IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL APPLICATION NO. 17304 OF 2025

CASE REFERENCE NO. 20250716100017304

RAMANI CONSULTANTS LIMITED ....PETITIONER

VERSUS

SWISSPORT TANZANIA PLC ....RESPONDENT

RULING

Date of Last Order: 17/04/2026

Date of Ruling: 19/06/2026

GONZI, J.

These are two Rulings in respect of two proceedings fused together into one, hence, producing a relatively long decision. The circumstances surrounding this case present an interesting paradox whereby the Sole Arbitrator having been paid by both parties the initial deposit towards the costs of arbitration but the Petitioner has not paid the invoiced arbitrator's fees, is not ready to proceed further with the arbitration until the Petitioner pays his share of the "agreed" arbitrator's fees. On the other hand, the

Petitioner is not willing to pay the "agreed" arbitrator's fees until the Arbitrator applies the alleged "agreed" institutional rules governing the arbitration proceedings including payment of fees, whose application has the potential to affect adversely the payable amount of the alleged already "agreed" rates of the Arbitrator's fees.

Caught in the above-described legal limbo, to date, the Arbitral Tribunal and the parties to the dispute have not made significant progress in the arbitration proceedings which started on 13th March, 2023. Not even the hearing of the Claimant's case has begun. The perceived advantages of Alternative Dispute Resolution, including arbitration, that it is confidential, simpler, expeditious and cost-effective, seem illusory in the light of the present dispute. Meanwhile, the contractual dispute which relates to crucial construction works for cargo handling facility at the Julius Nyerere International Airport in Dar es Salaam, remains pending in arbitration for over three years now.

It all started peacefully, as usual. On 19th June, 2013, the Petitioner and the Respondent signed a consultancy agreement for the petitioner to act as a Consultant and supervise construction of cargo handling facilities at Julius Nyerere International Airport. The contractor was one Nandhra Engineering

Company Limited. The contract sum was USD 4,400,000.00. It was a term of the Consultancy Agreement that in the event of a dispute occurring, parties would resort to the Architects and Quantity Surveyors Registration Board of Tanzania for an opinion which would be final and, in case the dispute could not be determined as such, to arbitration by an arbitrator appointed by the parties or, failing mutual appointment by parties, appointed by the President of the Architects and Quantity Surveyors Registration Board of Tanzania. Clauses 16 and 17 of the Consultancy Agreement regulate the agreed mode of dispute resolution between parties herein, and this is where part of the controversy began. I reproduce them verbatim:

> ***"16.00 DISPUTES***
>
> ***16.01 Any difference or dispute may by agreement between the parties be referred to the relevant Board of Registration for an Opinion, provided always that such an opinion is sought on a joint statement of undisputed facts, and the parties undertake to accept the Board's opinion as Final.***
>
> ***17.00 ARBITRATION***

17.01 Where any difference or dispute arising out of these conditions of engagement and /or Schedules of duties and professional charges cannot be determined in accordance with Clause 16.01 it shall be referred to arbitration by a person to be mutually agreed upon, or failing agreement within fourteen days after either has given the other a written request to concur in the appointment of an arbitrator to a person to be nominated at the request of either party by the President of the Architectural and Quantity Surveyors Registration Board of Tanzania."

In the course of performance of the consultancy agreement, a dispute arose between the parties herein. Accordingly, parties appointed Hon. Justice (Rtd) Thomas Mihayo, to be the Sole Arbitrator. It is an undisputed fact from the Pleadings that the appointment of the Sole Arbitrator was done through and pursuant to the Architects and Quantity Surveyors Registration Board of Tanzania Arbitration Rules, 2021. On 13th March, 2023, Architects and Quantity Surveyors Registration Board of Tanzania notified the Sole Arbitrator of his appointment and, on 14th March, 2023, the Sole Arbitrator wrote to the

Architects and Quantity Surveyors Registration Board of Tanzania (AQRB) accepting the appointment.

Parties appeared before the Sole Arbitrator in the 1st Preliminary Meeting on 23rd March, 2023. In that meeting, the Minutes (not the proceedings) of the meeting signed by the Arbitrator alone, show that parties introduced themselves; affirmed the jurisdiction of the Arbitrator who disclosed his not having any conflict of interest; agreed on the applicable Rules to be the rules of natural Justice and of Civil procedure; established the calendar for filing pleadings as per the schedule given by the Sole Arbitrator in that meeting; agreed on the communication procedure, conduct of the meetings, the venue, duration from conclusion of hearing to delivery of the Award, and, finally, discussed on Arbitrator's fees and costs. Of interest is that, with respect to the Arbitrator's fees and costs, the Minutes disclose that:

> ***"The Parties are to discuss and decide on a suitable method of payment either by hourly or lump sum and the amount to cover the secretary and recorder's costs. It was also agreed and directed that the parties shall deposit with Justice Mihayo's Chambers TZS 5,000,000/= each thus making a total of TZS 10,000,000/= to cover incidental costs for the***

proceedings and shall be duly accounted for by the Arbitrator."

Like the Respondent, the Petitioner on 12th April, 2023, paid to the Secretariat of the Sole Arbitrator, TZS 5,500,000/= being TZS 5,000,000/= as the initial deposit for costs and TZS 500,000/= being expenses for the use of private office to conduct the Arbitration.

On 23rd May, 2023, as it can be seen in the Procedural Order No.2 under Item 7, the question of arbitrator's fees resurfaced and it was agreed that the Arbitrator was to prepare a projective billing guide on hourly basis and on a lump sum basis based on the percentage [of value of subject matter in dispute] so that parties could decide which method better suited them.

On 29th May, 2023, the Sole Arbitrator communicated to both parties his billing guide as requested. The Arbitrator proposed to adopt rates applied under the "International Court of Arbitration" which have been tested internationally. It was disclosed that the Arbitrator would charge USD 450 per hour and his Administrative Secretary USD 150 per hour. The whole arbitration process up to award making was projected to take about 67 hours and 30 minutes for the Arbitrator and 23 hours and 10 minutes for his Administrative Secretary.

On 14th June 2023, as per Procedural Order No.3, among other things, parties and the Arbitrator were meeting to discuss and agree on the modality of paying the Arbitrator's fees. The Minutes under Item 4 show that:

> ***"Parties and the Sole Arbitrator had a long discussion on various modes of payments and various rates. It was finally agreed by all that the Sole Arbitrator charge an hourly rate of USD 420 per hour and the Administrative Secretary charges USD 150 per hour."***

It happens that in the course of the arbitration sessions/ meetings, the Petitioner was harboring discontents on the way the arbitration was being conducted alleging biased statements by the Arbitrator, arbitrary imposition of Arbitrator's fees and the Arbitrator not applying the Architects and Quantity Surveyors Registration Board of Tanzania Arbitration Rules, 2021 including the fee structure therein, as the agreed applicable rules of procedure. The Petitioner, therefore, filed in this Court Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024). The Petition was made under sections 27 (4)(b) and 28 (1) (a) and (d) (i) of the Arbitration Act CAP 15 (R.E. 2020); Regulation 63 (1) of the Arbitration Rules G.N. No. 146 of 2021 and Rule 17.7 of the Architects and Quantity Surveyors, Registration Board Rules. An affidavit verifying the Petition was sworn by Mr. Sebastian Ngimbwa, Principal Officer of the Petitioner.

The key complaints in that petition in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024) are summed up at page 4 of that Ruling that:

> ***"As earlier on hinted in this ruling, the main grounds upon which the arbitrator's removal is being asked are the following: That, the sole arbitrator issued a statement that, the Claimant's claim was going back and forth and that it was not well stated for what the Claimant was claiming, which statement is considered by the Petitioner as pre disposition of the dispute before hearing the parties' case; That, the arbitrator applied without the consent of both parties and without justifiable reasons the rates of International Court of Arbitration while the arbitration was a local one and; That, the sole arbitrator failed to deliberate with the parties on the rules applicable to the arbitration proceedings."***

In its Ruling, this Court held at pages 5, 6 and 7 that:

"It is worth noting that, in reply to the last two grounds of the Petition, it was stated in the respondent's answer to the Petition that, the arbitration fees were discussed and agreed by the parties and that, it had been agreed that the parties would adopt the Rules of Natural Justice and the Civil Procedures and that, in no order did the arbitrator hold that the Architect and Quantity Surveyors Registration Board Rules would not apply. Reference was made to Procedural Order No.3. These averments by the respondent were not specifically challenged by the Petitioner. As such, the court is entitled to hold the two grounds as baseless, for failure of the Petitioner to substantiate the same.... An arbitrator cannot be held to be guilty of misconduct merely because he insists on there being clarity or coherence of the Claimant's claim; for his claiming to be paid the agreed fees or for his refusal to grant request of either party especially when the request would not have advanced the cause of either of the parties.... For the foregoing reasoning, I also hold the first ground of the Petition to be unmeritorious."

Against that Ruling, the Petitioner herein has preferred an appeal to the Court of Appeal of Tanzania. After some time, Arbitration resumed before the

Sole Arbitrator. On 26th September, 2024, when arbitration resumed, the minutes of arbitration show that the Petitioner addressed the Sole Arbitrator praying that the fees be scaled down as they were too high; that the arbitration venue be changed; that the arbitral proceedings be recorded and that the Petitioner be allowed to amend her pleadings. The directions given on 26th September, 2024 by the Sole Arbitrator on fees, were that:

> ***"The Arbitrator will now answer all prayers of the Claimant as follows:***
>
> ***1. On the issue of Arbitrator's fees this is the final direction.***
>
> ***As parties had agreed at a fee of USD 420 per hour I will not submit this prayer for further discussion. I will deduct from what was agreed as a fee, the fee is now scaled down to USD 300 per hour for Arbitrator and USD 100 per hour for the secretary. This fee will not apply retrospectively. The fee note submitted by the Arbitrator will have to be paid before resumption of the new fee."***

Therefore, in his direction, on 26th September, 2024, the Sole Arbitrator was scaling down the fees from USD 420 to USD 300 per hour for the Arbitrator and from USD 150 to USD 100 per hour for his Administrative

Secretary. Other prayers were also granted with some conditions, including the prayer for amendment of pleadings. A revised filing schedule of the amended pleadings was given up to 31st October, 2024.

On 21st November, 2024, the Petitioner's Learned Counsel addressed the Sole Arbitrator that, in their view, Clause 16.01 of the Consultancy Agreement required parties firstly to take the dispute to the Architects and Quantity Surveyors Registration Board of Tanzania for Opinion before referring it to Arbitration, if need be. The Sole Arbitrator responded that it had appeared to him that parties had waived that clause by submitting themselves to arbitration. However, he directed the Petitioner to make written submissions on that issue for the other side to respond before the Arbitrator could Rule on it. The Sole Arbitrator gave parties a schedule for filing their respective written submissions on the implications of Clause 16.01 of the Consultancy Agreement. Finally, on the same 21st November, 2024, the Sole Arbitrator addressed the issue of non-payment of arbitrator's fees by the Petitioner, in the following words:

> ***"I remind the claimant to make payment within 7 days from today. If not, I shall not make the Ruling on Clause 16.0 of the Agreement but will proceed to***

suspend all work and all relevant claims shall be considered withdrawn as per Article 37(6) of the ICC International Court of Arbitration Rules 2021."

It is obvious from the above that all this time the Petitioner had not paid his share of the Arbitrator's fees apart from the initial deposit of TZS 5,000,000/=.

On 6th January, 2025, by way of a letter, the Arbitrator notified the Petitioner on the imminent danger of dismissal of the Petitioner's Claims in arbitration for want of prosecution if payment of Arbitrator's fees by the Petitioner would not be effected by 13th January, 2025. The Petitioner's Learned Counsel responded by an un-dated letter addressed to the Sole Arbitrator, stating that that pursuant to the Procedural Order of 21st November, 2024, all the claims would have been marked withdrawn upon lapse of 7 days without the Petitioner effecting payment of arbitrator's fees and, thus, according to the Petitioner, there was no pending arbitration anymore before the Arbitrator to be dismissed and that the Arbitrator had become functus officio upon failure by the Petitioner to make payment within the 7 days deadline given on 21st November, 2024.

On 11th January, 2025, the Sole Arbitrator responded to the letter by Learned Counsel for the Petitioner, expressing his being *flabbergasted* by the letter's insinuation that the arbitration proceedings had automatically terminated and that the claims therein had become automatically withdrawn. He clarified that the phrase in the Minutes of 21st November, 2024 that upon failure to pay the arbitrator's fees by the Petitioner within 7 days the claims would be considered withdrawn, was not a direction or an order of the Arbitral Tribunal; but merely an explanation intended to keep the petitioner on Notice about her non-payment of Arbitrator's fees. The Sole Arbitrator stressed that an arbitrator cannot become functus officio without having made the final order in a matter before him.

