

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

COMMERCIAL CASE NO. 76 OF 2022

HABIB AFRICAN BANK LIMITED.....PLAINTIFF

VERSUS

BARETO HAULERS (T) LIMITED.....1st DEFENDANT

JUDE TERENCE JOSEPH BARETO.....2nd DEFENDANT

RICHARD RUDOLF LAWRENCE BARETO.....3rd DEFENDANT

CONSENT JUDGEMENT

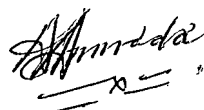
Date of last order: 15/11/2022

Date of judgement: 17/11/2022

A.A MBAGWA J.

This judgment arises from a deed of settlement duly signed by the parties and filed in this court on 17th November, 2022.

The plaintiff, **HABIB AFRICAN BANK LIMITED** instituted the present suit against the defendants namely, **BARETO HAULERS (T) LIMITED, JUDE TERENCE JOSEPH BARETO, RICHARD RUDOLF LAWRENCE BARETO**, herein referred to as the 1st, 2nd and 3rd defendants respectively.



The plaintiff prays for judgment and decree against the defendant jointly and severally as follows;

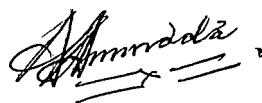
- i. A declaration that the defendants are in breach of credit agreement as constituted under the term loan facility and thus the plaintiff is entitled to realize the securities pleaded under paragraph 15 and 16 of the plaint and which are liable for enforcement for the full repayment of the outstanding credit facility extended to the 1st defendant.
- ii. Payment of US\$ 105,692.74. only as pleaded in paragraphs 5 and 17 of the plaint.
- iii. Payment of commercial interest at 23% per annum of the amount due of US\$ 105,692.74 only from the date it was due to the date of judgement.
- iv. Payment of interest on the decretal sum at the court's rate from the date of judgement until payment in full.
- v. Costs of this suit.
- vi. Any other orders and reliefs may this honorable court deem fit and just to grant.



Upon completion of pleadings, the matter was set for mention on 10th November, 2022 at 09:00hrs. Gladly, on 9th day of November, 2022, the parties reached an agreement to settle matter amicably as such, they filed in this court a deed of settlement wholly adjusting the suit. Consequently, this court summoned the parties to appear on 17th November, 2022 for necessary orders.

When the matter was called on before the court, Mr. Tazan Mwaiteleke, learned advocate appeared for the plaintiff whereas the 3rd defendant Mr. Richard Rudolf Lawrence Barreto, appeared in person and on behalf of the 1st and 2nd defendants.

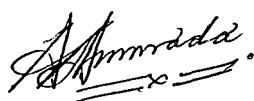
Mr. Tazan Mwaiteleke informed the court that parties had mutually signed and filed the settlement deed stipulating the terms upon which they agreed. He thus prayed the court to mark the matter as settled as per the terms and conditions stipulated in the settlement deed and the same to form part of the consent judgment. The submission and prayer of the plaintiff's counsel was supported by the 3rd defendant one Mr. Richard Rudolf Lawrence Barreto on behalf of all the defendants.

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Order XXIII rule 3 of the Civil Procedure Code under which this the 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’.

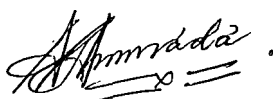
I have keenly gone through the said deed of settlement filed in this court on 17th November, 2022 in terms of Order XXIII rule 3 of the Civil Procedure Code and rule 2(2) of the High Court (Commercial Division) Procedure Rules. I am satisfied that the deed of settlement was on 17th November, 2022 duly signed by both parties namely, **Mr. Herman Lameck**, Head of Credit for the Plaintiff and **Syed Muktar Sibtain**, the Company Secretary for plaintiff, on the one hand and Mr. **Richard Barreto**, the Director for the 1st defendant and **Jude Terence Barreto**, the Director for 1st defendant, on the other hand. Additionally, I have scanned the terms and conditions of the settlement deed and found that they are in consonance with the law.



Undeniably, disposal of cases by settlement is one of the modes which is mostly encouraged by the court. In the case of **Jaffrey Indi. Sian Ltd vs M/s Beijing Construction Engineering Group Limited**, Commercial Case No 38 of 2021, this court remarked that parties' mutual settlement of cases is a route encouraged all over the world. The similar position has been echoed by the Court of Appeal in **Motor Vessel Sepideh and another vs. Yusuph Mohamed Yusuph and two others** Civil Application No.237 of 2013, CAT at Dar- es- Salaam.

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

1. **The outstanding amount of the debts:** The 1st defendant (borrower), other defendants and the plaintiff (bank) agree and acknowledge that the **OUTSTANDING AMOUNT** arising from the said credit facility is USD 104,570.10 (**United States of America Dollars One Hundred and Four Thousand Five Hundred Seventy and Ten Cents**) only herein after referred to as "**the debt**".
2. That for the purposes of this settlement deed, the plaintiff (bank) is agreeable to be paid **USD 80,000.00** (United States of America Dollars eighty thousand) or its equivalent of TZS 188,400,000.00 (Tanzanian shillings one hundred eighty-eight million four hundred thousand)



thousand) hereinafter "**the settlement amount**" in fully satisfaction of the debt by the defendants.

