

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

MISC COMMERCIAL APPLICATION NO 84 OF 2015
AND
IN THE MATTER OF ARBITRATION ACT CAP 15 OF THE LAW OF TANZANIA
AND
IN THE MATTER OF ARBITRATION

BETWEEN

THE PERMANENT SECRETARY MINISTRY OF
WATER AND IRRIGATION -----PETITIONER
AND
MEGA BUILDERS LTD-----RESPONDENT

RULING

Date of the last order 8/7/2015
Date of the Ruling 6/10/2015

SONGORO, J

I have before me, a Petition instituted by the Permanent Secretary, Ministry of Water and Irrigation, the Petitioner to challenge Arbitration Award filed in court by Q.S Evans Wapalila, the Arbitrator, on a dispute which the Petitioner and Mega Builders Ltd, Respondent were involved.

In the said dispute, the Petitioner contracted Respondent to undertake construction of works on Chalinze Water Supply Project Phase II, Package F, and H and the duration of the Contract was 18 months. The costs of the two contracts were shs 999,715,400 and shs 10,297, 382, 800/= respectively.

It is the cause of execution of two Contracts, the dispute aroused between Petitioner and Respondent aroused. Subsequently, on the 19/2/2013, Respondent's contracts were terminated on the grounds that, he failed to rectify defects on his works, and he delayed to complete construction works as per schedule.

The dispute was referred to sole Arbitrator, Mr Wapalila by the National Construction Council, who conducted Arbitration and ultimately made and filed an Award which was in favour of the Respondent. The Award is pending in court for enforcement.

In response Award which was filed in Court, the Petitioner led by Hon Attorney General instituted the instant petition, claiming that, they were not satisfied with the decision of the Arbitrator in the Award on grounds that, it was improperly secured, and there were several irregularities. Respondent firmly prayed to court for nullification of the whole of the Arbitration Process, including the Award on the grounds that;

1. *The Award was improperly procured because the Arbitrator did not have jurisdiction to entertain the matter, and the parties did not agree to submit to arbitration on matters of termination.*
2. *That, the award was improperly procured because the Arbitrator purported to enforce the decision of adjudicator contrary to what parties agreed upon.*
3. *That, the award was improperly procured for failure to comply with the law of the land.*
4. *That, the Arbitrator misconducted himself for violating the terms and condition of the Agreement.*

5. *That, the Arbitrator misconducted himself for failure take into consideration the decision of the Adjudicator which is final, conclusive and binding to the Parties thereto after none of the same parties challenged it to the Arbitrator.*
6. *That, the Arbitrator misconduct himself for failure to take into account both the assessment of appropriate price if pump in question by the consultant Engineer and the amount payable to the claimant as assessed by the Consultant Engineer as it was directed in the decision of the Adjudicator, the decision which is final , conclusive and binding to the parties thereto.*
7. *That, the Arbitrator misconducted himself when he failed to give opportunity to the Petitioner to be heard on the Bill of costs*

In the light of the above-mentioned grounds which were set out in the petition, the Petitioner pressed for a court order to nullify the Award with costs in his favour.

In response to the Petition, Respondent opposed the Petition and straight pointed out that, the Petition is misleading because the Arbitration was properly conducted and the Respondent and the Attorney General fully participated in the Arbitration. Respondent maintained that, there is no ground for faulting the Arbitrator and the Award. He then insisted that, the Petition has no merit, and prayed for its dismissal with costs for lack of merit.

Thus on the 10/6/2015, when the Petition was due for hearing both parties applied to the Court to pursue, the Petition by a way of written submission. So with the leave of the court, the parties filed their written submissions as per the Court Order.

Relying on the grounds set out on the Petition, the Petitioner led by Attorney General, first pointed out that, the dispute which was referred to Arbitration was on termination of contracts. However, the termination of contract was not one of the matters which were accepted by the parties to be referred to Arbitration. Only matters arising from the decision of "Adjudicator" were agreed upon as the ones which will be referred to Arbitration.

In a nutshell, the Petitioner was saying the reference to Arbitration was only initiated by the Respondent without the consent of the Petitioner, and it was wrong and contrary to what was agreed upon in two contracts. It was the Petitioners views, and submissions that, the Arbitration was nullity.