On 24th March, 2025, both parties and their Learned Counsel, appeared before the Sole Arbitrator and the Petitioner expressed willingness to proceed with the arbitration but insisted that the Arbitrator should firstly make a Ruling on Clause 16.01 of the Consultancy Agreement and determine their request for the dispute to be governed by the Architects and Quantity Surveyors Registration Board of Tanzania Arbitration Rules including adoption of the fees scales as prescribed in those Rules. The Petitioner also insisted that payment of the Arbitrator's fees should be done through the secretariat of the Architects and Quantity Surveyors Registration Board of Tanzania who would then pay the Sole Arbitrator, but not directly to the Sole Arbitrator.

In his orders of 24th March, 2025, the Sole Arbitrator directed that he could not give a Ruling on the implications of Clause 16.01 of the Consultancy Agreement since the Petitioner had not filed the written submissions as earlier on ordered. He, further, clarified that the Order of 21st November, 2024, did not terminate the arbitral proceedings automatically upon lapse of the time given to the Petitioner to effect payment of Arbitrator's fees. Thus, he clarified, that the arbitration was still alive and subsisting. The Sole Arbitrator promised to liase with the Architectural and Quantity Surveyors Registration Board of Tanzania "on the modality of making payments and on other procedural matters".

On 25th April, 2025, the Petitioner dropped the bomb shell when the Petitioner (this time not writing through its Learned Counsel as it used to be the case, but through its Managing Director), wrote to the Sole Arbitrator on several matters the Petitioner was not happy with, including, once again, the issue of payment of the Arbitrator's fees. In the letter, the Petitioner, inter alia, drew the attention of the Sole Arbitrator that under Clause 54.1 of the AQRB Arbitration Rules, the modalities and timings of the arbitration fees payment are matters to be fixed by the AQRB Board after consultation with the Arbitrator and parties and shall be in accordance with the schedule of fees applicable on the day on which the request for arbitration is received by AQRB. The Petitioner, also, wrote that contrary to the minutes and orders as per Procedural Order No.3 in Item 4, no agreement had ever been reached with respect to the Arbitrator's fees of USD 420 per hour for the Arbitrator and USD 150 per hour for the Administrative Secretary. The Petitioner, also, stated that it had received an invoice from the Sole Arbitrator for 23 hours already spent on Arbitration but that the Petitioner was not ready to pay since no agreement had ever been reached on the Arbitrator's fees. The letter added that even the scaled down fees of USD 300 per hour for the Arbitrator and USD 100 per hour for the Administrative Secretary, were not accepted by the Petitioner and, actually, their former lawyer had recused himself due to the issue of arbitrator's fees. The last sentence in the letter by the Petitioner, signed by its managing Director, added that:

"We wish to notify you that Clause 16 was not waived by our office and therefore this Arbitration is premature."

In a letter dated 14th June, 2025, written by the Arbitrator through his Administrative Secretary, to the parties, the Sole Arbitrator insisted that the issue of fees had been discussed many times and had been agreed upon but that the Petitioner was attempting to frustrate the arbitration. The Sole Arbitrator also made it clear that:

> *"It should be noted that first, Clause 16.00 is not in the imperative and secondly, the dispute may, by "**agreement between the parties**..." Therefore, the absence of an agreement between the parties can only have one conclusion. The parties have abandoned that route and gone to arbitration. So, I agree with what the Respondents have said, that parties willingly waived that path."*

Soon after the above correspondence, on 16th July, 2025, the Petitioner, once again, approached this Court by filing the present petition under the provisions of section 27(4)(B), 28 (D)(i) and (ii) of the Arbitration Act, CAP 15 (RE 2020); Regulation 63(1) of the Arbitration Rules of Procedure

Regulations, GN.146/2021 and Clause 17.7 of the Architects and Quantity Surveyors Registration Board Rules of 2021. In this petition, the Petitioner is praying for the Court to:

(i) Declare that the Arbitrator has acted in violation of the applicable Arbitration Rules, particularly in relation to fee determination and contractual obligations;

(ii) Order that the Arbitrator must adhere to the AQRB Arbitration Rules of 2021 in all respects, including the arbitrator's payable fees;

(iii) Declare the arbitral tribunal has no jurisdiction for as the arbitral process is immune for failure to comply with Clause 16.0 of the Consultancy Agreement, and for being initiated without exhaustion of the agreed referral mechanism;

(iv) Costs of the Petition be granted;

(v) Make any other orders this honourable court deems just and appropriate in the circumstances.

Upon being served with the Petition, the Respondent filed an Answer to the Petition. In it, the Respondent raised a preliminary Objection that:

1. ***This Petition is res judicata in view of the proceedings and/or determination in Misc. Commercial Cause No. 66 of 2023 and Misc. Commercial Cause No. 7309 of 2024.***

Alternatively, the Respondent answered the Petition that Clause 16 of the Consultancy Agreement does not confer absolute authority upon the Architects and Quantity Surveyors Registration Board (AQSRB) to receive and/or determine disputes between the parties. Rather, the said clause provides that any reference of a dispute to the relevant Board is subject to the agreement and consent of the parties.

The Respondent stated at paragraph 4 of the Answer to the Petition, that the Respondent was admitting what was stated under paragraphs 5 and 6 of the Petition that it was "the correct narration of the background facts". By conceding to paragraphs 5 and 6 of the Petition, the Respondent was accepting that upon occurrence of the dispute, parties agreed to appoint the Sole Arbitrator to arbitrate the dispute through the Architects and Quantity Surveyors Registration Board (AQSRB) vide the provisions of the Architects and Quantity Surveyors Registration Board (AQSRB), Arbitration Rules, 2021.

Further admission by the Respondent was that the Sole Arbitrator on 14th March, 2023, wrote a letter to AQSRB accepting his appointment.

On the payment of arbitrator's fees, the Respondent added that the sole arbitrator had afforded the parties ample time to discuss and agree on the method of payment, whether on an hourly basis or as a lump sum. Further, that while those discussions were ongoing, the parties agreed that each party would deposit the sum of Tanzania Shillings Five Million (TZS 5,000,000/=) to cover incidental costs of the proceedings, which amount was to be accounted for by the arbitrator in the final agreed fees.

The Respondent stated that, following the session of 23rd May 2023, and the consensus reached on the arbitrator's fees on 29th May 2023, the sole arbitrator circulated his proposed fees to the parties. With regard to the issue of the arbitrator's fees, the Respondent stated that this Honorable Court overruled an earlier challenge in respect thereof on the ground that it was unsubstantiated and held that the allegations relating to fees were baseless. The respondent further stated that the Court in the previous petition, further, upheld the Respondent's position that the arbitral fees had been discussed and agreed upon by the parties, and that the parties had agreed to adopt the

Rules of Natural Justice and the Civil Procedure and that at no point, did the arbitrator hold that the Architects and Quantity Surveyors Registration Board Rules would not apply. The Respondent stated that following the said Ruling by the Court, the Petitioner, being aggrieved, filed a Notice of Appeal, and that the appeal is pending before the Court of Appeal.

The Respondent further stated that, following the aforesaid previous Ruling of this court, the arbitral proceedings were resumed and the sole arbitrator convened a session on 26th September 2025 during which, the Petitioner, again, raised the issue of the arbitrator's fees, alleging that the fees were excessive, and prayed that they be scaled down. The sole arbitrator thereupon issued final directions to the effect that:

> ***"As parties had agreed a fee of USD 420 per hour I will not submit this prayer for further discussion. I will deduct from what was agreed as fee, the fee is now scaled down to USD 300 per hour for Arbitrator and USD 100 per hour for the secretary".***

The Respondent stated that at the arbitration session convened on 21st November 2024, the Petitioner raised an issue that, in his view, Clause 16.0 of the Agreement required the parties to refer any difference or dispute to the AQSRB for an opinion before the matter could be referred to arbitration. The sole arbitrator directed both parties to address that point of law by way of written submissions; however, the Petitioner did not file any submissions on the issue he had raised.

With regard to the allegation in paragraphs 16, 17, and 18 of the Petition that the sole arbitrator suspended the arbitral proceedings for non-payment of fees, the Respondent stated that the sole arbitrator, through the proceedings dated 24th March 2025, made it clear that the arbitral proceedings were still alive as no direction had been made by the Arbitrator against that position and that the last paragraph of the proceedings on 21st November 2024 was just putting the claimant on notice and nothing more.

With respect to the issue of the arbitrator's fees, the Respondent was of the position that the sole arbitrator clearly explained that the matter of fees had already been determined. The Respondent, further, replied on the issue of jurisdiction, that the Petitioner was reluctant to comply with the arbitrator's directions requiring him to file written submissions in support of his preliminary objection. Further, that the issue of jurisdiction was discussed at the first arbitration session, and both parties agreed that the arbitrator had jurisdiction over the dispute. The Respondent prayed for this honorable court to dismiss the petition with costs. That marked the end of pleadings by both parties.

As intimated herein before, the Respondent raised a Preliminary Objection to the effect that:

> ***"This Petition is res judicata in view of the proceedings and/or determination in Misc. Commercial Cause No. 66 of 2023 and Misc. Commercial Cause No. 7309 of 2024."***

This Court, on 10th March, 2026, through the predecessor Judge, (Hon. Morris, J.,) ordered parties to argue both the preliminary objection and the petition simultaneously and by way of Written Submissions, whereby a schedule was given. Upon transfer of the Predecessor Judge from this duty station, this matter was re-assigned to me. On 17/04/2026 when the matter was called for necessary orders, I informed parties on the reason for the re-assignment and, since the hearing had been done by way of written submissions, I undertook to compose and deliver the Ruling upon reading the written submissions filed by parties and the records of the case file.

With respect to the Preliminary Objection and the merit of the Petition, the Respondent was represented by Mr. David Shadrack Pongolela, Learned Advocate. The Petitioner was represented by Mr. John James, Learned Advocate. I thank both Learned Counsel for their submissions. I will start with submissions by Learned Counsel on the preliminary Objection and the merit of the Petition. Then I shall determine the Preliminary Objection before embarking on the merit of the petition, in the event the preliminary Objection does not dispose of the matter.

Submitting in support of the Preliminary Objection, Mr. Pongolela, Learned Advocate, argued that this Petition is res judicata in view of the proceedings and/or determination in Misc. Commercial Cause No. 66 of 2023 and Misc. Commercial Cause No. 7309 of 2024. He submitted that the Petitioner had instituted the said proceedings seeking, inter alia, the removal of the sole arbitrator on grounds of alleged bias, improper determination of arbitral fees, and non-compliance with the applicable procedural framework. He submitted that this Court, (Hon. Mkeha, J., as he then was), after hearing the parties, dismissed the earlier filed Petition with costs for being unmeritorious, after having found that the Petitioner had failed to substantiate its allegations. He submitted that the Petitioner, being aggrieved, filed a Notice of Appeal, which is currently pending before the Court of Appeal.

Mr. Pongolela, Learned Advocate, submitted that following the aforesaid ruling I the earlier petition, when the arbitral proceedings resumed on 26th September 2025, the Petitioner again raised concerns regarding the arbitrator's fees, alleging that they were excessive and requested that they be reduced. Thereupon, the sole arbitrator issued final directions scaling down the fees to USD 300 per hour for the arbitrator and USD 100 per hour for the administrative secretary.

Mr. Pongolela, Learned Advocate, submitted that while the issue of fees was pending and the Petitioner was insisting that the fees payable to the Sole Arbitrator had not been agreed upon, the Petitioner raised another issue in respect of the Jurisdiction of the Arbitrator in view of Clause 16.0 of the Consultancy Agreement. He argued that the sole arbitrator directed both parties to address that point of law by way of written submissions; however, that the Petitioner did not file any submissions on the issue he had raised, instead the Petitioner decided to come again to this Court with the same allegations which were earlier on ruled baseless in the previous application.

Going further with the submissions, Mr. Pongolela, Learned Advocate, submitted that in the former proceedings, (Misc. Commercial Cause No. 66 of 2023 /Misc. Commercial Cause No. 7309 of 2024), the issue of arbitral fees was directly and substantially in issue as reflected at page 2 of the ruling and the Court conclusively determined this issue at page 5, paragraph 1 of the ruling, holding that the ground was baseless for failure by the petitioner to substantiate the same.

Mr. Pongolela, Learned Advocate, submitted that from the above holding in the earlier petition, the Court conclusively determined that: The arbitral fees were agreed upon by the parties; the applicable procedural framework had been mutually settled; and that the Petitioner had failed to substantiate any complaint regarding arbitral fees. The Court dismissed all allegations relating to arbitral fees as baseless and unmeritorious, argued Mr. Pongolela, Learned Advocate for the Respondent.

Mr. Pongolela, Learned Advocate, submitted that in the present Petition, the Petitioner has, once again, raised the issue of arbitrator's fees under paragraphs 14–20 of the Petition whereby the Petitioner prays for this court to declare that the Arbitrator has acted in violation of the applicable arbitration rules particularly in relation to the fee's determination and contractual obligation, and for an order that the arbitrator must adhere to the AQRB Arbitration Rules of 2021 in all respect, including the arbitrator fees payable.

