

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (IN THE
DISTRICT REGISTRY OF MWANZA**

AT MWANZA

CIVIL CASE NO. 12 OF 2021

JOSEPH GABRIEL KONDO.....PLAINTIFF

VERSUS

KENAFRIC INDUSTRIES LTD1st DEFENDANT

AZANIA BANK LIMITED.....2nd DEFENDANT

CONSENT JUDGMENT

11th March, 2022.

ITEMBA, J.

Whereas the plaintiff filed a suit against the defendants seeking for reliefs as follows: -

- i. A Declaratory order be issued by the court that, the correct amount owed by the Plaintiff to the 1st Defendant under the Agency Agreement between the parties for the supply of sweets and Bubble Gum is a total sum of **USD 58,123.64** only.
- ii. A Declaratory order that the said amount USD 58,123.64 in (i) above is payable under 2nd Defendant's **Performance Guarantee No. 003GUPB20120001** dated 05th May, 2020.
- iii. General damages be awarded to the plaintiff against the 1st Defendant as may be assessed by the Court for inconveniences

caused by the 1st Defendant due persistence claim of false and inaccurate claims.

- iv. Costs of the suit be borne by the 1st Defendant.
- v. Any other reliefs that this honourable court may deem just and fit to grant.

Whereas, both defendants filed a written statement of defence disputing the alleged facts in the plaint and prayed for dismissal of the suit with costs.

And whereas upon hearing counsel for the parties that on 18th of February, 2022 the matter was successfully mediated before the appointed mediator Constantine Mutalemwa. On terms contained in the settlement Agreement which was filed before the court on 21.2.2022.

And upon the said settlement being registered in this court under order XXIII rule 3 of the Civil Procedure Code [Cap. 33 R. E 2019]

Therefore, this court adopts the said settlement agreement and the same is recorded as a decree of this court in this case.

consequently, this court orders thus: -

1.1 The plaintiff undertakes and commits himself to pay the unpaid amount of USD 300,104.8 due and payable to the 1st Defendant which shall be paid directly to the 1st Defendant's Nominated Account No. 1141172887 KCB Bank in the name of Kenafric Industries Limited in accordance with the terms and conditions provided herein.

1.1.1 Out of the outstanding amount of USD 358,228.44, the 2nd Defendant paid USD 58,123.64 of the 1st Defendant. That by virtue of this Deed of Settlement, the Plaintiff acknowledges that the said USD 58,123.64 already paid to the 1st Defendant by the 2nd Defendant will be deemed as a loan extended to the Plaintiff to him by the 2nd Defendant.

1.1.2 That the Plaintiff shall be making consecutive instalments (within 30 days' time for each instalment of USD 3,000), counting from 17th March, 2022 to settle the remaining outstanding amount of USD 300,104.8.

1.1.3 In the event the Plaintiff defaults to pay the agreed payments in four (4) consecutive month's as agreed in this Deed of

Settlement the 1st Defendant will be at liberty to execute the consent decree accordingly.

1.1.4 That the Plaintiff agrees and undertakes to pay a lumpsum amount of USD 100,000 within a period of five (5) months from the date of filing this Deed of Settlement which shall be applied to reduce the outstanding remaining amount.

2. 1.1 That based on the terms of this Deed of Settlement as embodied in clause 1. 1. 4 above, the 2nd Defendant stands discharged from any liabilities and obligations arising from the Performance Guarantee No. 003GUPB201260001 dated 5th May, 2020.

1.1.5 That the 1st Defendant will continue to supply the PRODUCTS TO THE Plaintiff on cash basis.

1.1.6 That the monthly instalments payable, are separate from the above cash purchases.

1.1.7 That the Plaintiff shall settle the first instalment prior to continuation of the business relationship between the parties; and

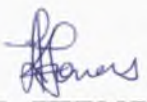
1.1.8 In case of any default in respect of any right conferred to any party herein, the aggrieved party shall have a right to execute such right(s) against the defaulter.

2.0 Each party will bear its own costs

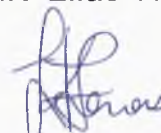
It is so ordered.

DATED at MWANZA this 11th day of March, 2022




L. J. ITEMBA
JUDGE
11.3.2022

Consent judgment entered in the presence of Mr. Erick Muta advocate for the plaintiff, Mr. Bahati Kesi advocate holding brief for Ms. Bupe Kabeta advocate for the 1st defendant and Mr. Elias Hezron, Advocate for the 2nd defendant.


L. J. ITEMBA
JUDGE
11.3.2022