

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 10 OF 2021

IBRAHIM MAJID AMBARI..... PLAINTIFF

VERSUS

EMMASAI (T) GENERAL ENTERPRISES..... 1ST DEFENDANT

EMMANUEL MLAPONI..... 2ND DEFENDANT

BIFFA BARRAN SULLE..... 3RD DEFENDANT

NOVART KABOIGORA..... 4TH DEFENDANT

ECOBANK TANZANIA LIMITED..... 5TH DEFENDANT

JUDGMENT

Date of last Order: 19th June, 2023

Date of Judgment: 30th June, 2023

E.E. KAKOLAKI, J.

The Plaintiff herein, Tanzanian by birth currently residing in the United States of America, being a partner in the 1st defendant's partnership, filed a suit against the 1st defendant and 2nd, 3rd and 4th defendants as his co-partners and the 5th defendant as a banking institution duly incorporated under Tanzanian laws for fraudulently facilitating and restructuring a loan against him to the tune of Tshs. 2,288,787,500, while using his title No. 003006/86,

Plot No. 16, Block N, within Bukoba township as collateral. And further that, the 1st, 2nd and 3rd defendants mishandled the partnership account in respect public transportation business, thereby occasioned loss to the plaintiff to the tune of Tshs. 207,259,716 and continued in unlawful possession of his two buses involved in partnership with Reg. No. 376 DFT and T 379 DTF both worth Tshs. 170,000,000/=. When tried to effect service to the Defendants, it is only the 5th Defendant (Eco Bank) who turned up, filed her defense and entered appearance in Court, whilst efforts to locate the 1st, 2nd, 3rd and 4th Defendants proved futile, thus the Court ordered for substituted service by way of publication against them. Following publication of summons on 22/9/2022 in Mwananchi Newspaper and Uhuru Newspaper and continued defaulted appearance by the 1st, 2nd, 3rd, and 4th defendants, the Court ordered hearing of the case proceeds ex-parte against them.

Before the Court could proceed to schedule the case for 1st pre-trial conference, it was informed by the Plaintiff and the 5th Defendant (Eco Bank) of their intention to settle their dispute out of Court in which time was availed to them for that purpose, hence their dispute settled and Deed of Settlement filed in this Court on 21/7/2022, registered and the decree issued among others to effect that, the plaintiff shall pay the 5th defendant Tshs.

65,000,000/= by 30/09/2022, the 5th defendant discharge plaintiff's mortgage on his property and reinstate his certificate of title to him, while leaving plaintiff's claims against the 1st, 2nd, 3rd and 4th Defendants pending for determination/trial by the Court. Following the plaintiff's settlement of claims against the 5th defendant, he is now praying against the defendants the following reliefs:-

- (i) Payment and Declaration for fraudulently mishandling the partnership accounts and occasioning loss of earnings to the Plaintiff to date from two buses between 2015 and 2020 to the amount of 207,259,716/=.
- (ii) Reimbursement of the value of two buses T 376 DFT and T379 DFT in possession of the 1st, 2nd and 3rd Defendants belonging to the Plaintiff worth TSHS. 170,000,000/=.
- (iii) A declaration that the 1st, 2nd, 3rd, 4th Defendants fraudulently facilitated and restructured a loan against the Plaintiff.
- (iv) A declaration that the 5th defendant fraudulently approved the restructure of the loan and colluded with the 1st, 2nd, 3rd and 4th defendants without the consent and knowledge of the plaintiff.

- (v) A declaration that the restricting of the loan was unlawful, illegal and fraudulently obtained, and that the plaintiff's Title (Title Number 003006/86, Plot No. 16, Block N, Bukoba Township) be released and any entry, encumbrance by the defendants jointly or severally be discharged.
- (vi) A declaration that the Plaintiff be removed from any association of the 1st Defendant partnership and authorities.
- (vii) General damages and;
- (viii) Costs of this suit.

