

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**  
**CIVIL CASE NO. 193 OF 2018**

**TONY GODLISTEN MWANRI.....PLAINTIFF**

**VERSUS**

**HELMUT SUITNER.....DEFENDANT**

**EX-PARTE JUDGMENT**

*Date of last order: 10/03/2020*

*Date of Judgment: 17/7/2020*

**S.M. KULITA, J.**

The plaintiff, **TONY GODLISTEN MWANRI** filed this suit against the defendant one **HELMUT SUITNER** claiming for the following reliefs;

1. Payment of a sum of USD 19,000 as special damages.
2. Payment of USD 25,000 as the estimated costs for the work done.

3. Interest over the amount in (1) above at the commercial rate of 6% per annum from the date of filing the suit to the date of judgment.
4. Interest on decretal sum at Court's rate per annum from the date of judgment to the date of full payment.
5. General damages for breach of contract at the discretion of the court.
6. Any other relief this court may deem fit to grant.

A brief background of this dispute is that on the 10<sup>th</sup> December, 2014 the plaintiff and the defendant entered into a sale agreement of 50% shares owned by the defendant in the ship known as MV. BACCARA (hereinafter to be referred as suit vessel). The total value of the said shares being United States Dollars Forty Thousand (USD 40,000). The plaintiff paid a sum of United States Dollars Nineteen Thousand (USD 19,000) leaving a balance of United States Twenty-One (USD 21,000) of which as per the agreement was supposed to be settled by August, 2017. One Hugo Van Lawick was the shareholder for the said ship holding 50% of the shares, the defendant was holding the same amount of share. The plaintiff also alleges that the defendant refused to effect the transfer of shares to him as agreed at the

time of entering into the agreement and stopped communication with him.

After those incidents the plaintiff decided to conduct his own search with the Registrar of Companies in which he discovered that the suit vessel was owned and registered in the name of Mafia Rufiji Express Ltd, the fact which was not disclosed to the plaintiff when entering into agreement. He therefore got the idea that the defendant had intention to defraud him (plaintiff) as he was knowing all the facts or encumbrances concerning the said suit vessel but never disclosed to him. That made the Plaintiff not to complete the effect of paying the defendant the said remaining sum of USD 21,000.

It happened that the Defendant never turned up to court inspite of being served though his postal address located in Austria where he is said to be living as for now. The matter was therefore heard ex-parte.

During trial the plaintiff was represented by Mr. Julius Ndanzi, Learned Advocate. The plaintiff's case consists only one witness who is the plaintiff, one Tony Godlisten Mwanry.

PW1, Tony Godlisten Mwanry, testified that on 16<sup>th</sup> October, 2014 he entered into the sale agreement of the 50% shares of the suit

vessel which belongs to the defendant one Helmut Suitner. The other 50% was holden by one Hugo Van Lawick.

PW1 said that he had agreed with the defendant that he purchase the whole 50% of shares that the defendant holds in the ownership of the ship namely MV. BACCARA. They agreed that the terms of payment was to be made by instalments as hereunder;

1. On the 16<sup>th</sup> October, 2014 United States Dollars 10,000/= at the signing of the agreement which was actually was paid.
2. On the 20<sup>th</sup> April, to December 2015 United States Dollars 9,000/= to be paid, where the payment was effected in December.
3. On 20<sup>th</sup> January to December, 2016 United States Dollars 12,000/= was supposed to be paid.
4. On 20<sup>th</sup> January to August, 2017 United States Dollars 8,000/= was supposed to be paid.

PW1 further testified that after the signing of the agreement the ownership of shares for the suit vessel by the defendant was supposed to be transferred to him. On top of that the plaintiff said that they agreed the defendant's co-share holder one Hugo Van Lawick to change the use of the suit vessel from being the

passengers boat into fishing boat. The said change was effected by 70% and the costs for the said change was United States Dollars 50,000/=. PW1 tendered as exhibits the photographs of the suit vessel which were marked as Exhibits P2 collectively.

