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THE IMPACT OF INTERNATIONAL ARBITRATION AWARDS ON RESOLUTION OF INTERNATIONAL TRADE DISPUTES IN TANZANIA

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Abstract

International commercial arbitration has emerged as the preferred mechanism for resolving cross-border trade disputes due to its advantages of neutrality, flexibility and finality. However, the true impact of international arbitration awards in resolving such disputes is ultimately determined by their effective recognition and enforcement within national jurisdictions. This paper will critically assess the impact of international trade disputes from the study conducted in Tanzania, specifically focusing on the challenges and practices at the High court of Tanzania. The paper acknowledges Tanzania's commitment to international dispute resolution, evidenced by its ratification of the New York Convention and the ICSID Convention, and its modernised Arbitration Act, Cap 15. Despite this framework, the enforcement of international arbitration awards often encounters significant legal hurdles. Here, the key problematic areas identified in this study includes the practical application of state sovereign immunity from execution which can frustrate award creditors even after recognition, the right of appeal on question of law which can threatens arbitral finality and expedition and the High court's interpretation of the public policy exception which has in some instances been broader than international best practices. Employing a doctrinal legal research methodology, the paper herein analyses relevant

international conventions, Tanzanian statutes and pertinent case laws from the High court of Tanzania to understand the nuances. The researcher has also identified specific challenges, examined judicial trends, and explored best practices that could enhance the efficiency, predictability, and fairness of the enforcement process in Tanzania. Ultimately, the paper from this study seeks to contribute to a more robust legal framework for international trade dispute resolution in Tanzania, thereby bolstering investor confidence and strengthening the nation's position in global commerce.

Keywords: arbitration, substantive principles, international conventions, doctrinal legal approach, legal barriers, international commercial arbitration and sovereign immunity

INTRODUCTION

International trade is a fundamental driver of global economic growth, enabling the exchange of goods and services across borders. However, disputes often arise due to differences in contract interpretation, performance failures, and breaches of trade agreements. The resolution of these disputes through international arbitration and the enforcement of international awards is a critical area of concern. This study aims to assess the effectiveness of international arbitration awards in resolving trade disputes, with a particular focus on the High Court of Tanzania (Commercial Division). International commercial arbitration has increasingly become a preferred mechanism for resolving cross-border disputes due to its neutrality and enforceability.

According to Wolaver, E.S. (1934)[1] the origin of arbitration is lost in obscurity. At what time or placeman first decided to submit to his chief or to his friends for a decision and a settlement with his adversary, instead of resorting to violence and self-help, or to the public legal machinery available, is not known; and any inquiry of this sort would belong more properly in the history of social growth and ethics than in either law or economics.

So, this simply means that, the author's views on the background of arbitration is that, unlike the history of law is not an account of the growth and development of principles and doctrines that have come through a long use to have a general validity and force. While arbitration probably antedates all the former legal systems, it has not developed any code of substantive principles, but is with very few exceptions, a matter of free decision, and each case being viewed in the light of practical expediency and decided in accord with the ethical or economic norms of some particular group.[2]

[1] Wolaver, E.S. (1934), The historical background of commercial arbitration

[2] Ibid.

From the outset, it is very common to say that commercial arbitration had its beginning with the practices of the market and fair courts and in the merchant gilds. According to Moses (2021)[3], arbitration provides a structured yet flexible process that allows businesses to resolve disputes efficiently. Nonetheless, the effectiveness of arbitration awards is often challenged by variations in national enforcement regimes. A study by Redfern and Hunter (2015)[4] highlights that while international conventions such as the New York Convention[5] promote uniformity, the actual enforcement of awards can be inconsistent, particularly in developing economies like Tanzania.

To amplify the inherent inconsistencies and problems associated with enforcement of arbitral awards, the case of *Songoro Marine Transport Ltd v. Sinotaship Co. Ltd*[6] offers a notable example. In this case, a dispute arose over a shipbuilding contract. The matter was resolved through arbitration, and an international arbitral tribunal issued an award in favour of Songoro Marine Transport Ltd. However, the enforcement of this award in Tanzania encountered significant legal difficulties, including procedural delays and judicial reluctance to uphold foreign arbitral decisions. This case demonstrates and underscores the complexities and challenges associated with the enforcement of international arbitration awards in Tanzania.

Dispute resolution in international trade is a crucial aspect of global commerce, as inefficiencies in arbitration can lead to disruptions in trade and economic losses. International arbitration institutions such as the International Chamber of Commerce (ICC) and the International Centre for Settlement of Investment Disputes (ICSID) provide mechanisms to resolve such disputes. Despite the presence of global frameworks such as the New York Convention on the Regulation and Enforcement of Foreign Arbitral Awards[7], the enforcement of arbitration awards remains inconsistent across different jurisdictions.

In Tanzania, challenges in enforcing international awards have been noted, leading to concerns about the reliability and efficiency of arbitration as a dispute resolution mechanism. The case of Songoro Marine Transport Ltd is a clear demonstration of challenges encountered

[3]Moses, M. L. (2021). *The principles and practice of international commercial arbitration*. Cambridge University Press.

[4]Redfern, A., & Hunter, M. (2015). *Law and practice of international commercial arbitration*, Routledge.

[5]New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. (1958). Oxford *University Press*.

[6]Chinese Tanzania Joint Shippping Line (Sinotaship) VS Karaka Enterprises Ltd (Commercial Case No 140 0f 2019).[2021] TZHCComDiv 3434.

[7]New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. (1958). Oxford *University Press*.

in enforcing international arbitral awards in Tanzania. Despite adherence to international arbitration procedures, national courts have, from time to time, impose legal impediments that delay enforcement of arbitral awards

Therefore, the purpose of this study was to examine critically the impact of international arbitration awards on resolution of international trade disputes in Tanzania and to come up with the best ways or procedures for harmonizing domestic legislation on sovereign immunity from execution.

CONCEPTUAL FRAMEWORK

The conceptual framework for this study was grounded in the interplay between international arbitration mechanisms and domestic legal systems in the enforcement of arbitral awards. The framework considers international arbitration awards as a dispute resolution method designed to provide finality, neutrality, and efficiency in international trade disputes. For that matter, the study assessed how these awards are recognized, enforced, or challenged within the Tanzanian legal system and how such enforcement influences dispute resolution outcome. Key variables for consideration include instructional capacity of the judiciary, compliance with international obligations, and perceived credibility of arbitration in Tanzania. The framework has evaluated the contribution of international arbitration awards in international trade dispute resolutions.

Critical Review of Relevant Literature

Baker & Muir (2022)[8]employ a comparative legal analysis methodology, evaluating arbitration award enforcement across different jurisdictions. The key findings of this study indicate that while legal frameworks exist to support arbitration, judicial attitudes and lack of institutional capacity hinder enforcement in many developing countries. The study is relevantly important to this research as it provides a basis for comparing Tanzania's arbitration enforcement mechanisms with global standards. However, their limitations lie in the lack of empirical data specific to Tanzania, making it necessary to conduct localized research.

Bermann (2016)[9] deploying a doctrinal legal approach, explores the role of international legal frameworks in arbitration enforcement. The findings of the study highlight inconsistencies in national courts' interpretations of international arbitration laws, leading to unpredictable enforcement outcomes. This study is specifically relevant in understanding the legal barriers

[8]Baker, A., & Muir, D. (2022), *Enforcement of International Arbitration Awards*, Cambridge University.

[9]Bermann, G. A. (2016). *The Law of International Commercial Arbitration*, Oxford University Press.

affecting the Tanzanian judiciary. However, this study does not sufficiently address socio-political influences on arbitration enforcement, leaving a gap that this research seeks to fill.

Born (2020)[10] deploys a mixed-method approach, combining doctrinal legal research with case study analysis. It highlights best practices in arbitration, underscoring the importance of consistency in legal interpretation for effective enforcement. Its relevance to the instant research lies in offering practical recommendations for improving arbitration processes. However, the study is lacking in that it is more tilted towards the western jurisdictions, with very little mention on African contexts, necessitating further research focused on Tanzania.

