

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF ARUSHA)  
AT ARUSHA**

**LAND CASE NO. 04 OF 2019**

**DHARAM SINGH HANSPaul & SONS LIMITED.....PLAINTIFF**

**VERSUS**

**TANZANIA PHARMACEUTICAL**

**INDUSTRIES LIMITED .....1<sup>ST</sup> DEFENDANT**

**RAMADHAN RASHID MADABIDA .....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Parties' C/submission...03/9/2020  
Judgment delivered.....24/11/2020**

**GWAE, J**

This judgment emanates from institution of a suit based on contract of sale of land in which the plaintiff, Dharan Singh Hanspaul is suing the defendants namely; Tanzania Pharmaceutical Industries Limited and Ramadhani Rashid Madabida (1<sup>st</sup> defendant and 2<sup>nd</sup> defendant respectively). The plaintiff through his plaint claims that, she is a registered company under the laws of Tanzania and its place of business being in Arusha and that on the March 2015 the plaintiff and 1<sup>st</sup> defendant entered into sale agreement of a parcel of land measuring 20, 235

square meters on Plot No. 34 comprised under Certificate of Title No. 2727 located at Themu Industrial area (suit land) offered by the defendants.

The plaintiff further claims that the agreed consideration sum (purchase Price) of the suit land was USD 1,000,000/= or Tshs. 1,800,000,000/= and that the purchase price would be paid into instalments. That, the plaintiff was able to pay USD 200,000 as the 1<sup>st</sup> instalment on the date of signing the sale agreement and that the defendants breached the contract for his failure to surrender the title deed of the suit land to Arusha City Land Office for partition and creation of new title after lapse of one month period from the date of signing of the sale agreement despite plaintiff's repeated demands.

That, on the 3<sup>rd</sup> July 2015 the parties entered into an addendum to the sale agreement dated 18<sup>th</sup> March 2015 with effect that the purchase price was now in terms Tanzania of currency that is Tshs, 1,800,000,000/= which would be paid into four installments and that the 1<sup>st</sup> installment in the tune of USD 200,000 was accordingly equated to Tshs. 360,000,000/= and the amount paid by the plaintiff on the date of signing the addendum was Tshs. 100, 000, 000/=. The plaintiff also claimed that, the 2<sup>nd</sup> defendant initially made representation that, the suit property though was mortgaged to two different creditors but their consent to release its certificate of title was sought and obtained.

In view of the above alleged claims, the plaintiff is now before this court praying for judgment and decree against the defendants jointly and severally as follows;

In his plaint, the plaintiff/defendant prays for judgment and decree to be entered against the defendants/plaintiffs for the following orders;

- a. Declaration that, the defendants are in breach of the contract
- b. An order compelling the plaintiff to pay the sum of USD 200,000.00 and Tshs. 100,000,000/=
- c. Payment of USD 200,000.00 being liquidated damages for breach of contract
- d. Payment of interest at the rate of 18 % per annum in (b) above from the date of filing to the date of judgment
- e. Payment of interest at the rate of 7 % per annum in (b) above from the date of judgment to the date satisfaction of the decree
- f. General damages as shall be assessed by the court
- g. Punitive damages
- h. Costs of the suit be borne by the defendant

In their joint written statement of defence, the defendant admitted having entered into sale agreement for the said consideration sum read together with addendum however they refuted that they are neither liable to the plaintiff's on liquidated damages nor costs as it was the plaintiff who refused to take possession

and use contrary to the sale agreement. The 2<sup>nd</sup> defendant also denied to have made representation as to the creditors' consent to release the title deed and also contended that he cannot be held liable in his personal capacity since he entered into agreement as 1<sup>st</sup> defendant's director. The defendants however admitted that the CT would be surrendered to Land Office after the 1<sup>st</sup> defendant had discharged his duty after having it from creditors who had duly registered mortgages thereof.

Before commencement of trial of this case, the court involved the parties' advocates notably; **Mr. Salim Mushi** and **Boaz Mosses** for the plaintiff and defendants respectively in framing issues and eventually the following were issues framed for determination; -

1. Whether there was valid agreement between Plaintiff and 1<sup>st</sup> defendant.
2. If the 1<sup>st</sup> issue is answered in affirmative, whether the 1<sup>st</sup> defendant is in breach of the agreement.
3. To what reliefs are the parties entitled.

Proving his case, the plaintiff was able to summon her two witnesses namely, Satbir Hanspaul and Haggai Sanara and further produced a total of eight exhibits to wit; sale agreement and its addendum (**PE1**), Pay slip in respect of payment of Tshs.100, 000,000/=by the plaintiff (**PE2**), plaintiff's demand notice dated 16<sup>th</sup> Dec.2016 (**PE3**), defendant's letter of reply (**PE4**), the defendant's letter of reply to the defendant's (**PE5**), the defendants' further response to **PE5**

**(PE6)**, the 1<sup>st</sup> defendant's circular board resolution **(PE7)** and Exim Bank pay slip in respect of payment of USD 200,000.00 by the plaintiff in favour of the 1<sup>st</sup> defendant (PE8) made on 18.3.2020.