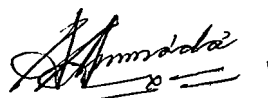
3. **Securities:** the defendants hereby acknowledge and agree that the securities shall continue to be security of the debt as provided herein and in security documents.

4. **Payment Modalities and Interest:** the parties agree that;

(a) That, the borrower agrees, accepts unconditionally to allow the bank to convert the mutually agreed liability of US\$ 80,000.0 into local currency liability at an exchange rate of Tshs. 2,355.0 [per dollar]. Further, borrower hereby agrees that the bank is fully authorized specifically to convert the liability of US\$ 80,000 in equivalent local currency liability of TZS. 188,400,000.00 **(Tanzanian Shillings one hundred eighty-eight million & four hundred thousand)**

(b) The 1st defendant Barreto Hauliers [T] Limited 2nd defendant and 3rd defendant accept the settlement amount of Tsh.188,400,000.0 **(Tanzanian shillings one hundred eighty-eight million four hundred thousand)** as full and final liability to be repayable at a monthly installment of Tshs.2,000,000.00 (Tanzania shillings two million) only without default in the 1st year starting from November 2022 up to October, 2023.

(c) The 1st defendant Barreto Hauliers [T] Limited ,2nd defendant and 3rd defendant accept to enhance the instalment amount & shall commence paying at a monthly instalment of **Tsh.3,000,000.00 (Tanzanian Shillings three million)** only for complete 2nd year



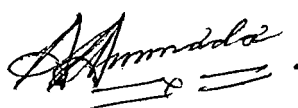
the liability without default irrespective of economic condition, business landscape, commercial situation or trade activity. The 2nd year shall start from November, 2023 to October 2024.

- (d) The 1st defendant Barreto Hauliers, 2nd defendant and 3rd defendant accept to enhance the instalment amount and shall commence paying at a monthly instalment of **Tsh. 4,000,000.00 (Tanzania Shillings four million) only** for complete 3rd year subsequent to 2nd years payment [as cited under clause 5(C) to reduce the liability without default irrespective of economic scenario, business development, commercial situation or trade activity.
- (e) The 1st defendant Barreto Hauliers [T] Limited, 2nd defendant and 3rd defendant accept to enhance the instalment amount & shall commence paying a monthly instalment of **Tsh. 5,000,000.00 (Tanzania Shillings four million)** for complete 4th year subsequent payments [as cited under clause 5 (d)] to reduce the liability without default irrespective of economic scenario, business development, commercial situation or trade activity. The 4th year shall start from November 2025 to October 2026.
- (f) The 1st defendant Barreto Hauliers [T] Limited, 2nd defendant and 3rd defendant accept to enhance the instalment amount & shall commence paying at a monthly instalment of Tshs. 6,000,000.0 (**Tanzania shillings six million**) only commencing from 5th year [for three months] and final payment of Tsh.2.4 million as last instalment [50th instalment] to liquidate the liability without default



(Tanzania shillings six million) only commencing from 5th year [for three months] and final payment of Tsh.2.4 million as last instalment [50th instalment] to liquidate the liability without default irrespective of economic scenario, business development, commercial situation or trade activity. The 5th year shall start from November 2026 to February 2027.

- (g) That, the settlement amount will not accrue any interest during the ensuring period of repayment.
- (h) That, the borrower shall have the right to liquidate the entire liability in lumpsum, in one go without any penalty.
- (i) That, in event of any single default in repayment of the settlement sum, this deed shall terminate forthwith.
- (j) That, upon default by defendants, the plaintiff shall have the powers to sell the securities and to enforce the directors guarantee to recover the outstanding liabilities without recourse to the court.
- (k) That upon default in any single instalment, the terms of this deed of settlement as a decree of the court shall become payable immediately and the plaintiff shall be at liberty to execute the decree as against the defendants 1st 2nd and 3rd in favour of the plaintiff to liquidate the outstanding amount or to sell herself under power of sale without assistance of the court.



declared that this deed of settlement does not alter, change, vary or affect the security and guarantees executed as security for credit facilities advanced to the borrower and will remain in full force and effect until the settlement sum is paid in full.

(m) That immediately after filing of this deed of settlement this suit, Commercial Case No. 76 of 2022 shall be marked settled as per terms of this deed of settlement.

(n) That the parties have willingly and fully negotiated this settlement and are in agreement to the settlement reached herein and that by this deed the matter is marked settled and that no further claim whatsoever pertaining to this settled matter emanating from credit facility advanced to the 1st defendant and guaranteed by the personal guarantees (2nd and 3rd defendants) may be revived or reinstituted by any party.

(o) That except as provided herein, the parties waive all other claims against each other and thus this deed of settlement shall constitute a decree of the court as between parties in respect of the dispute between them and the parties agree the court to record as such and should either of the parties hereto default in the performance of the terms herein it shall be enforced in the same manner as a decree of this court.

(p) That upon the matter being marked settled between the plaintiff the 1st defendant, 2nd defendant and 3rd defendant, the settlement deed

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of the terms herein it shall be enforced in the same manner as a decree of this court.

(p) That upon the matter being marked settled between the plaintiff the 1st defendant, 2nd defendant and 3rd defendant, the settlement deed shall have effect as if it is a decree of the court made after full hearing of the suit and delivery of judgement upon its terms.

It is so ordered

Dated at Dar es Salaam this 17th day of November, 2022.




A.A. Mbagwa

JUDGE

17/11/2022