

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

**LAND CASE NO. 195 OF 2021
(BY WAY OF COUNTER – CLAIM)**

GROFIN SGB LIMITED.....PLAINTIFF

VERSUS

**LENNY PLASTIC COMPANY LIMITED.....1ST DEFENDANT
LEONARD WEREIKIO LEMA.....2ND DEFENDANT
REBECCA LEONARD LEMA.....3RD DEFENDANT**

DECREE UPON DEED OF COMPROMISE OF THE COUNTER CLAIM

WHEREAS, the Plaintiff in the counter claim is praying for judgement and decree as follows: -

- i. Declaration that,
 - a) The 1st, 2nd, 3rd and 4th Defendants in the counter claim breached the Settlement Agreement by failing to discharge their duties and obligation in accordance with that Settlement Agreement.
 - b) The 2nd Defendant in the counter claim breached the mortgage deed by his failure to fulfil the covenants and commitment to pay the entire balance of the settlement amount following default by the 1st Defendant in the counter claim in paying the entire settlement amount in accordance with the mortgage deed.
 - c) The 2nd Defendant in the counter claim breached the personal guarantee by his failure to fulfil the binding undertaking and commitment to pay the entire balance of the settlement amount following default by the 1st Defendant in the counter claim in paying the entire settlement amount in accordance with his personal guarantee.

- d) The 3rd Defendant in the counter claim breached the personal guarantee by his failure to fulfil the binding undertaking and commitment to pay the entire balance of the settlement amount following default by the 1st Defendant in the counter claim in paying the entire settlement amount in accordance with her personal guarantee.
- ii. The Three Defendants in the counter claim be jointly and severally ordered to immediately pay to the plaintiff in the counter claim the entire outstanding balance of the settlement amount under the Settlement Agreement which is TZS 2,548,589,765 say Tanzanian Shillings Two Billion Five Hundred Forty Eight Million Five Hundred Eighty Nine Thousand Seven Hundred Sixty Five only as of 30th November 2021.
 - iii. The Three Defendants in the counter claim, jointly and severally, be ordered to pay to the plaintiff in the counter claim the finance charges and other additional finance charges including fees, VAT and recoverable accrue after 30th November 2021 up to the date of the judgement;
 - iv. An order for the plaintiff in the counter to sell the mortgaged property over Plot No. 1 Block G Kwembe Area, Kinondoni Municipality, Dar es Salaam, with Title No. 131328, L.O. No. 529879 registered in the name of Leonard Wereikio Lema, if the Defendants in the counter claim fail to pay the plaintiff in the counter claim her claims as ordered.
 - v. The Three Defendants in the counter claim be jointly and severally ordered to pay to the plaintiff in the counter claim general damages as assessed by this Honourable Court to cover the loss the plaintiff in counter claim suffered for the failure of the Defendants in the counter claim to discharge their duties and obligations under the Agreements.
 - vi. The Three Defendants in the counter claim be, jointly and severally, ordered to pay interest on the decretal

amount at the rate of 12% from the date of judgement to the date of full and final payment.

- vii. The Three Defendants in the counter claim in the counter claim be jointly and severally condemned to pay costs of this counter claim.

AND WHEREAS the parties on **21st** day of **February, 2023**, filed in this Court their Deed of Compromise of Counter Claim in Land Case No. 195 of 2021 having negotiated the matter and reached a mutual agreement and the said Deed witnesseth as follows that:

1. Now this Deed of Compromise Defendants in the Counter Claim, is hereby counsel of all parties, recorded as settled amicably by consent of the parties on the following terms and conditions: -

2. The Commencement of this Deed of Settlement

The Plaintiff and the Three Defendants in the Counter Claim in Land Case No. 195 of 2021 agree that the commencement of this Deed of Settlement shall be retrospective starting from June 2022 with the intention of taking on board payments made by the three Defendants to the Plaintiff from June 2022.

