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ACQUISITION The cement manufacturer on November 22 executed a transaction at the DSE involving 43,504,403 shares valued at Sh106.34 billion

Why Tanga Cement takeover deal looks done and dusted

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Dar es Salaam. The Tanga Cement acquisition deal has gone a step further after 43.5 million shares changed hands in a block trading arrangement at the Dar es Salaam Stock Exchange (DSE).

The cement manufacturer on November 22 executed a transaction involving 43,504,403 shares valued at Sh106.34 billion.

This shows that the ongoing merger between Tanga Cement and Scancem International DA (Scancem) is well on track after being at the centre of protracted legal tussles.

Tanga Cement managing director Reinhardt Swart confirmed to *The Citizen* yesterday that the sale was indeed meant to transfer shares from AfriSam Mauritius Investment Holdings Limited, which owns Tanga Cement.

"Yes, that was the actual sale where the shares were transferred from AfriSam to Scancem," he said in a message delivered through Tanga Cement marketing and communications manager Mtanga Noor.

The transaction aligns with the initial acquisition proposition, where Scancem, a subsidiary of Heidelberg Cement AG, which owns another cement manufacturer, Tanzania Portland Cement Plc (Twiga Cement), acquired a 68.33 percent stake in Tanga Cement.

Mr Ahmed Nganya, capital markets manager with the brokerage firm Vertex International Securities, said the Sh106.34 billion transaction at the DSE marked the culmination of the acquisition deal and described it as the first stage of the entire transaction.

"Absolutely, that was the culmination of the acquisition deal between Heidelberg Cement (the acquirer) – which owns a controlling stake in Twiga Cement – and Tanga Cement (the target) via AfriSam Mauritius Investment Holdings Limited, (owner of Tanga Cement)," he said.

The deal, Mr Nganya added, was the first stage of the entire transaction, where the former is expected to complete the second and last stage through buying the remaining shares from other shareholders.

"The acquisition will probably be finalised early next year," said Mr Nganya.

The recent stock deal comes after legal complexities in the acquisition of regulatory approvals.

The Tanga Cement acquisition deal dates back to 2021 when Scancem and AfriSam Mauritius Investment Holdings Limited, owner of Tanga Cement, agreed for the former to acquire a 68.33 percent stake in Tanga Cement.

The Fair Competition Commission (FCC) had given a green light to the acquisition but on condition that the acquiring firm should bind itself that it shall not shut down the operations for Tanga Cement; that it shall continue to produce and promote the Simba Cement (Tanga Cement) brand and that it [Scancem International DA] would be barred from laying off existing employees for Tanga Cement Plc.

But Chalinze Cement Company Limited and the Tanzania Consumer Advocacy Society (TCAS) lodged an appeal with the Fair Competition Tribunal (FCT), which quashed the planned merger through its verdict delivered on September 23, 2022.

The FCT quashed the planned merger on the argument that it would create a position of market dominance by the merging firms in the post-merger scenario.

The value in shillings of shares that changed hands in block trading at the Dar es Salaam Stock Exchange last week

106bn

But in an interesting turn of events, two months after the merger was quashed, the FCC admitted a fresh application for the same deal which it later re-approved on February 28, 2023.

This did not only attract debate in and outside the Parliament but it also witnessed a number of manoeuvres for and against the deal.

Ultimately, Chalinze Cement was deregistered by the Business Registration and Licensing Agency (Brela).

As such, FCT members delivered dissenting judgments when Chalinze's appeal against the new merger came up for judgment on July 6, 2023.

Two members (Dr Godwin Wanga and Dr Onesmo Kyauke) struck out the appeal by Chalinze Cement on the ground that the appeal was incompetent because it had been lodged by a non-existing entity.

On the other hand however, the FCT chairperson, Judge Salma Maghimbi, differed with her two colleagues and she instead delivered her dissenting judgement in which she once again nullified a decision by the FCC to approve the merger.

But seeking to bring clarity to the conflicting decisions, all the three FCT members quashed the merger approval last month (October) as lodged by one Peter Hellar.

After a protracted legal battle, the three FCT-member bench ruled: "We find it necessary that we rectify the mischief that is prevailing in our market by having two conflicting decision of the same merger.....we find it necessary and we hereby nullify the decision of the 1st Respondent (FCC) dated February 28, 2023 in Merger Application No CBC. 127/359/144," reads the October 16, 2023 ruling by Judge Salma Maghimbi (the FCT chairperson), Dr Onesmo Kyauke (member) and Dr Godwill Wanga (member).

As part of its *obiter dictum* (a passage in a judicial opinion which is not necessary for the decision of the case before the court), the quasi-judicial FCT proposed a one-year timeline for firms to submit fresh notification following a previously prohibited merger.

The conditions included demonstrating a substantial change in circumstances or market dynamics and waiting for the lapse of a reasonable time.

"Having the above in mind, the Tribunal is setting a one-year duration as a reasonable period of time for a firm to make a fresh notification of a previously prohibited merger, noting however that with no clear guidelines on the same in Tanzania, the Tribunal was not blaming the respondents for lodging a fresh merger notification before the expiry of one year after the prohibited proposed merger," reads the October 16, 2023 ruling.