

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

CIVIL CASE NO. 46 OF 2021

WILBAT STEPHAN NYATO.....PLAINTIFF

VERSUS

ACCESS BANK TANZANIA LIMITED.....1st DEFENDANT

KOTI BROTHERS COMPANY LIMITED.....2nd DEFENDANT

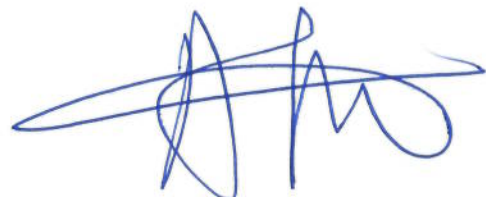
SELESTINE GODFREY MASSAWE.....3rd DEFENDANT

JUDGEMENT

Date of Judgment: 22/08/2023

A. J. Mambi, J.

This judgment emanates from the claims made by the plaintiff **WILBAT STEPHAN NYATO** against the defendants. The material facts of this case are that the 1st defendant (*the Banker*) sometimes in March, 2017 advanced a business loan facility amounting to Tsh=250,000,000/= to the 3rd defendant (*the Borrower*). It is on the records the loan that was secured by a residential house (*the suit property*) of the borrower located at Mbezi Kibanda cha Mkaa, Kimara Mji Mpya, Saranga Ward in Ubungo



District within Dar Es Salaam Region. It appears that the borrower (mortgagor) who is the 3rd defendant, failed to service his debt as per the loan agreement with the banker (mortgagee). It is also on the records that following the borrower's failure to service his debt, the banker sought to exercise its powers of sale under the mortgage deed. The banker (1st defendant) subsequently issued a 60 days' notice to the borrower (3rd defendant) dated 23/07/2018, advertisement of notice of loan defaulters on Mtanzania News Paper dated 01/12/2018. This was followed by an auction of the said suit property that was conducted on 24/07/2019 by the 2nd defendant (*'the Broker'*) in collaboration with the banker (1st defendant).

Following the auction, the plaintiff (*'the purchaser'*) emerged as a highest bidder and successfully bought the suit property at Tsh =70,000,000/= . It appears that the plaintiff having bought the said suit property was never furnished with the documentations related to the suit property he bought to enable him to change ownership to the land authorities. The records reveal that although the first defendant failed to hand the documents of the said property to the plaintiff, the broker (2nd defendant) successfully evicted the 3rd defendant (the borrower) from the suit property and handed it to the purchaser (the plaintiff). However, when the plaintiff was handed the property, he still failed to fully enjoy his new property following the disturbances from the 3rd defendant (the borrower) and his agents. The plaintiff thereafter filed this suit against the defendants.

In this suit the plaintiff is praying against the defendants jointly and severally: -

- (a) An order for the payment of Tsh 3,500,000,000/= being specific damages.
- (b) An order for the payment of general damages to the tune of Tsh 5,000,000,000/=.
- (c) Interests at commercial rate on the decretal amount from the date of judgment to the date of full payment.
- (d) Costs of the suit and;
- (e) Any other reliefs or orders which this Court deems fit to grant.

Before the trial commenced, parties agreed the following issues;

- i. Whether there was a contract between the plaintiff and defendants in regard to purchase of the suit property.
- ii. Whether the 1st defendant had a better title to sale the house to the plaintiff.
- iii. Whether the plaintiff is a bonafide purchaser for value in respect of the suit property.
- iv. What reliefs are the parties intitled to.

The matter was scheduled for hearing for several times but for unknown reasons the second and third defendants never appeared albeit summons that were duly served. The court decided to proceed ex-parte with the remaining parties. During hearing the plaintiff was represented by the learned counsel Mr. Ambrose Nkwera while the 1st defendant was represented by the learn counsel Mr. Amon Meja. The plaintiff used one witness that is the plaintiff himself (PW1). The plaintiff (PW1) in his evidence told this Court that he bought the suit property on 24/07/2019

through the auction conducted by the 2nd defendant. PW1 further stated that having paid the purchase price of Tsh 70,000,000/= on the same day to the 1st defendant, the 2nd defendant furnished him with a certificate of sale, (**exhibit P 4**) and a handing over letter.

