

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

CIVIL CASE NO. 97 OF 2018

ANAND SATYAVAN CHANDE 1ST PLAINTIFF

ALKESHWARI ANAND CHANDE 2ND PLAINTIFF

VERSUS

EXIM BANK TANZANIA LIMITED DEFENDANT

CONSENT JUDGEMENT

26th and 27th January, 2023

KISANYA, J.:

The plaintiffs filed a suit against the defendant praying for judgment and decree as follows:-

(a)A declaration that, due to economic hardship and the Plaintiffs' business going down, the Defendant should vary the terms and conditions of the loan agreement for the Plaintiffs to pay the outstanding amount, plus interest, which is approximately to Tanzania Shillings 970 million.

(b)That, the Defendant be restrained to do any act, including selling the landed property in Plot No. 1345 Msasani Peninsula, Dar es Salaam, with certificate of Title No. 24235 which will affect the Plaintiff and will be prejudicial for the interest of justice.

(c)An order for payment of general damages as may be assessed by the Court.

(d) An order for payment at court rate, from the date of judgment till payment of the decretal sum.

(e) Payment of cost.

(f) Any other remedy the Hon. Court deem fit to grant.

Upon being served, the defendant filed a written statement of defence in which she denied the plaintiffs' claims. In addition, the defendant raised a counterclaim and prayed for a judgment and decree jointly and severally against both plaintiffs (also referred to as "defendants in the counterclaim") in the following terms:

- i. An order for payment by the 1st defendant and 2nd defendant of an outstanding amount of Tanzania Shillings Two Hundred Five Million Four Hundred Forty-Six Thousand Eighteen and Ten Cents (TZS 205,446,018.10) being repayment of the outstanding Term Loan Facility as at the 31st day of August, 2017 (the "Outstanding Amount"), granted by the Plaintiff in favour of the 1st Defendant and 2nd Defendant vide the Plaintiff Facility Letter dated 02nd October, 2009.*
- ii. An order for payment by the 1st and 2nd Defendants of an outstanding amount of Tanzania Shillings Three Hundred Eighty-Two Million Six Hundred Ninety-Nine Thousand Four Hundred Seventy-Six and Seventy Eighty Cents (TZS 382,699,476.78) being payment of the personal loan as of the 1st day of August, 2017 extended to the 1st Defendant by the Plaintiff vide the Plaintiff's Facility dated 18th August, 2014, and guaranteed by the 2nd Defendant.*

- iii. An order for payment of interest on the total outstanding amount as stipulated in (i) and (ii) above, at the rate of 27% per annum, computed and accruing from 1st September, 2017 to the date of Judgment.*
- iv. An order for payment of interest on the decretal amount mentioned under paragraphs (i),(ii) and (iii) herein, at the rate of 12% per annum computed from the date of judgment to the date of payment in full.*
- v. Upon failure to pay the amounts under paragraphs (i),(ii) and (iv) herein above, for the sale of landed property identified as Plot No. 1345, Msasani Peninsula- Dar es Salaam City, comprised in certificate of Title No. 24235 in the name of Anand Saytyavan Chande and Alkeshwari Anand Chande, mortgaged by the 1st and 2nd Defendants to secure the Loan Facilities in favour of the 1st and 2nd Defendants.*
- vi. For payment of costs of this suit, and any other orders or reliefs as the Honorable Court may deem fit and just to grant.*

When the matter came up for hearing, both plaintiffs were represented by Mr. Cathbert Mbilingi, learned advocate, whereas the defendant had the legal service of Mr. Zurien Kazungu, also learned advocate.

Before the hearing could commence, both counsel informed the Court that the parties had executed a deed of settlement dated 26th January, 2023 and filed the same in the Court. On that account, the learned counsel for the

parties invited the Court to record the deed of settlement and deduce a consent decree thereon.

Having gone through the deed of settlement, the Court is satisfied that the main suit and counterclaim have been adjusted by the lawful compromise of the parties. The Court is further convinced that there is nothing to suggest that the deed of settlement is a result of fraud or misrepresentation. That being the position, the Court holds the firm view that the agreement meets the legal requirement of the law under Order XXIII Rule 3 of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC).

For the foregoing reasons, the deed of settlement is hereby recorded to form part of this judgment and decree of the Court. In consequence, the Court enters consent judgment and passes consent decree as follows:

1. By the consent, the parties irrevocably admit that, as of the 31st day of August, 2017, the total outstanding loan balance due and owing to the plaintiffs in the main case/defendants in the counterclaim from mortgage loan stood at Tanzania Shillings Two Hundred Five Million Four Hundred Forty-Six Thousand Eighteen and Ten Cents (TZS 205,446,018.10) being repayment of the outstanding Term Loan Facility and Tanzania Shillings Three Hundred Eighty-Two Million Six Hundred Ninety-Nine Thousand Four Hundred Seventy-Six and Seventy Eighty Cents (TZS 382,699,476.78) from personal loan

extended to the 1st plaintiff in the main case/1st defendant in the counterclaim.

