

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL CASE NO. 32 OF 2019

JOHN BENJAMI LEMA.....1ST PLAINTIFF

TRADERAN LIMITED.....2ND PLAINTIFF

Vs

ZHIQUIANG WANG..... DEFENDANT

JUDGMENT

Date of last order: 3-12-2021

Date of judgment: 18-2-2022

B.K. PHILLIP, J.

It is alleged in the plaint that the 1st plaintiff and the defendant agreed to establish a Company for the purpose of operating various businesses including a restaurant. The 1st plaintiff was supposed to contribute 60% of the capital whereas the defendant was supposed to contribute 40%. In December 2013, they incorporated the a company known as " Traderan Limited, (the 2nd Plaintiff herein). In fulfillment of their plan, the 1st plaintiff and the defendant registered a business name at the Business Registration and Licensing Agency (BRELA) known as "The Fresher's" for the purpose of operating a restaurant. The 1st plaintiff gave the

defendant a sum of USD 71,157 for purchasing equipment and materials from China for use in the operation of the Fresher's Restaurant. Contrary to what was agreed, the defendant bought equipment and materials worth USD 19,681.90 only which is equivalent to TZS. 45, 268,375.392 at the exchange of TZS. 2,300/=. The shipment costs was USD 14,193. The defendant did not account for the remaining amount, that is, USD 37,282.1 despite being requested by the 1st plaintiff to do so.

In addition to the above, plaintiffs alleged as follows; That the 1st plaintiff gave the defendant USD 8,000 for processing and payment for the work permit of one Li Haiyan who was introduced to the 1st plaintiff by the defendant as an expert in Chinese cuisine. The defendant failed to secure the work permit for Li Haiyan. He only paid for his work permit and did not account for the remaining amount (USD 7000). The defendant was a signatory in the Bank account which was opened at CRDB Bank for smooth management of funds in operation of the Restaurant. Without any prior notice and for reasons unknown to the 1st plaintiff, the defendant refused to sign the cheques for withdrawal of money for operation of the Fresher's Restaurant. Consequently, there was no sufficient fund to run the business. Thus, the plaintiffs' claims against the defendant are breach of

contract and unreasonable refusal to authorize Bank transactions which caused the plaintiffs to suffer losses.

The plaintiffs pray for the following reliefs;

- i) Payment of the sum of USD 257,850.9 as specific damages
- ii) Payment of the sum of USD 35,594.8 per month from the date of filing this case up to the date of judgment due to breach of agreement to run the Chinese Restaurant.
- iii) Court interest on the decretal amount from the date of judgment until the date of full payment.
- iv) General damages as may be assessed by the Court.
- v) Costs of this suit.
- vi) Any other relief (s) that this Honourable Court may deem fit.

In his defence the defendant alleged as follows; That the capital for the Company was contributed jointly by the 1st plaintiff and the defendant through the shares held by each shareholder. The defendant contributed for his 4000 shares which were equivalent to TZS 16,000,000/=. He received a total sum of USD 71,157 from a Catholic priest namely father John Assey who had an oral agreement with him in which they agreed to buy machines and materials from China for establishment of a restaurant. The plaintiffs have nothing to do with the said amount of

money. He bought the equipment and materials as agreed but the costs for the same was USD 99,252. Thus, there was extra costs to tune of USD 28,095 which father John Assey owes him. The 1st plaintiff is the one who caused all the problems in the business because he was forcing him to forego the sum of USD 28,095 which father John Assey owes him. The costs for his work permit was paid by the Company (2nd defendant). Li Haiyan was not an employee of the Company. The 1st plaintiff restricted him to go to the Fresher's Restaurant, as result he could not participate in the operation of the Fresher's restaurant.

During the final pre-trial conference, the following issues were framed for determination by the Court;

- i) Whether there is a breach of any agreement on the business owned by the plaintiffs and the defendant*
- ii) Whether the defendant refused to authorize bank transactions in respect of the business owned by the plaintiffs and the defendant.*
- iii) To what reliefs are the parties entitled to.*

However, in the course of composing this judgment, upon analyses of the evidence adduced in particular the documentary evidence, I found myself constrained to add one issue for the reasons that will come into

light later. Thus, pursuant to the provisions of Order XIV Rule 5 (1) I added the following issue; *Whether there was any business owned by the plaintiffs and the defendant* which became the first issue followed by the issues enumerated herein above.

With regard to the 1st issue, that is *Whether there was any business owned by the plaintiffs and the defendant*, PW1, Mr. John Benjamin Lema (The 1st Plaintiff) testified that he agreed with the defendant to incorporate a Company which would deal with operation of a restaurant. Consequently, they incorporated Traderan Limited (the 2nd plaintiff herein) . In fulfillment of their plan, they established a restaurant known as the Fresher's which was duly registered at the Business Registration and Licensing Agency (BRELA) .PW1 tendered in Court the Memorandum and Articles of Association and Certificate of Incorporation of the 2nd Plaintiff, Certificate of Registration of the Fresher's Restaurant under the Business Names Registration Act, (Cap 213) and extract from the register of business in respect of the Fresher's Restaurant , which were all admitted as exhibit P1 collectively. Furthermore, he testified that they opened a bank account at CRDB Bank for smooth operation of their business (The Fresher's Restaurant). PW1 and the defendant were signatories in that account.

