

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(IRINGA DISTRICT REGISTRY)**

**AT IRINGA**

**CIVIL CASE NO. 04 OF 2018**

**ALBERTO JOHN MWINAMI ..... PLAINTIFF**

**VERSUS**

**LUPEMBE FARMERS CO-OPERATIVE**

**JOINT ENTERPRISES LIMITED ..... DEFENDANT**

**JUDGMENT**

Date of Last Order: 18/11/2022 &  
Date of Judgment: 13/12/2022

**S.M. KALUNDE, J.:**

The plaintiff is businessman involved in the process of buying, harvesting, processing and re-selling them at profit. The defendant on the other hand is a body cooperate registered and operating under the laws of Tanzania. In 2018 the present suit was filed for recovery of TZS. 69,600,000.00 being a refund for unsupplied poles; TZS. 339,000,000.00 being costs for loss of business, interests and costs of the suit.

The background of the case is as follows: it is alleged that around November, 2011 the plaintiff and defendant entered into an arrangement for purchase of 3,900 poles at the price of TZS. 20,000.00 for each pole. The total amount paid to the defendant was TZS. 78,000,000.00. Upon entering into the farm for logging the plaintiff managed to harvest only 420 poles. He alleged that there

were no more poles as the defendant had entered into a similar arrangement with other people resulting into scramble for the available poles. Upon realizing that there were no more poles the defendant promised to offer the plaintiff another farm for logging. However, the promise was not delivered, as a result the plaintiff issued a Demand Notice. Nothing happened even with the demand notice, as a result the plaintiff instituted the present suit containing the above mentioned claims.

Having completed the filing of pleadings and upon resolution of all the preliminaries the following issues were agreed upon and framed for determination by the Court:

1. Whether the plaintiff purchased a plot or poles from the defendant;
2. Whether the plaintiff purchased poles from the defendant;
3. If the second issue is answered in the affirmative; whether the plaintiff is entitled to a refund of TZS. 69,600,000.00 being purchase price of the unlogged poles;
4. Whether the plaintiff is entitled to TZS. 339,000,000.00 for loss of business; and
5. To what reliefs are the parties entitled.

To prove his claims the plaintiff paraded three witness, him being one of the witnesses. In outlining the background of the situation, the plaintiff, **ALBERTO JOHN MWINAMI (PW1)**, recounted that on or about the 05.09.2011 the plaintiff and

defendant entered into a logging agreement where the plaintiff purchased 3900 trees for logging. Each log was to be purchased at a cost of TZS. 20,000.00 making the total cost of the logging agreement to be TZS. 78,000,000.00.

In further execution of their agreement on 05.09.2011 the plaintiff deposited TZS. 30,000,000.00 as part of the purchase price. He was issued with receipts from the defendant. Subsequently, on 09.09.2011 another payment amounting to TZS. 48,000,000.00 was deposited to the defendants and another receipt was issued. The two receipts were tendered and admitted in evidence without any objection. They were collectively marked as **Exhibit P1**. By this stage the appellant had paid the entire cost of the logging agreement which was TZS. 78,000,000.00.

According to the plaintiff the procedure for harvesting involved going to the farm where one meets a "**Bwana Shamba**" who would then direct where logging may be carried out. Thereafter logging will be conducted. Prior to exist the Bwana Shamba and the guard would count the logs and issue a certificate and receipt. The logger would then be allowed to exist the farm. Having effected payments, in line with the above procedure, the plaintiff proceeded to the farm for logging. At the farm he met Oswald Shaban Mkongwa a "Bwana Shamba" of the defendant. On various dates he was allowed to harvest around 420 poles. Before existing the farm, he was issued with handwritten receipts indicating the number of poles logged. The various receipts issued from 26.09.2011 to around 19.11.2022 were collectively admitted as **Exhibit P2**.

