

TANZANIA / JUDGMENT

HABIB AFRICAN BANK LTD VS A

COURT
TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF TANZANIA COMMERCIAL DIVISION AT PAR ES SALAAM
COMMERCIAL CASE NO. 5691 OF 2024 HABIB AFRICAN BANK
LIMITED..... PLAINTIFF VERSUS A.A. TRANS
LIMITED..... 1st DEFENDANT AKBER BASHIR
VERSI..... 2nd DEFENDANT AKBER BASHIR VERSI, T/A ASANTE
PHARMACY..... 3rd DEFENDANT
CONSENT JUDGMENT Date
of Last Order: 12/07/2024 Date of Judgment: 26/07/2024 AGATHO, J.: This judgement emanates
from a deed of settlement dully signed by the parties on 27th June 2024 and filed in this court on
2nd July 2024. The Plaintiff is a registered company under the Companies Act No. 12 of 2002 R.E.
2002 and licensed under the Banking and Financial Institutions Act 2006 to carry out banking
business, and the 1st defendant is registered company under the Companies Act No. 12 of 2002
R.E. 2002, 2nd and 3rd Defendants are guarantors. The Plaintiff, Habib African Bank Limited by
way of plaint instituted this suit against the Defendants praying for judgment and decree for the
following reliefs:

- a) Declaration that the payment of TZS 212,488,618.23/= being the outstanding amount, due, or owed to the plaintiff by the 1st i Defendant jointly and severally with the 2nd and the 3rd Defendant as guarantors,
- b) An order that the Defendants pay the Plaintiff interest on the sum that will be adjudicated as a specific and general damages as which sought in prayers (a) above at the commercial lending rate prevailing in commercial banks from the date of filing of this suit to the date judgement is pronounced by this Honourable court,
- c) An order that the Defendants pay the Plaintiff interest on the decretal sums at the court rate of 12% from the date the judgement is pronounced until full and final satisfaction of the decree by the Defendant.
- d) An order that the Defendants pay the Plaintiff the costs of this suit and
- e) Any other relief this Honourable Court may deem just and equitable to grant to the Plaintiff. On 28th June 2024, when the matter came for necessary order, the parties informed the court that they had reached an amicable settlement, and they will file Deed of Settlement. The said deed of settlement has now been filed in the court and the parties are praying that

the court be pleased to mark the matter settled and proceed to issue consent judgment and decree under Order XXIII Rule 3 of the Civil Procedure Code [Capp 33 R.E. 2019]. I have gone through the Deed of Settlement filed in court on 2nd July 2024, and in terms of Order XXIII Rule 3 of the Civil Procedure Code [Capp 33 R.E. 2019] and Rule 2(2) of the High Court (Commercial Division) Procedure Rules, 2012 as amended in 2019 I am satisfied that, the same was mutually consented. In 2 the view of above, the Deed of Settlement is hereby recorded and adopted to form part of consent judgement as prayed by the parties on the following

orders:

1. That, since the Loan facility was of the 1st Defendant, then the 1st Defendant takes the whole liability to repay the same.
2. That, the 1st Defendant shall pay to the Plaintiff TZS 224,474,618 out of TZS 232,488,618.23 hereinafter called the "Settlement Sum" in equal Monthly installment within the period of 58 Months. This is after deducting an amount of TZS 8,004,000/= which was paid through funds of the Deceased Father of the Directors of the 1st Defendant.
3. The 1st Defendants to pay TZS 5,000,000/= being 50% of an amount used to file the suit.
4. The 1st Defendant to pay TZS 5,000,000/= being 50% of an amount used to pay Advocate of the Plaintiff.
5. That, the 1st Defendant shall pay to the Plaintiff Tanzania Shillings Four Million (TZS 4,000,000/=) every month from the date of signing this agreement without failure.
6. The first installment shall be paid effectively within 7 days after signing of this agreement to settle.
7. That, 1st Defendant to bear costs of this settlement deed.
8. That the parties mutually agree that the 3rd Defendant shall be withdrawn from this case as such she shall not be part of this settlement, the consent judgment will be for the 1st and 2nd 3 Defendants only.
9. That the Honourable Court shall record this settlement between the parties as Consent Judgement and issue a Decree.
10. That upon failure of the 1st Defendant to pay the Plaintiff as agreed in herein on monthly instalment as agreed the amount of TZS 4,000,000/= per month for 58 months amounting to TZS 224,474,618 the Plaintiff shall proceed to execute the Decree granted by this Honourable Court and this settlement shall be marked as failed.
11. That, the parties herein agree that securities or collaterals kept with the Plaintiff shall not be released until such time the liability/ outstanding loan as defined in the settlement agreement is fully adjusted, paid, liquidated. Securities / Collateral by Bank to be kept

12. The Registered Mortgage over Certificate of Title (Subtitle) No: 100419/25,160/3717 Shares, Land Office No: 168366, Plot no: 2500/149, Flat No: 10, Third Floor, Central Area, Dar es Salaam. City In the name of Asgher Bashir Versi. Securities / Collateral by Bank to be kept
13. Original Certificate of Title bearing No: 100419/7/41, Land office No: 168366, Plot no: 2500/149, Central area, D'Salaam in the name of Akber Bashir Versi and Akber Bashir Versi as guardian of Sabira Akber Versi & Shaina Akber Versi.
14. Chattel mortgage over the following vehicles to be kept 4
 - a. Scania Tractor !(2007) Reg. no: T246 CPS, Engine no: 6350583, Chassis no: 5186317, registered in Tanzania on 18.Q9.2013, costing US\$ 50,000.0.
 - b. Scania Tractor (2007) Reg. no: T353CPM, Engine no: 6348406, Chassis no: 5184923, registered in Tanzania on 18.09.2013, costing US\$ 50,000.0.
 - c. Scania Tractor (2007) Reg. no: T362CPM, Engine no: 6359990, Chassis no: 5191995, registered in Tanzania on 18.09.2013, costing US\$ 50,000.0.
 - d. Scania Tractor (2007) Reg. no: T966CPL, Engine no: 6350887, Chassis no: 5186486, registered in Tanzania on 18.09.2013, costing US\$ 50,000.0.
 - e. Scania Tractor (2007) Reg. no: T186CPS, Engine no: 6348377, Chassis no: 5184907, registered in Tanzania on 18.09.2013, costing US\$ 50,000.0. In lieu of the above, and as per Order XXIII Rule 3 of the Civil Procedure Code [Capp 33 R.E. 2019], the present suit 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 2nd July, 2024. Therefore, the said terms of the deed of settlement are now recorded as judgment and decree of the court It is so ordered. DATED at Dar es salaam this 26th Day of July 2024. JUDGE 26/07/2022 5

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Prepared on 14 October 2026 · Esheria