3. The Outstanding Debt and Payment Schedule

3.1 The outstanding amount of the debt agreed by Grofin SGB Limited as the Plaintiff in the Counter Claim and the Three Defendants in the Counter Claim shall be **TZS 2,004,403,723.86 say Tanzanian Shillings Two Billion Four Million Four Hundred Three Thousand Seven Hundred Twenty Three Eighty Six Cents Only** meaning that the Three Defendants in the Counter Claim shall pay Grofin SGB Limited the agreed and stated herein the outstanding amount of the debt.

3.2 Parties agree that the outstanding amount of the debt of TZS 2,004,403,723.86 shall be paid to Grofin SGB Limited as the Plaintiff in the Counter Claim by the Three Defendants in the Counter Claim in two phases as follows:

- i. The first phase shall involve payment of TZS 79,200,00.00 which shall be paid as described under clause 3.3 below.

- ii. The second phase shall involve payment of TZS 1, 925, 203,723.86 which shall be paid as described under clause 3.4 below.

3.3 The Three Defendants in the Counter Claim shall pay the Plaintiff in the Counter Claim the amount of TZS 79,200,000.00 under the first phase of payment in twelve (12) instalments as follows:

- i. The Three Defendants in the Counter Claim paid the Plaintiff in the Counter Claim monthly instalment of TZS 6,000,000.00 for six (6) months in which the first instalment was paid on 30th June, 2022 while the sixth (6) instalment was paid on 30th November, 2022 thus making a total of TZS 36,000,000.00 under this clause.
- ii. The Three Defendants in the Counter Claim shall pay the Plaintiff in the counter claim monthly instalment of TZS 7, 200, 000. 00 payment under this part shall be made by the end of every month for six (6) months in which the first instalment was made on 31st December, 2022 while the second instalment was made on 31st January, 2023. The Three Defendants in the Counter Claim shall continue with payments of the remaining four (4) instalments under this part; for the purpose of specificity the sixth (6th) instalment shall be paid by 31st May, 2023 thus making a total of TZS 43,200,000,00, under this clause.

3.4 When the 1st Phase of payment is finalized, the Plaintiff in the Counter Claim and the Three Defendants in the Counter Claim shall agree on the structure and modality of payment of the outstanding amount of the debt of TZS 2, 004,403,723.86. For the purpose of clarity and specificity, failure by the parties to reach consensus on what is agreed under this clause shall entitle the Plaintiff in the Counter Claim to enforce the recovering measures pleaded in the Counter Claim without coming back to Court.

4. Legal Status of the Securities used for the Loan Facility Covered by this Deed of Compromise of Land Case No. 195 of 2021

- 4.1 The collaterals for the loan facility which led to this Deed of Compromise of Land Case No.195 of 2021 shall remain intact and the same shall continue to be held by and/or in favour of the Plaintiff in the counter claim until the entire outstanding amount of the loan facility is cleared.
- 4.2 The Three Defendants in the Counter Claim undertake that in case of any default by the Three, Defendants in honouring the commitment to pay the entire outstanding amount of the loan facility as agreed upon in accordance with this Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021; such default shall entitle the Plaintiff in the Counter Claim to commence recovery measures and that shall include, but not limited to, exercising any of its rights in the assets used as collaterals for the loan facility as well as exercising rights in any other collaterals. The Three Defendants in the Counter Claim in Land Case No. 195 of 2021 further undertake that if the Plaintiff in the Counter Claim exercises any of the rights under the securities for the purpose of recovering the entire loan facility under this scenario, none of the Three Defendants in the Counter Claim in Land Case No. 195 of 2021 shall be entitled to challenge the Plaintiff in the Counter Claim in the course of taking any of the measures under any of the securities.
- 4.3 The Three Defendants in the Counter Claim in Land Case No. 195 of 2021 hereby, jointly and severally, waive all their rights to oppose or to challenge recovery measures to be taken by the Plaintiff in the Counter Claim in Land Case No. 195 of 2021 in case of any default or breach of the terms of this Deed of Compromise of Counter Claim in Land Case No. 195 of 2021. For the avoidance of doubt the collaterals for the facility in question which are also covered by the foretasted waiver are those listed under paragraph 22 (i), (ii), (iii), (iv), and (iv) of the Counter Claim.