Later, the plaintiff noted that the defendant had allowed other loggers including one MERAB to harvest over the same area. The said MERAB harvested most of the poles leaving the farm empty. He approached them requesting for clarifications on how to log the remaining poles. The defendants issued him with a letter (**Exhibit P3**) promising to give him another farm at Mlangali, Ludewa at the end of the rainy season so that he would harvest the remaining 3,480 poles. However, at the end of the rain season no new logging area was issued. Despite several reminders his request was not heeded. As a result, the plaintiff instructed his lawyer Mr. Basil Mkwata to serve a Demand Notice (**Exhibit P4**) to the defendants.

PW1 recounted that the poles he purchased from the defendant were sold to Sao Hill at an estimated cost of TZS. 80,000.00, TZS. 90,000.00, TZS. 120,000.00 or TZS. 160,000.00 depending on the size and length of the pole. The witness added that by failing to supply the 3,480 poles as agreed, he suffered losses amounting to TZS. 339,000,000.00. According to PW1 the amount was arrived at after an assumption that the poles were sold at the price of TZS. 90,000.00. Further to that PW1 supplemented that as a result he had failed to repay his agricultural which he had taken for the said transaction. He tendered He tendered copies of loan agreements from NMB and overdraft facility from NBC Bank which were collectively admitted as Exhibit P5. In conclusion the plaintiff prayed that the suit be allowed wherein the defendant be ordered to pay TZS. 69,600,000.00 being costs of the unharvested poles and TZS. 339,000,000.00 being loss of the estimated profit that would have

accrued. The plaintiff prayed for interest on the above amounts and costs of conducting the case.

In cross examination PW1 stated that through Exh. P1 he had a written agreement for the purchase of the 3,900 poles. He also stated that the contract was breached at the end of 2011 and that the demand letter was written in 2012. Further to that PW1 stated that the present suit was filed six years later in 2018. In further cross-examination the witness stated that he had a partner in the said business going by the name of Eusebius Sanga. When he was asked about the actual amount claimed, PW1 conceded that the amount claimed was TZS. 69,600,000.00. However, he insisted that TZS. 339,000,000.00 included claims for the loss of the estimated profit that would have accrued if the loss were supplied to him and if he sold them to Sao Hill at the price of TZS. 90,000.00.

His re-examination was brief, he confirmed that the TZS. 69,600,000.00 claimed was for the uncollected poles and that TZS. 339,000,000.00 was for the loss of the forecasted profits. He insisted that he bought trees, meaning poles, and not a farm. As regards to timelines, PW1 stated that the first suit was filed in 2012, upon negotiations with the Chairman, Secretary and the Board, the suit was withdrawn and negotiation between the plaintiff and defendant continues between 2013 and 2017 as they had agreed to give him another area for logging. The witness recounted after refusal to give him another area he decided to file the present suit.

**EUZEBIO SANGA (PW2)** he recounted that in 2011 he informed PW1 of an opportunity for logging of poles at the defendant farm. They visited the farm, shown the poles and made deposits amounting to TZS. 78,000,000.00 being payment of 3,900 poles. Thereafter, they proceeded to log the poles as agreed. Outlining the procedure for logging, PW2 stated that, an area was designated by the Bwana Shamba for lodgment. Poles were then harvested and loaded into trucks, at the gate the same were counted by the bwana shamba and a handwritten receipt (Exh. P2) was issued. The receipt issued indicated the number of poles existing the farm, signature of the issuer and stamp of the defendant.

PW2 described that upon existing the farm, the trees were transported to Sao Hill where they were graded and sold. According to PW2, the prices for the poles were contingent to their qualities considered in terms of length and width. After grading the poles invoices were then issued to facilitate payment. An invoice book with twelve (12) was tendered and admitted into evidence and marked as **Exhibit P.6**. The witness testified that the prices of poles ranged from cost of TZS. 80,000.00, TZS. 90,000.00, TZS. 120,000.00 or TZS. 160,000.00 depending on the quality. PW2 added that upon issuance of invoices, payments were made into his account at NMB Bank. He tendered a bank statement from NMB which was admitted as **Exhibit P.7**.

