.00** every month and therefore the claim of the Plaintiff is **USD \$ 323,000.00**. Copies of invoices for proof were tendered admitted as **exhibit P2**, despite several correspondences over the phones, emails, and letters but to no avail. Towards this end, final closing written submissions were prayed, granted and in compliance. I need not repeat in verbatim all that Counsel reiterated, but agree that further and better research was done as evidenced.

On the 1st issue on whether **there was a fundamental breach of the terms and conditions of the Retainer Agreement**, it is evidenced

through **exhibit P1 Titled: LEGAL AND CORPORATE SERVICES RETAINER ENGAGEMENT AGREEMENT**, dated the **22nd of February 2013**. It is even duly endorsed by both sides. It is even on record **exhibit P2 the INVOICE** collectively from **June 2018** up to **January 2019** each attracting **USD \$ 20,000.00**. Not forthcoming the Plaintiff issued Demand Notice dated the **4th of June 2019** to the Defendant. Three days (3) was given for payment failure to which legal proceedings will commence. Section **110 (1) of the Tanzania Evidence Act Cap 6 R.E 2002** provides that;

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he assert must prove that those facts exist."

In the absence of a defiant Defendant defence, the Plaintiff and the one moving the Court has fully done his part by proving the existence of the Agreement, Retainer in nature, invoices raised for outstanding fees. All in fine, he has his Decree and, costs as prayed, as I declare the suit with merit and allowed.


J. A. DE- MELLO

JUDGE

17/12/2019