

**IN THE HIGH COURT OF THE UNITED  
REPUBLIC OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR-ES-SALAAM  
COMMERCIAL CASE NO.136 of 2019**

**FIRST NATIONAL BANK  
TANZANIA LTD.....PLAINTIFF  
VERSUS**

**OSSAM GENERAL TRADERS  
COMPANY LTD .....1<sup>ST</sup> DEFENDANT**

**OMARY MGUMBA TEMBETA aka OMARY  
TEBWETA MGUMBA.....2<sup>ND</sup> DEFENDANT**

**ADAM OMARY MGUMBA.....3<sup>RD</sup> DEFENDANT**

Last order: 5<sup>th</sup> MAY, 2021  
Final Order: 6<sup>th</sup> MAY 2021.

**CONSENT JUDGEMENT**

**NANGELA, J:.**

The Plaintiff herein instituted a claim against the Defendants jointly and severally praying for judgement and decree of this Court as follows:

1. A declaration that the 1<sup>st</sup> Defendant has breached the fundamental terms and conditions of the Overdraft Agreement dated the 2<sup>nd</sup> of September 2016 with reference

number FNB/HC/625/12/16 entered into between the Plaintiff and the 1<sup>st</sup> Defendant.

2. A declaration that the 2<sup>nd</sup> Defendant breached the term and conditions of the Mortgage Deed he executed in favour of the Plaintiff and caused to be registered by the Registrar of Titles .
3. A declaration that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have breached the term and conditions of the Personal guarantee they entered into and signed in favour of the Plaintiff.
4. An Order directing the Defendants to jointly and severally pay the Plaintiff the sum of TZS 318,925,174.49, being the principal sum plus interest as of the 31<sup>st</sup> October 2019 arising from the default on Credit Facilities extended to the Plaintiff under the Loan/Credit Agreement.
5. An order directing the Defendants to pay the Plaintiff interest at a rate of 28% of the amount stated in item No.4 above per annum and to be calculated on a daily outstanding balance and capitalized monthly in arrears from 31<sup>st</sup> day of October 2018 to the date of payment in full.
6. An order directing the Defendants to pay the Plaintiff interest at 7% rate on the decretal sum calculated on calculated on a daily outstanding balance and capitalized monthly in

arrears from the date of judgement to the date of payment in full.

7. The Defendants be ordered to pay General Damages to the Plaintiff the same to be assessed by this Court for the loss of income in the banking business, hardship and disturbances which were caused by the Defendants' act of refusal and or neglect to pay the outstanding balance/debt on time.
8. An order granting the Plaintiff permission to sell the land/premises in dispute say land registered with Certificate of title No.91619, Plot Nos.2074, 2075, 2076, 2077, 2078 and 2079 , Block B, located in Goba Kunguru Area in Kinondoni Municipality, DSM and use the proceed thereof to discharge part of the Defendants liability against it as shall be collectively awarded by the Court
9. The Defendants be ordered to pay costs f this suit; and
10. Any other relief as this honourable Court may deem fit and just to grant.

When this case was called on for its hearing on 8<sup>th</sup> April 2021, Mr Augustine Ndomba learned Advocate appeared for the Plaintiff while the Defendants enjoyed the services of Mr Ahmed Mwita, learned Advocate.

On the material date, Mr Ndomba informed this Court that the parties were in a settlement course and that they have initiated such negotiations to have this matter settled amicably as between themselves. Mr Mwita supported the submission and both learned counsels requested for an adjournment of the hearing session to pave way for the conclusion of the settlement negotiations. This Court granted the prayer and the case was set for mention on 13<sup>th</sup> May 2021.

On the material date, the parties appeared before me. They also filed a Settlement Deed indicating that they have consented to the settlement if the dispute amicably as per the terms of the Deed of Settlement filed in this Court under **Order XXIII Rule 3 of the Civil Procedure Code, Cap.33 R.E 2019.**

In view of the Deed of Settlement filed in this Court on the 5<sup>th</sup> of May 2021, Mr Ndomba prayed, therefore, that, this Court be pleased to register the Deed of Settlement and adopt it as forming the judgment and decree of the Court.

Order XXIII Rule 3 of the CPC 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 examined the Deed of settlement. I am satisfied that this suit has been adjusted wholly by the Deed of Settlement which constitutes a lawful compromise, of the parties. In view of that, this Court proceeds to record it and, does hereby; adopt the same as forming the judgment and decree of this Court. The suit is thus marked settled by compromise of the parties.

**It is so ordered.**

DATED at **DAR-ES-SALAAM**, this **06<sup>th</sup> May 2021**



A handwritten signature in blue ink, appearing to read "Nangela".

.....  
**HON. DEO JOHN NANGELA**