

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 48 OF 2020

BETWEEN

HIGH HOPE INT'L GROUP JIANGSU NATIVE PRODUCE

IMPORT AND EXPORT CORP. LTD..... APPLICANT

VERSUS

JOC TEXTILE (TANZANIA) CO. LIMITEDRESPONDENT

RULING

B.K. PHILLIP, J

This ruling is in respect of a point of preliminary objection raised by the learned advocate Edward Magayane, who appears for the respondent, to wit;

-That this application is fatally defective for being brought under the provisions of the Arbitration Act No. 2 of 2020, an Act which is yet to come into force.

The applicant is represented by the learned advocates Rico Adolf and Nicholaus Kakoza.

A brief background to this matter is that on 22nd April, 2020 Mr. Rico Adolf lodged this application under the provisions of Section 68(1), 78(1) and 79 of the Arbitration Act 2020 praying for the following orders:-

- i. That this honourable court be pleased to grant leave for the court to enforce as judgment and extract a decree from the Award[2018] Z.G.M.Z.J.C.ZI.NO. 1420 issued by China International Economic and Trade Arbitration Commission.
- ii. Any other(s) or relief(s) that this court deems fit to grant.

Submitting in support of the aforesaid point of preliminary objection, Mr. Magayane said that the Arbitration Act No. 2 of 2020 (hereinafter to be referred to as "Act No. 2/2020") has not yet come into operation since the Minister has not published any notice in Government Gazette for the date on which this Act has to come into operation. Mr. Magayane referred this court to the provisions of section 1 of Act No. 2/2020 which provides as follows:-

"This Act may be cited as the Arbitration Act 2020 and shall come into operation on such date as the Minister may ,by notice published in the Gazette appoint"

(Emphasis is added)

He also referred this court to the provisions of Sections 14 and 16 of the Interpretation of Laws Act, which provides as follows:-

Section 14.

"Date of commencement of Acts

Every Act shall come into operation on the date of its publication in the Gazette or, if it is provided either in that Act or in any other written law, that it shall come into operation on some other date, on that date."

(Emphasis added)

Section 16.

"Effective date of commencement provision where notice of commencement required.

Notwithstanding section 14, where an Act provides that the Act, or portion of the Act, is to come into operation on a day to be fixed by notice, that provision and the provision providing for the short title of the Act, unless it is otherwise expressly provided, shall come into operation on the day on which the Act receives the Presidential Assent."

Furthermore, Mr. Magayane submitted that he is aware that Act No.2/2020 has been assented to by the President of the United Republic of Tanzania and published in the Government Gazette No.8 dated 21st February 2020. However, he contended that, the aforesaid Government Gazette does not contain any notice pertaining to the date on which Act No.2 of 2020 has to come into operation. He invited this court to dismiss this application with costs.

In rebuttal Mr. Kakoza, submitted that Mr. Magayane misconstrued the provisions of section 14 of the Interpretation of Laws Act. He proceeded to submit that the provision of section 14 of the Interpretation of Laws Act, provides that an Act comes into operation upon being published in the Government Gazette. He contended that, the fact that Act No. 2/2020

was published in Government Gazette No. 8 dated 21st February 2020, then it has come into operation.

As regards the provisions of section 16 of the Interpretation of Laws Act, Mr. Kakoza submitted that, there are only two things required to make an Act operational, one is to be assented to by the president, secondly to be published in the Government Gazette. He contended that since Act No. 2/2020 was assented to by the President of the United Republic of Tanzania and published in the Government Gazette No. 8 dated 21st February 2020 then, the same is operational. He invited this court to dismiss the point of preliminary objection with costs.

In rejoinder Mr. Magayane reiterated his submission in chief and insisted that Act No. 2/2020 has not yet come into operation as the Minister has not published any notice regarding the commencement date of the same. The Government Gazette No. 8 dated 21st February 2020, just published the Act, contended Mr. Magayane. He insisted that the requirement for publication of a notice regarding the date on which this Act has to come into operation is provided in the law itself (Act No 2/2020).

Having perused the courts records, the provisions of section 1 of Act No. 2/2020 and the provisions of the Interpretation of Laws Act referred to this court by Mr. Magayane, as well as the Government Gazette No.8 dated 21st February 2020 , I wish to point out on the onset that the point of preliminary objection raised by Mr. Magayane has merits as I will explain hereunder.

Section 1 of Act No. 2/2020 provides for the short title and commencement of the Act. It reads as follows; "*This Act may be cited as the Arbitration Act 2020 and this Act shall come into operation on such date as the Minister may, by notice published in the Gazette appoint*". So, Act No. 2/2020 provides explicitly that its commencement date shall be stated in a notice which shall be published in the Gazette by the Minister and section 3 of Act No. 2/2020 provides that, "*Minister*" means "*The Minister responsible for legal affairs*".

From the foregoing, pursuant to the provisions of section 16 of the Interpretation of Laws Act, section 1 of Act No. 2/2020 came into force when Act No. 2/2020 was assented to by the President, that is on 14th February 2020. Therefore, pursuant to the provisions of section 14 of the Interpretation of Laws Act read together with section 1 of Act No. 2/2020, Act No. 2/2020 shall come into operation on such a date as the Minister responsible for legal affairs may, by notice published in the gazette appoint.

As correctly submitted by Mr. Magayane Act No. 2/2020 was published in the Government Gazette No. 8 dated 21st February 2020, but the Minister has not yet published the notice regarding the date on which the same shall come into operation. Therefore, the Act No. 2/2020 has not yet come into operation.

In addition to the above, I wish to point out that in the case of **Petrolube Tanzania Limited Vs Fuchs Oil Middle East Limited, Misc Application No. 8 of 2019** (unreported), out of misapprehension that by being published in the Government Gazette No. 8 , dated 21st February 2020, Act No.2/2020 is operational, I made a finding that the same has come into operation. However, the correct position of the law is the one I have explained herein above. Since, I have realized the correct status of Act No.2/2020 that is, it is not operational, I believe I am not bound by my findings in the aforementioned case of **Petrolube Tanzania Limited** (Supra) and am supposed to abide by the correct position of the law explained herein above.

Having said the above, this application is bound to fail , since it has been made under the provisions of Act No. 2/2020 which has not come into operation. The position of the law is that failure to cite correct provisions of the law renders the application incompetent.

In the upshot, I hereby uphold the point of preliminary objection and strike out this application with costs.

Dated at Dar es Salaam this 12th day of June 2020.



A handwritten signature in black ink, appearing to read "B.K. Phillip".

B.K.PHILLIP

JUDGE