

TANZANIA / JUDGMENT

evance mbinga vs abelnego shadrack ngoloka 4 others 2023 tzhc 15953 10 march 2023

COURT
TZHCDECIDED
10 March 2023

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IN THE HIGH COURT OF TANZANIA MTWARA DISTRICT REGISTRY AT MTWARA CIVIL CASE NO.10 OF 2021 EVANCE MBINGA..... PLAINTIFF VERSUS ABELNEGO SHADRACK NGOLOKA.....1st DEFENDANT TANZANIA PORTS AUTHORITY.....2nd DEFENDANT THE HON. ATTORNEY GENERAL.....3RD DEFENDANT MAYFAIR INSURANCE COMPANY TANZANIA LIMITED.....4th DEFENDANT CRJE (EAST AFRICA) LIMITED.....5th DEFENDANT CONSENT JUDGEMENT (DEED OF SETTLEMENT) (Made under s.95 read together with Order XXIII Rule 3 of the Civil Procedure Code Cap. 33 R.E. 2019) 26/1/2023 & 10/3/2023 LALTAIKA, J. The plaintiff, EVANCE MBINGA, on 16/12/2021 filed this suit against the defendants and claimed the following reliefs as reproduced herein below:

- (a) Payment of specific damages at the tune of Tshs. 2,300,000/= being value of the fatally damaged motorcycle.
- (b) Payment of compensation of Tshs. 36,700,000/= being compensation due to loss of motorcycle business rider alias boda boda as a result of the serious body injuries caused to the Plaintiff.
- (c) Tshs.716,000/= being treatment expenses.
- (d) Tshs. 74,000/= being transport expenses to and from St. Wai burg's Hospital Nyangao.
- (e) Tshs. 300,000/= being Advocates fees for demand notice.
- (f) Tshs. 600,000/= being expenses for meal at St. Walburg's Hospital Nyangao Mtwara.
- (g) Payment of general damages as this Honourable Court may deem fit preferably not less than Tshs.30,000,000/= for the bodily injuries caused to the Plaintiff.
- (h) Interest at Court rate of 12% per annum on item (a.) (b) (c)
- (d) (e) and (f) above from the date cause of action arose 2019 to the date of judgment.

- (i) Interest at commercial rate of 21% on item (a) (b) (c) .(d) (e) and (f) above from the date of judgment to the date of full payment.
- (j) Costs of this suit.
- (k) Any further orders and relief(s) as the Court may deem fit and just to grant. Page 2 of5 After completion of pleadings, the suit proceeded to the stage of mediation of which I was appointed to be the mediator. During mediation parties showed interest to settle the dispute and agreed to file the Deed of Settlement. I take this opportunity to commend learned counsel for both sides Mr. Robert Dadaya for the Plaintiff and Masunga Kamihanda, State Attorney for their assistance in the mediation process. On 27/01/2023 they lodged in this court a Deed of Settlement. Consequently, the learned counsels have implored this court to record the Deed of Settlement as part of the Decree of the court. Having thoroughly studied the filed Deed of Settlement, I am fortified that it confirms with the requirements of the law (O.XXIII Rule 3 of the Civil Procedure Code [Cap. 33 R.E. 2019]). Consequently, I proceed to adopt the terms and conditions of the registered Deed of Settlement to form part and parcel of this consent judgment as appearing herein below:-
 - 1. That, upon negotiation, the 4th defendant (insurer) for and on behalf of the car owner with registration No. DEPA 7110 Make Toyota Hilux Pick Up and other defendants has agreed to pay the plaintiff the total sum of Tshs 6,000,000/- (Six Million Tanzania Shillings Only) as full and final amount
 - 2. That, the plaintiff and the 4th Defendant agree that, the money payable to the plaintiff shall be paid directly to the plaintiff's Advocate's Official bank account depicting the following particulars: Account Name: RD LAW CHAMBERS Account Number: 0150371284500 Bank Name: CRDB Bank PLC Branch: Mtwara Page 3 of 5
 - 3. That, the plaintiff and the 4th Defendant have also agreed that, if the 4th Defendant defaults to pay the monies as per the terms and conditions as agreed upon in this agreement within a period of 14 days from the date of signing this deed, the plaintiff shall proceed to undertake execution of the decree as shall be drawn by the Court.
 - 4. That, the plaintiff do hereby release and discharge the said defendants and insurer or their employees/assigns or his driver/his assigns of all claims arising of the said accident and the plaintiff will have no further claims of any nature arising from the accident whatsoever against any of the parties above mentioned upon signing this settlement and registering the same to this court.
 - 5. That, each party shall bear his/her own costs that have been incurred towards instituting, prosecuting and defending this case.
 - 6. That, the terms and conditions of this Deed of Settlement which shall take from the date it is signed by both parties herein, shall be binding upon them accordingly.

7. That, upon execution of this deed of settlement, the dispute shall be marked as conclusively determined.
8. That, this deed of settlement shall be filed in the High Court of Tanzania at Mtwara District Registry and shall be marked as the Decree of the said Court.
9. That, upon successful completion or fulfillment or performance of the terms and conditions set forth herein, the parties shall revert to their original positions that prevailed prior to the institution of the case. Therefore, I hereby declare that the executed Deed of Settlement effective from the date when it was lodged in this court, that is, on 27/1/2023, binds all parties herein and to the subsequent applications or suits arising from the same cause of action. In the light of the above, this court do hereby invoke powers under section 95 and Order XXIII Rule 3 of the Civil Procedure Code [Cap. 33 R.E. Page 4 of 5 2019], to mark Civil Case No. 10 of 2021 amicably settled. More so, the Terms and Conditions contained in the executed Deed of Settlement as summarized herein above, adopted hereto, forming part of this Court Judgment and Court Decree. It is so ordered. E.I. LALTAIKA JUDGE 10.03.2023
Court: Judgement delivered this 10th day of March 2023 in the presence of Mr. Masunga Kamihanda, State Attorney counsel for the Respondents also holding brief for Mr. Robert Dadaya, learned counsel for the Plaintiff. E.I. LALTAIKA JUDGE 10.03.2023 Page 5 of 5

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CASE PAGE <https://chat.esheria.ai/case-law/tanzania/evance-mbinga-settlement-tzhc-2023>

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