

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

COMMERCIAL CASE NO. 101 OF 2021

AFRICAN BANKING COOPERATIONS TANZANIA

LIMITED.....PLAINTIFF

VERSUS

KIKAPU INVESTMENT COMPANY LIMITED.....1st DEFENDANT

ANZILA WISANJI.....2nd DEFENDANT

ELISAMIA RAPHAEL NNKO.....3rd DEFENDANT

ANIL NAVAS WISSANJI.....4th DEFENDANT

TAREKH WISSANJI.....5th DEFENDANT

ARUSHA BORA COMPANY LIMITED.....6th DEFENDANT

CONSENT JUDGMENT.

Date of Last Order : 18th March 2022

Date of Judgment : 28th March 2022

Z.A MARUMA, J.

This is a consent judgment that arose from a deed of settlement entered and agreed successful by the parties in this suit and filed in Court on 28th March 2022.

The settlement resulted from a suit filed by the plaintiff herein claimed for breach of an agreement of credit facility by the defendants. The plaintiff was praying for the judgement and the decree against the 1st ,2nd ,3rd 4th ,5th and 6th defendants jointly and severally as follows: -

- (1) For payment of outstanding debt of USD 1,045,492.17 or its equivalent in Tanzanian shillings against the 1st defendant borrower and against 2nd 3rd 4th 5th and 6th defendant in their capacity as sureties and/ guarantors.
- (2) For payment of interest at the agreed rate of 10% per annum to be charged to the loaned money in foreign currency and or at the interest rate of 23% per annum to be charged to any judgement and decree for payment of the

same in the local currency. The latter interest is the normal prevailing rate in the banking industry.

- (3) For payment of general damages in the sum not less than TZS 500,000,000/= For injuries caused to the plaintiff's banking business by the defendant's jointly and severally.
- (4) For payment of interest at the courts rate of 7% per annum to be charged from the date of delivery of judgement and decree until the date of payment in full.
- (5) In the alternative to prayer (1) to (4) above and in case of failure by the defendants or any of them to repay the amounts stated in prayer items (1) to (4) above: for an order of attachment and sale of the 2nd 3rd 4th 5th and 6th defendants' properties and assets pledged to the plaintiffs by their personal and cooperate guarantee and indemnity wherever they are situated and;
- (6) For payment of costs of conducting this case and;
- (7) Any and further reliefs as the honorable courts will deem just and fit to grant.

On 22nd February 2022 when the matter was scheduled for hearing Mr. Herman Lupogo, learned advocate for the plaintiff informed the Court that, the parties there was a settlement of the two matters pending before the management of the plaintiff waiting for the approval and signing of the settlement deed. The information supported by Mr. Ricko Adolf, learned advocate for the defendant. The matter was adjourned pending the conclusion of the settlement on progress.

On 28th March, 2022 the parties appeared in Court for the feedback of their settlement. The applicant was presented by Mr. Herman Lupogo, learned advocate and Mr. Ricko Adolf appeared for the respondent. The parties informed the Court that, they have managed to settle their suits and already file a deed of settlement in Court on 28th March 2022.

Having guided by order XXIII rule 3 of the Civil Procedure Code, Cap 33 R.E 2019 that:-

"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".

This Court went through the deed of settlement filed and satisfied that the parties have deliberately settled their matter conclusively. Consequently, as guided above as well as 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 (Unreported) the Court held that "Where there is a lawful agreement or compromise, the Court is bound to record settlement once it is arrived by the parties".

This Court recorded the deed of settlement entered to form part of this consent judgment and decree of this Court in Commercial Case no. 101 of 2021.

In the result, the matter is marked settled to the extent of the terms and conditions in the deed of settlement.

It is so ordered.

Dated **AT DAR ES SALAAM** on this **29TH MARCH, 2022**



Z.A.Maruma, J

29/03/2022