It is settled principle of the law as promulgated under the provisions of section 110(1) and (2), 112 and 3(2) of the Evidence Act, [Cap. 06 R.E 2022], that whoever alleges existence of a certain fact must prove its existence and the standard such proof is on the balance of probabilities or preponderances. See also the cases of **Anthoni M. Masanga Vs. Penina (Mama Ngesi and Another)**, Civil Appeal No 118 of 2014, **Paulina Samson Ndawavya Vs. Theresia Thomasi Madaha**, Civil Appeal No. 53 of 2017, **Paulina Samson Ndawavya Vs. Theresia Thomasi Madaha**, Civil Appeal No. 53 of 2017 and **Berelia Karangirangi Vs. Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017, (both CAT- unreported). In view of that the pending

issue for determination by the court is whether the plaintiff has managed to establish his claims against the 1st, 2nd, 3rd and 4th defendants to the required standard? In order to respond to the sole issue four (4) sub-issues must also be answered. These are one, whether there existed a partnership between the 1st, 2nd, 3rd and 4th defendants. Second, if the response to the first issue is in affirmative whether there was any breach of the terms of the said partnership by the defendants against the plaintiff. Third, whether the plaintiff suffered any damage and to what extent? And lastly to what reliefs are the parties entitled to?

In discharging the noble duty of proving his case to the required standard the plaintiffs' evidence consisted of testimony of single witness, PW1 who was (IBRAHIM MAJID AMBARI), who relied on eleven (11) documentary exhibits some of which were admitted collectively. At the end of the trial counsel for the plaintiff Ms. Raya S. Nassir filed her final submission to assist the Court arrive at the just decision in which I am very much grateful to her. In this judgment I am not intending to narrate the whole evidence as adduced but I will consider it together with the submissions in the course of answering the raised issue and sub-issues.

To start with the first sub issue as to whether the alleged partnership existed between the parties, PW1 stated that the 1st Defendant who was previously a sole proprietor under the 2nd Defendant's ownership, later on in August and September 2015 converted itself into Partnership after the joining of the plaintiff, 3rd and 4th defendants and continued to trade under the 1st Defendant's name (EMMASAI (T) GENERAL ENTERPRISES) that existed before. **Exhibit PE1 Collectively** which include among others Certificate of Registration of change and extract from register from Business Registration and Licensing Agency (BRELA) was tendered by PW1 to prove the formation of the said Partnership. Further to that he said, the 1st Defendant was dealing in the business of Public Transportation and tendered **Exhibit PE2** which is a Statement of Particulars in case of a firm (Form No 2) from BRELA to prove the said nature of business. Upon examining the above document and having considered plaintiff's submission in respect of formation of partnership, it is to the satisfaction of this Court that, the 1st defendant existed as a partnership between the plaintiff and 2nd, 3rd and 4th defendants. Thus the first sub-issue is answered in affirmative.

Next for determination is the second sub-issue as to whether there was any breach of terms of agreement in the partnership by the 1st, 2nd, 3rd and 4th

defendants against the plaintiff. It was PW1's testimony that, when the partnership was formed the 2nd defendant as a sole proprietor operating under business name of the 1st defendant had previously acquired loan facility to the tune of Tshs. 260,000,000/- which was carried by the partnership. That partners had agreed in September, 2015 under the Partnership to acquire and acquired new loan from the 5th Defendant amounting to Tshs. 620,000,000/= in which plus the top up of previous loan made a total of Tshs. 880,000,000/- in order to buy new buses for the business of Public Transportation. He said, it was their term that each partner was to furnish security to secure the obtained loan of Tshs. 880,000,000/=: in which the Plaintiff furnished his property with C.T NO. 003006/86 in Bukoba Municipality as collateral and so proved by tendering a copy of certificate of title in respect of that property as **Exhibit PE3**, since the original was still in the possession of the 5th defendant. According to PW1, this loan allowed the partnership to acquire 15 buses, among them two (2) Eicher Town buses belonged to the Plaintiff under Registration Number TDFT 376 and TDFT 379 which matched the value of his furnished security i.e. Tshs. 170,000,000/= in which their Registration cards were tendered and admitted as **exhibit PE4** in the name of the 1st Defendant on the reason

that, the bank had to retain them until the loan advanced for their purchase is paid in full.

