

TANZANIA / JUDGMENT

acmirs consulting ltd vs medical store department another 2024 tzhccomd 13 23 february 2024

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TZHCCOMDDECIDED
23 February 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT
PAR ES SALAAM MISC. COMMERCIAL CAUSE NO. 32 OF 2023 IN THE MATTER OF
ARBITRATION BETWEEN ACMIRS CONSULTING LIMITED.....CLAIMANT
VERSUS 1 MEDICAL STORES DEPARTMENT..... st RESPONDENT THE ATTORNEY
GENERAL.....2nd RESPONDENT

RULING

Date of last order: 03/11/2023 Date of last ruling: 23/02/2024 AGATHO, J.: This ruling was prompted by the preliminary objection (PO) raised by the respondents. That the application for filing the final Arbitral Award is time barred by virtue of Section 17 of the Arbitration Act and Part III of the Law of Limitation Act [Cap 89 R.E. 2019], It trite that for a PO on time limitation to be sustained we must know when does the time start to run against the Applicant's application for registration of the Arbitral Award. We ask does the time start to run from i the date the Arbitral Award was issued/delivered that is 16/08/2022 or from the time the date (that is 20/02/2023) when it was issued or communicated to the Applicant? What does Section 17 of the Arbitration Act [Cap 15 R.E. 2020] and part III of item 18 of the Law of Limitation Act [Cap 89 R.E. 2019] provide? Section 17(1) of Cap 15 R.E. 2020 allows the application of the Law Limitation Act to arbitral proceedings. Thus, reading Cap 89 R.E. 2019 Part III item 18, it is clear that the time set by the law for filing the Arbitral Award is six months. That law is loud as reproduced below: Application "under the Civil Procedure Code fo r the filing in court o f an aw ard in a su it m ade in a n y m atter referred to arbitration b y order o f the court, o r o f an aw ard m ade in a n y m atter referred to arbitration without the intervention o f a court...six m onths." The above provision however does not make it clear as from when should we count these six months. Is it from the date the Arbitral Award was issued or when the award was given or communicated to the parties (the Applicant)? But going through the respondents' submission, they have supported their PO with Part III item 21 of the Law of Limitation Act [Cap 89 R.E. 2019] which provides: 2 "Application under the Civil Procedure Code, the Magistrates' Courts A ct or other written law for which no period o f limitation is provided in this A ct or any other written law...sixty (60) days." In

my view the above cited provision does not apply to the case at hand because the time under which the arbitration award should be filed has been stated in the law. That is Part III item 18 of Cap 89 R.E. 2019. It clearly provides for six months. Therefore, the respondents' PO which is based on 60 days' time limit is without merit. As a matter of general principle, a notice of PO is a pleading. Therefore, a party raising it (the PO) is not allowed to depart from what s/he has raised in that notice of PO during submission. The respondents raised the PO on Part III item 18 of Cap 89 R.E. 2019. As from when we compute time of limitation for filing arbitral award, Section 61 of Cap 15 R.E. 2020 provides the answer. It provides: "(1) an arbitral tribunal may unless otherwise agreed by the parties decide what is to be considered as the date on which the award was made.

- (2) in the absence of a decision of the arbitral tribunal, the date of the award shall be considered to be the date on which the award was signed by the arbitrator or, where more than one arbitrator signs the award, the date signed by the last arbitrator." 3 From the above provisions of the law, it is conspicuous that the arbitral award was signed on 16/08/2022. That was enough to dispose the matter by sustaining the PO. However, the parties did not tell the court whether there was or was not an agreement as to the date on which the award was made. This would have helped the court to determine whether Section 61
- (1) or (2) of the Arbitration Act will apply in this case. I have noticed that the respondents have argued that neither the parties agreed, nor the Arbitral Tribunal decided on what is to be considered as the date of the award. But to resolve this will certainly require evidence. Hence contravening the principle laid in *Biscuits Manufacturing Company Limited v West End Distributors Limited* [1969] EA 696 that PO does not require evidence beyond what is found in the pleadings. For that matter, evidence is needed to substantiate what the respondents have alleged in their submissions. Moreover, submissions are statements from the bar. But it suffices to state that the PO can be raised at any stage. However, it must be a pure point of law that does not need evidence to sustain. The point of limitation as seen here requires other issues to be substantiated with evidence. Thus, not a pure point of law. It is a mixture of law and facts. That said and done, the PO is overruled because it requires evidence of some sort as mentioned herein above. Should the respondents desire, they can raise the issue in the normal way at the hearing of the application. In the end the PO is overruled. Each party shall bear its costs. Order accordingly. 4 SALAAM this 16th Day of February 2024. U\J. AGATHO JUDGE 16/02/2024 Date Coram: Hon. UJ. Agatho J. For Applicant: Robert Mosi, Advocate For Respondents: Angelina Ruhumbika, State Attorney. C/ Clerk: Mustafa Court: Ruling delivered today, this 16th February 2024 in the presence of Robert Mosi, counsel for the Applicant, and Angelina Ruhumbika, the Respondent's State Attorney. JUDGE 16/02/20 5

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Prepared on 13 October 2026 · Esheria