

TANZANIA / JUDGMENT

cesilia christantus laus 18 others vs tanzania gatsby trust another 2023 tzhc 21647 14 july 2023

COURT
TZHCDECIDED
14 July 2023

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IN THE UNITED REPUBLIC TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES
SALAAM CIVIL CASE NO. 140 OF 2020

1. CESILIA CHRISTANTUS LAUS
2. MARRY MAU RUS KOMBA
3. ALWINA S. MAERE
4. JOSEPH N. CHENGA
5. HIYARI N. KASAKWAYA
6. REHEMAH. NDONDE
7. ESTER MBILINYI
8. YASIN SALUMU
9. MARYS. TENGA
10. AIKAMBI SWAI PLAINTIFFS 11.GODFREY ISRAEL 12.INNOCENT AIKAMBI 13.ESRAEL
EMMANUEL 14.JOSHUA J. MUJWAHUI
15. ROSENA C. MTEMERE
16. IDDY ABAS1SABURI
17. SELEMANI SALUMU MWAMBASI 18.ADAM BONIFASI NYONI
19. ANASAMWELI VERSUS TANZANIA GATSBY TRUST ----- - 1st DEFENDANT OLIVE D.
LUENA -..... -..... 2nd DEFENDANT Page 1 of 10

JUDGEMENT

Date of last order: 14.06.2023 Date of Judgement: 14.07.2023 EBRAHIM, J.: The Plaintiffs named herein have instituted the instant suit praying jointly and severally for the judgement and decree against the Defendants as follows:

- i. Declaration that the 1st Defendant and 2nd Defendants are in breach of the contract executed between the Plaintiffs and the 2nd Defendants. ii. An order for payment of Tshs. 327,760,000/- being amount which could be generated from the business agreed thereto. iii. An order for payment of Tshs. 200,000,000/- being general damages iv. Costs of the suit
- v. Any other relief(s) that this Honourable Court shall deem fit to grant. Going by the Plaintiffs averments in the plaint, on 25th December 2014 the Plaintiffs executed an understanding with the Defendants that each Plaintiff shall pay Tshs. 50,000/- as registration fees and Page 2 of 10 the Defendants shall advance a loan of Tshs. 300,000/- to each of the Plaintiffs. The Plaintiffs averred further that through their organization called Peace and Comfort for Needy Women Organization, they ought to have conducted their business within agreed time but without any justification or reason able cause the Defendants failed to fulfill their obligations for none payment of the agreed loan amount. The Plaintiffs therefore claim to have suffered loss as their estimated business was not conducted. Upon being served with the plaint, the Defendants filed their joint written statement of defence strongly disputing the Plaintiffs' claims. After the completion of pleadings, first pre-trial conference; on 24.11.2022, the following issues were framed for determination by the court;
- i. Whether parties had a contract between them; ii. Whether there was a breach of contract; Tri. To what reliefs are parties (s) entitled to. Page 3 of 10 In this case the Plaintiffs were represented by Advocate Augustino Kusarika whereas the Defendants had the service of Advocate Robi Simon. The first issue is whether parties had a contract between them. On 27.03.2023 when the suit was called for hearing PW1, Cesilia Christantus Laus, testified that they entered into: a contract with the Defendants to advance them with loans to help them to eliminate poverty. The Defendants agreed to grant them a loan of TZS. 300,000/= to each person. PW1 testified further that on 25.12-2014 the Defendants agreed to advance them a total loan of TZS. 41,000,000/= on interest basis. She tendered the projected breakdown of the claim which was admitted as Exhibit P1. PW1 testified further that they have not yet been advance such loan that is why they have come to court. Responding to the cross-examination questions PW1 admitted that the Defendants were not giving loans without seeing a business of the applicant. She explained in re-examination that each Plaintiff Page 4 of 10 had a business which they expected profit. As to their contribution, she said the same was collected during the seminar. On 09.06.2023 advocate Kusarika told the court that testimony of PW1 suffices and covers the evidence of the other 18 Plaintiffs, He thus closed Plaintiffs' case. On the defense side, DW1, Mr. Marki Mambo testified that he was the employee of the 1st Defendant from 2005 to 2018 as a Finance and Administrative Manager. He was dealing with entrepreneurs by advancing them with affordable loans which were disbursed on groups. He explained the procedure for granting loans to the groups was by application which was done by the head of the group. He said once the Credit Officer and other responsible officers were satisfied that all procedures have been followed, they sign an agreement between the group and the Company. DW1 testified further that the institution which he was working with is no longer operative: since 2014 and that the 1st Defendant made an internal organization structure whereby all issues pertaining to loans were

