IN THE HIGH COURT OF THE UNITED REPUBLIC OT TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL CAUSE NO. 64 OF 2023

IN THE MATTER OF ARBITRATION

AND

IN THE MATTER OF THE ARBITRATION ACT,2020

BETWEEN

VODACOM TANZANIA PUBLIC LIMITED COMPANY

(Formerly known as Vodacom Tanzania Limited).....PETITIONER

VERSUS

PLANETEL COMMUNICATION LIMITED.....RESPONDENT

RULING

Date of Last Order: 12/12/2023

Date of Ruling: 27/03/2024

MKEHA, J:

The present Petition traces its genesis from arbitration proceedings initiated by the Respondent against the Petitioner in December 2016. The basis for initiation of the said proceedings according to the Petition was that, a dispute had arisen under "the Super Dealer Agreement" (SDA) entered between the parties on 23rd November 2004. Before the arbitral

tribunal, each party alleged that, the other party had breached the agreement.

The Respondent, who was the Claimant before the Tribunal, alleged violations of her contractual rights which emanated from the SDA. Under the SDA, the Petitioner had appointed the Respondent to be a Super Dealer to sell and distribute pre-paid airtime, post-paid airtime, starter packs and other products and services of the Petitioner.

Specifically, the Respondent alleged that, the Petitioner had breached the SDA by: failing to issue a 30 days' notice to her (the Respondent) when she made amendments, adjustments or variations under the SDA contrary to Clause 5.1.2, 5.1.4 and 20.5 of the SDA; Constructively ignoring the Respondent's repeated requests/calls to solve the issues that arose during their trading relation contrary to Clause 6.1.3 of the SDA; Unilaterally valuating the value of the Subscriber base while under the SDA the same was the transferrable asset of the Respondent and, Misappropriation of the interest of the subscriber base from the Respondent to which the Petitioner had continued to benefit from the same up to when notice of initiation of arbitral proceedings was issued.

With regard to the Petitioner's Counter Claim, it was contended that the Respondent had purchased products on credit between 30th December 2013 and 11th March 2014 in respect of which she did not pay despite being bound to do so. The Petitioner contended further that, she had established that the Respondent was liable for payment of the sums due under the SDA (as per the repayment conditions of the Credit Facility and Clause 7.1.7 of the SDA) and as a matter of Tanzanian law.

To a large extent, the arbitration proceedings terminated against the Petitioner herein. The details on how the arbitral proceedings ended in disfavour of the Petitioner will be revealed in different parts of this ruling. Being aggrieved with the Final Award by the Arbitral Tribunal dated 15th September 2023; the Petitioner is challenging the Award on the following four grounds:

(i) That, the award was procured in a manner contrary to public policy for being in violation of the law;

(ii) That, the tribunal failed to comply with the requirements as to the form of the award agreed by the parties under paragraph 88 of the Terms of Reference read together with section 59(b) of the Arbitration Act;

(iii) That, the effect of the award is uncertain and/or ambiguous and

(iv) That, the Tribunal failed to conduct the proceedings in accordance with the procedure agreed by the parties under the Terms of Reference read together with the procedural calendar dated 10th October 2022 as amended on 2nd February 2023 and 1st March 2023.

The Petition is brought under section 75 (1) and (2) (c), (f), (g) and (h) of the Arbitration Act, Cap. 15 R.E. 2020 and Regulation 63 (1) (a), (b), (c), (d) and (e) of the Arbitration (Rules of Procedure). Affidavits verifying the Petition and the Petitioner's Affidavit in Reply to the Answer to the Petition were sworn by Ms. Jacqueline Kalaze, the Petitioner's Head of Legal Affairs. On the other hand, the Respondent filed an answer to the Petition verified by an affidavit sworn by Mr. Peter Mayunga Noni, the Respondent's Managing Director.

The Petition was argued through written submissions. Whereas Mr. Gaspar Nyika learned advocate represented the Petitioner, Mr. Michael Ngalo learned advocate represented the Respondent.

Firstly, Mr. Gaspar Nyika learned advocate submitted at a considerable length to impress the court that, the disputed award had been procured contrary to public policy. He commenced his submissions by acknowledging his understanding on the principle that, in challenging an arbitral award on ground of public policy, there must be clear violations of mandatory legal rules which are fundamental to the legal order of the state. In this regard, the learned advocate cited section 75(2) (g) of the Arbitration Act as well as the decision by my Brother Nangela, J in **CATIC INTERNATIONAL ENGINEERING (T) LTD VS UNIVERSITY OF DAR ES SALAAM, MISCELLANEOUS COMMERCIAL CASE NO. 1 OF 2020.** According to the learned advocate, the principle hereinabove had been affirmed on appeal by the Court of Appeal of Tanzania which insisted that, courts could interfere with an award if there were errors of law manifest on its face.

The learned advocate submitted that, in terms of section 53(1)(a) of the Arbitration Act the Tribunal must decide the dispute in accordance with the substantive law in force in Tanzania where the seat of arbitration is in Tanzania and Tanzanian law have been chosen by the parties. It was submitted that, an award cannot legislate that which is prohibited by the

law and courts of law cannot uphold an illegality otherwise the provision of section 53(1) (a) of the Arbitration Act would become nugatory and the award would adversely affect the administration of justice in the country. Reference was made to the decision in **CHAMA CHA WALIMU TANZANIA VS. THE ATTORNEY GENERAL, CIVIL APPLICATION NO. 151 OF 2008, CAT, AT DSM.**

Mr. Gaspar Nyika learned advocate submitted that, whereas the Super Dealer Agreement (**SDA)** was governed by the laws of Tanzania, in which case the dispute had to be determined pursuant to the laws of Tanzania, the award was issued contrary to the general principles of the Law of Contract and the Law of Limitation Act. That, whereas section 73 (1) and (2) of the Law of Contract requires that special damages be specifically pleaded and proved as per the decision in **ZUBERI AUGUSTINO MUGABE VS. ANICET MUGABE (1992) T.L.R. 137,** in total disregard of the said legal requirement at paragraph 188A.4 of the award, the Tribunal awarded to the Respondent TZS 5,810,000,000/= as special damages allegedly being the value of its interest in the subscriber base. According to the learned advocate, the Respondent did not plead for such amount in its Amended and Restated Statement of

Claim and that, the award does not even mention the amount of TZS 5,810,000,000/=as part of the reliefs sought by the Respondent.

