

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

AT DAR ES SALAAM

COMMERCIAL CASE NO. 64 OF 2023

AZANIA BANK LIMITED.....PLAINTIFF

VERSUS

JOSHUA SAMWEL NASSARI.....DEFENDANT

CONSENT JUDGEMENT

Date of last order: 23.02.2024

Date of Judgement: 01.03.2024

AGATHO, J.:

This consent judgement emanates from deed of settlement dully signed by the Defendant and Plaintiff presented for filing in this court on 19th February 2023. The Plaintiff, **AZANIA BANK LIMITED**, on 25th May, 2023 filed the instant suit praying for Judgment and Decree against the above-named Defendant on the following orders:

- a) Payment of a total sum of TZS **128,634,124.41** being an amount outstanding and remaining unpaid in respect of the consumer loan granted by the Plaintiff to the Defendant as per the terms of the Consumer loan Agreement as of 2nd May 2023;

- b) For payment of interest computed at an agreed rate of 14% per annum on the outstanding amount referred in (a) above from the date of filing of the suit to the date of judgment;
- c) For payment of interest on the decretal sum at the court's rate of 7% from the date of judgment/decreed until final payment;
- d) For payment of general damages for the losses of business and others suffered by the Plaintiff as a result of the Defendant's failure to heed to the terms and conditions of the loan agreement;
- e) For costs of the suit; and
- f) For any other relief(s) the court may deem fit to grant.

Having been served upon with the Plaint, the Defendant filed his Written Statement of Defence disputing the Plaintiff's claims. It is on record that the Parties went through all the Court procedures including the first PTC, Mediation, final PTC, and when the matter was fixed for hearing they reached a consensus to settle it amicably.

Therefore, on 19/02/2024 the parties informed the court that they have filed a deed of settlement. It means the parties have successfully reached an amicable settlement of their dispute. The parties prayed that the deed of settlement be recorded as a decree of the Court capable of being executed in accordance with the laws of the land.

The court has gone through the deed of settlement dated 19th February, 2024 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, 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:

1.0 Outstanding amount and interest

1.1 Outstanding Loan Amount

That by executing this Deed of Settlement, the Plaintiff and Defendant jointly acknowledges that the total principal loan amount together with interest accrued therein owed by the Defendant to the Plaintiff is **TZS 128,634,424.41** to be paid by the Defendant to the Plaintiff.

1.2 Interest on the Outstanding loan amount

That, the parties herein agree that the outstanding loan amount stipulated in Clause 1.1 hereinabove shall be capped with interest at the rate of zero percent (0%) per annum.

2.0 Repayment of the outstanding loan amount and interests

- 2.1** The Outstanding Loan amount to the tune of **TZS 128,634,424.41** shall be payable to the Plaintiff by the Defendant in installments for the period of sixty (60) Months from the date of execution of this Deed of Settlement;
- 2.2** The Defendant shall pay the outstanding amount within the period agreed in clause 2.1 in installments whereby the Defendant shall deposit TZS 10,000,000/= upon signing of this deed of settlement.
- 2.3** The Defendant after depositing TZS 10,000,000/= the outstanding debt will be TZS 118,634,424.41 and will be repayable within sixty (60) months. In the indicated period of sixty months that will commence on 31st January 2024 to 31st December 2028. On or before the last day of each calendar month the Defendant shall deposit not less than TZS **1,977,240.41** without any delay.
- 2.4** Where convenient, the Plaintiff shall accept from the Defendant payment of any amount beyond the agreed monthly installment of TZS 1,977,240.41 and that payment if made, shall be considered as payment for subsequent months.

3.0 Default and non-performance

That the parties herein agree that in event of default on the part of the Defendant to repay the outstanding loan amount during the agreed period or default to make any three consecutive monthly installments as agreed in clause 2.0 above, the Plaintiff shall immediately vary the interest rate from zero percent as provided in clause 1.2 hereinabove to the contractual interest rate of 14 percent on the outstanding amount from the date of default to the date of payment in full.

4.0 Costs

The parties herein shall bear their own costs for legal fees and any other incidental costs incurred in and arising incidental to Commercial Case No. 64 of 2023.

5.0 Settlement of claim and effect of this deed of settlement

5.1 That in consideration of an amicable settlement of matters in the said suit; the Parties herein settle all their claims lodged in the High Court of Tanzania Commercial Division in the above captioned matter and the Parties mutually and unconditionally undertakes as follows;

5.1.1 To relinquish all claims of whatever description against each other, arising out of or as a result of the said Commercial Case No. 64 of 2023;

5.1.2 To relinquish all Applications, complains if any and other incidental proceedings related to the said previous Loan Agreement;

5.1.3 The Parties shall forthwith make this Deed of Settlement an Order of the Honorable Court, as it shall be adopted.

5.2 That upon filing this Deed of Settlement, this agreement shall have effect as if it were a decree of the Court made after full hearing and delivery of judgment upon its terms and should either of the parties hereto default in the performance of any terms herein, it shall be enforced in the same manner and to the full extent as a decree of the High Court of Tanzania, Commercial Division.

5.3 The Deed of Settlement shall be binding on the Parties' executors, administrators, assignees or successors' in title.

5.4 This Deed of settlement contains the entire agreement between the Parties and no Party shall be bound by any undertaking, representation, warranties, promise or the like not recorded herein.

By this consent decision, therefore, this 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 constitutes the judgment and decree of this court.

Order accordingly.

DATED at DAR ES SALAAM this 1st Day of March 2024.




U. J. AGATHO

JUDGE

01/03/2024

Date: 01/03/2024

Coram: Hon. U.J. Agatho J.

For Plaintiff: Upendo Mmbaga, Advocate

For Defendant: Upendo Mmbaga, Advocate, h/b Deusdedit Luteja,
Advocate

B/Clerk: Beatrice Mushi

Court: Judgment delivered today, this 1st March 2024 in the presence
of Upendo Mmbaga, Counsel for the Plaintiff, also holding brief of
Deusdedit Luteja, Advocate for the Defendant.




U. J. AGATHO

JUDGE

01/03/2024