

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 230 OF 2022**

**SAMSON MWITA MAISA ..... 1<sup>ST</sup> PLAINTIFF**

**SOPHIA ISAYA ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**MKOMBOZI COMMERCIAL BANK PLC ..... 1<sup>ST</sup> DEFENDANT**

**MOPEH COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

*Date of last hearing: 08/11/2023*

*Date of recording settlement: 08/11/2023*

**CONSENT JUDGMENT**

**I. ARUFANI, J**

The plaintiffs filed in this court the present suit praying for judgment and decree be entered jointly and severally against the defendants as follows: -

1. For a declaratory order that the auction done by the second defendant is illegal hence null and void.
2. For payment of Tanzania shillings one fifty million (Tshs. 150,000,000/=) as general damages for unlawful sale of the property in dispute.
3. In the alternative, the first and second defendants be ordered to pay a total amount of Tanzania shillings two hundred and fifty million (250,000,000/=) being special damages for the second defendant acts of wrongly sale the property in dispute.

4. For the first and second defendants, be ordered to pay an interest on 2 and 3 above at the rate of 24% per annum from the date of filing this suit to the date of judgment.
5. For the first and second defendants, be ordered to pay an interest on 2 and 3 above at the court's rate of 12% per annum from the date of judgment to the date of satisfaction of the decree.
6. The first and second defendants be ordered to pay the costs of the suit.
7. Any other relief/order the court may deem fit and just to grant.

After the plaintiffs' claims being served to the defendants, the first defendant filed in the court its written statement of defence to oppose the claims of the plaintiffs and prayed the suit be dismissed with costs. As the second defendant was dully served and failed to appear in the court, the court was prayed and agreed to order hearing of the case to proceed ex parte against the second defendant as it was satisfied the second defendant was dully served and failed to appear in the court for unknown reason.

When the suit came for hearing today 11<sup>th</sup> November, 2023 the first plaintiff appeared in the court in person and Mr. Leonard Masatu, learned advocate appeared in the court to represent the first defendant. The counsel for the first defendant told the court the parties have succeeded

to settle their dispute out of the court and they have filed in the court their deed of settlement. He prayed the court to record their settlement as the consent judgment and issued a consent decree in the case. The first plaintiff told the court that is the position of the matter and said they have already filed their deed of settlement in the court.

Having heard both sides and after going through the settlement deed signed and filed in this court by the parties today 8<sup>th</sup> November, 2023, the court has found the parties have agreed to settle their dispute out of the court and they have indicated in the deed of settlement the terms and conditions of their settlement. After reading the terms and conditions set in the deed of settlement filed in this court by the parties and see the reliefs the plaintiffs are seeking in the suit they have filed in the court, the court has found there is no reason whatsoever making it to refuse to accept to record the settlement reached by the parties as the decision of the court in the suit filed in the court by the plaintiffs.

Consequently, the settlement reached by the parties in the suit filed in this court by the plaintiffs and inserted in the deed of settlement filed in the court by the parties today 08<sup>th</sup> November, 2023 is hereby recorded as the decision of the court in the present suit. The court is now entering the consent judgment and decree in the suit at hand pursuant to Order

XXIII Rule 3 of the Civil Procedure Code, Cap 33 R.E 2019 in the terms and conditions recorded hereunder: -

1. The plaintiffs and the first defendant have agreed to have the suit settled in terms, conditions and covenants as hereafter appearing.
2. The plaintiff shall make payment of Tshs. 315,747,019/= being final and full settlement of the outstanding liability.
3. The entire outstanding liability mentioned above shall be paid in the period of ten (10) years as follows:
  - 3.1 The first phase of five (5) years effective from 25<sup>th</sup> November, 2023 to 25<sup>th</sup> November, 2028 the plaintiffs shall pay monthly instalment of Tshs. 300,000/= falling due on 25<sup>th</sup> of each month to be applied in reducing liability amounting to Tshs. 315,747,019/=.
  - 3.2 Following expiry of the five (5) years period as mentioned in paragraph 3.1 above, the remaining outstanding amount shall be repaid within the remaining five (5) years effective from 25<sup>th</sup> December, 2028 to 25<sup>th</sup> December, 2033 in equal monthly instalment of Tshs. 2,500,000/= falling due on the 25<sup>th</sup> of each month.
4. The first defendant herein waives uncollected interest to the tune of Tshs. 4,654,593.62 which had accrued from the plaintiffs' loan facility advanced prior to zero-rating the same as approved by the first defendant's Board and implemented in 2022 as part of the remedial intervention to recover the first defendant's loan.

5. In the event of default and while the first defendant is exercising its lender's right, neither the plaintiffs, their agents, administrators, liquidator(s), spouse(s), lawful assignees personal/legal representatives, successor nor customers shall by and in whatsoever means block, challenge or oppose the recovery process.
6. Parties herein agree that upon execution, the deed shall be submitted to the High Court of Tanzania Land Division at Dar es Salaam for filing, and the case shall be marked settled. Upon execution no party shall be allowed to contest and or withdraw from the terms of the deed.
7. In case of default of the terms and conditions set in the deed including default in any single instalment as and when the same fall due as per clause 3.1 and 3.2 above, the usual default clause shall apply, that is, this deed upon being filed in the court shall have the same effect as a decree dully made by the court capable of being executed in the same manner as any other decree of the court.
8. Parties herein state that these settlement terms and conditions are result of free negotiations of the parties.

It is so ordered.

Dated at Dar es Salaam this 08<sup>th</sup> day of November, 2023.



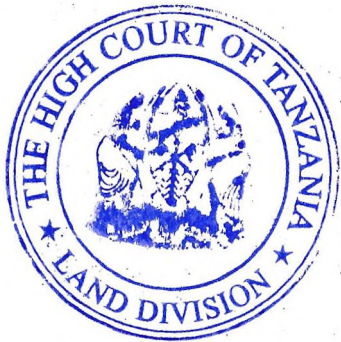
I. Arufani

**JUDGE**

08/11/2023

**Court:**

The above consent Judgment has been recorded today 08<sup>th</sup> day of November, 2023 in the presence of the first plaintiff in person and in the presence of Mr. Leonard Masatu, learned advocate representing the first defendant and in the absence of the second plaintiff and the second defendant. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

**JUDGE**

08/11/2023