Born (2022)[11] comes up with a review of recent development in arbitration law. He does so, deploying a comparative legal analysis. The researcher suggests that while arbitration is extensively recognized as an efficient dispute resolution mechanism, enforcement challenges persist due to political interference and lack of judicial independence in some jurisdictions. Crucially, the study allows understanding of external factor affecting arbitration. Nonetheless, it does not provide concrete policy recommendations for reform, a gap that this study will address.

Kessedjian (2020)[12] analyses arbitration frameworks across different regions, including Africa. The study identifies judicial reluctance and inadequate legal infrastructure as major impediments to arbitration enforcement. The study is thus relevant as it provides comparative insights. Lacking in the study is that it does not provide detailed case studies from Tanzania making a focused investigation necessary.

Moses (2021)[13] uses a case study methodology to examine arbitration efficiency by assessing the duration and outcomes of various arbitration cases. The study finds that procedural delays and inconsistencies in arbitration award's recognition. The findings of this study are valuable in analysing arbitration timeliness in Tanzania, but it is limited by the lack of quantitative data to support its qualitative findings.

Poudret & Besson (2020)[14]is a comparative study of arbitration law highlighting gaps in enforcement mechanisms. The researcher mainly finds that judicial reluctance often undermines arbitration decisions. The study's limitation lies in its general approach, which does not account

[10]Born, G. B. (2020). *International Arbitration: Law and Practice*. Kluwer Law International.

[11]Born, G. B. (2022), *International Arbitration: Law and Practice*. Havard Law Review.

[12]Kassedjian, C. (2021). *International arbitration and dispute resolution: Procedures and practice.* Routledge.

[13]Moses, M. L. (2021). *The principles and practice of international commercial arbitration*. Cambridge University Press.

[14]Poudret, J. F., & Besson, S. (2020). *Comparative law of international arbitration*, Sweet & Maxwell; Oxford University Press.

for region-specific legal complexities, making, making this study necessary to analyse Tanzania's specific challenges.

Redfern & Hunter (2015)[15] discusses legal and procedural challenges in award enforcement. The research crucially allows understanding arbitration procedural deficiencies in Tanzania. However, this study's focus on wider international practices limits its one-to-one applicability to Tanzania. *WTO (2023)*[16]analyses the role of arbitration in global trade dispute resolution. It presents economic and legal perspectives on arbitration effectiveness. While mainly informative, it does not focus on Tanzania's arbitration landscape, highlighting the need for country-specific research.

Equally important, Schwartz & Silverman (2022)[17] reviews the enforcement of arbitral awards and judicial resistance in different countries. The study is particularly relevant for understanding judicial discretion in Tanzania but lacks detailed regional case studies. Addressing this gap, this study will provide a detailed analysis of Tanzania's judicial approach to arbitration enforcement.

Nyika (2016)[18]focusing on Tanzanian arbitration legal landscape, employs a qualitative methodology, relying on a doctrinal approach to analyse Tanzanian arbitration laws and their enforcement challenges. The author examines the Arbitration Act[19] and the Civil Procedure Code of 1966[20], detailing procedural steps and judicial interpretations in enforcing arbitral awards. The author uses case law to highlight inconsistencies between these laws, such as the conflicting provisions on filing and enforcement procedures. The key findings indicate that Tanzania's arbitration framework is out-dated, creating procedural bottlenecks that hinder effective enforcement. The article thus calls for reforms to align Tanzania's laws with modern arbitration standards and best practices, ensuring a more efficient dispute resolution process.

While Nyika (2016) is relevant to policymakers and legal practitioners, it has notable limitations. It does not provide empirical data on the frequency or success rate of arbitration enforcement cases, making it difficult to assess the practical impact of the identified challenges.

[15]Redfern, A. & Hunter, M. (2015). *Law and practice of international commercial arbitration,* Routledge

[16]World Trade Organization (2023), *World Trade Report 2023*

[17]Schwartz, A. & Scott, R. E. (2017), *International arbitration and the resolution of commercial* disputes. Routledge.

[18]Nyika, E. S. (2016), Enforcement of arbitral awards in Tanzania: Applicable Laws and their Practical Challenges, *LST Law Review, 1* (1), January – June 2016.

[19] [Cap 15 R.E 2020].

[20] [Cap 33 R.E 2019].

Additionally, whole it discusses legal inconsistencies; it does not explore the role of international treaties, such as the New York Convention, in resolving these issues. The study would benefit from comparative insights, contrasting Tanzania's framework with those of jurisdictions that have successfully modernized their arbitral laws. This gap underscores the need for further research into how international best practices could be integrated into Tanzania's legal system.

Mkata (2014)[21] deploys a legal analysis methodology to scrutinize Tanzanian arbitration legislation and comparing it to international standards, particularly the New York Convention and the UNCITRAL Model Law. The study identifies several deficiencies in Tanzania's legal framework, including excessive judicial intervention, out-dated procedural requirements, and the absence of clear guidelines for recognizing foreign awards. Although some of the basis of findings of the study may have been undone following the enactment of the Arbitration Act in 2020, it remains relevant as it argues that the identified shortcomings, which may still be prevalent considering that some of the laws remain unchanged, deter foreign investors and create legal uncertainty. Further to that, the study makes a firm call for adoption of the UNCITRAL Model Law to harmonize Tanzania's arbitration laws with global best practices, thereby enhancing the country's attractiveness as an investment destination.

Despite its compelling comparative approach, the author has some limitations. It focuses mainly on legal provisions without incorporating empirical data on enforcement cases, making it challenging to measure the real-world impact of these legal barriers. Additionally, while it highlights the need for reform, it does not sufficiently engage with political and institutional factors that might hinder legislative changes. The study assumes that legal reform alone will resolve enforcement issues, but practical concerns such as judicial capacity, corruption, and resistance to reform are not deeply analysed. Addressing these aspects would provide a more comprehensive understanding of the challenges facing arbitration enforcement in Tanzania.

Rweyemamu (2025)[22] with a focus on resolution of mining disputes explores arbitration as an alternative dispute resolution mechanism in Tanzania's mining sector. The study uses a combination of legal analysis and case review to assess arbitration's effectiveness compared to litigation. It finds that arbitration offer advantages like confidentiality, neutrality, and specialized expertise, but challenges such as regulatory inconsistencies and limited awareness of arbitration persist. The study is particularly relevant for policymakers and investors navigating

[21]Mkata, E. F. (2014). *The Recognition and enforcement of foreign arbitral awards: A need for* reform *of Tanzanian legislation* {Master's thesis, University of Cape Town}.

[22]Rweyemamu, C (2025). Resolving mining disputes in Tanzania: An examination of the role of arbitration. *International Journal of Multidisciplinary and Current Educational Research*

Tanzania's mining legal framework. However, it is limited in scope as it does not provide a comparative analysis of arbitration's success rates against litigation or mediation in the mining sector.

Muigua (2016)[23] employs a qualitative methodology, relying on legal analysis and case studies to assess the state of arbitration institutions in East Africa. The study's findings reveal that despite the existence of arbitral institutions, international arbitration in the region remains underdeveloped due to factors such as inadequate institutional capacity, weak legal frameworks, and limited international recognition. The study is relevant to the instant research for it highlights institutional weaknesses that may affect enforcement and credibility of arbitral decisions. However, the study is limited by its focus on East Africa without a broader comparative analysis with other regions, which could provide deeper insights into best practices for improving arbitration effectiveness.

Mugisha J. E et al (2024)[24] employing a mixed-methods approach, combining legal analysis with empirical data evaluates arbitration's role in resolving maritime disputes in Tanzania. The study finds that arbitration offers advantages such as efficiency, cost-effectiveness, flexibility, and confidentiality compared to traditional court litigation, which is often slow and costly. It is particularly relevant to this research as maritime disputes frequently involve international parties and contractual obligations. A key limitation is that while the study suggests legislative improvements, it does not provide detailed data on arbitration outcomes or enforceability challenges in Tanzania, which would be crucial for a deeper assessment of arbitration's true effectiveness.

Moses, M.L. and Ann, M.G.[25] while discussing advantages of arbitration was of the views that, once the arbitrators render an award, the losing party may voluntarily comply with the terms of the award. If it does not, the prevailing party will try to have the award recognized and enforced by a court in a jurisdiction where the losing party has asset. According to them, in the enforcing court, the losing party can also challenge the award but, again, only on very narrow grounds.

