

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT DARE ES SALAAM

COMMERCIAL CASE NO. 98 OF 2022

BETWEEN

PIUS RWEGOSHORA TIBAZARWA (Administrator of the estate of the late) CLEMENS MARTIN TIBAZARWA..... PLAINTIFF

VERSUS

LAKE OIL LIMITED.....DEFENDANT

CONSENT JUDGMENT

Date for last order:14/11/2022

Date for Judgment: 21/11/2022

A.A. MBAGWA, J.

This judgment emanates from a deed of settlement duly signed by the parties and filed in this court on 18th day of November, 2022.

The plaintiff, Pius Rwegoshora Tibazarwa (Administrator of the estate of the late) Clemens Martin Tibazarwa, by way of plaint, instituted this case against the defendant for the following reliefs:

1


- a) An order for payment of United States Dollars One Hundred Sixty – Eight Thousand (USD 168,000.00) only being the unpaid rent pursuant to the terms of the Lease Agreement:
- b) An order for specific performance requiring the defendant to construct all the facilities contracted in the Lease Agreement:
- c) Payment of the sum of United States Dollars Three Thousand Five Hundred (US\$ 3,500.00) only per month from November, 2021 up to the date the unconstructed facilities would be ready for use by the Plaintiff;
- d) An order for payment of interest from the date the rent became due to the date of judgment at the rate of ten percent (10%);
- e) An order for payment of interest at court rate from the date of judgment to the date of final satisfaction;
- f) An order for payment of general damages;
- g) Costs of this suit; and
- h) Any other order(s) and relief(s) the Honourable Court may deem just and fit to grant in the circumstances of this matter.

When the matter came for first pre-trial conference on 14th day of November, 2022, Ms. Joyce Shayo, counsel for the plaintiff told the court that there were

ongoing negotiations between the parties with the view to settle the matter amicably. She thus prayed for an adjournment in order to finalise the negotiation and signing of the settlement deed. As such, the matter was adjourned to 21st November, 2022.

When the matter came for necessary orders on 21st November, 2022, Mr. Alexander Roudossakis, learned advocate appeared for the plaintiff whilst Mr. Heriolotu Boniface, learned counsel appeared for the defendant. Mr. Roudossakis informed the court that the parties had signed the deed of settlement to settle the suit amicably and subsequently filed the same in court on 18th November, 2022. He thus prayed the deed of settlement to be adopted and form part of the consent judgment. Mr. Boniface, learned counsel, on behalf of the defendant, assured the court that the parties had settled the matter as submitted by Mr. Roudossakis.

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 dispassionately gone through the deed of settlement dated 17th November, 2022 and filed in this court on 18th 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 mutually consented and signed by the parties hence it is lawful. Besides, the terms and conditions of the settlement deed are within the confinement of law.

Disposal of the suit by way of settlement is one of the legally acceptable means of determining cases. This has been, on several occasions, endorsed 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. Further, this court once remarked in the case of **Jaffrey Indi. Sian Ltd vs M/s Beijing Construction Engineering Group Limited**, Commercial Case No 38 of 2021, that parties' mutual settlement of cases is a route encouraged all over the world.

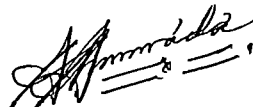
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In view of the above, the deed of settlement is hereby recorded and adopted to form part of the consent judgment. Consequently, the suit is marked settled with the following orders;

- (a) That the defendant shall pay to the plaintiff a sum of United States Dollars One Hundred Sixty- Eighty Thousand (USD 168,000.00) only being the unpaid rent pursuant to the terms of the Lease Agreement through NBC Bank Accounts No. 01114800617 Corporate Branch belonging to the plaintiff being rent for a period up to 7th June 2025.
- (b) That subsequent rent pursuant to the terms of the Lease Agreement between the parties shall be paid for four years in advance, the first instalment becoming due for payment on 7th June 2025.
- (c) That, the defendant shall construct at the leased land the following amenities/facilities for the plaintiff's use within a period of six months from the date of recording this settlement.
 - (i) One place for an Automated Teller Machine;
 - (ii) Service Bay for Automobiles;
 - (iii) A place for fixing tire punctures; and
 - (iv) Gas selling cage



- (d) That the plaintiff shall be given one of the already built offices on the ground floor for his exclusive use.
- (e) That the facilities constructed for the plaintiff's use shall be formally handed over to the plaintiff within six months from the date of recording this settlement, failing which the defendant shall be required to pay rent amounting to USD 3,500 per month as rent for facilities which would otherwise have been used for plaintiff's exclusive use.
- (f) That the defendant shall refund the amount spent by the plaintiff for enforcing his rights under the Lease Agreement as follows:
 - (i) Filing fees of Tanzania Shillings 7,913,840.00
(receipt attached);
 - (ii) Advocates Fess of USD 6,000.00
- (g) The said amount described in paragraph (f) shall be deposited in the plaintiff's account described above in United States Dollars or its equivalence in Tanzania Shillings.
- (h) Upon execution of this Deed of Settlement, the dispute shall be marked as conclusively determined.

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- (i) This Deed of Settlement shall be filed in the High Court of Tanzania (Commercial Division) at Dar es Salaam and shall be marked as the Decree of the said Court.
- (j) That this Deed is subject to the usual default clause.

It is so ordered.

Dated at Dar es Salaam this 21st day of November, 2022




A.A. Mbagwa

JUDGE

21/11/2022