

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

**COMMERCIAL CASE NO. 93 OF 2022**

**LEISURE TOURS AND HOLIDAYS LIMITED.....PLAINTIFF**

**VERSUS**

**MARKET INSIGHT LIMITED.....1<sup>st</sup> DEFENDANT**

**RULING**

**A.A. MBAGWA J.**

This ruling is in respect of preliminary objection raised by the defendant's counsel to the effect that;

***'The suit is premature and bad in law as the plaintiff has failed to refer the dispute to arbitration as per the contract'***

When the matter was called on for hearing of preliminary objection, Mr. Jagadi Robert, learned counsel appeared for the plaintiff whereas the defendant was represented by Rico Adolf, learned advocate.

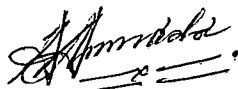
Submitting in support of the preliminary objection, Mr. Rico Adolf told the court that the suit before the court was filed prematurely in that the agreement from which the dispute arises contains a clause that requires the parties to refer the matter to arbitration before resorting to judicial measures. The counsel cited section 7(1) of the Civil Procedure Code and submitted that it denies the court the powers to entertain the matter where



such powers are implied barred. To fathom his submission, Mr. Adolf referred this court to the case of **Petrol Fuel vs Market Insite Limited**, Misc. Commercial Cause No. 7 of 2022. He expounded that in this case the Hon. Judge struck out the case and directed the parties to refer the matter to arbitration. The defendant's counsel was further opined that it is not always necessary that the court should stay the proceedings pending conclusion of arbitration rather, it can make any consequential orders that it deems fit including striking out the case. Finally, he prayed the court to strike out the case with costs and direct the parties to comply with arbitration clause.

In rebuttal, the plaintiff's counsel forcefully contested the defendant's counsel's prayer of striking out the case. Mr. Jagadi Robert conceded that the matter was not referred to arbitration despite the existence of arbitration clause but he hastily remarked that the appropriate course to take is to stay the proceedings and direct the parties to take the matter to arbitration. Citing the provisions of sections 12(1) and 13(1) of Arbitration Act No. 2 of 2020, the plaintiff counsel submitted that the defendant's counsel was supposed to file an application for stay of the present proceedings. He strongly opposed the prayer to strike out the case as proposed by the defendant's counsel. Mr. Jagadi Robert relied on the case of **Scova Engineering S.P. A and another vs Mtibwa Sugar Estate Limited and three others**, Civil Appeal No. 179 of 2017, CAT at Dar es Salaam at page 18 to back up his position.

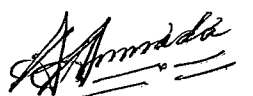
As hinted above, there is no dispute that the contract from which this case arises contains an arbitration clause. Clause 18 categorically requires the

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parties to settle the dispute amicably failure of which they should refer the matter to arbitration. Further, it is undeniably common cause that the matter was brought to court without going through arbitration. Both counsel were at one that this court cannot proceed to determine a case arising from contract which contained arbitration clause without the parties referring the dispute to arbitration first. The only rival point is on the consequential orders which this court may issue in the circumstances of the present case.

Whereas section 15 of the Arbitration Act No. 2 of 2020 empowers this court to stay the proceedings as rightly submitted by the plaintiff's counsel, the same does not bar the court from issuing any other consequential orders which it deems fit. The court's power is not limited to only staying the proceedings as such it has been the practice of this court to strike out cases which are brought to the court without being referred to arbitration. See **Petrofuel (T) Limited vs Market Insight LTD**, Misc. Commercial Cause No. 07 of 2022, HC (Commercial Division) at Dar es Salaam. This is because the law does not provide the time frame within which the arbitration should be concluded after the court proceedings are stayed by the court. As such, staying the proceedings indefinitely may lead to unprecedented backlog cases for no good reasons. In view of the foregoing, It is my opinion that the appropriate remedy in the circumstances of this case is to strike out the suit and direct the parties to refer the dispute to arbitration first.

That said and done, I uphold the preliminary objection and consequently strike out the case. The parties are therefore directed to refer the matter to



arbitration as agreed under clause 18 of the contract. Each party should bear its own costs.

Dated at Dar es Salaam this 22<sup>nd</sup> day of December, 2022



*A. A. Mbagwa*  
**A. A. Mbagwa**

**JUDGE**

**22/12/2022**