

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM SUB- REGISTRY**

**AT DAR ES SALAAM.**

**CIVIL CASE NO. 6256 OF 2024**

**THE ATTORNEY GENERAL.....1<sup>ST</sup> PLAINTIFF**

**THE BOARD OF TRUSTEES OF**

**THE NATIONAL SOCIAL SECURITY FUND.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**KOPAFASTA MICROFINANCE LIMITED.....DEFENDANT**

**CONSENT JUDGMENT**

**A.A MBAGWA J.**

This judgment stems from a deed of settlement duly signed and filed by the parties in this Court on the 13<sup>th</sup> day of June 2024.

The plaintiffs herein, the Attorney General and the Board of Trustees of the National Social Security Fund instituted the present suit through summary procedure against the defendant namely, Kopafasta Microfinance Limited praying for judgment and decree as follows;

- a) The defendant to be ordered to pay the sum of Tshs. 30,860,000/= (Tanzanian Shillings Thirty Million Eight Hundred Sixty Thousand only)



being un-remitted member's contributions thereon due and payable to the Plaintiff by the Defendant.

- b) Costs of this suit and any other incidental costs pertaining to the filing of the suit; and
- c) Any other relief that this Honourable Court shall deem fit and just to grant.

In brief, the material facts as gathered from the plaint and attending annexures are to the effect that; The defendant, a limited liability Company, is a contributing member of the 2<sup>nd</sup> plaintiff since 25<sup>th</sup> May 2022 with membership registration Number 1035712. The defendant defaulted remittance of members' principal contributions for the period between January 2022 and February 2023. The 2<sup>nd</sup> plaintiff issued a demand notice in a bid to recover the arrears amicably but to no avail. As such, at the time of instituting this suit, the total outstanding amount stood at TZS 30,860,000/= (Tanzanian Shillings Thirty Million Eight Hundred Sixty Thousand) as a principal contribution.

Following the defendant's failure or neglect to clear the outstanding contributions, the plaintiffs decided to institute the present suit claiming for the reliefs as indicated herein above.



When the matter was scheduled for hearing, Mr. Baraka Mgya, learned State Attorney for the plaintiffs informed the Court that the parties had amicably settled the dispute and the deed of settlement had been duly signed and filed in Court. He thus prayed for the court to record the deed of settlement to form part and parcel of the consent judgment and decree of the Court. On the other hand, Mr. Philemon Mgonja, the learned Counsel for the defendant joined hands with the plaintiffs' counsel.

The law is very clear on the disposal of cases by settlement where parties mutually agree to settle their dispute through amicable means. Order XXIII rule 3 of the Civil Procedure Code under which this settlement deed was filed 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".*

I have keenly gone through the said deed of settlement filed in this court on the 13<sup>th</sup> day of June 2024 in terms of Order XXIII rule 3 of the Civil Procedure Code. I am satisfied that the same was on 13<sup>th</sup> June 2024 duly signed by both parties and mutually consented. Additionally, I have scanned the terms



and conditions of the settlement deed and found them in consonance with the law.

In the case of **Motor Vessel Sepideh and Another vs. Yusuph Mohamed Yusuph and two Others**, Civil Application No.237 of 2013, CAT at Dar es Salaam, the Court clearly restated 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. Besides, in the case of **Jaffrey Indi. Sian Ltd vs M/s Beijing Construction Engineering Group Limited**, Commercial Case No. 38 of 2021, the court remarked that the parties' mutual settlement of cases is a route encouraged all over the world.

In the premises, the deed of settlement is hereby recorded and adopted to form part and parcel of the consent judgment. The matter is therefore marked settled with the following terms;

## **ARTICLE I**

### **SETTLEMENT**

1.1 That, the DEFENDANT shall pay the PLAINTIFF a total sum of TZS 30,860,000/= (Tanzanian Shillings Thirty Million Eight Hundred Sixty Thousand only) being the total of principal outstanding statutory contributions that the DEFENDANT owes the PLAINTIFFS.



1.2 That, the parties hereto further agree that, the remittance of the principal sum referred in clause 1.1 above shall be paid in six installments for the period of six (6) months effectively from the date of signing of this Deed of Settlement.

1.3 That, the parties herein, further agreed that, the outstanding penalties referred in the recitals shall be settled by the defendant after payment of the principal sum.

1.4 That, sequel to paragraph 1.1, 1.2, 1.3 above, and without prejudice to the foregoing below paragraphs, parties have agreed that the payments arrangements shall be based in an instalment as it has been expressly tabled in the Article II in the Mode of Payment Segment.

1.5 That, the DEFENDANT undertakes to be current in remittance of members' contributions in respect of the DEFENDANT employees 'who are the 2nd PLAINTIFF's members without default at any time.

1.6 That, the parties agree that this Deed of Settlement shall be filed in Court to signify the Parties' agreement and the Parties, by way of this Deed, notify the Court that, the Parties have agreed to settle the matter in the modalities stipulated herein.



1.7 That, upon full execution of this Deed and satisfaction of clauses 1.1, 1.2, 1.3, 1.4, and 1.5 herein, there shall be no further rights or obligations as between the parties in relation to this case.

