IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 173 OF 2021

ALEX RUMISHAEL MLAY..... 1ST PLAINTIFF

HASNA MALIKI MSUYA..... 2ND PLAINTIFF

JUMA SADIKI KIKWESA..... 3RD PLAINTIFF

JULIANA JOHN MSAKI..... 4TH PLAINTIFF

ISIAKA ZUBERI KASIMU..... 5TH PLAINTIFF

VERSUS

TARIQ SAID MACHIBYA..... 1ST DEFENDANT

MR. KUKU FARMERS LIMITED.....2ND DEFENDANT

JUDGMENT

Date of last Order: 13th June, 2023

Date of Judgment: 14th July, 2023

E.E. KAKOLAKI, J.

Before this Court the plaintiffs herein and natural persons having obtained leave of the Court filed a representative suit representing 262 persons including themselves against the defendants above named, the 1st defendant being a managing director to the 2nd defendant a body corporate duly registered under Tanzania laws, engaged in the business among others

raising fund from the contracted customers for running poultry farming scheme/project, sale the products (chicken) and repay back the fund raised plus lucrative profit for the customers. Their claims against the defendants are for a declaration that the 1st and 2nd defendants breached contracts for provision and supply of chicken to plaintiffs as signed in various contracts, payment of Tshs. 3,909,098,300 as principal amount paid by the plaintiff's as initial capital to the defendants, general damages as assessed by the Court, costs of the suit and any other reliefs as the Court deem fit and just to granted.

It is contended by the plaintiff as garnered from the plaint that, the 2nd defendant acting through the 1st defendant set up a business initiatives for collection of fund from the public to run under profit the poultry farming project (farms) located at Kigamboni area and District within Dar es salaam Region. In so doing various agreements (exhibits PE2, PE3 collectively and PE4 collectively) were executed between the 2nd defendant through the 1st defendant as **beneficiary** and the plaintiffs as **financiers** under different contractual terms on the period involved, amount deposited with each defendant and number of chicken covered basing on the financier's financial capacity and agreed profit rate/margin. In all agreements is was their terms

of agreement that, depending on financial capacity each plaintiff would deposit into the 2nd defendant Bank Account Number 0150481394800 the amount of money he/she would want to invest in the scheme/project depending on the number of chicken covered as initial capital, for the period between 120 to 180 days depending on one's agreement, the amount that would attract profit of between 90% up to 100% depending on the period covered under the agreement. For those whose agreement period was 180 days would be entitled to 100% profit of the initial capital invested/deposited with the defendants. The financier was at liberty to execute as many agreement as she/he would wish to and at any time and agreed period of either 120 days/four (4) or 180 days/six (6) months for the deposited amount to generate 90% and 100% profit. It appears the said agreements were executed between the periods of January, 2020 to June, 2020, in which it was expected profits for the invested fund/initial capital would be reaped plus capital in between June, 2020 to December, 2020. However, it turned out that the same were not paid to the plaintiffs as expected or agreed hence the present suit in which the plaintiffs are seeking for the reliefs as demonstrated above.

Upon being served with the plaint, the defendants denied the plaintiffs' claims on the ground that, the plaintiffs have no cause of action against them as all the averments against them whether jointly, severally or otherwise are frivolous, vexatious and baseless. And that, the 2nd defendant is a separate entity operating and carrying out her business independent of the 1st defendant. It was their defence that, the alleged agreements if any were frustrated by the Court of law when ruled out to be illegal when the 1st defendant was arraigned before the Resident Magistrate Court of Dar es salaam at Kisutu sometimes August, 2020, in Criminal Case No. 60 of 2020, convicted and sentence for offences of Conducting and Managing Pyramid Scheme, Contrary to section 171A(1) and (3) of the Penal Code, [Cap. 16 R.E 2019] and Accepting Deposits from General Public Without Licence, Contrary to section 6(1) and (2) of the Banking and Financial Institutions Act No. 5 of 2006, before a total amount of Tshs. 4,889,445,534.54 from Bank Account No. 0150481394800 and Tshs. 388,818,509.54 from Bank Account No. 0150444196500 all maintained with CRDB Bank, Water Front Branch and Tshs. 178,216,415.82 Account No. 015248653700 maintained with CRDB Bank Viva Tower Branch, were all confiscated as proceeds of crime and transferred to Account No. 9921169817 maintained by Bank of Tanzania

