

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

COMMERCIAL CASE NO. 46 OF 2022

BALTON TANZANIA LIMITED.....PLAINTIFF

VERSUS

GLOBAL AGENCY LIMITED.....DEFENDANT

CONSENT JUDGEMENT

Date of last order: 09/11/2022

Date of judgement: 11/11/2022

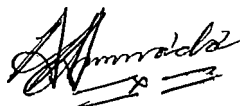
A.A. MBAGWA, J.

This judgment arises from a deed of settlement duly signed by the parties and filed in this court on 9th November, 2022.

The plaintiff, Balton Tanzania Limited instituted the present suit against the defendant namely, Global Agency Limited.

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

1. For payment of the outstanding debt of Tanzanian shillings Two Hundred Fifty-Eight Million Seven Hundred Twelve Thousand Nine

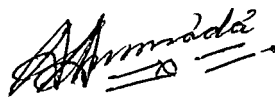


Hundred Seventy-Two and Fifty Cents (tzs 258,712,972.50) against the defendant.

2. For payment of general damages in the sum not less than Tanzanian shillings two hundred million (TZS.200,000,000.00) for injuries caused to the plaintiff's business by the defendant.
3. For payment of interests at the courts' rate of 7% per annum, to be charged from the date of delivery of judgement and decree until date of payment in full.
4. For payment of costs of conducting this case; and
5. Any and further reliefs this honorable court will deem just and fit to grant.

Upon completion of pleadings, the matter was set for hearing on 7th and 9th November, 2022 at 11:00hrs. However, on 9th day of November, 2022, parties filed in this court a deed of settlement wholly adjusting the suit. As such, the court scheduled the matter on 11th November, 2022 for necessary orders.

On the 11th day of November, 2022, Miss. Elizabeth Majuva, learned advocate appeared for the plaintiff whereas Mr. Ngasa Ganja, learned counsel represented the defendant.

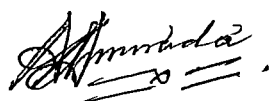


Miss. Elizabeth Majuva informed the court that parties had mutually agreed to settle the dispute and therefore signed and filed the settlement deed stipulating the terms upon which they agreed. She thus prayed the court to mark the matter as settled as per the terms and conditions stipulated in the settlement deed and the same to form part of the consent judgment. The submission and prayer of the plaintiff's counsel was supported by the defendant's counsel one Mr. Ngasa Ganja.

Order XXIII rule 3 of the Civil Procedure Code under which this 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 had an occasion to go through the said deed of settlement filed in this court on 9th November, 2022 in terms of Order XXIII rule 3 of the Civil Procedure Code and rule 2(2) of the High Court (Commercial Division)



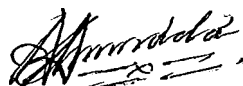
Procedure Rules, 2012. I am satisfied that the same was on 8th November, 2022 duly signed by all the parties namely, Mr. Ravi Periyasamy, General Manager for the plaintiff and Paul Mark Msella, Controller for Plaintiff, on the one hand and Mr. Fidelis Christian Bashasha, the Managing Director for the defendant and Amani Omari Sinare, the Financial Controller for the defendant, on the other hand. Additionally, I have scanned the terms and conditions of the settlement deed and found that they are in compliance with the requirements of law.

The procedure to dispose of the suit by way of settlement has, on several occasions been recommended by the Court of Appeal including in its decision in the case of **Motor Vessel Sepideh and another vs. Yusuph Mohamed Yusuph and two others** Civil Application No.237 Of 2013, CAT at Dar es Salaam. In addition, this court in the case of **Jaffrey Indi. Sian Ltd vs M/s Beijing Construction Engineering Group Limited**, Commercial Case No 38 of 2021, remarked that parties' mutual settlement of cases is a route encouraged all over the world.

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



1. That the plaintiff's claims against the defendant is for payment of Tanzania shillings Two Hundred Fifty-Eight Million Seven Hundred Twelve Thousand Nine Hundred Seventy-Two and Fifty Cents (tzs 258,712,972.50) only being an outstanding amount due and owing to the plaintiff as a result of breach of contract leading to the institution of Commercial Case No.46 of 2022.
2. That the parties have agreed to settle the matter amicably by the defendant paying the plaintiff the total amount of Tanzania shillings Two Hundred Eighty-Six Million Two Hundred Nineteen Thousand Six Hundred Sixty-Four (TZS 286,219,664) only which is inclusive of.
 - 2.1 The outstanding amount due to date amounting to Tanzanian Two Hundred Fifty-Eight Million Seven Hundred Twelve Thousand Nine Hundred Seventy-Two and Fifty Cents (TZS 258,712,972.50) only.
 - 2.2 Legal fees for the Commercial Case No. 46 of 2022 High Court of Tanzania (Commercial) Division at Dar Es Salaam amounting to Tanzanian shillings Ten Million (TZS 10,000,000) only.
 - 2.3 3% interest per annum on the outstanding amount from the last date the defendant made payment to May 2023 (2 years and 5 months) amounting to Tanzanian shillings Seventeen Million Five

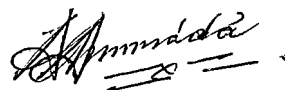


Hundred and Six Thousand Six Hundred Ninety-One (TZS 17,506,691) only.

3. That, the plaintiff and defendant have agreed that the defendant shall make initial payment of Tanzanian shillings One Hundred Million (TZS 100,000,000) to the plaintiff herein by 15th December 2022.

That the plaintiff and the defendant have agreed that the defendant will pay the remaining amount of Tanzanian shillings One Hundred Eighty Six Million Two Hundred Nineteen Thousand Six Hundred Sixty Four (TZS 186,219 ,664) in five (5) equal installments from January to May 2023.

4. It has been further agreed that this deed of settlement shall be filed in the High Court of Tanzania (Commercial Division) and the Commercial Case No.46 of 2022 instituted by the plaintiff shall be marked settled and this deed shall be adopted as courts' judgement and decree.
5. The defendant agrees that, upon failure to pay a single installment as agreed or general failure to adhere to this deed of settlement, the plaintiff will proceed to file an application for execution against the defendant.



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6. That pursuant to this settlement, the plaintiff in Commercial Case No. 46 of 2022 has also irreversibly agreed to withdraw and waive other claims against the defendant in relation to this matter in the High Court of Tanzania (Commercial Division) at Dar es salaam.
7. That this is a final settlement of all the claims of the plaintiff against the defendant and there will be no other or further claims resulting from the matter. Should any party become aware of any such claim being pursued against them in relation to this matter, then the defaulting party shall stand and ensure that the said claims are withdrawn, dismissed, or otherwise terminated at his own cost.

It is so ordered

Dated at Dar es Salaam this 11th day of November, 2022.




A.A. Mbagwa

JUDGE

11/11/2022