

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
DAR ES SALAAM
MISC COMMERCIAL CAUSE NO. 9 OF 2019**

**BOGETA ENGINEERING LIMITED.....CLAIMANT
Vs
NANYUMBU DISTRICT COUNCIL.....RESPONDENT**

RULING

B.K.PHILLIP, J

On 9th of April 2019 the sole Arbitrator, the Advocate Rosan Mbwambo, paid filing fees for registration of an award he issued on 7th April 2015, in respect of the disputes between Bogeta Engineering Ltd (claimant) and the Executive Director, Nanyumbu District Council (the respondent). The application for registration of the award is made under the provisions of section 12(2) of the Arbitration Act, Cap 15, R.E 2002.

The respondent herein raised two points of preliminary Objection to wit; That, the filing of the award is hopelessly time barred and the award is improperly filed in Court contrary to the provisions of section 12(2) of the Arbitration Act (Cap.15 R.E.2002) and Rule 4 of the Arbitration Rules (GN No. 427 of 1957).

This ruling is in respect of the above mentioned points of preliminary objections. The same were disposed of by way of written submissions. The learned State Attorney George N. Mandepo filed the written submissions

for the respondent whereas the learned Advocate Peter Nyangi filed the reply to the submissions for the respondent.

Submitting for the 1st point of Preliminary objection, the learned State Attorney submitted that the award was granted on 7th April 2015, and filed in Court on 16th April 2019, that is four years after the date of the award. The learned State Attorney contended that ,the award has been filed in Court out time, since the provisions of the Law of Limitation Act, part III of its schedule , item 18 provides that an award granted by an Arbitrator has to be filed in Court within six months from the date it was made. He also referred this court to the case of **Kigoma/ Ujiji Municipal Council Vs Nyakirang'ani Construction Limited, Misc Commercial Cause No.239 of 2015**, (unreported). In which this court said the following;

"It is noteworthy here that the law as it stands now, provides only the time within which to file such an award for enforcement and not the time for challenging the same see: Item 18 of Part III of the schedule to the Law of Limitation Act."

The learned State Attorney, went on to argue that in the matter in hand, the award was made without Court intervention however, it was supposed to be filed in court within six (6) months from the date it was made. An award filed beyond the period of six months as prescribed by the Law of Limitation Act is time barred and this court is not supposed to entertain it, submitted Mr. Mandepo. To cement his arguments he referred this court to the case of **Siemens Limited and Another Vs Mtibwa Sugar Estate**,

Misc Commercial Cause No. 247 of 2015 (unreported), in which this court (Mwambegele, J as he then was) said as follows;

"In the instant case the Final Award was issued on 13/2/2015 and the Arbitrator forwarded the same to the Deputy Registrar of this court vide a letter bearing Ref. No. S. 197 dated 03/09/2015 and, given the ERV, received on 17/9/2015. The present application was filed on 23/10/2015. All these endeavours were being made when it was already out of time as time within which the Final Award could legally be filed had expired on 12/08/2015; six months after the Final Award was made."

The learned State Attorney further submitted that likewise, in the matter at hand, time started to tick on 7th April 2015 when the award was issued thus, since the application to register the award was filed on 16th April 2019, four years later from the date it was made, the same is incompetent. It deserves to be dismissed with costs, contended the learned State Attorney.

As regards, the second point of preliminary objection, the learned State Attorney submitted that the award is improperly filed in court because the legal requirements provided under the provisions of section 12(2) of the Arbitration Act (Cap 15 R.E 2002) and Rule 4 have not been complied with. He further submitted that Pursuant to section 12(2), of the Arbitration Act, once the Arbitrator or umpire has made his award and notified the parties thereto, he will only file the award or caused it to be filed in court upon a request by any of the parties to the submission or any person claiming

under such party. After filing the said award, the Arbitrator should notify the parties of the filing.

Furthermore, in order to file an award to the High Court rule 4 of the Arbitration rules, requires the Arbitrator or Umpire to forward the award, or a copy certified by them or him to be a true copy, together with the evidence on the reference, the minutes of their proceedings and a 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, contended the learned State Attorney.

It was the concern of the learned state attorney, that in the matter hand, the applicant did not issue any notice to the respondent for filing the award in court as required in the provisions of section 12 (2) of the Arbitration Act. Moreover, he argued that upon perusing the court's records he noted that the award was neither delivered in a sealed envelope as required by rule 4 of the Arbitration rules nor certified to authenticate its originality. He invited this court to dismiss this application.

In rebuttal the learned advocate Peter Nyangi, submitted that the provisions of item 18 of part III to the schedule to the Law of Limitation Act, is not applicable in the case in hand, since the arbitral award in hand was not procured under the Civil Procedure Code, Cap 33 R.E 2019 (henceforth "the CPC"). He contended that the time limit for bringing an action to enforce an arbitral award is six (6) years as per the provisions of clause 9 of part I of the law of Limitation Act. He contended, the case of

Siemens (supra) and **Kigoma Ujiji Municipal Council** (supra) are distinguishable from the application in hand.

