

TANZANIA / JUDGMENT

afriscan group t ltd vs david joseph mahende 2015 tzhccomd 19 15 december 2015

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IN THE HIGH COURT OD TANZANIA (COMMERCIAL DIVISION) PAR ES SALAAM COMMERCIAL
CASE NO 86 OF 2013 BETWEEN AFRISCAN GROUP (T) LT D ----- PLAINTIFF VERSUS DAVID
JOSEPH MAHENDE----- ---DEFENDANT

JUDGMENT

Date of the last Order 25/11/2015 Date of Judgment; 15/12/2015 SONGORO, J On the 25th July, 2013, Afriscan Group Ltd, the Plaintiff filed a suit against David Joseph Mahende the Defendant claiming for a court declaration that, the Defendant lawfully sold, and transferred his 10 shares in the Company known as Afriscan Construction Company to the Plaintiff Company. In the Plaintiff, it is stated that, the Defendant was a founder member of Afriscan Construction Company incorporated on 30th October, 1990 and had 40% shares, and on September, 2000 at a Joint Meeting the Defendant agreed and sold 10 % of his shares and remained with 30% shares. Page 2 o f 25 It is further stated that, while the Plaintiff company was in business, the Defendant has insisted that, he has never sold any shares and that, prompted the filing of the present suit and is praying for the following orders and reliefs;

1. A declaration that, the defendant had lawfully sold and transferred 10 % o f his shares in the company known as Afriscan Construction Co Ltd.
2. Payment o f General Damages to be assessed by the Court
3. Costs o f the suit
4. Interests on the Decretal sum at the court rate o f 12% from the date o f the Judgment until payment on full. In response to the Plaintiff suit, David Mahende, the Defendant filed a Written Statement of Defence and firmly opposed the Plaintiff's claim. Further, the Defendant contested that, he never sold any shares to the Plaintiff's company, and prayed for the dismissal of the suit In the light of the Plaintiff claims, and Defendant's and Defences and, denials the Court after consulting the parties, drew the following as agreed issues for determination;

- 1) Whether or not the Defendant sold and transferred ten shares to the Plaintiff company;
- 2) If the answer is in affirmative whether the Plaintiff suffered any damages as a result of the Defendant denial of the sales; \
- 3) What reliefs are parties entitled too. Page 3 of 25 In view of the above, the Plaintiff suit was heard, and concluded on the basis of the above-mentioned agreed issues. At the hearing of the suit, Mr. Rutabingwa, Learned Advocate appeared for the Plaintiff; whereas Defendant was represented by Mr. Mbamba, Learned Advocate. In pursuing his claim, the Plaintiff called Ulf Nilson who testified as PW1, and informed the court that, he had filed a Written Statement in Court. After, that, PW1 tendered the Memorandum and Articles of Association of Afriscan Construction Company which were admitted as Exhibit P1, and Certificate of Incorporation which was admitted as Exhibit P2. Further, PW1 tendered a transfer of share of David Mahende together with a receipt which was admitted as Exhibit P3. Furthermore, PW1 tendered a letter from the Defendant which was admitted as Exhibit P4. After that, PW1 was cross examined by the Defence Counsel, he explained to the court that, shareholders of the Plaintiff company were David Mahenge who had 40% shares, Afriscan Group had 40% shares which were sold to Farida Ulfson and thereafter Afriscan group ceased to be shareholder in Afriscan construction company Limited. Page 4 of 25 On his part PW1 said is minority shareholder in Afriscan group which ' sold its shares to Farida Ulf Nilson, and was representing Afriscan group company Ltd in the Meeting of Afriscan Construction Company, He finally insisted that, the Defendant sold his 10 % shares and has remained with only 10% shares, and they had a Board Resolution to that, effect. After PW1 closed his testimony the Plaintiff called Raymos Zakayo who testified as PW2 and stated that, he was an Accountant with the Afriscan Group. He then told the court that, he was an eye witness to Exhibit P3 which was a statement of sale of shares between the Defendant and Afriscan Group. Also, he claims to have witnessed a sale of shares between Mr. Msangi who signed a sale of 20% shares. Finally, PW2 said, his role in that transaction was just to be a witness. After PW2 testified, the Plaintiff called Farida Ulf Nilson who testified as PW3 brief the court that, she had file a Written Statement in court and would like the court to take into account. Relying on her witness statement, PW3 briefed the court that, Ulf Nilson is her husband and as her family member is taking care of her business interests. Page 5 of 25 Further PW3 told the court that, on the 15/9/2000 she attended a meeting of Afriscan construction company Limited which deliberated on the financing of the irrigation project. She then elaborated that, the meeting was chaired by Mr. Ulf Nilsson. To prove that, the meeting took place, she tendered minutes of the shareholders meeting which took place on the 15/9/2002, and it was admitted as Exhibit P5. Then PW3 clarified that, in Exhibit P5 which is minutes of the Meeting, it was decided that, Afri-Scan Group will inject additional amount of shs 20,000,000 from his own sources to finance and complete two company projects. In return, it was resolved that, Mr. David Mahende who had 40% shares will transfer his 10% shares to Afriscan Group. In view of the above, David Mahende, agreed and transferred his 10% shares to the Afriscan Group. PW3 said the sale of shares was discussed in the meeting and a Resolution was made, agreed, and signed by the shareholders including Mr. Mahende. She

