

TANZANIA / JUDGMENT

jovet tanzania limited vs bavaria nv 2022 tzhccomd 101 27 april 2022

COURT
TZHCCOMDDECIDED
27 April 2022

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT DAR ES SALAAM
COMMERCIAL CASE NO. 94 OF 2018 BETWEEN JOVET TANZANIA
LIMITED..... PLAINTIFF Versus BAVARIA
N.V..... DEFENDANT Date of last order: 18th March, 2022 Date of
Ruling: 27th April, 2022

RULING

MKEHA,J. This suit was instituted before this court on 18th July 2018. Upon institution of the same, the defendant filed Miscellaneous Commercial Cause No. 183 of 2018 seeking an order of this court to stay the proceedings of this suit pending referral of the matter to the arbitrator. This court granted the prayer for stay of the proceedings in this suit pending reference of the matter to arbitration. 1 | Page The plaintiff appealed to the Court of Appeal against the order of stay of the proceedings in this suit. The appeal was registered as Civil Appeal No. 207 of 2018. Despite pendency of the appeal as indicated hereinabove, the parties in this case submitted themselves to the arbitrator. The plaintiff who is the appellant in Civil Appeal No. 207 of 2018 before the Court of Appeal is said to have preferred a counter claim in the arbitration proceedings which ended against her favour. The arbitration proceedings between the parties were conducted and the dispute which had earlier been filed by the plaintiff in this suit, was determined by the arbitrator. The facts hereinabove are not in dispute as obtainable from the advocates' submissions before this court, dated 18th March, 2022. Given the foregoing background, on 18th March 2022 I invited the learned advocates for the parties, to address the court on maintainability of the present suit. The position hereinabove notwithstanding, Mr. shayo learned advocate for the plaintiff maintains that, this court should continue staying this suit because of subsistence of the notice of appeal at the Court of Appeal and that, the record of Miscellaneous Commercial Application No. 183 of 2018 cannot be separated from the record of this court in this 2 | Page suit. He also added that, refusal of this court to continue staying this suit would tantamount to speculating on the outcome of Civil Appeal No. 207 of 2018 before the Court of Appeal of Tanzania. In view of Mr. Shayo learned advocate, this suit can only be determined after Civil Appeal No. 207 of 2018 is determined by the Court of Appeal of Tanzania. Mr. Tarimo learned advocate submitted in reply that, the order of this court meant that the same dispute had to be litigated through arbitration.

According to the learned advocate, the plaintiff strongly took part in the arbitration proceedings while aware that he had issued a notice of appeal challenging this court's order to refer the matter to arbitration. The learned advocate submitted that, not only did the plaintiff file defence before the arbitrator, she also filed a counter claim. According to the learned advocate, after resolution of the parties' dispute through arbitration, the reason for stay of this suit was no longer valid. The only issue for determination is whether this court has jurisdiction to continue staying a suit after procurement of an arbitral award by the parties over the same dispute. It is not denied that, the party who filed notice of appeal to register Civil Appeal No. 207 of 2018 before the Court of Appeal submitted herself to an 3 | Page arbitration which proceeded to the extent of issuance of an arbitral award. The dispute which was resolved in the said arbitration proceedings is what is still pending before this court. The learned advocate for the plaintiff maintains that, the court should continue staying this suit because of pendency of notice of appeal. I consider this to be a clear example of how parties and their advocates abuse the court process through forum shopping. It defeats logic how did the plaintiff participate in the arbitration proceedings and thereafter retain her notice of appeal over a related matter before the Court of Appeal. In fact, as between the parties, the matter is now res judicata after issuance of an arbitral award by the arbitral tribunal. The court has no jurisdiction of ordering stay of a suit in relation to a dispute which has already been decided by the parties' own chosen arbitrator. Mr. Shayo learned advocate was of a firm stand that, the record of Miscellaneous Commercial Cause No. 183 of 2018 cannot be separated from the record of this court in this suit. Although the proceedings in Miscellaneous Commercial Cause No. 183 of 2018 are interlinked with the proceedings in this suit, the two are not for the purposes of Civil Appeal No. 207 of 2018 one and the same. The notice of appeal lodged by the plaintiff in respect of the decision in Miscellaneous Commercial 4 | Page Cause No. 183 of 2018 has no correlation with Commercial Case No. 94 of 2018, the present suit. See: TECHLONG PARKAGING MACHINERY CO. LTD & ANOTHER Vs A-ONE PRODUCTS AND BOTTLERS LIMITED, CIVIL APPLICATION NO. 517 OF 2018, CAT AT DAR ES SALAAM. For the foregoing reasons, the present suit is struck out for being res- judicata. I make no order as to costs. It is so held. DATED at DAR ES SALAAM this 27th day of April 2022 C.P JUDGE 27th APRIL, 2022 Court: Ruling is delivered in the presence of Mr. Msamanga learned advocate for the plaintiff and Mr. Nangi learned advocate for the 5 | Page

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