Mr. Pongolela, Learned Advocate, submitted that under section 11 of the Civil Procedure Code [Cap 33 R.E 2023] and the rule in Civil Appeal No. 525/2021, **John Pius Tsoxho Versus Herman Paulo Awe**, the court observed that:

> ***"It is well settled law and leading authorities are at one, that in order for the plea of res judicata to successfully operate, the following conditions must be proved; namely, the former suit must have been between the same litigating parties or between parties under whom they or any of them claim; the subject matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and subsequently in issue in the former suit either actually or constructively; the party in the subsequent suit must have litigated under the same title in the former suit; the matter must have been heard and finally decided; that the former suit must have been decided by a court of competent jurisdiction."***

Mr. Pongolela, Learned Advocate, submitted that all the conditions for res judicata are present in respect of the present case whereby the former proceedings, Miscellaneous Commercial Cause No. 66 of 2023/7309 of 2024, was between the same parties as in the present Petition. He added that the issue of arbitral fees and the arbitrator's conduct, as raised in the present Petition, are identical to that which was directly and substantially in issue in the former proceedings. He added that in the present Petition under paragraphs 14–20, the Petitioner challenges the arbitrator's fees and seeks orders that this Court declares that the Arbitrator has acted in violation of the applicable arbitration rules, particularly in relation to the fees determination and contractual obligations; order the arbitrator must adhere to the AQRB Arbitration Rules of 2021 in all respect, including the arbitrator fees payable. Mr. Pongolela, Learned Advocate, submitted that the subject matter or issue of arbitral fees has been heard and finally decided in the previous proceedings.

Mr. Pongolela, Learned Advocate, submitted that the fact that a Notice of Appeal has been filed against the earlier decision of the Court, does not negate the finality of the decision for purposes of res judicata, unless and until the decision is set aside. He went on to argue that the previous decision was made by a Court of Competent Jurisdiction, namely this Court.

Mr. Pongolela, Learned Advocate, concluded by submitting that all the elements of res judicata are fully satisfied. He prayed that the present petition, particularly in so far as it challenges arbitral fees, is legally untenable and ought to be dismissed in limine with costs for being res judicata.

In his reply submissions, Mr. John James, Learned Advocate for the Petitioner, submitted that, from the Respondent's own written submissions, the objection is founded on the proposition that the issue of arbitral fees was already determined in the earlier proceedings and that the present Petition merely reopens what this Honourable Court has already decided, yet, the same submissions, simultaneously, disclose later events which occurred after the earlier ruling, including resumed arbitral proceedings, renewed complaints over arbitral fees, the scaling down of those fees by the sole arbitrator and the Petitioner's later insistence on clause 16.0 of the Consultancy Agreement. He argued that those later matters, render the preliminary objection unsustainable.

Mr. James, Learned Advocate for the Petitioner, submitted that in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696**, it was held that a preliminary objection must consist of a pure point of law argued on the assumption that all pleaded facts are correct, and it cannot be raised where the court must ascertain contested facts or evaluate evidence. He argued that in the present matter, the Respondent's objection cannot succeed without this Court firstly comparing the earlier petition with the present petition and the ruling delivered on 31st July 2024. He reasoned that, this, necessarily, would involve scrutiny of factual substance, hence, not a proper preliminary objection.

Mr. James, Learned Advocate, submitted that, at any rate, the preliminary objection does not satisfy the requirement for operation of the doctrine of res judicata. He referred the court to the case of **John Pius Tsoxho v Herman Paulo Awe,** Civil Appeal No. 525 of 2021 [2024] TZCA 1199, where the Court restated the familiar elements of res judicata. He added that for the doctrine of res judicata to apply, all its elements must co-exist.

Mr. James, Learned Advocate, submitted that in the present matter, the Petitioner does not dispute that there was an earlier proceeding between the same parties before a competent Court; but rather disputes the allegation that the matter directly and substantially in issue in this Petition is the same matter that was directly and substantially in issue in the former petition. He added that the Petitioner, also, disputes the allegation that the matters now complained of have already been heard and finally determined.

Mr. James, Learned Advocate, submitted that the Respondent's own submissions show that following the earlier ruling, the arbitral proceedings resumed and the sole arbitrator convened a session on 26th September 2025 during which the Petitioner, again, raised concerns regarding arbitral fees, and that the sole arbitrator, thereupon, issued final directions scaling down the fees to USD 300 per hour for the arbitrator and USD 100 per hour for the administrative secretary. He went on to submit that as stated by the Respondent, while the issue of fees was still pending, the Petitioner also, raised another issue concerning the jurisdiction of the arbitrator under clause 16.0 of the Consultancy Agreement. Mr. James, Learned Advocate, submitted that, in view of this factual position, the preliminary objection cannot stand because a ruling of the court earlier delivered on 31st July 2024, could not possibly have heard and finally determined the subsequent events which arose during the resumed arbitral proceedings on 26th September, 2025 and thereafter.

Mr. James, Learned Advocate, submitted that the earlier ruling may have dealt with complaints as they stood at that time, but it could not have finally adjudicated the future conduct, future fee directions, future revisions of the fee regime, or later objections based on clause 16.0 of the consultancy agreement raised after the proceedings resumed post the Ruling of the court.

Mr. James, Learned Advocate, submitted that the former ruling shows that the former petition concerned, among other matters, alleged justifiable doubts as to the arbitrator's impartiality, including complaints that the sole arbitrator had made a statement touching the claimant's claim before hearing evidence; applied international arbitral rates without consent; and failed to deliberate with the parties on the applicable rules. He submitted that the Court, on the material then before it, found those complaints unsubstantiated and dismissed the earlier petition. Learned Counsel for the Petitioner insisted that the ruling was made on the factual record then existing before the court and thus it did not, and could not, convert all future arbitral conduct into matters forever immunized from challenge.

Mr. James, Learned Advocate, submitted that, after delivery of the earlier ruling by the court, the arbitrator's fees were again disputed and were in fact revised downward by the arbitrator himself. He argued that, this fact alone is enough to show that the matter of arbitrator's fees did not end with the earlier Ruling of the Court in July 2024. He argued that a fee question that remained alive in the arbitral process, attracted later objections and results in later directions by the arbitrator. He reasoned that these new matters cannot, honestly, be treated as a matter wholly closed for all purposes by the earlier ruling.

Mr. James, Learned Advocate, submitted that, the doctrine of res judicata applies only where the matter directly and substantially in issue is the same in two cases involving the same parties. He argued that where later events give rise to a fresh complaint, the later proceedings is not barred merely because it concerns the same parties or the same general transaction. He argued that a later claim founded on subsequent conduct is not necessarily barred by an earlier one, because the later conduct gives rise to a distinct cause of complaint.

Mr. James, Learned Advocate, submitted that the present Petition is not simply saying again what was said before, rather, it is saying that after the earlier petition was dismissed, the arbitral proceedings resumed; the Petitioner renewed its complaint that the fees ought to be anchored in the AQSRB framework; the arbitrator continued with a disputed fee regime and then revised it. He added that the clause 16.0 issue was again raised in the resumed proceedings and, notwithstanding those later developments, the process continued in a manner now challenged.

Mr. James, Learned Advocate for the Petitioner, submitted that the present Petition is not founded on arbitral fees alone. He explained that the Respondent's own submissions expressly state that after the resumed proceedings, the Petitioner raised the issue of the arbitrator's jurisdiction according to clause 16.0 of the Consultancy Agreement. He argued that the later jurisdictional complaint, in the context of resumed proceedings and later fee directions, cannot simply be folded into the earlier petition by assertion.

He stressed that the present Petition includes a later jurisdictional complaint emerging from subsequent proceedings.

Mr. James, Learned Advocate, submitted that the pendency of a Notice of Appeal to the Court of Appeal against the earlier Ruling of this court does not assist the Petitioner's case because the Petitioner's position is not that the earlier ruling lacks finality merely because an appeal is pending, but that the present Petition is not barred because it is materially founded on later arbitral events and later conduct which were not, and could not have been, finally determined in the earlier ruling.

Mr. James, Learned Advocate, submitted that the Respondent's approach, if accepted, would produce an untenable result as it would mean that once an earlier petition concerning an arbitration has been decided, every later complaint arising from subsequent conduct in that same arbitration would automatically be barred, even where the arbitrator later changes the fee structure; addresses fresh objections, or acts in a manner giving rise to a new grievance. He emphasized that the doctrine of res judicata is meant to prevent re-litigation of what has already been decided, not to grant perpetual immunity to later conduct.

Learned Counsel for the Petitioner prayed for the Respondent's Preliminary Objection to be dismissed with costs, and thus the Petition be ordered to proceed to hearing on its merits.

By way of rejoinder, Mr. Pongolela, Learned Advocate, submitted that the preliminary objection raised is a pure point of law, as it is grounded on the doctrine of *res judicata*. He explained that the Respondent showed that the prior decision between the same parties, namely Misc. Commercial Cause No. 66 of 2023 / 7309 of 2024 covered the same matters now being litigated in this petition. He added that the settled position is that a preliminary objection is not raised in the abstract. He stressed that a preliminary objection must arise from the pleaded facts and be argued on the basis of those facts as they stand. He referred the court to the case of **Nova Esperansa Services vs PTL Roadways Ltd, Comm. Case No. 23/2023** where the court quoted with approval the decision in the case of **Ali Shabani & 48 others vs. Tanzania National Road Agency & another** Civil Appeal No. 261/2020 (unreported), where the Court of Appeal, had the following to say:

> *"At any rate, we hold the view that no preliminary objection will be taken from abstract without reference to some facts plain on the pleadings which must be looked at without reference examination of any other evidence."*

Mr. Pongolela, Learned Advocate, submitted that if this Honorable Court proceeds to render a decision on the issue of arbitrator's fees while an appeal on the same issue is pending before the Court of Appeal, there is a real risk of two conflicting decisions on the same matter. He argued that since the Petitioner has already lodged an appeal on the issue of arbitrator's fees and the same is pending determination, this Court is barred by the doctrine of *res judicata* and is *functus officio* in respect of that issue.

Mr. Pongolela, Learned Advocate, submitted that the Petitioner does not dispute that the previous ruling of this court addressed the issue of fees and that the court rendered a determination thereon, and, further, that the Petitioner filed a notice of appeal against that decision. Therefore, he argued, the Petitioner is barred from re-litigating the same issue by operation of the doctrine of res judicata, otherwise the Petitioner would be effectively pursuing parallel remedies—having filed an appeal on the same issue while simultaneously reverting to the arbitral forum to raise it again.

Mr. Pongolela, Learned Advocate, submitted that the doctrine of constructive *res judicata* still operates to bar the Petitioner from raising issues which he ought to have raised in the previous petition. He added that the purpose of incorporating an arbitration clause is to dispense with technicalities associated with ordinary court proceedings. For this, he relied on the case of **Oryx Oil Company and Oryx Energy SA vs Oilcom Tanzania Limited,** Civil Appeal No. 47/2024 decided by the Court of Appeal. He concluded by praying for the court to uphold the preliminary objection and dismiss the petition for being res judicata.

As regards the merit of the Petition, it was Mr. John James, Learned Advocate for the Petitioner, who started. Mr. James, Learned Advocate, submitted that the Petition was brought under sections 27(4)(b) and 28(d)(i) and (ii) of the Arbitration Act, Cap. 15 R.E. 2020, read together with Regulation 63(1) of the Arbitration (Rules of Procedure) Regulations, 2021 and Rule 17.7 of the Architects and Quantity Surveyors Registration Board Rules, 2021. He submitted that the Petition does not invite this Court to determine the merits of the underlying commercial dispute between the parties nor as to who is right or wrong in the consultancy claim. It concerns the integrity of the arbitral process itself, he argued. He amplified that when the Petition is read together with the Respondent’s Answer, three grievances plainly arise, namely that the arbitration was pushed forward notwithstanding the Petitioner’s insistence that clause 16.0 of the Consultancy Agreement first required reference of the dispute to the Architects and Quantity Surveyors Registration Board. Secondly, that the Petitioner specifically requested the sole arbitrator to apply the AQSRB fee framework, particularly because he had been appointed through that very Board, yet that request was not honoured and the arbitrator instead proceeded on a disputed fee regime. Thirdly, that while those two foundational objections remained unresolved, the sole arbitrator proceeded to suspend the proceedings and later issued directions pointing towards dismissal. He argued that these complaints go directly to jurisdiction, regularity and fairness.

Mr. James, Learned Advocate, submitted that the first complaint by the Petitioner must be appreciated from the settled and controlling principle that arbitration is a creature of contract and therefore, the arbitrator has no inherent jurisdiction. He derives authority entirely from the parties’ agreement and, for that reason, his authority must be exercised within the boundaries, sequence, and discipline of that agreement. He reasoned that once the

Petitioner raised the point that the contract required prior recourse to AQSRB for opinion, it was a jurisdictional objection.

