

IN THE HIGH COURT OF TANZANIA

AT DODOMA

MISC. CIVIL APPLICATION NO. 29 OF 2016

*(Arising from Civil Case No. 10 of 2015, in the Matter of the
Arbitration Act Cap 15 R.E. 2002)*

SAJIMA ENTERPRISES CO. LTD.....APPLICANT

VERSUS

DODOMA MUNICIPAL COUNCILRESPONDENT

RULING

18/07/2017

&

15/08/2017

H. H. KALOMBOLA, J.:

This is a ruling following a petition which was filed by SAJIMA ENTERPRISES CO.LTD against DODOMA MUNICIPAL COUNCIL .

They pray as follows:-

- (1) Order a stay of proceedings pursuant to Section 6 of the Arbitration Act CAP 15 R.E.2002,
- (2) An order that the Respondent to pay the costs of and occasioned by this Petition, and,
- (3) Make such further Orders as this Honourable Court deems just, equitable and convenient to grant.

Mr. Mndeme submitted on the petition that the essence of this petition is that the respondent herein had instituted Civil Case No. 10/2015 against the petitioner. That the basis of the said Civil suit is found under Clause 4 of the plaint which is on agreement between them. It is their submission their agreement contains Arbitration Clause which means they are supposed to refer their disputes to arbitration. That on their part, the petitioner is willing to submit the dispute to arbitration hence this petition seeking this Court to order Stay of proceedings in Civil Case No. 10/2015. In this line they referred to this Court Commercial Case No. 365/2001 between ASHA KABANI AND OTHERS VRS AISI MAKATIANI AND OTHERS which has highlighted three conditions required before submitting oneself to arbitration. It is their submission on their part they have complied with the conditions pursuant to Clause 17 in the agreement.

Ms Sagire for the respondent conceded to the existence of Clause 17 in their agreement but said, since the petitioner failed to remit revenues to the respondent they are covered under Clause 10, not Clause 17 of their agreement. In all the dispute in Civil Case No. 10/2015 needs not to be referred to arbitration.

In rejoinder Mr. Mndeme submitted there are other paragraphs in the plaint in Civil Case No. 10/2015 which touch matters which are supposed to be submitted before arbitration.

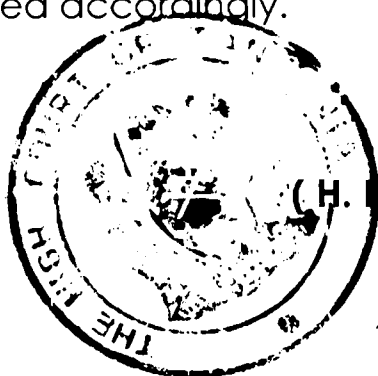
I have gone through the submissions and find out there existed agreement between the parties whereby the petitioner

herein was to collect service Levy on behalf of the respondent. That it is due to this contract that the parties have found themselves before this Court. Moreso upon the said contract both sides are at one that there is existence of Clause 17 which they inserted themselves requiring them incase of a dispute, they should submit themselves to Arbitration.

There is no evidence that this dispute was ever submitted to arbitration. Although respondent on the other hand submitted the nature of the dispute they took before the Court is not covered under Clause 17. It is the view of this Court that since they voluntarily put Clause 17 in their contract, they should submit themselves before arbitration before they run to Court.

As long as there is Clause 17 in the parties contract, I am of the considered view that this application should be granted. Accordingly, I order stay of proceedings in Civil Case No. 10/2015 pursuant to Section 6 of the Arbitration (Cap 15 R.E.2002) costs to follow the event.

Ordered accordingly.



K.H.
(H. H. KALOMBOLA)

JUDGE

15/08/2017

DATE: 15/08/2017.

Coram: Hon. Madam H.H.Kalombola,J.

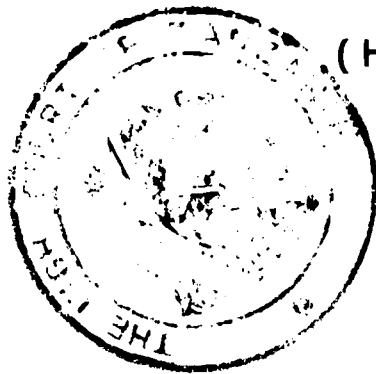
Applicant: Ms Mkama/ Mr. Biko – present.

Respondent: Ms. Kambona.

C/c: Ijinji.

COURT

Ruling read today 15th day of August 2017, in the presence of Ms Mkama/Mr. Biko for Application and Ms Kambona for the Respondent.




(H. H. KALOMBOLA)

JUDGE

15/08/2017