It was further submitted that, the Respondent had not proved its entitlement to such amount as required by the law. The learned advocate submitted that, at no point in the Final Award does the Tribunal determine the Respondent proved it was entitled to this head of damages as a result of the Petitioner's breach of the Super Dealer Agreement, not even in paragraphs 165 and 185 of the Final Award which contain analysis of the reliefs granted by the Tribunal. The learned advocate submitted that, the amount was arbitrarily awarded without explanation in violation of the legal principles contrary to section 73 of the Law of Contract Act and the established judicial precedents.

It was further submitted that, whereas the Tribunal made a finding at page 83 of the award that, there was no basis in law to award the Respondent specific damages in the form of unpaid commissions, arbitrarily, it awarded specific damages of TZS 1,926,439,108.88/= as unpaid commissions for the period from March 2014 to September 2016 for the Petitioner's breach of the Super Dealer Agreement. In view of the learned advocate, the award was contrary to section 73 of the Law

of Contract Act and the established legal principles that damages are only awarded where a contract has been broken and not otherwise and only for losses resulting from the breach.

The learned advocate submitted that, since the Tribunal had already made a finding that the Super Dealer Agreement was breached on 07/10/2016 and that the Respondent was not entitled to unpaid commissions as specific damages, awarding specific damages of TZS 1,926,439,108.00/= as unpaid commissions for the period between March 2014 and September2016, a period prior to such breach, was therefore contrary to section 73 of the Law of Contract Act hence the award of damages was illegal.

It was further submitted that, the Tribunal having held at page 44 that the Petitioner was entitled under the Super Dealer Agreement to introduce the TD Model, the Petitioner's action to introduce the same could not amount to breach of contract. According to the learned advocate, the Tribunal had held that, the Petitioner was not in breach of the SDA by introducing the TD model, therefore, in awarding general damages of TZS 9,500,000,000/=, the Tribunal violated the provisions of section 73 of the Law of Contract Act which entitle a party to

damages only where a contract has been broken and not otherwise. To substantiate this argument, the learned advocate cited a text book by **Pollock and Mulla, The Indian Contract and Specific Reliefs Act, 16th Edition, Volume 2 at page 1144.** The learned advocate remained surprised as to how the Petitioner's compliance with the terms of the contract would in turn entitle the Respondent to colossal sum of general damages.

The learned advocate submitted that, whereas general damages are direct losses caused to an innocent party where a contract has been breached, which naturally arose in the usual course of things from such breach, the Tribunal awarded general damages in part for the breach arising from the Petitioner's purported termination of the SDA. According to the learned counsel, the Respondent was required to prove that, the losses claimed as general damages naturally and directly arose from the Petitioner's breach, otherwise, as the Tribunal stated in paragraph 181, the Respondent would only be entitled to nominal damages. The decisions in **DIXON VS. DEVERIDGE (1825)2 C & P** and **TWYMAN VS. KNOWLES (1853)13 CB 222** were cited. The learned advocate insisted that, evidence to the effect that such loss

naturally and directly flowed from the Petitioner's breach of the SDA was lacking.

The learned advocate went on to submit that, the Super Dealer Agreement being a commercial transaction ought to attract compound interest. The decision in **SCHELTENS VS. SUDESH KUMARI VARMA (**as administratrix of the estste of Baldev Norataram Varma) and **OTHERS, CIVIL APPEAL NO. 203 OF 2019 (2022) TZCA 508 at page 35** was cited**.** The learned advocate complained that, at pages 70 and 84 of the award, paragraphs 163, 164 and 188 B.3, the Tribunal awarded the Petitioner simple interest at the rate of 18% on the amount of TZS 5,092,272,254.09/= from 30/12/2013 to 21/12/2022 and simple interest at 7% on the amounts unpaid under the credit facility from 21/12/2022 to the date of final payment.

According to the learned advocate, by awarding the Petitioner simple interest instead of the agreed compound interest, the Tribunal disregarded the clear terms of the credit facility and the Super Dealer Agreement contrary to the doctrine of sanctity of contracts. In this regard, section 37 (1) of the Law of Contract Act and the decision in **SIMON KICHELE VS. AVELINE M. KILAWE, CIVIL APPEAL NO.**

160 OF 2018 were cited. The learned advocate emphasized that, as the doctrine of sanctity of contracts requires and as it had been held in **SIMON KICHELE's** case, the lender is always entitled to interest on unpaid amounts in the manner contractually agreed.

Finally regarding public policy, it was submitted that, in the Final Award, the Tribunal disregarded the provisions of the Law of Limitation Act and made a finding at paragraphs 114 and 109 that, the Petitioner was in breach of the SDA by its act of unilaterally making adjustments, modifications, amendments and alterations to the SDA on 01/04/2009, September 2009 and October 2010 without affording the Respondent 30 days' notice instead of dismissing such claims under section 3 (1) read together with Item 7 of Part I of the Schedule to the Law of Limitation Act as the claims were made after the expiry of 6 years since when the cause of action arose. According to the learned advocate, whereas the latest event complained of happened in October 2010, the arbitration proceedings were instituted by the respondent by notice of arbitration dated 1st December 2016.

Secondly, the learned advocate challenged the award for its alleged failure to comply with the requirements as to the form as agreed by the

parties under paragraph 188 of the Terms of Reference read together with section 59 (2)(b) of the Arbitration Act. It was submitted that, under paragraph 88 of the Terms of Reference entered between the parties and the Tribunal it had been agreed that, the award had to state the reasons on which it is based and that, it had to include material facts constituting the dispute or claims, an analysis and evaluation of the evidence adduced, the legal arguments submitted by the parties and determination of every issue raised by the parties or the Tribunal in accordance with paragraph 60. However, according to the learned advocate, the awards made at paragraph 188A.2 at page 83 were arbitrarily made without assigning any reason or explanation for such awards. The learned advocate condemned the Tribunal for holding that the Petitioner was entitled to simple interest at the rate of 18% per annum without assigning reasons. The learned advocate further condemned the Tribunal for holding that the Petitioner was in breach without evaluating evidence and legal submissions made by the parties.

Thirdly, it was submitted by the learned advocate that, the Final Award was uncertain and ambiguous. The learned advocate clarified that, at page 83, the Tribunal made an award of specific damages in the form of

unpaid commissions from March 2014 to September 2016 despite having determined at page 80 of the award not to award the Respondent specific damages in the form of unpaid commissions as there was no basis in law to award that limb of damages. According to the learned advocate, the ambiguity and uncertainty as to the effect of the award was that, although the Tribunal refused the Respondent's claim for specific damages of TZS 1,926,439,108.88/= as unpaid commissions , it proceeded to award the respondent the refused claim as part of the reliefs awarded in the Final Award.