PW1 further testified that, the 2nd and 3rd Defendants were the sole supervisors of the buses business operations and were responsible for collection of income from all buses on a daily basis, pay the loan amount monthly to 5th defendant (ECOBANK) as can be seen in item 5 of **Exhibit PE2**, and distribute the profit to the partners through their accounts. That, they were also responsible for preparation of weekly, monthly and annually report of partnership income and expenses in excel spread sheet, schedule for partners meetings on weekly basis for reconciling the income and expenses before the net profit could be paid to the partners. According to PW1, the plaintiff decided to set up an account in the name of Ambari Co. Ltd at ECOBANK for the sole purpose of collecting income from the Partnership operations of his two Eicher buses and received income (profit) smoothly for the first six (6) months, before he started receiving weekly income deposits discretionary and irregularly and sometime nothing at all. He tendered the spread sheet of Ambari Group Co. Ltd in Management Account for a period of January 2016 to December, 2020 showing the amount he ought to have received but not remitted into his account and the

statement of account with A/C No. 0040135401853501 as **Exhibits PE5** and **PE6**, respectively. He further stated that, at the same time, the loan repayment amount was being collected from the generated income without being remitted to the 5th Defendant, as a result loan repayment was defaulted.

It was PW1's further testimony that, in 2016 the 2nd Defendant proposed to the plaintiff to obtain a new credit facility but the later refused on the ground that, he had no further security to secure the same and he had ceased to benefit from the formerly obtained loan facility. To his surprise he testified, the 1st, 2nd, 3rd and 4th defendants went through his back, forged his signature and used his property already secured the previous loan as collateral for an additional amount of loan of Tshs. 1,400,000,000/- in which a credit facility letter dated 30/06/2016 issued by the 5th defendant including his name and signature was admitted as **Exhibit PE-8**. This witness went on testifying that, upon such discovery he demanded for a Memorandum of Understanding (M.O.U) which was executed and admitted as **Exhibit P-9** to exonerate him from any liability arising from **Exhibit PE-8**. And that, upon his return to the United States of America where he resides, the 1st, 2nd, 3rd and 4th defendants made a further restructuring of the Credit Facility

in 2018, (Restructuring facility letter) which was admitted as **Exhibit P-10**, the document which he learnt on his return to Tanzania that, had created encumbrance on his property to the tune of Tanzania Shillings Two Billion. Having considered evidence of PW1 and thoroughly perused of **exhibits PE5 and PE6** relied on by the plaintiff to prove to this Court the claim that, the 1st, 2nd, 3rd and 4th defendants acted fraudulently and contrary to the agreed terms under the partnership, when ceased to repay the loan and remit the profit to the plaintiff's account regularly after the first six (6) months of the business without any justifiable explanation, I find the evidence is insufficient to prove the said claim to the required standard. I will explain why? Glancing at the two documents relied on by the plaintiff and banked on by Ms. Nassir in her submission, I find the same to be unreliable due to their questionable genuineness and authenticity. When tendering the printout of Ambari Group Co. Ltd Management Account **exhibit PE5 and PE6** Ambari Group Co. Ltd Consolidated Management Account, PW1 told the Court that, the same were shared to him by the partnership accountant one Richard Komba. However the said documents do not bear any headed paper, title or stamp of the partnership nor do they contain any signature of the officer who prepared them or any other

partnership officer to justify their authenticity. Similarly **exhibit PE6**, Ambari Group Limited Account No. 0040135401853501 bank statement of 24/11/2015 to 20/09/2019, which bears the stamp of ECO Bank Tanzania Limited without any signature of the person who issued it so as to render it reliable document. **Black's Law Dictionary, 8th Edition** (2004) page 1954 defines "**Authentication**" as, *the act of proving that something (as a document) is true or genuine, esp. so that it may be admitted as evidence.* In the present matter since the documents relied on by plaintiff are not true or genuine due to the defects noted therein this Court cannot rely on them to make findings against the defendants on the claimed fraudulent acts of failure to remit partnership profits to the plaintiff.