According to them, the award cannot be challenged on the merits that are even if the arbitrators made mistakes of law or mistakes of fact, these are not grounds for non-enforcement, and the award will still be enforced. They are of the views that, once a party's

[23]Muigua, K. (2016). Effectiveness of arbitration institution in East Africa

[24]Mugisha, J. E., et al (2024). *Optimizing maritime dispute resolution in Tanzania*: A comprehensive assessment of arbitration's role. *Open Journal of Social Sciences*, *12*, 330-340.

[25] Moses, M.L and Ann, M.G (2007), Introduction to International Commercial Arbitration

award is recognised in the enforcing jurisdiction, it is generally considered to have the same legal effect as a court judgment and can be enforced in the same way as a judgment in that jurisdiction.[26]

On the other hand, the authors have discussed about arbitration involving states whereby, their views are that, state or state-owned entities are generally immune from suits by individuals or companies, and that if the state- or state-owned entity engages in a commercial deal, and particularly if it enters into an arbitration agreement with the other contracting party, normally it will be considered to have waived immunity and will be held to its agreement to arbitrate.[27]

These authors believe that a state may also be obliged to arbitrate under the provisions of a bilateral investment treaty. A state may have also obliged to arbitrate under the provisions of the bilateral investment treaty, and this is where the state have entered a treaty known as the Washington Convention on the Settlement of Investment Disputes between States and nationals of the other states, which is also known as International Convention on the Settlement of Investment Disputes (ICSID). This treaty deals with investor-state arbitration rather than commercial arbitration.[28]

Authors add further that the ICSID convention was promoted by the World Bank which wanted to encourage investments in developing countries as the history shows that investors could not bring any kind of action against the government, and that had to depend on their own government to take up action against the government to take up their case against a foreign government. The ICSID Convention came to provide opportunity for the investors and the country to arbitrate any dispute directly, whether pursuant to an arbitration agreement in a contract, or by virtue of a bilateral investment treaty that includes a clause whereby the state consents to arbitrate with the investors covered by the treaty.[29]

Authors have then concluded that, contracting states that agree to arbitrate under the ICSID Rules of Arbitration have no right of appeal to a court, and national laws are not applicable to the process. Under the ICSID Rules, however the award can be reviewed by an ad hoc committee of three arbitrators and, if annulled, may be arbitrated again by yet another

[26] Ibid.

[27] Ibid.

[28] Ibid.

[29] Moses, M.L and Ann, M.G (2007), *Introduction to International Commercial Arbitration*

tribunal and a monetary award is enforceable in a contracting state as though it were a final judgment in the court of that state.[30]

Many things have been discussed by the authors in their article starting with the advantages of arbitration in general, arbitration process involving states and finally on the outcome of the arbitral awards and its enforceability to make it relevant with this sturdy. However, unlike expectations of the researcher herein, the authors have failed to substantiate and discuss the procedure of enforcing and execution of the arbitral awards and the challenges which are faced by award holders in executing their awards to the national courts of the losing state. Challenges like sovereign state immunity which a state is entitled just to exempt from attachment of its properties in execution process of the arbitral awards is one of the critical issues which authors have failed to discuss.

Christoph, H.S et al[31]*,* in their book have made an analysis of the ICSID Convention by discussing the weaknesses found therein. According to the authors, one of the weaknesses found in the ICSID Convention is that it does not provide substantive rules for the relationship between host states and foreign investors. The authors are of the views that, the ICSID Convention is merely designed to establish a procedural framework for the settlement of investment disputes. The authors have discussed further that, suggestions which were made in the course of the Convention's drafting, to offer some substantive guidance to tribunals were not made, as doing so would led to insurmountable difficulties in trying to reconcile sharply conflicting positions and would have endangered the entire project. It is their further point of view that, at the same time, by doing so, it was considered necessary to offer some legal security and predictability concerning the outcomes of the arbitration proceedings.

Commenting on the enforcement of investment awards, the authors are of the views that the way Article 54 of the ICSID Convention is constructed, awards under such provision is only conceivable if they are in conformity with international law.

By what have been discussed by authors in the above literal work, makes it to be relevant with this research work as the authors have touched relevant areas relating to enforcement and execution of the arbitral awards together with the weaknesses which according to them are associated with in the process of executing international arbitral award.

Be as it may, despite of discussing some relevant issues related to arbitration process and enforcement of its awards, and the associated weaknesses in enforcing the awards, yet the

[30] Ibid.

[31] Christoph, H.S. *et al, The ICSID Convention: A commentary,* 2nd Edition. Cambridge: Cambridge University Press, 2009, pp. 550-613.

authors have failed to give proper solution to be applied so that enforcement of the arbitral awards would not face some substantive obstacles. It is this area of the gap which researcher herein is going to work for so that proper recommendations can be made so that enforcement and execution of arbitral awards can be easily made.

Jan, P[32]*,* in his book has discussed more about the denial of justice under the international law. It has traced the historical background of the denial of justice and how the same occurs. According to him, denial of justice is an elusive concept and there are two lucid reasons why this should be so. The first reason is a matter of definition, whereby all kinds of injustice could be referred as a denial of justice, but then the expression could be invoked to complain about the disposition of any grievance. The other reason according to the author is that, some national laws contain their own long-established doctrines of denial of justice, defined in a manner different from that of international law, and sometimes inconsistent with it.

The author further adds that, denial of justice also includes failure to execute a final judgment. According to him, the governments are not obliged to satisfy judgments or awards in favour of foreigners against parties who might be insolvent or who find ways to evade payment, however, they are held to the duty of providing officials who with reasonable diligence and without discrimination put the imperium of the law at service of foreign judgment creditors.[33]

This literal work is relevant with this study on the reason that the author has discussed about denial of justice and how the same can be seen specifically where the court fails to execute final arbitral award. It is obvious that, once an arbitral award holder fails to successfully execute an award for reasons like sovereign state immunity, this amounts to denial of justice, because award holder will remain with it meaninglessly without converting it to money.

Regardless of the relevance and advantageous of the above literal work, however, the author has not covered other crucial areas like an alternative way to be employed by arbitral award holders to make sure that they successfully execute their awards in the courts of law.

Gaillard, E. and Penusliski, I.M.[34] in their article have discussed the enforceability of arbitral awards to be considered as he most attractive feature of international commercial arbitration and that the instrument ensuring such awards are enforceable is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1959. According to them, when the ICSID system was set up, the issue of compliance with and enforcement of awards against states in international investment arbitration was considered, but did not lead to

[32] Jan, P. Denial of Justice in International Law. Cambridge: Cambridge University Press, 2005, pp. 10-168.
[33] Ibid.
[34] Gaillard, E. and Penusliski, I.M., *State compliance with investment awards,* ICSID Review, 2021, pp. 1-6.

extensive debate. It was believed that, as long as states were under international obligation to comply with awards, they would generally do so.

The authors have also discussed commonly instances of non-compliance by citing various cases where international investment arbitral awards were not enforced by the host states. For instance, the case of *Petrobart Limited v. Kyrgyz Republic*[35]whereby after the respondent's refusal to comply, the applicant made subsequent application for enforcement in the Kyrgyz courts but the same was denied.

Van Harten, G[36]*,* in his book has demonstrated the investment treaty arbitration as a public law system and addressed how the same goes beyond all other forms of international adjudication in giving arbitrators a comprehensive jurisdiction to determine the legality of sovereign acts and to award public funds to businesses that sustain loss as a result of government regulation. The author has also offered a critical perspective on investment treaty arbitration including the enforcement phase. The author's analysis of how public law considerations and state sovereignty intersect with enforcement challenges is insightful.

Rudolf, D. and Schreuer, C.[37] in their authoritative book have systematically examines the substantive principles of international investment law which form the basis of claims leading to arbitration and subsequent enforcement. In their book, they have categorically provided essential context relating to the international investment law, however the authors have not focused more on the procedural and practical aspects of enforcement.

