

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**(CORAM: SEHEL, J. A., KENTE, J.A, And MASOUD, J. A.)**

**CIVIL REVISION NO. 388/16 OF 2022**

**M/S ST. ANTHONY SECONDARY SCHOOL.....APPLICANT**

**VERSUS**

**LUKUMBULU INVESTMENT CO. LTD..... RESPONDENT**

**(Application for Revision from the decision of the High Court of Tanzania,  
Commercial Division, at Dar es Salaam)**

**(Mansoor, J.)**

**dated the 4<sup>th</sup> day of December, 2015**

**in**

**Miscellaneous Commercial Cause No. 184 of 2015**

.....

**RULING OF THE COURT**

9<sup>th</sup> & 23<sup>rd</sup> February, 2024

**SEHEL, J.A.:**

This application is on a narrow issue pertaining to the procedure of filing and registering an arbitral award as it was in the old Arbitration Act (the old Act) prior to its repeal in 2020.

For an easy appreciation of the sequence of events leading to the application at hand, we think it is desirable to set out its historical background briefly. In arbitration proceedings conducted by the late Chipeta, J. the respondent secured an arbitral award against the applicant on 3<sup>rd</sup> September, 2012. It happened that the arbitrator passed

on before he filed the said award. In that respect, the successor arbitrator, one Mihayo, J. filed the award to the Deputy Registrar (the Registrar) of the High Court of Tanzania, Commercial Division (the High Court) on 13<sup>th</sup> July, 2015. On 10<sup>th</sup> August, 2015, the Registrar issued a notice to the parties to appear before the High Court on 18<sup>th</sup> August, 2015 for further orders. In obedience to the notice, parties appeared before Mansoor, J. on 18<sup>th</sup> August, 2015. Thereat, the learned counsel for the applicant raised an objection to the effect that the claimant was time barred to register the award. Instead of proceeding to deal with the matter, the learned Judge referred the file back to the Registrar to determine the legal issue raised by the counsel for the applicant, that is, whether the award was registered out of time.

On 1<sup>st</sup> September, 2015, when parties appeared before the Registrar, they made their oral submissions on the legal point. Having heard the submissions, the Registrar was of the opinion that he had no jurisdiction to determine the issue. He thus forwarded the file to the learned Judge for determination of the issue.

The learned Judge heard the oral submissions made by the counsel for the parties and reserved her ruling. In its ruling dated 4<sup>th</sup> December, 2015, relying on the decision of this Court in the case of **Tanzania**

## **Cotton Marketing Board v. Cogecot Cotton Company SA [1997]**

T.L.R. 165, the High Court correctly observed that:

*"It is therefore the settled law that on request of a party, the award can be filed by the arbitrator personally or by someone instructed by the arbitrator to do that on his behalf. Thus, a party to the arbitration proceedings can also file an award in court, upon being instructed by the arbitrator."*

On the registration of the award, it said:

*"...it was the Registrar and not the judge who could register the award. The court gets jurisdiction to entertain and determine the question of limitation for the purpose of registration of the award only after the award has been registered by the Registrar...once the Registrar gets the award presented to him, he has no choice but to file the award. He has to do this without undue delay, since there is nothing in the law that gives him the right to consider, let alone delay or refuse, to have the award filed. No proceedings to refer, or set aside, the award or even objections on limitations can be made until the award is filed."*

At the end, the High Court overruled the objection without assigning reasons for its decision and remitted the file to the Registrar for registration of the award. Since then, nothing had been done as the

Registrar was adamant to attend to the same. Following the unsuccessful intervening reference initiated by the High Court, the applicant preferred the present application after obtaining an extension of time to file the same.