then defended the sale of shares of Mr. Mahende by saying he intended to sale some of his shares, and procedure was followed including the issuance of notice. Page 6 o f 25 Finally, PW3 insisted that, Mr. Mahende sold his shares to Afriscan Group and they paid the share purchase price. After, PW3 finished her testimony, the Plaintiff called E. 2912 SSgt Johannes Joseph who testified as PW4 and tendered a Handwriting expert report which was admitted as Exhibit P6. In view of Exhibit P6, PW 3 informed the court that, he conducted investigation on documentary exhibit which was brought to him from the office of Mr. Rutabingwa Advocate. In his Defence, David Joseph Mahende testified himself as DVV1 informed the court that, he has copy of Judgment of Land Case IMo 66 of 2007 delivered on the 25/7/2014 which was admitted as Exhibit D 1. Then he tendered a Certificate of Title No 40380 of Plot No 569 Mikocheni Medium Density which was admitted as Exhibit D2. Further, he tendered a document with title Sheria ya Makampuni No " 12 ya 2012 from BRELA which was admitted as Exhibit D3. Later during cross examination and re-examination, DW1 told the court that, their company started in 1990, and in 2000, their company had several projects including irrigation Projects in Arusha but he was in the Army fulltime but was also supervising company activities. Page 7 o f 25 He further, started that, there was a moment he wrote a letter to the Registrar referring Ulf Wilson as the Director, and Managing Director of the Company but in fact he is not the director because he sold his shares to his wife in 1991 and ceased to be member of the company. He then explained that, the shareholders of the Afriscan Construction group are himself, Joseph Mahende, Saidi Msangi, and Farida Ulf Nilson. Regarding the Minutes of the Meeting which took place on the 15/9/2000, DW1 said, he did not attend, and the signature which appears on the said minutes is not his signature. Further the witness said Farida Ulf Nilson, does not know about Afriscan Construction Company because he was not involved in its business. In respect of a report of handwriting expert, -DW1 stated that shows that, there was a meeting but the signature also is not his. While on the point, DW1 down played the report by saying even the signatures which were sent for forensic investigation was not his, but was obtained from, Mr. Rutabingwa, Learned Advocate. Page 8 o f 25 In the light of what he stated, DW1 maintained that, he still hold 40 shares, and did not transfer any shares as alleged by the Plaintiff, and his witnesses. Next, DW1 told the court that, in 2003 he checked with BRELA and found he has been removed from directorship of the Afriscan Construction Company Limited and reported to the Director of Criminal Investigation at the Police Headquarters. Then, he said there is a time, he signed a document which shows contribution of profit of each shareholder's. DW1 after defending himself, he called Saidi Abdallah Msangi who testified as DW2 and said he made a witness under the oath and would like the court to rely on it. Further, DW2 denied completely that, David Mahende DW1 did not sale any shares. He then explained that, it is true their company had several projects including that, of supplying Laboratory Equipments to Ministry of Education, in 2004. Also DW2 said as structure engineer was an overall director, and Mr. Mahende DW1 was involved in supervisions of the Company's projects. Furthermore, DW2 stated that, in their company there is a dispute on the transfer of shares because Afriscan Group Company limited Page 9 of 25 through its directors forged sale of shares. He then claimed that, his signatures and that, of DW1 have been used to forge sale of