transferred to Fanikiwa Company. Responding to cross-examination questions, DW1 said that the Page 5 of 10 procedure of getting the groups was done by the group leader (s) and not the other way round. Therefore, the group make an application. DW1 explained further that when he was acting as CEO (Chief Executive Officer) there were people who went there at their office accompanied with the former Credit Officer who moved to Fanikiwa Company felling him that the Plaintiffs have a claim against the 1st Defendant. DW2, Ms. Anna Dominic Lyimo testified that she is the CEO of Tanzania Growth Trust since 01.06.2019. She only responded to the summons because the same was wrongly served to them. DW3, Ms. Olive Daniel Lueno testified that she was the CEO (Chief Executive Officer) of the 1st Defendant for 22 years but she retired. Responding to cross examination questions DW3 said that from 2010 the 1st Defendant was transferred to Fanikiwa Company and that the assets and liabilities were also transferred to Fanikiwa Company. She explained on the conditions for the loans that they differed depending on the type of the applied loan and the amount. Going through the evidence of the parties it is undisputed that the 1st Defendant was operating from 2005 to 2014 dealing with granting Page 6 of 10 loans to the entrepreneurs and on year 2014 the 1st Defendant restructured to Fanikiwa Company as testified by DW1 and DW3. The main issue here is whether there is proof of a contract between parties. PW1 claimed that they entered into an agreement with the Defendants whereby the Defendants: agreed to advance them a loan of Tshs. 300,000/- to each Plaintiff. Nevertheless, apart from exhibit PI which was generated by the Plaintiffs themselves, they do not have any other proof of such agreement. There is no any document to show that they actually paid the said Tshs. 50,000/- to the Defendants as registration fees. Being a monetary transaction and the 1st Defendant being a Company, one would not assume money exchanged hands without any acknowledgement either in a form of a receipt or records. DW1 testified in court that their modus operandi was that the head of the group would go to them and the credit officer would do due diligence then the contract would be entered. He stated also that the Company would not issue a loan unless each person has a Page 7 of 10 business. To the contrary, apart from merely saying that each Plaintiffs had a business, there is no evidence of such business or even a document to show that indeed they had formed a recognized and a registered group. DW1 said that when he was acting as CEO (Chief Executive Officer) there were people who went at their office accompanied with the former Credit Officer who had moved to Fanikiwa Company and told him that the Plaintiffs had a claim against the 1st Defendant. Again, the Plaintiffs have not said that it was them who went to see DW1 and in-fact there is no concrete evidence as to who exactly went to DW1 and what exactly was the claim. DW3 completely denied knowing the Plaintiffs and she said they were working with the registered groups only. It is a settled principle of law in civil suits that "whoever alleges must prove". Many cases have ascribed to this principle including the case of Kwiga Masa vs. Samwel Mtubatwa [1989] TLR 103. Moreover, the provisions of Section 110(1) and (2) of the Evidence Act, [CAP 6 R. E 2022] places the burden of proof of the allegations to the Plaintiffs. The law states that; Page 8 of 10 'Section 110 (J J Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

- (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.' [Emphasis is mine] More-so, the Plaintiff is required to prove his/her case first before the defendant could be called to mount his/her defence i.e., to disapprove the claim. This means the Plaintiffs have primary duty to prove their assertion of facts. This position was well stated in the case of Paulina Samson Ndawavya Vs Theresia Thomas Madaha, Civil Appeal No. 45 of 2015 on the principal that the burden of proof lies on the party who asserts the affirmative of the issue and the one who denies it. However, having critically analysed and considered the evidence presented by the Plaintiffs before the court, there is no proof that they are either registered group or that they even entered into such an agreement with the Defendant to claim the expected profits Page 9 of 10 from the breach of contract. How can one claim breach of contract while he cannot prove the existence of such contract at first place? Having said that I find that there was no proof of contract at first place hence the first issue is answered in the negative. Having found that there was no contract between the parties, automatically it answers the second issue that there was no breach of contract. As the Plaintiffs' failed to prove their case, they would not be entitled to any of the claimed relief. Consequently, the Plaintiffs' case is dismissed with costs. Dar Es Salaam 14.07.2023 Page 10 of 10
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