In his testimony PW1 testified that after receiving a certificate of sale he forthwith wrote a letter, (**exhibit P3**) to the 1st defendant demanding it to include some terms in their contract of sale and he informed the 1st defendant that in the event of failure to comply with the terms, the 1st defendant will have to pay the plaintiff the whole purchase price. PW1 testified that the 1st defendant did not heed to some of his demands in his letter which among them was to hand over to him the suit property with all documents. PW1 stated that following his letter, the 2nd defendant ended up handing over to him only the suit property on 14/09/2019 vide **exhibit P8** without any document relating to the said house. PW1 also testified that notwithstanding the 1st defendant's failure to handle the documents of the suit property, he managed to evict the 3rd defendant through the help of the Local (Street) Government. PW1 further testified that despite eviction of the 3rd defendant from the said house, he used to disturb him from his peaceful enjoyment. PW1 stated that the 3rd defendant and his agents used to threaten and chase him and his guards from the suit property and one time he was injured.

In his evidence PW1 testified that later on it came to his knowledge that the property he had bought was mortgaged by the 3rd defendant and that its title deed was already deposited to the mortgagee that is Akiba Commercial Bank. He testified he also learnt that there was a case

between the 1st and 3rd defendant with regard to the same property. Having learnt all these, PW1 stated that in 2020 he conducted an official search to the Ministry for Lands where it was revealed that the said property was registered by the ministry of lands in 2010 in the names of the 3rd defendant and that by the time of the search the title deed was deposited with Akiba Commercial Bank PLC to secure a loan in 2017. In his testimony, PW1 added that an official search in respect of the same property conducted in 2021 revealed that the said property by then was in the names of one Primi Aloyce Mushi. PW1 stated that, he formed an opinion that the 1st defendant was negligent in advancing a loan to the 3rd defendant securing it with a sale agreement when the suit property was a surveyed land with title deed.

PW1 went on testifying before this Court that having noticed all these in respect of his new house (the suit property) he kept on demanding clarifications via emails and text messages through his mobile phone (electronic printout admitted as **exhibit P 7**) from the officials of the 1st defendants without success.

PW1 further testified that after being handed over the house (the suit property) by the broker (2nd defendant) on 14/10/2019 he employed IQ Investment Limited to renovate it at Tsh 35,477,000/= vide **exhibit P 9 and P 10** which are *Mkataba wa Kukarabati Nyumba* and a proforma invoice & delivery note respectively.

PW1 stated that he got the money to purchase the property after selling his two lorries (semitrailers). PW1 went on to tell this Court that before the sale, his vehicles were under the transportation contract with Africio Africa

Co. Ltd (*the company*) where the said company hired the vehicles for five years. PW1 stated that under their contract the company was required to among others pay the plaintiff Tsh 6,000,000/= per week which was to be paid in every 6 months as per the agreement known as '*Mkataba wa Kukodisha gari*', a letter titled '*Nia ya Kuuza gari No. T739DCW, T735DCW na Matela yake No. T603 DDD Na T138 CTH na Kubadili Gari Zingine*' and a letter titled '*Majibu ya Barua yako ya Tarehe 27/06/2019*' that was collectively admitted as **exhibit P 13**. PW1 further testified that following his desire to buy the house (the suit property) that was advertised by the 1st defendant he decided to cancel his contract with the company in order to sale his vehicles to raise money for purchasing the said house. PW1 further stated that in purchasing the said house he had plans of using it in securing a loan to finance his businesses. PW1 testified that he sold his two semitrailers in July, 2019 before the auction day. The contracts for sale of two vehicles and their trailers and two Transfer of Vehicles from TRA from PW1 were admitted as **exhibit P 11** and **P12** respectively.

PW1 testified that due to failure by the 1st defendant in giving him the documents relating to ownership of the property he bought caused him a lot of commercial losses.

In their defense, the defendant also used one witness only, Mr. Focus Makungu who testified as DW1 who in his evidence told this Court that as a Recovery Officer to the 1st defendant he knows the 3rd defendant as he was granted a Tsh 250,000,000/= loan by the 1st defendant. DW1 stated that when the 3rd defendant failed to pay his loan, the banker in 2019

issued him with notice and subsequently assigned a broker (the 2nd defendant) to sell a house of Mr. C. Mushi that was used as a mortgage. DW1 went on telling this Court that indeed upon complying with the legal procedures the broker (2nd defendant) on 24/07/2019 successfully auctioned the house belonged to one Mushi where the highest bidder was one Mr. Steven Nyoki. As per the letter dated 15/02/2018 from Ubungo District office to Saranga Ward Executive Office and a notice from the 1st defendant to the 3rd defendant collectively admitted as **exhibit D 1**.

