

TANZANIA / JUDGMENT

sci tanzania ltd vs gulam mohamedali punjani another 2023 tzhccomd 235 28 july 2023

COURT
TZHCCOMDDECIDED
28 July 2023

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT DAR ES SALAAM COMMERCIAL CASE NO. 130 OF 2020 SCI (TANZANIA) LIMITED.....PLAINTIFF VERSUS GULAM MOHAMEDALI PUNJANI 1ST DEFENDANT PRISTINE PROPERTIES LIMITED 2ND DEFENDANT Date of Last Order: 22/05/2023 Date of Judgment: 28/07/2023

JUDGMENT

NANGELA, J. The Plaintiff, a Company established under the laws of Tanzania, filed a suit against the 1st Defendant (a natural person and a statutory Director of the 2nd Defendant) and the 2nd Defendant (a company registered in Tanzania) and prays for the following orders:

- (a) A refund of United States Dollars Three Hundred Thousand (US\$ 300,000/-). Page 1 of 24
- (b) Commercial interest on (a) above at the rate of 22% from the date filing to the date of judgment.
- (c) Interest on decretal sum from the date of judgment to the date of full recovery.
- (d) Court interest at the rate of 12% from the debt of judgment to full satisfaction thereof.
- (e) General damages.
- (f) Costs of this suit, and;
- (g) Any other relief that this honourable court may deem fit and just to grant. For clarity of the matters as they unfolded herein, however, I find it pertinent to briefly summarize the facts of this case. It all started sometime in April 2011 when the Plaintiff's Director, one Shabir Abji and the 1st Defendant had investment discussion. In their discussion, the two agreed to a partnership venture in the realm of property development. An oral agreement was, therefore, concluded with a view to develop a Page 2 of 24 multistorey building at Seaview Area, in Ilala District, within Dar-es-Salaam. In consideration thereof, on the 20th of April 2011, the Plaintiff deposited a total of US\$ 300,000/= to the 1st Defendant's bank account, this

being the agreed investment amount on the part of the Plaintiff for purposes of executing the project. Upon receipt of the stated amount, the 1st Defendant informed the Plaintiff that he would cause an agreement to be reduced into writing as the project papers were in their final stages, ready for viewing and execution within a period of twelve (12) months. Unfortunately, however, up to the year 2014, nothing was executed, and the Plaintiff was not notified. In the year 2014 the Plaintiff became aware that the project, if any, had not taken place and/or was abandoned by the Defendants without giving notice and the agreement was never reduced in writing as the 1st Defendant promised to do. It therefore remained an oral agreement through out. Page 3 of 24 However, following the Plaintiff's discovery that nothing had taken place up the year 2014, concerns were raised with the Defendants and the parties modified their initial agreement by a new agreement. In that agreement, the 1st Defendant agreed to compensate the Plaintiff for the US\$ 300,000 by way of transfer to the Plaintiff's ownership, one prime apartment in another high-end multi-storey apartment building along Sea View Road, in Sea View Area, Ilala District in Dar-es-Salaam Region which was on a completion stage within a period of thirty-six (36) months. However, upon completion of the 36 months, (by December 2017) the Plaintiff became aware that nothing substantial was forth coming from the project and the promise made by the 1st Defendant was not going to be fulfilled. Upon close follow-up efforts and discussions with a view to ensuring that a refund is made, the Plaintiff met a dead end as the Defendants were uncooperative. Page 4 of 24 Three demand notices were later issued on the 11th of February 2019, the 26th of March 2019, and the 06th of May 2019 for an immediate refund of the full amount. Noting that, nothing was forthcoming, the Plaintiff preferred this suit. Upon service of the Plaint, the Defendants filed a joint Written Statement of Defence (WSD) in response to the claims made by the Plaintiff. In their WSD, however, the Defendants raised a point of law to wit, that, the suit is, under the Law of Limitation Act, Cap.189 R.E 2019, time barred. In a ruling of this court dated 20th of October 2022, this court overruled the Defendants objection making a finding that, the parties' contract having been novated in 2014, the new contract was still valid, and the cause of action was within time. The case had to proceed to its hearing. Following the completion of the pleadings and the pre- trial hearing and the mediation process which turned out to be unsuccessful, on 14th June 2022, this court convened for a final Page 5 of 24 pre-trial conference and the following issues were agreed and recorded for determination:

1. Whether the Plaintiff and the Defendant had agreement that led to the Plaintiff to deposit a total of USD 300,000/= as investment to develop the 1st Defendant's project which is a mutual store Building in Seaview area.
2. Whether the Defendant breached the Agreement to develop the project at Seaview area as agreed.
3. Whether the Plaintiff is entitled to the refund of the said monies amounting to USD 300,000/ =.

