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Oilcom Tanzania vs. Oryx Energies: A High-Stakes Legal Battle, Holding Up the Nation and Exposing Cracks in Tanzania's Arbitration Framework

A high-stakes legal battle is taking place between Oilcom Tanzania Limited and Oryx Energies.

It is capturing the attention of Tanzania as a nation, and casting a harsh light on the partiality and deficiencies of Tanzania's arbitration framework, as well as the challenges for the judicial systems to handle flawed arbitration decisions.

Concerns are rife within the investor and global business community.

The case has evolved into a hold on both Oryx Energies and the Nation itself.

The conflict originated from a series of agreements in 2016 involving transportation and the leasing of petrol stations. It then took a dramatic turn in 2020 when Oilcom initiated arbitration proceedings with the seat of arbitration in Tanzania, seeking over TSh 460 billion.

Arbitration is generally seen as a neutral and fair means of conflict resolution. In this case, however, it has been marred by fraud and outright manipulation.

Tanzanian Arbitration Under Scrutiny

The arbitration faces criticism due to serious procedural concerns, leading to an undue and unfair process.

The arbitration tribunal, comprising Prof. Mussa Juma Assad, Engera Kileo JA (Retired), and Sophia Wambura J (Retired), supported by the Secretary, Prof. Zakayo Lukumay, encountered contention from the start.

Oryx Energies raised objections regarding Prof. Mussa Juma Assad's undeclared involvement due to his past consultancy work with Oilcom and therefore his clear lack of independence and objectivity to act as an arbitrator.

Despite calls for his recusal and requests to stay the arbitration process until the outcome of this matter, the tribunal proceeded, casting grave doubts on the impartiality of the proceedings.

The process drew sheer indignation when the tribunal awarded Oilcom TSh 468 billion based on Oilcom's inflated damages claim. Oilcom did not provide any expert witnesses nor financial statements to support their groundless claims.

On the other hand, a world-class quantum expert presented by Oryx Energies, whose analysis categorically contested the basis and scale of Oilcom's claims was excluded. This raises questions about the fundamental right to be heard and the right to a comprehensive defense.

Oilcom's Underhand Tactics

Oilcom has intentionally misrepresented the transportation agreement to serve its own interests, suggesting that such tactics are a recurring part of their business approach.

Oilcom did not use the actual list of Oryx Energies' customers as specifically agreed by both parties in the contract. They calculated their claims based on the total fuel volume that Oryx Energies imported into Tanzania, including for clients that are responsible for their own transportation, as well as transportation services that are required by local regulations to be fulfilled by other local transporters.

Furthermore, instead of calculating losses based on the real profit margin, Oilcom used 100% of the total turnover without any deduction for relevant costs. Oilcom themselves failed to demonstrate having incurred any losses.

This calculation method of total imported volumes multiplied by their own transit rate has resulted in an absurd and inflated claim that defies any logic or international legal norms.

Last but not least, the specific clause allowing for transportation volumes obligation to be transferred from one year to another for the entire duration of the contract (the "catch up clause"), while discussed and agreed by both parties, was purposely ignored or distorted by Oilcom and the arbitrators. Had this clause been correctly applied the claim would have been nil.

Operational Halt and Asset Freeze

The stakes for Oryx Energies have escalated. A court execution order has been issued that includes an asset freeze affecting bank accounts, properties, and more recently shares in several Tanzanian companies owned by Oryx Energies, including TIPER, a joint venture between Oryx Energies and the Tanzanian government.

Oryx Energies has been compelled to suspend an important part of its operations and hopes not to have to implement a definitive halt.

This chronicle of a death foretold underscores the existential challenges facing Oryx Energies, a group serving Tanzania since 1999. It employs over 700 staff, creating an additional 25,000 indirect jobs, and contributes an average annual tax payment of TSh 262 billion.

This is in stark contrast to Oilcom whose tax contribution falls significantly short.

Furthermore, the situation at stake signals broader issues for the Tanzanian business environment and its attractiveness to foreign capital and international financing.

International Repercussions and Legal Strategies

Oryx Energies is determined to pursue all available national and international legal avenues that protect investors against unlawful expropriation and ensure fair treatment, depending on how the proceedings unfold.

A Test for Judicial Integrity

Oryx Energies calls for an impartial justice that will review the flaws of the unfair arbitral award and protect its affiliates from the predatory tactics of Oilcom.

It is imperative to ensure that this case is handled with transparency and impartiality.

The outcome will serve as a benchmark for Tanzania's commitment to upholding justice and protecting genuine business interests.

The legal community and international stakeholders are already closely monitoring developments, as the resolution of this case may influence the future of commercial dispute resolution in the region.

Oryx Energies remains committed to be a responsible entrepreneur, a trustworthy business partner and an investor in Tanzania, providing jobs and access to energy products as well as fostering the development of the country and serving it customers.

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