

TANZANIA / JUDGMENT

Kagaruki CONSENT JUDGEMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA BUKOBA SUB REGISTRY AT BUKOBA MISC. CIVIL APPEAL NO.1934 OF 2025 (Arising from Misc. Civil Application Case No.000000072 of 2024 of the District Court of Bukoba from Original Civil Case No.103 of 2021 of Bukoba Urban Primary Court). BASHIRU J

KAGARUKIAPPELLANT VERSUS NICKSON J
SWAHIBU1ST RESPONDENT MAJEMAJE AUCTION MART &
BROKERS LTD.....2ND RESPONDENT MATHIAS KOSEKUBI
BULAHU3RD RESPONDENT CONSENT JUDGEMENT OF THE COURT

Date of last order: 05/03/2025 Date of Judgment: 14/03/2025 BEFORE: G.P. MALATA, J The appellant filed the present appeal challenging the decision by the District Court of Bukoba in Misc. Civil Application Case No.000000072 of 2024 arising from Original Civil Case No.103 of 2021 of Bukoba Urban Primary Court. The parties to an appeal resolved to settle the appeal amicably. On 05/03/2025, 2025 Mr. Gerase Reuben learned counsel for the appellant and holding brief of Mr. 1 Victor Blasio for the 1st and 3rd Respondents with leave to proceed in informed this court that, parties to the appeal have concluded settlement of an appeal and filed the Deed of Settlement on 05/03/2025. In nutshell, he submitted that, the appellant had engagement with 1st respondent in which he defaulted. In return, the 1st respondent filed case against the appellant Civil Case No. 103/2021 before Bukoba Urban Primary Court. On 27/08/2021, the decision was delivered with an order that, the appellant to pay the Plaintiff (1st respondent) TZS. 9,186,200/= within twelve months. In default thereof, the 1st respondent applied for attachment and sale of house located at Kerebe Village, Muleba District owned by the appellant. The house was attached and sold by the 2nd respondent to the 3rd respondent at TZS. 15,100,000/=. That, the 1st Respondent paid a decretal sum and the remaining sum was paid to appellant. The appellant appealed against the decision in execution for sale of the said house thence, the present appeal No. 1934/2025. In settlement thereof, the appellant and 3rd respondent (purchaser of the appellant's house) resolved through the Deed of Settlement to return the amount of money paid to the 3rd respondent and take back the house sold in execution of decree in civil case No. 103/2021. 2 He submitted that, the Deed of Settlement is signed by the parties to the case and their advocates save for the 2nd respondent who is just court broker appointed to attach and sell the appellant's house. He stated that, he is nowhere to be found. Besides, the 2nd respondent has no interest whatsoever. Finally, Mr. Gerase Reuben learned counsel prayed that, the Deed of Settlement filed and registered by this Court be registered and become consent judgment of this Court in

settlement of MISC. CIVIL APPEAL NO.1934 OF 2025. He prayed that, Misc. Civil Appeal No. 1934 of 2025 between the parties herein be marked settled. The DEED OF SETTLEMENT is hereby substantially reproduced for easy of reference. It reads that; MAKUBALIANO YA KUMALIZA MGOGORO NJE YA MAHAKAMA MAKUBALIANO haya yamefikiwa leo hii tarehe 05 mwezi 03, 2025 KATI YA BASHIRU J. KAGARUKI Wa BUKOBA (ambaye atajulikana kama MRUFANI kwa upande wa kwanza NA MATHIAS KOSEKUBI BULAHU Wa Mwanza (Ambaye atajulikana kama MRUFANIWA WA TATU kwa upande wapili) 3 IWAPO Mrufani alifunguliwa kesi ya madai na Mrufaniwa wa kwanza katika Mahakama ya Mwanza Bukoba Mjini, katika shauri la madai namba 103/2021, ambapo katika shauri ilo mrufani aliamuliwa kumlipa mrufaniwa wa Kwanza kiasi cha Tshs.9,186,200/= ndani ya kipindi cha Miezi kumi na miwili (12) tu. KWAMBA, Mrufani alishindwa kulipa kiasi tajwa hapo juu ndani ya kipindi cha miezi kumi na miwili (12) kama ilivyoamuliwa na mahakama hivyo kupelekea mali ya mrufani ambayo ni nyumba kuuzwa kwa njia ya mnada na Mrufaniwa wa pili kwa mrufaniwa wa tatu jambo ambalo mrufani hakuridhika nalo hivyo kufungua shauri la marejeo namba 72 la mwaka 2024 katika Mahakama ya Wilaya Bukoba ambapo maombi hayo yalikataliwa hivyo mrufani kuamua kuleta rufaa hii katika mahakama hii tukufu na ambayo imesajiliwa kama rufaa namba 1934 ya mwaka 2025. NA IWAPO, kabla ya kuanza kusikiliza rufaa hiyo basi mrufani na mrufaniwa wameamua kumaliza mgogoro huu nje ya mahakama kwa kufikia makubaliano kwa mashariti yafuatayo:-

