

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 98 OF 2019**

**BETWEEN**

**THE EXIM BANK (TANZANIA) LIMITED.....PLAINTIFF**

**VERSUS**

**BARRETTO HAULIERS (T) LIMITED.....1<sup>ST</sup> DEFENDANT**

**RICHARD RUDOLF BARRETTO.....2<sup>ND</sup> DEFENDANT**

**JUDE TERENCE BARRETTO.....3<sup>RD</sup> DEFENDANT**

**MARINE WORLD LOGISTICS (T) LTD.....4<sup>TH</sup> DEFENDANT**

*Date of Last order: 16/8/2021*

*Date of Judgement: 19/8/2021*

**CONSENT JUDGEMENT**

**MAGOIGA, J.**

The plaintiff, **THE EXIM BANK (TANZANIA) LIMITED** by way of plaint, instituted the instant suit against the above-named defendants praying for judgement and decree jointly and severally in the following orders, namely:-

- a) Payment for the sum of Tshs 258,931,862.06 being an amount outstanding owing and due from the defendants to the plaintiff, including interest and bank charges as on 31<sup>st</sup> May, 2019;
- b) In alternative, an order for the attachment and sale of the property comprised Plot No 415, Block CC, Sombeteni in Arusha Municipality, held under certificate of Tittle No 10868, and sale of properties under

debentures over the Entire assets of the company Sale of Trucks T 165 BAJ and T 184 BAJ;

- c) Interest at 27% per annum as per agreement from 1<sup>st</sup> June, 2019 to the date of payment;
- d) Interest at courts rate from the date of judgment to the date of payment in full;
- e) Costs of this suit; and
- f) Any other relief(s) that this Court may deem fit to grant.

When this case was called on for mention for orders on 19<sup>th</sup> August, 2021 Ms. Genoveva Kalolo, learned advocate for the Plaintiff and Mr. Richard Rudolf Barreto, 2<sup>nd</sup> defendant and Managing Director of the 1<sup>st</sup> defendant informed the court that they have managed to settle the matter and deed of settlement has already filed in this court.

I have gone through the Deed of Settlement filed in this court by the parties and indeed filed under order XXIII Rule 3 of the Civil Procedure Code [Cap 33 R. E 2019]. The said Rule 3 provides that:-

**“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 decree in accordance therewith so far 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.

The scope of the above Rule 3 of Order XXIII of the Civil Procedure Code, [Cap 33R.E. 2019], was succinctly defined by Mulla, the Code of Civil Procedure Act of 1908 (14<sup>th</sup> edition) on page 1828, who stated as here below:-

**“The rule gives a mandate to the court to record a lawful adjustment or compromise and pass a decree on in terms of such compromise or adjacent such consent decree is not appealable when the agreement relates to whole suit, the court on being invited by the parties record the agreement and pass a decree in accordance with the agreement and the suits ends there.”**

This position was acknowledged by the Court of Appeal in the case of **Motor Vessel Sepideh and Another v. Yusuph Mohamed Yusuph and two others Civil application No 237 of 2013 (unreported)** in which the Court observed that:-

**“Where there is 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 it shall form part and parcel of this Consent decision as well as its decree.

The present suit, therefore, is marled 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 19<sup>th</sup> August 2021.

It's so ordered.

Dated at Dar es salaam on this 19<sup>th</sup> August ,2021



A handwritten signature in blue ink, appearing to read "S.M. Magoiga". The signature is stylized and somewhat cursive.

**S.M. MAGOIGA**

**JUDGE**

**19/8/2021**