Gary, B.B.[38] in his book is of a view that comprehensive treatise on international commercial arbitration provides an invaluable framework for understanding the general principles of award enforcement. The author's detailed analysis of the New York Convention and the grounds for refusal of enforcement is highly relevant to investment arbitration. However, the author has not delved deeply into the unique challenges posed by sovereign immunity in the context of state respondents.

Sornarajah, M.[39] in his widely respected book provides a comprehensive overview of international investment law, dedicating significant attention to dispute settlement. The author in this book is of the view that, there are complexities of enforcing awards against states,

[35] SCC Case No. 126 of 2003

[36] Van Harten, G., Investment Treaty Arbitration and Public Law, Oxford: Oxford University Press, 2007, pp. xxxii-214.

[37]Rudolf, D. and Schreuer, C., Principles of International Investment Law, 2nd Edition, Oxford: Oxford University Press, pp. 22-214.

[38] Gary, B.B., *International Commercial Arbitration*, 3rd Edition, Kluwer Law International, 2021.

[39] Sornarajah, M., *The International Law on Foreign Investment*, 5th Edition, Cambridge: Cambridge University Press, 2017, pp. 358-428.

particularly due to sovereign immunity. However, the breadth of the book means that the analysis of enforcement, while insightful, is not as granular.

Muchlinski, P.T., et al[40] in this comprehensive handbook contains various chapters by leading scholars. Some of the scholars have addressed the issue of dispute settlement and enforcement. The authors herein have demonstrated that, compliance and enforcement of international investment arbitral awards faces multiple challenges, however they have justified that such refusal by national courts to enforce international investment arbitral awards are due to various grounds as seen in the international instruments.

McLachlan, C., et al[41] in their book has focused on the substantive protections under investment treaties. While understanding that these principles crucial for comprehending the basis of awards, the authors have failed to extensively analyse the enforcement phase.

Noah, R. and Kinsella, S.N.[42] in their book have integrated the important issue of dispute resolution into the broader scope of international investment, explains the risks, in particular the political risk associated with international investment and the legal framework of investment protection at large. In their book, the authors have also addressed valuable insights into the practical challenges of enforcing investment awards, drawing on real world experiences.

Crawford, J.[43] in his book provides the foundational legal principles underpinning a state's obligation to comply with international legal obligations, including enforcing arbitral awards. The author's analysis of the consequences of breaches of international law is highly relevant. Nevertheless, the author's scope of discussions in his book is much broader than the specific context of investment arbitration award enforcement. The author is of the views that, any system of law must address the responsibility of its subjects for breaches of their obligations.

UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Conventio)n[44] is the foundational treaty mandates the recognition and enforcement of international commercial arbitral awards by contracting states. Its provisions on the grounds for

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[40] Muchlinski, P.T., *et al*, *The Oxford Handbook of International Investment Law*, Oxford: Oxford University Press, 2008, pp. 1171-1187.

[41] McLachlan, C., et al, *International Investment Arbitration: Substantive Principles*, 2nd Edition, Oxford: Oxford University Press, 2017, pp. 295-303.

[42] Noah, R. and Kinsella, S.N., *International Investment, Political Risk, and Dispute Resolution*: A Practitioner's Guide, Oxford: Oxford University Press, 2005, pp. 518.

[43] Crawford, J., *State Responsibility: The General Part, Cambridge*: Cambridge University Press, 2013, pp. 584-603.

[44] UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention, 1958.

refusal of enforcement are directly applicable to many investments' arbitration awards. However, its application to awards against sovereign states raises specific issues related to sovereign immunity.

Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention)[45] is the convention which establishes ICSID and its unique enforcement regime which requires member states to treat ICSID awards as final judgment of their own courts. Though this convention offers a seemingly robust enforcement mechanism, but practical challenges and interpretation by national courts still arise.

UNCTAD[46] in their report which primarily providing statistical data and analysis of ISDS cases, often touch upon the outcomes of cases, including instances of non-compliance and the broader implications for the system, implicitly highlighting enforcement challenges. Despite of the foregoing, the report has failed to comment on the best solutions to overcome challenges of enforcement of international investment arbitral awards.

OECD[47] in their report have highlighted and examine emerging issues in investment law including discussions on dispute settlement and the challenges associated with the enforcement of arbitral awards against states. However, its focus on emerging issues provides a forward-looking perspective.

Bjorklund, A. K[48] in his article has critically examined the pivotal role of national courts in the enforcement process, highlighting the complexities arising from different domestic legal systems and interpretations of international conventions. The author's analysis in this article underscores the challenges posed by the decentralized nature of the enforcement mechanism.

Hossain, B.H.[49] in his article has explored the inconsistencies and conflicting trends in state practice and legal interpretations concerning the enforcement of awards against sovereign states by highlighting the lack of uniform approach.

Waibel, M.[50] in his article has directly addressed the persistent and significant challenge of sovereign immunity in the context of enforcing investment arbitration awards. The author

[45] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), 1965

[46] UNCTAD, *Investor-State Dispute Settlement: A Stocktaking of cases in 2020,* Geneva: United Nations, 2021.

[47] OECD, *Investment Treaty Law and Practice: Emerging Issues*, Paris: OECD Publishing, 2007

[48] Bjorklund, A.K., *The Role of National Courts in the Enforcement of Investment Treaty Arbitration Awards:* Journal of International Dispute Settlement, Vol. 1 No. 1 (2010), pp. 129-156.

[49] Hossain, B.H., *Enforcement of Arbitral Awards against Sovereign States:* The conflicting trends in state practice and legal interpretations, Asian Journal of International Law, Vol. 2, No. 2 (2012), pp. 385-408.

have analysed the legal principles and state practice, offering a focused examination of the challenges on enforcing international investment arbitral awards.

Reinisch, A.[51] in his article has provided a detailed and insightful analysis specifically focused on the enforcement of ICSID awards. The author has examined the legal framework and practical challenges, offering a valuable contribution to the literature. Despite of that, the author's analysis underscores the challenges posed by the decentralized nature of the enforcement mechanism.

Bjorklund, A.K.[52] in his article has addressed that, successful claimants in investment arbitrations increasingly find that they have earned a hollow victory if the losing state refuses to pay the arbitral award voluntarily. Immunity inhering in the state's asset may prevent execution against them. According to him, this difficulty arises from the distinction between waivers of sovereign immunity with respect to jurisdiction and waivers of sovereign immunity with respect to execution.

METHODOLOGY

Research Design

The study used by this paper adopted a doctrinal legal research methodology which involves a systematic and in-depth analysis of legal sources such as case law, statutes, international treaties, and scholarly legal literature. This methodology is particularly suitable for the study as it allows for a comprehensive evaluation of the legal framework governing arbitration and its enforcement in Tanzania. Moreover, this methodology allowed a structured approach to understanding legal principles, judicial interpretations, and statutory provisions relevant to international arbitration and enabled the researcher to analyse judicial decisions from the High Court of Tanzania thereby identifying patterns in enforcement practices and judicial attitudes toward international arbitration awards.

It is also worth noting that the proposed methodology will be advantageous especially so because empirical data from stakeholders will be difficult to obtain due to confidentiality concerns in arbitration process. As there will be huge reliance on publicly available legal texts, this methodology will ensure objectivity and consistency in analysis.

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[50] Waibel, M., *Sovereign Immunity and the Enforcement of Investor-State Arbitral Awards:* The Journal of World Investment & Trade, Vol. 10, No. 4 (2009), pp. 741-766.

[51] Reinisch, A., *The Enforcement of ICSID Awards*: ICSID Review, Vol. 20, No. 1 (2005), pp. 1-56.

[52] Bjorklund, A.K., *Sovereign Immunity as a Barrier to the Enforcement of Investor-State Arbitral Awards:* The Re-politicization of International Investment Disputes: American Review of International Arbitration, Vol. 21, No. 211 (2010), pp. 1-5.

Research Approach

The study adopted a qualitative research approach, employing a case study methodology to assess the impact of international arbitration awards on the resolution of international trade disputes in the context of the High Court of Tanzania. The studyrelied on doctrinal legal analysis of relevant international arbitration instruments and applicable Tanzanian laws. In addition, empirical insights were gathered through semi-structured interviews with legal practitioners, judges and officials from institutions involved in international trade and arbitration. This combination of doctrinal and empirical methods aims to provide a thorough understanding of both the legal framework and practical enforcement of arbitration awards in Tanzania.