Regarding 2nd and 3rd defendants' failure to repay the loan as alleged, I find plaintiff's reliance on **exhibit PE5** which its authenticity is already questionable is insufficient to prove such strong allegation. It was expected that the plaintiff would have tendered the loan repayment bank account statement from the 5th defendant showing the flow of remission of monthly loan repayment instalments by the 1st defendant so as to prove that assertion. In absence of such vital document it is the firm findings of this Court that, the claim remains unproved to the required standard in terms of

section 3(2)(b) of the Evidence Act. In view of the above I find even the contention by the plaintiff that, the 2nd and 3rd defendants were entrusted with the duty to manage partnership business and accounts, prepare income and expenditure accounts weekly, monthly and annually as well as conducting partners' meetings weekly, in which alleged they failed to do and fraudulently mishandled partnership accounts, is also unproved. The reasons I am so holding are very obvious as **one**, apart from the 2nd and 3rd defendants being named as persons empowered to operate the firm's bank account or sign, draw or endorse documents on behalf of the 1st defendant as exhibited in item 5 of **exhibit PE2**, there is no any tendered partnership deed by the plaintiff to support existence of other duties entrusted to the 2nd and 3rd defendants allegedly breached, since as a matter of law partnership relationship arises from the contract. I find solace in the provisions of **Section 191 (1) of the Law of Contract Act**, [CAP 345 R.E. 2019] providing that, "*The relationship of partnership arises from contract and not from status.*"

Second, no partnership bank account statement if any existed and/or minutes of the allegedly weekly partners meeting formerly held or weekly, monthly and annually income and expenditure accounts reported formerly

issued to PW1 if any, were tendered by the plaintiff to substantiate his assertions of mishandling of partnership accounts and failure to hold meetings by the defendants. Much as the plaintiff in his testimony (PW1) never mentioned whether their partnership relations were created and regulated by oral terms or tendered any partnership deed to prove to the Court's satisfaction on how the partnership was to be run and since there is no tangible evidence apart from **exhibit PE5 and PE7** which is questionable to prove that partnership accounts and affairs were mishandled.

The above aside it is the plaintiff's contention that, the 1st, 2nd, 3rd and 4th defendants fraudulently obtained loan facility from the 5th defendant to the tune of Tshs. 1,400,000,000/= using plaintiff's property that had secured the loan of Tshs. 880,000,000/= from the said 5th defendant, without plaintiff's consent or knowledge as exhibited in **exhibits PE8, PE9 and PE10**. The plaintiff's claim or assertion is premised on his averment in paragraph 20 of the plaint and sub-paragraphs (iii) and (iv) of the particulars of fraud going thus:

20. That sometimes in 2009, the plaintiff being abroad, became suspicious is due to continuous lack of earning paid due to him, failed promises, confronted the 1st, 2nd and 3rd defendants, and further contact with the 5th defendant only to

be informed of default to a loan and deceptive restructuring of the loans without his knowledge, consent, and permission between the 1st, 2nd, 3rd, 4th and 5th defendants, all of whom fraudulently approved a restructuring of the principal loan, first on the 3th of June 2016, and again on the 11th of April 2018, taking the amount borrowed to 2,288,787,500/= (Two Billion Two Hundred Eighty Eight Million Seven Hundred Eighty Seven Thousand and Five Hundred) using among others the plaintiff's collaterals. Attached herewith are the restricting letters collectively marked "G".