2. That, as of 31st January, 2023, the outstanding amount due and owing to the plaintiffs in the main case/defendants in the counterclaim from the aforesaid term loan and personal loan was Tanzanian Shillings Two Billions, Sixty Three Million, Three Hundred and Three, Nine Hundred and Four and Sixty-Eight Cents (TZS 2,063,303,904.68).
3. By consent of the parties, the agreed settlement amount payable by the plaintiffs in the main case/defendants in the counterclaim to the plaintiff in counterclaim/defendant in the main case is TZS 1,000,000,000.00 (Tanzania Shillings One Billion), henceforth "the settlement sum".
4. By consent of the parties, the said settlement sum shall be paid by the Plaintiff in main case/defendants in counterclaim within eight (8) years, to be reckoned from December, 2022 to December, 2030.
5. By consent of the parties, the plaintiffs in the main case/defendants in counterclaim shall pay the settlement sum as follows:
 - 5.1. A sum of Tanzania Shillings Thirty-Eight Million Two Hundred and Twelve Thousand Only (TZS 38,212,000.00), which

amount is exclusive shall be paid from December, 2022 to December, 2023 in the following settlement repayment schedule:

(a) TZS 932,000.00 shall be paid every month from December, 2022 to May, 2023; and

(b) TZS 4,660,000.000 shall be paid every month from June, 2023 to December, 2023.

5.2. The remaining settlement sum of TZS 961,788.000.00 shall be paid in eighty four months with interest of 5.0% per year as per the following settlement repayment schedule:

(a) TZS 10,096,666.67 shall be paid every month from January, 2024 to December, 2025;

(b) TZS 10,873,333.33 shall be paid every month from January, 2026 to December, 2026;

(c) TZS 12,038,333.33 shall be paid every month from January, 2027 to December, 2027;

(d) TZS 15,921,666.67 shall be paid every month from January, 2028 to December, 2028;

(e) TZS 19,028,333,33 shall be paid every month from January, 2029 to December, 2029; and

(f) TZS 19,643,142.67 shall be paid every month from January, 2030 to December, 2030;

6. That, until the whole settlement sum due to the defendant in main case/plaintiff in counterclaim is paid, the securities of the loan remain the same and that, upon payment of the whole outstanding debt, the defendant in main case/plaintiff in counterclaim shall release and surrender all properties or security arrangement pledged as collaterals to the Plaintiffs in main case/defendants in counterclaim.
7. By consent of the parties, the default period shall be two (2) months, thus, where the plaintiffs in main case fail and or skip payment of two consecutive months' instalment, this will be considered as a default of the deed of settlement.
8. In the event of any default to pay the settlement sum, the whole amount set out in the Deed of Settlement and the judgment and decree shall become payable immediately, and the plaintiff in main case shall have first opportunity to liquidate the guarantor and the mortgaged properties to realize the outstanding amounts and take other necessary measures to recover the said settlement sum.

9. The period that the plaintiffs in the main case shall be given to liquidate the guarantees and mortgaged properties shall be four (4) months from the date of last default.
10. That, in the event the plaintiffs in the main case are unable or unwilling to liquidate the assets, the defendant in the main case shall be at liberty to do so, to recover the said settlement sum. The defendant in the main case/plaintiff in the counterclaim shall be at liberty to realize the guarantees and the mortgaged properties, to liquidate the outstanding amount and take other necessary measure to recover the said settlement sum.
11. That, in the event of default set out in paragraph 7 hereinabove, the amount which will be due and not paid shall attract penalty interest of 7.0 per annum and will be charged every month until paid.
12. The main case and counterclaims are marked settled in accordance with the terms of the deed of settlement. No further claim pertaining to the settled matter emanating from the credit facilities stated afore shall be revived or reinstated by any of the party herein.

13. That plaintiffs in the main case shall be excluded from payment of early financial settlement fees when making capital reduction payment.
14. The deed of settlement shall be enforced in same manner and to the full extent as a decree of the Court including auctioning of the properties for recover of the outstanding sum after expiry of four (4) months after the last default as stated in paragraphs 8 and 9 hereinabove.
15. Each party shall bear its own costs/legal fees.

It is so ordered.

DATED at DAR ES SALAAM this 27th day of January, 2023.



S.E. KISANYA
JUDGE