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Registration and Enforcement of Arbitral Awards in Tanzania

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The Arbitration Act¹ governs domestic arbitral proceedings and enforcement of foreign arbitral awards. The Act was originally enacted in 1931 and was based on the English law of the time. A draft new law based on the current law of England is under consideration by the government of Tanzania. Pursuant to schedule 4 of the Act, foreign arbitral proceedings are recognised as binding when they are or have been conducted in the territories of any contracting party of the Geneva Convention on the Execution of Foreign Arbitral Awards.

The prevailing rule in Tanzania is that the arbitral tribunal should apply the substantive law chosen by the parties in the arbitration agreement. For this purpose the choice of the laws of a country shall be understood to refer to the substantive laws of that country and not to its conflict of laws rules. If or to the extent that there is no such choice or agreement, the tribunal shall apply the law determined by the conflict of laws rules that it considers applicable.

The Arbitration Act of Tanzania still incorporates multilateral agreements like the Geneva Protocol on Arbitration Clauses, 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927. The New York Convention entered into force in Tanzania on 12 January 1965. There are no declarations made according to articles I, X and XI of the Convention. Tanzania is also a contracting state to the Convention on the Settlement of Investment Dispute between States and Nationals of Other States (ICSID), 1965 since 17 June 1992 and to the Multilateral Investment Guarantee Agency, 1985 since 19 June 1992.

Tanzania has entered into 13 bilateral agreements relating to arbitration. The corresponding countries are: Switzerland on 6 April 2006; Germany on 12 July 1968; the Netherlands on 1 April 2004; the United Kingdom on 2 August 1996; Sweden on 1 March 2002; Finland on 30 October 2002; and Italy on 25 April 2003. Tanzania also has agreements with Denmark, Egypt, Jordan, Korea, Mauritius, South Africa and Zimbabwe, which are not yet implemented.

A recent update on international arbitrations relates to the involvement of the government of the United Republic of Tanzania in an ICSID arbitration (ICSID Case No. ARB/12/10) commenced by Standard Chartered Bank (UK) for an alleged breach of a bilateral investment treaty connected with between an IPP, Independent Power Tanzania Limited (IPTL) and state owned power utility, Tanzania Electric Supply Company Limited (TANESCO) for breach of its payment obligations under the Power Purchase Agreement. There is also pending before the ICSID tribunal an arbitration commenced by the lender of IPTL, Standard Chartered Bank (Hong Kong) Limited (ICSID Case No. ARB/20/12) against TANESCO for failure to make capacity payments to IPTL.

The enforcement of an arbitral award is coloured by the fact that arbitration is a forum of choice agreed by parties to a conflict. Parties cannot be heard to challenge arbitral awards except on very limited instances.² In this chapter we will illustrate the process from the time an arbitral award is given to the time a

winning party gets the arbitral award. We will also address the limited instances for challenging arbitral awards.

When an arbitrator (or in the case of three arbitrators, the umpire)³ has concluded the arbitration proceedings, he makes an award. Because he has to sign it, the assumption is that the award shall be in writing. He then gives the parties in the arbitral proceedings notice of the making and the signing of the award. At this point, the arbitrator also makes the (final) fee note and charges payable to him in respect of the arbitration and the award.⁴ After one or both the parties settle the arbitrator's fee and charges, a certified copy of the award is given to the concerned party.

The parties are principally free to agree on the powers of the tribunal to correct an award or make an additional award. If there is no such agreement, the tribunal may on its own initiative or on the application of a party correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission, or to clarify or remove any ambiguity in the award, or make an additional award in respect of any claim (including a claim for interest or costs) that was presented to the tribunal but was not dealt with in the award. Any correction of an award forms part of the award.

