

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

COMMERCIAL DIVISION

AT DAR ES SALAAM

COMMERCIAL CASE NO. 83 OF 2019

EXIM BANK (TANZANIA) LTD.....PLAINTIFF

VERSUS

M/S ACE DISTRIBUTORS (T) LIMITED.....1ST DEFENDANT

M/S MASAKI APARTMENTS LIMITED 2ND DEFENDANT

SHARMAPAL BIRCHAND AGGARWAL.....3RD DEFENDANT

ZUBEDA ABDULBERALI LALANI

As administrator of the estate of

ABUL AZIZ LALANI.....4TH DEFENDANT

ANAND SATYA VAN CHANDE5TH DEFENDANT

2ND CONSENT JUDGMENT

Date of Last Order: 14/2/2023

Date of Judgment: 24/2/2023

AGATHO, J.:

This 2nd consent judgement emanates from a deed of settlement duly signed by the 1st, 2nd, 3rd, and 4th defendants and the plaintiff in this court on, 15th February, 2023. Plaintiff is a registered company under the Companies Act No. 12 of 2002 R.E 2002 and licensed under the Banking and financial institution Act of 2006 to carry out banking business and the 1st and 2nd defendants are registered companies under the Companies Act No. 12 of 2002 R.E 2002, the 2nd, 3rd, 4th and 5th

Defendants are guarantors of the 1st defendants' loan advanced by the plaintiff. By way of plaint the plaintiff Exim Bank (Tanzania) Limited instituted this suit against the above-named Defendants praying for judgment and decree jointly and severally for following reliefs

- i. Payment of principal sum of USD 623,985,58 as on 30/3/2020
- ii. Payment of the interest at the rate of 8.5 per annum from 31/10/2017 to the date of full payment in full
- iii. Payment of penalty of 2.5% per annum for the unpaid sum from 31/10/2017 to the date of payment in full
- iv. Interest on the decretal sum at the court rate from the date of judgement to the date of payment in full.
- v. In alternative disposal of the securities
- vi. Costs of the suit.

On 16th February, 2023 when the matter came for necessary order parties informed the court that, parties by consent had signed Deed of settlement and the same 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. I have dispassionately gone through the deed of settlement dated 16th February, 2023, and in terms of 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 above, the deed of settlement is hereby recorded and adopted to form part of consent judgement as prayed by parties on the following order;

- i. The Parties agree that the total outstanding loan payable to the Plaintiff herein as of 18th February, 2022 is Tanzania Shillings Eight Billion Thirty-six Million Four Hundred Thirteen Thousand Seven Hundred Eight-Five and Seventy-One (TZS 8,036,413,785.71) only.
- ii. That in the spirit of settlement, the Plaintiff shall waive penal interest of Tanzania Shillings Three Billion Nine Hundred Seventy- Three Million Four Hundred Thirteen Thousand Seven Hundred Eighty-five and Seventy-One Cents (TZS 3,973,413,785.71) only thus reducing the loan to be Tanzania Shillings Four Billion Sixty-Three Million (TZS 4,063,000,000.00) only.
- iii. That, from the total outstanding loan balance of Tanzania Shillings Four Billion Sixty-Three Million (TZS 4,063,000,000.00) only, the 3rd and 4th Defendants have agreed to settle the outstanding amount of United States Dollars One Million One hundred Thousand (USD 1,100,000) only being equivalent to Tanzania Shillings Two Billion

Five Hundred and Sixty Three Million (TZS2,563,000,000.00) only ("Settlement Amount") (based on the agreed rate of exchange of USD 1= TZS.2,330) so as to release the 2nd, 3rd and 4th to the loan issued to the 1st Defendant.

- iv. That upon payment of the Settlement Amount by the 3rd Defendants, the 3rd and 4th Defendants shall jointly and severally stand discharged and released from any claims that the Plaintiff have against the 1st Defendant.
- v. It is agreed that the 3rd and 4th Defendants shall make the 1st down payment of United states Dollars one hundred thousand (USD 100,000) immediately upon signing this settlement deed. The 2nd down payment of United States Dollars one hundred thousand (USD 100,000) shall be deposited a month from the date of signing settlement Deed. This shall reduce outstanding, loan payable by the 3rd and 4th Defendants to United Stated Dollars nine hundred thousand (USD 900,000.00) only.
- vi. That the said loan balance of United States Dollars nine hundred thousand (USD 900,000) shall be repaid within a period of twenty-four months (24) from the date of payment of the second installment, at an interest rate of 5% per annum.

- vii. Upon full payment of the Settlement Amount stipulated in 1.3 above, the Plaintiff shall relinquish all its claims against the 1st Defendant to the extent of the amount payable under clause 1.3 above and shall fully discharge the 2nd, 3rd and 4th Defendants from all liabilities in relation to claims made by the Plaintiff in relation to the loan issued to the 1st Defendant and the 3rd and 4th Defendants herein shall also be fully discharged from all liabilities that the Plaintiff may have against the 1st Defendant.
- viii. It is further agreed that the Plaintiff release all the collaterals issued by the 2nd, 3rd and 4th Defendants, the legal mortgage created by the 2nd Defendant in respect to the property registered under certificate of title number 47278, Plot No. 1527 and No. 1531 Msasani Peninsula, Dar Es Salaam, corporate guarantee issued by the 2nd Defendant, the personal guarantees and indemnity issued by the 3rd and 4th Defendants.
- ix. The parties agree that upon payment of the two (2) installments indicated in paragraph 1.4 above, the plaintiff shall waive its entitlement to claim early settlement fee as a recognition towards the good faith shown by the 3rd and 4th Defendants in resolving the dispute relating to claims made by the plaintiff with regard to the loan issued to the 1st defendant accordingly.

