

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

AT DAR ES SALAAM

COMMERCIAL CASE NO. 72 OF 2022

HABIB AFRICAN BANK LIMITED.....PLAINTIFF

VERSUS

A.M. STEEL & IRON MILL LIMITED.....1ST DEFENDANT

SHEIKH SHAHID MAJEED.....2ND DEFENDANT

SHEIKH ZAHID MAJEED.....3RD DEFENDANT

SHEIKH SAJID MAJEED.....4TH DEFENDANT

TULIP (T) LIMITED.....5TH DEFENDANT

CONSENT JUDGEMENT

Date of last order: 27.4.2023

Date of Judgement: 12.5.2023

AGATHO, J.:

This consent judgement emanates from deed of settlement dully signed by the Defendants and Plaintiff in this court on 27th April, 2023. The Plaintiff Habib African Bank Limited 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 2nd, 3rd, 4th and 5th defendants are guarantors of the 1st defendant's loan advanced by the Plaintiff. By way of plaint, Plaintiff Instituted this

suit against the above-named defendants praying for judgement and decree jointly and severally for following reliefs;

- 1) Declaration that the Defendants are in breach of the credit agreement as constituted under the Overdraft Facility and Term Loan facilities, and thus the Plaintiff is entitled to realize the securities pleaded under paragraph 25(a, c, d, e) of the plaint and which are liable for enforcement for the full repayment of the outstanding credit facilities extended to the 1st Defendant.
- 2) Payment of Tshs. 1,153,074,279.43 (say Tanzania Shillings One Billion One Hundred Fifty Three Million Seventy Four Thousand Two Hundred Seventy Nine Cents Forty Three) only as pleaded in paragraph 7 and 27 of the Plaint.
- 3) Payment of commercial interest at 23% per annum of the amount due of Tshs. 1,153,074,279.43 (say Tanzania Shillings One Billion One Hundred Fifty Three Million Seventy Four Thousand Two Hundred Seventy Nine Cents Forty Three) only from the date it was due to the date of judgement.
- 4) Payment of interest on the decretal sum at the Court's rate from the date of Judgement until payment in full.
- 5) Costs of this suit.

6) Any other order(s) and relief(s) may this Honourable Court deem fit and just to grant.

On 27th April 2023 when the matter came for necessary orders parties informed the court that, by consent they had signed deed of settlement and they prayed that this court be pleased to mark the matter settled and proceed to issue consent judgment under Order XXIII Rule 3 of the Civil Procedure Code [Cap 33 R.E. 2019]. I have dispassionately gone through the deed of settlement dated 27th April, 2023 and in terms of under Order XXIII Rule 3 of the Civil Procedure Code 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 the above the deed of settlement is hereby recorded and adopted to form part of consent judgment as prayed by the parties on the following orders:

1. That, the Defendants shall pay to the Plaintiff **USD 316,438.00** (United States of America Dollars Three Hundred Sixteen Thousand Four Hundred Thirty Eight) Only hereinafter called the "**Settlement Sum**" in full and final repayment of the Credit Facilities advanced to the 1st Defendant by the Plaintiff.

2. That, the 1st Defendant shall pay the said Settlement Sum within six (6) months effective from the date of the delivery of the consent Judgment by the honourable Court.
3. That the Defendants shall pay the Settlement Sum in Six (6) months by monthly instalments of **USD 52, 739.67** effective from the date of the delivery of the Consent Judgment by the honourable Court.
4. That, in the event of any default by the 1st Defendant to pay the Settlement Amount agreed herein within the stipulated time, the Usual Default Clause shall apply, in the sense that the terms of this Deed of Settlement as a Decree of the Court shall become payable immediately and the Plaintiff shall be at liberty to execute the decree as against the Defendants jointly and severally to liquidate the Settlement Sum.
5. That the securities executed by the Defendants shall remain valid and binding to the respective parties until the whole Settlement Sum is paid in full.

For avoidance of doubts, it is hereby declared that the mortgages and guarantees executed as security for credit facilities advanced to the 1st Defendant will remain in full force and effect until the Settlement Sum is paid in full.

6. That, immediately after filing of this Deed of Settlement, the Plaintiff's suit being Commercial Case No. 72 of 2022, shall be marked settled as per terms of this deed of settlement.
7. That, each party shall bear its own costs.
8. That the parties have willingly and fully negotiated this settlement and are in agreement to the settlement reached herein and that by this Deed the matter is marked settled and that no further claim of whatsoever nature pertaining to this settled matter emanating from credit facilities advanced to the 1st Defendant by the Plaintiff, may be revived or reinstituted by any party in this matter.
9. That except as provided herein, the Plaintiff waives all other claims against the Defendants.
10. That this Deed of Settlement shall constitute a consent order and decree of the Court as between the Parties in respect of the dispute between them and the Parties agree that the Court to record as such and should either of the parties hereto default in the performance of the terms herein it shall be enforced in the same manner stated under clause 3 herein above and as being a decree of the court.
11. That upon matter being marked settled between the Plaintiff and the Defendants, the Settlement Deed shall have effect as if it was a

decree of the court made after full hearing of the suit and delivery of judgment upon its terms.

By this consent decision, therefore, this court hereby declare that parties hereabove have resolved their dispute and this suit is marked settled on the compromise of the parties, as evidenced by the terms agreed under the said deed of settlement. For the reasons aforesaid the deed of settlement signed by the parties and filed in this court constitute the judgment and decree of this court.

It is so ordered.

DATED at DAR ES SALAAM this 12th Day of May, 2023.




U. J. AGATHO
JUDGE
12/05/2023

Date: 12/05/2023

Coram: Hon. U. J. Agatho, J.

For Plaintiff: Jetness Jasson, Advocate holding brief of Seni Malimi, Advocate

For Defendant: Jetness Jasson, Advocate.

C/Clerk: Beatrice

Court: Judgment delivered today, this 12th May, 2023 in the presence of Jetness Jasson, learned counsel for the Defendants also holding brief of Seni Malimi, Advocate for the Plaintiff.



A handwritten signature in black ink, appearing to read "U. J. Agatho".

U. J. AGATHO

JUDGE

12/05/2023