IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM SUB – REGISTRY
AT DAR ES SALAAM
CIVIL CASE NO. 200 OF 2022

ABDUL OMAR..... 1ST PLAINTIFF

MAHADA AHMED.....2ND PLAINTIFF

VERSUS

MOHAMED IBRAHIM OSMAN .....DEFENDANT

JUDGMENT

Dated: 15th & 22nd May, 2024

KARAYEMAHA, J.

This is a judgment on a suit preferred by the plaintiffs in which the following reliefs are prayed:

(i) *A declaration by this Honourble Court that the defendant has breached the terms of Memorandum of Understanding.*

(ii) *An order for payment of the sum of United States Dollars Four Hundred Seventy-four Thousand One Hundred Forty-Two and Fifty-Nine Cents (USD 474,142.59) only being plaintiffs' five years share of profit pursuant to the business proposal;*

(iii) *An order against the defendant for payment of general damages;*

(iv) Costs of this suit

(v) Any further orders and relief(s) the Honourable Court may deem fit and just to grant.

Without sounding banal, but in order to escalate the course that the matter will take, it is imperative that facts constituting the parties' contestation be stated, albeit in brief terms. Sometimes in October, 2016 the defendant shared a business proposal to team up with the plaintiffs to set up a clearing business with an investment capital of United States Sevent thousand dollars (USD 70,000). Essentially, this proposal was sent through an e-mail dated 1/10/2016 (exhibit PE1). Subsequently, on 22/12/2016, the defendant through an email exhibit PE2 shared a business summary comprised of two years revenue target and two-year profit target. Plaintiffs were informed that the defendant was about to open an office in January, 2017. Relying on that invitation and representation, plaintiffs decided to team up with the defendant to set up and run clearing business. To govern their relationship and contributions properly, parties executed the Memorandum of Understanding (hereinafter the MoU). It was expected as per the terms and business proposal and projections that after injecting the capital, the business would generate a profit of USD 154,366.80 per year out of

which the plaintiffs' share would be USD 77,183.40 per year. Acting on that lucrative business plan, parties signed the MoU. At the same time, whereas the 1st plaintiff contributed USD 20,000.00, the 2nd plaintiff contributed USD 23,000.00. On his part, the defendant contributed USD 23,000.00.

It is further claimed that after receiving the capital, the defendant started the business styled as Mruhutu Freight Forwarders and opened an office at City Mall Building 2nd Floor Right Wing office number S21 in Dar es Salaam. Later the defendant started operating the business as Ample Freight and Trading Ltd, incorporated in 2017 but located in the same office. Subsequently, plaintiffs being part of the business, requested information from the defendant with no avail. Surprisingly, in February, 2022 the defendant unilaterally decided to return capital contributions to the plaintiffs. Apparently, no profit was shared.

The plaintiffs' lamentation is that the defendant used their money and generated income for about five years to which the plaintiffs are entitled to a share of the rate of return on their money in terms of the business projections as represented by the defendant.

Three issues were framed at the commencement of the trial to guide the proceedings. they are:

1. Whether there was an agreement between the plaintiffs and the defendant.
2. Whether there was a breach of the agreement by the defendant.
3. To what reliefs are parties entitled to.

On 19/4/2023, this Court ordered this suit to proceed *ex-parte* against the defendant because all efforts to procure his appearance proved futile.

Disposal of this matter will follow the order in which the issues were framed. With respect to the first issue, the point for determination is whether there exists any evidence to the effect that the plaintiff and the defendant entered into a contract to jointly invest USD 70,00 in the clearing business. Abdul Omar who featured as PW1, testified how the plaintiffs met the defendant in 2010 through financial transactions, glued their relationship which later progressed into friendship. PW1 testified further that in October, 2015, the defendant e-mailed him proposing a joint business of clearing and forwarding and indicated the capital needed to be USD 70,000. To bolster his evidence PW1 tendered the e-mail print out dated 1/10/2016. The same was admitted as exhibit PE1.

PWI averred further that on 22/12/ 2016 he received another e-mail from the defendant and this time it was also copied to the 2nd plaintiff. According to PW1, the same contained projections, particularly two-year revenue projections and two-year profit projections and when the office would be opened, to wit, January, 2017. The copy of e-mail and excel were admitted as exhibits PE2 and PE3. PW1 testified further that plaintiffs were persuaded by the projections on profit. Therefore, on 13/1/2017 they entered into MoU with the defendant and was witnessed by a lawyer. The MoU was tendered and admitted as PE4.

In his final submission Mr. Leonard Masatu, learned counsel for the plaintiffs, held the view that there was an agreement between the parties. Citing section 10 of the Law of Contract Act, [Cap. 345 R.E 2019], the learned counsel cemented his view that there was consideration of USD 154,366.80 which is an important ingredient of a valid contract. He invited this court to visit the decision in **Mr. Mathias Erasto Manga v. M/S Simon Group(T) Limited,** Civil Appeal No. 43 of 2013 [2014] TZCA 281 (CAT-Arusha) and find that there was an offer, acceptance and lawful consideration. I agree with him.

