

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**HC CIVIL CASE No. 14 OF 2021**

**JOHN ALFRED ..... PLAINTIFF**

**VERSUS**

**FELIX ISIDORY NGOWI ..... 1<sup>ST</sup> DEFENDANT**

**FIN HOLDING LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

10/6/2022 & 2/9/2022

**ROBERT, J**

The plaintiff, John Alfred, filed an action in this Court against the two Defendants named above jointly and severally seeking payment of USD 117,000 being 30% of his shares in the partnership for mining activities at Nyamwilima area within the district and region of Geita which ceased to operate after Geita Gold Mining Limited (GGML) acquired their mining area through a memorandum of compromise with the Defendants. The Plaintiff further claims for general damages, interests and cost of the suit.

The Plaintiff's case is to the effect that, on 24 November, 1995 the first Defendant who is the managing Director of the second Defendant was granted Primary Mining Licences (PMLs) numbering PML No. 42447, PML No. 42448 and PML No. 42449 by the Commissioner for Minerals for

mining in the area known as Ridge 8 located at Nyamwilima area within the District and region of Geita.

On 19<sup>th</sup> September, 2008 the Plaintiff entered into a partnership agreement with the Defendants to conduct mining activities in the said area under the PMLs granted to the first Defendant in the agreement that the Plaintiff would own 30% of shares and the Defendants 70% of shares from the said PMLs. The Plaintiff provided the Defendants with equipment at the value of TZS 10,000,000/= being consideration to acquire the 30% of the first Defendant's PMLs.

However, GGML filed land case No. 42/2016 at this Court seeking to refrain Defendants from conducting any mining activities in the area as they claimed to have a special mining licence extending to the said area. On 17<sup>th</sup> August, 2018 the Defendants entered into a memorandum of compromise with GGML where they mutually agreed that GGML would compensate the Defendants in order for them to permanently vacate the area. GGML compensated the Defendants a total of USD 390,000 in order for the defendants to surrender their PMLs and offer the exclusive rights over the mining area to GGML. However, having received the said amount, the Defendants failed to pay the Plaintiff his 30% shares from their partnership agreement which is equivalent to USD 117,000 hence the Plaintiff filed this suit.

Parties in this suit enjoyed the legal services of Messrs. Ernest Makene and Venance Kibulika, learned counsel for the Plaintiff and Defendant respectively. The following issues were proposed and agreed by the parties and eventually adopted by this court for the determination of this suit:-

- i. Whether the Parties entered into a valid partnership deed;
- ii. If the first issue is answered in the affirmative, whether the defendants breached the partnership deed;
- iii. Whether the defendants had already paid the plaintiff claims arising out of the partnership deed.
- iv. Relief that parties are entitled to.

To prove his case, the Plaintiff testified as PW1 and he was the only witness for the Plaintiff. Similarly, the first Defendant was the only witness for the Defendants. As for the exhibits, the plaintiff tendered a Partnership Deed which was admitted as exhibit P1. He also tendered the memorandum of compromise which was admitted for reference purposes only. On their part, the Defendants tendered two exhibits namely, the Primary Mining Licenses (PMLs) and a letter titled "KUFUTWA KWA VIWANJA VYA MADINI" which were admitted as exhibit D1 collectively and a print out of bank statement of Mr. Felix Isidori Ngowi from NBC which was admitted as exhibit D2.

Starting with the first issue, whether parties entered into a valid partnership deed, PW1 informed the Court that, he had a partnership with the defendants to conduct mining activities with the Defendants whereby the 1<sup>st</sup> defendant offered three mining licenses at Nyamwililima area namely PML No. 42447, PML No. 42448, and PML No.42449 while the plaintiff offered machinery namely, 2 piston Engines, one motor KVA12, Sub massive pump, and complete crusher worth Ten Million Shillings (TZS 10,000,000/=). He testified further that, the partnership agreement gave the 1<sup>st</sup> Defendant 70% of shares while the plaintiff had 30% shares. He tendered the partnership deed which was admitted as exhibit P1.

On the defence side, DW1 informed the Court that, the Plaintiff went to him in September, 2008 with his mining tools and asked to do mining activities with him. He accepted his request and they entered into a partnership agreement. He explained that, he had three mining licences, PML No. 424447, PML No. 42448 and 42449 which he owned since 7<sup>th</sup> May, 1995 then he transferred them to Finholding Company in 1997. Copies of the said Licences and a letter titled "KUFUTWA KWA VIWANJA VYA MADINI" were admitted in evidence as exhibit D1 collectively. He informed the Court that, after the said letter from the Commissioner of Mining the first Defendant's mining licences (PMLs) in respect of the said mining area were no longer recognized and the said mining area was

given to GGM under Mining License No. PL 695/97. After that, they continued with mining in violation of the law and they were sued by GGM. The case came to an end in 2018 when the Court decided that the Defendants must vacate the area.

