

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 130 OF 2021

KAS MEDICS LIMITED.....PLAINTIFF

VERSUS

NSK HOSPITALS LIMITED.....DEFENDANT

CONSENT JUDGMENT

Date of last order: 19/12/2022

Date of judgment: 22/12/2022

A.A. MBAGWA, J.

This judgment stems from a deed of settlement duly signed and filed by the parties in this court on 22nd December, 2022.

The plaintiff, **KAS MEDICS LIMITED**, by way of a plaint, instituted the present suit against the defendant namely, **NSK HOSPITALS LIMITED**. She prays for judgment and decree against the defendant as follows;

- i. An order for payment of Tanzania shillings 86,628,033.25/= being the principal outstanding payment for medical equipment and accessories supplied to the defendant by the plaintiff.



- ii. An order for payment of Tanzania shillings 223,385,913/= being accrued interest on delayed payment computed up to 31st August 2021.
- iii. An order for payment of interest at commercial rate of 7% per annum over the amount awarded by the court from the date of judgement to the date of full payment of the decretal amount.
- iv. An order for payment of Tanzania shillings 200,000,000/= being general damages.
- v. Costs of suit.
- vi. Any other relief which this honorable court deems fit and just to grant.

Upon completion of pleadings and attendant preliminaries, the matter was set for hearing on 22nd December, 2022 at 10:00 hrs. However, on the same day i.e., 22nd day of December, 2022, parties filed in this court a deed of settlement wholly adjusting the suit.

Mr. Martin Sangira, learned advocate appeared for the plaintiff whereas Ms. Luiza Msemembo, learned counsel represented the defendant.

Mr. Martin Sangira informed the court that parties had mutually and amicably agreed to settle the matter. As such, they signed and filed the settlement deed stipulating the terms upon which they agreed. He thus prayed the court to adopt and record the deed of settlement and subsequently mark the matter as settled in accordance with the terms and conditions stipulated therein. The submission and prayer of the plaintiff's counsel were supported by the defendant counsel one Ms. Luiza Msemembo.

The law is very clear on disposal of cases by settlement where parties mutually agree to settle their dispute through amicable means. 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 keenly gone through the said deed of settlement filed in this court on 22nd day of December, 2022 in terms of Order XXIII rule 3 of the Civil Procedure Code read together with rule 2(2) of the High Court (Commercial Division) Procedure Rules. I am satisfied that the same was on 21st December, 2022 duly signed by all the parties namely Mr. Naveen Kuckian who is the director for the plaintiff and Mr. James Gulaka who is the Senior Manager Operations and Credit Control for the defendant. Additionally, I have scanned the terms and conditions of the settlement deed and found them compatible with the legal requirements.

The use of settlement as desirable means of disposing cases was emphasized by the Court of Appeal 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, in the case of **Jaffrey Indi. Sian Ltd vs M/s Beijing Construction Engineering Group Limited**, Commercial Case No 38 of 2021, the court 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 both parties have agreed to a final and total settlement amount of Tanzania Shillings Fifty-Five Million (Tshs 55,000,000.00) only, as the amount payable by NSK Hospital Limited the defendant to KAS Medics Limited, the plaintiff.
2. That defendant shall pay to the plaintiff the final and total settlement sum say; Tanzania Shillings Fifty-Five Million (Tshs 55,000,000) only, in 24 monthly equal installments of Tshs 2,292,000.00 per month, with effect from 31st January 2023 when the first monthly installment of Tshs 2,292,000.00 shall become due and payable.
3. That the defendant shall ensure every month installment is made on or before the last working day of every calendar month with effect from 31st January 2023 all through to 31st December 2024.
4. That if the defendant defaults payment of any monthly payment as agreed under paragraphs 2 and 3 above, the defendant shall be given seven days' notice to honor the agreement and on failure to rectify the situation on expiry of the seven days' notice, the remaining balance from the final and total settlement sum as per paragraph 2 shall become due; failure of which plaintiff shall

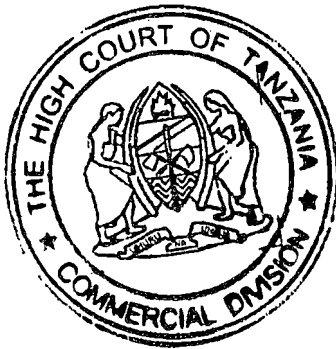


be at liberty to enforce the decree against the judgement debtor to recover the remaining balance on the decree as at the date of default.

5. That each party shall bear its own costs of the case.
6. That the deed of settlement is a final and conclusive settlement of the plaintiff's claims against the defendant and upon recording of this deed of settlement the same shall form judgement and decree of this court.

It is so ordered

Dated at Dar es Salaam this 22nd day of December, 2022.




A.A. Mbagwa

JUDGE

22/12/2022