

TANZANIA / JUDGMENT

canocity limited v sky developers limited 2 others 2022 tzhccomd 47 17 march 2022

COURT
TZHCCOMDDECIDED
17 March 2022

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT PAR ES SALAAM
COMMERCIAL CASE NO. 125 OF 2020 CONACITY LIMITED.....
PLAINTIFF VERSUS SKY DEVELOPERS LIMITED..... 1st DEFENDANT DR.
ONESMO MICHAEL KYAUKE RECEIVER OF THE MORTGAGED
PROPERTY..... 2nd DEFENDANT I AND M BANK (T)
LIMITED3rd DEFENDANT Date of Last order: 17/03/2022 Date
of Judgement: 17/03/2021 CONSENT JUDGEMENT MAGOIGA, J. The plaintiff, CANOCITY 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) A declaration that, the 1st Defendant has breached the Sub Lease Agreement dated 15th June, 2016 and its addendum dated 1st May 2019 1 on plot No. 278 Msasani Dar es Salaam CT No. 118650 executed between the plaintiff and 1st defendant;
- b) A declaration that the second and Third defendants have breached the Sub Leased Agreement dated 15th June, 2016 and its addendum dated 1st May, 2019 on Plot No.278 Msasani Dar es Salaam CT. No. 118650 executed between the plaintiff and first defendants;
- c) A declaration that the second defendant's direction to the plaintiff to either sign the new release contract while the Sub Lease Contract is still operative or else to quit failure of which to be registered as trespasser on Plot No. 278 Msasani Dar es Salaam CT NO.118650 is unlawful;
- d) A declaration that the second defendant's attempts to evict the plaintiff from the office premises on plot No.278 Msasani Dar es Salaam CT. No. 118650 is unlawful;
- e) An order permanent injunction to restrain the defendants from evicting the plaintiff from the suit premises;
- f) An order for the defendants to refund the plaintiff the rent paid from January 2020 to the date the defendant will repair the office premise to habitable condition which amount to USD.24,000 by November, 2020 and to continue to accrue at the rate of USD2,000 per month up to the date the defendants conduct repair and maintenance of the suit premises;

- g) The payment of Tanzania Shillings of Four Hundred Sixty Four Million only (Tshs.464,000,000/) being replacement value of the building Fixture and Fittings, fixed costs and replacement value by the court;
- h) General damages to be assessed by the court; 2
- i) Interest on the decretal sum at 25% per annum from January 2020 to the date of judgement and 12% per annum, from the date of the judgement to the date of satisfaction of the judgement and decree; and
- j) Costs of the suit When this case was called on for hearing on 17th March, 2022, Mr. Frank Mwalongo, learned advocate for the Plaintiff and Mr. Makarios Tairo, learned advocate for the 2nd and 3rd defendants informed the court that, they managed to settle the matter and Deed of Settlement has already filed in this court. As to the 1st defendant the suit was withdrawn with leave to refile in the future if need arises. 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 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 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 Rule 3 of Order XXIII of the Civil Procedure Code [Cap 33 R.E. 2019] was succinctly defined by Nulla, the Civil Procedure Act, 1908 (14th edition) on page 1828, who stated that as here below:- "The rule gives a mandate to the court to record a lawful adjustment or compromise and pass a decree in terms of such compromise or adjustment. Such consent decree is not appealable ... when the agreement relates to the 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." 4 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 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, therefore, by a Deed of Settlement duly executed by the parties in this case and filed in this court, this court hereby record this suit to be settled out of court in the terms and conditions as agreed in the Deed of Settlement under Order XXIII Rule 3 of the Civil Procedure Code [Cap 33 R. E. 2019] filed in this court on 16th day of March, 2022 and a decree shall be issued accordingly. It is so ordered.

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ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/182459/source_file/canocity-limited-v-sky-developers-limited-2-others-2022-tzhccomd-47-17-march-2022.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/conacity-limited-BreachofLease-tzhccomd-2022--6a3ea52c3b1caa9129825292

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