The learned advocate went on to submit that, at page 84 of the award, the Tribunal awarded interest at the rate of 7% on the amount of TZS 5,092,272,254.09/= from the date of filing the Arbitration Claim without any reason and in contradiction of its own finding at page 70 in which it held that the Petitioner was contractually entitled to 18% per annum. In view of the learned advocate, the ambiguity and uncertainty as to the effect of the Final Award was that, although the Tribunal determined that the Petitioner was entitled to 18% interest, it arbitrarily awarded interest at a lower rate of 7%.

The learned advocate went on to point out that, at pages 35 and 37 of the award, the Tribunal determined that, the Petitioner's purported termination of the SDA on 07/10/2016 was a breach of contract, yet at page 83 of the award, the Tribunal awarded the Respondent damages up to the date of breach on 07/10/2016. i.e, from March 2014 to September 2016. The ambiguity and uncertainty as to the effect of the Final Award according to the learned advocate was that, the Tribunal made a finding that the Respondent was entitled to damages prior to the occurrence of the purported breach.

It was complained further that, in paragraphs 104 and 180 of the award, the Tribunal determined that, the Petitioner was entitled under the SDA to introduce TD Model and that it did not constructively terminate the SDA by introducing the TD Model, yet, at page 81 of the award, the Tribunal awarded the Respondent general damages of TZS 9, 500,000,000/= for, in part, the Petitioner's act of introducing the TD Model. In view of the learned advocate, the ambiguity and uncertainty as to the effect of the Final Award was that, the Tribunal awarded the Respondent general damages even though the Petitioner had not breached the Super Dealer Agreement when it introduced the TD Model.

Fourthly, it was submitted by the learned advocate for the Petitioner that, the Tribunal had failed to conduct the proceedings in accordance with the procedure agreed by the parties under the Terms of Reference read together with the procedural calendar dated 10/10/2022 as amended and revised on 02/02/2023, 28/02/2023 and 01/03/2023. The learned advocate submitted that, the agreed procedure was that, evidence in chief would be by witness statements followed by cross examination and re-examination or questioning by the Tribunal. The learned advocate complained that, on 10/10/2022 the Tribunal set the date for hearing of the oral testimonies of the parties' witnesses. This calendar according to the learned advocate was revised on 02/02/2023. Under the Revised Procedural Calendar the Tribunal ordered the pre-hearing conference to be held on 25/04/2023, the common hearing bundles to be filed on 02/05/2023 and hearing to be on 05/05/2023.

The learned advocate submitted that, on 02/05/2023, the Petitioner asked for revised procedural calendar which was refused. According to the learned advocate, the Tribunal closed the proceedings and set a date for delivery of the Final Award. In view of the learned advocate, refusal to conduct oral hearing despite the Petitioner's request

amounted to denial of right to be heard to the Petitioner. The learned advocate submitted that, section 37(1) of the Arbitration Act was contravened by the Arbitral Tribunal. The learned advocate complained that, the procedural order dated 7th May 2023 was contrary to the procedure agreed by the parties as envisaged under paragraphs 69, 83 and 84 of the Terms of Reference and the Revised Procedural Calendar and this, in view of the learned advocate, denied the Petitioner its right to a fair hearing.

Mr. Michael Ngalo learned advocate commenced his reply submissions by restating the principles governing handling of post arbitration proceedings by courts as enunciated by the Court of Appeal of Tanzania in **VODACOM TANZANIA LIMITED VS. FTS SERVICES LIMITED, CIVIL APPEAL NO. 14 OF 2016, CAT AT DAR ES SALAAM** and **CATIC INTERNATIONAL ENGINEERING PTY (T) LTD AND THE UNIVERSITY OF DAR ES SALAAM (**supra**).** According to the learned advocate, in respect of the former decision, the following are the principles:

(a) The High Court's power is not of appellate court;

(b) A petition cannot be disposed of in a form of re-hearing;

(c) Courts cannot interfere with awards on the ground of misconduct except for errors of law manifest on the face of the award;

(d) Error of law on face of the award means an error which is vivid or self-evident on the face of the award and not one which requires long process of reasoning or examination;

(e) Courts are not entitled to interfere where there is an error on part of the arbitration which can only become apparent after examination of evidence;

(f) As a general rule, a court is not entitled to examine the record of the proceedings before Arbitrators except the Award and documents incorporated therein.

Regarding the latter decision (the Catic decision), the following are the principles:

(a) Much as courts have authority in appropriate situations to remit, set aside or declare the whole or part of the award to be of no effect, in principle, courts are always cautious when they are called upon to interfere with the findings of the arbitrators;

(b) Arbitral proceedings are ordinarily not to be subjected to scrutiny with the finesse of a toothcomb;

(c) Arbitral justice calls for the support of the freestanding of the arbitral process rather than interfering with it, save only for extreme cases only where for instance, an arbitrator has gone wrong in his conduct of the arbitration in such a way that substantive justice will demand that the award be set aside or remitted;

(d) That kind of approval is essential, not only for the sake of upholding the principle of party autonomy, but also for the purposes of promoting certainty and predictability of the arbitral process itself. That is healthy for the business environment and the general policy of promoting spill overs that lead to economic development;

(e) Where an award infringes public procurement laws or public policy, that illegality may be sufficiently relied upon to set aside an arbitral award;

(f) An award can be set aside if it is in breach or would result into an express violation of law or be contrary to public policy;

(g) An arbitral award can be challenged on two main grounds: lack of substantive jurisdiction and serious irregularity affecting the proceedings or the award.

After the learned advocate had restated the basic principles governing handling of post arbitration proceedings by courts, he went ahead to submit that, the disputed arbitral proceedings and the award were not against any public policy or law and that the award was not procured in violation or non-compliance with the Terms of Reference, the Arbitration Act, Arbitration Rules or any other law. The learned advocate submitted that, the proceedings were neither ambiguous nor uncertain in any respect. That, neither the Petitioner nor the Respondent were denied right to be heard. That, none of the raised grounds amounted to serious irregularity within the meaning of section 75 (2) of the Arbitration Act. The learned advocate for the Respondent was in agreement with the issues formulated by the Petitioner's counsel as hereunder:

1. Whether the Final Award was procured in a manner that is contrary to public policy for being in violation of the law.

2. Whether the Tribunal failed to comply with the requirements as to the form of the award agreed by the parties under paragraph 88 of the Terms of Reference read together with section 59(b) of the Arbitration Act.