Data Collection Methods

Given the legal nature of the research, this study relied on secondary data sources. The use of secondary data in this research was justified because it allowed the researcher to conduct a thorough analysis without the constraints posed by limited access to arbitration records, which are often confidential. Furthermore, secondary sources provide extensive legal interpretations and discussions that would be difficult to obtain through primary data collection methods such as interviews or questionnaires. The sources included the following:

Legal Textbooks and Journal Articles

These sources provided scholarly insights into arbitration law and international trade disputes offering doctrinal interpretations and critiques of arbitration and enforcement mechanisms.

International, Regional, and Domestic Legal Instruments

The study analysed treaties such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), UNCITRAL Model Law on International Commercial Arbitration, and Tanzania's Arbitration Act. Analysis of these instruments was made so as to understand their applicability and limitations in enforcing international arbitration awards.

Reports from Arbitration Institution and Trade Organizations

Publications from institutions like the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), National Council of Construction (NCC), and

the Tanzania Institute of Arbitrators (TIA) were used to assess global and local arbitration trends and effectiveness.

Case Law from the High Court of Tanzania (Commercial Division)

These enabled the study to evaluate the consistency of enforcement decisions and identify emerging trends and challenges.

Semi-Structured Interviews

In addition to collection of secondary data, the Researcher gathered empirical data through semi-structured interviews with the people in the legal fraternity including legal practitioners, judges and officials from arbitration institutions. This helped to enhance the understanding and assessment of the practical enforcement of arbitration awards in Tanzania.

Data Analysis Methods

The study employed qualitative data analysis to interpret and critically analyse collected legal materials. Specifically, the researcher conducted content analysis of statutory provisions and treaties to assess their effectiveness in facilitating enforcement, examine judicial precedents from the High Court of Tanzania (Commercial Division) to identify common judicial reasoning, inconsistencies, and legal trends regarding arbitration awards, compare Tanzania's enforcement practices with those of other jurisdictions that have a well-established arbitration framework to highlight areas of improvement, and identified challenges in enforcement and proposed recommendations for enhancing the effectiveness of international arbitration awards in Tanzania.

RESULTS AND DISCUSSION

Given the nature of this study, it relies on secondary data as the methods of collecting data. Through that, various documentary sources and literatures were reviewed for the purpose of obtaining data to accomplish this study. Being guided with the formulated study questions, the data was collected from the various for the purpose of obtaining data to reflect the study as the effectiveness of the international arbitration awards in dispute resolution in international trade is concerned.

What is the effectiveness of the international arbitration awards in resolving disputes in international trade?

The researcher here wanted to know the effectiveness of which an international arbitration awards has in resolving disputes in international trade. After reviewing various

literatures, the researcher's findings are that, the international arbitral awards carry legal effects of being used as a defence to bar further suit on the basis of the same cause of action in future. It is the findings of this research that the arbitral awards may be used as a defence or set off against the arbitral award debtor in any later proceedings on the same cause of action in the court.[53]

The study further finds that, international arbitration is the preferred method for resolving disputes in cross-border business transactions due to the fact that arbitration in the international setting offers specific advantages that go beyond those often associated with arbitration in the domestic context.[54]

Given the facts that cross-border conflicts typically encompass events occurring in many jurisdictions and involve parties from other countries, they frequently give rise to conflicting assertions of jurisdiction by courts from various states. Although various authors are of the views that it is possible to legally assign a national court exclusive authority over dispute that crosses borders, there is however currently no universally recognized international agreement in effect for acknowledging and enforcing such clauses that determine the jurisdiction of the court. In contrast, a venue selection clause that refers a matter to arbitration is highly enforceable under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[55]

In addition to that, this study reveals the other effectiveness of the international arbitration awards in resolving disputes in international trade is that, international arbitration enables parties to circumvent a foreign court where their opponent may have an advantage due to familiarity with the local legal system. An international arbitration can take place in a country in a country that is neutral, with the rules being administered by an impartial arbitral institution, and the arbitrators not being citizens, of either party's state.[56]

What role do international arbitration awards play in resolving trade disputes between parties from different countries?

It is the findings of the study that international arbitration plays a crucial role in promoting international trade by providing a reliable and efficient dispute resolution mechanism. This helps

[53] Marwa, R., *A review of law and procedure governing recognition and enforcement of foreign arbitral awards in Tanzania*, International Law Journal, Vol. 5, Issue No. 2, (2019) pg. 41.

[54] Rizwan, S., *The role of international arbitration in resolving cross-border business disputes*, Indian Journal of Integrated Research in Law, Vol.4, Issue 3,(2019) at pg. 215-217.

[55] Ibid.

[56] Ibid.

businesses to participate confidently in international transactions, knowing that they have a fair and professional method of resolving disputes.[57]

By selecting arbitrators who are experts in the relevant field, international arbitration ensures that disputes are accurately resolved based on deep professional knowledge. This not only ensures fairness but also generates highly practical awards. Moreover, according to the findings of this research, international arbitration helps to alleviate pressure on national court systems, especially in countries with overloaded or slow judicial systems in handling complex disputes. By transferring complex and lengthy disputes to international arbitration, national court systems can focus on other cases, enhancing the overall efficiency of the judicial system.[58]

Additionally, by providing an effective and reliable dispute resolution mechanism, international arbitration creates a stable and favourable business environment. This encourages investment and economic development because businesses and investors know that their rights will be protected in case of disputes.[59]

How efficient is the arbitration process in delivering timely and fair resolutions to international trade disputes?

On this study question, the main agenda was to know how efficient is the arbitration process in delivering timely and fair resolutions to international trade disputes. The efficiency of the arbitration process in delivering timely and fair resolutions to international trade disputes, particularly in the Tanzanian context.

Some studies of which had reviewed their literal works have presented that, without making a generalization regarding the needs of the users of arbitration, an ideal arbitration would be simultaneously conducted in an equal, neutral, flexible, cost-efficient and rapid manner while tailored to the particularities of each dispute. Efficiency is often assimilated with only cost and time efficiency, but the other side of the same coin is to gain the efficient proceedings without risking either the correct outcome or the due process.[60]

[57] Https://aslgate.com*the role of international arbitration in resolving cross-border disputes*, Accessed on 16th June, 2025 at 16:05 PM.

[58] Ibid.

[59] Ibid.

[60] Hemmi, L. & Fortese, F., *Procedural Fairness and Efficiency in International Arbitration (2015)*, pg. 116-119

The findings show that, parties to arbitration are obviously not after a cheap dispute resolution process at the expense of a well-founded outcome. At its best, an efficient arbitration process can be equivalent to good case management and thereby result in a correct outcome.[61]

The fairness in international arbitration is underpinned by several legal principles such as impartiality and independence of arbitrators which is a fundamental principle in international arbitration; ensuring parties receive an unbiased hearing. To guarantee that the parties in arbitration proceedings are afforded a fair hearing, the Arbitration Act[62] contains provisions for challenging arbitrators on grounds of bias or lack of independence by arbitrators.

A cornerstone of fairness is the requirement that each party be given a full and equal opportunity to present its case. This had been provided under the Arbitration Act which mandates the tribunal to ensure a fair means for the resolution of matters to be determined. Further to that, the law gives power the tribunal to refuse enforcement as provided under Article V of the New York Convention specifically includes situations where a party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case. This provides a critical safeguard against unfair proceedings.

Moreover, this research reveals that, while not always strictly mandated for all types awards, many international arbitration rules and common practice require arbitrators to provide reasoned awards. This enables parties to understand the basis of the decision, contributing to the perception of fairness and allowing for limited judicial review if grounds for challenge exist.

What are the common challenges and issues faced in enforcing international arbitration awards?

Under this study question, it reviewed various documentary sources which could answer this research question. For the purpose of capturing comparative analysis, the study passed through the position from various international jurisdictions and finalized with the local position in Tanzania.

