

TANZANIA / JUDGMENT

MCA 32571 PRESTIGE VS STANDARD

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31 December 2024

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM SUB-REGISTRY) AT DAR ES SALAAM
CIVIL REVISION NO.32571 OF 2024 (Originating from the District Court of Kinondoni in Civil
Case No. 32232 of 2024 and Misc. Civil Application No. 32231 of 2024) PRESTIGE INVESTMENT
SA..... APPLICANT VERSUS STANDARD PETROLEUM
LLC..... RESPONDENT

RULING

31st December 2024 & 09th January, 2025 BWEGOGGE, J.: The applicant herein above named instituted an application herein praying this Court to be pleased to call for and inspect the records in Civil Case No. 32232 of 2024 and Miscellaneous Civil Application No. 32231 of 2024 between the parties herein instituted in the Resident Magistrates' Court of Kinondoni, at Kivukoni, to satisfy itself on the propriety and legality of the whole proceedings and orders and to issue appropriate orders for the interest of justice, among others. 1 The application is brought under the provisions of section 79 (1) (a), (b) and (c); and section 95 of the Civil Procedure Code [Cap. 33 R.E. 2024] (henceforth the "CPC"); and supported by the affidavit of Tazan Mwaiteleke, the applicant's counsel. In tandem with filing the counter affidavit, the respondent raised five preliminary objections as hereunder mentioned:

1. The application is misconceived and bad in law for seeking revision against interlocutory orders.
2. That the application is misconceived and bad in law for being sworn by a person with no locus standi and as such incompetent.
3. The application is misconceived and bad at law for containing untrue allegations of fact.
4. That the application is misconceived and bad in law for containing a defective jurat of attestation.
5. That the application is misconceived and bad in law for failure to exhaust available local remedies. The applicant has the services of Mr. Tazan Mwaiteleke, learned advocate; and Mr. Denis Mugyabuso, learned advocate, entered appearance for the respondent. On leave of this court, the counsel herein argued both the preliminary objections and merit of the appeal. In substantiating the 1st objection alleging that the application herein is bad in law

for seeking revision against an interlocutory order, the counsel submitted that the term “interlocutory order” as defined by Black’s Law 2 Dictionary means “intermediate order in the case or any other order than a final order.” That literally, interlocutory order is an order which doesn’t finalise the case. Thus, the counsel argued that the provision of section 79 (2) of the CPC forbids the application for revision to lie against the ruling in respect of the interlocutory order. He clarified that in this matter the applicant is moving this court to call and revise the proceedings and orders entered in Misc. Civil Application No. 32231 of 2024 between the parties herein pending in the Resident Magistrates’ Court of Kinondoni, at Kivukoni, to determine the correctness, legality and regularity of the same which is contrary to the law. Respecting the 2nd objection, the counsel contended that the affidavit supporting the application is bad in law for being sworn by a person with no locus standi and as such incompetent. That the affidavit was sworn by an advocate of the applicant whereas there is no document mentioned in the affidavit which allows the respective advocate to swear the affidavit. And the respective advocate didn’t state that he appears in the proceedings pending in this Court (High Court-Commercial Division) but merely mentioned the law firm from which the counsel mandated to represent the applicant emanates, which is contrary to the law. The counsel directed the mind of this case to the cases: Tanzania Breweries 3 Ltd vs. Harman Bildad Minja (Civil Application 11 of 2019) [2020] TZCA 63 and Kellen Rose Rwakatare Kuntu (As Legal Representative of the late Rev. Dr. Getrude Lwakatare) & 3 Others vs. Zithay Kabuga (Misc. Land Application No. 89 of 2023; Misc. Land Application No. 89 of 2023) [2023] TZHCLandD 16974 to buttress his point. The counsel concluded his argument in this respect by asserting that the rationale behind the rule of law in the decided cases mentioned above is based on the principle that the advocate who swears an affidavit cannot be cross-examined in the matter he conducts. Regarding the 3rd objection, the counsel argued that the application herein is bad in law for containing untrue allegations of facts specifically, the 2nd, 3rd, 4th, 5th and 6th paragraphs of the supporting affidavit for the reason that advocates from N&L Law Chambers have never been instructed to handle any matter between the parties in this court. That the name of the law chamber which represents the respondent in this court (Commercial Division) doesn’t tally with the name of their law firm (N&L Law Chamber). The counsel clarified that the name of the law chamber mentioned in the pleadings in respect of the case pending in this court is MNL Law Chamber, not N&L Law Chamber. Thus, the allegations made in the supporting affidavit are untrue. To bolster his argument, the counsel cited the case 4 of Damas Assesy & Another vs Raymond Mgonda Paula and Others, Civil Application No. 32/17 of 2018, CA (unreported) wherein it was held that the affidavit tainted with untruth is not affidavit at all and cannot be relied upon to support the application. Concerning the 4th objection alleging that the application herein is supported by the defective jurat of attention, the counsel contended that the respective jurat of attestation contravenes section 10 of the Oaths and Statutory Declaration Act [Cap. 34 R.E. 2019]. That in the case of Jamal Msitiri @ Chaijaba vs. Republic, Criminal Application No. 01 of 2012, CA (unreported), the Apex court observed that the jurat should indicate that either the commissioner knows the deponent personally or otherwise identified to him by a person known to him. The counsel maintained that the commissioner

