

**IN THE HIGH COURT OF TANZANIA
COMMERCIAL DIVISION
AT ARUSHA**

MISCELLANEOUS COMMERCIAL APPLICATION NO. 11 OF 2018

**M/S MOSHI URBAN WATER SUPPLY
AND SANITATION AUTHORITY (MUWASA) PETITIONER**

VERSUS

M/S SECULARMS.....RESPONDENT

RULING

Date of Submissions: 12/02/2019

Date of Delivery: 14/02/2019

AMOUR S. KHAMIS, J:

Moshi Urban Water Supply and Sanitation Authority (MUWASA) petitioned this Court for stay of proceedings commenced by M/S Secularms (T) Limited in Commercial Case No. 5 of 2018 pending reference of the matter to arbitration in conformity with Framework Agreement entered between Secularms (T) Limited and the Government Procurement Services Agency (GPSA).

It was alleged that the agreement was executed vide Call-Off Orders No. 0001897 of 01/07/2014, 01/07/2015 and 01/07/2016 respectively.



It was further alleged that clause 5 of the Framework Agreement for supply of common use items and services and specifically a tender for provision of security services between GPSA and M/s Secularms (T) Limited provided that any matter in dispute between the parties to the agreement and arising out of the agreement should be submitted to the arbitration of a single arbitrator appointed in accordance with Cap 15 of the Laws of Tanzania.

In addition to a Reply to the Petition, M/s Secularms (T) Limited filed a notice of preliminary objection that can be rephrased as follows:

"The Miscellaneous Commercial Application No. 11 of 2018 is incompetent and bad in law as it contravenes the mandatory requirements of Rule 8 of the Arbitration Rules, G.N No. 427 of 1957."

The preliminary objection was orally argued before me. Mr. Laurean Kessy, learned advocate, acted for Moshi Urban Water Supply and Sanitation Authority while M/s Secularms (T) Limited enjoyed services of Mr. Gwakisa Sambo, learned advocate.

In support of the objection, Mr. Sambo contended that in contravention of Rule 8 of the Arbitration Rules, G.N No. 427 of 1957, the petitioner omitted to annex a certified true copy of the "submissions".



The learned counsel submitted that “submissions” was defined in Section 2 of the Arbitration Act, Cap 15, R.E 2002 to mean a written agreement to submit present or future differences to arbitration whether arbitration is named therein or not.


In support of his contention, Mr. Sambo drew attention of the Court to decisions in East Africa Development Bank V Blue Line Enterprises Limited, High Court of Tanzania – Dar es Salaam District Registry, Misc. Civil Cause No. 142 of 2005 (unreported), Mount Meru Millers Limited V Darsh Industries Limited, High Court of Tanzania, Arusha District Registry, Civil Case No. 18 of 2009 and Shaaban Idd Jololo & 3 Others V R, Criminal Appeal No. 200 of 2006.

The learned counsel submitted that in view of the omission the petition deserved to be struck out.

In reply, Mr. Laurean Kessy submitted that Rule 8 of the Arbitration Rules, G. N No. 427 of 1957 could not be read in isolation of Rule 3 thereof.

He contended that when the two rules were read together, Rule 8 was inapplicable to the present petition.

He argued that the Arbitration Rules were only applicable to awards filed under the Arbitration Act and



could not apply to arbitration proceedings prior to delivery of the award as in this case.

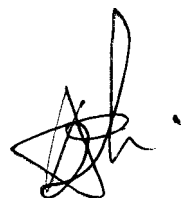
The learned advocate forcefully asserted that since arbitration proceedings were not conducted and no award has been issued, the Arbitration rules could not apply to this petition.

Further to that, Mr. Kessy submitted that even if the Rules were found to be applicable, the petitioner could not be faulted for failure to annex the "*submissions*" on the ground that the same was in the custody of the Government Procurement Services Agency (GPSA).

He advanced that a proper person to submit the original document under the Framework Agreement was M/s Secularms (T) Limited allegedly because it was a party to the agreement.

In rejoinder, Mr. Sambo reiterated his earlier submissions and moved the Court to strike out the petition with costs.

The respondent's counsel brushed off a contention that the original agreement was in custody of GPSA on the premises that the petitioner had failed to apply for such certified copy from GPSA.

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However, the counsel stressed that failure to have an original agreement was no justification to contravene Rule 8.