Moreover, PW1 told this Court that, he agreed with the defendant to contribute to the capital for the establishment of the Fresher's Restaurant and since he had no sufficient cash money, he requested his uncle, namely Father John Assey (PW3) to borrow him a total of USD 71,000 for contribution to the capital as agreed. PW3 agreed to borrow him the said amount of money which was paid to the defendant in instalments. The money was intended to cover the costs for buying the equipment and materials for the restaurant. They prepared a list of equipments and materials which were supposed to be imported from China and the defendant agreed to travel to china to buy the same. Upon being given the money, the defendant travelled to China but he imported equipment and materials worth USD 19,681.90 only. PW1 tendered in Court the Tanzania Revenue Authority (TRA) release order for the imported equipment and material which was admitted as exhibit P6.

PW3 was Father John Assey. His testimony was as follows; That the 1st plaintiff is his nephew. The 1st plaintiff had agreed with the defendant to establish a restaurant. He was required to contribute cash money for the capital in establishing the restaurant but he had no sufficient money for contribution for the capital. Thus , he borrowed him, (PW3) a total of USD 71,000 which was sent direct to the defendant as it was intended

to be used for buying equipment and materials from China for the restaurant. The restaurant was known as the Fresher's Restaurant.

On the other hand the defendant testified as DW1. In his testimony, did not deny the existence of the 2nd plaintiff as well as the Fresher's Restaurant. He testified that he agreed with the 1st plaintiff's uncle, a catholic priest namely father John Assey to establish and operate a restaurant which was known as the Fresher's Restaurant . Father Assey is the one who agreed to provide the funds for buying the equipment and materials for establishment of the restaurant. He gave him a total sum of USD 71,157. He went to China to purchase the equipment and materials for the restaurant, unfortunately upon arrival in China, he found that the prices for the equipment and materials were higher than the costs they estimated .He contacted the 1st plaintiff and requested him to inform PW3 on the increase of the prices. In response, the 1st plaintiff informed him that father Assey directed that he should buy the equipment and all materials as planned, and on arrival to Arusha father Assey will reimburse him the excess costs. He purchased the equipment and materials as agreed. He spent a total of USD 99,252. Father Assey owes him USD 28,095 which is the difference between the money he gave

him and the actual costs of the equipment and materials bought and imported to Tanzania.

I have perused the certificate of registration of the Fresher's Restaurant (Exhibit P1 collectively). The same indicates that the proprietor of the Fresher's Restaurant is Traderan Limited with registration No.138396908.(the 2nd plaintiff herein).The certificate of incorporation of Traderan Limited (Exhibit P1 collectively) indicates that the same was registered on 13th of December 2018, with registration No. 138396908. Therefore from the documentary evidence adduced in Court, it is obvious that there is no any business by the name of the Fresher's which is jointly owned by the plaintiffs and the defendant. I have noted that the Memorandum and Articles of Association of Traderan Limited , (herein after to be referred to as the Company") indicates that the 1st plaintiff and the defendant are shareholders and Directors of the Company. According to the Company Laws, a Company is separate and distinct from its members and shareholders [See the case of **Salomon Vs Salomon and Co Ltd, (1897) A.C.22**]. In instant case the 1st plaintiff and the defendant are distinct and separate from the Company, that why I am saying that in the eyes of the law, the 1st plaintiff in his individual capacity is not a proprietors of the Fresher's Restaurant. Likewise, there is no any

business owned by the 2nd plaintiff and the defendant by the name of the Fresher's Restaurant.

I wish to point out here that the even the TRA release order for the equipment and materials that are alleged were imported from China intended to be used in the restaurant indicates that the same were imported by Traderan Limited (the Company) which is the sole proprietor of the Fresher's Restaurant. PW1's testimony on the existence of a business owned by the plaintiffs and the defendant is contradictory to the documentary evidence tendered in Court as per contents of exhibit P1.

Without prejudice to the findings I have made herein above, what I have noted here is that the 1st Plaintiff and the defendant being directors of the Company (Traderan Limited) made resolution to establish a restaurant by the name of the Fresher's . The capital for that business was supposed to be raised through the contribution of the shareholders of the Company. The Money which PW1 alleges that he borrowed from his uncle, Father John Assey was used to pay for his shares in the Company. So, going by the testimony of PW1 and exhibit P6 (TRA release Order) it is the Company (2nd plaintiff) which was buying the equipment and material for the restaurant , and one of its directors, that is the 2nd


defendant was entrusted to buy the same for the restaurant which is owned by the Company. Looking at the evidence adduced by PW1 on the dispute that arose in the course of buying the equipment and materials for the restaurant, in my opinion it is the Company which is supposed to claim for the money alleged that was not accounted for. And since the defendant is one of the directors of the Company, then, that dispute is supposed to be dealt with in accordance with the provisions of the Companies Act, to enable the 1st plaintiff who is the Co-Director and Co-shareholder of the 2nd plaintiff to claim against his fellow director for the alleged loss. In other words, the 1st plaintiff in his personal capacity has no *locus standi* to claim for the losses incurred by the Company. Similarly he has no *locus standi* to file the case on behalf of the Company against his Co-Director and Co-shareholder, unless he obtains a leave of the Court to do so upon making appropriate application pursuant to the provisions of the Companies Act.

From the foregoing, since the 1st issue has been answered in the negative, I cannot proceed with the determination of the remaining issues. Furthermore, as I have alluded herein above this suit has been filed by parties who have no *locus standi* to claim against the defendant in manner they have done. Since the procedure for filing this case against

the defendant has been flouted, I will not dismiss this suit because I have not determined its merit, instead I will strike it out as I hereby do, to allow the parties to make their claims in a proper legal procedure if they wish to do so. This case is struck out with costs.

Date this 18th day of February 2022




B. K. PHILLIP
JUDGE