who attested the affidavit supporting this application didn't comply with this mandatory condition of the law. Hence, the omission is fatal to the affidavit as it renders the same defective. Lastly, in respect to the 5th objection the counsel charged that the applicant is abusing the due process of law for failure to exhaust available remedy. The counsel opined that exhausting local remedy is a legal requirement in our jurisdiction which is aimed to avoid chaos in the cause 5 of administration of justice; and failure to comply with the requirement is fatal as it goes to the jurisdiction of the court presiding the case. On this basis, the counsel opined that the applicant herein ought to have sought local remedy in the presiding court (the Resident Magistrates' Court of Kinondoni). The case of Pangea Minerals Limited vs. Petroleum (T) Limited and Others, Civil Case No. 96 of 2015, CA (unreported) was cited to bring the point home. In passing, the counsel opined that they are aware of the oxygen principle advocated under the provision of sections 3A and 3B of the CPC; however, as observed by the superior Court in the case of Puma Energy Tanzania Ltd vs Diamond Trust Bank Tanzania Ltd, Civil Appeal No. 54 of 2016, CA (unreported), the oxygen principle should not be used to circumvent the mandatory rules of the court. On the above premises, the counsel prayed the objections to be sustained and this application be struck out with costs. In reply, Mr Mwaiteleke contended that the 1st objection is patently misconceived as this court has been called upon to revise the whole proceedings and orders entered by the lower court, not specific order(s) issued thereto. The counsel clarified that the provision of sections 79 (1) and 95 of the CPC confers power to this court to revise the proceedings of the subordinate court. The case of VIP Engineering and Marketing Ltd vs. Mechmar Corporation (Malaysia), Civil Application No. 163 of 2004, CA (unreported) was cited to bolster the point. Respecting the 2nd objection, the counsel maintained that the objection is misconceived as well. That the case referred to buttress the objection [Tanzania Breweries vs. Harman Bildad Minja (supra)] underscores that the advocate can swear affidavit in the proceedings in which he appears which are within his personal knowledge. That the supporting affidavit is clear in that the deponent is the advocate of the applicant. Hence, the deponent in this case has locus standi to swear the affidavit. Otherwise, the counsel contended that the allegation that the facts deposed are not within the knowledge of the deponent needs evidence; hence, the purported objection falls short of the preliminary objection in the strict legal sense. And the counsel opined that the case of Kellen Rose Rwakare (supra) invoked the modified principle contrary to the case cited earlier which doesn't bind this court. Pertaining to the 3rd objection alleging that the application is supported by the deposed untrue facts, the counsel contended that the respective objection needs evidence as well. That no reason has been advanced as to why the counsel alleges that the depositions are tainted with untruth. 7 That the contention that N&L Law Chambers has never been instructed to handle any matter between the parties in this court (Commercial Division) is contradicted by the counter affidavit, notwithstanding the misnomer in the description of the respective law chamber from which the counsel representing the respondent (petitioner) emanates. The counsel opined that the case of Damas Assesy (supra) cited to buttress the objection is inapplicable in the circumstances of this case as no false fact was deposed as alleged. Replying to the 4th objection in that the jurat of attestation in