Particulars of Fraud:

(iii) Restructuring of the loan on the 30th of June, 2016 and using the plaintiff's collateral by the 1st, 2nd, 3rd, 4th and 5th defendant without the knowledge and consent of the plaintiff, and deliberately changing the plaintiffs address details so as plaintiff was unaware.

(iv) Restructuring of the loan on the 11th of April 2018 using the plaintiff's collateral by the 1st, 2nd, 3rd, 4th and 5th defendants without his knowledge and consent of the plaintiff and deliberately changing the plaintiff's address details so as plaintiff was unaware.

It is a settled principle now that, parties are bound by their own pleadings.

This position of the law and its object was adumbrated in the case of

Charles Richard Kombe t/a Building Vs. Evarani Mtungi and 2

Others, Civil Appeal No. 38 of 2012 (CAT-unreported) where the Court had this to say:

“It is cardinal principle of pleadings that the parties to the suit should always adhere to what is contained in their pleadings unless an amendment is permitted by the Court. The rationale behind this proposition is to bring the parties to an issue and not to take the other party by surprise. Since no amendment of pleadings was sought and granted the defence ought not to have been accorded any weight.” (Emphasis supplied).

As can be deciphered from paragraph 20 of the plaint and paragraphs (iii) and (iv) of the particulars of fraud the accusations of deceptive restructuring of loans using plaintiff's collateral without his consent and knowledge are shouldered on all 1st, 2nd, 3rd, 4th and 5th defendants. It is undisputed fact as alluded to above that, when the plaintiff and 5th defendant executed and registered their settlement deed on 04/08/2022, the plaintiff agreed to relinquish all claims against the 5th defendant and vice versa, meaning all claims by the plaintiff against the 5th defendants in respect of this matter were terminated. It is further uncontroverted fact that, after relinquishing all claims against the 5th defendant the plaintiff never sought and effected any amendment of the plaint to state his cause of action against the rest of the

defendant in exclusion of the 5th defendant. Now the issue is whether under the circumstances where the plaintiff no longer maintain any cause of action against the 5th defendant, the claim of fraudulent transaction of restructuring of loan can be held to be proved against the 1st, 2nd, 3rd and 4th defendants only in exclusion of the 5th defendant who as per the pleadings is alleged to have colluded with them? In absence of any amended plaint to state how the 1st, 2nd, 3rd and 4th defendant in exclusion of the 5th defendant perpetrated the alleged fraudulent transaction through **exhibits PE8 and PE10**, I hold the plaintiff cannot prove his claim against the 1st, 2nd, 3rd and 4th defendants on restructuring of loans, on the ground that, the 5th plaintiff is a necessary party and ought to be joined in the claim. I so view as glancing in the said **exhibits PE8 and PE10**, the same were prepared and issued by the 5th defendant for signatures by the 1st, 2nd, 3rd and 4th defendants. In view of the above I am of the finding that, the second sub-issue is answered in negative as there is no proof to the required standard that defendants breached the terms of agreement as claimed by the plaintiff.

I now turn to consider the third sub-issue as to whether the plaintiff suffered any damage and to what extent? To start with, the plaintiff is claiming for *payment of Tshs. 207,259,716/= loss of earnings occasioned by the*

defendants to the Plaintiff to date from two buses between 2015 and 2020.

It is a settled principle of law that, specific damages must be specifically pleaded and strictly provided. See the cases of **Stanbic Bank Tanzania Limited Vs. Abercrombie & Kent (T) Limited**, Civil Appeal No. 21 of 2001 and **Reliance Insurance Company (T) Ltd and 2 Others Vs. Festo Mgomapayo**, Civil Appeal No. 23 of 2019 (both CAT-unreported). In **Reliance Insurance Company (T) Ltd and 2 Others** (supra) the Court of Appeal stated that:

"The law in specific damages is settled, the said damages must be specifically pleaded and strictly proved..."

