

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
COMMERCIAL DIVISION
AT DAR ES SALAAM
MISCELLANEOUS COMMERCIAL CAUSE NO. 2751 OF 2023
AND
IN THE MATTER OF ARBITRATION
AND
IN THE MATTER OF THE ARBITRATION ACT, CAP 15 R.E. 2020
BETWEEN
PLANETEL COMMUNICATION LTD..... APPLICANT
VERSUS
VODACOM TANZANIA PUBLIC LTD..... RESPONDENT

RULING

March 26th & April 25th, 2024

Morris, J

The applicant above emerged the victor in arbitration proceedings between the parties above. The final award was handed down by the arbitrators on September 15th, 2023. He is now moving this Court to register it. His move, however, meets the respondent's preliminary rebuff. The latter has filed a preliminary point of objection (PO) contending that the application has been filed out of time. The Court is, thus, being moved to make its determination on whether or not the application has been preferred timely according to the law.



During hearing of the PO, parties were represented by a pair of advocates each. Messrs. Hamza Jabir and Hosea Chamba appeared for the applicant. However, Mr. Gaspar Nyika and Ms. Faiza Salah had the respondent to represent. In favour of the PO, it was submitted that the application has been filed out of time in view of item 21 of the schedule in ***the Law of Limitation Act***, Cap 89 RE 2019 (***LLA***). To the respondent, time set for commencement of these proceedings is sixty (60) days from the day the award is rendered. It was argued further that the award for which registration is being sought by the applicant was rendered on September 15th, 2023 but it was electronically filed on December 7th, 2023 at 11:50:49 hours. Moreover, the respondent submitted that the award should have been filed at least mid-November 2023.

The respondent referred to ***Tanzania Cotton Marketing Board v. Cogecot Cotton Company SA***; Civ. Appeal No. 60 of 1998 (unreported, at page 3 para2) to support his argument that as ***the Arbitration Act***, Cap 15 R.E. 2020 (***the AA***) does not provide for the period of limitation resort should be made to item 21 of ***the LLA*** schedule. Nevertheless, he appreciated existence of the Court holding to the



contrary in ***Bogeta Engineering Ltd v Nanyumbu District Council***, Misc. Comm. Cause No. 9 of 2019 (unreported). However, he was hasty to argue that I should not follow suit because, in his view, such case was wrongly ruled by considering the time limitation under item 18 of the schedule to ***LLA*** instead of item 21 as observed above. He cited ***the Kirir Cotton Co. Ltd v. Ranchhoddas Keshavji Dewani*** [1958] EA 239; ***NBC Ltd v National Chicks Corp. Ltd***, Commer. Case No. 11 of 2014; ***Essau Asajile Makosi v. Otman Rebman Kyapokwa***, Prob. App. No. 10 of 2020 (both unreported) to influence my reluctance to rely on ***Bogeta's case*** (*supra*).

Moreover, the respondent maintained that, the arbitrator lodged the letter requesting filing of the award on November 10th, 2023; but that step alone did not complete filing until when the relevant fees were paid a week later (Nov. 17th, 2023 through receipt no. FH47698170021725). Hence, filing was completed on such date. So, the filing was complete about 2-3 days out of statutory time. To buttress his claim that electronic filing is complete when the fees is paid, he cited ***John Chuwa v Anthony Ciza*** [1992] TLR 233; ***Bakema Said Rashid v Nashon William Bidyanguze and others***, Election Ref. No.1 of 2020; and ***Maliselino B.***

Mbipi v Ostina Martnie Hyera, Misc. Civ Appl. No. 08 of 2022 (both unreported).

On his part, the applicant opposed the PO. He took note of matters not in dispute. He started by arguing that the receipt of the award by the registrar of this Court, by itself, constitutes the filing of the award; the payment of fee, notwithstanding. He was quick to refer the Court to the case of ***M/S St. Anthony Sec. School v Lukumbulu Investment Co. Ltd***, Civ. Rev. No. 388/16 of 2022 (unreported, pages 10-12) to the effect that receipt of the award by the court's registry constitutes the filing thereof. Blending such holding in the current matter, the petitioner argued that the registrar received the award on November 10th, 2023; which date establishes the filing of the award herein. Hence, the award was filed within time; be it 60 days or 6 months.

