

**IN THE HIGH COURT OF THE UNITED REPUBLIC
OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
Commercial Case No. 27 of 2021**

NATAL MARTIN CHARLES LTD.....PLAINTIFF

VERSUS

GAPCO TANZANIA LIMITED.....DEFENDANT

CONSENT JUDGEMENT

Date of Last Order: 20/04/2022

Date of Ruling: 22/04/2022

NANGELA, J.:

The Plaintiff herein sued the Defendant seeking for Judgment and Decree of this Court as follows:

1. Payment of TZS 838,817,939.35
(Tanzanian Shillings Eight Hundred
Thirty Eight Million Eight Hundred
Seventeen Thousand Nine Hundred
Thirty Nine and Cents Thirty Five)
being the principal sum.
2. For an injunctive Order restraining
the Defendant from evicting the

Plaintiff over the Chang'ombe
Gapco Service Station.

3. For an Order requiring the Defendant to renew the Management Lease Contract with the Plaintiff.
4. Interest at the commercial lending rate of 18% on the principal sum from the date of instituting the suit to the date of Judgment.
5. General damages
6. Interest on the decretal sum at the Court rate of 7% per annum from the date of Judgment to the date of payment in full.
7. Costs of this suit.
8. Any other relief as the Court may deem fit and just to grant.

Following the filing of Defendant's Written Statement of Defense and before this matter went ahead to its pre-trial conference session; it was put on hold to

give room to the hearing and determination of two **Miscellaneous Applications, No.23 of 2021** and **Misc. Commercial Application No.115 of 2021**.

Essentially, the second application, which is still pending in this Court, emanated from the first application (i.e., **Miscellaneous Applications, No.23 of 2021** whose ruling was issued on the 1st of November 2021).

However, before the parties herein convened for the hearing of the **Misc. Commercial Application No.115 of 2021**, this Court was informed that, they had entered into a negotiation process seeking for an amicable settlement of this suit as well as the said Miscellaneous Commercial Application.

Being reminded of the Shakespear's adage, that "when clouds appear, wise men put on their cloaks", this Court's wisdom did welcome the Parties negotiations and intention to settle their disputes amicably owing to the

fact that, it is in the interest of the parties themselves and even the Court, that suit are expeditiously resolved.

That approach was emphasized by this same Court in the case of **Jaffery Ind.Saini Ltd vs. M/S Beijing Construction Engineering Group Ltd**, Commercial Case No. 38 of 2021 (unreported).

In that case, citing the case of **Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc., 332 F.3d 976, 980 (6th Cir. 2003)**, this Court stated, that:

"settlement of a dispute is an important and a welcome process.... The ability to negotiate and settle a case ... fosters a more efficient, more cost-effective, and significantly less burdened judicial system."

Consequently, the negotiations initiated by the parties culminated into the filing of a Deed of Settlement on the 21st April 2022. The Settlement Deed was filed under Rule 2 (2) of the High Court (Commercial Division)

Procedure Rules, 2012; GN. 250 of 2012 (as amended) and Order XXIII Rule 3 of the Civil Procedure Code, Cap.33 R.E 2019. This Consent Judgment, therefore, comes as a result of the parties' filing of such a Deed of Settlement.

In the first place, it is a common legal practice, however, that, before one rushes to the exercise of recording a Deed of Settlement as per Order XXIII rule 3 of the CPC, he or she has to be satisfied that it does conform to the requirements of the law.

In **Karatta Ernest D.O and 6 Others vs. The Attorney General**, Civil Appeal No.73 of 2014 (Unreported), the Court of Appeal made it clear that, the basis of a Deed of Settlement must be privy to all parties. See also the decision of this Court in the case of **Jaffery Ind.Saini Ltd'case** (supra).

The Court in **Jaffery Ind.Saini Ltd'case** (supra), citing the persuasive decision of Mwayera J, in the case

of **Farisai Nando vs. Godwills Masimirembwa**, High Court of Zimbabwe, Harare, 10 November, 2016, 23 February 2017, noted that, when considering the lawfulness of the settlement agreement one has to:

"Firstly...be satisfied that both parties to the agreement have freely and voluntarily concluded the agreement. Secondly, that there is meeting of minds of the contracting parties; in other words, that the parties are *ad idem* with regards the terms of the Deed of Settlement. [Thirdly, the decision maker] has to consider whether or not the terms of the Deed of Settlement are capable of enforcement without recourse to further litigation. The [decision making body], of necessity, should make a

specific and enforceable order.

These factors in my view fall for consideration cumulatively.”

In that case, this Court did emphasize as well, citing the decision of the Court of Appeal in South Africa (in the case of **Thutha vs. Thutha** 2008 (3) SA 49, that, ensuring that Orders that may follow a settlement deed are enforceable is crucial and, is premised on the fact that:

“the purpose of a court order is not to [merely] record the terms of an agreement between the parties, but to give final effect to the judgment which brings the dispute to closure.”

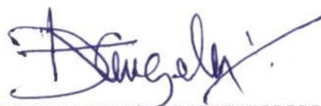
Having gone through the Deed of Settlement which was duly signed and filed by parties herein, I am satisfied that the same meets the requirements of an enforceable Deed and falls within Order **XXIII rule 3 of the Civil Procedure Code, Cap.33 R.E 2019**. This means that,

the present suit has been adjusted wholly by the Deed of Settlement filed in this Court on 21th of April 2021. With that in mind, this Court hereby proceeds and records the Deed of Settlement and marks this suit as "settled on the basis of terms contained in their duly signed Deed of Settlement, which shall constitute the Order of this Court".

It follows, therefore, that, by this consent decision, it is hereby declared that, the parties herein have resolved their dispute and, this suit is marked "**settled on the compromise of the parties**" and, the "Deed of Settlement" duly signed and filed by the parties in this Court, constitutes the Judgment and Decree of this Court.

It is so ordered.

DATED AT DAR-ES-SALAAM ON THIS 22nd DAY OF
APRIL, 2022



.....
HON. DEO JOHN NANGELA
JUDGE

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It is so ordered.

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APRIL, 2022



A handwritten signature in blue ink, appearing to read "Deo John Nangela".

HON. DEO JOHN NANGELA
JUDGE