

**IN THE HIGH COURT OF TANZANIA  
(IN THE SUB REGISTRY OF DAR ES SALAAM)**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 184 OF 2017**

**ZACHARIA HANS POPPE .....1<sup>ST</sup> PLAINTIFF**

**CAESAR HANS POPPE ..... 2<sup>nd</sup> PLAINTIFF**

**Z.H. POPPE LIMITED ..... 3<sup>rd</sup> PLAINTIFF**

**VERSUS**

**MEK ONE INDUSTRIES LIMITED ..... DEFENDANT**

**AND IN THE COUNTER CLAIM**

**MEK ONE INDUSTRIES LIMITED ..... CLAIMANT**

**VERSUS**

**ZACHARIA HANS POPPE ..... 1<sup>ST</sup> DEFENDANT**

**CAESAR HANS POPPE .....2<sup>ND</sup> DEFENDANT**

**Z.H. POPPE LIMITED..... 3<sup>rd</sup> DEFENDANT**

Date of Last Order: 08.06.2023

Date of Judgement: 10.07.2023

**JUDGEMENT**

**MAGOIGA, J.**

This suit revolves around breach of agreements and their consequences between parties. The plaintiffs, **ZACHARIA HANS POPPE, CAESAR HANS POPPE** and **Z.H. POPPE LIMITED** (the 1<sup>st</sup> plaintiff, ZACHARIA



HANS POPE is no more and by order of this court, the case for and against him abated after he has finished testifying) by way of plaint jointly instituted this suit against the above named defendant praying for judgement and decree in the following orders, namely:

1. Declaratory orders that the defendant has breached her payment obligations with regard to an agreement vide which the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs as shareholders of **Z.H. POPPE LIMITED** undertook to cede a conditional transfer of management powers to the defendant with regards to the 3<sup>rd</sup> defendant;
2. Declaratory orders that the said agreement has not been performed by the defendant and therefore null and void;
3. Permanent injunctive orders against the defendant and its principal, in particular, one, Mohamed Edha Awadh and any person acting under their authority barring them from interfering with the lawful undertakings and operations of **Z.H. POPPE LIMITED**;
4. Payment of specific damages in favour of the 3<sup>rd</sup> plaintiff to the tune of Tshs.500,000,000.00 for loss of business with regard to the ENGEN RWANDA contract that was terminated consequent to the defendant's unjustified and unwarranted acts;



5. Payment of general damages to the tune of Tshs.500,000,000.00 for the harm to the business image that the defendant's unjustified and unwarranted acts have caused the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs;
6. Costs of the suit, and;
7. Any other order the honourable court will deem just and fit to grant.

Upon being served with the plaint, the defendant filed a written statement of defence disputing all plaintiffs' claims and prayed for dismissal of this suit with costs. Simultaneously, the defendant raised a counter claim against the plaintiffs praying for judgement and decree against the defendants counter claim in the following orders, namely:-

1. Declaration that the 3<sup>rd</sup> defendant is wholly owned by the defendant;
2. A declaration that by selling their shares in the 3<sup>rd</sup> plaintiff to the defendant, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs ceded all their rights and powers on the 3<sup>rd</sup> plaintiff;
3. An order that the transfer of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs' shares to the defendant be registered and regularized;
4. An order that the transfer of the 1<sup>st</sup> and 3<sup>rd</sup> plaintiffs landed property in favour of the defendant be registered subject to encumbrances;



5. An order that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs unconditionally vacate at once the defendant's landed properties and hand over the trucks and trailers;
6. A permanent order of injunction be issued against the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, their agents and assigns from howsoever interfering with the 3<sup>rd</sup> plaintiff and defendant's business and properties;
7. A permanent order of injunction be issued against the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, their agents and assigns from howsoever interfering with the 3<sup>rd</sup> plaintiff and defendant's accounts

**An In the alternative immediate payment of:-**

8. USD.9,309,300.75 translated to Tshs.20,945,926,687.50 as at the date of filing this suit for paying for 3<sup>rd</sup> plaintiff's old loans, cash money paid to the 1<sup>st</sup> plaintiff and for the 1<sup>st</sup> plaintiff's old banking loans;
9. USD.228,736.91 and Tshs.450,464,981.82 taken from Barclays accounts;
10. USD.1,385,617.84 taken from Engen Tanzania Limited;
11. Tshs.237,538,400.00 being salaries for the 3<sup>rd</sup> plaintiff's workers for the months of April, May, June, July and August, 2017;

12. Payment of USD.50,000.00 per month being loss of profit for the whole duration of the case from September, 2017 to the date of judgement;
13. Compound interest at 20% per annum on item No.8-12 from the date of filing this suit to the date of judgement;
14. Additional interest on item the decretal sum at the court's rate from the date of judgement to the date of payment in full;
15. General damages as shall be assessed by the court;
16. Costs of the suit;
17. Any other/further relief as may appear just.

The facts of this suit are not complicated. It is alleged and not disputed between parties that on 22<sup>nd</sup> March, 2017 parties herein entered into Business Management Agreement in which MEK ONE INDUSTRIES LIMITED undertook to control, operate and manage Z.H. POPPE LIMITED at a goodwill of USD.15,000,000,000.00 to be paid in accordance with the schedule in the said agreement. While the said agreement exists, parties signed an addendum on 17<sup>th</sup> May, 2017 which changed the Business Management Agreement into Sale Agreement on terms as stipulated in the



said addendum and on 20<sup>th</sup> March parties again signed agreement for sale of shares.

Further facts were that without doing her contractual obligations as agreed, the defendant attempted to usurp the control, operations and management of Z.H. POPPE LIMITED and engaged in harmful acts against the interests of Z.H. POPPE LIMITED necessitating the institution of this suit, among others, claiming reliefs as contained in the plaint.

On the counter claim, facts are, as well, not complicated. It is alleged that through Addendum Agreement and Agreement for the Sale of shares, the 3<sup>rd</sup> plaintiff became wholly owned by the counter claimant. It is further alleged that the counter claimant performed her contractual obligations as agreed but to his Managing Director's surprise, the plaintiffs breached the agreements and forcefully took control of Z.H. POPPE LIMITED causing the counter claimant to suffer both monetary and non-monetary damages as claimed in the counter claim.

