

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL CASE NO 01 OF 2015**

**BETWEEN**

**FUSUN INVESTMENT COMPANY LIMITED.....PLAINTIFF**

**VERSUS**

**FARB ASSOCIATES LIMITED AND**

**TRIBUNAL BROKERS.....1<sup>ST</sup> DEFENDANT**

**BASILISA THOMAS.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

*Date of Last Order: 27/08/2019*

*Date of Judgment: 30/10/2019*

**MLYAMBINA, J.**

The calling issues for determination in this matter are:

1. Whether the procedural irregularities in conducting the auction did cause encumbrance.
2. To what relief (s) are the parties entitled.

The prosecution side paraded one witness to prove its case. PW1 was Wang Lin Gang. According to the testimony of PW1, he is the General Manager of the plaintiff. PW1 affirmed that, the plaintiff emerged the highest bidder at the auction conducted by the defendants in the year 2013. Consequently, the plaintiff paid TZS 120,000,000/= for the purchase of Kurasini Beach Hotel. The sale

agreement dated 18<sup>th</sup> December, 2013 for the house known as Kurasini Beach Hotel Between Farb Associates Ltd and Tribunal Brokers (vendor) and Fusun Investment Co. Ltd (the buyer) at the consideration of TZS 120 Million was admitted as exhibit P1. The receipts evidencing such payments were admitted as exhibit P2 collectively.

PW1 affirmed that, ever since the plaintiff paid the consideration, the suit property has never been handled to them. Worse, the consideration has never been refunded to the plaintiff by the defendants. Demand notice for refund of TZS 120 Million dated 16/09/2014 was admitted as exhibit P3.

The testimony of PW1 went on to reveal that the plaintiff wanted to buy the property for hotel purposes. PW1 went on to tender a copy of the High Court Ruling in respect of the suit property **Land Revision Case No. 3 of 2014 between John Asario Lema And Godfrey Ndiaheddi Mwakisya** High Court Land Division. It was admitted as judicial notice 1. Through that ruling, the auction in issue was nullified by the Court.

PW1 told the Court that there was arbitration. The defendant admitted and prayed to refund the plaintiff. The defendant never refunded. The letter from Tanzania Institute of Arbitrators dated

1<sup>st</sup> September, 2014 was admitted as exhibit P4. PW1 lastly prayed for refund of the plaintiff's paid consideration and interests as per the plaint.

In the plaint, the plaintiff had prayed for the following orders:

- a) Lifting up the veil of incorporation so that the 2<sup>nd</sup> defendant can be made personally liable for non-payment of the plaintiff's claim based on fraudulence and improper conduct;
- b) Immediate payment of the said TZS 120,000,000/=.
- c) Interest at the Court's rate of 7% from the date of Judgment to the date of payment.
- d) TZS 20,000,000/= as damages resulted from advocate fees and disturbance caused to plaintiff.
- e) Punitive damages as result of defendant's intentional misconducts.
- f) Costs incidental to the suit.
- g) Any other relief (s) that the Honorable Court may deem fit.

On 15<sup>th</sup> July, 2019 when the matter came for defence hearing, the 1<sup>st</sup> Defendant's Managing Director who is also the 2<sup>nd</sup> defendant admitted the plaintiff's claim and told the Court that she is ready to pay the plaintiff. Consequently, in terms of ***Order XXIII Rule***

**3 of the Civil Procedure Code, Cap 33 (R.E 2002)** Judgement on admission was entered with costs.

For interests of justice, the defendant was given a right to defend on the claimed interests and damages.

Despite of availing such right to the defendant, on 27<sup>th</sup> August, 2019, she never appeared for reasons best known to her. In terms of **Order IX Rule 12 of the Civil Procedure Code (supra)**, the Court had no better option than to close the defence case.

In the light of the foregoing, it is not in dispute that the defendant admitted to the claim of TZS 120,000,000/= being the principle sum owed to the defendant.

It is not in dispute that the sum of TZS 120 million has been in the hands of the defendant illegally ever since the auction was nullified by the High Court on 04/11/2014. I therefore grant prayer (c) in the plaint.

Needless the above observation, the plaintiff has not exactly established the damages prayed. The plaintiff merely ended telling the Court that they suffered loss.

In the end result, I grant this suit with the following order:


- (a) The first defendant corporate veil is lifted.

- (b) The 2<sup>nd</sup> defendant is made liable for nonpayment of the plaintiff's sum of TSZ 120 Million for her fraudulence and improper conduct.
- (c) The 2<sup>nd</sup> defendant is ordered to pay the plaintiff the sum of TZS 120 million with immediate effect.
- (d) The 2<sup>nd</sup> defendant is ordered to pay the plaintiff Court interest rate of 7% from the date of judgment to the date of payment.
- (e) The 2<sup>nd</sup> defendant is ordered to pay costs of the suit.

It is so ordered.

  
**Y. J. MLYAMBINA**  
**JUDGE**  
**30/10/2019**

Judgment pronounced and dated 30<sup>th</sup> day of October, 2019 in the presence of counsel Edwin Shibuda for the Plaintiff and counsel Cyprian Silungwe for the defendants.

  
**Y. J. MLYAMBINA**  
**JUDGE**  
**30/10/2019**