

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB- REGISTRY OF MWANZA**

**AT MWANZA**

**MISC. CIVIL CAUSE NO. 8 OF 2022**

**IN THE MATTER OF ARBITRATION**

**BETWEEN**

**OJA COMPANY LIMITED ..... PETITIONER**

**AND**

**MOUNT MERU UNIVERSITY ..... RESPONDENT**

**RULING**

*6<sup>th</sup> May, & 21<sup>st</sup> July, 2023.*

**ITEMBA, J**

This Petition was filed in this Court under section 68 (1) of the Arbitration Act, Cap. 15 [R.E 2020], herein known as the Act and Rule 63 (1) a, b, c, d and e of the Arbitration (Rules of Procedure) Regulations (G.N. No.146 of 2021). The brief facts of this Petition, as gathered from the pleadings are that, on the 11<sup>th</sup> March 2014, Oja Company Limited, (the Petitioner), entered into a lease agreement of Plot No. 61, Block Q, situated at Uhuru Street, Mwanza with the Mount Meru University (the Respondent) for the term of ten years. The Agreement, among others, urged the parties to resolve their disputes through arbitration. It was then when the respondent breached the lease agreement and the petitioner opted to invoke the arbitral clause. The petitioner moved the High Court to appoint an arbitrator through Misc. Civil Application No. 129

of 2020 whereas on 11<sup>th</sup> February, 2021, Mr. Stephen Kaijage was appointed as a sole Arbitrator. According to certificate of claims, the alleged breach of contract caused the petitioner to suffer loss of income being the twenty-seven months' rent arrears. The petition was claiming for TZS. 373,666,668. (Three Hundred Seventy-Three Million, Six Hundred Sixty-Six Thousand, Six Hundred and Six Eight only).

Before the sole arbitrator, parties prayed to settle the matter amicably. On 22<sup>nd</sup> June, 2021, a consent judgment was entered with the following terms:

- 1. That, the Respondent shall pay the petitioner TZS. 300,000,000. (Three Hundred Million) within four months.*
- 2. That, the petitioner shall charge 3% penalty per month of any money that shall remained unpaid by the respondent after the lapse of four months.*
- 3. That, the respondent is at liberty to deposit any amount but not less than TZS. 2,500,000 (Two Million Five Hundred Thousand) per deposit to the petitioner account number 0150213174500 at CRBD bank with the name OMBENI. S. SWAI.*
- 4. That, the respondent is given one month from the filling of the settlement to vacate the suit premises including removing all its chattels or fixtures.*

- 5. That, the lease between the petitioner and respondent marked terminated from the date of filing the settlement at the tribunal, and*
- 6. That, each party to bear its own cost*

According to the petition, the respondent has 'half-heartedly' paid the petitioner. As a result, he has lodged this Petition seeking for the following orders or reliefs:

- 1. That, this honourable court be pleased to grant leave to enforce an arbitral award dated, 22<sup>nd</sup> June, 2021.*
- 2. That, this honourable court be pleased to enter judgment in terms of the said award, and*
- 3. Costs of this petition.*

The respondent raised a point of preliminary objection on the petition and the grounds advanced are;

- 1. That, the application is bad in law for been pegged in a non-existing law and non-existing provision of the law to wit section 68(1) of the Arbitration Act, 2020.*
- 2. That, the application is bad in law for been filed pre-maturely without obtaining leave of this honourable court which is a condition precedent.*

When the parties appeared before this court, the petitioner was under the representation of Mr. Silas John the learned counsel while Rev. Sui Isaack, a principal officer of the respondent appeared in person. An order was made to the effect that, the matter at hand shall be disposed

of by way of written submissions. Addressing the grounds for challenging the petition, the respondent, in his preliminaries, opted to start with the second ground of the preliminary objection that, the petitioner was supposed to first apply for leave upon being granted, then he could file an application for enforcement of arbitral award as per section 68(1) of the Act. In that regard, he argued that the petitioner has filed the matter prematurely because he failed to obtain leave first before lodging current application. He cited the case of **Theobald Rugambwa Vs Rugimbana Divo Rugaibura**. Misc. land application no. 20 of 2017, whereby the court struck out the application for being filed prematurely for want of leave of the High Court.

Nonetheless, the respondent labeled the application as an omnibus because it has two distinct prayers, that being the case he buttresses his submission with the case of **Albert M. Chabruma and Two Others Vs. China Railway Seventh Group Company Limited**, labour revision no. 8 of 2020. H.C at Sumbawanga, whereby the court discouraged omnibus applications.

