

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO SUB REGISTRY)**

AT MOROGORO

MISC LAND APPLICATION NO. 42 OF 2023

BETWEEN

MERTUS NESTORYAPPLICANT

VERSUS

MAGRETH DOWARD LULAMBO (Administratrix

Of estate of Grace Lulambo).....1ST RESPONDENT

SALUM A. CHAMBA..... 2ND RESPONDENT

Date of Last order: 04/06/2024

Date of Judgement: 04/06/2024

CONSENT JUDGEMENT

MAGOIGA, J.

The applicant, **MERTUS NESTORY** by way of chamber summons filed an application for revision against the decision of the District Land and Housing Tribunal Misc. Application No.33 of 2022 for execution of judgement of Land Dispute No.28 of 2014 praying the following orders: -

- a) That this honourable court be pleased to call the record of the proceedings of the District Land and Housing Tribunal for Morogoro in Misc. Application No.33 of 2022 and examine the same as to its



legality and or propriety of the said proceedings and on finding any illegality and impropriety of the said proceedings revise the same;

b) Costs of this application be provided for;

c) Any other relief that this honourable court shall deem fit and just to grant.

When this case was called on for hearing on 04th this day of June, 2024, Ms. Magreth John Simbi, learned advocate for the applicant and Magreth Doward Lulambo- the first respondent and holding brief for the second respondent informed the court that parties have managed to settle the matter and deed of settlement has already been filed in court since 06th May 2024.

The learned counsel for applicant and the respondents, thus, prayed that the Deed of Settlement be recorded as decree of the court in terms agreed therein.

Having 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] and 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 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 decree in accordance therewith so far it relates to the suit."

This provision was defined by Mulla, the Code of Civil Procedure Act of 1908 (14th edition) on page 1828; who stated that: -

"The rule gives a mandate to the court to record a lawful or compromise and pass a decree 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 in the case of **Motor Vessel Sepideh and Another v. Yusuph Mohamed Yusuph and two others, Civil Application No. 237 of 2013 (unreported)** the Court of Appeal 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 once and for all and I am satisfied as to its lawfulness and effect of settling the whole suit once and for all. In the view of the above the same is hereby registered and it shall form part and parcel of this consent judgement of the court as well as its decree.

The present suit, therefore, 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 06th May, 2024.

It is so ordered.

Dated at Dar es Salaam this 04th day of June, 2024.



S.M. MAGOIGA

JUDGE

04/06/2024.