

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

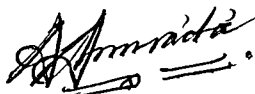
COMMERCIAL CASE NO. 147 OF 2021

**MESHACK JACKSON KABOTE.....PLAINTIFF
VERSUS
HAMIMU KARASHANI.....DEFENDANT**

JUDGMENT

A.A MBAGWA J.

The dispute in this suit arises from the agreement dated 14th November, 2020 entered into between the plaintiff and defendant. It is the plaintiff's contention that through the said agreement (exhibit P1), the defendant agreed to sell two Primary Mining Licenses No. PML 0308GTA and PML 0309GTA in respect of mining area located at Shibaranga within Nyang'hwale district in Geita region at the consideration of Tanzania Shillings Two Hundred Million (Tshs 200,000,000/=). According to the plaint, the two mining licenses were jointly owned by the defendant Hamimu Karashani and Vedasto Mutayoba. Hamimu Karashani (the defendant) was owning 90% whereas Vedasto Mutayoba owned only 10% of shares in the mining licenses. Thus, in order to effect sale of the two licenses and subsequently transfer ownership to the plaintiff, the defendant had first to buyout his partner's shares so that the ownership



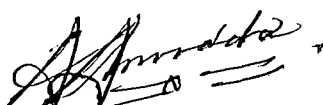
become sole. As such, the plaintiff and defendant agreed that the defendant would first buy 10% of shares owned by Vedasto Mutayoba Daud in order to put the two licenses under the exclusive sole ownership of the defendant, Hamimu Karashani and thereafter the defendant would transfer ownership to the plaintiff. It was further agreed that once the defendant had put the two license under his sole ownership, the duo would sign a purchase of licenses agreement which would be followed by transfer of ownership from the defendant to the plaintiff. Consequently, the plaintiff advanced to the defendant a sum of Tanzania shillings fifteen million (15,000,000/=) for purposes of facilitating the purchase of 10% of the shares owned by Vedasto Mutayoba and transfer of the same into sole ownership of the defendant so that the defendant could easily sell and transfer ownership of the two licenses to the plaintiff. The plaintiff contends that despite these terms of agreement and payment of Tshs 15,000,000/=, the defendant failed to perform his obligation. In the result, the plaintiff filed this suit praying for judgment and decree against the defendant as follows;

- 1) A declaration that the defendant has breached the contract
- 2) An order for the defendant to pay the plaintiff the total amount to a tune of Tanzania shillings One Hundred Ninety-Five Million (TZS 195,000,000/=) being compensation for breach of contract

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- 3) An order for the defendant to pay general damages to the plaintiff for breach of contract (to be assessed by the court)
- 4) Costs of the suit
- 5) Any other relief this Honourable Court deems fit to grant.

Upon service, the plaintiff's claims were vehemently countered by the defendant through a written statement of defence. Although the defendant admits entering into agreement dated 14th November, 2020 (exhibit P1), he contends that it is the plaintiff who breached the terms of contract. The defendant further stated that upon receipt of Tshs 15,000,000/=, on 18th November, 2020, he honoured the terms of contract with the plaintiff by entering into an agreement with Vedasto Mutayoba to dissolve their partnership. He stated that through the agreement dated 18th November, 2020, he purchased 10% of shares owned by Vedasto Mutayoba but failed to proceed with the next steps as the plaintiff neglected to pay Tanzania Shillings Twenty Million (Tshs 20,000,000/=) which was required for capital gain tax by Tanzania Revenue Authority (TRA). The defendant further averred that the plaintiff was required to pay the remaining balance of Tshs. 185,000,000/= within one year after initial payment of Tshs. 15,000,000/=, a condition which he failed to comply with. The defendant concluded that it is the plaintiff who breached the contract. As such, he prayed for dismissal of the suit.

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After completion of pleadings, this court, with the consensus of parties, framed the following issues;

1. Whether there was a breach of contract.
2. If the answer in issue No. 1 is in the affirmative, who breached the contract.
3. To what reliefs are the parties entitled?

When this matter was scheduled for hearing, the plaintiff was represented by Mr. Juventus Katikiro, learned advocate whilst the defendant had the services of Mr. Ambrose Malamsha, learned advocate.