The application is made by Notice of Motion predicated under rule 65 (1) of the Tanzania Court of Appeal Rules. It seeks for an order of the Court to revise the proceedings, ruling and orders and the record of the High Court in Miscellaneous Civil Cause No. 184 of 2015 on the following grounds:

- "1. Whether it is the Registrar or the Judge who has the jurisdiction to order the registration of an arbitral award;*
- 2. Whether filing of an award is tantamount to registering an award;*
- 3. Who has the power to determine an issue of the award being filed out of time, is it the Registrar or the Judge;*
- 4. Having declared that the High Court had no jurisdiction to determine the issue of limitation of time, was it proper to make an order overruling the objection; and*
- 5. Whether it was proper to summon parties under rule 10 of the old Arbitration Rules on filing of the arbitral award".*

On the other hand, the respondent had filed its affidavits in reply to oppose the application, and, on 6<sup>th</sup> February, 2024 filed a notice of a preliminary objection that the applicant has no right of revision against an interlocutory decision of the High Court.

When the application was called on for hearing on 9<sup>th</sup> February, 2024, Mr. Barnabas Luguwa, learned advocate appeared for the applicant, whereas, the respondent had legal services of Mr. Litete Haji Ndungo, learned advocate.

Before the application could proceed on merit, the Court adverted Mr. Ndungo to the ruling of the single Justice where it was held that the decision of the High Court was not an interlocutory. In that respect, Mr. Ndungo prayed to withdraw the objection which prayer was not objected to by Mr. Luguwa. Accordingly, we marked the notice of the preliminary objection, filed on 6<sup>th</sup> February, 2024, by the respondent, withdrawn.

Arguing the application on merit, the learned counsel for the applicant referred the Court to various provisions in the old Act; the Arbitration Rules, Government Notice No. 427 of 1957 (the old Arbitration Rules) and the Civil Procedure (Arbitration) Rules contained in the Second Schedule to the Civil Procedure Code (the CPC), and contended that the High Court had jurisdiction to register the award and not the Registrar. He elaborated that under rule 4 of the old Arbitration

Rules, an arbitrator or umpire was required to cause the award to be filed before the High Court by sending the award to the Registrar. According to Mr. Luguwa, the practice had been that the Registrar would receive and file the award; transmit the file to the Judge in Charge who would then assign it to the presiding Judge. He contended that upon assignment, the presiding Judge had to determine all issues before him regarding registration or non-registration of the award. He added that, in terms of section 17 of the old Act, the award when filed would be enforceable as if it were a decree of the court, unless, the Court decided to remit it to the reconsideration of the arbitrators or umpire or set it aside. It was therefore his submission that the filing and registration were not synonymous as they related to two different stages. He argued that, while filing was done by the Registrar, the registration was done by the Judge of the High Court. As such, he submitted, it was the Judge who had powers to register the award and not the Registrar.

Submitting on the objection regarding time limitation which was overruled by the High Court, Mr. Luguwa pointed out that parties were not notified by the arbitrator on filing of the award, and that, neither were they supplied with the arbitration proceedings. In such circumstances, he argued, the applicant rightly raised the objection before the Judge who ought to have considered and determined it.

Nonetheless, he said, after the High Court held that it had no jurisdiction to determine the objection it went on to overrule it without assigning reasons. As to the summons which was issued to the parties, it was submitted that it was not proper for the Registrar to invoke rule 10 of the old Arbitration Rules which was used by the court to notify parties on the date of hearing of a petition and not for filing of an arbitral award. Accordingly, the counsel for the applicant urged the Court to allow the application with costs.

When the learned counsel for the respondent took the floor to respond, he began his submission by asserting that he supported the decision of the High Court. However, after being probed by the Court on the status of the award, he relented by arguing that the High Court ought to have registered the award as no petition was filed to challenge its registration. With that brief submission, he invited the Court to revise the proceedings and direct the High Court to deal with the award as it deems fit.

Having heard the oral submissions from the counsel for the parties and after considering the notice of motion with its supportive affidavit and the affidavit in reply, the issue that stands out for our consideration is whether there is any irregularity or illegality in the proceedings, ruling

and order of the High Court which declined to exercise jurisdiction over the filed arbitral award.

