

IN THE HIGH COURT OF TANZANIA

COMMERCIAL DIVISION

AT DAR ES SALAAM.

MISC COMMERCIAL CAUSE NO 12 OF 2020

**(ARISING OUT OF MISCELLANEOUS COMMERCIAL CAUSE NO. 7
OF 2020)**

IN THE MATTER OF THE ARBITRATION ACT NO. 2 OF 2020

**IN THE MATTER OF SECTION 69 (1) (a) (b), AND (3) (c) OF THE
ARBITRATION ACT No. 2 of 2020**

**IN THE MATTER OF ARBITRATION UNDER THE INTERNATIONAL
CHAMBER OF COMMERCE RULES**

**AND IN THE MATTER OF PETITION TO CHALLENGE ON
SUBSTANTIVE JURISDICTION ON AN ARBITRATION ICC
REFERENCE 23831/TO**

BETWEEN

NEXTGEN SOLAWAZI LIMITED.....PETITIONER

AND

VOLTALIA PORTUGAL S.A.....RESPONDENT

RULING

B.K.PHILLIP, J

The applicant herein has lodged this petition under the provisions of sections 69 (1) (a) (b) and (3) (c) of the Arbitration Act No. 2 of 2020 praying for the following orders.

- (a) The Award dated 17th January 2020 in respect of the EPC Agreement dated 14th December 2016 be set aside in its entirety.
- (b) Costs of this Petition and the Arbitration be awarded.

A brief background to this petition is that the respondent herein lodged in this court an arbitral award made by the ICC International Court of Arbitration in Case No. 23831/ 10 between the petitioner and the respondent for registration of the same as a court decree vide Misc. Cause No. 7 of 2020.

Upon being served with the summons for appearance in court in respect of the afore said Misc. Cause No. 7 of 2020, the petitioner's advocate, Mr. Jovison Kagirwa, lodged this petition challenging the respondent's application for registration of the award as a court decree.

Upon being served with this petition, the respondent's advocate Mr. Gerald Nangi, filed the answer to the petition together with the following points of preliminary objection.

- (i) The Petition is preferred under inapplicable law.
- (ii) That this Honorable Court lacks jurisdiction to determine the Petition having been improperly moved.

This Ruling is in respect of the above mentioned points of preliminary objection. The same were disposed of by way of written submissions. Submitting for the first point of preliminary objection, Mr. Nangi argued that this Court has been moved under the provisions of sections 69 (1) (a) (b) and (3) (c) of the Arbitration Act No. 2 of 2020 (hereinafter to be referred to as "the New Arbitration Act"), which is yet to come into

operation. Mr. Nangi went on to submit that, the operational date for the New Arbitration Act has to be appointed by notice published in the Gazette by the Minister responsible for legal affairs. To cement his argument he cited the provisions of section 1 of the New Arbitration Act, which provides as follows;

Section 1.

“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”

Mr. Nangi further submitted that, he made a follow up to the relevant authorities and was sure that the Minister for Legal Affairs has not published any notice on the operational date of the New Arbitration Act. Moreover, Mr. Nangi submitted that, he was aware that the New Arbitration Act was published in the Government Gazette No. 8 vol. 101 dated 21st February 2020 and assented to by the President of the United Republic of Tanzania on 14th February 2020. The Government Gazette dated 21st February 2020 does not contain any notice on the commencement date of the New Arbitration Act, contended Mr. Nangi. He referred this Court to the provisions of section 14 of the interpretation of laws Act Cap 1 RE 2012 which provides as follows;

Section 14 *“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”.*

Mr. Nangi invited this Court to strike out this application with costs.

In rebuttal, Mr. Kagirwa submitted that in the previous court session before the Deputy Registrar, the Respondent's advocate made a prayer in Misc cause No. 7 of 2020 under the provisions of section 78 of the New Arbitration Act, thus, now he cannot be heard arguing that, the New Arbitration Act is not operational.

Mr. Kagirwa proceeded to submit that, the New Arbitration Act came into force on 21st February 2020, when it was published in the Government Gazette No. 8 dated 21st February 2020. He referred this Court to the decision of this Court in the case of **Petrolube Tanzania Limited Versus Fuchs Oil Middle East Limited Misc. Application No. 8 of 2019**, (unreported), in which this Court made a finding that the New Arbitration Act is operational. Thus, he insisted that the New Arbitration Act is operational since this court has also made a finding to that effect.

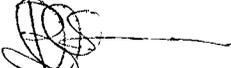
I have dispassionately analyzed the submissions made by the learned advocates, as well as perused the relevant laws, that is the New Arbitration Act and the Interpretation of Laws Act, Cap 1. I wish to state outright here that this point of preliminary objection has merits. As correctly argued by Mr. Nangi, section 1 of the New Arbitration Act, states clearly that the same will be operational on the date to be appointed by the Minister by notice to be published in the Government Gazette. I am in agreement with Mr. Nangi that the Government Gazette No. 8 of 2020 dated 21st February 2020 did not provide the commencement date of the New Arbitration Act. In addition to the above, I wish to state clearly that the case of

Petrolube Tanzania Limited (Supra) was cited by Mr. Kagirwa is no longer a good case law. I said this in the case of **High Hope Int'l Group Jiangsu Native Produce Import And Export Corp. Ltd Vs. Joc Textile (Tanzania) Co. Limited, Misc. Commercial Application No. 48 Of 2020**, (unreported) that the finding in the case of **Petrolube Tanzania Limited** (supra) was made out of misapprehension that by being published in the Government Gazette No. 8 , dated 21st February 2020, Act No.2/2020 is operational. The correct position of the law is that of the New Arbitration Act is not operational as stated in the case of **Joc Textile (Tanzania) Co. Limited,**(supra).

From the foregoing this application is incompetent as the court is not properly moved, since the law cited is not operational and failure to cite the correct provisions of the laws renders the application/petition incompetent. [see the case of **Harish Chandra GN Shelkhe Vs. Cliff Jiwan and Two Others, Misc. Civil application No. 19/2004** (unreported)]. Under the circumstances I do not see any plausible reasons to proceed with the determination of the second point of preliminary objection. In the upshot, this petition is dismissed with costs.

Dated in Dar es Salaam this 19th day of August, 2020




B.K.PHILLIP
JUDGE