

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**ARUSHA DISTRICT REGISTRY**  
**AT ARUSHA**  
**LAND CASE NO. 3 OF 2018**

**M/S ARUSHA DULUTI LIMITED.....PLAINTIFF**

**Versus**

**M/S GREEN APARTMENTS LIMITED..... DEFENDANT**

**JUDGMENT**

Last Order: 28<sup>th</sup> November 2022

Date of Judgment: 14<sup>th</sup> December 2022

**MWASEBA, J.**

M/S Arusha Duluti Limited is suing the defendant M/S Green Apartments Limited. The genesis of this suit is a breach of contract based on a sale agreement of the landed property commonly described as Farm No. 98/2/1 measuring at 61.502 hectares located at Tengeru, Arumeru District. The plaintiff is now suing and praying for judgment and decree as follows:

1. *Judgement on admission for payment of a sum of \$1,380,000 as pleaded in paragraphs 3 and 11 herein above,*
2. *Payment of the balance of the principal sum of \$300,000 upon trial,*
3. *Interest at the rate of 15% per annum from 23<sup>d</sup> day of June, 2012 to the date of judgment,*



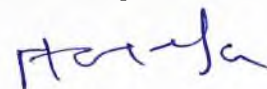
4. *Interest at the rate of 7% per annum from the date of judgement till payment in full.*
5. *In the alternative to prayer (1) and (2) herein above, payment of principal sum of \$1,680,000.*
6. *Costs of the suit.*
7. *Any other relief as the Court may deem fit to grant.*

The defendant contested the plaint by filing his written statement of defence and prayed for the suit to be dismissed with costs. At the trial, Mr Elvaison E. Maro Learned Advocate appeared on behalf of the plaintiff, while Mr Emmanuel Kinabo Learned Advocate represented the defendant.

In proving his claim, the plaintiff had a total of three (3) witnesses namely PW1-Sunjuy Gudjuy, PW2-Ali Moledina and PW3-Benard Buhoma. The defendant had two witnesses: DW1-Joseph Abel Rwakeza and DW2-Harold Jacob Mushi.

Several documents were tendered and admitted into evidence in support of each side's case. These were:

- a. The Arusha Duluti Limited Accounts for the period ended 30<sup>th</sup> June 2010 which was received and marked as exhibit P1.
- b. A sale agreement between Arusha Duluti Ltd and Green Apartments Ltd of farm No. 98/2/1, Tengeru which was admitted as exhibit P2.



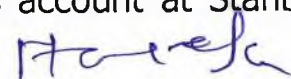
- c. The title deed of land farm No. 98/2/1 Tengeru area in Arumeru District which was admitted as exhibit P3.
- d. A demand letter/notice from BBB Chambers to Director of Green Apartments Ltd which was admitted and marked as exhibit P4;
- e. A letter from BBB Chambers to F.S Kinabo & Co. Ltd dated 9/9/2012 which was admitted as exhibit P5;
- f. A letter from BBB Chambers to Managing Director of Green Apartments dated 22/2/2013 which was admitted and marked as exhibit P6;
- g. A letter via email from Green Apartments to Arusha Duluti dated 24/9/2016 which was admitted and marked as exhibit P7;
- h. A Swahili letter from Arumeru Local Government Authority to RAS which was admitted as exhibit P8;
- i. The title deed in respect of farm No. 98/2/1 which was admitted and marked as exhibit P9;
- j. Bank statement of Arusha Duluti Ltd of Stanbic Bank which was admitted and marked as exhibit P10;
- k. Special resolutions of Board of Directors of Arusha Duluti which was admitted and marked as exhibit P11;



- l. A letter dated 15/8/2012 from F.S Kinabo & Co. to BBB Chambers which was admitted and marked as exhibit P12;
- m. Print out letter from Kinabo & Company to BBB Chambers dated 15/9/2012 which was admitted as exhibit P13; and
- n. The letter from Kinabo & Company to BBB Chambers dated 28/2/2013 which was admitted and marked as exhibit P14.

