

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE NO. 38 OF 2021**

**JAFFERY IND.SAINI LTD.....PLAINTIFF
VERSUS**

**M/S BEIJING CONSTRUCTION
ENGINEERING GROUP LTDDEFENDANT**

Last order: 09th June, 2021

Judgment-Date: 11th June, 2021

CONSENT JUDGEMENT

NANGELA, J.

This consent judgment arises from a Plaint filed by the Plaintiff on 18th March 2021 seeking for judgment and decree of the Court against the Defendant as here below:

1. That, the Defendant pays the Plaintiff a sum of TZS 303,463,140/-being an outstanding debt due and payable to the Plaintiff.
2. Payment of general damages as this Honourable Court may deem fit.
3. Payment of compound interest at the rate of 22% per annum from October 2015 to the date of judgment.
4. Payment of compound interest at the rate of 22% per annum from October 2015 from the date of judgment to the date of full payment.
5. Payment of Court interest at the rate of 12% per annum from the date of judgment to that date of full payment.
6. Cost of the suit and,
7. Any other relief as this Court deems fit.

The Defendant filed a written statement of defence and partly admitted to be indebted to the Plaintiff to a tune of TZS 221,505,942/-.

When the parties appeared for orders of this Court on 21st June 2021, the Plaintiff enjoyed the services of Mr Emanuel Kessy, learned counsel, while Mr Hussain Bitomwa, a Quantity Surveyor working with the Defendant, represented the Defendant. Mr Kessy addressed this Court and informed it that, the parties have managed to settle their dispute amicably and, that, as evidence to that successful effort, they have filed their Consent Deed of Settlement in this Court. He requested the Court to proceed and recorded the Deed of Settlement as constituting its own judgment and decree.

I have seen the signed Deed of Settlement. In my view, this amicable settlement is quite a significant achievement by the parties.

Generally, litigants are encouraged to settle their differences earlier enough if possible. Such a route is encouraged by Courts all over the world. For instance, the United States Court of Appeals, Sixth Circuit observed and stated, in the case of **Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.**, 332 F.3d 976, 980 (6th Cir. 2003), that:

"settlement of a dispute is an important and a welcome process.... The ability to negotiate and settle a case ... fosters a more

efficient, more cost-effective, and significantly less burdened judicial system."

As I stated herein above, Mr Kessy has requested this Court to proceed and record the agreement as constituting the judgment and decree of this Court. Indeed, as once stated by the Court of Appeal of Tanzania in the case of **Motor Vessel Sepideh and Another vs Yusuf Mohamed Yussuf and two Others** (Civil Application No.237 of 2013) (Unreported):

"where there is a lawful agreement or compromise the court is bound to record a settlement once it is arrived at by the parties."

However, before one rushes to that exercise of recording the agreement, he or she has to be satisfied that it does conform to the requirements of the law. In ***Karatta Ernest D.O and 6 Others vs The Attorney General , Civil Appeal No.73 of 2014 (Unreported)*** the Court also emphasized that, it must be made clear that the basis of a Deed of Settlement is privity to the parties.

As regards the test of lawfulness of the Deed of Settlement, the same was aptly set out in the persuasive Cases of **Farisai Nando vs Godwills Masimirembwa , High Court of Zimbabwe Mwayera J, Harare, 10**

November, 2016, 23 February 2017, which test I am gladly adopting.

In that case, the Court noted that, when considering the lawfulness of the settlement agreement one has to:

"Firstly,...be satisfied that both parties to the agreement have freely and voluntarily concluded the agreement. Secondly, that there is meeting of minds of the contracting parties; in other words, that, the parties are *ad idem* with regards the terms of the Deed of Settlement. [Thirdly, the decision maker] has to consider whether or not the terms of the Deed of Settlement are capable of enforcement without recourse to further litigation. The [decision making body], of necessity, should make a specific and enforceable order. These factors in my view fall for consideration cumulatively."

As it may be noted, the enforceability of the order that may follow thereafter is an important aspect as well since, as once noted by a Court of Appeal in South Africa (in the case of **Thutha v Thutha** 2008 (3) SA 49, '**the purpose of a court order is not to [merely] record the terms of an agreement between the parties, but to give final effect to the judgment which brings the dispute to closure.**'

Having examined the Deed of Settlement filed in this Court by the parties, I am satisfied that the same

meets the lawfulness requirements of an enforceable Deed and falls within Order **XXIII rule 3 of the Civil Procedure Code, Cap.33 R.E 2019**. This means that the suit has been adjusted wholly by the Deed of Settlement filed in this Court on 8th of June 2021.

With that in mind, this Court hereby proceeds and records the Deed of Settlement. The suit is therefore marked "**Settled at the Consent of the Parties on the basis of terms contained in their duly signed Deed of Settlement, which shall constitute the Decree of this Court**".

It is so ordered.

DATED at **DAR-ES-SALAAM**, this **11th JUNE 2021**



HON. DEO JOHN NANGELA
JUDGE