

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC COMMERCIAL CAUSE NO. 5 OF 2019

IN THE MATTER OF COMPANIES ACT, 2002

AND

**IN THE MATTER OF PETITION FOR WINDING UP OF UKOD
INTERNATIONAL COMPANY LIMITED**

BETWEEN

EQUITY BANK (TANZANIA) LIMITED.....PLAINTIFF

AND

UKOD INTERNATIONAL COMPANY (T) LIMITED.....1ST DEFENDANT

Date of Last order: 25/3/2021

Date of Judgement: 28/4/2021

CONSENT JUDGEMENT

MAGOIGA, J.

The plaintiff, **EQUITY BANK TANZANIA LIMITED** by way of petition instituted the instant petition against the above-named defendant, praying for judgement and decree in the following orders, namely:-



- (a) That the UKOD international company limited (Registration No 58938) may be wound up by the order of the court under the provisions of section 279(1) (d) of the companies Act;
- (b) Liquidator be appointed under section 294 of the companies Act 2002;
- (c) Such further orders or reliefs this honourable Court deems just, equitable and convenient; and
- (d) Costs of this petition be provided for.

When this petition was called on for orders on 25th March, 2021, Mr. Seni Malimi learned advocate for the Plaintiff and Mr. Juma Ibrahim, Chief Executive Officer of the defendant informed the court that, they 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 the suit has been adjusted wholly or in part by any lawful agreement or compromise, or where 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 to the provision provides, once a Deed of Settlement is entered and filed in court, the court must be satisfied that it is lawful Deed and it does, indeed, adjust the suit either wholly or partially and, thereafter, the court shall record it, thereby passing the 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 33 R.E.2019] was succinctly defined by Mulla, the Code of Civil Procedure Act of 1908 (14th edition) on page 1828, who stated as herein below:

“The rule give 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 of Tanzania 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 of the court as well as its decree.

The present, 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 28th April 2021.



It's so ordered.

Dated at Dar es Salaam on this 28th April, 2021



S. M. MAGOIGA

JUDGE

28/4/2021

