

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

MISC. COMMERCIAL APPL. NO. 27 OF 2023

(Arising from Commercial Cause No.36 of 2022)

BETWEEN

CENTRAL ELECTRICALS INTERNATIONAL LIMITED..... APPLICANT

VERSUS

CHINA RAILWAY JIANGCHENG ENG.CO. (T)LTDRESPONDENT

Date of Last Order: 17/05/2023

Date of Ruling: 26/05/2023

RULING

NANGELA, J:.

This application was brought under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap.141 R.E 2019, Section 74(4) of the Arbitration Act, Cap.15 R.E 2020 and any other enabling provision. The Application is by way of a chamber summons supported by an affidavit of Mr. Hafeez Thawer, the Applicant's Principal Officer.

In her application, the Applicant is seeking for the following orders, that:

1. This Honourable Court be pleased to grant leave to appeal to the Court of Appeal of Tanzania against the decision of the High Court of Tanzania (Commercial Division) at Dar-es-Salam, (Hon. Dr. Deo John Nangela, J.), dated 9th February 2023 in Misc. Commercial Cause No.36 of 2022.
2. Costs of this application be borne by the Respondent.

When the matter was called on for orders on the 28th day of March 2023, Ms. Felister Mtani, learned Advocate, appeared for the Applicant while Mr. Rico Adolf, learned Advocate too, appeared for the Respondent. This Court noted that, the Respondent had raised preliminary legal issues in objection to this application.

The objections raised by the Respondent were as follows, that:

1. The Application for leave is incurably defective for contravening the mandatory requirements of Rule

63(1) of the Arbitration (Rules of Procedure) Regulations, 2021.

2. That, the Application is time barred.

This Court set a date, i.e., 5th of April 2023, as a day when the parties were to meet and argue such preliminary matters. Unfortunately, on the material date, the hearing could not proceed but rather the parties were directed to file written submissions. A schedule of filing was, therefore, issued and, the learned counsel for the parties herein duly complied with the directives of this Court, hence, this ruling.

Submitting in support of the Preliminary Objections, Mr. Rico Adolf, the Respondent's learned counsel, commenced his submission with a withdrawal of the first objection and argued the second. In his submission, Mr. Rico contended that, the ruling, and the orders which the Applicant is seeking to have them contested before the Court of Appeal of Tanzania, if leave will be granted, were delivered on the 09th day of February 2023 while the application for leave was filed on the 7th day of March 2023, some 26 days from the date when the ruling was delivered.

Mr. Rico submitted that, the specific law governing limitation for application for leave where one seeks leave to appeal to the Court of Appeal against a decision of the High Court on enforcement proceedings is Regulation 65(1) of the Arbitration (Rules of Procedure) Regulations, 2021, GN. No. 146 of 2021.

He contended that, since the enabling provision as per the chamber summons is section 74(4) of the Arbitration Act, Cap.15 R.E 2020, then, the application ought to have been filed within 15 days as provided by Regulation 65(1) of the GN. No. 146 of 2021. On that sole ground, he urged this Court to dismiss this application with costs for be preferred out of time.

Responding to the submission filed by Mr. Rico, it was the submission by the counsel for the Applicant, Mr. Shehzada Walli, that, the application was preferred well within time. He submitted that, the Applicant was/is aware of the provision of section 69(4) of the Arbitration Act, which requires an aggrieved party to first file an application for leave before any appeal is made against a decision which has set aside an Arbitral Award.

Let me state, in the first place, that, the right provision is not section 69(4) but, according to the 2020 Revised Edition of

the Act, the correct provision is section 74(4) of Cap.15. Mr. Walli stated that, that provision is in line with Section 5(1)(c) of the Appellate Jurisdiction Act, Cap.141 R.E 2019. He argued, however, that, since the issue which this Court is called upon to look at is what is the time limitation for application for leave to appeal to the Court of Appeal against a decision of the High Court on arbitral enforcement proceedings, then, one must be guided by Rule 45(a) of the Court of Appeal Rule, 2009 (as amended) for a response. Rule 45(a) of the Court of Appeal Rules 2009 provides that:

“Notwithstanding the provisions of 46 (1), where appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, **within thirty days** of the decision.”

(Emphasis added).

To support the above position, Mr. Walli has cited the case of **Tumaini Nikodemu vs. Olam Tanzania Limited**, Civil Appl. No.32 of 2021 and **Iddi Uddi vs. Simon Sokolo**, Misc. Land Appl. No.188 of 2020 (both decisions being of the High Court) (unreported). Mr. Walli contended that, the Applicant having filed her application within 30 days, is well within the requirements of Rule 45(a) of the Court of Appeal Rules, 2009 (as amended). He contended further that; the Applicant's choice of law is based on what Regulation 65(3) of G.N No.146 of 2021 provides. That specific regulation provides that:

"Any appeal to the Court of Appeal shall be governed by the existing laws regulating appeals to the Court of Appeal."