In alternative, Mr. Peter Nyangi, submitted that even if the period for filing the award in Court is six (6) months as contended by the learned State attorney. It is a fact that the respondent did not pay the Arbitrator's fees. All of the Arbitrator's fees were paid by the applicant/claimant. Thus, the respondent does not have clean hands to raise this objection because he is the one who caused the Arbitrator's failure to file the award earlier/timely.

As regards the 2nd point of preliminary objection, Mr. Nyangi contended that it is not a pure point of law as it needs evidence to establish it.

In rejoinder , the learned State Attorney, reiterated his submission in chief and insisted that the provisions of item 18 of part III of the schedule to the Law of Limitation Act, is applicable in the application at hand, since it provides for two types of scenarios. The first one is in respect of an award made by Arbitrator for the matter that is referred to arbitration by the order of the Court, whereas the second one is an award made in any matter referred to arbitration without court intervention, that is without a court order.

As regards the provisions of item 9 of part I to the schedule to the Law of Limitation Act, which was cited by Mr. Nyangi as the applicable provision of the law in the matter in hand, the learned state Attorney submitted that the same provides for a period for enforcement of the award not the

registration of an award. He contended that filing of an award is different from the enforcement of an award.

Having dispassionately analyzed the competing arguments made by the learned State Attorney and the learned Advocate, starting with the 1st point of preliminary objection, I wish to state on the outset that the same has merits as I will demonstrate soon hereunder.

For ease of reference let me quote the provisions of item 18 of part III of the law of Limitation Act, hereunder;

Item 18 Part III of the Law of Limitation Act;

"Under the Civil Procedure Code for the filing in court of an award in a suit made in any matter referred to arbitration by order of the court, or of an award made in any matter referred to arbitration without the intervention of a court."

The above quoted provision of the law caters for two scenarios, the first one is respect of an award made by the Arbitrator after the dispute between the parties is referred to arbitration by the Court. The second one is in respect of an award made an Arbitrator in matters/disputes which are referred to the Arbitrator out of the court system, that is, the parties themselves in implementation of their agreement from which the dispute at issues arises, refer their dispute to arbitration. The award in respect of the application in hand, falls in the second scenario because the award was made by the sole Arbitrator after the parties themselves referring their disputes to the Arbitration. Therefore, the provisions of the item 18 of Part

III of the schedule to the Law of Limitation Act is applicable in this application. Likewise the case of **Siemens** (supra) and **Kigoma Ujiji Municipal Council** (supra), cited by the learned state Attorney are relevant in this matter. I entirely subscribe to the findings made by Hon. Mwambegele, J, as he then was, in the above cited cases, that is, the time limit for registration of an award in Court is six (6) months.

Furthermore, I wish to point out that, as correctly argued by the learned State Attorney, the provision of item No. 9 of part I of the schedule to the Law of Limitation Act, is not applicable in this application, since the same provides for a time limit for enforcement of an award that has already been filed in Court, thus capable of being executed^{as} a Court decree. This application is not for execution of the award. The issue here is the registration of the award.

Having said the above, it is evident that the application in hand was filed out of time since there is no dispute that the award at issue was made on 7th April 2015. As per the provisions of the law I have mentioned herein above, the same was supposed to be filed on or before October 2015, but same was filed on 16th April 2019. The legal consequences of an application, case or any matter that is filed out to the time prescribed by the Law of Limitation Act without the leave of the court, is dismissal of the same.

The arguments raised by the learned advocate Peter, that the respondent is the one who caused the delay in filing the award in court because he did not pay the Arbitrator's fees timely, as a result it was not possible for

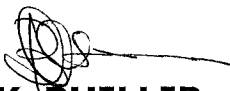
the Arbitrator to register the award before the payment of the Arbitrator's fees, cannot be a justification for filing this application out of time without the leave of this Court. If at all, what is alleged by the applicant is true, then the claimant was supposed to make an application for extension of time to lodge the award in Court out of time and what is alleged herein by the applicant/claimant could be a reason for the court to grant the extension of time if it is satisfied that the same is a sufficient reason for granting the extension of time.

Having made the above findings, I do not see any plausible reasons to proceed with the determination of the second point of preliminary objection, since the findings I have made herein above leads to the dismissal of this application as the provisions of section 3 of the Law of Limitation Act Provides that an application/matter filed out of time prescribed in the schedule to the Law of Limitation Act, has to be dismissed, whether or not limitation has been set up as a defence.

From the foregoing and on the strength of the case of **Siemens** (supra) and Kigoma **Ujiji Municipal Council** (supra), this application is hereby dismissed. No order as to costs.

Dated at Dar es Salaam this 14th day of September, 2020




B. K. PHILLIP
JUDGE