Secondly, Petition contested that, the Arbitration Proceedings and the Award was done contrary to Section 6(3) of the Government Proceedings Act Cap [R.E 2002], which requires the Attorney General be joined as Party. So it was legally wrong to join the Permanent Secretary of Ministry of Water and Irrigation alone is party. He insisted that, in any proceedings which the Government is involved, the Attorney General is the one who is supposed to be made a party.

It was the views, and submission of the Petitioner that, since the Attorney General was not joined, then the Arbitration and Award are nullity on the ground that, the proceedings were conducted contrary

to Section 6 of Government Proceedings Act Cap 5 [R.E.2002], and are nullity. To support his point petitioner drew the attention of the court on the decision in the case of the Permanent Secretary, Ministry of Justice and Constitutional Affairs and KS Builders Ltd, Misc Commercial Application No 6 of 2012 where the Court insisted that,

The law requires that, in the "Petition against Government Ministry" the Attorney General who is representative of the Government be joined as a party and if not a party is then the Petition contravened Section 6(3) of the Government Proceedings.

The Court in the above-mentioned decision states that, such Award was is incapable of being enforced against the Government because the Attorney General was not joined

Guided by the decision in the cited case and Section 6(3) of the Government Proceedings Act, Cap 5 the Petitioner submitted that, the Award in the Petition was improperly procured because the Attorney General was not joined.

The Petitioner pointed out that, it was wrong for Arbitrator to proceed with Arbitration without strictly following what was agreed by the parties.

To support his argument, the petitioner draw the attention of the Court on what was said by Hon Justice R.S Bachawat in the Book Law of Arbitration and Conciliation 5th Edition Volume 1 Reprint 2012,

that, it is trite law that, the Jurisdiction of Arbitrator is derived from Arbitration Agreement, then he explained that, under clause 26 and 27 of the General condition of the Contract, the parties only agreed to refer to arbitration disputes originating from the adjudicator decision and not every dispute.

Petitioner then submitted that termination of contracts and claims for damages were not ones of the disputes, envisaged by clauses 26 and 27 of General Condition of Contract, and were not supposed to be subject of arbitration. It was wrong, and contrary to the law for the Arbitrator to entertain the two matters, which were not agreed upon by the parties.

It was also part of his argument that, even reliefs granted in the Award went beyond the scope of submissions made by the parties, such as enforcing matters which were decided upon by the Adjudicator

Another ground, which, the Petitioner faulted the Arbitrator is that, under clause 27.2 a reference to Arbitration was supposed to be done under 28 days from the date, of the decision of the Adjudicator. He then argued that, the decision of Adjudicator on some matters and not on termination was made on the 6/11/2012 but the reference to arbitration was done after 28 days has elapsed. The Petitioner maintains in his argument that, was

Arbitration conducted contrary to clause 27.2 which requires reference to Arbitration be done within 28 days from the date of Adjudicator.

Next, Petitioner pointed out that, since the reference to Arbitration was made outside the prescribed period, it is obvious the Arbitrator did not have jurisdiction. Also on this ground Petitioner prays that, the arbitration and Award be declared null and void.

In another ground, the Petition contested is that, the Arbitrator misconduct himself for failure to consider assessment of appropriate price of procured pumps as submitted by Consultant Engineer as it was directed by adjudicator, Instead, he granted a sum of USD 150,000 which was an error because the matter was already decided by adjudicator.

In addition the petition complaint that, during arbitration, Respondent did not lead any credible evidence to support the price of the procured pumps which was granted by Arbitrator.

The Petitioner argued that the Arbitrator in assessing the Prices of the Pumps, stood in the shoes of the Adjudicator and overruled the Adjudicator's decision which was binding.

In respect of grounds (IV) and (v) of the Petition, the Petitioner abandoned them and did not argued them. Finally, the Petitioner concluded in his submission by praying that, the Court declare the whole proceedings to be null and void, and proceed to set aside the award of the sole arbitrator with costs.

On his part Mr. Kilindu, Learned Advocate for Respondent submitted that, the arbitration which gave rise to the Petition originates from the termination of the contract, which Respondent perceived to be unlawful.

He then pointed out that, Respondent instituted Arbitration Proceedings, and the Ministry of Water and Irrigation, and the Attorney General filed a Statement of Defence, a Notice of objection and Counter Claim.

