

TANZANIA / JUDGMENT

kigenda imam salim vs avic coast land development t ltd 2024 tzhccomd 9 16 february 2024

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TZHCCOMDDECIDED
16 February 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT
PAR ES SALAAM COMMERCIAL CASE NO. 44 OF 2023 KIGENDA IMAM
SALIM..... PLAINTIFF VERSUS AVIC COAST LAND DEVELOPMENT (T)
LIMITED.... DEFENDANT CONSENT JUDGEMENT Date of last order: 05.02.2024 Date
of Judgement: 16.02.2024 AGATHO, J.: This consent judgement emanates from deed of settlement
duly signed by the Defendant and Plaintiff presented for filing in this court on 8th December,
2023. The Plaintiff, KIGENDA IMAM SALIM, on 18th April, 2023 filed the instant suit praying for
Judgment and Decree against the above-named Defendant on the following orders:

- a) A declaration that the Defendant has breached the terms of the contract by failing to refund the advance paid by the Plaintiff in purchase of the house; i
- b) Specific payment of USD 41, 000/= (United States Dollars Forty One Thousand) being the refund of the Plaintiff's money for the purchase price under the contract;
- c) Interest on item (b) above at the rate of 15% per annum from the date of 30th June 2022 until the date of judgment;
- d) Interest on above items at the court's rate of 7% from the date of judgment/decreed until final payment;
- e) General damages for breach of contract and the plaintiff's suffering out of the Defendant's behaviour as shall be assessed by this Honourable court;
- f) Costs of the suit be borne by the Defendant; and
- g) Any other relief(s) that this Honourable court may deem fit and just to grant. That in terms of the background, on 15th day of June, 2022 the Plaintiff entered into a Sale Agreement with the Defendant for purchase of a House known as Unit/House No. 052 - B, Zone-01 situated at Plot No. 265, Block A, Amani Gomvu, Minondo Somanginga (AVIC TOWN) in Kigamboni Municipality within Dar es salaam Region for a total agreed consideration of USD 112,827.35 (United States Dollars One Hundred Twelve Thousand Eight Hundred Twenty- Seven and 2

Thirty-Five Hundredth) plus Value Added Tax (VAT). That the Plaintiff filed a Complaint to claim against the Defendant for a refund of USD 41,000 (United States Dollars Forty One Thousand) being the advance payment of the purchase price under the contract plus interest and general damages thereto. That the Defendant to that effect filed a Written Statement of Defense and Counterclaim defending his side against the claims made by the Plaintiff and he further he made a counter claim amounting to USS 75,237.98 (United States Dollars Seventy Five Thousand Two Hundred Thirty Seven and Ninety Eight Cents). That both Parties went through all the Court procedure until the expiration of the Mediation period pursuant to the Court Proceedings Rules and thereafter reached a consensus to settle the matter amicably. Therefore, on 05/02/2024 the court noted that the parties have filed deed of settlement. When this case was set for filing of witness statement following the final pretrial conference before commencement of hearing on 9th November, 2023. It means the parties have successfully reached an amicable settlement of their dispute. The parties prayed that the deed of settlement be recorded as a decree of the Court capable of being executed in accordance with the laws of the land. The court has gone through the deed of settlement dated 8th December, 2023 and in terms of Order XXIII Rule 3 of the Civil Procedure Code and Rule 2 (2) of the High Court (Commercial Division) Procedure Rules, 2012 as amended in 2019, it is satisfied that the same was mutually consented. In the view of the above, the deed of settlement is hereby recorded and adopted to form part of consent judgment as prayed by the parties on the following orders:

1. That the Plaintiff has initially paid or deposited USD 41,000 (United States Dollars Forty One Thousand) to the Defendants Account as part of purchase price.
2. That the Defendant shall out of USD 41,000 (United States Dollars Forty One Thousand), retain USD 11,282.70 (United States Dollars Eleven Thousand Two Hundred Eighty Two and Seventy cents) which is equivalent to 10% of the Purchase Price of the Sale Agreement (USD 112,827.35) being the defaulting penalty for terminating the Contract. That the retained amount should be offset from the amount paid by the Plaintiff as referred to paragraph 1 herein above. 4
3. That the remaining balance of USD 29,717.30 (United States Dollars Twenty Nine Thousand Seven Hundred Seventeen and Thirty Cents Only) be refunded to the Plaintiff's account.
4. That the refund referred in paragraph 3 herein above shall be made by the Defendant to the Plaintiffs account within the period of six (6) months from the date of filing the Deed before the Court in the following installments;
 - i. Two weeks (14 days) after filing this Deed before the Court the Defendant shall deposit the amount of USD 3,500 (United States Dollars Three Thousand Five Hundred) to the Plaintiffs account.
 - ii. One Month after the first installment (i.e. by 31st January,

