

TANZANIA / JUDGMENT

hrg bon voyage and travel centre versus mufindi tea and cofee ltd 2023 tzhc 23481 19 december 2023

COURT
TZHCDECIDED
19 December 2023

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 547 OF 2023 IN THE MATTER OF THE ARBITRATION TIARB ACT
CAP. 15 R.E 2020 BETWEEN HRG BON VOAGE AND TRAVE CENTRE
PETITIONER VERSUS MUFINDI TEA AND COFEE LTD RESPONDENT

RULING

27th November, & 19th December, 2023 MWANGA, J. This application is brought before this Court for registration as the judgment and decree of the Court, an award which was issued on the 29th day of September 2022, by the presiding arbitrator Christina Ilumba FCIARB. The said award was forwarded to this Court through the petition under section 83(1) of the Arbitration Act, Cap. 15 [R. E 2020], Regulation 1 51(4) and 63(1) of the Arbitration (Rules of Procedure) Regulations G.N 146 of 2021 asking the court to register the Award. The Respondent filed a reply by stating that they have paid some installments that have been awarded by the arbitrator. When the matter was scheduled for hearing the respondent was absent. On the other hand, the petitioner was represented by Ms. Rose Mtesigwa accompanied by Ms. Linda Mafuru both learned advocates. The absence of the respondent led the matter to be heard exparte against her. Ms. Rose stated that the petitioner and respondent agreed to provide traveling and hotel booking services, in which the respondent used the service amounting to USD 18,636.98. The petitioner tried to follow up on the payment and issued a demand notice to the respondent. It is attached to the petition as Annexure BON VI. It seems the respondent was reluctant to pay, hence the petitioner referred the matter to the Tanzania Institute of Arbitrators. When the matter came for arbitration before a single arbitrator, the parties had agreed to settle the matter amicably. See annexure BON V2 which is a copy of a letter referring the matter to the arbitration. The 2 matter was amicably settled among the parties and an agreement was entered to that effect; see annexure BON V3. Upon presentation of the agreement to the arbitrator, the arbitrator adopted it and issued a final Award. See annexure BON V4. After the final Award, parties were supposed to share half of the Arbitration costs. However, the respondent failed to do so; instead, the petitioner paid to collect the final award. See annexure BON V5. Under Section 83(1) of the Arbitration Act, Cap. 15 R.E 2020 and regulation 51 (4) and 63 (1) of the Arbitration Rules and Procedures, counsel for the

petitioner proceeded to ask this court to register the award as the judgment of this Court and thereby proceed to extract an enforceable decree of the Court. Having heard the submission of the learned counsel, it comes to my mind that this application is brought to court for two things. one is recognition of an award, and two is enforcement of an award. This was held in the case of the Higher Education Students' Loans Board versus Tanzania Building Works Limited, in the matter of Misc. Commercial Cause. 39 of 2022 (HCT-Unreported). 3 According to the above-cited case, my brother Nangela, J. defined the concept of recognition of an Award as; "it refers to a process where a party seeks for an authoritative endorsement of the court, that, the award is "authentic" and, hence, confirmed to be final and binding". From the case at hand, the award was entered under Section 58(1) which was an agreed award. In that regard, the award is endorsed to be authentic and confirmed to be final and binding. Concerning enforcement of an award, it is a requirement of the law that an award has to be enforced. This is provided under section 73(1) and

- (2) of the Arbitration Act, Cap.15 [R.E 2020], that an award made by an arbitral tribunal may, by leave of the Court, be enforced in the same manner as a judgment or order of the Court. And, where there is such a leave, judgment will be entered in terms of the award. From the petition and the submission by the counsel of the petitioner, it is seen that the petitioner and respondent agreed to the terms of the Arbitral Award, and the same was reached to the final award by the 4 Arbitrator. It follows, therefore that, the award should now be enforced in the same manner as a judgment and/or order of this Court. Therefore, this Court does hereby rule in favor of the petitioner and orders that the final award dated 29th December 2022 be enforced in the same manner as a judgment of this Court and decrees as follows:
- i. The Respondent shall, within 5 months from the date of publication of the Award, pay to the Complainant a total of USD 18,636.98 and Tshs. 500,000 as follows;
 - a) The sum of Tanzanian Shillings Five million only (Tshs. 5,000,000/=) on or before 30th September 2022.
 - b) The sum of Tanzanian Shillings Five Hundred Thousand only (Tshs. 500,000/=) on or before 30th September 2022.
 - c) The sum of United States Dollars Four Thousand and One Hundred Only (USD 4,100) on or before 30th November 2022.
 - d) The sum of United States Dollars Four Thousand and One Hundred Only (USD 4,100) on or before 31st December 2022.
 - e) The sum of United States Dollars Four Thousand and One Hundred Only (USD 4,100) on or before 31st January 2023. 5
 - f) The sum of United States Dollars Four Thousand and Two hundred only (USD 4,200) on or before 28th February, 2023 ii. That, the Claimant's claims for costs, general damages, and interest are dismissed. iii. That, within seven (7) days of receipt of an invoice, the Claimant and Respondent shall each day 50% of Tanzanian Shillings one million Six Hundred Twenty-Two thousand only (TZS 1,622,000) being the arbitrator's fee and Value Added Tax. iv. That,

within seven (7) days of receipt of an invoice, the claimant and Respondent shall each pay 50% of Tanzanian Shillings two hundred ninety-six thousand only (TZS 296,000) being the administrative cost.

- v. That, within seven (7) days of receipt of an invoice the Claimant and Respondent shall each pay 50% of the cost of the Preliminary Meeting fixed at Tanzania Shillings three Hundred thousand only (TZS 300,000). 6 Order accordingly. H. R. MWANGA JUDGE 19/12/2023 7

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