Filing or registration of the award

The arbitrator does not make any further move unless one of the parties to the arbitration, or any person claiming under the arbitration requests the arbitrator to file the award in the court. The party making the request will have to settle the arbitrator's fee note. When the arbitrator files the award in court, he gives the parties notice that the award has been filed.⁵

Rule 4 of the Arbitration Rules, 1957 provides that the award, or a copy certified by the arbitrator, together with the evidence of the reference, the minutes of the proceedings and a copy of each notice given to the parties be collated by the arbitrator. These collated documents are then put in a sealed envelope addressed to the registrar of the High Court.⁶ Inside the same sealed envelope, the arbitrator puts a letter addressed to the registrar requesting him to have the award filed in the court. The envelope is then dispatched to the registrar by registered post.

The manner of sending the award to the registrar and having it filed has been a subject of interesting interpretation by the Court of Appeal of Tanzania. In *Tanzania Cotton Marketing Board v Cogecot Cotton Company SA* [1997] TLR 165, (*Tanzania Cotton*) at p168, Lubuva, JA, responded to the contention by one of the parties' counsel that the arbitrator has to file the award personally and directly. Lubuva, J A, disagreed with this position. He said:

From the wording of this subsection [11(2) of the Arbitration Act],⁷ the question that has engaged our minds considerably is whether the law as it stands makes it mandatory for the award to be filed by the arbitrator himself personally. On this, we are, with respect, unable to accept Mr Mselem's submission that as a matter of law, the filing of the award must be done by the arbitrator himself to the exclusion of any other person. We find no reason or justification for such a restrictive interpretation

of the law. We are respectfully in agreement with Dr Kapinga, learned counsel for the respondent that the wording of this section is such that at the request of the party involved in the arbitration, the arbitrator can instruct some other person to file the award in court. In our view, this is because the operative words in the section are those underlined in the extract above. That is, 'upon request the arbitrator shall cause the award to be filed in Court'. In our considered opinion, the import of the word 'cause' in its literal and ordinary meaning is that the arbitrator can either file the award himself in court or can cause by instructing somebody else to do it on his behalf.

Expanded scope of manner of filing

The Court of Appeal had, in fact, expanded the scope of that subsection by providing that the arbitrator could actually file the award himself, something which is only implied in the words: 'cause the award or a signed copy of it to be filed in court'. It is thus now part of our law that on request of a party, the award can be filed by the arbitrator personally or by someone instructed by the arbitrator to do that on his behalf.

It is useful to give some light on the basis for the concern that arises from sending someone to present the award to the registrar for filing. An award, as we shall say later in this paper, leaves the world of private individuals (the parties and the arbitrator) to enter the world of the court (upon filing). The danger of the award being tampered with from the time it leaves the arbitrator to the time it arrives in the hands of the registrar is real and possible. This is why it must be put in a sealed envelope and most certainly the registrar must satisfy himself that the sealed envelope is intact before he accepts the award for filing. On this aspect, Lubuva, JA, had this to say in *Tanzania Cotton* (at p169):

It is common knowledge that the essence and spirit behind the enactment of the law s 11(2) of the Arbitration Ordinance chap 15 is safe receipt of the award. That it should be received by the Registrar, High Court in the form in which it was forwarded by the arbitrator without any tampering.

It follows that the stricture of a sealed envelope would possibly not apply in case the arbitrator himself presents the award to the Registrar.

In the case of *Tanzania Cotton*, the arbitrator had sent by courier a sealed envelope to a law firm with instructions that the envelope be forwarded to the registrar of the High Court of Tanzania for filing. The Court of Appeal found that the use of DHL, a private courier company, was not at odds with Rule 4 of the Arbitration Rules, 1957. That Rule talks about registered post, not courier. The Court of Appeal accepted DHL as a valid agent to transmit the award. The learned Justice of Appeal noted:

While it is an undisputed fact that under Rule 4 of the Arbitration Rules, 1957, the award is to be forwarded to the Registrar of the High Court by registered post, the words 'registered post' should be interpreted widely enough to take into account the current development in communication technology that has taken place since 1957 when the rules were enacted. It is common knowledge that since that time other modes of postage have been introduced. The DHL system which was used in this case in among such modes of communication.

It is hard to resist the thought that since that finding in *Tanzania Cotton* in 1997, communication technology has moved even farther, making it possible to transmit documents electronically as, say, PDF.⁸ Would a bold judicial decision such as Lubuva's take this on board? It remains to be seen.

