

TANZANIA / JUDGMENT

CIVIL APPEAL NO

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TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB
REGISTRY AT DAR ES SALAAM CIVIL APPEAL NO. 732 OF 2024 (Originating from Civil Case No.
94 of 2023 In the District Court of Kinondoni at Kinondoni) EQUATOR ENTERPRISES CO. LTD
..... APPELLANT VERSUS TREDSTONE GROUP CO. LTD
..... RESPONDENT

RULING

Date of last order: 29/10/2024 Date of ruling: 13/12/2024 NGUNYALE, J. Civil Case No. 94 of 2023 was struck out by the trial court on reason that the trial court had no jurisdiction to enforce a settlement deed between the parties which originated from the arbitration proceedings. The appellant was aggrieved with the order to struck out her suit, she filed the present appeal aiming to challenge the same based on the following grounds of appeal: - 1

1. That the trial Magistrate erred in law and fact by holding that the matter was improperly filed before the District Court.
2. That the trial Magistrate erred in law and fact by holding that the appellant was supposed to file the execution before the Arbitration Centre instead of referring the breach of contract before the trial court. Before I go to the merits of the appeal, I wish to state briefly the facts of the case as gathered from the plaint filed by the appellant before the trial court. On 9th April 2019 the appellant and the respondent entered into a lease agreement between the respondent and the appellant; the respondent agreed to pay the appellant the quarterly rent to the tune of USD 1955. In the course of their tenancy relationship, the respondent defaulted in paying rent the which result the debt of unpaid rent to be USD 36,615.57. The appellant was aggrieved with the default of the respondent thus she preferred their dispute to be subjected to arbitration as agreed in the tenancy agreement. The dispute was assigned to the arbitrator one Honourable Njunwa. In the arbitration process the parties agreed to enter into a settlement deed dated 6th October 2021 in a bid to resolve their dispute amicably. In the said settlement deed, the respondent committed 2 to pay the appellant a total of USD 39,500 within 3 months from the date of signing the same. The respondent could not honour the settlement, she just paid USD 20,000 leaving an outstanding amount in the tune of USD 19,500. The appellant made several follow ups to the respondent but the efforts ended. Failure of the respondent to settle the outstanding payment made the

appellant's board to issue a resolution that the same should be claimed through the court procedures. They decided to file the suit before the trial court claiming the outstanding rent, damages and interest. The trial court heard the matter and at the end of the day on 16th October 2023 the matter was struck out with costs for want of jurisdiction, hence the present appeal. The matter was heard by written submissions in which the appellant submissions were drawn and filed by Frank Kifunda learned Counsel from KKB Attorneys at law whilst the respondent submission was drawn and filed by Emmanuel William Kessy from Emax Attorneys at Law. In support of the appeal the appellants submitted that the matter was properly filed before the trial court because the nature of the plaint filed aimed to enforce the settlement deed execute between the parties on 6th October 2021. The trial Magistrate misunderstood the nature of the plaint 3 filed thus he ruled wrongly in favour of the respondent. The position that the appellant ought to move the court by way of execution was a misconception. The respondents in their side strongly objected the appeal supporting the decision of the trial court to struck out the suit. It was the view of the respondents that after the dispute was referred to arbitration following the arbitration clause in the lease agreement and the settlement deed was signed by the parties, the appellant has no room to file a fresh suit in the ordinary court. The only available channel was for her to comply with arbitration procedures. After settlement, the appellant ought to be issued with an arbitral award which is like a decree of the court subject to execution. The appellant ought to move the court by way of execution i. e executing the arbitral award which was to be registered by the court. After having heard the parties through their rival submission, it is my duty to determine as to whether the trial court was correct to struck out the suit for want of jurisdiction. In answering this issue, I will be guided by the Arbitration Act which is a mother law in arbitration process in Tanzania. From the outset it is not in dispute that the parties had subjected themselves to arbitration process where they ended with a settlement 4 deed. The fact that the same was settled, the settlement deed carries the same meaning as the arbitral award which is defined under Section 3 of the Arbitration Act, 2020 Act No. 2 of 2020 that: "arbitral award" means a decision of the arbitral tribunal on the substance of a dispute, and includes any interim or interlocutory; The follow up question is, how does the arbitral award is enforced? The appellant is of the view that the trial court had power to enforce the settlement reached on 6th October 2021 between the parties. The suit he filed was for seeking to enforce the settlement deed and not the lease agreement. His position has been opposed by the respondent who was of the view that, provided the matter was subjected to arbitration process, the appellant ought to follow the arbitration process to enforce the order. The appellant ought to register the award with the court for the same to be enforced as the normal decree of the court and not to move the court by way of a fresh suit. The essence of arbitration process is to resolve the parties' disputes outside the courts through qualified arbitrators. Upon agreement of the parties through arbitration, the decision become binding upon them. According to Black's Law Dictionary (Abridged 7th Edition) by Bryan A. Garner; Editor in Chief, the agreement reached by the parties through arbitration is binding upon them. From that view I think it was never 5 intended that the matters concluded under arbitration to have such easy way to court in a form of new suit as

challenged by the respondent. With due respect to the appellant counsel, I am not prepared to agree with him that an option for a new suit to enforce the settlement deed was legally acceptable. Section 60 (1) of the Arbitration Act is very clear about the effect of the award. The provision provides: - “An award made by the arbitral tribunal pursuant to an arbitration agreement shall, unless otherwise agreed by the parties, be final and binding to both parties and to any person claiming through or under them.” Emphasis added From the above provision, it is my finding that the award obtained upon settlement between the parties cannot be enforced by a new suit. Instead, the appellant ought to follow the appropriate channel through arbitration process as correctly suggested by the respondent. He ought to register the award through the court process and proceed to apply for execution as a normal decree of the court. Without being registered, the award regardless with the way it was obtained becomes meaningless. In the case of Kigoma/Ujiji Municipal Council v Nyakirang'ani Construction Ltd, Misc. Commercial Cause No. 239 of 2015 High Court Commercial Division at Dar es salaam. The court held: “That, notwithstanding, a court of law being not a party to such procedure cannot move suo motu to make the order adopting or 6 registering the Award as a decree of the court. Thus, it is upon the relevant party to move the court to make such order as it deems fit” The court subscribes to the above position that it is mandatory upon the awardee to move the court to make an order for registration of the award. In this case, the facts are silence as to whether the same was registered and the decree was issued. In conclusion I remain with the conclusion that an arbitral award becomes meaningful and legally executable when it is registered, and a court decree is issued. Without a decree the same remain unenforceable. The fact that it is unenforceable does not give an option to the appellant to file a fresh suit by way of plaint but instead the appellant is obliged to follow procedures of registration under the arbitration process and end up with execution process. The appellant should follow such procedures as correctly suggested by the respondent. In the end result, I am of the view that the trial court was correct to struck out the matter for want of jurisdiction. The appeal is dismissed with costs. Order accordingly. Dated at Dar es Salaam this 13th day of December 2024. D. P. Ngunyale Judge 7 Judgment delivered this 13th December 2024 in presence of Archard Masika for the respondent. D. P. Ngunyale Judge 8

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