Respondent the said while the Arbitration Proceedings were pending, for adjudication , he took several legal steps and requested the legal advice from the Attorney General in terms of Standing Order made under Section 24(5) of the Civil Service Act , 1980 on Regulation B.9 on the manner in which arbitration was to be conducted. However, in the arbitration process the Petitioner was represented by the Attorney General through out the Arbitration. He also said, in Arbitration, the Attorney General is the one who represented the Petitioner, and the Government.

Then the Respondent draw the attention of the court that, under Section 16 of the Arbitration Act, Cap the Court may not set aside the Arbitral Award, unless and until the Arbitration has misconducted himself or the Award was improperly procured.

Turning to the Present Petition, the Respondent elaborated that, there is no evidence which was furnished to the Court by the Respondent on whether the Arbitrator was corrupt or secretly interested with the subject matter, or the Award was reached after undue influence, bribing, or deceiving.

The Respondent submitted that, though there were allegations that, the Award was improperly procured, there is no evidence of misconduct on the part of the Arbitrator, or he was corrupt, or bribed or he was under undue influence to make such decision.

So, it was the argument of the Respondent that, since there is no evidence, and proof of misconduct on his part, alleging bribery or undue influence, there is no basis of faulting the Arbitrator.

On the contention that, the Arbitrator did not have jurisdiction to arbitrate the dispute, Mr. Kilindu submitted that, the point can not be re opened now because it was raised before the Arbitrator during the

Arbitration Proceedings, but it over ruled and Arbitrator decided that, he has jurisdiction.

Relying on the decision made in the case of DB Shapriya and Co Ltd V Bish International (2003) EA 404, and, the case of WS Tame Limited Versus Zagaritus Estate Limited (1960) EA 370, Mr. Kilindu insisted that, the court is precluded to interfere with a finding of Arbitrator made in the cause of arbitration, including the point as to the jurisdiction of the Arbitrator.

He then submitted that, in principle all legal issues including the issue of Jurisdiction are always dealt during the Arbitration Proceedings and on the issue of law which requires interpretation of the court, the procedure provided under Section 11(b) of the Arbitration Act Cap 15 requires a party who wants court interpretation on legal issue to move the Arbitrator, to state the case to the court and seek its opinion by a way of case stated. The Arbitrator must be moved while the arbitration proceedings are in progress.

Respondent insisted that, the issue such of Jurisdiction of the Arbitrator, which was decided upon by the Arbitrator, the court cannot re open it and legal issues which was decided during the arbitration by arbitrator.

Moving on the another ground that, the Arbitrator did not consider decisions made by adjudicator, Respondent contested that it is factually wrong because the Arbitrator in paragraph 8.4.6 of the Award said the decision of the Adjudicator was never referred by the parties Arbitration.

To support his argument, Mr Kilindu referred the court to views expressed by Arbitrator in the Award, in which he stated that, "by the time the contracts were terminated on the 19/2/2013, the parties had already lost their right to refer any of their pending disputes to the Adjudicator. It was the views of the Respondent that, after the contract was terminated, it was not possible to enforce a decision of the adjudicator while the contract was already terminated.

Regarding the complaint that, the Award was also improperly procured for failure to comply with the laws, because the Attorney General was not made a party in the Arbitration Proceedings and in filing the Award, Respondent argued that, , from the legal point of view, the Ministry of Water and Irrigation and Attorney General were supposed to appear in arbitration proceedings. And it is clear from the Arbitration Proceedings that, the Attorney General filed all Pleadings, Witness Statement, and submissions on behalf of the Petitioner.

So, it was the view of the Respondent's counsel that, since the Attorney General appeared in the Arbitration, then the Arbitration was properly conducted, may not be faulted. The Respondent insisted that, the Petitioner complaint that, Arbitration was not properly conducted has no basis.

On ground (iv) of the Petition, that the Arbitrator misconducted himself by violating the terms and condition's of the Agreement, Respondent, submitted that, the Petition did not explain in his Petition and even on his submission, before the court, the Arbitrator's conduct, or acts which constituted misconduct. So the ground of misconduct on the part of Arbitrator was not substantiated and proved. He prayed to the court to disregard the allegations.

In respect of ground (v) of the Petition that, the Arbitrator failed to enforce a decision of the adjudicator, Respondent replied that, contradict ground (iii) of the Petition, where it said the Arbitrator wrongly purported to enforce the decision of the adjudicator. So also that, argument is totally misplaced.