4. Whether the Defendant had agreed with the plaintiff to compensate her investment money by issuance of apartment located at the developed project at Seaview area situated at plot No. 2406/5 Seaview Road, which Page 6 of 24 is the 4th floor with 260 square metres.
5. To what reliefs are the parties entitled to. All parties did also file their witness statements as per the requirements of the Rule 49 (2) of the High Court (Commercial Division) Procedure Rules, GN. 250 of 2012 as (amended by GN. 107 OF 2019), and the suit proceeded to a full hearing of the parties which commenced on 03rd May 2023. On the material date, the Plaintiff was represented by Mr. Shehzada Wali together with Ms. Winjaneth Lema, learned advocates, while the Defendants enjoyed the legal services of Mr. Ashiru Lugwisa, learned advocate. Both parties herein called one witness and tendered various exhibits. It is also worth noting that the two witnesses filed witness statements which were admitted as their testimonies in chief. At the opening of the Plaintiff's case, Mr. Shabir Abji who appeared for the Plaintiff testified as Pw-1 and tendered various exhibits in court as I shall shortly reveal. In his testimony in chief, Pw-1 told this court that, he is a Director in Page 7 of 24 the Plaintiff's company who discussed and entered into an oral partnership venture agreement with the Defendants sometime in April 2011. He told this court that, in their discussions, the 1st Defendant had presented to the Plaintiff that he had secured and intended to develop a multistory building in Seaview Area in Ilala District in Dar es salaam. In agreement to be part of the project, the Plaintiff and agreed, as part of consideration, to deposit a sum of United State Dollars Three Hundred thousand (US\$ 300,000/=). According to Pw-1, the stated sum was deposited directly into the bank account of the 1st Defendant on the 20th of April 2011 by way of bank transfer, as the investment sum for the agreed project. In court, Pw-1 tendered an affidavit and the SWIFT MESSAGE evincing that transfer of funds and the two documents were admitted as Exh.P1 and Exh.P2 respectively. Further still, it was the testimony of Pw-1 that, immediately after receipt of the sum earlier stated, the 1st Page 8 of 24 Defendant informed the Plaintiff his intention to cause a written agreement to be drafted reducing the transaction in writing. Pw-1 told this court as well that, the 1st Defendant did assure him that, the project's paperwork was in its final stages and that, it was expected to be ready for viewing and execution within a period of 12 months. Pw-1 told the court, however, that, up to the year 2014 nothing meaningful was done as it came to the attention of the Plaintiff that the project had not taken place and/or was rather abandoned by the Defendants without giving notice to the Plaintiff. It was a further testimony of Pw-1 that, when he confronted the 1st Defendant, the latter readily admitted that the project had not been performed as agreed. Pw-1 told this court that, the 1st Defendant undertook to compensate the Plaintiff by allocating and transferring to her, ownership of a prime 260 square meters, 4 bedrooms apartment, located on the 4th floor of another ongoing project by Pristine Properties Limited (2nd Defendant), situated at Plot No. 2406/5, along Seaview Road, and which was expected to Page 9 of 24 be completed within a period of 36 months and at no additional charges, a promise which the Plaintiff agreed to. Pw-1 told the court, however, that, upon follow up and inquires on the progress of the project, the Plaintiff became aware, in December 2017, that even the 2nd project had stalled and, that, the 1st