It was DW1's evidence that after the purchase of the said house, the 2nd defendant issued a 30 days' notice requiring the 3rd defendant to vacate the disputed house in order to give Mr. Steven Nyoki vacant possession. DW1 further testified that on 13/09/2019 the broker (second defendant) handed the house to the plaintiff and on 14/09/2019 the plaintiff was handed with the documents related to the house as per the notice dated 25/07/2019 from the 2nd defendant (the broker) to the occupiers of the property that belonged by the 3rd defendant admitted as **exhibit D 2**. DW1 went on testifying that apart from the above documents there were other documents that were signed during the handing over of the house one being certificate of sale and a house handover sheet admitted as **exhibit P 4** and **P 8** respectively. DW1 added that the claims against the banker (1st defendant) have no basis since the buyer was handled with the property.

Having adduced their evidence, parties through their learned counsel made their written submission. Addressing the first issue on whether or not there was a contract between the plaintiff and the defendants with regard to the

purchase of the suit property, Mr. Nkwera for the plaintiff contended that the evidence before this Court is to the effect that there was an agreement between the plaintiff and the 1st and 2nd defendants with regard to the sale and purchase of the suit property. Mr. Nkwera submitted that the contract was based on the auction where the 2nd defendant under the instructions of the 1st defendant sold the suit property to the plaintiff at Tsh 70,000,000/=. Mr. Nkwera contended that the facts were admitted in this Court by the 1st defendant's witness in his evidence and thus it sufficed to conclude that there was a contract.

Mr. Nkwera went on submitting that the said contract was breached by the 1st and 2nd defendant when they failed to hand over documentation of ownership of the said suit property to the plaintiff despite his several unreplied demands. Mr. Nkwera was of the view that failure to handover the documents of ownership of the suit property sufficed to say that the defendants breached the said contract they entered.

With regard to the second issue as to whether the 1st defendant had a better title to sell the house (suit property) to the plaintiff, Mr. Nkwera submitted that since there is no evidence from the 1st and 2nd defendant to suggest that they possessed the documents of ownership of the suit land, then it was as good as saying they had no title over land that could be passed to the plaintiff. Mr. Nkwera went on arguing that although the DW1 admitted that they advanced a loan to the 3rd defendant, still he did not prove if at all they advanced the said loan to him. Mr. Nkwera further submitted there was no proof of collateral that was deposited and registered in favour of the banker, the 1st defendant. Mr. Nkwera thus

submitted that the evidence from the plaintiff side proved that the said suit property had title deed and the same was deposited with Akiba Commercial Bank due to a loan advanced to the 3rd defendant and later the said title was changed to the names of Primi Aloyce Mushi. It was therefore Mr. Nkwera's view that all those facts showed that the 1st defendant had no better title to the suit property to be transferred to the plaintiff.

The learned counsel for the plaintiff went on submitting that during the sale of the suit property to the plaintiff, the 1st defendant had a Land Case No. 432/2018 at Kinondoni District Land and Housing Tribunal with the 3rd defendant, it was his view that since during the sale both the 1st and 2nd defendant were aware of the pendency of the said case, this again meant that they had no better title to sell the house to the plaintiff.

Addressing the third issue as to whether the plaintiff was a bonafide purchaser of the suit property. Mr. Nkwera briefly submitted that since the sellers had no better title to pass over to any purchaser, then it cannot be said that the plaintiff who purchased the suit property was a bonafide purchaser.

With regard to the fourth issue which concerns reliefs, Mr. Nkwera for the plaintiff submitted that, a sale of the suit property to the plaintiff was a scam as the defendants were aware that they had no better title to pass over to purchasers nevertheless they proceeded to advertise and eventually sold it to him. It was his view that the 1st defendant acted negligently and that even when the plaintiff informed them, they did not cooperate leading to the plaintiff suffer more and more losses in his businesses. In his submission, Mr. Nkwera particularized the said losses in

the following, that the losses were due to the fact that the 1st defendant has stayed with the purchase money Tsh 70,000,000/= for long time that is since 2019. The counsel argued that having bought the said suit property the plaintiff incurred costs in renovating it of Tsh 35,477,000/=. He further submitted that having sold his two vehicles in order to raise money to purchase the suit property he lost his transportation business with Africio Company while his intention was to use the suit property as a mortgage in realizing a loan for buying new trucks and continue with his transportation businesses. The learned counsel for the plaintiff submitted the plaintiff suffered losses totaling to Tsh 3,500,000,000/=.