the application lodged herein is defective, the counsel contended that the case of Jamal Msitiri @ Chaijaba cited doesn't apply to this case. He maintained that the jurat of attestation is proper in law as it indicates that the deponent is known to the commissioner for oath in compliance with the law. Lastly, concerning the 5th objection alleging that the applicant failed to exhaust local remedy, the counsel contended that the trial court has no power to nullify its own proceedings as it is this court which is enjoined with power to revise the proceedings of the subordinate courts under the law of this land. That the case of Pangea Minerals Ltd (supra) cited to bolster the objection is distinguishable from this case as in the respective 8 case, the appellant thereof filed an appeal against the exparte judgment of the High Court which is contrary to the law. Moreso, the counsel opined that the case of Puma Energy Tanzania Limited (supra) is not of general application but applicable in certain circumstances, as the oxygen principle aims to attain substantive justice. That the principle may still be invoked by this court to sustain the right of the applicant to be heard and the matter be determined on merit. In sum, the counsel prayed the objections raised herein to be overruled for want of merit, with costs. The question for determination is whether the preliminary objections herein have substance. The 1st objection alleges that the application is bad in law for seeking revision against the interlocutory orders. The mainstay of this objection is premised on the ground that the provision of section 79 (2) of the CPC forbids the application for revision to lie against the ruling of the interlocutory order. Foremost, I subscribe to the submission made by Mr Mugyabuso in that the provision of section 79 (2) of the CPC in no uncertain terms, instructs that no application for revision shall lie in respect of any preliminary or interlocutory decision or order of the Court unless such decision or order has the effect of finally determining the suit. 9 However, I must make it clear that the applicant herein has invoked the provision of section 79 (1) (a),(b) and (c) of the CPC to move this court to grant the prayers sought, not sub-section 2 thereto. I am constrained to reproduce the relevant provision for clarity as under: "Section 79(1); The High Court may call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies thereto, and if such subordinate court appears-

- (a) to have exercised jurisdiction not vested in it by the law;
- (b) to have failed to exercise jurisdiction so vested; or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit. " [emphasis added]. Given the foregoing, I am constrained to agree with Mr Mwaiteleke in that the revisionary power of this court is not restricted to interlocutory decision or order entered by the trial court as provided under sub-section 2 of the relevant provision, but also to the record/proceedings of the subordinate court, where the trial court allegedly exercised the jurisdiction not vested in it by law; failed to exercise jurisdiction vested to it and or acted in the exercise of its jurisdiction illegally or with material irregularity. I would further assert that irregularities and confusion in the proceedings are amenable to the revisional process. See in this respect the cases: VIP Engineering and Marketing Ltd vs. Mechmar Corporation (Malaysia) (supra);

Agness Simbambili 10 Gabba vs. David Samson Gabba (supra); and Fahari Bottlers Ltd and Another vs. Registrar of Companies and another, Civil Revision No. 01 of 1999 (unreported). The applicant herein prayed this court to call for and inspect the record of the lower court respecting the matters in question and satisfy itself as to the propriety and legality of the whole proceedings and orders entered and issue appropriate orders of which, in my opinion, this court is enjoined with power to exercise. Therefore, I hereby find the 1st limb of the preliminary objections without substance. The charge in the 2nd objection alleges that the affidavit supporting the application herein was sworn by a person with no locus standi and as such incompetent. The reason fronted to buttress this charge is that the respective advocate who sworn the affidavit didn't state that he appears in the proceedings pending in this Court (Commercial Division) but merely mentioned the law firm from which the counsel mandated to represent the applicant emanates which is contrary to the law. Admittedly, it is trite law that an advocate can swear and file an affidavit in the proceedings in which he appears for his client, but on matters which are in the advocate's personal knowledge only. See the cases of Tanzania Breweries Limited vs. Herman Bildad Minja(supra) and Lalago 11 Cotton Ginnery and Oils Mills Company Ltd vs. The Loans and Advances Realization Trust (LART) (supra). The rationale behind this rule of law is that the counsel who swear facts unknown to them on behalf of their client run the possibility of unsuspectingly swearing to falsehood and run the risk of being cross-examined. See the cases: Berno Didier Muhile (As Legal personnel Personal Representative of the Estate of the Late Keremere Boniface) vs. Rowland Patrick Sawaya, Misc, Land Application No. 69 of 2022 HC, (unreported) and Raila Odinga & Others vs. Wiliam Ruto & Others, Presidential Elections Nos. E001, E002, E003, E004, E005, E007 & E008 of 2022 (Consolidated)