(BOT) in the name of DPP. Following that, conviction and confiscation of the said money deposited by the plaintiffs as proceeds of crime as per the charge sheet, proceedings and DPP consent exhibits DE 1 and DE4 collectively and plea agreement and court order exhibits DE2 and DE3, the defendant contended that, plaintiffs had no any valid claim of right against them for being engaged in the pyramid scheme and for that matter there was no agreements capable of being either discharged and/or breached for being illegal ab intio. Otherwise they called the plaintiffs to strict proof of their claims.

In this matter both parties were represented and the conclusion of pleadings and upon failure of parties to resolve their dispute during mediation process this Court proceeded to frame four (4) issues that would lead it to determine their disputes. These are going thus:

1. Whether there was valid contracts between the plaintiffs and the defendants.
2. If the 1st issue is answered in affirmative, whether there was breach of contracts by the defendants.
3. If the 2nd issue is answered in affirmative, whether the plaintiffs suffered damages.

4. What reliefs are the parties entitled to?

It is settled principle of the law in proof of civil matters as promulgated under the provisions of sections 110(1) and (2), 112 and 3(2) of the Evidence Act, [Cap. 06 R.E 2022], that whoever alleges existence of a certain fact must prove its existence and the standard such proof is on the balance of probabilities or preponderances. See also the cases of **Anthoni M. Masanga Vs. Penina (Mama Ngesi and Another**, Civil Appeal No 118 of 2014, **Paulina Samson Ndawavya Vs. Theresia Thomasi Madaha**, Civil Appeal No. 53 of 2017 and **Berelia Karangirangi Vs. Asteria Nyalwambwa,** Civil Appeal No. 237 of 2017, (both CAT- unreported). Equally it is trite law that, parties are bound by their pleadings the rationale being to bring the parties to an issue and not to take the other party by surprise. See the cases of **Charles Richard Kombe t/a Building Vs. Evarani Mtungi and 2 Others**, Civil Appeal No. 38 of 2012 and **Astepro Investment Co. Ltd Vs. Jawinga Company Limited**, Civil Appeal No. 8 of 2015 (both CAT-unreported). This Court will therefore be guided by the above principles in deciding this matter.

As alluded to above it is the plaintiff's duty to prove his/her case to the required standard. In discharging such noble duty, in the present suit the

plaintiffs procured in Court four witnesses, Alex Rumishael Mlay (PW1), Juma Sadick Kikwesa (PW2), Juliana John Msaki (PW3) and Hasna Malik Msuya. They also relied on five documentary exhibits namely order for leave for filing representative suit exhibit PE2, various agreement between the plaintiffs and defendants as PE2, PE3 collectively and PE4 collectively and various receipts issued to the plaintiffs by the defendants after payment of initial capital as exhibit PE5 collectively. The defendants' defence was marshalled through a sole witness by the name of Tariq Said Machibya (DW1) whose evidence was corroborated with four documentary exhibits as mentioned above in the facts of the case. At the end of the trial both counsel Mr. Haji Mlosi for the plaintiffs and Norbert Mlwale for the defendants filed their final submission to assist the Court arrive at the just decision in which I am very much grateful for the efforts employed by them. In this judgment I am not intending to reproduce the entire evidence as adduced but I will consider the relevant one together with the submissions in the course of answering the raised issues.

Having spared enough time to go through the evidence rendered by both parties and accord the submissions the deserving time, it is now opportune for me to determine the four raised issues. However, before venturing into that business I wish to state from the outset that, from both parties' oral

evidence and plaintiffs' tendered exhibits PE2, PE3 collectively, PE4 collectively and PE5 collectively as well as their submissions it is uncontroverted fact that, as per exhibits PE2, PE3 collectively and PE4 collectively 262 plaintiffs as financers at different times between January, 2020 and June, 2020, executed 344 agreements with the 2nd defendant represented by the 1st defendant as beneficiary and deposited initial capitals into 2nd defendant's bank account for financing poultry farming scheme/project to be undertaken by the 2nd defendant in which financiers would benefit the profit of 90% up to 100% of their initial capitals depending on the period of each category of agreement as the first category was for 120 days and 180 days for the second category. What remains in dispute is whether there was valid contracts between the plaintiffs and the defendants, the issue which this Court seeks to address and consider first.

