

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

CIVIL CASE NO. 3 OF 2017

J.S. KHAMBAITA LTD PLAINTIFF
VERSUS
SNOWCREST HOTEL AND WILDLIFE SAFARIS LTD DEFENDANT

JUDGMENT

ROBERT, J:-

The Plaintiff, J.S. Khambaita LTD filed a suit in this court against the Defendant Snow crest Hotel and Wildlife Safaris Ltd claiming for the sum of TZS 1,460,757,531.00/= being the outstanding payment for construction of Snow Crest Hotel on Plot No. 39 and 58 Block BB Kwangulelo – Arusha, together with interest thereof.

Briefly, facts relevant to the filing of this suit reveals that the Plaintiff and defendant entered into a contract on 26th February, 2006 in which the plaintiff undertook to construct a hotel hereinafter known as Snow crest on Plot No. 39 and 58 Block BB Kwangukelo – Arusha for consideration of TZS 2,752,017,257/=.

the respective due dates of invoices until payment in full but the Defendant failed to pay.

As a result, the Plaintiff resolved to file this case claiming for Judgment and Decree against the Defendant for:

- (a) The Principal sum of TZS 1,460,757,531.00/=
- (b) An interest on delayed payments at 12% until payment in full as per the agreement
- (c) Costs of and incidental to the suit
- (d) Any other relief that the Honourable court may deem appropriate.

On her part, the Defendant in her Written Statement of Defence disputed everything except the jurisdiction of the court.

When the case came up for hearing and throughout the hearing of this case the Plaintiff was represented by Mr. Josephat Msuya, learned counsel, assisted by Mr. Frank Makishe, learned counsel whereas the Defendant was represented by Mr. Ephrahim Koisenge, learned counsel, assisted by Mr. Nicholaus Senteu, learned counsel.

The court framed five issues for determination of this case. **One**, whether there was a contract between the plaintiff and the Defendant dated 26th

Plaintiff completed the construction of the hotel according to the terms of the agreement but the Defendant failed to pay the outstanding amount of TZS 1,250,782,239.

On the other hand, the Defendant presented two witnesses, that is, William Lucas Mollel (DW1) and Farida William Mollel (DW2). DW1, the Managing Director of Snow Crest Hotel denied to have knowledge of an agreement between the plaintiff and the Defendant dated 26th February, 2006. He gave a long narration on how he obtained ownership of Snow crest hotel. He informed the court that, he purchased Snow crest hotel from the previous owners Wilfred Lucas Tarimo and his family in 2013. At the time of purchasing the hotel the hotel was already sold to other buyers, Grand Alliance Limited, who were evicted by the Court order without being refunded. After the purchase, he was also evicted from the hotel in 2013 without being refunded on the explanation that the hotel was not for sale. The Hotel was sold again to a company called Hotels and Lodges who were also evicted in April, 2014. He testified that, later he came to know that Mr. Wilfred Lucas Tarimo and his family were using the company to defraud people. He stated further that, when the bank which financed construction of the said hotel heard about the problems at the hotel they removed all

because there were two other cases filed by the Plaintiff and Mr. Tarimo in the court at that time.

Further to that, PW2, Faidha William Mollel, one of the three directors of snow crest hotel, stated that they came to know the plaintiff after buying the hotel. The plaintiff informed them that the hotel owed them some money at a tune of USD 200,000. They accepted to pay the money because they had already accepted to pay other debts connected to the hotel. However, before they could pay the plaintiff, another creditor, the National Social Security Fund (NSSF) claimed for the payment of 480,000,000/= instead of TZS 48,000,000/= which was indicated earlier to be money owed to this creditor. Whilst dealing with this issue, the hotel was partly demolished to pave way for construction of public road which caused further delay in the payment of USD 200,000 to the Plaintiff. She denied any other claims by the plaintiff saying the Plaintiff was never part of the sale agreement of the hotel.

This court has given deserving consideration to the testimony of both parties and the exhibit tendered in court to prove the existence of an agreement between the Plaintiff and the Defendant on 26th February, 2006. The court has observed that Exhibit P1 tendered by PW1 as proof of a contract entered on 26th February, 2006 between the Plaintiff and the Defendant does not

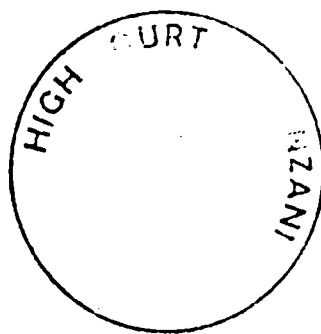
1,250,782,239/=. Parties signed another contract to rectify the previous contract on 30/12/2014 whereby the Defendant agreed to pay the Plaintiff USD 200,000 in two instalments, the first one on 28/1/2015 and the second one on 31/12/2015. The agreement for outstanding payment of construction between the Plaintiff and the Defendant was admitted in court as exhibit P5.


On the defence side, DW1 during cross examination stated that there was no any prior agreement between the plaintiff and defendant which wanted them to pay the claimed amount from the beginning. He stated further that he did not agree that the terms of exhibit P5 binds the Defendant. Both DW1 and DW2 admitted that they owe the Plaintiff USD 200,000 which according to PW1, he had promised to give the plaintiff. The said amount does not arise from the breach of contract. PW1 stated that there was no agreement to the effect that if USD 200,000 was not paid parties would revert back to the claim of TZS 1,250,782,239/=.

It appears to this court that the Defendant does not oppose the existence of the contract between the Plaintiff and the Defendant entered on 30/12/2014 (exhibit P5). However, the defendant objects that the said contract does not modify the contract alleged to take place on 26/2/2006 (exhibit P1). Having looked at the contents of exhibit P5, this court is in agreement with the

Defendant to the Plaintiff marks the final and conclusive demand of TZS 1,250,782,239/= demanded by the Plaintiff as outstanding building costs. In the circumstances, taking into account the terms of exhibit P5 and reliefs sought by the Plaintiff, this court awards the Plaintiff a sum of United States Dollars (USD) 200,000 as compensation for breach of contract entered between the Plaintiff and Defendant on 30th December, 2014. Plaintiff shall have their costs.

It is so ordered.




K.N. ROBERT
JUDGE
24/11/2020