We shall start our discussion by looking at the provisions of the section 12 (2) of the old Act and rule 4 of the old Arbitration Rules that dealt with the filing of an arbitral award to the High Court. Section 12 (2) of the old Act provided that:

*"The arbitrators or umpire shall, at the request of any party to the submission or any person claiming under him and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, to be filed in the court; and notice of the filing shall be given to the parties by the arbitrators or umpire."*

And, rule 4 of the old Arbitration Rules provided that:

*"Arbitrators or an umpire, requested under the provisions of section 12 (2) of the Act to cause an award to be filed in the Court, shall forward the award, or a copy certified by them or him to be a true copy of each notice given to the parties, by registered post and in a sealed envelope addressed to the Registrar together with a letter, also so addressed, requesting that such award or copy be filed in the Court."*

In the case of **Tanzania Cotton Marketing Board** (supra), the Court had an occasion to consider the import of section 12 (2) of the old Act and rule 4 of the old Arbitration Rules. In that appeal, a firm of advocates caused the arbitral award to be filed in court instead of the arbitrator, and that, the award was forwarded by DHL courier and not by registered post as required by rule 4 of the old Arbitration Rules. On the issue who should file the award, the Court expressed in clear terms that it was either the arbitrator who could file the award himself in court or he could have instructed someone else to do it for him, and that, the same was supposed to be filed in a sealed envelope addressed to the Registrar. Regarding the mode of sending the award to the court for filing, after taking into account the technological advancement, the Court interpreted the words 'registered post' widely to include courier postal services. It thus held that the award was properly filed before the High Court.

By passing, the Court provided guidance on steps to be taken after the award was filed in court. It said:

*"The principle that from the date of filing, the award is capable of being enforced as though it were a decree was also underscored in another Indian case of **Ahmed Musaji Saleji** [1912] 40 ILJ 212. The Indian legislation being in pari materia with our Arbitration*

*Ordinance Cap 15, we see no reason for giving section 12(2) a different construction. So far in our country the practice in matters of arbitration awards is that the court is moved by an application for an order for filing which is then followed by proceedings. On the basis of the Indian decisions, we are persuaded to take the view that as a matter of law it is not necessary to conduct proceedings before an order for filing is made. In our view, **the receipt of the award by the Court Registry constitutes the filing of the award. Thereafter, the court is required to notify the parties who may wish to challenge or to enforce the award in terms of the law.**"*  
[emphasis added]

It follows then that, the position of the law by then was that, after the award had been received by the Registrar, it had to be filed in court and no further proceedings were required to be taken for it to be filed. Thereafter, the court was required to notify parties who might have wanted to challenge or enforce the award. Pursuant to section 17 (1) of the old Act, the award could have been enforced as if it were a decree of the court unless the court set it aside or remitted it to the reconsideration of the arbitrators or umpire. The powers to remit and set aside the arbitral award were provided under sections 15 and 16 of the old Act respectively, and that, such powers were vested in the court. The

mode of challenging the award was by way of petition, in terms of rule 5 of the old Arbitration Rules. Further, rule 10 of the old Arbitration Rules required the court to notify parties, and all other persons who were likely to be affected by the proceedings, on the date fixed for hearing of a petition, to show cause why the relief (s) sought in the petition should not be granted. If no sufficient cause was shown, a Judge might have proceeded to make an order or orders as he deemed appropriate to make. That is, it was the Judge who had the mandate to determine whether the award should be enforced as a decree of the court or remitted for reconsideration by the arbitrator or umpire or set it aside.