With regard to the general damages, Mr. Nkwera submitted that since they were not contested by the defendants, then the plaintiff deserved to be awarded Tsh 500,000,000/=.

Responding to the plaintiff's submissions, Mr. Amon Meja for the 1st defendant with respect to the 1st and 2nd issues contended that the 3rd defendant having failed to repay a loan that was advanced to him as per their agreement with the 1st defendant, the 1st defendant rightly exercised her contractual right of selling the security (in this case the suit property). Mr. Meja submitted that the plaintiff as highest bidder in the public auction that was conducted by their agent, the 2nd defendant having bought the suit property was subsequently issued with a certificate of sale (**exhibit P 4**). The learned counsel added that upon evicting the 3rd defendant from the suit property the very property was subsequently handed over to the plaintiff vide **exhibit P 8**. Mr. Meja for the 1st defendant further submitted that the plaintiff failed to prove the allegation that there was any

disturbance after being handed over the suit property or the existence of another title over the same property nor existence of another mortgage from Akiba Commercial Bank.

The learned counsel for the 1st defendant went submitting that although the plaintiff alleged the existence of the title deed, the same was not brought to this Court. He argued that besides, **exhibit P14** that was tendered by the plaintiff has many errors for the same to prove ownership of the suit property by a 3rd party. Mr. Meja further argued that, exhibit P14 indicates that the suit property is located at Plot No. 1041 Block C, Ubungo Mbezi Luis whereas the property that was handled to the plaintiff as is indicated in the certificate of sale (exhibit P 4) is located at Kibanda cha Mkaa, Kimara Mji Mpya, Saranga Ward, Ubungo District within Dar Es Salaam.

Mr. Meja faulted the emails and text messages (exhibit P 10) on ground that it is not known if it was the plaintiff or any person who wrote as messages do not show the originator. He further contended that the messages do not show the number of the sender and they do not carry or show admission of the existence of the complaints or anything relating to the suit property. Mr. Meja contended that it was clear that the 1st defendant had good title to transfer the suit property to the plaintiff.

With regard to the third and fourth issues, Mr. Meja for the 1st defendant, in relation to claims of specific damages of Tsh 3,500,000,000/=, contended that there was no proof to such claims. Mr. Meja argued the amount of Tsh 35,477,000/= as renovation costs to the suit property there no proof of receipts to substantiate them that indeed that sum was paid.

With regard to the proforma invoice and delivery note (exhibit P10) Mr. Meja contended the same do not show if the said list of delivered goods were for the renovation of the suit property and further that the delivery note does not disclose the price or amount of property delivered as claimed. Mr. Meja went on submitting that for the plaintiff to prove his allegation with respect to renovation he ought to have tendered a receipt rather than proforma invoice as the same are mere offer or proposal which are subject to negotiation which one cannot rely on the proposed prices on them to justify that the actual amount was paid. The learned counsel referred this Court on the decision of the court in **Ami Tanzania Ltd vs Prosper Joseph Msele**, Civil Appeal No. 159 of 2020 pg 15 and 16.

With regard to the loss of transport business after the plaintiff having sold his two lorries. Mr. Meja submitted that, that was a private arrangement between the plaintiff and Africio Africa Co. Ltd. The learned counsel argued that there is nowhere any time or any point that the 1st defendant was involved in their arrangement so that to be involved at the time of the breach of the contract. Mr. Meja further submitted that what the plaintiff was claiming in as far as his business with Africio Africa Co. Ltd was anticipated costs and losses but he argued that specific damages must be specifically pleaded and strictly proved rather than anticipation of future loss or damages. He referred this Court in the decision of the court in **Vidoba Freight Co. Ltd vs Emirates Shipping Agencies (T) Ltd and Another**, Civil Appeal No. 12 of 2019 pg 13, **Bytrade Tanzania Ltd vs Assenga Agrovet Co. Ltd**, Civil Appeal No. 64 of 2018 and **Bolag vs Hutchison** [1950] A.C. 515 pg 525.

With regard to general damages, Mr. Meja argued that the plaintiff does not deserve such claims as in his evidence he just stated that he was injured physically and his security guard but no any evidence like medical report or medical fees were brought to prove costs incurred in the hospital.