In response to that issue, it was PW1's evidence that, together with his fellow plaintiffs in between January, 2020 and April, 2020 deposited into 2nd defendants CRDB bank account Tshs. 2,098,450,000/= as initial capital in which the profit/interest ranging from 60% to 90% depending on category of agreement/contractual period of four (4) and/or six (6) months was Tshs. 1,810,832,300/= thus making a total claim of Tshs 3,909,098,300. And some

of them paid cash to the 2nd respondent and issued with receipts and agreements. He informed the Court that, it was their terms of agreement that, after depositing the initial capital into 2nd defendant's bank account, plaintiffs would be issued with receipts and contracts. And that, the defendants would buy chicks, raise them and supervise the sales hence share the realized profit to the investor as per the agreed percentage on each agreement. According to him the defendant breached the terms of agreements as none of the plaintiffs received his/her either initial capital or the profit. He thus urged the Court to assist them get back their contractual money.

When subjected to cross examination by Mr. Mlwale PW1 said, in his part paid Tshs. 4,200,000/- into CRDB bank account No. 0150461394800 operated in the name of the 2nd Defendant. On further cross examination and when referred to paragraph 6(v) of the written statement of defence and asked he had read it and whether was aware their deposited money was forfeited, the witness responded that, was informed by their advocate of the said forfeiture of defendants' money from Bank account No. 0150481394800 in favour of the DPP, though together with his colleagues never inquired the

DPP or BOT as to why they took that money for not being party to the case in which the said order originated from.

PW2 on his part gave similar account of evidence to that of PW1 and added that, on his part in April 2020 invested with the 2nd defendant Tshs. 10,230,000/= paid into Bank account No. 0150481394800 in which he would receive a profit of Tshs. 9,207,000 after 120 days. As he executed an agreement to that effect the same was tendered and admitted as exhibit PE2. It is this witness who also tendered other four agreements for four other above named plaintiffs and the rest of the plaintiffs and the receipts issued to them in confirmation of the payments made as exhibits PE3 collectively, PE4 collectively and PE5 collectively respectively. He also testified that, despite of plaintiffs executing part of their obligations under the contracts the defendants breached the terms of agreement as up to the time of his testimony they were never paid a single penny of the contractual amount and prayed for court's intervention to have their initial capital restored to them.

When referred to annexure MRK 2 to the written statement of defence, proceedings in Criminal Case No. 60 of 2020 and invited by Mr. Mlwale for the defendants to answer questions, PW2 conceded that, CRDB Bank

account No. 0150481394800 in the name of Mr. Kuku Farmers Limited is mentioned therein, though denied that the money therefrom was not forfeited. Further to that, he confirmed that, they were claiming for interest/profit and capital invested with the defendants.

Next in testimony was PW3 who like PW2 corroborated evidence of PW1 on the terms of agreement and added that, on her part she had invested Tshs. 10,000,000/= for ten (10) months for 1,429 chicks. And that, she decided to so invest after coming across adverts through different media and social media where comedians like JOTI were used to sensitive and attract the general public to join the scheme/project. On cross examination this witness told the Court that her decision to invest with the defendant resulted from attractive and lucrative profit of 100% of the invested initial capital, hence invested Tshs. 10,000,000/= in which she was to reap Tshs. 20,000,000/= within 120 days. On further cross examination whether which such lucrative profit believed the project/scheme was real PW3 said, she so believed though did not see or find any licence or permit from BOT authorizing the defendants to collect or receive money from members of the public for facilitating the project. She also admitted that, the CRDB Bank account No. 0150481394800 in the name of Mr. Kuku Farmers Limited in which she

deposited her money is mentioned in Economic Case No. 60 of 2020, while denying the money therein to have been forfeited to the government as that transaction does not concern her.