He informed the Court further that, the partnership agreement with the plaintiff took place in 2008 after he had received a letter from the Mining Commissioner which cancelled the first Defendant's PMLs.

This Court has noted that, the subject matter of the partnership agreement (exhibit P1) signed on 19/9/2008 between the first Defendant as the Managing Director of the second Defendant and the Plaintiff was to conduct mining activities by using the Primary Mining Licences No. 42447, No. 42448 and 42449 purportedly issued to the first Defendant. However, according to the letter from the Mining Commissioner dated 5/12/1997 (see exhibit D1 collectively), the said licences were not recognized by the Mining Commissioner because they were issued in an area already granted to GGM under Mining Licence No. PL 695/97 since 30/5/1997. That said, this Court finds that, it would be unlawful for the object of the partnership to be carried on by using mining licences which were not recognized by the Mining Commissioner and the Mining Act. In the circumstances both the object of the agreement and consideration by the first Defendant were unlawful under section 23 (1) of the Law of

Contract Act, Cap. 345 R.E 2002 and therefore the partnership agreement was void under section 23(2) of the Law of Contract Act, Cap. 345 R.E 2002. As the object and consideration of the partnership agreement was unlawful, this Court finds and holds that parties in this suit had no valid partnership deed.

Having made a finding that there was no valid partnership deed between the parties in this suit, the second issue as to whether the defendants breached the partnership deed do not arise since there was no valid agreement to be breached.

Coming to the third issue, whether the defendants had already paid the plaintiff claims arising out of the partnership deed. In his plaint, the Plaintiff alleged that GGML, through a memorandum of compromise, compensated the Defendants a total sum of USD 390,000 for the Defendants to surrender their PMLs and offer the exclusive rights over the mining area to GGML but the Defendants neglected to pay the Plaintiff 30% of his shares made from the total amount paid by GGML to the Defendants which is USD 117,000. In his testimony, PW1 informed the Court that the Defendants sold the disputed mining area to GGML for 390 in 2018 and a dispute between the Defendants and GGML was compromised as indicated in the memorandum of compromise. The

Defendants promised to pay him his shares but did not honour their promise.

On his part, DW1 informed the Court that having signed the purported partnership agreement he worked with the Plaintiff from September, 2008 until April, 2011 when the Plaintiff decided that he did not want to continue with the business and wanted either to move out with his mining tools or to sell the tools to the Defendants at the cost of TZS 10,000,000. The Defendants decided to buy the said mining tools at the cost of TZS 10,000,000/- and paid through NBC bank and this marked the end of their business together. To prove the alleged payment, he tendered the bank statement which was admitted in evidence as exhibit D2. He informed the Court that the payment to the Plaintiff was effected on 28/4/2011 and after that payment the Plaintiff left. He denied the Plaintiff's claim of USD 117,000 as 30% of the partnership agreement.

This Court having decided that there was no valid partnership agreement between parties in this suit, the general rule under section 23(2) of the Law of Contract Act is that the plaintiff's claims arising out of the said void partnership agreement cannot be recovered under such agreement.




Even if, for the sake of argument, the Court is satisfied that the Plaintiff was ignorant of the illegality of the consideration or object of the agreement and therefore entitled to recover his claims under the agreement, there is no sufficient evidence to ascertain the Plaintiff's claim of USD 117,000 allegedly arising from his 30% shares in the proceeds of the memorandum of compromise signed between the Defendants and the GGM. The said memorandum of compromise was not tendered in Court and the Plaintiff did not provide any proof of the alleged payment of USD 390,000 by GGM to the Defendants. The Court is also satisfied by the evidence adduced by DW1 that the Plaintiff was paid TZS 10,000,000 by the first Defendant on 28/4/2011, as evidenced in exhibit D2, which is the value of his mining tools contributed to the purported partnership and that marked the end of his involvement with the Defendants in the said mining activities. That explains why there was no any mining activities done between the Plaintiff and Defendants from 2011 until the alleged payment of USD 390,000 by GGM came into picture in 2018.

Having decided that parties in this suit did not enter into a valid partnership agreement and the Plaintiff has no claims arising out the said partnership, this Court finds no merit in this suit and it is hereby dismissed with Costs.

It is so ordered.





  
K.N. ROBERT  
JUDGE  
2/9/2022