

IN THE HIGH COURT OF TANZANIA
COMMERCIAL DIVISION
AT DAR ES SALAAM
COMMERCIAL CASE NO. 48 OF 2022

EXIM BANK (TANZANIA) LIMITED.....PLAINTIFF
VERSUS
MAHAMUDU SELEMANI LUPANDA.....DEFENDANT

CONSENT JUDGMENT

Date of Last Order: 06/12/2022

Date of Judgment: 14/12/2022

AGATHO, J.:

This judgement emanates from a deed of settlement dully signed by the parties in this court on 5th December,2022. The 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 and the defendant is registered company under the Companies Act No. 12 of 2002 R.E. 2002. The Plaintiff, the Exim Bank (Tanzania) Limited by way of plaint instituted this suit against the Defendant praying for judgment and decree for the following reliefs:

- i. Declaration that the Defendant is in breach of the facility agreements.
- ii. An order for payment of Tanzania Shillings TZS. 254,066,318.41 says (Two Hundred Fifty-Four Million Sixty-Six Thousand Three Hundred Eighteen and Forty-One Cents Only) as pleaded under paragraph 11 of the plaint being the outstanding loan balance.
- iii. Interest at an agreed commercial rate of 27% on the outstanding amount stated in (ii) above from the date of filling this suit to the date of judgement.
- iv. Interest on the decretal sum at the court rate of 12% from the date of judgement to the date of full satisfaction.

- v. General damages for breach of contract to be assessed by this Honorable Court.
- vi. Costs of the suit.

On 6th December 2022, when the matter came for final pre-trial conference the parties informed the court that they had signed Deed of Settlement out of court and they have filed it in the court and prayed that the court be pleased to mark the matter settled and proceed to issue consent judgment under Order XXIII Rule 3 of the Civil Procedure Code [Capp 33 R.E. 2019]. I have gone through the Deed of Settlement dated 5th December 2022, and in terms of Order XXIII Rule 3 of the Civil Procedure Code [Capp 33 R.E. 2019] and Rule 2(2) of the High Court (Commercial Division) Procedure Rules, 2012 as amended in 2019 I am satisfied that, the same was mutually consented. In the view of above, the Deed of Settlement is hereby recorded and adopted to form part of consent judgement as prayed by the parties on the following orders:

1. The parties agreed that the total outstanding loan payable to the Plaintiff as of 31st March 2022 is TZS. 254,066,318.41 (Say **Tanzania Shillings Two Hundred Fifty-Four Million Sixty-Six Thousand Three Hundred Eighteen and Forty-One Cent only**)
- 1.2 That in the spirit of the settlement, the Plaintiff shall waive penal interest of **TZS. 94,066,318.41** (Say Tanzania Shillings **Ninety-Four Million Sixty-Six Thousand Three Hundred Eighteen and Forty-One Cent**) which shall make loan balance payable to be **TZS. 160,000,000** (Say **One Hundred Sixty Million Only**)
- 1.3 That in the spirit of settlement the Defendant undertakes to deposit TZS. 5,000,000/= in October 2022 as down payment to reduce the outstanding amount which shall make the outstanding loan to be **TZS. 155,000,000/= (Say Tanzania Shillings One Hundred Fifty-Five Million)**

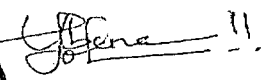
- 1.4 That the remaining loan balance of **TZS. 155,000,000/= (Say Tanzania Shillings One Hundred Fifty-Five Million)** shall be repaid within a period of Five months (5) starting from November 2022 to March, 2023.
- 1.5 That, the parties have agreed that should the Defendant default to pay any of the installments as agreed under paragraph 1.3 and 1.4 above, the Plaintiff shall have automatic right to proceed with recovery measures including the sale of securities to recover the whole amount of **TZS. 254,066,318.41 (Say Tanzania Shillings Two Hundred Fifty-Four Million Sixty-Six Thousand Three Hundred Eighteen and Forty-One Cent only)** plus interest accrued thereon without further court proceedings and/or notice to the Defendants.
2. Without prejudice to the generality in 1.5, if the Defendants default any of the terms herein, the Plaintiff shall be entitled to commence recovery measures without further proceedings and/or notice to the Defendants.
- 2.1 Without prejudice to clause 2 above, the Plaintiff may opt to seek Court's assistances by way of execution proceedings as the case may be.

In lieu of the above, and as per Order XXIII Rule 3 of the Civil Procedure Code [Capp 33 R.E. 2019], the present suit is 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 5th December, 2022. Therefore, the said terms of the deed of settlement are now recorded as judgment and decree of the court

It is so ordered.

DATED at Dar es salaam this 14th Day of December 2022.




U. J. AGATHO
JUDGE
14/07/2022