

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 540 OF 2020**

**ABDULKADIR ELMANZI RASHID & 135 OTHERS .....APPLICANTS**

**VERSUS**

**THE HONOURABLE ATTORNEY GENERAL .....1<sup>st</sup> RESPONDENT**

**BOARD OF TRUSTEES, NATIONAL  
SOCIAL SECURITY FUND.....2<sup>nd</sup> RESPONDENT**

**YONO AUCTION MART & COURT BROKERS.....3<sup>RD</sup> RESPONDENT**

*Date of last Order: 19/04/2021*

*Date of Ruling: 25/06/2021*

**R U L I N G**

**MANGO, J.**

The Petitioners filed this petition praying for the following orders: -

- 1. That this Honorable Court be pleased to revoke the arbitration clause requirement under clause 10.1 of the Sale Agreement for hire purchase arrangement entered between the 2<sup>nd</sup> Respondent and the Petitioners;**
- 2. Maintenance of status quo pending hearing and determination of the intended suit; and**
- 3. Costs of the Petition.**

**4. And any other orders that this Honorable Court may deem fit to grant in favour of the Petitioners.**

The Respondents filed their answer to the petition, and a notice of preliminary objection on points of law. The notice of preliminary objection contained two points as follows;

- i. That this Court lacks jurisdiction to entertain this matter on the ground of sanctity of the contract.
- ii. The Application is untenable for being vexatious, frivolous and abuse of court process

The Petitioners had legal services of Mr. Benitho Mandele, Learned Advocate while the Respondents were represented by Mr. Stanley Mahenge, Learned State Attorney. On 11<sup>th</sup> March 2021, this Court ordered the Preliminary points of objection be argued by way of written submissions. The second limb of objection was dropped thus parties submitted on the remaining limb.

Submitting in support of the objection, learned counsel for the Respondents submitted that, the objection is based on the freedom of contract, the famous principle of law of contract namely, Pacta Sunt Servanda which presupposes that parties to contract are bound by the terms and provisions of their contract.

He argued further that, the Petitioners prays this Court to revoke the arbitration clause, clause 10.1 of the Sale Agreement, which means that they invite the court to redraft the contract for the parties contrary to the cordial principle prohibiting the same. Citing a number of authorities on the issue of sanctity of contract, including the case of **Unilever Tanzania Ltd Versus Benedict Mkasa t/a Bema Enterprises**, Civil Appeal No. 41 of 2009,

Court of Appeal of Tanzania, at Dar es salaam, he concluded that if the Court will entertain and determine this matter, it will be acting without jurisdiction.

He submitted also on the new law, the Arbitration Act, Act No. 2 of 2020 in terms of its application and procedures to be followed where the agreement does not appoint the arbitrator and a party does not cooperate in appointing the arbitrator. He argued that, the Arbitration Act, 2020 has a retrospective application effect as provided under section 91(1) & (2) of the Act. And that, sections 18,19 and 20 of the Act provide for the procedure to be followed when the agreement does not appoint the Arbitrator and a party does not cooperate in appointing the Arbitrator.

In his reply submission, learned counsel for petitioners submitted that, the Respondents submission and authorities are misconceived and misleading on the following grounds;

First the Respondents submission is substantially opposing the substance of the Petitioners petition thus, it is not a pure preliminary objection but rather a response to the petition.

Second the Respondents joint submission has not controverted the reasons advanced by the petitioner that the Respondents have not been cooperative to the process of enhancing the arbitration process which was initiated by the petitioners.

He argued that the petitioners in this matter are moving the court to revoke the arbitration clause under Section 4 of Cap. 15 R. E. 2002 which provide that submission shall be irrevocable except by leave of the Court.



On the Application of Section 18, 19 and 20 of Arbitration Act, 2020 the learned Counsel submitted that, the cited provisions are not applicable as the said Act was not in force when this Petition was filed.

In his rejoinder counsel for the Respondents reiterated his submission in chief and argued that the Arbitration Act, 2020 is applicable to this matter as section 96 of the Act provides for a retrospective application of the Act. Thus, the Arbitration Act, 2020 is applicable to this petition.

I have considered submissions by both parties and provisions of the Law applicable in this matter. I agree with the counsel for the Petitioners that Section 4 of the Arbitration Act Cap. 15 R. E. 2002 which was applicable at the time of filing this Petition, provides for Court powers to revoke submission clause under special circumstances including neglect to cooperate by either party as alleged in this Petition. However, with coming into force of the Arbitration Act No. 2 of 2020 such powers no longer exist. I am holding so because, the Arbitration Act of 2020 does not have any provision that empowers the Court to revoke an arbitration clause in an agreement.

As correctly submitted by the counsel for the Respondents, Arbitration Act 2020 provides for a very sophisticated manner of proceeding to enforce the submission clause in case the agreement does not appoint an arbitrator and in cases where the adverse party refuses to cooperate as alleged in this petition. Section 18, 19 and 20 of the Act provides for a detailed procedure to be followed in enforcing submission clause(s).

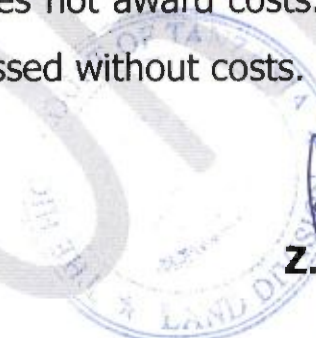

On whether the said provisions do apply to the Petition at hand, the response is affirmative. Section 91 of Arbitration Act, Act No. 2 of 2020 provides for

repeal, savings and transmission of arrangements made and concluded under Cap. 15. The section repealed the Arbitration Act of 1931. Moreover, sub section (4), of section 91 provides that any proceedings pending shall be proceeded in the light of the Act. The petition at hand is among the proceedings pending as it was brought under section 4 of the Arbitration Act, [Cap. 15 R. E. 2002].

In such circumstances, I agree with the counsel for the Respondents that, the Petition at hand is overtaken by events by coming the into force of the Arbitration Act No. 2 of 2020 which does not provide for the jurisdiction of the court to revoke the submission clause. Parties should pursue their matter under the provisions of the new Arbitration Act which provide for a detailed procedure in enforcing arbitration clause(s).

For that reason, I hereby sustain the preliminary objection and dismiss the Petition for want of jurisdiction to grant relief sought in the Petition.

Given the fact that the Petition became overtaken by operation of the Law, this Court does not award costs. Misc. Land Application No. 540 of 2020 is hereby dismissed without costs.



**Z. D. MANGO**  
**JUDGE**  
**25/06/2021**