In his further narration, PW2 stated that during the pendency of the logging they could only obtain 420 poles before noticing that there were no sufficient poles to further harvest. Apparently, the

defendants had given permission for logging to other people including MERAB who used advanced tools to harvest most of the poles. They notified the defendant of the impending shortage of poles wherefore they were notified that they will be given another farm at Mlangali. However, the promise was not honored leading to the filing of the present suit.

Through cross-examination the witness recounted that besides MERAB, there were many other people logging. He also stated that the poles were not counted on the day of purchase but rather at the gate during existing the farm. When he was called to explain why the number of poles in the invoices (Exh. P6) was lower than that contained in the receipts (Exh. P2) issued at the farm, the witness stated that the number was lower in the invoices because at Sao Hill the logs were sorted. As regards to prices of poles the witness stated that the lowest price for the poles was TZS. 55,000.00. Validating his claims before the Court, PW2 insisted that his claims were TZS. 69,600,000.00 for the uncollected poles and TZS. 339,000,000.00 was for the loss of the forecasted profits. He was not re-examined.

**PW3, SELEMAN LUCAS MHEPELA**, was employed by the plaintiff to supervise logging of the poles. He recounted that after purchasing the 3,900 poles they were introduced to the Bwana Shamba called Oswald and a guard in the name of Shaban Mkongwa. PW3 narrated that they logged the poles and transported them through trucks. PW3 stated under oath that he was able to collect 420 poles before the poles were finished. He recounted that they

were given a letter informing them that they will be given another farm at Mlangali but the farm was not given.

In cross-examination the witness said that they were not given poles to harvest, instead they were given an area within which to harvest the poles. He added that the trees were selected and that at the end of the day they could harvest around 30 to 35 poles. He added that logging stalled as poles were finished by MERAB who applied heavy equipment's, machines and tractors. He was not re-examined.

The above three witnesses concluded testimony for the plaintiff's case. It was then the defendant's turn to present his defense. The defense had only one witness, going by the name **MEDECK PAULOS MHOMISOLI (DW1).**

DW1 informed the Court that for eleven years between 2007 and 2018 he was the secretary of Lupembe Farmers' Cooperative Joint Enterprise Limited (LFCJEL). Outlining the procedure for selling of poles, DW1 stated that an advertisement was put for the sale of poles at Iyembela farm where the price of each unharvested pole was TZS. 20,000.00. he said that after the advertisement several people applied. According to him, those who applied went to inspect the farm and selected the poles intended for logging. Thereafter, the applicant would be issued with the bank account to deposit money for the selected poles. After payments, the applicant would then proceed logging.



In relation to the plaintiff's transaction, DW1 stated that, the plaintiff initially paid TZS. 30,000,000.00 for 1500 poles. He was issued with receipts and proceeded to the farm with the Bwana Shamba and guard to be shown his space for logging. Later, the applicant said he has seen 2400 poles. He deposited TZS. 48,000,000.00 for the newly identified poles and another receipt was issued to the plaintiff. The witness said the defendant did not give the area of the farm to any other person. however, he conceded that the plaintiff wrote to them that he could not obtain sufficient poles. He also admitted being the one who communication to the plaintiff though Exh. P3.

DW1 stated that whilst awaiting to verify the plaintiff's claims they received a demand letter from him demand payment of TZS. 69,000,000.00. He identified Exh. P4 as the demand letter wrote to them by the plaintiff. Thereafter, in 2012 the plaintiff filed a suit at this Court and the same was withdrawn before being refiled. The witness added that he did not know the basis of the plaintiff claim as he was given a plot for logging. Imploring that he was the one who failed to harvest. In addition to that DW1 stated that the plaintiff did not notify them about the sources of the money used to purchase the poles nor the market where he was selling the same. He also denied being aware that PW1 and PW2 were partners in the transaction. In his prayers, DW1 prayed that the plaintiff's suit be dismissed for being baseless.