5. Fees and Costs.

- 4.1 Each party shall pay bear the legal fees and other costs incurred in the course of handling the Counter Claim in respect of Land Case

No. 195 of 2021 from the preparatory stage up to the time of signing of this Deed of Compromise of Counter Claim in Land Case No. 195 of 2021.

4.2 All costs and expenses incurred in connection with this Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021 including, but not limited to attorneys and court fees shall be paid by the Three Defendants in the Counter Claim in Land Case No. 195 of 2021.

6. The Legal Status of this Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021.

- 5.1 Parties agree that upon execution of this Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021, the same shall be filed at the High Court of the United Republic of Tanzania, (Land Division); at Dar es Salaam to mark settlement of the Counter Claim in Land Case No. 195 of 2021 done amicably by parties outside the court and sets a binding position to the extent agreed upon by the parties with regard to matters which they were to be determined in the course of determination of that Counter Claim.
- 5.2 Parties agreed this Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021 shall, upon being filed at the court as stated under paragraph 5.1, the same shall be recorded as a decree of the Court in accordance with the agreed terms and conditions of this Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021 and parties shall be strictly bound by it with normal default clause to follow in case either party fails to fulfil any of the obligations as agreed herein between the parties.
- 5.3 For the purpose of clarification the decree recorded as stated under 5.2 shall have the same effect as a decree duly extracted by the court capable of being executed as agreed upon by the parties and in the same manner in which any other decree of the court may be executed.
- 5.4 For the avoidance of doubt filing and recording and decree extracted from the Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021 and all matters relating to this Deed of Compromise of Land Case No. 195 of 2021 in general shall be in accordance with Order

XXIII, Rule 3 of the Civil Procedure Code Act, Chapter 33, R.E. 2019 and any other laws relevant and/or applicable in the course of implementing it.

7. Default

That in the event of any default by any of the Three Defendants in the Counter Claim in Land Case No. 195 of 2021 to strictly pay the entire amount as agreed in this Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021, the Plaintiff in the counter claim shall have the right to recover the amount by exercising her rights in any of the collaterals as described and agreed upon by the parties under the entire clause 4 of this Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021, the rights which shall be exercised by the Plaintiff in the Counter Claim in Land Case No. 195 of 2021 without recourse to the court.

8. Originals and Authenticity

This Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021 shall be executed in Five originals all of them being equally authentic and all constituting one instrument.

9. Miscellaneous Matters

8.1 This Deed of Compromise of Counter Claim in Land Case No. 195 of 2021 shall be binding upon the parties and the same shall be governed and regulated by the laws of the United Republic of Tanzania.

8.2 No waiver of the breach of the terms of or any default under this Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021 shall be deemed to be a waiver of any subsequent breach or default or in any way affect the other terms of this Deed of Settlement.

The suit coming for recording of the **Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021** on the **21th** day of **February, 2023** before **Hon. V. L. Makani, J.** in the presence of Ms. Hamisa Nkya, Advocate for the Plaintiff and Mr. Isaack Lema, Director of the 1st Defendant and Ms. Hamisa Nkya, Advocate holding brief of Ms. Hadija Tate, Advocate for the 2nd and 3rd Defendants.

THE COURT DOETH HEREBY ORDERS THAT:

The suit by way of Counter Claim is hereby marked as settled in terms and conditions of the Deed of Compromise of the Counter Claim in Land Case No. 195 of 2021 duly executed by the parties and filed in court on **21/02/2023**. The said Deed of Compromise is adopted and registered as a decree of the court.

BY THE COURT

GIVEN under my **Hand** and the **Seal** of the court this **21th February, 2023**.



V. L. Makani

**V. L. MAKANI
JUDGE**

Extracted on.....*03rd*.....day of *March,*.....2023.