Before hearing of this suit commenced, the following issues were proposed by parties, adopted and recorded by this Court for the determination of this suit, namely:



1. Whether the defendant breached the payment obligations under the Business Management Agreement and an Addendum thereto together with the sale of share agreements;
2. Whether the defendant without cause interfered with affairs of the third plaintiff;
3. Whether the defendant and 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs entered into an Addendum to the business management agreement that turned the earlier arrangement that is the Business Management Agreement into a Sale Agreement of the sale of shares by the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs into the third plaintiff to the defendant;
4. Whether the first and second plaintiffs descended unto the properties and business of the third plaintiff now owned by the defendant obtained out of Sale Agreement and appropriated them denying the defendant their use;
5. Reliefs the parties are entitled to?

The plaintiffs at all material times have been enjoying the legal services of Mr. Peter Kibatala learned advocate; while on the other hand, the defendant has been enjoying the legal services of Dr. Rugemeleza Nshalla, learned advocate and vice versa in the counter claim.



It should be noted that this suit was partly heard by my learned three judges (Luvanda, De-Mello and Mruma, JJJ) but by reasons of transfer, retirement and transfers respectively were unable to conclude it. In the circumstances, same was re-assigned to me for its final determination by hearing defence case guided by the provisions of Order XVIII Rule 10(1) of the Civil Procedure Code [Cap.33 R.E. 2019].

In proof and disproof of the suit and counter claim respectively, the plaintiffs called three witnesses. The first witness was the late **ZACHARIA HANS POPPE** (to be referred herein as "**PW1**" and whose testimony and exhibits tendered remains intact in this suit and have to consider them in this judgement). PW1 under oath told the court that he and his younger brother (**CAESAR HANS POPPE**) are the directors and shareholders of **Z.H. POPPE LIMITED**. PW1 told the court that he knows **MEK ONE INDUSTRIES LIMITED** who exhibited intention to purchase **Z.H. POPPE LIMITED** as going concern but because they had no money no deal was done. According to PW1, there was an agreement for **MEK ONE INDUSTRIES LIMITED** to take over business management of the company and the second one was for sale of shares. PW1 tendered in





evidence Business Management agreement dated 22.03.2017 as **exhibit P1.**

Further testimony of PW1 was that unless the defendant complied with all terms in exhibit P1, the shareholding structure remained as it was before. Among the notorious terms, according to PW1, was payment of USD.1,000.00 as a good will to be paid immediately upon signing the agreement and after 60 days pay USD.3,000,000.00 cash. PW1 told the court that the entire transaction was for USD.15,000,000.00 to be paid as stipulated in exhibit P1. Another condition was for payment of USD.4,000,000.00 within 4 months from the date of paying USD.3,000,000.00 and a balance of USD.8,000,000.00 was to be paid within 4 years being USD.2,000,000.00 per each year as per item 11 of exhibit P1. PW1 went on telling the court that a sum of USD.7,155,057.06 were debts in various banks which were to be paid by the defendant.

According to PW1, despite signing this agreement, no single cent was paid for want of bank transfer and payment of capital gain tax. Failure to pay the debts, PW1 told the court that the debts raised from USD.7,155,057 to USD.8,288,000.00 due to interest and penalties.



PW1 further testimony was that, under that agreement an account was to be opened at Barclays Bank which was to be used by the defendant for management of the business but same was misused by the defendant. Following the ECO Bank refusal to allow the defendant take over all liabilities and rescheduling of debts, parties executed an ADENDUM AGREEMENT, which changed the first agreement from business management to sale agreement. PW1 tendered in evidence Addendum Agreement dated 17.05.2017 as **exhibit P2**. According to PW1, the liabilities of **Z.H. POPPE LIMITED** from 20.03.2017 were transferred to the defendant which were a sum of USD.2,343,973.70 apart from the bank loans, other debts were Tshs.996,892,020.85. PW1 insisted that no debt was paid by the defendant before or after all these agreements. PW1 denied and disputed even the amount of USD.734,730.13 not to have been paid as stipulated under clause 7 of the Addendum. PW1 tendered in evidence extract from BRELA dated 06.09.2017 showing the shareholding structure is the original one as **exhibit ID1**. PW1 told the court that parties exchanged letters which he told the defendant will return the company into his hands. According to PW1, the director of the defendant conducted himself in a manner that was prejudicial to the company.




Further, PW1 told the court that no proof that funds were injected into the 2<sup>nd</sup> plaintiff but used revolving funds of **Z.H. POPPE LIMITED** to run the business as such disputed all claims in the counter claim. PW1 insisted that the defendant never remedied the wrongs done to the company. On the above testimony, PW1 prayed that this court grant the prayers of the plaintiffs as contained in the plaint with costs.

Under cross examination by Dr. Nshalla, PW1 told the court that nothing in so far as the agreement was concerned, **Z.H. POPPE LIMITED** has been paid. PW1 referred to exhibit P2, in particular, clause 7 which he read and agreed that USD.734,730.13 was paid and was part of the agreement. PW1 when referred to sale agreement dated 20/03/2017 recognized it with qualification that it did not come to reality. Pressed with questions, PW1 admitted to have signed the sale of shares agreement and the full price paid was Tshs.1,500,000,000.00 for 5000 shares at Tshs.300,000.00 each but was quick to insist that, no money was paid for the shares. PW1 went on telling the court that on good faith, **MEK ONE INDUSTRIES LIMITED** took over the company but never paid the price of shares.

Further, under cross examination, PW1 referred to exhibit P1, in particular, paragraphs 8 and 9 and says the payment was to be done before taking

over the management. PW1 pressed if he proved what he alleges in paragraphs 15 16 and 17 of the plaint and said no evidence was led to prove those allegations. PW1 shown a document and says is board resolution by ZH POPPE for sale of shares and agreed it be admitted in evidence as **exhibit D1**. Pressed with questions, PW1 admitted that they agreed and resolved to sell shares and assets. However, PW1 insisted that, despite signing the said exhibit D2 but never received any money. PW1 shown several documents and acknowledged to have signed them and same were admitted as **exhibits D2, D3, D4, and D5** respectively. PW1 asked to read the contents of paragraphs 4 and 5 of exhibit D4 and admitted that he signed them and knows English but denied to have received such money as mentioned in that exhibit. PW1 referred to exhibit P2, in particular at paragraph 7, PW1 insisted that despite that paragraph but was not paid at all and later realized the ill will on the part of the defendant.


PW1 was taken through several payments which were made by the defendant on diver dates and acknowledged to have proved them for payment. Under cross examination DW1 tendered in evidence **exhibits D6- D53**.



