

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

COMMERCIAL APPLICATION NO. 88 OF 2022

(Arising from judgment and decree of the High Court Commercial Division at Dar es Salaam (Hon. Fikirini J) in Commercial Case No. 2 of 2018 and the Order of the Honourable Court (Honourable Mkeha, J dated March 2022)

DANGOTE CEMENT TANZANIA LIMITEDJUGDMENT DEBTOR

VERSUS

JL CONSULTANCY COMPANY LIMITED.....DECREE HOLDER

Date of Last Order: 14/12/2022

Date of Ruling: 20/01/2023

RULING

MKEHA, J.

Through the present application, a notice had been issued to the respondent, to appear and show cause as to why payments made by the applicant to its bank account in satisfaction of the judgment and decree of the court in Commercial Case No. 2 of 2018 should not be recorded as certified. The application moves the court to be pleased to record as certified, the payments made by the Judgment Debtor to the Decree Holder's Bank account in satisfaction of the judgment and decree of the court. The application is made under Order XXI rules 1 (1), 2 (2) and 3 of

the Civil Procedure Code. The application is supported by two affidavits sworn by Ms. Clara Koshuma and affirmed by Mr. Said Zakaria respectively. The application is contested through a counter affidavit sworn by Mr. Leopold S. Wami the Managing Director for the decree holder.

In terms of the affidavits supporting the application, and the submissions by Ms. Elizabeth Chacha for the applicant, it was by mistake that the bank slip and swift transfer indicate that the payments made by the applicant between the 5th and 6th day of October, 2020 were for delivery of cement. The affidavit of Ms. Koshuma indicates that actually, the payments were made in view of settling the decretal sum. See paragraph 11 of the said affidavit. See also paragraph 6 of the affidavit of Mr. Said Zakaria.

On the other hand, in paragraphs 13 and 14 of the counter affidavit and the submissions by Mr. Athanas Wigan learned advocate, it is insisted that the payments made by the applicant to the respondent, between 5th and 6th October, 2020, were for delivery of cement. Apart from mere words in the counter affidavit, there was nothing annexed to the counter affidavit substantiating the fact that at the time the payments were made, the judgment debtor owed distinct debts to the decree holder including the one

related to cement delivery. The respondent does not object receipt of payments evidenced in "Annexure DANGOTE 8" which is annexed to the affidavit of Mr. Said Zakaria that supports the application. In the absence of proof from the respondent that there were distinct debts for which the applicant was at the time of making payments liable to satisfy in favour of the former (respondent), it is just and fair to hold as I do that, payments of the said TZS 24,934,170.94 were for purposes of satisfying the decree in Commercial Case No. 2 of 2018. I thus hold the decree in Commercial Case No. 2 of 2018 to be fully satisfied by the applicant. It is so held.

Dated at Dar es Salaam this 20th day of January, 2023.




C.P. MKEHA

JUDGE

20/01/2023

Court: Ruling is delivered in the presence of the parties' advocates.




C.P. MKEHA

JUDGE

20/01/2023