- x. The parties agree that provided that the 3rd and 4th Defendants herein full comply with the terms of this settlement, the 2nd, 3rd and 4th Defendants shall not be liable for any default by the 1st and/or 5th Defendants as the case may be.
- xi. That the plaintiff covenants that once this Settlement Deed is executed by the 3rd and 4th Defendant, the plaintiff shall have no further claims whatsoever against the 2nd, 3rd and 4th Defendants with regards to claims made by the plaintiff on the loan made to the 1st Defendant to the extent of the amount's states in clauses 1.3 above.
- xii. This Agreement shall, upon been filed in Court, be recorded as a decree duly made by the Court capable of being executed in the same manner as any other decree of the Court.
- xiii. Without prejudice to the generality in Article 2.1, if the 3rd and 4th Defendants default any of the terms herein, the plaintiff shall be entitled to commence recovery measures without further proceedings and/or notice to the Defendants.
- xiv. That the parties herein have the authority and capacity to enter into this Agreement.
- xv. This Agreement shall be in English Language. All notices: Communication under or in connection with this Agreement shall be in the English Language.

- xvi. This Agreement shall be executed in six originals all of them being equally authentic and all constituting one instrument.
- xvii. That in consideration of the amicable settlement of this matter in the suit, being Civil Case Number 83 of 2019 the Plaintiff herein abandons all its claims lodged in the High Court of the United Republic of Tanzania – Dar es Salaam District Registry, against the 2nd, 3rd and 4th Defendants herein the parties mutually and unconditionally undertake as follows:

- a) That the Plaintiff shall procure that it enters settlement with the 5th Defendant herein with a view of settling Civil Case No. 255 of 2017 filed by the 5th Defendant as detailed under Recital C above and in so doing, the Plaintiff hereby relinquishes all claims of whatever description against the 2nd, 3rd and 4th Defendants herein arising out of or as a result of the said Civil Case No. 255 of 2017 pending in the High Court of Tanzania at Dar es Salaam.
- b) That the Plaintiff herein relinquishes all claims of whatever description arising out of its counter claim in Civil Case No. 97 of 2018 pending in the High Court of Tanzania at Dar es Salaam against the 2nd, 3rd and 4th Defendants herein. The

plaintiff further undertakes to negotiate settlement with the 5th Defendant herein with a view of settling Civil Case No. 97 of 2018 as detailed under Recitals E-G above and in so doing, the plaintiff hereby relinquishes all claims of whatever description arising out of or as a result of the said Civil Case No. 97 of 2018 pending in the High Court of Tanzania at Dar es Salaam against the 2nd, 3rd and 4th Defendants herein.

c) Immediately upon signing of this Agreement, the Plaintiff herein shall immediately withdraw the matter herein being Commercial Case No. 83 of 2019 pending at the High Court of Tanzania (Commercial Division) at Dar es Salaam including any and all incidental applications or proceedings of any nature arising out of the said proceedings without any orders as to cost against the 2nd, 3rd and 4th Defendants.

xviii. This Agreement shall be binding upon and inure solely to the benefit of the Parties hereto and their respective successors in title and representatives and shall not be enforceable by or inure to the benefit or any third party.

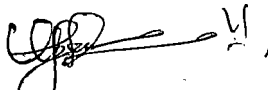
xix. No waiver of the breach of the terms of or any default under this Agreement shall be deemed a waiver of any subsequent breach or default or in any way affect the other terms of this Agreement.

By this consent decision, therefore, this Court hereby declares that the parties herein 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 constitutes the Judgment and Decree of this Court.

It is so ordered.

DATED at DAR ES SALAAM this 24th Day of February 2023.




U. J. AGATHO
JUDGE
24/02/2023

Date: 24/02/2023

Coram: Hon. U. J. Agatho J.

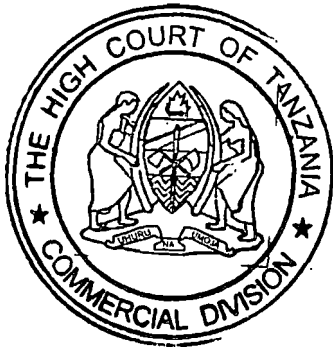
For Plaintiffs: Robert Mosi (Advocate)

For Defendants: Robert Mosi, Advocate holding brief of Jonathan
Lulinga, Advocate

5th Defendant: Present in person

C/Clerk: Beatrice

Court: Judgment delivered today, this 24th February 2023 in the presence of Robert Mosi, learned counsel for the Plaintiffs, and 5th Defendant.



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

U. J. AGATHO

JUDGE

24/02/2023