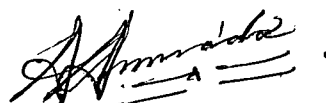
In a bid to establish the claims, the plaintiff brought two witnesses namely, Francis David Masha (PW1) and Meshack Jackson Kabote (PW2). In addition, the plaintiff tendered four documentary exhibits namely, agreement dated 14th November, 2020 (exhibit P1), a letter dated 18th March, 2022 requesting information about ownership of the licenses in dispute (exhibit P2) and two demand notices (exhibit P3 and P4).

Similarly, the defendants paraded two witnesses to wit, Hamimu Karashani Kirahama (DW1) and Judith Nyaki (DW2) along with four documentary exhibits namely, agreement dated 14th November, 2020 (exhibit D1), agreement dated 18th November, 2020 (exhibit D2), reply to a demand notice (exhibit D3) and a blank transfer form (exhibit D4).




It was the evidence of Francis David Mosha (PW1) that on 14th November, 2020 the plaintiff and defendant approached him for purposes of drafting and witnessing agreement for purchase of two Primary Mining Licenses No. PML 0308GTA and PML 0309GTA. He thus, prepared the agreement (exhibit P1) which was signed by both parties. PW1 elaborated that the consideration for purchase of two mining licenses was Tshs 200,000,000/= and at the time of signing agreement, the plaintiff advanced to the defendant Tshs 15,000,000/=. He said that according to the agreement, the defendant was supposed to buyout his partner's shares first and then transfer them in to his sole ownership before transferring the ownership to the plaintiff. He further told the court that the remaining Tshs 185,000,000/= was to be paid within a year after the two licenses were solely owned by the defendant and upon conclusion of the purchase agreement between the plaintiff and the defendant.

The plaintiff, Meshack Jackson Kabote (PW2) testified that he entered in exclusive agreement with the defendant through (exhibit P1) with effect to purchase two primary mining licenses namely, PML 0308GTA and PML 0309GTA. It was PW1's evidence that the consideration for purchase of two licenses was Tshs 200,000,000/=. However, the two mining licenses were jointly owned by the defendant and one Vedasto Mutayoba. Thus, it was agreed between the parties that before entering into purchase



agreement, the plaintiff should advance initial payment of Tshs 15,000,000/= to facilitate transfer of ownership from partnership between the defendant and Vedasto Mutayoba to sole ownership of the defendant, Hamimu Karashani. PW2 told the court that the remaining Tshs. 185,000,000/= was to be paid after the mining licenses were exclusively in the sole ownership of the defendant and upon signing a purchase agreement between the defendant and plaintiff. PW2 lamented that the defendant failed to transfer ownership of the two mining licenses from joint to sole ownership of the defendant hence a breach of the contract. PW2 claimed that he incurred costs following the defendant's breach of contract. He narrated that he incurred costs while visiting the mining area with experts. He also stated that he had engaged companies to supply heavy machines and equipment for drilling minerals as a result they are demanding him costs for breach of the contract.

In rebuttal, the defendant vehemently contested the plaintiff's claims. He said that he honoured the terms of contract by signing an agreement dated 18th November, 2020 (exhibit D2) in which he dissolved the partnership with Vedasto Mutayoba. DW1 stated that he failed to transfer/change ownership from joint ownership to sole ownership as agreed in the agreement with plaintiff because he was demanded by Tanzania Revenue Authority (TRA) to pay capital gain tax of Tanzania



shillings twenty million (Tshs. 20,000,000/=). However, during cross examination, PW1 admitted that the capital gain tax which was required for transferring ownership from Vedasto in to his was 10% of the purchase price in respect of the agreement between him and Vedasto Mutayoba i.e., Tshs 350,000/. He further conceded that he has never submitted exhibit D2 to TRA for assessment of capital gain tax. Judith Nyaki DW2, on her part, told the court that she is the one who prepared an agreement (exhibit D2) in which the defendant purchased shares of his partner. She further said that the defendant paid Vedasto Mutayoba Tshs 3, 500,000/= being a purchase price of 10% of his shares in the ownership of nine(9) mining licenses. She admitted, during cross examination, that after dissolution of partnership, the defendant was supposed to change ownership of the licenses into his sole ownership. In brief, that was the substance of the evidence for both parties. Upon completion of hearing, both counsel filed written submissions. I am grateful for their insightful submissions which I have considered in my deliberations.