In giving his testimony the PW1, Managing Director of the plaintiff told the court that, he met the defendants when he was looking for a parcel of land for building a factory and thereafter both parties voluntarily entered into the sale agreement. PW1 testified in addition that, he was informed by the 2<sup>nd</sup> defendant that the 1<sup>st</sup> defendant had a small loan to repay which would be settled after the 1<sup>st</sup> installment having been paid by the plaintiff.

The PW1 further told this court that after payments aforementioned without being availed title deed he then decided to look for another piece of land and finally he was able to obtain an alternative piece of land. Finally, PW1 sought; refund of the money given to the defendants, interest as per the contract and damage. Cementing on the plaintiff's evidence, PW2, currently Exim Bank Branch Manager appeared before the court and he was able to produce PE8, transfer form.

When the defendants were afforded an opportunity to give their defence, only one witness, (Ramadhani Rashid Madabida (2<sup>nd</sup> defendant) who appeared for testimonial purposes as DW1. He told the court that he is a director to the 1<sup>st</sup> defendant, a limited Company. Admittedly, DW1 testified that the plaintiff entered

into an agreement with the 1<sup>st</sup> defendant to sell her property (suit land) after the 1<sup>st</sup> defendant had faced financial difficulties. He further adduced to the effect that the plaintiff's Board of Directors finally reached consensus to sell the above the suit land.

DWI went on testifying that the 1<sup>st</sup> defendant informed the Plaintiff that the suit land had encumbrances as it was mortgaged to two creditors notably; the defund PSPF and Backlays Bank (T) Ltd. He added that the said creditors were sharing the mortgage on paripaso (equally) however plaintiff exhibited his willingness to purchase despite the fact that the suit land had encumbrances, the Plaintiff agreed to buy it.

DW1 also contended that the consent was sought and obtained from the PSPF as unlike to Backlays back which declined but the 1<sup>st</sup> defendant proceeded with his obligation of seeking consent from Backlays Bank in vain till when the case was successfully instituted by the 1<sup>st</sup> defendant but the said Back lays Bank has applied for a review whose determination is still pending before the Court of Appeal.

DW1 further testified that the plaintiff's claim on USD currency is baseless since the same consideration sum was subsequently agreed to be paid in terms of Tanzania shillings as per addendum adding that the plaintiff has refused to enter into possession and use temporarily on the basis that they are no longer interested

in acquiring suit land pending settlement of the dispute between the 1<sup>st</sup> defendant and Backlays Bank.

Certainly, DW1 told the court that the plaintiff's claim in the tune of Tshs 460,000,000/= is admitted and not otherwise adding that the 1<sup>st</sup> defendant be given extension of time so that he can be able to raise the amount of money to which he is indebted. He reiterated his refusal of being held personally liable.

After close of the parties' evidence, parties' advocates sought and obtained leave to file their final written submissions which were subsequently filed in conformity with the court order. Parties' closing submissions shall be considered and respected while composing this court's judgment and determining framed issues seriatim.

As to the **1<sup>st</sup> issue**, 'whether there was valid agreement between Plaintiff and 1<sup>st</sup> defendant' according to the oral evidence of both parties and documentary evidence (PE1), it is certainly clear, to my considered view, that, the plaintiff and the 1<sup>st</sup> defendant entered into valid contract on the 18<sup>th</sup> March 2015 regarding sale of the suit land. It is further evident that the plaintiff was represented by Kamaljit S. Hanspaul and Satbir S. Hanspaul (**PW1**) as directors whereas the 1<sup>st</sup> defendant was duly represented by its directors namely; Ramadhani Rashid Madabida (**DW1**) and Benjamin Mukandara Kato (deceased). Section 10 of law of contract, Cap 345 R.E, 2002 reads;



"All agreements are contracts if they are made by the free consent of parties competent to contract, for lawful consideration and with a lawful object and are not hereby expressly declared be void"

(See also **Sluis Brothers (E.A) Ltd v. Mathias and Tayari** (1980) TLR at Page 294)

In our instant case, the element of free consent in the sale agreement by the parties is vividly not disputed, it follows that the 1<sup>st</sup> issue is affirmatively answered since the parties were abundantly competent persons to enter into contract as they have capacities of doing so for the lawful object (Suit land).

