

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL APPLICATION NO. 16 OF 2022

BETWEEN

ATTORNEY GENERAL1ST APPLICANT

ROADS FUND BOARD.....2ND APPLICANT

VERSUS

M/S RANS COMPANY LIMITED.....RESPONDENT

RULING

Date of last order: 01/11/2022

Date of Ruling:02/12/2022

AGATHO, J.:

This ruling is prompted by the Preliminary Objection (PO) raised by the Respondent against the Applicants' application for registration of the arbitral award. The PO is to the effect that the Applicants' application for registration of the arbitral award is time barred. The Court is therefore invited to rule whether the said application is indeed time barred. If so then this application should be dismissed, and if not the raised PO ought to be overruled and the Applicants' application proceed to be entertained.

Among other things the PO calls for the court to rule on the time of limitation for registration of arbitral award. Other issues of how the PO

should be is examined as well in the lens of **Mukisa Biscuits Manufacturing Ltd v West End Distributors Ltd [1969] E.A. 696.**

But before delving into the substance of the PO let me state briefly the matter at hand. On 06/09/2021 the sole arbitrator one Summa Mwaitenda published an arbitral award in favour of the Applicants. The latter made a request to the said Arbitrator so that they could proceed registering the award at the Hight Court of Tanzania (Commercial Division) herein cited as HCCD. On 27/10/2021 the Arbitrator gave permission to the Applicants to register the final award in the HCCD. On 01/11/2021 the Applicants wrote to the Deputy Registrar of the HCCD applying for registration of the award as per Rule 51 (2) of the Arbitration (Rules and Procedure), Regulations G.N. No. 146 of 2021. The application was filed online under Rule 8,9, and 21 (1) of the Judicature and Application of Laws (Electronic Filing Rules) G.N. No. 148 of 2018.

At this juncture, the controversy that remains unresolved is when is the award said to be legally filed in the court? Is it when the application is uploaded in the system (Judicial Statistical Dashboard System) or is it when the court filing fee is paid? Does this rule apply to all parties to any suit or application before the Court? These questions are worth to be explored. That is done hereinbelow.

There is no dispute that the Applicants filed their application for registration of the arbitral award on 02/11/2021. But as per the Respondent's submission, the Applicants are not telling the Court when exactly the control number was generated, and payment of filing fee was effected. According to the counsel for the Respondent the filing fees were paid on 28/04/2022. And he claimed further that the same is seen in the court records. As per the law including the Electronic Filing Rules the date for payment of the filing fees is regarded as the date when the application for registration of the award is said to have been filed. It is the law that the application is filed in the court when the court fees are paid. In **Camel Oil (T) Limited v Bahati Moshi Masabile & Bilo Star Debt Collector; Mailande Augustine Mpemba v Pius Rwegasira & Two Others, Land Appeal No. 23 of 2020 HCT Mwanza District Registry** (unreported) where it was held that the e-Filing Rules have not changed the law, procedure, and practice of payment of court fees to be recognition of registration of suits in courts.

But my keen examination of court records could not land me to any receipt that could confirm that the Applicants indeed paid their filing fees on 28/04/2022. To search for such receipt beyond the court records

(pleadings) will mean searching for evidence which offends a principle laid down in **Mukisa Biscuits' case** that the PO should be founded on pure point(s) of law and not requiring searching for evidence to substantiate it. For that reason, I am of the view that the claim that the application for registration of the arbitral award is time barred has not been established. Besides that, the issue whether the Applicants were obliged to pay the court filing fees will be examined in due course.

Further, I am of the settled view that both the Applicants and the Respondent have misconceived the PO in different perspectives. The Applicants have misconceived the PO in that they argued the PO is untenable because it is based on facts. Hence being a factual matter, it is not a pure point of law. But, with respect this is misconception because the issue of lapse of time or the matter being time barred is a pure point of law. And to establish that the matter is time barred a party is not precluded from referring to the pleadings. Even the issue of jurisdiction will certainly require a party raising a PO to refer to the pleadings. The PO is established by looking at the pleadings and the law. Once one goes to look for evidence it ceases to be a PO based on point of law. And that is what happened in the case at hand. The issue of filing application for registration of arbitral award out of time could not be established without

demanding evidence or receipt of filing fees. And the same was not found in the court file.

Consequently, the PO is founded on facts, it requires evidence hence not a pure point of law, and in my view, it offends the principle in **Mukisa Biscuits' case**. Looking at the case at hand the question of the registration of the arbitral award to be time barred is a point of law and if established to the satisfaction of the court it would have been sustained and the application would have been dismissed. But that is not the case. Therefore, the PO should be overruled.

The Respondent on the other hand has raised a PO that lacks merit. The Respondent has equally missed a point on the PO she has raised based on a fact which required evidence. Moreover, and as explained later the PO was raised in ignorance of the law that the government entities are exempted from paying filing fees. Nevertheless, the time of limitation for registration of arbitral award is six months from the date of publication of the award as per second column of Part III item 18 of the 1st schedule to the Law of Limitation Act [Cap 89 R.E. 2019]. The Applicants' application for registration of the award was received on 02/11/2021. The arbitral award was published on 06/09/2021. Thus, there were only 58 days that

have passed from the date of publication of the award. But as pointed out here in above the date when the filing fees are paid is the filing date of the application or suit. That was held in the case of **Charles Kimera Msenga v The Registered Trustees of the Seventh Day Adventist Association of Tanzania, Misc. Land Application No. 28 of 2022, HCT Tanga District Registry** (unreported). From that what follows was a proof whether the application at hand is time barred because the fees were paid on 28/04/2022 which is more than six months counting from 06/09/2021 when the arbitral award was published. The six months ended on 06/03/2022. Had that been established in the court records/pleadings the application for registration of the award could have been delayed for 53 days. And the PO could have been sustained.

But out of curiosity I asked myself does the government pay court filing fees? This without doubt is obiter dictum. However, worth pondering. My struggle to locate the Applicant's receipt for payment of application filing fees proved futile. I also learnt that the government does not pay court filing fees. That is loud under Rule 7(1) of the Judicature and Application of Laws (Court Fees Rules), G.N. No. 247 of 2018 published on 01/06/2018 that the Government is exempted from paying court fees in respect of proceedings instituted by or against the Government. The

Applicants being Government entities they are exempted from paying the court fees. That is probably why their receipts for payment of court fees were missing. And because they are exempted it follows that the time their application filed when it was admitted in the JSDS and not when the court fees was paid. That is logical because the Government is exempted from paying the Court fees as above noted.

In the end the PO is overruled for lacking substance and contravening the principle laid down in **Mukisa Biscuits' case**. The matter shall proceed from where it ended prior to raising of the PO unless there are other lawful reasons for not doing so. Each party shall bear its costs.

It is so ordered.

DATED at DAR ES SALAAM this 2nd Day of December 2022.



U. J. AGATHO

JUDGE

02/12/2022

Date: 02/12/2022

Coram: Hon. U.J. Agatho J.

For Applicants: Rehema Mtulya State Attorney

For Respondent: Litete Haji Advocate.

C/Clerk: Beatrice

Court: Ruling delivered today this 2nd December 2022 in the presence of Rehema Mtulya State Attorney for the Applicants, and Litete Haji learned counsel for the Respondent.



A handwritten signature in black ink, appearing to read "U. J. Agatho".

U. J. AGATHO

JUDGE

02/12/2022