

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR-ES-SALAAM  
MISC.COMMERCIAL CAUSE NO.5 OF 2020  
IN THE MATTER OF ADJUDICATION AND IN THE MATTER  
OF ARBITRATION ACT, CAP. 15 [R. E. 2002]**

**BETWEEN  
DOMINION OIL & GAS LTD.....CALIMANT/APPLICANT  
VERSUS  
HERITAGE TANZANIA KISINGIRE LTD.....1<sup>st</sup> RESPONDENT  
HERITAGE OIL LIMITED .....2<sup>nd</sup> RESPONDENT**

**RULING**

Date of Last Order: 16/6/2020  
Date of this Ruling: 25/8/2020

**NANGELA, J.:**

This is a ruling in respect of an award which was duly registered in this Court and acknowledged so by the Deputy Registrar through a letter dated 21<sup>st</sup> January 2020. On 31<sup>st</sup> January 2020 and 26<sup>th</sup> February 2020, the matter was scheduled for necessary orders. According to section 12 (2) of the Arbitration Act Cap. 15 [R.E. 2002] an arbitrator/ umpire who delivers an award is required to cause the Award to be filed in Court. Under Rule 4 of the Arbitration Rules GN No. 427 of 1957, the arbitrator shall forward the Award to the Registrar together with a letter requesting the same to be registered by the court. This is what happened to this application and was acknowledged as stated herein above.

On 26<sup>th</sup> February 2020 the Claimant/ Applicant was represented by Ms. Mariam Said, learned Advocate. She submitted that, since the award has been filed in this Court, by virtue of section 17 of the Arbitration Act, Cap.15, the Court should proceed to pronounce it as a decree of the Court. However, Ms. Mariam was quick to add, in her submission, that, since the Respondents have a right to appear and show cause why the award should not be registered as a decree of the Court, the Claimant prays to be granted time to serve the Respondents with the summons to appear by way of a publication since the attempts to serve them has been futile.

On 26<sup>th</sup> February, 2020, this Court issued an order for a substituted service. The matter was fixed for mention on 2nd April 2020. On that material date, Mr. Abdillah Hussein, holding the briefs of Ms.Mariam Saidi submitted that, the Claimant duly complied with Court order issued on the 26<sup>th</sup> February 2020. He informed the Court that, the summons to appear *was published on the Mwananchi News Paper of 4<sup>th</sup> March 2020* and the Daily News Newspaper of the same date. He prayed for another date for orders of this Court. The matter was scheduled for mention on 6<sup>th</sup> May 2020 and later on 16<sup>th</sup> June 2020.

On 16<sup>th</sup> June 2020, Ms Kapinga represented the Claimant/Applicant. She submitted that the Applicant/ Claimant had been entering an appearance since the filing of this application. She prayed that the award be adopted and form the Decree of this Court in terms of section 17 of the Arbitration Act, Cap.15

[R.E.2002]. She argued that, the absence of the Respondents in Court, despite having been served by way of publications in newspapers, is inexcusable and the Court should proceed to adopt the award and register it as its Decree.

The law regarding the filing and registration of arbitral awards as a decree of the Court is well settled. In the case of **Tanzania Cotton Marketing Board v Cogegot Cotton Company SA [1997] T.L.R. 165**, the Court of Appeal of Tanzania held, on page 172 of its decision, that:

**"...the receipt of the award by the Court Registry constitutes filing of the award. Thereafter, the court is required to notify the parties who may wish to challenge or enforce the award in terms of the law."**

*(Emphasis added).*

The above position was followed by this Court in the case of **Kigoma/Ujiji Municipal Council v Nyakirang'ani Construction Limited, Misc. Commercial Cause No.239 of 2015 (unreported)**. In that decision, Mwambegele, J., (as he then was) stated, at page 6, as follows:

"For purposes of regularizing ... understanding, I hasten to observe that **a party aggrieved by an arbitral award has no avenue to challenge the same through a Court of law until and unless the award is filed in court for purposes of registration** as a decree of the court- See Tanzania Cotton Marketing Board v Cogegot Cotton Company SA [1997] T.L.R. 165." **(Emphasis added)**.