In this case the above claimed amount of Tshs. 207,259,716/= was pleaded in paragraph 18 of the plaint. In proving it PW1 evidence that, as per the excel spread sheet **exhibit PE5**, the 1st, 2nd and 3rd defendants overcharged plaintiff as a total amount of Tshs. 167,000,000/= was deducted from his revenue amount for repayment of loan for the period from January 2016 up to December, 2020. He stated that, to the contrary and as depicted in the Ambet Group Co. Ltd consolidated Management Account which was admitted as **exhibit PE7**, the amount of loan acquired by him plus interest charged was Tshs. 234,545,500/= while the purported repaid loan amount to the 5th

defendant is Tshs. 401,828,941/= in which the difference is Tshs. 167,000,000/=, as a loss suffered by him. This witness averred that, in addition to that, the same exhibit PE7 indicates the plaintiff also suffered loss of Tshs. 39.9 million which was not remitted to his account as net surplus (deficit) in which plus Tshs. 167,000,000/= makes a total of Tshs. 207,000,000.

I have taken time to consider the evidence supplied in proof of the plaintiff's claims of loss of income to the tune of Tshs. 207,259,716/=. It is the view of this Court that, the alleged loss of 167,000,000/= is not proved to the required standard for two good reasons. **One**, the documents in exhibits PE6 and PE7 which the plaintiff relies on to substantiate that loss have already been held to be questionable for want of authenticity hence unworthy of proving it. Second, assuming the same are genuine still I would hold there is no proof that contended principal loaned amount to the plaintiff plus interest is worth Tshs. 234,545,500/=. I so view as the plaintiff never tendered in Court the loan facility letter which secured partnership's loan to the tune Tshs. 880,000,000/= to show the principal loaned amount to him as alleged plus interest would worth the said Tshs 234,545,500/=. The only available evidence in record is the mortgage deed **exhibit PE3** executed on

01st September, 2016, offering security to the bank in consideration of issued various Banking credit facilities to the 1st defendant for unspecified amount. Much as there is no loan facility letter to specify plaintiff's portion of the amount of loaned for the alleged purchased two Eicher town buses and given the position that **exhibit PE5 and PE7** is unreliable evidence, it is difficult for this Court to believe plaintiff's story that, his portion of loan as principal and interest was limited to Tshs. 234,545,500/= only as alleged, so as to justify the claim of Tshs. 167,000,000/= being the difference from the alleged total loan repaid to the 5th defendant to the tune of Tshs. 401,828,941/=. The third sub-issue is therefore answered in negative. Lastly is to what relief are the parties entitled to. It is principal of law enunciated under **section 73 (1) of the Law of Contract Act**, that where breach of agreement has been established, it goes with the award of damages. Section 73 of the Law of Contract reads:

"Where a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss or damage caused to him by the other party. The compensation must arise naturally in the usual course of things from such breach, or which the parties knew will happen or were likely to result from the breach of contract."

Apart from the above reliefs which are already found to be unproved, the plaintiff is claiming for reimbursement of the value of two buses T 376 DFT and T379 DFT in possession of the 1st, 2nd and 3rd Defendants belonging to him worth Tshs. 170,000,000/=. As alluded to above it is a rule of law of evidence under sections 110(1) and (2) and 3(2)(b) of Evidence Act that, he who alleges must prove and the standard is that of balance of probabilities, meaning the Court will sustain such evidence which is more credible than the other on that particular fact to be proved. See also the case of **Bakari Mhando Swanga Vs. Mzee Mohamedi Bakari Shelukindo & 3 Others**, Civil Appeal No. 389 of 2019, (CAT-unreported). It is Ms. Nassir's submission that, the Plaintiff has proved this claim to the required standard. She informed the Court that, PW1 testified on how he provided collateral to the loan secured for purchase of two Eicher town buses for the plaintiff as seen in **Exhibit PE3** which was appraised at TZS. 170,000,000/-, the buses which are in the possession of the 1st, 2nd and 3rd Defendants, managed by the 2nd and 3rd Defendants and which buses are also in the name of the 1st Defendant as seen in **Exhibit PE4**. She said, the Plaintiff derives no profit from the two Eicher town buses despite the same being procured through his collateral and that, he fully serviced the loan by entering into Deed of

Settlement to settle the outstanding amount which was a result of the 2nd and 3rd Defendants mismanagement of the loan.

