

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IRINGA SUB REGISTRY)  
AT IRINGA**

**CIVIL APPEAL NO. 13 OF 2022**

*(Original Civil Case No. 10/2021 of the District Court of Njombe at Njombe  
before Hon. I.R. Mlowe, SRM.)*

<b>ADELHARD METHOD MGENI</b>	.....	<b>APPELLANT</b>
<b>VERSUS</b>		
<b>MERU AGRO TOURS &amp; CONSULTANTS CO. LTD</b>	.....	<b>RESPONDENT</b>
<b><u>JUDGMENT</u></b>		

*30<sup>th</sup> May & 3<sup>rd</sup> July, 2023*

**I.C. MUGETA, J:**

This appeal arises from the consent judgment of the District Court of Njombe. According to the pleadings, the parties entered into an agreement for the supply of Hybrid maize seeds worth Tshs. 64,750,000/= . In paragraph 7 of the Written Statement of Defence, the appellant admits Tshs. 63,750,000/= as the value of the supplied goods. Failure to pay resulted into this case.

In the course of hearing of the suit, the appellant's counsel prayed for time to settle the matter out of court. On 27/5/2022, the parties filed a deed of settlement. The court, thus, proceeded to compose a consent judgment incorporating the terms in the deed of settlement. The appellant



had agreed to pay Tshs. 64,750,000/=, the principle sum and Tshs. 6,000,000/= as costs of the case.

The appellant is aggrieved by the consent judgment. His petition of appeal has two grounds of complaint. After abandoning the second ground, the appellant seeks to challenge the consent judgment based on one ground that the deed of settlement was obtained by fraud. He is represented by Richard Giley, learned advocate, who argued that fraud, if proved, vitiates court proceedings. To support his argument, he cited the case of **Laura Lucas Chogo v. International Commercial Bank (T) Ltd & Another**, Misc. Commercial Application No. 88 of 2020, High Court, Commercial Division – Dar es Salaam (unreported). He argued further that, it is the duty of a party alleging fraud to prove it. To prove there was fraud he submitted that the respondent's counsel was involved to prepare and sign the loan agreement which is the subject of this dispute as officer of the bank. In that regard, the learned counsel argued, he should not have been involved in attesting the settlement deed which led to the consent judgment to avoid conflict of interest. He cited the case of **Silayo v. CRDB [1996] Ltd [2002] 1 EA 288** to support his argument.

The respondent's counsel, Idris Msemu, opposed the appeal. He distinguished the two cited cases by the appellant in that in the present

case no contract was tendered in the trial court upon which this court can ascertain the alleged facts of who signed the loan agreement and attested the deed of settlement to establish the alleged fraud. He argued that since it is the appellant's counsel who initiated the settlement process, it is untenable for him to argue that he was defrauded. He concluded that the appellant has failed to prove fraud.

In rejoinder, counsel for the appellant complained that the respondent withheld the contract which disabled the court to make informed decision.

The issue for my determination is whether the trial court's consent judgment can be faulted on account of being procured by fraud. The alleged fraud is that some important information was withheld from the court particularly on the fact that counsel for the respondent played a double role of preparing the loan agreement between the parties and later attesting the deed of settlement which is unlawful. However, as submitted by counsel for the respondent, the said contract is not on record, therefore, it cannot be a basis of the court's decision. I find the complaint that there was fraud lacking evidence to support it. It is an afterthought.

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In **Mohamed Enterprises (T) Limited v. Masoud Mohamed Nasser**, Civil Application No. 33 of 2012, Court of Appeal – Dar es Salaam (unreported) the Court held:

*"We agree with Dr. Lamwai that matters of fraud, coercion or misrepresentation do vitiate a consent decree. It is imperative therefore that evidence be adduced in support of such factual claims."*

As there is no evidence to prove fraud in this case, it is clear that this appeal lacks merit. I accordingly dismiss it with costs.



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**I.C. MUGETA**

**JUDGE**

**3/7/2023**

**Court:** Judgment delivered in chambers in the presence of Neema Chacha, advocate holding brief for Idris Msemu, advocate for the respondent and in absence of the appellant.

**Sgd. M.A. MALEWO**

**DEPUTY REGISTRAR**

**3/7/2023**