I have closely examined exhibits PE1, PE2, PE3 and PE4. No doubt that exhibit PE1 and PE2 convey a message that the defendant invited the plaintiffs to an agreement to set up clearing and forwarding business. The evidence led by PW1 brings forth a picture that the projections, particularly two-year revenue projections and two-year profit projections, lured the plaintiffs to accept the proposal. Finally, the triple signed the MoU, exhibit PE4. Going through exhibit PE4, it is abundantly clear that they agreed first to invest USD 70,000 in the project and second, each had to contribute. Item 3 indicates that the defendant would own 50% of the company while the plaintiff each would own 25% in the company. The defendant was responsible for a day-to-day operation of the company.

Fairly, the contract reveals that the MoU was made by the free consent of the parties competent to contract, consideration was lawful with lawful object and cannot be declared void. There is no evidence intimating that the contract between parties suffered from less of any of these elements.

In view of the discussion above, I hold the view that the plaintiffs have been able to conform to the requirements of sections 110 and 111

of the Evidence Act, [Cap. 6 R.E. 2022] (hereinafter the Evidence Act) which cast the burden on the plaintiffs to prove the assertions that they had a contract with the defendant.

Reviewing the evidence of PW1, and upon a dutiful scrutiny of exhibits PE1, PE2, PE3 and PE4 submitted in Court, there can hardly be any doubt that the plaintiffs and the defendant meditated and finally entered into a contract to set up a clearing and forwarding business. I am also strengthened by the evidence of PW1 to hold that plaintiffs contributed the capital needed to commence the business. I say so because PW1 is entitled to credence and I have no reason to doubt him. This answers the first issue in the affirmative.

The next issue is intended to ascertain as to whether the defendant breached the contract. Though Mr. Masatu did not hit on top of the nail, it appears he bidden this Court to hold that the defendant breached the MoU. I entirely agree with him. I am attracted to hold that way because exhibit PE2, PE3 and PE4 clearly indicates that parties were setting up a joint business to gain profit. Vividly, as per exhibit PE3, the income projection statement, shows that gross profit per year would accumulate to USD 154,366.80. The uncontested evidence from PW1,

informs this Court that the plaintiffs were not given their share which amounted to USD 77,183.40 per year for five years.

What is construed as breach of MoU, the defendant failure or refraining from performing his contractual obligation of preparing quarterly report, including company activities and financial statement. This is the requirement of item 5 of the MoU which also intended the defendant to share the said to the rest of the two investors. This was considered by the plaintiffs as an act of reneging the terms of MoU and it triggered a recovery action. I respectfully concur with them.

A further breach of the MoU was the return of the capital in February, 2022. This was not contemplated during the process of planning to have a joint business with a contemplation of generating profit. The singular and unilateral decision of returning the plaintiffs' capital was a total violation of the MoU and dying their legitimate expectations. It comes out clearly that the testimony of PW1 on which the plaintiffs' case hinges has given a convincing and credible account of facts that vindicate their claims of breach of contract by the defendant. The plaintiffs' testimony, together with the documentary testimony tendered and admitted, leave no doubt that the scale tilts in the

plaintiff's favour. My view is guided by a canon of justice as emphasized in **Hemed Said v. Mohamed Mbilu** [1984] TLR 113 to the effect that ***"the person whose evidence is heavier than that of the other is the one who must win."*** In view thereof, I find and hold that second issue is also answered in the affirmative.

The third issue wants this Court to determine on what reliefs should be granted to the parties.

I begin my scrutiny on this issue by first restating what is otherwise the obvious. This is to the effect that this being a civil case, the burden of proving that the defendant is in breach of the MoU, lies with the plaintiffs. Like in all civil cases, the standard of proof is on the balance of probabilities, consistent with sections 110 through to 113 of the Evidence Act.

Going through the testimony of PW1, and Exhibits, they give me the impression that, the plaintiffs' invested in the clearing and forwarding business together with the defendant in 2017. It appears that from that year up to February, 2022, no profit was shared to the plaintiffs. PW1's evidence is categorical about this fact. PW1's evidence is categorical about this fact as per exhibit PE3, the gross profit per year

was USD 154,366.80. The uncontested evidence from PW1, informs this court that the plaintiffs were not given their share which amounted to USD 77,183.40 per year for five years, to wit, from 2017 to 2022. Therefore, by simple calculations, they are entitled to USD 385,919 in five years. I take a view that this amount has been specifically proved. Since the plaintiffs have lost all opportunities and profit, they would otherwise would have earned from the money they invested they should be awarded as a way to place them in a situation they would have been if the MoU had been respected and the defendant acted in good faith.

Consequently, the claim succeeds and the following reliefs are granted against the defendant:

(i) The defendant is declared to have breached the terms of MoU;

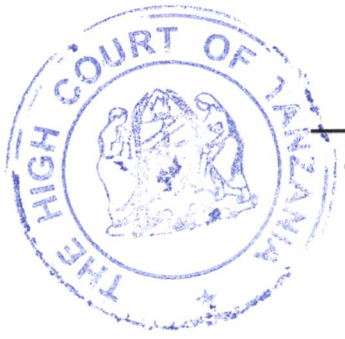
(ii) Payment of USD 385,919 being the plaintiffs' five years' share of the business jointly done with the defendant;

(iii) Payment of general damages of USD 100,000 because the defendant has withheld the plaintiff's profit for five good years, loss of income and profit.

(iv) Costs of this suit.

It is ordered accordingly.

Dated at **DAR ES SALAAM** this 22nd day of May, 2024



J. M. Karayemaha
JUDGE