Lastly in testimony was PW4 whose evidence was similar and corroborated that of PW1, PW2 and PW3 as she also deposited her money Tshs. 4,500,000/- in CRDB Bank account No. 0150481394800 in the name of Mr. Kuku Farmers Limited on the promise to receive a profit of 100% of the invested money. Like other witnesses she prayed the Court to order for refund of their money, payment of general damages and costs of this suit. When referred to the proceedings in Eco Case No. 60 of 2020, PW4 confessed that, the account in which she deposited her money was mentioned therein and that, it is true as per the said proceedings and order of the Court the deposited money was forfeited to the government and transferred to the DPP's account. And further that, from the charge sheet the 1st defendant had no authority to collect money from the public, though she maintained that, it is not true that defendants failed to refund their money on the ground of forfeiture as she did not enter into agreement with the DPP but rather the defendants.

On the defence side as alluded to above in the facts of the case, the 1st defendant and managing director to the 2nd defendant testified as DW1 and sole witness. Principally this witness did not deny to have executed agreement with the plaintiffs for and on behalf of the 2nd defendant, contracts which attracted profit margin of 90% up to 100% of the invested capital depending on the category of contract and agreed period and other terms in which their initial capitals were deposited in the bank accounts. He said, as managing director of the 2nd defendant could not discharge company's obligations under the contracts for purchasing chicks, raising and selling them on profits following freezing of the two company's accounts by the Financial Intelligence Unit (FIU) in March 2020, though the frozen accounts in total were five. And that, thereafter he was indicted before the Resident Magistrate Court of Dar es salaam at Kisutu in Economic Case No. 60 of 2020 facing seven counts in which two of them were Conducting and Managing Pyramid Scheme and Accepting Deposits from General Public Without Licence, and incarcerated at Keko prison for 4½ months, the act which frustrated and/or affected performance of terms of agreements of the contracts at issue as in December, 2020 was forced to opt for plea bargaining where the charges against him were concluded after being convicted in the

1st and 2nd counts and sentenced accordingly. Copies of charge sheet and plea agreement were admitted as exhibits DE1 and DE2 respectively. This witness went on to inform the Court that, as part of the sentence meted on him a total amount of Tshs. 5,456,480,459/= from Bank Accounts No. 0150481394800 and No. 0150444196500 all maintained with CRDB Bank, Water Front Branch in the name of Mr. Kuku Farmers Limited and Account No. 015248653700 maintained with CRDB Bank Viva Tower Branch in the name of Tariq Said Machibya, was confiscated as proceeds of crime and transferred to Account No. 9921169817 maintained by Bank of Tanzania (BOT) in the name of DPP. To corroborate his testimony DW1 tendered in Court the forfeiture order and proceedings in respect of Economic Case No. 60 of 2020, facts of the case and DPP's consent which were admitted as exhibits DE3 and DE4 collectively respectively. Further to that, DW1 testified he was ordered to pay fine of 2 million and 3 million respectively for both counts he was convicted with, in which he managed to pay and freed. According to him the charges that faced him of Conducting and Managing Pyramid Scheme, was perpetrated by the 2nd defendant and the plaintiffs hence the defendants were not in a position to execute the said agreements for being tainted with illegality before the eyes of law. He therefore urged

the Court to dismiss plaintiffs' claims as the Court had already declared the agreements illegal through criminal charges.

When subjected to cross examination DW1 confessed that, plaintiffs were attracted to invest in the scheme/project following adverts in different media including social media and that the money collected from the public was intended to be invested in the poultry farming project on the promise that financiers would be entitled to receive interest/profit. On further cross whether in the particulars of offence the said agreement were mentioned and declared illegal DW1 said, it was not mentioned so but that was inferred from the statement in the particular of offence.