In many instances, a party obligated by the final award to pay money will simply do so, as its final obligation under the arbitration agreement. However, a party may also decline to pay an award. This failure to pay the award may be based on a genuine belief that the award is in

[61] Ibid.

[62] [Cap 15 R.E 2020].

some way flawed, or it may simply be a matter of obstinacy or inability to pay. In either case, court action regarding the award is likely.[63]

If the party obligated to pay money under the award has assets in the place of arbitration, then the process of converting the award into an enforceable money judgment in court is probably a relatively simple one governed by the law of a single jurisdiction, the law of the place of arbitration, which is also law of the place of enforcement. As such, there will likely be only one forum in which any issues as to the legal viability of the award will be fully and finally determined.[64]

Furthermore, if the arbitration of disputes arising from an international contract or other legal relationship has ended with the rendering of an award, and the party against which the award is made refuses to honour the award, then the question arises as to which law governs the recognition and enforcement of the award. Ultimately, the law governing enforcement is that of the state in which enforcement is sought, which will be a state where a losing party has assets. If the state has implemented the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[65], recognition will be according the terms of the convention.[66]

Despite of having a uniform international instrument governing recognition and enforcement of foreign arbitral awards, there are yet challenges which the award holders face in executing and enforcing their arbitral awards.

Another issue found by the researcher is that, an arbitration process is expensive and sometimes is slow to the extent that it may be that the disappointments or annoyances of removing from the court to the arbitral tribunal are made worse by the uncertainties in relation to the costs and indeed the management of the arbitration itself. It is on the ground of increasing certainty in relation to costs and management those alternative methods of dispute resolution are being strenuously promoted.[67]

This study revealed that, the aforementioned challenges appear to beset nearly all systems of arbitration, he principal costs concerns being legal fees for the parties, the arbitrators

[63] Graves, J.M. & Morrissey, J.F. (2008): *International Sales Law and Arbitration*: Problems, cases and commentary. Chapter 10 – Arbitration as a final award: challenges and enforcement, Pg. 460-461.

[64]Ibid.

[65] 1958

[66] Gillies, P. (2005), *Enforcement of International Arbitration Awards – The New York Convention:* International Trade & Business Law.

[67]Https://author.com/essay-examples/an-analysis-of-the-effectiveness-and-challenges-of-commercial-arbitration. Accessed on 01/07/2025 at 09:54 AM

and any expert fees, the time consumed to obtain hearing date, and issues in the currently fashionable fast track dispute resolution mechanisms.[68]

The common challenges and issues faced in enforcing international arbitration awards in other jurisdictions

Under Article 54(3) of the ICSID Convention, the execution of the award is governed by domestic law pertaining to execution of judgments in the state where execution is sought, for instance by attaching, freezing or seizing assets to satisfy the amounts owed under the award.[69] Article 55 of the ICSID Convention specifies that the domestic laws of the state in which execution is sought apply to a state's sovereign immunity from execution. By preserving the state's right to immunity from execution, Article 55 maintains the limitation on the assets of states which may be executed to satisfy pecuniary obligations in awards.[70]

Execution against specific assets of a state to satisfy an award against that state will depend on whether those assets are protected from execution is domestic laws on sovereign immunity and waiver of immunity from execution by that state. The principle of state immunity or sovereign immunity haws two important components immunity from jurisdiction and immunity from execution. Immunity from jurisdiction addresses whether a domestic court can exercise jurisdiction over a foreign sovereign, whereas immunity from execution addresses whether the court can attach and execute against specific sovereign property.[71]

The study reveals that in some jurisdictions the difficulties in enforcing international arbitral awards has been codified into laws. For instance, in the United States of America there is Foreign Sovereign Immunities Act[72] (the "FSIA"), which establishes two different aspects of sovereign immunity: (1) jurisdictional immunity, a foreign state's immunity from suit, and (2) immunity from execution and attachment, a foreign state's immunity from having its property attached in satisfaction of judgments. These two aspects are independent; a state can be subject to suit but immune from execution of a judgment against it. Thus, this means that, in United States, to collect a money judgment against a foreign state or agency, a plaintiff must prove that neither type of immunity applies.[73]

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[68] Ibid.

[69] ICSID (2024), *Background paper, compliance with and enforcement of ICSID awards*, pg. 46

[70] ICSID (2024), *Background paper, compliance with and enforcement of ICSID awards*, pg. 46

[71] ibid

[72] 1976

[73] Steele, M., & Heilen, M., *Challenges to enforcing Arbitral Awards against foreign states in the United States,* International Lawyer, Vol. 42 No. 1 (2008) pg. 88

Considering the "FSIA" above, it can now clearly stated that seeking to enforce and execute an arbitral awards against foreign states and state agencies can be specifically difficult. International arbitral panels cannot enforce the awards they render, so prevailing parties must seek relief in courts when their opponents fail to comply. In the United States, an award holder must first obtain a judgment confirming the award, and then the court must enter an order levying execution against the opponent's property. So this simply means that, when the opposing party is a foreign state or state agency, the award holder must show that the state entity is not immune from jurisdiction, and must further show that the state entity has lost its immunity from execution and attachment to be able to collect any money.[74]

The study showed further that, under the FSIA, foreign state entities lose immunity from jurisdiction by agreeing to arbitration, but they however do not lose their immunity from execution and attachment. In fact, this position confirms that, it is quite difficult to attach the property of a state entity after obtaining judgment recognizing an arbitral award against it.[75]

Despite of the afore-stated codified difficulties in enforcing international arbitral awards in the United States, the FSIA provides some circumstances of which attachment and execution of international arbitral awards can be done though needs strong prove. For instance, where a state agencies and instrumentalities have waived immunity from attachment or execution. This was observed in the case of *Ferrostaal Metals Corp. V. S.S. Lash Pasifico*[76], a state agency explicitly waived its immunity from execution under the terms of a trade agreement between Romania and the United States. Their agreement had a clause stating that; -

Nationals, firms, companies and economic organizations of either party shall be afforded access to all courts, and, when applicable, to administrative bodies as plaintiffs and defendants, or otherwise, in accordance with the laws in force in the territory of such other party. They shall not claim or enjoy immunities from suit or execution of judgment or other liability in the territory of other party with respect to commercial or financial transactions, except as may be provided in other bilateral agreements. [Emphasis is mine].

So, basing on the above clause of the agreement, the court held that, the agency's property could be attached for execution of a judgment because Romania waived its immunity in the agreement on trade relations between the United States and the Romanian Government.

[74]Steele, M., & Heilen, M., *Challenges to enforcing Arbitral Awards against foreign states in the United States*, International Lawyer, Vol. 42 No. 1 (2008) pg. 88

[75] Ibid.

[76] 652 F. Supp. 420 (S.D.N.Y. 1987)

The above position was also observed in another case of *Trendtex Trading Corporation Ltd V. The Central Bank of Nigeria*[77] whereby the Nigerian Central Bank which was a separate legal entity from the Nigerian government, had issued a letter of credit in favour of Trendtex, a Swiss company to pay for cement ordered by the Nigerian Ministry of Defence for military purposes. Following a military coup, the new government ordered the Central Bank not to pay for the cement. Trendtex sued the Central Bank and demanded payment. The court of Appeal (U.K) found that the bank was not entitled to immunity since it was a separate entity. The court held that; -

> *(1) That the bank, which had been created, as a separate legal entity with no clear expression of intent that it should have governmental status was not an emanation, arm, alter ego or department of the state of Nigeria and therefore not entitled to immunity from suit.*
>
> *(2) That even if the bank were part of the government of Nigeria, since international law recognized no immunity from suit for a government department in respect of ordinary commercial transactions as distinct from acts of a governmental nature, it was not immune from suit on the plaintiff's suit in respect of a letter of credit.*

In another case of *Rahimtoolla V. H.E.H. The Nizzam of Hyderabad and Others*[78]*,* there had been a sum of money, euro 1,000,000 in the Westminster Bank in London. It had been deposited there by the Nizzam of Hyderebad and was claimed by the government of Pakistan. The issue was whether Pakistan could claim sovereign immunity. The court held that; -

> ***Sovereign immunity should not depend on whether a foreign government is impleaded directly or indirectly, but rather on the nature of the dispute. If the dispute brings into question, for instance, the legislative or international transactions of a foreign government or the policy of its executive, the court should grant immunity if asked to do so, because it does offend the dignity of a foreign sovereign to have the merits of such a dispute canvassed in the domestic courts of another country;*** *but if the dispute concerns for instance, commercial transactions of a foreign government, and it arises properly within the territorial jurisdiction of our courts, there is no ground for granting immunity.* [Emphasis is added].