Mr. James, Learned Advocate, relied on the case of **Higher Education Students Loan Board v Adil Auction Mart Limited** (Misc. Commercial Cause No. 375B of 2017) [2018] TZHC 3845, where the High Court held that a petition was premature because the contract required the dispute first to be referred to arbitration. He reasoned that the principle, therefore, is that where parties have agreed on a contractual sequence for dispute resolution, proceedings taken in disregard of that sequence are liable to be treated as premature. He argued that parties themselves agreed on a structured path, and one stage of that path could not lawfully be ignored merely because the arbitral tribunal preferred to continue with the next. He stressed that in arbitration, party autonomy is the very source of the arbitral tribunal's legitimacy.

Mr. James, Learned Advocate, submitted that the second complaint by the Petitioner touches not merely the order of proceedings, but the fairness and institutional discipline of the proceedings. He argued that the Petition shows, and the Answer substantially confirms, that the issue of fees was never finally settled at the outset. He argued that at the first arbitration meeting the parties were still to discuss whether payment would be on hourly basis or lump-sum basis, while each party deposited TZS 5,000,000/= for incidental costs. Later, the arbitrator circulated a projected billing guide based on USD 450 per hour for himself and USD 150 per hour for the administrative secretary. He submitted that the Petitioner did not merely complain that the fees were high but, also, he specifically requested the sole arbitrator to apply the scale of fees as provided under the AQSRB Rules. He submitted that the basis of the request was that the arbitrator had been appointed through AQSRB itself, hence, the Petitioner was perfectly entitled to expect that the arbitrator's remuneration would be determined in accordance with the rules and institutional discipline of the very Board through which he had accepted appointment.

Mr. James, Learned Advocate, submitted that the earlier petition expressly complained that the arbitrator had declined to apply the AQSRB Board Rules in relation to fees and instead relied on international rates and foreign currency. He argued that once an arbitrator accepts appointment through a statutory or professional board, parties are entitled to expect that his fees will be regulated by the framework of that body unless there is a clear and lawful agreement to the contrary. He argued that when that institutional consistency is abandoned, uncertainty begins, and when uncertainty begins, confidence in the fairness of the process is inevitably weakened.

Mr. James, Learned Advocate, submitted that the earlier petition as embedded in the Respondent's annexures to the Answer to the Petition, shows that this was the Petitioner's complaint from the beginning. It pleaded that the arbitrator declined to apply the AQSRB Board Rules as the governing rules; he did not disclose the scales of fees applicable to the proceedings; insisted on each party depositing TZS 5,000,000/= before fees were determined; proposed international rates in United States Dollars; and even caused the Petitioner to deposit an additional TZS 500,000/= for use of the secretary's private office. He submitted that, instead of anchoring the fees in the AQSRB framework, the arbitrator proceeded with the projected hourly billing model, inclusive of secretary charges, and later, even after continued objection by the Petitioner, merely scaled the figures down. Learned Counsel reasoned that the arbitrator's trend on the question of fees, demonstrates that the fee regime was never truly settled in a final and consensual sense. He added that, also, it shows that the Petitioner's objection was persistent and genuine. Further, he submitted that the arbitrator himself recognized that the earlier figures could not comfortably stand untouched. Learned Counsel argued that a fee regime that begins at one level, is objected to by a party, is defended as settled, and is later reduced by the same arbitrator, is not a stable or settled fee arrangement but that it is the very picture of an unresolved fee dispute.

Mr. James, Learned Advocate, referred the court to section 30 of the Arbitration Act which makes parties jointly and severally liable to pay the arbitrator's reasonable fees and expenses, and also entitles a dissatisfied party to apply to Court where the fees exceed the amount agreed by the parties; contains items not agreed by the parties; or where there has been a significant change of circumstances. He submitted that arbitral fees are not beyond judicial scrutiny as the Court remains the lawful forum for restoring order where the fee structure becomes contested, excessive, or irregular.

Mr. James, Learned Advocate, submitted that the Petitioner asked the arbitrator to apply the AQSRB scale because AQSRB was the appointing Board. That request was not adopted. Instead, the arbitrator maintained a disputed hourly fee structure, later altered it himself, and continued to conduct the process on that footing.

Mr. James, Learned Advocate, submitted that the third complaint by the Petitioner is that while the arbitrator had suspended the proceedings for non-payment of fees by the Petitioner, he later issued directions pointing towards dismissal for want of prosecution. He submitted that before threatening suspension, dismissal, or any comparable sanction, the Arbitral Tribunal ought firstly to have resolved the threshold objections, namely: whether the arbitration was properly proceeding on the face of clause 16.0 of the Consultancy Agreement and whether the fee regime being insisted upon was lawful, agreed, and properly anchored in the framework of the appointing Board. He argued that the objection ought first to have been resolved and that the objector ought not to have been pressured.

Mr. James, Learned Advocate, referred the court to the case of **Oryx Oil Company and Another vs Oilcom Tanzania Limited** (Civil Appeal No. 47 of 2024) [2024] TZCA 875, where the Court of Appeal held that a High Court decision under section 27(4)(b) of the Arbitration Act, on removal of an arbitrator is interlocutory in nature and not appealable as of right under section 5(2)(d) of the Appellate Jurisdiction Act. Learned Counsel argued that the position in the above stated case is a confirmation that the law expressly contemplates judicial supervision over the arbitral process before the final award where the propriety of the arbitrator's continued mandate will be challenged.

Mr. James, Learned Advocate, prayed for this Honourable Court to be pleased to grant the prayers sought in the Petition.

Mr. Pongolela, Learned Advocate, submitted in reply on the merit of the petition. He submitted that the concern over Clause 16.0 of the Consultancy Agreement for the dispute to firstly be referred to the Architects and Quantity Surveyors Registration Board (AQSRB), was raised by the petitioner on 21st November 2024. He referred the court to annexure RAM-7 to the petition. He argued that the arbitrator, upon hearing that concern, ordered the parties to address him on the said issue by way of written submissions and ordered the petitioner to file his submission on 5th December 2024; the respondent to file his reply submission on 12th December 2024 and the Ruling was reserved for 17th December 2024. However, Mr. Pongolela, Learned Advocate, submitted, the Petitioner failed to file his submissions as directed by the Arbitrator on that issue and no sufficient reasons were adduced for such failure. Mr. Pongolela, Learned Advocate, submitted that failure of the petitioner to file the submissions as ordered by the arbitrator tantamount to failure to prosecute his claim. Mr. Pongolela, Learned Advocate, cited the case of **Seti Tete vs Mwanjelwa Saccos,** Misc. Civil Application No. 22/2018 (unreported). He submitted that, the petitioner having defaulted in that regard, cannot now be heard to complain that he was denied the right to be heard on that point, nor can he properly resurrect the same ground in the present Petition.

Mr. Pongolela, Learned Advocate, submitted that despite the petitioner's failure to file submissions on the issue he raised on 14th June 2025, the Arbitrator proceeded to give direction as per annexure RM11-to the petition, to the effect that parties had waived and abandoned that path of Clause 16:00 of the Consultancy Agreement.

Mr. Pongolela, Learned Advocate, submitted that in the circumstances, the Petitioner's contention that the issue of Clause 16 of the Consultancy Agreement was not addressed by the Arbitrator, is wholly misconceived, factually incorrect, and untenable. So argued, Mr. Pongolela, Learned Advocate for the Respondent.

Mr. Pongolela, Learned Advocate, submitted that the meaning of clause 16.0 of the consultancy agreement is that, if a dispute arises between the parties, they may agree to refer it to the relevant Board of Registration for an expert opinion. He argued that, however, this can only be done where both parties prepare and submit a joint statement of facts that are not in dispute. He submitted that the provision is not in the imperative. He argued that Clause 16.0 and Clause 17.01 establish a two-tier dispute resolution framework, but not one that is rigidly sequential or mandatory in nature. He was of the position that the words "*may, by agreement between the parties",* signify that referral to the Board is entirely dependent on mutual consent. He argued that Clause 17.01, on the other hand, is the operative and default dispute resolution clause which recognizes that Clause 16 may not always be feasible or applicable, and in such circumstances, the dispute is to be referred to arbitration. Hence, he argued, it is not a condition precedent for parties to first invoke Clause 16.0 of the Consultancy Agreement before resorting to arbitration under Clause 17.01. Rather, parties were entitled to proceed directly to arbitration. He argued.

On the second concern that the Petitioner specifically requested the sole arbitrator to apply the AQSRB fees framework particularly in light of the fact that his appointment emanated from that very Board, Mr. Pongolela, Learned Advocate, submitted that, first, as acknowledged by the Petitioner himself at paragraph 11 of his submissions, the issue of fees had already been determined by this Honorable Court, which rejected the complaint and dismissed it in its entirety. Therefore, he argued, this Court is precluded from entertaining the issue afresh, as doing so would amount to re-litigation of a matter that is res judicata. Second, Mr. Pongolela, Learned Advocate, submitted that this Court is functus officio in respect of the said issue, having conclusively determined it in the earlier petition. It therefore lacks jurisdiction to reopen or re-adjudicate the same matter. He relied on the case of Kamundi **v. Republic,** [1973] 1 E.A. 540 on functus officio.

Further, Mr. Pongolela, Learned Advocate, submitted that the determination of fees lies within the discretion of the parties to negotiate and agree with the arbitrator upon the commencement of the arbitral proceedings. He submitted that, in the present matter, parties initially agreed on the fees, and the arbitrator duly communicated his fee structure. He argued that the Petitioner has since persistently disputed the same, thereby causing the arbitration to stall for several years.

The third complaint was that while the preceding two foundational objections remained unresolved, (fees and the jurisdiction of referring the matter to the AQRB for opinion), the sole arbitrator proceeded to suspend the proceedings and later issued directions pointing towards dismissal. Mr. Pongolela, Learned Advocate, submitted remarks made by the Sole Arbitrator did not constitute a formal notice dismissing the arbitral proceedings, as alleged. Rather, the Arbitrator was merely reminding the parties that they were duty-bound to pay the agreed fees, failing which the arbitral proceedings could be terminated. He added that even the Arbitrator subsequently provided clarification through the proceedings dated 24th March 2025 as per annexure RAM-10 to the Petition, clarifying that the last paragraph of the proceedings on 21st November was just putting the claimant on notice and nothing more.

Mr. Pongolela, Learned Advocate, concluded by praying for dismissal of the petition as the Petitioner has been raising trivial issues to stall the arbitration.

By way of rejoinder, Mr. James, Learned Advocate, argued that the reply submissions by the Respondent confirm the very grievances raised by the Petitioner, while attempting to neutralize them through assertions that are either inconsistent with the record, contrary to the contractual documents, or founded on a misapprehension of the legal complaint before this Honourable Court.

Mr. James, Learned Advocate, submitted that the argument that the Petitioner did not file submissions before the arbitrator on the point of clause 16.0 of the Agreement, is not an answer to the legal complaint. He submitted that the Petitioner's case is not that he was denied an opportunity to file submissions, rather, it is that the arbitral process itself was being pushed forward notwithstanding a foundational jurisdictional objection anchored in the contract. He added that the reply submissions show that the arbitrator made the ruling on clause 16.0 of the agreement within the same atmosphere in which he was simultaneously linking payment of disputed fees. He submitted that the petitioner's complaint is that even before the time granted to the Petitioner to file those submissions had expired, the sole arbitrator had already adopted a coercive posture by linking payment of disputed fees with his willingness to determine the objection and with the continuation of the arbitral proceedings. Mr. James, Learned Advocate, reiterated submissions in chief and prayed for the petition to be granted. I will now embark on determining the matter.

I will start with the preliminary Objection raised by the Respondent against this petition. The preliminary Objection was to the effect that:

> ***"1. This Petition is res judicata in view of the proceedings and/or determination in Misc. Commercial Cause No. 66 of 2023 and Misc. Commercial Cause No. 7309 of 2024."***

At the outset, it must be known that Misc. Commercial Cause No. 66 of 2023 and Misc. Commercial Cause No. 7309 of 2024 refer to one and the same case. When it was filed manually it was numbered as Misc. Commercial Cause No. 66 of 2023. Later, when the same case was migrated to the electronic filing system, it got registered as Misc. Commercial Cause No. 7309 of 2024. Hence, the two registration numbers relate to the same case.