3. Whether the effect of the Final Award is uncertain and/or ambiguous and

4. Whether the Tribunal failed to conduct the proceedings in accordance with the procedure agreed by the parties under the Terms of Reference read together with the procedural calendar dated 10th October 2022 as amended on 02nd February 2023, 28th February 2023 and 1st March 2023.

According to the learned advocate for the Respondent, for the Petitioner to succeed under the Petition he had to overcome the hurdle imposed by section 80(1)(d) of the Arbitration Act which reads:

" Where a party to arbitral proceedings takes part, or continues to take part in proceedings without making , either forthwith or within such time as is allowed by the arbitration agreement or the arbitral tribunal or by any provision of this Act or the Law of Limitation Act, any objection that there has been any other irregularity affecting the arbitral tribunal or the proceedings, he may not raise that objection before the arbitral tribunal or

the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection."

The learned advocate posed a question that, if the proceedings were being conducted contrary to public policy or in violation of any law or that the Petitioner was denied a hearing, why did the Petitioner and its counsel fail to raise objections at opportune moment? According to the learned advocate, there was no explanation for such failure, neither in the pleadings nor in the submissions.

As to the specific issues, Mr. Michael Ngalo learned advocate condemned the Petitioner's counsel for having devoted a total of 26 paragraphs all addressing the first ground. In view of the learned advocate for the Respondent, such lengthy submissions on a single issue alleging violation of public policy were improper, uncalled for and contrary to what the Petitioner was enjoined to address in this kind of Petitions. According to the learned advocate, the hearing and disposal/determination of a petition challenging an award is not a re-hearing of the matter before the court and neither does it take the form of an appeal. It was submitted that, the Petitioner's trouble to make analysis of the facts upon which the Tribunal

made its findings and reliefs granted to each party, was faulty, improper and misconceived as this court was not sitting on hearing the Petition as an appellate court over the Tribunal's proceedings and award.

The learned advocate submitted that, neither the proceedings were conducted, nor the award was procured in any manner contrary to public policy or in violation of any Tanzanian law. It was insisted that, whereas cases involving setting aside of awards on grounds of being against public policy would differ from one jurisdiction to another; the commonly raised ground is where there is an allegation of fraud. A text book written by **J. William Rowley, The Guide to Challenging and Enforcing Arbitration Awards Published by Law Business Research Ltd, London, 2019 at page 27** was cited. Specifically, the learned counsel cited pages 83 to 84 of the book as hereunder:

"...Under the UNCITRAL Model Law and the New York Convention, courts are free to disregard an award if it violates their own state's public policy. Again, as a general matter, an award is contrary to public policy if it is repugnant to fundamental notions of justice or morality or if it contravenes important national interests. Because of its inherent vagueness, the public policy defence seems to provide the greatest latitude for courts to correct

substantive defects in an arbitral award. Accordingly, it is perhaps the most commonly invoked basis for challenging an arbitral decision, yet rarely with any success...."

The learned advocate submitted that, fortunately, the Petitioner had not proved that the award was repugnant to fundamental notions of justice or morality or contravention of important national interests. The learned counsel proceeded to distinguish the facts in **Catic's case** and this case, that, the award in **Catic's case** was against a public institution, a public University and that, the arbitration had awarded extra payments , facts not existing in the present matter.

Regarding breach of the Law of Contract Act, the Law of Limitation, the Arbitration Act and the general civil laws governing pleadings and awards of various types of damages it was submitted that, TZS 1,926,439, 108.80/= and TZS 5,810,000,000.00/= had been pleaded and proved. Reference was made to paragraph 167 of the award. According to the learned advocate, the allegation that the amounts were awarded without being pleaded and proved were factually and legally unfounded. Citing the decision in **PRESTINE PROPERTIES LIMITED VS. SEYANI BROTHERS & CO LTD, MISCELLANEOUS COMMERCIAL CAUSE NO.**

02 OF 2021, the learned counsel submitted that, this court was precluded from dealing with matters relating to evaluation of evidence and findings of facts made by the arbitral tribunal. It was submitted that, matters of evaluation of evidence and the like are not part of what constitutes serious irregularity under section 75(2) (a) to (i) of the Arbitration Act. In view of the learned advocate, considering whether the amounts were pleaded and proved would tantamount to evaluation of evidence not within the court's power.

That notwithstanding, the learned advocate went on to submit that, TZS 5,810,000,000.00/= specific damages, being the value of the Respondent's interest in the subscriber base had been pleaded under PART XII Clause "h" of the reliefs sought by the respondent in the Amended/Restated Statement of Claim dated 15/11/2022. That, TZS 6,029,671,210.00/= had been pleaded being the value of the Claimant's interest as in May 2012. According to the learned advocate, in its discretion, the Tribunal awarded TZS 5,810,000,000/=pleaded under the Respondent's reply to the Amended Defence by the Petitioner.

The learned advocate submitted that, the counsel for the Petitioner did not substantiate which principle of law or laws the Tribunal failed to follow or

comply with in the assessment of general damages of TZS 9,500,000,000.00/=. The learned advocate insisted that, unlike specific damages, general damages need not be specifically pleaded and proved. The decision in **THE COOPER MOTOR CORPORATION LTD VS. MOSHI/ARUSHA OCCUPATIONAL HEALTH SERVICES (1990)T.L.R. 96** was cited. It was insisted that, the **Vodacom's case** was an authority on the arbitral tribunal's discretion in assessment of general damages. In the said case, the Court declined to interfere with the tribunal's assessment of general damages.

The learned advocate went on to submit that, neither sections 73 and 74 of the Law of Contract Act, nor case laws were to the effect that general damages ought to be pleaded and proved. The learned advocate insisted that, general damages had to be simply asked and averred to have been suffered resulting from the breach complained of. And that, assessment of the same remained in the domain of the trial tribunal or court not bound by any figures quantified by the parties. The learned advocate insisted that, the amount to be awarded was entirely in the tribunal's discretion to be exercised judiciously and that, in most of the cases, higher courts were reluctant to interfere. In view of the learned advocate, the Tribunal could

not be faulted on the amount awarded as it gave reasons for awarding that sum.

Regarding awards of 18% and 7% simple interest the learned advocate submitted that, the Petitioner was inviting the court to re-evaluate evidence. The learned advocate warned the court not to assume the role of the Tribunal or appellate court. According to the learned advocate, in terms of section 56(2) of the Arbitration Act and Rule 42(2) of the Arbitration Rules, the award of interest (simple or compound) was in the sole discretion of the Tribunal unless there was an express agreement of the parties so far as the issue of interest was concerned.