[2022] KESC 54 (KLR). In the matter at hand, it is apparent that the lawyer who deponed the supporting affidavit is the counsel representing the applicant herein who is conversant with matters which have given rise to this application. The same, enlightened this court that the applicant is represented by the colleague in his chamber in the proceedings pending in this court vide Misc. Commercial Cause No. 30612 of 2024 and ascertained that he is conversant with facts of the relevant proceedings of which he disclosed in a nutshell. In fact, the respondent's counsel has not disputed the matters deponed by the applicant's counsel respecting the subject matter of the 12 case pending in this court, save the denial in that he was not involved in the relevant case. Hence, I am of the considered opinion that the deponent in the supporting affidavit who represents the applicant in this case deponed matters within his personal knowledge; thus, competent to do so. I find the 2nd objection without substance as well. The 3rd objection alleges that the application herein is bad in law for containing untrue allegations of fact. The ground fronted to bolster this allegation is that N&L Law Chambers has never been instructed to handle any matter between the parties pending in this court (High Court - Commercial Division). I would not tarry to agree with Mr Mugyabuso in that it is an uncontroverted fact that the pleading lodged in this court respecting Misc. Commercial Cause No. 30612 of 2024 indicates that the petitioner thereto is represented by advocates from the firm namely, MNL Law

Chambers whereas the respondent's counsel herein, as depicted by the pleading filed in this court as well as the subordinate court depicts that the same emanates from N&L Law Chambers. Thus, it is apparent that the two law chambers are two and separate entities; it cannot be taken that the difference may have been occasioned by mere misdescription. 13 However, as rightly contended by Mr. Mwaiteleke, the respondent's counter-affidavit acknowledges the pendency of the proceedings in this court and the subject matter of the relevant proceedings; and Mr Mugyabuso himself in so many words acknowledged the pendency of the respective matter and contended that by its nature, it doesn't bar the institution of the suit in the lower court. And the same has not suggested that they acted in ignorance of the pending case in this court when they commenced civil proceedings in the subordinate court. Suffice it to say that apart from erroneous deposition pertaining to the respondent's representation in the proceedings respecting the Misc. Commercial Cause No. 30612 of 2024, Mr Mugyabuso has not pointed out depositions in the supporting affidavit he alleges to be tainted by falsehood. Hence, I lack cogent ground to arrive at the conclusion that the deponent should not be believed for deposing falsehood. The 3rd objection fails. The 4th objection alleges that the application is bad in law for containing a defective jurat of attestation. The argument fronted by Mr Mugyabuso in validating this charge is that the jurat of attestation of the affidavit supporting the application herein contravenes section 10 of the Oaths and Statutory Declaration Act for failure on the part of the commissioner for 14 oaths to indicate that he either knows the deponent personally or otherwise identified by a person known to him. Contrarywise, Mr Mwaiteleke contended that the jurat of attestation is proper in law as it indicates that the deponent is known to the commissioner for oath in compliance with the law. The rival arguments above constrained me to revisit the jurat of attestation in question for scrutiny. It is gleaned from the pleadings filed herein that the deponent (Tazan Mwaiteleke) was sworn by Mr Joshua Matiko, the commissioner for oath who knows the deponent personally. The remaining part denoted by wording pertaining to the introduction of the deponent to the commissioner which would have indicated that the deponent was a stranger to the deponent was not filled/remains blank. Hence, I would apprehend that based on the words in that the deponent is known to the commissioner personally, the jurat of attestation meets the requirement of the law. I would have decided otherwise if the jurat would have indicated that the deponent was likewise introduced to the commissioner by someone else as that would amount to reprobation of the earlier fact. That said, I find the 4th objection without merit. Lastly, it is charged in the 5th objection that the applicant failed to exhaust the available local remedies in the presiding court (the Resident 15 Magistrates' Court of Kinondoni) as the applicant had an avenue to contest both the application and main suit which were yet to be heard interparte. Conversely, Mr Mwaiteleke argued that the trial court has no power to nullify its own proceedings, but this court. Arguably, based on the nature of the proceedings commenced in the trial court in question and the consequential impugned order, the applicant had two legal recourses. One, the applicant had an avenue to appear in the respective proceedings and raise an objection as to the legality and, or competence of the same; and Two, invoking the

