

TANZANIA / JUDGMENT

emmanuel michael kanyandegé another v chrissostom christopher kaijage 2022 tzhccomd 48 25 march 2022

COURT
TZHCCOMDDECIDED
25 March 2022

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT PAR ES SALAAM MISC COMMERCIAL CAUSE NO. 01 OF 2022 IN THE MATTER OF COMPANIES ACT, 2002 AND IN THE MATTER OF SAFE COMPUTERS ICT & SERVICES PROVIDERS TANZANIA LIMITED AND IN THE MATTER OF PETITION FOR ORDERS ON GROUND OF UNFAIR PREJUDICE BY BETWEEN EMMANUEL MICHAEL KANYANDEGE..... 1st PETITIONER REHEMA ISSA CHINGOMANJE..... 2nd PETITIONER AND CHRISOSTOM CHRISTOPHER KAIJAGE..... RESPONDENT Date of Last Order and Judgement: 25/03/2022
CONSENT JUDGEMENT MAGOIGA, J. The petitioners, EMMANUEL MICHAEL KANYANDEGE AND REHEMA ISSA CHINGOMANJE by way of petition, instituted the instant petition against the above- named respondent, praying for decree in the following orders, namely: --Uk i

- i) A declaration order that the respondent's actions/conducts and omissions were and are unlawful and unfairly prejudicial to the interest of the company and the Petitioners as shareholder of the company; ii) An order that the petitioners to purchase of all shares of the respondent in the company; iii) An order for the respondent to pay general to the petitioners as the court may asses; iv) Costs of this petition be borne by the respondent; and
- v) Any other relief or orders as the court may deem fit and just to grant. When this petition was called on for hearing on 7th March, 2022, Mr. Issa Chundo learned advocate for the Petitioners and Mr. Denis Mwesiga, learned advocate for the respondent informed the court, they are ready for hearing but before I deliver the ruling/judgement they intend to settle this matter amicably. I heard parties and scheduled the matter today for ruling or recording settlement. When this petition was called today, Mr. Chundo for petitioners and holding brief for Mwesiga told the court parties managed to settle the matter and deed of settlement has already filed in this court today on 24th March, 2022. The learned counsel for parties prayed that the same be recorded and a decree be issue as decree of the court on the terms and conditions agreed. 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 which provides that:- 2 "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". This provision was defined by Mulla, the Code of Civil Procedure Act of 1908 (14th edition) on page 1828, who stated that: "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 and 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 Speideh 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 petition once and for all. Therefore, by a deed of settlement dully executed by the parties in this 3 petition and filed in this court, this court hereby record this to be settled out of court in the terms and conditions as agreed in the deed of settlement under Order XXII Rule 3 of the Civil procedure Code in the following words:

1. The petitioners has agreed to give the respondent on asset in the company that is a printer type colour Laser jet Pro MFP dw around TZS. 15,000,000.00 to TZS. 17,000,000.00;
2. MD complete table and chair in the office and;
3. Cash of TZS. 15,000,000.00. This amount is payable in two installments that is TZS.7,500,000.00 by 30th March, 2022 and the balance of TZS.7,500,000.00 shall be paid on or before 15th April, 2022;
4. Upon completion of the first installment and handing over the property agreed above to the respondent, all parties shall schedule a date to sign Brela forms and an amicable hand over;
5. In case of default in the terms of this settlement agreed herein above, the respondent shall have the right to institute execution proceedings with interest thereto to recover his dues. It is so ordered. Dated at Dar es Salaam on this 25th JUDGE 25/3/2022 4

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