

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

AT DAR ES SALAAM

COMMERCIAL CASE NO. 106 OF 2022

ACHELIS MOTOREX TANZANIA LIMITEDPLAINTIFF

VERSUS

MAXSEC GROUP LIMITED.....DEFENDANT

Date of Last order : 07th March 2023

Date of Judgement : 08th March 2023

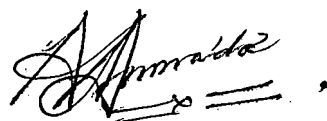
CONSENT JUDGMENT

A.A. MBAGWA J.

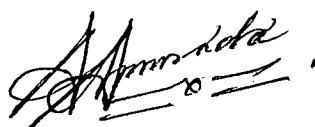
This judgment stems from a deed of settlement duly signed and filed by the parties in this court on 8th day of March, 2023.

The plaintiff herein, **ACHELIS MOTOREX TANZANIA LIMITED** instituted the present suit against the defendant herein namely, **MAXSEC GROUP LIMITED** praying for judgment and decree against the defendant as follows;

- i. That this honourable court issue immediate order for the defendant to release and hand over to the plaintiff's office one unit of backhoe loader machine model 570T with registration no.T.805 DLV.



- ii. That this honourable court be pleased to order the defendant to pay the full amount of USD 65,780.22 being unpaid rentals fees charges for the back hoe loader from the date of default until September 2022, monthly incremental rates continue until judgement.
- iii. That this honourable court be pleased to order the defendant to pay the plaintiff USD 53,711.64 being potential loss of business at the interest rate of 6.5% per month for hire rental arrears for one unit of back hoe loader machine case backhoe loader model 570T with registration number T.805 DLV as from May 2021 to August 2022.
- iv. That this honourable court be pleased order the defendant to pay the plaintiff the sum of USD 50,000.00 as general damages the plaintiff has suffered.
- v. Interest of 10% on the claimed amount at (ii) above at the prevailing commercial rate from the date of default to the date of judgement.
- vi. Interest on the decretal amount at the court rate of 15% from the date of judgement until final settlement.
- vii. That the defendant pays the costs of and incidental to this suit.
- viii. Any other relief that this court may deem fit to grant.

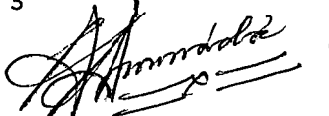
A handwritten signature in black ink, appearing to read 'Amir Kola', is written over a horizontal line. There are some additional scribbles and a small mark below the line.

Upon completion of pleadings the matter was set for mediation on 07th March, 2023 at 09:00hrs. The mediation was conducted and parties managed to settle the matter amicably and agreed to draft the deed of settlement, sign and file it in court. As such, on 8th day of March 2023, when the matter was called on for continuation of mediation, Mr. Hussein Kitta, learned advocate for the plaintiff informed the court that parties signed a deed of settlement and filed the same in court. He thus prayed the court to adopt it and mark the suit settled. Mr. Kitta's submission was seconded by Cecilia Mrisho, learned advocate for the plaintiff.

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

'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 had an occasion to go through the said deed of settlement filed in this court on 8th March, 2023 in terms of Order XXIII rule 3 of the Civil

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Procedure Code and rule 2(2) of the High Court (Commercial Division) Procedure Rules. I am satisfied that the same was duly signed by the respective parties namely, Mr. Dino Stengel, the Managing Director for the Plaintiff, on the one hand and Mr. Ponziano Mponzi, the Managing Director of the Defendant, on the other hand. In addition, I have appraised the terms and conditions of the settlement deed and found them in consonance with the law.

It is common cause that settlement is one of the legally acceptable means of disposing of the suit. See the case of **Motor Vessel Sepideh and Another vs. Yusuph Mohamed Yusuph and Two Others**, Civil Application No.237 Of 2013. Also, 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;

1. The defendant shall immediately release and allow the plaintiff to collect the equipment.

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

2. That, the plaintiff shall pay USD 13,624.22 in favour of the plaintiff, which amount shall be settled on or before 10th June 2023.
3. Once paid, the amount in (2) above shall constitute full and final satisfaction of the plaintiff's claim in Commercial Case No. 106 of 2023 and shall relinquish all other claims to such case.
4. Each party shall bear their respective legal costs in relation to the claim above referred.
5. That this deed of settlement upon being filed in court have the same effect as a decree duly made by the court and in case the defendant defaults to honour and implement the terms of this deed, the plaintiff has liberty to open execution proceedings against the defendant in this honourable court to enforce implementation of the terms herein.
6. That the parties herein are legally bound by the terms of this deed upon signing.
7. That the payment in paragraph (2) above shall be paid before the stated date above through plaintiff Bank Account Number.

Account Name: Achelis Tanganyika limited P.O. Box 9003 Dar Es Salaam, Tanzania

Bank name: **NCBA** Bank Tanzania Limited P.O. Box 9640 Dar Es Salaam Ohio Branch.

A handwritten signature in black ink, appearing to be 'A. Amundala', with a date '10/6/23' written below it.

Account Number: 104129100011 (TZS)

Swift Code: CBAFTZTZ

Dated at Dar es Salaam this 08th day of March, 2023.



A handwritten signature in black ink, appearing to read "A.A. Mbagwa".

A.A. Mbagwa

JUDGE

08/03/2023