I have taken into consideration Ms. Nassir's submission with regard to the above claimed relief by the plaintiff. With due respect I disagree with her submission that, the plaintiff proved his claim for reimbursement of the value of the two Eicher Town Buses, more particularly the assertion that the collateral to secure them as seen in **exhibit PE3** was appraised at TZS. 170,000,000/-. The reasons I am so holding is not far-fetched as **one**, the plaintiff tendered no facility letter in Court as exhibit to prove the secured loan for the purchase of the said two buses and that it was limited to Tshs. 170,000,000/= only, as **exhibit PE3** relied on by Ms. Nassir is so express in that the mortgaged property by the plaintiff was for securing unspecified amount, thus recanting her assertions that the two Eicher town buses were appraised at Tshs. 170,000,000/- in which its security was limited to that amount only, and not Tshs. 880,000,000 obtained by the 1st defendant in September, 2015. **Secondly**, as per section 195(1) and (2) of the Law of Contract Act, partnership property or property rights and interests in the property or the partnership assets are collectively held and owned by all the partners of the partnership firm, unless the contrary intention is expressed.

Applying the law to the facts of this case it is the findings of this Court that, the plaintiff's claimed two Eicher town buses were acquired from the money belonging to the firm, thus deemed to have been acquired on account of the firm. It follows therefore that, in absence of any intention or evidence to the contrary as per the partnership agreement or any court's order dissolving the partnership, the plaintiff is not entitled to claim back the value of the said vehicles and I so hold.

In another relief the plaintiff is praying for a declaration that he be removed from any association of the 1st defendant partnership and authorities. Ms. Nasir has moved the Court under section 95 to grant the prayed order by the plaintiff as in his evidence he testified to have been denied access to the partnership by co-partners whose conducts have been laced with fraudulent conducts for mishandling partnership's affairs and finances and that, he has lost trust in them as they can secure loan at his detriment as done before in the present matter. I find no merit in this claimed relief as it is already held that, the plaintiff has failed to establish that, the 1st, 2nd, 3rd and 4th defendants mishandled partnership affairs and finances, hence dismiss the same.

Lastly is the prayer by the plaintiff for his removal from any association of the 1st Defendant partnership and authorities. Ms. Nassir is of the submission

that, the plaintiff has exerted himself in trying to locate the 1st, 2nd, 3rd and 4th Defendants, but all efforts have proved fruitless, hence the only remedy for him is to secure court's order for his removal from the partnership and authorities. I do not find merit in this prayer as the procedure under which the partner can withdraw and have back his shares in the partnership is well settled under sections 212(1)(c), 213(1) and (2) and 215 of the Law of Contract Act, which is either by the partner giving notice to the other or others of his intention to dissolve the partnership or by death, bankruptcy, death or charge of shares of partner's property or by court decree upon application of the partner. In this matter the plaintiff chose none of them. The prayer therefore is bound to fail.

In the premises and for the demonstrated reasons, this Court is satisfied that, the plaintiff has failed to prove his claims to the required standard. Consequently I dismiss the suit in its entirety.

No order as to costs.

Order accordingly.

DATED at Dar es salaam this 30th June, 2023.

E. E. KAKOLAKI

JUDGE

30/06/2023.

The Judgment has been delivered at Dar es Salaam today 30th day of June, 2023 in the presence of Ms. Mariam Saleh, advocate for the plaintiff and Mr. Oscar Msaki, Court clerk and in the absence of the 1st, 2nd, 3rd 4th and 5th defendants.

Right of Appeal explained.

E. E. KAKOLAKI

JUDGE

30/06/2023.

