

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

**LAND CASE NO. 88 OF 2023**

**HIGH SPIRIT LIMITED..... 1<sup>ST</sup> PLAINTIFF  
RAJESH SHRIKRISHNA BHATTBHATT..... 2<sup>ND</sup> PLAINTIFF  
SHEHENSHA SHAMSHUDIN MITHA..... 3<sup>RD</sup> PLAINTIFF  
AKSHAY RAJESH BHATTBHATT..... 4<sup>TH</sup> PLAINTIFF  
**VERSUS****

**BANK OF INDIA (TANZANIA) LIMITED.....DEFENDANT**

**CONSENT JUDGEMENT**

*Date of last order :20/02/2024*

*Date of Judgment :23/02/2024*

**MWAIPOPO, J**

The above named Plaintiffs filed this suit praying for judgement and Decree against the Defendants as follows :-

- i. A declaration that the Defendant herein misrepresented the Plaintiffs leading to the unsigned Mortgage of Right of Occupancy and Deed of Guarantee;
- ii. A declaration of the Court that there was no valid Mortgage of the Right of Occupancy as well as Deed of Guarantee on the reason that the same did not contain appended signatures of the defendant;

- iii. General damages as it can be assessed by the court itself;
- iv. Costs of the suit;
- v. Any other relief (s) this Honourable Court deems just and proper to grant.

On the other hand, the Defendant on 11<sup>th</sup> of May 2023 filed a defence disputing all of the Plaintiff's claims and raised a Counterclaim against M/S High Spirit Limited, Rajesh Shrikrishna Bhattbhatt, Shehensha Shamshudin Mitha and Akshay Rajesh Bhattbhatt ("who are the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants in the Counterclaim") seeking the following reliefs:-

1. a declaration that the 1<sup>st</sup> Defendant is in breach of its repayment obligation.
2. a declaration that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants have breached their repayment obligations as mortgagors.
3. (i) an order for payment of the said USD 753,884.79 by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants plus interest as shown in paragraph 21 of the Counterclaim;

**ALTERNATIVELY,**

- (ii) For orders that the Plaintiff is entitled to sell by way of auction the mortgaged property namely Sub-title No. 54681/25, Unit No. 11-1 on 11<sup>th</sup> Floor Measuring 450 Square Meters Built on Plot No. 778/39, Block Floor 1, Central area, Ilala Municipality;
4. For general damages against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants arising out of fraudulent misrepresentation whose particulars are given in paragraph 24 of the Counterclaim;

5. For general damages arising out of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendant's breaches demonstrated in the counterclaim;
6. For costs of the suit; and
7. For any other relief that this court may deem fit to grant.

When this case came up for necessary orders on the 20<sup>th</sup> of February 2024, Dr. Abdiel Kitururu, learned counsel appeared for the Defendant, and the Plaintiffs enjoyed the services of learned counsel Bakari Juma.

On the material date, the learned counsel Dr. Abdiel Kitururu kicked the ball rolling by informing the Court that on 29<sup>th</sup> of December 2023 both parties filed a Deed of Settlement of the suit after negotiations, which were geared towards settling the matter amicably. He further informed the Court that they would like to record the Deed of Settlement as Consent Judgement and that the Consent Decree should follow thereafter. The learned counsel emphasized that; everything should be adopted and recorded the way it is. His submissions were adopted by the learned counsel Bakari Juma to be the position of the matter.

I have taken time to examine the Deed of Settlement filed in this Court. Having gone through the Deed of Settlement in question, this Court is satisfied that the same meets the requirements of an enforceable Deed and falls within the ambit or purview of Order XXIII Rule 3 of the Civil Procedure Code Cap 33 RE 2019. It means therefore that suit has been adjusted wholly by the Deed of Settlement filed in this Court on 29<sup>th</sup> of December 2023. Thus, the Deed of Settlement filed by the named parties herein is hereby recorded. Further to this the Court makes an

order that the said Deed of Settlement forms part of Judgment and Decree of this Court in the present case.

For the reasons stated above, this case is marked **settled** by the parties herein, based on the following terms and conditions agreed upon in the Deed of Settlement;

1. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs in the Original suit relinquish all claims made in the original suit.
2. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants in the counterclaim shall jointly and severally, pay the Plaintiff in the Counterclaim a sum of USD 800,000.00 (United States Dollars Eight Hundred Thousand Only) (**"the Settlement Amount"**) within 12 months from the date of signing of this Settlement Deed. Once the **Settlement Amount** has been fully settled then the Plaintiff in the Counterclaim shall have no further claims against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants and this Settlement Deed shall be final.
3. No interest will be charged for the first three months. After the lapse of the initial three months, the residual Settlement Amount shall attract simple interest at the rate of 7.50% per annum.
4. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants in the Counterclaim agree that, upon breach of the terms, that is failure to pay the said amount of USD 800,000.00 within 12 months the Plaintiff in the Counterclaim shall be at liberty to file for the execution of the Decree against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants jointly and

severally without any notice to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

5. The 1<sup>st</sup> Defendant in the Counterclaim intends to sell the property kept as collateral for the payment of the **Settlement Amount**. Hence, the collateral security shall be released upon receipt of proportionate **Settlement Amount** as under against the respective security.

Security Particulars	Settlement Amount
Legal Mortgage of Certificate of Title No. 54681/25, being subtitle of the CT No. 54681, Unit No. 11-1, 11 <sup>th</sup> Floor in the name of M/S High Spirit Ltd, Central Area, Dar es Salaam.	USD 800,000.00
<b>TOTAL</b>	<b>USD 800,000.00</b>

6. The following terms shall be followed by the Plaintiff and the 1<sup>st</sup> Defendant in the Counterclaim in selling the collateral security:

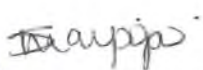
- The **Settlement Amount** should be deposited by the buyer directly or from own source by the 1<sup>st</sup> Defendant in the Counterclaim to make the property eligible for release from the Bank charge.
- To facilitate the selling of the property, the Plaintiff and the 1<sup>st</sup> defendant in the Counterclaim may enter into an arrangement with a potential buyer providing for special terms under which the transaction may be realized.


7. This deed shall be recorder as a Consent Judgment.

8. No failure or delay by the Plaintiff in the Counterclaim to exercise any of its powers or rights herein granted shall operate as a waiver thereof nor shall any single or partial exercise of any such powers or right preclude further exercise thereof.


It is so ordered

**DATED at DAR ES SALAAM** this 23<sup>rd</sup> day of February 2024

  
**S.D. MWAIPOPO**  
**JUDGE**  
**23/02/2024**



The Consent Judgement delivered this 23<sup>rd</sup> day of February, 2024 in the presence of Bakari Juma Adv for the plaintiff and Bakari Juma H/b for Dr. Abduel Katururu adv for the defendant, is hereby certified as a true copy of the original.

  
**S.D. MWAIPOPO**  
**JUDGE**  
**23/02/2024**