The Petitioner has argued that the preliminary objection is unfounded because it is based on factual allegations requiring evidence or comparison of record in the former Petition and Ruling with the petition in the present matter. I do not accept the argument by Learned Counsel for the Petitioner that a preliminary Objection on res judicata is not a pure point of law. On this, I accept the argument by Mr. Pongolela, Learned Advocate for the Respondent, that a preliminary objection cannot be taken from abstract without reference to some facts plain on the pleadings which must be looked at without reference or examination of any other evidence. It is equally the law as per the case of **Mukisa Biscuit Manufacturing Ltd versus West End Distributors Ltd** [1969] EA 696:

> ***""A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which, if argued as a preliminary point, may dispose of the suit. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."***

Therefore, since, in the present matter, parties have pleaded existence of an earlier determined petition allegedly raising the same issues, a preliminary objection on res judicata has been properly raised. Looking at the earlier decision to ascertain its scope in relation to the present petition, does not amount to considering evidence. I will, therefore, determine the preliminary objection on merit.

On the merit of the Preliminary Objection, the Respondent submitted that this petition is res judicata Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024). Parties are not at issue as to the necessary elements for the doctrine of res judicata to apply. I agree to what was held in Civil Appeal No. 525/2021, **John Pius Tsoxho Versus Herman Paulo Awe**, where the court observed that:

> *"It is well settled law and leading authorities are at one, that in order for the plea of res judicata to successfully operate, the following conditions must be proved; namely, the former suit must have been between the same litigating parties or between parties under whom they or any of them claim; the subject matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and subsequently in issue in the former suit either actually or constructively; the party in the subsequent suit must have litigated under the same*

title in the former suit; the matter must have been heard and finally decided; that the former suit must have been decided by a court of competent jurisdiction."

In the present case, the only dispute between Learned Counsel for the Petitioner and the Respondent, was on whether or not the subject matter in directly and substantially in issue in the previous application in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024) is, either actually or constructively, directly and substantially in issue in the present application which is the subsequent suit for the purposes of section 11 of the Civil Procedure Code.

It must be noted that there are two sets of relevant decisions made by the Sole Arbitrator in the course of the pending arbitral proceedings between the parties herein. The relevant sets of decisions were made at different times and at two different instances, have been brought to court. Two of the matters canvassed in the two decisions by the arbitrator are of common theme. These are the questions of the arbitrator's fees, and applicability of the Architects and Quantity Surveyors Registration Board Arbitration Rules, 2021. The question of the bar under Clause 16 of the Consultancy Contract requiring the matter to be referred for an Opinion of the Board, was not the subject of the earlier decision by the Arbitrator nor the subject of the Ruling of this Court in the previous Application.

The first Arbitrator's decision on of the arbitrator's fees and applicability of the Architects and Quantity Surveyors Registration Board Arbitration Rules, 2021, was the subject of the former suit in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024). In that Application, the Petitioner herein, also, additionally, sought to remove the Sole Arbitrator for allegedly not being impartial after making a statement in respect of the petitioner's conduct which, in the view of the Petitioner, was prejudicial to his impartiality. For ease of reference, what was taken to Court in the previous case is captured in the Ruling in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd whereby the key complaints of that petition are summed up at page 4 thus:

> ***"As earlier on hinted in this ruling, the main grounds upon which the arbitrator's removal is being asked are the following: That, the sole arbitrator issued a statement that, the Claimant's claim was going back and forth and that it was not well stated for what the***

Claimant was claiming, which statement is considered by the Petitioner as pre disposition of the dispute before hearing the parties' case; That, the arbitrator applied without the consent of both parties and without justifiable reasons the rates of International Court of Arbitration while the arbitration was a local one and; That, the sole arbitrator failed to deliberate with the parties on the rules applicable to the arbitration proceedings."

From the above, the matters directly and substantially in issue in the former case between the parties herein were three: (a) that the arbitrator had applied without the consent of both parties and without justifiable reasons the fees rates of International Court of Arbitration; (b) that the sole arbitrator had issued a statement that was considered by the Petitioner as pre disposition of the dispute before hearing the parties' case; (c) That, the sole arbitrator failed to deliberate with the parties on the rules applicable to the arbitration proceedings. Those are the matters that were directly and substantially in issue in the previous application. All three were determined by this Court in the previous case. This Court in the former case held at pages 5, 6 and 7 that:

"It is worth noting that, in reply to the last two grounds of the Petition, it was stated in the respondent's answer to the Petition that, the arbitration fees were discussed and agreed by the parties and that, it had been agreed that the parties would adopt the Rules of Natural Justice and the Civil Procedures and that, in no order did the arbitrator hold that the Architect and Quantity Surveyors Registration Board Rules would not apply. Reference was made to Procedural Order No.3. These averments by the respondent were not specifically challenged by the Petitioner. As such, the court is entitled to hold the two grounds as baseless, for failure of the Petitioner to substantiate the same…."

The above excerpt of the Ruling shows that the complaint by the Petitioner on the Applicable Rules of Procedure in the conduct of Arbitration was baseless since the Arbitrator had not ruled out that he would not apply the Architects and Quantity Surveyors Registration Board Rules. Also, the complaint on arbitrator's fees was determined as being baseless because the Court found that the arbitration fees were discussed and agreed by the parties. Also, the court held that an arbitrator cannot be held to be guilty of misconduct merely because he insists on there being clarity or coherence of the Claimant's claim. That was the essence of the Court's decision in respect of the three matters in issue in the previous case between the same parties. The question of Clause 16.01 of the Consultancy Agreement on the requirement to take the dispute for an Opinion of the Architect and Quantity Surveyors Registration Board before Arbitration, was not an issue in the previous case as it had not yet been argued by parties nor determined by the Sole Arbitrator, despite having been raised. No decision thereon had been made by the Arbitrator prior to filing Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024). No decision thereon was made by the Court in the earlier case above mentioned. That issue cannot be res judicata.

It should be noted, with utmost circumspection, however, that the said Arbitrator's fees under consideration in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024), are the ones that were fixed on 29th May, 2023, when the Sole Arbitrator communicated to both parties his billing guide as requested. He indicated that the Arbitrator would adopt rates applied under the "International Court of Arbitration" which have been tested internationally. Further, that the Arbitrator would charge USD 450 per hour and his Administrative Secretary USD 150 per hour with the entire arbitration process up to award making projected to take about 67 hours and 30 minutes for the Arbitrator and 23 hours and 10 minutes for his Administrative Secretary.

Before the filing of Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024), the Arbitrator had already scaled down the Arbitrator's fees to USD 420 per hour for the Arbitrator and USD 150 per hour for his Administrative Secretary. These are the Arbitrator's fees which were unsuccessfully challenged by the Petitioner vide the previous case in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024). What does this all mean? It means at least two things. Firstly, that upon unsuccessful challenge of the Arbitrator's fees by the Petitioner in the previous case, the Arbitrator's fees agreement was endorsed or confirmed by this court that the Arbitrator would charge USD 420 per hour and his Administrative Secretary USD 150 per hour. It is common knowledge that the Petitioner has appealed against that order of this court emanating from the earlier Petition which order had confirmed the Arbitrator's fees of USD 420 per hour for the Arbitrator and USD 150 per hour for his Administrative Secretary.

Secondly, it means that the Arbitrator's decision made on 26th September 2025 that the sole arbitrator would charge the fees to USD 300 per hour for himself and USD 100 per hour for the administrative secretary, was not the subject matter of the earlier decided case in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024) which was decided before 26th September 2025. As such, I find that the Petitioner's complaint in this matter, to the extent that it challenges the Arbitrator's fees decision made on 26th September 2025, imposing Arbitrator's fees of USD 300 per hour for himself and USD 100 per hour for the administrative secretary, was not the subject matter of the earlier decision of this court in in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024). The complaint on the Arbitrator's decision made on 26th September 2025 imposing Arbitrator's fees of USD 300 per hour for himself and USD 100 per hour for the administrative secretary, is not barred by the doctrine of res judicata.

It is not the common theme/nomenclature of two decisions which makes the subsequent one res judicata, rather, it is the actual determination on matters that were directly and substantially in issue in the previous case which are also directly and substantially in issue in the subsequent case, which counts. A decision maker, like an arbitrator, may make several decisions on the same or common theme like arbitrator's fees, admissibility of evidence and many other procedural orders, in the course of the same arbitral proceedings. Each of those orders may be taken to the supervisory courts at different times in the course of the same arbitral proceedings. It cannot be held, therefore, that so long as the decisions made have a common theme or bear the generic nomenclature, say on arbitrator's fees, then a subsequent decision on the same generic theme, but covering entirely different issues, would be res judicata.

As regards, the question of applicability of the Architects and Quantity Surveyors Registration Board Rules of Arbitration, 2021, it must be noted that this Court in its Ruling in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024) did not determine that issue one way or the other. The court merely held that "in no order did the arbitrator hold that the

Architect and Quantity Surveyors Registration Board Rules would not apply." What does that mean? It means that the Petitioner was not, at that time, entitled to complain on a wrong-doing not yet committed by the Arbitrator. In other words, the Court in the previous Ruling did not decide that the Architects and Quantity Surveyors Registration Board Rules would or would not apply to the pending arbitration. It did not rule, also, that even where, subsequent to that Court Order, the Arbitrator does not actually follow the Architects and Quantity Surveyors Registration Board Rules in conducting the arbitral proceedings, the Petitioner should not complain or take the issue to Court.

I find that a complaint made by the Petitioner that, subsequent to the earlier Ruling of the court in the previous case, the Arbitrator was actually not following the Architects and Quantity Surveyors Registration Board Rules to conduct the Arbitration, is not barred by res judicata in relation to Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024). In the previous decision of this Court, the issue of applicable rules was not determined one way or the other simply because the Arbitrator had not declined following the Architects and Quantity Surveyors Registration Board

Rules to conduct the Arbitration. The court left that issue undecided for hence ripe for future complaints and determination in the event of the Arbitrator, actually, not following the said Rules to conduct the arbitration**.** Now, subsequent to the delivery of the earlier decision by the Court, the Petitioner has come to this Court, through this subsequent petition, complaining that actually, the Arbitrator is not following the Architects and Quantity Surveyors Registration Board Rules to conduct the Arbitration. This issue is new and was never determined in the previously decided case. It is not res judicata.

Additionally, in the present case, the Petitioner is complaining of the determination by the Sole Arbitrator that the arbitral proceedings are not barred by Clause 16.01 of the Consultancy Agreement. As said before, the question of Clause 16.01 of the Consultancy Agreement on the requirement to take the dispute for an Opinion of the Architects and Quantity Surveyors Registration Board before Arbitration, was not an issue in the previously decided case as it had not yet been argued by parties nor determined by the Sole Arbitrator**.** No decision thereon had been made by the Arbitrator prior to filing of the previous case in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024). No decision on clause 16 of the consultancy agreement was made by the Court in the previously decided case between the parties herein as above mentioned.

In short, the preliminary Objection raised by the Respondent that the three complaints herein raised are res judicata Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024), is baseless and misconceived. The Petitioner has brought one entirely new issue of the bar under Clause 16.01 of the Consultancy Agreement which was not canvassed at all in the previously decided case between the parties herein. Additionally, the Petitioner has brought two new issues relating to the Arbitrator's decision made on 26th September 2025 imposing Arbitrator's fees of USD 300 per hour for himself and USD 100 per hour for the administrative secretary. Also, the Petitioner has brought the issue of an Arbitrator's actual refusal to apply the Architects and Quantity Surveyors Registration Board Rules of Arbitration, 2021, especially on the aspect of arbitrator's fees. The issue of Arbitrator's decision made on 26th September 2025 imposing Arbitrator's fees of USD 300 per hour for himself and USD 100 per hour for the administrative secretary, rhymes with the Arbitrator's decision made on 29th May, 2023, when the Sole

Arbitrator communicated to both parties his billing guide as requested by parties, indicating that the Arbitrator would charge USD 450 per hour for himself and USD 150 per hour for his Administrative Secretary. These rates were, ultimately, scaled down by the Arbitrator to USD 420 per hour for the Arbitrator and USD 150 per hour for his Administrative Secretary. Then they were unsuccessfully challenged in court in the earlier decided case between the same parties. After the court's decision, on 26th September, 2025, the arbitration proceedings raised the same issue of arbitrator's fees. The Arbitrator, ruled on 26th September, 2025 by imposing USD 300 per hour for the Arbitrator and USD 100 per hour for his Administrative Secretary. Despite having a common theme of both being decisions on payable arbitrator's fees, the decision of 26th September, 2025 imposing USD 300 per hour for the Arbitrator and USD 100 per hour for his Administrative Secretary is a different decision emanating from different and subsequent arbitral proceedings.

The two decisions on arbitrator's fees were made at different times, emanate from two distinct arbitral sessions, through different decision-making processes and represent different figures (outcomes). The earlier decision was subsequently tested in Court vide Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T)

Ltd [2024] TZHCComD 157 (31st July 2024). The second decision on arbitrator's costs was made after determination of the earlier filed court case and has never been tested in Court. It is being tested now for the first time. It cannot be res judicata the earlier decided case.

