

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT ARUSHA

COMMERCIAL CASE NO. 10 OF 2021

BETWEEN

MORGAN AIR & SEAFREIGHT

LOGISTICS KENYA LIMITED PLAINTIFF

VERSUS

SERENGETI FRESH LIMITED DEFENDANT

Date of Last order: 23/05/2022

Date of Judgement: 24/05/2022

CONSENT JUDGEMENT

MAGOIGA, J.

The plaintiff, MORGAN AIR & SEAFREIGHT LOGISTICS KENYA LIMITED by way of plaint, instituted the instant suit against the above-named defendant praying for judgement and decree in the following orders, namely:-

- a) For an order for payment of outstanding amount of USD.126,438/= (say United State Dollars One Hundred Twenty-Six Thousand Four Hundred Thirty Eight) by the defendant;

- b) For an order for payment of interest of 21% per annum on the outstanding amount mentioned in (a) above from the date the amount became due to the date of full payment of the said sums;
- c) Costs of this suit be borne by the defendant;
- d) Any other relief this Honorable Court may deems fit and just to grant.

When this suit was called on for further hearing on 20th May, 2022, Mr. Hassan Ruhwanya, learned advocate for the plaintiff and Mr. Benson Mhango, learned advocate for the defendant informed the court that, they managed to settle the matter and prayed for time to prepare and have the deed of settlement filed in court on 24th May, 2022. Indeed, the deed of settlement dully executed by parties has already filed in this court today 24th May, 2022.

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 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 decree in accordance therewith so far 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 in so far it relates to the suit.

The scope of 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 (14th 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 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 CAT DSM (unreported)** where the Court citing Mulla on Code of Civil Procedure Act of 1908 observed that:

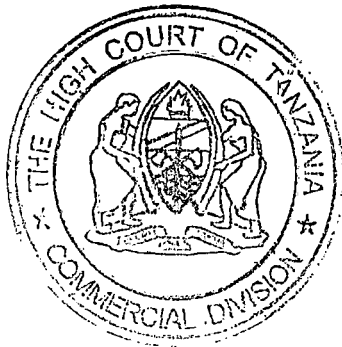
"Where there is lawful agreement or compromise the court is bound to record a settlement once it is arrived at by the parties"

I have examined the Deed of Settlement which seeks to settle the whole suit once and for all. 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.

The present suit, therefore, by a deed of settlement dully executed by the parties in this case and filed in this court, this court hereby record this suit to be settled out of court in the terms and conditions as agreed in the Deed of Settlement under Order XXIII Rule 3 of the Civil Procedure Code filed in this court on 24th day of May, 2022.

It is so ordered.

Dated at Dar es Salaam on this 24th May, 2022.



A handwritten signature in black ink, consisting of a series of vertical strokes followed by a long horizontal stroke that curves upwards at the end.

S.M. MAGOIGA

JUDGE

24/05/2022