

TANZANIA / JUDGMENT

mic tanzania limited vs crystal mobile tanzania 2021 tzhccomd 2059 8 april 2021

COURT
TZHCCOMDDECIDED
8 April 2021

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT PAR ES SALAAM MISC
COMMERCIAL APPLICATION NO.166 OF 2020 (Originating from Misc. Commercial Cause No. 15
of2020} BETWEEN MIC TANZANIA LIMITED..... APPLICANT AND
CRYSTAL MOBILE TANZANIA LIMITED..... RESPONDENT

RULING

B.K.PHILLIP, J The applicant lodged this application under the provisions of section 14

- (1) of the Law of Limitation Act, praying for the following orders;
- i. That this Honourable Court may be pleased to extend time within which the Applicant may file petition to challenge the Final Arbitral Award issued on 3rd October 2019; ii. Costs of this application to be provided for. iii. Any other relief(s) that the Honourable Court may deem just and equitable to grant. The application is supported by an affidavit sworn by the learned Advocate Rosan Mbwanbo. The learned Advocate Romana Gervas swore a counter affidavit in opposition to the application. The learned Advocate Victor Kikwasi and Romana Gervas appeared for the applicant and the respondent respectively. A brief background to this application is as follows; Since 2020, the applicant and the respondent have been signing Frameworks Agreements for provision of Value-Added Services. The last agreement which led to the matter in hand was signed in June 2016. The applicant terminated the aforesaid last agreement and the respondent being aggrieved by the termination of the agreement referred its complaints to Arbitration. On 3rd October, 2019 the arbitrator delivered his final Award and thereafter an application for registration of the same was lodged in this Court in April 2020 vide Misc Commercial Cause No. 15 of 2020. The applicant was notified of the application. Upon receipt of the notice for the application for registration of the award as the Court decree, the applicant lodged a petition against the same vide Misc Commercial Application No. 19 of 2020. Upon being served with the aforesaid petition, the respondent's advocate raised a point of preliminary objection that the petition contravened the provisions of Rule 19 (1) of the High Court (Commercial Division) Procedure Rules, 2012. The point of preliminary objection was heard and upheld, thus the applicant's petition was struck out on 16th October 2020. Now the applicant has 2 lodged this petition seeking for an order for

extension of time to lodge another petition for challenging the award. Submitting in support of the application Mr. Kikwasi started his submission with a prayer to adopt the contents of the affidavit in support of this application. He went on to submitted that the 1st petition for challenging the arbitral award was filed in time. It was struck out because it was defective but the applicant is still determined to challenge the application for registration of the award. Referring this court to paragraphs 4-6 of the affidavit in support of this application, Mr. Kikwasi argued that the applicant has pointed out a number of irregularities in the Arbitral award. He contended that this application is in line with the laws as our laws allow granting extension of time when the first application is struck out on technicalities. To cement his argument he referred this court to the case of the Principal Secretary Ministry of Defence and National Services Vs Duram P. Valambhia ,TLR (1992) 387. In rebuttal, Ms Gervas submitted that she is alive that this court has powers to grant an order for extension of time if there are sufficient reasons to do so. She contended that in this application the applicant has not adduced any good reason to move this Court to grant the orders sought. The applicant should not be allowed to benefit from his own 3 wrong, as he was supposed to act diligently, contended Ms Gervas. She was of the view that the 1st petition filed by the applicant was not struck out on technicalities since the applicant was duty bound to comply with the laws. She invited this court to dismiss the application. In rejoinder Mr. Kikwasi submitted that it is a legal principle that a party should not be punished twice. So long as the 1st petition was struck out , the applicant has already been pushed for his failure to comply with the laws. Moreover, Mr. Kikwasi contended that the respondent has not challenged the irregularities in the award that have been pointed out in the affidavit in support of this application. Upon perusing the affidavit in support of this application and the affidavit in opposition to the application, and made a thorough analysis of the arguments made by both advocates appearing in this matter, I hasten to say that this application has merits. It is not in dispute that the first petition against the application for registration of the Arbitral award was filed in time, but was struck out for being in contravention of Rule 19(1) of the High Court (Commercial Division) Procedure Rules, 2012. Under the circumstances, I am in agreement with Mr. Kikwasi that the delay in filing the petition is a technical delay in the sense that the first petition was filed in time, [see the case of William Shija Vs Fortunatus Masha (1997) TLR 154]. Had it not been for the defects 4 that were found in the first petition, the applicant would not have filed this application. The applicant has explained very well in the affidavit in support of this application on what happened and the cause for current state of affairs. The reason explained by the applicant in the affidavit in support of this application that is, the delay in filling the petition for challenging the arbitral award was caused by the defects in the 1st petition which lead the same to be struck out is a sufficient reason to move this court to grant the order sought in this application . I have also noted that the applicant filed this application within seven days from the date the first petition was struck out. He did not waste much time in taking the appropriate steps. This also makes the application meritorious as time spent in taking the appropriate steps is also relevant in determination of an application for extension of time. In the upshot, this application is granted. The applicant is hereby ordered to file the petition for challenging the award within fourteen

(14) days from the date of this order. I give no order as to costs. Dated at Dar es Salaam this 8th day of April 2021. 5

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