

**IN THE HIGH COURT OF THE UNITED REPUBLIC
OF TANZANIA
(COMMERCIAL DIVISION)
AT ARUSHA
COMMERCIAL CASE NO. 1 OF 2023**

TANGA CEMENT PLC.....PLAINTIFF

VERSUS

DOMA ENTERPRISE.....1ST DEFENDANT

VERAN IGNAS JUMA.....2ND DEFENDANT

RONALD PROSPER MASSAWE.....3RD DEFENDANT

CONSENT JUDGEMENT

Last Order: 21/08/2023
Date of Judgment 25/08/23

NANGELA, J.:

This suit was brought to the attention of this court following a plaint filed by the Plaintiff on 31st January 2023.

On the plaint the Plaintiff prays for Judgement and Decree against the Defendants and seeks for the following orders:

- (i) A declaration that the Defendant is in breach of the terms and conditions for sale on credit agreement.

- (ii) An order for payment of **TZS. 195,465,578.96/=** being payments for cement supplied
- (iii) Interest at a commercial rate of 25% on the outstanding amount stated in **(ii)** above from the date of filing this suit to the date of judgment.
- (iv) Interest of the decretal sum at the court rate of 12% from the date of judgment to the date of full satisfaction by payment.
- (v) Cost of this suit.
- (vi) General damages as will be assessed by this court following the defendant's breach of the terms and conditions for sale on credit agreement for failure to settle the invoices as agreed, and
- (vii) Any other relief as the Court may find just, convenient, and equitable to grant.

This case was set for Mention on 25th August 2023.

Before me appeared Mr. Moria Denis, legal counsel

representing the Plaintiff. The 1st and 3rd Defendants were absent but the 2nd Defendant was present.

In his submission to the court, Mr. Moria informed this court that, although the matter could not be resolved through mediation, the parties have had their own discussion and managed to amicably settle the matter and prepared a deed of settlement. He asked for time to have it filed in court.

This court set the matter for orders on this 25th of August 2023. The parties did file their duly signed deed of settlement on 23rd August 2023. Following the filing, when Mr. Moria appeared before me this 25th of August 2023, he prayed that the deed of settlement be recorded as forming part of the Judgement and Decree of the court.

I have gone through the deed of settlement filed in this court by the two parties. The same was filed under Order XXIII Rule 3 of the Civil Procedure Code, Cap 33 R.E 2019. Rule 3 of Order XXIII of the Civil Procedure Code, Cap. 33 R.E 19 provides as follows:

“Where it is proved to the satisfaction of the court that a 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 a decree in accordance therewith so far as it relates to the suit."

As the above provision indicates, once a deed of settlement is entered and filed in court, the court must be satisfied that it is a lawful deed and it does, indeed, adjust the suit either wholly or partially. If it does, thereafter, the court will have only one duty to discharge, i.e., it shall record it, thereby passing a decree in accordance therewith, and so far, as it relates to the suit.

The scope of the above Rule 3 of Order XXIII of the Civil Procedure Code, Cap.33 R.E.2019, was succinctly defined by **Mulla, the Code of Civil Procedure Act of 1908** (14thEdition) on page 1828, as here below:

"The rule gives a mandate to, the Court to record a lawful

adjustment or compromise and pass, a decree in terms of such compromise or adjustment. Such a consent decree is not appealable....When the agreement relates to the whole suit, the Court on being invited by the parties, record the agreement, and pass a decree in accordance with the agreement and the suit stops there."

It is also worth noting that, in the case of **Motor Vessel Sepideh and Another vs. Yusuf Mohamed Yussuf and two Others** (Civil Application No.237 of 2013) (Unreported), the Court of Appeal of **Tanzania, (Rutakangwa, J.A., Mjasiri, J.A., and Mussa, J.A.,)** (citing **Mulla on the Code of Civil Procedure Act of 1908 (14th Edition)**), observed that:

"where there is a lawful agreement or compromise the court is bound to record a settlement once it is arrived at by the parties." (Emphasis added).

Since the deed of settlement which seeks to settle the whole suit is lawful and enforceable and given that it has the effect of settling the whole suit once and for all, the same is hereby registered and it shall form part and parcel of this **“Consent Decision”** of the court as well as its decree.

The present suit, therefore, is marked settled at the instance of the parties and on the basis of the terms and conditions set out in their duly executed deed of settlement which was filed in this Court on the 23rd day of August 2023. The deed of settlement forms the Decree of this court.

It is so ordered.

**DATED AT ARUSHA ON THIS 25TH DAY AUGUST
2023**



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DEO JOHN NANGELA
JUDGE