From the above set of international authorities of which the issue of state sovereign immunity came into question, it is a clear indication that this play as a key challenge impeding parties form enjoying fruits of paper award into monetary award.

[77] [1977] All E.R. 881 C.A
[78] [1957] All E.R. 441

The common challenges and issues faced in enforcing international arbitral awards in Tanzania

The burgeoning landscape of international trade and investment has increasingly positioned international commercial arbitration as the dispute resolution mechanism of choice for cross-border transactions. However, the ultimate efficacy of this seemingly efficient system hinges not merely on the rendition of an arbitral award, but critically, on its successful enforcement within national jurisdictions. While Tanzania's commitment to international dispute resolution is underscored by its ratification of the New York Convention, the practical realties of enforcing international awards before the High Court of Tanzania often present a complex interplay of legal, procedural, and sometimes extra-legal hurdles. At this part the researcher has discussed common challenges and recurrent issues that impede the seamless recognition and execution of international arbitration awards in Tanzania.

The progress made by the New York Convention in harmonizing the enforcement of foreign awards, still the enforcement process is facing challenges. Indeed, these challenges have been because of depending on national rules, which differ in many aspects in different parts of the world. It is these national courts which are authorised to enforce the award by applying their national rules even though the award is foreign.[79]

The researcher's findings are that, one of the challenges in enforcing an international arbitral award is a state immunity, where a state is a party to the dispute. This is considered as an obstacle in enforcing an international arbitral award especially where the losing party is a state or state agency. The defence is on the ground that the contract between the state and foreign investor is governed by public and not private law, or that the subject matter of the contract is of public nature.[80]

According to various authors, where a state is to be made with a state or one of its instrumentalities, consideration should be given to the express waiver of any immunities or privileges attaching to that party which might impact upon the resolution of disputes. In particular, whilst entering into an arbitration agreement will, itself often treated as a waiver of

[79] Cosmas, G.L., *Critical analysis on the challenges facing legal and institutional frameworks on recognition and enforcement of foreign arbitral awards in Tanzania*, Journal of Law, Policy and Globalization, Vol. 39 (2015) pg. 169-173.

[80]Cosmas, G.L., *Critical analysis on the challenges facing legal and institutional frameworks on recognition and enforcement of foreign arbitral awards in Tanzania*, Journal of Law, Policy and Globalization, Vol. 39 (2015) pg. 169-173.

any immunity from suit, an express waiver will normally be required to deal with immunity from enforcement of an award.[81]

For instance, in the case of *Creighton Ltd V. Ministry of the State of Qatar*[82] the Qatar authority argued, before the first instance and on appeal in France, that such enforcement would violate Qatar's sovereign execution immunity. The court held that; -

In my opinion, the enforcement of arbitration award against the assets of the state in which the enforcement is sought, and especially against those used for the state's public functions, is not always easy, it may cause diplomatic difficulties and affect relationships between the countries. [Emphasis is mine].

In Tanzania, the issue of state sovereign immunity is also at stake and impedes holders of the arbitral awards from successful enforcing and executing of their awards. There are several cases whereby the issue of sovereign immunity was in question and ended up leaving holders of the arbitral award to remain with their paper awards unexecuted.

For instance, in the case of *Blueline Enterprises Limited V. East African Development Bank*[83] the court held that; -

> ***In our judgment we found and held that bank enjoyed absolute immunity from all legal processes emanating from actions in the exercise of its lending powers. We, in effect, held that as the courts have no jurisdiction to issue execution processes against the bank, the high court wrongly entertained wrongly entertained the application for execution by issuing a garnishee order.*** *We further held that for the purposes of such types of execution proceedings, the final highest court contemplated under Article 45 was this court. It goes without saying that since the high court acted without jurisdiction, the proceedings before it was a nullity, and they had to be set aside.* [Emphasis is added].

Another Tanzanian case of which the issue of sovereign immunity was considered and impeded execution and enforcement of arbitral award is the case of Humphrey Construction Ltd V. Pan African Postal Union (PAPU)[84]. In this case, the respondent (PAPU) was also a respondent in Misc. Commercial case No. 8 of 2007 filed in the High court, Commercial division. Humphrey Construction Ltd was a claimant, who filed an arbitration award under section 10 of the second schedule to the Civil Procedure Code and section 11(2) of the Arbitration Act and

[81] Ibid.

[82] French Court of Cassation, 1st Civil Chamber, 2000 (Pouvoi A 98-19.068)

[83] Civil Application No. 21 of 2012 CAT at DSM (Reported in Tanzlii website) 87

[84] Civil Revision No. 1 of 2007, CAT at DSM (Reported in Tanzlii website) at pg. 1-4 and pg. 12.

Rule 4 of the Arbitration Rules. Upon such application, Massati, J. (as he then was) made the following order; -

> *Judgment is hereby pronounced according to the award and decree to follow accordingly in terms of section 16(2) of the second schedule of the Civil Procedure Code 1966.* [Emphasis is added].

Subsequently, after pronouncement of the judgment and decree, the claimant filed an application for execution whereupon the court made the following order: -

***Order**:*

(i) Issue prohibitor order in respect of landed property

(ii) Issue warrant of attachment for the motor vehicles. [Emphasis is added].

Moreover, the court then issued a warrant of attachment of movable properties of the respondent under order XXI Rule 21 of the Civil Procedure Code. Thereafter, on the subsequent dates, the court issued a warrant of sale of property in execution of a decree under Order XXI Rule 66 of the Civil Procedure Code.

It is the above background of the case which implored the Attorney General by then to write a letter to the Registrar of the court of Appeal of Tanzania notifying the court on the attachment order issued and the immunity of which the PAPU has over attachment and execution against its properties. This letter then made the court of appeal to invoke its powers vested in it under the provisions of section 4(3) of the Appellate Jurisdiction Act, 1979 and call for and examine the record of the proceedings, judgment, order and decree of the High court commercial division (Massati, J.) in Misc. commercial case No. 8 of 2007 with a view to satisfy itself as to correctness, legality and propriety of the decision made therein. As a result, the court held that; -

> ***It is crystal clear that, in terms of section 13(1) of the Act, read together with Articles II (1) and III (1) of the Headquarters Agreement, the property of PAPU is immune from attachment or execution.*** *PAPU did not and in any case could not waive its immunity as contended by Dr. Ringo, learned advocate*. [Emphasis is added].

Moreover, while discussing about challenges associated with arbitration process, researcher's findings is that, other authors provides that arbitration systems face considerable challenges in view of the need for user satisfaction and the increasing demands for good governance. Many of these challenges also intimately affect commercial arbitration and, in essence, are linked to the satisfactory and effective outcomes with minimum delays or costs, the provision of maintenance of full due process, the need for concentrated and certainly prolonged involvement in the arbitral process by managers, the death of the casualties resulting either in the form of unsuccessful or delayed settlement of disputes, or in grievances that lead to

further legal proceedings aimed at challenging the outcome of the arbitration. Shortly, the author means that, the degree of fairness and the effectiveness, efficiency, and the image of the arbitral process are challenged almost daily.[85]

So, from the above discussion, you can see how arbitral award holders are passing through serious obstacles in execution process and enforcement of their arbitral awards. This makes them to have a useless and fruitless arbitral award which could not be converted to be something with value. Furthermore, while these immunities place the state and or state-owned entities in a safe position on the reasons that their properties cannot be attached in execution proceedings, on the other hand, leave the arbitral award holders to make a serious loss on the reasons that the transaction between them and the state or state-owned entities which results into a breach by the later cannot be remedied.

CONCLUDING REMARKS

Conclusion

The researcher, being confined with the research topic, research questions and objectives reviewed various literal works by various authors. The data reveals that resolution of international trade disputes by way of arbitration has several benefits to the parties in dispute. Issues like saving of costs, saving of time and fairness in determination of arbitration proceedings are among the issues considered to be pivotal in international arbitration.