Having narrated the evidence of both parties, let me now proceed to determine the issues;

Whether there was a breach of contract. There is no dispute that on 14th November, 2020, the plaintiff and defendant entered into a contract which



was tendered and admitted as exhibit P1. The plaintiff contends that the defendant breached the contract by failing to transfer the two mining licenses into his sole ownership. In contrast, the defendant states that it is the plaintiff who breached the terms of contract. The defendant complained that the plaintiff failed to pay the remaining balance of Tshs. 185,000,000/= within one year as it was agreed in the agreement dated 14th November, 2020. He also claimed that he failed to change ownership from joint to sole ownership because the plaintiff did not give him Tshs 20,000,000/= for capital gain tax which was demanded by TRA in order to effect change of ownership. The defendant tendered an agreement dated 18th November, 2020 as evidence to prove that he complied with the terms and conditions of the agreement dated 14th November, 2020 (exhibit P1) by buying his partner's shares.

I have carefully read the terms of the agreement dated 14th November, 2020 which is the source of dispute. Clause 3 is very clear that the amount of Tanzania shillings fifteen million which was advanced to the defendant was intended to facilitate the defendant to buy 10% of shares belonging to the defendant's partner one Vedasto Mutayoba in the two mining licenses. According to exhibit D2, on 18th November, 2020, the defendant entered into agreement with Vedasto Mutayoba to dissolve the

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partnership with Vedasto Mutayoba in the ownership of nine (9) mining licenses including license No. PML 0308GTA and PML0309GTA.

It has to be noted that the agreement between the plaintiff and defendant was in respect of two mining licenses namely, No. PML 0308GTA and PML 0309GTA only but the defendant entered into agreement with Vedasto Mutayoba in exhibit D2 to buyout his shares in nine (9) mining licenses.

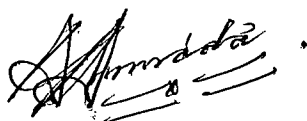
Upon appraisal of the whole evidence, it is clear that the purpose of the initial payment of Tshs. 15,000,000/= was to facilitate the defendant to convert the two mining licenses from joint ownership to sole ownership. The ultimate objective was to enter into purchase agreement between the plaintiff and defendant after the ownership had been put under the defendant solely. The defendant received the money i.e., Tshs. 15,000,000/= but failed to change ownership into his sole name. This is established through exhibit P2, a letter from the Mining Commission which is to the effect that until 18th March, 2022 the two mining licenses were still jointly owned by Hamimu Karashani by (90%) and Vedasto Mutayoba Daud by 10%. In his defence, the defendant stated that he failed to effect change of ownership from joint ownership with Vedasto Mutayoba to his sole ownership because the plaintiff refused to give him Tshs. 20,000,000/= for payment of capital gain tax which was required by TRA.



Hamimu (DW1) stated that Tshs. 20,000,000/= was calculated based on the purchase price of Tshs. 200,000,000/= in the agreement dated 14th November, 2020 (exhibit P1). Nonetheless, the defendant could not produce any evidence to substantiate his claims that TRA demanded payment of capital gain tax in the sum of Tanzania Shillings Twenty Million. Upon consideration of the evidence in whole, I am inclined to hold that the defendant's contention that the plaintiff refused to pay him Tanzania Shillings Twenty Million for payment of capital gain tax hence a reason for failure to transfer ownership are unfounded.

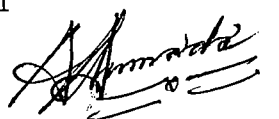
Throughout the evidence, it is common cause that the defendant did not change ownership of the two mining licenses into his sole ownership in order to pave way for conclusion of purchase agreement and payment of the remaining Tshs 185,000,000/=. I agree with the plaintiff that according to the agreement (exhibit P1), the defendant was duty bound to buy his partner's shares and change the ownership of two mining licenses from joint to sole ownership before signing of the final purchase agreement and payment of the remaining Tshs 185,000,000/=.

