

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

COMMERCIAL CASE NO. 58 OF 2022

BETWEEN

VEHICLE AND EQUIPMENT LEASING LIMITED.....PLAINTIFF

VERSUS

PANAFRICAN EQUIPMENT (TANZANIA) LIMITED.....DEFENDANT

CONSENT JUDGEMENT

Date of last order: 6.7.2023

Date of Judgement: 14.7.2023

AGATHO, J.:

This consent judgement emanates from deed of settlement dully signed by the Defendant and Plaintiff presented for filing in this court on 6th July, 2023. **VEHICLE AND EQUIPMENT LEASING LIMITED**, the Plaintiff herein, is a company registered under the laws of the United Republic of Tanzania. And the defendant, **PANAFRICAN EQUIPMENT (TANZANIA) LIMITED**, is a Private Company with Limited liability registered under the laws of United Republic of Tanzania.

By way of plicant, Plaintiff instituted Commercial Case No. 58 of 2022 ("the **Suit**") against the above Defendant praying for judgment and decree as follows: -

- a) A Declaration that the Defendant is in breach of Product Sale Agreement dated 7th March 2016 as amended by its addendum dated 6th February 2017 ("**Product Sale Agreement**"),
- b) A Declaration that the Defendant is in breach of its legal obligations arising from the Product Sale Agreement,
- c) An Order against the Defendant compelling her to issue to the Plaintiff EFD Receipts/tax invoices for Second Phase payment for procurement of Komatsu Equipment, proof of paying Stamp Duty, Documents evidencing remittance of tax relating to the Komatsu Equipment supplied to the Plaintiff under the Product Sale Agreement (tax clearance), necessary documents for transfer of ownership of Komatsu Equipment to Plaintiff (Tax and Ownership Transfer Documents, itemized in paragraph 12 above);
- d) An Order against the Defendant of transferring ownership of the said Komatsu Equipment to the Plaintiff;
- e) An Order against the Defendant of reimbursing the Plaintiff USD 410,664.00 balance on fund paid to the Defendant for fees of establishing Letter of Credit,
- f) An Order against the Defendant of compensating the Plaintiff the tax liability of TZS 11,105,498,956.20 detailed in paragraphs 10, 11, [11.1, 11.2, 11.3] of the Suit;
- g) An Order for payment of general damages to be assessed by the Court of at least TZS One Billion (TZS 1,000,000,000/-);

- h) An Order for payment of interest at commercial rate of 25% per annum on USD 410,664.00 from the date of cause of action (May 2018) till judgment date;
- i) An Order for payment of interest and penalties charged by TRA on the tax liability calculated as of the date of payment of tax;
- j) An Order for payment of interest on the decretal sum at Court rate of 7% per annum from the date of judgment till full and final satisfaction of the decree;
- k) An Order for payment of costs of and incidental to the suit;
- l) Any other and or further relief(s) as this Honourable Court may seem just and fit to grant.

On 16th June,2023 when the matter came for necessary orders parties informed the court that, by consent the Plaintiff and Defendant herein have negotiated a settlement out of court and are desirous of settling the matter amicably. And a settlement deed has thereof been filed and they seek the same be deemed as a decree of the Court capable of being executed.

This court has gone through the deed of settlement dated 6th July, 2023 and in terms of under Order XXIII Rule 3 of the Civil Procedure Code [cap 33 R.E. 2019] and Rule 2 (2) of the High Court (Commercial Division) Procedure Rules, 2012 as amended in 2019. It is 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:

Without admission of liability, the Defendant agrees to pay the Plaintiff an aggregate amount of United States Dollars One Hundred Ninety Thousand only (USD 190,000.00) (the "Settlement Amount") net of all taxes and costs. The Settlement Amount shall be paid both in CASH and in KIND under the following payment terms:

a. CASH payment

Out of the Settlement Amount, the Defendant shall pay United States Dollar Sixty Thousand only (USD 60,000.00) in the form of a cash payout within twenty-one (21) days of filing the Deed of Settlement. The Cash Payment shall be made to the following bank account:

Bank Name: BANK ONE

Branch name: **INTERNATIONAL BANKING**

Account Name: **VAELL HOLDINGS LIMITED**

Account Number: 164253588

Currency: **UNITED STATES DOLLAR (USD)**

Swift Code: **BKONMUMU**

b. Payment in KIND

- i. The balance of United States Dollars One Hundred Thirty Thousand only (USD 130,000.00) shall be made in the form of parts credit extended to the Plaintiff for consumption within a period of eighteen (18) months from the date of filing the Deed of Settlement ("Credit Period"), for any other parts supplied by the Defendant.
- ii. During the Credit Period, the Plaintiff shall receive a 15% discount against the Defendant's 2023 price list. The 15% discount shall apply until the expiry of the Credit Period or full utilization of the parts

credit, whichever comes first. Thereafter, the price for parts shall revert to the Defendant's standard price applicable at the time of purchase.

The Defendant agree to resubmit to the Plaintiff, within twenty-one (21) days of filing the Deed of Settlement, ALL EFD tax invoices and/or receipts and import documents relating to the equipment purchased in both the First and Second Phases of procurement under the Product Sale Agreement.

The Defendant agrees to cooperate in the transfer of ownership of the equipment sold under the Product Sale Agreement to the Plaintiff as and when instructed by the TDB Bank, the financing bank, to do so.

Both the Plaintiff and the Defendant acknowledges that this Deed of Settlement constitutes a full and final settlement of the Plaintiff's claims against the Defendant which arises out of and/or in connection with the Suit and the Product Sale Agreement, including all past and present claims.

Upon execution of the Deed of Settlement, the parties agree to release and forever discharge each other and each of the other party's affiliates, subsidiaries, parent Companies and respective agents, employees, directors, associate, assigns, successor and/or any person acting on the other party's behalf from any and all and all matters, claims, complaints, demand, liabilities of whatsoever nature arising from the Suit and any other claim arising out of and/or in connection with the Product Sale Agreement.

Parties to the Suit shall cause this Deed of Settlement to be recorded in the High Court of Tanzania Commercial Division at Dar es Salaam in full and the final settlement of Commercial Case No. 58 of 2022 and fully undertake to honour the terms thereto to which they are legally bound.

Upon the recording of this Deed of Settlement, the parties agree that the same shall be made a Decree of the Court and the Plaintiff shall be at liberty to execute the same as a decree of the Court.

The Plaintiff and Defendant agrees that each party shall bear its own cost of the Suit and any other costs arising out of and/or in connection with the Suit or this Deed of Settlement.

By this consent decision, therefore, the 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 14th Day of July 2023.



U. J. AGATHO

JUDGE

14/07/2023

Court: Judgment delivered today, this 14th July 2023 by Hon. Minde, Deputy Registrar in the presence of the parties.



U. J. AGATHO

JUDGE

14/07/2022