IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

REVISION NO. 06 OF 2019

(Originating from Miscellaneous Civil Application No. 87 of 2019)

YUKO'S ENTERPRISES (E.A) LTD ..... APPLICANT

VERSUS

REGIONAL ADMINISTRATIVE SECRETARRY
OF MWANZA REGION .....1ST RESPONDENT

THE ATTORNEY GENERAL ..... 2ND RESPONDENT

RULING

19 & 26/02/2020

RUMANYIKA, J.:

The application for review, with respect to my order of 18/2019 that removed the prematurely instituted Civil Case No. 13 of 2019 from the register is brought under Sections 95, 78(1) (a) and Order XLII of the Civil Procedure Code Cap 33 R.E. 2002.

Ms. Dorothea Method learned counsel appeared for Yuko's Enterprises (E.A) Ltd (the applicant). Mr. Lameck Merumba learned state attorney appeared for the Regional Administrative Secretary for Mwanza and the Attorney General (the 1st and 2nd respondents) respectively.

In a nutshell, Ms. Dorothea Method submitted that essentially the impugned order contravened the provisions of Section 6 of Arbitration Act Cap 15 R.E. 2002 (the Act) which, in express terms required that in all cases any prematurely filed case be stayed pending Arbitrator's findings and decision. That the case therefore shouldn't have been removed from the register. That is it.

Mr. Lameck Merumba learned state attorney resisted the application and submitted that the provisions of Section 6 of the Act were not that mandatory. That depending on circumstances of the cases whenever the court was satisfied so to do, it may make an order to stay the proceedings (case of **Shamji V. The Treasurer Registrar Ministry of Finance** (2002) 1 E.A and the case of **Construction Engineers and Builders Ltd V. Sugar Development Corporation** (1983) TLR 13.

The issue is whether the impugned order is subject to review. In no uncertain terms the provisions of Section 6 of the Act required that the court had a discretion (that needs to be exercised reasonably) to order stay of proceedings of a prematurely instituted suit (see the cases of **Shamji** (supra) and **Construction Engineers** (supra).

I think in exercise of its judicial discretion, the court is bound to consider what had the parties agreed upon. Much as it is trite law that parties are bound by terms and conditions of their contract. In their ambiguity free contract, the parties are on record having agreed:-

> "Clause 43.1 – **If any dispute arise between the employer and the service provider in connection with,** or arising out

of **the contract** or the provisions of the service, **whether during carrying out the service or after their completion, the matter shall be referred to the Adjudicator".**

It means therefore if anything, that the parties had no option other than referring their dispute to the arbitrator.

Again, also as a matter of logic, it is trite law that where there was, with respect to a matter a specialized court more so where the parties were so agreed, not only filing a matter in a different court defeated the purposes, but also such other court had no automatic jurisdiction over the matter. In other words contrary to the applicant's wishes and prayers, a court with no jurisdiction cannot have powers to order stay and retain proceedings of the case over which it lacked jurisdiction in the first place.

Now that without prejudice to the foregoing discussion parties are bound by terms and conditions of their contract and the applicant's counsel did not assign any compelling reasons why they came to court straight away, as a punitive measure the court's discretion would dictate that in line of its powers to order stay of the proceedings, the prematurely instituted suit be removed from the register. The devoid of merits application is dismissed with costs. Ordered accordingly.

THE HIGH COURT OF TANZANIA MWANZA

S. M. RUMANYIKA
JUDGE
20/02/2020

Delivered under my hand and seal of the court in chambers. This 26/02/2020 in the presence of Mr. Lameck Merumba SA.

F.H. MAHIMBALI

DEPUTY REGISTRAR

26/02/2020