

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

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 89 OF 2021**

**BETWEEN**

**NCBA BANK TANZANIA LIMITED.....PLAINTIFF**

**VERSUS**

**TANZANIA BUILDING WORKS LIMITED.....1<sup>st</sup> DEFENDANT**

**IQBAL ISMAIL NORAY.....2<sup>nd</sup> DEFENDANT**

**SHUAIB ISMAIL NORAY.....3<sup>rd</sup> DEFENDANT**

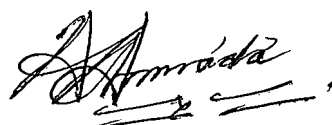
**CONSENT JUDGMENT**

**A.A. MBAGWA, J.**

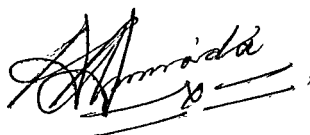
This judgment stems from a deed of settlement duly signed and filed by the parties in this court on 28<sup>th</sup> February, 2023.

The plaintiff, **NCBA Bank Tanzania Limited** instituted the present suit against the defendants namely, **Tanzania Building Works LIMITED**, **Iqbal Ismail Noray** and **Shuaib Ismail Noray** herein referred to as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively.

The plaintiff prays for judgment and decree against the defendants jointly and severally as follows;



- 1) For orders requiring the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants jointly and severally to pay the plaintiff the sums of Tshs. 4,366,431,014.78 (Say Tanzania shillings four billion three hundred sixty-six million and four hundred thirty -one thousand and fourteen and seventy - eight cents only) which constitutes principal debt, interest, and penalty interest as agreed as of 10<sup>th</sup> August 2021.
- 2) The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants to be compelled, jointly and severally, to pay interest at the court's rate of 7% p.a from the date of pronouncement of judgement and decree until the date of full satisfaction.
- 3) The 1<sup>st</sup> ,2<sup>nd</sup>, and 3<sup>rd</sup> defendants to be compelled jointly and severally, to pay damages for loss of business occasioned to the plaintiff at the sums to be decided by the honorable court.
- 4) In the event the 1<sup>st</sup> ,2<sup>nd</sup> and 3<sup>rd</sup> defendants fail to pay the demanded sums here off, the properties charged as securities to wit: - property located on Plot No.155 Mikocheni "B" Area Kinondoni Dar es Salaam comprised in CT no. 186085/38 and property on Plot No. 188/A/2 Pugu Road Industrial Area, L.O No. 50752 and comprised on CT no.186085/35 to be auctioned and proceeds realized thereat be used to liquidate all outstanding debts and liabilities.
- 5) Costs of the case.

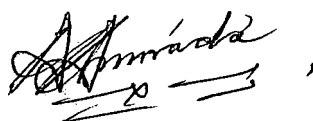
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6) Any other reliefs the Hon. Court deems just and fit to grant.

When this matter was pending judgment, Mr. Gabriel Mnyele, learned advocate for the defendant wrote to this court via a letter with REF: TMA/NCBA/958(36)/Letter-1/EAM/23 dated 10th February, 2023 requesting the court to defer delivery of judgment in order to allow the parties to file the deed of settlement. As such, this court issued summons to appear. Following the court summons, on 2nd March, 2023 Regina Kiumba, learned advocate appeared for the plaintiff whilst Mr. Gabriel Simon Mnyele, learned advocate appeared for the defendants. Also, in attendance were Iqbar Ismail Noray, Jabeen Iqbar Noray (Director of the 1st defendant) and John Njau, Principal Officer of the plaintiff's bank.

Mr. Mnyele addressed the court that parties had mutually agreed to settle the suit amicably. He further told the court that following their agreement, on 23rd day of February, 2023 they signed a settlement deed which was subsequently filed in this court on 28th day of February, 2023. Thus, the counsel prayed the court to adopt the settlement deed and make it a part of the court judgment and decree. The prayer was seconded by Regina Kiumba, learned advocate for the plaintiff.

Order XXIII rule 3 of the Civil Procedure Code under which this the settlement deed was filed provides as follows;



Handwritten signature of Regina Kiumba, learned advocate for the plaintiff.

***Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.***

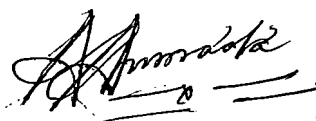
I have thoroughly gone through the said deed of settlement filed in this court and I am satisfied that the same was on 23<sup>rd</sup> February, 2023 duly signed by all the parties namely, **NCBA Bank Tanzania Limited** (plaintiff), **Tanzania Building Works Limited** (1<sup>st</sup> defendant), **Iqbal Ismail Noray** (2<sup>nd</sup> defendant) and **Shuaib Ismail Noray** (for the 3<sup>rd</sup> defendant). Additionally, I have scanned the terms and conditions of the settlement deed and found in consonance with the law.