PW1 yet under serious cross examination told the court that he terminated the agreements as result of breach on the part of the purchaser for failure to pay consideration as agreed.

Under re-examination by Mr. Kibatala, PW1 told the court that **Z.H. POPPE LIMITED** was a going concern by the time parties agreed to sale it but which contract was frustrated by want of consideration. PW1 shown several exhibits D1 to 8 but disputed them that nothing was paid from those exhibits.

Next witness for the plaintiff was **YUSUF NASSOR** (to be referred in these proceedings as **("PW2")**). Under affirmation, PW2 told the court that in 2017 was working with the defendant as Chief Financial Officer but resigned in October, 2017 to preserve his reputation and integrity. PW1 specifically told the court that he resigned under protest due to conflict between **MEK ONE INDUSTRIES LIMITED** and **Z.H. POPPE LIMITED**. Further testimony of PW1 was on the creation of exhibit P1 and P2 and payments schedules. Shown all payments alleged to have been paid to creditors, PW2 said the payment were to be done by cheques or bank transfers and not otherwise.



Under cross examination by Dr. Nshala, PW2 told the court that as Chief Financial Officer was involved at all stages and that he was aware of the terms of the agreements in dispute. Pressed with questions, PW2 admitted the amount of USD.734,730.00 was paid as acknowledged in exhibit P2. PW2 told the court that the bank statement was to show how much was paid and not. Pressed more with questions, PW2 told the court not remembering when payment whatsoever was made. Shown exhibit P12 to P33 inclusive and admitted that he signed them approving payments but refused to have signed exhibit P34 to 49 inclusive.

Under re-examination by Mr. Kibatala, PW2 told the court that the vouchers were for **Z.H. POPPE LIMITED** as opposed to **MEK ONE INDUSTRIES LIMITED**.

Next was **CAESAR HANS POPPE** (to be referred in these proceedings as "**PW3**"). PW3 under oath told the court that he is the shareholder and director of the **ZH POPPE LIMITED** with only 10% of the shares. PW3 acknowledges that there was agreement for sale of the company to **MEK ONE INDUSTRIES LIMITED** and all was handled by ZACHARIA-PW1. According to PW3, they had agreed to sell the company at a consideration of USD.15,000,000.00 to be paid in installments but which has not been

paid and as such have sued the defendant for reliefs as claimed in the plaint. PW3 went on testifying that, Mohamed Awadh went to their office and caused havoc but police intervened. Like PW1, PW3 insisted that no proof for payment of consideration as agreed.

Under cross examination by Dr. Nshala, PW3 told the court that going concern means healthy and active in business. Shown **exhibits P1, P2** and **exhibit D1**, PW3 agrees that initially the agreement was for management but it changed into selling of shares and transfer of assets. When referred to exhibit P2 and asked to read clause 7 replied that the amount stated thereon was not paid for want of proof. Pressed with questions, PW3 admitted to have signed exhibit D2 and that exhibit D4 state that the amount of USD.734,730.13 was part of the purchase agreement to be deducted from the agreed price. Under cross examination, PW3 tendered in evidence **exhibit P54**.

Under re-examination by Mr. Kibatala, PW3 told the court that exhibit D4 shows the balance was USD.11,478,233.00

Next witness for plaintiff was **Mr. MOHAMED HUSSEIN NASSOR** (to be referred in these proceedings as "**PW4**"). PW4 under oath told the court





to know all parties in this suit and he was the broker of the deal between them. PW4 went on testifying that he was approached by the late ZACHARIA who was in need of retiring from his position in the company and parties strike a deal at USD.15,000,000.00 to be paid by installments. According to PW4, out of the contract they formed a what sapp group for updating each other what was going on and convening meetings. PW4 told the court that no proof that any money was paid as parties agreed. Lastly, PW4 told the court the he witnessed vandalism and invasion done by MEK ONE INDUSTRIES LIMITED.

Under cross examination by Dr. Nshalla, PW4 told the court that exhibit P2 paragraph 3 was acknowledged by the seller but was not present when sealed. Pressed with questions, PW4 told the court that he was not involved of the subsequent acts that followed after 17.05.2017.

Under re-examination by Mr. Kibatala, PW4 told the court that no proof of payment via bank in this transaction.


This marked the end of plaintiff case and same was marked closed.

The defendant and counter claimant had two witnesses. The first witness was **Mr. DISMAS EPHRAIM MBANDO** (to be referred in these





proceedings as "**DW1**". Under oath and through his witness statement adopted in this court as his testimony in chief told the court that he is the advocate of the High Court of Tanzania and courts subordinate thereto and that by virtue of that was involved in witnessing the agreements reached between ZACHARIA HANS POPPE, CAESAR HANS POPPE AND Z.H. POPPE LIMITED on one hand, and MEK ONE INDUSTRIES LIMITED on the other hand. According to DW1, the agreements were for business management venture whereby the defendant was to run and operate Z.H. POPPE LIMITED, later on 14<sup>th</sup> March 2017 and 18<sup>th</sup> March 2017, the plaintiffs resolved to transfer their shares held in the third defendant to the defendant, among others, was also transfer of five pieces of land and motor vehicles. All these were to be done at consideration of USD.15,000,000.00. DW1 went on telling the court that the business management agreement could not work well between parties who then amicably resolved to elevate the same into agreement for sale of shares by executing an addendum to the business management agreement. Under this arrangement parties executed agreement for sale of 5000 shares at a price of Tshs.300,000.00 per share at Tshs.1,500,000,000.00 which was fully paid.



DW1 further told the court that he witnessed as well issuance of five share certificates by the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs. DW1 went on telling the court that in the addendum it was acknowledged that the defendant so far has paid USD.2,343,973.70 and Tshs.996,892,020.85 as debts since the defendant took over the management and the amount paid directly to Zacharia Hans Poppe was USD.743,730.13 to be deducted from the purchase price by 30<sup>th</sup> May 2017 leaving the unpaid amount to the tune of USD.11,478,233.05. Lastly, DW1 told the court that he also witnessed the affidavit of marriage of late Zacharia Hans Poppe and that of Caesar Hans Poppe which they agreed to transfer their 4500 and 500 shares respectively to the defendant. Under the circumstances, DW1 stated that the defendant did not breach the terms of the agreements between the plaintiffs and that by paying the price of the shares as agreed, then, Z.H. POPE LIMITED became wholly owned by MEK ONE INDUSTRIES LIMITED.

