

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

LAND CASE NO. 19 OF 2019

JUNACO (T) LIMITED-----PLAINTIFF

VERSUS

EQUITY BANK (T) LIMITED-----DEFENDANT

STOPH YUSUF SANGA-----1ST PARTY TO THE COUNTERCLAIM

ADROFINA LASTON SANGA-----2ND PARTY TO THE COUNTERCLAIM

JUSTIN LAMBERT-----3RD PARTY TO THE COUNTERCLAIM

VEDASTINA LAMBERT-----4TH PARTY TO THE COUNTERCLAIM

CONSENT JUDGMENT

MASABO, J.

The plaintiff company is suing the defendant for breach of a loan facility agreement. His prayers are for judgment and decree against the defendant for the following orders:

- (a) A declaration that the Defendant's actions and attempts to sell the properties on Plot No. 43 Regent Estates, Msasani, Dar es Salaam held under CT. No. 186150/22 and on Plot No. 279 with CT No. 1861/50/60 are invalid, wrongful and illegal.
- (b) A declaration that currently, the Defendant has no right whatsoever to sell or take possession and /or transfer the suit properties.
- (c) An order directing the Defendant to enter into negotiations with the plaintiff for purposes of agreeing to restructure the plaintiff's

plaintiff's loans and overdraft facilities and for ascertainment of the correct and actual outstanding amounts due to the Defendant as on the date of Judgment and Decree.

- (d) A declaration that the rates of interests being charged on the loan and overdraft facilities are usury, reasonable and unfair regard being had to the prevailing economic conditions in the country hence wrongful and illegal.
- (e) Order of injunction permanently restraining the Defendant, its board, its employees and or servant, agents, assignees and whomsoever may be directed or instructed by the Defendant from in any manner sell, alienate or enter on and take possession of the suit properties and or transfer ownership thereof to any person (s);
- (f) Payment of general damages to be assessed by the court;
- (g) Costs of the suit.
- (h) Payment of interest of the general damages at court rate of 12% from date of judgment till full and final payment ; and
- (i) Any other relief (s) the Honourable court may deem just, fit and proper to grant.

Upon being served with plaint, the Defendant filed a counter against the defendant and other persons (third parties appearing in the title), praying for the following orders against them:

Against the Plaintiff:

- (a) Payment of Tshs 2, 059,059,462.55 (Tanzania Shillings Two Billion Fifty Nine Million Fifty Nine Thousand Four Hundred Sixty and Fifty Five cents Only) and USD 1, 611, 232.75 (United States of

America Dollars One Million Six Hundred Eleven Thousand Two Hundred Thirty Two and Seventy Five cents Only);

- (b) Payment of interest at commercial rate of 22% and 12 per annum for Tshs 2, 059, 059,462.55 and USD 1, 611, 232.75 respectively as from the date it was due to the date of Judgment;
- (c) Interest on the Decretal sum at the court's rate of 12% from the date of the judgment until the payment in full;
- (d) An order to enforce the Mortgage over Certificate of Title No.186150/22, Plot No. 43, Regent Estate, Kinondoni Municipality Dar es Salaam City, for recovery of the outstanding amount in prayers (a), (b) and (c) above;

Against the 1st and 2nd Party to the Counterclaim.

- (a) An order to enforce the Mortgage over Certificate of Title No.186150/22, Plot No. 279, Regent Estate, Dar es Salaam City, for recovery of the outstanding amount in prayers (a), (b) and (c) above;
- (b) An order to enforce the Mortgage over Certificate of Title No.186150/22, Plot No. 279, Regent Estate, Dar es Salaam City, for recovery of the outstanding amount in prayers (a), (b) and (c) above;
- (c) An order to enforce Personal Guarantees executed by the 1st and 2nd party to the Counterclaim for recovery of the outstanding amount of Tshs. **2, 500,000,000.00** (Tanzania Shillings Two Billion Five Hundred Million Only);

Against the 3rd and 4th Party to the Counterclaim.

- (a) An order to enforce Personal Guarantees executed by the 3rd and 4th party to the Counterclaim for recovery of the outstanding amount of Tshs. **1, 260,000,000.00** (Tanzania Shillings One Billion Two Hundred Sixty Million Only);

Severally and jointly against all the defendants to the counterclaim:

- (a) Costs of the suit.
- (b) Any other order (s) and relief (s) may this Honourable court deem it fit and just to grant.