I have gone through the plaintiff's claims, the defendant's replies and their evidences in that regard. I have also considerably perused and considered the evidence including other records admitted as exhibits to this court during hearing. In my considered view, the key issue to be answered is whether there was a contract between the parties and if yes, the other issue is whether the defendant breached the contract or not. In other words, the court needs address and determine whether there was a contract between the parties and if yes, whether there was a breach of contract and who was in a breach. One of the issues agreed by the parties is whether there was a contract between the plaintiff and defendants on the purchase of the suit properties.

It is on the records the plaintiffs entered into sale agreement with the first defendant (Access Bank) to buy the house located at Mbezi Kibanda cha Mkaa, Kimara Mji Mpya, Saranga Ward at Ubungo Dar Es Salaam. These facts are not disputed by the second defendant (Access Bank). The sale agreement emanated from the overvehement made by the first defendant (Access Bank) vide Mtanzania Newspaper dated 2nd December 2028 which was admitted by this court as Tshs.70,000,000/= From the records it appears the plaintiffs and the first defendant (Access Bank) entered into binding sale agreement under both the Sale of Goods Act and the law of Contract Act Cap 345 [R.E.2019]. I am aware that matters of contract are

governed by the law of Contract Act Cap 345 [R.E.2019] but in my considered view the Sale of Goods Act is also relevant since the plaintiffs the contract was concluded through an auction and the contract was made when the highest bidder (who was the plaintiffs) was obtained. The contract was finally concluded when the plaintiff paid the 2nd defendant the consideration of Tshs.70,000,000/= for the purchase of the house. It is clear from the records (exhibit P.1) that parties on the 24th day of July 2019 the entered and executed into the binding contract (Sale Agreement) for purchase on the house the day when the auction was conducted. This is also evidence by the certificate of sale issued by the 2nd defendant to the plaintiff as per exhibit P3 admitted in this court. Reference can also be made to the testimony of PW1 who testified that after receiving a certificate of sale PW1 wrote a letter, (**exhibit P4**) to the 1st defendant demanding it to include some terms in their contract of sale and he informed the 1st defendant that in the event of failure to comply with the terms, the 1st defendant will have to pay the plaintiff the whole purchase price. It is also on the records and evidence that the plaintiff paid the amount of Tshs.70,000,000/= to the 2nd defendant through the defendant's account Number 012410055062 namely SME Recovery collection through electronic transfer. The evidence from PW1 and exhibit P.5 show that the money paid to the 2nd defendant was debited from the plaintiff account Number 0152277071500. Reference can also be made to electronic communication between the plaintiff and the officials of the first defendant as per exhibit P.7. The electronic communication and communication through letter between the plaintiff and defendant also indicated there was a valid contract between the parties.

There is no dispute that the 1st defendant through its court broker (the 2nd defendant) sold the suit property to the plaintiff through a public auction that was conducted on 24/07/2019. There is also no dispute that having bought the suit property, apart from handing over only a certificate of sale of the suit property (exhibit P 4) the 1st defendant also on 14/09/2019 handed over the suit property to the plaintiff vide exhibit P 8. This happened after the 2nd defendant having successfully evicted the 3rd defendant from the said property vide exhibit D1 and D2 which is a letter from Ubungo District Office to Saranga Ward Executive Officer and a notice requiring the 3rd defendant to give vacant possession to the suit property respectively.

Looking at the evidence from both parties and the documents admitted by the court it is clear that parties entered into binding contract. The question to be answered is; was there breach of contract and if yes who breached the contract?. I have clearly gone through the records in line with considering the evidence by both parties and found that there is no dispute that the plaintiff started to perform his obligations and he even paid the first defendant the full amount of the price purchase. It is on the records and evidence that the plaintiff fulfilled his contractual obligation by paying the agreed consideration that is the purchase of price of 70,000,000/ but the defendant never fulfilled its promise to handle ownership document such as title deed for the disputed house.