In disproof of the plaint and proof of the counter claim, DW1 tendered in evidence **exhibit D53** (which was admitted earlier as exhibit P1) which is business management agreement, **exhibit D54** (which was admitted earlier as exhibit D3) which is addendum to the business management agreement, **exhibit D55** (which had earlier been admitted as exhibit D2)

which is sale of shares agreement, **exhibit D56** (which was earlier admitted as **exhibit D4** (which is agreement for purchase of Z.H.POPPE LIMITED), **exhibit D1** Board resolution and its minutes, affidavits of marriage of Zachariah and Caesar Hans Poppe.

Under cross examination by Mr. Kibatala, DW1 told the court that the agreement was between **ZACHARIA HANS POPPE, CAESAR HANS POPPE** and **Z.H. POPPE LIMITED** and **MEK ONE INDUSTRIES LIMITED** whereby **Z.H. POPPE LIMITED** shares were bought by **MEK ONE INDUSTRIES LIMITED** which includes everything that a company owns. According to DW1, the USD.15,000,000.00 was for purchasing of shares, assets and loans/debts. DW1 referred to exhibit P1 and said in the Business Management Agreement assets were not mentioned. Pressed with questions, DW1 told the court that, corporate entity cannot sell nor buy shares because shares are owned by individuals in a company. DW1 went on telling the court that in this transaction, Mr. Zacharia Hans Poppe and Mohamed Awadh Edha agreed to sale the company shares for Tshs.1,500,000,000.00 which money was paid by cheques and receipts issued.

Under re-examination DW1 told the court that a company can own shares.

Asked by the court to clarify some facts, DW1 told the court that directors of the respective companies and Mr. Zacharia Hans Popper acknowledged to have received USD.734,730.13 and the unpaid amount was USD.11,478,223.05 when exhibit P55 was signed.

Next and last witness for defence was **Mr. MOHAMED EIDHA AWADH** (to be referred herein in these proceedings as "**DW2.**") Under affirmation and through his witness statement, DW2 told the court that he is the Managing Director of the defendant and party to these proceedings. According to DW2, between January and mid-March 2017 the defendant and the directors of Z.H. POPPE LIMITED i.e. the late Zacharia Hans Pope and Caesar Hans Pope embarked into discussion on business management venture for the defendant to run and operate Z.H. POPPE LIMITED which resulted into creation of exhibit P1 on 22<sup>nd</sup> March 2017 with its terms. DW2 went on telling the court that in the course on 17<sup>th</sup> May, 2017 parties signed an addendum to business management which changed from management to sale agreement resulting into creation of exhibit P2 and exhibit D1. In the said exhibits P2 and D1, parties agreed for purchase of shares, transfer of assets(which includes trucks and immovable properties),




liabilities of Z.H. POPPE LIMITED starting from 20<sup>th</sup> March, 2017 were to be taken over by the defendant.

Further testimony of DW2 was that on 20<sup>th</sup> day of May, 2017, parties sold shares of Z.H. POPPE LIMITED to the defendant as result created **exhibits D2, D3, D4, D5 and D6**. DW2 pointed out that by 25<sup>th</sup> May 2017 it was acknowledged by plaintiffs that by that time the defendant had paid USD.2,343,973.70 and Tshs.996,892,020.85 as debts and the amount paid directly to Zacharia Hans Poppe was USD.743,730.13 and that all these were to be deducted from the purchase price of USD.15,000,000.00 leaving a balance of USD.11,478,233.05. Further, DW2 pointed out that it was also to transfer all immovable and movable properties in the name of the defendant as listed at pages 3-4 of the written witness statement of DW2.

DW2 went on telling the court that the movable properties were 124 trucks and 132 trailers of different makes out of which 15 trailers were unencumbered and were immediately transferred to the ownership of the defendant. It was further testimony of DW2 that after signing of exhibit P2 and exhibit D1, the defendant took over the ownership and management of Z.H. POPPE LIMITED which was in bad shapes in all respects for having

negative bank balances and default notices were coming in from all sides. Not only that but also that the late Zacharia Hans Poppe wrote letters to various banks, subcontractors and supplier introducing the defendant as new owners of the ZH POPPE LIMITED who would pay the loans. In agreement with the terms of the agreement, DW2 told the court that, he started paying and until 4<sup>th</sup> September, 2017, the defendant had paid USD.9,309,300.75 which is equal to Tshs.20,945,926,687.50.

Not only that but DW2 told the court that by 14<sup>th</sup> August, 2017 defendant had paid Zachariah Hans Poppe USD.2,097,031.32 which is equivalent to Tshs.4,686,864,993.42. Additionally, DW2 told the court that defendant paid salaries to Z.H. POPPE LIMITED staffs for the months of April, May, June, July, and August to the tune of Tshs.237,538,400.00. DW2 went on telling the court that upon taking control of the company rehabilitated the trucks and injected money into business in terms of fuel, spare parts and tyres between April and August 2017 to the tune of Tshs.2,639,105,797.39, mileage Tshs.674,588,400.00, road toll USD.437,234.00 and Tshs.42,045,600.00. According to DW2, business went in well and sales shoot up millions of litres until September, 2017 when the business was interfered by the late Zacharia Hans Poppe.



DW2 testified that his efforts to be registered as owner of the 3<sup>rd</sup> plaintiff were met with bottlenecks from TRA. It was further testimony that in July 2017, the late Zachariah clandestinely interfered with smooth operations of Z.H. POPPE LIMITED by writing and giving instructions to banks and clients and instrumentally removed Mr. Mohamed Eidha Awadh from any dealing with the Z.H. POPPE LIMITED, including but not limited to withdrawing money from accounts and were paid USD.1,385,617.84 from ENGEN out of business done by the defendant. According to DW2, this was possible because transfer of shares and assets as agreed were yet to be possible and they were the ones recognizable with authorities. This conduct by PW1, to DW2, was clear breach of contract causing massive losses and inconveniences to the defendant. DW2 insisted that the defendant fulfilled its contractual obligations.

DW2 told the court that against that backdrop, the defendant decided to open a counter claim praying for reliefs as contained in the defence and counter claim. DW2 tendered in evidence motor vehicles and trailers registration cards of 236. DW2 also tendered 89 petty cash vouchers and payment vouchers paid to different debtors, 12 payments vouchers to Visiga, 26 to Jogoo at Mbezi and various correspondences.