The *Tanzania Cotton* case had considered an award sent to an agent by way of DHL with instructions that the agent presents it to the registrar for filing. The Court of Appeal gave its mark of approval for this mode of postage. However, it is also clear that the Court of Appeal also approved an arbitrator sending the award to the registrar by way of DHL. Which would be a substitution of the words 'registered post' with DHL. It must be borne in mind that there are similar courier agents such as Federal Express, Expedited Mail Services, United Parcel Services, Sangare Express – all of which are characterised as recorded deliveries and therefore within the scope of Rule 4 of the Arbitration Rules, 1957.

Practice note

Tanzania Cotton provided guidance on what happens after the award has been filed. Lubuva, JA (at p171) had the following to say:

In conclusion, we consider it appropriate to say something about one other issue which was raised in the course of submissions before us. It is not directly relevant for the purpose of determining the general issue before us, but it is intended to provide guidance to those handling such matters in the future. Dr. Kapinga, learned counsel for the respondent had raised the issue as to what happens after the award has been filed. Having regard to the commentaries and authorities from India which has an identical law on arbitration to Arbitration Ordinance Cap 15, he took the view that it is not necessary as a matter of law to have any further proceedings and nuling after the award has been received by the court. For this proposition, he referred us to the Indian cases of: Volkart Brothers v Achrajram & Others⁹ and Achrajising v Achirajram Sahmi.¹⁰

In upholding Dr Kapinga on his submission the learned judge (in the court below) lamented:

This is very interesting because if the position is so, then I have wasted my time and energy for nothing. I have wasted my time for merely recording a fact that the award had been caused to be filed at the instance of the arbitrator...

Thus, once the registrar gets the award presented to him in the way we have outlined above, he has no choice but to file the award. He has to do this without undue delay, since there is nothing in the law that gives him the right to consider, let alone delay or refuse, to have the award filed. No proceedings to refer, or to set aside, the award can be made until the award is filed. Thus, an application to prevent the filing or registration of an award in court has been considered to be out of order (see *Tanzania Cotton* (1997); *The Board of Trustees of PPF v Milo Construction Limited*, High Court of Tanzania (Dar es Salaam) Misc Commercial Case No. 16 of 2009 (unreported); and *Shell Tanzania Ltd v Super Star Forwarders Company Ltd*, High Court of Tanzania (Dar es Salaam) Misc Commercial Cause No. 4 of 2011 (unreported)).

The above decisions have formed the opinion that the High Court has no jurisdiction to act upon an unfiled award. By the same token, an aggrieved party can do nothing against an arbitral award unless it is first filed. The basis for our position is that the court gets its jurisdiction over an arbitral award only upon its being filed and never before that. Until the decision in *Tanzania Cotton*, the practice in Tanzania in matters of arbitration awards was that the court was moved by an application for an order of filing the award. The Court of Appeal of Tanzania found that section 15 of the Indian Arbitration Act, 1899 is identical to the Tanzanian Arbitration Act. For that reason, *Tanzania Cotton* interpreted similar provisions in the Indian Act in the same way as the

Indian courts had interpreted them. On the basis of those Indian decisions, *Tanzania Cotton* took the view that as a matter of law, it not necessary to conduct proceedings before an order of filing is made. The receipt of the award by the court registry constitutes the filing of the award.

The duty of informing the parties to the arbitration that the award has been filed is that of the arbitrator. He does this by way of a notice of filing. This is a requirement set by section 12(2) of the Arbitration Act. Since there is no time limit prescribed to the arbitrator to send the notice of filing to the parties, it is assumed that it is done immediately after filing.

