

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB- REGISTRY**

**AT DODOMA**

**PC. CIVIL APPEAL NO. 27 OF 2023**

*(Arising from Civil Appeal No. 109 of 2022 in Dodoma District Court, Originating from Civil Case No. 124 of 2022 in Makole Primary Court)*

**JEMIMA MASIMBA ..... APPELLANT**

**VERSUS**

**JAMES TULOLE LEONARD ..... RESPONDENT**

**CONSENT JUDGMENT**

*10<sup>th</sup> May & 3<sup>rd</sup> June, 2024.*

**MUSOKWA, J.**

On 15<sup>th</sup> July 2022, the appellant and the respondent entered into a tenancy agreement whereby the respondent, being the tenant, paid a total of TZS 900,000/- as advance rent covering the period of three (3) months. For some reasons and after negotiations between the parties, the respondent decided to terminate the tenancy agreement and the appellant had no objection. Further, the appellant agreed to refund TZS 900,000/- to the respondent being rent received in advance prior to the termination of the said agreement. However, the appellant failed to refund the said rent as agreed.

Consequently, the respondent instituted and successfully prosecuted Civil Case No. 124 of 2022, against the appellant before Makole Primary Court (trial court). The suit intended to recover TZS. 900,000/- that was advanced to the appellant as rent for the business premises. Being aggrieved by the decision of the trial court, the appellant lodged an appeal to the Dodoma District Court, in Civil Appeal No. 109 of 2022. The first appellate court upheld the decision of the trial court, hence the present appeal containing the following grounds reproduced herein under: -

- 1. That the first appellate magistrate erred in law and facts by ordering the appellant to pay nine hundred thousand shillings (900,000/=) without considering the facts that it's the respondent who breach (sic) the lease agreement.*
- 2. That the first appellate magistrate erred in law and facts by ordering the appellant to pay nine hundred thousand shillings (900,000/=) within a month without considering an income of the appellant.*
- 3. That the first appellate magistrate erred in law and fact by deciding in favour of the respondent without considering the fact that the appellant adduced reliable and strong evidence against the respondent.*
- 4. That the whole proceedings marred by procedural irregularities which led to un-wanted judgment and order of the court.*

On 10<sup>th</sup> May 2024, the parties appeared before this court, unrepresented.

Briefly, the appellant informed the court that an agreement had been

reached with the respondent to settle the dispute amicably. Further, that the agreed terms and conditions were contained in the deed of settlement which was filed in court on 10<sup>th</sup> May, 2024. The respondent on his part, conceded with the submission made by the appellant. The parties prayed that the deed of settlement should be recorded to form part of the decree of this court. The provision of Order XXIII Rule 3 of the Civil Procedure Code, Cap. 33 R.E. 2019 (CPC) stipulates 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."*

Being guided by the aforementioned provision, this court perused the deed of settlement that was filed on 10<sup>th</sup> May, 2024. The court is satisfied that the suit has been adjusted by a lawful agreement which disposes the whole appeal.

In the circumstances, the deed of settlement entered into by the parties herein, is hereby recorded and forms part of this consent judgment and the decree of this court.

Accordingly, the matter before this court is, by the consent of both parties, marked settled as per the terms and conditions contained in the deed of settlement.

It is so ordered.

**DATED** at **DODOMA** this 3<sup>rd</sup> day of June, 2024.



*I.D. Musokwa*  
**I.D. MUSOKWA  
JUDGE**

The consent judgment is delivered this 3<sup>rd</sup> day of June, 2024 in the absence of the appellant and in the presence of the respondent.



*I.D. Musokwa*  
**I.D. MUSOKWA  
JUDGE**