- 2024) the Defendant shall deposit the amount of USD 3,500 (United States Dollars Three Thousand Five Hundred) to the Plaintiffs account. iii. One Months after the Second installment (i.e. by 29th February, 2024) the Defendant shall deposit the amount of USD 4500 (United States Dollars Four Thousand Five 5 Hundred) to the Plaintiff's account. iv. One Months after the Third installment (i.e. by 31st March,
- 2024) the Defendant shall deposit the amount of USD 5000 (United States Dollars Five Thousand) to the Plaintiff account.
- v. One Months after the Fourth installment (i.e. by 30th April,
- 2024) the Defendant shall deposit the amount of USD 6500 (United States Dollars Six Thousand Five Hundred) to the Plaintiffs account. vi. One Months after the Fifth installment (say 31st May, 2024) the Defendant shall deposit the amount of USD 6,717.30 (United States Dollars Six Thousand Seven Hundred Seventeen and Three Tenths) to the Plaintiff account.
5. That the said the refund referred in 3 herein above may be made in any reasonable currency either United States Dollars or Tanzania Shillings with the condition of the prevailing exchange rate of Bank of Tanzania on the date of payment as stated herein above. 6
6. That payments shall be paid to the Plaintiff's account through the following Bank Account; Account Name: KIGENDA IMAM SALIM Bank Name: STANBIC BANK (T) LIMITED Branch Name: CENTRE BRANCH (1011) Account Number: 9120002563353 SWIFT/CODE: SBICTZTX
7. That, all costs of transmitting the monies into the said account shall be borne by the Defendant.
8. That, subject to the provision of Clause 2 above, upon payment of the agreed sum in accordance with this Deed of settlement, the Plaintiff and the Defendant mutually agree and covenant to have no other or further claims against each other arising out of or connected with the claim forming the basis of the Pre-Sale Agreement and the Sale Agreement that were executed by both Parties.
9. That, the Parties hereto agree to abide to the terms and conditions of this Deed of Settlement. 7
10. That, the Defendant agrees to forego all other claims and application before any court in connection to this matter with a view of attaining amicable settlement.
11. That, the Parties agree to use reasonable efforts to keep and maintain the confidentiality of any information in respect of this Deed of Settlement whether Oral, written or in any form whatsoever.

12. That all what has been agreed upon this Deed shall be construed as the matter of settlement and it is a proviso that, in case of default by the Defendant to heed the conditions set under this Deed, the Plaintiff may have right to revert to the original standing claimed amount as stipulated under paragraph 2(f) hereinabove together with any interests and costs that shall be accrued thereafter.
13. That, this Deed of Settlement shall be governed and construed in accordance with the provisions of the laws of Tanzania.
14. That this Deed shall be filed in the Court and the Honourable Court shall be asked to record it as its final decision over the disputes 8 between the Parties and mark the final settled of the case and thereafter shall have the effect as a decree duly passed by the court.
15. Each party shall bear its costs of the suit. By this consent decision, therefore, this court hereby declare that parties hereabove have resolved their dispute and this suit is marked settled on the compromise of the parties, as evidenced by the terms agreed under the said deed of settlement. For the reasons aforesaid the deed of settlement signed by the parties and filed in this court constitutes the judgment and decree of this court. Order accordingly. DATED at DAR ES SALAAM this 16th Day of February 2024. 9 Date: 16/02/2024 Coram: Hon. U. J. Agatho, J. For Plaintiff: Roman Masumbuko and Nobert Tarimo, Advocates For Defendant: George Palangyo, Advocate B/Clerk: E. Mkwizu Court: Judgment delivered today, this 16th February 2024 in the presence of Roman Masumbuko and Nobert Tarimo, counsel for the Plaintiff, and George Palangyo, advocate for the Defendant. U. J. AGATHO JUDGE 16/02/2024 io

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