Mr. Walli submitted that, the Applicant is mindful of the Respondent's submissions that, the specific law governing limitation for application for leave is Regulation 65(1) of the Arbitration (Rule of Procedure) Regulations, GN.No.146 of 2021 which provides:

"65-(1) A leave to appeal in terms of section 74(4) of the Act shall be

by way of Chamber Summons
supported by an affidavit and shall
be filed within fifteen (15) days
upon delivery of any orders stated
under section 69 (3)."

Mr. Walli contended that, section 69 of the Act does not have subsection (3) and its contents speaks about the effects of agreement or award about costs. He contended that, the above provision has no relevancy and so, the 15 days mentioned are not applicable as there are errors made when drafting the particular provision, hence, time prescribed in that manner is 30 days.

Mr. Walli submitted that, there are confusions within the Arbitration Regulations, and they conflict with the Act at some points. He pointed, for instance, Regulation 63(1) which requires all applications to be made by way of Petition but also Regulation 65(1) which shows that application for leave to be made by way of Chamber Summons.

To come to terms, he invited this Court to draw guidance from the Court of Appeal decision in the case of **Dangote Industries Ltd Tanzania vs. Warnercom (T) Ltd**, Civil Appeal

No.13 of 2021 and **Board of Trustees of the NSSF vs. The New Kilimanjaro Bazaar Limited**, Civil Appeal No.16 of 2004 where the Court stated that, "*where the provisions of a statute are plain and unambiguous there is no need to resort to rules of construction.*" He invited this Court to comment on the Regulation.

The gist of the objection raised by the Respondent's counsel is that the applicant has knocked at the doors of this Court belatedly. The premise upon which the Respondent's counsel has anchored his submission is the Arbitration (Rule of Procedure) Regulations, GN. No.146 of 2021. The issue therefore is whether the Applicant is indeed out of time or not.

Let me state, however, that, although I do indeed agree that the Arbitration Regulations, GN. 146 of 2021 as well as the Act, Cap.15 R.E 2020 have some issues that need to be looked at for possible corrections or rectifications, I do not think that this is the right case within which one can loudly blow the trumpet. For now, I should confine myself to the issue for which the parties have found themselves at logger heads, i.e., whether the Applicant is out of time.

As I stated earlier, section 74 (4) of the Arbitration Act is clear that for appeals arising from a decision premised under that provision, leave must be obtained. Regulation 65 (1) of GN. No.146 of 2021 provides that, a leave to appeal in terms of section 74 (4) of the Act shall be made within 15 days. Under that regulation, the only problem there is the words “**under section 69(3).**” The mentioning of section 69(3), in my view, was a clerical error because, the Act, Cap.15 was revised in the year 2020 and the provisions therein were re-arranged whereby section 69(3) now reads section 74 (3). The understanding, therefore, is that section 69 (3) mentioned in Regulation 65 (1) should be read as section 74 (3) of the Act since, that is the provision under which orders for which leave to appeal under section 74 (4) of the Act relates.

With that understanding, it clearly follows that, the period of limitation of time expressed under Regulation 65 (1) should be fifteen days upon delivery of any of the orders which are provided for under section 74 (3) of the Arbitration Act. Mr. Walli has argued that the appropriate provision to rely on as to limitation of

time should be Rule 45(a) of the Court of Appeal Rules, 2009, G.N No. 368 of 2009 as amended by G.N No. 362 of 2017.

In my considered view, I do not think I can take sides with Mr.Walli's submission. There being a very specific provision telling when an aggrieved party seeking to appeal to the Court of Appeal should file his/her application for leave under section 74 (4) of the Arbitration Act, the appropriate provision should be that specific provision. Had the Arbitration Regulations been silent, then one would resort to Rule 45(a) of the Court of Appeal Rules 2009 (as amended).

Accordingly, as for matters falling under section 74 (4) of the Arbitration Act, Cap. 15 R.E 2020, the governing provision in as far as limitation of time regarding that matter is concerned, is Regulation 65(1) of the Arbitration (Rules of Procedure) Regulations, G.N. No.146 of 2021. In this present application, the Respondent has contended that, the Applicant has come before the Court belatedly. As clearly shown, the decision intended to be impugned if leave will be granted, was delivered on the 09th day of February 2023 while the application for leave was filed on the 7th day of March 2023.

If one is to count, the Applicant ought to have knocked at the doors of this Court lately on the 23rd of February 2023. As correctly submitted by Mr. Adolf, filing the application on the 7th of March 2023 was a belated attempt and worse, one done without there being any attempt to seek of extension of time.

Since the Applicant knocked at the doors of this Court belatedly, the application is time barred and nothing can be done to it except that which is a normal fate for matters brought before the Court belatedly, i.e., the application should be dismissed.

In the upshot of the above, this Court settles for the following Orders:

- (i) That, the preliminary objection raised by the Respondent is upheld.
- (ii) The Application is hereby dismissed for being time-barred.
- (iii) The dismissal is with costs to the Respondent.

It is so ordered.

DATED AT DAR-ES-SALAAM THIS 26TH MAY 2023.



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DEO JOHN NANGELA
JUDGE