Regarding Petitioner's contention, and submission that, the Arbitrator erred, when he decided on prices of pumps a matter which was already adjudicated by Adjudicator, Mr. Kilindu said the issue of price of pumps was thoroughly analysed, and decided by the Arbitrator, and can not be re opened. Next, Respondent submitted

that, the Petitioner did not even show in his petition, and submission which error is on face of the record of the assessed prices of pumps. So Respondent submitted that, the alleged complaint has no merit.

On a complaint on Bill of Costs, contained in ground (viii) of the petition, Respondent submitted that, that issue was raised to the Arbitrator, and it was decided. The Petitioner insisted that, it may not be re-opened. He then added that, the costs were awarded because the Petitioner unlawfully terminated two contracts and that, is the basis of granted costs.

Finally, Respondent submitted that, the Petitioner has failed to substantiate and prove in his Petition if the Arbitrator has misconduct himself or an arbitration or Award has been improperly procured as envisaged by Section 16 of the Arbitration Act, Cap 15 R,E 2002 . For that, reason, Respondent prayed that, the Petition be dismissed with costs for lack of merit.

The Court has fully considered all claims in the Petition, Respondent's reply to the Petition, and submissions from both sides, and find both grounds raised by the Petitioner in the Petition are worth to be considered.

For the sake of convenience, I will first consider the issue, whether there was Arbitration clause which gave jurisdiction to Arbitrator

On the issue if the Arbitrator had Jurisdiction to conduct arbitration, I find Petitioner is alleging that, the two contracts did not have arbitration clause which allowed the dispute on termination to be referred to Arbitration. Responding to this point, I would say the purpose of Arbitration is to settle disputes of the parties conclusively, and to avoid further court litigation or other arbitration processes.

To argue that, the arbitration which was agreed upon was intended to cater for specific disputes and leave the disputes of termination unresolved appears to be a strange argument.

It seems to me such argument that agreed arbitration was to cater for specific disputes and leaves the dispute on termination and others disputes flouting and unresolved requires a proof.

Honestly, I have carefully analysed the Petitioner's arguments that, what was agreed upon was partial mediation, and find the Petitioner did not annex in his petition copies of Agreement, or Arbitration Clause which may enable the court to make appropriate finding on whether the two contracts excluded the dispute of termination in the arbitration.

The court was expecting the Petitioner in the cause of substantiating his ground of Petition, he would have annexed the two contracts, or Arbitration clauses, to support his argument that dispute of termination was left out of arbitration. The burden was on the Petitioner to prove termination was not included in Arbitration Clauses in two contracts. The burden was not discharged by the Petitioner.

Also, relying from what was submitted by the Petitioner and what was stated at Page 4 of the Petition that, they were guided by clause 26 and 27 of the General Conditions of the Contract, I am satisfied that, there were Arbitration clauses in two contracts. The fact that, there was an agreement to go to arbitration is well supported by joint note for "Submission to Arbitration" which was signed by the Parties on the 29/5/2013. The note appears in the first page of the Award, and had two paragraphs which makes cross reference to the contract, it state that;

- 1) Whereas in the contract , we the said Mega Builders and the Permanent Secretary Ministry of Water and Irrigation had agreed to refer the said matters in difference to Arbitration , and
- 2) Now we the said Mega Builders Ltd, and the Ministry of Water and Irrigation do hereby confirm our agreement to submit the matters in difference to the sole Arbitration of QS Evans S. Wapalila and to proceed with the arbitration with expedition as provided for under the Arbitration Ordinance Cap 15 of the Laws of Tanzania and in conformity with the Arbitration Rules 2001 Edition of the National Construction Council, Tanzania.

Upon carefully perusal the above mentioned two paragraphs I find the 1st paragraph has the words " *whereas in the contracthad agreed to refer the said matters in difference to Arbitration*" thus I find those set of words which make cross reference to contract expressly states their contract had arbitration clause.

Also, the submission to Arbitration makes cross reference on the scope of Arbitration by stating as matters in difference between the parties, and there is no exclusion of termination of contract. It is in this regard ,I find in the absence of such proof of exclusion of termination dispute, the court find the ground that, termination of contract was not included in the Arbitration, is not proved and fails for lack of proof.

Quite frankly, in the light I have stated above, I am persuaded that, there was Arbitration clause in their contract, and arbitration was supposed to be conducted on matters which they had differences.

Without repeating too much on this point, I find a complaint that, there was no Agreement clause to refer the matter of Termination to Arbitration has no basis, and it fails.