Enforcement of the award

The act of filing adopts the award to the High Court. It transforms it from being a creature of unenforceable private proceedings to being a fully enforceable decree of the High Court.¹¹ The High Court is thus empowered to deal with the award. Section 17(1) of the Arbitration Act states that on being filed, the award becomes enforceable 'as if it were a decree of the court'. More often than not, an award is not written with the same precision and clarity of a High Court judgment. And certainly, an award is more like a judgment than a decree. After the court has been seized of the award filed by the arbitrator, how is it then enforced? Recent practice in the commercial division of the High Court of Tanzania has simplified this process by taking the award and extracting a decree from it. The decree is then signed by a judge.¹² This practice is neither in the Arbitration Act nor in the Rules. However, we salute it and we hope it will be emulated in other instances in the Commercial Division and in other registries of the High Court of Tanzania. When a decree extracted from an award is being enforced, it has the precision and clarity that does not distinguish it from other decrees of the High Court. We also believe that the 'adoption' of the award by the High Court becomes better formalised.

A decree of the High Court is enforced by filing an application for execution in accordance with the Civil Procedure Code.¹³ The same applies to a decree extracted from an arbitral award. We do not believe we need to elaborate on the process of execution. What needs to be looked into is what a party aggrieved with a filed award is allowed to do by law.

An award will not be enforced where the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award. In this regard, a foreign award is enforceable if it has been made pursuant to an arbitration agreement that was valid under the law by which it was governed; it has been made by the tribunal provided for in the agreement or constituted in the manner agreed upon by the parties; it has been made in conformity with the law governing the arbitration procedure; it has become final in the country in which it was made; it has been made in respect of a matter that may lawfully be referred to arbitration under the law of Tanzania; and its enforcement is not contrary to the public policy of or the law of Tanzania.

A foreign award will not be enforceable if the award has been annulled in the country in which it was made; the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case or was under some legal incapacity and was not properly represented; or the award does not deal with all the questions referred to or contains decisions on matters beyond the scope of the agreement for arbitration. In that case, the court may postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking the enforcement.

Setting aside/remitting awards

As said at the opening of this chapter, parties in an arbitration are generally bound by what they agree among themselves. And parties which agree to be bound by a decision of a particular arbitrator and in a particular arbitral process will not be heard to fault an award of that arbitrator unless he has misconducted himself or the arbitration or unless the award was improperly procured. Our law reports have many instances where arbitrators have misconducted themselves or the arbitration or where awards were improperly procured. In such cases, on application by an aggrieved party, the High Court will set aside the award.¹⁴ Again, on application, the High Court may remit an award to the reconsideration of the arbitrator.¹⁵

Because an arbitrator is a tribunal selected by the parties, his adjudication is binding on them. If it were permissible for the court to re-examine the correctness of the award, the entire proceeding would amount to an exercise in futility. The grounds on which awards may be set aside are limited by statute. They are based on the general principle applicable to arbitration proceedings. It is not open to the court to speculate, where reasons are not given by the arbitrator, as to how he came to his conclusion. The court cannot proceed to determine whether the conclusion is right or wrong. This is on the assumption that the arbitrator must have proceeded by a certain process of reasoning.

The grounds for setting aside an award under section 16 of the Arbitration Act are divided into two parts: misconduct, ie, corruption on the part of the arbitrators or umpire, in other words moral turpitude; and misconduct of the proceedings, ie, legal misconduct.

Moral turpitude

If the arbitrator is guilty of moral turpitude, the award will be set aside. Ordinarily, under the definition of moral turpitude fall the cases of corruption and fraud. The court will set aside the award if corruption is proved, ie, if the arbitrator has taken a bribe or has received other illegal gratification. 'Treating' the arbitrator may amount to misconduct if the intention to treat was to corrupt or influence the arbitrator.¹⁶ But mere dining with one of the parties in the absence of the other will not amount to misconduct.¹⁷

Under this definition also fall cases where the arbitrator has shown bias. It is incumbent upon the arbitrator to disclose to the parties any facts or circumstances which are likely to affect his decision and which are likely to bias him. A mere suspicion of bias is not enough; but if it is found that there are circumstances which tend to produce a bias in his mind, then he is an improper person and his award will be set aside.¹⁸ For example, during the hearing and before the award is made, the arbitrator should avoid any questions, acts, or comments which may give the impression of bias or partiality, and should not act as an advocate for the party who appoints him.¹⁹ But a mere expression of opinion by arbitrator does not necessarily imply a prejudgment of the question.²⁰

