

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 55 OF 2022

NCBA BANK TANZANIA LIMITED PLAINTIFF

VERSUS

NEW HABARI (2006) LIMITED.....1ST DEFENDANT

DIMBA NEWSPAPERS LIMITED.....2ND DEFENDANT

HASSAN HAYDAR OMAR.....3RD DEFENDANT

GULAM CHAKAAR.....4TH DEFENDANT

CONSENT JUDGMENT

Date of Last Order: 01/12/2022

Date of Judgment: 13/12/2022

AGATHO, J.:

This judgement emanates from a deed of settlement dully signed by the parties in this court on 1st December,2022. Brief background of this suit is that, Plaintiff is a registered company under the Companies Act No. 12 of 2002 R.E 2002 and licensed under the Banking and financial institution Act.2006 to carry out banking business while the 1st defendants is registered company under the Companies Act No. 12 of 2002 R.E. 2002 and the 2nd ,3rd and 4th Defendants are guarantors of the 1st Defendants' loan advanced by the plaintiff. By way of plaint the plaintiff NCBA Bank Tanzania Limited instituted this suit against Defendants praying for judgment and decree jointly and severally for following reliefs:

- a. Payment of TSH. 1,235,383,140.01(Tanzania Shillings One Billion Two Hundred Thirty-five Million Three Hundred Eighty-Three Thousand One Hundred and Forty, one cent only pleaded in paragraph 6 of the plaint).
- b. Payment of Commercial interest at the rate of 23% per annum for the sum in paragraph (a) hereinabove from the date was due to the date of judgement.
- c. Interest at the court's rate of 12% of decretal sum from the date of judgement until payment of the outstanding loan amount in full.
- d. Declaration that the 1st defendant is in breach of the credit facilities agreements as constituted under the facility letters pleaded and thus the Plaintiff is entitled to realize the securities thereof to wit:
 - i. First ranking debenture over fixed and floating assets of the 1st Defendant.
 - ii. Specific Debenture Deed issued by New Habari (2006) Limited, the 1st defendant over the printing machine in the name of 1st Defendant.
 - iii. Registered Mortgage of Certificate of right of occupancy over certificate of Title No 28772, Land office No 73886, Plot No .5 Block" C" Commercial area Sinza Area Dar es salaam City in the Name of Dimba Newspapers Limited the 2nd Defendant.
 - iv. Contract of guarantee of 2nd Defendant
- e. An order for attachment and sale of the security in (d) (iii)
- f. An order for enforcement of securities in (d) (i) (ii) (iii) and (iv)

- g. Costs of this suit and
- h. Any other order(s) and relief(s) may this honourable court deem fit and just to grant.

On 1st December, 2022, when the matter came for mention Mr. Seni Malimi, counsel for the Plaintiff informed the court that, initially parties on 21st September, 2022 filed deed of settlement with the view to settle the suit between the parties. However, on the course of further negotiations parties asked the court to expunge the deed of settlement. Following that prayer this court expunged the deed of settlement from its record. Parties continued with negotiation and subsequently on 1st December 2022 they filed a new duly signed Deed of settlement. He thus prayed the Deed of settlement to be adopted and form part of the consent judgement on the following terms:

1. That the parties have agreed to reinstate the initial settlement agreement that was entered in 2020 between the parties wherein the agreed settlement amount was TZS. 1,600,000,000.00/= and the 1st Defendant managed to pay TZS. 733,000,000.00/= which was paid in June, 2021 leaving unpaid loan balance was TZS 867,000,000.00/=.
2. That the Defendants shall jointly and severally pay to the Plaintiff TZS. 867,000,000.00/= (Tanzania Shillings Eight Hundred and Sixty-Seven Million Seven Hundred Thousand only) hereinafter called the "Settlement Sum" in full and final repayment of the credit facilities advanced to the 1st Defendant by the Plaintiff.
3. That the Defendants shall pay the said settlement sum on dates and months as described herein below.