shares. Finally, he maintained that, the share structure of the Afriscan Construction Company Limited is Saidi Abdallah Msangi has 20 Mahende Joseph 40 shares, and Farida Nilson 40 shares. He even emphasized that, even the Memorandum and Articles of Association did not change and still recognizes he Saidi Abdallah Msangi and Joseph Mahende as directors, and they denied to have sold, any shares to Afriscan Group. After DW2 testified, the Defendant closed his case. So that was the end of Plaintiff case, as well as the Defendant's case. In view of the closure of the Plaintiff, and Defendant case, counsels from both sides with the leave of the court made their submissions. Mr. Rutabingwa for the Plaintiff explained to the court that, Afriscan Group Company Limited was a founder of Afriscan Construction Company Limited which was incorporated in 1990, and the Plaintiff had 40 shares, Defendant had 40 shares and Saidi Abdallah Msangi had 20 shares. Further the counsel argued that, the Afriscan Construction Company was awarded several project works, and the company did not have funds to execute the said projects. So, the Plaintiff, through Mr. Ulfi Page 10 of 25 Nilson, the Managing Director agreed to inject funds to the project, in return the Defendant agreed to sale his 10% shares. The Plaintiff insisted that, the sale of share agreement was concluded. Then, relying on Section 10 of the Law of Contract Cap 345 R.E.20Q7r Mr. Rutabingwa submitted that, all agreements are contract if they are made by free consent of the parties competent to contract, for lawful consideration, and with lawful object. Further, Mr. Rutabingwa pointed out that, pursuant to Section 74 of the Companies Act Cap 212 states that, shares are movable property transferable in a manner provided in the Articles of Association.' Then on the sale of share, the Plaintiff counsel then explained that, there is evidence that, the Defendant sold, and transferred his shares. But Defendant while in court has retracted his signature on sale of shares document and the sale and transfer of shares. The Counsel then submitted there is testimony of PW5 who is the handwriting expert and relying on Exhibit P6, he gave the evidence and confirms that, signatures on both shares transfer, and minutes were those of the Defendant. Relying on the book written by Eminent Legal Writer Grower and Davies, Principles of Modern Company Law, Eight Editions by Paul Page 11 of 25 .L.Davies, at page 936 at page 937 he insisted that, the sale of shares involved two steps. The "first step" the "buyer" and "seller" concludes the sales contract where they agree on the price which the shares are sold, and on other terms of transactions, this is said to be "trading". The second step is "settlement" whereby certificate of shares are sold. He then insisted that, sale of shares is completed by delivery of certain transfer documents to the buyer. Turning to the Plaintiff -claim, the counsel submitted that, the Defendant undertook to sell his shares because he signed the sale and transfer of shares documents, and handled over to the Plaintiff. In respect of a claim for damages, the Plaintiff Counsel submitted that, there is evidence that, Defendant sold his shares in 2000, but has alleged that, he knew about the sale of share in year 2013. He then explained that, the continuous Defendants claim on sale of shares has caused embarrassment and painted bad image and picture to the Plaintiff, its members and directors, and caused a delay in the realization of the Award which was granted in the Arbitration. Page 12 of 25 He then maintained that, the Plaintiff is entitled for general damages. Finally, Mr. Rutabingwa prayed for judgment and decree in favour of the Plaintiff