Other authors consider international arbitration of trade disputes as a means attracting investors to make investment in a certain country because they are assured of the security of their investment in case trade dispute arise between the parties.[86]

Despite of those benefits, other findings from the data collected by the researcher reveals that though parties may win an award in the international arbitration, but this award remains a paper award and that it is difficult to convert it into monetary. This is because; the award winners face several challenges ending to fail enforcing and executing an arbitral award.

Challenges like state sovereignty immunity, is among the one mentioned by the authors.[87] State sovereignty immunity makes exempt properties of the state which was a party in an arbitration proceeding not to be attached in enforcing and executing arbitration award.

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[85] Https://author.com/essay-examples/an-analysis-of-the-effectiveness-and-challenges-of-commercial-arbitration. Accessed on 01/07/2025 at 09:54 AM

[86] Https://aslgate.com*the role of international arbitration in resolving cross-border disputes*, Accessed on 16th June, 2025 at 16:05 PM.

Limitations of the study

The study encountered for a number of problems such as:

- Lack of funds to under the whole processes of conducting research;
- Lack of willingness to some government officials to authorize their offices to collect data;
- Lack of transport facilities to enable the study to be done effectively; and
- Bureaucratic procedures of some managers to allow the researcher to distribute the questionnaires and to be interviewed.

Despite of these limitations encountered in this study; various ways were taken by researchers in order to overcome the challenges including;

- Receiving some funds support from my employer (Dar es Salaam Maritime Institute);
- Distribution of research letters to some government officials in order to allow their offices to collect data;
- The uses of public transport for data collection; and
- Provision of research education to some managers in order to minimize their bureaucracy.

Recommendations

Basing on the findings of this study, the paper tries to provide the following recommendations for enhancing the impacts of international arbitration awards in Tanzania basically on the challenges that persist in the enforcement of international arbitration awards, particularly concerning state sovereignty immunity, issue of arbitration as a method of attracting investors in making investment, and the issue of ensuring the perceived fairness of arbitration proceedings. The following recommendations are put forth to bolster Tanzania's position as an arbitration-friendly jurisdiction and to strengthen the resolution of international trade disputes.

Addressing challenges related to state sovereign immunity

Addressing challenges related to state sovereign immunity, particularly immunity from execution, remains a significant hurdle in the enforcement of international arbitration awards against the Tanzanian government or its entities to mitigate this:

[87] Cosmas, G.L., *Critical analysis on the challenges facing legal and institutional frameworks on recognition and enforcement of foreign arbitral awards in Tanzania*, Journal of Law, Policy and Globalization, Vol. 39 (2015) pg. 169-173.

Clarify and harmonize domestic legislation on sovereign immunity from execution

Tanzania should amend the Government Proceedings Act[88] and the Arbitration Act[89] to provide clearer, more modern, and internationally aligned provisions on sovereign immunity from execution in the context of international arbitral awards. The rationale is that, the ambiguity in the current legislation creates uncertainty for claimants and can lead to protracted enforcement proceedings.

Aligning with contemporary international practices such as the restrictive theory of sovereign immunity, distinguishing between commercial and non-commercial assets would make it easier for the High court to identify and allow execution against commercial assets of the state or state-owned enterprises that are not used for sovereign, public purposes. This clarity would enhance predictability and compliance with international obligations under the New York Convention.

Implement explicit waivers of sovereign immunity in investment/commercial contracts

It is the recommendation of the researcher that the government entities entering into international trade and investment agreements should consistently incorporate explicit waiver of immunity from execution significantly streamlines the post-award enforcement process by pre-empting this common defence. Such waivers demonstrate a commitment to fulfilling international obligations. For instance, the case of *FG Hemisphere Associates LLC V. Democratic Republic of Congo*[90] supports the effectiveness of clear contractual waivers of sovereign immunity from execution.

Establish a centralized fund for payment of awards against the state

The Tanzanian government could explore the feasibility of establishing a dedicated, ring-fenced fund for the satisfaction of the international arbitral awards rendered against the state or its agencies. The rationale is that, this would eliminate the need for claimants to embark on costly and time-consuming asset tracing and attachment proceedings, promoting more efficient resolution and preserving state assets from disruptive execution measures. It would be also signal strong financial commitment to honouring international obligations.

[88] [Cap 5 R.E 2019].

[89] [Cap 15 R.E 2020]

[90] No. 10-7040 (D.C.Cir. 2011)

Enhancing Tanzania's attractiveness to investors

The challenges in enforcement directly impact investor confidence. Improving the enforcement environment can significantly boost Tanzania's appeal as an investment destination.

Strengthen judicial capacity and specialization in international arbitration law

Investing in continuous specialized training for judges of the High court Commercial division and relevant court staff on international arbitration the New York Convention and comparative enforcement practices. The rationale is that the judiciary well-versed in the nuances of international arbitration ensures consistent and predictable application of the law, minimizes delays arising from misinterpretations, and enhances trust among foreign investors. This fosters a perception of a reliable and sophisticated legal system as provided under the Model Law on International Commercial Arbitration[91] Which emphasizes uniformity of interpretation for international arbitration. Consistent jurisprudence by national courts is vital for investor confidence

Promote transparency and accessibility of enforcement decisions

The judiciary of Tanzania should ensure that all High court commercial division judgments on the recognition and enforcement of international arbitration awards are promptly published on accessible platforms like Tanzlii. The rationale behind this is that transparency in judicial decisions allows investors and their counsel to understand the legal landscape, assess risks, and predict outcomes. It fosters a predictable legal environment, which is a major factor for attracting and retaining foreign direct investment.

Develop and disseminate a clear national policy on international arbitration

The Government should articulate a clear national statement policy statement or guidelines affirming its commitment to international arbitration as a dispute resolution mechanism and as the expeditious enforcement of awards. A strong policy statement, publicly endorsed, can reassure investors about the state's willingness to abide by its international obligations, irrespective of the outcome of individual cases. It helps to counter perceptions of political interference in enforcement.

[91] UN General Assembly, 1985.

Ensuring and demonstrating fairness of arbitration proceedings

While the fairness of the arbitration itself is primarily the responsibility of the arbitral tribunal, national courts play a crucial role in upholding it during enforcement. The perception of fairness by foreign investor is paramount.

Consistent and strict adherence to Article V of the New York Convention

The High court of Tanzania should consistently interpret and apply the grounds for refusal of enforcement under Article V of the New York Convention narrowly, in line with international best practices. This is because broad interpretations of grounds like public policy or due process violations can undermine the finality of awards and make enforcement unpredictable. A narrow interpretation ensures that awards are set aside or refused enforcement only in exceptional circumstances, preserving the integrity and perceived fairness of the arbitral process. For instance, the case of *Parsons & Whittemore Overseas Co. V. Societe Generale de L'Industrie du Papier (RAKTA)*[92] widely cited for its narrow interpretation of public policy. Another case of *CATIC International Engineering (T) Ltd V. University of Dar Es Salaam*[93] should be reviewed by the Court of Appeal of Tanzania to align with the public policy interpretations more strictly with international norms.

Expedited review of enforcement applications

The High court commercial division should implement mechanisms to prioritize and expedite the hearing and determination of applications for the recognition and enforcement of international arbitration awards. The reason for this is that, lengthy court proceedings post Awa undermines the core advantage of arbitration speed. Swift judicial review reinforces confidence in the enforceability of awards and signals the judiciary's commitment to facilitating international trade.

Promote alternative compliance mechanism (post-award)

The government should encourage and facilitate dialogue or mediation between the award debtor, including the state, and the award creditor immediately post award, before enforcement proceedings are initiated, to explore voluntary compliance or settlement. The rational for this is that, while not strictly a legal enforcement tool, facilitating communication can lead to more amicable and less adversarial resolution, preserving relationships and potentially

[92] 508 F.2d 969 (2d Cir. 1974)

[93] Civil Appeal No. 162 of 2020 (Reported in Tanzlii).

avoiding the need for contentious court enforcement, which can be costly and damage a state's reputation.

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