

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
MISC. COMMERCIAL CASE NO. 16 OF 2018

**AFRICAN AGRICULTURAL TECHNOLOGY
FOUNDATION**

CLAIMANT

AND

TANSEED INTERNATIONAL LIMITED

RESPONDENT

RULING

Date of the Last Order: 09/07/2018

Date of the Ruling 13/07/2018

SEHEL, J.

Before me is an award presented for filing by the sole arbitrator, Walter Buxton Chipeta through a letter dated 1st day of February, 2018. Upon receipt of the said award and upon payment of the filing fees, parties were duly notified and were required to appear on 6th day of March, 2018.

On 6th March, 2018 learned advocate Caroline Jacob Muro appeared to represent African Agriculture Technology Foundation



(hereinafter referred to "the claimant") while learned advocate Richard Madibi appeared to represent Tanseed International Limited (hereinafter referred to as 'the respondent').

Counsel Muro prayed to the court for the award to be registered and enforced as a decree of the court.

Counsel Madibi notified the court that the respondent has filed a petition at the High Court of Tanzania at Dar es Salaam, District Registry (hereinafter referred to as "the High Court") through Miscellaneous Civil Cause No. 798 of 2017 in which the respondent is challenging the present award.

He argued the petition filed by the respondent is trying to nullify the proceedings of the arbitration. He therefore prayed for the present matter to be stayed pending determination of the petition filed at the High Court.

Counsel Muro rejoined that they have not been served with such a petition so she prayed for time to ascertain the status.

~~MB~~

On 2nd day of July, 2018 when the matter was fixed for orders, counsel Muro appeared again but the respondent was absent. She prayed for the court to proceed with the execution of the award because she said the petition filed at the High Court is not challenging the award rather it is trying to nullify the proceedings of the arbitral proceedings, which are no longer there.

The counsel did not bring any evidence to substantiate her submission. Therefore, the matter was adjourned to 9th July, 2018 in order to allow time for counsel Muro to bring evidence and notify the respondent for his response on the submissions made.

On 9th July, 2018 both parties appeared. The claimant was represented by counsel Muro, as usual and respondent was represented by counsel Erasto Ngussa.

Counsel Muro insisted on her earlier submission that let this court proceed to register the award and decree be issued there from. She said that she has availed to this Court all the pleadings that were filed at the High court by the respondent by a letter dated 5th July, 2018 which was also copied to the counsel for the respondent. She

said the respondent's petition at the High Court was filed on 13th December, 2017 seeking to stay on going arbitral proceedings. The said petition, she argued, was served upon the claimant on 19th March, 2018 wherein the claimant raised therein preliminary objection and it has filed an answer to the petition.

It was the submission of counsel Muro that the respondent is not challenging the present award because the petition filed at the High Court is not seeking to challenge present award filed by the arbitrator for registration and enforceable as decree of the court. She thereof insisted for the award to be registered and decree be issued.

Learned advocate Ngussa replied by acknowledging that the petition at the High court was filed on 13th December, 2017 and it is Miscellaneous Civil Cause No. 798 of 2017. He also acknowledged that the award was issued on 9th January, 2018 but argued that the petition at the High Court is also challenging the award. He therefore prayed for stay of execution of the award pending determination of the petition. He also argued if stay will be granted, no prejudice will

be done to the claimant as such he impleaded for the court to find justice to both parties.

It was rejoined by insisting that there is no petition challenging the award and that the petition at the High Court is for stay of ongoing arbitral proceedings and not against the award issued by the arbitrator.

It is gathered from the submissions made by the learned advocates that there is an award issued on 9th January, 2018. The said award was presented for registration pursuant to Section 12 of the Arbitration Act, Cap. 15 (hereinafter referred to as "the Act") and for the decree to be issued. It is also acknowledged that at the High Court there is Miscellaneous Civil Cause No. 798 of 2017 filed on 13th December, 2017 seeking for stay of ongoing arbitration proceedings.

It is argued by the counsel for the respondent that the petition filed on 13th December, 2017 at the High Court is also seeking to challenge the award issued by the arbitrator on 9th January, 2018.



It is trite law, as clearly provided under Section 17 (1) of the Act, an award on submission on being filed in the Court shall be enforceable as a decree of the court, unless the court remits the said award to the arbitrator or umpire for reconsideration, if invited pursuant to Section 15 of the Act, or sets it aside if invited pursuant to Section 16 of the Act.

In the matter at hand, as I have instigated earlier, the award was submitted by the sole arbitrator, Walter Buxton Chipeta, by his letter dated 1st day of February, 2018. The said award was filed as Miscellaneous Commercial Cause No. 16 of 2018 and on 6th March, 2018 parties were notified on the filing of the award as such in terms of item 21 part III of the schedule to the Law of Limitation Act, Cap. 89 parties had up to sixty (60) days within which to make an application by way of petition, either for the award to be remitted back for reconsideration or for it to be set aside. It is on records that from the date the award was filed to 9th July, 2018 when parties appeared before this court and made their submissions, there is no petition filed. I have been asked by the counsel for the respondent

to take that the petition filed at the High Court on 13th December, 2017 that was filed prior to the issuance of the award, be taken as petition challenging the award issued on 9th January, 2018.

I have gone the prayer made in Miscellaneous Civil Cause No. 798 of 2017 and noted that the prayers made therein are for:-

"(a) An order to stay the ongoing arbitration proceedings as

it shall raise costs to the petitioner hence we request

this Honourable court to intervene.

(b) Costs in this Honourable Court and costs of the arbitration.

(c) Any other relief(s) which this Honourable court may deem fit to grant.

From the above prayers, it is evident that the petition does not in any way involve the award submitted for registration. None of the prayers seek for setting aside the award or for its remittance for reconsideration. In the case of The Board of **Trustees of Agricultural Inputs Trust Fund Vs Exim Bank (Tanzania) Limited**, Misc. Commercial Case No. 288 of 2014 this Court said:-

"No proceedings to refer or to set aside, the award or even objections on limitation can be made until the award is filed. Thus, an application to prevent the filing or registration of an award in court has been considered to be out of order".

I have instigated herein that the award was presented for filing on 1st day of February, 2018 while the petition at the High court was filed on 13th December, 2017. It is obvious then that the petition was filed before the award was filed as such the petition is out of order. As I said, Section 17(1) of the Act provides that an award shall be enforceable as a decree of the court unless the court remits it to the arbitrator or umpire for reconsideration or sets it aside. Since there is no application by way of a petition to challenge the award after it was filed, then I proceed to register the award and decree is hereby issued in favour of the complainant as per the terms of the award, in that;-

- (1) The respondent is in breach of the Sub-grant Agreement and the First Amendment thereto, by its failure to complete all

the agreed milestones within the time provided in the Sub-grant Agreement and the First-Amendment.

- (2) The respondent shall refund to the claimant the sum of United States Dollars One Hundred and Forty Eight Thousand Only (USD 148,000.00).
- (3) Claimant is awarded costs of the arbitration and costs of the present application, Misc. Commercial Case No. 16 of 2018.

It is so ordered.

Dated at Dar es Salaam this 13th day of July, 2018.



B.M.A Sehel

JUDGE

13th day of July, 2018