In disproof of the plaint and proof of the counter claim, DW2 tendered in evidence **exhibits D56 to 63** respectively.

Under cross examination by Mr. Kibatata, DW2 told the court that in simple transaction of buying and selling involve issuance of receipts. DW1 went on telling the court that he has proof of payment in this court from the exhibits tendered. Shown exhibit P55 and says it was an agreement for sale of shares between Z.H. POPPE LIMITED and MEK ONE INDUSTRIES LIMITED for shares owned by Zacharia and Caesar Hans Poppe. According to DW2, the shares were owned by Zacharia Hans Poppe and Caesar Hans Poppe though in the contract nowhere it reads Zacharia and Caesar Hans Poppe were selling shares. Pressed with questions, DW2 told the court that in exhibit D55 there was a board resolution by Z.H. POPPE LIMITED dated 14.03.2017 and one share was for Tshs.300,000.00 and there were 5000 shares costing Tshs.1,500,000,000.00.

Asked on debts, DW2 admitted that Equity Bank debts were not paid in full and that his obligations were to pay all mortgages. DW1 pointed out that despite paying substantial amount, the contract was prematurely terminated. Pressed with questions, DW2 told the court that Zacharia admitted selling shares and Managing Directors of the two companies dully



executed documents to that effect. Shown exhibit D62, and said the registration cards have names of the owners and registration numbers. Pressed with questions, DW2 told the court that after 20.03.2017 the defendant carried over all liability of the 3<sup>rd</sup> plaintiff including bank loans and Z.H. Poppe Limited was exempted. According to DW2, the contract was terminated after 5 months. Shown exhibit D54 and replied that Zacharia was admitting sale of shares. Further pressed with questions, DW2 admitted that nowhere Caesar signed exhibit D54. As to exhibit D53, DW2 told the court that was between the two companies and Caesar signed the acknowledging receipt of the money. Shown exhibit D61-65 share certificates, DW2 admitted that were not registered with BRELA. As to exhibit 58, DW2 said it was a letter declining change of facility structure. Shown exhibit D60 and says was balance of Boa Bank which was USD.600,000.00 but half has been paid leaving a balance USD.300,000.00. But pressed with questions, admitted that nowhere shows MEK ONE INDUSTRIES LIMITED paid such an amount.

DW2 shown exhibit D56 and says are letters from TRA on buying of shares and payment of capital gain tax. Shown exhibits D53-55 and exhibit 56 and says shows different buyer and names. Shown exhibit D59 and says it was



a board resolution and minutes for instituting the counter claim which he himself signed. Shown exhibit D57 and says was an account submissions for the period between 20<sup>th</sup> March and August 2017 showing how much money has been so far paid as purchase for shares and assets. As to exhibit D62 says was under Stanbic bank and exhibit D62 were securities with Eco Bank, Stanbic Bank, and FN Bank.

As to emails , exhibit D67 were introducing the defendant as new owner of the 3<sup>rd</sup> plaintiff. Pressed with questions, DW2 admitted that paragraphs 26 and 32 were not verified but was quick to point out that it was due to human error. DW2 insisted that the banks were happy after starting paying some old loans.

DW2 shown exhibits D62 collectively and said were for various payments that were paid as part of debts and were approved by Zacharia before payments were effected.

Pressed with questions, DW2 said Zacharia intended to dupe him in this transaction because he had hidden agenda because despite paying that much he denied actual transfer and wrote termination letter.



DW2 shown exhibits D10-D29 and says these were vouchers in the name of Z.H.POPPE LIMITED and exhibit D32 to D42 and says are letter head of Z.H.POPPE LIMITED and exhibit D43 –D50 and says these were payments done in the name of Z.H POPPE LIMITED to Engen (T) Limited.

Under re-examination by Dr. Nshalla, DW2 told the court that in the entire period he was the Managing Director of Z.H. POPPE LIMITED because the company has been sold to them. As to paragraphs 26 and 32 was just a typing error for not indicating verification. Further, DW2 told the court that MEK GENERAL TRADERS had no relationship with Z.H.POPPE LIMITED but had relationship with MEK ONE INDUSTRIES LIMITED as a sister company, so was meeting obligations of its sister company under the directorship of the DW2. Shown exhibits 49 and 43 and says there were payment authorized by him as Managing Director and no money from Zacharia was used at all. Shown exhibits D10 -47 and says all these payments were effected when the 3<sup>rd</sup> plaintiff was under his control, so was paying debts inherited and authorized by Zacharia. DW2 further told the court that the addendum did not oust the business management agreement but it only changed the purpose to out rightly purchase and DW2 said he did his legal



obligations. DW2 reiterated some money paid to Zacharia and the balance unpaid was only USD.11,478,233.05 when the dispute arose.

Basically DW2 explained in details the purposes and intents of each exhibits tendered one after the other and insisted that it is the defendants in the counter claim who breached contract and prayed that the suit be dismissed and the counter claim be granted as prayed.

Asked by the court to explain if the contract had scheduled time of payments, DW2 told the court that exhibit P1 had all time line of payment and that after six months they had paid USD.7,000,000.00.

This marked the end of hearing of this hotly contested suit on breach of contract.

At the end of hearing of this suit, the learned counsel for parties prayed to file final written submissions. I granted the prayer with a condition limiting the same ten pages only. I truly commend them for abiding with time granted, their valuable input on the matter and for making this judgement be able to be delivered in time. Because this is already long judgement, I will not be able to reproduce each and every argument taken, but it



suffices to say their respective contributions are accorded the weight they deserve.

The noble task of this court, is now to determine the merits or otherwise of this suit against the evidence on record. However, before going into that, I have noted that there are some facts not in dispute between parties. These are: **one**, there is no dispute that parties herein on 22<sup>nd</sup> March, 2017 entered into business management agreement whereby the defendant was to manage and operate all activities of the 3<sup>rd</sup> plaintiff (now 2<sup>nd</sup> Plaintiff) at the consideration of USD.15,000,000.00 as exhibit in exhibit P1. **Two**, there is no dispute that on 17<sup>th</sup> May, 2017 (i.e. two months later) parties signed addendum to the business agreement which changed course of agreement from business management agreement into sale agreement whereby the defendant was to wholly buy the 3<sup>rd</sup> plaintiff (now 2<sup>nd</sup> defendant) at the same consideration after deducting payment of loans and debts owed to the 3<sup>rd</sup> plaintiff. **Three**, there is no dispute that, pursuant to the addendum agreement, parties on 30<sup>th</sup> May, 2017 signed agreement for purchase of Z.H. POPPE LIMITED by MEK ONE INDUSTRIES LIMITED and agreement for the sale of shares on 20<sup>th</sup> May, 2017 and accordingly issued share certificates to MEK ONE INDUSTRIES.