as prayed in the Complaint. On his part, Mr. Mbamba Learned Advocate for the Defendant made detailed submissions to support the Defendants defence. To start with the Defendant's counsel admitted that, the Plaintiff is one of the shareholders of the Afriscan Construction Company Limited and had 40 shares. Other shareholder was the Defendant ' who had 40 shares and Mr. Saidi Abdallah Msangi who had 20 shares. Then relying on the witness statement of DW1 in his written statement he submitted that, the Defendant on his own words had denied to have sold part of his shares as claimed by the Plaintiff. He even added that, the Defendant has even denied to have signed the share sale transfer form. Responding on the sale and transfer of shares documents which the Plaintiff is relying upon, the Defendant's counsel submitted that, there is no proof if the requirements of sale and transfer of shares stated in the Articles and Memorandum of Associations and Regulations on transfer of shares were complied with. Page 13 of 25 He then pointed out that, under Article 4, of clauses 2, and 3 of Memorandum and Articles Associations, the sale, and transfer of shares to non member is restricted. Further the counsel submitted that, the sale of shares is permitted after issuing a prior notice to the Board, and other directors, and the notice shall contained the proposed price per shares. The counsel then argued that, in essence Afriscan Group ceased to be a shareholder of Afriscan construction co Limited in 1990 after selling its shares to Farida Ulf Nilson. It follows therefore that, Farida Nilson became a shareholder of African construction Company Limited and replaced the Afriscan Group Limited. While on this point, Mr. Mbamba strongly argued that, pursuant to Article 4^b and fQ of certificate of incorporation, the shares of the Defendant could not have been transferred or lawfully transferred to Afriscan Group Co Ltd who was none member and not shareholder to the Afriscan Construction Co Ltd. He then strongly insisted that, Article 4 predetermine who the shares of the company may be sold to, and said it is on the other shareholders. Furthermore the Counsel challenged the sale and transfer by saying that, it was not preceded by a prior notice to shareholder as required by Memorandum and Articles of Association. Page 14 of 25 Next, the Defendant's Counsel argued that, since it appears the procedure on sell of shares was not adhered too then it cannot be argued that, in year 2000 ten shares of the Defendant was lawfully sold to Afriscan Group Co Ltd who was not shareholders. In short the Defendant ' s counsel argued that, going by restriction contained in Article 4 of Exhibit P2, Certificate of Incorporation, Afriscan Group Co Limited being none member was not allowed to purchase the shares of the Afriscan Construction Co Limited. Another point which Mr. Mbamba challenged the sale and transfer of share that, were irregular is that, in the Meeting which took place and on Board Resolution of shares, Mr. Ulf Nilson voted while he was not a shareholder and director of Afriscan Construction Co Limited. The Counsel then clarified that, Mr. Ulf Nilson was not qualifying to be a chairman of the said meeting or to vote. So the meeting was irregular. Next, the Defendant's council requested the court to ignore the Forensic report because it did not comply with the 3rd Schedule of the Criminal Procedure Act, Cap 33 [R.E 2002]. Finally, Mr. Mbamba submitted that, in the absence of prior notice of the Defendant to the Board, desiring to sale shares, and absence of Page 15 of 25 21 days notice, to shareholders, and absence of proof of purchase of shares, it cannot be lawfully argued that, there was proper sale and transfer of