The witness was lengthily cross-examined wherein he stated that the plaintiff paid TZS. 78,000,000.00 for purchase of 3,900

standing poles. He also admitted that at the farm the plaintiff was introduced to Oswald Likilike (Bwana Shamba) and Shaban Mkongwa (Chief Guard). DW1 recounted further that Oswald and Shaban introduced the receipt system at the gates but the system was not known to Society's administration. He conceded that the 3480 unharvested poles were valued at TZS. 69,000,000.00. Further to that DW1 admitted that they did not conduct any verification process as promised in the letter. In his further cross-examination the witness admitted that no evidence was presented to show that all the 3,900 poles were harvested by the plaintiff. In addition to that the witness conceded that there was no evidence that the poles were counted before payments were made to the society. There was no substantive substance in re-examination.

Having examined the evidence available on the records, I will now proceed to respond to the issues framed for determination. However, before I delve into determination of the issues, I propose to start by expounding the uncontested factual dispositions. From the pleadings and witness testimonies I am satisfied that: **one**, there is no dispute that that sometimes around 2011 the parties entered into an arrangement for purchase of 3,900 poles. According to the arrangement each pole was to be sold at the cost of TZS. 20,000.00 making the total sum to arrive at around TZS. 78,000,000.00.

**Two**, through the testimony of PW1, PW2 and supported by DW1, it is not contested that the plaintiff paid the said TZS. 78,000,000.00 for buying of the said 3,900 poles. This is also corroborated by Exh. P1 which comprised two receipts from the

defendant to the plaintiff dated 05.09.2011 and 09.09.2011 for payment of TZS. 30,000,000.00 and TZS. 48,000,000.00 respectively. In his testimony, DW1 conceded that on the respective dates TZS. 30,000,000.00 was paid for 1500 poles; and TZS. 48,000,000.00 was paid for 2400 poles. He also confirmed that on both occasions receipts were issued. **Three**, both parties agreed that out of the 3,900 poles paid for by the plaintiff's only 420 poles were harvested. It is also in evidence that both PW1 and PW2 claimed, and DW1 conceded that the unharvested poles were 3480 and their value was TZS. 69,000,000.00.

From the pleadings, evidence on record and upon examining the framed issues, it seems clear to me that parties are at loggerheads as to what exactly was sold to the plaintiff. If this issue is resolved then the rights accorded to the parties would be equally resolved. This seems to be the crux of the first and second issue. That said I propose to deal with the two issues jointly since they are inter-related.

The plaintiff believes and therefore argued that he purchased 3,900 poles and paid TZS. 78,000,000.00 for the same. In support of his argument, he tendered Exh. P1 which evidenced payment of TZS. 78,000,000.00 into the accounts of the defendants. As stated above, the payment and subsequently receipt and issuance of receipts is not contested by the defendants. On the other hand, whilst admitting that the plaintiff paid TZS. 78,000,000.00 for purchase of 3,900 poles, the defendant maintains that the plaintiff purchased a piece of land within which to harvest the 3,900 poles. In their written

statement of defence (WSD) the defendant maintained that upon handling of the said plot they were not responsible for logging and transportation of poles.

On my part, having examined the records I am satisfied that the plaintiff purchased and paid for unharvested poles not a piece of land or plot containing poles and the defendants want this Court to believe. I say so because Exh. P.1 which was not contested by the parties shows that the payments made were for purchase of poles. I have examined the two receipts dated 05.09.2011 amounting to TZS. 30,000,000.00 for 1500 poles; and the other dated 09.09.2011 to the tune of TZS. 48,000,000.00 respectively paid for 2400 poles and noted the same are inscribed the payments were made for purchase of poles and not a piece of land. The inscription in the first receipt dated 05.09.2011 read at the title: "***Kwa ajili ya NGUZO***". Literally translated payment for poles. Inside the receipt the description of what is purchased reads as follows: "***Mauzo ya nguzo 1500 @20,000/=***". Translated as for sale of 1500 poles at the price of TZS. 20,000.00 each. The same inscription is found on the receipt dated 09.09.2011.