The issue of the Arbitrator's actual refusal to apply the Architects and Quantity Surveyors Registration Board Rules of Arbitration, 2021, especially on the aspect of fees, also, rhymes with the theme in of the holding in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024) where the Court held that "in no order did the arbitrator hold that the Architect and Quantity Surveyors Registration Board Rules would not apply." However, the complaint now being made that the arbitrator, "actually," is refusing to apply the Architects and Quantity Surveyors Registration Board Rules of Arbitration, 2021 especially on the aspect of arbitrator's fees, was never tested in the earlier decided court case. It is being tested now for the first time. It cannot be res judicata the earlier decided case.

Perhaps, it is not out of context to explain the problem encountered by Learned Counsel for the Respondent in arguing the res judicata objection in the context of this matter. Fact is, the Respondent's Learned Counsel argued the ground of res judicata before this Court as if he were arguing it before the arbitrator or, rather, as he would have argued it before the Arbitrator when the Petitioner raised questions of applicable fees and the applicable rules of procedure subsequent to determination by the Arbitrator and the court in the earlier decision, on the same issues. If Learned Counsel for the Respondent is of the view that the questions of applicable fees and the applicable rules of procedure were conclusively settled vide the earlier decision of this Court, he ought to have raised an objection to that effect before the Arbitral Tribunal during the resumed arbitral proceedings when the Petitioner, allegedly, was re-litigating on the two matters allegedly concluded by the ruling delivered by the Court in its earlier decision delivered on 31st July 2024.

Perhaps, the Respondent's Learned Counsel missed the chronological development of the events leading to the issues of costs and applicable rules resurfacing before the Arbitrator. Records show that On 24th March, 2025, both parties and their Learned Counsel appeared before the Sole Arbitrator and the Petitioner expressed willingness to proceed with the arbitration but insisted that the Arbitrator should, firstly, make a Ruling on Clause 16.01 of the Consultancy Agreement and determine the request for the dispute to be governed by the Architects and Quantity Surveyors Registration Board of Tanzania Arbitration Rules, 2021, including adopting the fees scales as prescribed in those Rules. The Petitioner, also, insisted that payment of the Arbitrator's fees should be done through the secretariat of the Architects and Quantity Surveyors Registration Board of Tanzania, who would then pay the Sole Arbitrator. These prayers were being made by the Petitioner on 24th March, 2025, hence, subsequent to the Court's earlier Ruling which was delivered on 31st July 2024.

On the other hand, on 25th April, 2025, the Petitioner herein wrote to the Sole Arbitrator, inter alia, drawing the attention of the Sole Arbitrator that under Clause 54.1 of the AQSRB Arbitration Rules, the modalities and timings of the arbitration fees payment, are matters to be fixed by the AQSRB after consultation with the Arbitrator and parties. These prayers, also, were being made on 25th April, 2025, hence, subsequent to the Court's earlier Ruling between the parties which was delivered on 31st July 2024. I hold that if the Respondent was of the view that the prayer relating to fees and the applicable procedural rules were res judicata the earlier made decisions of the Arbitrator and or the previous Ruling of this court delivered on 31st July 2024, the Respondent ought to have raised an objection before the Arbitrator on 24th

March, 2025 and or on 25th April, 2025 when the issues allegedly already conclusive settled, were being raised again by the Petitioner before the Arbitrator. The doctrine of res judicata applies to arbitration proceedings before the Arbitrator as well.

It happens that on 24th March, 2025 and or on 25th April, 2025, when the issues allegedly already conclusive settled, were being raised again by the Petitioner before the Arbitrator, no objection was raised and the Sole Arbitrator made fresh decisions in respect thereof. The fresh directions/ decisions by the Arbitrator on the two issues, are amenable to the subsequent judicial challenge (through the present proceedings). And it must be borne in mind that in the present challenge, no party is arguing that the Arbitrator was functus officio or that the matters of payable arbitrator's fees and applicable rules of procedure were res judicata before the Arbitrator. I cannot, therefore, determine the competence of the Arbitrator to determine the two questions of applicable Rules and payable fees which were raised again before him after having made decisions thereon. So long as there are decisions made by the Arbitral Tribunal subsequent to the earlier decision of this court, and so long as those decisions are being challenged, this court is mandated to determine the grounds of challenge herein on merits. They are not matters barred by the doctrine of res judicata. The preliminary Objection does not hold water. It is hereby dismissed with costs.

As for the merit of the petition, the Petitioner has raised three complaints against the Arbitrator's conduct of the pending arbitration. These are captured in the written submissions by Learned Counsel for the Petitioner. Firstly, the petitioner complains that clause 16.0 of the Consultancy Agreement first required reference of the dispute to the Architects and Quantity Surveyors Registration Board before arbitration. Secondly, that the Petitioner specifically requested the sole arbitrator to apply the AQSRB fee framework, particularly because he had been appointed through that very Board, yet that request was not honoured and the arbitrator instead proceeded on a disputed fee regime. Thirdly, that while those two foundational objections remained unresolved, the sole arbitrator proceeded to suspend the proceedings and later issued directions pointing towards dismissal.

I will start with clause 16.0 of the Consultancy Agreement. The Clause provides that:

"16.00 DISPUTES

16.01 Any difference or dispute may by agreement between the parties be referred to the relevant Board of Registration for an Opinion, provided always that such an opinion is sought on a joint statement of undisputed facts, and the parties undertake to accept the Board's opinion as Final."

Initially, the Sole Arbitrator ordered parties to address him on this clause in writing. No submissions were filed by the Petitioner within the given time frame. No adverse orders were made by the Sole Arbitrator against either part for failure to comply with his order. The Sole Arbitrator could not write an order as he was insisting on firstly being paid his arbitration fees by the Petitioner who was, in turn, refusing to pay the arbitrator's fees until this issue and the other issue of applicable rules of procedure including those in respect of fees, were determined first. While that deadlock was on, in a heated exchange of letters between the Sole Arbitrator and the parties, on 14th June, 2025, writing through his Administrative Secretary, the Sole Arbitrator determined the question of Clause 16.01 of the Consultancy Agreement in the following words:

"It should be noted that first, Clause 16.00 is not in the imperative and secondly, <u>the dispute may, by "agreement between the parties…</u>" Therefore, the absence of an agreement between the parties can only have one conclusion. The parties have abandoned that route and gone to arbitration. So, I agree with what the Respondents have said, that parties willingly waived that path."

No formal Ruling was issued or made by the Arbitrator. Parties were not heard before the direction being issued. An interlocutory award/Ruling on the substantive jurisdiction of the Arbitral Tribunal was issued by way of a letter written on behalf of the Sole Arbitrator by his administrative secretary.

As if the above features of the issuance of the interlocutory award/Ruling on substantive jurisdiction were not disturbing enough, it must be noted, also, that section 35(1) of the Arbitration Act requires that an objection on substantive jurisdiction of the Arbitral Tribunal should be raised at the outset of the Arbitral proceedings and not later than the time the party raising it takes the first step in the proceedings to contest the merits of any matter in relation to which he challenges the arbitral tribunal's jurisdiction. However, in this matter, whereas the 1st Preliminary Meeting was held on 23rd March, 2023 whereby pleadings were subsequently filed as scheduled in it, it was not until 21st November, 2024, when the Petitioner's Counsel raised an objection n substantive jurisdiction when he addressed the Sole Arbitrator that, in their view, Clause 16.01 of the Consultancy Agreement required parties, firstly, to take the dispute to the Architectural and Quantity Surveyors Registration Board of Tanzania for Opinion before referring it to Arbitration.

I have looked at Clause 16.0 of the Consultancy Agreement. In my decision, there is no reason for not accepting the interpretation given by the Sole Arbitrator. The "decision" by the Arbitrator on Clause 16 of the consultancy agreement made on 14th June, 2025, therefore, remains intact that Clause 16.01 of the Consultancy Agreement is not phrased in the imperative and that in absence of an agreement between the parties, it could not be invoked. Hence, parties were entitled to go to arbitration as the first tier of dispute settlement, in the circumstances.

Next is the complaint on arbitrator's fees. On this, given the previous Ruling of this Court in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024), the orders arbitrator's directions pertaining to arbitrator's fees for the period up to the date of making the said Ruling on 31st July, 2024, cannot be disturbed since the arbitrator's orders in respect thereof, have been merged into the Ruling of this court over which it is now functus officio.

It is the decision on arbitrator's costs made after the previous Ruling of this court which can be investigated upon by this Court. That is to say, the Arbitrator's decision made on 26th September 2025 that the sole arbitrator would charge the fees of USD 300 per hour for himself and USD 100 per hour for the administrative secretary is the one that is the subject of this Ruling.

As it was submitted by Learned Counsel for Respondent, after the arbitral proceedings were resumed, and the sole arbitrator convened a session on 26th September 2025, the Petitioner, again, raised the issue of the arbitrator's fees, alleging that the fees were excessive, and prayed that they be scaled down. Now, to this prayer, the Arbitrator had only two options. The first option was to rule that the question of Arbitrator's fees had been agreed upon (if at all) between the parties and the Arbitrator and the agreement had been confirmed by the court in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31st July 2024), thus, he was sticking to the fees agreement.

The second option available to the Arbitrator was to reopen the issue of arbitrator's fees and thereby undo their earlier agreement on it, and renegotiate a new agreement on arbitrator's fees pursuant to the applicable procedures.

As for the first option of standing by the position that the question of Arbitrator's fees had been agreed upon between the parties and the Arbitrator, the position of the law is that arbitrator's fees are considered a matter of contract between the parties and the arbitrators. Under this theory, the parties' contractual responsibility to pay the arbitrators and the institution for conducting and administering the arbitration, respectively, is analytically distinct from the content of the resulting award. (For this see **Soyak Int'l Constr. & Investment Inc. v. Hobér, Kraus & Melis,** No. Ö 4227-06 (3 Dec. 2008), decided by the Swedish Supreme Court.) Upon accepting the appointment, the arbitrator becomes a party to the arbitration agreement, giving rise to a trilateral contract between the parties and the arbitrator. (For this see **Compagnie Européenne de Céréales SA v. Tradax Exp. SA,** [1986] 2 Lloyd's Rep. 301 (QB).

As to the second option exercisable by the Sole Arbitrator in this case, the position of the law is that since arbitrator's fees are considered to be a matter of contract between the parties and the arbitrators, the parties to that agreement are at liberty to vary the terms of their agreement at any time, with the consent of all parties involved. Thus, upon opting not to enforce the alleged earlier made agreement on fees, the Sole Arbitrator effectively reopened negotiations and discussions on the payable arbitrator's fees. Thus, he was mandated to renegotiate the arbitrator's fees with both parties. The Sole Arbitrator could not unilaterally impose new terms on the arbitrator's fees in absence of consent and agreement of both parties involved.

On 26th September, 2025, when the Petitioner raised the issue of the arbitrator's fees being excessive, the Arbitrator opted out of the earlier agreed arbitrator's fees, thus he thereby reopened negotiations on the payable arbitrator's fees. In doing so, he should have involved the parties to the fees agreement. This was, however, not done. Instead, the Arbitrator unilaterally imposed new fees "agreement" fees as follows:

> ***"As parties had agreed a fee of USD 420 per hour I will not submit this prayer for further discussion. I will deduct from what was agreed as fee, the fee is now scalled down to USD 300 per hour for Arbitrator and USD 100 per hour for the secretary".***

The questions which come up are, firstly, with whom did the Arbitrator "agree" on the new arbitrator's fees of USD 300 per hour for the Arbitrator and USD 100 per hour for the secretary? Secondly, the Arbitration herein being institutional, as conceded by both parties, under the auspices of the AQRB Board and its Arbitration Rules of 2021, were the imposed arbitration fees of 26th September, 2025, in conformity with or allowed by the applicable institutional rules?

The question as to with whom did the Arbitrator "agree" on the newly imposed arbitrator's fees of USD 300 per hour for the Arbitrator and USD 100 per hour for the secretary, is crucial because, as already said, an arbitrator cannot determine their own fees without consulting the parties and reaching an agreement with them. This position of the law found judicial recognition in a persuasive decision by the Supreme Court of India in the matter of **Oil And Natural Gas Corporation Ltd. vs Afcons Gunanusa Jv,** delivered on 30 August, 2022. The Court's ruling held that an arbitrator cannot determine their compensation without consulting the parties, upholding the significance of party autonomy. The Court held that the term "costs" and "fees" are two different paradigms, where cost shall include the arbitrator's fees. However, an arbitral tribunal cannot pass a binding order on its fees, while determining the amount of costs. The Court also observed that an arbitrator can demand deposits and supplementary deposits since these advances for costs are provisional.

In the facts disclosed above, after the Arbitral Tribunal opted to un-do the earlier made agreement on the Arbitrator's fees, instead of engaging parties into consultations with a view to agreeing on a new agreement on arbitrator's fees, it passed a final binding order determining its fees without consulting the parties in the course of arriving at the newly imposed fees. That was wrong. Arbitrators cannot determine their fees without consulting the parties and reaching a clear agreement with them on that aspect.