From DW1's testimony it is Mr. Mlwale's submission on the first issue that, the purported agreement between the plaintiffs and 2nd defendant were illegal and unenforceable in law for contravening laws of the land. He said, in terms of section 2(1)(h) of the Law of Contract Act, [Cap. 345 R.E 2019] there was no valid contract as a contract is *an agreement enforceable by law*. In the present matter he argued, as per the particulars of offence in the 1st count for conducting and managing pyramid scheme exhibit DE1, in which the 1st defendant and 2nd defendant's director pleaded guilty to during plea bargaining and convicted with accordingly as proved in exhibit DE4

collectively, the defendants' act of collecting money from the public on the promise to invest it in poultry farming project in return of interest/profit of 70% up to 90% of the invested capital, in law constituted illegal contracts for contravening the provisions of section 171 A (1) and (3) of the Penal Code [Cap. 16 R.E 2019] [Now R.E 2022], prohibiting a person to *conducts or manages a pyramid scheme*. Further to that, he argued the contracts were illegal in terms of section 23(1)(a) and (b) of the Law of Contract Act, as it is not in dispute that even the consideration is illegal due to the uncontroverted fact that, the interest between 70% and 90% of the initial capital of the money invested for four (4) and six (6) months by the plaintiffs, when given all commercial consideration, is greater than the money or the return on investment of the deposited amount. According to him all 339 agreements by the plaintiffs in the eyes of the law were illegal hence unenforceable for contravening penal laws and the provision of section 6 (1) and (2) of the Banking and Financial Institutions Act No. 5 of 2006 for Accepting deposit from the general public without licence as indicated in the second count of the charge sheet exhibit DE1. Relying on the cases ***Berg Vs. Sadler and Monroe*** [1937] 2 KB. 158 and ***Collins Vs. Blantern*** *[1767] 2 Wils 341 at page 350*, as quoted in the book of **Cheshire and**

Fifoot's, *Cases on the Contract Law* 7th Ed, 1977 at page 280, Mr Mlwale invited this court to find that, money paid out of illegal contracts is irrevocable unless the party substantiates his claim without involving such illegality, hence conclude that, the first issue is answered in negative.

On his side Mr. Mlosi is of the opposite view submitting that, defendants' reliance on Economic Case No. 60 of 2020, does not exonerate them from liability of discharging their obligations under the contracts/agreements on the ground that, **one**, the 1st defendant was charged on his personal capacity, **second** plaintiffs were not parties to the said charge, **third**, the contracts between plaintiffs and defendant were not declared illegal in the said criminal proceedings, **fourth**, during cross examination DW1 admitted that, no order was issued by the criminal court declaring the said contracts illegal and **fifth** that, in all circumstances admission by the 1st defendant during plea bargaining that, he accepted deposits from the public without licence was done at his convenience to discharge himself from the criminal charges that were facing him, as when subjected to cross examination admitted that it is the same licences there were valid during collection of funds from the plaintiffs which are still in use to date in furthering 2nd defendant's operations or business. According to Mr. Mlosi existence of the

conviction and forfeiture orders in Economic Case No. 60 of 2020 against the 1st defendant cannot act as a bar for facing liabilities in civil matters as it was held in the case of in **Charles Christopher Humphrey Richard Kombe t/a Humphrey Building Materials Vs. Kinondoni Municipal Council**, Civil Appeal No: 125 of 2016 (CAT-unreported). In his view, in terms of section 10 of the Law of Contract Act, the contracts entered by the plaintiffs and 2nd defendant were valid contracts as were made with **free consent** of both parties, with law full consideration for investing initial capital on the promises of receiving 90% or 100% profits and for a law full object at the time their execution for running poultry farming scheme/project in which the 2nd defendant was responsible for buying, raising and selling chickens on their behalf and later on share the profits with plaintiffs, before the 1st Defendant was subjected to criminal Economic Case No. 60 of 2020. He therefore invited the Court to find the first issue is answered in affirmative.