In addition to that there was no evidence whatsoever to suggest that the plaintiff was issued with a plot of land. In his testimony DW1 did not present any evidence as to the size or location or size of the land. All is confirmed was that the poles were counted by the Bwana Shamba and Chief Guard at the gate. At this rate it is clear that bot, the Bwana Shamba and Chief Guard cared less where the poles came from but rather whether the plaintiff

harvested the requisite number of poles. In the circumstances therefore, it cannot be concluded that the plaintiff purchased a plot. Conversely, I am satisfied that the arrangement between the parties was for purchase poles. In similar vein the I answer the second issue in the affirmative.

Having resolved the first and second issues, I will now turn to the third issue which is whether the plaintiff is entitled to a refund of TZS. 69,600,000.00 being purchase price for the 3480 unlogged poles. As provided above parties are not in dispute as regards to the payment of TZS. 78,000,000.00 being payment of 3,900 poles. DW1 conceded that the plaintiff paid the amount and receipts were issued to him. In addition to that PW1 and PW2 alleged that they only managed to harvest 420 poles. This was also evidenced by Exh. P.2. and conceded by DW1. There is therefore no dispute that out of the 3,900 poles only 420 poles were harvested and 3480 were not harvested. Multiplying the 3480 and TZS. 20,000.00 being the number of unharvested poles and value of each pole respectively I am content that the value of the unsupplied poles is TZS. 69,600,000.00.

The plaintiff argued that upon failing to harvest the remaining 3480 poles he notified the defendants. DW1 conceded to have authored Exh. P.3, a letter confirming that a survey will be conducted to verify the availability or otherwise of the poles in the farm. DW1 admitted that the survey was not carried out. It is therefore clear that the 3480 remains unsupplied to the plaintiff. Since he paid for the said poles and the same have not been supplied the plaintiff and

the amount was not reimbursed to him, I see no reason why he should be allowed to recover TZS. 69,600,000.00 being equivalent to the amount paid for the poles which remain unsupplied. The third issue is also answered in the affirmative.

The foregoing discussion brings me to the last issue that is whether the plaintiff is entitled to TZS. 339,000,000.00 being specific damages for loss of business. In support of this claim the plaintiff endeavored to establish that the poles purchased from the defendant were sold to Sao Hill at different prices ranging from TZS. 80,000.00, TZS. 90,000.00, TZS. 120,000.00 or TZS. 160,000.00 per pole depending on the size and length of the pole. He argued that if the unsupplied 3,480 poles were to be sold to Sao Hill at an average price of TZS. 90,000.00 he would have fetched TZS. 339,000,000.00 as a profits. To support his allegations, he tendered invoices (Exh. P.6) allegedly issued to Sao Hill on the poles supplied. In conclusion, he therefore prayed that the defendant be ordered to pay the said amount as compensation for the lost business opportunity. On the other hand, the defendant feels the plaintiff is not entitled to the claims. The gist of their argument is that, first they offered him a plot and not poles; second, even assuming they offered him poles there is no proof that the logs would have fetched the said amount.

It is a trite principle of law that specific damages must be specifically pleaded and strictly proved. In the case of **Stanbic Bank Tanzania Limited v. Abercrombie & Kent (T) Limited**, Civil Appeal No. 21 of 2001 (unreported) the Court of Appeal quoted the words of **Lord Macnaghten** in **Bolag v. Hutchison** [1950] A.C. 515

at page 525 he had the following to say concerning special damages:-

*"... such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and, therefore, they must be claimed specifically and proved strictly."*

In the present case there is no dispute that, through his pleadings and evidence, the plaintiff has specifically claimed TZS. 339,000,000.00 as specific damages being the loss of business. In light of the above authority, the question before me is whether the plaintiff strictly proved the claim. Having reviewed the evidence on record, I am of the considered view that the plaintiff failed to demonstrate and prove by way of evidence how they had suffered loss of business, I will illustrate my position hereunder. The plaintiff argued that his partner Euzebio Charles Sanga (PW2) was the one responsible for selling the poles harvested from the defendants. To support this, he relied on Exh. P.6 which contained invoices to Sao Hill and an in the name of PW2. The invoices contains he personal names of; and an NMB account number in the names of Euzebio Charles Sanga (PW2). I have examined the records and noted besides mere assertions by PW1 and PW2 there was no any evidence to support the claims that the two were partners in business or relating to the transaction, the subject of this suit. I have also examined the communications between the plaintiff and defendant and noted that Exh. P1 and Exh. 3, did not include the name of PW2.