It was submitted that, the complaint regarding time limitation had never been raised before the Tribunal. That, by not pleading the same, the Respondent could not exercise its right to reply to it one way or the other. According to the learned advocate, in any event, determination of that issue could have required the Tribunal to scrutinize the pleadings and annexures thereto to ascertain whether those breaches were continuing or not hence brought within time or not. In view of the learned counsel for the Respondent, as long as the Petitioner had never pleaded time bar as a ground of defence against any of the incidents of breach of the SDA

alleged by the Respondent, the Petitioner had to be taken as having waived or forfeited that defence and raising it at this stage was an afterthought which could not salvage its own fault. The learned advocate added that, in any case, the Tribunal could not have gone out of its way to look for possible defences against the breaches alleged to have been committed by the Petitioner. In view of the learned advocate, it would have been strange for the Tribunal to have done that in the absence of any request to that effect or affording the parties a hearing thereon.

Regarding compliance with the requirements as to the form of the award agreed by the parties, it was submitted that, the award was made in the manner agreed under the Terms of Reference and in accordance with the law governing the substance and form of making awards. According to the learned advocate, the Petitioner's allegations were unfounded. The learned advocate was insistent that, the award conformed to the parties' agreement and the law.

Regarding ambiguity and uncertainty of effect of the award, it was submitted that, there were no uncertainties or ambiguities at all and if there were any (which was denied), the same were inconsequential and or over which the Petitioner could have sought clarification from the Tribunal.

According to the learned advocate, the complaint did not constitute serious irregularity within the meaning of section 73(2) of the Arbitration Act. It was submitted that, the Tribunal did not refuse the Respondent's claim of TZS 1, 926,439,108.88/= as unpaid commissions. Reference was made at paragraph 178 of the award. According to the learned advocate, the amount was specifically pleaded, prayed for and proved by the Petitioner's own documents comprised under CLD-9.

The learned advocate submitted further that, there was no ambiguity regarding the award of general damages. It was submitted that, the Tribunal's finding that the Respondent stopped the SDA in March 2014 could not be faulted for circumstances caused by the Petitioner's breaches found established. According to the learned advocate, the Tribunal did not award general damages on the basis alleged by the Petitioner. In view of the learned advocate, the Tribunal's finding that the TD Model did not terminate the SDA was just endorsing the Respondent's prayer to abandon the relief sought in that regard.

Regarding failure to conduct the proceedings in accordance with the Terms of Reference and the Procedural Calendar, it was submitted that, the Petitioner had not raised any objection before the Tribunal. According to

the learned advocate, for such failure to raise an objection at opportune moment, the Petitioner was barred, under section 80 of the Arbitration Act, to take up the objection at a later stage.

It was submitted by Mr. Gaspar Nyika learned advocate in the rejoinder submissions that, the Respondent's counsel misconstrued section 80(1)(d) of the Arbitration Act. According to the learned advocate, the prohibition under section 80(1)(d) relates to irregularities affecting the arbitral tribunal or the proceedings and not the Final Award. The learned advocate insisted that, the irregularities envisaged under the said provision of the law ought to have taken place in the course of the arbitration proceedings and not those that are found in the Final Award. The learned advocate went on to submit that, the Petitioner could not have raised an issue of violation of the law in the Final Award before the Final Award was issued. The violations could only be discovered after the review of the Final Award.

The learned advocate submitted further that, the Petition had been filed under section 75 (1) and (2) of the Arbitration Act which allows challenges to the Final Award on serious irregularities affecting the award. According to the learned advocate, a challenge under section 75 was only possible after an award had been made, and, if the court was to agree with the

Respondent, the court's decision would mean that, an arbitral award could never be challenged rendering section 75 superfluous.

The learned advocate submitted that, whereas the Respondent's counsel was of the view that the decision in **Catic case** considered the best interest of a public institution, actually, the said decision was reached after considering decisions not involving public institutions including that of **Christ for All Nations vs. Apolio Insurance Co Ltd.** The learned advocate submitted that, the **Catic case**, set down a general principle that violations of laws are contrary to public policy hence it would be inconceivable to limit its applicability to only public institutions.

Regarding damages, the learned advocate submitted that, the Respondent's counsel had acknowledged the fact that special damages ought to be pleaded and proved. Mr. Nyika learned advocate was surprised to learn from the Respondent's counsel that, the determination of the said issue by the court would require evaluation of evidence. According to Mr. Nyika learned advocate, the position taken by the Respondent's counsel was wrong. In view of the Petitioner's counsel, the Petitioner was only asking the court to review the Final Award which examination would enable it to find out what was pleaded and proved by the parties.

The learned advocate went on to submit that, whereas the Respondent alleged that it was not factually true that the award of TZS 5,810,000,000.00/= was neither pleaded nor proved, it failed to direct the court to a specific part of the Final Award where the alleged pleadings and proof of such damages could be found. It was further submitted that, whereas the Respondent referred to the reliefs claimed in establishing that TZS 1,926,439,108.80 had been pleaded and proved, it was the Petitioner's position that, the Respondent had failed to capture the real issue that, this amount was awarded as specific damages for unpaid commissions for the period before breach of the SDA and after the Tribunal had already decided at paragraph 179 of the Final Award that the Respondent was not entitled in law to unpaid commissions. Regarding the award of general damages, it was submitted that, all the cases cited by the Respondent's counsel were to the effect that, such head of damages is only awarded once a breach of contract has been determined. According to the learned advocate, if the Petitioner did not breach the contract when it introduced the TD Model, the Tribunal had no legal justification to award general damages to the Respondent for such conduct and hence acted in violation of section 73 (1) of the Law of Contract.

The learned advocate for the Petitioner insisted that, the tribunal's discretion to award general damages ought to be exercised with justification. Reference was made to the decision of the Court of Appeal in **ANTONY NGOO & ANOTHER VS. KITINDA KIMARO, CIVIL APPEAL NO. 17 OF 2010** where it was held that, *the law is settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence on record able to justify the award. The judge has discretion in the award of general damages. However, the judge must assign reasons, which was not done in this case.*

On interest, it was submitted that, the refusal to award compound interest by relying on a document that had already been superseded and replaced (CLD-8) was contrary to section 62 of the Law of Contract Act and the position of the law as set out by case laws on compound interest. It was added that, the reduction of interest to 7% from 18% that had been contractually agreed, was also contrary to the doctrine of sanctity of contract.