It should be noted that in our jurisdiction the legal burden of proof lies on the party who alleges and in civil cases, like this one, the standard of proof is that of balance of probabilities. This is in accordance with sections 110 and 111 of the Tanzania Evidence Act, [Cap 6 R.E.2022]. For easy of reference the said sections provide as follows:

**"Section 110(1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist"**

**"(2) when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person"**

**"Section 111-The burden of proof in a suit lies on the person who would fail if no evidence at all were given on either side"**

The burden of proving facts rests on the party who substantially asserts the affirmation of the issue and not upon the party who desire it, for a negative is usually incapable of proof.

Further it should be noted that breach occurs if one of the parties fail to perform what parties have lawfully agreed. This is in accordance to section



37 of the Law of Contract Act, [Cap 345 R.E.2019]. For easy of reference the said section provides as follows:

**“Section 37-(1) The parties to a contract must perform their respective obligations, unless such performance is dispensed with or excused under the provisions of this Act or any other law.”**

However, what is in serious dispute between parties' is the allegations of breach of contract by either party and its consequences. With the above in mind now, it is opportune time to answer each issue framed in respect of this commercial dispute. The first issues was couched that **“whether the defendant breached the payment obligations under the management agreement and an addendum thereto together with the sale of shares agreement?”** Mr. Kibatata answering issue number one submitted that without bank transfers and receipts it cannot be said any money was paid by the defendant in accordance to the agreements in dispute. According to Mr. Kibatata, out of 67 exhibits tendered none was actual payments to corroborate that payments were done. Not only that, but also that even invoices tendered were not enough to prove payments and failure to call bank officials to prove payment was fatal to the case of



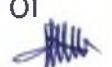


counter claim by defendant. Guided by the case of **Aziz Abdallah Vs. Republic [1991] TLR 71**, the learned advocate charged that failure to call such material witness a counter claim cannot stand in this suit. The learned counsel cited section 35 of Law of Contract Act,[Cap 345 R.E. 2019] which provides that a contingent contract becomes void on the expiration of the fixed time without fulfillment, section 37(1) which obligates parties' to perform their obligations, and section 39 which legislates that promises is entitled to end a contract on nonperformance .

In the end, Mr. Kibatala urged this court to find that, indeed, there was a blatant breach of contract by the defendant and that the plaintiffs were entitled to terminate the contract as they did.

It should be noted that, the plaintiff tendered only two exhibits to prove breach which are exhibit P1- Business Management agreement and exhibit P2- which is Addendum to the Business Management Agreement.


On the other adversary hand, the defendant through Dr. Nshalla urged this court to answer the first issue in the negative because there is evidence by the defendant that by the time the contract was unilaterally and without cause terminated by the plaintiffs, the defendant had paid huge amount of





money to the banks and creditors of the 3<sup>rd</sup> plaintiff (now 2<sup>nd</sup> plaintiff) which was in line with the schedule of payments and were to be deducted from the purchase price. According to Dr. Nshalla, guided by the Addendum to the Business Management Agreement-exhibit P2, the defendant had paid USD.4,785,810.77 and Tshs.996,892,020.00 and in addition Zacharia Hans Poppe as per clause 7 had already been paid USD.734,740.13. In the circumstances, Dr. Nshalla argued that, by 21<sup>st</sup> May, 2017 the defendant had paid USD.4,785,810.77 and Tshs.996,892.00 well over and above the stipulated USD.3,000,000.00. in both exhibit P1 and P2.

The learned counsel for defendant cited the cases of **Umico Limited Vs. Salu Limited, Civil Appeal No.91 of 2015, Haruna Chakupewa Vs. Patrick Christopher Ntalukundo, (PC) Civil Appeal No.10 of 2021 HC (Kigoma) (unreported) and Agatha Mshote Vs. Edson Emmanuel and 10 Others, Civil Appeal No. 212 of 2019 CAT**, all of which the court loudly stated the principle of law that if parties in dispute had reduced their agreement to form a document, then, no evidence of oral agreement or statement shall be admitted for the purposes of contradicting, varying, adding to or subtracting from its terms.



On that note, Dr. Nshalla invited this court to find in the negative this issue that the defendant never breached the terms and conditions of the agreements in disputes.

Having carefully heard the rivaling arguments for and against the first issue and considered the evidence on record, with due respect to Mr. Kibatala and his clients, I am constrained in the circumstances of this suit, to answer the first issue in the negative. I will explain. **One**, in order to answer the first issue one has to look at three contracts i.e. Business Management Agreement-**exhibit P1**, Addendum to Business Management Agreement- **exhibit P2** and Agreement for payment of the purchase price of Z.H. POPPE LIMITED- **exhibit D4**. Thus, as rightly argued by Dr. Nsalla that, by 30<sup>th</sup> May, 2017 when exhibit D4 was freely created by parties which was admitted in evidence without any objection, no doubt it speaks loud and acknowledged at paragraphs 4 and 5 that the defendant by then had paid USD.2,343,973.70 and Tshs.996,892,020.85 and USD.734,730.13 which when added is over and above USD.3,000,000.00 agreed to be paid after elapse of 60 days ie on 22<sup>nd</sup> May 2017. **Two**, the arguments by Mr. Kibatala that no bank transfers were tendered and receipts, with due respect to him, are argued out of context because in all agreements

nowhere was stated that the proof of payment was to be proved by way bank transfers and receipts while no any bank accounts details were stated to exist for such transfer. **Three**, as legally observed above, it was the plaintiffs who alleged breach on the part of the defendant but tendered no iota of evidence to substantiate their allegations. Worse enough, their oral testimonies, as correctly argued by Dr. Nshalla and on the strength of case law cited which I am in full agreement in their holding, in my considered opinion, were short of proving breach on the part of the defendant and are against the documentary evidence which they freely signed. **Four**, in the absence of evidence of forgery, cohesion, undue influence, concealments, misrepresentation and fraud in the creation of the said agreements, the plaintiffs cannot deny the documents they freely signed and come up with allegations not proved at all in this suit.

