

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 475 OF 2016
(From Arbitration Award by Engineer Fintan Kilowoko dated 19/12/2014)

**1. THE PERMANENT SECRETARY, MINISTRY OF
FINANCE AND ECONOMIC AFFAIRS 1ST APPLICANT**
2. THE ATTORNEY GENERAL 2ND APPLICANT

VERSUS

M/S HERKIN BUILDERS LIMITED RESPONDENT

Date of Last Order: 24/11/2016

Date of Ruling: 16/12/2016

RULING

FELESHI, J.

This ruling originates from an application by way of Chamber Summons under section 14(1) of the Law of Limitation Act, [CAP. 89 R.E, 2002] and section 95 of the Civil Procedure Code, [CAP. 33 R.E, 2002] for extension of time within which to file a Petition out of time for setting aside an arbitral award amounting to Tshs. 3,219,300,000/= dated 19/12/2014. The Chamber Summons was supported by an affidavit sworn by one Gabriel Pascal Malata, Principal State Attorney.

In his affidavit, the deponent averred that, following a contractual dispute between the parties, a matter was referred for arbitration whereas a final award was published on 19/12/2014. Dissatisfied, the applicant preferred a petition to set aside the arbitral award in terms of Rules 5 & 6

of the Arbitration Act, [CAP. 15 R.E, 2002]. The petition was on illegalities committed regarding contract law, national policy and public interest.

On 21/06/2016, the High Court raised a point of law on wrong citation of the enabling provisions whereas on 11/07/2016, the petition was struck out for being brought under wrong provisions of the law. The above has instigated this application for extension of time to impugn the award.

Hearing of the application for extension of time was conducted orally whereas the applicants were represented by one Juma Ramadhani, learned Principal State Attorney. On the other hand, the respondent did not enter appearance for reasons undisclosed to this Court. Notably, the respondent neither filed a Counter Affidavit in reply resisting the application nor appeared during hearing of the application as observed.

The learned Principal State Attorney urged for the said affidavit to form integral part of his submission and added that, the arbitral award comprises of serious contraventions which can be impugned and set aside under section 16 of the Arbitration Act, [CAP. 15 R.E, 2002]. To back up his submission Mr. Juma cited the case of **Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia** [1992] T.L.R 182 where the Court of Appeal underscored that:-

" when the point of issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record right".

The Court of Appeal also held in **VIP Engineering and Marketing Limited and Three Others vs. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 that:-

"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged that by itself constitutes "sufficient reasons" within the meaning of rule 8 of the Rules for extending time".

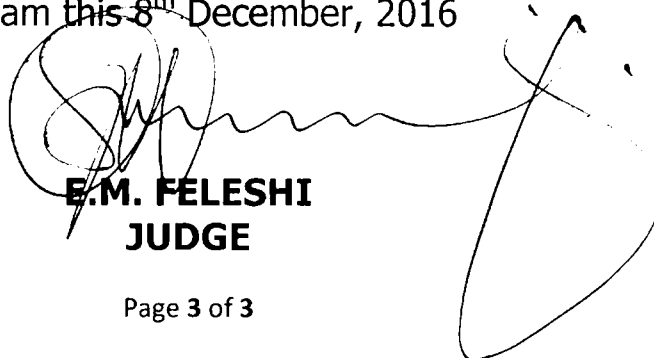
As correctly submitted by Mr. Juma learned Principal State Attorney, the issue at controversy albeit brief is on illegality of the arbitral award and the application at hand is meritorious.

Though an aggrieved party is always expected to take prompt action regarding the impugned decision which the applicant did through the struck out petition, the fact that the impugned decision is on illegality, this Court is constrained to grant the sought extension to file the petition.

In the premises, the sought prayer for extension of time is hereby granted. The Applicant is given fourteen (14) days within which to file his Petition. Since the respondent did not resist the application, this Court refrains from awarding costs of the application to the applicant.

Order accordingly.

Dated at Dar es Salaam this 8th December, 2016



E.M. FELESHI
JUDGE