

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

**IN THE SUB REGISTRY OF KIGOMA**

**AT KIGOMA**

**LAND CASE NO. 32 OF 2021**

**RUKIA RUHAZA BHULILO (As administratrix of the estate of the late  
CORNELIUS BUKURU LULIKELA .....PLAINTIFF**

**VERSUS**

**ZAITUNI SAIDI ..... 1<sup>ST</sup> DEFENDANT**

**KIGOMA/UJIJI MUNICIPAL COUNCIL ..... 2<sup>ND</sup> DEFENDANT**

**HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

*Date of Last order: 17/03/2023*

*Date of Judgement: 17/03/2023*

**CONSENT JUDGEMENT**

**MAGOIGA, J.**

The plaintiff, **RUKIA RUHAZA BHULILO** by way of plaint, instituted the instant suit against the above-named defendants, praying for judgement and decree in the following orders, namely:-

- a) A declaration that the suit plot is lawfully owned by the plaintiff in her capacity as the administratrix of the estate of the late CORNELIUS BUKURU LULIKELA and that the 1<sup>st</sup> defendant is a mere trespasser thereon;

- b) An order against the 1<sup>st</sup> defendant to demolish the building structure which is unlawfully erected on the suit plot and give vacant possession of the same;
- c) An order against the 1<sup>st</sup> defendant to pay the plaintiff general damages as it will be assessed by this Honourable Court for trespass;
- d) Payment of interest at Court's rate of 7% over the decretal sum from the date of judgement until payment in full;
- e) ALTERNATIVELY, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants be ordered to allocate the plaintiff an alternative and equivalent plot;
- f) Costs of this suit;
- g) Any other relief.

When this case called on for hearing on 17<sup>th</sup> March, 2023, Mr. Method R.G. Kabuguzi, learned advocate for the Plaintiff, Mr. Sylvester Damas Sogomba, learned advocate for the 1<sup>st</sup> Defendant and Mr. Anold Simeo and Ms. Beatrice Mongi for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants informed the court that they managed to settle the matter and deed of settlement has already been filed in this court on 17<sup>th</sup> March 2023.



I have gone through the deed of settlement filed in this court by the parties, and indeed, filed under order XXIII Rule 3 of the Civil Procedure Code [Cap 33 R; E 2019]. Rule 3 which provides that:

**“Where it is proved to the satisfaction of the court that the suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded and shall pass decree in accordance therewith so far it relates to the suit”.**

This provision was defined by Mulla, the Code of Civil procedure Act of 1908 (14<sup>th</sup> edition) on page 1828, who stated that:-

**“The rule give a mandate to, the court to record a lawful adjustment or compromise and pass a decree in terms of such compromise or adjacent. Such consent decree is not appealable when the agreement relates to whole suit. The court on being invited by the parties record the agreement**



**and pass a decree in accordance with the agreement and the suits ends there.**

This position was acknowledged by the Court of Appeal of Tanzania in the case of **Motor Vessel Sepideh and Another v. Yusuph Mohamed Yusuph and two others Civil application No 237 of 2013 (unreported)** in which the court of observed that:-

**“ Where there is lawful agreement or compromise the court is bound to record a settlement once it is arrived at by the parties”**

I have examined the deed of settlement which seeks to settle the whole suit once and for all and I am satisfied as to its lawfulness and effect. In view of the above, therefore, by a deed of settlement dully executed by the parties in this case and filed in this court on 17<sup>th</sup> March, 2023, this court hereby adopts and record the deed of settlement and it shall form part and parcel of the consent decision of the court as well as decree.

Therefore, the present suit is hereby marked settled out of court at the instance of parties in the terms and conditions as agreed in the deed of

settlement under Order XXIII Rule 3 of the Civil Procedure Code[Cap 33 R.E.2019].

It's so ordered.

Dated at Kigoma on this 17<sup>th</sup> day of March, 2023



A handwritten signature in blue ink, consisting of a series of vertical lines followed by a horizontal stroke and a flourish.

**S.M. MAGOIGA**

**JUDGE**

**17/03/2023**