The plaintiff in his evidence testified that having been handed over the suit property, the 3rd defendant and his agents started to disturb him over his new property. The plaintiff testified to this Court that the third defendant

who also used to be the customer of the first defendant used to threaten him and his guards and that at one moment he was injured. The plaintiff in his evidence testified that he continued demanding documents of ownership (title deed) of the suit property from the 1st defendant by physically visiting the office of the defendant and reminding the defendant through emails and text messages (admitted as exhibit P 7) in vain. PW1 also testified that though his demands fell into deaf ears he later came to realize that the documents (title deed) he was pressing the 1st defendant was in the depository of Akiba Commercial Bank being mortgaged by the very 3rd defendant. PW1 also testified that having conducted an official search to the Ministry of Lands, he received the report that in 2020 and 2021 which showed that the title deed of the suit property was in the names one Primi Aloyce Mushi (exhibit 14). This evidence show that the fist defendant breached the sale agreement at the detriment of the plaintiff. The defendant in their evidence show that it had contract with the plaintiff and the defendant breached the agreement. This can be evidence by the testimony of the first defendant witness (DW1) who testified that having handed over a certificate of sale and the suit property physically to the plaintiff that was all and enough for them. More specifically, in his evidence DW1during cross-examination stated that they handed over to the plaintiff other documents but he failed to mention those documents and even to produce evidence like a handing over book to prove his fact considering the fact that all correspondences with the plaintiff were in writing.

My analysis from the evidence reveal that the first defendant breached the terms of the agreed contract. One of the terms of the agreed contract was to handle the plaintiff the house he purchased and the defendant was also obliged to handle the plaintiffs the documents related to the disputed house. Despite several demands and reminders from the plaintiffs, the defendant never fulfilled its promise. The evidence also show that the plaintiff made an effort of repairing the house but he never enjoyed staying in that house. This in my view was contract to the provisos of the law governing contracts. The law of Contract CAP 345 [R.E 2019] under section 37 (1) provides that:

"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".

Now, since the parties entered the binding contract, all parties to a contract were duty bound to perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act or of any other law. In our case the first defendant was duty bound to perform its respective promises. There is no evidence to show that the defendant's promise or contractual obligation was dispensed with or excused, the first defendant was rather bound by the terms and conditions of the contract.

Looking at the evidence and records it is clear that the act of the defendant to fail to handle the plaintiff the house (including the documents) he bought for the agreed purchase price for a long time show that the

defendant breached the terms of the sale agreements and plaintiff is right in instituting the suit and claiming his rights at this court.

In my considered view, the fact that the first defendant failed to handle the disputed house plus the documents to the plaintiff within agreed time that was the breach of Sale Agreements and the plaintiff is entitled to claim his money he paid plus damages he suffered. The court in ***JOSEPH MNINGA V. ABASS FADHILI & ANOTHER (2001) TLR at page 222***, as cited by the plaintiff stated that,

"the term fundamental breach is that breach which touches the purpose of the contract.

The question to be determined here; is whether the act by the defendant amounts to fundamental breach of the contract as stipulated under the sale agreements. My answer to this issue is clear as I have already observed that since the first defendant had breached the contract, the plaintiff has the right to be paid his claim as will be determined by this court. Basing on the analysis of evidence it follows that, this court declares that Defendants have breached the sale agreement.

Now that the 1st defendant breached the terms and conditions of the sale agreements contract, the question which follows is, what remedies was the plaintiff entitled to?. I understand that the position of the law is clear that when one party (the first defendant in our case) to the contract breaches the contract, the other party or aggrieved party of the contract (the plaintiff in our case) may terminate or rescind the contract and will be entitled for monetary compensation when the contract is breached.

I also wish to address the plaintiff claim on general damages, the plaintiff claims Payment of Tanzanian shillings five hundred million only (Tshs. 3, 500,000,000/=) being specific damages as can be assessed by the Court due to breach of contract and business frustration. I will also consider the claim of 500, 000/ being general damages suffered by the plaintiff as the result of breach of contract by the first defendant. As indicated above nothing in the evidence from the 1st defendant that suggest that the plaintiff was never handed over the title deed of the suit property apart from being physically handed over the suit property. This suggest the proposition by PW1 that the 1st defendant acted negligently in wrongly advancing a loan to the 3rd defendant that was secured by a sale agreement of the said suit property instead of title deed. Additionally, it appears that the 1st defendant was not in custody of the title deed of the said property when it was selling the very suit property to the plaintiff. That being the case I can simply conclude that the 1st defendant had no title to pass to the plaintiff who was the bonafide purchaser at the public auction on 24/07/2019. It follows that all consequential losses and damages emanated from the said sale have to be covered by the party who caused.