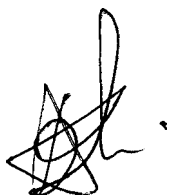
Rule 8 of **THE PETITION RULES, G. N NO. 427 OF 1957** provides that:

“8. Every Petition shall have annexed to it the submission, the award or the special case to which the petition relates or a copy of it certified by the petitioner or his advocate to be a true copy.”

My reading of the above rule suggests that a petition envisaged under the Rules is applicable in three circumstances.

Firstly is a petition that requires “*submission*” to be annexed. Secondly is a petition that need to be accompanied by an “*award*” as a necessary attachment. Lastly, is a petition that should be accompanied with a “*special case*”.

That construction is supported by presence of a *comma* after the word submission and the letters ‘or’ after the word “award”. Furthermore, there is a phrase “*.....to which the petition relates*” meaning that it applies to more than one type of petition.



That being the case, what is to be annexed to a petition varies from one type of petition to another.

In the present case, the Petition was made under Section 6 of the Arbitration Act, Cap 15 R.E 2002, Rule 18 of the Civil Procedure (Arbitration) Rules, Cap 33 R.E 2002 and Rule 5 of the Arbitration Rules, G. N No. 427 of 1957.

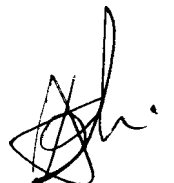
The marginal notes to Section 6 of the Arbitration Act, Cap 15 R.E 2002 provides that the section relates to powers of the Court to stay proceedings where there is a submission.

As rightly submitted by Mr. Sambo, the term “submission” is defined in Section 2 of **THE ARBITRATION ACT, CAP 15 R.E 2002** to mean:

“...a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.”

This is to say that where a petition relates to filing of an award, other relevant provisions of the law will be cited but Rule 8 of the Arbitration Rules, G.N No. 427 of 1957 will still be applicable to guide the manner of filing the petition.

In such a case, a certified true copy of the award will be annexed to the petition.



Likewise, a “*case stated*” is another form of applicable petition. This is provided for in Section 12(3) of **THE ARBITRATION ACT, CAP 15, R.E 2002**.


Having established that position, it is clear that in the present case, the petitioner was required to annex either an original submission or a certified true copy of it.

According to Rule 8 of the Arbitration Rules, the certification could be done by either the petitioner, Moshi Urban Water Supply and Sanitation Authority (MUWASA) or its advocate.

Upon inspection of the Petition in this matter and its annextures, I noticed that the Petitioner annexed copies of the Framework Agreement for Supply of Common Use Items and Services whose clause 5 covers reference of the parties’ dispute to arbitration of a single arbitrator.

In my view, attachment of the above agreement which in reality is the envisaged “*submission*” falls short of the mandatory requirements of Rule 8 that demands an original “*submission*” or a certified true copy thereof to be annexed.

To that conclusion, I associate myself with rulings of the learned Judges in **EAST AFRICA DEVELOPMENT BANK V BLUE LINE ENTERPRISES LTD, HIGH COURT OF TANZANIA, DAR ES SALAAM DISTRICT REGISTRY,**



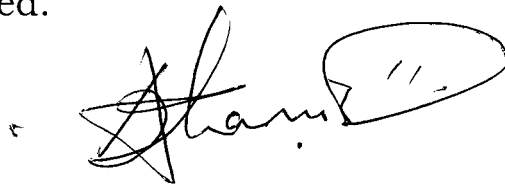
MISCELLANEOUS CIVIL CAUSE NO. 142 OF 2005
(unreported) and **MOUNT MERU MILLERS LIMITED V**
DARSH INDUSTRIES LIMITED, HIGH COURT OF
TANZANIA, ARUSHA DISTRICT REGISTRY, CIVIL CASE
NO. 18 OF 2009 (unreported).

In those two cases, A. Shangwa, J (as he then was) and A. C Nyerere, J (as she then was) concluded that petitions that omitted to annex original or certified true copies of the agreement(s) were a nullity.

In the same vein, the present petition is incurably defective for omission to annex an original or certified true copy of the '*submission*'.

The same is hereby struck out with costs.

It is so ordered.

A handwritten signature in black ink, appearing to read 'Amour S. Khamis', with a large, loopy flourish to the right.

AMOUR S. KHAMIS

JUDGE

14/02/2019