Having exercised my mind and taken considerable time to consider both parties' contending arguments and revisit evidence adduced in Court during the trial as well as the provisions of the law and case laws relied on by both parties in respect of this issue, I tend to agree with Mr. Mlosi that it is a principle of law as rightly stated in the case of **Charles Christopher**

Humphrey Richard Kombe t/a Humphrey Building Materials (supra) that, neither conviction nor acquittal in criminal case binds a trial court in a civil suit and vice versa on similar allegations. In arriving to that principle the Court of Appeal while interpreting the provisions of section 43A of the Evidence Act, [Cap. 6 R.E 2019] [Now R.E 2022], made reference on the relevance of judgments in criminal trials to subsequent civil proceedings as obtained in the selected cases in India by the learned authors of **Sarkar's Laws of Evidence**, 18th Edition, M.C. Sarkar, S.C. Sarkar and P. C. Sarkar, published by Lexis Nexis, where an illustration from a suit on malicious prosecution was extracted from page 1167 stating thus:

> *"**The order of the criminal court is admissible to prove acquittal, but the conclusions drawn are not binding though the judgment may be looked at for seeing the circumstances which resulted in acquittal.** ... In deciding a suit for damages for malicious prosecution the duty of the civil court is to consider the evidence independently from the judgment of the criminal court and to come to its own finding if there is reasonable and probable cause."* (Emphasis supplied)

What I gather from the principle in above cited case and the illustrations from **Sarkar's Laws of Evidence** (supra) is the unambiguous fact that,

apart from the criminal order lacking binding effects to trial court when entertain civil matters, the circumstances in which the order or judgment was arrived at might be looked into by the Court to draw any conclusion regarding dispute before it. It is from that premises I now proceed to inquire into the circumstances under which Mr. Mlwale relying on the charge sheet (exh. DE1) facts of the case (exh. DE2), Court order and proceedings in Economic Case No. 60 of 2020, before the Resident Magistrates Court for Dar es salaam at Kisutu, exhibits DE3 and DE4 respectively, is seeking to impress upon the Court that, the plaintiffs' agreements/contracts with the defendants were illegal in the eyes of law for contravening penal laws hence unenforceable in law.

It is an established definition under section 2(1)(h) of the Law of Contract Act that a contract is *an agreement enforceable by law*. It is also settled law under section 10 of the Law of Contract Act that, a valid contract is that one, made by free consent of parties, second, the said parties are competent to enter into the said contract, third, the agreement must have consideration which is lawful in law, fourth, the said contract must be for lawful object and fifth, it should not be expressly declared void. Section 10 of the said Law of Contract Act reads:

> "S.10. *All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void".*

In this case save for consideration of the contracts under scrutiny which Mr. Mlwale submits were illegal hence rendering them void and unenforceable in the eye of the law the rest of the ingredients for rendering plaintiffs' agreement lawful contract were obtained. To the contrary Mr. Mlosi holds opposite view submitting consideration was lawful as plaintiffs at the time of executing the disputed agreements invested their initial capitals on the promises of receiving 90% or 100% profits and for a law full object of running poultry farming scheme/project through the 2nd defendant who was responsible for buying, raising and selling chickens on their behalf and later on share the profits with them. Looking at the consideration in which the 1st defendant acting for and on behalf of the 2nd defendant collected initial capitals from the plaintiffs on the promises to run poultry farming scheme/project for purchasing chicks, raise them and sell chicken products and issue a profit of 90% and 100% out of their initial capitals within four (4) and six (6) months depending on the period of agreement as submitted by Mr. Mlosi, I find the said consideration was illegal in law thus rendering

all agreements invalid and unenforceable in law in terms of section 23(1)(a) of the Law of Contract Act for bring prohibited by the law. My finding is premised on the ground that, the said collected money from the plaintiffs (public) and the expected huge profit when given all commercial considerations is greater than the money or return on the investment of the money collected, the act is prohibited by the law and constitutes a criminal offence of **Conducting and Managing Pyramid Scheme**, under section 171A(1) and (3) of the Penal Code, [Cap. 16 R.E 2002] [Now R.E 2022], the offence which the 1st defendant pleaded guilty to, convicted and sentenced accordingly before the said collected money was forfeited to the government through DPP's account maintained with BOT as exhibited in exhibits DE1,DE2, DE3 and DE4 collectively. For the purposes of clarity I find it apposite to reproduce contents of the first count demonstrating the ingredients of the said offence of **Conducting and Managing Pyramid Scheme**, in which the 1st defendant was booked with:

1ST COUNT

STATEMENT OF OFFENCE

CONDUCTING AND MANAGING PYRAMID SCHEME,

Contrary to Section 171A (1) and (3) of the Penal Code (Cap 16 R.E 2002).

