

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 148 OF 2021**

**HABIB AFRICAN BANK LIMITED ..... PLAINTIFF**

***VERSUS***

**SAMORA SERVICE STATION LIMITED.....1<sup>ST</sup> DEFENDANT**

**AUGUSTINO PETER MMASI.....2<sup>ND</sup> DEFENDANT**

**NIZAR BHIMJI.....3<sup>RD</sup> DEFENDANT**

**ESSIA OBETI KILALE.....4<sup>TH</sup> DEFENDANT**

**CONSENT JUDGMENT**

*Date of Last Order: 13/12/2022*

*Date of Judgment: 14/12/2022*

**AGATHO, J.:**

This judgement stems from a deed of settlement dully signed by the parties in this court on, 14<sup>th</sup> 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 1<sup>st</sup> defendant is registered company under the Companies Act No. 12 of 2002 R.E. 2002 and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants are guarantors of the 1<sup>st</sup> defendants' loan advanced by the plaintiff. By way of plaint the plaintiff Habib African Bank Limited instituted this suit against Defendants praying for judgment and decree jointly and severally for following reliefs:

- 1) Payment of TSH. 137,957,249.32/= only as pleaded in paragraph 6 of this plaint;
- 2) Payment of commercial interest at the rate of 23% per annum for the in paragraph(a) hereinabove from the date was due to the date of judgment;
- 3) Interest at the court's rate of 12% of the Decretal sum from the date of Judgment until payment of the outstanding loan amount in full.
- 4) Declaration that the 1<sup>st</sup> Defendant is in breach of the credit facilities agreement as constituted under the Facility Letters Pleaded herein and thus the Plaintiff is entitled to realize the securities thereof, to wit:
  - i. Lien over Fixed Term Deposit of TSH. 20,000,000/= placed in the account having No. 010-64963-081 in the name of Augustine Peter Mmasi;
  - ii. Debenture Deed issued by Samora Service Station Limited:
  - iii. Registered Mortgage of Certificate of Right of Occupancy over Certificate of title no. 49486, Land Office No. 177233, Plots Nos. 26 & 28/i. Block Kawe Area, Dar es Salaam City in the name of Augustine Peter Mmasi;
  - iv. Registered Mortgage of a Residential License No. ILA 004362 ILA/KWN/YMB25/I, Yombo Kiwalani Area, Ilala Municipality, Dar es Salaam City in the name of Essia Obeti Kilale; and
  - v. Contracts of Guarantee executed by 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

## 5) Costs of this suit

On 13<sup>th</sup> December 2022, when the matter came for mention Ms. Mary Lamwai, Advocate for the Defendants also holding brief of Seni Malimi, Advocate of the Plaintiff informed the court that, initially parties have filed a dully signed Deed of settlement. Se thus prayed the Deed of settlement to be adopted and form part of the consent judgement on the following terms:

- 1) That the 2<sup>nd</sup> Defendant acknowledges the 1<sup>st</sup> Defendant being indebted to the Plaintiff in the sum of TSH. 137,957 249.32/= on account of Credit Facilities granted to the 1<sup>st</sup> Defendant as of 17<sup>th</sup> June 2021.
- 2) That the 2<sup>nd</sup> Defendant being one among the guarantors of the 1<sup>st</sup> Defendant intends to settle the debt due on behalf of the 1<sup>st</sup> Defendant and the remaining Defendants amicably at a reduced sum of TSH. 90,000,000/=
- 3) That the 2<sup>nd</sup> Defendant concedes that the mortgage executed as security for the said loan plus all the other guarantees are valid and lawful.
- 4) That the Plaintiff accepts a negotiated settlement of the said debt at a reduced amount of TSH. 90,000,000.0 [ninety million only] in full and final settlement of the debt after writing off any additional amount that may be due on the debt.
- 5) That the Plaintiff shall surrender the mortgaged property, namely, Plots No: 26 &28/1, Block 'K' Kawe with Certificate of Title Deed No. 49486, Land office no. 177233 Located at Kawe Area, Dar es Salaam

city in the name of Augustino Peter Mmasi and property having License No. ILA/KWN/YMB25/I, Yombo Kiwalani Ilala Municipality Dar es Salaam City in the name of Essia Obeti Kilale to the 2<sup>nd</sup> Defendant after the full payment of the account amount to be paid as per Clause 4.

- 6) The Parties to this deed are therefore agreed to the repayment of the debt referred at clause 3 and 4 herein above on the following instalment as schedule hereunder:
- a) That the 2<sup>nd</sup> Defendant agrees to pay TSH. 1.0 million [one million Tanzanian shilling] each month commencing from December-2022.
  - b) The 2<sup>nd</sup> Defendant to keep paying Tsh. 1.0 million [one million Tanzanian shilling] each month from January -2023 onwards till July-2023.
  - c) The 2<sup>nd</sup> Defendant to liquidate the remaining liability of TSH. 82,0000,000 [Eighty-two million] in one go in lump sum by August-2023.
  - d) That on failure of 2<sup>nd</sup> Defendant to liquidate the agreed liability of TSH. 90.0 million by August-2023, bank shall have full privilege, right & authority under the settlement agreement to dispose of the two [2] properties to liquidate the liability.
- 6) That in the efforts of paying the outstanding debt, the 2<sup>nd</sup> Defendant is allowed to sell the collaterals pledged to the Plaintiff, provided that the sale price in full is paid or routed through account maintained with the Plaintiff. Upon such payment the plaintiff shall release the said collateral

[Certificate of Title duly discharged] to the buyer of the said collateral or any authorized person.

- 7) That upon payment of the settlement amount, the Plaintiff shall in fifteen (15) days to release and surrender all other properties or security arrangement pledged as collaterals to the 2<sup>nd</sup> Defendant without any encumbrance.
- 8) That in the event of default by the 2<sup>nd</sup> Defendant the Plaintiff shall have full, unfettered rights to attach and sell only properties pledged to the Plaintiff as collaterals to recover the amount that shall be outstanding and due at the time of default.
- 9) That if the Plaintiff opts to sell collaterals or properties on default, the Plaintiff shall sell the said collaterals at prevailing market price. That is if the Plaintiff after sell of collaterals receives sufficient funds, or money in excess to satisfy the debt, the plaintiff shall give excess balance or remaining funds to the Defendants.
- 10) Subject to default in payment by the 2<sup>nd</sup> Defendant; should the Plaintiff sells all the collaterals at a price below the outstanding debt, that does not satisfy the outstanding liability or debt, the Plaintiff shall have no right to claim more money from the Defendants and the outstanding debt shall come to an end in that regard or shall be treated as waived or written-off.

As intimated earlier, today, the 14<sup>th</sup> 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 14<sup>th</sup> Day of December 2022.**



**U. J. AGATHO**  
**JUDGE**  
**14/12/2022**