

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

**IRINGA DISTRICT REGISTRY**

**AT IRINGA**

**LAND CASE NO 02 OF 2022**

**TANGANYIKA WATTLE COMPANY**

**LIMITED @TANWART ..... PLAINTIFF**

**VERSUS**

**KIBENA TEA LIMITED ..... DEFENDANT**

**CONSENT JUDGMENT**

(Made under section 95 and Order VIII Rule 18(3) of the Civil Procedure Code  
[CAP, 33 R.E. 2019])

**Date of Judgment: 08.09.2022**

**S.M. KALUNDE, J.:**

In the present case the parties are TANGANYIKA WATTLE COMPANY LIMITED @TANWART and KIBENA TEA LIMITED as plaintiff and defendant respectively. Both parties are limited liability companies incorporated and existing under **the Companies Act, Cap. 212**. On 15.02.2022 the plaintiff filed the present case against the defendant. The plaintiff alleged that on 30.12.2005 the defendant engaged the plaintiff to manage 1,114.4 hectares of fuel wood plantation and carryout all operations in relation thereof, including land clearance, planting, maintenance, silviculture operations and harvesting. In return the plaintiff was to receive monthly payments. Additionally, the plaintiff was to supply the defendant with timber in return of monthly payments. Both payments were to be made by the 15<sup>th</sup> of each month. It would

appear that at the beginning the defendant delivered to the end of the bargain.

However, sometimes later the defendant failed to honor their obligations. By the time the present suit was filed the amount due stood at TZS. 342,440,910.01. Despite several reminders and issuance of demand notice the defendant refused to honor their obligations to pay the plaintiff. The plaintiff decided to institute the present suit to safeguard his interests. In the present suit the plaintiff is seeking for judgement and decree against the defendant in the following terms:

- "(i) Payment of Tshs 342,440,910.00 (say Tanzania Shilling Three Hundred Forty Two Million Four Hundred Forty Thousand Nine Hundred and Ten and Zero One Cent) being the outstanding amount owed but not paid.*
- (ii) Interest on the abovementioned principal sum at commercial rate from the date the payment was due to the date of judgment.*
- (iii) Interest on decretal sum at court rate of 7% from the date of judgment to date of payment in full.*
- (iv) General damages to be assessed by the Court.*
- (v) Costs of this suit; and.*
- (vi) Any such order or orders as the Honourable Court may deem fit and just to grant in the circumstances of this case"*

At what time the matter came for Final Pre-Trial Conference the learned counsel for the for the plaintiff **Mr. Lusiu Peter** informed the

Court that parties had agreed to settle the matter out of the Court and have filed a Deed of Settlement reflecting their agreement. The learned counsel informed the Court that, in terms of Order VIII Rule 18(2) of **the Civil Procedure Code [CAP. 33 R.E. 2019]** (hereinafter "the CPC"), parties were desirous that judgment be entered to give effect to the agreement of the parties. The prayer was supported by **Mr. Jailos Josephat**, learned advocate for the defendant.

The provisions of Order VIII Rule 18(3) of the **Civil Procedure Code** provide as follows:

*"(3) The court may, at any time during the pre-trial conference where the parties are agreeable to a settlement of some or all of the matters in dispute in the suit or proceedings, enter judgment in the suit or proceedings or make such order to give effect to the settlement."*

In accordance with the above provision, where parties to a suit or proceeding are agreeable to a settlement on either some or all of the matters in dispute, the Court is enjoined to enter judgment or make such order to give effect to the settlement. In the present matter parties agreed to settle the matter and executed a Deed of Settlement on 07.09.2022. The said Deed of Settlement was filed before this Court on 07.09.2022. In the said Deed of Settlement parties agreed as follows (I quote):

**"NOW THEREFORE, this DEED WITNESSTH as follows:**

1. That, the Defendant shall pay the Plaintiff the debt to the tune of **Tshs. 342,440,910.01/=** (**say Tanzania Shilling three hundred forty two million four hundred forty thousand nine hundred ten and zero one cent**) only (herein referred as "the decretal amount")
2. That, the Defendant shall also pay the Plaintiff the amount of **Tshs 20,000,000/=** (**say Tanzania Shillings twenty million** only) being the legal fee and expenses incurred by the Plaintiff in prosecuting this case.
3. That, in consideration of the mutual agreement by the parties to amicably settle the dispute out of court, the Plaintiffs have also agreed to waive, abandon and/or relinquish their claims in items **(b), (c), (d)** and **(f)** of the Plaint.
4. That, the decretal amount situated in clause 1 above shall be paid by the Defendant within a period of **eight (8) months** from **October, 2021 to June, 2023** in installments stipulated in Schedule 1 annexed hereto and forming part and parcel of this deed.
5. That, the legal fee situated in clause 2 above shall be paid by the Defendant within a period of **five (5) months** from **November, 2022 to March, 2023** in installments stipulated in Schedule 2 annexed hereto and forming part and parcel of this deed;

6. That, any default in payment of any installment as stipulated in Schedule 1 and Schedule 2 shall attract enforcement of this deed by execution of the decree as required by the law.
7. That, by way of this deed Civil Case No. 02 of 2022 between the parties herein shall be marked settled and the parties shall move the Court to record this deed as the final and binding decree of the Court in relation to the said case.
8. That, this deed is binding upon the parties and shall be enforceable as a decree of the High Court of Tanzania, Commercial Division."

Now that parties have agreed to a settlement and thereby file a Deed of Settlement with the above quoted agreement. This Court, therefore, in terms of Order VIII Rule 18(3) of the Civil Procedure Code, enters judgment on the terms and conditions as agreed by the parties and quoted verbatim herein.

It is so ordered.

**DATED at IRINGA this 08<sup>th</sup> day of SEPTEMBER, 2022.**



A handwritten signature in blue ink, appearing to read "S. M. Kalunde".

S. M. Kalunde

**JUDGE**