On the totality of the above reasons, I am inclined and constrained to find the first issue in the negative that the defendant never breached the terms and conditions of the agreements freely entered between parties.

This takes me to the second issue couched that "**whether the defendant without cause interfered with affairs of the third plaintiff**"(now **second defendant**)? Mr. Kibatala briefly submitted that this issue should

be answered in the affirmative that the defendant's principal officers and agents unlawfully and unjustifiably invaded the 2<sup>nd</sup> plaintiff's premises at Mbezi Beach but which interference was stopped by police. According to Mr. Kibatata, this fact was pleaded but not rebutted, hence, proven on balance of probabilities.

On the other hand, Dr. Nshalla urged this court not be detained by this issue because the terms of exhibit P1 and P2 are clear that parties agreed the defendant to take over the control, management and operations of the 3<sup>rd</sup> plaintiff (now second plaintiff). According to Dr. Nshalla, it was through exhibit P1 and exhibit P2 that the defendant took over the control, management and operations of the 3<sup>rd</sup> plaintiff (now the 2<sup>nd</sup> plaintiff.), hence, in line with what parties had agreed and that the said company was fully owned by the defendant.

Having carefully considered the rivaling submissions by the learned legal minds of the parties and the evidence on record alongside with the pleadings, with due respect to Mr. Kibatata, this issue must be and is hereby answered in the negative. I am bound to explain. **One**, as correctly argued by Dr. Nshalla, and rightly so in my own considered opinion, the taking over the control, management and operations of the 3<sup>rd</sup> plaintiff

(now 2<sup>nd</sup> plaintiff) was preceded by written agreements freely entered between parties which provided so. **Two**, it is a trite law in our jurisdiction, even without citing any authority that parties are bound by their pleadings. On that same vein, the issue of usurp was pleaded in paragraph 13 of the plaint and rebutted back under paragraph 11 of the written statement of defence, hence, was an issue which needed evidence to prove it but the plaintiffs miserably failed to do so. The submissions by Mr. Kibatala that no single rebuttal on those allegations, are misconceived and calculated to mislead this court and are rejected on their face value as are against the contents of paragraph 11 of WSD. **Three**, worse enough, the submissions of Mr. Kibatala was an admission that no evidence was lead to prove this issue as no single police who intervened was called to support these serious allegations.

That said and done, the second issue must be and is hereby answered in the negative that the defendant without cause interfered with the affairs of the 3<sup>rd</sup> plaintiff (now 2<sup>nd</sup> plaintiff) in the circumstances of this suit.

This trickles this suit to the third issue which was couched that **"whether the defendant and the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs entered into addendum to the Business Management Agreement that turned**



**earlier arrangement i.e Business Management Agreement into Sale Agreement of the sale of shares by the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs into the third plaintiff to the defendant.?”** Mr. Kibatala took his submissions in answering this issue on refuge to section 29 of [Cap 345 R.E.2019] which provides that an agreement is void for its uncertainty. According to Mr. Kibatala, therefore, the Addendum to Business Management Agreement is full of contradictions, uncertainty and legal and factual shortcoming by being horribly drafted, and no court can read any valid contract for any sale of shares by Zachariah Hans Poppe and Caesar Hans Poppe to Mek One Industries Limited into it.

More so, Mr. Kibatala submitted that the Addendum Agreement is at odds with Business Management Agreement as to parties, paragraphs 3 speaks of the properties with Z.H.Poppe Limited, loans was to ECO Bank while evidence shows is to BOA Bank, amount stated is Tshs.1,500,000,000.00 completely at odds with the amount stated in the Addendum Agreement, hence, no nexus capable of certain deciphering, to lead to valid judgement.

On those reasons, the learned counsel for plaintiff strongly submitted that there is no Addendum Agreement, and thus, the 3<sup>rd</sup> issue decided in favour of the plaintiffs.

On the other hand, Dr.Nshalla submitted that this issue should be answered in the affirmative because on 17<sup>th</sup> day of May, 2017 parties signed and executed an Addendum Agreement which expressly changed the main contract from Business Management Agreement to Sale Agreement and that after signing the Addendum there shall be sale of Z.H.POPPE LIMITED 100% and same was further exhibited in **exhibits D2 and D4**. Not only that but also that by signing exhibits D2 and D4 the seller acknowledges to have received full purchase price of Tshs.1,500,000,000.00 as stipulated in clause 3 of exhibit D2.

Further, Dr. Nshalla submitted that at no time, the plaintiff disowned the Addendum nor suggests otherwise and on strong terms urged this court not to entertain oral denial not backed up by any documentary evidence.

Having as well carefully considered the pleadings, the oral testimonies of the respective parties and documentary evidence in this suit, with due respect to Mr. Kibatala, this issue must be and is hereby answered in the affirmative. I will endeavour to explain. **One**, as correctly argued by Dr. Nshalla, and rightly so in my own opinion, the arguments by Mr. Kibatala sound good, but in the circumstances of this suit, remain technical and are calculated and designed to defeat the end of justice in this case. The



Addendum Agreement was tendered in this court without any objection by PW1 and no such questions of being odds, uncertainty and all submitted by Mr. Kibatala were pleaded and cross examined to DW2. **Two**, Mr. Kibatala do not say anything to the other documentary evidence signed as part of the execution of the Addendum Agreement. **Three**, exhibit P2 was preceded by exhibits D1 and D2 which the plaintiffs have no issue with. **Four**, by agreeing with what has been submitted by Mr. Kibatala on this issue will tantamount to accept the change of goalpost because no such pleadings are averred in the plaint and no such question was put to DW2 on uncertainty and odds.

That said and done, issue number three must be and is hereby answered in the affirmative that the Addendum Agreement changed the earlier agreement to sale of shares and same was exhibited by creation of sale of shares agreement.

The fourth issue was couched that **"whether the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs descended into the properties of the defendant business and appropriated them, thus, denying the defendant their own use?"**

Mr. Kibatala in his opening final submissions on this issue took refuge to section 29 of [Cap 345 R.E.2019] that the contract was uncertainty, hence,



unenforceable, for being horribly drafted, no single paragraph in WSD pleaded that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs descended into the defendant's business and properties but according to Mr. Kibatala, the record is to the contrary that it was the defendant who unlawfully invaded the plaintiffs' premises. Further, it was the submission of Mr. Kibatala that the contract had not been performed to fully transfer of ownership onto the defendant.

