

TANZANIA / JUDGMENT

ALLY HASSAN GALU

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27 October 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (DAR ES SALAAM SUB-REGISTRY) AT DAR ES SALAAM CIVIL CASE NO. 222 OF 2023 ALLY HASSAN GALU
..... 1 ST PLAINTIFF SEIF YUSUFU UNYANGO
.....2ND PLAINTIFF SAID MOHAMED MKWAMA
..... 3RD PLAINTIFF GALUS PETER COSTA
..... 4TH PLAINTIFF PATRICK POSOLO MWINUKA STH
PLAINTIFF 6TH PLAINTIFF SALUM OMARY MWAULE
VERSUS SISI MULTBIZ LIMITED 1 ST DEFENDANT
KALRAV PATEL 2ND DEFENDANT MUSHIE GROUP
OF COMPANIES (T) LIMITED 3RD DEFENDANT NICOLAUS MUSHI
..... 4TH DEFENDANT EX-PARTEJUDGMENT 26th Aug.&
25th Oct., 2024 DYANSOBERA, J.: This ex-parte judgment is against the above four defendants who, on being duly served both by normal mode and through substituted service by publication, neither appeared nor filed their statements of defence to counter the plaintiffs' claims against them. 1 " According to the plaint filed on 27th October, 2023, the five plaintiffs, namely ALLY HASSAN GALU, SEIF YUSUFU UNYANGO, SAID MOHAMED MKWAMA, GALUS PETER COSTA, PATRICK POSOLO MWINUKA and SALUM OMARY MWALILE (hereinafter referred to as, the 1st, 2nd, 3rd, 4th 5th and 6th plaintiffs, in that order), are, under paragraph 6 of the plaint, claiming against all defendants jointly and severally, payment of the total sum of Tanzanian Shillings One Billion, Forty Five Million Four Hundred Thirty Thousand Only (say Tshs. 1, 045, 430, 000/=) being outstanding balance emanating from breach of contract, general damages, interest on the decretal sum at the court's rate of 12% per annum from the date of the judgment to the date of full satisfaction and costs of this suit. It is averred under paragraph 7 of the plaint that pursuant to an oral agreement among the parties, the plaintiffs were supposed to supply legumes to the 3rd defendant via the 1st defendant who was supposed to weigh up the same and thereafter deliver the said legumes to the 3rd defendant who in return was supposed to pay the consideration for the aforesaid legumes to the plaintiff via the 1st defendant. According to paragraph 8 of the plaint, basing on the aforesaid agreement, the plaintiffs, on diverse days, supplied legumes to the 3rd defendant via the 1st defendant who weighed up the said legumes and thereafter delivered the same to the 3rd defendant as had been agreed upon. After the process of delivery of the legumes was completed, the plaintiffs not receive the payments from the 3rd defendant. As a means of realizing their money, the plaintiffs decided to report matter to

the Minister responsible for Agriculture who, in collaboration with the Office of the Regional Commissioner for Dodoma Region, convened 2 the several meetings to discuss and resolve the controversy arising from the parties' oral contract. The end result, was that the parties under the supervision of the Office of the Regional Commissioner for Dodoma, extracted and executed a contract for the refund of the claimed amount. The contract for refund of the claimed amount together with a list of the claimants who are plaintiffs in this case was not only attached to the plaint as annexure THA 1 but as will be seen soon, was also tendered in evidence. Following the defendants' default to honour the terms and conditions of the contract for refund, the plaintiffs reported to the Minister for Agriculture whereupon the Permanent Secretary wrote a letter to the Regional Police Commander for Dodoma Region informing him of the said saga. Meanwhile, the plaintiffs went on making several follow ups. After all efforts were fruitlessly exhausted, the plaintiffs decided to institute this civil action against the defendants claiming for court's judgment and decree against the defendants as follows: I. A declaration that the defendants have breached the terms and conditions of the contract for refund of the claimed amount executed between and among the plaintiffs and the defendants; Ii. An order that the defendants jointly and severally pay the sum of Tanzanian Shillings One Billion Forty Five Million Four Hundred Thirty Thousand only (TShs. 1/ 045, 430/ 000.00 being the outstanding amount on account of the contract for refund of the claimed amount. iii. Interest on the amount in (ii) above at the commercial rate of 26% per annum from the date of breach of the contract for refund of the claimed amount to the date of judgment. 3 " iv. Interest on the decretal amount at the court's rate of 7% per annum from the date of judgment to the date of payment in full.