In this case, it is only the Petitioner that is complaining of the arbitrator's fees being unilaterally imposed by the Arbitrator on 26th September, 2025, without agreement with both parties. It means that the Respondent, on his part, accepted the imposed fees of arbitration. However, that agreement by one of the parties and the Arbitrator is only bilateral whereas the arbitrator's fees agreement ought to be trilateral. The bilateral agreement, if any, between the Arbitrator and the Respondent did not suffice since, typically, an arbitrator's fees agreement is not bilateral rather a trilateral contract among the parties and the arbitrator. To be valid, the arbitrator's fees agreement needed the active involvement and express consent of the Arbitrator, the Claimant and the Respondent. No such involvement was done in the circumstances of this case. No agreement was reached. The fees were imposed by a direction of the Arbitrator made on 26th September, 2025.

Perhaps, it is not out of context to point out here that where only one party has agreed to the arbitrator's fees and the fees are later on held by Court to be unreasonable, it is only the successful complaining party who is exonerated from the liability/obligation to pay the fees thus set aside, but the other party (who did not complain/challenge the fees) may still be held liable contractually to pay the Arbitrator the contractually agreed amount as between him and the Arbitrator. (For this principle, see Loukas A. Mistelis (ed), in **Concise International Arbitration** (2 edition, 2015), Chapter 23 —Mistelis on Arbitration).

Thus, the Arbitrator's fees of USD 300 per hour for the Arbitrator, and USD 100 per hour for the secretary, imposed on 26th September, 2025, to the extent that it is not disputed by the Respondent, constitutes a valid agreement as between the Arbitral Tribunal and the Respondent only.

I repeat, on 26th September, 2025, the moment the Arbitral Tribunal opted to re-negotiate with the parties the payable arbitrator's fees, it was not in a position to pass a final binding order/direction on its own fees. An entirely new agreement was to be reached with the full consent of both parties. Arbitrators cannot determine their fees without consulting the parties and reaching an agreement with them. The minutes of the arbitral proceedings should show that consultation and consensus building on the payable arbitrator's fees. A separate fees agreement between the Arbitrator and parties could also suffice. In this case, the Arbitrator, after having abrogated an earlier agreement on fees, "determined" the new payable fees. There was no agreement reached with both parties on arbitrator's fees. Logically, "determination" of any thing comes only when there is no common decision on it between the parties involved. A Judge or an arbitrator cannot "decide" anything against the joint view of the parties to the dispute. Therefore, the fact that on 26th September, 2025, the Arbitrator unilaterally, "determined" the payable arbitrator's fees, has only one conclusion. That is, there was no consensus reached on 26th September, 2025 by the Arbitrator, the Claimant and the Respondent in their trilateral contract on arbitration fees.

In absence of a consensus of the three parties to the arbitrator's fees agreement, it cannot be said that parties and the Arbitrator "agreed" to the arbitrator's fees of 26th September,2025 for the Arbitrator to be paid USD 300 per hour and USD 100 per hour for the secretary. Existence of consensually reached arbitrator's fees agreement is crucial as it protects the parties from being forced to accept a unilateral and arbitrary fee, if any, fixed by arbitrators and at the same time affords liberty to an arbitrator to accept or to reject any unreasonable or unconscionable fee, not commensurate with the efforts required while adjudicating disputes between the parties.

I said, also, that the fixation of arbitrator's fees of USD 300 per hour for the Arbitrator and USD 100 per hour for the secretary by an order of the Arbitrator dated 26th September, 2025, poses another challenge in view of the fact that this arbitration is institutional. In the National Insurance Corporation vs. Sekulu Construction Company (1986), TLR 157, the Court of Appeal held that parties are bound by their pleadings. In the present case, reading the Petition at paragraphs 4, 5 and 6 the Petitioner alleged as follows:

> **4. That under Clause 16 of the Agreement, the Petitioner and the Respondent agreed that in case a**

dispute arise between them, then the dispute will be referred to the Architects and Quantity Surveyors Registration Board (AQRB) for an opinion to be accepted as final, and, later, as per Clause 17 to the arbitration and that the Applicable law to be of the Architects and Quantity Surveyor Registration Board (AQRB) Arbitration Rules of 2021 (hereinafter referred to as ("the Rules").

5. That upon arose of the dispute, the parties agreed to appoint Honorable Justice (Rtd) Thomas B Mihayo) herein after known as the "sole arbitrator") to arbitrate the dispute through the Architects and Quantity Surveyors Registration Board Arbitration Rules of 2021;

6. That the Sole Arbitrator was notified by the Architects and Quantity Surveyor Board on 13th March 2023. That on 14th March 2023, the sole arbitrator wrote a letter to the Architects and

Quantity Surveyor Board accepting the said appointment.

The Respondent, on the other hand, in her Answer to the Petition, responded to the above allegations as follows:

3.That the contents of paragraph 4 of the Petition are partly admitted and partly denied to the extent that Clause 16 of the Agreement does not confer absolute authority upon the Architects and Quantity Surveyors Registration Board (AQSRB) to receive and/or determine disputes between the parties. Rather, the said clause provides that any reference of a dispute to the relevant Board is subject to the agreement and consent of the parties

4. That the contents of paragraphs 5 and 6 of the Petition are noted as a true narration of the background to the dispute.

5. In addition to the content of para 4 above, the sole arbitrator afforded the parties ample time to discuss

and agree on the method of payment, whether on an hourly basis or as a lump sum.

From the above excerpts from the Petition and the Answer to the Petition, both parties concede that:

(a) That the Applicable law in the arbitration shall be the Architects and Quantity Surveyor Registration Board (AQRB) Arbitration Rules of 2021;

(b) That upon the dispute arising, parties agreed to appoint Honorable Justice (Rtd) Thomas B Mihayo) as the "sole arbitrator" to arbitrate the dispute through the Architects and Quantity Surveyors Registration Board Arbitration Rules of 2021;

(c) That the Sole Arbitrator was notified of his appointment by the Architects and Quantity Surveyors Board on 13th March 2023 and that on 14th March 2023, the sole arbitrator wrote to the Architects and Quantity Surveyors Board accepting the said appointment.

Now, in this Petition, the Petitioner has complained that the Sole Arbitrator is not following the parties agreement as regards the applicable arbitration Rules especially in fees payment. On my part, I find that since parties have agreed to the above modality of conducting their arbitration, the Court has mandate to see to it that the agreement of the parties is upheld. In the exercise of its primary or supervisory jurisdiction, the court has broader powers over the arbitration and the arbitral award. The supervisory powers of the Court are necessary to support or facilitate the smooth conduct of arbitration falling under its supervisory jurisdiction. I subscribe to what was held in **G.K. Hotels and Resorts vs Board of Trustees of the Local Authorities Provident Fund** (Misc. Civil Cause No. 1 of 2008) [2008] TZHC 562 (7 August 2008),where it was held at page 10 that:

> **Hostility to arbitration could have adverse effect on the economy if courts in this country do not support parties and arbitral tribunals to enforce their choice to arbitrate their disputes.**

In this case, the Petitioner pegged his petition, inter alia on Clause 17.7 of the Architects and Quantity Surveyors Registration Board Rules of 2021. The Petitioner and the Respondents in their pleadings, have intimated of having appointed the Sole Arbitrator to arbitrate the dispute through the Architects and Quantity Surveyors Registration Board Arbitration Rules of

2021. Further, parties are at one that the Sole Arbitrator was notified of his appointment by the Architects and Quantity Surveyors Board on 13th March 2023 and that on 14th March 2023, he wrote to the Architects and Quantity Surveyors Board accepting the said appointment. This means that the arbitration was institutional under the Architects and Quantity Surveyors Registration Board which allegedly, as stated by parties in their pleadings, has its own institutional arbitration Rules in place which according to the petitioner, also govern the question of arbitrator's fees.

This Court has not seen the said Architects and Quantity Surveyors Registration Board Arbitration Rules of 2021 but since parties are at one on their existence and applicability to their dispute, hence, being not an issue for determination, the role of this court is to enforce the parties' agreement made under party autonomy. As I stated herein before, a Judge cannot "decide" anything against the joint view of the parties to the dispute. Existence and applicability of the said Rules was not a matter in dispute from the pleadings to submissions. Actually, applicability of the Architects and Quantity Surveyors Registration Board Rules of Arbitration, 2021,was raised and argued by parties in the earlier case in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024]

TZHCComD 157 (31 July 2024). The Court, in its Ruling, did not determine that issue one way or the other since a cause of action in respect thereof had not yet arisen. I take judicial notice of the former decision on existence of the said institutional rules. However, arbitration being a process anchored on parties' agreement founded on the principle of party autonomy, if parties wish to depart from applicability of the alleged Rules on any aspect in their arbitration or to supplement the Rules with other Rules, they may do so by consent of both parties, subject to the dictates of the institutional rules. That departure or modification should be clearly discernible from a separate parties' agreement on that aspect or the undisputed minutes of the meetings signed by parties and the Arbitrator. In absence of such departure or undisputed modifications, the Arbitral Tribunal is bound to conduct all aspects of the Arbitration pursuant to the parties' own agreed Rules of procedure in respect of all matters governed by those Rules.

Now that it is not disputed that the Sole Arbitrator was appointed through the AQRB as an arbitral institution to arbitrate the dispute through the Architects and Quantity Surveyors Registration Board (AQSRB) vide the provisions of the Architects and Quantity Surveyors Registration Board (AQSRB), Arbitration Rules, 2021, could the Sole Arbitrator unilaterally, impose arbitration fees by his order of 26th September, 2025 without regard to the dictates of the institutional rules of arbitration? My answer is in the negative. Institutional arbitrations are conducted pursuant to institutional arbitration rules and overseen by an arbitral institution with responsibility for various aspects relating to constituting the arbitral tribunal, administrative, financial and similar matters.

The main advantages of institutional arbitration include the presence of default arbitration rules, the services from a permanent organization and a higher degree of certainty in respect of the procedural aspects of the arbitration. The general rule is that, typically, when an arbitration is conducted under the auspices of an arbitral institution, the fees payable to the arbitrator(s) are fixed by the institution. None of the international bodies (including arbitral institutions) confer an absolute or unilateral power to the arbitrator(s) to decide their own fees. (For this, see the decision by the Supreme Court of India in the matter of **Oil And Natural Gas Corporation Ltd. vs Afcons Gunanusa Jv,** delivered on 30 August, 2022, at paragraph 52 and page 46 thereof.) In institutional arbitration, generally, the calculation of the arbitrator's fees is either stipulated in the contract between the parties and the arbitrator or in the institutional rules governing the procedure, unless parties and the arbitrator opt out of the arbitrator's fees prescribed in the institutional rules governing the procedure (and only if the Rules allow them to do so).

It must be remembered that Mr. James, Learned Advocate for the Petitioner, in his submissions, complained that the arbitrator in this case had declined to apply the AQSRB Board Rules in relation to fees and, instead, relied on international rates and foreign currency. He argued that once an arbitrator accepts appointment through a statutory or professional board, parties are entitled to expect that his fees will be regulated by the framework of that body unless there is a clear and lawful agreement to the contrary. When that institutional consistency is abandoned that uncertainty begins, and when uncertainty begins confidence in the fairness of the process is inevitably weakened. I agree. This submission by Learned Counsel, represents the correct position of the law on arbitrator's fees in an institutional arbitration like the present one. On 26th September, 2025, the Sole Arbitrator, after having departed from the earlier agreed fees and reopened negotiations on the new payable arbitrator's fees, he unilaterally imposed upon the parties the new payable rates of the arbitrator's fees. With respect, it was not correct.

As the records of 26th September, 2025, show, in arriving at the new arbitrator's fees, no reference was made to the fee scales prescribed in the Architects and Quantity Surveyors Registration Board Rules, which fees scales parties are deemed to have accepted by opting the institutional rules and the arbitrator to have also accepted by accepting his appointment through the said rules. The starting point in re-negotiating the arbitrator's new fees should have been the fees prescribed in the institutional rules or as fixed by the administration of the arbitral institution (here AQSRB). From there, the Arbitrator could engage parties to, mutually, agree to a different fees scale and sign an agreement with parties on the agreed fees. If an arbitrator, operating under institutional arbitration were to be allowed to unilaterally fix the arbitrator's fees, the Arbitral Institutions would have no power to fix the fees and the whole purpose of institutional Arbitration would be defeated. When Parties choose an Arbitral institution to administer their arbitration, the rules of the said Arbitral Institution take over the procedure of the Arbitration. The Arbitrators must strictly follow the Rules of the Arbitral Institution which include, not only the procedure to conduct the arbitration, but also the fees.