1. Kwamba, mrufani atamlipa mrufaniwa wa tatu kiasi cha Tshs 18,000,000/= kwa awamu tatu kama ifuatavyo:-
 - i. Awamu ya kwanza kiasi cha Tshs 7,000,000/= kimelipwa taslimu tarehe 13/02/2025 kwa mrufaniwa wa tatu. ii. Awamu ya pili mrufani atalipa kiasi cha Tshs 3,000,000/= kabla au mara ifikapo tareha 12/03/2025. iii. Awamu ya tatu na ya mwisho, mrufani atalipa kiasi cha Tshs 8,000,000/= ndani ya kipindi cha miezi ishirini (20) kuanzia tarehe ya leo tarehe 05/03/2025 bila kukosa.
2. Kwamba, mrufani atatakiwa kutunza kumbukumbu za malipo kila anapofanya malipo ya aina yoyote kwa mrufaniwa wa tatu.
3. Kwamba, pande zote mbili wanakubaliana kwamba, mara baada ya kutia saina makubaliano haya, mrufaniwa wa tatu pamoja na mawakala wake hawatojiusisha tena na nyumba/mali ya mrufani iliyoko Kisiwani kelebe, wilaya ya Muleba ambayo alinunua kwa njia yam nada. Mara moja nyumba hiyo / mali hiyo inarudi mikononi mwa mrufani kuwa mmiliki halali kama ilivyokuwa hapo wali kabla ya mnada.
4. Kwamba, pande zote mbili wanakubaliana kwamba, baada ya kumaliza mgogoro nje ya mahakamani, upande wowote hautafungua kesi ya aina yoyote dhidi ya mwenzake kuusiana na madai haya kwani tayari wamemaliza tofaut zao nje ya mahakamama. 5

5. Kwamba, pande zote mbili wanakubaliana kwamba makubaliano haya yatasajiliwa mahakamani na kufanywa kuwa tuzo halali ambayo itaweza kutekelezeka endapo upande wowote katika makubaliano haya utashindwa kutekeleza masharti yaliyomo katika makubaliano haya.
6. Kwamba, pande zote mbili wanakubaliana kwamba, baada ya kusajili makubaliano haya mrufani ataondoa rufaa namba 1934 ya mwaka 2025 bila gharama zozote na wala warufaniwa wale hawatodai gharama zozote za kuondoa shauri/rufaa hii.
7. Kwamba, makubaliano haya yamefikiwa leo na pande mbili kwa maridhiano na uhuru Upon perusal of the said the Deed of Settlement, this court noted that; one, it bears the names of the parties to Misc. Civil Appeal No. 1934 of 2025 save for the court broker the 2nd Respondent, two, it is dated, three, contains terms and conditions for settlement, four, signed by both parties and their advocates save for the court broker and five, filed in this court. Having gone through the Deed of Settlement and satisfied beyond sane of doubt that, it contains terms for the settlement of terms of Misc. Civil Appeal No. 1934 of 2025, this court therefore, hereby register and order that the DEED OF 6 SETTLEMENT, as substantially reproduced herein above is hereby registered and become the Consent Judgement of this court with effect from 14th March, 2025. Moreover, upon payment in full of TZS 18,000,000/=as stated in item 1 of this Consent Judgement by the appellant to 3rd Respondent, the said respondent shall have no claim arising or connected to the same cause of action. In the event, MISC. CIVIL APPEAL NO. 1934 OF 2025 between the parties herein is marked settled. IT IS SO ORDERED. DATED at BUKOBA this 14th March, 2024. G.P. MALATA JUDGE 14/03/2024 CONSENT JUDGMENT delivered at BUKOBA this 14th March, 2024 in the absence of the parties. G.P. MALATA JUDGE 14/03/2024 7

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