shares. The court has carefully considered, and weighed, the Plaintiff Claims, Defendant Defence, plus the evidence from both sides and finds that, all three agreed issues of (i) whether or not the Joseph Mahende DW1 sold and transferred his 10 shares held in Afriscan Construction Company Limited to Afriscan Group Company Limited, (ii) Whether the Plaintiff suffered any damages and (iii) what reliefs, what reliefs are parties are entitled too are relevant for determination of the present suit. In view of the above, I will address all three key issues one after another. Turning to the first issue Whether or not the Defendant sold his ten shares to the Plaintiff's company, honestly, I find that, is a question of fact which may determined by assessing the evidence which is before the court by the parties themselves. Going into presented evidence, the court find there are testimonies of PW1, PW1 and PW3 who said they were present at the Meeting of Shareholders, it was resolved and agreed by Mr. David Mahende who had 40 shares to sale and transfer his 10 shares to Afriscan Group. Page 16 of 25 The Court find, testimonies of the PW1, PW2 and PW3 is well supported and corroborated by Exhibits P5 -Minutes of the Meeting of Shareholders Exhibit P5 in which at Clause 3 has a column of Allotment of Shares. Indeed Exhibit P5 reads as follows "Minutes of the Meeting, of Shareholders of Afriscan Construction Co Ltd at the office in Dar es Salaam on Friday 15 September, 2000 which was held the chairmanship of Mr. Nilson" Further Exhibit P3 is a transfer of share Form. Further Minutes IMo 3 on allotment of shares reads as follows 3 ALLOTMENTS OF SHARES IT WAS RESOLVED THAT, Mr. Saidi M sangi sells his shares 20 in Afriscan Construction to Afriscan Group at a consideration of 20 x 10,000 totally T shs 200,000, and THAT, David Joseph Mahende sells ten shares in Afri Scan Construction to Afri scan group at a consideration of 10x10000 totally shs 100,000. The Composition of shareholding thereafter is; David Joseph Mahende 30 shares = 40% of the share capital Farida Nilson 40 shares = 40% of the Share capital

- Afri Scan Group 30 Shares =30% of the share capital The perusal of Exhibit P3 shows it has resolution on sale of shares, transferee, and transferor of shares, and signatures of both transferee and transferor. Next, the court find, the testimonies of PW1, PW2 and PW3 on sale and transfer of shares is supported by details of Exhibit P3, which is Transfer of Share Form. The form shows on the 15/9/2000, the Defendant sold his 10 shares held in Afri scan Construction to Afriscan Group. Page 17 of 25 Quite frankly, I find statements in Exhibits P3, and P5 gives credence, and supports the testimonies of PW1 PW2 and PW3 that, they witnessed the Defendant signing 'Minutes of the Meeting which allowed him to sale his 10 shares in Afri Scan Construction 'Co Ltd to Afri Scan Group. The Defendant is firmly contesting that, he did not sign Minutes of the Meeting sale of shares- Exhibit P5 and he did not even sign the transfer of share form Exhibit P3. But the testimony of David Mahende DW1 that he did not sign the Minutes of Meeting, and Share Transfer Form was challenged by testimony of PW4 E. 2912 SSgt Johannes Joseph, the handwriting expert who claim to have examined the Defendant's disputed signatures on Exhibits P3, and P5, and compiled a report which has a title of DOCUMENT EXAMINATION REPORT UNDER SECTION 205 OF THE CRIMINAL PROCEDURE CODE CAP 20 R.E.2002 which was admitted as Exhibit P6. Then relying on his findings in Item 3 of Exhibit P6, PW4 in his witness statement, and oral

