

**THE REPUBLIC OF UGANDA
IN THE CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION
CAD/ARB/NO.16 OF 2012**

EDGARD AGABA APPLICANT

v.

AKRIGHT PROJECTS LTD RESPONDENT

RULING

This file came up for hearing on 25th May 2012.

The only parties present were counsel Naboth Muhairwe for the Applicant and the Applicant Mr. Edgar Agaba.

Counsel Naboth Muhairwe conveyed information from the bar that Respondent's counsel had notified him via mobile phone, some five minutes prior to the hearing, that he was not opposed to the application.

Counsel Naboth Muhairwe nevertheless made an *ex parte* prayer to proceed with the Application.

This prayer was granted.

The common background between both parties is as follows.

Akright Projects Ltd and Edgar Agaba signed two sale agreements.

The first agreement is dated 12th August 2010. The subject matter here was 0.25 acres of land comprised in Plot 17 Block 273 at Mutungo Kakoola (Lubowa View extension) at Akright Housing Estate – **Annex A2**.

The second agreement is dated 6th January 2011. The subject matter here was 0.50 acres of land comprised in Plot 20 Block 273 at Mutungo Kakoola (Lubowa View extension) at Akright Housing Estate – **Annex A1**.

A dispute appears to have arisen between the parties, hence this Application for the compulsory appointment of an arbitrator.

Both agreements have clause 6, which reads as follows,

“6. The parties agree that any disputes arising in respect of this agreement between the parties will be settled under the Arbitration and Conciliation Act (Cap 4) Laws of Uganda 2000 by one or more arbitrators appointed in accordance to the law.”

Counsel Naboth Muhairwe submitted the Applicant counsel’s communication dated 7th February 2012 (**Annex D**), evidenced the notice to appoint the arbitrator to resolve the disputes arising.

This notice gave the Respondent until 12th February 2012 to respond to the issue of formulating the arbitral tribunal.

I have perused Annex D and note that the Respondent scribbled a response, dated 7th February 2012, counter-proposing another arbitrator.

There was no further action by either party.

This deadlock has now to be resolved under Section 11 Arbitration and Conciliation Act, Cap.4 Laws of Uganda, given that the process of constituting a tribunal has failed under the watch of both parties.

The clause states “one or more arbitrators appointed in accordance to the law”.

It is open to the parties when they are co-operating to determine the number of arbitrators.

Neither the clause nor Section 11 Arbitration and Conciliation Act, Cap.4 Laws of Uganda vests me with the powers to exercise the parties discretion to determine how many arbitrators should constitute the tribunal.

I am therefore bound by Section **10(2) Arbitration and Conciliation Act, Cap.4 Laws of Uganda** to appoint only one arbitrator.

I therefore appoint Jackie Nakalembe as the arbitrator. In case Jackie Nakalembe is not be able to accept this statutory appointment due to any unforeseen event under S.12(1) Arbitration and Conciliation Act, then the matter shall be referred to Kafuko Ntuyo or Sim Katende.

Should Jackie Nakalembe not take up the appointment, then the alternative arbitrators they can only be approached in the sequential order listed.

Before taking leave of this matter, I must observe that the Applicant took a very bold step to consolidate two contracts into one Application.

I noticed this when I was writing out this Ruling.

I raise this because arbitral tribunals do not have powers to consolidate matters unless if expressly empowered by the parties.

Therefore the appointment I have effected shall apply to Plots 17 and 20 as if they are separate claims, before me. The result of which is that the arbitrator will hear one case for plot 17 and another for Plot 20.

Costs of the Application are awarded to the Applicant.

Dated at Kampala on the 27th day of May 2012.

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**Jimmy M Muyanja
Executive Director
CADER.**