

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

COMMERCIAL CASE NO. 37 OF 2021

VODACOM TANZANIA PUBLIC
LIMITED COMPANY.....PLAINTIFF

VERSUS

247 COMMUNICATION LIMITED.....DEFENDANT

Last Order: 29/10/2021
Judgment: 05/11/2021

CONSENT JUDGMENT

NANGELA, J.

This suit was brought to the attention of this court following a plaint filed by the Plaintiff on 23rd March, 2020. The Plaintiff prays for judgment and decree against the Defendant as follows:

- (a) Payment of **TZS 95,275,596.88** being the outstanding amount of taxes paid by the Plaintiff on behalf of the Defendant.
- (b) Commercial interest at the Bank of Tanzania lending rate as applicable from the date of default which was 5th October 2020 to the date of Judgment

- (c) Interest of the decretal sum at the Court's rate at 7% per annum from the date of default judgment to the date of full payment; and
- (d) Costs of this suit.
- (e) Any other or further reliefs as the Honourable Court will deem just to grant.

When this case was called on for Mention on the 29th October, 2021, Ms Natasha Mukangara and Pascal Mwanyika legal counsels represented the Plaintiff while the Defendant enjoyed the legal service of Mr. Noel Sanga, learned advocate.

When Ms Natasha seized the moments to address the Court, she informed this Court that the parties have managed to negotiate a settlement out of Court and a Deed of Settlement was already filed in Court. In view of that, she prayed that the same be recorded as forming the judgment and decree of this Court.

I have gone through the Deed of Settlement executed by the two parties and filed in this Court. The same was made and filed under Order XXIII Rule 3 of the Civil Procedure Code, Cap 33 R.E 2019.

Order XXIII Rule 3 of the Civil Procedure Code,
Cap.33. R.E, 2019 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."

As the above provision provides, once a Deed of Settlement is entered and filed in Court, the Court must be satisfied that it is a lawful Deed and it does, indeed, adjust the suit either wholly or partially and, thereafter, the Court shall record it, thereby passing a decree in accordance therewith, and so far as it relates to the suit.

According to Mulla, **the Code of Civil Procedure Act of 1908** (14th Edition), on page 1828:

"The rule gives a mandate to, the Court to record a lawful adjustment

or compromise and pass, a decree in terms of such compromise or adjustment. Such a consent decree is not appealable....When the agreement relates to the whole suit, the Court on being invited by the parties, record the agreement, and pass a decree in accordance with the agreement and the suit stops there."

It was also the emphasis of 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) that:

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

I have examined the Deed of Settlement which seeks to settle the whole suit. I am satisfied as to its lawfulness and effect of settling the whole suit once and for all. In view of the above, the same is hereby registered and shall form part and parcel of this Consent Judgment of the Court, as well as its decree.

The present suit, therefore, is marked settled at the instance of the parties' terms and conditions set out in their Deed of Settlement executed and filed in this Court on the 29th October 2021.

It is so ordered

**DATED AT DAR-ES-SALAAM ON THIS DAY 05th OF
NOVEMBER 2021**



A handwritten signature in blue ink, appearing to read "Deo John Nangela". The signature is written over a horizontal dotted line.

**DEO JOHN NANGELA
JUDGE,**