PARTICULARS OF OFFENCE

Tariq Said Machibya*, on divers dates between January 2018 and May, 2020 at various places within the City and Region of Dar es Salaam, did conduct and manage a pyramid Scheme to wit,* ***collecting money from the public on promise that it will be invested in poultry farming project and individuals who invested the money would be entitled to receive the interest of 70% of the initial capital for the money invested for four months and 90% of the initial capital for money invested for six months, the sum of the money which given all commercial considerations is greater than the money or return on the investment of the money collected****. (Emphasis supplied)*

From the above excerpt of the first count of the charge that faced the 1st defendant whom I do not need cite any law to establish that, being a managing director to the 2nd defendant under the corporate veil was responsible to answer charges related to the 2nd defendant's business, it is noted without difficulties that, the act of collecting money from the public on the promise of being invested in poultry farming project and return of lucrative interest or profit to individuals who invested the money as initial capital at the rate of 70% for four (4) months and 90% for six (6) months as also rightly demonstrated by Mr. Mlosi in his submission, constituted a

criminal offence of Conducting and Managing Pyramid Scheme under the section 171A(1) and (2) of Penal Code. I so view as it is beyond human comprehension for one to expect generation of such huge profit margin out of the business not managed by him/herself. The plaintiffs in my opinion ought to know or ought to have known that, if at all the business was real, which I do not find to be there would be running costs which at any rate could not have earned them such imaginary high profit, apart from being a pyramid scheme in which they were party to. I therefore do not subscribe to Mr. Mlosi's submission that, the 2nd defendant and plaintiffs were not involved in the offence of Conducting and Managing Pyramid scheme as the mere fact that, they were not charged personally or reflected in the charge sheet does not take away the fact that they were involved in commission of the said offence as the agreements were executed between them through the 1st defendant as managing director of the 2nd defendant.

Similarly as rightly submitted on by Mr. Mlwale, in the second count the 1st defendant was booked with the offence of **Accepting Deposits from the General Public Without Licence**, Contrary to section 6(1) and (2) of the Banking and Financial Institutions Act, No. 5 of 2006, which provides that:

6.–(1) *A person may not engage in the banking business or*

otherwise accept deposits from the general public unless that person has a license issued by the Bank in accordance with the provisions of this Part.

(2) *Any person who contravenes the provisions of this section shall be guilty of an offence and on conviction shall be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.*

The particulars of offence was to the effect that and I quote from exhibit DE1:

PARTICULARS OF OFFENCE

TARIQ SAID MACHIBYA*, on diverse dates between January, 2018 and May, 2020 at various places within the city and region of Dar es salaam, accepted deposits amounting to Tanzania Shillings Seventeen Billion (TZS 17,000,000) from the Public without Licence.*

In this case there is no dispute from the evidence of both parties PW1, PW2, PE3, PW4 and DW1, at different time within January 2020 to April 2020, the plaintiffs deposited some money with the 2nd defendant through the 1st defendant in CRDB bank account No. 0150481394800 and the 2nd defendant accepted Tshs. 2,098,450,000/= from the plaintiffs as initial capital for running poultry farming scheme/project. It is the said amount of money in

which the 2nd defendant through her managing director, the 1st defendant collected from the public (plaintiffs) without licence as demonstrated in the second count, the offence which the 1st defendant pleaded guilty to, convicted and sentenced accordingly as per the exhibits referred above when deliberating on the first count. Mr. Mlosi argues that, there is no evidence indicating that, the defendants at the time of execution of the agreement with the plaintiffs had no valid licence to collect or accept deposit from the public (plaintiffs) as when cross examined DW1 admitted that, it is the same licences the 2nd defendant possessed at that time which are still in use in running the project currently. With due respect I am not prepared to accept Mr. Mlosi's submission as the onus of proving the defendants possessed licences for accepting deposits from the public at the time of execution of agreements with the plaintiffs, in terms of section 110(1) and (2) and 112 of the Evidence Act and also stated in the cases of **Anthoni M. Masanga** (supra), **Paulina Samson Ndawavya** (supra), **Paulina Samson Ndawavya** (supra) and **Berelia Karangirangi** (supra), lies on the plaintiffs who sought to prove to the Court's satisfaction that the said contracts/agreements were valid, but they failed to discharge such duty. I so find as the 1st defendant and managing director of the 2nd defendant who

pleaded guilty to and convicted with the offence of accepting deposits from public without licence, at any rate could not have possessed such licences at the time of execution of contracts with the plaintiffs, as it is obvious if they had any he would have refrained from pleading guilty to the said charge.