provision of section 79 (1) of the CPC for revision of the allegedly irregular proceedings. The applicant opted to knock on the door of this court seeking a nullification order based on the legality and irregularity of the impugned proceedings. I, based on the circumstances of the case, find no reason to fault the legal recourse preferred by the applicant. Thus, I find the 5th objection unmerited as well. In fine, I find the preliminary objections on point of law raised herein bereft of substance. Hence, I hereby overrule the respective objections in their entirety. Now, at this juncture, I proceed to determine the merit or otherwise of the application herein. 16 In substantiating the application herein, Mr. Mwaiteleke elaborated the grounds deposed under paragraph 9 of the supporting affidavit to move this court to grant the orders sought herein as follows: First, the trial court has no jurisdiction to entertain the cases instituted by the respondent against the applicant thereto for the reason that the subject matter of the dispute is pending as Misc. Commercial Cause No. 30612 of 2024 before this court (Commercial Division) between the respondent (petitioner) and the applicant (respondent) herein. That annexure PIS1 to the supporting affidavit is an amended petition instituted by the petitioner (respondent herein) which was filed in this court on 10th December, 2024 wherein the petitioner (respondent) is moving this court for revocation of arbitration clause so that he can file the suit in the court in Tanzania as the contract executed by parties herein provides for arbitration only. Likewise, the counsel enlightened this court that the petitioner is moving this court for an injunction order against the applicant herein to restrain the same from dealing in petroleum product/cargo in dispute which is the subject of the proceedings in the subordinate court at present. Moreso, the counsel enlightened this court that while the case before this court is still pending, the petitioner (respondent) filed matters in the subordinate Court on 22nd December, 2024 (as per annexure PIS2) namely, Civil Case No. 32232 of 2024 and 17 Misc. Civil Application No. 32231 of 2024. That the respective cases are a replica of the case (Misc. Commercial Cause No. 30612 of 2024) pending in this Court (Commercial Division) involving the same parties. The counsel reiterated that the proceedings pending in this court in Misc. Commercial Cause No. 30612 of 2024, the respondent is praying for revocation of the arbitration clause which denies this court jurisdiction to preside the case; yet, before the application is granted, the respondent commenced proceedings in the lower court. The counsel opined that it was not proper for the respondent to institute the subsequent case in the subordinate court as it is a clear abuse of the court process and a clear act of forum shopping. Likewise, the counsel contended that the respondent should have withdrawn the case pending in this court before commencing the subsequent proceedings in the lower court. Secondly, the lower court has no jurisdiction to entertain the matters instituted thereto because the parties herein covenanted to resolve their dispute by arbitration as depicted by the amended petition in which the respondent referred to the contract executed by the parties herein for proof of existing arbitration clause. That the respective contract executed in May, 2024 specifically, paragraphs 20.4 and 20.5 provides for the 18 arbitration clause in that in case of any dispute, arbitration would be conducted at Bujumbura city in Burundi. Thirdly, the trial court erred in law in granting an injunction without serving the applicant with

