

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

MISC COMMERCIAL APPLICATION NO. 25 OF 2018
Arising from Miscellaneous Commercial Cause No. 21 of 2018)

IN THE MATTER OF THE AGREEMENT BETWEEN THE PPF PENSIONS FUND AND
ESTIM CONSTRUCTION CO. LTD.

AND

IN THE MATTER OF AN ADJUCICATION TO A CONTRACT DATE 15 DECEMBER, 2015
FOR THE DESIGN, BUILD AND MAINTENANCE PPF COMMERCIAL PROPERTY AND
NEW PPF HEAD OFFICE ON PLOT NO. 3 ALONG SAM NUJOMA ROAD, DAR ES
SALAAM, TANZANIA, COMPRISED IN C.T. NO. 28185

AND

IN THE MATTER RULING OF THE DISPUTE ADJUDICATION BOARD (DAB) DATED
THE 30TH DAY OF NOVEMBER, 2017 AND THE ORDER FOR DIRECTIONS DATED THE
30TH DAY OF NOVEMBER, 2017

BETWEEN

THE BOARD OF TRUSTEES OF THE PPF PENSIONS FUND ----- APPLICANT

AND

ESTIM CONSTRUCTION COMPANY LIMITED ----- 1ST RESPONDENT

THE INTERNATIONAL FEDERATION OF
CONSULTING ENIGIERS (FIDIC) ----- 2ND RESPONDENT

RULING

SONGORO, J

The Board of Trustees of the Parastatal Pension Fund herein after referred as the applicant in this matter filed an application under Section 86(e) and 95 and Order XXXVII Rule of the Civil Procedure Code Cap 33 [R.E 2002] and any other enabling provisions applying for *Ex-Parte* and *Inter Parties* Orders and reliefs. In the Ex-Parte Order the applicant applies for the following reliefs:-

This Honourable Court may be pleased to make an order of injunction restraining the Respondents their agents, servants, workmen's, assigns, or whosoever will be acting through them proceedings with the intended hearing of the purported Adjudication in respect of Referral No 1 Late /Non Payment of milestones 35 and 72 including the stay of direction given to the Applicant to submit its response to the said Referral pending the hearing and determination of the application for temporary injunction. Inter parties.

Also, in the Inter-parties application the Applicant applied for the following orders-

This Honourable Court may be pleased to make an order of temporary injunction restraining the Respondents, their agents, servants, workmen, assigns or whomsoever will be acting through them from proceedings with the intended hearing of the purported Adjudication in respect of Referral No 1 Late Non Payment of milestones 35 and 72 including the stay of the direction give to the Applicant to submit its response to the said Referral pending the hearing and determination of the suit filed herein

Other orders and reliefs prayed in the application are costs of the application and any reliefs the court deems fit.

Respondents in the application are Estim Construction Company Limited, and International Federation of Consulting Engineers (FIDIC) of Geneva, Switzerland, who are 1st and 2nd Respondents respectively.

Thus on 1/3/2018 when the court realized that, the applicant`s chamber summon has Ex-Parte and Inter-Parties applications, it directed the Applicant to serve a copy of the application to the 1st Respondent who is based in Dar es Salaam by 1/3/2018, so that, he may be notified on the existence of the application and petition which are before the court. . Also taking into account there is Inter party's application which is pending the court also ordered the applicant to serve a copy of application to the 2nd Respondent who

is based in Geneva Switzerland. Next the application was fixed on the 2/3/2018 for necessary orders.

Then on the 2/3/2018, when the application was called for necessary orders Mr Roman Selasini Lamwai, Learned Advocate appeared for the Applicant; while Mr. Duncan, Mr. Mayenga, and Mr. Mwakingwe Learned Advocates appeared for Respondents.

Then, Mr. Mayenga, Learned Advocate of the Respondent took the floor and object to the hearing of Ex-parte Application and even Inter-Parties Application on the ground that, there are preliminary objection on points of law touching the jurisdiction of court. So it was part of his argument that, pursuant to Order XIV Rule 2 of the Civil Procedure Code Cap 33 " *issues of law*" must be determined first before the hearing of any application. So he prayed that, the issue of jurisdiction be heard and determined first. The counsel rests his submission by stating that, the granting of an Ex-Parte Order will be prejudicial. He prayed and insisted that, the Ex-Parte order of temporary injunction should not be granted at this juncture.

Also, on his part, Mr. Duncan Learned Advocate for Respondents join hands with the Mr. Mayenga and informed the court that, the " adjudication" which is sought to be restrained, its hearing was fixed to be on 3rd April, 2018 and preparation are in the due cause. It was part of his final arguments that, any court order at this juncture may cause great hardship.

On his Mr. Roman Selasini Lamwai, Learned Advocate for the applicant informed the court that, the matter is coming for necessary orders, and were served with a notice of preliminary objection on points of law by Respondents Counsel. The Applicant Counsel then explained that, they are praying for hearing date of the preliminary objection on points of law. He also added that, since respondent has not filed a counter affidavit, they are praying to the court to grant an order of temporary injunction which restrain respondents from conducting adjudication proceedings, pending the hearing of inter parties application.

The court has carefully considered the applicant application for ex-parte order for temporary injunctions pending determination of Inter-parties application, and find since the jurisdiction of the court has been challenged by respondents and issue of jurisdiction is fundamental in court any proceedings, the court must satisfy itself if it has jurisdiction over the application .

In that, regard, I find it is ideal to determine preliminary objection on points of law, including a point whether or not the court has jurisdiction to hear the application before making any order of temporary injunction.

Since there is a challenge on the jurisdiction of the court which need to be resolved, I decline to exercise the court discretion to grant ex-parte Order of temporary injunction.

Also I make an order that, issue of jurisdiction of the court, and other objections raised in connection with the application be determined first.

Due to fact that, there are preliminary objection on points of law which were raised by respondent I find that, justice will be better served if the application may be heard inter-parties but with urgency it deserved.

In that, connection I further order that, the preliminary objection on points of laws be heard Inter-Parties orally on the 8/3/2018, and the ruling will be delivered on 12/3/2018 at 3.00pm. So the hearing is adjourned to 8/3/2018 at 3.30pm

Dated and Delivered at Dar es Salaam this 5th day of March, 2018



H.T.SONGORO
JUDGE

The ruling was delivered in the presence of Mr. Roman Selasini Lamwai and Teotheo Constantine, Learned Advocates of the Applicant and Mr. Duncan and Mr. Mayenga, Learned Advocate of Respondents.