

**IN THE HIGH COURT OF UNITED REPUBLIC OF THE  
TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR-ES-SALAAM**

**COMMERCIAL CAUSE NO. 54 OF 2017**

JIANMIN WANG.....PETITIONER

VERSUS

HUATENG METALLURGICAL CO. LTD.....1<sup>st</sup> RESPONDENT  
LATAO BA .....2<sup>nd</sup> RESPONDENT  
YIHUI SHEN.....3<sup>rd</sup> RESPONDENT

**CONSENT DECISION**

Last order: 06<sup>th</sup> September, 2021  
Judgment: 09<sup>th</sup> September, 2021

**NANGELA, J.:**

This consent decision arises from a Deed of Settlement which the parties herein duly executed and filed in this Court on the 15<sup>th</sup> January 2020. Initially, the matter was dealt with by Madam Judge Fikirini, J. (as she then was) who issued an order to vacate an earlier order dated 23<sup>rd</sup> August 2018, vide Misc. Commercial Application No. 264 of 2018.

In that earlier order of this Court, the Court expunged from its records, a Deed of Settlement filed in Court on 14<sup>th</sup> August 2018. Subsequently, on the 15<sup>th</sup> January 2020, the parties filed a new duly executed Deed of Settlement.

On 6<sup>th</sup> September 2021, the parties appeared before me. Mr Amini Mshana, learned advocate, represented the Applicant, while Mr. Michael Mhina appeared for the 3<sup>rd</sup> Respondent. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents were unrepresented.

In his submission, Mr Mshana informed this Court that, the parties have filed a new Deed of Settlement which the Applicant prays that it be received and registered as forming the judgement and Decree of the Court. Mr Mhina supported the prayer.

I have had time to look at the Deed of Settlement filed in this Court. The same was filed under Order XXIII Rule 3 of the Civil Procedure Code, [Cap.33 R.E 2019]. Rue 3 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 provides, 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 and, thereafter, the Court 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 (14<sup>th</sup> Edition) on page 1828, who stated 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."

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 (14<sup>th</sup> 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).

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 petition 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.

The present petition, 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 the 15<sup>th</sup> January 2020.

**It is so ordered.**

DATED AT DAR-ES-SALAAM ON THIS 09<sup>TH</sup> SEPTEMBER 2021



A handwritten signature in black ink, appearing to read "Deo John Nangela".

.....  
**DEO JOHN NANGELA**  
**JUDGE**