## ARTICLE II

### MODE OF PAYMENT

2.1 That, the arrears as above stipulated amounting to being outstanding principal member's contributions and accumulated penalties shall be payable by the defendant to the plaintiffs in six (6) months installments as clearly itemized in the repayment schedule herein below:

Period	Installment	Amount (TZS)
30/06/2024	1 <sup>ST</sup>	5,143,333
30/07/2024	2 <sup>ND</sup>	5,143,333
30/08/2024	3 <sup>RD</sup>	5,143,333
30/09/2024	4 <sup>TH</sup>	5,143,333
30/10/2024	5 <sup>TH</sup>	5,143,333
30/11/2024	6 <sup>TH</sup>	5,143,335
<b>TOTAL</b>		<b>30,860,000/=</b>

2.2 That, the parties further agree that the Defendants are at liberty to accelerate repayment of the outstanding statutory contributions plus penalty should they wish to do so. Whereby, in that instance, payment



schedule under paragraph 2.1 herein above will be adjusted accordingly.

### **ARTICLE III**

#### **THE SETTLEMENT TO SERVE AS A DECREE OF THE COURT**

3.1 That, this Deed of Settlement shall, upon being filed in Court, and upon payment of settlement sum as stipulated in clauses 1.1 and in the modality described in the table and schedule of payment under Article II hereinabove as well as the fact that the DEFENDANT remains current in remittance of members' contributions, finally satisfies the Decree and shall have the same effect as an otherwise fully and finally satisfied Decree of the Court.

3.2 That, this Deed of Settlement shall, upon being filed in Court, have the same effect as a Decree duly made by the Court capable of being executed in the same manner as any other decree of the Court; that in the event of default of any term of this Deed of Settlement, then this Deed shall become enforceable as a Decree of the Court and the usual default clause shall apply.

### **ARTICLE IV**

#### **THE DEFAULT**

A handwritten signature in blue ink, appearing to read "Amir", is located in the bottom right corner of the page.

That the consent judgment carries the usual default clause.

## **ARTICLE V**

### **COST**

Save for the cost of the Court Broker which shall be borne by the DEFENDANT, all other costs and expenses incurred in connection with the suit and/or this Deed of Settlement including, but without limitation to attorneys, accountants, financial advisors, and Court fees and any other costs incurred by any of the Parties herein shall be paid by the party incurring such expenses.

## **ARTICLE VI**

### **GOVERNING LAW AND JURISDICTION**

This Deed of Settlement shall be governed by, and construed in accordance with, the laws of Tanzania. Any dispute arising out of or in connection with, or concerning the carrying into effect of, this Deed shall be subjected to the exclusive jurisdiction of the Courts of the United Republic of Tanzania, and the Parties hereby submit to the exclusive jurisdiction of those Courts for these purposes.





**ARTICLE VII**  
**UNDERTAKINGS, REPRESENTATION AND WARRANTIES BY THE**  
**PARTIES**

The parties undertake, represent, and warrant to each other and acknowledge that they are relying on such undertakings, representation, and warranties in entering into this Deed of Settlement inter alia as follows:

- 7.1 That, the DEFENDANT undertakes to settle the outstanding statutory contributions to the tune of TZS 30,860,000/= (Tanzanian Shillings Thirty Million Eight Hundred Sixty Thousand only) as per agreed terms above without default at any time.
- 7.2 That, the DEFENDANT undertakes to be current in remittance of members' contributions in respect of the DEFENDANT-employees' who are the 2nd PLAINTIFF's members without default at any time.
- 7.3 That the PLAINTIFFS have the authority and capacity to enter into this Deed of Settlement on their own behalf.
- 7.4 That the DEFENDANT has the authority and capacity to enter into this Deed of Settlement on its own behalf.



7.5 That the execution of performance of this Deed of Settlement does not and shall not result in a breach of any provision of the PLAINTIFFS or the DEFENDANT applicable laws, regulations, agreements, or obligations to which they are parties or by which they are bound.

## **ARTICLE VIII**

### **MISCELLANEOUS PROVISIONS**

- 8.1 That, the parties agree that the terms of this Deed of Settlement shall be binding upon and insure solely to the benefit of the parties hereto and their respective successors in title and representative and shall not be enforceable by or inure to the benefit of any third party apart from the DEFENDANT's employees who are the members of the 2nd PLAINTIFF.
- 8.2 That, no waiver of the breach of the terms of or any default under this Deed of settlement shall be deemed a waiver of any subsequent breach or default under this Deed of Settlement shall be deemed a waiver of any subsequent breach or default or in any way effect the other terms of this Deed of Settlement.
- 8.3 This Deed of Settlement shall be effective on the date it shall be signed by both parties.



8.4 This Deed of settlement has been executed by the parties duly authorised to negotiate and execute the same.

It is so ordered.

Dated at Dar es Salaam on this 13<sup>th</sup> day of June 2024.



A handwritten signature in blue ink, appearing to read "A.A. Mbagwa".

**A.A. Mbagwa**

**JUDGE**

**13/06/2024**