

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 174 OF 2022

(Arising from Civil Case No.346 of 2016)

BETWEEN

GEORGE SYLVANUS OREKU.....APPELLANT

VERSUS

EMMANUEL KOPUNDO KIMAYA..... FIRST RESPONDENT

THOMAS PIUS WARITU.....SECOND RESPONDENT

CONSENT JUDGEMENT

5th & 5th May, 2023

MWANGA J,

This is a consent judgment. It arose from a deed of settlement entered and agreed between the parties in this appeal. The said deed of settlement was filed in court on 24th April, 2023 and it resulted from an appeal filed by the appellant on the following grounds: -

1. That, the trial court erred in law by proceeding with the determination of the suit without an order of setting aside the dismissal order issued by the court on 24th day of September, 2019.

2. That, the trial court erred in law on entertaining in evidence documents which are not stamped contrary to Section 47(1) of the Stamp Duty Act, Cap. 189, [R.E 2019]
3. That, the trial court erred in law and fact in its failure to consider the evidence tendered by the appellant.
4. That, the trial court erred grossly both in law and fact in delivering its judgment basing on the contradictory evidence tendered by the respondents.
5. That, the trial court erred in law and in fact by its decision to consider the false documentary evidence tendered by the respondents.
6. That, the trial court erred in law and in fact by being grossly biased to the respondents.

On 5th May, 2023 the counsel for the appellant and respondents informed this court that they have been able to settle the whole dispute amicably, an act which was followed by filing the relevant deed of settlement in court on 24th April, 2023.

When both counsels appeared in court on the 5th May, 2023, they pleaded for such settlement deed to be reduced into the consent judgment and to form part of the decree of this court.

In a nutshell, amongst the agreed terms and conditions are as follows: -

- i. the appellant to pay the respondents the total sum of Tshs.93,424,000/= only hereinafter referred to as "settlement amount";
- ii. the payments mode on the above state sum in item (i) shall be through installment until full settlement of the amount is paid;
- iii. the payment shall be made on monthly basis to the tune of Tshs.1,500,000/= only without any excuse and without fail for each month until the settled amount is paid in full;
- iv. all payments shall be deposited into the first respondent's Bank Account No. 420407001419 operated with Tanzania Commercial Bank at Corporate Branch, Dar es salaam in the name Emmanuel Kopundo Kimaya, the 1st respondent. And such payment shall be made in Tanzania shillings only;

- v. the appellant committed himself that he shall settle the stated sum within the period of five years at the given rate of Tshs. 1,500,000/= commencing from May, 2023;
- vi. in case of default, the respondents shall have rights to the extent of the remaining balance to recover the unpaid sum.
- vii. in consideration of this settlement, the respondents shall relinquish all the claims it has preferred against the appellant including the unpaid arrears arising from transactions extended between them up to date of filing the suit; and
- viii. that each part shall bear its own costs.

In consideration of the above terms and conditions set forth in the deed of settlement, the same is entered accordingly to form part of this consent judgment. It has been emphasized in the case of **Motor Vessel Sepideh and Another Versus Yusuph Mohamed Yusuph and Two Others**, Civil Application No. 237 of 2013(Unreported) that where there is a lawful agreement or compromise; the court is bound to record settlement once it is arrived by the parties.

In light of the foregoing, this appeal is marked settled to the extent of the deed of settlement reached by the parties as per terms and conditions therein.

Order accordingly.



H. R. MWANGA

JUDGE

5/05/2023

COURT: The Consent Judgement delivered in Chambers this 5th day of May, 2023 in the presence of advocate Johnson Msangi for the appellant and advocate Juventus Katikuro for respondents.



H. R. MWANGA

JUDGE

5/05/2023

