

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

MISC. COMMERCIAL CAUSE NO. 33 OF 2022

IN THE MATTER OF THE ARBITRATION ACT, CAP 15 R.E. 2020

BETWEEN

M/S RANS COMPANY LIMITED.....PETITIONER

VERSUS

ATTORNEY GENERAL1ST RESPONDENT

ROADS FUND BOARD.....2ND RESPONDENT

RULING

Date of last order: 01/11/2022

Date of Ruling: 25/11/2022

AGATHO, J.:

The parties had a contract for construction of Roads Fund Board Office that was signed on 04/08/2014. During implementation of the contract a dispute arose, and the matter was referred to the National Construction Board for adjudication and later to the sole Arbitrator. The Petitioner was aggrieved by the arbitral final award and the procedures therein. When the Petitioner filed her petition before this Court the Respondents raised a Preliminary Objection (PO) that the said petition is hopelessly defective as the annexure thereto is neither original nor certified. It was the submission of the Respondents that the petitioner is duty bound by the law (Rule 63 (1) of the Arbitration (Rules of Procedures) 2021 which provides that:

Save as is otherwise provided, all applications made under the provisions of the Act or these Regulation shall annex to it the submission, the minutes or the proceedings of the arbitral tribunal award or the ruling to which the petition relates or a copy of it certified by a petitioner or his advocate to be a true copy.

To persuade the Court the Respondents cited the case of **Regional Manager TANROADS Simiyu v M/S Nyanguruma Enterprises Co. Ltd, Misc. Commercial Cause No. 39 of 2018** and the case of **Constantine Stephen Kalipeni v Tarek Gani Farhat, Misc. Commercial Cause No 7 of 2018**. In these cases, the court held that failure to comply with the requirement of rule 63(1) of the Arbitration Rules is fatal because the said rule is couched in mandatory terms. The Respondents argued in their written submission that in the case at hand the petitioner failed to comply with the requirement stipulated in rule 63(1) of the Arbitration Rules. Consequently, the present petition is incompetent before this Court, and they prayed that it be struck out with costs.

The Petitioner on her side was of contrast view that the petition at hand is competent and the allegation that the annextures to the petition were neither original nor certified by an arbitrator, or an advocate for petitioner is false. The counsel for the Petitioner Mr. Litete submitted that the records of the present petition that was served upon the Respondents bear the stamps of the Notary Public and Commissioner for Oaths of the Advocate for the applicant one Mr. Menye David Manga

certified on 23/12/2021. The said stamp is visible on all the attached documents.



While the Respondents claimed that the PO is founded on pure point of law as stated in **Mukisa Biscuits Manufacturing Ltd v West End Distributors Ltd [1969] E.A. 696** because the requirement that the annexures be original or certified by the petitioner's advocate is stated by the law (rule 63(1) of the Arbitration Rules) hence a pure point of law. That view is contested by the Petitioner that the PO never deserved to be raised because it requires scrutiny of the documents hence not a pure point of law. It is rather a mixture of facts and law and if argued cannot dispose the case. And the Petitioner's counsel cautioned that the raised PO is contrary to the established principle in **Mukisa Biscuits case**.

To dispose this PO does not require rocket science. It simply requires the court to peruse the records of the court file in respect of this application. It is a truth-finding mission which in strict sense is a mixture of fact and law. But since the POs are drawn from the pleadings and not evidence then I am prepared to examine the pleadings to ascertain the validity and truth or otherwise of the PO raised. On this point see the case of **Tanga Cement Plc v Bernard Kusiga, Labour Revision No. 11 of 2021, HCT Tanga District Registry** (unreported). Without beating around the bush, a quick glance at the records of this application/petition shows that the annexures are certified by Mr Menye David Manga the Notary Public and Commissioner for Oaths and Advocate. Whether Mr Menye David Manga is the Applicant's advocate is

another thing that requires evidence. Doing so will certainly be stretching the PO beyond its pure point of law domain into the territory of facts or evidence. That is disallowed at this stage.

In the end the PO is overruled for lacking substance. It is further ordered that the matter shall proceed from where it ended before hearing of the PO. Each party shall bear its costs.

It is so ordered.

 **DATED at DAR ES SALAAM** this 25th Day of November 2022.

U. J. AGATHO
JUDGE
25/11/2022

Date: 25/11/2022


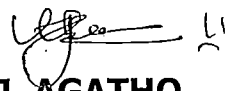
Coram: Hon. U.J. Agatho J.

For Petitioner: Litete Haji (Advocate)

For Respondents: Absent.

C/Clerk: Beatrice

Court: Ruling delivered today this 25th November 2022 in the presence of Litete Haji, learned counsel for the Petitioner, but in the absence of the learned State Attorney the Respondents.

 
U. J. AGATHO
JUDGE
25/11/2022