Defendants knew that the project was not going to be completed within the time he made the offer of the compensation in lieu of refund. Pw-1 told this court, therefore, that, following futile efforts and discussions about how the matter should be resolved, and since the Defendants became uncooperative, several demand notices were served upon the Defendants on requiring an immediate and full refund of the US\$ 300,000.00 and hence this suit was filed in court. Such demand notices were tendered in court and got admitted as Exh.P3, Exh.P4 and Exh.P5. When Pw-1 was cross examined by Mr. Lugwisa, he did stand firm that, the oral agreement was entered between him Page 10 of 24 as the chairman of SC1 Company and Mr. Gulam, as director of the 2nd Defendant. He told this court that, at first there was initially agreement to enter into a partnership with the Defendant. He denied an averment that he had wanted to purchase a flat. He admitted, however, that, at some point the Defendants did offer him a title to the flat but his view was that possession of such as not possible since it was incomplete, and no development was taking place at the project site. While under re-examination, Pw-1 clarified to the court that, the project which contained flat at Seaview started sometimes in 2013/2014, and it has taken 10 years to date and still not completed. That marked the end of the Plaintiff's case and, as I stated earlier, the Defendant called one witness to testify. In his testimony, the Defence witness, Mr. Gulam Muhamedali Punjani, testified for himself as the 1st Defendant and for the 2nd Defendant (where he serves as a one of the Page 11 of 24 statutory Directors of the 2nd Defendant). He testified, therefore, as Dw-1. In his testimony in chief received by this court, Dw-1 did admit before the court that, sometimes in 2011, him and the Plaintiff agreed to invest in various projects. He mentioned them to include an airline and development of property at Toure Drive. Dw-1 told this court that, in that discussion there was nothing about partnership structure but that, the discussion was limited to investment in such specific projects. He also stated that, there was no discussion or investment in any of the Seaview project. In his testimony, Dw-1 did also admit that, on 14th April 2011, the Plaintiff's Chief Executive Officer, Mohan R, sent him an email which undertook to transfer funds and copied Mr. Shabir Abji. He told this court that on 21st April 2011, the sum of USD 300,000/= was transferred to his bank account at Habib African Bank Ltd. According to Dw-1, subsequent to the transfer, sometimes in 2012, the Plaintiff's representative, one Mr. Page 12 of 24 Shabir Abji (Pw-1) did agreed to allocate the entire sum received in 2011 to purchase of a 4-bedroom apartment unit measuring 260 square meters, plot 2406/5 in Seaview Road Dar es salaam, at an ongoing project developed by the 2nd Defendant (Pristine Properties Ltd). He told this court further, that, sometimes in 2017, the Plaintiff's representative, Mr Shabir Abji and his partner visited the project site and told the Defendant that the said apartment should be allocated to their daughter. Further, it was Dw-1's testimony that, in January 2019, he and the Plaintiff's representative, Mr. Shabir, met, and the latter got informed that the Defendants were working towards completion of the Seaview project. Dw-1 told this court that, on the material date, the Plaintiff's representative was moreover told that, the Defendants had prepared for his certificate of title and, that, the same were ready for collection. He told the court that he was as well advised by one of his advocates that the claims were already stale and thus, prayed for the dismissal of the Page 13 of 24 suit with costs as the Plaintiff is not