In the **2<sup>nd</sup> issue**, if the 1<sup>st</sup> issue is answered in affirmative, whether the 1<sup>st</sup> defendant is in breach of the agreement. It is the assertion by the plaintiff that the defendants had failed to surrender the title deed to land office as required that is within one month period from when the 1<sup>st</sup> installment was paid whilst it is the contention by the defendants that mother title deed could not be obtained since the Backlays Bank withholds it to date. In light of exhibit P8, it goes without saying that the plaintiff accordingly discharged his duty as per the sale agreement since he paid the 1<sup>st</sup> instalment as per clause 3. 1. 1 of the contract. However the 1<sup>st</sup> defendant had clearly breached the contract since after payment of the 1<sup>st</sup> instalment he was required to submit the mother title to the Land Office within one calendar month.



The 1<sup>st</sup> defendant's default of the sale agreement is not only to the main contract clause 3 but also in the addendum as glaringly depicted under clause 3.1.6 where it reads and I quote;

"That within one **(1)** calendar month from the date of signing this addendum and upon vendor surrender the mother title to the Arusha City Land Office for partition and creation of new title for .....metres (20,235 M<sup>2</sup> of the land, the purchaser shall pay the sum of ..... Tshs. 440,000,000/=) as third instalment of the purchase price within 7 days once the vendor provides the copy of form received by the Municipal for partition to the purchased".

The defendants have therefore patently breached the contract because even after the plaintiff had paid the 2<sup>nd</sup> instalment in the tune of Tshs.100, 000, 000/= and signing of the addendum she is found to have defaulted surrendering of the mother title to the relevant authority for the intended partition within seven day period from date of payment of the 2<sup>nd</sup> installment.

Due to the 1<sup>st</sup> defendant's failure to discharge his contractual obligation, the plaintiff would not be in position to pay third instalment and 4<sup>th</sup> installment as agreed by the parties following the 1<sup>st</sup> defendant's default to submit the mother title and Capital Gain TAX Clearance Certificate. Since the 1<sup>st</sup> defendant has no performed his respective promise as envisaged for under section 37 (1) of the Law of the Contract (supra). Provision of section 37 (1) of the Act was judicially stressed

by this court decision (Kulita, J) in **Tony Golisten Mwanri vs. Helmut Suitner**, Civil Case No. 193 of 2018 where it was held that when a party absconds to perform his duty he is regarded to have breached the contract and that breach by the defendants amounted to an end of the contract unless covered by an exceptional clause in the contract.

Observing as explained above and having examined the sale agreement and its addendum I found that the defendants are **not** exempted from performing their duty to surrender the mother and capital gain tax clearance certificate by any clause of the sale contract more so the 1<sup>st</sup> defendant through her directors, 2<sup>nd</sup> defendant inclusive expressly stated that the suit land was free from any encumbrances to the purchaser (See clause 3.1.3 of the Addendum).

That being the position, the defendants' assertion that reason for its failure to surrender the mother title was known to the plaintiff, that, the suit land was mortgaged to two creditors (PSPF and Backlays Bank) is baseless as he had guaranteed the plaintiff that she could obtain consent from all interested parties to the suit property and allow the transaction be possible (See clause 5.1.1 of the sale agreement) and the defence that the said encumbrances would not affect the possession and developments by the plaintiff is, to my view, nothing but an afterthought since in the Addendum the defendants expressly stated that the suit land had no encumbrances as explained earlier. Above all how can one have a

smooth possession and effect developments to a parcel of land which is not free from encumbrances? The answer is negative.


In the **3<sup>rd</sup> issue**, since it is clear that the parties entered into the valid sale agreement and since it is found that the 1<sup>st</sup> defendant and her director (2<sup>nd</sup> defendant) have breached the contract, the remedies available must have emanated from our laws and from the contract save the general damages which is always in the discretion of the court. Clause 3.1.6 of the sale agreement read together with clause 3.1.10 of the Addendum (**PE1**) are to the effect that in the event of the vendor's failure to accomplish her promise, she would be penalized by the purchaser to pay an interest of 2.5 % of the 1<sup>st</sup> instalment per month.

Judgment is therefore entered in favour of the plaintiff against the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant jointly and severally as follows;

- a. That, the defendants are declared to have been in breach of the contract
- b. That, the defendants are to pay the sum of Tshs 460,000,000/ being the plaintiff's payment of the 1<sup>st</sup> installment and 2<sup>nd</sup> installment in favour of the 1<sup>st</sup> defendant
- c. Payment of interest at the rate of 2.5 % on the 1<sup>st</sup> installment (Tshs. 360,000,000/=) per month from the date of its payment to the date of delivery of this judgment

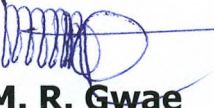
- d. Payment of interest at the rate of 7 % per annum in (b) above  
from the date of judgment to the date of satisfaction of the  
decree
- e. Costs of the suit shall be borne by the defendant

It is so ordered

  
**M. R. Gwae**  
**Judge**  
**24/11/2020**

**Court:** Right of appeal fully explained



  
**M. R. Gwae**  
**Judge**  
**24/11/2020**