

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

**COMMERCIAL CASE NO. 36 OF 2021**

**COTEX INDUSTRIES LTD .....PLAINTIFF**

**VERSUS**

**TANZANIA BREWERIES LTD..... 1<sup>ST</sup> DEFENDANT**  
**DARBREW LIMITED..... 2<sup>ND</sup> DEFENDANT**

Last order: 23<sup>RD</sup> February, 2022  
Judgment: 25<sup>th</sup> February, 2022

**CONSENT JUDGEMENT**

**NANGELA, J.**

This consent judgment arises from a suit filed by the Plaintiff for which a Deed of Settlement successfully negotiated and agreed upon by the Parties was filed in Court.

To give it context, the Plaintiff sued the Defendants claiming or seeking for the Judgment and Decree as follows:

1. A Declaration that the Defendants are in breach of terms of engagement of supply of

bottle caps between the Plaintiff and the Defendants.

2. A declaration that, that Defendant should pay the amount of **TZS 79,307,499.77**, being the outstanding amount for the supplied bottle caps.
3. Interest at commercial rate per annum on the claimed amount from the date it became due.
4. Interest on the decretal sum at this Court's rate, from the date of judgment till payment is made in full.
5. General damages.
6. Costs of and incidental to the suit.
7. Any other relief that the Court deems fit, just and equitable to grant.

The suit proceeded to the stage of mediation which was unsuccessful and it was set for a final pre-trial conference which took place on the 27<sup>th</sup> October 2021. Its hearing was to commence on the 13<sup>th</sup> December 2021. On the material date, however, when the parties appeared before me, Ms Maria Patrick, learned advocate for the Plaintiff informed this Court that, the parties were

engaged in a possible out of court settlement negotiations.

The submissions of Ms Patrick were supported by Mr Issa Mrindoko, learned advocate for the Defendants. In view of that, I granted an adjournment to afford the parties herein an ample time to discuss and reach amicable solution to their dispute. I set the 23<sup>rd</sup> day of February 2022 as a date when the parties are to appear before me for necessary orders.

On the 23<sup>rd</sup> of February 2022, Ms Patrick appeared for the Plaintiff while Mr Augustine Rutakolezibwa, learned advocate appeared for the Defendants. Ms Patrick informed this Court that, the parties have had successful settlement discussions and, that; they were able to file a Deed of Settlement in this Court. She prayed that the filed deed of settlement be recorded as forming the Judgment and Decree of this Court, a prayer which Mr. Rutakolezibwa supported.

I have also gone through the said "Deed of Settlement". In law, a consent agreement which is frequently made under Order XXIII Rule 3 of the Civil Procedure Code, Cap.33 R.E 2019 is an agreement of the parties which is subject to the same principles of the law of contract.

According to Order XXIII rule 3 of the Civil Procedure Code, Cap.33 R.E 2019, the law requires that, the Court will have to be satisfied whether the agreement is lawful and compromises the suit. Order XXIII Rule 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."

In the case of **Motor Vessel Sepideh and Another vs. Yusuf Mohamed Yussuf and two Others** (Civil Application No.237 of 2013) (Unreported) it was the emphasis of the Court of Appeal of Tanzania 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."

Looking at the Deed of Settlement filed in this Court on the 20<sup>th</sup> January 2022, and taking into account what the law requires me to do, 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 recorded and declared to be forming part and parcel of this Consent Judgment of the Court, as well as its decree.

The present suit is, therefore, 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 20<sup>th</sup> January 2022, and which forms part and parcel of this Consent Judgment.

**It is so ordered**

**DATED AT DAR-ES-SALAAM ON THIS 25<sup>TH</sup> DAY OF  
FEBRUARY 2022**



**DEO JOHN NANGELA  
JUDGE**