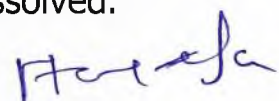
The evidence adduced by the plaintiff was as follows: That the plaintiff entered into a sale agreement with the defendant on 22<sup>nd</sup> March, 2012 but the said sale agreement was not fully executed. After the Director of the plaintiff one Mr. Moledina left the country, PW1 was left to make follow up of payment with the defendant. He had few meetings with them and their advocate. The defendant made payments plan and gave it to the plaintiff but the same was never honored. The defendant failed to pay the principal sum agreed in the sale agreement (exhibit P2).

The farm was owned by the plaintiff, as they purchased it many years ago and the title deed of the farm was issued to that effect. According to PW2, the farmland was sold to the defendant for USD 2,280,000 and the mode of payment was through cheque and bank money transfer. The payment period is stipulated in clause 3.2 of the sale agreement being 90 days from the date the contract was signed. The commitment fee of USD 200,000 and later USD 125,000 was remitted to the plaintiff's account at Stanbic



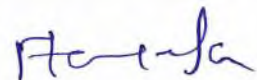
Bank, before signing the agreement. After signing the contract, they paid USD 275,000 so, a total of USD 600,000 was remitted into the account. The 180 days after the contract ended plus the additional period of 90 days. The defendant did not comply with the contract as per the agreed time. They then started making a follow up. They wrote a demand letter/notice (Exhibit P4) of the outstanding balance of USD 2,062,000. The defendant responded to the demand letter. They agreed with the debt of Tshs. 1,780,000/= and the defendant suggested to pay the debt from August onwards. Following the delay to pay the debt by the defendant, the plaintiff suggested to retain 20-30 acres of land to reduce the cash flow of the delay the defendant was facing. They wrote a letter to that effect and the defendant responded to it. After that, there were several follow ups, meetings, talks but until 2016, the defendant wrote a letter and committed themselves to pay 2,280,000 USD and the outstanding amount is 1,680,000 USD without interest.

PW2 went on stating that before giving the farm to the defendant there was a challenge with the Local Government Authority where the land was revoked. The plaintiff went to court and in conclusion three acres were given to Tengeru Counsel women market. The plaintiff then, received a new title (exhibit P3). And therefore, the dispute was dissolved.



On the defendant's side, they did not dispute entering into a sale agreement with the plaintiff and that they paid part of the agreed amount in the said sale agreement, USD 600,000. DW1 was involved as an agent in selling the plot of land registered with No. 98/2/1 and title No. 24111. They succeeded to sell the land to the defendant. On the process of transferring a title a dispute arose with Meru District Council. They conducted a meeting and an issue that the plaintiff is a foreign company was raised. The plaintiff was notified regarding the issue and the issue was dealt with. They agreed with Meru District Council to change the use of landed property from being a farm to residential and commercial area. They divided the farm into plots and sold the same to citizens. Meru District Council asked for four (4) acres. According to the defendant's witnesses, they paid the plaintiff a total of USD 600,000 as part of the amount claimed in the contract. Thereafter there was no payment done to the plaintiff because the remaining plots were not sold due to this case at hand. They denied the claim of the plaintiff since they did not make the transfer and have not yet sold all plots, they also found a shortage of 15 acres from the whole farm sold to them. Currently, the said disputed farm is in possession of the defendant.

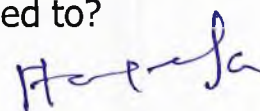
This was in summary the case by both the plaintiff and the defendants.



It was agreed and ordered that each party file a final written submission which were due by 3<sup>rd</sup> November, 2022. Both parties filed their written submissions timely. I appreciate the effort exhibited by parties in their written submissions, although I will not reproduce them verbatim but certainly consider them in course of this judgment.

