

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

MISC.COMMERCIAL CAUSE NO.49 OF 2023

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

BETWEEN

PUMA ENERGY TANZANIA LTD.....PETITIONER

VERSUS

YAPI MERKEZI INSAAT VE SANAYI A.S ..RESPONDENT

RULING

Date of Last Order: 16/10/2023
Date of this Ruling: 15/11/2023

This is a petition seeking for enforcement of award filed in court as a final settlement award. The Petition was filed under Section 73(1) and (2) of the Arbitration Act, 2020 and Regulation 63 (1) (a), (b), (c), (d) and (e) of the Arbitration (Rules of Procedure) Regulations, 2021.

In her petition, the Petitioner specifically prays for the following:

- (i) Leave of the Court be granted to the
Petitioner to enforce the Final

Settlement Award as a judgement of the court.

(ii) Judgement be entered as per the Final Settlement Award.

(iii) Costs of this Petition.

(iv) Any other reliefs this Honourable Court may deem fit to grant.

On the 16th day of October 2023, Mr. Gasper Nyika, learned advocate appeared for the Petitioner while Mr. Humphrey Aloyce, learned advocate appeared for the Respondent. Mr. Nyika submitted before this court that; the parties agreed that a final settlement award be filed in court. He urged the court to grant the prayers and except the one on costs which he prayed should be waived.

Mr. Humphrey told the court that, they as stated by Mr. Nyika, the Respondent took part in every move leading to the final settlement award being issued. He submitted that, save for the prayer for costs (which the court is urged to waive) the Respondent is not objecting to this petition.

I carefully considered the above noted submissions. Under the law governing arbitration, an Arbitral Award can be in varied forms, one being a “consent award” (also referred to as an “award

on agreed terms”). A consent award takes form when parties agree to bring the dispute before an arbitral tribunal for resolution, and, in the middle of the proceeding, both parties agree to settle the dispute by conciliation and discontinue the proceeding. It is therefore an arbitral award that records some or all terms of the settlement agreement. If that happens, the arbitral tribunal will not consider the merits of the dispute but will rather put the parties’ agreement into an award. This is exactly what happened in the context of this matter before me.

Perhaps it will be apposite that I set out the facts albeit briefly. It is on record that between the years 2017 and 2022 the parties herein entered into three agreements for the supply of petroleum products, storage, and services. At the time the Respondent had been contracted by the Tanzania Railways Authority (TRC) to construct the Standard Gauge Railway line from Dar-es-Salaam to Morogoro and from Morogoro to Makutopora and Makutopora Tabora.

According to the parties’ agreement, any dispute in relation to the three agreements was to be resolved by reference to arbitration. The Respondent breached the agreements by failing to pay for the services rendered, a fact which triggered the arbitration clause and the Petitioner commenced arbitration

proceedings claiming for US\$ 13,703,003.96. Following the commencement of the arbitral proceedings, parties engaged in various discussions and consultations with a view to reach an amicable settlement.

On the 19th of September 2023, the parties executed a Deed of Settlement wherein they agreed, amongst other things, that, the Respondent shall pay the remaining balance ascertained to be in the amount of US\$ 12,425.278.00 and will continue purchasing services from the Petitioner on a cash basis. In their Deed of Settlement, they also agreed to appoint Dr. Wibert Kapinga, a Sole Arbitrator with powers to arbitrate the dispute and issue a Final Settlement Award.

On the 22nd day of September 2023, the parties appeared before the Sole Arbitrator for a preliminary meeting and on the 25th day of September 2023, the Sole Arbitrator issued a Final Settlement Award which they now seek to bring before this court in line with the provisions of section 73 (1) of the Arbitration Act, read together with Regulation 63 (a) (a), (b), (c), (d) and (e) of the Arbitration (Rules of Procedure) Regulations, 2021.

I should hasten to say that section 83 (1) of the Arbitration Act, Cap.15 R.E 2020 which seeks its “*recognition*” first before its enforcement should have been added as well on the citation of

the enabling laws since, an award needs to be recognized d by the court first before one seeks to enforce it. That position was stated in the case of **Higher Education Student Loan Board vs. Tanzania Building Works Limited**, Misc. Commercial Cause.39 of 2022. In that case this court stated that:

“[R]ecognition of award’ entails a process where a party to an award asks the court to “recognize an award as valid and binding upon the parties in respect of the issues with which it dealt....[E]nforcement of an award entails a process during which the court ensures that the award “*which it had recognised*” “is carried out, by using legal sanctions as are available.”

In the context of the petition at hand, however, even though section 83 (1) of the Act was not cited as an enabling provision, I do not consider that to be fatal as I presume by virtue of the overriding objective principle that, the provision was taken on board and the parties’ interest is to have their consent award recorded as forming the judgement and decree of the court.

In the **Higher Education Student Loan Board’s case** (supra) this court did as well state that, what should be entered as

judgement in terms of the award is “*only the dispositive portion of the award*”. In this petition the dispositive portion of the award is its paragraph 6.1.4. Based on that paragraph this court enters judgment and Decree in terms of the award and settles for the following orders:

- (i) That, the Respondent shall pay the Claimant (Petitioner) the remaining balance of the debt in instalments and to be included in every instalment towards Debt Settlement a corresponding amount for future supply of the services under LOT1, LOT2, and LOT3 Agreements. The Modality of Debt settlement with each corresponding payment for the future supply of services shall be as per the table below:

<i>Modality</i>	<i>Due Date</i>	<i>Payment (US\$)</i>	<i>Supply (US\$)</i>	<i>Overdue (US\$)</i>	
<i>Opening Balance</i>	<i>11/09/2023</i>	<i>1,300,000.00</i>		<i>1,300,000.00</i>	<i>12,425,278.00</i>
	<i>11/09/2023</i>	<i>1,137,141.64</i>	<i>1,137,141.64</i>	-	<i>12,425,278.00</i>
	<i>16/10/2023</i>	<i>2,500,000.00</i>	<i>1,200,000.00</i>	<i>1,300,000.00</i>	<i>11,125,278.00</i>
	<i>20/11/2023</i>	<i>5,000,000.00</i>	<i>1,200,000.00</i>	<i>3,800,000.00</i>	<i>7,325,278.00</i>
	<i>18/12/2023</i>	<i>3,500,000.00</i>	<i>1,200,000.00</i>	<i>2,300,000.00</i>	<i>5,025,278.00</i>
	<i>22/01/2024</i>	<i>3,500,000.00</i>	<i>1,200,000.00</i>	<i>2,300,000.00</i>	<i>2,725,278.00</i>
	<i>19/02/2024</i>	<i>5,396,928.00</i>	<i>2,671,650.00</i>	<i>2,725,278.00</i>	-
		<i>22,334,069.64</i>	<i>8,608,791.64</i>	<i>13,725,278.00</i>	

- (ii) That, the Respondent shall pay the instalments indicated in the Tale in United States Dollars or the equivalent

in Tanzanian Shillings at the prevailing exchange rate as provided in the commercial banks. The amount shall be deposited into the Claimant's Bank Account per details provided below:

Account Name: Puma Energy Tanzania Ltd

Bank Name: NMB PLC

Branch: Headquarters, Ohio Branch

USD Account No. 20110009338

TZS Account No. 20110009337

(iii) The Respondent shall pay with respect to any late payment a yearly interest of Secure Overnight Financing Rate (SOFR) +4.5% on the overdue amount.

It is so ordered.

**DATED AT DAR-ES-SALAAM ON THIS 15TH DAY OF
NOVEMBER 2023**



DEO JOHN NANGELA
JUDGE