In the present application, we have alluded that the arbitral award was signed and delivered to the parties on 3<sup>rd</sup> September, 2012 by the late Chipeta, J. On 13<sup>th</sup> July, 2015, the successor arbitrator, Mihayo, J. caused the award to be filed in the High Court by forwarding it to the Registrar, High Court pursuant to section 12 (2) of the old Act and rule 4 of the old Arbitration Rules. Upon receipt of the award, the Registrar notified parties on the filing of the award. The summons which appears at pages 15 and 16 of the record of the application shows that it was made under rule 10 of the old Arbitration Rules. The said summons notified parties that *"the arbitration was fixed for further orders on 18<sup>th</sup> August, 2015 before Hon. Mansoor, Judge."* Undeniably, the summons

wrongly referred to rule 10 of the old Arbitration Rules which dealt with notification to the parties for hearing of petition, while, at that moment, the petition was yet to be filed. Nonetheless, we find that the wrong reference of the provision of the law did not prejudice any party as the essence of the summons was to notify parties which they were duly notified and they both appeared before the High Court on 18<sup>th</sup> August, 2015.

We gathered from the record of the application for revision that when parties appeared before the Judge, the applicant raised a point of law that the award was filed out of time. The Judge declined to entertain the objection and remitted the file to the Registrar who also said that he had no jurisdiction to determine the objection. He returned the file to the Judge. However, the Judge was adamant that she had no jurisdiction over an arbitral award which, she said, was yet to be filed and registered by the Registrar. With due respect to the learned Judge's view, we have said and reiterate here that *'the receipt of the award by the Registrar constituted the filing of the award'*. No further proceedings was required to evidence the filing of the award. Besides, at page 38 of the record of the application, the Judge noted that the award was filed on 30<sup>th</sup> November, 2015. Therefore, we find that it was highly irregular for the Judge to hold that the court had no jurisdiction to entertain the award

until it is filed and registered by the Registrar. On the contrary, the award was already filed. The Judge was therefore required, by law, to determine as to whether she should have registered the award as a decree of the court or set it aside or remit the same for consideration by the arbitrator.

There is another disturbing feature in the High Court's ruling. As rightly argued by Mr. Luguwa, after the Judge had ruled that she had no jurisdiction to entertain the award, she went ahead to overrule the objection without assigning any reason as to why she decided to overrule it. It is to be observed that the strength of any decision lies on its reasoning. Reason is the soul and spirit of a good judicial decision without it there cannot be any valid decision. In view of that fact that, we are of the strong view that the ruling of the High Court dated 4<sup>th</sup> December, 2015 cannot be left to stand.

In the end, we find merit in the application for revision and we allow it. Consequently, we quash the proceedings of the High Court in Miscellaneous Civil Cause No. 184 of 2015 from 18<sup>th</sup> August, 2015 when the error was committed by the Judge and the subsequent proceedings that followed thereafter. We set aside the ruling of 4<sup>th</sup> December, 2015 and any other orders that followed therefrom. We remit the file to the High Court and direct that the arbitration proceeding be resumed as

soon as possible from the date it ended on 17<sup>th</sup> August, 2015. Given the circumstances of the application, we make no order as to costs.

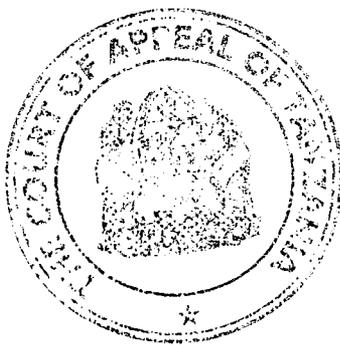
**DATED at DAR ES SALAAM** this 22<sup>nd</sup> day of February, 2024.

B. M. A. SEHEL  
**JUSTICE OF APPEAL**

P. M. KENTE  
**JUSTICE OF APPEAL**

B. S. MASOUD  
**JUSTICE OF APPEL**

The Ruling delivered this 23<sup>rd</sup> day of February, 2024 in the presence of Mr. Barnabas Luguwa, learned Counsel for the Applicant and Mr. Haji Litete Ndungo, learned Counsel for the Respondent is hereby certified as a true copy of the original.



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

W. A. HAMZA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**