In determining this matter, I will focus on the agreed issues of the court listed hereunder:

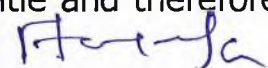
1. Whether the sale agreement dated 22/3/2012 is legally valid.
2. Whether the sale agreement dated 22/3/2012 was frustrated.
3. Whether subsequent thereto, the parties entered into verbal arrangement or agreement.
4. Whether the defendant is in breach of the sale agreement entered on 22/3/2012 for disposition of the parcel of land (farm) measuring 61.502 hectares comprised in title No. 24111.
5. If the answer to issue No. 4 is in affirmative, then whether the plaintiff is entitled for an order of recovery of a sum of \$1,680,000 being the balance of the purchase price.
6. whether the monies paid by the defendant was in pursuance of the sale agreement dated 22<sup>nd</sup> March, 2012.
7. What other reliefs are the parties entitled to?





The first issue as to whether the sale agreement is valid, was raised following the defendant's claim that the plaintiff is a foreign company and therefore unable to own land as provided for under **Section 20 of the Land Act**, Cap. 113 R.E 2002. It was the defendant's submission that the plaintiff is a foreign company since its majority shareholder is Lonova Limited and Rosenberg Investment Limited. And therefore, certificate of occupancy No. 24111 over the disputed land was granted to the plaintiff directly as if it is a citizen contrary to the law. Mr Emmanuel Kinabo learned advocate cited the provisions of **Section 19(2) of the Land Act** which requires that a non-citizen may only obtain a right of occupancy under Tanzania Investment Act.

On his side Mr Maro learned advocate submitted that prior to 2008 the plaintiff is the lawful owner of the farm No. 98/2/1, such land was held vide certificate of title No. 5835 (exhibit P9) which was issued on 27<sup>th</sup> January, 1989 subsequent thereafter the said title was revoked. The plaintiff and the Government entered into negotiation and the said land was returned to the plaintiff and a fresh title was issued on 27<sup>th</sup> June 2008. According to Mr Maro learned advocate the plaintiff's title over farm No. 98/2/1 was saved by the provisions of **Section 183(1) of the Land Act**, land owned by the foreigners prior to coming into force of the new land Act, were saved and foreigners continued to have good title and therefore

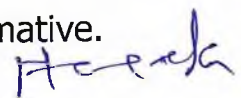




the provisions of **Section 20 (1) of the Land Act** are inapplicable and cannot be applied to the facts of this case at hand.

As it appears in the record of proceedings, the plaintiff and defendant entered freely into the sale agreement (exhibit P2) on 22<sup>nd</sup> March, 2012. The parties agreed to the terms and conditions set out in the sale agreement and signed. The defendant's witnesses admitted in their testimonies to enter into the said sales agreement and sold the said farm, but they alleged that the sale agreement was invalid because the plaintiff was a foreign company.


It should be noted that the issue as to whether the plaintiff is a foreign company when acquiring the title of the farm sold to the defendant is immaterial to us. The evidence on record is very clear that the plaintiff was issued with a fresh title on 27<sup>th</sup> June, 2008 but before that the plaintiff was the owner of the farm No. 98/2/1 which was revoked and later reissued after the negotiations with Meru District Council and a new title No. 24111 was given. When the sale was taking place, the farm was in the hands of the plaintiff company, and they had a good title to that effect. And since the plaintiff was the lawful owner of the farm and during entering of the sale agreement there was not any fraud or misrepresentation done by the plaintiff. It is my considered view that the contract of sale entered by the parties is legally valid. Thus, the first issue is answered in affirmative.



On dealing with the second issue as to whether the sale agreement was frustrated. Frustration of contract is defined in **Black's Law Dictionary (8<sup>th</sup> edition)** to mean prevention or hindering of the attainment of a goal, such as contractual performance. Frustration of contract occurs when the contract is incapable of being performed due to unforeseen events resulting in the obligation of the contract.