Mr. Kibatala went on submitting that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs were always *in situ* and the properties were either in 2<sup>nd</sup> plaintiff's names or encumbered to 3<sup>rd</sup> parties. According to Mr. Kibatala, exhibit D62- vehicle registration cards is case point on this issue and Visiga and other landed properties are equally encumbered.

It was further submission of Mr. Kibatala that, a purported purchaser cannot purchase what belongs to 3<sup>rd</sup> parties by way of mortgage unless the mortgagee consents. He cited the case of **Hope Stiftung (Hope Foundation) versus Sisters of St. Joseph-Kilimanjaro Region and 2 others, Land Case No.3 of 2020 HC (Moshi) (unreported)** which insisted the essence of buyer be aware.



In sum, the learned advocate for the plaintiffs strongly urged this court to answer this issue in favour of the plaintiffs.

On the other hand, Dr. Nshalla was brief to the point submitted that the testimony of PW1 clearly showed that the plaintiffs indeed descended unto the defendant's properties and took over possession. According to Dr.Nshalla, the said taking over is captured in paragraph 16 of the plaint.

It was further submissions of Dr. Nshalla that upon signing exhibit P1, exhibit P2 and exhibit D2 the said properties were no longer the plaintiffs' but rather of the defendant's properties. But since the plaintiffs were all out to take advantage of the defendant it is when they muscled in and descended unto the properties of the defendant. Ultimately, the learned advocate for the defendant urged this court to find this issue in the affirmative.

Having carefully considered the pleadings, the oral testimony of the parties and the documentary tendered in this suit, this issue with due respect to Mr. Kibatala and his clients, must be and is answered in the affirmative. I will explain. **One**, as rightly submitted by Dr. Nshalla, and rightly so in my own opinion, the plaintiffs upon execution of exhibits P1, P2, D2 and D4



they handed over control, management and operations of the 3<sup>rd</sup> plaintiff to the defendant and as such relinquished all their legal rights to defendant. **Two**, the arguments by Mr. Kibatata that no single paragraph in the counter claim stated that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs descended into the properties of the defendant, is, but raised out of context because in paragraphs 24 -52 inclusive details facts giving raise to the counter claim and what the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs did contrary to what parties have earlier agreed on exhibits P1, P2, D1, D2 and D4 is loud and despite exhibition of payment of consideration. **Three**, the case of HOPE STIFTUNG (HOPE FOUNDATION) (supra) and its holding is, with due respect to Mr. Kibatata distinguishable because in this suit there was consent of the late Zacharia Han Poppe as evidenced in exhibit D1, and the acknowledgement of payment to Zacharia Hans Poppe is no other than that he consented to sale and much as he received consideration it waters down this line of arguments. **Four**, from the evidence on record, I have no flicker of doubts to say and hold that, the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs in this suit amounts to take the law in their hands at the detriment of the defendant by retaking the control, management and operations of the 3<sup>rd</sup> plaintiff and in my own considered opinion had no justification whatsoever without



notice to retake and without due legal process. The opening of this suit was aimed to recover what was not envisaged of them. This was contrary to the commercial goals and business expectations of the parties, and in particular, the defendant who heavily invested into the 3<sup>rd</sup> plaintiff within a short period of time.

That said and done, the fourth issue must be and is hereby answered in the affirmative that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs descended onto the properties and business of the third plaintiff and now owned by the defendant obtained out of sale agreement and appropriated them thus denying the defendant their use.

Dr. Nshalla had 5<sup>th</sup> issue couched that **"whether the defendant fully paid the amount of shares, purchase as envisaged in the Business Management Agreement and the Addendum?"** But guided by the proceedings of this suit, no such issue was framed and same was raised and argued out of context and this court will not ventured into it for reason already held above in particular in the 1<sup>st</sup> issue.

The usual and last issue number 5 on record was thus couched **"what reliefs are the parties entitled to?"** Bravely, Mr. Kibatala urged this



court to grant reliefs sought by the plaintiffs and proceed to dismiss the counter claim with costs.

On the other hand, Dr. Nshalla strongly urged this court to dismiss the main suit and proceed to grant the counter claim as prayed with costs.

Given the answers on each issue framed and answered above, without much ado, the plaintiffs' suit is akin to fail for want of evidence. Consequently, the same is hereby dismissed. On the other hand, the counter claim is akin to succeed on the strength of evidence on record which I need not repeat to restate herein below and same is hereby granted with costs in the following orders, namely:

1. I declare that the 3<sup>rd</sup> plaintiff (now 2<sup>nd</sup> plaintiff) or 3<sup>rd</sup> defendant (now (2<sup>nd</sup> defendant) in the counter claim is wholly owned by the defendant;
2. I declare that by selling their shares on the 3<sup>rd</sup> plaintiff (now 2<sup>nd</sup> plaintiff) to the defendant, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs ceded all their rights and powers on the 3<sup>rd</sup> plaintiff;
3. I equally order and direct that the transfer of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs' shares to the defendant be registered and regularized;



4. I order and direct that the transfer of the 1<sup>st</sup> and 3<sup>rd</sup> plaintiffs landed properties in favour of the defendant be registered subject to their encumbrances;
5. I order and direct that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs (and any successor of the 1<sup>st</sup> plaintiff) unconditionally vacate at once the defendant's landed properties and hand over the trucks and trailers;
6. I hereby issue permanent injunction against the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs (and any successor to the 1<sup>st</sup> plaintiff), their agents, and assigns from howsoever interfering with the 3<sup>rd</sup> plaintiff (now 2<sup>nd</sup> plaintiff) and defendant's business and properties;
7. I hereby issue permanent order of injunction against the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs (any successor of the 1<sup>st</sup> plaintiff), their agents and assigns from howsoever interfering with the 3<sup>rd</sup> plaintiff (now 2<sup>nd</sup> plaintiff) and defendant's business;
8. Given the facts that breach has been proved by the claimant against the plaintiffs, and the facts as proved was deliberate and not justified at all, consequently guided by the provisions section 73 of the Law of Contract Act,[Cap 345 R.E.2019] I hereby grant the plaintiff general



damages to the tune of USD.500,000.00 also bearing in mind the time that has elapse;

9. The plaintiff shall have costs of this suit

10. The alternative prayers are not granted.

It is so ordered.

Dated at Dar es Salaam this 10<sup>th</sup> day of July, 2023.



A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke, positioned to the right of the court seal.

**S.M.MAGOIGA**

**JUDGE**

**10.07.2023**