Regarding time limitation, it was submitted by the learned advocate for the Petitioner that, contrary to the Respondent's argument, the position of the law under section 3 (1) of the Law of Limitation Act is that, whether or not

limitation is set out as a defence, the court has power to dismiss the proceedings. The decisions in **MENEJA MKUU SHIRIKA LA UMEME ZANZIBAR VS JUMA SIMAI MKUMBINI AND FOUR OTHERS, CIVIL APPEAL Nos. 41-45 OF 2011** and **MBEZI MGAZA MKOMWA VS. PRINCIPAL SECRETARY, PRIME MINISTER'S OFFICE AND OTHERS, CIVIL APPEAL No. 2017** were cited. The rest of the submissions were a reiteration of what had been submitted in chief.

I now turn my attention to addressing the issues proposed and agreed by the parties. Looking at the grounds put forward by the Petitioner in challenging the award, the court accepts and adopts the proposed issues to be determinative of the Petition before it. The first issue is whether the award was procured against the public policy.

It was submitted for the Petitioner that, the award of TZS 5,810,000,000/= and TZS 1,926,439,108.80/= as special damages to the Respondent had no reflection in the Claimant's pleadings. That, neither was there proof that the Respondent had specifically suffered the said damages. According to the Petitioner's position, the award contravened section 73 of the Law of Contract Act. It was submitted that, at page 44 of the award the Tribunal held that, the Petitioner's action to introduce the TD model could not

amount to breach of contract. That was after the Tribunal had held that the Petitioner was entitled under the SDA to introduce the TD Model. Therefore, in awarding general damages of TZS 9,500,000,000/= the Tribunal violated the provisions of section 73 of the Law of Contract Act which entitle a party to damages only where a contract has been broken and not otherwise.

The Petitioner maintained also that, the Super Dealer Agreement, being a commercial transaction had to attract compound interest. However, at page 84 of the award the Petitioner was awarded simple interest on the amount of TZS 5,092,272,254.09/= in disregard of clear terms of the credit facility and the SDA. In view of the Petitioner, in doing so, the Tribunal went against section 37 (1) of the Law of Contract Act and the doctrine of sanctity of contract.

Regarding time limitation, it was submitted for the Petitioner that, the Tribunal held at paragraphs 114 and 109 of the award that, the Petitioner was in breach of the SDA by its act of unilaterally making adjustments, modifications, amendments and alterations to the SDA on **01/04/2009, September 2009** and **October 2010** without affording the Respondent 30 days' notice. In view of the learned advocate for the Petitioner, the

claims were time barred deserving a dismissal order. According to the learned advocate, whereas the latest incident of breach complained of happened in **October 2010**, the arbitration proceedings were instituted by the Respondent by a notice dated **01/12/2016.**

The Respondent's reaction to the submissions hereinabove was that, the proceedings were not conducted contrary to public policy or in violation of any law. The learned advocate for the Respondent remained wondering, why did the Petitioner and its counsel fail to raise objections at opportune moment. According to the learned advocate, there was no explanation for such failure, neither in the pleadings nor in the submissions. The learned advocate submitted that, the Petitioner had not proved that the award was repugnant to fundamental notions of justice or morality or that, it was in contravention of important national interests.

Regarding breach of the Law of Contract Act, Law of Limitation Act, Arbitration Act, general civil laws of pleadings and awards of various types of damages, it was submitted that, the amounts of TZS 5,810,000,000.00/= and TZS 1,926,439,108.80/= had been pleaded and proved . Reference was made to paragraph 167 of the award which deals with the reliefs sought. It was further submitted that, the allegations that

the amounts were awarded without having been pleaded and proved were unfounded. While referring to the decision in **PRESTINE PROPERTIES LIMITED** case, the learned advocate warned against dealing with matters relating to evaluation of evidence. In view of the learned advocate, considering whether the amounts were pleaded and proved or not, would tantamount to evaluation of evidence which was not within the court's power. Nevertheless, the learned advocate insisted that, the amounts had been pleaded under the reliefs' section i.e, PART XII Clause "h" of the reliefs sought by the respondent in the Amended/Restated Statement of Claim dated 15/11/2022.

The learned advocate faulted the Petitioner for failure to state clearly, the principle of law breached by the Tribunal in awarding general damages of TZS 9,500,000,000/=. According to the learned advocate, general damages ought not to be proved. It was insisted that, neither sections 73 and 74 of the Law of Contract Act, nor the case laws were to the effect that, general damages were subject to proof. It was submitted that, general damages, had to be simply asked and averred to have been suffered from the breach complained of. Without specific reference, the learned advocate maintained that, reasons for the award of general damages had been offered in the

disputed award. Neither did the learned advocate address the court on how the general damages' award was compliant with the established legal principle in **ANTONY NGOO & ANOTHER VS. KITINDA KIMARO** (supra) that, general damages are awarded after consideration and deliberation on the evidence on record able to justify the award and that, although the trial judge/magistrate/arbitrator has discretion in the award of damages, he must assign reasons for awarding what he decides to award.

The learned advocate submitted further that, in terms of section 56 (2) of the Arbitration Act and Rule 42(2) of the Arbitration Rules, unless there was agreement to the contrary, it was within the Arbitrator's power to decide on the imposable interest, be it simple or compound. The learned advocate refrained from submitting on whether the parties had a contractually agreed interest under the SDA.

Regarding time limitation, it was the Respondent's position that, limitation had never been raised at the Tribunal. That, having not been pleaded by the Petitioner, the Respondent could not exercise reply to it one way or the other. The learned advocate for the Respondent submitted that, in any case, determination of that issue could have required the Tribunal to scrutinize the pleadings, and annexes to ascertain whether those breaches

were continuing or not, hence brought within time or not. According to the learned advocate, as long as the Petitioner had never pleaded time bar as a ground of defence against any of the incidents of breach of the SDA alleged by the Respondent, the Petitioner had to be taken as having waived or forfeited that defence.