With that court finding, I now mover to consider the issue whether the Arbitration was conducted contrary to Section 10 of the

Government Proceedings Act, Cap 5. Relying on the said Section, the Petitioner argued that, the law requires in any proceedings against the Government, including Arbitration Proceedings the Attorney General be joined as a Party. I have considered what is stated in Section 10 of the Government Proceedings Act, and find it is quite proper that, the Attorney General be must be a party to the proceedings involving the Government. Indeed the Section states that;

Subject to the Provisions of any other written law, civil proceedings by or against the Government shall be instituted by or against the Attorney General

Guided by the above-mentioned by the wording of Section 10 cited above, I first revisited the filed Award and noted that, there is "Submission to Arbitration Note and at bottom, the Attorney General is listed as the 2nd Respondent. Indeed the Note stated that;

Arbitration Ordinance

SUBMISSION TO SINGLE ARBITRATOR

In the matter of the Arbitration Ordinance;

Whereas the differences have arisen , and are still subsisting between M/S Mega Builders Limited of P.O.Box 5767 Dar es Salaam and the Permanent Secretary Ministry of Water, and Irrigation of P.Box 9153 Dar es Salaam concerning from contract for Chalinze Water Supply Project Phase II Packages F and H, and

Whereas in the contract, we the said Mega Builders and the Permanent Secretary Ministry of Water and Irrigation had agreed to refer the said matters in difference to Arbitration

Now we the said Mega Builders Ltd, and the Ministry of Water and Irrigation do hereby confirm our agreement to submit the matters in difference to the sole Arbitration of QS Evans S. Wapalila and to proceed with the arbitration with

expedition as provided for under the Arbitration Ordinance Cap 15 of the Laws of Tanzania and in conformity with the Arbitration Rules 2001 Edition of the National Construction Council, Tanzania.

Dated the 29/5/2013

Sign
Mega Builders Limited
(Claimant)

Dated 29/5/2013

Sign
Ministry of Water and Irrigation
1st Respondent

DatedMay, 2013

not signed
The Attorney General Chambers
2nd Respondent

So, going by the "Submission Note which was signed by the parties while referring the dispute to a single arbitrator, Ministry of Water and Irrigation was listed down as 1st Respondent, and an officer from the Ministry signed the submission to go for a single arbitration.

Likewise, the Attorney General was listed as the 2nd Respondent in the Submission to Arbitration filed to the Arbitrator on May, 2013. There is no explanation before the court as to why he did not sign the Submission to Arbitration to state his status as a party, Also, there is no explanation why he did not withdrawal himself from the Arbitration Proceedings after being listed as the 2nd Respondent in the Submission to Arbitration. The fact that, the Attorney General participated in the Arbitration is visible in the Award, whereby proceedings shows, he fully participated in arbitration proceedings and sessions as a party, and representative of the Government.

So as the Respondent pointed out that, I also agree that the Attorney General from day one participated in the proceedings and other arbitration sessions and his participation and involvement is easily noted in almost all arbitration proceedings.

To point some few events which shows that, Attorney General fully participated, and represented the Government in the Arbitration is that on the 6/8/2013 the Attorney General filed a Notice of Preliminary objection and Statements of Defence to the Arbitrator. The two pleadings were sent to the National Construction Council and transmitted to Arbitrator, and they both shows were drawn and filed by;

The Attorney Generals Chambers,
Kivukoni Front,
P.O. Box 9050
Dar es Salaam

Secondly on the 11/8/2014 the Attorney General filed 39 pages document of detailed submission to the Arbitrator which had a title of

RESPONDENT'S WRITTEN SUBMISSIONS IN OPPOSITION OF THE CLAIM IN SUPPORT OF THE COUNTER CLAIM. (Pursuant to the Order in this matter of this honourable Tribunal Hon. Evans Wapalila made on the 21st July, 2014.

The filed written submissions, shows were drawn and filed by;

The Attorney Generals Chambers,
Kivukoni Front,
P.O. Box 9050
Dar es Salaam

Thirdly, the court noted the proceedings which accompanied Award that in the arbitration sessions four State Attorney's pursued the Arbitration one after another and their name are visible in the Award which was filed in court and is subject of the present Petition.