entitled to any of the orders sought. Upon being cross examined by Ms. Lema, Dw-1 told this court that, the title deed he had referred to is still available for collection in the 1st Defendant's office. He told the court that in the year 2011/ 2012 it was not ready but subsequently in 2017 it was ready. However, he admitted that such alleged title deed was not submitted before this court. Upon further cross-examination, Dw-1 told this court, however, that, the title deed is in the name of Pristine property Ltd (the 2nd Defendant), and it has not been transferred into the name of the Plaintiff. It was Dw-1's admission when cross examined by Mr. Walii that, indeed he received the US\$ 300,000/= and asserted that he offered a title deed to the Plaintiff. So far that marked the end of the Defence case. At the closure of the defence case, the parties prayed for time to file closing submissions. I have as well considered their submissions. In his submissions, Mr. Lugwisa has raised matters regarding the Land Act, Cap.113 R.E 2019 and the Unit Page 14 of 24 Titles Act, 2008. However, let me state from this very outset that, I do not see their applicability to the matter at hand. It is also worth noting that, in law, he who alleges must prove. Section 110-111 of the Evidence Act, Cap.6 R.E 2019 is very settled on that and various cases, such as the case of The Registered Trustees of Joy in the Harvest vs. Hamza K. Sungura, Civil Appeal No.149 of 2017 (unreported), are alive to that settled legal position. It follows, therefore, that, as I seek to determine the issues earlier agreed upon to guide this court, I will also be guided by that evidentiary principle and many others. Here below, and as part of my analysis of the issues agreed upon, I will therefore proceed to address each issue in the light of the available evidence and the testimonies received in court. As I pointed out earlier here above, there are five issues which considering the facts of this case, the evidence gathered, and the existing cardinal principles of the law, I am called upon to determine. The first issue is: Whether the Plaintiff and the Defendant had agreement that led Page 15 of 24 to the Plaintiff to deposit a total of USD 300,000/= as investment to develop the 1st Defendant's project which is a mutual store Building in Seaview area. There is no doubt that the parties herein had concluded an agreement. As this court stated in its ruling dated 20th October 2020, the parties' agreement is to be reckoned from the 2014 variations which amounted to a complete novation of the earlier agreement. In that regard, this court made it clear that, in the year 2014, the parties' original oral agreement concluded in the year 2011 was modified, and its terms got altered coming up with a new contract by virtue of the doctrine of novation as provided for under section 62 of the Contract Act, Cap.345 R.E 2019. Under the new contract, the parties agreed that the Defendants were to transfer to the Plaintiff ownership of a prime apartment in another high-end multi-storey apartment building along Sea View Road, in Sea View Area, Ilala District Page 16 of 24 in Dar-es-Salaam Region. It follows therefore, that, the first issue is to be responded to affirmatively, considering what is stated herein above. That conclusion leads me to the second issue which is: Whether the Defendant breached the Agreement to develop the project at Seaview area as agreed. Legally speaking, a breach of contract is an act which occurs when a legally binding agreement is not honored by one or more parties to the contract, either by non-performance or interference with the other party's performance. Put differently, it is in essence, a material non-compliance with the terms of a legally binding contract. See the case of FABEC Investment Limited vs. MES International Services

(Pty) Limited and Another, Commercial Case No. 07 of 2022 (unreported). In his testimony, Pw-1 has made it clear that up to the year 2017 and, even to date, what was agreed in the year 2014 was not and has never been fulfilled. This fact has readily been admitted by the Dw-1. However, Dw-1 has given Page 17 of 24 explanations to the effect that, the parties had agreed that the entire sum received in 2011 be allocated to the purchase of a 4-bedroom apartment unit measuring 260 square meters, plot 2406/5 in Seaview Road Dar es salaam, at an ongoing project developed by the 2nd Defendant (Pristine Properties Ltd) and that, the same be given to the Plaintiff's daughter. In my view, however, the fact will still remain that, the promises which were given in the year 2014 when the parties agreed to novate the initial contract and agreed on a new position were never fulfilled in time since, up to the year 2017, nothing to that effect was available which could have been handed over to the Plaintiff whose monies were given to the 1st Defendant since the year 2011. From the look of things as they stand to this very date, there is a clear conclusion that, the Defendants have failed to honor their promises and, therefore, are in breach of their obligations. The second issue will equally be responded to in the affirmative, and that will allow me to move on to the third issue which is: Page 18 of 24 Whether the Plaintiff is entitled to the refund of the said monies amounting to USD 300,000/=. By and large, the above stated issue will attract a positive response. I find it to be so because, naturally, when the 1st Defendant failed to deliver what he promised to the Plaintiff in 2014, what was to follow was to refund the Plaintiff the full amount. As such, the third issue is also responded to in the affirmative, paving way to the fourth issue which is: Whether the Defendant had agreed with the plaintiff to compensate her investment money by issuance of apartment located at the developed project at Seaview area situated at plot No. 2406/5 Seaview Road, which is the 4th floor with 260 square meters. In my considered view, the fourth issue is directly linked to the first issue. The first issue attracted an affirmative answer because, the parties had novated their initial contract and concluded a new contract altogether. This court need not reopen the discussion it made when addressing the preliminary Page 19 of 24 issue which was raised by the Defendants in the ruling delivered on the 20th of October 2022. It suffices to note, therefore, that the new oral contract entered in the year 2014 had a term which was to the effect that the Defendant was to compensate the Plaintiff her investment money by issuing to her ownership of an apartment (which is the 4th floor with 260 square meters) from project at Seaview area situated at plot No. 2406/5 Seaview Road. As such, the fourth issue is responded to in the affirmative allowing me to address the last issue which is: to what reliefs are the parties entitled. In principle, if a party is to be entitled to any relief, such a party must have succeeded to prove its case to the required standards. The principle regarding the standard of proof in civil cases as this suit is that of "proof based on the balance of probabilities". In the case of Kibogate Tanzania Ltd vs. Grandtech (T) Ltd, Commercial Case No. 32 of 2021 (unreported), this court, citing the English case of Miller vs. Minister of Pensions [1947] ALL E.R. 372; 373, 374, Page 20 of 24 noted that, Lord Denning J (as he then was) held a view regarding whether a party has fulfilled the role to discharge the burden of proof, that: "If the evidence is such that the tribunal can say: We think it more probable than not, the burden is discharged, but if the probabilities are equal, it is not." In this instant suit at hand, it is my