When this matter came for hearing, the parties who were both represented unanimously submitted that they have amicably settled their dispute and have executed a deed of settlement which has been filed in court. They subsequently prayed that the terms of the deed be recorded and judgment be entered as per the terms of the deed of settlement.

Having examined the deed of settlement as filed in this court of 4th November 2020 which I have found to be in compliance with law as it has been executed by all the parties, the deed of settlement is hereby recorded and consent judgement is hereby entered as follows:

- (1) All the plaintiff's outstanding liabilities to the Defendant are hereby consolidated and booked in Tanzania shillings being TZS,7, **143,000,000.00** (hereinafter called "Settlement Amount").
- (2) The said Settlement Amount does not include accrued Penal Interest amounting to TZS 629, 170, 349.44 which is hereby waived by the Defendant as part of the consideration in settlement.

- (3) The plaintiff shall pay to the Defendant the said Settlement Amount in full repayment of the credit facilities advanced to the plaintiff by the Defendant and guaranteed by the plaintiff and the parties to the counterclaim.
- (4) The plaintiff shall pay the Settlement Sum in Sixty (60) Months Installments through an Escrow Account as provided herein below.
- (5) The plaintiff shall pay the said Settlement Sum by Installments as set out herein below;
 - (a) Payment of Tshs. **1, 700,000,000.00** (Tanzania shillings One Billion Seven Hundred Million only) to be paid on or before 31st March, 2021.
 - (b) Payment of **Tshs. 370,000,000.00** (Tanzania Shillings One Billion Seven Hundred Million Only) to be paid before 30th of November 2020.
 - (c) Payment of monthly installment of **TZS 100,000,000.00** (Tanzania Shillings One Hundred Million Only) starting from April, 2021 to March, 2022.
 - (d) Payment of monthly installment of **TZS 181,385, 252.11** (Tanzania Shillings One Hundred Eight One Million Three Hundred Eight Five Thousand Two Hundred Fifty Two Only) starting from April, 2022 to September, 2025.
 - (e) The said monthly installments shall be paid by the plaintiff on or before 30th of each month and in case of a shorter month, before the end of the month through the Escrow Account to be opened by the plaintiff and the Bank.

- (f) The plaintiff shall maintain and/or deposit all the monies payable to the defendant as a settlement sum pursuant to this Deed of Settlement through the Escrow Account.
- (6) The Settlement Sum shall be charged an interest of 18% per annum on a reducing balance.
- (7) Each party shall bear its own costs and expenses relating to the suit and/or this settlement.
- (8) In event of any default by the Plaintiffs to pay any installment of the Settlement Amount agreed herein within the stipulated time, the usual Default Clause shall apply, in that the whole settlement Sum as set out in this Deed of Settlement shall become payable immediately and the Defendant shall be at liberty to realize the Guarantees and the Mortgaged Properties to liquidate the outstanding amounts and take other necessary measures to recover the said Settlement Sum.
- (9) Sequel to paragraph 7 hereinabove, the parties hereto agreed to each other that in event of default by the plaintiff in repayment of the settlement sum, an additional penal interest of 4% per annum shall be charged and hence making the interest to be 22% per annum.
- (10) The securities executed by the plaintiff and the parties to the counterclaim being the mortgages and personal guarantees, shall remain valid and binding to the respective parties until the whole settlement sum is paid in full.
- (11) In event of default by the plaintiff in repayment of the Settlement Sum, the liability of the parties to the counterclaim in repayment of

the Settlement Sum shall be to the extent as set out in the respective securities executed by them.

- (12) Immediately after filing of this Deed of Settlement, the plaintiff's claim against the Defendant shall be deemed to have been withdrawn and the counterclaim by the Defendant against the Plaintiffs and parties to the counterclaim determined in accordance with the terms of this Deed of Settlement.
- (13) The parties in this Deed of Settlement have voluntarily and willingly negotiated this settlement and are in agreement to the settlement reached herein and that by this Deed the claim between the plaintiff and the Defendant as contained in the main suit and the counterclaim are marked settled in accordance with the terms of this Deed of Settlement and that no further claim of whatsoever nature pertaining to this settled matters emanating from credit facilities advanced to the plaintiff by the Defendant and guaranteed by the parties to the counterclaim may be revived or reinstated by any party in this settlement except as contained herein.

Order, accordingly.

DATED at **DAR ES SALAAM** this 5th day of November, 2020



A handwritten signature in blue ink, appearing to read "J. L. MASABO".

J. L. MASABO

JUDGE