- a) Payment of TZS. 433,500,000.00 (Tanzania Shillings Four Hundred and Thirty-Three Million Five Hundred Thousand only) which is 50% down payment by 31st August 2022.
 - b) Payment of TZS. 433,500,000 (Tanzania Shillings Four Hundred and Thirty-Three Million Five Hundred only) shall be paid on 9 equal monthly installments starting from 30th September 2022 without interest.
- 4. That the Settlement Sum will be paid by Defendants through TAIFA TRANSPORT AND LOGISTICS LIMITED who is not party to this case, as the purchaser of the Mortgaged Property.
 - 5. That the said TAIFA TRANSPORT AND LOGISTICS LIMITED will purchase the Mortgaged Property from the Plaintiff under power of sale.
 - 6. The Mortgagor, DIMBA NEWSPAPERS LIMITED the 2nd Defendant herein; consents to the sale for the Mortgaged Property by the Plaintiff to TAIFA TRANSPORT AND LOGISTICS LIMITED under power of sale and the Settlement Sum being the Purchase Price.
 - 7. The Mortgagor, DIMBA NEWSPAPERS LIMITED the 2nd Defendant herein release the Plaintiff from any future claim that might arise relating to the sale of the Mortgaged Property by the Plaintiff to TAIFA TRANSPORT AND LOGISTICS LIMITED and that the Plaintiff shall not be liable any claim whatever upon liquidation of the settlement amount.
 - 8. The sale shall be concluded and/or done upon full payment of the Purchase price by TAIFA TRANSPORT AND LOGISTICS LIMITED and

that the Mortgagor DIMBA NEWSPAPERS LIMITED hereby authorizes the Plaintiff upon fully liquidation of the agreed Purchase Price (agreed settlement amount) the Plaintiff shall proceed to release and discharge the title to TAIFA TRANSPORT AND LOGISTICS LIMITED.

9. That the Mortgagor, DIMBA NEWSPAPERS LIMITED the 2nd Defendant herein, declares that the purchase price is the market price and has no objection to the said TAIFA TRANSPORT AND LOGISTICS LIMITED to pay the settlement sum and purchase the property under power of sale.
10. That in event of default to pay the Settlement Sum as per this Settlement Deed, the Plaintiff shall have the power to realize the Securities and the Mortgaged Property to recover the outstanding liabilities without recourse to the Court.
11. That after default of two consecutive installments, the Usual Default Clause shall apply, in the sense that the terms of this Deed of Settlement as a Decree of the Court shall become enforceable and the Settlement Sum payable immediately and the Plaintiff shall be at liberty to execute the decree as against the 1st, 2nd, 3rd and 4th Defendants in favor of the Plaintiff to liquidate the outstanding amount or to sell herself under power of sale without assistance of the Court and that by this Settlement Deed, the defendants release the plaintiff from any further claims related to Mortgaged property.

12. That immediately after filling this deed of settlement, the plaintiff suit, Commercial case No 55 of 22 shall be marked settled as per terms of this Deed of settlement.
13. That the defendants shall bear the costs of this suit.
14. 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 that no further claim of whatsoever nature pertaining of this settled matter emanating from credit facilities advanced to the 1st Defendant by the plaintiff, may be revived or instituted by any party in this matter.
15. That except as provided herein, the plaintiff waived all other claims against the defendants that this deed of settlement shall constitute a consent decree of the court as between the parties in respect of this dispute between them and the parties agree that 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.
16. That the securities executed by 1st, 2nd, 3rd and 4th defendants being Mortgage, Debenture, specific debenture, corporate guarantee and personal guarantees, shall remain valid and binding on the perspective parties until the whole settlement sum is paid in full remain for avoidance of doubt and save for the amount secured ,it is hereby declared that this deed of settlement does not alter, change, vary or

affect the mortgage, debenture specific debenture, corporate guarantee, and personal guarantees executed as security for credit facilities advanced to the borrower /1st defendant and will remain in full force and effect until the settlement sum is paid in full.

17. That upon the matter being marked settled between the plaintiff and defendants, the settlement deed shall have effect as decree of the court made after full hearing of the suit and delivery of judgement upon its terms.

As intimated earlier, on the 1st day of December 2022 the parties filed the deed of settlement in court. They both agreed to be bound by the terms of the Deed of Settlement as a such the terms of the deed of settlement are now recorded as judgment and decree of the court and the matter is hereby marked as settled in terms of Order XXIII Rule 3 of the Civil Procedure Code, [Cap 33 R.E 2019].

It is so ordered.

DATED at Dar es Salaam this 13th Day of December 2022.



U. J. AGATHO
JUDGE
13/12/2022