The Respondent's first reaction to the complaint that the amounts awarded as special damages had not been pleaded and proved was that, considering whether the same had been pleaded and proved or not by the court, would entail re-evaluating the evidence adduced before the Tribunal which was not within the powers of the court. Later on, the learned advocate submitted that, the amounts awarded as special damages had been specifically pleaded and proved. Reference was made to reliefs section, under PART XII of the Amended/ Restated Statement of Claim dated 15/11/2022. The learned advocate failed to specifically cite, the relevant paragraphs from the Amended Statement of Claim, under which the amounts or related amounts, had been pleaded. As a matter of fact, before a party asks for a specific relief, there should be a specific averment in the pleadings, regarding what he asks the court or tribunal to grant to him. This is so because; no amount of evidence on a plea that is not

specifically put forward in the pleadings can be looked into to grant any relief. **See: BACHHAJ NAHAR VS. NILIMA MANDAL AND OTHERS, AIR 2009 SC 1103. See also: MASAKA MUSA VS. ROGERS ANDREW LUMENYELA AND TWO OTHERS, CIVIL APPEAL NO. 497 OF 2021, CAT AT KIGOMA** and **ZUBERI AUGUSTINO MUGABE VS. ANICET MUGABE** (supra).

While the learned advocate for the Respondent was insistent that reasons for the award of General damages amounting to TZS 9,500,000,000/= had been assigned in the Final Award, he made no specific reference to the said reasons. Although as correctly submitted by the learned advocate for the Respondent general damages need not be proved, the established legal principle in **ANTONY NGOO & ANOTHER VS. KITINDA KIMARO** (supra) is that, the discretion to award such kind of damages has to be accompanied with reasons.

While there was contractual interest agreed by the parties, reduction of the same from 18% to 7% and its variation from compound to simple interest as mercantile practice would require, went unexplained. As long as the parties had agreed on matters relating to interest, the discretion of the

Tribunal to award whatever interest be it simple or compound, under Rule 42(2) of the Arbitration Rules, could not be freely exercised.

Regarding the Petitioner's stance that the Tribunal ought to have dismissed the Respondent's claims for being time barred, the learned advocate for the Respondent submitted that, for failure of the Petitioner to plead time limitation as her defence, she ought to be taken as having waived or forfeited such defence. The learned advocate for the Petitioner rejoined that, under section 3 (1) of the Law of Limitation Act, irrespective of the fact that time limitation had not been pleaded as a defence, the Tribunal was obliged to dismiss the claims for being time barred.

There was no dispute that the events leading to the Petitioner's claims happened on 01/04/2009, September 2009 and October 2010. Equally, there was no dispute arbitration in respect of the said claims concerning breach of the SDA was commenced by the Respondent by a notice dated 01/12/ 2016.

In terms of section 53 (1) and (2) of the Arbitration Act, when the parties agree on choice of the applicable laws governing their future disputes should they arise, the choice of the laws refers to substantive laws. Under

section 17(1) of the Arbitration Act, the Law of Limitation Act should apply to arbitral proceedings as it applies to other legal proceedings. This provision makes the Law of Limitation expressly applicable to arbitrations. This means, where an award is given by an arbitral tribunal on a time barred claim, it can be held that, there was violation of section 17(1) of the Arbitration Act. It is the holding of the court, the use of the word "shall" under section 17(1) implies that, the parties cannot contract themselves out of the Law of Limitation. That is to say, all the provisions of the Law of Limitation Act are equally applicable to arbitrations as they apply to proceedings in ordinary courts of law. As it was held by the Privy Council in **RAMDUTT RAMKISSEN DASS VS. E.D. SASSOON & CO, AIR, 1929, PC 103**, in mercantile, it is an implied term of contract that, the arbitrator must decide the dispute according to the existing law of contract and every defence which would have been open in a court of law can be equally put forward for the arbitrator's decision unless the parties have agreed to exclude that defence. There was no submission that the parties herein had agreed to exclude the defence of time limitation, in which case it would have been a contract for breaching the law which would not be enforceable.

The foregoing analysis in my considered view indicates clearly that, the award was procured in contravention of the provisions of section 73 (1) and (2) of the Law of Contact Act, sections 17(1), 56 (1) and (2) of the Arbitration Act, as well as the established legal principles governing grant of damages and interests in our jurisdiction. An award which, on the face of it is patently in violation of statutory provisions cannot be said to be in public interest. Such award is likely to adversely affect the administration of justice. Such award would promote injustice if allowed to stand. For the foregoing reasoning the first issue is answered in the affirmative. That is to say, the Final Award was procured in a manner that was contrary to public policy for being in contravention of the law.

The second and fourth issues can be dealt with together. That is a task I now embark on. The Petitioner's complaint was that, the Tribunal failed to comply with the requirements as to form of the award as agreed by the parties and as provided under section 59 (2) (b) of the Arbitration Act. The main complaint was on the Tribunal's failure to assign reasons, why it awarded the Petitioner simple interest instead of compound interest. The other complaint concerned change of the procedure agreed under the Terms of Reference, from filing of witness statements to oral hearing of

witnesses. That, refusal of the Petitioner's request for revised procedural calendar, resulted in denial of right to be heard on part of the Petitioner.

The Respondent's response on the two issues was that, the award was made in a manner agreed by the parties and in conformity with the Terms of Reference. In view of the learned advocate for the Respondent, the Petitioner's allegations were unfounded. Regarding failure to abide to the Terms of Reference and the Procedural Calendar, the learned advocate for the Respondent submitted that, the Petitioner did not raise any objection before the Tribunal to show his dissatisfaction with the manner the proceedings were being conducted hence, in terms of section 80(1)(d) of the Arbitration Act, she was barred from raising any such objection.

Looking at the Terms of Reference, what had been agreed by the parties in respect of form of the award corresponds with what the law provides under section 59(2)(a) to (c) of the Arbitration Act. That is, the award had to be in writing signed by all the arbitrators. It had to contain reasons. It had to state the seat of the arbitration. It had to be dated.

As far as procedure is concerned, the law provides that, it has to be decided by the Tribunal subject to the agreement of the parties. See:

Section 38(1) of the Arbitration Act. Before I move on determining the two issues, it may be necessary to see how one of the eminent authors on the subject of Arbitration comments on form and contents of an award. And what the practice is, in other jurisdictions.