findings and, without a flicker of doubts, that, what the Plaintiff is claiming from the Defendant is highly probable than not. As such, the balance of probabilities lies in favour of the Plaintiff as against the Defendants. In other words, the Plaintiff has been able to discharge his burden and has proved her case to the required standards. In his prayers, however, the Plaintiff has prayed for among others, an award of general damages. In law, general damages are payable to a party who suffers due to breach of contract, but he must only plead such without prescribing a quantum since the quantum to be paid is paid at the discretion of the Court. See: for that matter, the cases of Cooper Motor Page 21 of 24 Corporation Ltd vs. Moshi/Arusha Occupation Health Services [1990] TLR 96 and Fredrick Wanjara, M/S Akamba Public Road Service Limited A.K.A Akamba Bus Service vs. Zawadi Juma Mruma, Civil Appeal No. 80 of 2009 CAT [unreported]. Considering that the monies which the Plaintiff herein seeks to be refunded were monies which the 1st Defendant received in 2011, the evidence that such monies were indeed issued and received by the Defendants, and nothing expected from their use came forth is itself compelling on me to exercise my discretion and grant general damages as prayed by the Plaintiff. In principle, had such an amount been invested else where the Plaintiff would have enjoyed her investments efforts. However, things went awry as they have gone and here were today with a claim for a full refund. The refund must, thus, be cushioned with a payment of at TZS 10,000,000/= (say: Ten million Tanzanian Shillings) as general damages which I assess based on the inconveniences Page 22 of 24 suffered by the Plaintiff from the time she advanced her monies to the Defendant. From the totality of the above findings, this court proceeds to grant Judgement and Decree in favour of the Plaintiff and settled for the following orders:

1. That, the Defendants are hereby jointly and severally ordered to refund a total of United States Dollars Three Hundred Thousand (US\$ 300,000/-) to the Plaintiff.
2. That, the Defendants are to pay the Interest at a rate of 7% on decretal sum from the date of judgment to the date of full recovery.
3. That, the Defendants are to pay interest on the decretal amount at a Commercial rate of 12% pa, from the date of judgment to full satisfaction thereof.
4. That, the Defendants are to pay the Plaintiff TZS 10,000,000 (Ten Million Page 23 of 24 Tanzania Shillings) as general damages.
5. Costs of this suit are to be paid by the Defendant. It is so ordered. DATED AT DAR-ES-SALAAM ON THIS 28TH DAY OF JULY 2023
DEO JOHN NANGELA JUDGE Right of Appeal Explained. Page 24 of 24

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/242613/source_file/sci-tanzania-ltd-vs-gulam-mohamedali-punjani-another-2023-tzhccomd-235-28-july-2023.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/sci-tanzania-limited-breachofcontract-tzhccomd-2023>

Prepared on 13 October 2026 · Esheria