Like the Respondent I find since the Attorney General was listed down as the 2nd Respondent in the Submission to Arbitration , and he filed submissions and defence in pursuing the Arbitration, and he never withdrawal himself from arbitration , I am persuaded that, though the Arbitration was conducted in the name of the Ministry , but the Attorney General physically participated in the Arbitration from day one to the last day. I tend to agree that, the Arbitration which was conducted under the watch of the Attorney General, it was conducted pursuant to the Government Proceedings Act, and it was proper.

It will be unfair, to say the Attorney General was not involved or the Government was not represented while there were about 4 State Attorney who physically attended all arbitration sessions.

So the argument that, arbitration was conducted in the name of Attorney General is noted, but that is not the ground under which the court may set aside the Award in which the Attorney General was fully heard in the entire Arbitration process.

Next, I find the mere omission to state in the Arbitration Proceedings that, the Attorney General is a party, while he effectively participated in the Arbitration process is not an omission which may trigger the court, to set aside an Award because that, is not one of the arbitrator's faults envisaged by Section 16 of the Arbitration Act, Chapter 15 R,E 2002.

The above mentioned court finding is reinforced by the Section 16 of the Arbitration Act, Chapter 15 R,E 2002 which states grounds for setting aside Award are (1) where, the Arbitrator has misconducted himself or (2) an arbitration or award has been improperly procured. In deed Section 16 of Cap 15 states that;

Where an arbitrator or umpire has misconducted himself or an arbitration or award has been improperly procured, the court may set aside the award.

Thus going by the wording of Section 16 of the Arbitration Act, Cap cited above they clearly states that, the powers of the court to set aside the Award is limited to three scenarios where there has been misconduct on the part of arbitrator, (2) if arbitration, or award has been improperly procured.

The rationale for limiting the court intervention in Arbitration Award, is easy to understand; being that, it is parties themselves, who have on their own choice, choose the alternative dispute settlement, instead of court and have pursued it. So the role of the court, is to

satisfy itself, if the parties have agreed to go to arbitration, if the arbitration was fairly conducted, and parties were accorded a fair and adequate opportunity of being heard. The court does not sit like appellate court of the Arbitrator.

In the Petition, and Petitioner's submission the court did not find any credible complaint or allegation that, the arbitrator was corrupt or bias or there was under influence on his part or the Award was procured by fraud or in a dishonest manner or through misconduct. So generally, there is no ground under which the court may exercises its powers, and set aside the Award. Even if it is found that, the Arbitrator made a wrong decision, that, is not misconduct or wrongs envisaged by Section 16 of the Arbitration Act , Cap 15 as ground for setting aside an Award.

Turning to the complaint on prices of pumps , I find that, was adequately pursued and decided by the Arbitrator at page 34 of the Award and the decision of the Adjudicator was taken into account, with a word that, the decision of adjudicator was followed with termination of Contract, so there was nothing left to the Respondent to enforce. For that, reasons the Arbitrator allowed USD 156, 000 as prices for pumps out of the claim sum of USD 234,000. So I find the issue of prices of pump was properly dealt by the arbitrator, and this is not the ground of setting aside an Award envisaged by Section 16 of the Arbitration Act.

On complaint that, the Petitioner was not given the right to be heard on bill of costs, honestly I find the Arbitrator on page 40 of the Arbitration Proceedings stated that, the costs were assessed in accordance of Rule 14.5 of the National Construction Council Arbitration Rules 2001, Edition.

Next, the court found Petitioner did not point to the court which granted costs were excessive or improperly granted. In the absence of such specific complaint, I find no basis of interfering with the Arbitrator decision on in issue of costs. More the court find that, a complaint on granted costs is not the basis of setting aside an Award envisaged by Arbitration Act

To conclude, I find that, though Section 16 of the Arbitration Act, Chapter 15 R,E 2002 permits the court to set aside Arbitration Award, but that, permissions is only on matters are listed down under that section which. I have said were not proved by the Petitioner. For those reasons I find there is no legal justification to interfere with the decision of the Arbitrator and whatever was decided in the Award. Consequently, I dismiss the Petition with costs in favour of Respondent for lack of merit. Right of Appeal is explained to the parties.

Dated at Dar es Salaam this 7th day of October 2015

H.T.SONGORO
JUDGE

Delivered at Dar es Salaam this 7th day of October, 2015

H.T.SONGORO
JUDGE

The Ruling was delivered in the presence of Ms. Greener Aden State Attorney assisted by Ms. Lilian Machage, State Attorney for the Petitioner and Mr, George Kilindu Learned Advocate for the Respondent.