chamber summons contrary to Order XXXVII, rule 4 of the CPC which requires service of notice to the adverse party. And no justification was made as to why the notice was not affected before entering an impugned order. Fourthly, the trial court erred in adjudicating the matter without joining the Tanzania International Petroleum Reserves Limited (TIPER) as TIPER is mentioned as the entity holding the petroleum cargo of the parties. Hence, the same should have been joined as a necessary party in the cases. On the above premises, the counsel called upon this court to invoke its revisionary power to address the serious irregularities in the proceedings in the lower court to maintain the propriety and order of the court proceedings. The case of Agness Simbambili Gabba vs. David Samson Gabba, Civil Appeal No. 26 of 2008, CA (unreported) was cited to bolster the point. In reply to the 1st and 2nd grounds for the revision sought herein, Mr Mugyabuso contended that there is no pending suit in this court but prayer 19 to waive the arbitration clause. Hence, the pending proceedings in this court don't restrict the commencement of proceedings in the subordinate court. Otherwise, the counsel contended that if the applicant thinks the subordinate court has no jurisdiction to preside over the case based on the arbitration clause binding the parties herein, she is at liberty to raise the issue thereto as the case is still pending. The counsel opined that raising the jurisdiction issue in this court is an abuse of the judicial process. Pertaining to the 3rd ground alleging non-service of notice to the applicant before the impugned order was made, the counsel contended that the provisions invoked to move the court to issue a temporary order are section 68(e), Order XXXVI, rule 1 (b) and 4 of the CPC which allows the court to issue interim order exparte. Hence, the allegation of illegality is unfounded. Lastly, concerning the allegation of non-joinder of necessary party namely, TIPER, the counsel contended that the said TIPER was not a party to the contract between the parties herein. However, if the applicant thinks TIPPER ought to be a party, this is not the right forum to address her complaint. 20 The counsel concluded that no illegality has been occasioned by the trial court in entering the impugned interim orders; and this matter has been brought in this court prematurely. He prayed that the matter herein be dismissed with costs. In rejoinder, the applicant's counsel maintained his previous stance and further emphasized that the petition filed by the respondent in this court is intended to move this court to waive the arbitration clause so that they may file a suit in the competent court in respect of the pending dispute inter-se. And in the respective proceedings, there is a prayer for injunction order sought against the applicant herein in respect of the petroleum products procured from TIPER. Thus, based on the contract entered between the parties herein and the addendum contract involving a third party, the arbitration clause thereto prohibits any party from commencing any matter in the classical court. The counsel reiterated that the matter pending in this court has not been disputed by the counsel. Neither, it has not been disputed that the respondent prayed for the injunction order in this court. Likewise, the arbitration clause has not been disputed. The counsel concluded that the contention that the applicant should have raised their complaint in the trial court, based on the circumstances of the case, is misconceived. 21 This is all about the submissions made by the learned counsel herein. The issue for determination is whether the application herein

is merited. As I earlier mentioned, the applicant herein is praying this court to call for and inspect the record of the lower court respecting the matters in question and satisfy itself as to the propriety and legality of the proceedings and orders and issue appropriate orders of which, in my opinion, this court is enjoined with power to exercise. Ab initio, I find it pertinent to address two matters raised by Mr Mwaiteleke in his 3rd and 4th grounds for revision advanced herein. Pertaining to the 3rd ground, the counsel alleged that the trial court erred in law in granting injunction without serving the applicant with chamber summons contrary to Order XXXVII, rule 4 of the CPC which requires service of notice to the adverse party before the injunction order is issued whereas no justification was made why the notice was not effected before entering impugned order. Admittedly, the provision of Order XXXVII, rule 1 of CPC enjoins the court with power to issue temporary injunction. However, the provision of rule 4 of the same Order instructs that before granting an injunction, the trial court should direct that the notice of the application be given to the opposite party, except where “it appears that the giving of such notice would cause undue delay and that the object of granting the injunction, would thereby be defeated.” I have gone through the record of the lower court and the impugned injunction order. In granting the order, the trial court purchased wholesale the submission made by Mr Mugyabuso in that, if the injunctive order would not be granted, the applicant would lose the entire disputed petroleum cargo as well as the purchase price, which remains unpaid to date to the detriment of the applicant and the charter parties. Thus, for the above ground, the trial court opined that the reasons adduced for the issue of *ex parte* injunctive order were justifiable. Hence, granted the sought order. To my opinion, apart from the provision of section 68 (e) of the CPC fronted by Mr Mugyabuso to justify the grant of the impugned order, assuming that the trial resident magistrate was put in the dark respecting the pending proceedings in this court, I find the order to have complied with the condition set under the provision of Order XXXVII, rule 4 of the CPC. Concerning the allegation of non-joinder of the purported necessary party, as rightly opined by Mr Mugyanuso, this issue should have been raised in the trial court upon the applicant entering an appearance in the respective proceedings. It should not have been advanced as a ground for revision. 23 That said, I proceed to determine the merit or otherwise, of the remaining grounds advanced to substantiate the application herein. In substance, in the 1st ground, the applicant alleges that the subordinate had jurisdiction to preside over the proceedings initiated by the respondent herein; and in the 2nd ground, the applicant suggested that the proceedings in the subordinate court were commenced prematurely as the petition seeking an order for revocation of arbitration clause pending in this court is yet to be determined. Having gone through the pleadings in respect to the proceedings in Misc. Commercial Cause No. 30612 of 2024 filed in this court; the proceedings in Civil Case No. 32232 of 2024 and Miscellaneous Civil Application No. 32231 of 2024 filed in the subordinate court; and the proceedings herein, coupled with submissions made by the counsel hereto, I have the following observations: One, respecting the proceedings pending in this court (Commercial Division) in Misc. Commercial Cause No. 30612 of 2024, the petition filed thereto avers that the parties thereto entered an agreement for an