Further to that, there is evidence as found in exhibit DE2, an order in Economic Case No. 60 of 2020, to the effect that the deposited money by the plaintiffs in the 2nd defendant account No. 0150481394800 which had a total amount of Tshs. 4,889,445,534.54 forms part of the money that was forfeited to the government as proceed of crime and transferred to Bank Account No. 9921169817 maintained at BOT in the name of the Director of Public prosecution. Admittedly this piece of evidence stems this court's finding that, the agreements between the plaintiffs and defendants were illegal and unenforceable in the eyes of the law for contravening the laws as their initial capital deposited with the 2nd defendant's account No. 0150481394800 were declared by the court to be illegal and thus proceeds of crime before the same was forfeited to the government.

In view of the above I am satisfied and it is the findings of this Court that, as consideration to the said agreements between the plaintiffs and defendants was rendered illegal by operation of law as demonstrated above,

all agreements were illegal and unenforceable in law. Hence the first issue is answered in negative.

As the first issue is answered in negative, I think the second issue as to whether there was breach of contracts by the defendants need not detain this Court for being rendered redundant on the ground that, illegal and unenforceable contracts in law cannot be breached and under such circumstances a party cannot successfully establish claim(s) if any unless it is substantiated without disclosing such illegality. It was held in the case of ***Berg Vs. Sadler and Monroe*** (supra) as quoted in the book of **Cheshire and Fifoot's**, ***Cases on the Contract Law,*** 7th Ed, 1977 at page 280, which position of the law I find to be sound law hence adopt it, that:

> *"…money paid under the contract which is illegal in that it involves conduct of criminal, immoral or otherwise reprehensible character is irrecoverable if the plaintiff cannot substantiate his claim without disclosing such illegality."*

From the above cited principle of law, in the present matter since the plaintiffs agreements have been already found to be invalid and unenforceable in law and given the fact that, plaintiffs have failed to substantiate their claims that agreements were valid without disclosing their

illegality obtained in the consideration, I find the second issue therefore is also answered in negative.

Similar response is obtained in the third and fourth issues as to whether the plaintiffs suffered damages and whether are entitled to any sought reliefs, as plaintiffs cannot be held to have suffered any damages to entitle them to obtain the reliefs sought under courts' assistance out of unlawful/invalid contracts, as it was held in the case of ***Collins v. Blantern*** (supra) which is also quoted in the book of **Cheshire and Fifoot's**, ***Cases on the Contract Law***, 7th Ed, 1977 at page 283, where it was observed thus:

> *"…whoever is a party to an unlawful contract, if he hath once paid the money stipulated to be paid in pursuance thereof, he shall not have the help of the Court to fetch it back again…"*

In the premises and for the reasons demonstrated above, this Court is satisfied that, plaintiffs have failed to prove their claims to the required standard warranting grant of the prayed reliefs. Consequently the only available remedy to them is dismissal of the suit, which order I hereby enter.

Given the nature of the case, I order each party to bear its own costs.

Order accordingly.

DATED at Dar es salaam this 14th day of July, 2023.

E. E. KAKOLAKI

JUDGE

14/07/2023.

The Judgment has been delivered at Dar es Salaam today 14th day of July, 2023 in the presence of Mr. Haji Mlosi, advocate for the plaintiffs, the 2nd, 3rd and 4th defendants, Mr. Deus Tarimo, advocate for the 1st and 2nddefendants and Mr. Oscar Msaki, Court clerk.

Right of Appeal explained.

E. E. KAKOLAKI

JUDGE

14/07/2023.