testimony stated that, he compared the "disputed signature" on the Minutes of the Meeting and compares it with specimen of signature of the Defendant which was availed to him, by using a "modern microscopes VSV 6000 Video Spectral comparator". And during his examination, he discovered significant Page 18 o f 25 similar characteristic of letters, and stroke formation between the disputed signature, and specimen signatures of the Defendant, like the one which was on the Transfer of right of occupancy of Plot No 570 an agreement dated 14/3/2006 which the Defendant signed it, in the normal course of business. He then point out that, he has concluded that, the disputed signature and specimen of signatures including that, of the Defendant signed on the Transfer of Right of occupancy, provided to him for examination, and found are similar, and were signed by the same hand. It seems to me that, PW4 relying on the details of Exhibit P6 states that, David Mahende, the Defendant, is one, and same person, who signed Transfer of Shares Form dated 15/9/2000, and Board Resolution dated 15/9/2000. Further, PW4 said he even made "Photographic Enlargements" of disputed signature of the Defendants on the Board Resolution and Transfer of share Form, and other specimen of the Defendant like the one which was on Transfer of Right of Occupancy Agreement on Plot No 570 dated 14/3/2006 signed by defendant in the normal course and compared he was of the opinion that, the disputed signature and specimen of signatures provided to him for examination are similar and were signed by one and same hand of David Mahende. Page 19 o f 25 Honestly, I find the testimony of P4 that, his two examinations o f using " a Modern Microscopes VSV 6000 Video Spectral comparator" and "Photographic enlargements" lead to the conclusion that, the disputed signatures on the Minutes of Board Resolution and Transfer forms belong to David Mahende that, supports and gives credence's to the testimonies of PW1 , PW2 , and PW3 that, they saw the Defendant signing the Minutes of Board Resolution agreeing to sale and transfer of shares, and Defendant signed transfer form. In view of such evidence, the court is persuaded that, the testimonies of PW1, PW2 and PW3 are more convincing, and credible compared to denial made by the Defendant and the testimony of DW2. The Defendant, and DW2, did not give tangible reasons to fault the testimonies of PW1, PW2 PW3 on the sale and transfer of shares which was done by the Defendant. More, the court finds if at all the Defendant who was the shareholder and director of the Afri- Scan Construction Co was of the strong views that, his shares were unfairly sold, then, he would have taken legal steps and file an application in court to contest the sale of shares in order to invalidate i t . Page 20 o f 25 It seems to me that, his persistence and consistence silence on his 10 shares alleged to have been sold for a decade, suggests that, though is defending himself that, he did not sign the Resolution on sale of shares, but he never contested it in court to invalidate sale or transfer of shares which appears in Exhibits P3 and P6. Turning to the Defendants legal argument on restriction on the sale and transfer of share to shareholder alone, honestly I find it is true Section 27(1) (b) of the Companies Act Cap 212 and Article 4 (a) to

- (c) of Exhibit PI- Articles of Association of the Afri -Scan Company Ltd, the sale, and transfer of shares is restricted to shareholders, in the sense that, they must be give the first right refusal to buy shares to shareholders, before an outside like Afri -scan Group. But it is important to