PW1 stated that the defendant did not transfer the shares and stopped to cooperate with him. This forced the plaintiff to make his own inquiry at the office of the Registrar of Ships and found out that the defendant and Hugo Van Lawick do not own the suit vessel, the legal owner is a company known as Mafia Rufiji Express Limited. He tendered as exhibit the certificate of registration for suit vessel from the Registrar of Ships. It was received and admitted as Exh. P3.

That was marked the end of the plaintiff's case. The court addressed itself to the following issues which were framed at the final pre-trial conference for determination of the matter;

- i. Whether there was a sale of shares between the plaintiff and the defendant.
- ii. If the answer to the issue no. (i) is in affirmative what were the terms?
- iii. Whether the defendant breached the sale agreement.

Having gone through the pleadings and evidence adduced by the plaintiff I resolve all three issues collectively as follows;

According to the plaintiff's testimony as well as the contents of Sale Contract (exhibit P1) the suit vessel is owned by Mafia Rufiji Express Limited which is a company but it was not so disclosed by the defendant. The plaintiff alleges that following poor cooperation from the defendant he decided to make inquiries over the ownership of the vessel. He came to note through the office of Registrar of Titles that neither the defendant nor the Co-purported share-holder, Hugo Van Lawik owned the suit vessel, but the owner was the said Mafia Rufiji Express Limited. The plaintiff blames the defendant for misrepresentation on the ownership of the vessel. I had a blink over the sale agreement between the plaintiff and the defendant (Exh. P1), among others it indicates the following;

*"M/V BACCARA the operating ship on behalf of Mafia Rufiji Express Ltd, will be taken out from the company, being used as a fishing boat in Good for Africa Limited....."*

From the aforementioned clause of the contract it is clear that the defendant and Hugo Van Lawick are not owners of the suit vessel. The suit vessel belongs to Mafia Rufiji Express Limited and

it is in the knowledge of the plaintiff that the suit vessel is owned by the other person and not the defendant. Therefore, the issue is very clear to the Plaintiff that the defendant and one Hugo Van Lawick are the shareholders in the said property. Therefore, the issue of misrepresentation was not there.

As for the issue of performance of sale contract the plaintiff complains that the defendant did breach it for not performing his duty to transfer the shares to him. The question that triggers my mind is that, at what time the said shares were supposed to be due for transfer? Once the sale contract was signed, or after the payments by the purchaser being affected? It is not expressly stated in the Contract of Sale of Shares (Exh. P1) but under the law of contract each party has a duty to act on the duty(s) assigned/agreed for him to perform. If one of them absconds to perform his duty he is regarded to have breached the contract, and if that happens the other party can opt either to sue the one who has breached the contract or abstain from performing his duty for that other party. The Law of Contract Act [Cap 345 RE 2002] states as follows at sections 37(1) and 39;

*"37. Obligations of parties to contracts*



*(1) The parties to a contract must perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act or of any other law."*

*"39. Effect of refusal of party to perform promise wholly*

*When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance."*

The plaintiff was ought to pay a total sum of USD 40,000 in instalment by August, 2017 as scheduled in the sale contract (Exh. P1). According to the Letter authored by the Defendant to the Plaintiff dated 1/6/2017 (Exh. P5) with no dispute from the plaintiff (PW1) the Plaintiff had paid only USD 19,000 up to December, 2015 and no more payments had been affected thereafter.

The Sale Contract (Exh. P1) transpires that after December, 2015 the next instalment (USD 12,000) was supposed to be affected by January – December, 2016 and the last instalment (USD 8,000) by January – August, 2017. The fact that the plaintiff had paid



only USD 19,000 up to December, 2015 as stated by the Defendant in his reply letter to the plaintiff dated 1/6/2017 (Exh. P5) it means the plaintiff is the one who had breached the contract.

As provided under section 37(1) of the Law of Contract Act [Cap 345 RE 2002] cited above that parties to the contract must perform their respective promise. It has been evidenced that the plaintiff himself is the one who had failed to perform his duty to effect payments to the Defendant as scheduled in the contract. In that sense, through section 39 of the Law of Contract Act [Cap 345 RE 2002] the Defendant had the right of not continuing to perform his duty(s) for the plaintiff, he may put the contract to an end.

In upshot I find this suit has no merit, hence dismissed with costs.



*SK*

**S.M. KULITA**

**JUDGE**

**17/07/2020**