Taking a break, the scenario in this case underscores the need for the law to strike a balance between power and responsibility. On one hand, arbitrators have powers. On the other hand, they have great responsibility. Douglas A. Stephenson, in his book titled: "**Arbitration Practice in Construction Contracts**," Fifth Edition, Blackwell Science, 2001, page 1 observes about the powers of arbitrators, that:

> ***"According to Raymond, LJC, An arbitrator is a private extraordinary judge between party and party, chosen by their mutual consent to determine controversies between them. And arbitrators are so called because they have an arbitrary power: for if they observe the submission and keep within due bounds, their sentences are definite from which there lies no appeal."***

Whereas, Arbitrators are endowed with great powers, on the other hand, however, Arbitrators should be alive to the words by Stan Lee (in Amazing Fantasy #15 (1962) that: -

"With great power comes great responsibility".

Despite their arbitrary power, Arbitrators are bound to observe the submission and keep within due bounds. Power should be construed as synonymous with responsibility. The law governing arbitration, amongst others, attempts to balance out between the arbitrators' powers and their responsibility in the exercise of such powers.

The need for conducting institutional arbitration pursuant to the institutional rules, unless parties agree otherwise, and only to the extent allowed by the rules, cannot be overstated. The arbitration in this case, for example, was agreed by parties to be conducted by the Sole Arbitrator through the Architects and Quantity Surveyors Registration Board (AQSRB) vide the provisions of the Architects and Quantity Surveyors Registration Board (AQSRB), Arbitration Rules, 2021. The Sole Arbitrator on 14th March, 2023, wrote a letter to AQSRB accepting his appointment as such. In that regard, applying the institutional rules in every aspect including the institutional fees structure, was a matter of an agreement binding upon parties and the arbitrator unless modified by an agreement and to the extent allowed by the rules.

Conducting institutional arbitration within the auspices and supervision of the relevant arbitral institution, also, helps to maintain the intended professional oversight by the arbitral body to ensure that the arbitration proceedings are conducted in the manner anticipated by the particular profession. For example, the dispute at hand involved an Architect Petitioner and parties agreed to subject the arbitration to the oversight of Architects and Quantity Surveyors Registration Board (AQSRB) for a purpose. The last time I checked, there were some specific legal provisions which might have been applicable to arbitrations conducted under the oversight of Architects and Quantity Surveyors Registration Board (AQSRB) as follows:

(a) The Architects, Quantity Surveyors, Architectural and Quantity Surveying (Consulting Firms) (Fees) By-laws, G.N. No. 408 of 1998 were providing that:

> *" 3.26 Any difference or dispute arising out of the appointment which cannot be resolved in accordance with clause 3.25 shall be referred to arbitration by a person to be agreed between the parties or, failing agreement within 14 days after each party has given to the other a written request to concur in the appointment of an arbitrator, a person to be nominated at the request of either party by the Chairman of the Board of Architects and Quantity Surveyors, provided that in a difference dispute arising out of provisions relating to copyright, clauses 3.15 to 3.18 the arbitrator shall unless otherwise agreed, be an architect."*

(b) The Architects and Quantity Surveyors By-laws, G.N. No. 168 of 2000 was providing that:

> ***"97. Settlement of disputes***
>
> ***(2) Any difference or dispute arising out of the conditions of engagement and scale of professional fees and charges which cannot be resolved by settlement before the Board therefore the matter shall be referred to the arbitration by a person to be agreed between the parties or failing to reach an agreement within 14 days the matter shall be referred to an arbitrator, to be nominated at the request of either party by the Attorney-General, provided that in a difference or dispute arising out of provisions relating to copyright, the arbitrator shall, unless otherwise agreed, be an architect."***

(c) The Architects and Quantity Surveyors By-laws, 2024 Government Notice No. 879 Published on 25/10/2024 was providing that:

> ***"8. The Board may coordinate arbitration or reconciliation of parties involved in disputes in accordance with the Architects and Quantity Surveyors Registration Board Arbitration Rules.***

117.-(1) Any question arising out of the conditions of engagement and scale of professional fees and charges may be referred by a registered person or client to the Board for advise or determination.

(2) Any dispute arising out of conditions of engagement and scale of professional fees and charges which cannot amicably be resolved may be referred for settlement before the Board for arbitration which is coordinated by the Board.

(3) Parties may agree to refer a dispute on a joint statement of undisputed facts, to the Board for an opinion, and the parties shall consider the Board's decision as binding and final."

It might be that some of the above sector-specific legal provisions relating to arbitration are no longer in force or have been amended, but it might as well be that at the time of the Consultancy Agreement in 2013 or when the arbitration of the dispute commenced in March, 2023, one or more such provisions was applicable. Subjecting the arbitration to the oversight of Architects and Quantity Surveyors Registration Board (AQSRB) as agreed by the parties when opting for the institutional rules and by the arbitrator when accepting the appointment, could prove useful in maintaining the professional ambiance within which the professional dispute relating to architectural consultancy work was intended by parties to be arbitrated.

The third, complaint by the Petitioner in this matter was that while the two foundational objections on the effect of clause 16 of the contract and applicable rules of procedure remained unresolved, the sole arbitrator proceeded to suspend the proceedings and later issued directions pointing towards dismissal. He argued that the objection ought first to have been resolved and the objector ought not to have been pressured.

Mr. Pongolela, Learned Advocate, submitted in reply that the Arbitrator subsequently provided clarification over his remarks made in the proceedings dated 21st November 2024 through the proceedings dated 24th March 2025 as per annexure RAM-10 to the Petition, clarifying that the last paragraph of the proceedings on 21st November, 2024 was just putting the claimant on notice and nothing more.

I find the complaint by the Petitioner on the Arbitrator not making a decision over clause 16.0 of the Consultancy Agreement, overtaken by events. As it has been shown herein before, the Arbitrator, ultimately delivered his "decision" on that issue on 14th June, 2025, through the letter by his

Administrative Secretary. The Sole Arbitrator ruled that Clause 16.01 is not in the imperative and can only be invoked on agreement between parties. By not agreeing to go through that path, parties had waived that route. Thus, as far as the issue has been determined by the arbitrator, the Petitioner, now, cannot complain on its not being determined. As for the past, the Arbitrator could not be faulted for not having determined an issue in the arbitration without being paid his agreed arbitrator's fees. Actually, for smooth progress of arbitration, it is encouraged that the question of arbitrator's fees and costs of arbitration in general be dealt with at the very beginning and with certainty.

The other component of the third complaint by the Petitioner was propriety or otherwise of the arbitrator threatening to dismiss the claims before firstly determining the applicable fee regime which is lawful, agreed and properly anchored in the framework of the appointing Board. It must be noted that, this question has also been determined already whereby on 26th September, 2025, the Arbitrator imposed the new arbitrator's fees. It is a complaint by the Petitioner of past events in arbitration which have now been overtaken by events. Equally here, I am of the view that the Arbitrator could not be faulted for threatening to dismiss the claims before firstly determining the applicable fee regime which is lawful, agreed and properly anchored in the framework of the appointing Board. So far as the Arbitrator is concerned, and so far as the Ruling of this Court in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024) is concerned, the question of arbitrator's fees prior to 31st July, 2024 was agreed upon. In that regard, it would be inconceivable to condemn the arbitrator top embark on determining some issues in the arbitration in which he had not been paid the agreed arbitrator's fees. Again, for smooth progress of arbitration, it is encouraged that the question of arbitrator's fees and costs of arbitration in general, be dealt with at the very beginning and with certainty.

If I should add, the question of arbitrator's fees is a trilateral agreement involving the Arbitrator(s), the Claimant(s) and the Respondent(s). Where the arbitration is institutional, in reaching to agreeable fees, the Arbitrator and parties are bound to start with the institutional framework on that aspect since they are all deemed to have accepted it by parties choosing the institutional rules and services and by the arbitrator accepting to work as such. However, as a matter of agreement, where the Rules allow, parties can reach an agreement on payment of arbitrator's fees, not costs.

The terms 'cost of arbitration' and 'arbitrator's fee' are often mistaken to be synonymous, however, the meaning of the two terms is distinct. While the fees of the arbitrator(s) is only a part of the cost, the cost of arbitration may include (i) the fees and expenses of the arbitrators, (ii) costs or expenses of witnesses; (iii) legal fees and expenses; (iv) any administration fees of the institution supervising the arbitration; and (v) any other expenses incurred in connection with the arbitral proceedings and or the arbitral award. In short, "costs" include other elements apart from the arbitrator's fee.

The parties to the arbitration have a right to expect a reasonable fee to be fixed by the arbitral tribunal that can be borne by them as per their mutual agreement. Where parties and the arbitrator, have a room to negotiate and agree on the arbitrator's fees, they are expected to be guided by the obtaining best practices/approaches used world over such as *ad valorem* approach whereby the fees are determined by reference to the sum in dispute. The fees are proportionate to the amount in dispute. This approach helps parties to determine at an early stage whether arbitration is of benefit, especially if the amount in dispute is low.

Another approach is an hourly rate where fees are determined by reference to the work done and time spent by an arbitrator on a matter. This approach could be beneficial in ensuring that arbitrators are compensated based on the actual work done.

Another approach is the hybrid approach, which is a blend of both the *ad valorem* and hourly rate models, considers the amount in dispute, but also looks to the work done by each arbitrator to determine their fees.

Lastly is a free rein to the tribunal in determining its fees. However, this does not translate to freedom to decide arbitrarily. Instead, the tribunal remains confined to a direction of reasonability, hence preventing an arbitrary determination of fees which would infract party autonomy.

Finally, to the prayers. The Petitioner approached this Court, praying for the court to:

(i) Declare that the Arbitrator has acted in violation of the applicable Arbitration Rules, particularly in relation to fee determination and contractual obligations.

Based on my findings on this issue, and the findings earlier made by this Court in Misc. Commercial Cause No. 66 of 2023/7309 of 2024 between

Ramani Consultants Ltd vs Swissport (T) Ltd [2024] TZHCComD 157 (31 July 2024), I cannot undo what was decided by that case. However, as regards the order of the Sole Arbitrator dated 26th September, 2025, when the Arbitral Tribunal opted to renegotiate the payable arbitrator's fees with the parties, it is hereby declared that the Arbitral Tribunal was not in a position to pass a lawful final binding order on its fees without consulting the parties and reaching an agreement with them and or pursuant to the applicable Arbitration Rules, particularly in relation to fee determination.

(*ii) Order that the Arbitrator must adhere to the AQRB Arbitration Rules of 2021 in all respects, including the arbitrator's payable fees.*

Following my findings in this case, since it is the common understanding of both parties that the Sole Arbitrator was appointed through the AQRB as an arbitral institution to arbitrate the dispute through the Architects and Quantity Surveyors Registration Board (AQSRB) vide the provisions of the Architects and Quantity Surveyors Registration Board (AQSRB), Arbitration Rules, 2021. Therefore, the Sole Arbitrator is ordered, in further conduct of the Arbitration herein, to adhere to party autonomy and the said Architects and Quantity Surveyors Registration Board (AQSRB), Arbitration Rules, 2021 and or administrative directives of the AQSR Board in all respects, including the arbitrator's payable fees as from 26th September, 2025 onwards.

(iii) Declare the arbitral tribunal has no jurisdiction for as the arbitral process is immune for failure to comply with Clause 16.0 of the Consultancy Agreement, and for being initiated without exhaustion of the agreed referral mechanism;

Based on my findings in this matter, I decline to make the order sought. I find that the Sole Arbitrator properly construed Clause 16.01 of the Consultancy Agreement as not being in the imperative. The substantive jurisdiction of the arbitrator in that regard remains unscathed.

(iv) Costs of the Petition be granted.

I have already awarded the Petitioner his costs for the dismissed Preliminary Objection. On the merits of the petition, however, given the prolonged arbitral and judicial proceedings in this matter, I opt to let each party bear its own costs since the arbitration is not over and there is a pending appeal in the Court of Appeal. Parties may incur additional costs.

(v) Make any other orders this honourable Court deems just and appropriate in the circumstances.

On this, I make an order, for clarity, that whereas I have nullified the direction of the Sole Arbitrator dated 26th September, 2025, when the Arbitral Tribunal unilaterally determined and imposed the new payable arbitrator's fees upon the Petitioner, my Ruling has no effect to any arbitrator's fees agreement(s) which might have been entered into between the parties and the Arbitrator prior to 26th September, 2025 and, further, that since the Respondent did not object to the fees imposed by the Sole Arbitrator on 26th September, 2025, my Ruling on that aspect pertains only to the fee arrangement as between the Petitioner herein and the Arbitrator who should renegotiate and agree on the arbitrator's fees payable but subject to, and in accordance with, institutional Rules of Arbitration and or the administrative directives regulating Arbitration conducted under the auspices of the Architects and Quantity Surveyors Registration Board of Tanzania.

It is so ordered.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
COMMERCIAL DIVISION

A.H.GONZI

JUDGE

19th June, 2026

Ruling is delivered in Court this 19th day of June, 2026 in the presence of Mr. John James Advocate for the Applicant and Mr. Shukuru Rajabu Advocate for the Respondent.

A.H.GONZI

JUDGE

19th June, 2026