

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 80 OF 2015

MAHESHKUMAR RAOJIBHAI PATEL PLAINTIFF

VERSUS

KARIM SHAMSHUDDIN SULEMAN DEFENDANT

JUDGMENT:

MRUMA, J:

The Plaintiff Maheshkumar R. Patel instituted this suit against the Defendant Karim Shamshudin Suleiman claiming for payment of USD 3,300,000.00 (Say Three Million Three Hundred Thousand only) being his excess contribution in a joint venture business.

The Plaintiff's case is that sometimes in March, 2012 he entered into a joint venture business agreement with the Defendant. The business was established in Mauritius under the name of Pwani International Hauliers Ltd. On 28th December, 2013 the parties agreed to enter into a Dissolution of Joint Venture Business Agreement. In that agreement the parties agreed that the Defendant shall pay to the Plaintiff USD 3,300,000.00 which were contributed by him in excess of his shares in the joint venture business.

According to the Plaintiff, it was agreed by the parties that the Defendant shall first pay USD 250,000.00 on or before 10th February, 2014, followed by a minimum of USD 100,000.00 per month payable before the last working day of each month till the entire amount is paid. The Defendant has not paid a single cent and hence this suit.

In his Written Statement of Defence the Defendant denied the Plaintiff claims and stated that the Plaintiff did not make any excess contribution as claimed or at all. Elsewhere (for instance in paragraph 4 of the written statement of defence), he disputed the existence of a joint venture business between him and the plaintiff.

At the commencement of the trial four (4) issues were framed by the court for determination. The issues are:-

1. Whether parties ever entered into a joint venture business agreement
2. If the answer to the first issue is in affirmative, whether or not the plaintiff made any excess contribution towards that business.
3. If the answer to issue No. 2 is in the affirmative, whether or not the Defendant is liable to the Plaintiff for the amount claimed or any other amount.
4. To what reliefs are the parties entitled.

The Plaintiff called one witness Mr. Maheshkumar Raojibhai Patel who testified as PW1. He testified that he used to run a transport and logistics company in the name of Pwani Haulers Limited and the Defendant had a transport and logistics company known as Dhando Road Haulage

Limited. In 2012 the plaintiff and the defendant agreed to join hands and establish and ran a transport and logistics joint venture business known as Pwani International Hauliers Limited. It is the evidence of PW1 that their joint venture business was based in Mauritius and it worked as agreed. He said that on 28/12/2013 they agreed to dissolve their joint venture business and accordingly they signed a dissolution of joint venture agreement. He tendered as exhibit a copy of dissolution of Joint Venture Agreement (Exhibit P1).

On his party, the Defendant testified as a sole defence witness. He testified as DW1. He testified by way video conferencing while allegedly in Vancouver Canada. He told the court that there has never existed any joint venture business between him and the plaintiff. He denied to have signed the joint venture agreement (exhibit P1) as alleged by the plaintiff. He said that the plaintiff did not make any excess contribution as alleged therefore he is not liable to pay any claims of the plaintiff.

As stated before the 1st issue is whether the parties ever entered into a joint venture agreement. From the plaintiff's evidence parties agreed to jointly establishing and running a transport and logistics service business. To prove the existence of a joint venture business the plaintiff tendered in evidence dissolution of joint venture agreement (exhibit P1). In paragraph C of the Dissolution of Joint Venture Agreement (exhibit P1), it is stated that on March 01, 2012 parties had agreed to jointly establishing and running a transport and logistics services business. This evidence is not contested. In his evidence in defence the Defendant simply denied to have entered into such agreement. He did not substantiate his denial.

In my view the oral evidence adduced by PW1 which is supported by a Dissolution of Joint Venture Agreement (exhibit P1) by far out weights the Defendant simple denial of the existence of the said Joint Venture Agreement. I thus answer the 1st issue in the affirmative, that is to say parties did enter into a joint venture business agreement as alleged by the plaintiff and substantiated under paragraph "C" of the Dissolution of Joint Venture Agreement (exhibit P1).

The second issue is whether or not the plaintiff made any excess contribution towards the joint venture business.

Under clause 1.1 of the Dissolution of Joint Venture Agreement (exhibit P1), it is clearly stated that the plaintiff had contributed USD 3,300,000.00 in excess of his shares up to 28th December, 2013 and that the excess contribution shall be repaid by the Defendant. Again this evidence is not seriously challenged. The Defendant did not offer any cogent evidence to counter the plaintiff's assertion which finds support in clause 1.1 of exhibit P1. In absence of any evidence to the contrary I answer the 2nd issue in the affirmative and find that the plaintiff did make excess contributions towards joint venture business. In terms of clause 1.1 and 1.3 of exhibit P1, the Defendant is liable to the plaintiff for the amount he is claiming as excess payment made towards joint venture business, and this answers the 3rd issue.

The last issue is about reliefs. The plaintiff is claiming for payment of USD 3,300,000.00 being excess contribution he made towards their joint venture business. Having found that there was a joint venture business

between the plaintiff and the Defendant and that the plaintiff had made excess – contribution towards the running of that business to the tune of USD 3,300,000.00 and in view of clause 1.1 and 1.3 of the Dissolution of Joint Venture Agreement (Exhibit P1), I find and hold that the plaintiff is entitled to the payment of USD 3,300,000.00 as prayed in the plaint.

The plaintiff is also claiming for general damages. Generally speaking general damages are payable for sufferings which cannot be estimated in monetary value. In the present case the Plaintiff was claiming and has been awarded specific damages of USD 3,300,000.00 which is actually a reimbursement of his money. He did not lead any evidence to show that he suffered general damages as result of the acts of the Defendant refusing to pay him as agreed. In this respect evidence of physical or mental injuries, loss of business and reputation would have laid a ground for award of general damages. In absence of such evidence I find that claim of general damages has not been established.

Finally the plaintiff is claiming for interests both at Commercial rate of 21% per annum from February, 2014 up to the date of Judgment and at court's rate of 12% per annum from the date of judgment to the date of payment in full.


I have no doubt that the money involved in this matter was for business and investment which naturally attracts interest. However, I find that the 21% rate claimed is on the high side particularly so because the currency involved, ie USA Dollar is among the strongest currency in the world economies. Instead of 21% per annum claimed, I would allow and

award an interest rate of 5% per annum from the date of filing the suit to the date of judgment and further court's interest at the rate of 2% per annum from the date of judgment to the date of full payment of the decretal sum. The plaintiff is also awarded costs.

In summary therefore judgment is entered for the plaintiff and against the defendant as follows:-

1. The Defendant shall pay to the Plaintiff USD 3,300,000.00 being the amount contributed by the plaintiff in excess of his shares in a joint venture business up to 28th December, 2013.
2. The decretal sum shall attract interest at the rate of 5% per annum from the date of filing this suit to the date of Judgment and further court's interest at the rate of 2% per annum from the date of full payment of the decretal sum.
3. Costs of the suit as shall be taxed.

Order accordingly.


A. R. Mruma,



Judge

07th February, 2018