emergency order for petroleum shipping and supply and the same which was executed on 02/05/2024 and an addendum agreement thereto dated 27/06/2024, mainly to adjust the petroleum product prices to accommodate for any eventuality in the event of 24 unforeseen fluctuations in the market. It is alleged that the petitioner managed to fulfil his contractual obligation under the contract but the respondent whereas the cargo in dispute was discharged to Tanzania International Petroleum Reserves Limited (TIPER) herein Dar Es Salaam. Likewise, it is averred that the petitioner has noticed that the terms and conditions of the head contract governing the parties involved a submission clause to the effect that in case of any dispute parties would submit themselves to an arbitrator. Thus, based on the applicant's failure to discharge her contractual obligation to the financial detriment of the respondent (petitioner) the petition craves for leave to revoke the submission clause to an arbitrator to harmonize the current situation. Based on the foregoing, the respondent (petitioner) prayed for two reliefs as follows:

1. This Court be pleased to grant leave to the petitioner to revoke a submission clause under the contract dated 02/05/2024 together with its addendum dated 27/06/2024.
2. An order to the respondent or its agent or any other person to refrain from tempering with cargo under dispute and which is currently under financial hold with Tanzania International Petroleum Reserves Limited (TIPER) pending hearing of the petition for leave to revoke a submission clause emanating from the contract dated 02/05/2024 together with its addendum dated 27/06/2024. 25 Two, before the above petition was deposited, and leave to institute a suit against the applicant in classical court was granted; the respondent, for reasons better known to herself, commenced civil proceedings against the applicant in the subordinate court in Civil Case No. 32232 of 2024 alleging breach of contract and prayed for reliefs namely, declaratory order to the effect that the applicant herein (defendant) breached the contract; and the order for injunction restraining the applicant/defendant or its agent or any other person from tempering with cargo under dispute and which is currently under financial hold with Tanzania International Petroleum Reserves Limited (TIPER) till final payment of the said cargo. Likewise, the respondent commenced an application in Misc. Civil Application No. 32231 of 2024 praying the trial court to issue the interim injunction order restraining the applicant (respondent) from tempering with cargo under dispute and which is currently under financial hold with Tanzania International Petroleum Reserves Limited (TIPER) pending hearing of the main suit. The restraint order was duly granted exparte. In view of the foregoing, I apprehend that based on the petition for grant of leave to vacate the arbitration clause which remains pending in this court, the respondent acknowledged that the contract executed with the applicant bars and, or denies her locus standi to sue in classical court in 26 this land for the reason of submission clause in force. Thus, the commencement of the proceedings in the subordinate court whereas the order for revocation of the arbitration clause sought in this court is yet to be granted was made prematurely. Hence, the respective proceedings are incompetent before the subordinate court. Moreso, the same injunction order obtained exparte is one of the reliefs prayed for in the petition pending in this court. I would specifically say that the exparte injunction order

sought and obtained in the subordinate court is one of the orders sought in this court. It goes without saying that, based on the current circumstances, the proceedings in this court are rendered nugatory. In summary therefore, I find the application herein meritorious. Accordingly, I find the purported proceedings commenced in the subordinate court incompetent for being commenced prematurely. I would allow the application and enter the orders hereunder:

1. The purported proceedings in Misc. Civil Application No. 32231 of 2024 commenced in the subordinate court and the consequential impugned injunction order are hereby quashed and set aside for being incompetent before the trial court.
2. The pending proceedings in Civil Case No. 32232 before the subordinate court be terminated until the disposal of the proceedings pending in this court in Misc. Commercial Cause No. 30612 of 2024. 27
3. The applicant shall have her costs. I so order. DATED at DAR ES SALAAM this 09th January, 2025. O. F. BWEGOGI JUDGE 28

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