As hinted above, the assertions by the defendant that he failed to change ownership because TRA demanded him to pay capital gain tax to a tune of Tanzania Shillings Twenty Million are, in my views, untenable. This is

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because the defendant was only required to transfer ownership of 10% of shares owned by Vedasto in to his sole ownership. Further, according to exhibit D2, the 10% of Vedasto's shares was purchased at Tshs 3,500,000/= as such, in no circumstances the capital gain tax could be Tshs 20,000,000/= far beyond the value of the purchase price. If at all TRA demanded him to pay capital gain tax as the defendant wants this court to believe, the amount due was 10% of purchase price i.e., Tshs 3,500,000/= which is equivalent to Tshs. 350,000/= because the relevant agreement at this stage was between the defendant and Vedasto (exhibit P2) and not Tshs 20,000,000/= which arises from exhibit P1. The transfer of ownership from the defendant to the plaintiff was to be done after the defendant has become sole owner of the two mining licenses. Having holistically considered all the above, I am of the unfeigned findings that the defendant breached the contract to wit, he failed to change the ownership of two mining licenses from joint ownership to sole ownership.

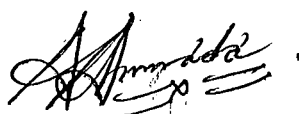
The 2nd issue was that if the answer in 1st issue is in the affirmative, who breached the contract. I have deliberated in details under the 1st issue on how the contract was breached. Without much ado, I hold that it is the defendant who breached the contract by his failure to transfer ownership of two mining license from joint to sole ownership.

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As to reliefs the parties are entitled to, the plaintiff prayed several reliefs including a declaration that the defendant has breached the contract, an order for the defendant to pay the plaintiff a sum of Tanzania shillings One Hundred Ninety-Five Million (TZS 195,000,000/=) being compensation for breach of contract, an order for the defendant to pay general damages to the plaintiff for breach of contract, costs of the suit and any other relief this Honourable Court deems fit to grant. In his submission, the plaintiff's counsel cited the case of **Simba Motors Limited vs John Achelis & Sohne GMBH and Another**, Civil Appeal No. 72 of 2020, CAT at Dar es Salaam to bolster his point that every failure to perform contractual obligation amounts to a breach of contract and a party who suffers from such a breach is entitled to compensation.

It is a settled law that specific damages should be specifically pleaded and strictly proved. See **Puma Energy Tanzania Limited vs Ruby Roadways (T) LTD, Civil Appeal No. 287 of 2020 CAT at Dodoma** and **Reliance Insurance Company (T) LTD & 2 others vs Festo Mgomapayo, Civil Appeal No. 23 of 23 of 2019, CAT at Dodoma.**

The plaintiff alleged that he incurred costs to a tune of Tanzania shillings One Hundred Ninety-Five Million (TZS 195,000,000/=) due to breach of contract. On the contrary, the defendant's counsel resisted the claims. The defendant's counsel submitted that the plaintiff did not bring any

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evidence to prove the loss allegedly suffered. I have dispassionately scanned the evidence presented but I could not come across any scintilla of evidence in support of the plaintiff's claims. This is to say that apart from plaintiff's mere assertions, no single evidence was brought to substantiate the claims. As such, since specific damages ought to be strictly proved, I dismiss the claim for want of proof.

As regard to the general damages, it is a trite law that general damages need not to be strictly proved. It suffices even just to aver that the damage was suffered. See **Reliance Insurance Company (T) LTD & 2 others** (supra). The plaintiff prayed for general damages to be assessed by the court. First, there is uncontroverted evidence that the defendant was paid the initial amount of Tanzania Shillings Fifteen Million by the plaintiff for purpose of facilitating transfer of ownership from joint to sole ownership of the defendant. Unfortunately, the defendant did not discharge this contractual obligation. He only dissolved the partnership with Vedasto Mutayoba but the two mining licenses remained in the joint ownership of the defendant and Vedasto Mutayoba. It is common cause that the plaintiff encountered disturbances following the defendant's breach of contract. Thus, considering the undisputed payment of Tanzania shillings Fifteen Million and consequential inconveniences resulting from the defendant's failure to perform his contractual obligations, I am opined



that the plaintiff is entitled to general damages to a tune of Tanzania Shillings Twenty Million (Tshs. 20,000,000/=) only.

On all the above account, it is my considered findings that the plaintiff has, on balance of probabilities, established its case. Consequently, I enter judgment and decree in favour of the plaintiff with the following orders;

1. It is hereby declared that the defendant has breached the contract
2. The defendant is hereby ordered to pay the plaintiff Tanzania Shillings Twenty Million (Tshs. 20,000,000/=) only being general damages.
3. The defendant is ordered to bear costs of the suit.

It is so ordered.

The right of appeal is explained.




A.A. Mbagwa

JUDGE

05/05/2023