

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 89 OF 2019**

**BETWEEN**

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

**VERSUS**

**LION WATTLE COMPANY (T) LIMITED .....1<sup>ST</sup> DEFENDANT**

**YUSUPH NAWAB MULLA .....2<sup>ND</sup> DEFENDANT**

**SHAHDAD NAWAB MULLA .....3<sup>RD</sup> DEFENDANT**

*Date of Last order: 24/02/2021*

*Date of Judgement: 25/02/2021*

**CONSENT JUDGEMENT**

**MAGOIGA, J.**

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

- a) Declaration that the 1<sup>st</sup> defendant breached the terms and conditions of  
the Credit Facilities Agreement dated 23<sup>rd</sup> December, 2015, Temporal



Overdraft Facility dated 2<sup>nd</sup> September, 2016 and 31<sup>st</sup> October, 2016 between her and the plaintiff by failure to pay overdrawn amount;

- b) Declaration that the 2<sup>nd</sup> and the 3<sup>rd</sup> defendant breached the terms and conditions of the Guarantee and Indemnity Agreement dated 8<sup>th</sup> January, 2016;
- c) An order that the defendants jointly and severally pay the plaintiff the total sum of Tanzania Shilling Eight Hundred Seventy Million Hundred Thirty One Thousand Four Hundred Seventy Seven Thousand and Forty Cents(Tshs.870,231,467.45) and United States Dollars One Hundred Seventy Seven Thousand Five Hundred Seven Four and Twenty Nine Cents(USD.177,574.29) being the outstanding principal and agreed interest as at 30<sup>th</sup> June, 2019;
- d) An order that the plaintiff dispose the mortgaged property securing the credit facility for partial or full satisfaction of the outstanding balance;
- e) General damages to be assessed by the court;
- f) An order that the defendants pay interest in (C) above at the contractual rate of 14.5% for the USD defaulted amount and 27% for the Tshs



defaulted amount per month from the date of 1<sup>st</sup> July, 2019 to the date of judgement;

- g) An order that the defendants pay interest on the decretal sum at the court rate of 7% per annum from the date of judgement till payment in full;
- h) An order for costs;
- i) An order that the defendants pay interest on the costs at the court's rate of 7% per annum from the date of judgement to the date of full satisfaction;
- j) Any other relief(s) that this Court may deem fit to grant.

When this case was called on for mention for orders on 25<sup>th</sup> February, 2021 Mr. Jovinson Kagilwa and Ms. Neema Richard learned advocates for the Plaintiff and Mr. Paul Mgaya, learned advocate for the defendants 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 of 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 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 25<sup>th</sup> February, 2021.

It's so ordered.

Dated at Dar es salaam on this 25<sup>th</sup> Febraury, 2021



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

**S.M. MAGOIGA**

**JUDGE**

**25/02/2021**