Further, the applicant submitted that, under section 88(1) of ***the AA*** parties may to arbitration proceedings may mutually agree on the periods of reckoning time. That, consequently, parties herein executed terms of reference (ToRs) on August 31st, 2022. That, under paragraph 90 of the ToRs, parties agreed that time would be counted from the date of delivery of the award to them. Thus, to him, as the award was delivered

to parties on October 2nd, 2023 (by email of Prof. Zakayo Lukumay on behalf of the Tribunal); and the award collected by the applicant the next day, 03.10.2-23); countdown of the period herein commenced on the latter date. Accordingly, both filing of the award and payment of applicable fees were done timely (be it 60 days of 6 months).

The foregoing conclusion notwithstanding, the applicant contended further that time for registering the award is per item 18 of the schedule to **LLA**; not item 21 as submitted by the opposite party's counsel. He reinforced his argument by relying on the case of **Bogeta** (*supra*, page 7); and **Acmirs Consulting Ltd v Medical Stores Dept. and another** Misc. Comm. Cause No. 32 of 2023 (unreported, pages 2-3). On the same vein, he invited the Court to distinguish **Tanzania Cotton Board** (*supra*) because it adjudicated on the erstwhile **Arbitration Ordinance** of 1957 and **Rules** thereof; and it did not interpret the applicability of items 18 and 21 of **LLA**, Cap 89 which statute was not in force then. He, finally, I prayed for the Court to overrules the PO with costs.

In rejoinder, it was briefly submitted for the respondent that the applicant's attempt to dissect item 18 does not change the scope of the subject provision which is meant for awards under **CPC** only. To him, the

letter from the Arbitrator who filed the award cited Rule 54(4) of ***the Arbitration (Rules of Procedure) Regulations***, GN 146 of 2021 (***the Regulations***) not ***CPC***. In addition, he argued that the case of ***St. Anthony' case*** (*supra*) was cited by the applicant out of context because the Court's mind was not directed towards payment of fees. Accordingly, it would be absurd if this court to rule that documents can be filed in court without payment of fees.

Regarding section 88 of ***AA*** and ToRs in reckoning of time, he submitted that the date when parties collected the award is not the date to go by as they were notified of the readiness of the award on September 15th, 2023. Any party's tardiness in collecting the same was at own risk. In conclusion, the respondent reiterated that the award was filed out of time; be it November 17th or 19th, 2023 and made the usual prayer: the application to be dismissed with costs.

From the onset, I commend the research and efforts of the learned counsel for each side in this matter. However, as I was writing this ruling, it came to my attention that the proceedings herein involve the award which was successfully challenged by the respondent in the case of ***Vodacom Tanzania Public Limited Company (formerly known as***

Vodacom Tanzania Limited) v Planetel Communication Limited,

Misc. Commercial Cause No. 64 of 2023 (unreported).

The ruling of the Court, of which I take judicial notice, was delivered by my learned brother; Hon. Mkeha, J on March 27th, 2024. The same reads, in part, that:

*"For the foregoing reasoning, having held **the award** to have been **procured** in a manner that is **contrary to public policy** and that, the same is **uncertain or ambiguous** as to its effect; I proceed to hold that, these are serious irregularities affecting the award. Pursuant to section 75 (3) (a) of the Arbitration Act Cap. 15 R.E. 2020, I **remit** the award to the arbitral tribunal in whole, **for reconsideration**. There being no fault on part of the parties, I make no order as to costs"*(bolding rendered for emphasis).

From the excerpt above, it is incontestably clear that the award intended to be filed by the applicant; whose corresponding proceedings are subject of this PO is non-existent. That is, both the pursuit of filing and PO have been overtaken by event. I proceed to strike them out for want of competence.

For avoidance of any doubts, the application is struck out for want of the valid award and the PO for want of proceedings to attack preliminarily. None of the parties earns costs. It is so ordered.



C.K.K. Morris

Judge

April 25th, 2024

Ruling delivered this 25th day of April 2024 in the presence of Advocate Gaspar Nyika for the respondent and also holding the brief of Mr. Hamza Jabir, Advocate for the applicant.

C.K.K. Morris

Judge

April 25th, 2024