

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(THE SUB-REGISTRY OF DAR ES SALAAM)**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 12 OF 2022**

**TIB DEVELOPMENT BANK LIMITED.....1<sup>ST</sup> PLAINTIFF**

**ATTORNEY GENERAL.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**VAST SOURCE ENTERPRISES CO. LIMITED.....1<sup>ST</sup> DEFENDANT**

**WILLIAM MSHABAA LYAKUWA.....2<sup>ND</sup> DEFENDANT**

**GUO ZHI XIN.....3<sup>RD</sup> DEFENDANT**

**SUN DONG HUI.....4<sup>TH</sup> DEFENDANT**

**CONSENT JUDGEMENT**

**MAGOIGA, J.**

The plaintiff, **TIB DEVELOPMENT BANK LIMITED** and the **ATTORNEY GENERAL** by way of plaint instituted the instant suit against the above-named defendants, praying for judgement and decree jointly and severally in the following orders,

- (i) Payment of the sum of TZS. 4, 276,151,174/= as of 10<sup>th</sup> September, 2021 for party finance construction of 6 storey commercial/residential building on Plot. No. 38 Block 45C

Kijitonyama Area Kinondoni Dar es Salaam with total of 21 apartments and overdraft facility for accrued interest until the date of judgment.

- (ii) Plaintiffs be allowed to exercise their legal towards Personal Guarantee of the 2<sup>nd</sup> Defendant, 3<sup>rd</sup> Defendant and 4<sup>th</sup> Defendant which is supported by first class legal mortgage over the landed property on Plot No. 469, Block "A" comprised in Title number 53979 in Dar es Salaam.
- (iii) Interest of the above (i) at the rate of 27% from the date of default to default to the date of judgment.
- (iv) Interest on the decretal amount at the rate of 7% from the date of judgment until full and final payment.
- (v) Costs of the suit; and
- (vi) Any other reliefs which this Honourable Court may deem just to grant in favour of the Plaintiffs.

When this suit was called on for hearing on 9<sup>th</sup> May, 2024, Mr. Athanas Wigani learned advocate for 1<sup>st</sup> and 2<sup>nd</sup> defendants and holding brief for Mr. Daniel Nyakiha, learned State Attorney for the plaintiffs informed the court that, both parties have managed to settle the matter amicably and the Deed

of Settlement has already filed in this court. Mr. Wigani told the Court that he was authorized by Mr. Nyakiha to pray for this court, that the Deed of Settlement be recorded as a Decree of the Court and the suit be marked settled on the terms and conditions agreed by parties therein.

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]**. The said rule 3 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 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".***

As to the provision provides, once a Deed of Settlement is entered and filed in court, the court must be satisfied that it is lawful Deed and it does, indeed, adjust the suit either wholly or partially and,

thereafter, the court shall record it, thereby passing the 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 (14<sup>th</sup> edition)** on page 1828, who stated as herein below:

***"The rule gives a mandate to, the court to record a lawful adjustment or compromise and pass a decree on 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** (reported at Tazlii) in which the Court of observed that:-

***" Where there is lawful agreement or compromise, the court is bound***

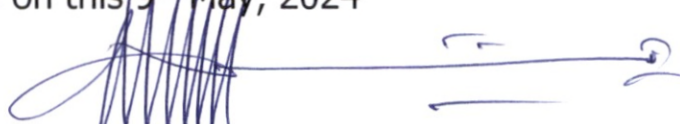
***to record a settlement once it is  
arrived at by the parties."***

I have examined the Deed of Settlement which seeks to settle the whole suit. I am satisfied as to its lawfulness and effect of settling the whole suit once and for all. In view of the above, the same is hereby registered and it shall form part and parcel of this consent decision of the court as well as its decree.

Therefore, present suit is marked settled at the instance of the parties' terms and conditions set out in their Deed of Settlement executed and filed in this Court on 9<sup>th</sup> May, 2024.

**It's so ordered.**

Dated at Dar es Salaam on this 9<sup>th</sup> May, 2024



**S. M. MAGOIGA**

**JUDGE**

**09/05/2024**