If the arbitrator is guilty of partiality, the award will also be set aside. But partiality must be proved. A mere surmise that the arbitrator was partial is not enough. A broad allegation of misconduct on the part of the arbitrator without any particulars is not enough. The particulars of misconduct should be supplied.²¹ The general rule is that 'if the parties with full knowledge of the facts select an arbitrator who is not an impartial person or who has to perform other duties which will not permit of his being an impartial person in the ordinary sense of the word, the court will not release them from the bargain which they have agreed.'²²

Under the ground of moral turpitude will also fall cases where the arbitrator is disqualified from acting on the ground that unknown to one of the parties, the arbitrator had an interest

or acquires an interest in the subject matter of the arbitration agreement or reference.²³ As to what interest of the arbitrator or umpire in the subject matter of the arbitration would be sufficient to vitiate the award. Lord Moulton in *Bristol Corporation v Aird & Co.*, (1913) A.C., 241 at p258 observes as follows:

...but the court must always remember that the parties themselves are stopped from saying that the tribunal in its constitution is unfair, because it is the one which they accepted as the basis of the contract. I think that in each case the court is bound to consider all the circumstances. There may be something in the arbitrator which makes him an unfit person to be judge in the matter. It may be his personal conduct; it may be the position in which his actions have placed him.

The court is bound to consider all these things; but in considering them it ought to hold that nothing known at the time of the contract, nothing fairly to be expected from the position of, say, the civil engineer (rather than, say, a lawyer) when he becomes arbitrator can be alleged as a ground why it should not keep the parties to the bargain, because those things must be supposed to have been in their contemplation at the time when they entered into the contract.

Legal misconduct

Misconduct not amounting to moral turpitude is called legal misconduct. It has a very wide meaning. It is difficult to give an exhaustive definition of what amounts to legal misconduct. Legal misconduct means misconduct in the judicial sense arising from some honest though erroneous breach or neglect of duty and responsibility on the part of the arbitrators causing a miscarriage of justice.²⁴

There may be ample misconduct in a legal sense to make the court set aside the award even when there is no ground to impute the slightest improper motive to the arbitrator. Legal misconduct includes the failure to perform the essential duties which are placed on an arbitrator as such. According to Daver J, "Any irregularity of action which is not consonant with general principles of equity and good conscience which ought to govern the conduct of arbitrator is legal misconduct."²⁵

Remittance of awards

Section 15 of the Arbitration Act empowers the court to remit to the reconsideration of the arbitrator. When the court does so, the arbitrator is required, unless the court otherwise directs, to make a fresh award within three months after the date of the order remitting the award. As we shall discuss below, reasons for remitting an award are widely varied.

The power given by section 15 is to be used very sparingly. Power of remission is to be exercised if the award leaves some points undecided. If the agreement to refer disputes to arbitration provides for giving reasons, the award can be remitted if reasons are not given. The court will also remit the award when the award has left undetermined any matter referred to arbitration or when the award has determined any matter not referred to arbitration and such matter cannot be separated from other matters in the arbitration. If it can be separated from the rest of the award then it is not a ground for remittance.

The failure of the arbitrators to decide one out of several matters may also vitiate the award, and the court is not bound to remit the award under section 15. Instead, the court can set aside the award under Section 16 of the Arbitration Act. The rule of law as to under what circumstances the court will remit the award and under what circumstances the court will set aside the award of the arbitrator has left undetermined any matter referred

to them to be deduced from the decided cases is that the award will be set aside if there is such an interdependence between the various matters covered by the agreement of arbitration that the decision of some of them only to the exclusion of others would operate to produce injustice between parties. If this conclusion is not to be drawn, the court may remit the award when the award is incapable of execution or when an objection to the legality of the award is apparent upon the face of it.