In the case of **Jaffrey Indi. Sian Ltd vs M/s Beijing Construction Engineering Group Limited**, Commercial Case no. 38 of 2021, this court remarked that parties' mutual settlement of cases is a route encouraged all over the world.

In the premises, the deed of settlement is hereby recorded and adopted to form part of the consent judgment. The matter is therefore marked settled with the following orders that;



1. The plaintiff and defendants mutually agreed that the sums of Tsh. 2,300,000,000.00 (say Tanzania shillings two billion three hundred million only) is now acknowledged and agreed to be debt liability due and owing to defendants by the plaintiff, jointly and severally, and the same is regarded and recorded as the decretal sum.
2. All the residue claims by the plaintiff against the defendants as stated in the plaint together with all claims by the defendants against the plaintiff in the counter-claim are hereby relinquished in full.
3. That the decretal sum of Tsh.2,300,000.00 (say Tanzania shillings two billion three hundred million only) shall be paid by the defendants jointly and severally in installments as follows: -
  - i) That the sum of Tsh.1,200,000.00 (say Tanzania shillings one billion two hundred million only) (the 1<sup>st</sup> installment) shall be paid immediately upon registration and certification of this deed of settlement in court but in any case, not later than 08<sup>th</sup> march, 2023.
  - ii) The remaining sums of Tshs 1,100,000,000.00 (say Tanzania shillings one billion one hundred million only) shall be paid in full and within six (6) months from the date of registration and certification of this deed of settlement in court.

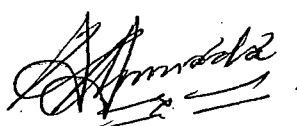
A handwritten signature in black ink, appearing to be 'A. Amurata', is written over a horizontal line. There are some additional scribbles and a small mark below the line.

4. All collaterals charged as securities shall be unconditionally released after the decretal sum to the extent of Tshs 2,300,000.00 (say Tanzania shillings two billion three hundred million only) is paid in full. The plaintiff shall prepare discharge forms in respect of each mortgage created and hand over the same together with the respective certificates of the right of occupancy to the defendants and or the appointed agent as the case may be. The defendants shall be responsible for the discharge processes. Each party shall bear costs in the discharge processes accordingly.
5. In the event of default to pay, as more particularized in paragraph 2, 3(i) and 3(ii) herein, the defendants shall have forfeited the waived amount and will be indebted to the plaintiff in full, up to an amount of Tsh. 4,366,431,014.78 (say Tanzania shillings four billion and three hundred sixty-six million and four hundred thirty-one thousand and fourteen and seventy-eight cents only) which constitutes principal debt, interest and penalty interest. The plaintiff shall have all the rights to realize the collaterals named herein below by way of sale/auction. The securities include, but are not limited to the following properties.
- i) First legal mortgage charged in favour of the bank over commercial property located at plot number 188/A/2, Pugu

A handwritten signature in black ink, appearing to read 'A. M. M. M.', with a horizontal line underneath it.

Road Industrial Area, Ilala Municipality Dar Es Salaam CT number 186085/36 in the name of Tanzania Building Works Limited.

- ii) A first-ranking legal mortgage charged in favour of the bank over the commercial property located at Plot Number 155, Mikocheni "B" Area Kinondoni Municipality under the name of Tanzania Building Works.
  - iii) The residential property located on CT number 34543/46 Plot Number 2, Apartment 46, Block D Msasani Village Area, Kinondoni municipality, Dar Es salaam under the name of Jabeen Iqbal Noray.
6. That all proceeds realized shall be used to liquidate the sums of Tsh.4,366,431.78 (say Tanzania shillings four billion three hundred sixty-six million four hundred thirty-one thousand and fourteen and seventy-eight cents only) which constitutes principal debt, interest, and penalty interest as agreed as of 10<sup>th</sup> August 2021 plus facility charges thereafter.
7. Decretal sums herein agreed are inclusive of interest as shall be accrued at the commercial rate of 17% p.a counting from the date of the decree until the date the auction is conducted. It is hereby agreed that plaintiff shall be at liberty to realize /sell/ auction the



securities named under paragraph 5(i), (ii) and (iii) above without resorting to court by appointing an auctioneer or by conducting a private sale. Such sales shall be conducted in compliance with the applicable laws and regulations obtaining at the date of sale.

8. That upon execution of the deed of settlement, all original copies shall be returned to the plaintiff who shall file them in court and cause parties to be summoned and appear in court for certification.
9. This deed of settlement /adjustment of a suit is made by the parties freely and without any coercion, duress, and or misrepresentations from either party at all.

It is so ordered

Dated at Dar es Salaam this 6<sup>th</sup> day of March, 2023.



  
A.A. Mbagwa

**JUDGE**

**06/03/2023**