In some jurisdictions, there is no prescribed form for an award. What is generally accepted is that, an award must give a decision. Any words expressive of a decision are an award. **Russel on Arbitration, 19th (1979) Edition, at page 333,** says:

"*With regard to the substance of the award any form of words amounting to a decision of the questions referred will be good as an award. No technical expressions are necessary. But as awards often bind valuable rights for all time, the arbitrator should be precise and clear in his adjudication".*

On contents, Russel says:

" *An award in order to be valid, must be final, certain, consistent and possible and must decide the matters submitted and no more than the matters submitted".*

On Presumption in favour of Award, Russel states at page 334:

'It has often been said that the courts are always inclined to support the validity of an award and will make every reasonable intendment and presumption in favour of its being a final, certain and sufficient termination of the matters in dispute. No such presumption however, extends to the question of the arbitrator's jurisdiction.*"*

The foregoing rule on presumption in favour of awards was stated by the Supreme Court of India in the following words:

'' It is necessary to emphasize certain basic positions. These are: 1. A court should approach an award with a desire to support it, if that is reasonably possible; 2. Unless the reference to arbitration specifically so requires, the arbitrator is not bound to deal with each claim or matter separately but can deliver a consolidated award. The legal position is clear that unless so specifically required, an award need not formally express the decision of the arbitrator on each matter of difference; 3. Unless the contrary appears the court will presume that the award disposes of finally all the matters in difference and 4. Where an award is made praemissis (that is, of and concerning all matters in dispute referred to the arbitrator), the presumption is that, the arbitrator intended to dispose of finally all the matters in difference; and his award will be held final, if by any intendment

it can be made so". See: **SANTA SILA DEVI (SMT) VS. DHIRENDRA NATH SEN, AIR, 1963, SC 1677.**

No doubt, save for specific matters on which our Arbitration Act provides otherwise, the foregoing principles and presumptions, form part of the jurisprudence of our jurisdiction on the subject. That being the position, in deciding the present Petition, amongst other things I will be guided by the said principles.

I have to the extent possible, read the award in dispute. Upon re-reading the same, I have formed a firm opinion upon which I hold that, as far as form of the award is concerned, the Final Award conforms not only with what had been agreed by the parties, but also, the Arbitration Act and the accepted standards highlighted hereinabove. The alleged uncertainties cannot be overemphasized to suggest that, the Tribunal issued no award at all.

Regarding the procedure, much as the agreed procedure was varied by the Tribunal, for failure of the Petitioner to raise objection at opportune moment, she is to be taken to have consented to the said variation. The Petitioner was unable to demonstrate to the court that, at the time she

continued to take part in the proceedings she was unable to put before the Tribunal, this complaint. That is where section 80 (1) (d) of the Arbitration Act comes in the Respondent's path. For these reasons, the second and fourth issues are answered in the negative.

Last to be determined is the issue whether there is uncertainty or ambiguity as to the effect of the award. It was complained by the Petitioner that, at page 80 of the award the Tribunal determined not to award the Respondent specific damages in the form of unpaid commissions as there was no basis in law to award that limb of damages. However, later on, the Tribunal awarded specific damages in the form of unpaid commissions from March 2014 to September 2016;

That, at page 70 of the award, the Tribunal held that the Petitioner was contractually entitled to 18% interest rate on the amount of TZS 5,092, 272,254.09/= from the date of filing the Arbitration Claims. However, without reasons, at page 84 of the award, the Tribunal awarded interest on the said amount at the rate of 7%;

That, at pages 35 and 37 of the award the Tribunal held that, the Petitioner's purported termination of the SDA on 07/10/2016 was a breach

of contract, yet, at page 83 of the award the Tribunal awarded the Respondent damages up to the date of breach the result being that, the Respondent was held to be entitled to damages prior to the occurrence of the purported breach and;

That, at paragraphs 104 and 180 of the award the Tribunal held that the Petitioner was entitled under the SDA to introduce TD Model and that it did not constructively terminate the SDA by introducing the TD Model. However, at page 81 of the award, the Tribunal awarded the Respondent general damages of TZS 9,500,000,000/= partly because of the Petitioner's act of introducing the TD Model.

Against the foregoing allegations, it was submitted in reply for the Respondent that there were no uncertainties or ambiguities at all and if there were any (which was denied), the same were inconsequential or they were things in respect of which the Petitioner would have sought clarification from Tribunal.

Without beating around the bush, all the Petitioner's allegations in respect of this ground/issue are vivid in the Final Award. That is perhaps why the Respondent's counsel recommended that the Petitioner would have sought

clarification from the Tribunal rather than challenging the award in the way she did.

As I embark on determination of this issue, it is important that the following be emphasized. As earlier on stated in this ruling, it is one of the essential ingredients of a valid award that, it must be certain so that no reasonable doubt arises as to its meaning. That is why **Russel on Arbitration, 19th (1979) Edition at page 333** says what I earlier on quoted that, an award, in order to be valid, amongst other things, it must also be **certain.** One of the remedies of rectifying uncertain awards is for the courts to remit them to the tribunals for re-consideration.

However, where the uncertainties in an award are irreconcilable, they may be a reason for setting aside of the award. In the case of **UNION OF INDIA VS. KAY BEE ALUMS PVT LTD 2008 (4) Arb LR 99: (2008) 155 DLT 181: 2009 Arb WLJ 92 (Del)**, the Union of India was the purchaser of Aluminium Ferric Grade and respondent number 1 was the seller. An award was made in favour of the seller on account of payment of excise duty. The Union of India made an application for setting aside of the award in the Delhi High Court. The Arbitrator had on one hand held that respondent number 1 i.e. the seller was not entitled to amendment of the

rate of contract as claimed but on the other hand allowed the claim of respondent number 1 for excise duty which he would have been entitled to only if the rate of contract had been amended. There was thus inherent contradiction in the award and it was liable to be set aside on this ground alone. One way or the other, the uncertainties complained of in the present Petition, which I have held to be vivid in the disputed award, are similar to what happened in the persuasive decision cited hereinabove. For the foregoing reasoning the third issue is answered in the affirmative. That is, the Final Award is uncertain or ambiguous as to its effect, to the extent indicated hereinabove.

For the foregoing reasoning, having held the award to have been procured in a manner that is contrary to public policy and that, the same is uncertain or ambiguous as to its effect; I proceed to hold that, these are serious irregularities affecting the award. Pursuant to section 75 (3) (a) of the Arbitration Act Cap. 15 R.E. 2020, I remit the award to the arbitral tribunal in whole, for reconsideration. There being no fault on part of the parties, I make no order as to costs.

DATED at **DAR ES SALAAM** this **27th** day of **MARCH 2024**.

C. P. MKEHA

JUDGE

27/03/2023

Ruling is delivered this 27th day of March 2024 in the presence of Ms. Faidha Salhah the learned counsel for the Petitioner and Mr. Ferdinand Masoy & Mr. Safari Malata the learned counsel for the Respondent.

J. M. MINDE

DEPUTY REGISTRAR

27/03/2024