Kluwer Arbitration Blog

Interpreting Tanzania's Arbitration Act, 2020

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This post is in response to the post titled "The First Year of Tanzania's 2020 Arbitration Act" published on the Kluwer Arbitration Blog on 21 April 2021.

In the above-mentioned post, Katarina Jurisic and Michael Wietzorek analysed the provisions of Tanzania's Arbitration Act 2020 ('the Act') and the effect that the Act would have on the jurisdiction. The well-written article provides a deep analysis of the Act, to which we generally prescribe. However, we disagree with certain views of the authors and, in this post, we provide our reactions to some of them, in particular the following statement:

> *"In addition to this difference, Section 13(3) of the 2020 Arbitration Act appears to be at odds with Section 12(1) of the 2020 Arbitration Act…"*

This post therefore presents further opinions in reaction to that statement.

Analysis

In our opinion, while conceding that provisions of the Act are open to interpretation, Section 12(1) and Section 13(3) do not seem to be at odds with each other.

Under Section 6 of the repealed Arbitration Act, any application to stay court proceedings pending arbitration would have to be filed before the Defendant files a written statement of defence ('WSD') or takes any other steps in the proceedings. If the Defendant were to take steps in the proceedings, such as submitting arguments or defenses, it would amount to foregoing his right to submit the dispute to arbitration. The court would first determine the application for stay before making a decision as to whether the dispute should be referred to arbitration or a WSD should be filed by the Defendant.

Section 6 of the repealed Arbitration Act which provided as follows:

> *"Where a party to a submission to which this Part applies, or a person claiming under him, commences legal proceedings against any other party to the submission*

> *or any person claiming under him in respect of any matter agreed to be referred, a party to the legal proceedings may, at any time after appearance and before filing a written statement or taking any other steps in the proceedings apply to the court to stay the proceedings*". (our emphasis)

Currently, under Section 13(3) of the Act, a party cannot make an application for stay of legal proceedings pending arbitration unless he has first taken appropriate procedural steps to acknowledge the legal proceedings against him, or has taken steps in those proceedings to answer the substantive claim. This includes filing a WSD in response to the claim.

Meanwhile, Section 12(1) of the Act states:

> "*A court, before which an action is brought in a matter which is the subject of an arbitration agreement shall, where a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement of claim on the substance of the dispute, and notwithstanding any judgment, decree or order of the superior court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*" (our emphasis)

Contrary to the inference made in the post by Jurisic and Wietzorek, this provision simply means that a WSD should be filed first before making an application to stay legal proceedings. Further, such application should be filed within the statutory deadline of filing a defence, which is within 21 days from the date of service of summons as per Order VIII Rule (1) of the Civil Procedure Code R.E. 2019.

In our view, there is no confusion created by the inclusion of both Sections 12(1) and 13(3) in the Act. Whereas Section 13(3) imposes conditions for applying for stay of proceedings pending arbitration, Section 12(1) imposes a time limit within which such application can be made.

The Spirit behind these Provisions of the Act

The aim behind the two provisions is to facilitate the speedy determination of suits. Previously, under the repealed Arbitration Act, where an application for stay of proceedings was dismissed, hearing of the suit could not immediately proceed because the Defendant would not have yet filed his WSD.

Instead, he would then have applied for leave and extension of time to file the WSD, and this would have resulted in a considerable prolonging to the conclusion of pleadings, therefore causing delay in the hearing of the suit.

The Act remedies these issues by providing that if the application for stay of proceedings is dismissed, there would be no need for an extension of time to file the WSD, since one would have been filed before the application for stay was made.

Among the previous cases which set the framework for an application for stay of legal proceedings was the case of Wembere Hunting Safaris Limited v Registered Trustees of Mbomipa Authorized Association, Commercial Case No. 40 of 2013, High Court of the United Republic of Tanzania, Commercial Division, Dar es Salaam Registry (Unreported) cited as authority in Travelport International Limited v Precise Systems Limited, Misc. Commercial Application No. 359 of 2017, The High Court of the United Republic of Tanzania, Commercial Division, Dar es Salaam Registry (Unreported), where the court stated four conditions for the grant of a stay in legal proceedings pending reference to arbitration, namely:

- There are legal proceedings commenced by the Respondent and pending in court;
- There is an arbitration agreement;
- No WSD has been filed in response to the proceedings commenced or taken other steps in the proceedings; and
- The petitioner has shown willingness and readiness to do things necessary for the proper conduct of arbitration.

However, the Act now requires the Defendant to acknowledge the proceedings before him, effectively meaning that the third condition is no longer applicable.

The case of *Queensway Tanzania (EPZ) Limited v Tanzania Toku Garments Co. Ltd*, Misc. Commercial Cause No. 43 of 2020**,** High Court of the United Republic of Tanzania, Commercial Division, Dar es Salaam Registry, (Unreported) affirmed the position that an application under Section 13(1) of the Act requires the Defendant to first acknowledge the proceedings against him.

We note that under Section 12(1) of the Act a party who wishes to apply for stay of proceedings so as to refer a matter to arbitration must do so **"**not later than the date of submitting his first statement of claim on the substance of the dispute**"**.

We believe the reference to "statement of claim" was unintended and that it was meant to refer to a **"**statement of defence". The applicant would be a Defendant in the suit and he would be expected to file a WSD, not a statement of claim.

Concluding Remarks

Save for the reference to "statement of claim" which we believe to be unintended and the fact that what amounts to a Respondent acknowledging proceedings against it for purposes of applying for stay is not defined, the provisions of section 12(1) and 13(1) of the Act are clear. We believe that any confusion arising out of the interpretation of the provision of the Act will be effectively resolved by the courts, and that both investors and practitioners have a reason to smile.

This entry was posted on Friday, August 20th, 2021 at 8:20 am and is filed under Africa, Arbitration Act, Arbitration Proceedings, Stay of Proceedings, Tanzania
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