It is not any trivial matter left undetermined by the arbitrators or by the umpire that will entitle a party to petition the court to remit the award under section 15. The matter left undetermined must be some definite and substantial question upon which the parties are at variance. It must be some cardinal point in controversy. An award will also not be remitted, if the question undecided was not notified to the arbitrator as a matter in difference, or the parties showed by their conduct before the arbitrator that they did not mean him to decide it. If any matter is left undetermined by the arbitrator, then the court's jurisdiction is only confined to remitting the award for reconsideration; the court cannot take upon itself the duty to fill up the gap left undetermined by the award while passing the decree on the award, and if it does so the decree will be bad.

A recent topical issue on the challenge of an award has been in relation to the International Chamber of Commerce (ICC) award involving an IPP, Dowans Holdings SA (Costa Rica) Limited against TANESCO. Dowans sought to enforce the ICC award in the High Court of Tanzania after it prevailed in an ICC arbitration for repudiatory breach of contract. TANESCO sought to remit the award to ICC for reconsideration on grounds that the the subject contract was entered into in violation of Tanzanian procurement legislation and therefore the award ought not to be enforced on grounds of public policy. The High Court denied TANESCO's petition and an appeal against the High Court decision is pending in Tanzania.

To conclude the discussion on challenge to awards, other than making an application to the High Court to set aside or remit an award, there is no other legally competent method that an aggrieved party may challenge an award. An award cannot be appealed against, it cannot be reviewed or revised and there is little room for stay execution of an award (or more accurately, a decree extracted from an award).²⁶

Notes

- 1 Cap 15 of the Revised Laws of Tanzania, 2002.
- 2 An award may only be challenged on the basis that the arbitrator has misconducted himself or the arbitration or by reason that the award was improperly procured (section 16 of the Arbitration Act). A rather indirect way an award may be challenged is by applying in court for the award to be remitted to the reconsideration of the arbitrator (section 15 of the Arbitration Act).
- 3 In this paper, reference to an arbitrator will include the umpire.
- 4 Section 12(1) of Arbitration Act.
- 5 Section 12(2) of the Arbitration Act.
- 6 Rule 2 of the Arbitration Rules, 1957 defines 'registrar' as including a deputy registrar and a district registrar.
- 7 Now renumbered as section 12(2) when the Arbitration Act was revised in 2002 with Section 6A being renumbered as section 7.
- 8 PDF means 'portable document format' which is an electronic image of a document and is not capable of being tampered with by editing.
- 9 [1933] AIR Sind 160.
- 10 [1933] AIR Sind 78.
- 11 Section 17(1) of the Arbitration Act.
- 12 *Attorney General v Hermanus Philippus Steyn*, High Court of

- Tanzania Misc Commercial Cause No. 11 of 2010 (unreported).
- 13 Order XXI Rules 9 and 10 of the Civil Procedure Code [Cap 33 R.E. 2002].
- 14 Section 16 of the Arbitration Act.
- 15 Section 15 of the Arbitration Act.
- 16 See *In re Hopper* (1867) 36 LJ Q B 97; and *In re Maunder*, (1883) 49 LT 535.
- 17 See *Moseley v Simpson*, L R 16 Eq 226.
- 18 *Kemp v Rose*, (1858) 1 Giff 258.
- 19 *Oswald v Earl of Grey*, (1855) 24 LJ Q B.
- 20 *Hutchinson v Haywood*, (1866) 15 LT 291.
- 21 *Venkatachellam v Suryanarayanamurti*, AIR (1914) Mad 29.
- 22 *Russell on Arbitration* 15th Edition, p 102.
- 23 See *Blanchard v Sun Fire Office*, (1890) 6 TLR 365; and *Jagrup v Kashi Presad*, AIR (1934) A 658.
- 24 See *Ganga Sahi v Lekhraj*, 9 All 253; and *Bhogilal v Chimanlal*, 52 Bom 116, AIR 1928 Bom 49.
- 25 *Haji Ahmed v Essaji*, 1 (1912) Bom LR1007.
- 26 The Appellate Jurisdiction Act [Cap 141 RE 2002] provides for appeal an order for filing or refusing to file in court a privately adjudicated award (section 5(1)(b)(vi)). However, the Arbitration Act does not give any room for such an order. The drafting of the Appellate Jurisdiction Act seems to have been influenced by Section 14(2) of the Indian Arbitration Act, 1940 under which parties are called upon to show cause why the award should not be filed.