state that, "restriction on sale of share is just a control, and " is not a "bar" or "prohibition" on transfer of share to an outsider like the Afriscan Group. In view of the above, it seems to me that, since the Plaintiff's Company purchased 10 share from the Defendant who was the owner of the said shares, and none of other shareholders who were at the Board Meeting put to the Plaintiff a notice of restriction on sale of shares, that suggest, none of shareholder was willing to buy the said shares or protested by putting to the attention of the Plaintiff the said restriction, and notice on sale of shares. Page 21 o f 25 In the absence of credible evidence that, there was a prior notice on restrictions of sale of shares addressed to the Plaintiff, or proof of misrepresentation on sale of shares, I find the Plaintiff was a "bona fide purchaser" of those shares. The term "bona fide" purchaser is defined in Black's Law Dictionary as follows that:- One who has purchased property for value without any notice o f any defects in the title o f the seller; and/or one who pays valuable consideration, has no notice of outstanding rights of others and acts in good faith, [at page 121 of the Abridged sixth edition (1991 In view of the above, it seems to me that, a bona fide purchase; his purchase remains valid and binding until and unless the said sale and transfer is set aside by the court or Tribunal. Since there is no such an order which invalidates the Plaintiff sale, and transfer of shares, I have no reasons to doubt that there was sale and transfer 10 shares by the Defendant To conclude on the 1st issue, I am satisfied by testimonies of PW1, PW2, PW3 that, transactions which appears in Exhibits P3 and P5 are credible and convincing to the point that Defendant sold his 10 shares to Plaintiff and the sale and transfer are valid, binding, and enforceable. Moving to the 2nd issue of whether the plaintiff suffered any damages I find the Plaintiff claim for damages was based on the Defendant's consistent and persistent denial on sale of shares which Page 22 o f 25 caused embarrassment, and painted bad image and picture to the Plaintiff, its members and directors, and caused a delay in the realization of the Award which was granted in the Arbitration.' So, from the Plaintiff point of view that is sufficient enough for granting of damages. The court has carefully considered the Plaintiff claim for damages and found as stated in the case of Mwalwanqe v. Mwalwaio 1972 HCD No 78 where Hon Mwakasendo Aa J as then was said "It is principle of law that, there is no entitlement to damages without a proof of loss, or injury.. Further in the case of Stanbic Tanzania Limited Versus Abercrombie & Kent f P Limited Civil Appeal No 21 of 2001 unreported the Court of Appeal quoting from Lord Macnaughten in Bolaq v Hutchson ri9 5 0] A.C. 515, the court stated that, general damages are the ones which the law will presume to be the direct, natural or probable consequence of the action complained of. The Court went to say Damages, generally, are:- That, sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been if he has not sustained the wrong for which he is now getting compensation or reparation. See Lord Black bum in Livingstone v Rawyards Coal Co. (1850) 5 App. Cas. 25 at page 39. Also, in the case of in Victoria Laundry v Newman [1949] 2 K.B. 528 at p. 539 Asquith, C J said "damages" are intendedto put the plaintiff Page 23 o f 25 "... in the same position, as far as money can do so, as if his rights had been observed. Guided by the above mentioned principles I revisited the Plaintiff claim for damages and realized that is found on the point that, persistent and consistent denial of sale of share or consistent claim of shares by the Defendant denied or

obstructed the Plaintiff from realization of Arbitration Award. But the court finds the so called Arbitration Award, and its contents were not tendered in court as exhibit for consideration. In view of the above, the court is left in darkness on what was in favour of the Plaintiff in the Award, and what loss, or injury he has suffered as a result of the Defendant denial on the sale shares. In view of the above, I find claim for damages was not proved. Moving to the 3rd issue of what reliefs are parties entitled too honestly, I have said the Plaintiff evidence has proved on the balance of probability that, the Defendant sold and transferred his 10 shares. In view of the above, I hereby declare that, the defendant had lawfully sold, and transferred his 10 shares in a company known as Afriscan Construction Co Ltd to the Plaintiff's Company. Secondly on payment of General Damages, I have said the Arbitration Award which was the basis of the Plaintiff's claim for damages was not tendered in court as Exhibit to enable the court to make assessment of damages. So, in absence of the Arbitration Award the court find Page 24 o f 25 and decides that, the Plaintiff has failed to prove any loss, or injury he had suffered. The plaintiff therefore, has failed to prove the damages which he suffered and the claim fails. , On the costs, honestly I find the Plaintiff has proved that, the disputed 10 shares were lawfully sold, and transferred to him. Therefore the Plaintiff is entitled to costs he incurred in pursuing the suit. Also, on interest I order that, Plaintiff will be entitled to interests of 10% per annum from the date the suit was filed to the date of. Judgment, and 13 % interest per annum from the date of the Judgment to the date the Decretal sum is paid in full. Consequently, I decide the Plaintiff's suit succeeds with costs against the Defendant as explained above. The right of appeal is fully explained to the parties. Dated at Dar es Salaam this 15th day of December, 2015 “ H.T. SONGORO JUDGE
Delivered at Dar es Salaam this 15th day of December, 2015 H.T. SONGORO JUDGE Page 25 o f 25 The Judgment was delivered in the presence of Ms. Hilda Rugakunguru, Learned Advocate for the Plaintiff and absence of the Defendant and his Counsel.

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