- v. An order condemning the defendants jointly and severally to pay general damages as may be assessed by the court; vi. Costs of this suit; and vii. Any other relief (1) this Honourable court may deem just and fit to grant in favour of the plaintiffs. At the hearing of the suit, Mr. Helmes Marcell Mutatina, learned counsel stood for the plaintiff. The defendants were absent. The plaintiffs' case was supported by six witnesses and two documentary exhibits as follows: The first witness to testify was Ally Hassan Galu (PW 1). According to him, his claims against the defendants jointly and severally is for payment of Tshs 145, 974, 000/=. He expounded the averments in the plaint. Furthermore, the witness tendered in court the 'MKATABA WA KUREJESHAFEDHA ZA WAKULIMA WA MAZAO YA MIKUNDE (Exhibit P.1). The same witness produced a document titled, 'MALALAMIKO YA WAKULIMA WA MAZAO YA MIKUNDE' (Exhibit P 2) which was authored by the Ministry of Agriculture, Administration Department. The next witness was Seif Yusufu Unyango who testified as PW 2. He supported the evidence of PW 1. On his part, he affirmed that he was claiming against the defendants a sum of Tshs. Tshs 331, 790, 000/=. Galus Peter Costa, testified as PW 3. He told the court that his claims against the defendants was Tshs 148, 800, 000/=. There then followed PW 4 one Salum Omary Mwalile. Supporting the suit, he testified that he was claiming from the defendants a sum of Tshs 770, 000, 000/= and also made reference to exhibit P. 1. 4 ----- ~.~ --- In his evidence, Said Mohamed who featured as PW 5 recalled that his claims against the defendants was Tshs 194, 000, 000/= and relied on exhibit P. 1 as well. The last witness to testify for the plaintiffs was Patrick Posolo Mwinuka whose claim

against the defendants amounted to Tshs 148, 666, 000/=. Having considered the evidence of the plaintiffs' prosecution witnesses and exhibits P. 1 and P. 2, I am satisfied that the case against the defendants was proved on preponderance of probabilities. I am also aware that the claims stand unopposed as the defendants neither appeared in court nor did they file the written statement of defence to contest the suit. Accordingly, judgment and decree are entered for all the six plaintiffs against the defendants jointly and severally. The following orders are issued:

- i. A declaration that the defendants have breached the terms and conditions of the contract for refund of the claimed amount executed between and among the plaintiffs and the defendants; ii. An order that the defendants jointly and severally pay the sum of Tanzanian Shillings One Billion, Forty-Five Million Four Hundred Thirty Thousand only (Tshs. 1, 045, 430, 000.00 being the outstanding amount on account of the contract for refund of the claimed amount. 5 iii. Interest on the amount in (ii) above at the commercial rate of 26% per annum from the date of breach of the contract for refund of the claimed amount to the date of judgment. iv. Interest on the decretal amount at the court's rate of 7% per annum from the date of judgment to the date of payment in full.
- v. The plaintiffs are awarded a total of Tshs. 30, 000, 000/= as general damages. vi. The defendants are condemned costs of suit. W.P.Dyansobera JUDGE 25.10.2024 This judgment is delivered under my hand and the seal of this Court on this 25th day of October, 2024 in the presence of Mr. Hermes Mutatina, learned Advocate for the plaintiffs but in the absence of the defendants who were duly served. 6

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