His name popped up in the demand letter, Exh. P.4. Upon careful examination of evidence on records, I am content that, on a balance of probabilities, the plaintiff has failed to demonstrate that there was a partnership arrangement between him and PW2 sufficient for this Court to rely on the invoices (Exh. P.6) and bank account statement (Exh. P7) both appearing in the personal names of Euzebio Charles Sanga (PW2) to justify the prices of the poles.

Even assuming, without deciding, that PW1 and PW2 were partners and that PW2 accounts were used to pay the money for the 420 poles harvested, there was still no concrete evidence on record establishing for example how many poles would have been sold at TZS. 80,000.00, TZS. 90,000.00, TZS. 120,000.00 or TZS. 160,000.00. Further to that even in his evidence, the plaintiff conceded that some of the poles were not sold at all. In absence of such evidence, it cannot be vouched with certainty that the 3,480 poles would have been sold at all or fetch the TZS. 90,000.00 as alleged by the plaintiff.

The evidence on record is wanting, as it was not strictly proved that the plaintiff suffered the alleged business loss. In the circumstances, I am satisfied that the plaintiff claims for payment of TZS. 339,000,000.00 as specific damages for the loss of business has no merit and the same are dismissed. The fourth issue is thus answered in the negative.

That said I will consider the remedies accruing to the parties. I have gone through the pleadings and noted that the plaintiff did not



pray for general damages but included a prayer for award of any other remedy as the Court may deem fit to grant. I am aware that general damages do not need to be specifically claimed or proved to have been sustained. It is also settled that general damages are such as the law will presume to be the direct, natural or probable consequence of the act, complained of, the defendant's wrongdoing must, therefore, have been cause, if not a sole or a particularly significant cause of damage. See **Tanzania Sanyi Corporation V. African Marble Company Ltd** [2004] TLR 155.

In the present case there concrete proof that plaintiff paid TZS. 78,000,000 for purchase of 3,900 poles. It was also admitted by both parties that the plaintiff managed to harvest 420 poles only and that 3480 remains unharvested. In accordance with the agreed price for each pole the valued was TZS. 69,000,000.00. The said amount was not paid back to the plaintiff and has been at the hands of the defendants for all this material times. Further to that it was the defendants who failed to conduct a survey to verify the number and value of poles harvested and availability of the same in the assigned site or award the plaintiff an alternative site. In the circumstances it is finding of this Court that the plaintiff has suffered damages by the acts of the defendants in failing to fulfil their obligations under the agreement in refusing to conduct a survey and by failing to repay the plaintiff's money on time. For that I award him TZS. 10,000,000.00 in general damages.

In view of the above findings, this Court has arrived at a conclusion that the defendant is liable to, and is hereby ordered to pay the plaintiff:

- (i) The sum of TZS. 69,000,000.00, being the value of the remainder of the paid for and unharvested poles (logs). This amount shall draw an interest rate of 7% per annum from the date of filing the suit to the date of judgment;
- (ii) The sum of TZS. 10,000,000.00, is also awarded as general damages; and
- (iii) An interest on the decretal sum at the rate of 7% per annum chargeable from the date of judgment until the same shall be fully satisfied.

In the circumstances the plaintiff shall also have the costs of the suit.

Order accordingly.

**DATED at IRINGA this 13<sup>th</sup> day of DECEMBER, 2022.**

   
**S.M. KALUNDE**  
**JUDGE**