Other decisions that have laid emphasis on that position include the recent decision of this Court in the case of **Afriq**

**Engineering & Construction Co. Ltd v The Registered Trustees of the Diocese of Central Tanganyika, Review No.3 of 2020, (HC) Commercial Division** (Unreported). See also the case of **Ardhi University v M/s Kiundo Enterprises (T) Limited, Misc. Commercial Cause No.272 of 2015, HC, Commercial Division**, (unreported) and **ISOB BPO Tanzania Ltd v Equity Bank (Tanzania) Ltd, Misc. Civil Cause No.659 of 2016, (HC) DSM District Registry** (unreported).

As regards the process of registration of an Arbitral Award, this Court, in the case of **Ardhi University v M/s Kiundo Enterprises (T) Limited** (supra), stated on page 15 of its decision, as follows:

"At this juncture, I find it apposite to summarize the answer to the question posed earlier: the process of presenting an arbitral award at the court registry, the relevant file opened and a number given to it constitutes filing of the arbitral award. What follows after that is the file to be placed before a judge for necessary orders during which, whoever wished to challenge it (the arbitral award filed), normally the respondent, will be allowed to do so. Short of which the arbitral award, by an order of the Court, will assume another status- an enforceable decree of the Court. **The right to challenge an arbitral award by the respondent, accrues after filing.** An arbitral award cannot be challenged in court before it is filed. An arbitral award becomes a decree of the court after an

order by a judge to confer it such status." (Emphasis added).

In this instant application, the filing process having been done, the next process was to grant the parties opportunity to challenge it or else the award will be adopted as a decree of the Court. This opportunity was availed to the Respondents but they failed to appear in court several times. A substituted service mode was adopted and still, the Respondents were unable to appear in Court.

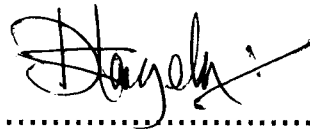
In the case of **Afriq Engineering & Construction Co. Ltd v The Registered Trustees of the Diocese of Central Tanganyika, (supra)**, this Court stated that, the filing of an arbitral award is a "**post- award rendering process.**" It is not an end of the journey, but it may culminate into a binding and enforceable decree, if no successful challenge is mounted against the Award. Section 17 (1) of the Arbitration Act, Cap.15 [R.E 2002] provides that:

"(1) An award on a submission, on being filed in the Court in accordance with this Act, shall, unless the Court remits it to the reconsideration of the arbitrators or umpire or sets it aside, be enforced as if it were a decree of the Court.

As I stated herein above, the Respondents have never challenged the award despite there being efforts to summon them for such a purpose, as a matter of exercising their rights. In view of what section 17 (1) of the Arbitration Act, Cap.15 provides, this Court makes the following orders:

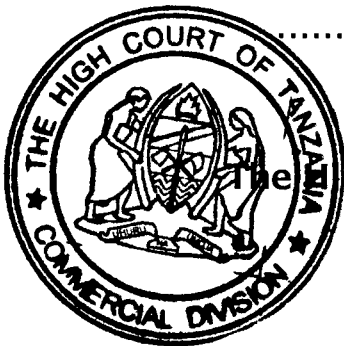
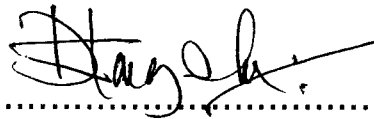
1. That, the ARBITRAL AWARD filed in this Court by the Claimant is hereby REGISTERED and the same shall have the effect of being enforced as the DECREE this Court.
2. I make no orders as to Costs of this instant Application.

**It is so ordered.**



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**DEO JOHN NANGELA**  
**JUDGE,**  
**The High Court of the United Republic of Tanzania**  
**(COMMERCIAL DIVISION)**  
**25/08/2020**

Ruling delivered on this 25<sup>th</sup> day of August 2020, in the presence of the Advocates for the Applicant and in the absence of the Respondent.



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**DEO JOHN NANGELA**  
**JUDGE,**  
**The High Court of the United Republic of Tanzania**  
**(COMMERCIAL DIVISION)**  
**25/08/2020**