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Mkono & Co Advocates is considered one of the leading law firms in East Africa. The firm was founded in 1977 as an international corporate, commercial and financial practice. The firm has 45 staff including seven partners and twelve other lawyers and works in association with several international law firms. Mkono & Co's lawyers come from diverse jurisdictions, including the US, Belgium, Germany, India, Uganda and Tanzania. The firm's staff has varied and abundant extra-legal experience as it includes former bankers, engineers, business executives, accountants, professors, state attorneys, economists and investors.

Close client contact combined with its global partnerships with leading law firms has enabled the firm to handle wide-ranging matters for governments, private companies and non-governmental organisations. The firm provides services across different sectors, such as banking and finance, energy, transport, infrastructure, real estate, information technology, intellectual property, dispute resolution and capital markets.

Since 2000, the firm has been consistently ranked in Band 1 by international legal directories such as *Chambers Global* and *IFLR 1000*. It is the sole Tanzanian law firm to have held that status in the last four consecutive years. In fact, in 2008, 2009 and 2010 the firm was the only Tier 1 firm listed by *IFLR 1000*. In *Chambers Global*, while the firm shared the top spot with another firm in 2008 and 2009, it has been the sole Band 1 firm since 2010.

The firm's arbitration practice in recent times has included two BIT arbitrations at ICSID: *Biwater Gauff Tanzania Limited v Government of Tanzania* and *Standard Chartered Bank (UK) Limited v Government of Tanzania*. In both cases the firm represented the government. Another is a UNCITRAL arbitration between City Water Services Limited and Dar es Salaam Water & Sewerage Authority in which the firm represented the latter; a power purchase agreement dispute between lender, Standard Chartered Bank (Hong Kong) of an IPP with Tanzania Electric Supply Company Ltd, a state-owned power utility in which the firm represented the utility.

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Dr Wilbert Kapinga is specialised in corporate law, finance law, banking, privatisation, telecommunications and competition law and has over 20 years' experience of transactions and projects in these areas. He has been at the centre of advising several local and international banks on loan facilities, bond issuances and other types of securitisations. He has also been involved in a wide range of regulatory matters for petroleum and electric utilities including international arbitration at ICSID and UNCITRAL tribunals.

Since 2002, he has been consistently ranked Band 1 by international law directories such as *IFLR 1000* and *Chambers Global* and described as the leading corporate lawyer in Tanzania. His work is also recognized by *The International Who's Who of Project Finance Lawyers* (2010 and 2011) and *The International Who's Who of Banking Lawyers* (2012). Some of the accolades Dr Kapinga has received are: 'one of the best lawyers on the continent'; 'clients always find his advice useful, and appreciate his extensive knowledge of the legal world' (*Chambers Global 2008*); 'a well respected practitioner'; '[his] exposure and the quality of [his] work, put together with [his] response time'; '[He] doesn't pick points to argue over for the sake of it; [he] is pragmatic and that's important' (*IFLR 1000 2008*); 'a well-established and responsive attorney' (*Chambers Global 2009*); 'a very good lawyer'; 'is calm, clever and good with clients; they like his manner'; 'manages his staff well' (*IFLR 1000 2009*); 'leading lawyer' (*IFLR 1000 2010*); 'his ability to get the deal done'; 'we see him on a lot of transactions and he is clearly a very intelligent man' (*Chambers Global 2011*); 'astute, capable and a good guy to work with on the other side' (*IFLR 1000 2011*); and 'is commended for his market leadership' 'he is one of the most respected lawyers in the country' (*Chambers Global 2012*).



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Eric S Ng'maryo, Advocate

Eric Ng'maryo is an advocate in practice in Tanzania since 1987. Other than being an advocate he is also a commodity trader, a farmer, a grandfather and a creative writer. For the last 10 years he has struggled with little success to retire from legal practice. Eric Ng'maryo believes that arbitration is one of the most effective means of unclogging the stupendous pile up of civil cases in many African jurisdictions and that Tanzania should spearhead this approach.



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