The defendant's counsel submitted on this issue that since the intended sale of the farm was unlawful, the agreement was indeed frustrated. It was his view that a contract whose object is unlawful and illegal any rights purported to be created thereby cannot enjoy the protection of the law. This was strongly objected by the plaintiff's counsel. It was his submission that no evidence was adduced by the defendant to prove the frustration of contract.

Much as I agree with the plaintiff's counsel submission, it was the duty of the defendant to establish and prove the allegations of a contract being frustrated. In our case at hand there is no evidence adduced by the defendant's witnesses to prove the same. The available evidence on record shows clearly that after entering the sale agreement and making of advance payment, the defendant took possession of the said farm. Although there were some unresolved issues with Meru District Council



regarding the farm, the same was resolved as explained by DW2. The farm was divided into plots and sold to other people.

The fact that the defendant agreed to the terms and conditions of exhibit P2 and took possession of the farm and sold it to third parties, confirms that the contract was in no way frustrated. The parties are bound by their own signed terms and conditions of the contract. The allegations that the said plots are not yet sold or even the acres sold to it were just an afterthought to escape from the liabilities. Having foresaid, this issue is answered in negative.

On the third issue as to whether the parties entered into a verbal agreement should not detain me. It was the allegation by the defendant that after the frustration of the sale agreement, they entered a fresh negotiation with the plaintiff. I must admit that DW2 testified to this court that they communicated with the plaintiff regarding the involvement of Meru District Council to the farm. As well their communications were made through the letters tendered as exhibits P4 to P7.

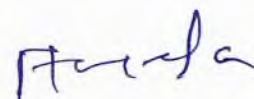
In my considered view, the said communications do not qualify being verbal agreement. There is no specific agreement made verbally by the parties to rectify the terms and conditions made in the sales agreement (exhibit P2). The defendant failed to avail the court with strong evidence to prove to this court that there was indeed verbal agreement between the

parties. Even the said letters do not directly prove the availability of verbal agreement as alleged. Therefore, this issue is also answered in negative.

The fourth issue is whether the defendant is in breach of sale agreement entered on 22<sup>nd</sup> March, 2012 for dispassion of a parcel of land measuring 61.502 hectares comprised in title No. 24111. Breach of contract is defined in **Black's Law Dictionary** to mean where one party to a contract fails to carry out terms. A breach can occur where any party has failed to fulfill the obligations imposed on each by the terms of the contract. It is a trite law that each party to a contract must fulfil its obligations otherwise will amount to a breach of contract. **Section 37 (1) of the Law of Contract Act**, CAP 345 provides that:

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

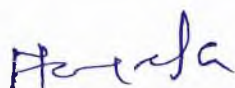
Relating this to the case at hand, there is clear evidence from both parties and the exhibits tendered that the plaintiff and defendant entered into the sale agreement for consideration of \$2,280,000 and the defendant paid only \$600,000. Since the defendant failed to pay the remaining amount as agreed in the sale agreement for the reasons best known by themselves, it is without doubt that the defendant breached the sales agreement.



Having answered the fourth issue in affirmative, the plaintiff is thus entitled for an order of recovery of a sum of \$ 1,680,000 being the balance of the purchase price. As well, the said monies \$ 600,000 was paid by the defendant in pursuance to the sale agreement dated 22<sup>nd</sup> March, 2012. This answers the fifth and sixth issues in affirmative.

The last issue relates to what relief (s) are the parties entitled? After evaluation of the evidence, exhibits admitted and submissions made, I find on the balance of probabilities the plaintiff has been able to establish his case. I thus enter judgment in favour of the plaintiff on the following reliefs:

1. Payment of principal sum of USD 1,680,000 being the balance of the purchase price of the farm.
2. Interest at the rate of 15% per annum from 23<sup>rd</sup> June, 2012 to the date of judgment.
3. Costs of the suit.

  
**N. R. MWASEBA**  
**JUDGE**  
**14/12/2022**