PW1 in his evidence stated that in order to raise money for purchasing the suit property he sold his two vehicles after cancelling his contract with Africio Africa Ltd. Whereas PW1 tendered the contract (exhibit P 13) to prove what he was earning after hiring his lorries to the Africio Africa Co. Ltd there are no other documentary evidence to corroborate these facts. It would have been deferent if PW1 had tendered for example a bank statement or TRA receipts to show that indeed the profits he received from

Africio Africa Co. Ltd attracted a certain amount of taxes. However, that notwithstanding, still, it cannot be said that the plaintiff was not receiving anything from Africio Africa Co. Ltd.

In his evidence, PW1 stated that incurred costs of Tsh 35,477,000/= in renovating the suit property. To prove this fact, he tendered a contract with Iq Investment Co. Ltd which renovated the said property and a proforma invoice and delivery note (exhibit P 9 and 10 respectively). As it was opposed by Mr. Meja for the 1st defendant, this Court is of the view that PW1 was supposed to tender a receipt (preferably an EFD receipt) to corroborate his evidence and not only proforma invoice and delivery note as the same were subject to more bargaining.

My analysis of evidence shows that the plaintiff who was the bonafide purchaser suffered damages resulting from the act of the first defendant breaching the agreed terms of contract. There is no doubt that it is a settled principle of law that in claim for general damages, particulars will not be needed of the quantum of damages claimed. See ***London and Northern Bank Ltd. v George Newness Ltd. (1900) 16 T.L.R. 433, C.A.***

It is also clear from the case laws that general damages can be asked for by "a mere statement or prayer of a claim". See ***Perestrello Companhia Limitada v United Paint Co. Ltd., [1969] 1 W.L.R. 570.*** The Court in observed that:

"If damage be general, then it must be averred that such damage has been suffered, but the quantification of such damage is a jury question".

The Court in **LIVINGSTONE V RAW YARDS CAAL CO (1850) 5 Case 25** clearly explained "damages", to mean:-

"The sum of money which will put the party who has suffered in the same position as he would have been if he has not sustained the wrong for which he is now getting compensation or reparation".

The court **Prehn V. Royal Bank of Liverpool**, observed that:

"General damages are such as the jury may give when the judge cannot point out any measure by which they are to be assessed, except the opinion and judgment of a reasonable man..."

It is a trite law that general damages need not be specifically pleaded, they may be asked for a mere statement or prayer of claim. As I observed earlier that while special damages may consist of "out-of-pocket expenses and loss of earnings incurred down to the date of trial, and may be capable of substantially calculation", general damage is implied by law and may include "compensation for pain and suffering and the like. The court in **THE COOPER MOTOR CORPORATION LTD V. MOSHI ARUSHA OCCUPATIONAL HEALTH SERVICES [1990] TLR 96** held that:

"general damages need not be specifically pleaded; they may be asked for by a mere statement or prayer of claim"

It is trite law that where a contract is breached, any party to that contract who suffers as a result of such breach has a right or is entitled to receive from the party who has breached the contract, compensation for any loss or damage caused to him thereby. Reference can be made section 73 of the law of Contract which provides that;

"When a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which the

parties knew, when they made the contract, to be the likely to result from the breach of it”.

In light of the foregoing discussions this Court is satisfied that the plaintiff by selling his properties such as vehicles to enable him buy the house that he had never enjoyed as he never used, he lost more profits as his plans of using his sold properties and the disputed house he repaired. Again, apart from losing profits he lost the money that he used to purchase the suit property in dispute.

In this case, the plaintiff has claimed tshs.3, 500,000,000/= as specific damages. However, it is my well-considered opinion that the amount of specific damages claimed by the plaintiff was high. Having gone through the records and considered the loss suffered by the plaintiff as a result of the defendant failure to honor the contract. I find that the plaintiff suffered specific damages as a result of the first defendant failure to honour the terms of the sale agreements and thus this court orders the defendant to pay the plaintiff Tshs.500, 000, 000/= as specific damages and Tsh 200,000,000/=as general damages. The defendants to pay cost of this suit.

The plaintiff has also claimed bank interests of 30% amount of the principle amount from purchase date, however this court orders the first defendant to pay the plaintiff 5% as interest.



A.J. MAMBI

JUDGE

22.08.2023

22/08/2023

Coram: Hon. S.B. Fimbo – DR

For the Plaintiff: Herri Kimaro

For the Defendant : Mvano Mlekano

CC; Zawadi

Court: Judgment delivered this 22/8/2023 in the presence of Mr. Ambrose Mkwama for the plaintiff and Mr. Amon Meja for the defendants only

S.B. FIMBO

DEPUTY REGISTRAR

22/8/2023