Submitting on the first limb of preliminary objection, the respondent stated that the application is pegged in a non-existing law to wit section 68(1) of the Act. That, the provision of the law cited never came into

operation. He quoted the short title the of the Arbitration Act which provides inter alia that,

*"This act may be cited as the Arbitration Act, 2020 and shall come into operation on such date as the Minister may, by notice published in the gazette appoint"*

He added that, the Arbitration Act was revised through G.N No. 13 published on 1<sup>st</sup> January, 2021 hence it affected the entire arrangement of the Act and all the former revised editions. Basing on that, he argued that the petitioner cited a non-existing provision of the law, and this court lacks jurisdiction. He finalised his submission by citing the case of **Fabian Akonaay Vs. Matias Dawite**, Civil Application no. 11 of 2003 Court of Appeal, Arusha where the Court struck out the application as the party cited a wrong provision of the law.

Mr. John's rebuttal was equally vociferous. He began by submitting that this application is lodged under section 68(1) of the Act and regulation 63(1) a, b, c, d, and e of the GN no. 146/2021 pursuant to GN no. 101 published on 15<sup>th</sup> January, 2021 that the Minister responsible for Constitutional and Legal Affairs gave notice that on 18<sup>th</sup> January, 2021 the Arbitration Act shall come into operation. He cited the case of **Htt Infranco Limited Vs. Smile Communications Tanzania Limited**. Misc. Commercial Cause No. 15 of 2021, before Hon. Nangera J.

(Unreported) where the same provisions were relied by the court to allow the petition. He argued that, section 68(1) and (2) entails that a party has to obtain leave of the court for the award to become a judgment and decree, and the leave issued in arbitration matters is different from other types of leave issued by the court. The counsel disregarded the submission that this application is omnibus because it did not feature in the notice of preliminary objection. However, citing the case of **Rutunda Masole Vs. Makufuli Motors Limited**, Misc. labour application no. 79 of 2019, he stated that, generally, the application cannot be omnibus if prayers therein do not oppose each other.

Starting with the 2<sup>nd</sup> point of preliminary objection, I wish to state at the outset that it lacks merits because Part IX of the Arbitration Act entails the power of the court in relation to awards and section 68 that;

*1) An award made by the arbitral tribunal pursuant to an arbitration agreement may, **by leave of the court, be enforced in the same manner as a judgment or order of the court.***

*2) Where leave of the court is given, judgment may be entered in terms of an award.*

*3) Save as otherwise provided, leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that **the arbitral***

***tribunal lacked substantive jurisdiction to make the award. (emphasis supplied)***

Looking at the petition, the 1<sup>st</sup> prayer made in item 4(a) reads: '*That, this honourable court be pleased to grant leave to enforce an arbitral award dated, 22<sup>nd</sup> June, 2021*'. Therefore, without using many words, it can not be said that the petition is filed prematurely because one of the prayers on the petition is an application for leave. The respondent might be implying that the application for leave should have been brought earlier before the petition for enforcement of the award but that does not seem to be a legal requirement. Therefore, the second limb of objection fails.

In respect of the first objection, briefly, as rightly stated by the petitioner's counsel, the cited laws exist as they are from the Arbitration Act 2020. The 1<sup>st</sup> limb of objection also fails.

Having sorted the objections, the issue is whether this court can grant leave for the petition and whether it can enter judgment in terms of section 68 of the Arbitration Act.

Under section 68 of the Arbitration Act this court is empowered to enforce the award by Arbitration Tribunal. The only limitation made for granting leave is if the arbitral tribunal lacks jurisdiction. If there is not such objection, the court will grant leave and enter judgment. I have

gone through the arbitral award and parties' pleadings. I find that, the Arbitral Tribunal had jurisdiction to make an award.

Further, the respondent is not opposing the enforcement of the award save for costs. I am content that this petition is in order and it hereby granted.


In the finality, and considering that the respondent is not opposing the petition, this court hereby orders as follows:

1. In terms of section 68(1) of the Arbitration Act, 2020, leave of the court is granted to the petitioner to enforce the Arbitral Award issued on 22<sup>nd</sup> June 2021 by S.M Kaijage sole arbitrator in the same manner as a judgment or order of this court.
2. That, the said Arbitral Award issued on 22<sup>nd</sup> June 2021 by S.M Kaijage, sole arbitrator, is hereby adopted and entered as the Judgment of this court.
3. Each party to bear its own costs.

It is so ordered.

DATED at **MWANZA** this 21<sup>st</sup> day of July, 2023.



  
**L.J. ITEMBA**  
**JUDGE**